Implementation of the Companion Animals (Rehoming Animals) Amendment Act 2022

Why have rehoming processes under the Companion Animals Act changed?

- The NSW Government is committed to safeguarding animal welfare and providing a strong regulatory framework to promote responsible animal ownership in NSW. On 23 February 2022, a Private Members Bill, the *Companion Animals Amendment (Rehoming Animals) Bill* passed Parliament and was assented to on 4 March 2022, becoming law. The requirements of the legislation are now in effect.
- While the Bill received the support of Local Government NSW and was subsequently supported by the NSW Government, these amendments have required many councils to review their current practices in relation to the rehoming of companion animals in their care. The legislative changes are aimed at standardising the rehoming process and creating a consistent approach to rehoming across all NSW councils. They will also foster the development of closer partnerships with local rehoming organisations that will enable the development of a system that works best for both parties, including shared, cost-effective arrangements for the collection of animals from pounds.
- Section 64 and 64A of the *Companion Animals Act 1998* (CA Act) places a duty on councils to consider whether there is an alternative action to that of destroying the animal and (if practicable) to adopt any such alternative. The Amendment Act added a new section 64B which prescribes the alternative actions that councils must take before destroying a seized or surrendered animal.
- A number of implementation issues have come to light since the amendments came into effect. The Rehoming Practices Review (Review) that is currently underway will examine these issues in more depth and will provide recommendations, including for any potential legislative, regulatory or process improvements and guidance that may be needed.
- Further details about the Review and information on how councils can participate, including an Issues Paper framing the consultation phase of the Review, can be found on the OLG website.
- Meanwhile, without pre-empting the outcomes of the Review, the following information is provided to assist councils to effectively implement these recent legislative changes.

What has changed?

- Key changes include:
    - The need for councils to give written notice to at least 2 rehoming organisations that the animal is available for rehoming and will remain available for at least 7 days from the date the notice is given.
    - The need to take reasonable steps to advertise on a webpage or through a social media platform that the animal is available for rehoming.
    - New record-keeping requirements in relation to:
        - the identification of animals either rehomed or destroyed, and

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- in the case of animals that are destroyed, the actions a council took to rehome that animal.

- Along with the new record-keeping requirements, guidelines may be developed in relation to the reporting of that information to the Office of Local Government (OLG) or the public, or both. At this stage, excluding the record keeping requirements outlined above, no additional reporting requirements have been put in place but if changes are identified, OLG will consult with councils prior to the development of these guidelines.

Implementation – Key Considerations

How should councils deal with dogs displaying concerning behaviour?

Importantly, the existing prohibition on selling or giving away a dangerous, menacing, or restricted dog remains in place. It remains open for councils to utilise this declaration process if there is sufficient evidence in relation to a dog entering its facility to warrant such action.

As per section 9.5 of the 'Guideline on the Exercise of Functions Under the Companion Animals Act' (PDF), authorised officers have discretion in the application of the dangerous and menacing dog declaration provisions to suit individual circumstances. The dominant factor is the public interest and the safety of the community.

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

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

OLG has noted the challenges highlighted by the sector to date, such as instances where the owner cannot be identified, issuing a notice to an owner who has surrendered their dog and the increased administration and impounding periods. A declaration can be made even if the dog's owner cannot be identified, provided the council is satisfied that sufficient evidence is documented to warrant such action due to concern for public safety.

Councils are encouraged to provide as much information about an animal as possible when providing written notice of its availability for rehoming and again when transferring custody to a rehoming organisation or to a member of the public. This will ensure transparency and provide the rehoming organisation and prospective new owners with valuable information that will assist in:

- deciding whether or not they have the necessary capacity and expertise to take on such an animal, and
- determining the suitability of potential new owners and what (if any) rehabilitation work may be necessary prior to rehoming to minimise the potential for adverse outcomes.

Councils can, after advertising an animal is available for rehoming and ensuring it is made available for rehoming for at least the statutory period, refuse to rehome an animal to a member of the public where council is concerned that person does not have the required skills and/or the animal is not suitable for the prospective new pet owner.

What about staff safety and Work, Health and Safety (WHS) considerations?

Councils have trained and skilled staff to fulfil animal handling requirements within a pound/shelter context. It is therefore appropriate for a council, based on its individual circumstances and local arrangements (for example, with the local veterinary clinic), to design and implement measures, consistent with both WHS and Civil Liability obligations, to ensure that the welfare of the companion animal is maintained, and people dealing with them are kept safe.

