

NORTHERN TERRITORY OF AUSTRALIA

WAGAIT SHIRE COUNCIL (DOG MANAGEMENT) BY-LAWS 2019

As in force at 20 November 2019

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 20 November 2019

WAGAIT SHIRE COUNCIL (DOG MANAGEMENT) BY-LAWS 2019

Regulations under the *Local Government Act 2008*

Part 1 Preliminary matters

1 Citation

These By-laws may be cited as the *Wagait Shire Council (Dog Management) By-laws 2019*.

2 Commencement

These By-laws commence on the day on which they are notified in the *Gazette*.

3 Definitions

In these By-laws:

abandon, in relation to a dog, means:

- (a) deliberately leaving the dog at a place without an intention to return to collect the dog or to provide care for it; and
- (b) failing to obtain the release of the dog from a pound.

animal means a dog, cat, bird, reptile or other animal that is kept in the Council area.

approved means approved by the Council.

attack, by a dog, means the dog behaviour prohibited by by-law 34(1) and (2)

authorised person means a person appointed under section 112(1) of the Act to be an authorised person.

CEO means the Chief Executive Officer of the Council.

Council means the Wagait Shire Council.

Council area means the Wagait Shire Council area.

dangerous dog means a dog declared under by-law 21 to be a dangerous dog.

determined means determined by the Council by resolution.

dog means an animal of the genus *Canis*.

dog exercise area means an area declared under by-law 25 to be a dog exercise area.

dog restriction area means an area declared under by-law 26 to be a dog restriction area.

dog-tag means a dog-tag issued under by-law 10(1).

identification device means a dog-tag or microchip that complies with by-law 10.

infringement notice, see by-law 45.

infringement notice offence, see by-law 44(1).

licence means a licence granted or renewed under these By-laws for the keeping of dogs on the premises in respect of which the licence is granted.

menace, in relation to the actions of a dog, means an action that creates a reasonable apprehension in a person that:

- (a) the dog is likely to attack a person or an animal; or
- (b) the dog is likely to escape, or be released from, restraint and attack a person or an animal.

microchip means a digital device that can be implanted in a dog.

officer means any of the following:

- (a) an authorised person;
- (b) an officer or employee of the Council.

owner, in relation to a dog, means:

- (a) the registered owner of the dog;
- (b) the person for the time being in control of the dog, other than a person controlling or keeping a dog under Division 8 or 9;

- (c) the occupier of premises, or a part of premises, where the dog is usually kept; and
- (d) if the owner is under the age of 17 years, a parent or guardian of the owner.

pound means a pound established by by-law 39.

premises includes:

- (a) a building; and
- (b) land, whether built on or not.

prescribed amount, see by-law 44(2).

properly contained, in relation to a dog, means the dog is kept in accordance with by-law 27(1).

register means a register kept under by-law 4.

registered, in relation to a dog, means registered under by-law 9.

registered owner, in relation to a dog, means the person specified in the appropriate register as the owner of the dog.

vehicle means a conveyance or other device designed to be propelled or drawn by any means, including a bicycle, tricycle, motor vehicle, wheelchair or mobility device.

veterinarian means a registered veterinarian as defined in section 3(1) of the *Veterinarians Act 1994*.

Note for by-law 3

The Interpretation Act 1978 contains definitions and other provisions that may be relevant to these by-laws.

4 Registers

- (1) The CEO must keep registers as determined by the Council.
- (2) A register may be kept in any form, including electronic form.
- (3) A register must include details about the following:
 - (a) all dogs registered by the Council;
 - (b) all licences granted by the Council;

- (c) all offences against these By-laws for which an owner of a dog:
 - (i) was found guilty by a court; or
 - (ii) has paid the prescribed amount under an infringement notice.

5 Publishing determinations and resolutions

A resolution or determination of the Council made under these By-laws is to be published on the Council's website.

6 Matters of evidence

- (1) An extract from, or copy of an entry in, a register, purportedly signed by the CEO is evidence of the details contained in the entry without requiring the production of the register, unless a court otherwise orders.
- (2) A statement purportedly signed by the CEO in relation to details contained in a register, including the following, is evidence of those details without requiring the production of the register, unless a court otherwise orders:
 - (a) whether the name of a person was entered in a register in relation to an animal, matter or thing;
 - (b) whether a licence was granted in relation to premises;
 - (c) whether a registration was made in relation a dog.

7 Application of Criminal Code

Part IIAA of the Criminal Code applies to an offence against these By-laws.

Note for by-law 7

Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.

Part 2 Control of dogs

Division 1 Preliminary matters

8 General exemption for assistance dog

- (1) By-laws 11, 12 and 26 do not apply in relation to:
- (a) an assistance dog; or
 - (b) any other dog that the Council determines is exempt from those provisions.

