



Premier & Cabinet
Division of Local Government

Companion Animals Act 1998
and
Companion Animals Regulation 2008

**GUIDELINE FOR BREED
ASSESSORS**

Revised Guideline

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1. INTRODUCTION

The purpose of this document is to provide guidelines and information to those persons approved by the Chief Executive, Local Government to conduct breed assessments within the provisions of the *Companion Animals Act 1998* (the Act) and the Companion Animals Regulation 2008 (the Regulation).

References in these guidelines to a 'breed assessor' mean a breed assessor approved by the Chief Executive, Local Government under section 5 of the Act.

1.1 Summary of relevant legislation

Under Division 6, Part 5 of the Act, a council is able to declare a dog to be a restricted dog for the purposes of the Act if the council is of the opinion that the dog is one of the breeds or kinds of dogs listed under section 55(1) (a)-(d) (a 'restricted breed') or is a cross-breed of a restricted breed. The council is required to give the dog's owner a notice of the council's intention to declare the dog to be a restricted dog.

The restricted breeds as listed under section 55(1) are:

- (a) American pit bull terrier or pit bull terrier
- (b) Japanese tosa
- (c) dogo Argentino
- (d) fila Brasileiro
- (d1) any other dog of a breed, kind or description whose importation into Australia is prohibited by or under the *Commonwealth Customs Act 1901*
- (e) any dog declared by a council under Division 6 of this Part to be a restricted dog
- (f) any other dog of a breed, kind or description prescribed by the regulations for the purposes of this section.

After 28 days following the issuing of a notice of intention, the council may declare the dog to be a restricted dog, but not if the owner provides the council with a written statement by an approved breed assessor to the effect that the dog is not of a restricted breed or a cross-breed of a restricted breed. Section 5 of the Act defines an approved breed assessor to be "a person or body approved for the time being by the Chief Executive, Local Government to carry out breed identification assessments in relation to dogs for the purposes of Division 6".

If the dog is, however, identified as a cross-breed of a restricted breed, the council cannot proceed with the declaration if the owner provides the council with a written statement by an approved temperament assessor to the effect that the dog is not a danger to the public and is not likely, without provocation, to attack or bite any person or animal.

A written statement by an assessor for the purposes of Division 6 cannot be challenged, and any assessor who provides any such written statement does not incur any civil or criminal liability for doing so.

The declaration by a council of a dog to be a restricted dog is final and is not subject to any review or appeal.

1.2 Notice of Intention to Declare a Dog to be a Restricted Dog

The Chief Executive has approved a form of Notice for the purposes of Division 6, Part 5 of the Act. A PDF copy of the approved form, *Notice of Intention to Declare a Dog to be a Restricted Dog*, may be viewed at the Division's website:

<http://www.dlq.nsw.gov.au/dlq/dlghome/documents/Forms/08-56%20Form.pdf>

Under section 58A(1), a council may declare a dog to be a restricted dog if the council is of the opinion that a dog is either:

- (a) a breed or kind of dog referred to in section 55(1) (a)-(d) ("restricted breed"), or
- (b) a cross-breed of a restricted breed.

A notice of intention to declare a dog to be a restricted dog must set out the requirements that the owner has to comply with, both while a restricted dog declaration is pending and if a declaration is subsequently made. The notice must also set out the procedures associated with obtaining either a breed assessment or a temperament assessment in relation to the dog.

If the owner of the dog decides to proceed with obtaining the relevant assessment(s), s/he has 28 days from the giving of the notice to undertake the procedures set out in the notice. However, the council may, at the owner's request, extend the 28-day period because of extenuating circumstances.

The owner of the dog may decide to do nothing, in which case the council may proceed to declare the dog to be a restricted dog. Once a declaration is made, the owner must comply with the control requirements for restricted dogs set out under the Act.

Alternatively, if the breed assessment process is conducted and establishes that the dog is **not** a restricted breed or a cross-breed of a restricted breed, the council cannot make a restricted dog declaration. The issue is finalised by the addition of the breed assessor's number (BA number) to the dog's record on the NSW Companion Animals Register (the Register) and a "pass" is recorded on that record.

