

14 June 2024

Dog and Cat Management Reform Team
Department for Environment and Water
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By email: DEW.dogandcatreform@sa.gov.au

Dear Reviewer

Dog and Cat Management (Breeder Reforms) Amendment Bill 2024

1. I refer to the South Australian Government's consultation on the above Bill via the YourSay webpage.
2. The Bill amends the *Dog and Cat Management Act 1995* ("the Act") to implement a series of reforms identified as part of a 2022 review. The most prominent aspects of the reforms are the establishment of a licensing scheme for breeders of dogs and cats and increased maximum penalties for dog attacks and dogs wandering at large.
3. The Society's Animal Law Committee ("the Committee") has considered the Bill and corresponding Explanatory Guide and informed the Society's below response. The Committee is broadly supportive of the proposed amendments and has identified a number of areas in which the protections for dogs and cats and the community may be strengthened or clarified.

Breeder's Licences

4. Clause 38 of the Bill replaces existing Part 7 of the Act to establish a new licensing scheme for breeders of dogs and cats. The Committee is broadly supportive of the proposed amendments, particularly insofar as they aim to increase oversight of breeders and provide some level of certainty to consumers and the broader community as to the adequacy of care breeders provide to dogs and cats. The Committee has however expressed concern that a licensing scheme should not come at the expense of any existing transparency arrangements.
5. Proposed section 68(2) prescribes conduct that will be taken for the purposes of the Act to constitute the breeding of dogs or cats owned by a person or within a person's control. They include allowing one or more dogs or cats to mate, providing a dog or cat to another person for the purpose of mating, artificially inseminating a dog or cat or any other act or omission as prescribed by the regulations.
6. The Committee queries the intent behind proposed section 68(4)(a), which provides that proposed section 68(2) does not apply in relation to "*an act or omission referred to in that subsection that is done interstate or overseas*". This exclusion may create an anomaly contrary to the objects of the Act whereby a person who causes one or more dogs or cats owned by the person to mate at an interstate or overseas location would not be considered to have bred the animals for the purposes of the Act.

7. Proposed section 70 makes it an offence for a person to breed dogs or cats unless licensed to do so. Pursuant to proposed section 70(3)(b), the Dog and Cat Management Board (“the Board”) must not grant to or renew the licence of an applicant unless it is satisfied that *“neither the applicant, nor a current spouse or domestic partner of the applicant, has been found guilty of a prescribed offence within the 5 years immediately preceding the application”*. The Committee considers that given the commerciality of dog and cat breeding, this provision should be broadened to include employees of the applicant in addition to spouses or domestic partners.
8. As to applications for licences, the Explanatory Guide states that when setting application requirements, the Board will have regard to the nature of the breeding operations, balancing the appropriateness of requirements imposed on ad-hoc or smaller breeding operations as distinct from large or commercial operations. The Committee queries whether different types of licences will apply to different sized operations or to different breeds, and what other conditions may be imposed by the Board under proposed 71A(2).
9. The Committee supports the development and publication of standards and guidelines addressing the minimum requirements for dog and cat breeding as provided for by proposed section 69. It suggests consideration be given to the establishment of a mandatory online or in person education program based on the standards and guidelines. Accordingly, the successful completion of such a program would ideally be a prerequisite for a breeder’s licence.

Dog and Cat Attacks

10. Part 2 of the Bill amends the Act to increase the maximum financial penalties that apply to dog attacks and dogs wandering at large. The Society acknowledges the serious risks dog attacks can cause to owners, animals and the community, and supports measures aimed at deterring unsafe behaviours.
11. Given the financial penalties for dog attacks have been increased as part of the proposed reforms, the Committee queries whether the maximum period of imprisonment ought also to be reconsidered. To illustrate this, the Committee queries whether a person who urges a dangerous dog to attack a person or an animal, should be subject to an offence provision that attracts the same maximum term of imprisonment applicable to an offence of assault,¹ or assault causing harm aggravated by the use of an offensive weapon.²
12. The Committee suggests consideration be given to an aggravated form of some of the offences relating to dog attacks where the victim of the attack is an RSPCA inspector or authorised council officer and the person who owns or is responsible for the control of the subject dog knows the victim to be acting in the course of his or her official duty.
13. It is well understood that cats wandering at large are capable of destruction to other animals, including wildlife. The Committee suggests consideration be given to the creation of an offence for a person who owns or is responsible for the control of a cat if the cat is wandering at large or is a nuisance. By way of example, section 31 of the *Companion Animal Act 1998* (NSW) states that a cat is a nuisance if it:
 - (a) *makes a noise that persistently occurs or continues to such a degree or extent that it unreasonably interferes with the peace, comfort or convenience of any person in any other premises, or*
 - (b) *repeatedly damages anything outside the property on which it is ordinarily kept.”*

