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Relevant laws

Please note that this is intended to provide an overview of laws that are generally relevant to people with animals. It is not comprehensive and wherever needed, legal advice should be sought to understand a person and an animal's rights and options.

Prevention of Cruelty to Animals Act 1979 (NSW) known as POCTAA

POCTAA seeks to prevent cruelty to animals and to promote the welfare of animals by preventing anyone from committing an act of cruelty to animals and requiring a 'person in charge' of an animal to care for and treat animals in a humane manner. Under the POCTAA, a 'person in charge' includes:

- the owner(s), including a joint owner
- a person who has the animal in their possession or custody, or under their care, control, or supervision
- the owner or lessee of the saleyard where a farmed animal is kept.

An act of cruelty includes causing an animal to be:

- killed, wounded, abused, beaten and kicked, and other forms of physical harm, as well as causing an animal to be terrified
- overloaded, over-worked, over-driven, over-ridden or over-used
- exposed to excessive heat or excessive cold
- inflicted with pain.

The act of cruelty is considered to be aggravated if it results in the death, deformity or serious disablement of the animal, or the animal being so severely injured, so diseased or in such a physical condition that it is cruel to keep them alive.

NSW Police, RSPCA NSW and Animal Welfare League NSW Inspectors can enter a home with the consent of people living there, the authority of a search warrant, or if they believe on reasonable grounds that:

- an animal has suffered significant physical injury, is in imminent danger of suffering significant physical injury or has a life threatening condition that requires immediate veterinary treatment, and





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- it is necessary to enter to prevent further physical injury or to prevent significant physical injury to the animal or to ensure that the animal is provided with veterinary treatment.

If an inspector suspects on reasonable grounds that:

- the animal is in distress due to suffering from exposure to the elements, debility, exhaustion or significant physical injury, or
- an act of cruelty has been or is about to be committed, or
- the animal has not been provided with sufficient food or drink in the past 24 hours, or
- the animal is severely injured or diseased and is not being provided with necessary veterinary treatment or it is cruel to keep them alive.

Then the inspector may take and retain possession of the animal, remove the animal, provide them with necessary food, drink or veterinary treatment or 'destroy' the animal in a manner that causes the animal to die quickly and without unnecessary pain.

Companion Animals Act 1998 (NSW) and Companion Animals Regulation 2018 (NSW)

The *Companion Animals Act* applies to dogs, including working dogs on rural properties, and cats, and animals that are required to have a microchip or who have had a microchip implanted.

The Act defines each of the following as being an 'owner' of a companion animal:

- the owner of the animal (in the sense of being the owner of the animal as personal property)
- the person by whom the animal is ordinarily kept
- the registered owner of the animal.

There can be more than one owner of a companion animal eg a person who is the registered owner (Person A), and a person by whom the animal is ordinarily kept (Person B). A local council could regard both as being the owner of the animal.

A companion animal must be microchipped and registered from the time the animal is 12 weeks old or first sold (or given away), whichever is the earlier. Microchips must provide identification information including the full name and telephone number of the 'owner' of the animal, the address and local council of the place at which the animal is ordinarily kept,





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the animal's type and breed, date of birth, sex and colour. The Register can be accessed by the owner (for the purposes of notifying changes in registration or identification information), Local Government, Police and certain government agencies and people authorised by them. Limited access to the Register is available to members of the public (for information about the animal), veterinary practitioners (for the purpose of locating the owner of a companion animal). The NSW Pet Registry is managed by the Office of Local Government: <https://www.petregistry.nsw.gov.au/>

The 'owner' is guilty of an offence if the animal is not microchipped or registered. The 'owner' must notify the Local Council if there is any change in the registration or identification information for the animal within 14 days of the change, and the Local Council is to provide a certificate of registration free of charge with the information as changed. If the change is a change of 'ownership', the certificate of registration is to be provided to the new 'owner'.

A person with disability is entitled to be accompanied by an assistance animal in any public building or place and public transport and it is an offence for a person in charge or control of a public building or public transport to refuse to permit a person to take an assistance animal into the building or public transport without reasonable cause.