If the breed assessment establishes that the dog is a restricted breed:

- the dog will be a restricted dog for the purposes of the Act
- a "fail" will be recorded against its record on the Register, and
- a temperament assessment is not required.

If the breed assessment establishes that the dog is a cross-breed of a restricted breed:

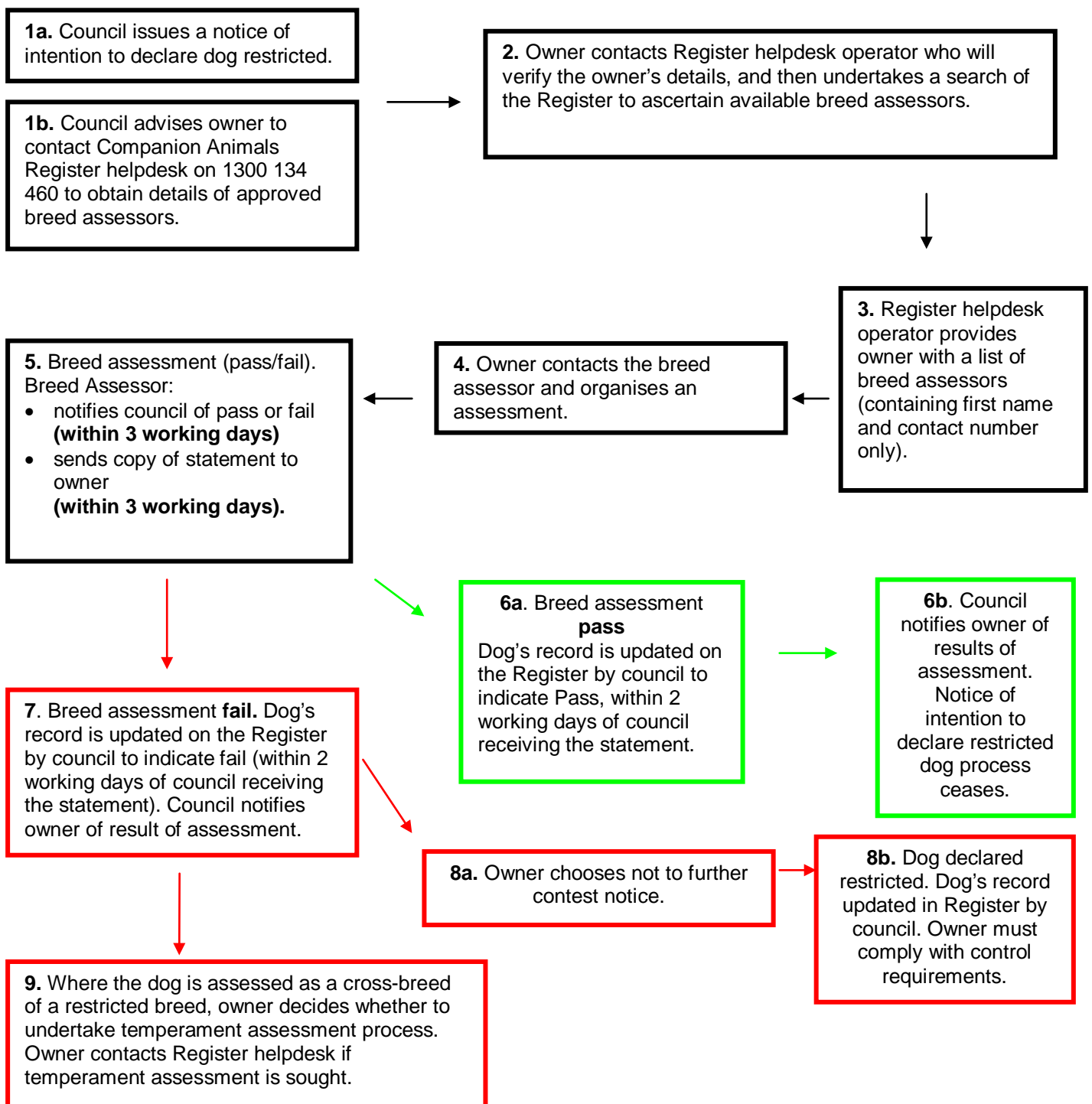
- the BA number is entered on the Register
- a "fail" will be recorded on the dog's record
- a temperament assessment must establish that the dog is not a danger to the public and is not likely, without provocation, to attack or bite any person or animal in order for the dog not to be declared to be a restricted dog, and
- the breed assessor must direct the owner of the dog to the Register helpdesk to obtain information regarding the temperament assessment process.

