

NORTHERN TERRITORY OF AUSTRALIA

NHULUNBUY (ANIMAL CONTROL) AMENDMENT BY-LAWS 2015

Subordinate Legislation No. 28 of 2015

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NORTHERN TERRITORY OF AUSTRALIA

Subordinate Legislation No. 28 of 2015*

Nhulunbuy (Animal Control) Amendment By-laws 2015

Nhulunbuy Corporation Limited (ACN 009 596 598), at a meeting held on 21 October 2015, made the following by-laws under the *Local Government Act* and, for section 63(2)(a) of the *Interpretation Act*, authorised Angela Louise MacMillan, the Chief Executive Officer, to sign them.

Dated 23 October 2015

A. L. MacMillan
Chief Executive Officer

Executed by the Nhulunbuy Corporation Limited under section 122 of the *Corporations Act 2001* (Cth) following the passage of a special resolution authorising the making of these By-laws on 21 October 2015.

C. Walters
Director

V. Wykes
Director/Secretary

**NB: A certificate of a legal practitioner is required under section 190(1)(c) of the *Local Government Act*.
Also, a special resolution of the council is required for making a by-law under section 190(2) of the *Local Government Act*.**

* Notified in the *Northern Territory Government Gazette* on 24 November 2015.

1 Citation

These By-laws may be cited as the *Nhulunbuy (Animal Control) Amendment By-laws 2015*.

2 By-laws amended

These By-laws amend the *Nhulunbuy (Animal Control) By-laws*.

3 By-law 2 amended

By-law 2(1), at the end

insert

Note for clause (1)

These By-laws were made under the Local Government Act (Act No. 83 of 1993) and continued in force by section 270(1)(b) of the Local Government Act (Act No. 12 of 2008).

4 By-law 4 amended

(1) By-law 4(1), definition **Town Administrator**

omit

(2) By-law 4(1)

insert (in alphabetical order)

authorised person means an authorised person within the meaning of the *Local Government Act*.

CEO means the person who is responsible for exercising the powers and performing the functions under and in relation to these By-laws that, if the Corporation was a shire council and the corporation area was a local government area, the CEO of the shire council would be exercising or performing.

declared dog means a dog declared under by-law 28A.

infringement notice, see by-law 16.

infringement notice offence, see by-law 16(1).

officer means the following:

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

prescribed amount, see by-law 16(2).

prescribed breed, of a dog, means a breed of dog specified in Schedule 1 to the *Customs (Prohibited Imports) Regulations 1956* (Cth).

registered, in relation to a dog, means registered under these By-laws.

5 By-law 4A inserted

After by-law 4

insert

4A Application of Criminal Code

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

Note for by-law 4A

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.

6 By-laws 14 to 17 replaced

By-laws 14 to 17

repeal, insert

14 Obstruction of officers

- (1) A person commits an offence if:
 - (a) the person obstructs another person; and
 - (b) the other person is one of the following:
 - (i) an officer;
 - (ii) an employee of a contractor or subcontractor of the Corporation; and
 - (c) the other person is acting in an official capacity.

Maximum penalty: 20 penalty units

- (2) An offence against clause (1) is an offence of strict liability.

(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.

15 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 person knows the information is misleading; and
- (d) the person knows the officer is acting in an official capacity.

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 person knows the document contains misleading information; and
- (d) the person knows the officer is acting in an official capacity.

Maximum penalty: 20 penalty units.

(3) Strict liability applies to clauses (1)(b) and (2)(b).

(4) Clause (2) does not apply 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.

Part 1A Infringement notice offences

16 Infringement notice offence and prescribed amount payable

- (1) An infringement notice offence is an offence against a provision specified in Schedule 3.
- (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 Schedule 3.

17 When infringement notice may be given

If an authorised person reasonably believes a person has committed an infringement notice offence, the person may give a notice (an infringement notice) to the person.

17A 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, time and place of the infringement notice offence;
 - (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*, 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* 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*, including (but not limited to) action for the following:
 - (i) suspending the person's licence to drive;
 - (ii) seizing personal property of the person;
 - (iii) deducting an amount from the person's wages or salary;
 - (iv) registering a statutory charge on land owned by the person;
 - (v) making a community work order for the person and imprisonment of the person if the person breaches the order.
- (3) Also, the infringement notice must include an appropriate form for making the statement of election mentioned in clause (2)(b).

17B Payment by cheque

If the person tenders a cheque in payment of the prescribed amount, the amount is not taken to have been paid unless the cheque is cleared on first presentation.

17C Withdrawal of infringement notice

- (1) The Corporation may withdraw the 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 payment of the prescribed amount.

