

**CLONCURRY SHIRE COUNCIL
LOCAL LAW NO. 5
(KEEPING AND CONTROL OF
ANIMALS) 2001**

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PART 1 - PRELIMINARY

1. Short title

This local law may be cited as *Local Law No. 5 (Keeping and Control of Animals) 2001*.

2. Objects

The objects of this local law are to regulate the keeping of animals:

- (a) to protect the community against risk of injury and damage; and
- (b) to ensure that animals do not create a nuisance, or a hazard to health or safety; and
- (c) to prevent pollution and other environmental damage resulting from the keeping of animals and to protect the amenity of the local environment; and
- (d) to ensure that animals are kept and used in a way that is consistent with the rights and expectations of the local community; and
- (e) to ensure that animals are treated humanely.

3. Repeal

This local law repeals *Local Law No. 6 (Keeping and Control of Animals)*.

4. Definitions

In this local law:

"authorised person" means a person authorised by the local government to exercise the powers of an authorised person under this local law;

"animal" includes a fish, bird or reptile but does not include an animal of a species excluded by a subordinate local law from the application of this local law;

"cattery" means a place used for the keeping, boarding or breeding of cats on a commercial basis;

"dangerous dog" means a dog:

- (a) of a breed or type classified by a subordinate local law as a dangerous dog;
or
- (b) declared under section 34 to be a dangerous dog;

"keeper" of an animal means:

- (a) the person who has the immediate custody and control of the animal; or
- (b) if the person who has the immediate custody and control of an animal is a minor, the minor's parent or guardian; or

- (c) the occupier of the land on which the animal is ordinarily kept.

"kennel" means a place at which dogs are kept, boarded, bred or trained on a commercial basis;

"pet shop" means a shop at which animals are offered for sale;

"registration tag" means a mark or object to identify an animal including, for example:

- (a) a metal or plastic, disc or plate;
- (b) a collar;
- (c) a tattoo or brand; or
- (d) an implant bearing an electronic code;

"security" means a sum of money to be determined annually by the Chief Executive Officer to cover the costs and expenses reasonably expected to be incurred by the local government in keeping a dog subject to a destruction order, pending the determination of an appeal under Part 4 or review under Part 5.

5. Relationship with other laws

This local law is in addition to, and does not derogate from:

- (a) laws regulating the use or development of land; and
- (b) other laws about the keeping or control of animals of a particular species.

PART 2 - KEEPING OF ANIMALS

Division 1 - Animals for which permit is required

6. Requirement to hold permit

- (1) A subordinate local law may require a permit for the keeping of animals.
- (2) The requirement for a permit may be imposed with regard to the following factors:
 - (a) the species, breed, age or sex of the animals; or
 - (b) the number of animals to be kept; or
 - (c) the area, or part of the area, in which the animals are to be kept; or
 - (d) the nature of the premises in which the animals are to be kept; or
 - (e) whether the animal has been declared as a dangerous dog under this local law; or
 - (f) any other factors described in a subordinate local law.

7. Obligations to hold permit

- (1) A person must not keep an animal for which a permit is required unless the person holds a current permit from the local government under this Division.

Maximum Penalty - 20 penalty units

- (2) A person must not contravene a condition of a permit.

Maximum Penalty - 20 penalty units

8. Application for permit

- (1) An application to the local government for a permit under this Division must include or be accompanied by:

- (a) the name and address of the applicant; and
- (b) details of the species, breed, age or sex of the animal(s); and
- (c) details of the number of animal(s) to be kept; and
- (d) details of location in which the animal(s) are to be kept; and
- (e) details of the area or enclosure in which the animal(s) are to be kept; and
- (f) details of whether the owner(s) of adjoining premises to the location where the animal(s) are proposed to be kept have stated in writing they have no objections to the keeping of the animal(s) at the location; and
- (g) other information and material required under a subordinate local law.

9. Criteria for application of permit

In deciding whether to grant a permit under this Division the local government may have regard to:

- (a) the physical suitability of the land for the keeping of the animals; and
- (b) the structural suitability of enclosures in which the animals are to be kept; and
- (c) the likelihood of the animals causing nuisance, inconvenience, or annoyance to the occupiers of adjoining land; and
- (d) the likely effect on the amenity of the surrounding area; and
- (e) the likely effect on the local environment and any possible pollution or other environmental damage; and
- (f) other factors that may be relevant in the circumstances of the particular case; and
- (g) any other criteria required under a subordinate local law.

10. Term of permit

- (1) The term for which a permit is granted or renewed must be fixed:
 - (a) as required by a subordinate local law; or
 - (b) as decided by the local government when it grants the permit or the renewal.
- (2) The local government may, from time to time, on application by the holder of the permit, renew the permit.

