

DOG AMENDMENT BILL 2013

EXPLANATORY MEMORANDUM

OVERVIEW OF THE BILL

The purpose of this Bill is to introduce a range of measures that will provide greater protection for the community and improve controls on dogs according to current community expectations.

The key amendments provide for:

- Improving community safety through stricter control of dangerous dogs: covering restricted breeds, individuals dogs that have been declared dangerous and commercial security dogs;
- The ban of the sale, transfer and breeding of dangerous dogs (restricted breeds);
- Improvements in the ability for local governments to deal with the nuisance caused by barking dogs;
- Microchipping of new dogs from 1 November 2013 and all other dogs by 1 November 2015;
- Expansion of the special provisions for Guide dogs in order to recognise and accommodate the various new types of appropriately trained assistance dogs now commonly utilised by people with a disability;
- New provisions to enable retired racing greyhounds after completing an approved training program, to safely return to the community as household pets and not be required to wear a muzzle;
- Increased penalties for offences under the Act, with minimum penalties stipulated for offences in relation to dangerous dogs. All other listed penalties are maximum that a court can impose;
- The introduction of a criminal offence where a dangerous dog kills a person or puts a person's life in danger; and
- New provisions to enable courts to impose a requirement for dog owners to attend and complete a dog training course in place of or in addition to a penalty.

CLAUSE NOTES

Outlined below is a brief description of each clause of the *Dog Amendment Bill 2013*.

Part 1 – Preliminary

This Part contains the title and the relevant commencement provisions.

Clause 1 - Short title

Clause 1 cites the short title of the Act.

Clause 2 - Commencement

This Clause cites the commencement of the Act. Sections 1 and 2 will commence on the day on which this Act receives the Royal Assent. The rest of the Act will commence on a day fixed by proclamation.

Part 2 — Dog Act 1976 amended

This Part contains amendments to the *Dog Act 1976*.

Clause 3 - Act amended

This section provides that this part amends the *Dog Act 1976*.

Clause 4 - Section 3 amended

Section 3 provides for the definition of key terms used in the Act.

Clause 4(1) and (2) amends section 3(1) by deleting the definitions of **dangerous dog**, **guide dog** and **sterilized** and inserts new definitions of the key terms used in the Act.

The following new definitions are of particular significance:

commercial security dog means a dog that is kept primarily for the purpose of guarding or protecting premises that are not dwellings;

dangerous dog means a dog that is —

- (a) a dangerous dog (declared); or
- (b) a dangerous dog (restricted breed); or
- (c) a commercial security dog;

dangerous dog (declared) means an individual dog that is declared to be a dangerous dog (declared);

dangerous dog (restricted breed) means a dog that —

- (a) is of a breed prescribed by the regulations; or
- (b) is a mix of 2 or more breeds, one being a prescribed breed ;

dog management facility means —

- (a) a facility for keeping dogs operated by a local government; or
- (b) a facility for keeping dogs operated by a prescribed person or body; or
- (c) a facility for keeping dogs that is operated by an approved person or body;

effectively confined —

- (a) in relation to a mobile home, means the mobile home is designed and constructed in a way to prevent the dog from escaping and
- (b) in relation to other premises, means the premises or area is bounded by a fence or barrier of a standard sufficient to prevent the dog from escaping;

sterilised means made permanently infertile by a surgical procedure;

transfer, in relation to ownership of a dog, includes —

- (a) sell, trade, give away, take consideration for, transfer ownership of and offer for sale; and

(b) to reclaim from a dog management facility;
working, in relation to a commercial security dog, means guarding or protecting premises that are not dwellings and that are not the premises of the dog's owner.

Definitions are also included for **microchip, microchip database, microchip database company, microchip implanter** and **microchipped**.

Clauses 4(3) to 4(6) make technical and consequential amendments.

Clause 4(7) inserts new subsection (3) into section 3 to clarify that, in the case where a dog is not registered but is microchipped, the person recorded as the owner of the dog in the microchip database is taken to be the person who ordinarily keeps the dog, unless there is evidence to the contrary.

Clause 5 - Section 6 amended

Section 6 provides for the application of the Act.

Clause 5 deletes section 6(4) and inserts new subsections (4), (5) and (6) to provide that:

- the provisions of this Act do not apply to a dog that is kept for the purposes of the Crown; and
- Public Officers can take dogs into public places while performing a function of a public officer.

Clause 6 - Section 7 amended

Section 7 outlines the registration requirements for dogs.

