

Act 1993 No. 22

DOG (AMENDMENT) BILL 1993

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The Crimes (Dogs) Amendment Bill 1993 is cognate with this Bill.

The object of this Bill is to amend the Dog Act 1966 to provide further measures to control dogs.

The Bill:

- (a) provides for the declaration of certain dogs as dangerous by a local council or a Local Court; and
- (b) sets out the responsibilities of owners of dogs that are declared to be dangerous; and
- (c) widens the powers of a Local Court in various proceedings under the Act to make orders to control dogs (including an order that a dog be destroyed); and
- (d) enables certain other Courts to order, in specified circumstances, that a dog be destroyed; and
- (e) enables a Court in certain circumstances to disqualify a person from owning a dog; and
- (f) increases monetary penalties imposed for offences under the Act; and
- (g) makes miscellaneous amendments of a minor nature.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the Schedules containing amendments to the Dog Act 1966.

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SCHEDULE 1—AMENDMENTS RELATING TO THE CONTROL OF DANGEROUS DOGS

Schedule 1 (5) inserts new Divisions 2-5 in Part 2.

Power of councils to declare dogs dangerous

Proposed Division 2 (Power of councils to declare dogs dangerous) will allow a council to declare a dog to be dangerous. A declaration may be made on a number of grounds (e.g. the dog has previously attacked a person or an animal without provocation as defined for the purposes of the Act).

The owner of the dog will be entitled to lodge an objection with the council that proposes to make the declaration and may appeal to a Local Court against the making of such a declaration.

A council may revoke a declaration made by it on the application of the owner concerned. The owner may appeal to a Local Court against the refusal of the council to revoke the declaration.

On appeal, a Local Court may confirm the decision of the council or revoke the declaration.

Power of Local Court to declare dogs dangerous

Proposed Division 3 (Power of Local Court to declare dogs dangerous) will enable a Local Court in certain proceedings under the Act to declare a dog to be dangerous. A Local Court will be able to revoke a declaration made by it on the application of the owner of the dog concerned.

Orders for the control or destruction of dangerous dogs etc.

Proposed Division 4 (Destruction and control orders) will extend the circumstances in which a Local Court can make certain orders to control a dog. At present, a Local Court may make an order for the destruction of a dog, or to control a dog, in limited circumstances (e.g. the owner has been convicted of an offence under section 6 which deals with dogs attacking or injuring persons or animals). The proposed Division enables the Court, for example, to make a destruction order if the owner of a dog declared to be dangerous does not comply with an obligation imposed on the owner to control the dog.

The proposed Division will also enable a Court that deals on indictment with an offence under section 35A of the Crimes Act 1900 relating to certain attacks on persons by dogs (as proposed to be inserted by the Crimes (Dogs) Amendment Bill 1993) to make an order for the destruction of the dog concerned in certain circumstances.

An owner who does not comply with a destruction or control order will be guilty of an offence and liable to a maximum penalty of 10 penalty units (currently \$1,000).

Responsibilities of owners of dangerous dogs

Proposed Division 5 (Responsibilities of owners of dangerous dogs) will provide that the owner of a dog in respect of which there is a declaration in force must comply with certain requirements to keep the dog under control (e.g. the dog must be restrained at the place where the dog is ordinarily kept to prevent it from attacking any person or another animal). The owner of such a dog who does not comply with those control requirements will be guilty of an offence and liable to a maximum penalty of 10 penalty units (currently \$1,000).

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Proposed section 9U makes it clear that a person may be convicted of only one offence under certain provisions of the Act and proposed section 9T (which imposes requirements relating to the control of dangerous dogs) even though the circumstances would otherwise expose the person to conviction for more than one offence.

Proposed section 9V ensures that in the event of an inconsistency between proposed section 9T and the provisions of any agreement, covenant or instrument, proposed section 9T will prevail to the extent of the inconsistency.

Proposed section 9W provides that the mere fact that a dog has been declared to be dangerous does not affect the civil liability of the owner of the dog in any proceedings (other than those under the Act).

Definition of provocation

Schedule 1 (1) inserts a definition of “provocation” for the purposes of the Act. A dog may be provoked by a person or by an animal.