Certain procedures apply to animals seized under the Act or that end up at a council pound by being surrendered or abandoned. However, these procedures do not apply to lost or injured animals taken by members of the public to animal welfare organisations such as the RSPCA or to a vet merely so they can be treated or reunited with their owners. They also do not apply to animals surrendered to animal welfare organisations unless they also operate as a council pound.

When a seized or surrendered animal is delivered to a council pound, the person in charge is required to give notice to the person who appears to be the 'owner' of the animal, or to try their best to establish who the owner is. The person in charge of a pound must make inquiries to determine whether the animal is registered, based on any form of identification worn by the animal. If a seized or surrendered animal has not been claimed, the council may 'sell' or 'destroy' the animal after 14 days after the 'owner' has been notified, or after 7 days if notice is not required to be given (ie where the pound cannot establish who is the 'owner'). An animal is 'claimed' if a person who appears to be the 'owner' of the animal or acting on the owner's behalf claims the animal and the required fees and charges are paid to the local council.





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- Confidentiality – protection if veterinarians report a suspected breach under POCTAA to authorities.
- Euthanasia of animals, noting that some ex partners have taken animals to be euthanised. The guideline suggests veterinarians discuss it with the partner of the person if unsure. Veterinarians are not obliged to euthanise an animal.
- Records of consent for a procedure, noting consent in writing is a better record.
- Policies about animal abuse and domestic violence should be developed to assist staff to respond, noting the RSPCA is producing a poster for all veterinary premises in NSW.

Crimes (Domestic and Personal Violence) Act 2007 (NSW)

An Apprehended Violence Order ('AVO') is an order made by a court against a person who makes the applicant fear for their safety. Its purpose is to protect people from further violence, intimidation or harassment. The person who is subject to the order (called a 'defendant') must obey it. It is an offence to breach an AVO. There are two types of AVOs:

1. Apprehended Personal Violence Orders (APVO). These are designed to protect a person where there is **no domestic relationship between the parties** (for example where the parties are co-workers).
2. Apprehended Domestic Violence Orders (ADVO). These are designed to protect a person where there **is a domestic relationship** between the parties.

Under the CDPV Act a person has a domestic relationship with another person through marriage, a de facto partnership, an intimate personal relationship, living in the same household or residential facility, providing care, or being a relative or kin.

An application for an AVO can be made by:

- the person experiencing, or at risk of, violence, and at least 16 years of age,
- the guardian of the person, or
- a police officer.

Police application

The police must apply for an AVO to protect a person if:

- a domestic violence offence has been, is being, or will be committed against the person;
- the defendant has recently, is currently, or will likely stalk or intimidate the person with the intention of causing the person to fear physical or mental harm;





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- an offence against a child or young person has been, is being, or will be committed; or
- there are proceedings against the defendant for any of the above offences.

A person can apply for an AVO if they:

- are experiencing or have been threatened with physical violence
- are being intimidated, harassed, molested or stalked by someone
- have suffered property damage or been threatened with property damage.

Note that in NSW, companion animals are legally considered 'property' of their 'owners'.

AVOs are a civil order and will not be listed on a defendant's criminal record. A defendant can, however, be charged with a criminal offence for knowingly breaching an AVO.

The police must apply for an interim AVO, known as a 'provisional order', if they have good reason to believe that an order needs to be made immediately to:

- ensure the safety and protection of the person, or
- prevent substantial damage to the person's property.

Private application

A person may make a private application for an AVO if she/he/they wish to represent her/him/themselves or if the police will not make an application on her/his/their behalf.

If a person makes a private application and is unsuccessful, the Local Court may order that person to pay the defendant's costs if the application was 'frivolous or vexatious'.

Types of orders in AVOs

AVOs can include mandatory standard orders and additional orders.

Mandatory standard orders prohibit the defendant from doing any of the following to the protected person or anyone the protected person has a domestic relationship with:

- assaulting or threatening them,
- stalking, harassing or intimidating them, and
- intentionally or recklessly destroying or damaging any property that belongs to them or is in their possession.