17D 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 has been 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 has been given to a person, the person may expiate the offence by paying the prescribed amount in accordance with any of the notices.

7 By-law 23 amended

(1) After by-law 23(2)(a)

insert

(aa) the dog is a declared dog and within the period of 12 months before the date of the application the owner of the dog has contravened by-law 28C(1) more than once; or

(2) By-law 23(2)(a) to (c), at the end

insert

or

8 By-law 23A inserted

After by-law 23

insert

23A Registration of dog that is a prescribed breed

It is a condition of registration of a dog of a prescribed breed, that the owner of the dog must, at all times when the dog is outside the premises where it is usually kept:

- (a) ensure the dog is controlled by a suitable leash; and
- (b) keep the dog muzzled.

9 Part 3, Division 4A inserted

After by-law 28

insert

Division 4A Declared dogs**28A Declared dog**

- (1) An authorised person may declare a dog to be a declared dog if:
 - (a) the dog attacks a person or animal; or
 - (b) the dog menaces a person or 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) If an authorised person declares a dog to be a declared dog, the Corporation must serve a notice of the declaration on the owner of the dog.

28B Revocation of declaration

- (1) The owner of a declared dog may apply to the Corporation for the revocation of the declaration of a declared dog.
- (2) The Corporation may:
 - (a) revoke the declaration; or
 - (b) refuse the application to revoke the declaration.

-
- (3) The Corporation must give written notice of a decision under clause (2) to the owner of the dog.
 - (4) A revocation under clause (2)(a) takes effect from the date the Corporation notifies the owner of the revocation.
 - (5) If the Corporation refuses an application made under clause (1), the registrar is not required to consider an application made under clause (1) in relation to the same dog within six months of the refusal.

28C Registration of declared dog

- (1) As a condition of registration of a declared dog, the owner of the dog must:
 - (a) ensure the dog is under the effective control of a person who is at least 18 years of age at all times when the dog is outside the premises where the dog is usually kept; and
 - (b) ensure the dog is controlled by a suitable leash at all times when:
 - (i) the dog is outside the premises where the dog is usually kept; or
 - (ii) the dog is kept on premises that are not fenced in a manner determined by the Corporation; and
 - (c) keep the dog muzzled at all times when the dog is outside the premises where it is usually kept; and
 - (d) inform a prospective purchaser or owner of the dog that it is a declared dog; and
 - (e) if ownership of the dog is transferred – notify the Corporation of the name and address of the new owner within 24 hours after the transfer; and
 - (f) if the owner intends to keep the dog at a different location to the premises where the dog is usually kept for a period exceeding 14 days – notify the Corporation of the new address within 24 hours after the dog is relocated; and
 - (g) if the dog attacks, or is alleged to have attacked, a person or animal – notify the Corporation of the attack, or alleged attack, within 24 hours after the earlier of:
 - (i) the attack, or alleged attack; or

-
- (ii) the time the owner is made aware of the attack, or alleged attack; and
 - (h) if the dog is missing – notify the Corporation within 24 hours after the owner becomes aware the dog is missing; and
 - (i) if the dog has died – notify the Corporation within 14 days after its death; and
 - (j) comply with any other condition imposed by the Corporation.
- (2) If the owner of a declared dog contravenes clause (1) more than once in a 12 month period, the Corporation may, by notice served on the owner of the dog, require the owner to show cause why the Corporation should not cancel the registration of the dog.
- (3) The Corporation may, not less than 14 days after the day a notice under clause (2) is served, by notice in writing served on the owner, do one or both of the following:
- (a) cancel the registration of the dog;
 - (b) impose additional conditions on the registration of the dog.

10 By-law 30 amended

- (1) By-law 30(1) and (2)

omit, insert

- (1) A person commits an offence if:
- (a) the person keeps a dog within the corporation area; and
 - (b) the dog is not registered.

Maximum penalty: 20 penalty units

- (2) An offence against clause (1) is an offence of strict liability.
- (2A) The court may, in addition to any penalty imposed for the offence, impose a penalty not exceeding 1 penalty unit for each day during which the offence continues after the day the offence is committed.

- (2) By-law 30(3)

omit

person charged with the offence

insert

defendant

11 By-law 31 replaced

By-law 31

repeal, insert

30A Failure to comply with a condition of registration

- (1) A registered owner of a dog commits an offence if:
 - (a) the dog has been registered subject to conditions; and
 - (b) a condition of the registration is contravened.

Maximum penalty: 20 penalty units.

