

2017

**THE LEGISLATIVE ASSEMBLY FOR
THE AUSTRALIAN CAPITAL TERRITORY**

Government amendments to the Domestic Animals (Dangerous Dogs)

Legislation Amendment Bill 2017

EXPLANATORY STATEMENT

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Introduction

This explanatory statement relates to Government amendments to the *Domestic Animals (Dangerous Dogs) Legislation Amendment Bill* (the Bill) as presented to the Legislative Assembly. It has been prepared to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the ACT Legislative Assembly.

This explanatory statement must be read in conjunction with the Bill, explanatory statement to the Bill and Government amendments moved by the Minister for Transport and City Services. It is not, and is not intended to be, a comprehensive description of the Bill. What is written about a provision is not to be taken as an authoritative statement of the meaning of a provision, this being a responsibility of the Courts.

Overview of the Bill

This Bill presents Government amendments to the Domestic Animals (Dangerous Dogs) Legislation Amendment Bill 2017 introduced to the Assembly on 1 November 2017.

The Government amendments provide even stronger protections for public safety and animal welfare.

The amendments will ensure that the ACT comes in to line with best practice in other jurisdictions in Australia and around the world and that there is a holistic approach to addressing dangerous dogs and potentially dangerous dogs. This includes addressing factors that contribute to a dog becoming dangerous such as illegal breeding, not de-sexing dogs and nuisance and harassing behaviour resulting from irresponsible dog ownership practices.

All dogs, regardless of their breed, can be unpredictable and have the capacity to be aggressive and dangerous if they are not managed appropriately and responsibly. The recognised underlying cause of dog attacks has been identified across the world as irresponsible dog owners.

The Government amendments will bring about immediate improvements to the regulatory framework for dangerous and potentially dangerous dogs, focussed on responsible dog ownership as well as dog behaviour.

In summary, the Bill and Government amendments will:

- introduce three new classes of responding to a dog attack with proportionate powers to act by the registrar. The registrar will be able to destroy a dog in extreme and serious circumstances with reduced appeal timeframes so that action can be taken promptly and without delay;

- result in a three-tiered system for managing dogs with the introduction of a dog control order. This will give the registrar the ability to impose either a nuisance notice, control order or a dangerous dog licence on a dog depending on the type of behaviour exhibited by the dog and the owner and the risk to the community;
- introduce a general public safety consideration in how the registrar exercises discretion in dealing with dogs that could be dangerous and in making important decisions about dogs and community safety;
- increase fines and penalties, including a new offence for provoking a dog to attack and not having effective control of a dog in a public place, on or off a leash. The registrar will also have the discretion to take action against a keeper who has acted negligently, even where there is someone else caring for their dog at the time of an attack;
- introduce ownership bans and cancellations for irresponsible owners or owners in breach of the Act, where a person cannot demonstrate responsible dog management, care or control;
- impose greater restrictions on keepers of dangerous dogs with public safety being the paramount consideration;
- increase enforcement powers and give authorised officers an ability to seize and act on nuisance, harassing or dangerous dogs in a greater range of circumstances, particularly where they pose a potential or actual threat to public safety;
- provide for greater enforcement powers and increased restrictions in relation to de-sexing and illegal breeding;
- introduce a self-reporting obligation for owners of dogs involved in serious dog attacks and an obligation for owners or carers to exchange details with victims, or be penalised; and
- move to a microchip-only system of registration to improve identification and tracking of dogs, including dangerous dogs.

Human Rights Implications

This Bill provides stronger protections for fundamental human rights, notably the right to life, protection of the family and children, freedom of movement, and the right to liberty and security of the person. In protecting these rights there will be restrictions placed on the property rights of others.

The property rights implications of this Bill are to remove property (in this case, a dog) or to restrict the way in which that property is owned, kept or used. This right only becomes limited after a dog has attacked, harassed or resulted in a nuisance to a person or animal; where a person does not demonstrate responsible dog management, care or control; or where there is potential or real risk to public safety.

The limitations on property rights are considered to be fair, equitable and proportionate in consideration of the fundamental human rights mentioned above. The Bill will respect the rights of responsible pet owners.

Climate Change impacts

The Bill has no identifiable climate change impacts.

OUTLINE OF PROVISIONS OF THE GOVERNMENT AMENDMENTS TO THE BILL

PART 1 PRELIMINARY

Clause 3A Offences against Act

This clause removes tag offences as it will no longer be an offence not to have a registration tag in moving to a microchip-only registration system under the Bill.