11. Conditions of permit

- (1) The local government may grant a permit under this local law on conditions it considers appropriate.
- (2) The conditions may, for example:
 - (a) require the holder of the permit to care for the animal(s) in accordance with appropriate standards; or
 - (b) require that the animal(s) be kept in enclosures that comply with specified structural requirements; or
 - (c) require the holder of the permit to comply with specified standards of hygiene; or
 - (d) require the holder of the permit to ensure that the animal(s) wears or displays an appropriate identifying tag; or
 - (e) require the holder of the permit to ensure that the animals do not cause nuisance, inconvenience or annoyance to others; or
 - (f) require the holder of the permit to take specified action to protect against possible harm to the local environment.
- (3) The local government may, by subordinate local law, prescribe conditions that may be imposed in a permit.

Division 2 - Animals for which registration is required

12. Requirement to register animal

The local government may, by subordinate local law:

- (a) require the keeper of an animal of a particular species or breed to have the animal registered; and
- (b) prescribe a time for which that animal must be registered.

13. Obligation to register

- (1) A person must not keep an animal for which registration is required unless the person holds a current certificate of registration for the animal from the local government.

Maximum Penalty - 20 penalty units

- (2) A person who keeps a registered animal must ensure that the animal carries the registration tag required under a subordinate local law.

Maximum Penalty - 20 penalty units

14. Application to register

An application for a certificate of registration for an animal must include or be accompanied by:

- (a) the name of the keeper of the animal; and
- (b) the address at which the animal is to be kept; and
- (c) the breed of the animal; and
- (d) the description of the animal including colour, markings, sex and age; and
- (e) any other information and materials required under a subordinate local law.

Division 3 - Prohibited animals

15. Prohibited animals

- (1) The local government may, by subordinate local law, prohibit the keeping of animals.
- (2) The prohibition may be imposed by reference to 1 or more of the following factors:
 - (a) the species, breed, age or sex of the animals; or
 - (b) the number of animals to be kept; or
 - (c) the area, or part of the area, in which the animals are to be kept; or
 - (d) the nature of the premises in which the animals are to be kept; or
 - (e) whether the animal has been declared as a dangerous dog under this local law; or
 - (f) any other factors described in a subordinate local law.

16. Prohibited animals must not be kept

A person must not keep an animal contrary to a prohibition under section 15.

Maximum Penalty - 20 penalty units

Division 4 - Commercial operations

17. Pet shops, catteries and kennels

A person must not operate a pet shop, cattery or kennel unless authorised to operate it under a current permit from the local government.

Maximum Penalty - 50 penalty units

18. Obligation to comply with permit

A person must not contravene a condition of a permit authorising the operation of a pet shop, cattery or kennel.

Maximum Penalty - 50 penalty units

19. Application for permit

- (1) An application for a permit to operate a pet shop, cattery or kennel must include or be accompanied by:
 - (a) if the applicant is not the owner of the land on which the pet shop, cattery or kennel is or is to be located - the written consent of the owner to the application; and
 - (b) details of the name and address of the applicant; and
 - (c) any other information specified in a subordinate local law.
- (2) Before the application is granted, the applicant must provide evidence of any necessary development approval or statutory permit, authorisation or approval:
 - (a) for the development and use of the relevant land as a pet shop, cattery or kennel; and
 - (b) for the occupation or use of the buildings and structures on the land in connection with the pet shop, cattery or kennel.

20. Criteria for granting permit

The local government must consider every application for a permit to operate a pet shop, cattery or kennel having regard to the following criteria:

- (a) whether the applicant is a suitable person to operate a pet shop, kennel or cattery; and
- (b) that the pet shop, kennel or cattery will be kept to a proper standard of hygiene, safety and comfort; and
- (c) any other criteria prescribed in a subordinate local law.

21. Term of permit

- (1) The term for which a permit is granted or renewed must be fixed is:
 - (a) as required by a subordinate local law; or
 - (b) as decided by the local government when it grants the permit or the renewal.
- (2) The local government may, on application, prior to the expiration of the permit by the operator, renew the permit.

22. Conditions of permit

- (1) A permit may be granted subject to conditions the local government considers appropriate.
- (2) The conditions of permit may, for example:
 - (a) limit the number of animals on the land on which a pet shop, cattery or kennel is or will be operated; or
 - (b) comply with the minimum standards for the keeping of animals or a particular species of animal specified in section 23 of the local law.
- (3) The local government may, by subordinate local law, prescribe conditions that may be imposed on a permit.