- (2) An offence against clause (1) is an offence of strict liability.
- (3) The court may, in addition to any penalty imposed for the offence, impose a penalty not exceeding 1 penalty unit for each day during which the offence continues after the day the offence is committed.
- (4) It is a defence to a prosecution for an offence against clause (1) if the defendant has a reasonable excuse.

31 Requirement for licence

- (1) The Corporation may determine a maximum number of dogs, or dogs of a class of dog, that may be kept on premises without a licence.
- (2) An occupier of premises commits an offence if the occupier keeps dogs on the premises in contravention of clause (1).

Maximum penalty: 20 penalty units.

- (3) An offence against clause (2) is an offence of strict liability.
- (4) The court may, in addition to any penalty imposed for the offence, impose a penalty not exceeding 1 penalty unit for each day during which the offence continues after the day the offence is committed.
- (5) 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 proves that the dogs or the dogs of the class of dog had not been usually kept on the premises:
- (i) for a period of 3 months or more immediately before the date of the alleged offence; or
 - (ii) for periods totalling 3 months or more during the 6 month period immediately before the date of the alleged offence.

12 By-law 32 amended

- (1) By-law 32(1), at the end

insert

Maximum penalty: 20 penalty units.

- (2) By-law 32(2), at the end

insert

Maximum penalty: 20 penalty units.

- (3) By-law 32(3)

omit

a regulatory offence

insert

an offence of strict liability

- (4) After by-law 32(3)

insert

- (3A) The court may, in addition to any penalty imposed for the offence, impose a penalty not exceeding 1 penalty unit for each day during which the offence continues after the day the offence is committed.

- (5) By-law 32(4)

omit

all words from "this" to "the offence"

insert

clause (1) or (2) if the defendant

(6) By-law 32(4)(a), at the end

insert

and

13 By-law 33 replaced

By-law 33

repeal, insert

33 Removal of identification device

(1) A person, other than the owner of a dog, who without reasonable cause removes an identification device from a registered 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.

33A Dog at large without identification device

(1) The owner of a registered dog who permits the dog to be at large 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 proves that the identification device was removed:

(a) without the owner's permission and the owner had not had sufficient opportunity to replace the identification device; or

(b) for a reasonable cause and the cause was still existent at the date of the alleged offence.

33B Identification device fitted to incorrect dog

(1) A person must not fit an identification device on a dog that is not 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.

14 By-law 34 amended

(1) By-law 34(1)

omit

The

insert

An

(2) By-law 34(1), at the end

insert

Maximum penalty: 20 penalty units.

(3) By-law 34(2)

omit

a regulatory offence

insert

an offence of strict liability

(4) By-law 34(3)

omit

person charged with the offence

insert

defendant

15 By-laws 35 to 38 replaced

By-laws 35 to 38

repeal, insert

35 Female dog in oestrus

- (1) The owner of a female dog must ensure the dog is not in a public place if the dog is in oestrus.
- (2) A person commits an offence if the person fails to comply with 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) Without limiting clause (4), it is a reasonable excuse if the female dog is:
 - (a) under effective control; and
 - (b) being taken to one of the following:
 - (i) a veterinarian for treatment;
 - (ii) a kennel for boarding;
 - (iii) a stud dog for breeding purposes;
 - (iv) a conformation show;
 - (v) any other event or place approved by the registrar.

36 Enticement

A person commits an offence if:

- (a) the person intentionally engages in conduct; and
- (b) the person is reckless as to whether the conduct results in the owner of a dog being liable to prosecution for an offence against these By-laws.

Maximum penalty: 20 penalty units.

37 Dogs attacking or menacing persons or animals

- (1) An owner of a dog must ensure that the dog does not:
- (a) menace a person or animal; or
 - (b) attack a person or animal.
- (2) An owner of a dog commits an offence if the owner fails to comply with 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, enticed the dog to menace or attack the person or animal;
 - (b) the animal menaced or attacked was menaced or attacked on premises owned or occupied by the defendant;
 - (c) the person menaced or attacked was menaced or attacked on premises owned or occupied by the defendant, and the person:
 - (i) was not proceeding by the shortest practical route from a boundary of the premises to the door of the premises closest to the boundary or from the door to the boundary; or
 - (ii) was on the premises for an unlawful purpose.
- (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) order the person to pay the costs and expenses of, and incidental to, the impounding of the dog;
 - (b) order the destruction of the dog in addition to, or instead of, the penalty for that offence.

38 Dog chasing vehicle

- (1) An owner of a dog must ensure the dog does not chase a vehicle.

-
- (2) An owner of a dog commits an offence if the owner fails to comply with clause (1).

Maximum penalty: 20 penalty units.

- (3) An offence against clause (2) is an offence of strict liability.

