**DOG CONTROL ACT AMENDMENT BILL 1989**

**Legislative Council, 8 March 1989, pages 2246-8**

Second reading

 **The Hon. G.F. KENEALLY (Minister of Transport)** obtained leave and introduced a Bill for an Act to amend the Dog Control Act 1979. Read a first time.

The Hon. G.F. KENEALLY: I move: That this Bill be now read a second time.

I seek leave to have the second reading explanation inserted in Hansard without my reading it. Leave granted.

Explanation of Bill

It contains various measures designed to improve the present system of dog control and registration particularly in relation to attacks by dogs on persons and livestock. Since the repeal, in 1983, of the Alsatian Dogs Act which prohibited the keeping of German shepherd dogs in northern pastoral areas, various bodies and committees have examined the problem of continuing attacks on livestock in northern and urban fringe areas. The factors which give rise to stock attacks are the same factors which give rise to attacks on persons and to other damage and nuisance caused by dogs—an unwanted surplus of dogs being bred and irresponsible owners who do not adequately contain and control their dogs.

This Bill proposes that the penalty for urging a dog to attack be increased to a fine not exceeding $8 000 or a term of imprisonment not exceeding two years and that persons responsible for the control of a dog which attacks persons or animals be liable to a fine not exceeding $2 000. Penalties in relation to allowing a dog to become a nuisance and hindering an authorised person or otherwise obstructing the enforcement process have also been increased. Severe penalties have been provided for failure to comply with orders of the court in relation to the abatement of a nuisance created by a dog and the destruction or control of a dog which has proved to be unduly mischievous or dangerous. As a last resort, where a person has demonstrated by the repeated commission of offences concerning nuisance and attacks caused by their dog or the ill-treatment of a dog that they are not prepared to accept the responsibility which owning a dog entails, this Bill provides for a court to order that the person dispose of their dog and not acquire another for a specified period.

Since livestock attacks often occur on consecutive days over a short period, regulations are proposed which will provide for livestock owners to lay baits after giving 48 hours notice rather than 21 days notice but the notification required will be more extensive.

In an effort to improve the identification of seized dogs, dogs which have been tattooed will also be required to wear a collar and current registration disc. Guard dogs used in connection with a business or activity which is not of a domestic nature will be required to wear special reflective collars so that they can easily be identified as potentially dangerous when at large. Regulations are proposed which will require owners of such dogs to advise councils of the location of the dogs and erect warning notices containing an emergency 24-hour telephone number so that they can be contacted quickly by authorised persons.

The present provisions of the Act which relate to relativities of registration fees in relation to categories such as working dogs and dogs registered by persons entitled to a concession have been removed as these matters are dealt with by regulation. It is proposed to provide that the amount for registration of a desexed dog be half that for registration of a dog which has not been desexed. Over time it is expected that this incentive will reduce the number of unwanted dogs being bred. The opportunity has been taken to rectify a number of problems which have arisen in working with the present provisions. For instance, wardens under the National Parks and Wildlife Act, who may not under the present Act be classed as ‘owners’ of protected wildlife, are given the same powers as the owners of livestock to destroy a dog found attacking the animals.

The Bill contains a number of minor amendments which improve the machinery of the Act. Prescribed pounds will only be required to keep strays delivered by councils for 72 hours from delivery before disposing of them, rather than 72 hours after the prescribed notices describing the dog have been displayed or served by an authorised person. In most cases they will be kept for a longer period but the number of unwanted dogs is such that at times these pounds have been stretched to capacity when forced to maintain unwanted dogs for long periods. Councils will also be able to accept the late payment of expiation fees on payment of the costs and expenses incurred in relation to proceedings.

Clause 1 is formal.

Clause 2 provides that the measure is to come into operation on a day to be fixed by proclamation.

Clause 3 amends section 5 of the principal Act which contains definitions of certain terms used in the Act. The clause alters the definition of ‘dog’ so that it is clear that it does not include a dingo. ‘Guard dog’ is defined as being a dog used in or in connection with a business or other activity not of a domestic nature for the purpose of guarding or protecting a person or property. A new definition of ‘metropolitan council’ is inserted which would allow the councils that are to fall within the definition to be listed by regulation. A new definition of ‘registration disc’ is inserted which is designed to make it clear that the term may include a badge, tag or other device not in the form of a disc.

Clause 4 amends section 7 of the principal Act by removing a reference to metropolitan councils within the meaning of the Local Government Act 1934-1981. Metropolitan councils are no longer defined in that Act. Instead, the new definition of ‘metropolitan council’ would allow such bodies to be listed in the regulations.

Clause 5 amends section 16 of the principal Act which provides for the establishment and application of the Dog Control Statutory Fund. The clause amends the section so that the Animal Welfare League is included amongst the bodies to which payments or grants may be made and to authorise the administrative expenses of the Central Dog Committee to be met from the fund.

Clause 6 amends section 26 of the principal Act which makes it an offence to own or keep an unregistered dog. Under the present wording it is not an offence if an unregistered dog is not kept in any one council area for more than 14 days. This exception is removed and instead provision is made that a person responsible for the control of a dog is not guilty of an offence by reason of the fact that the dog is unregistered if—

(a) less than 14 days has elapsed since the person first became responsible for the control of the dog; or

(b) the dog is travelling with the person and the place at which the dog is or is to be usually kept is not within the State.