Clause 3B – 3E Offences against Act

These clauses reflect the new or amended offence provisions in the list of offences.

Clause 3F Criteria for assessing responsible dog or cat management, care or control

New section 4B

This clause introduces a definition for responsible dog and cat management, care or control which is used throughout this Bill. The clause sets out what the registrar must consider but also allows the registrar to consider any other matter the registrar considers relevant in deciding whether a person has or is able to exercise responsible dog or cat management, care or control. A key feature of this definition is whether someone has committed an animal welfare or animal control offence before, either in the ACT under this Act or the *Animal Welfare Act 1992* or in another jurisdiction.

PART 2 DOMESTIC ANIMALS ACT

Clause 3G Registration – approval or refusal

Substitute section 7

This clause gives the registrar the power to refuse to register a dog if the applicant is disqualified from keeping a dog or any other animal as per existing section 138A of the Act, but also a discretionary power to refuse to register a dog if the registrar reasonably believes the applicant has failed to or is unable to exercise responsible dog management, care or control (as defined in this Bill) or the dog is not microchipped or de-sexed. This is aimed at preventing irresponsible dog ownership before a person even takes ownership of a dog where a person is clearly not suitable to own a dog or has not met the provisions of this Act (for example, has not de-sexed their dog).

Clause 3H to 3K Registration numbers, certificates and tags

**Amend heading section 11, section 11 (1) (b),
section 11 (3) and section 11 (4)**

These clauses amend section 11 to remove reference to 'tags' which are no longer required under this Bill.

Clause 3L Change of keeper

Amend Section 12 (1) and (2)

This clause increases the maximum penalty units from 5 penalty units for these subsections to 10 penalty units. This is considered reasonable and proportionate to the offence.

Clause 3M Registration – cancellation

Amend section 13

This clause gives the registrar the ability to cancel the registration of a dog in a range of practical circumstances (such as the dog has died) but also if the applicant is disqualified from keeping a dog or any other animal as per existing section 138A of the Act or if the registrar reasonably believes the applicant has failed to or is unable to exercise responsible dog management, care or control (as defined in this Bill). There are both mandatory and discretionary cancellation powers.

This is aimed at preventing ongoing irresponsible dog ownership by removing a dog from the care of an irresponsible owner and cancelling that ownership. The registrar will then be able to deal with the dog by either selling the dog (which is defined in this Bill) or euthanising the dog.

Clause 3N Unregistered dogs

Amend section 14 (1)

This clause increases the maximum penalty units from 5 penalty units for this subsection to 15 penalty units. This is considered reasonable and proportionate to the offence.

Clause 3O Tag offences

Omit section 15

This clause removes tag offences as tags are no longer required under this Bill.

Clause 3P Evidence of registration or non-registration

Substitute section 17 (1)

This clause amends section 17 (1) to remove reference to ‘tags’ as tags are no longer required under this Bill.

Clause 3Q Requirement to be licensed if multiple dogs

Substitute section 18

This clause clarifies that four or more dogs cannot be kept on a residential premises, regardless of whether there is one or more owner of those dogs. It also allows for one or more owner to be found guilty of an offence if four or more dogs are kept on a premises. There are exceptions to this in subsection (3). This clause also brings wording from the Regulations in to this Act to reduce duplication. This clause increases the maximum penalty units to 50 penalty units which is considered reasonable and proportionate to the offence.

Clause 3R Multiple dog licenses – approval or refusal

Section 20 (1)

This clause corrects a reference error in section 20.

Clause 3S – 3U Multiple dog licences

Insert sections 20 (2) (d), 20 (3) (g) and 21 (2) (d)

These clauses require the registrar to consider if the applicant is able to exercise responsible dog management, care and control and the safety of the public and other animals in deciding whether or not to approve or refuse an application for a multiple dog licence and to consider the safety of the public and other animals in deciding whether to place conditions on a multiple dog licence.

Clause 3V Multiple dog licences – conditions

New section 21 (5)

This clause makes it an offence if a person fails to comply with a condition of a multiple dog licence with a maximum penalty of 50 penalty units. This is considered reasonable and proportionate to the offence.

Clause 3W Declaration – dangerous dogs

Amend section 22 (1) (a)

This clause means that any dog that is kept as a guard dog is a dangerous dog, regardless of whether it is on a residential premises or not. All dogs that are kept as guard dogs should be declared dangerous dogs.