- (2) In this by-law:

assistance dog means a dog:

- (a) trained by an assistance dog training institution recognised by the Council; and
- (b) used as an assistance dog by a person who:
 - (i) is wholly or partially blind or deaf; or
 - (ii) has another form of disability requiring the use of an assistance dog.

Division 2 Registration of dogs

9 Applications for registration

- (1) The owner of a dog that is kept within the Council area must apply to the Council for registration of the dog.
- (2) An application for the registration of a dog must include the application fee.
- (3) The Council must, within 14 days after receiving an application for the registration of a dog:
- (a) register the dog, either conditionally or unconditionally; or
 - (b) refuse to register the dog and refund the application fee to the applicant.
- (4) The Council may refuse to register a dog if:
- (a) within the 12 months before the date of the application the owner of the dog was found guilty by a court of more than 2 offences against these By-laws; or

- (b) the dog is a dangerous dog and the CEO believes on reasonable grounds that, within 12 months before the date of the application, the owner of the dog contravened by-law 23(1) more than once; or
 - (c) within 12 months before the date of the application the dog was impounded under these By-laws on more than 2 occasions; or
 - (d) the Council is satisfied that the dog is destructive, dangerous, savage or consistently the cause of nuisance to members of the public; or
 - (e) the premises on which the dog is to be usually kept are not secured to a degree that is satisfactory to the Council.
- (5) The Council must refuse to register a dog if:
- (a) keeping the dog on the premises on which the dog is to be usually kept would contravene by-law 15; or
 - (b) the dog is to be kept on premises within a dog restriction area and is not a dog exempted by-law 26(7).
- (6) If the Council refuses to register a dog or imposes conditions on the registration of a dog, the Council must give the applicant a statement in writing of the reasons for its decision.
- (7) For clause (4)(a), a reference to a finding of guilt for an offence includes the payment of a prescribed amount under an infringement notice given to the person under these By-laws.
- (8) The registration of a dog expires after 12 months and may be renewed annually as determined by Council.

10 Identification device

- (1) If the Council registers a dog under these By-laws, the Council must issue a dog-tag for the dog to the person who made the application.
- (2) In addition to a dog-tag, the Council may require the dog to be implanted with a microchip in the manner approved by the CEO.
- (3) The microchip must:
 - (a) comply with the following Australian Standards:
 - (i) AS 5018 – 2001 Electronic Animal Identification – National coding scheme;

- (ii) AS 5019 – 2001 Electronic Animal Identification – Radiofrequency methods; and
- (b) be designed to store information in a way that can be retrieved electronically without physical contact.
- (3) The registered owner, unless exempted by the CEO, must ensure that, while the registration of the dog remains in force:
 - (a) the dog-tag is fixed to a collar on the dog; and
 - (b) the dog-tag remains displayed on a collar on the dog.

11 Unregistered dog

- (1) A person commits an offence if the person keeps an unregistered dog in the Council area for a continuous period of 3 months or longer.

Maximum penalty: 20 penalty units.
- (2) An offence against clause (1) is an offence of strict liability.
- (3) The following persons are exempt from clause (1):
 - (a) a Council employee or contractor keeping a dog in a pound; or
 - (b) an approved incorporated body that provides services relating to animal welfare and refuges for dogs; or
 - (c) a veterinarian keeping a dog for the purposes of treatment.

12 Failure to comply with a condition of registration

- (1) A registered owner of a dog commits an offence if:
 - (a) the dog's registration is subject to a condition; and
 - (b) the owner contravenes the condition.

Maximum penalty: 20 penalty units.
- (2) An offence against clause (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against clause (1) if the defendant has a reasonable excuse.

13 Change of ownership

- (1) The registered owner of a dog who transfers the dog to a new owner must, within 14 days after the transfer, notify the CEO of:
 - (a) the registered owner's name and address; and
 - (b) the registration number of the dog; and
 - (c) the name and address of the new owner of the dog.
- (2) A person who contravenes clause (1) commits an offence.
Maximum penalty: 20 penalty units.
- (3) An offence against clause (2) is an offence of strict liability.
- (4) It is a defence to a prosecution for an offence against clause (2) if the defendant has a reasonable excuse.
- (5) The CEO must, on being notified of a change of ownership under clause (1), amend the register accordingly.

14 Change of address

- (1) The registered owner of a dog who changes the owner's address must, within 14 days after the change, notify the CEO of the new address.
- (2) A person who contravenes clause (1) commits an offence.
Maximum penalty: 20 penalty units.
- (3) An offence against clause (2) is an offence of strict liability.
- (4) It is a defence to a prosecution for an offence against clause (2) if the defendant has a reasonable excuse.
- (5) The CEO must, on being notified of a change of address under clause (1), amend the register accordingly.