¹ *Criminal Law Consolidation Act 1935* (SA) s 20(3).

² *Ibid* s 20(4)(c).

14. We note the term “*nuisance*” is utilised throughout the Act however it is not defined, potentially giving rise to inconsistent application of the Act or ambiguities.

Destruction and Control Orders

15. Division 3 of the Act provides for a council or the Board to make destruction and control orders in relation to dogs. The Bill amends section 51 of the Act to create a new class of order, being a Control (Wandering Dog) Order, which may be made where a dog is persistently wandering at large or is subject to an equivalent order made under a law of another jurisdiction.
16. While the Society is supportive of the proposed new class of order, we note that “*persistently wandering at large*” is subjective and may give rise to ambiguities. The Society suggests the implementation of an objective measure, for example if a dog is found wandering at large by an authorised person three or more times within a 12-month period.
17. The Bill inserts proposed section 59C which permits the Minister, either on the Minister’s own initiative or on application of the Board or a council, to recognise a prescribed interstate order. A prescribed interstate order means a court order made under a law prescribed by the regulations as corresponding law corresponding to a Destruction Order, Control (Dangerous Dog) Order, Control (Menacing Dog) Order, Prohibition Order or any other order or class of orders as prescribed by regulation.
18. The Committee considers the recognition of interstate dog control orders would be better achieved through a statutory provision similar to subsections 14(1) and (2) of the *Powers of Attorney and Agency Act 1984* (SA) which state as follows:

- “(1) *An interstate enduring power of attorney has effect in this State as if it were an enduring power of attorney made under, and in compliance with, this Act, but only insofar as the powers it gives under the law of the State or Territory in which it was made could validly have been given by an enduring power of attorney made under this Act*
- (2) *An interstate enduring power of attorney to which subsection (1) applies—*
- (a) *has effect in this State subject to any limitations on the power that apply to it under the law of the State or Territory in which it was made; and*
- (b) *does not operate to confer any power on an attorney in this State that cannot be conferred on an attorney under an enduring power of attorney made in this State.*”

Registration

19. The Bill deletes existing section 35 of the Act which provides for the owner of a business consisting of or involving a kennel at which dogs are bred or trained or that provides security or other services involving the use of dogs to apply for registration. Such registration would in most cases deem any dog over the age of three months that is bred or trained at the kennel or used in connection with the business as registered. The Committee welcomes this proposed amendment, which broadens the scope of dogs which must be registered in accordance with section 34.
20. Section 42C(2)(a) requires the owner of a dog or cat that is required to be registered under the Act to wear a collar around its neck with the last issued registration disc affixed. The Committee has anecdotally observed that registration discs are easily lost, especially where multiple dogs are housed together, and due to their size, may also present a choking hazard to some animals. The Committee considers the Bill an opportunity to reform the use

of registration discs in favour of other means of identification, for example via a collar embroidered with the dog's registration number.

Greyhounds

21. Existing section 45C requires greyhounds to be muzzled so as to be incapable of biting and physically restrained so as to be effectively controlled by a person while outside their premises of occupancy, unless exempted. The Bill proposes to amend this section to limit the muzzling requirement only to racing greyhounds outside their premises of occupancy.
22. The Committee welcomes this amendment, noting significant penalties remain applicable to owners who do not exercise adequate control.

Should you have any questions, please do not hesitate to contact me.

Yours sincerely



Alex Lazarevich
President