Clause 4 Declarations – dangerous dogs

Amend new section 22 (1) (aa)

This clause amends new section 22 (1) (aa) so that it is only mandatory to declare a dog a dangerous dog if the dog causes the death of or serious injury to a person. It removes the requirement to declare a dog a dangerous dog if it kills or causes a serious injury to an animal, although the registrar still has discretion to do this. This means that a dog that kills a chicken or a lizard does not have to be declared a dangerous dog for example.

Clause 4A Declarations – dangerous dogs

Amend section 22 (2)

This clause amends section 22 (2) to list the circumstances when the registrar may declare a dog to be a dangerous dog to include not only where a dog has attacked or harassed a person or animal but also where the registrar reasonably believes the dog is aggressive or menacing and without being kept in accordance with a dangerous dog licence is an unacceptable risk to the safety of the public and other animals.

Clause 4B Licensing of keepers of dangerous dogs

Amend section 23 (1)

This clause amends section 23 (1) and increases the maximum penalty units from 50 to 100 penalty units where a person, without reasonable excuse, keeps a dangerous dog except in accordance with a dangerous dog licence. This is considered reasonable and proportionate to the offence.

Clause 5 Dangerous dog licences - applications

Amend new section 24 (3) and (4)

This clause amends new section 24 (3) and (4) so that the new licence application fee for a dangerous dog licence is at least 10 times the application fee for registration of a dog and also so that the registrar can waive the increased application fee in certain circumstances, for example where someone is keeping a guard dog and this is the only reason the dog is declared dangerous or where the dog will not be an unacceptable risk to the safety of the public and other animals.

Clause 5A Dangerous dog licences – approval or refusal

New section 25 (1A)

This clause sets out grounds when the registrar must refuse to approve an application for a dangerous dog licence and also when the registrar may refuse an application. The registrar has discretion where the registrar reasonably believes there is an unacceptable risk to the safety of the public or other animals or if the applicant has failed, or is unable to, exercise responsible dog management, care or control.

Clause 5B Dangerous dog licences – approval or refusal

Amend section 25 (2) (f)

This clause requires the registrar to consider the safety of the public and other animals in deciding whether or not to grant a dangerous dog licence.

Clause 5C Omit section 25 (3)

This clause omits section 25 (3) as it is now built in to Clause 5A.

Clause 5D Dangerous dog licence conditions

New section 26 (1A)

This clause requires the registrar to consider the safety of the public and other animals in deciding whether or not to impose a condition on a dangerous dog licence.

Clause 5E – 5F Dangerous dog licences – conditions

New sections 26 (2) (b) and (c)

This clause adds an additional condition that can be imposed on a dangerous dog licence (requirements about the dog leaving the premises) and amends the wording about a condition for an approved course to be a course approved in writing by the registrar.

Clause 5G Dangerous dogs in public places

Amend section 27 (1) and (2)

This clause amends the subsections to increase the maximum penalty units from 10 to 20 penalty units. This is considered reasonable and proportionate to the offence.

Clause 5H Signs on premises about dangerous dogs

Substitute section 28

This clause requires the keeper of a dangerous dog to ensure that warning signs are placed on all places of entry to the premises where each sign can be readily seen by a person about to enter the premises, rather than just on one fixed point of entry.

Clause 6 Special licences - renewal

Substitute new section 32 (2)

This clause substitutes section 32 (2) and gives the registrar discretion as to whether to renew a special licence if the registrar reasonably believes there is an unacceptable risk to the safety of the public or other animals or if the holder has failed, or is unable to, exercise responsible dog management, care or control. The clause requires the registrar to refuse to renew a licence if the licence holder is disqualified from keeping a dog or any other animal as per existing Section 138A of this Act. The fee must be at least 10 times the application fee for registration of a dog and can be waived by the registrar in certain circumstances, which mirror the circumstances where the fee for granting a licence can be waived.

Clause 6A Variation of special licences

Amend section 33 (3) (c)

This clause reduces the time that the registrar must give a person notice before varying a special licence from 14 to 7 days so that variations can be acted on quickly.

Clause 6B Variation of special licences

Substitute section 33 (7)

This clause amends section 33 (7) to make varying a licence consistent with, and reflect, new section 25 (1A) in relation to when the registrar must and can refuse to issue a dangerous dog licence. This also makes the provision consistent for both a multiple dog licence and dangerous dog licence.