If the owner decides **NOT** to proceed with obtaining a temperament assessment, then the council may declare the dog to be a restricted dog.

A 28 day statutory time limit applies to the owner that decides to proceed with obtaining the relevant assessments (unless an extension is granted to the owner by the council). Therefore, breed assessors should immediately respond to requests from owners to conduct assessments and endeavour to complete assessments as soon as possible.

The flowchart on page 6 provides an overview of the breed assessment process.

1.3 Outline of Breed Assessment Process



2. APPLYING TO BECOME AN APPROVED BREED ASSESSOR

Section 5(1) of the Act defines an approved breed assessor as a person or body approved for the time being by the Chief Executive to carry out breed identification assessments in relation to dogs for the purposes of Division 6, Part 5 of the Act.

2.1 Criteria

The Chief Executive has adopted the following criteria as the minimum acceptable level of knowledge and experience a breed assessor must address.

Persons interested in becoming a breed assessor should:

- be an ANKC All Breeds Judge, having judged the Terrier Group for 2 years, or
- be an ANKC Terrier Specialist Judge, or
- be an ANKC Group Judge for a minimum of 2 years, or
- have owned ANKC registered American Staffordshire Terriers or Staffordshire Terriers or Bull Terriers for a minimum of 5 years and have bred a minimum of 3 registered litters and show competence in identifying all mastiff breeds and all terriers.

Applicants must also:

- demonstrate competence in assessing without supervision
- demonstrate management and conflict resolution skills
- demonstrate extensive involvement in purebred dog structures, organisations, breeding and showing
- understand the legislative provisions of the *Companion Animals Act 1998* and Companion Animal Regulation 2008
- understand the Work Health and Safety requirements and administrative responsibilities of breed assessors
- show competency in the use of a microchip reader, and
- show competency in completing the breed assessment statement.

Dogs NSW has established a training course for breed assessors that addresses the above criteria. For information about training courses, please contact the Breed Assessor-Temperament Tester (BATT) Committee at Dogs NSW on (02) 9834 3022 or by email to info@dogsnsw.org.au.

2.2 Approval process

An application to become an approved breed assessor is to be made to the Division of Local Government. If the Chief Executive approves the application, the breed assessor information is entered onto the Register and the successful applicant is notified of the result of their application. The Register generates a unique BAXXXX number that each breed assessor must use when completing the breed assessment statements.

2.3 NOTIFICATION OF APPROVAL

If approved, each applicant will receive an information package containing the following:

- approval letter and BA number (BAXXXX)
- a Guideline for Breed Assessors
- a book of Breed Assessment Certificates.

3. PROCEDURES TO BE FOLLOWED WHEN CONDUCTING A BREED ASSESSMENT

3.1 Prior to the assessment

Before an assessment can be undertaken, the breed assessor must:

- a. Sight an official *Notice of Intention to Declare a Dog to Be a Restricted Dog* that has been issued to the dog owner by a NSW Council and signed by a council officer. The date of issue on the Notice of Intention should not be more than 28 days prior to the date of the assessment.

PLEASE NOTE:

- If the dog owner fails to provide this information, the breed assessment **cannot** take place.
 - If the date of issue of the Notice of Intention is more than 28 days prior to the date of assessment, the breed assessor should contact the council officer who has signed the Notice to ascertain whether the council has granted an extension to the dog owner.
 - Assessments conducted on dogs that have **not** been issued with such a notice are invalid, as they have not been performed in accordance with the processes outlined under Division 6 of Part 5 of the Act.
 - **Councils cannot process invalid breed assessment statements.**
- b. Verify the identity of the animal being assessed by using a multi-read microchip scanner and compare to documentation provided by the owner.

Note: If a dog is not microchipped, then an assessment cannot take place as the identity of the dog cannot be verified.