Division 3 Licensing of premises

15 Requirement for licence

- (1) The Council may determine the maximum number of dogs, or dogs of a class of dog, that may be kept on premises in the Council area without a licence.

- (2) An occupier of premises commits an offence if the occupier:
- (a) keeps more dogs, or dogs of a class of dogs, on the premises than the maximum determined under clause (1); and
 - (b) does not have a licence permitting that number of dogs on the premises.

Maximum penalty: 20 penalty units.

- (3) An offence against clause (2) is an offence of strict liability.
- (4) It is a defence to a prosecution for an offence against clause (2) if:
- (a) the defendant has a reasonable excuse; or
 - (b) the defendant establishes that the dogs, or dogs of a class of dogs, were not usually kept on the premises:
 - (i) during the 3 months immediately before the date of the alleged offence; or
 - (ii) for periods totalling 3 months or more during the 6 months immediately before the date of the alleged offence.

16 Licensing of premises

- (1) An occupier of premises who wants to keep more dogs on the premises than the maximum number determined under by-law 15(1) may apply to the Council for a licence.
- (2) An application for the registration of a dog must include the application fee.
- (3) The Council must, within 14 days after receiving an application for a licence:
- (a) grant a licence in respect of the premises, either conditionally or unconditionally; or
 - (b) refuse to grant a licence in respect of the premises and refund the application fee to the applicant.
- (4) In considering an application, the Council may take into account any matter that it considers relevant, including the following:
- (a) the facilities for controlling dogs on the premises specified in the application;
 - (b) the number of dogs kept or to be kept on the premises;

- (c) the likely impact on residents near the premises if the licence is granted.
- (5) If the Council has determined the manner in which premises are to be fenced, the Council must not grant a licence in respect of premises if the premises are not fenced in accordance with the determination.
- (6) The Council may renew a licence without considering the application in the manner specified in clauses (4) and (5) if, to the Council's knowledge, no matters have arisen that, if taken into account at the time the licence was granted, would have caused the Council to refuse to grant the licence or to grant the licence subject to conditions other than those specified in the licence.
- (7) The Council must give the applicant a statement in writing of the reasons for its decision if the Council:
 - (a) refuses to grant a licence; or
 - (b) grants a licence subject to conditions; or
 - (c) renews a licence subject to conditions not imposed on the original licence.
- (8) A licence for premises expires after 12 months and may be renewed annually as determined by the Council.

17 Failure to comply with a condition of licence

- (1) An occupier of premises commits an offence if:
 - (a) a licence is granted, subject to a condition, in respect of the premises; and
 - (b) the occupier contravenes a condition of the licence.

Maximum penalty: 20 penalty units.

- (2) An offence against clause (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against clause (1) if the defendant has a reasonable excuse.

Division 4 Cancellation, variation or suspension of registration or licence

18 Cancellation, variation or suspension of registration or licence on request

The Council may, on the written request of the registered owner of a dog or the holder of a licence, by written notice given to the registered owner or holder:

- (a) cancel the registration of the dog; or
- (b) cancel the licence or suspend it for the period specified in the notice; or
- (c) vary the conditions to which the registration of the dog or the licence is subject.

19 Cancellation, variation or suspension of registration or licence for cause

- (1) If the Council believes on reasonable grounds that it is in the public interest to take any action mentioned in by-law 18(a) to (c) in relation to a dog or a licence, it may give the registered owner of the dog or the holder of the licence a written notice:
 - (a) specifying the proposed action and the reason it is believed to be in the public interest; and
 - (b) inviting the licensee to show cause, in writing and within 14 days from the date the notice is given, why the proposed action should not be taken.
- (2) After considering any response received within 14 days of the date of the notice, the Council may:
 - (a) take no action; or
 - (b) cancel the registration of the dog; or
 - (c) cancel the licence or suspend it for the period specified in the notice; or
 - (d) vary the conditions to which the registration of the dog or the licence is subject.
- (3) The Council must, by written notice, notify the registered owner or the holder of the licence of its decision.

20 Operation of notice of cancellation

A notice given by the Council under by-law 18 or 19(3) takes effect on the expiry of 14 days after the notice is given.

Division 5 Dangerous dogs

21 Dangerous dog

- (1) An authorised person may declare a dog to be a dangerous dog if:
 - (a) the dog attacks a person or an animal; or
 - (b) the dog menaces a person or an animal; or
 - (c) the authorised person believes on reasonable grounds that the dog is destructive, dangerous, savage or a threat to the safety of the community.
- (2) The Council must give written notice of any declaration under clause (1) to the owner of the dog.