Clause 6(1) deletes subsection 7(1) which makes it an offence for the owners or the occupier of premises where a dog is ordinarily kept to not register the dog and replaces it with a similar provision that makes allowances for "visiting" or newly located dogs that are registered in another jurisdiction.

Clause 6(2) deletes paragraph (c)(ii) of subsection (3) and inserts new subparagraphs (ii) and (iii) to provide that the registration requirements outlined in section 7 do not apply to a dog held in the custody of a police officer in the performance of their duties or by any other person when performing a function under this Act or any other written law. Clause 7(2) also deletes paragraphs (d) and (e) in subsection (3) to remove this exemption for foxhound packs and dogs in kennels. Dogs normally kept in kennels will be required to be individually registered, thus facilitating local governments' management of these dogs. The registration concession rate will continue to apply for kennel owners. A new paragraph (d) exempts greyhounds registered under the *Racing and Wagering Western Australia Act 2003* section 41 while the registration is in effect, to eliminate requirement for dual registration.

Clause 6(3) is a technical drafting improvement.

Clause 7 - Section 8 replaced

Section 8 provides special provisions for guide dogs.

Clause 7 deletes section 8 and replaces it with a new section 8 to enable people with disabilities to use an assistance dog to access public places, in a similar manner to the current guide dogs provisions. The emphasis is on the dog's training rather than the person's disability, in accordance with the *Disability Discrimination Act 1992*. The training will be provided or assessed by prescribed organisations or people with prescribed qualifications. At this stage, the prescribed organisations will include Guide Dogs Australia, Lions Hearing Dogs and Assistance Dogs Australia.

Clause 8 - Sections 10AA and 10AB inserted

Clause 8 inserts new sections 10AA and 10AB into the Act to provide a local government the power to delegate functions to its Chief Executive Officer in a manner similar to that under the *Cat Act 2011*. Local governments are to keep a register of such delegations and to review them annually.

Clause 9 - Section 11 amended

Section 11 enables local governments to establish and staff public pounds.

Clause 9 amends section 11 by replacing the word "Pound" with "Dog Management Facilities" to provide consistency in terminology with the *Cat Act 2011*.

Clause 10 - Section 12A amended

Section 12A provides local government registration and authorised officers with the power to enter and inspect premises.

Clause 10(1) makes clarifying and technical drafting improvements.

Clause 10(2) inserts new subsections (4) and (5) into section 12A to enable an authorised person to enter premises, other than dwellings, on reasonable grounds without a warrant or without consent for matters involving dangerous dog offences, and to enable an authorised person to enter vehicles on reasonable grounds without a warrant or without consent for matters involving enforcement of this Act.

Clause 11 - Part III heading replaced and Part III Division 1 heading inserted

Clause 11 replaces Part III's heading with 'Registration and identification' and inserts a new Division 1 heading that reads 'Registration' to reflect the content of sections 14 – 20.

Clause 12 - Section 14 replaced

Section 14 requires local governments to keep a register of dogs.

Clause 12 deletes section 14 and replaces it with a simplified section requiring local governments to maintain an up-to-date register of dogs. The amendment also deletes current section (4) which removes the right of any person to inspect and take

copies of any entry in the dog register. This amendment aligns with the provisions in the Cat Act which offers protection to people's privacy.

Clause 13 - Section 15 amended

Section 15 provides for registration periods and fees for dogs.

Clause 13(1) deletes section 15(2) and inserts two new subsections which provide for extended and lifetime registration of dogs other than dangerous dogs, as prescribed in regulations. Dangerous dogs must be re-registered annually.

Clause 13(2) includes technical drafting improvements and amendments to section 15(3) to allow regulations to prescribe concessional rates for lifetime registration of dogs and approved kennel establishments.

Clause 13(3) inserts new subsections (4A) and (4B) into section 15 to allow a local government to discount or waive a registration fee, except in the case of dangerous dogs. A local government will have the authority to waive registration fees in circumstances where it is believed to be in the best interests of the management and control of dogs such as in remote or economically disadvantaged communities. In such communities where there may be a significant proportion of the population living on social security benefits, it may be beneficial to introduce a free dog registration scheme in an effort to get people to register their dogs.

Clause 13(4) and (5) are consequential technical amendments. No registration fees will be payable for assistance dogs.

Clause 13(6) replaces the existing section 15(6) to clarify that if a dog is first registered after 31 May for an annual registration (which has effect until 31 October of that year), the registration fee is half of the annual fee. No discount applies if the first registration is for a three year period or the life of the dog.