The Division recommends that breed assessors take at least one photograph of the dog they are assessing for the purposes of record keeping. A print-out of this photograph should be attached to the breed assessor's records for the animal.

3.2 The Breed Assessment

The dog owner will contact the breed assessor to arrange a mutually convenient time to conduct the breed assessment. The assessment is conducted at the owner's own expense (see item 4.8 below for information on costs and fees).

The breed assessor must provide the owner with an overview of the process including:

- the paperwork/documentation to be provided by the owner at the assessment
- the documentation/statements to be provided by the breed assessor to the owner
- that the dog will be scanned for microchip verification
- the cost of the assessment including travelling costs (if any)
- the process the breed assessor will use to determine the outcome of the breed assessment.

On completion of a breed assessment, the assessor must fill out the breed assessment statement form in full. These statements are in triplicate and must be distributed as follow:

- Yellow copy - council copy (to council within three working days of assessment)
- Pink copy – owner’s copy (to owner within three working days of assessment)
- White copy - breed assessor’s copy (to be retained by the assessor in accordance with State Records policy on document management).

The breed assessor must notify both the owner and the council of the outcome of the breed assessment within three working days of the assessment, using the breed assessment statement form.

4. RESPONSIBILITIES OF APPROVED BREED ASSESSORS

4.1 Privacy and confidentiality – responsibilities

Under section 89 of the Act, it is an offence to intentionally allow a person to have access to information held by a breed assessor other than in the lawful exercise of his or her functions under the Act, for example by disclosing to an unauthorised person information obtained during the breed assessment process.

Breed assessors will be collecting, recording, storing and disposing of personal information gathered from individuals as part of the breed assessment process. These activities must be undertaken in keeping with the overarching principle of consideration for the privacy of individuals and in keeping with the provisions of this Guideline.

Breed assessors must not collect, access, attempt to access, allow other people to access, record or use personal information except as is necessary for the breed assessment process under the Act, Regulation or Guideline.

Personal information held by breed assessors because of their activities under the Act, Regulation or Guideline must be promptly provided to the individual to whom it relates at their request. Breed assessors must require proof of identity to be presented before providing this information.

Section 58F(1) of the Act provides that any person (other than a council) who is authorised by or under the Act to identify or register companion animals may, despite any other Act or law, provide any information (including the person's opinion as to the breed of a dog) to a council that may result in any action being taken by the council under the Act in relation to a dog.

4.2 Liability

Under section 58E, a breed assessor does not incur any criminal or civil liability in respect of anything done or omitted to be done in good faith by the assessor in connection with carrying out an assessment of a dog's breed for the purposes of the Act.

4.3 Privacy and confidentiality – Division of Local Government responsibilities

The Division of Local Government is responsible for updating and maintaining all information relating to breed assessors.

If an owner decides to obtain a breed assessment, the council will direct the owner to call the Companion Animals Register helpdesk on 1300 134 460. The helpdesk operator will provide the dog owner with contact information for approved breed assessors. It is the responsibility of the dog owner to contact a breed assessor to arrange a date, place and time for the breed assessment (see item 4.8 below for information on costs and fees).

The Companion Animals Register helpdesk ensures privacy with respect to the breed assessor's personal information. Access to information relating to breed assessors is

restricted to users of the Register with level 4 access (authorised staff within the Division of Local Government only).

Only the assessor's first name and contact number may be released. No other assessor information contained on the Register is released publicly under **ANY** circumstances.

4.4 Records management

The breed assessor must establish and maintain a records management system for the white copy of the breed assessment statement form (see item 3.2), or the information contained in the form which must be retained. This ensures that the confidentiality of the information is maintained.

The records management system must be capable of retrieving the information contained in the form on request. It is recommended that forms or records be capable of being retrieved based on microchip number or breed assessment statement number. It is not adequate that forms or records are accessible only by owner's name.

Breed assessors must comply with all reasonable requests from the Division of Local Government or authorised officers of a local council for access to individual white copies of the form and/or the information contained in them.

Where a breed assessor has transferred information into their own records and the records management system complies with these requirements, it is no longer necessary to ensure retrieval of physical copies of the form for the purposes of access to information. However provisions relating to the retention of the form, protection of confidentiality and destruction still apply.

