

# Model Local Law No.2 (Animal Management) 2010

Version 1.1

GUIDANCE NOTES

## Disclaimer

*These guidance notes have been compiled for your information only and should not be treated as an exhaustive statement on the subject. Nor should they be considered as a substitute for legal or professional service. The Department of Infrastructure, Local Government and Planning (DILGP) recommends that independent legal advice be sought on any matter of interpretation of the model local laws or template subordinate local laws. The information is provided on the basis that you are responsible for making your own assessment of the topics discussed.*

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## Purpose

These guidance notes aim to assist local governments interpret and implement the set of seven model local laws notified by gazette on 25 June 2010. The notes provide explanatory commentary for the model local law and its relevant subordinate local law template.

The guidance notes set out the scope and purpose of each part of the model local law and associated provisions within the relevant template subordinate local law, and explain how the model is intended to be applied. The notes identify how:

- linkages between the different model local laws form an integrated regulatory regime
- the models link with other relevant legislation affecting the model including the *Local Government Act 2009* (LGA) and the *Animal Management (Cats and Dogs) Act 2008* (AMCD Act).

A set of guidance notes is available for each model local law and each should be read in conjunction with the relevant model and template subordinate local law.

## Context

### Model local laws 2010

The model local laws were developed following consultation with stakeholders undertaken in 2007–08. The model local laws cover a range of matters considered appropriate for local government to regulate such as:

- undertaking prescribed activities in a local government area
- bathing reserves
- parking
- community and environmental matters
- animal management and the regulation of other activities on local government controlled areas, facilities and roads.

See Appendix 1 for the full list of models. The models are available on the Department of Infrastructure, Local Government and Planning's (DILGP) website at [www.dilgp.qld.gov.au](http://www.dilgp.qld.gov.au).

The model local laws are presented as an integrated package with Model Local Law No.1 (Administration) 2010 (the Administration Model) being the framework for all other model local laws.

The Administration Model sets out common approval processes for:

- undertaking specific activities
- legal proceedings
- enforcement provisions
- miscellaneous matters upon which the other model local laws rely.

This means there is only one set of provisions for obtaining a local government's approval on a matter, rather than duplicating these provisions within each model local law. It ensures the model local laws are streamlined but flexible, enabling local governments to make local laws on new issues in the future without having to repeat relevant approval and enforcement provisions. It also means that a local government needs to adopt the Administration Model to enable any other model local law adopted to have effect.

There are a number of overarching principles upon which all model local laws are based. These include a requirement that a model local law should not duplicate state legislation and it should be necessary and enforceable. A full list of the principles upon which all model local laws are based are set out in the guidance notes for the Administration Model.

## Template subordinate local laws 2010

A template subordinate local law is available for each model local law as an additional support tool for local governments. These templates are available on the department's website at [www.dilgp.qld.gov.au](http://www.dilgp.qld.gov.au).

Subordinate local laws are essential to the successful implementation of the model local laws. In recognition of the state's diversity and to avoid limiting the application of the model local laws, subordinate local laws provide the means for local government to specify the details of regulatory requirements that meet their particular needs.

It is intended local governments use the templates as a guide when developing subordinate local laws appropriate for their areas for each model local law adopted. The templates provide a subordinate local law structure that is consistent with the heads of power provided in the model local law. While the templates include examples and suggestions for subordinate local law content in italicised text, this text is not intended to provide an exhaustive list of matters for inclusion.

## Commentary on model provisions and template subordinate

Model Local Law No. 2 (Animal Management) 2010 (Animal Management Model) updates and combines into one model local law specific matters that were previously covered by two separate models:

- No. 4 (Keeping and Control of Animals) 2000
- No.5 (Impounding of Animals) 2000

The Animal Management Model is drafted to complement legislation dealing with animal management matters and specifically the AMCD Act and the Animal Management (Cats and Dogs) Regulation 2009.

For more information about this legislation visit, [www.daf.qld.gov.au](http://www.daf.qld.gov.au).

Appendix 2 includes a summary of the offences and corresponding penalties in the Animal Management Model.

## Relationship with other models

The Animal Management Model relies on the adoption and application of the Administration Model to provide for:

- an approval process for keeping animals in prescribed circumstances, including conditions imposed on approvals
- compliance with approvals
- general enforcement powers for authorised officers
- processes for reviewing certain decisions

- certain definitions that are used in a number of model local laws.

An Administration Subordinate Local law is also necessary to effectively implement an approval process for keeping animals. It should prescribe a range of administrative matters such as documentation required for approval applications, specific criteria for granting approvals and mandatory conditions to be imposed on approvals for keeping animals.

Once the Administration Model is adopted the full title (specifically the year) needs to be inserted at section 4(b) of the Animal Management Model prior to its adoption.

The regulation of nuisance noise from barking dogs is not covered in the Animal Management Model or the Community and Environmental Management Model or within the default noise emission standards under Chapter 8 of the *Environmental Protection Act 1994* (EPA). Instead, barking dogs are regulated as nuisance noise under the general nuisance provisions in section 440 of the EPA. The previous specific provisions dealing with animal noise were removed during the recent overhaul of the Environmental Protection Regulation 1998, as they had proven ineffective and difficult to apply.

The revised Environmental Protection Regulation 2008 applies the general emission criteria and the noise emission criteria in determining whether noise from an animal is a nuisance. This approach provides greater flexibility for a broader range of considerations to be applied in determining whether the noise is causing a nuisance.

## Part 1—Preliminary

### S2. Purpose and how it is to be achieved

This section sets out the scope of the Animal Management Model by identifying what is intended to be achieved by regulating animals in a local government's area. This includes protecting the community's health, safety and amenity, and preventing environmental damage within a balanced consideration of community expectations, individual's rights and an appropriate standard of care for animals. While the model gives implicit recognition to animal welfare considerations, the primary legislation regulating animal welfare is the *Animal Care and Protection Act 2001*.

This section also sets out the regulatory mechanisms through which the purpose of the model local law is to be achieved.

The model's purpose sets the broad context for and limits on the scope of subordinate local laws able to be developed by local governments to supplement the Animal Management Model. The content of subordinate local laws should be consistent with the purpose of the Animal Management Model as outlined in this provision.

### S3. Definitions—the dictionary

All relevant words used in the model are defined in the Schedule *Dictionary* and are consistent with state legislation.

Definitions are included based on the following approach for all the models:

- where a term is used in only one section of the model local law it is defined in that section and not repeated in the dictionary
- where a term is defined in the Administration Model and also used with the same meaning in another model, the definition is not repeated in the dictionaries of the other models. Instead the term will be signposted in the other models' dictionaries to refer the reader to the definition in the Administration Model
- generally where a term is defined in the LGA it is not replicated in the model local law dictionaries. The first instance of the term's use in the model is footnoted to alert readers to refer to the LGA for its definition
- where a term is defined in another Act and the models rely on the meaning given to the term in that Act specific reference is made to this effect in the model.

#### **S4. Relationship with other laws**

The Animal Management Model operates in conjunction with the LGA and several other key state legislative instruments including:

- *Animal Management (Cats and Dogs) Act 2008*
- *Sustainable Planning Act 2009*
- *Animal Care and Protection Act 2001*
- *Nature Conservation Act 1992*
- *Land Protection (Pest and Stock Route Management) Act 2002*
- *Stock Act 1915*
- *Guide, Hearing and Assistance Dogs Act 2009*

Appendix 3 includes a list of current legislation in addition to the LGA that is relevant to the matters covered by this model local law.

Local governments should carefully consider this legislation, and any relevant new legislation, when developing subordinate local laws to ensure the content is consistent with requirements of state legislation. Any inconsistency with state legislation would render the subordinate local law invalid to the extent of the inconsistency in accordance with section 27 of the LGA.

##### *Animal Management (Cats and Dogs) Act 2008 (AMCD Act)*

The AMCD Act provides for the identification and registration of cats and dogs, the management and control of regulated dogs and general offences for attacks or fear caused by any dog. Consequently these matters are omitted from the Animal Management Model, except where the Act specifically provides for regulation by way of local law.

This means some parts of the Animal Management Model relating to the control and management of animals will apply to dogs generally and other parts will apply to dogs other than regulated dogs.

Appendix 4 provides a summary of the model's provisions that apply to dogs, any exceptions and where the AMCD Act applies to the matter. Footnotes are used in

relevant provisions of the Animal Management Model to alert readers to refer to the AMCD Act's application on the matter.

