

1991

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

DOG CONTROL (AMENDMENT) BILL 1991

EXPLANATORY MEMORANDUM

**Circulated by the authority of the Minister for the Environment, Land and
Planning**

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Dog Control (Amendment) Bill 1991

Explanatory Memorandum

Outline

The Dog Control (Amendment) Bill 1991 ("the Bill") amends the *Dog Control Act 1975* ("the Principal Act") to require a person in control of a dog to take reasonable precautions to prevent the dog from escaping into a public place or the premises of another person. The Bill amends the Principal Act to require that where a dog is in a public place it be restrained by a competent person, by means of a leash, unless the dog is in a declared exercise area or participating in an activity such as a dog show or working livestock, in which circumstances the dog must be otherwise under the control of a competent person.

The Bill substantially increases penalties for offences under the Principal Act and introduces a system of on-the-spot fines in relation to particular offences under the Act. It also amends the Principal Act to provide that the keeper of a dog is guilty of an offence where the dog attacks wildlife.

A new Part IIA is inserted in the Principal Act, providing a licensing regime for persons who wish to keep more than three dogs at a residential premises. A licence will be required for such a purpose and the Registrar of Dogs, in considering an application for a licence, will be required to take into account factors including the suitability of the accommodation provided for the dogs and the likelihood of any nuisance to neighbours.

The Bill provides for fees under the Principal Act to be determined by the Minister and it is proposed to provide for a range of registration, licence and other fees, applying in respect of various categories of keepers and dogs, by Ministerial determination.

Financial implications

The Bill will have no direct effect on income or expenditure.

Details of the Bill are included in the Attachment.

Attachment

Dog Control (Amendment) Bill 1991

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Formal clauses

Clause 1 is a formal clause providing for the short title of the Bill.

Clause 2 provides for the commencement of the Bill.

Subclause 2(1) provides for sections 1 and 2 of the Bill to commence upon notification of the Act in the *Gazette*.

Subclause 2(2) provides for the remaining provisions to commence on a day fixed by the Minister by notice in the *Gazette*.

Subclause 2(3) provides that where a provision of the Bill has not commenced within six months of the day on which the Act is notified in the *Gazette*, that provision will come into effect upon the first day after the expiration of that six month period.

Clause 3 provides that references in the Bill to the "Principal Act" are to be read as references to the *Dog Control Act 1975*.

Interpretation

Clause 4 amends section 5 of the Principal Act, which is an interpretation provision, by adding a number of definitions for terms used in the Bill and omitting the definitions of "pensioner" and "unemployed person" as these terms no longer appear in the Principal Act.

Clause 5 inserts in Part I of the Principal Act, after section 7, new provisions dealing with identity cards for inspectors and declared exercise areas.

Identity cards

New section 7A requires the Minister to issue each inspector an identity card, bearing the name and a recent photograph of the inspector and details of the appointment of the inspector.

New section 7B requires an inspector to return his or her identity card to the Registrar on ceasing to be an inspector, subject to a defence of reasonable excuse.

A penalty of \$100 is provided.

Declared exercise areas

New section 7C provides for the declaration by the Minister of exercise areas for dogs.

Amendments to section 21 of the Principal Act limit the circumstances in which a dog may be off a leash in a public place. One of the circumstances in which a dog may be off a leash is where the dog is in a declared exercise area.

New subsection 7C(1) provides that the Minister may declare a specified area to be an exercise area for the purposes of the Principal Act. Such declarations are required to be published in the *Gazette*.

New subsection 7C(2) provides that such a declaration by the Minister is a disallowable instrument. Consequently, a declaration will be of no effect if it fails to satisfy the notification and tabling requirements of section 10 of the *Subordinate Laws Act 1989* and it will be subject to scrutiny and disallowance by the Legislative Assembly.

Application for registration

Clause 6 repeals section 9 of the Principal Act, dealing with application for registration of a dog, and substitutes a new section 9.

Substituted section 9 requires that an application in a form approved by the Registrar, specifying particulars relating to the applicant, the dog and the premises at which the dog is to be kept must be lodged with the Registrar together with the determined fee.

The new section will enable the Registrar to determine the details required in support of an application for registration of a dog, rather than rely on a prescriptive list such as the one in repealed paragraph 9(1)(b). The provisions of paragraph 9(1)(d) and subsection 9(2) of the Principal Act are no longer necessary as the categories of dogs and keepers in respect of which different levels of registration fees for a dog are payable will be dealt with by Ministerial determination.

Registration

Clause 7 amends section 10 of the Principal Act by omitting from subsection (1) a reference to "section 11". Section 11 of the Act has been previously repealed.