Clause 14 - Section 16 amended

Section 16 outlines the registration procedure.

Clause 14 amends section 16(1) and 16(2)(b) to accommodate circumstances where there is no prescribed fee.

Clause 14(2) deletes section 16(1a) and inserts new subsections (1BA) and (1BB) which outline the requisite information an application form may require an applicant to provide when registering a dog. This includes new provisions covering microchip details and identifying commercial security dogs and their location. An owner will be able to provide alternative contact details on the registration form in case the owner is not contactable for any reason.

Clause 14(4) inserts new subsection (3A) into section 16 to provide for cancellation or non-renewal of registration when a person is banned from owning or keeping a dog in accordance with an order made under section 46A(2).

Clause 14(5) amends section 16(3) to enable a local government to refuse to register, or refuse to renew, or revoke an existing registration; if:

- a person has been convicted or has paid a modified penalty, within the previous 3 years in respect of 2 or more offences against this Act, the *Cat Act 2011* or the *Animal Welfare Act 2002*;
- the local government is not satisfied that the dog is or will be effectively confined in or at the premises where it will be ordinarily kept; or
- a dog has not been microchipped when it is required under section 21 or 22.

Clause 14(6) makes consequential amendments.

Clause 15 - Section 16AA inserted

Clause 15 inserts new section 16AA into the Act to enable a dog owner to nominate another person to act on their behalf or when they are not contactable.

Clause 16 - Section 16A amended

Section 16A outlines the requirements for change of ownership of dogs (other than dangerous dogs).

Clause 16 amends section 16A to clarify that this requirement does not apply to dangerous dogs.

Clause 17 - Section 17A inserted

Clause 17 amends the Act by inserting new section 17A into the Act.

New section 17A provides local governments with the power to give notice to an owner of a dog in respect of which an application for registration has not been made, to advise that the dog cannot be registered because –

- 2 or more offences or infringements have been committed in the past 3 years against the Act, the *Cat Act 2011* or the *Animal Welfare Act 2002*;
- The dog is destructive, unduly mischievous or suffering from a contagious or infectious disease;
- The dog is not effectively confined;
- The dog is not microchipped when required to be by section 21 or 22, or
- The dog is a dangerous dog.

Clause 18 - Section 17 amended

Section 17 relates to when a local government refuses to effect, renew or cancels a registration.

Clause 18 amends section 17 to include the right to apply to the State Administrative Tribunal for review of a decision to not grant, renew or cancel a registration. Amendments also provide that review rights apply to the actual owner of a dog where the dog is not registered.

Clause 19 - Section 18 amended

Section 18 provides for requirements for registration tags.

Clause 19 amends section 18(2) to include the gazettal of the colour of registration tags for lifetime registration.

Clause 20 - Section 20 amended

Section 20 outlines the offences relating to registration.

Clause 20 amends section 20 to increase fines and penalties for registration offences.

Clause 21 - Part III Divisions 2 and 3 inserted

Clause 21 inserts two new Divisions into Part III.

New Division 2 – Microchipping

This new division consists of new sections 21 to 26C.

New section 21 requires all new dogs (other than dangerous dogs) once reaching 3 months of age to be microchipped by 1 November 2013 and all dogs that have reached 3 months of age to be microchipped by 1 November 2015, unless a Veterinarian has provided an exemption certificate stating that the implantation of a microchip may adversely affect the health and welfare of the dog.

New section 22 requires all dangerous dogs to be microchipped within 30 days after new section 21 of the Act comes into operation, unless a Veterinarian has provided an exemption certificate stating that the implantation of a microchip may adversely affect the health and welfare of the dog.

New section 23 requires the owner of a microchipped dog to provide within 7 days the name of the microchip database company and the microchip's unique identification number for the dog to the local government.

New section 24 requires the microchip planter to forward within 7 days after implanting the microchip the information prescribed to the microchip database company for data entry and storage.

New section 25 requires that the approved microchip database company maintain the information provided by a microchip planter on their system.

New section 26A makes it an offence for any person to interfere with or remove an implanted microchip without reasonable excuse.

New section 26B makes it an offence to transfer an unmicrochipped dog to a new owner unless it has an exemption certificate provided by a Veterinarian.

New section 26C requires the owner of a microchipped dog to notify the microchip company of change of ownership when the dog is transferred to a new owner.

New Division 3 – Changes to recorded information

This Division consists of only one section.

New section 26D requires dog owners to notify the local government and the microchip database company of changes to registration details and/or the information on the microchip.

