

City of South Perth

DOGS LOCAL LAW 2016

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City of South Perth

DOGS LOCAL LAW 2016

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Note

Most issues regulating dogs are dealt with by the Dog Act 1976 and Dog Regulations 2013. This includes:

- Registration of dogs;
- 'Dangerous dogs' as defined by the Act;
- Operation of dog management facilities (pounds), including:
 - Issues in relation to the impounding of dogs;
 - Attendance of a poundkeeper at the pound; and
 - Release of impounded dogs are dealt with by the Dog Act 1976, and in particular section 29.
- Registration fees (although fees for the seizure and impounding of a dog may be set by a local government in its annual budget under section 6.16 of the Local Government Act 1995);
- How off leash dog exercise areas are established;
- Dogs wandering at large;
- Dogs not under control;
- Dog attacks;
- Provisions about assistance animals such as guide dogs;
- Modified penalties applicable for minor offences.

The only matters that a local government may make local laws about are listed in section 51 of the Dog Act:

51. Local law making powers

A local government may so make local laws —

(a) providing for the registration of dogs;

[(b) deleted]

(c) specifying areas within which it shall be an offence (unless the excreta are removed) for any person liable for the control of a dog to permit that dog to excrete on any street or public place or on any land without the consent of the occupier;

(d) requiring that in specified areas a portion of the premises where a dog is kept must be fenced in a manner capable of confining the dog;

(e) providing for the establishment and maintenance of dog management facilities and other services and facilities necessary or expedient for the purposes of this Act;

(f) providing for the detention, maintenance, care and release or disposal of dogs seized;

(g) as to the destruction of dogs pursuant to the powers hereinbefore conferred;

[(h) deleted]

(i) providing for the licensing, regulating, construction, use, and inspection of approved kennel establishments.

DOG ACT 1976
LOCAL GOVERNMENT ACT 1995
City of South Perth
DOGS LOCAL LAW 2016

Under the powers conferred by the *Dog Act 1976*, the *Local Government Act 1995* and under all other powers enabling it, the Council of the City of South Perth resolved on 13 December 2016 to make the following local law.

PART 1 - PRELIMINARY

1.1 Title

This is the *City of South Perth Dogs Local Law 2016*.

1.2 Commencement

This local law comes into operation 14 days after the date of its publication in the *Government Gazette*.

1.3 Repeal

The *City of South Perth Dogs Local Law 2011* as published in the *Government Gazette* on 21 July 2011 is repealed.

1.4 Terms used

(1) In this local law unless the context otherwise requires –

Act means the *Dog Act 1976*;

authorised person means a person appointed by the local government to perform all or any of the functions conferred on an authorised person under this local law;

CEO means the Chief Executive Officer of the local government;

district means the district of the local government;

district means an area of the State that has been declared to be a district under the Local Government Act 1995, and includes for certain purposes provided for in this Act other areas which although not being within the boundaries of a district are regarded for those purposes as being part of the district;

s3(1) Dog Act 1976

effectively confined —

(a) in relation to keeping a dog in premises comprising a mobile home, means the mobile home is designed and constructed in a way that enables an occupant to prevent the dog from escaping the mobile home; and

(b) in relation to keeping a dog in or at other premises, or in any outdoor area of those premises, means the premises or area is bounded by a fence or barrier of a standard sufficient to prevent the dog from escaping;

s3(1) Dog Act 1976

local government means the City of South Perth;

owner in relation to a dog means —

(a) the person by whom the dog is ordinarily kept; or

(b) a person who is deemed by subsection (2) to be the owner of the dog;

Section 3(2) states —

‘(2) A person who is shown in the register maintained by a local government under this Act as being the last person recorded by the local government as the registered owner of a dog is deemed to be owner of that dog, whether or not the registration in his name continues in force, unless he proves that he is not the owner of the dog’.

owner’s delegate, in relation to a registered owner, means a person appointed under section 16AA as the dog owner’s delegate;

person liable for the control of the dog means each of the following —

(a) the registered owner of the dog; or

(b) the owner of the dog; or

(c) the occupier of any premises where the dog is ordinarily kept or ordinarily permitted to live; or

(d) a person who has the dog in his possession or under his control, but does not include —

(e) a registered veterinary surgeon, or a person acting on his behalf, in the course of his professional practice; or

(f) a police officer or other person acting under a statutory duty or in the administration of this Act;

s3(1) and (2) Dog Act 1976

“premises” shall, for the purpose of determining who is the occupier, be taken to refer to any land or building, or part of any land or building, that is or is intended to be occupied as a separate residence from any adjacent tenement, and includes a mobile home;

s3(1) Dog Act 1976

Regulations means the *Dog Regulations 2013*; and

thoroughfare has the meaning given to it in section 1.4 of the *Local Government Act 1995*.

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- (2) A term that is used in this local law and is not defined in subclause (1) has the same meaning that is given to it in the Act or, if not defined in the Act, the same meaning given to it in the *Local Government Act 1995*.

1.5 Application

This local law applies throughout the district.

