

1992

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

DOG CONTROL (AMENDMENT) BILL 1992

EXPLANATORY MEMORANDUM

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Planning**

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DOG CONTROL (AMENDMENT) BILL 1992

The Dog Control (Amendment) Bill 1992 ("the Bill") amends the *Dog Control Act 1975* ("the Act") to -

- enable the Registrar to grant a licence to a person to keep more than three dogs on residential premises even though the facilities for keeping the dogs do not comply with the requirements of the Act as to the siting of those facilities; and
- exempt a person from the requirement to register a dog where the dog is to be kept for breeding purposes for a period of a maximum of 30 days, it is registered in another jurisdiction and the Registrar is notified concerning the keeping of such a dog;
- make obtaining a licence to keep more than three dogs on residential premises, by fraud or misrepresentation, a ground for cancellation of the licence;
- remove sexist language from the Act and otherwise bring the language of the Act into accord with current drafting practice.

Financial implications

There are no financial implications arising from the Bill.

The Dog Control Act 1975

The Act is principally concerned with the registration of dogs, the licensing of persons who keep more than three dogs upon residential premises, the seizure and destruction of dogs, the rights of deaf and blind persons with dogs and offences relating to the behaviour of dogs.

The Dog Control (Amendment) Act 1991 ("the amending Act") inserted a new Part, "Part IIA - Keepers' Licences", into the Act. This Part contains provisions requiring a person who keeps more than three dogs on residential premises to be licensed for that purpose.

A licence may not be granted by the Registrar unless he or she is satisfied that a dog, kept pursuant to the licence -

- will be confined in a yard, any part of which must be at least 9 metres from a neighbouring house or 2 metres from a boundary fence; and
- the yard will allow the dog adequate freedom of movement.

This is only one of a number of matters in respect of which the Registrar must be satisfied before a licence may be granted. Other matters include the adequacy of the shelter for the dog and ventilation and sanitation of the facilities for the dog.

Since the passage of the amending Act it has become apparent that many persons who currently keep more than three dogs on residential premises have already established facilities for the keeping of those dogs, in some cases at considerable cost. However, in many cases the existing facilities are not located on the premises so as to be capable of complying with the siting requirements.

The Bill amends the Act to enable the Registrar, where facilities for the keeping of more than three dogs have been established on residential premises prior to the day upon which the amending Act will commence to issue a licence for the keeping of more than three dogs at those premises even though the facilities are not sited on the premises so as to comply with the Act. The facilities, however, will have to meet all other relevant requirements of the Act in order for a licence to be issued.

This amendment -

- clarifies the siting requirements which were inserted by the amending Act to ensure that an applicant for a licence must comply with both the 9 metre and 2 metre rules and not merely one of them; and
- avoids requiring persons who have already established facilities for the keeping of more than three dogs, which facilities do not comply with the 9 metre and 2 metre rule, to bear the cost of relocating those facilities to comply with that rule.

The amendment will only apply in respect of facilities which existed prior to 25 June 1992 and in respect of which an application for a licence has been lodged before 1 October 1992. From that date all applicants for a licence to keep more than three dogs on residential premises will be required to meet the 9 metre and 2 metre rule as to siting of the yard for the dogs.

The Act requires, subject to some exceptions, that once a person has kept a dog for more than 14 days, the person must register the dog. The Bill amends the Act to include an additional exception from the requirement to register a dog in the case of a person who keeps a dog for breeding purposes provided that -

- the dog is kept for a maximum of 30 days;
- the dog is registered interstate;
- the Registrar is notified of the keeping of the dog, including the address at which the dog is being kept; and
- where the keeper does not hold a licence to keep more than three dogs on residential premises, the number of dogs kept by the person at the address advised to the Registrar does not exceed three.

This amendment is intended to enable a breeder of dogs to keep an interstate registered dog for a limited period, for the purposes of breeding, without requiring that that dog be registered.

The Act sets out the grounds for the cancellation of a licence to keep more than three dogs. The Bill includes the obtaining of a licence by fraud or misrepresentation as an additional ground upon which a licence may be cancelled.

Finally, the Bill amends the Act to remove sexist language and otherwise bring the Act into accord with current drafting practice.

MAIN AMENDMENTS

Clause 4 - grant or refusal of a licence to keep more than three dogs

Clause 4 amends section 18C of the Act by omitting paragraph (3)(a) which requires that the Registrar refuse to grant a licence in relation to a dog unless satisfied that the dog will be confined in a yard no part of which is

less than 9 metres from a neighbouring house or 2 metres from a boundary fence and which yard will allow the dog adequate freedom of movement.

