

2014

**THE LEGISLATIVE ASSEMBLY FOR
THE AUSTRALIAN CAPITAL TERRITORY**

DOMESTIC ANIMALS AMENDMENT BILL 2014

EXPLANATORY STATEMENT

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Domestic Animals Amendment Bill 2014

Overview of the Bill

The Domestic Animals Amendment Bill 2014 (the Bill) amends the *Domestic Animals Act 2000* (the Act) to create new offences of allowing a dog to attack a person or animal causing serious injury, and of allowing a dangerous dog to attack a person or animal causing serious injury. The Bill also redrafts certain offences currently in the Act to better reflect current legislative drafting style.

The Bill also amends the *Magistrates Court (Domestic Animals Infringement Notices) Regulation 2005* to increase the infringement notice penalty for the offence of allowing a dog to attack or harass a person or animal.

The aim of the Bill is to reduce injury to people and animals in the ACT from dog attacks and harassment.

Human rights implications—presumption of innocence

New section 49A of the Bill contains two offences of strict liability. Strict liability engages the right to be presumed innocent under section 22 of the *Human Rights Act 2004* as it may reverse the onus of proof from the prosecution onto a defendant. While strict liability offences engage the presumption of innocence, they are not inherently incompatible with human rights.

New section 49A (1) contains an offence if a person is the carer for a dog and the dog attacks or harasses another person or animal, and new section 49A (2) contains an offence if a person is the keeper of a dog and the dog attacks or harasses a person or animal. It is important to note that these are not new offences, but are redrafted offences that already exist in current section 50 of the Act.

Section 28 of the Human Rights Act provides that human rights are subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society. Section 28 (2) of the Human Rights Act provides that in deciding whether a limit on a human right is reasonable, all relevant factors must be considered. The limits on the right in section 22 is considered reasonable and justifiable in a free and democratic society, taking into account the factors enumerated in section 28 (2) of the Human Rights Act, namely:

(a) *The nature of the right being limited*

The right to presumption of innocence before the law is a very important right that has been recognised by the common law for centuries, and is now codified in section 22 of the Human Rights Act. The courts have held, however, that the right to presumption of innocence may be subject to limits, particularly where those who might be affected by an offence would be expected to be aware of its existence. The offences in new section 49A are already on the statute book, and it is expected that the keepers and carers of dogs are aware that they are under an obligation to prevent dogs for which they are responsible from attacking or harassing other people or animals.

(b) The importance of the purpose of the limitation

The purpose of providing a reverse onus is to ensure the effective enforcement of and compliance with new section 49A by enabling the offences within it to be effectively prosecuted. The limitation on section 22 is aimed at providing the effective promotion of responsible dog ownership to limit incidents of dog attacks or harassment on other people or animals.

The offence in new section 49A is targeted at the keepers and carers of dogs who should be well aware that the obligations of keeping or caring for a dog includes preventing it from attacking or harassing another person or animal.

(c) The nature and extent of the limitation

The strict liability offences in new section 49A may engage the right to be presumed innocent by reversing the onus of proof from the prosecution onto a defendant.

It is noted that the maximum penalty for a prosecution of the offences in new section 49A is 50 penalty units, without imprisonment. This is considered proportionate and not unduly harsh for an offence which has been enacted to protect people and animals from attacks or harassment by dogs.

(d) The nature between the limitation and its purpose

The imposition of a burden of proof on the defendant through creating the strict liability offences in new section 49A enables the offences to operate as an effective deterrent. Those who are affected by the offence—the keepers and carers of dogs—are expected to be aware that they must prevent dogs for which they are responsible from attacking or harassing other people or animals.

(e) Less restrictive means reasonably available to achieve the purpose

Although an evidential onus would be less restrictive on the right to be presumed innocent found in section 22, it would not be as effective. This is because strict liability offences provide that the defendant's act alone should dictate the offence, rather than the reasons that the defendant acted in that way.

While the inclusion of strict liability limits the range of defences that may be available for a person accused of an offence to which it applies, a number of defences remain open to the accused, depending on the particular facts of each case. Section 23 (1) (b) of the *Criminal Code 2002* provides a specific defence to strict liability offences of mistake of fact. Section 23 (3) of the *Criminal Code* provides that other defences may also be available for use for strict liability offences, which includes the defence of intervening conduct or event, as provided by section 39 of the *Criminal Code*.

CLAUSE NOTES

Clause 1 Name of Act

This clause provides that the name of the Act is the *Domestic Animals Amendment Act 2014*.

Clause 2 Commencement

This clause provides for the commencement of the Act. The Act commences on the day after its notification day.

Clause 3 Legislation amended

This clause provides that this Act amends the *Domestic Animals Act 2000*. This Act also amends the *Magistrates Court (Domestic Animals Infringement Notices) Regulation 2005*.