Are any companion animals exempted? What about welfare considerations?

There is an exemption to section 64B of the Act where an animal, in the opinion of a veterinary practitioner, is so severely injured, so diseased or in such a physical condition that it is cruel to keep the animal alive.

Councils should consult with veterinarians to determine whether exhibited behaviours indicate that an animal's physical condition is such that it is cruel to keep the animal alive. It is for a veterinary practitioner to make this determination.

A severely stressed or diseased cat (including feral cats) or an aggressive dog that is not eating or drinking and is unable to tolerate human contact could fall into this category.

It is acknowledged that these new rehoming requirements places an increased demand on veterinary services in rural areas as well as a corresponding resourcing implication for councils.

The availability of veterinary services in rural areas is unfortunately a complex issue that predates these rehoming amendments. However, this challenge will be examined further as part of the Rehoming Practices Review. Councils are encouraged to provide information about this issue to the Review.

How long do companion animals need to be held before they can be rehomed? How long do rehoming organisations have to collect an animal?

The date from which an animal becomes available for rehoming will depend on the circumstances in which it came into the custody of the pound and whether a notice of seizure or notice of possession is required to be given.

The following statutory holding periods apply:

- Surrendered by owner:
    - 0 days
- Surrendered by someone other than the owner – notice of possession given:
    - 14 days

- Surrendered by someone other than the owner – notice of possession not required to be given:
    - 7 days
- Seized – notice of seizure given:
    - 14 days
- Seized – notice of seizure not required to be given:
    - 7 days
- Feral or infant companion animals (where a council has adopted a policy in relation to the management of feral or infant companion animals):
    - 0 days

Companion animals must be made available for rehoming (except for exempt animals) for at least 7 days (noting the above statutory holding periods). However, councils may begin the process outlined under section 64B (by giving written notice to at least 2 rehoming organisations and advertising on their website / social media) prior to these statutory holding periods expiring. In this case, councils must make it clear that the animal may be claimed by its owner in the meantime and that it cannot be collected by a new owner until the statutory holding period has expired. The 7 days within which the rehoming organisation has available to take custody of the animal (or a longer period if agreed to by a council) only begins once the statutory holding period has expired.

If a rehoming organisation provides written notice that it will accept an animal, the organisation must collect the animal within 7 days of the date it gave the written notice to the council. Council can agree to a longer timeframe, but it is not obligated to. Provided the requirements of the legislation are met, these arrangements are subject to negotiations between the two parties and may be influenced by local factors, for example, travel distances are particularly relevant in rural areas.

If a companion animal is made available for rehoming for at least 7 days in line with the requirements of section 64B, and no rehoming organisation has agreed to take custody of the animal, council can lawfully destroy the animal. A record of the actions the council took to rehome the animal must be kept. However, councils are encouraged to keep animals available for rehoming longer than the minimum period required by law if holding capacity and resourcing allow.

How can councils find out more about local rehoming organisations?

While it is not a requirement for rehoming organisations / rescue organisations, designation as an approved rehoming organisation carries with it certain advantages. OLG has seen a significant uptick in applications to become approved rehoming organisations. A list of current approved rehoming organisations can be found on the OLG website (current as at April 2022): www.olg.nsw.gov.au/public/dogs-cats/information-for-professionals/information-for-animal-rescue-organisations.

Approved rehoming organisations must comply with the 'Guidelines for Designated Rehoming Organisations'. The Guidelines contain detailed information about the role and responsibilities of

designated rehoming organisations including their record keeping and annual reporting obligations. Designated rehoming organisations must report annually to OLG on their activities during each financial year to retain their designation. The information contained in the annual report must be accurate, verifiable, and signed by the person identified by the organisation as the Primary Carer.

A copy of the rehoming organisation's completed annual report should also be provided to every local council from which the rehoming organisation has sourced animals during the reporting period and to any other local council that may request a copy. This provides an overview to councils and the public of the activities and outcomes for companion animals taken into care by designated rehoming organisations. OLG can undertake spot checks and audits of the NSW Companion Animals Register to verify the accuracy of information provided by designated rehoming organisations.

Such transparency reduces the risk of animal hoarding and potential breaches of animal welfare legislation. Importantly though, designation as a rehoming organisation is not an endorsement of the rehoming organisation by OLG. That said, OLG does have the ability to revoke an organisation's designation as a rehoming organisation.