22 Revocation of declaration

- (1) The owner of a dangerous dog may apply to the Council to revoke the declaration.
- (2) The Council may:
 - (a) revoke the declaration; or
 - (b) refuse to revoke the declaration.
- (3) The Council must give written notice of its decision under clause (2) to the owner of the dog.
- (4) A revocation under clause (2)(a) takes effect from the date the Council notifies the owner of the revocation.
- (5) If the Council refuses an application under clause (1), the CEO is not required to consider any further application in relation to the same dog within 6 months of the refusal.

23 Duties of owner of dangerous dog

- (1) When properly containing the dog as required under by-law 27(1), the owner of a dangerous dog must ensure that the containment is appropriate to the danger posed by the dog.

- (2) The owner of a dangerous dog must:
 - (a) erect signage on the premises where the dog is usually kept, with the words "Warning Dangerous Dog" clearly visible and legible from the front boundary of the premises; and
 - (b) when the dog is outside the premises where the dog is usually kept:
 - (i) ensure the dog is under the control of a person who is at least 18 years of age and competent to restrain the dog; and
 - (ii) ensure the dog is controlled by a suitable leash, and muzzled; and
 - (c) if the owner intends to keep the dog, for more than 14 days, at a place other than the premises where the dog is usually kept – notify the Council of the address of the place within 24 hours after the dog is relocated.
- (3) If a dangerous dog attacks, or is alleged to have attacked, a person or an animal, the owner of the dog must notify the Council of the attack, or alleged attack, within 24 hours of the earlier of:
 - (a) the time of the attack, or alleged attack; or
 - (b) the time the owner is made aware of the attack, or alleged attack.
- (4) The owner of a dangerous dog must notify the Council:
 - (a) if the dog is missing – within 24 hours after the owner becomes aware the dog is missing; and
 - (b) if the dog dies – within 14 days after its death.
- (5) The owner of a dangerous dog must:
 - (a) inform any prospective purchaser or owner of the dog that it is a dangerous dog; and
 - (b) if ownership of the dog is transferred – notify the Council of the name and address of the new owner within 24 hours after the transfer.
- (6) The requirements of clauses (1) to (5) are conditions on the registration of a dangerous dog.

- (7) The owner of a dangerous dog must also comply with any other condition imposed by the Council on the registration of the dog.

24 Breaching conditions for dangerous dog

- (1) If the owner of a dangerous dog contravenes by-law 23(1) to (5) more than once in a 12 month period, the Council may, by written notice given to the owner of the dog, require the owner to show cause, within 14 days, why the Council should not cancel the registration of the dog.
- (2) After considering any response received within 14 days of the date of the notice, the Council may:
- (a) cancel the registration of the dog; or
 - (b) impose additional conditions on the registration of the dog.
- (3) The Council must, by written notice, notify the registered owner of its decision.

Division 6 Dog exercise areas and dog restriction areas

25 Dog exercise areas

- (1) The Council may, by resolution, declare an area within the Council area to be a dog exercise area.
- (2) The resolution must specify:
- (a) the times when a dog may be exercised in the area; and
 - (b) any other conditions that apply to the exercising of a dog in the area.

Example for clause (2)(b)

The Council may impose a condition that female dogs in oestrus are not permitted in a dog exercise area, or are permitted only at certain times.

- (3) At least 28 days before making the declaration, the Council must publish, on its website and in a newspaper circulating in the Council area, a notice of its intention to declare a dog exercise area.
- (4) Before making the declaration, the Council must consider any responses to the notice from members of the public who reside in the Council area.

26 Dog restriction areas

- (1) The Council may, by resolution, declare an area within the Council area to be a dog restriction area.
- (2) The Council may, in the resolution, prohibit:
 - (a) keeping any of the following in the dog restriction area:
 - (i) all dogs;
 - (ii) more than a specified number of dogs;
 - (iii) all or more than a specified number of dogs of a specified class; and
 - (b) taking a dog into the dog restriction area.
- (3) At least 28 days before making the declaration, the Council must publish, on its website and in a newspaper circulating in the Council area, a notice of its intention to declare a dog restriction area.
- (4) Before making the declaration, the Council must consider any responses to the notice from members of the public who reside in the Council area.
- (5) A person commits an offence if the person keeps a dog in a dog restriction area where keeping the dog is prohibited.

Maximum penalty: 20 penalty units.
- (6) An offence against clause (5) is an offence of strict liability.
- (7) A dog is exempt from clause (5) if the defendant establishes that:
 - (a) the dog is owned by the defendant; and
 - (b) the dog is registered; and
 - (c) the dog was usually kept at premises in the dog restriction area immediately before the date of the declaration of the dog restriction area.
- (8) A person commits an offence if the person takes a dog into a dog restriction area where taking the dog is prohibited.

