

CLAUSE NOTES

Dog Control Amendment Bill 2009

CLAUSE 1 - SHORT TITLE

Self explanatory

CLAUSE 2 - COMMENCEMENT

Commencing provisions of the Act on a day or days to be proclaimed will allow for a phased introduction of different provisions of the Act. This will ensure that the community is provided with adequate opportunity to be advised of, and to prepare for, new provisions such as housing controls for dangerous dogs and compulsory micro-chipping of dogs.

CLAUSE 3 - PRINCIPAL ACT

Self-explanatory

CLAUSE 4 - SECTION 3 AMENDED (INTERPRETATION)

The definitions are generally self-explanatory.

The definition of animal has been drawn from the *Animal Welfare Act 1993*. The previous definition was considered too restrictive and could have resulted in a particular animal, eg a specialist equestrian horse, not meeting the definition.

The definitions of 'laceration' and 'serious injury' have been included to support the gradation of offences in Clause 8.

CLAUSE 5 - SECTION 4 SUBSTITUTED

This amendment reorders section 4 of the Act to more clearly emphasise the responsibilities of dog owners.

CLAUSE 6 - SECTION 15 AMENDED (REGISTER)

This clause requires a general manager to register the details of a dog declared to be a restricted breed dog.

CLAUSE 7 - SECTION 15A INSERTED

This amendment establishes the power to require compulsory micro-chipping of dogs over six months of age. The approved micro-chip database and registration system will be established through subordinate legislation.

The clause establishes an exemption from compulsory micro-chipping where a veterinary surgeon has certified that to do so may adversely affect the health and welfare of a dog. The Minister may also declare, by order, a type, class or breed of dog as exempt from micro-chipping.

General managers of councils are also provided with the power to micro-chip a seized unmicro-chipped dog before returning it to its owner and to recover the costs of doing so from the owner.

The clause imposes a duty on a person micro-chipping a dog to include the details on an approved database.

CLAUSE 8 - SECTION 19 SUBSTITUTED

These amendments establish a new hierarchy of offences for dog attacks allowing for a gradation of penalties according to the seriousness of an attack.

The new section 19A establishes new controls on a dangerous dog that has been involved in a second attack. A general manager may seize and detain such a dog and recover the costs of doing so from the owner. A general manager may also euthanise such a dog, but an intention to do so must be notified to the owner, who is provided with an opportunity to appeal against such a notice to the Magistrates Court (Administrative Appeals Division). Penalties may be imposed on the owner who, on conviction, is barred from owning or being in charge of a dog for a period of five years.

CLAUSE 9 - PART 3, DIVISION 3: HEADING AMENDED

This amendment includes in the heading for Division 3 a reference to the process for declaration of restricted breed dogs.

CLAUSE 10 - SECTION 29 AMENDED (DECLARATION OF PARTICULAR DANGEROUS DOG)

This clause removes the previous process for micro-chipping of a dangerous dog. This process is now established under clause 13 and the new section 32A.

CLAUSE 11 - SECTION 29A INSERTED

The amendment establishes the process by which a dog is declared to be a restricted breed dog.

Guidelines to assist in identification of restricted breed dogs will be developed by the Director of Local Government in consultation with key stakeholder groups. They will be based upon key characteristics of breeds such the height, weight, coat, colouration, tail carriage, and facial and body features.

The breeds listed in subsection (3) are those breeds listed in Schedule 1 of the *Customs (Prohibited Imports) Regulations 1956* as being prohibited, absolutely, from importation into Australia.

The clause provides for any other breed, kind or description of dog prohibited from import into Australia to also become a restricted breed for the purposes of this Act.

CLAUSE 12 - SECTION 31 AMENDED (APPEAL AGAINST DECLARATION)

The amendment provides the owner of a dog declared to be a restricted breed dog with access to an appeal process to the Magistrates Court (Administrative Appeals Division). However, the onus of proof will be on the owner to prove that the dog is not of a restricted breed.