Wherever possible the Animal Management Model's provisions relating to keeping, control, seizure and destruction of animals (parts 2, 3 and 4) have been drafted using the same structure and terminology as the AMCD Act. This uniformity with the Act is intended to make implementation and enforcement of the model easier for local governments and the community.

*The Sustainable Planning Act 2009 (SPA)*

This Act is referred to as the Planning Act in this model for consistency with the LGA, SPA or its predecessor, the *Integrated Planning Act 1997*.

The keeping of animals in certain circumstances may require a development application to be made under the Planning Act—for example, where the property undergoes a material change of use. Conditions may be imposed by the assessment manager on such approvals. The Animal Management Model aims to avoid any duplication or inconsistency between a development approval or permit to undertake an environmentally relevant activity associated with keeping animals under planning legislation and model local law requirements for approval for keeping animals.

*Animal Care and Protection Act 2001*

This Act is the primary legislation for animal welfare matters and includes offences in relation to breaches of a duty of care for animals. It prevails over the Animal Management Model to the extent of any inconsistency. It is particularly relevant to the development of subordinate local laws on minimum standards for the keeping of animals. The Animal Care and Protection Regulation 2002 calls up mandatory and voluntary codes of practice in relation to the keeping and transporting of various animals.

For specific details visit the Department of Agriculture and Fisheries (DAF) website at [www.daf.qld.gov.au](http://www.daf.qld.gov.au).

*Land Protection (Pest and Stock Route Management) Act 2002*

This Act (sections 94 to 96) provides for the destruction of dogs in certain circumstances by an owner of land that is not in an urban district or by an authorised person under that Act. The declaration of pest animals under this Act may also impact on the content of a subordinate local law for Part 2 (Keeping of Animals) of the Animal Management Model by prohibiting the keeping of certain animal species.

*South East Queensland Koala Conservation State Planning Regulatory Provision (Koala SPRP) and State Planning Policy 2/10: Koala Conservation in South East Queensland (Koala SPP)*

The Koala SPRP and Koala SPP are made under the Planning Act. The Koala SPRP is an overarching planning tool which in the case of any inconsistency prevails over any other planning instrument.

The Koala SPRP provides requirements that local governments and others must assess development applications against in order to minimise the impact of new development on koalas.

Land use planning and infrastructure decisions made prior to the commencement of the Koala SPRP and Koala SPP on 31 May 2010 must consider koala conservation outcomes of the *Nature Conservation (Koala) Conservation Plan 2006* where relevant. The Animal Management Model complements the Plan and Koala SPRP and Koala SPP by providing for additional controls on dogs kept within koala habitat areas to ensure koalas are not harmed by dogs.

#### *Stock Act 1915*

This Act deals with the control of disease in stock and section 19 specifically authorises local governments to destroy stray diseased stock. The provisions of this Act apply to the particular animals specified in the Act with regard to destroying seized animals where the animal is suffering from serious diseases rather than section 22(2)(b) of the Animal Management Model.

The Stock Identification Regulation 2005 is also relevant for understanding requirements for certain animals to be identified under the National Livestock Identification System.

For specific details visit the Department of Agriculture and Fisheries (DAF) website at [www.daf.qld.gov.au](http://www.daf.qld.gov.au).

#### *Guide, Hearing and Assistance Dogs Act 2009*

This Act makes provision for certain dogs to be in public places including rights of persons with a disability to be accompanied by a guide, hearing or assistance dog and imposes obligations on persons exercising control of public places. Consequently this Act takes precedence over the Animal Management Model in relation to the specific circumstances with which it deals.

#### *Nature Conservation Act 1992*

This Act provides for the protection and management of native wildlife and the taking or use of native wildlife. Therefore the Animal Management Model does not apply in relation to native animals, unless specific authorisation to keep native animals is provided under this Act.

#### *Nature Conservation (Koala) Conservation Plan 2006*

This plan is subordinate legislation to the *Nature Conservation Act 1992* and a statutory planning instrument under the SPA. It is intended to promote the continued existence of viable koala populations in the wild. The effect of the plan and management program that relate to planning and development assessment have been replaced by the Koala SPRP and Koala SPP. Other elements such as policies relating to the rehabilitation of injured or sick koalas and translocation remain in place. The Animal Management Model complements the plan and Koala SPRP and Koala SPP by providing for additional controls on dogs kept within koala habitat areas to ensure koalas are not harmed by dogs.



## Part 2—Keeping animals

This part provides a hierarchy of regulation for keeping animals starting with the most restrictive (prohibition) and subsequently less restrictive measures such as obtaining approval or meeting certain minimum standards.

For example, a local government could prohibit the keeping of more than 20 poultry in an urban area, require approval for keeping between 10 and 20 poultry in an urban area and require someone keeping less than 10 poultry in an urban area to comply with specified minimum standards for keeping poultry as set out in a subordinate local law.

### S5. Prohibited animals

The power to prohibit the keeping of animals is primarily intended as a means to ensure an appropriate level of amenity is maintained for a neighbourhood and to prevent nuisances. While this provision provides local government with flexibility to tailor which animals and in what circumstances animals can be prohibited in their area by setting out such details in a subordinate local law, the circumstances must conform to one or more of the factors listed in section 5(2).

Schedule 1 of the Animal Management Subordinate demonstrates how the circumstances in which keeping of an animal or animals may be prohibited could be set out. The inclusion of ‘breed’ as a circumstance upon which prohibition may be imposed (section 5(2)(f)) is consistent with the explicit power provided under sections 6(2) and 72(3) of the AMCD Act and means that local governments may prohibit the keeping of restricted dogs altogether or alternatively prohibit the keeping of more than a certain number of restricted dogs.

Any prescribed circumstances relying on section 5(2)(h) would need to be consistent with any related minimum standards prescribed under section 8 and enclosure requirements for keeping regulated dogs under Chapter 4 of the AMCD Act.

If restricted dogs are prohibited under this section, local governments must rely on powers of entry and seizure available under local laws and the LGA rather than those available under the AMCD Act to enforce the prohibition.

For example, if a person continued to keep an animal in prohibited circumstances, a compliance notice (under section 26 of the Administration Model) requiring action to be taken to stop the contravention of the local law could be given. This action would then trigger the use of the seizure and disposal provisions under Part 4 of the Animal Management Model if the necessary action was not taken.



## S6. Requirement for approval to keep animals

This section is integrally linked with the Administration Model's provisions relating to approval for prescribed activities. Under that model the keeping of animals for which an approval is required under the Animal Management Model is designated as a prescribed activity (see Schedule 2 of the Administration Model). Therefore the processes for obtaining an approval, imposing conditions and enforcing compliance with the approval are provided under the Administration Model while the trigger for when an approval is required is provided under the Animal Management Model as specified in its subordinate local law.

The offence of not holding an approval, for the keeping of an animal that requires an approval, is also covered by the Administration Model (section 6).

Careful consideration should be given to determining what circumstances for the keeping of domestic animals should be subject to an approval process. The detailed circumstances need to be specified in a subordinate local law.

Schedule 2 of the Animal Management Subordinate provides examples of how this may be described. Approval requirements under state legislation for keeping animals should be closely considered when preparing the subordinate local law provision to avoid inconsistency and therefore invalidity.

The primary purpose of requiring an approval for keeping certain animals in certain circumstances is to ensure particular requirements are met, over and above any minimum standards required for the keeping of the relevant animal. This is achieved through the imposition of conditions on the approval. To avoid over-regulation it is important to consider whether the use of prescribed minimum standards for keeping animals under section 8 of the Animal Management Model is sufficient to achieve the regulatory objectives listed in section 2(1)(a) to (d) of the Model rather than an approval process.

Approval for keeping certain types of animals or numbers of animals is variously required under state legislation.

For example, an environmentally relevant activity under the *Environmental Protection Act 1994*, a development application for a material change of use under the integrated development assessment system of the SPA.

Subsection (3) makes it clear that a separate approval under a local law for keeping such animals is not required. It is intended to ensure there is no inconsistency between state legislation and the local law or duplication of approval processes. Powers to deal with nuisances (noise, odour, etc) associated with keeping animals are available to local governments under environmental protection legislation. Approvals required under this Model are intended to provide for matters that may impact on the ongoing amenity and public health and safety associated with keeping animals that fall outside other state regulatory processes.

For example, the establishment of a boarding kennel or cattery may require a development permit for the size and scope of the facility.

Subsection (4) is included to ensure the model is not directly inconsistent with the AMCD Act as that Act provides for permit requirements for owning a restricted dog.