Maximum penalty: 20 penalty units.
- (9) An offence against clause (8) is an offence of strict liability.

- (10) It is a defence to a prosecution for an offence against clauses (5) and (8) if the person has a reasonable excuse.

Division 7 Offences

27 Proper containment of dog

- (1) The owner of a dog must properly contain the dog, when it is on the premises where the dog is usually kept, as follows:
- (a) keep the dog within a fenced area from which the dog is unable to escape;
 - (b) keep the dog inside a building or other enclosure from which the dog is unable to escape;
 - (c) confine or restrain the dog in an appropriate manner.
- (2) An owner of a dog commits an offence if the dog is not properly contained when the dog is on the premises where the dog is usually kept.

Maximum penalty: 20 penalty units.

- (3) An offence against clause (2) is an offence of strict liability.
- (4) To avoid doubt, the following matters are not relevant to an offence against clause (2):
- (a) the time during which the dog was not properly contained;
 - (b) the ability of the owner to contain the dog.

28 Removal of identification device

- (1) A person who removes an identification device from a dog commits an offence.

Maximum penalty: 20 penalty units.

- (2) An offence against clause (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against clause (1) if the defendant has a reasonable excuse.

29 Dog in public place without identification device

- (1) An owner of a registered dog who permits the dog to be in a public place without an identification device commits an offence.

Maximum penalty: 20 penalty units.

- (2) An offence against clause (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against clause (1) if the defendant establishes that:
 - (a) the identification device was removed from the dog without the owner's permission; and
 - (b) the owner did not have a reasonable opportunity to replace the identification, or had a reasonable excuse not to replace it, before the alleged offence.

30 Putting identification device on wrong dog

- (1) A person must not affix to a dog's collar, or implant in a dog, an identification device for any dog other than the dog for which the device was issued.
- (2) A person commits an offence if the person contravenes clause (1).
Maximum penalty: 20 penalty units.
- (3) An offence against clause (2) is an offence of strict liability.
- (4) It is a defence to a prosecution for an offence against clause (2) if the defendant has a reasonable excuse.

31 Dog at large

- (1) An owner of a dog commits an offence if the dog is at large in the Council area.
Maximum penalty: 20 penalty units.
- (2) An offence against clause (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against clause (1) if the defendant establishes that another person had, without the defendant's permission, caused the dog to become at large.
- (4) In this by-law:
at large, in relation to a dog, means:
 - (a) the dog is in an outdoor place other than the premises where the dog is usually kept; and
 - (b) the dog is not under effective control.

under effective control, in relation to a dog, means the dog is:

- (a) restrained by a leash, cord, chain or similar device that:
 - (i) is no longer than 3 metres; and
 - (ii) is held by a person who is over the age of 12 years and competent to restrain the dog; or
- (b) enclosed in a vehicle, or in or on the back of a flat-topped, tray-backed or well-bodied vehicle, in such a manner that no part of the dog is projecting from the vehicle; or
- (c) in a dog exercise area in compliance with any conditions applicable to the area.

32 Causing owner to commit offence

A person commits an offence if:

- (a) the person intentionally engages in conduct; and
- (b) the conduct causes the owner of a dog to commit an offence against these By-laws; and
- (c) the person is reckless in relation to that result.

Maximum penalty: 20 penalty units.

33 Menacing dog

- (1) An owner of a dog must ensure that the dog does not menace a person or an animal.
- (2) An owner of a dog commits an offence if the owner contravenes clause (1).

Maximum penalty: 20 penalty units.

- (3) An offence against clause (2) is an offence of strict liability.
- (4) It is a defence to a prosecution for an offence against clause (2) if the defendant establishes any of the following:
 - (a) another person had, without the defendant's permission, caused the dog to menace the person or animal;
 - (b) if an animal was menaced – the animal was menaced on premises owned or occupied by the defendant;

- (c) if a person was menaced – the person created a reasonable apprehension that the person was trespassing on premises owned or occupied by the defendant.
- (5) If a court finds a person guilty of an offence against clause (2), the court may make one or both of the following orders:
 - (a) if the dog was impounded as a result of the offence – an order that the person pay the costs and expenses of, and incidental to, the impounding;
 - (b) an order for the destruction of the dog in addition to, or instead of, the penalty for the offence.

34 Dog attacks

- (1) An owner of a dog must ensure that the dog does not bite a person or an animal.
- (2) An owner of a dog commits an offence if the owner contravenes clause (1).

Maximum penalty: 20 penalty units.

- (3) An owner of a dog must ensure that the dog does not:
 - (a) rush at, chase or menace a person or another animal; and
 - (b) make contact with the person or animal, the person's clothing or any property in the immediate possession or under the immediate control of the person.
- (4) An owner of a dog commits an offence if the owner contravenes clause (3).