Division 5 - Minimum standards

23. Prescription of minimum standards by subordinate local law

- (1) A subordinate local law may prescribe minimum standards for the keeping of animals in particular areas or a particular species of animal.
- (2) A subordinate local law may, for example:
 - (a) require the regular cleaning of enclosures and the disposal of waste; and
 - (b) require adequate provision of food and water; and
 - (c) require the provision of adequate space for the animals; and
 - (d) provide for the separation of enclosures in which animals are kept from places used for human habitation or the preparation of food, or from watercourses or water catchment areas; and
 - (e) make other provisions for the maintenance of proper standards of cleanliness and hygiene.

24. Obligation to comply with minimum standards

- (1) A person who keeps an animal must ensure that the relevant minimum standards prescribed by a subordinate local law are complied with.

Maximum Penalty - 20 penalty units

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

PART 3 - CONTROL OF ANIMALS

Division 1 - Animals in public places

25. Animal must be under effective control

- (1) A person must not bring or permit an animal to be brought into a public place unless the animal is under the person's effective control.

Maximum Penalty - 20 penalty units

- (2) A dog is not regarded as being under effective control unless:
 - (a) a person who is physically able to control the dog is holding the dog by a leash; or
 - (b) the dog is tethered to a fixed object and is under the continuous supervision of a person who is physically able to control the dog; or
 - (c) the dog is participating in an obedience trial, or training for an obedience trial, under the supervision of an organisation recognised by the local government for the purposes of this section; or
 - (d) the dog is being exhibited at an exhibition under the supervision of an organisation recognised by the local government for the purposes of this section.
- (3) If an animal in a public place is not under effective control, an authorised person may seize and impound the animal.

26. Dangerous dogs

- (1) A dangerous dog must not be brought into a public place by a person under the age of 18 years.

Maximum Penalty - 20 penalty units.

- (2) A person must not bring a dangerous dog into a public place unless the dog is securely muzzled to prevent it from biting.

Maximum Penalty - 50 penalty units

- (3) An authorised person may seize and impound the dog if it is brought into a public place in contravention of subsections (1) and (2).

27. Dogs on heat to be excluded from public places

A person must not bring a dog that is on heat into a public place.

Maximum Penalty - 20 penalty units

28. Person in charge of an animal to clean up animal faeces

If an animal defecates in a public place, the person in charge of the animal must immediately remove, and dispose of, the faeces in a sanitary way.

Maximum Penalty - 20 penalty units

Division 2 - Duty to provide proper enclosure

29. Duty to provide proper enclosure

- (1) A person who keeps an animal must maintain a proper enclosure to keep the animal on the person's land and prevent the animal from wandering or escaping from the land.

Maximum Penalty - 20 penalty units

- (2) If an animal is found wandering at large, the owner of the animal is guilty of an offence.

Maximum Penalty - 20 penalty units

- (3) It is a defence to a charge of an offence against subsection (2) for the defendant to prove:

- (a) the defendant maintained an appropriate enclosure for the animal; and
- (b) the defendant could not, by the exercise of reasonable diligence, have prevented the escape of the animal.

Division 3 - Nuisances etc.

30. Duty to avoid nuisances

- (1) A person must not keep an animal on land if:
- (a) the animal causes a nuisance, other than a nuisance under section 31; or
 - (b) the animal exposes the health or safety of others to significant risk; or
 - (c) the animal creates a reasonable apprehension in the minds of others of a threat to their health and safety.

Maximum Penalty - 20 penalty units

- (2) A local government may, on receiving a complaint of a contravention of subsection (1), give a written notice to the keeper of the animal requiring the person to take specified action to prevent further contravention.

Examples:

- i) remove the animal from the premises;*

ii) *place the animal in a specified enclosure.*

- (3) A person must not fail to comply with a notice under subsection (2) within the time allowed in the notice.

Maximum Penalty - 20 penalty units

31. Dog Barking

- (1) A person must not keep a dog on land if the dog's barking causes a nuisance.

Maximum Penalty - 20 penalty units

- (2) A dog's barking causes a nuisance for the purposes of this section if:

- (a) written complaints are received from 3 residents of different properties; or
(b) an authorised person is of the opinion that the dog barking causes a nuisance.

- (3) A local government may for a contravention of subsection (1) give written notice to the keeper of the animal requiring the person to take specified action to prevent further contravention.

Examples of specified action to prevent further contravention:

i) *remove the animal from the land;*

ii) *subject to any relevant State legislation, ensure an anti-barking collar is fitted to the dog.*

- (4) A person must not fail to comply with a notice under subsection (3) within the time allowed in the notice.