## S7. Animal de-sexing

This provision allows local governments to apply management controls to prevent the supply of unwanted animals which may otherwise create a nuisance for the community. In other circumstances the accidental escape and reproductive capacity of certain pet animals may pose a risk to the environment and native wildlife—for example, rats and guinea pigs.

Section 7 should be read in conjunction with the compulsory de-sexing requirements for declared dangerous dogs and restricted dogs under the AMCD Act. If this provision is used to require compulsory de-sexing by prescribing certain animals in a subordinate local law, local governments should carefully consider, when developing the subordinate local law, how the operation of the requirement will sit with registration requirements for cats and dogs under the AMCD Act.

The Queensland Government is funding a two year Managing Unwanted Cats and Dogs pilot study involving four Queensland councils. The pilot study aims to encourage responsible pet ownership and increase the number of de-sexed cats and dogs. The outcomes of the pilot study may lead to legislative amendments.

Local governments will need to monitor any future legislative amendments to ensure their local laws remain consistent with state legislation.

## S8. Minimum standards for keeping animals

Section 8 of the Animal Management Model allows local governments to impose requirements on owners of particular types of animals, in addition to those prescribed in the Animal Care and Protection Regulation 2002, to meet basic conditions in relation to space, enclosures, hygiene practices etc.

These conditions may be varied according to the locality (urban/non-urban) in which the animal is kept. The measures to be specified in a subordinate local law should be sufficient to achieve basic amenity, manage health and safety risks and prevent environmental damage in the local government area without imposing an unreasonable burden on the animal owner.

Use of this provision is likely to vary from one local government to another as particular species pose different levels of risk across the state.

When developing the detail for minimum standards in the subordinate local law, local governments should be aware of animal welfare requirements specified by the *Animal Care and Protection Act 2001* and Animal Care and Protection Regulation 2002 to ensure that the subordinate local law complements but does not duplicate or create inconsistency with these requirements. The Animal Care and Protection Regulation 2002 provides compulsory and voluntary codes of practice for keeping certain animals. For example, compulsory codes exist for keeping domestic fowl.

Voluntary guidelines issued by the Queensland Government for the keeping of specific animals can also be important sources of information. For example, DAF publishes guidelines for keeping bees in urban and other environments. For more information visit [www.daf.qld.gov.au](http://www.daf.qld.gov.au), which includes recommendations for ratios of hives to allotment size.

Relevant industry bodies may also issue codes of practice for keeping animals which may provide useful guidance in developing subordinate local law content for this provision.

The Model provides several ways of achieving its objectives. Setting minimum standards under this provision could be used, in place of a registration process, to require particular species or breeds, other than cats and dogs, to carry owner-identifying information. For example, where stray horses present a problem in a particular community, requiring such animals to carry owner-identifying information may assist in the return and control of these animals.

Alternatively, the keeping of horses could be included in a subordinate local law (under section 6 of the Animal Management Model) as one which requires approval as a prescribed activity under the Administration Model. A mandatory condition of the approval could include requiring the animal to carry identifying information. Enforcement of compliance with the conditions of approval would then be carried out under the Administration Model.

## **S9. Identification of registered cats and dogs**

Section 12 of the AMCD Act describes different identification devices used under that Act, including a ‘registration device’ decided by resolution of the local government.

Section 45 of the AMCD Act requires the keeper of a registered cat or dog, to ensure the animal, other than a regulated dog, wears identification, as prescribed by local law, when the animal is not at the address stated on the registration notice for the animal. Section 45 covers all situations in which a cat or dog might not be at the address at which it is registered including—for example—when a cat strays away from home.

Together these two provisions provide local government with flexibility to decide what form of identification should be required to be worn by the cat or dog when it is away from its registered address. Some local governments may wish to rely on the ‘permanent identification device’ (microchipping) and supplement with the registration device for those cats and dogs not microchipped while others may prefer that all cats and dogs, irrespective of microchipping, wear the registration device.

Consequently section 9 of the Animal Management Model provides the head of power for local governments to prescribe the identification requirements in a subordinate local law. This may be done by nominating one or more of the identification devices described in section 12 of the AMCD Act or specifying an alternative method. Without a subordinate local law on this issue local governments will not be able to enforce the offence provision in section 45 of the AMCD Act. The subordinate local law provides the transparency necessary to satisfy natural justice principles.

The Animal Management Subordinate, section 9, provides an example of options available to local governments. These include:

- no additional identification for those cats and dogs required to be microchipped under the AMCD Act and the registration device for those not microchipped
- registration device for all registered cats and dogs, irrespective of microchipping, and

- an alternative identification method—for example tattooing. (Note that if alternative methods are adopted, details about size, content, etc will need to be specified in the subordinate local law.)

As discussed in the commentary to section 8, section 9 is not intended to be used broadly in relation to identification requirements for animals other than cats and dogs. If the wearing of identification is considered necessary for the keeping of certain other animals, this requirement as well as the particulars of the identification device can be specified in Schedule 11 of the Administration Subordinate as a condition of approval for keeping the animal.

## Part 3—Control of animals

### Division 1—Animals in public places

#### S10. Exclusion of animals

Exclusion of animals generally or certain species from particular parts of a local government's area may be necessary for the protection of the environment and amenity or for health and safety reasons—for example, riding horses on parts of foreshores or dogs in a mall.

The excluded public places must be prescribed by subordinate local law. Note that 'public place' is defined in the LGA and reference is made to this definition in the Administration Model dictionary which applies to all other models. Schedule 6 of the Animal Management Subordinate provides examples of some different ways to specify the exclusion. However, local governments should construct their subordinate local law in the way that best meets their needs. Particular care is required in describing the relevant public places to minimise any confusion for the community about where animals are or are not allowed. To ensure natural justice principles are upheld, the Model places responsibility on local governments to ensure that the community is sufficiently informed about the exclusion areas by requiring notices about the exclusion to be displayed in a prominent place within the public place affected.

The offence of failing to ensure a relevant animal is not in a public place in contravention of a prohibition is one of absolute liability. This means the local government is not required to prove that the owner or responsible person for the animal brought the animal onto the place. The animal's presence on the place is sufficient for the offence to occur. Where the animal is on its own (without a responsible person present) in the place, the owner is still liable. It should be noted that in these circumstances an owner of an animal may also be breaching section 14(3) of the Animal Management Model (animal found wandering at large). There is some flexibility here for local governments to choose which offence best suits the circumstances. Theoretically the owner could be charged with both offences as they are separate offences. Note that section 30 of the Administration Model provides the defence of a 'reasonable excuse' for a contravention of a local law. This provision applies to offences across all the models.

## S11. Dog off-leash areas

This provision complements sections 10 and 12 by explicitly providing for public places where animals are permitted to be unleashed. An owner is still required to ensure the dog is under effective control while in the off-leash area and the definition of 'effective control' in section 12 specifically provides for the circumstances of a dog in an off-leash area.

As many off-leash areas may not be fenced, the boundaries of off-leash areas may not be obvious to a dog owner. Adequately identifying off-leash areas is necessary to enable enforcement of the requirements that animals be under effective control. Placing responsibility on local governments to clearly notify the public about the extent of the off-leash area is important for meeting natural justice principles.

Schedule 7 of the Animal Management Subordinate provides an example of how off-leash areas may be described. Local governments may also find it useful to have an on-line register of off-leash areas available to the public, especially for visitors to the area.

## S12. Control of animals in public places

This provision complements the AMCD Act. Its application is made easier by using terminology consistent with the AMCD Act's provisions. Section 12 is intended to apply to animals generally with some exceptions in relation to certain dogs due to the scope of the AMCD Act.

Firstly, the AMCD Act applies additional requirements for the effective control of regulated dogs and dogs subject to a proposed declaration notice when in a public place.

Secondly, the reference to a declared dangerous animal in the Animal Management Model by definition excludes dogs as such matters are provided for by the AMCD Act.

Nevertheless the model provides for local governments to declare other animals as dangerous under sections 19 and 20. The particular controls applied to declared dangerous animals under section 12(1)(b) refers only to those declared under sections 19 and 20 of the Model and envisages the possibility of a large animal causing damage to property in addition to attacking or causing fear to persons or other animals.

In section 12(1) the onus for ensuring an animal in a public place is kept under effective control rests with the owner or the responsible person for the animal. A 'responsible person' for an animal is defined in the dictionary and has an equivalent meaning to that used in the AMCD Act. Where an animal is registered or kept under an approval from the local government the owner can be readily identified. In situations where no owner or responsible person is identified for the animal the Animal Management Model's provisions relating to seizure of animals wandering at large (section 21) can be used.