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Additional orders can be made by the Court if it decides they are necessary in the circumstances to ensure the safety and protection of the protected person. Additional orders can be made about contacting the protected person, family law and parenting, where the defendant cannot go, and possessing firearms or weapons.

The CDPV Act was amended so that from 27 March 2021 onwards:

- The definition of 'intimidation' explicitly includes actual or threatened harm to animals belonging to, or in the possession of, the victim-survivor (or a person they are in a relationship with). Intimidation is a criminal offence and AVOs contain a mandatory standard condition that prohibits the defendant intimidating the protected person.
- Every AVO must specify as a part of a standard condition that the defendant is prohibited from harming an animal belonging to, or in the possession of the victim-survivor (or a person they are in a domestic relationship with).

Recovering personal property

The Court can make a Property Recovery Order to allow the protected person or defendant to recover their property, such as clothing, personal documents and children's belongings. The police, the protected person or the defendant can apply for a Property Recovery Order as part of the application for an AVO or ask the Court at the mention. A Property Recovery Order can only be made at the same time an Apprehended Violence Order is made. It cannot be made after the matter is closed. Usually a police officer will accompany the protected person or defendant to retrieve the property.

Since companion animals are legally considered 'property' of their 'owners', they can be included in a Property Recovery Order. However, a court may not make orders about some property items if there is a dispute about who 'owns' the animal. This is because, under the CDPV Act, a Property Recovery Order does not confer any right on a person to take property that the person does not own or have a legal right to possess even if the type of property is specified in the order (s 37(4)). Therefore if there is a dispute about who owns the property, proof about ownership may be required, such as who is the registered owner, whose name is on the animal's microchip, and/or who looks after the animal on a day-to-day basis. A Property Recovery Order is different from property settlement of significant assets, such as a house, boat or shares, which need to be negotiated under Family Law.

Police may also be able to assist a person to collect their property and retrieve an animal if they need to recover the property urgently and it cannot wait until the matter is heard in





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court. However, the police cannot assist if there is a disagreement about who owns the property.

Further information

NSW Government (n.d), *Factsheet: Better protection for victim-survivors of domestic violence and their animals*,

<http://www.crimeprevention.nsw.gov.au/domesticviolence/Documents/factsheet-better-protection-for-victim-survivors-of-domestic-violence-and-their-animals.pdf>

NSW Department of Communities and Justice, *Applying for an Apprehended Violence Order*, https://www.lawaccess.nsw.gov.au:443/Pages/representing/lawassist_avo/lawassist_gettingavo_home/lawassist_applying_avo/lawassist_applying_avo.aspx

Women's Legal Service NSW, *A Practitioner's Guide to Domestic Violence Law in NSW, Chapter 3: Apprehended Violence orders*, <https://www.wlsnsw.org.au/resources/dv-law-nsw/ch-3-avo/>

Veterinary Practitioners Board of New South Wales, *Animal Abuse and Domestic Violence*, <https://www.vpb.nsw.gov.au/animal-abuse-and-domestic-violence>

NSW Young Lawyers Animal Law Committee (2014), *Companion Animal Law Guide New South Wales*, 2nd Edition, <http://assets.doggierescue.com/downloads/animal-law-guide.pdf>

RSPCA Knowledgebase, <https://kb.rspca.org.au/>

NSW Department of Primary Industries, *National Livestock Identification System*, <https://www.dpi.nsw.gov.au/animals-and-livestock/nlis>





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Acknowledgement

Lucy's Project is grateful to the Animal Defenders Office for their review of this resource.

The Animal Defenders Office (ADO) is a national non-profit community legal centre that specialises in animal law.

As a community legal centre focusing on helping animals and animal advocates, the ADO:

- Offers free advice and representation for individuals and groups that want to take action for animals; and
- Produces information to raise community awareness about animal protection; and
- Works to advance animal interests through law reform.

ADO is a national legal centre in that they assist individuals and groups from around Australia with matters affecting animals and their (human) defenders.

ADO is run entirely by volunteer lawyers, law students and other professionals, and receives no government funding.

You can donate to the ADO here: <https://www.ado.org.au/donate>



Animal Defenders
Office

Using the law to protect animals