A record may be in such a form that information can only be produced or made available from it by means of the use of particular equipment or information technology (such as computer software). In this case the breed assessor is responsible to ensure that the information remains able to be produced or made available for at least two years from the date of assessment.

4.5 Secure disposal of information

The form and/or any other written personal information acquired during the breed assessment process must be securely disposed of. This means disposing of the information in a way which protects against loss, unauthorised access, use, modification or disclosure, and against all other misuse. It is suggested that the documents be shredded.

4.6 Loss or destruction of information

In the case of suspected loss or unintended destruction at any time of any copies of the forms or any other written personal information acquired during the completion of the breed assessment, the breed assessor must take all reasonable steps to recover the information or to ensure that the information has been properly disposed of.

In the case of loss or unintended destruction of the white copy of the form within the two-year period referred to under item 4.4 above, the breed assessor must immediately notify the Division of Local Government at the earliest opportunity, and within 14 days.

In the case of loss or unintended destruction within the two-year period, the breed assessor must comply with all reasonable requests by the Division of Local Government to contact the relevant owners of the animals and to take any other steps necessary to ensure the integrity of the information on the Companion Animals Register.

4.7 Breed assessor contact details

It is the responsibility of breed assessors to notify the Division of Local Government about any change in their address or contact details as soon as possible.

Breed assessors must notify changes to the Division directly, by fax on (02) 4428 4199 or by email to pets@dlg.nsw.gov.au, quoting the BA number issued by the Division.

4.8 Costs and fees

Section 58C(4)(b) of the Act provides that the owner of the dog is liable to pay for any costs associated with obtaining a written statement from a breed assessor for the purposes of this section.

Dogs NSW has recommended the cost of a breed assessment as at 1 May 2013 as follows:

- Breed assessment: \$82.50, which includes travel to a suitable assessment location within 10 km of the breed assessor's residence.
- After that distance, if a breed assessor has to travel, the following costs per km travelled after the initial 10 km in each direction will apply:-
 - \$0.63 per km for a small vehicle (1.6L and under)
 - \$0.74 per km for a medium vehicle (2.6L and under)
 - \$0.75 per km for a large vehicle (2.6L and over).
- Should a breed assessor not be available in the owner's immediate area, and to minimise costs, the owner may choose to travel at his or her own expense to the breed assessor. Breed assessors should take care to ensure that a neutral area is selected for the place of assessment.

The cost of the assessment may be liable to change without notice.

4.9 Conflict of interest

A conflict of interest exists when a breed assessor could be influenced, or a reasonable person would perceive that the breed assessor could be influenced by a personal interest when carrying out a public duty.

In light of this, and in the interests of independence and accountability, breed assessors **MUST NOT** accept an assessment booking if the dog owner is a relative or someone personally known to them.

Breed assessors perform a specific function under the *Companion Animals Act 1998*, for the particular purposes of assessing the breed of animals in accordance with the requirements of section 58C(2). This involves a once-only breed assessment, which is distinct from any other breed assessment function the assessor may perform. No on-going contact should be had with the owner of an assessed animal other than the requirement of supplying the owner with a copy of the assessment statement within three working days.

It should also be noted that under normal circumstances council officers should not be present when a breed assessment is conducted. This is to avoid any potential conflict of interest which may arise from such a situation. An example of an extraordinary circumstance in which a council officer may be required to be present at an assessment would be when the dog is impounded at the time of assessment.

5. Further information

Full copies of the Act and the Regulation can be viewed on the NSW Government's legislation website at www.legislation.nsw.gov.au. Copies of legislation may also be purchased from *Fuji Xerox Document Management Pty Limited*, by emailing bookshop@fujixerox.com or telephoning 1300 656 986.

Further information relating to the management of companion animals and the responsibilities of their owners can be found on the Division of Local Government's website at www.dlg.nsw.gov.au. Other relevant information including a full list of NSW councils and council contact details may also be obtained from that site.

5.1 Breed Assessment Statement forms

Books of Breed Assessment Statement forms (in triplicate) may be obtained, free of charge, by contacting Dogs NSW on **1300 728 022**.

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