The term 'owner' is not defined in the Animal Management Model and so the ordinary meaning of the term applies—the person whose personal property the animal is. In many, if not most, cases the responsible person in the circumstances will be the owner. However the provision provides local governments with the flexibility to impose the

penalty for breaching this provision onto the responsible person where they are not the owner (for example, where the owner has left the animal with another person) or where the owner is not known or identifiable. Where a minor has immediate control or custody (without effective control) of the animal, the parent or guardian of the minor is deemed the responsible person.

In circumstances where an animal is wandering at large in a public place—that is, without the presence of a responsible person—section 14(3) may provide a more appropriate offence provision. The Animal Management Model also provides for local governments to take action where a person has found an animal wandering at large and temporarily placed it under effective control. The Model enables an authorised person to seize the animal under section 21(3).

Section 12(2) provides a blanket prohibition on dogs being in a public place when they are on heat. This can be a particular problem in dog off-leash areas. It is considered that even if a dog was under effective control in accordance with section 12(3) it may still present a risk for other responsible dog owners by making it difficult for them to keep their dogs under effective control in the circumstances.

The definition of 'effective control' used in the Animal Management Model (section 12(3)) is based on the approach used in the AMCD Act although it is extended to effectively cover the broader scope of animals covered by the Animal Management Model. The definition has been constructed to ensure relevant and effective constraints apply for large animals such as cattle or horses (refer section 12(3)(a)(ii) and (iii)).

The *Land Protection (Pest and Stock Route Management) Act 2002* regulates the use of stock routes which involve the movement of cattle along public places that may not be fenced. In these circumstances, the movement of cattle would not meet the definition of being under effective control under the terms of the Animal Management Model. However as these circumstances are provided for under state legislation, it prevails over the local law.

Section 12(3)(d) replicates section 64(1)(b) of the AMCD Act and provides for specific circumstances where the animal is in a controlled environment but otherwise does not meet the tethering or 'being held by a leash' requirements of the definition of effective control. To effect this section, local governments will need to establish a process for recognising and publicising those bodies involved in exhibiting animals or obedience trials that the local government considers fall under this section.

Section 12(3)(e) extends the definition of effective control to provide for circumstances where a dog is not on a leash or tethered but is controlled by voice command when engaged in moving livestock.

### **S13. Cleaning up faeces after animal in public places**

This provision is primarily aimed at addressing the nuisance and health and safety risks associated with dog faeces on footpaths, parks, beaches etc. However, it is recognised that other animals may in some locations present a similar nuisance, such as cattle and horses. The Animal Management Model allows local governments to specify, in a subordinate local law, other animals to which this provision applies. Section 12 of the Animal Management Subordinate provides a sample provision.



## Division 2—Restraint of animals

### S14. Duty to provide proper enclosure and prevent animal from wandering

This provision complements sections 6 and 8 of the model and is aimed at preventing the nuisance of straying animals. It achieves this by making clear to the community, by way of subordinate local law, the standard enclosure requirements for keeping animals. These requirements could be generic for all animals or specific requirements for different species or breeds of animals.

Two separate and distinct offences are provided in this section—failing to maintain a proper enclosure (section 14(1)) and where an animal is found wandering at large (section 14(3)).

Operating together these offences ensure that the animal owner must keep the animal inside the enclosure unless it is under effective control elsewhere or one of the defences in section 14(4) applies. While the first offence relates to the person who keeps the animal (which may not be the owner), absolute liability applies to the animal's owner where the animal is found wandering at large, subject to the defence provisions.

This means that it is not necessary to prove a deliberate action took place to 'allow' the animal to be outside the enclosure. The onus is placed on a defendant to prove that a proper enclosure was maintained and reasonable diligence was exercised when arguing the escape could not have been prevented.

Where approval is required for keeping an animal, conditions imposed on the approval under the Administration Model may permit animals in certain circumstances to be outside an enclosure for specific purposes or at particular times. In these limited cases, a defence is created for offences under section 14.

### S15. Koala conservation requirements

In 2008 the Queensland Government formed a specialised Koala Taskforce to investigate and report on the crisis in koala numbers in South-East Queensland. The government's Koala Response Strategy, based on the Koala Taskforce report recommendations, included the development of a model local law to assist local governments and encourage consistent and in some cases expanded provisions to regulate dogs in koala habitat areas. Consequently, section 15 is included in the Animal Management Model to provide local governments with specific powers to prescribe particular requirements for keeping a dog in koala areas.

The definition of koala areas, to which this provision applies, is framed so that it captures areas identified in the Nature Conservation (Koala) Conservation Plan 2006 and its successor, the South East Queensland Koala State Planning Regulatory Provision, as well as areas that local governments may additionally designate as a koala area in a subordinate local law. In preparing a subordinate local law on this matter, consideration should be given to the local government's planning scheme to ensure consistency with the scheme and avoid duplication. The Model ensures that local governments, both in South East Queensland and other parts of the state, can be responsive to emerging needs and changes to land use impacts on koala habitats.



Section 15 sets out the parameters of the particular requirements that may be prescribed in a subordinate local law, however, flexibility is retained for local governments to tailor the particular measures to the needs of their respective communities.

Schedule 9 of the Animal Management Subordinate provides an opportunity for local governments to specify the required enclosures or tethering arrangements for dogs kept between sunset and sunrise. These are deemed the times that koalas are most vulnerable to attack and injury from dogs. DILGP can provide advice to local governments on the types and efficacy of particular measures to protect koalas that may be specified in Schedule 9. Schedule 10 provides an example of how a local government might describe a koala area for the purposes of section 15 in the Animal Management Model.

## **Division 3—Aggressive behaviour by animals other than dogs**

### **S16. Limited application to dogs**

This section serves as a reminder that the AMCD Act must be relied upon for powers to deal with aggressive behaviour by dogs by explicitly preventing the application of the Animal Management Model to these matters. An exception is made in relation to certain defences against offences under this division.

The definition of aggressive behaviour is consistent with the definition in the AMCD Act. This is intended to promote familiarity and ease of administration and enforcement.

### **S17. Animals not to attack or cause fear to persons or animals**

This provision mirrors the equivalent provisions relating to dogs in the AMCD Act. This offence provision requires the responsible person for an animal to be deliberately proactive in taking measures to prevent an attack or fear of an attack to occur.

Subsection (3) ensures that the offence provision cannot be used where an animal attacks and harms vermin such as a rat or mouse.

### **S18. Defences**

The inclusion of dogs in the application of section 18(a) is necessary to ensure the defence still applies where an animal is provoked to attack a dog by the aggressive behaviour of the dog.

## **Division 4—Dangerous animals other than dogs**

While most regulatory activity involving the declaration of dangerous animals is likely to relate to dogs and therefore is provided for under the AMCD Act, an equivalent provision to the AMCD Act has been retained in the Animal Management Model for application to other animals that exhibit dangerous behaviour—for example, a horse or bull. The AMCD Act provides for hunting dogs.

## **S19. Declaration of dangerous animal other than a dog**

This section provides the mechanism for local governments to determine and make transparent the criteria for declaring an animal dangerous. A subordinate local law must be made to effect this provision. Schedule 11 of the Animal Management Subordinate provides some examples of the matters that might be considered appropriate to include in such criteria. However, each local government will need to consider what is appropriate for its community.

The criteria need to be specific enough for an authorised person to rely upon in decision making yet broad enough to capture all possible circumstances in which an animal's behaviour might endanger persons, other animals or property.

As an information notice is required to be given about a declaration, it automatically triggers the right of the responsible person for the animal to seek a review of the decision under the Administration Model.

## **S20. Power to require responsible person for declared dangerous animal to take specified action**

This section provides the power for local governments to issue a compliance notice requiring the responsible person for a declared dangerous animal to take particular actions aimed at limiting the risk of injury from the animal's dangerous behaviour.

Section 27(1)(a) of the Administration Model provides for the issuing of a compliance notice authorised by local law. The Administration Model sets out the requirements for compliance notices and provides for the offence of not complying with a compliance notice.

Section 20 provides for two types of actions to be taken by the responsible person. Local governments can:

1. require the responsible person to warn persons who enter land on which the animal is kept of the presence of a declared dangerous animal on the land
2. require the person to ensure the animal remains in secure custody and is unable to attack or cause fear to persons or other animals, or cause damage to another person's property.

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

### **Division 1—Seizure of animals**

#### **S21. Seizure of animals**

This section provides for the seizure of animals by an authorised person in specific circumstances to ensure the proper control of animals in the interests of community health and safety. The provision applies to dogs in certain circumstances but does not duplicate the AMCD Act provisions for the seizure of dogs (Section 125).