This paragraph is replaced by new paragraphs (3)(a) and (3)(ab), which separate the requirements dealing with the siting of the yard and its capacity to allow adequate freedom of movement for the dog, and new subsection (4), which limits the application of the provisions dealing with the siting of the yard.

New paragraph (3)(a) requires that the Registrar refuse to grant a licence in relation to a dog unless satisfied that the dog will be confined in a yard which affords the dog adequate freedom of movement.

New paragraph (3)(ab) requires that no part of the yard be less than 9 metres from a neighbouring house and 2 metres from a boundary fence.

New paragraph (4) (a) limits the scope of new paragraph (3)(ab) by excluding those yards which were completed prior to 25 June 1992, and in respect of which an application for a licence has been received prior to 1 October 1992, from its application. This amendment will prevent dog keepers who have already constructed facilities for the keeping of more than three dogs from being denied a licence to keep more than three dogs because they are unable to satisfy the siting requirements of new paragraph (3)(ab) provided that they lodge an application for a licence before 1 October 1992. This provision gives dog keepers more than three months from the commencement of the new siting provisions in which they may apply for a licence which may not be refused on the ground that their facilities do not comply with the siting provisions. The Registrar of Dogs has already advised members of dog and kennel clubs of the proposed changes to the legislation. Prior to 1 October 1992 it is intended that sufficient additional publicity will be undertaken by the Registrar to ensure that those persons likely to be affected by the new siting requirements are aware that they may apply for a licence prior to 1 October and may be entitled to the licence notwithstanding that the facilities for keeping of dogs upon their premises do not comply with the siting rule.

New paragraph (4) (b) is intended to clarify the entitlement of a person who has been granted a licence, notwithstanding that the facilities of the person for the keeping of dogs do not comply with the 9 and 2 metre rule

to be relicensed even though the facilities may continue to be inconsistent with the siting rule.

It is intended that once there is a break in the licensing of the premises in respect of any new application for a licence the applicant will be required to satisfy the siting provisions of new paragraph 18C(4)(ab).

Clause 5 - cancellation of licence

Clause 5 amends section 18F of the Act to add as a ground for the cancellation of a licence to keep more than three dogs the obtaining of the licence by fraud or misrepresentation.

Clause 6 - keeping unregistered dogs

Clause 6 amends section 19 of the Act which makes it an offence for a person to keep an unregistered dog, subject to specific exceptions.

Clause 6 extends the exceptions to the requirement that a dog be registered by including a dog which is kept for the purposes of breeding. There is no requirement upon a person who keeps such a dog to register the dog if -

- . the dog is registered or licensed in another State or Territory;
- . the dog has been or is to be kept for a period not exceeding 30 days;
- . the person notifies the Registrar in the prescribed form within 14 days of commencing to keep the dog of the address at which the dog is being kept; and
- . where the person does not hold a licence, under the Act, to keep more than three dogs, the total number of dogs kept at that address would not exceed three.

This amendment will enable dog breeders to keep an interstate registered dog for a limited time for the purposes of breeding without requiring that the dog be registered.

TRANSITIONAL AMENDMENT***Clause 8 - Transitional***

Clause 8 is included so that a person who keeps dogs in a yard the construction of which was completed prior to the commencement of Part IIA and who may, in accordance with new subsection 18C(4), apply for a licence prior to 1 October 1992 is not guilty of an offence against section 18A of the Act which requires all persons who keep more than three dogs to be licensed.

This provision only applies to such a person who applies for a licence before 1 October 1992 and provided that the person has not been notified by the Registrar of his or her refusal to grant a licence.

FORMAL AND TECHNICAL MATTERS***Clauses 1, 2, 3 and 7 - formal and technical amendments***

Clauses 1 and 2 are formal provisions dealing with citation and commencement, respectively. *Clause 2* provides for the formal sections of the Act to commence upon the Act's notification in the Gazette. The substantive provisions of the Act are to commence on the same day as Part IIA of the Act, inserted by the *Dog Control (Amendment) Act 1991*, commences or commenced. This ensures that there is no gap between the commencement of the amending Act and the Bill and that no person to whom section 18A applies is adversely affected during this period.

Clause 7 makes amendments as set out in the Schedule to the Bill to bring the language of the Act into accord with current drafting practice and, in particular, provides for the use of gender neutral terms in the Act.