Maximum Penalty - 20 penalty units

32. Removal of animal

- (1) Where there is a recurrence of a nuisance under this part over a 3 month period or a failure to comply with a notice issued under section 30(2) or section 31(3) the Chief Executive Officer may, by written notice, order the removal of the animal from the land permanently ("**notice of permanent removal**") within a specified time.

- (2) A person must not fail to comply with a notice of permanent removal.

Maximum Penalty - 20 penalty units

- (3) If a person fails to comply with a notice of permanent removal then the local government may:

- (a) seize and impound the animal; and
(b) issue a destruction order under section 35(1).

Division 4 - Aggressive animals

33. Attack etc

- (1) A person must not cause, encourage or permit an animal to attack or worry another person or other animal.

Maximum Penalty - 200 penalty units

- (2) If an animal attacks or worries a person or other animal, an authorised person may seize and impound the animal.
- (3) The authorised person may issue an order for the destruction of the animal seized and impounded under subsection (2) in accordance with section 35.

Division 5 - Dangerous dogs

34. Declaration of dangerous dog

- (1) If an authorised person is of the opinion that a dog is dangerous, the authorised person may declare the dog a "**dangerous dog**".

Examples of a dangerous dog include:

- i) if the dog has attacked or worried a person or an animal; or*
 - ii) if the dog is likely to attack or worry a person or an animal; or*
 - iii) if the dog has been trained to attack for the purpose of guarding either persons or property; or*
 - iv) if the dog has been declared a dangerous dog by another local government.*
- (2) An authorised person may order the keeper of a dog by written notice to take specified action ("**a dangerous dog order**") if:
 - (a) the dog is declared dangerous under subsection (1); or
 - (b) the dog is of a breed or type classified as a dangerous dog by a subordinate local law.
- (3) Specified action may be:
 - (a) to warn persons who enter land on which the dog is kept of the presence of a dangerous dog on the land; and
 - (b) to ensure that the dog remains in secure custody and is unable to cause injury or damage to persons or other animals; and
 - (c) any other action as prescribed by subordinate local law.
- (4) A person must not fail to comply with a dangerous dog order issued under subsection (2).

Maximum Penalty - 50 penalty units

PART 4 - DESTRUCTION OF ANIMALS

35. Destruction orders

- (1) An authorised person may order the destruction of an animal (a "**destruction order**") if:
 - (a) the animal has attacked or threatened to attack a person or another animal;
or
 - (b) the animal has created a nuisance; or
 - (c) the animal has put at risk the safety of motorists, cyclists, pedestrians or any other person; or
 - (d) the animal is subject to a dangerous dog order and the order is not complied with.
- (2) When an authorised person makes a destruction order under subsection (1) the authorised person must, if the keeper of the animal is known to the authorised person, or can be ascertained from the local government's records, inform the keeper of the animal.
- (3) The destruction order must be accompanied by a statement outlining the general effect of sections 36, 38 and 42.

36. Appeal against destruction order

- (1) This section does not apply until the keeper of an animal the subject of a destruction order, has first made an application for a review of the decision under section 42.
- (2) Subject to subsection (1), the keeper of an animal against which a destruction order has been made, may appeal to a Magistrates Court against the destruction order.
- (3) A keeper of an animal is not able to appeal under subsection (2) until the security is first paid to the local government.
- (4) The appeal must be commenced within 14 days:
 - (a) after the keeper is given a notice under section 42(6) of the local law; or
 - (b) if the local government has not made a decision on the review - after the decision making period as specified in section 42(6) has expired.

37. Summary destruction of animal

An authorised person may seize and destroy an animal without notice to the keeper of the animal if:

- (a) the animal has been seized and detained more than 3 times in the last year;
or

- (b) the animal is, in the authorised person's opinion, dangerous and not controllable by means that are reasonably available to the keeper of the animal; or
- (c) if the animal has been seized and detained by the local government and then taken from the local government's possession without the local government's authority; or
- (d) the animal is diseased or emaciated.

38. Powers of Magistrates Court on appeal

- (1) This section does not limit the powers conferred on the Magistrates Court under the *Justices Act 1886*.
- (2) Subject to subsections (3) and (4) on an appeal under this Part, the Magistrates Court may:
 - (a) confirm or quash the order for destruction of the animal;
 - (b) make any order as it sees fit in relation to the security; and
 - (c) make any other order as it sees fit.
- (3) The Magistrates Court may only quash an order for destruction of an animal if satisfied that the keeper will in future ensure that the animal is properly kept and controlled in accordance with this local law and the circumstances that led to the making of the order are unlikely to recur.
- (4) An order for the costs of an appeal may only be made against the local government if the Magistrates Court is satisfied that the animal was unlawfully seized or there was no reasonable basis for making the order for the destruction of the animal.