PART 2 - KEEPING OF DOGS

2.1 Dogs to be confined

- (1) An occupier of premises on which a dog is kept must -
- (a) ensure that a portion of the premises on which the dog is kept is fenced in a manner capable of confining the dog;
 - (b) ensure the fence used to confine the dog and every gate or door in the fence is of a type, height and construction which having regard to the breed, age, size and physical condition of the dog is capable of preventing the dog at all times from passing over, under or through it;
 - (c) ensure that every gate or door in the fence is kept closed at all times when the dog is on the premises (unless the gate is temporarily opened in a manner that ensures that the dog remains confined) and is fitted with a proper latch or other means of fastening it;
 - (d) maintain the fence and all gates and doors in the fence in good order and condition; and
 - (e) where no part of the premises consists of open space, yard or garden or there is no open space or garden or yard of which the occupier has exclusive use or occupation, ensure that other means exist on the premises (other than the tethering of the dog) for effectively confining the dog within the premises.
- (2) An occupier who fails to comply with subclause (1) commits an offence.
- (3) Notwithstanding subclause (1) and (2), the confinement of dangerous dogs is dealt with in the Act and the Regulations.

Section 33GA(2) of the Dog Act provides that a dangerous dog must be confined whenever it is not tethered or leashed and under the direct control of an adult. This section provides for a maximum penalty of \$10,000. Since the penalty is twice the maximum penalty which a local law can impose, local governments are required to enforce the penalty directly rather than via a local law.

2.2 Limitation on the number of dogs

- (1) This clause does not apply to premises which have been granted an exemption under section 26(3) of the Act.
- (2) The limit on the number of dogs which may be kept on any premises is, for the purpose of section 26(4) of the Act is 2 dogs over the age of 3 months and the young of those dogs under that age.

2.3 Offence to excrete

- (1) A dog must not excrete on –
 - (a) any thoroughfare or other public place; or
 - (b) any land which is not a public place without the consent of the occupier.
- (2) Subject to subclause (3), if a dog excretes contrary to subclause (1), every person liable for the control of the dog at that time commits an offence.
- (3) The person liable for the control of the dog does not commit an offence against subclause (2) if any excreta is removed immediately by that person.

PART 3 - ENFORCEMENT

3.1 Terms used

In this Part -

infringement notice means the notice referred to in clause 3.4;

notice of withdrawal means the notice referred to in clause 3.7(1); and

penalty unit has the meaning given to it in the *City of South Perth Penalty Units Local Law 2003*.

3.2 Offences and general penalty

- (1) A person who fails to do anything required or directed to be done under this local law, or who does anything which under this local law that person is prohibited from doing, commits an offence.
- (2) A person who commits an offence under this local law is liable, on conviction, to a penalty not less than \$500 and not exceeding \$5,000, and if the offence is of a continuing nature, to an additional penalty not exceeding \$500 for each day or part of a day during which the offence has continued.

3.3 Modified penalties

- (1) An offence against a clause specified in Schedule 1 is an offence in relation to which a modified penalty may be imposed.
- (2) The amount appearing in the third column of Schedule 1 directly opposite an offence is the modified penalty payable in respect of that offence.
- (3) If this local law expresses a modified penalty as a number of penalty units, the monetary value of the modified penalty is the number of dollars obtained by multiplying the value of the penalty unit by the number of penalty units.

3.4 Issue of infringement notice

- (1) Where an authorised person has reason to believe that a person has committed an offence in respect of which a modified penalty may be imposed, the authorised person may serve on the alleged offender a notice in the form prescribed by section 9.17 of the Local Government Act 1995 and regulation 26(2) of the Local Government (Functions and General) Regulations 1996 informing the alleged offender that, if he or she does not wish to be prosecuted in court for the alleged offence, he or she may pay to the local government within the time specified in the notice, the amount prescribed as the modified penalty.
- (2) An infringement notice may be served on an alleged offender personally, or by leaving it at or posting it to her or his address as ascertained from the alleged offender, at the time of or immediately following the occurrence giving rise to the allegation of the offence, or as recorded by the local government under the Act.

3.5 Failure to pay modified penalty

Where a person who receives an infringement notice fails to pay the modified penalty within the time specified in the notice, or within such further time as may in any particular case be allowed by the CEO, the person must be regarded as having declined to have the allegation dealt with by way of a modified penalty.

3.6 Payment of modified penalty

An alleged offender on whom an infringement notice has been served may, within the time specified in that notice or within such further time as may in any particular case be allowed by the CEO, send or deliver to the local government the amount of the modified penalty, with or without a reply as to the circumstances giving rise to the allegation, and then –

- (a) the local government may appropriate that amount in satisfaction of the penalty and issue an acknowledgment; or
- (b) the local government, or an authorised person acting on behalf of the local government, may withdraw the infringement notice under clause 3.7 and refund the amount so paid.

3.7 Withdrawal of infringement notice

- (1) An infringement notice may, whether or not the modified penalty has been paid, be withdrawn by the local government, or an authorised person acting on behalf of the local government, by the sending of a notice in the form prescribed by section 9.17 of the *Local Government Act 1995* and Regulation 26(2) of the *Local Government (Functions and General) Regulations 1996* to the alleged offender at the address specified in the notice or his or her last known place of residence or business and in that event, any amount received by way of modified penalty must be refunded and any acknowledgment of the receipt of that amount must for the purposes of any proceedings in respect of the alleged offence be regarded as not having been issued.
- (2) A person appointed under section 29(1) of the Act to exercise the power of an authorised person to serve infringement notices under clause 3.4(1) is not eligible to be appointed under that section to exercise the power of an authorised person to withdraw infringement notices under clause 3.7(1).

Schedule 1

**Modified penalties
(clause 3.3)**

Item	Offence	Nature of Offence	Modified Penalty Unit
1	2.1	Failing to provide means for effectively confining a dog	10
2	2.3(2)	Dog excreting in prohibited place	10

Note:

Penalty Units are prescribed in the *City of South Perth Penalty Units Local Law 2003*. At 16 June 2016 one penalty unit was \$10.00.