The clause also alters the present exception from the requirement for registration in the case of a dog less than three months of age so that it applies to a dog less than six months of age.

Clause 7 amends section 27 of the principal Act which governs applications for the registration of dogs. The clause amends the section so that regulations may be made requiring that a registration application be accompanied by documents of a kind to be specified in the regulations, for example, evidence that a dog has been desexed. The section presently provides that no fee is payable for registration of a guide dog for the blind. This provision is amended so that it applies to guide dogs in general, which now, under the definition contained in section 5 of the Act, include guide dogs for the deaf. The other provisions relating to the amount of registration fees are removed and the matter is left to be dealt with in the regulations.

Clause 8 amends section 29 of the principal Act so that it provides that the registration of a dog will expire if the dog is removed from the area in which it is registered with the intention that it will be usually kept at a place outside that area.

Clause 9 amends section 33 of the principal Act which requires that a dog must have a collar around its neck with the registration disc attached to it and with the name and address of its owner marked on the collar or an attachment to the collar. The clause adds a further provision that collars for guard dogs must comply with the requirements of the regulations. The penalty for an offence against the section is increased from $100 to a division 10 fine (a maximum of $200). The clause removes the present exception under which a dog that has been tattooed in accordance with the Act is not required to wear a collar.

Clause 10 amends section 36 of the principal Act which relates to the seizure and impounding of dogs that are wandering at large. The clause rewords subsection (1) so that an authorised person is not required to ‘find’ a dog wandering at large before seizing it, but may if necessary leave a cage to trap it. The clause rewords subsection (3) so that it is clear that costs, charges and fees may be recovered from the person responsible for a dog whether or not the dog is returned to that person. The clause makes other amendments of a more minor and technical nature.

Clause 11 amends section 37 of the Act by removing the power of an authorised person to enter a dog owner’s property without a warrant. This power is restated in a slightly wider form in the new section 50a (3) inserted by clause 18. Clause 12 repeals section 42 of the Act concerning the abandonment of dogs. The same offence is created under section 13 of the Prevention of Cruelty to Animals Act 1985, with a more severe penalty. Clause 13 amends section 44 of the Act which makes it an offence if a dog attacks, harasses or chases any person or any animal or bird in the charge or under the control of a person. The clause adds a provision under which a court that finds a person guilty of such an offence may order the person to pay compensation for injury or loss caused by the actions of the dog.

Clause 14 amends section 45 of the Act so that it is clear that compensation may be ordered in respect of loss as well as injury suffered as a result of an attack by a dog. Clause 15 amends section 46 of the Act by giving power to a warden under the National Parks and Wildlife Act 1972, to lawfully destroy a dog which is found attacking or harassing a protected animal on a reserve. Clause 16 amends section 49 of the Act by providing that it is to be an offence punishable by a division 6 fine (a maximum of $4 000) if a person fails to comply with an order of a court made under that section.

Clause 17 amends section 50 of the Act by making changes that correspond to those made by clauses 14 and 16. Clause 18 expands the power under section 50a to seize and detain dangerous dogs so that it extends to dogs that are unduly mischievous (in the same way as applies under section 50). The clause also confers a power of entry without warrant for that purpose where urgent action is required. Clause 19 amends section 51 of the Act by removing a reference to the Alsatian Dogs Act 1934-1978, which has been repealed. Clause 20 amends section 52 of the Act which provides for damages for injury caused by a dog. The clause rewords the section so that it is clear that it extends to loss as well as injury caused by a dog. Clause 21 rewords sections 57 and 58 of the Act. The new sections are essentially the same as those replaced but various minor problems of interpretation are addressed.

Clause 22 repeals section 59 of the Act which creates an offence relating to cruelty to dogs. This matter is left to be dealt with under the Prevention of Cruelty to Animals Act 1985. The clause substitutes a new section 59 which gives a court power to order that a person who has been convicted of two more serious offences relating to dogs on separate occasions within the preceding period of two years must dispose of any dogs owned by the person or in the person’s possession or control and must not acquire any other dog for a specified period or until further order. Clause 23 makes an amendment to the evidentiary provision, section 61, that is consequential to the amendment to section 26 relating to the minimum age for registration of dogs. Clause 24 repeals section 64 of the Act which provides for the expiation of offences. The clause replaces the section with a new section that is substantially the same but, in addition, provides for acceptance by a council of late payment of an expiation fee where the person pays the prescribed fee for late payment or, if proceedings have already been commenced, pays the costs and expenses incurred by the council in relation to those proceedings.

Clause 25 rewords section 65a of the principal Act relating to the making of by-laws for the purposes of the Act. The new provision continues the requirement that any such bylaw must be made in accordance with Part XXXIX of the Local Government Act 1934. It also contains a new provision that the provisions of the Local Government Act 1934, including the provisions relating to the variation of fees, or the prescription of forms, by resolution of a council, apply in relation to a by-law for the purposes of the principal Act as if it were a by-law under the Local Government Act 1934. The schedule proposes amendments that are of a statute law revision nature only, or that adjust penalties for offences against the Act and convert them to the new divisional penalties provided for under the Acts Interpretation Act 1915. The statute law revision amendments do not make any changes of substance but bring the provisions into line with current drafting style with a view to the publication of a consolidation of the Act.

The Hon. B.C. EASTICK secured the adjournment of the debate.