Clause 4 Offences against Act—application of Criminal Code etc Section 4A, note 1

This is a consequential amendment to note 1 of section 4A of the Domestic Animals Act as a result of inserting new section 49A and amending current sections 50 and 50A.

Clause 5 New section 49A

This clause inserts new section 49A into the Domestic Animals Act. New section 49A is a redrafting of current section 50 of the Act, to better reflect current legislative drafting style.

New section 49A rewords two current offences:

- section 49A (1) contains an offence if a person is the carer for a dog and the dog attacks or harasses another person or animal; and
- section 49A (2) contains an offence if a person is the keeper of a dog and the dog attacks or harasses a person or animal.

Section 49A (3) provides that the above offences are strict liability offences.

Defences to the offences in sections 49A (1) and (2) are provided in section 49A (4). These defences include that:

- the person or animal provoked the dog that attacks or harasses;
- the dog was coming to the aid of a person or animal that it could be expected to protect; and
- the person was on the defendant's premises without lawful excuse.

Section 49A (5) provides a further defence to the offence in section 49A (2) for a keeper of a dog where, at the time of the offence, someone else was the carer of the dog.

The offences in sections 49A (1) and (2) have maximum penalties of 50 penalty units.

Clause 6 Section 50

This clause substitutes section 50 of the Domestic Animals Act.

New section 50 creates two new offences if a dog attacks a person or animal causing serious injury:

- section 50 (1) creates an offence if a person is the carer of a dog and the person:
 - does or omits to do something;
 - which results in the dog attacking another person or animal causing serious injury; and
 - the person intended the attack to cause, or is reckless about the attack causing, serious injury to the other person or animal; and
- section 50 (2) creates an offence if a person is the keeper of a dog and the person:
 - does or omits to do something;
 - which results in the dog attacking another person or animal causing serious injury; and
 - the person intended the attack to cause, or is reckless about the attack causing, serious injury to the other person or animal.

Defences to the offences in sections 50 (1) and (2) are provided in section 50 (3). These defences include that:

- the person or animal provoked the dog that attacks;
- the dog was coming to the aid of a person or animal that it could be expected to protect; and
- the person was on the defendant's premises without lawful excuse.

Section 50 (4) provides a further defence to the offence in section 50 (2) for a keeper of a dog where, at the time of the offence, someone else was the carer of the dog.

The offences in sections 50 (1) and (2) have maximum penalties of 100 penalty units, imprisonment for 1 year, or both.

Section 50 (5) provides for orders that a court may make to deal with a dog after its keeper or carer is convicted or found guilty of an offence in section 50.

Section 50 (6) provides a definition of ***serious injury*** for section 50.

Clause 7 Section 50A, heading

This clause substitutes the heading of section 50A as a consequence of the amendments to that section made by clause 8.

Clause 8 Section 50A (1) and (2)

This clause substitutes sections 50A (1) and (2) of the Domestic Animals Act, with new sections 50A (1), (2) and (2A). New section 50A (1) is a redrafting of current section 50A of the Act, to better reflect current legislative drafting style. New section 50A (2) provides a new offence of a dangerous dog attacking causing serious injury.

Dangerous dogs are declared under section 22 of the Domestic Animals Act. It is an offence for a person to keep a dangerous dog except in accordance with a dangerous dog licence issued by the registrar of Domestic Animal Services under section 23 of the Domestic Animals Act.

New section 50A (1) contains an offence if a person is the keeper of a dangerous dog and the person does or omits to do something which results in the dog attacking or harassing another person or animal. The maximum penalty for the offence in section 50A (1) is 100 penalty units, imprisonment for 1 year or both.

New section 50A (2) creates an offence if a person is the keeper of a dangerous dog and the person does or omits to do something which results in the dangerous dog attacking another person or animal causing serious injury. Section 50A (2) (e) provides that in order to have committed the offence, the person must intend the attack to cause, or is reckless about the attack causing, serious injury to the other person or animal. The maximum penalty for the offence in section 50A (2) is 500 penalty units, imprisonment for 5 years or both.

Defences to the offences in sections 50A (1) and (2) are provided in section 50A (2A). These defences include that:

- the person or animal provoked the dog that attacks or harasses;
- the dog was coming to the aid of a person or animal that it could be expected to protect; and
- the person was on the defendant's premises without lawful excuse.

Clause 9 New section 50A (5)

This clause inserts a signpost definition of the term serious injury as a consequence of the amendments to section 50A.

Schedule 1 Magistrates Court (Domestic Animals Infringement Notices) Regulation 2005

Clause [1.1] Schedule 1, part 1.1, items 33 and 34

This clause increases the infringement notice penalty for the offences in new sections 49A (1) and (2) of the Domestic Animals Act (previously found in sections 50 (1) and (2)).

The infringement notice penalty for these offences is currently \$200 (for an individual); this clause increases the penalty to \$350 (for an individual). This penalty value has been set so that the nominal amount on an infringement notice is 20% of the maximum fine stipulated in the offence.