Clause 22 - Section 26 amended

Section 26 provides limitations on the number of dogs that can be kept in or at premises.

Clause 22(1) deletes subsections (1) and (2) and inserts two new subsections which clarify that a local government can specify in a local law the number of dogs that may be kept on premises in their district. Limitations may be in respect of the number of dogs that can be kept over the age of 3 months, or the number of dogs of a specified breed that may be kept at premises; however these do not apply to the keeping of dangerous dogs or approved kennel establishments.

Clause 22(2) amends subsection (3) to clarify that a local government cannot authorise the keeping of more than 6 dogs over the age of 3 months or a dog under that age unless it is a pup of a dog whose keeping is authorised.

Clause 22(3) deletes subsection (4) and inserts a new subsection providing for it to be an offence for a person (other than a kennel establishment) to keep more than the:

- Number of dogs allowed under a local law or an exemption granted under subsection (3);
- 2 dangerous dogs over the age of 3 months (whether declared, restricted breed or one of each)

Clause 22(4) is a technical drafting improvement.

Clause 23 - Section 27 amended

Section 27 provides for the licensing of approved kennel establishments.

Clause 23 amends section 27 by deleting subsection (1) and inserting a new subsection requiring a person wanting to keep more dogs than permitted under section 26 to apply to the local government to be licensed as a kennel establishment.

Clause 24 - Section 28 inserted

Clause 24 inserts a new section 28 into Part VI, Division 1.

New section 28 requires dog management facilities holding impounded dogs to make every reasonable attempt to identify the owner of the dogs entering the facility including scanning the dogs, if it is safe to do so, for microchip identification information in order to return the dog to its owner.

Clause 25 - Section 29 amended

Section 29 provides local governments with the power to seize dogs in certain circumstances including where an attack by a dog is likely to occur or the dog is in a prohibited public place.

Clause 25(1) and (2) amend section 29 to add additional grounds for seizure being where the number of dogs being kept are in excess of that permitted or where an offence under Division 2 in relation to a dangerous dog is being committed.

Only the number of dogs on premises that exceed that permitted may be seized.

Amended subsection (5a) enables a Justice of the Peace to issue a warrant to seize the puppies of a seized dangerous dog, as well as for a dog that has been involved in an attack.

Clause 25(6), (7), (8) and (9) are consequential amendments to include microchipping as a means of identifying the owner of a seized dog and also to provide that an owner's delegate is to be notified if the owner cannot be notified.

Clause 25(8) provides for dogs that can be readily identified to be impounded for a minimum seven day period, rather than the current three days. Dogs that are unable to be readily identified will only have to be kept for three days.

Clause 25(10) amends section 29(10) to allow the destruction of a dog where the return of the dog to the owner would give rise to an offence.

A number of consequential and technical amendments are also made.

Clause 26 - Section 30A inserted

Clause 26 inserts new section 30A into the Act. New section 30A requires dog management facilities holding a dog without a microchip to implant the dog with a microchip (unless they believe the dog is exempt from this requirement) before returning the dog to its owners and to recoup the cost of providing that service from the owner. This provision will take effect from 1 November 2013.

Clause 27 - Section 30 amended

Section 30 requires dogs to wear collars and registration tags.

Clause 27 makes drafting improvements to the requirements for dogs in public places to be wearing a collar and registration tag.

A number of consequential and technical amendments are also made.

New subsection (4) provides that this section does not apply to dangerous dogs. The Bill contains specific provisions in relation to the collars to be worn by dangerous dogs.

Clause 28 - Section 31 amended

Section 31 relates to the control of dogs in certain public places.

Clause 28 amends section 31 to provide a new method by which a local government can establish dog exercise areas, rural leashing areas or areas where dogs are prohibited. The current mechanism is the making of a local law under section 51 (clause 56 deletes this power). The amendments will allow a local government to specify these areas by an absolute majority after giving at least 28 days' notice of its intention to do so.

In addition to a number of consequential and technical amendments the clause also specifies that section 31 does not apply to dangerous dogs, and that a local government is to specify a sufficient number of dog exercise areas.

Clause 29 - Section 32 amended

Section 32 provides for control of dogs in exercise and rural areas.

Clause 29 makes consequential amendments to section 32 arising out of the amendments to section 31.

Clause 30 - Section 33 amended

Section 33 provides special provisions for greyhounds.

Clause 30 expands the existing provisions by enabling retired racing greyhounds, which are retrained under an approved training program to be exempt from wearing a muzzle. This section does not apply to dangerous dogs.