An owner of a dog declared to be a restricted breed dog is provided with more time in which to appeal because there is not the same urgency as that attached to the declaration of a dangerous dog.

If, as the result of an appeal, the court orders that a declaration be set aside, a further declaration may only be made in relation to relevant behaviour of the dog which occurs after the court order.

CLAUSE 13 - SECTION 32. CONTROL OF DANGEROUS DOGS AND RESTRICTED BREED DOGS

The clause establishes controls that the owners of dangerous and restricted breed dogs must adhere to when their dog is in a public place. An offence for removal of a micro-chip from a dangerous or restricted breed dog is also established.

The clause also introduces new standards for dangerous dog enclosures. These will be specified in subordinate legislation but the intention is to draw on the specifications utilised by the relevant New South Wales and Victorian legislation.

These standards include minimum dimensions and materials, location and security requirements.

An exemption is provided for a dangerous or restricted breed dog when it is acting as a guard dog for non-residential premises.

CLAUSE 13 - SECTION 32A. DANGEROUS DOGS AND RESTRICTED BREED DOGS TO BE DE-SEXED AND MICRO-CHIPPED

The amendment imposes a duty on the owner of a dog declared as a dangerous dog or a restricted breed dog to have the dog de-sexed and micro-chipped.

Owners of dogs declared as dangerous dogs prior to the commencement of this legislation will be given 28 days in which to have their dog de-sexed and micro-chipped.

As provided for in Clause 2 of the Bill, there will be a phased introduction of different provisions of the Act. Owners of previously declared dangerous dogs will therefore be given adequate opportunity to be advised of, and to prepare for, these new provisions.

A guard dog declared as a dangerous dog under the guard dog provisions of the Act is not required to be de-sexed.

CLAUSE 14 - SECTION 33 AMENDED (WARNING SIGNS)

The amendment extends the previous warning sign provisions for dangerous dogs to restricted breed dogs.

CLAUSE 15 - SECTION 34 AMENDED (DANGEROUS DOG OR RESTRICTED BREED DOG MISSING, DYING, &C.)

The clause retains the duty imposed on the owner of a dangerous dog to notify a general manager of the transfer, death or loss of the dog but also extends this duty to the owner of a restricted breed dog.

The amendment also introduces a duty to notify that a dangerous dog or restricted breed dog has strayed. This is intended to control the abandonment of a dog following a declaration.

CLAUSE 16 - SECTION 34A. APPLICATION FOR APPROVAL TO TRANSFER OWNERSHIP OF DANGEROUS DOG OR RESTRICTED BREED DOG

The amendment establishes controls on the transfer of declared dogs. The requirement for a general manager to be notified of an intended transfer is intended to allow the enclosure in the new premises to be assessed as to its adequacy and compliance with the housing provisions of the Act before a declared dog is acquired.

The clause includes an appeal process, to the Magistrates Court (Administrative Appeals Division), against a decision of a general manager to disallow a transfer.

CLAUSE 16 - SECTION 34B. OFFENCE TO TRANSFER OWNERSHIP OF DANGEROUS DOG OR RESTRICTED BREED DOG WITHOUT APPROVAL

The clause makes it an offence to sell or transfer ownership of a dangerous or restricted breed dog without prior approval. An exemption is provided to allow the disposal of a dangerous or restricted breed dog to a pound or approved animal welfare organisation.

CLAUSE 16 - SECTION 34C. LIMIT ON NUMBER OF RESTRICTED BREED DOGS

The amendment limits ownership of restricted breed dogs over six months of age to two per premises. Existing owners of three or more dogs that become restricted breed dogs under the legislation will be able to keep those dogs but, over time, the limit will apply.

CLAUSE 16 - SECTION 34D. INTERSTATE DANGEROUS DOGS AND RESTRICTED BREED DOGS

The amendment requires a person who has imported a dog that is a dangerous dog or a restricted breed dog under the law of another state, to advise the general manager within seven days of its arrival.