Maximum penalty: 20 penalty units.

- (5) An offence against clause (2) or (4) is an offence of strict liability.
- (6) It is a defence to a prosecution for an offence against clause (2) or (4) if the defendant establishes any of the following:
 - (a) another person had, without the defendant's permission, caused the dog to attack the person or animal;
 - (b) the person or animal was attacked on premises owned or occupied by the defendant;
 - (c) if a person was attacked – the person created a reasonable apprehension that the person was trespassing.

- (7) If a court finds a person guilty of an offence against clause (2) or (4), the court may make one or both of the following orders:
- (a) if the dog was impounded as a result of the offence – an order that the person pay the costs and expenses of, and incidental to, the impounding;
 - (b) an order for the destruction of the dog in addition to, or instead of, the penalty for the offence.

35 Dog chasing vehicles or horses

- (1) An owner of a dog must ensure the dog does not chase:
- (a) a vehicle; or
 - (b) a horse, whether ridden or not.
- (2) An owner of a dog commits an offence if the owner contravenes clause (1).
- Maximum penalty: 20 penalty units.
- (3) An offence against clause (2) is an offence of strict liability.
- (4) It is a defence to a prosecution for an offence against clause (2) if the defendant establishes that another person had, without the defendant's permission, caused the dog to chase the vehicle or horse.

36 Dog causing nuisance

- (1) An owner of a dog must ensure that the dog, either by itself or with other dogs, is not a nuisance.
- (2) An owner of a dog commits an offence if the owner contravenes clause (1).
- Maximum penalty: 20 penalty units.
- (3) An offence against clause (2) is an offence of strict liability.
- (4) It is a defence to a prosecution for an offence against clause (2) if the defendant has a reasonable excuse.
- (5) For this by-law, a dog is a nuisance if it:
- (a) is injurious or dangerous to the health of the community or an individual; or

- (b) behaves repeatedly in a manner contrary to the general interest of the community or an individual.
- (6) Without limiting clause (5), a dog is taken to be a nuisance if it:
- (a) creates a noise, by barking or otherwise, that persistently occurs or continues to a degree or extent that disturbs the reasonable mental, physical or social well-being of a person; or
 - (b) repeatedly barks when people or vehicles use a public place in the vicinity of the premises where the dog is kept; or
 - (c) repeatedly defecates in a place causing annoyance to a person other than the owner of the dog.
- (7) The owner of a dog does not commit an offence against this by-law by reason of the nuisance mentioned in clause (6)(c) if the owner immediately removes the faeces and disposes of them in a public garbage receptacle or on the owner's own property.

37 Abandoning dog

- (1) A person commits an offence if the person abandons a dog in the Council area.
- Maximum penalty: 20 penalty units.
- (2) An offence against clause (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against clause (1) if the defendant has a reasonable excuse.

Division 8 Enforcement

38 Seizure of dog

- (1) An authorised person may seize:
- (a) a dog that appears to be diseased, injured, savage, destructive, stray or unregistered; or
 - (b) a dog that an authorised person believes on reasonable grounds has attacked a person; or
 - (c) a dog that is at large; or
 - (d) a dangerous dog the owner of which has not complied with the conditions of the dog's registration.

- (2) The authorised person must as soon as practicable:
 - (a) deliver a seized dog to a pound; or
 - (b) return a seized dog to its owner.
- (3) Despite clause (2), the authorised person may destroy a seized dog if:
 - (a) the dog is diseased, injured, savage or destructive; and
 - (b) the authorised person believes on reasonable grounds that it is necessary to destroy it.

Division 9 Pounds

39 Pound

The Council may establish a pound.

40 Notice of impounding

- (1) If an impounded dog has an identification device, the CEO must notify the registered owner of the impounding.
- (2) If an impounded dog has a collar on which an address is displayed, the CEO must give notice of the impounding to that address.
- (3) If an impounded dog has no identification device, the CEO is not obliged to notify the dog's owner of the impounding.

41 Release of dog from pound

- (1) Subject to by-law 43(1), an impounded dog is not to be released from a pound unless:
 - (a) it is registered; and
 - (b) it is released to its registered owner or to a person authorised to act on behalf of the registered owner; and
 - (c) subject to clause (4), the Council receives the appropriate release fees and any other amounts payable by the registered owner under an infringement notice given to the registered owner under these By-laws.
- (2) A person who is collecting a dog from a pound must satisfy a council employee at the pound that the person is the registered owner of the dog, or is authorised to act on behalf of the registered owner.

- (3) The Council may charge the registered owner a fee for delivering a dog released from a pound.
- (4) Any release fee or delivery fee that is not paid at the time the dog is returned to its registered owner may be recovered as a debt due to the Council.