Clause 31 - Section 33A amended

Section 33A provides for the control of dogs in non-public places.

Clause 31 amends the section as a consequence of the new controls on dangerous dogs introduced in the Act.

Other minor consequential and technical amendments are made.

Clause 32 - Section 33B amended

Section 33B outlines the defences applicable to sections 30 to 33A.

Clause 32 makes a consequential amendment in order to realign cross-referencing of offences.

Clause 33 - Section 33D amended

Section 33D provides for offences in relation to dog attacks.

Clause 33 amends section 33D by deleting subsection (1) which provides for one offence which is a dog attacking or chasing a person or animal, whether or not injury

is sustained. The subsection also contains the defences to the offence. The subsection is replaced with 3 new subsections (1), (2A) and (2B).

New subsections (1) and (2) create two offences of attacking or chasing where injury is caused and where no injury is caused. The defence provisions are stipulated in subsection (3). The penalties for both offences will be greater where the dog is a dangerous dog.

The amendments also remove the element in section 33D offences that the animal being attacked or chased must be owned or in the charge of another person.

New subsection (2B) lists the defences available for a charge under subsection (1) and (2A).

Penalties for offence of setting a dog on or urging a dog to attack are increased to a maximum of \$20,000 and imprisonment for 2 years for dangerous dogs with a minimum penalty of \$1,000; or a fine of \$10,000 with imprisonment for 12 months for all other dogs.

Clause 33D(3) inserts new subsection (3) into section 33D to clarify that this section does not affect the duty a person with a dog under their control has under section 266(2) of *The Criminal Code* (duty of persons in charge of dangerous things) or the operation of section 266(2), Chapters XXVIII (offences relating to killing) or XXIX of *The Criminal Code* (offences endangering the life or health) or any other law in relation to the consequences of omitting to perform that duty.

Clause 34 - Section 33E amended

Section 33E provides for when a dog can be declared a dangerous dog.

Clause 34 amends section 33E replacing the words “a dog to be a dangerous dog” and inserting “an individual dog to be a dangerous dog (declared)”.

These are also consequential amendments arising from the insertion of the new definition of “dangerous dog” by clause 4 of the Bill which provides for the term ‘dangerous dog’ to mean any of three classes of dangerous dogs.

Clause 35 - Section 33F amended

Section 33F provides for an owner to be notified of the making of a dangerous dog declaration and of the control requirements imposed in respect of the dog.

Clause 35 amends section 33F by removing references to control orders which will no longer be required with the insertion of control requirements in the Act in new section 33GA.

A number of consequential amendments are also made and subclause (3) makes it clear that notwithstanding the lodging of objection or application for review, a declaration has effect 7 days after the giving of a notice under subsection (1).

Clause 36 - Sections 33GA to 33GE inserted

Clause 36 inserts new sections 33GA to 33GE into the Act.

New section 33GA essentially sets out the controls mandated on the owner of a dangerous dog by creating offences relating to dangerous dogs.

New subsection (1) requires all three categories of dangerous dogs to wear specific prescribed collars with information attached to or endorsed on the collar as required by regulations.

New subsection (2) requires the owner of any dangerous dog to ensure the enclosure where the dog is confined is constructed to prevent the dog from escaping and from being released or removed without the permission of a person liable for the dog's control, and to prevent a child less than 7 years old from entering or inserting any part of their body without the help of an adult.

New subsection (3) provides that the requirements in (2) do not apply to commercial security dogs when they are working.

New subsection (4) stipulates requirements when a commercial security dog is working. These require that the enclosure within which the dog is confined is constructed to prevent the dog from escaping and from being released or removed without the permission of a person liable for the dog's control. If a person other than the handler has lawful access to the premises, the dog must be confined, securely tethered or held by means of a chain, cord, leash or harness.

New subsections (5) to (11) outline the responsibilities applicable to owners and persons liable for the control of dangerous dogs and imposes increased penalties for offences.

New subsection (5) requires premises where dangerous dogs are kept to have prescribed warning signs displayed at each entrance.

New subsection (6) requires that when a dangerous dog is not confined in an enclosure it is to wear a muzzle.

New subsection (7) requires that when a dangerous dog is not confined in an enclosure it must be in the control of a person physically able to control the dog who is over 18 years of age and tethered using a chain or cord of sufficient strength and of a prescribed length.

New subsection (8) requires that when a dangerous dog is not confined in an enclosure then every person liable for the control of the dog must ensure that the dog is controlled by a person who has reached 18 years of age.