Clause 7 also omits from subsection (2) the words "and every renewal of registration", as the provisions dealing with renewal of registration are repealed by the Bill. The renewal process is substantially the same as the process of application for registration and the keeper of a dog will, at the expiration of each period of registration, apply for a new registration of the dog.

Subsection 10 (3) of the Principal Act is omitted because these provisions are no longer necessary as the categories of dogs and keepers in respect of which different levels of registration fees for a dog are payable will be dealt with by Ministerial determination.

Certificate of Registration

Clause 8 amends section 12 of the Principal Act, dealing with the issue of registration documentation, by inserting a new subsection (1A) to provide that where a dog is re-registered the Registrar is not required to issue a new registration tag for the dog unless a new registration number has been assigned in respect of the dog.

Renewal of registration

Clause 9 repeals section 13 of the Act dealing with renewal of registration as renewal of registration will be effected by re-registration under section 9 of the Principal Act.

Notice of change of address

Clause 10 amends section 15 of the Principal Act, which requires the keeper of a dog to advise the Registrar within 14 days of any change in the address at which a dog is kept, by changing the reference in subsection (1) from a reference to a "dog" to a reference to a "registered dog", as the requirement to notify the Registrar of a change in the address at which a dog is kept applies only in respect of registered dogs.

Clause 10 also provides a penalty of \$300 for contravention of subsection 15(1) and amends subsection 15(3) of the Act to refer to a "determined fee" rather than a "prescribed fee".

Lost certificates

Clause 11 amends section 18 of the Principal Act, which provides for the replacement of lost registration certificates, to refer to a "determined fee" rather than a "prescribed fee".

Keepers' licences

Clause 12 inserts a new part in the Principal Act, after Part II -

PART IIA - KEEPERS' LICENCES

to provide a licensing system for persons who wish to keep more than three dogs on residential premises.

New section 18A deals with the offence of keeping more than 3 dogs without a licence.

New subsection 18A(1) provides that it is an offence for a person to keep more than three dogs, on residential premises within the City Area, except in accordance with a licence, and provides a penalty of \$500.

New subsection 18A(2) provides that no offence is committed if:

- (a) a dog kept in excess of three dogs:
 - (i) is less than 3 months of age;
 - (ii) has been or is to be kept by the person for less than fourteen days;
 - (iii) is a guide dog or hearing dog; or
- (b) the person keeping the dog has resided in the Territory for no more than three weeks.

New section 18B deals with applications for a licence to keep more than three dogs and requires that an application be in a form approved by the Registrar and specify the particulars relevant for the purposes of section 18C, dealing with the matters to which the Registrar shall have regard in considering an application for a licence. An application must be lodged with the Registrar and accompanied by the determined fee.

New subsection 18C deals with the granting of a licence by the Registrar.

New subsection 18C(1) provides that the Registrar may, on receipt of an application for a licence, grant a licence subject to any specified conditions or refuse to grant a licence.

New subsection 18C(2) sets out the matters to which the Registrar must have regard when considering an application for a licence.

New subsection 18C(3) prohibits the Registrar from granting a licence unless he or she is satisfied that the dog will be confined in a yard which meets specified requirements as to its location in relation to dwelling houses and boundary fences and as to the accommodation provided for the dog.

New section 18D dealing with the duration of a licence provides that a licence shall remain in force for a period not exceeding twelve months from the date upon which it is granted.

New section 18E requires a person to whom a licence has been granted to notify the Registrar in writing, within fourteen days, of particular changes in the circumstances of the licensee.

New subsection 18E(1) requires that details of a change of residential address be provided to the Registrar.

New subsection 18E(2) requires that particulars of a dog kept by the licensee other than a dog specified in the licence be provided to the Registrar.

New subsection 18E(3) provides a maximum penalty of \$300 for a person who fails to notify the Registrar of any such change, without reasonable excuse.

New section 18F deals with cancellation of a licence.

New subsection 18F(1) provides that the Registrar may cancel a licence at the request of the licensee.

New subsection 18F(2) provides that subject to the requirements in section 18G, which relates to the Registrar giving notice of his or her intention to cancel a licence, the Registrar may cancel a licence where a ground for refusing to grant a licence exists or a licensee has failed to comply with a condition of the licence.

New subsection 18F(3) provides that cancellation takes effect on the date on which written notice of the cancellation is given to the licensee or any later date of effect, as specified in the notice.

New section 18G deals with the notice of proposed cancellation required to be given to a licensee.