39. Destruction at request of keeper

An authorised person may, at the request of the keeper of an animal, seize and destroy the animal.

PART 5 - MISCELLANEOUS

40. Prohibition of registration tags designed to confuse

A person must not manufacture, sell, or have in possession for sale, registration tags for animals designed to be confused with the registration tags required for animals under this local law.

Maximum Penalty - 20 penalty units

41. Abandonment of animals

- (1) A person must not abandon an animal.

Maximum Penalty - 20 penalty units

- (2) A person who delivers an animal into the custody of the authorised person in charge of an animal pound is not to be regarded as having abandoned the animal.

42. Review of decisions

- (1) A person who is aggrieved by a decision made by the local government under this local law (a **'person aggrieved'**) is, subject to subsection (2), entitled to a review of the decision.
- (2) A person aggrieved is not entitled to a review under this section if:
- (a) a decision was made by a resolution of the local government; or
 - (b) the application does not comply with subsection (4); or
 - (c) the decision has been carried into full force and effect; or
 - (d) a decision made on an earlier application for review.

Example:

An action by an authorised person properly taken in accordance with section 37.

- (3) Notwithstanding subsection 2(b), the local government must take steps which are reasonable in the circumstances to assist a person to make an application which will be in a form that complies with subsection (4).
- (4) An application for review must:
- (a) be in writing and addressed to the Chief Executive Officer; and
 - (b) specify an address in Australia to which notices under this local law may be sent to the person aggrieved; and
 - (c) be lodged with the local government:
 - i) for a decision made under section 35(1) - within 7 days after the day on which notice of the destruction order was given to the person aggrieved; or
 - ii) for any other decision made under this local law - within 14 days after the day on which notice of the decision was given to the person aggrieved; and
 - (d) if the person aggrieved seeks to make representations through an agent - state the name of the agent; and
 - (e) if the decision was made under 35(1) be accompanied by:
 - i) a statement outlining the reasons as to why the dog should not be destroyed; and
 - ii) if the dog is being kept at the pound - the security; and

- (f) include any other information specified in a subordinate local law.
- (5) The decision of the local government on a review under this section must not be made by the person who made the original decision or any person who holds a less senior position than the person who makes the original decision.

Example:

If the original decision was made by the Chief Executive Officer then the only entity which can make a decision on the review is the full local government or a local government committee which has been delegated decision making power under the local law.

- (6) The local government must make a decision on the review and give notice to the person aggrieved within 28 days (the "**decision making period**") of receiving the notice under subsection (4).
- (7) If the local government fails to notify the person aggrieved within the timeframe specified in subsection (6), the local government is taken to have confirmed the original decision.
- (8) If the notice given under subsection (6) confirms the original decision the notice must state the general effect of sections 36 and 38.
- (9) The person aggrieved and the person who made the original decision are entitled to make written representations, either personally or through an agent, to the local government prior to a final decision on the review being made.
- (10) To remove any doubt, the local government in making a decision on the review has the same powers as the person who made the original decision and, without limiting those powers, can:
 - (a) confirm the original decision; and
 - (b) quash or set aside the original decision or part of the original decision and substitute it with a new decision.
- (11) The review of the decision is to be conducted on an informal basis but in accordance with the rules of natural justice.

43. Defences

It is a defence to any breach or non-compliance of any provision contained in this local law if a person has a reasonable and lawful excuse for the breach or non-compliance.

44. Entry to seize a dangerous dog

- (1) An authorised person may enter a place (including a building or other structure, or the part of a building or other structure, used for residential purposes) under this section, with the help and using the force that is necessary and reasonable in circumstances, if the entry is to seize a dangerous dog.
- (2) Chapter 15, Part 5, Division 9 of the *Local Government Act 1993* applies to the exercise of a power of entry under this section.

45. Sale of animals

- (1) This section does not apply to a person who holds a permit from the local government in accordance with Part 2, Division 4.
- (2) A subordinate local law may prescribe conditions to be complied with by persons who offer animals, or a particular species of animals, for sale.
- (3) A person must not offer or display animals for sale unless the person complies with conditions prescribed by subordinate local law under subsection (1).

Maximum penalty - 50 penalty units.

PART 7 - SUBORDINATE LOCAL LAWS

46. Subordinate local laws

The local government may make subordinate local laws in relation to those matters about which this local law specifically allows for the making of subordinate local laws.