16 By-law 39 amended

- (1) By-law 39(1)

omit, insert

- (1) An owner of a dog must ensure that the dog, either by itself or in concert with other dogs, is not a nuisance.

- (1A) An owner of a dog commits an offence if the owner fails to comply with clause (1).

Maximum penalty: 20 penalty units.

- (1B) An offence against clause (1A) is an offence of strict liability.

- (1C) It is a defence to a prosecution for an offence against clause (1A) if the defendant has a reasonable excuse.

- (2) By-law 39(2)

omit

the purposes of

17 By-laws 40 and 41 replaced

By-laws 40 and 41

repeal, insert

40 Abandoning dog

- (1) A person commits an offence if the person abandons a dog in the corporation 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.

41 Removal of dog from custody

- (1) A person commits an offence if the person:
- (a) removes or attempts to remove a dog from the custody of an authorised person; or
 - (b) except under by-law 46, removes or attempts to remove a dog from a pound.

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.

18 By-law 42 amended

- (1) By-law 42(5), penalty provision

omit, insert

Maximum penalty: 1 penalty unit.

- (2) After by-law 42(5)

insert

- (6) An offence against clause (5) is an offence of strict liability.
- (7) It is a defence to a prosecution for an offence against clause (5) if the defendant has a reasonable excuse.

19 By-law 46 amended

By-law 46(2) and (3)

omit, insert

- (2) The burden of proof as to whether a person is the owner of a dog or a person authorised to act as the owner's agent lies on the person.

20 By-law 47 amended

By-law 47(7)

omit, insert

- (7) An owner of a dog commits an offence if the owner:
- (a) fails to comply with a requirement of a notice under clause (2);
or
 - (b) fails to comply with a condition imposed under clause (4).
- 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.

21 By-law 49 amended

- (1) By-law 49, heading

omit

ownership of dog, &c.

insert

details

- (2) By-law 49(1)(b), after "owner"

insert

from whom the person acquired the dog

- (3) After by-law 49(1)

insert

- (1A) A person who fails to comply with clause (1) commits an offence.
Maximum penalty: 1 penalty unit.
- (1B) An offence against clause (1A) is an offence of strict liability.
- (1C) It is a defence to a prosecution for an offence against clause (1A) if the defendant has a reasonable excuse.

(4) After by-law 49(2)

insert

(2A) A person who fails to comply with clause (2) commits an offence.

Maximum penalty: 1 penalty unit.

(2B) An offence against clause (2A) is an offence of strict liability.

(2C) It is a defence to a prosecution for an offence against clause (2A) if the defendant has a reasonable excuse.

(5) By-law 49(4)

omit

22 Part 4 inserted

After by-law 50

insert

Part 4 Transitional matters for Nhulunbuy (Animal Control) Amendment By-laws 2015

51 Definition

In this Part:

commencement means the day on which the *Nhulunbuy (Animal Control) Amendment By-laws 2015* commence.

52 CEO of Corporation

The person who was referred to as the Town Administrator immediately before the commencement is the CEO for these By-laws.

23 Schedules 3 and 4 replaced

Schedules 3 and 4

repeal, insert

Schedule 3 Infringement notice offences and prescribed amounts

by-law 16

Provision	Prescribed amount in penalty units
by-laws 14(1), 15(1) and (2), 33(1), 33A(1), 36, 40(1) and 41(2)	2
by-laws 30(1), 30A(1), 31(2), 32(1) and (2), 33B(2), 34(1), 35(2), 38(2), 39(1A), 42(5), 47(7) and 49(1A) and (2A)	1
by-law 37(2)	7

24 By-laws further amended

The Schedule has effect.

25 Expiry of By-laws

These By-laws expire on the day after they commence.

Schedule By-laws further amended

by-law 24

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
Part 1 and Part 1, Division 1, heading, at the end		matters
by-law 5, heading	, &c.	
by-law 8(3)	Town Administrator	CEO
by-law 11, heading	whole heading	11 Licence
Part 1, Division 3, heading, at the end		matters
by-law 19, heading	, &c., or dead or diseased, &., animals	, destruction or disposal of animal
by-law 20	the purposes of	
Part 3, Division 1, heading, at the end		matters
by-law 21	Unless the contrary intention appears, a	A
by-law 21(c)	where has not attained	if is under
Part 3, Division 4, heading	whole heading	Division 4 Cancellation, variation or suspension of registration or licences
by-laws 26 and 27, heading	, &c.,	, or suspension
by-law 44, heading	whole heading	44 Pounds

Part 3, Division 9,
heading, at the end

matters

by-law 50, heading

whole heading

50 Exemptions