New subsection 18G(1) provides that the Registrar shall not cancel a licence unless the Registrar has given written notice to the licensee specifying the grounds for the proposed cancellation of the licence, stating the facts or circumstances which constitute that ground and informing the licensee that he or she may, within 14 days after the date of the notice, provide to the Registrar a written response to the matters raised in the notice.

New subsection 18G(2) requires that the Registrar shall have regard to any response to a notice of proposed cancellation, for the purpose of making a decision regarding cancellation of a licence.

New section 18H deals with powers of inspection.

New subsection 18H(1) provides that where an inspector has reasonable grounds to believe that a person is keeping a dog on premises in contravention of section 18A that the inspector may, for the purposes of this Part, enter and inspect residential premises at any reasonable time or with the consent of the occupier of the premises.

New subsection 18H(2) provides that an inspector who enters premises is not authorised to remain on those premises if the inspector fails to produce his or her identity card, on request by or on behalf of the occupier of the premises.

New subsection 18H(3) provides that an inspector who is entitled to remain on premises may, for the purposes of this Part, inspect the premises and examine facilities that appear to

be used in connection with the keeping of a dog. In addition, an inspector may take photographs and make such other recordings as the inspector believes, on reasonable grounds, to be necessary.

Keeping an unregistered dog

Clause 13 amends section 19 of the Principal Act to require keepers of dogs to register dogs at three months of age instead of six months of age.

Preventing escape of dogs

Clause 14 inserts a new section 20A into the Principal Act which requires a person who has possession or control of a dog in or on premises or a vehicle to take reasonable precautions to prevent the dog from escaping into a public place or another person's premises or vehicle, without the consent of that other person.

A penalty of \$500 is provided.

Dogs in public places

Clause 15 amends section 21 of the Principal Act, dealing with a dog being at large in a public place, by omitting superfluous words from subsection 21(1), omitting subsections (3) and (4) and substituting new subsections (3), (4), (5) and (6).

Substituted subsection 21(3) provides that in a prosecution for an offence against subsection (1) - having a female dog on heat in a public place - it is not a defence that the dog was under control but it is a defence that the keeper had taken reasonable precautions to prevent the dog from being in a public place.

Substituted subsection 21(4) provides that where a dog is in a public place and is not restrained by a competent person, by means of a leash, the keeper of the dog is guilty of an offence. A maximum fine of \$500 is provided.

New subsection 21(5) provides that it is a defence to a prosecution for an offence under subsection 21(4) that the keeper had taken reasonable precautions to avoid contravening subsection (4).

New subsection 21(6) identifies specific circumstances in which subsection 21(4) does not apply to a dog, provided that the dog is under the control of a competent person. These include where a dog is in a declared exercise area, participating in a dog show or working livestock.

Dog attacking or worrying a person or animal

Clause 16 amends section 25 of the Principal Act dealing with dogs attacking or worrying a person or animal to provide that in addition to where a dog attacks a person, domestic animal or farm animal, where a dog attacks wildlife, the keeper of the dog is guilty of an offence.

Seizure

Clause 17 amends section 28 of the Principal Act dealing with seizure of dogs by omitting subsection (1) and substituting a new subsection (1), amending subsections 28(2), 28(3) and 28(5) and inserting new subsection 28(4A).

Substituted subsection 28(1) provides that an inspector may seize a dog in a public place where, if paragraphs 21(6)(a), (b), (c) or (d) apply, the dog is not under the control of a competent person or in any other case the dog is not restrained by a leash held by a competent person.

Subsections 28(2), 28(3) and 28(5) are amended to include references to "wildlife" to provide that an inspector may seize a dog or require the keeper of a dog to produce the dog where the inspector has reason to believe that a dog has attacked wildlife, in certain specified circumstances.

New subsection 28(4A) provides that an inspector may seize a dog which is kept in contravention of new section 18A, requiring that

persons be licensed to keep more than three dogs on residential premises.

Notice of seizure

Clause 18 amends section 29 of the Principal Act, which requires the Registrar, in particular circumstances, to notify the keeper of a dog that his or her dog has been seized, to extend this requirement to circumstances in which the Registrar has seized a dog under subsection 28(4A).

Return of impounded dog

Clause 19 amends section 30 of the Principal Act to reflect the renumbering of existing subsections, the inclusion of a new subsection and the replacement of "prescribed" fees with "determined" fees.

New subsection 30(3) provides that a Registrar shall not return a dog to its keeper where the Registrar has reasonable grounds to believe that this would result in the dog being kept in contravention of the licensing requirements of Part IIA.

