

Proving ‘ownership’ of pet animals

This Factsheet is for general information purposes and is not legal advice. It provides a brief overview only of this area of the law.

Legal character of animals

In Australia animals are categorised as ‘personal property’ that can be ‘owned’. This applies whether the animal is a farm animal, an expensive racehorse, or a pet. While most pet owners consider their pets to be part of the family rather than an item of property such as a toaster, the law does not recognise this distinction. As such, disputes about the ownership of pets are subject to the same laws governing disputes about other items of personal property.



Proving ownership of pets

In general, ownership of personal property is proved by possession of the property or reference to a government maintained register. For example, a car, motorcycle or boat registration in a person’s name will normally be conclusive proof of ownership. In every state and territory in Australia,¹ it is a requirement to register a dog² with the relevant authority, such as local councils or the Domestic Animal Services in the ACT. The registration is usually the main evidence used in determining the ownership of pets.

If you want to claim that you own a pet you should have the animal registered and/or microchipped in your name. Taking such steps will go some way to proving that you have the best legal entitlement to the animal.

What if I haven’t registered my pet?

Local laws will usually define who is the ‘owner’ of an animal. For example, section 7 of the *Companion Animals Act 1998* (NSW) says that each of the following could be an ‘owner’ of a companion animal:

“(a) the owner of the animal (in the sense of being the owner of the animal as personal property),
(b) the person by whom the animal is ordinarily kept,
(c) the registered owner of the animal.”

In *Meimaropolous v Cheum*³ the District Court of New South Wales considered the above definition in circumstances where the animals in question were not registered. The Court found that ‘owners’ of the animals were the owners of the property where the animals normally resided. Those persons had cared for the animals and treated them as family pets such that they were ‘ordinarily kept’ by those persons.

In *Stevens v City of Wanneroo*⁴, the West Australian State Administrative Tribunal found that in circumstances where the animal in question was not registered, the details recorded on the microchip embedded in the animal was good evidence of the ownership of the animal for the purpose of having the animal registered in a person’s name.

¹ See for example, *Companion Animals Act 1998* (NSW); *Domestic Animals Act 1994* (Vic); *Domestic Animals Act 2000* (ACT) *Animal Management (Cats and Dogs) Act 2008* (Qld); *Dog and Cat Management Act 1995* (SA); *Dog Act 1976* (WA); *Dog Control Act 2000* (Tas) and *Darwin City Council By-Laws* (NT).

² Some states and territories also require the registration of other companion animals such as cats: see for example *Companion Animals Act 1998* (NSW), section 9.

³ [2014] NSWDC 26.

⁴ [2015] WASAT 55.

DISCLAIMER

While all care has been taken in preparing the information on this fact sheet, it is not a substitute for legal advice. For any specific questions we recommend you seek legal advice. The Animal Defenders Office accepts no responsibility for any loss or damage suffered by people relying on the information on this fact sheet.

What if my pet isn't registered or microchipped?

If the animal is not registered in your name, is not registered at all, or does not have your details recorded on a microchip, ownership will need to be proved by way of other evidence. Evidence that may assist in proving ownership includes receipts for expenses in relation to the animal such as the initial purchase of the animal, and veterinary and food bills, or photos of you with the animal over an extended period. A checklist is included at the end of this factsheet to help you determine who has the best legal claim to an animal.

Disputes in relation to companion animals

Disputes about who owns an animal may arise in many circumstances, including if a pet is not included in the keeper's will and the keeper dies, or if you've been looking after an animal who someone else claims as theirs. If there is a dispute about the ownership of a pet, the first step should always be resolving the dispute by agreement where possible. If you feel comfortable, you should meet with the person you are having the dispute with and try to reach an agreement. If an agreement cannot be reached, mediation before an independent third party may assist in resolving the dispute. If these steps fail, legal proceedings may be necessary to enforce your ownership rights.



Any legal proceedings are likely to be costly. There are, however, some low cost courts and tribunals that may be available. The Legal Aid Commission in your state/territory or a Community Legal Centre in your local area will often be able to give you advice about the options available to you.

Checklist

Checklist for determining the owner of a companion animal

- 1. Does the animal have a microchip? If so, whose name is recorded on the microchip?**

- 2. Is the animal registered eg with the local council (NSW) or Domestic Animal Services (ACT)?**

- 3. Whose name is the animal registered in?**

- 4. Who does the animal normally live with? How long has the animal been living with them?**

- 5. Was the animal purchased? If so, by whom? Is there a receipt?**

- 6. Who pays for the animal's food and veterinary care?**

- 7. Who currently has possession of the animal?**

- 8. Do you have photos of you with the animal over an extended period?**