The Animal Management Model provides for specific circumstances when an animal can be seized by an authorised person. While the Animal Management Model provides the seizure powers for authorised persons in these circumstances, it relies on the enforcement powers under the LGA in other respects—for example, power of entry onto land where this is necessary.

Local governments may seize an animal, other than a dog, under four sets of circumstances (Section 21(1)(a) to (d)):

1. where the animal is in a public place or private place without the consent of the occupier and not under effective control (wandering at large)
2. where a compliance notice issued in relation to matters under the Animal Management Model has not been complied with within the time specified in the notice—for example failure to adhere to the minimum standards for keeping animals under section 8 of the Animal Management Model. It should be noted that this power could only be exercised after the processes of Part 4 of the Administration Model (review of decisions) have either confirmed the original decision or the review application period has expired. This is because under the Administration Model a compliance notice must be issued with an information notice which triggers certain rights to a review of the decision to issue the compliance notice. For the purposes of natural justice the owner should be given a fair opportunity to rectify the contravention prior to any seizure and impounding action.

Given that the compliance notice must relate to a matter under the Animal Management Model, the seizure power could not be used in relation to a compliance notice about contravention of conditions of approval for the prescribed activity of 'keeping an animal' issued under the Administration Model. In that case the enforcement powers of the Administration Model should be used

3. where the animal has attacked, threatened to do so, or caused fear to a person or other animal, irrespective of whether this occurred in a public or private place. In the latter instance an authorised person would need to rely on the power to enter property provided under the LGA. Where permission was not given by the occupier (section 129 LGA), a warrant would be required under section 130 of the LGA.
4. where the authorised person considers on reasonable grounds that the animal has been abandoned, left or found on a road in the circumstances mentioned in section 100(12) of the *Transport Operations (Road Use Management) Act 1995* (TORUM) which provides that under a local law, a local government may provide for the removal, safe storage or disposal of an animal where it has been abandoned, left or found on a road. If a local government has a local law covering the removal of, safe storage or disposal of an animal then the provisions in TORUM regarding the removal of animals from roads do not apply. The matter is regulated under the local law and not TORUM. While this circumstance is very similar to 'wandering at large', the provision has been included as a separate category to remove any doubt that the local law provisions prevail rather than TORUM in these circumstances.

Section 21(2) provides specific seizure powers for dogs where:

- a dog is found wandering at large. Although this power is similar to section 125(2) of the AMCD Act, the MLL provision has a broader scope due to its definition of 'wandering at large'. Also, the key focus of the AMCD Act is generally the effective management of regulated dogs and dogs presenting a clear threat or risk to community safety
- the responsible person has not complied with a compliance notice involving a dog, other than a regulated dog, that has been issued in relation to compliance with the Animal Management Model
- the dog has been abandoned, left or found on a road in the circumstances mentioned in section 100(12) of TORUM as described above.

The AMCD Act (Section 125) provides authorised persons with seizure powers for dogs that have attacked, threatened to attack or acted in a way that causes fear to, a person or another animal or may be a risk to community health and safety, restricted dogs without a permit, a regulated dog where a compliance notice has been given in relation to the dog and the person reasonably believes the notice has not been complied with. Such circumstances should be enforced under that legislation. The AMCD Act also provides for the seizure of dogs that are not under effective control in a public place but such animals must still fall within one of the categories mentioned above.

Section 21(3) of the Animal Management Model provides for seizure of an animal by an authorised person where another person has found the animal, including a dog, wandering at large and delivered the animal to the authorised person or where an occupier of private land has found the animal wandering at large on the land, taken it under effective control and requested the authorised person to enter the land to seize it. This provision ensures that a defence is not inadvertently created for a responsible person of an animal where the animal has been taken under effective control by someone else after found wandering at large.

Note that simply because a person brings an animal found wandering at large to an authorised person there is no obligation on the authorised person to accept custody of the animal (Section 21(4)). For example, the person may be asked to deliver the animal to an animal refuge or a direct return to the owner may be appropriate.

In section 21(5) authorised persons are given explicit authority to use a level of force that is considered necessary and reasonable based on the particular circumstances at the time to capture or control of the animal. The appropriateness of the action would be determined on what a reasonable person in the circumstances would need to do. It is anticipated that authorised persons exercising this power would have completed relevant training and have an understanding of animal behaviour and animal welfare measures.

Once an animal has been seized the Animal Management Model provides three key options for dealing with the animal depending on the reasons for and circumstances surrounding the seizure. These include immediate destruction of the animal; returning

the animal directly to its owner; or impounding the animal. Once impounded, a range of further actions may be triggered.

## Division 2—Destruction of animal without notice

### S22. Power to immediately destroy seized animal

The power to immediately destroy a seized animal is available for very limited circumstances. This limitation is necessary to minimise the impact that the application of this significant power may have on the rights and liberties of individuals, specifically the principles of natural justice including procedural fairness. Note that there is no requirement to give a notice prior to taking the action and no right of appeal about the action.

Immediate destruction can occur:

- if an animal is considered dangerous and cannot be controlled by the authorised person (the reasonable person test would be applied in any challenge to this action with consideration given to a range of factors including the means of control that were reasonably available to the authorised person and the level of risk posed by the animal)
- if it is significantly suffering as a result of disease, severe emaciation or serious injuries
- if the owner of the animal has requested the authorised person to destroy the animal.

While not mandated in the model, it is recommended that this request should be put in writing for evidentiary purposes. Having forms available for use in situations where a verbal instruction is given by the owner to destroy the animal on the spot may assist with the effective administration of this provision.

Dogs are not excluded from the application of this section. However if a dog is seized under the AMCD Act immediate destruction is only permissible for a regulated dog. In other cases, processes under sections 127, 130 and 131 would apply. Use of section 22(2)(a) of the Animal Management Model to immediately destroy any dog may present a direct inconsistency with the AMCD Act and thereby make the action invalid. The Animal Management Model provision is intended for use in the very rare circumstances where a dog other than a regulated dog that has been seized under local law for wandering at large becomes, in the authorised person's reasonable opinion, dangerous and unable to be controlled. In most cases the preferred approach would be to impound the dog and issue a destruction notice if applicable under section 30.

The *Stock Act 1915* also provides for summary destruction of dogs in certain circumstances.

Section 22(2) (b) provides an additional ground to the AMCD Act and is consistent with powers available under the *Animal Care and Protection Act 2001* (ACP Act). The reference to seizing an animal under 'another law' in section 22(1) means that if a dog is seized under the AMCD Act it can be immediately destroyed if it meets the grounds specified in section 22(2)(b). This power is intended to be used cautiously and as a last resort.

Local government officers are generally able to call on authorised persons under the ACP Act to assess the animal and if necessary exercise their powers under that Act to destroy a diseased or injured animal. The power is included in the Animal Management Model to cater for those circumstances where an ACP Act authorised person is not available—for example, in some rural and remote areas.

The *Public Health Act 2005* also provides a power to deal with a diseased animal scenario by making a public health order and then an enforcement order.

## **Division 3—Return or impounding of animals**

### **S23. Immediate return of animal seized wandering at large**

This section provides an option for dealing with an animal, including a dog (but not a 'regulated' dog), that has been seized because it was found wandering at large and where the authorised person who seizes the animal knows, or can readily find out, the name and address of the owner or responsible person for the animal. It is not intended for use where the animal is a declared dangerous animal or one that has attacked. Regulated dogs found wandering at large should be dealt with under the provisions of the AMCD Act.

The animal may be immediately returned to the owner or responsible person, although this is at the discretion of the authorised person. This section is intended to provide an effective and efficient means for dealing with an animal wandering at large, where the animal and owner can be easily identified, that is, registered animals or those wearing a means of identification.

The registration and identification requirements of the AMCD Act are anticipated to facilitate an increased return-to-owner rate for seized animals. Animals other than cats and dogs that require an approval to be kept may also be required to wear an identifying device as part of the conditions of approval, thus aiding the return of wandering or escaped animals. The provision is designed to minimise the cost to local government and owners of impounding an animal. Returning an animal directly to its owner does not detract from the ability to issue an infringement notice for an offence under section 12 (control of animal in public place) or 14(3) (duty to prevent animal from wandering).

This provision is complemented by sections 26 and 30 which provide scope for an authorised person to take stronger actions where the animal is repeatedly found wandering at large.

### **S24. Impounding seized animal**

This section provides for the impounding of animals seized under this local law or another law—for example, the AMCD Act. An authorised person may impound a seized animal at a place of care for animals that is either operated by the local government or another organisation that has been prescribed by subordinate local law.