Detention of dogs that have attacked or worried persons or animals

Clause 20 amends section 31 of the Principal Act to allow 14, rather than 7, days within which the Registrar may institute proceedings for an offence, in respect of a detained dog, before the Registrar will be required to otherwise return the dog to its keeper.

Destruction of dogs by Registrar

Clause 21 amends section 32 of the Principal Act, dealing with destruction and sale of dogs, by adding two new subsections.

New subsection 32(2) prohibits the Registrar from destroying or selling a dog where at the end of the relevant period, referred to in subsection (1), an application for a licence in relation to the dog is pending with the Registrar or a decision of the Registrar in respect of

a licence or a decision of the Administrative Appeals Tribunal or a court relating to a decision of the Registrar has not become final.

New subsection 32(3) provides that a decision will be taken to have become final where no application for a review has been made, or appeal instituted, within 28 days after the date of the decision.

Estimated purchase price

Clause 22 amends section 32A of the Principal Act by substituting a reference to "determined fees" for an outdated reference to fees.

Destruction of attacking dog

Clause 23 amends section 34 of the Principal Act dealing with the circumstances in which a person may destroy a dog to include circumstances in which a dog is found attacking wildlife.

Certified copy of registration certificate and inspection of Register

Clauses 24 and 25 amend sections 36 and 38 of the Principal Act, respectively, by replacing references to "prescribed" fees with references to "determined" fees.

Compensation for injuries caused by dog

Clause 26 amends section 40 of the Principal Act dealing with circumstances in which compensation may be payable where a dog attacks persons or animals to include circumstances in which a dog attacks wildlife.

Appeals, notification of decisions and infringement notices

Clause 27 inserts new sections dealing with appeals, notification of decisions and issue of infringement notices in the Act.

New section 40AA provides that application may be made to the Administrative Appeals Tribunal for a review of a decision of the

Registrar in relation to the granting of a licence, under section 18C, to keep more than three dogs subject to conditions, refusing to grant such a licence and cancelling a licence under section 18F.

New section 40AB sets out the requirements for notification to a person of a decision referred to in section 40AA.

New subsection 40AB (1) requires the Registrar to, within 7 days of making a decision of a kind referred to in section 40AA, in respect of a person, to give written notice to that person, of that decision.

New subsection 40AB(2) requires that the notice set out the reasons for the decision and advise the person as to his or her right to seek a review of the decision by the Administrative Appeals Tribunal.

New subsection 40AB(3) provides that the validity of a decision referred to in subsection (1) is not to be taken to be affected by a failure to comply with subsection (2).

New section 40AC sets out the procedures for the issuing and processing of infringement notices in respect of certain prescribed offences.

New subsection 40AC(1) provides for the interpretation of terms used in this section.

New subsection 40AC(2) provides that where an authorised officer, being the Registrar, Deputy Registrar or an inspector, believes on reasonable grounds that a person has committed a prescribed offence, the officer may serve an infringement notice on the person.

New subsection 40AC(3) specifies the particulars which must be included in an infringement notice.

New subsection 40AC(4) provides that the "due date" for payment of a prescribed penalty in respect of which an infringement notice has been issued is the 28th day after the date of the notice or, where an application for an extension of the due date is pending before the 28th day after the notice was issued, the date fixed by the Registrar in accordance with the following subsection.

New subsection 40AC(5) provides that where, before the due date, the Registrar receives a written application for an extension of the due date the Registrar may specify a new due date, by written notice to the applicant. Such new due date may not be less than 14 days after the date of the notice.

New subsection 40AC(6) provides that an authorised officer may, within 28 days of the infringement notice, withdraw the infringement notice, by notice in writing to the person to whom the infringement notice was issued.

New subsection 40AC(7) provides that where a person pays the prescribed penalty before the due date the person's liability in respect of the offence is discharged, no criminal conviction is recorded and proceedings may not be instituted against the person in respect of the offence.

New subsection 40AC(8) requires the Registrar to refund an amount paid pursuant to an infringement notice where the notice is subsequently withdrawn.

New subsection 40AC(9) provides for the use in proceedings for the prosecution of a prescribed offence of an evidentiary certificate stating particulars as to the service of an infringement notice, any extension of the due date, any payment of the penalty and any withdrawal of the notice.

New Schedule 2

Clause 28 amends the Principal Act by adding a schedule of prescribed offences which will be the subject of an infringement notice under new section 40AC.

Increases in penalties

Clause 29 amends the Principal Act in accordance with the amendments set out in Schedule 2, to give effect to increases in penalties for certain offences under the Act which are specified in the Schedule.