Provocation of a dog by a person will include teasing, tormenting or abusing the dog, any act of cruelty towards the dog, entry (without lawful excuse) on any land, vehicle or premises of which the owner of the dog is an occupier or on which the dog is ordinarily kept or attacking the owner of the dog, or any person towards whom the dog could reasonably be expected to be protective, in front of the dog.

Provocation of a dog by an animal will include an attack on the dog made by the other animal or the entry of the other animal on any land, vehicle or premises of which the owner of the dog is an occupier or on which the dog is ordinarily kept.

Consequently, a dog will not be able to be declared dangerous if the dog attacked a person who, without lawful excuse, entered premises occupied by the owner of the dog.

Consequential amendments are made as a result of the insertion of the definition (**Schedule 1 (4) (a), (8) and (9) (b)**) and the insertion of Divisions 2–5 of Part 2 (**Schedule 1 (2), (4) (b), (6), (9) (a) and (10)**).

Offences relating to the registration of dogs

Schedule 1 (3) will amend section 5. **Schedule 1 (3) (b)** will require the owner of a dog declared to be dangerous to register the dog irrespective of its age (currently the owner of a dog is not required to register the dog if it is less than 6 months old). **Item (3) (a)** is consequential on this amendment.

Schedule 1 (3) (c) will provide that the owner of a dog declared to be dangerous who fails to register the dog is liable to a maximum penalty of 10 penalty units (currently \$1,000). The amendment will also provide that the maximum penalty for any other offence under the section is 5 penalty units (currently \$500).

Offences relating to attacks by dangerous dogs

Currently the owner of a dog is not guilty of an offence under section 6 of the Act if the owner’s dog attacks a person or an animal on any land, vehicle or premises occupied by the owner or on which the dog is ordinarily kept. Also, the owner is not liable in damages for any injury to a person or another animal, or for any damage to the clothing of a person, caused by the dog on such land, vehicle or premises (sections 20 and 20B).

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Schedule 1 (4) (a), 8 and 9 (b) will amend sections 6, 20 and 20B to extend the criminal and civil liability of the owner of a dog declared to be dangerous so that such an owner will be guilty of an offence and liable in damages irrespective of the place where the attack took place if the dog attacked without any intentional provocation being offered.

The liability of the owner of a dog that is not declared to be dangerous remains unchanged under sections 6, 20 and 20B.

Disqualification of persons from owning dog

Schedule 1 (7) will allow a Court, in certain circumstances, to disqualify a person from owning a dog if the person is convicted of certain offences under the Act or the Crimes Act 1900 or an order under section 556A of the Crimes Act 1900 is made in respect of the person for any such offence (proposed section 19A). A person who does not comply with a disqualification order will be guilty of an offence and liable to a maximum penalty of 10 penalty units or 6 months' imprisonment or both (proposed section 19B).

SCHEDULE 2—OTHER AMENDMENTS**Notes appearing in the Act**

Schedule 2 (1) makes it clear that matter appearing under the heading “NOTE” in the Act will not form part of the Act.

Increases in monetary penalties

Schedule 2 (2) will amend section 6 (which provides that a dog owner is guilty of an offence if the owner's dog attacks or injures a person or an animal in certain circumstances) by increasing the maximum penalty for the offence to 10 penalty units (currently \$1,000).

Schedule 2 (3) and (4) will increase the maximum penalty to 5 penalty units (currently \$500) for certain offences under the Act (not involving an attack or injury caused by a dog).

Registration of dogs

Schedule 2 (5) will amend section 14 to omit a reference to the registration fee for a desexed dog and to provide that the regulations may provide for the period that the registration of a dog is to be in force. A consequential amendment is made to section 27 by **Schedule 2 (6) (a)**.

Schedule 2 (6) (b) will amend section 27 to enable offences to be created by the regulations that carry a maximum penalty of 5 penalty units (currently \$500).

Proof of registration of dog

Schedule 2 (7) will amend section 21 to facilitate proof of the registration of a dog in any proceedings under the Act. At present, section 21 applies only to criminal proceedings.

Statute law revision

Schedule 2 (8)–(18) update references to police officers in the Act.