This section promotes greater flexibility for local governments who wish to make arrangements with other organisations (such as a veterinary surgery or animal refuge) for the provision of animal care after impounding either as an addition to a local government operated pound or as an alternative in remoter areas.



Local governments would need to satisfy themselves that the other organisation was appropriate for the task and enter into any necessary contractual arrangements prior to prescribing the organisation. An example of how a subordinate local law could be constructed for this purpose is provided at section 16 of the Animal Management Subordinate.

## **S25. Notice of impounding**

This section defines a 'notice of impounding' and specifies the information that must be included in the notice about the terms under which the impounded animal may be reclaimed.

If a destruction order is made for the animal upon impounding under section 30, a notice of impounding would be redundant.

One of the requirements for reclaiming an animal, which must be stated within the notice, is the payment of the cost-recovery fee. The definition of cost recovery fee in the Schedule Dictionary references the power to fix such a fee under the LGA. The LGA defines cost recovery fees and provides for them to be fixed by local law or resolution (section 97). The LGA also requires local governments to keep a register of cost recovery fees. In conjunction with the LGA, section 35 of the Administration Model provides the overarching parameters for fees imposed under local laws. The inclusion of information about the fees in the notice of impounding is recommended.

## **S26. Dealing with animal seized and impounded for wandering at large**

Sections 26 to 28 set out the actions that may be taken by authorised persons in response to animals seized and impounded according to the reasons which the animal was impounded.

Section 26 provides an alternative action to the immediate return of the animal under section 23 of the Animal Management Model. It sets out the process for dealing with an animal seized and impounded for wandering at large where the following criteria is met:

- the animal was not a declared dangerous animal at the time of being seized and
- the authorised person knows, or can readily find out, the name and address of the owner or responsible person for the animal.

A notice of impounding must be issued to the owner or responsible person.

However, if upon seizure it is established that the impounded animal is a declared dangerous animal (not including a regulated dog) or is an animal that has been seized more than three times during a 12 month period; the authorised person has two options available. The authorised person may give the owner or responsible person a notice of impounding or make a destruction order for the animal under section 30 of the Animal Management Model. This provision mirrors the approach taken in section 125(2) and 127(4) of the AMCD Act for ease of use.

If the owner or responsible person for the animal cannot be established and therefore no notice of impounding can be issued, the animal may be destroyed after expiry of the



period specified in a subordinate local law for this purpose and if none exists, the minimum period stated in the definition of 'prescribed period'. The minimum period stated in the definition of prescribed period where the animal is not registered is three days.

## **S27. Dealing with animal seized and impounded for non-compliance with local law**

When an animal, including a dog that is not a regulated dog, is seized and impounded for non-compliance with the Animal Management Model a notice of impounding should be given to the owner or responsible person which then triggers a requirement for the owner to rectify the contravention to enable reclamation of the animal.

The exception to this is where the animal was being kept in contravention of section 5 (keeping an animal that is prohibited under the local law) or where an application for an approval for keeping the animal has been rejected and any review process completed. In these cases disposal of the animal may proceed directly under Division 5 of the Animal Management Model.

If the owner or responsible person failed to rectify the contravention by the end of the prescribed period the animal could then also be disposed of under Division 5 of the Animal Management Model through the application of sections 31(a) and 29(2).

Non-compliance with a compliance notice issued under the AMCD Act (Chapter 5 Part 5) for regulated dogs should be dealt with under that Act rather than the Animal Management Model.

## **S28. Dealing with animal seized and impounded for attacking a person or another animal**

It is important to note that this section does not apply to dogs. Subsection (1) provides that section 28 applies only to those seizure circumstances specified in section 21(1)(c). The AMCD Act applies in relation to dogs that have been seized because they have attacked, threatened to attack or acted in a way that caused fear to another animal or person.

An authorised person may either make a destruction order for the animal in cases of extreme seriousness or give the owner or responsible person a notice of impounding. Issuing a notice of impounding does not preclude the local government from at the same time declaring the animal dangerous and giving the responsible person an information notice about the declaration.

The options provided in this section allow authorised persons to determine the most appropriate action given the specific circumstances in each case.

## **S29. Reclaiming an impounded animal**

This section specifies the terms for and limitations to reclaiming an impounded animal. The process of reclamation is triggered by giving a notice of impounding or where this is not possible because the contact details for the owner or responsible person for the animal are not known, the date of the animal's seizure.

Subsection (2) sets out the specific conditions that must be met for reclaiming an animal irrespective of whether a notice of impounding has been given.

These conditions include:

- The person must reclaim the animal within the prescribed period. The model's schedule dictionary defines 'prescribed period' as the period set by subordinate local law and imposes a minimum of three days for an unregistered animal or five days for a registered animal. Section 22 of the Animal Management Subordinate provides an example of how such a provision may be constructed. The definition also specifies when the prescribed period commences depending on the circumstances.

Specifying a minimum period is necessary to ensure adherence to fundamental legislative principles, which require administrative powers to be sufficiently defined and provide procedural fairness. This is particularly important given the consequences of not reclaiming an animal within the prescribed period. For example, disposal by way of destruction under Division 5 of the Model. The minimum mandatory holding period tries to balance several factors—the rights of owners to a reasonable period in which to reclaim an animal, considering the wide range of circumstances that may prevent an owner immediately reclaiming an animal from a pound, animal welfare considerations and the cost impact on local governments for maintaining an animal in a pound.

- Payment of the cost recovery fee. Calculation of this fee should be clearly articulated. Incentives for responsible animal ownership may be able to be built into the fee.
- An approval or registration for keeping the animal, if required under a local law or the AMCD Act, has been obtained. Some flexibility may be required in practice where the process of, and time required for, obtaining the approval or registration prevents reclamation within the prescribed period.
- Demonstrated compliance with requirements of the compliance notice mentioned in section 21(1)(b) or 21(2)(b) where the animal was seized because the owner or responsible person had failed to comply with a previously issued compliance notice.

Subsection (3) ensures an animal may not be reclaimed in two specified circumstances (where it is needed for evidence or a destruction order has been made) unless the conditions outlined in subsection (4) are met. This means that an animal for which a destruction order had been made upon seizure could be kept for a minimum of 61 days if the full review and appeal process is invoked based on maximum periods for each stage in the process.

This provision does not prevent the reclamation of an animal for which a dangerous animal declaration has been made after the animal's seizure even in cases where the owner is yet to comply with the requirements specified in a compliance notice issued with the information notice about the declaration. It is not considered necessary for the local government to retain custody of the animal during this period in view of the potential for a review of the decision and the time involved.

## **Division 4—Destruction of animal following notice**

The Animal Management Model provides for an animal to be destroyed under three separate circumstances where certain conditions are met:

- section 22 immediate destruction of a seized animal
- section 30 through a destruction order
- section 32 disposal of impounded animals.

### S30. Destruction orders

Subsection (1) sets the minimum period for when an animal may be destroyed after an order is given. It is aligned with the destruction order provisions in the AMCD Act for ease of enforcement and administration.

There are only three circumstances where a destruction order may be served on an owner or responsible person for the animal:

- subsection (2)(a) where it has attacked, threatened to attack or acted in a way that causes fear to, a person or another animal
- subsection (2)(b) a declared dangerous animal wandering at large
- subsection (2)(c) where an animal has been seized for wandering at large more than three times within a 12 month period.

In subsection (2)(a) it would not be necessary to seize the animal before issuing a destruction order. The AMCD Act, rather than a local law, should be relied upon when the animal involved in the circumstances described in subsections (2)(a) or 2(b) is a dog.

Subsection (2)(c) deals with the scenario of an animal owner continually failing to prevent their animal from escaping and penalties for the offence not being an effective deterrent. This provision has been modified in comparison to *Model Local Law No.4 (Keeping and Control of Animals) 2000*, which provided for an animal to be summarily destroyed without notice after being seized three times in a year. Using a destruction notice provides for greater natural justice as an opportunity is given to review the decision and take into consideration particular mitigating circumstances.

The service of the destruction order requires an accompanying information notice. This notice provides the trigger for the relevant person to seek a review of the decision under Part 4 of the Administration Model and if necessary, subsequently an appeal to the Magistrates Court under Part 5 of the Animal Management Model. As the review provisions referred to in this Division rely on the Administration Model, it is imperative that the Administration Model is adopted before or at the same time as adoption of this Model.