42 Diseased dog

- (1) An officer at the pound must notify the CEO if the officer notices or suspects that an impounded dog is diseased.
- (2) The CEO must arrange for a dog to be isolated from other dogs in the pound if:
 - (a) the CEO is notified under clause (1) that the dog is, or is suspected of being, diseased; or
 - (b) the CEO receives advice from a veterinarian that the dog is, or is suspected of being, diseased.
- (3) The CEO must give the owner, if known, of a dog isolated under clause (2) written notice that:
 - (a) the dog is, or is suspected of being, diseased; and
 - (b) the dog must undergo a course of treatment specified in the notice or be destroyed.
- (4) The CEO may, in the notice given under clause (3), require the owner of the dog to give the Council a report on the condition of the dog and any other dogs usually kept at the same premises.
- (5) The report must be prepared, within the time specified in the notice, by a veterinarian or other person specified in the notice.
- (6) A dog that is the subject of a notice under this by-law may be released from the pound in accordance with by-law 41 and subject to any conditions the Council considers appropriate.
- (7) An owner of a dog commits an offence if the owner:
 - (a) fails to give a report required under clause (4); or
 - (b) contravenes a condition imposed under clause (6).

Maximum penalty: 20 penalty units.
- (8) An offence against clause (7) is an offence of strict liability.

- (9) It is a defence to a prosecution for an offence against clause (7) if the defendant has a reasonable excuse.
- (10) The cost of treatment reasonably provided by the Council to a diseased dog, and to any other dog in the pound that was infected or was at risk of being infected by the diseased dog before the dog could reasonably be isolated, is a debt payable by the owner of the diseased dog to the Council.

43 Disposal or destruction of impounded dog

- (1) The CEO may arrange for a dog in a pound to be destroyed if the dog is so diseased or injured that it is humane to destroy it.
- (2) Subject to this by-law, the CEO may, after a dog is impounded for 72 hours:
 - (a) arrange for the destruction of the dog; or
 - (b) transfer the property in the dog to an approved incorporated body that provides services relating to animal welfare, and dispose of the dog as agent for that body.
- (3) If an infringement notice is issued to the owner of an impounded dog, the CEO must not destroy or dispose of the dog until at least 14 days after any court proceedings relating to that infringement notice are complete.
- (4) If an investigation is started in relation to an impounded dog, the dog must not be destroyed or disposed of until the investigation is complete.

Example for clause (4)

The dog is alleged to have attacked a person or another animal.

- (5) A dog in a pound may only be destroyed:
 - (a) by a veterinarian or another person who is, in the opinion of the CEO, qualified to destroy the dog; and
 - (b) in a manner approved by the Australian Veterinary Association.

Part 3 Infringement notice offences

44 Infringement notice offence and prescribed amount payable

- (1) An ***infringement notice offence*** is an offence against a provision specified in the Schedule.

- (2) The **prescribed amount** for an infringement notice offence is the amount equal to the monetary value of the number of penalty units specified for the offence in the Schedule.

45 When infringement notice may be given

If an authorised person believes on reasonable grounds that a person has committed an infringement notice offence, the authorised person may give a notice (an ***infringement notice***) to the person.

46 Contents of infringement notice

- (1) The infringement notice must specify the following:
- (a) the name and address of the person, if known;
 - (b) the date the infringement notice is given to the person;
 - (c) the date and time of the infringement notice offence and the place where the infringement notice offence occurred;
 - (d) a description of the offence;
 - (e) the prescribed amount payable for the offence;
 - (f) the enforcement agency, as defined in the *Fines and Penalties (Recovery) Act 2001*, to which the prescribed amount is payable.
- (2) The infringement notice must include a statement to the effect of the following:
- (a) the person may expiate the infringement notice offence and avoid any further action in relation to the offence by paying the prescribed amount to the specified enforcement agency within 28 days after the notice is given;
 - (b) the person may elect under section 21 of the *Fines and Penalties (Recovery) Act 2001* to have the matter dealt with by a court instead of under that Act by completing a statement of election and giving it to the specified enforcement agency;
 - (c) if the person does nothing in response to the notice, enforcement action may be taken under the *Fines and Penalties (Recovery) Act 2001*.
- (3) Also the infringement notice must include an appropriate form for making the statement of election mentioned in clause (2)(b).

47 Electronic payment and payment by cheque

- (1) If the person uses electronic means to pay the prescribed amount, payment is not effected until the amount is credited to the Council's bank account.
- (2) If the person tenders a cheque in payment of the prescribed amount, payment is not effected unless the cheque is cleared on first presentation.

48 Withdrawal of infringement notice

- (1) The Council may withdraw an infringement notice by written notice given to the person.
- (2) The notice must be given:
 - (a) within 28 days after the infringement notice is given to the person; and
 - (b) before the prescribed amount is paid.