This clause needs to be read in conjunction with section 34A, which requires a prospective owner to obtain prior approval for transfer of a dangerous or restricted breed dog. Section 34D is therefore limited to a notification process

so that a general manager is made aware that a previously approved transfer has actually taken place. This will allow micro-chip database records to be completed.

CLAUSE 17 - SECTION 35 AMENDED (SEIZURE AND DETENTION OF DOGS AT LARGE)

The amendment adds restricted breed dogs to the existing powers provided to general managers to deal with seized dogs and dogs found at large.

The amendment also provides general managers with the power to micro-chip dogs found at large and to recover the costs of doing so from an owner. A general manager cannot exercise this power where a veterinary surgeon has certified that to do so may adversely affect the health and welfare of the dog. Similarly, a general manager cannot exercise this power if the dog is a dog, or a type, class or breed of dog that the Minister has declared as exempt from compulsory micro-chipping.

CLAUSE 18 - SECTION 36 AMENDED (PAYMENT OF FEES RELATING TO SEIZED DOGS)

The amendment extends the existing penalties for failure to pay the costs associated with the seizure and detention of a dog at large under section 35 to include the cost of micro-chipping the dog, if this was necessary.

CLAUSE 19 - SECTION 37 AMENDED (SEIZURE AND DETENTION OF OTHER DOGS)

The amendment has been included to clarify that a dog seized as a result of an attack, or because of the failure of an owner to comply with the control requirements for a dangerous or restricted breed dog, may be detained at a pound, or an approved animal welfare organisation, as well as any form of custody approved by an authorised person.

CLAUSE 20 - SECTION 39 AMENDED (RELEASE OF DOGS)

This clause amends the requirements for release of dogs to provide for the separate arrangements for the release of dangerous dogs under the new section 39A.

CLAUSE 21 - SECTION 39A INSERTED

This clause imposes a duty on a general manager not to release a seized dangerous dog to its owner until satisfied that the enclosure requirements for housing of the dangerous dog have been met.

The general manager may extend the period provided to an owner to establish a suitable enclosure but, where there is unsatisfactory progress, the dangerous dog may be euthanised. An appeal provision to the Magistrates Court (Administrative Appeals Division) is provided, but an owner is liable for the costs of detention, until the dangerous dog is released or euthanised. If the dangerous dog is euthanised the owner is also liable for the costs of euthanasia and disposal of the body.

CLAUSE 22 - SECTION 49A INSERTED – ABATEMENT NOTICES

This clause provides for a new system of abatement notices to address nuisance behaviour of dogs. Nuisance behaviour is already defined in section 46 (3) of the Act and includes the noise created by persistent barking.

An abatement notice will clearly set out the nature of the nuisance, what is expected to be done about the nuisance, the timeframe within action must be taken and by whom.

General managers are also provided with powers of entry to investigate nuisance behaviour.

The abatement notice process includes an appeal mechanism to the Magistrates Court (Administrative Appeals Division).

CLAUSE 23 - SECTION 62 AMENDED (ORDER FOR DESTRUCTION OF DOG)

The amendment extends the existing options available to a court to deal with a dog that it has found has attacked a person or an animal, or a dog that has been found to have killed another animal.

The amendment extends the existing ability of a court to direct a general manager to declare a dog to be a dangerous dog, to also allow for a direction that a dog be declared a restricted breed dog.

CLAUSE 24 - SECTION 73 AMENDED (ENTERING LAND)

The amendment applies the same provisions for dealing with the seizure and detention of dogs at large to a dog seized as a result of an entry and search on land.

These provisions also stipulate measures a general manager must take before a dog is sold, euthanised or otherwise disposed of.

A general manager is also empowered to micro-chip a dog seized as a result of an entry and search on land and to recover the costs of doing so from an owner.

However, a general manager cannot micro-chip a dog if a veterinary surgeon has certified that to do so may adversely affect the health and welfare of the dog. Similarly, a general manager cannot exercise this power if the dog is of a type, class or breed of dog that the Minister has declared, by order, as exempt from compulsory micro-chipping.