While knowledge of the animal's owner is implicit for the circumstances described in subsections (2)(b) and (c), there is a possibility that the owner or responsible person for an animal that has attacked etc (subsection (2)(a)) may not be known or able to be readily identified. Clearly no destruction order can be served in this case. If the animal is impounded and the owner or responsible person seeks to reclaim the animal a destruction order can be served at that time. However, if no reclamation is sought the animal may be destroyed under Division 5.

Subsections (4) to (8) provide for when a destruction order may be carried out depending on whether a review or appeal has been initiated and the outcome of the

review or appeal. This is necessary to protect the rights of animal owners and to ensure natural justice is applied.

These subsections are consistent with section 29(4) of the Animal Management Model regarding the reclamation of animals but provide greater specificity of the process. It is important to note that the reclamation of the animal where the order is no longer in force due to the review or appeal process is contingent on meeting the other requirements for reclamation set out in sections 29(2)(b) to (d).

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

The purpose of this division is to set out the circumstances in which an animal may be disposed of after impounding and the means of disposal available and obligations imposed on the local government in relation to the sale of impounded animals. It covers scenarios where an animal may not or has not been reclaimed under earlier provisions.

### **S31. Application**

This section specifies and limits the circumstances in which an animal may be disposed. Paragraph (a) states that the division applies to animals impounded for wandering at large and unclaimed after the prescribed period expires.

Paragraphs (b) and (c) give the owner of an animal three days to reclaim an animal from the time that the animal is no longer required to be held for evidence or a destruction order is no longer in force due to the outcome of a review or appeal process. This short time frame is considered sufficient in view of the engagement of the animal owner that is implicit in the legal proceedings or review and appeal processes covered by these paragraphs.

Paragraph (d) applies the disposal provisions to situations where the animal is prohibited or cannot be granted an approval.

Paragraph (e) provides for the range of circumstances where an owner of an animal chooses to surrender an animal to the control of a local government and incorporates the circumstance mentioned in section 22(2)(c) which permits an authorised person to immediately destroy an animal or alternatively dispose of the animal under division 5.

### **S32. Sale, disposal or destruction of animals**

This section provides local governments with flexibility in the means by which they may dispose of an animal. It allows local governments to use the most appropriate means of disposal for the type and value of the animal involved while maintaining transparency in the process.

Selling the animal by public auction or tender is the standard means for disposal. However, local governments may consider the cost of an auction or tender process for selling certain species or classes of animals to be excessive in view of the monetary value of the animal. The Model provides local governments with the option to specify certain species or classes of animals that may be disposed through the alternative processes listed in subsection (1)(b)(i) to (iii). An example of a subordinate local law

provision for this purpose is provided in the Animal Management Subordinate at section 17.

An example of section 32(1)(b)(ii) is to give the animal to a person or animal welfare organisation for rehousing. Paragraph (b)(iii), destroying the animal, is considered a last resort and local governments are encouraged to undertake consultation with their communities about expectations and alternatives to destruction before making such a subordinate local law.

Subsection (2) refers to situations where the animal being disposed of is a particular species or breed of animal that is prohibited under the Animal Management Model (section 5). It would be inappropriate to sell or give such an animal to a resident of the local government area.

Local governments may wish to establish pre-sale procedures for disposing of an animal by way of sale or gift where the keeping of that animal requires approval to ensure prospective owners are not inadvertently committing an offence under the Administration Model, section 6(2) by undertaking a prescribed activity (keeping an animal) without a current approval.

Subsection (3) is intended to provide the necessary level of public transparency for disposing of property (the animal) that has been seized. The two day mandated public notification period should be factored into local government processes if the impounding period is to be kept to a minimum.

Subsection (4) ensures that reimbursement of a local government's costs arising from the sale and impounding of the animal receives priority over any reimbursement of proceeds from the sale to the former owner. No reimbursement is made to the former owner where the former owner surrendered the animal to the local government.

If an animal is not sold by public auction or tender, subsection (6) provides local governments with discretion to dispose of the animal in a way considered appropriate for the circumstances. This could include giving the animal to someone or destroying it.

## **Division 6—Other impounding matters**

This division covers administrative and governance matters associated with pounds. Provision for the establishment of pounds has not been included as it is not considered necessary to regulate this matter by local law.

Local governments are empowered broadly under the LGA to establish such operations. Model Local Law (Local Government Controlled Areas, Facilities and Roads) No. 4 2010 (LGCAFR Model), section 6, includes provisions about the opening times of local government controlled areas which would include local government operated animal pounds.

Consequently no provision for this is made in the Animal Management Model.

### **S33. Register of impounded animals**

Apart from a minor variation this provision replicates section 6 of Model Local Law No. 5 (*Impounding of Animals*) 2000. It requires local governments to keep certain specified information about animals impounded at either a pound

operated by the local government or to ensure another facility for the care of animals with which the local government has entered into contractual arrangements keeps the information.

Subsection (3) requires the register to be publicly available at either the pound's office or at another office that must be prescribed by subordinate local law. This provision provides transparency for the public and assists with the identification and reclamation of animals. The register is also an important evidentiary document for local governments.

### **S34. Access to impounded animal**

This provision has been modelled on section 129 of the AMCD Act for consistency and ease of enforcement.

In view of the potential for animals to be held in pounds for considerable periods and the impact this has on an individual's rights and liberties in relation to their property, section 34 provides an owner of an impounded animal reasonable access to the animal without charge. Importantly, subsection (3) provides local governments with some flexibility in dealing with unreasonable requests for access. Local governments may find it useful to develop some guiding principles for applying this provision to assist local government officer's decision making and promote consistency in decision making.

### **S35. Unlawful removal of seized or impounded animal**

This provision reinforces the authority of the authorised person in undertaking their responsibilities under the Animal Management Model. It is consistent with the offence of obstructing an authorised person under section 149 of the LGA but the Model's provision provides an additional level of specificity for authorised persons in relation to seizure of animals.

The inclusion of this provision in the Animal Management Model gives authorised persons options to use the most appropriate provision for the circumstances on a case by case basis.

While the LGCAFR Model (section 6) creates the offence of unauthorised entry to a local government controlled pound, section 35(1)(b) of the Animal Management Model creates an additional offence for unauthorised removal or attempted removal of an animal from a pound.

While the two Models provide the potential to issue infringement notices for two separate offences associated with a single incident, in practice local governments may choose to only use the more serious offence of removal/attempted removal where both unauthorised entry and unauthorised removal apply.

Additional to the penalty imposed for an offence against this provision, subsection (2) provides local governments with the means to recoup the costs associated with any damage that a person may have caused in committing the offence.



## Part 5—Appeals against destruction orders

The Animal Management Model provides for an external appeal process for only one type of decision—destruction orders.

### S36. to S41.

The process for appealing against a destruction order mirrors the process in Chapter 8 of the AMCD Act for appeals against decisions under that Act.

However, the appeal process under the AMCD Act is to the Queensland Civil and Administrative Tribunal whereas an appeal under the Animal Management Model is to the Magistrates Court. An appeal may not commence until a review of the decision has been undertaken and finally decided under Part 4 of the Administration Model.

The main difference to the AMCD Act provisions is that the Animal Management Model provides for a non-discretionary, automatic stay of the destruction order until the court decides the appeal. This provision ensures the integrity of the appeal process.

A further difference between the AMCD Act and the Animal Management Model is the Model's retention of a provision in Model *Local Law No.4 (Keeping and Control of Animals) 2000*, which places a limitation on the Court's power to order appeal costs against the local government to only those cases where the Court is satisfied that the animal was unlawfully seized or the local government had acted unreasonably in making a destruction order.

## Part 6—Miscellaneous

### S42. Sale of animals

This provision provides local governments with a head of power to require certain conditions to be met by persons who offer animals for sale. Such conditions should not be inconsistent with or duplicate those required for the supply of cats and dogs under the AMCD Act but allows additional conditions to be imposed. An example of a generic condition might be that a person should not offer an animal for sale if it is diseased. Conditions specific to particular animals may also be considered.

This provision includes an offence for contravening a condition imposed through a subordinate local law.

Local governments may consider no additional regulation is required in this regard. A voluntary Code of Practice for Pet Shops was released in December 2008 and is available on DAF's website at [www.daf.qld.gov.au](http://www.daf.qld.gov.au).

This code provides guidelines for the care and management of cats, dogs and other animals sold through pet shops. If a local government does not proceed to make a subordinate local law section 42 becomes inactive.



## S43. Subordinate local laws

This section lists the matters for which a local government may make subordinate local laws under the Animal Management Model and provides a ready reference to the sections in the model that provides the head of power.