49 Application of Part

- (1) This Part does not prejudice or affect the start or continuation of proceedings for an infringement notice offence for which an infringement notice was given unless the offence is expiated.
- (2) Also, this Part does not:
 - (a) require an infringement notice to be given; or
 - (b) affect the liability of a person to be prosecuted in a court for an offence for which an infringement notice has not been given; or
 - (c) prevent more than one infringement notice for the same offence being given to a person.
- (3) If more than one infringement notice for the same offence is given to a person, the person may expiate the offence by paying the prescribed amount in accordance with any of the notices.

Part 4 Miscellaneous matters**50 Removal or disposal of animal remains**

- (1) The Council may arrange for the removal and disposal of the remains of a dead animal found in a public place.

- (2) The Council may recover expenses incurred in removing and disposing of a dead animal from the owner of the animal, if known, as a debt due and payable to the Council.

51 Obstruction offence

- (1) A person commits an offence if:
- (a) the person intentionally obstructs another person; and
 - (b) the other person is:
 - (i) an officer; or
 - (ii) an employee of a contractor or subcontractor of the Council; and
 - (c) the other person is acting in an official capacity and the person has knowledge of that circumstance.

Maximum penalty: 20 penalty units.

- (2) Strict liability applies to clause (1)(b).

- (3) In this by-law:

acting in an official capacity, in relation to a person mentioned in clause (1)(b), means the person is exercising powers or performing functions under, or otherwise related to the administration of, these By-laws.

obstruct includes hinder and resist.

52 Misleading information

- (1) A person commits an offence if:
- (a) the person intentionally gives information to another person; and
 - (b) the other person is an officer; and
 - (c) the information is misleading and the person has knowledge of that circumstance; and
 - (d) the officer is acting in an official capacity and the person has knowledge of that circumstance.

Maximum penalty: 20 penalty units.

- (2) A person commits an offence if:
- (a) the person intentionally gives a document to another person; and
 - (b) the other person is an officer; and
 - (c) the document contains misleading information and the person has knowledge of that circumstance; and
 - (d) the officer is acting in an official capacity and the person has knowledge of that circumstance.

Maximum penalty: 20 penalty units.

- (3) Strict liability applies to clauses (1)(b) and (2)(b).
- (4) It is a defence to a prosecution for an offence against clause (2) if the person, when giving the document:
- (a) draws the misleading aspect of the document to the officer's attention; and
 - (b) to the extent to which the person can reasonably do so – gives the officer the information necessary to remedy the misleading aspect of the document.
- (5) In this by-law:

acting in an official capacity, in relation to an officer, means the officer is exercising powers or performing functions under, or otherwise related to the administration of, these By-laws.

misleading information means information that is misleading in a material particular or because of the omission of a material particular.

53 Exemption for events

- (1) The Council may, by written notice, exempt a person or body from either or both of by-laws 27 and 31:
- (a) for the purposes of a dog race, dog trial or dog show; or
 - (b) while taking part in the activities of a dog obedience club; or
 - (c) while using a dog to drive cattle or stock on a road; or

- (d) for any other purpose or event as determined by the Council.
- (2) An exemption under clause (1):
 - (a) may relate to a particular event or to a class of events; and
 - (b) may be subject to any conditions the Council considers appropriate.

54 Council may charge fee for service

- (1) The Council may charge a fee for any service provided under these By-laws.

Examples for clause (1)

A fee for registering a dog, licensing of premises, inspecting a register, keeping a dog in a pound.

- (2) If the Council considers it appropriate, the Council may waive, reduce or refund a fee charged under clause (1).

Schedule Infringement notice offences and prescribed amounts

by-law 44

Provision	Prescribed amount in penalty units
by-laws 11(1), 12(1), 13(2), 14(2), 15(2), 26(5) and (8), 28(1), 29(1) and 31(1)	1
by-laws 17(1), 27(2), 30(2), 35(2), 36(2) and 37(1)	2
by-law 33(2)	3
by-law 34(2) and(4)	6

ENDNOTES

1 KEY

Key to abbreviations

amd = amended	od = order
app = appendix	om = omitted
bl = by-law	pt = Part
ch = Chapter	r = regulation/rule
cl = clause	rem = remainder
div = Division	renum = renumbered
exp = expires/expired	rep = repealed
f = forms	s = section
Gaz = Gazette	sch = Schedule
hdg = heading	sdiv = Subdivision
ins = inserted	SL = Subordinate Legislation
lt = long title	sub = substituted
nc = not commenced	

2 LIST OF LEGISLATION

Wagait Shire Council (Dog Management) By-laws 2019 (SL No 27, 2019)	
Notified	20 November 2019
Commenced	20 November 2019