New subsection (9) makes it an offence for a dangerous dog to be in either a public place specified as a place under section 31(2B) where dogs are prohibited at all times or in a public place at a time when that place is specified under subsection 31(2B) as being prohibited for dogs.

New subsections (10) and (11) create a criminal offence in relation to dangerous dog attacks that endangers the life or kills a person. The penalty for this crime is imprisonment for up to 10 years.

New section 33GB requires dangerous dogs (restricted breed) to be sterilised.

New subsection (1) requires dangerous dogs (restricted breed) to be sterilised by the time they reach 3 months.

New subsection (2) provides a person charged with an offence under subsection (1) with a defence if they can prove the dog is sterile or the dog has a physical condition that is likely to cause it to die if it is sterilised.

New section 33GC provides restrictions on transferring ownership of dangerous dogs (restricted breed).

New subsection (1) provides for the definition of ***restricted breed pup***.

New subsection (2) makes it an offence to advertise a dangerous dog (restricted breed) or restricted breed pup for sale or otherwise being available for ownership.

New subsection (3) makes it an offence to sell a dangerous dog (restricted breed) or a restricted breed pup.

New subsection (4) makes it an offence to transfer the ownership of a dangerous dog (restricted breed) or a restricted breed pup unless the dog forms part of a deceased estate or the owner of the dog is medically certified as being not capable of caring for the dog or of fulfilling the responsibilities they have under the Act.

New subsection (5) makes it an offence to buy a dangerous dog (restricted breed) or a restricted breed pup or accept ownership of such a dog or pup except in the circumstances outlined in subsection (4).

New subsection (6) provides a person charged with an offence under subsection (5) in relation to a restricted breed pup a defence if the person can satisfy the court they did not know or did not have reasonable cause to believe that the dog was a restricted breed pup.

New section 33GD makes it an offence to breed a dangerous dog (restricted breed) or breed from a dangerous dog (restricted breed).

New section 33GE provides for the prohibition on transfer of ownership of dangerous dogs (declared) to a person under 18 years of age.

New subsections (3) and (4) provide it is a defence to a charge under subsection (2) if the person charged can satisfy the court they had no reason to believe the receiver had not reached 18 years of age, or they had received evidence from the receiver showing they had reached 18 years of age.

Clause 37 - Section 33G amended

Section 33G provides for the seizure and destruction of dangerous dogs.

Clause 37 inserts new subsection (2A) into section 33G to enable an authorised person who has reasonable grounds to believe a dangerous dog (restricted breed) has given birth to one or more pups at a premises, to enter that premises, under the authority of a warrant and seize and detain each restricted breed pup.

Clause 37(2) is a consequential amendment arising from the insertion of new subsection (2A).

Clause 38 - Section 33H amended

Section 33H enables a local government to revoke a declaration, control requirements, or a proposal to destroy a dog.

Clause 38(1) deletes section 33H(1)(a) as it relates to “a notice under section 33F(i) declaring a dog to be a dangerous dog”; and is replaced with new subsection “(a) that provide for a notice under section 33F(1) declaring a dog to be a dangerous dog (declared)”.

Clause 38(2) is a technical drafting improvement by amending section 33H(3)(a) by deleting “notice, declaration or proposal” and replacing with “notice.

Clause 38 also amends the heading to this section.

Clause 39 - Section 33I amended

Section 33I provides for the role of the State Administrative Tribunal

Clause 39 makes amendments as a consequence of the new dangerous dog provisions.

Clause 40 - Section 33J amended

Section 33J provides the mechanism for local governments to issue control orders to declare a dog dangerous.

Clause 40 makes minor consequential amendments to section 33J.

Clause 40 also amends the heading to this section.

Clause 41 - Section 33K amended

Section 33K provides for the owners of dangerous dogs to notify local government, and other persons of information regarding the dangerous dog.

Clause 41 makes amendments to take account of the new dangerous dog provisions inserted by the Act and increases penalties. The owner must ensure others liable for the control of a dangerous dog are made aware of the dog’s status and their responsibilities under the Act.

Clause 42 - Section 33L replaced

Section 33L outlines the offences applicable to a person liable for the control of a dangerous dog.

Clause 42 deletes section 33L and inserts new section 33L to:

- remove the penalties provisions for this division – these penalties have been placed in the amendments above in relation to dangerous dogs, and
- replace the existing defences to a charge of an offence in relation to a dangerous dog.