The Animal Management Subordinate sets out a framework for how each of these powers may be specified and applied to help local governments develop a subordinate local law that best meets their needs and those of their local community. Each provision contains examples set out in italics as prompts for local governments to review and consider when developing appropriate content for an Animal Management Subordinate. The template is a reference tool only. Local governments may wish to develop their own Animal Management Subordinate within the parameters set by the head of power in the Animal Management Model.

## Schedule—dictionary

This schedule defines significant terms used in the Animal Management Model.

An explanation of the overall approach to definitions is provided under ‘section 3—definitions’ in this document.

The definition of ‘animal’ provides the head of power to exclude certain types of animals from the application of the Animal Management Model. This provides local governments with the flexibility to tailor the scope of regulation and enforcement in relation to animals in their area.

Definitions of ‘owner’ and ‘responsible person’ are mirrored on equivalent definitions used in the AMCD Act for ease of use and enforcement.

The definition of ‘wandering at large’ has two components. Firstly, it incorporates the element of an animal not being under effective control, as described in section 12(3) of this Model.

Secondly, it extends the location of the animal to include a private place if the occupier has not given consent for the animal to be there. This covers the circumstances where an animal may have wandered onto a neighbour’s property.

## Appendix 1—Model local laws gazetted in 2010

Title	Date of gazettal notice
Model Local Law No. 1 (Administration) 2010	25 June 2010
Model Local Law No. 2 (Animal Management) 2010	25 June 2010
Model Local Law No. 3 (Community and Environmental Management) 2010	25 June 2010
Model Local Law No. 4 (Local Government Controlled Areas, Facilities and Roads) 2010	25 June 2010
Model Local Law No. 5 (Parking) 2010	25 June 2010
Model Local law No. 6 (Bathing Reserves) 2010	25 June 2010
Model Local Law No. 7 (Indigenous Community Land Management) 2010	25 June 2010

## Appendix 2—Summary of offence provisions and maximum applicable penalty\*

Provision number	Provision heading	Maximum penalty (in penalty units)
5(3)	Prohibition on keeping animals in prescribed circumstances	50
7(3)	Requirement to de-sex an animal, other than a cat or dog	20
8(2)	Minimum standards for keeping animals	20
10(2)	Bringing an animal into a public place	20
12(1)	Animal not under effective control in public place	20
12(2)	Dog on heat in a public place	20
13	Non-removal of animal faeces in a public place	20
14(1)	Failure to proper enclosure	20
14(3)	Found wandering at large	20
15(3)	Non-compliance with koala area requirements	20
17(1)	Responsible person must ensure animal does not attack or cause fear:	
(a)	causes death or grievous bodily harm to person	300
(b)	death or grievous bodily harm to animal	100
(c)	bodily harm to person or another animal	50
(d)	other	20
17(2)	A person must not allow or encourage an animal to attack or cause fear:	
(a)	causes death or grievous bodily harm to person	300
(b)	death or grievous bodily harm to animal	100
(c)	bodily harm to person or another animal	50
(d)	other	20
35	Unlawful removal of seized or impounded animal	50
42(3)	Sale of animals—non-compliance with conditions specified in subordinate local law	50

\*Note: penalties for offences relating to keeping an animal without approval and enforcement provisions about approvals and conditions of approvals are set out in the Administration Model.

### Appendix 3—State legislation relevant to the CEM Model

<b>Title of state legislation</b>	<b>Part of model local law most</b>
<i>Animal Care and Protection Act 2001 and Regulation 2002</i>	Parts 2,3, 4
<i>Animal Management (Cats and Dogs) Act 2008</i>	All parts
<i>Apiaries Act 1982</i>	Part 2
<i>Environmental Protection Act 1994</i> Environmental Protection Regulation 1998	Does not directly affect the Model but provides for noise nuisance from barking dogs
<i>Fair Trading Act 1989</i>	Part 6
<i>Guide, Hearing and Assistance Dogs Act 2009</i>	Parts 2, 3
<i>Land Protection (Pest and Stock Route Management) Act 2002</i>	
<i>Nature Conservation Act 1992</i> Nature Conservation (Wildlife Management) Regulation 2006 <i>Nature Conservation (Koala) Conservation Plan 2006</i> South East Queensland Koala Conservation State Planning Regulatory Provision State Planning Policy 2/10: Koala	Part 3
<i>Sale of Goods Act 1896</i>	Part 6
<i>Stock Act 1915 and Regulation 1988 Stock Identification Regulation</i>	Part 4 Part 2
<i>Sustainable Planning Act 2009</i>	Parts 2, 6
<i>Transport Operations (Road Use Management) Act 1995</i>	Part 4

Note: The state legislation listed in appendix 3 is current as at June 2010. For a complete list of current legislation visit [www.legislation.qld.gov.au](http://www.legislation.qld.gov.au)

## Appendix 4—Summary of model local law provisions applying to dogs

Animal Management Model provision	Applies to dogs	Limitation of application of model's provisions	Relevant/related provisions in the Animal Management (Cats & Dogs) Act 2008 (AMCD Act)
Part 1—Preliminary Sections 1-4	yes	except for s2(2)(d)	Chapter 1 ss.3—purpose s6—relationship with local laws ss.8- 12  Schedule 2—dictionary and definitions
Part 2 keeping of animals Division 1 Prohibited animals	yes		Chapter 1 s.6—relationship with local laws  Chapter 4 Part 1—definitions  Part 2 s.71—restricted dog permits
Division 2—Approval for keeping	yes	excludes restricted dogs	Chapter 3 registration of dogs and cats is a requirement of 'keeping' but does not involve 'approval'  Chapter 4 Part 3 and s.71—restricted dog permits
Division 3—De-sexing	yes		Chapter 4 Part 2 s. 70—compulsory de-sexing of restricted and declared dangerous dogs
Division 4—Minimum standards	yes		Schedule 1 sets out additional standards for relevant dogs Note also Chapter 4 s.103—dividing fence
Division 5—Identification of registered cats and dogs	yes	does not apply to declared dangerous and menacing dogs and restricted dogs	Chapter 3 s.45—cat or dog must bear identification in particular circumstances  Schedule 1 s.2 for relevant dogs
Part 3—Control of animals Division 1—Animals in public places s.10 Exclusion  s.11 Dog off leash area  s.12 Control in public places  s.13 Cleaning up faeces	yes  yes  yes  yes	AMCD Act applies for the effective control of regulated and relevant dogs	See also Chapter 4 s.64 and regulated dog or proposed regulated dog under effective  Chapter 9 s.197—greyhounds Schedule 1 s.3 —muzzling and effective control for relevant dogs

in public place			
Division 2—Restraint of animals s.14 Duty to provide proper enclosure	yes	AMCD Act applies for enclosures for regulated and relevant dogs	Chapter 4 ss. 97–98—duty to comply with permit conditions for declared dangerous and menacing dogs
s.15 Koala requirements	yes		about enclosures); and AMCD Regulation divisions 3-4
Division 3—Aggressive behaviour by animals	no, except in section 18 where the behaviour of a dog may have caused the animal to attack		Chapter 9 ss.194-196 applies to any dog in relation to a dog attacking or causing fear, prohibitions on allowing or encouraging a dog to attack or cause fear, and defences.
Division 4—Dangerous animals	no		Chapters 4 and 9 apply to dogs
Part 4—Seizure, impounding or destruction of animals Division 1—Seizure s.21(1)	no yes		Chapter 5 s.125 —seizure of certain dogs in certain circumstances
Division 2—Destruction without notice	yes	except for regulated dogs.	Chapter 4 s.100—surrender of regulated dog  Chapter 5 s.127—power to destroy seized regulated dog
Division 3—Return or impounding of animals s.23 s.24 s.25	yes yes yes	except for regulated dogs.  Except for regulated dogs	Chapter 5 ss.130–131—return of particular dogs  Chapter 5 ss.128–131—receipt, access and return of regulated dogs
Division 4—Destruction of animal following notice s.30(2) (a) and (b)  s.30(2)(c)	no yes	AMCD Act applies	Chapter 5 s.127 (power to destroy seized regulated dog)

Division 5—Disposal of impounded animals	yes	except for regulated dogs	Chapter 4 s. 100 (surrender of regulated dog) Chapter 5 s.127 (power to destroy seized regulated dogs)  Disposal is limited by Chapter 4 ss.66- 67 (prohibitions on the supply of regulated dogs)
Part 5—Appeals against destruction orders	yes	except for regulated dogs	Chapter 8 Part 1 (review) and Part 2 (external review).
Part 6—Miscellaneous	yes	except for regulated dogs	Chapter 4 ss.66–67, see also Chapter 2 s.13