New section 33L provides four defences to a charge in relation to a dangerous dog:

- a) that the person took all reasonable precautions and exercised all due diligence to avoid the contravention; or
- b) where the person who has control of the dog is not the owner of the dog and did not know and did not have reasonable cause to believe that the dog was a dangerous dog; or
- c) where a person is the occupier of premises where the dog is ordinarily kept or ordinarily permitted to live, is not the owner of the dog and has identified the owner; or
- d) where the owner of the dog is not the person who possessed or was in control of the dog at the material time.

Clause 43 - Section 33M amended

Section 33M relates to local government capacity to recover expenses.

Clause 43 makes consequential amendments to section 33M which deals with local government capacity to recover expenses in relation to dangerous dog investigations.

Clause 44 - Section 34 amended

Section 34 relates to protection of livestock.

Clause 44 makes a technical amendment to 34(4) by inserting after “Penalty” the phrase “a fine of”.

Clause 45 - Section 36 deleted

Clause 45 deletes Section 36 which provides for the control of diseases and parasite conditions in dogs. These matters are more appropriately dealt with under the *Animal Welfare Act 2002* and public health legislation.

Clause 46 - Section 38 replaced

Section 38 provides for the control of nuisances created by dogs

Clause 46 deletes and replaces section 38.

New section 38(1) defines when a dog is a nuisance.

New subsection (1)(a) and (b) essentially repeat the provisions in current section 38(2) in relation to persistent noise or barking and behaviour that is contrary to the general interest of the community. However the test for nuisance barking is amended by:

- removing the need to prove that the barking is “not normal or habitual in dogs”, and
- changing the test of the effect from *causing a disturbing effect on the physical, mental or social well-being of a person* to that it *unreasonably interferes with the peace, comfort or convenience of any person in any place*.

New subsection (1)(c) introduces an additional new means of proving nuisance barking by providing objective measures of noise level and occurrence to be prescribed.

A new section 38(2) will now clearly enable a single person to raise a complaint. This replaces the previous section 38(3) provision, which required three people, two of whom are from different premises for an abatement notice to be issued.

Amendments to section 38(3) and (4) clarify the capacity of authorised persons if they are satisfied that a dog is creating a nuisance, to issue an order to prevent the behaviour and abate the nuisance. Such an order is effective for up to 6 months (subsection (4)) and if not complied with the person commits an offence under subsection (5) and is liable to a penalty.

A new subsection (6) has been introduced to provide an exemption from the nuisance provisions for approved kennel establishments.

Clause 47 - Section 39 amended

Section 39 provides for the making of a court order requiring a dog that has caused injury or damage, to be destroyed and for associated costs.

Clause 47 increases the penalty where an owner fails to comply with the court order.

Clause 48 - Section 43 amended

Section 43 relates to offences relating to enforcement and has been amended by increasing penalties.

Clause 49 - Section 43A amended

Clause 49 amends section 43A which enables an authorised person to demand a person’s name and address when an authorised person suspects that the person has committed an offence, to add a requirement for that person to also provide their date of birth.

Clause 50 - Section 44 amended

Section 44 makes provision as to who can take proceedings under the Act.

Clause 50 amends section 44 by inserting a new subsection (4) to provide that only a police officer can commence a proceeding in relation to an attack by a dangerous dog that endangers the life of, or results in death of a person.

A new subsection (5) is also inserted to enable the Director of Public Prosecutions to commence proceedings under the Act.

Clause 51 - Section 45 amended

Section 45 deals with evidentiary provisions.

Clause 51 deletes section 45(1) and replaces it with appropriate evidentiary provisions, to wit that an averment in a prosecution notice as to certain listed facts will be taken to be evidence of such a fact.

New subsection 45(1)(b) places the evidentiary onus on dog owners or person responsible for the dog to prove that at a particular time the dog was registered, sterilised, microchipped or was under the age of 3 months.

A new subsection 45(2A) also clarifies that in any proceedings, whether civil or criminal, the onus of proving that a particular dog was not a dangerous dog (restricted breed) lies on the person making that assertion.

Clause 52 - Section 45A amended

Section 45A deals with modified penalties.

Clause 52 amends section 45A by deleting and replacing subsections (1), (2) and (3) to provide as follows:

- New subsection (1) provides the capacity to develop regulations for modified penalties for offences:
 - under the Act, for which the maximum penalty does not exceed \$10 000; or
 - under regulations made under section 48 or 54.
- New subsection (2) will allow local laws made by a local government to provide modified penalties for offences against those local laws.
- New subsection (3) limits a modified penalty to no more than 10% of the maximum penalty for that offence.

Clause 53 - Section 46A inserted

Clause 53 inserts a new section 46A that makes provisions for the court to make orders in relation to compulsory dog training and banning a person from owning a dog.

New subsection (1) provides that:

1. in addition to imposing a penalty for an offence relating to a dangerous dog (described as an offence carrying a minimum penalty) the court may also order the person to complete a specified dog training course, or
2. for any other offence may, as an alternative to or in addition to, imposing a penalty, a court may order the person to complete specified dog training.

New subsection (2) provides that the Court may ban a person from owning or keeping a dog if the person has previously been convicted of 2 or more offences against the Act.

New subsection (3) requires that a copy of such orders must be provided to the relevant local government and CEO.

New subsection (4) provides that noncompliance with a Court order constitutes contempt of court, and a person may be summarily convicted and liable to imprisonment for a term not exceeding 12 months, or to a fine not exceeding \$5 000, or to both, or imprisonment in default.

Clause 54 - Section 47 replaced

Section 47 relates to causing harm to dogs.

Clause 54 deletes section 47 relating to causing harm to dogs as such actions can be dealt with under the Animal Welfare Act.

New section 47 is inserted to provide that a veterinary surgeon may recover the costs of services that the vet provides at the request of a local government.

Clause 55 - Section 50 amended

Clause 55 amends section 50 to increase the maximum penalty that may be imposed under regulations and local laws to \$5 000.

Clause 55 also amends the heading to this section.

Clause 56 - Section 51 amended

Section 50 deals with general matters relating to local laws.

Clause 56(a) amends section 51 to delete local law making powers in relation to prohibited dogs in specified places, as these powers are now provided in amended section 31.

Clause 56(c) deletes section 51(h) regarding local government's capacity to make local laws on the number of dogs that may be kept at premises as this is addressed under amended section 26(2).

Clause 56(d) is a consequential drafting amendment.

Clause 57 - Section 53 deleted

Section 53 provides for regulations as to certain kinds of dogs.

Clause 57 deletes section 53 as it relates to making regulations in relation to certain restricted breed dogs. The deletion of section 53 enables the repeal of the *Dog (Restricted Breed) Regulations 2002* and for those provisions to be incorporated into the Act and regulations made under the amended section 54.

Clause 58 - Section 54 amended

Section 54 provides provisions for Regulations generally

Clause 58(1) introduces new section 54 to enable the Governor to make regulations to make provision for a register of dangerous dogs.

New subsection (2B) provides that a regulation prescribing a breed of dog to be a restricted breed shall not come into operation until the seventh day after publication in the *Gazette* or if a later day is specified or provided for in the regulation, on that day.

Clause 58(2) is a technical drafting amendment.

Clause 59 - Part XI inserted

Clause 59 inserts new Part XI into the Act to provide for the transitional provisions by inserting new Division 1 consisting of new sections 55 to 60.

New section 55 provides that nothing in the Part affects the terms of the *Interpretation Act 1984*.

New section 56 provides that an approval under section 8 prior to commencement of the amendments continues as approval for an assistance dog under the amended section 8.

New section 57 provides that an application to register a dog under section 16(1) that has not been finally dealt with prior to the commencement of the amendments is to be dealt with as it would have been under the repealed section 16(1).

New section 58 provides that where a dog has been seized under section 29(3) and is being detained by a local government immediately before the amendments comes into operation, is to be dealt with as it would have been under repealed section 29(3).

New section 59 provides for a dog declared as a dangerous dog prior to the commencement of the amendments will remain declared as a dangerous dog.

New section 60 provides for the making of regulations to deal with other transitional matters should the need arise.

Clause 60 – Review of Act inserted

New section 61 provides for a review of the operation and effectiveness of the Act to be carried out as soon as practicable after 1 January 2019. A report based on the review is to be prepared and the report is to be laid before each House of Parliament as soon as is practicable after it is prepared.

Part 3 — Residential Tenancies Act 1987 amended

Clause 61 – Act amended

Clause 61 amends the *Residential Tenancies Act 1987*.

Clause 62 – Section 29 amended

Clause 62 makes an amendment to section 29(1A) of that Act to replace “guide dog” with “assistance dog” to align with the new provisions in the Dog Act.

Part 4 — Regulations repealed

Clause 63 - Dog (Restricted Breeds) Regulations (No. 2) 2002 repealed

Clause 63 repeals the *Dog (Restricted Breeds) Regulations (No. 2) 2002*.