Clause 6C Cancellation of special licences

Substitute section 36 (1)

This clause requires the registrar to cancel a special licence if the licensee is disqualified from keeping a dog or any other animal and gives the registrar the discretion to cancel a licence in a number of circumstances, for example where the licence was obtained by a false or misleading statement of the registrar reasonably believes there is an unacceptable risk to the safety of the public and other animals.

Clause 6D Cancellation of special licences

Amend section 36 (2) (c)

This clause reduces the time that the registrar must give a person notice before cancelling a special licence from 14 to 7 days so that cancellations can be acted on quickly.

Clause 6E – 6F Prohibited places

Amend sections 42 (1), 42 (2), 42 (3) and 42 (4)

These clauses amend section 42 to increase the maximum penalty units from 5 to 15 penalty units for subsection 42 (1) and 5 to 10 penalty units for subsections 42 (2) to (4). The penalties are considered reasonable and proportionate to the offences.

Clause 6G Dogs in public places must be controlled

Amend section 44

These clauses amend section 44 so that it is an offence for a person not to have effective control of their dog, on or off a leash, when a person is with a dog in a public place. The clauses also make the maximum penalties consistent across the section and bring them to a maximum of 15 penalty units each. This is considered reasonable and proportionate to the offences. The clauses also make subsequent minor amendments to other sub-sections.

Clause 6H – 6I Dogs on private premises to be restrained

Amend section 45 (1), 45 (3) and 45 (5)

This clause amends the subsections to increase the maximum penalty units from 5 to 10 penalty units for sections 45 (1) and 45 (3) and from 5 to 15 penalty units for section 45 (5). These are considered reasonable and proportionate to the offences.

Clause 6J Removal of faeces

Amend section 46 (2)

This clause amends the subsection to increase the maximum penalty units from 1 to 5 penalty units. This is considered reasonable and proportionate to the offence.

Clause 6K Female dogs on heat

Amend section 47 (1)

This clause amends the subsection to increase the maximum penalty units from 5 to 15 penalty units. This is considered reasonable and proportionate to the offence.

Clause 6L – 6M Dog attacks or harasses person or animal

Amend section 49A (4) (c)

These clause correct the heading of Division 2.6 and wording in section 49A (4) (c) to include a reference to animal.

Clause 6N Dog attacks or harasses person or animal

Substitute section 49A (5) and note

This clause removes the complete defence for a keeper where their dog attacks or harasses a person under section 49A but they were not, at the time of the offence, the carer for the dog. This means that a keeper can still be guilty of an offence if their dog is in the care of someone else and attacks or harasses another person or animal, where they did not take reasonable steps to ensure that the carer could exercise responsible dog, management care or control. A number of examples are given to assist in interpreting this section, for example the keeper does not ensure that the carer is physically able to control the dog. This clause also gives the court power to act in relation to the dog.

Clause 7 – 7B Dog attacks person or animal causing serious injury

Retain and amend section 50

These clauses retain the ability for a court to order a dog to be destroyed, or take other appropriate action where a dog attacks a person or animal causing serious injury. This clause does not limit the ability of the registrar to take action in relation to an attacking or harassing dog as provided for elsewhere in this Bill.

These clauses also remove the complete defence for a keeper where their dog attacks but they were not, at the time of the offence, the carer for the dog. This means that a keeper can still be guilty of an offence if their dog is in the care of someone else and attacks a person or animal causing serious injury, where they did not take reasonable steps to ensure that the carer could exercise responsible dog, management care or control. A number of examples are given to assist in interpreting this section, for example the keeper does to ensure that the carer is physically able to control the dog.

This clause omits section 50 (6), consistent with part of Clause 7, and moves the definition of 'serious injury' to a different location in the Act.

Clause 8 – 8B Dangerous dog attacks or harasses person or animal
Retain and amend section 50A

These clauses retain the ability for a court to order a dog to be destroyed, or take other appropriate action, where a dangerous dog attacks or harasses another person or animal. This clause does not limit the ability of the registrar to take action in relation to an attacking or harassing dog as provided for elsewhere in this Bill.

These clauses omit section 50A (6), consistent with part of Clause 7, and move the definition of 'serious injury' to a different location in the Act.

Clause 8C Obligations of keeper or carer if dog attacks
New section 50B

This clause requires a keeper or carer of a dog that attacks to, if asked by the person affected by the attack, provide reasonable assistance as requested and to provide the keeper or carer's name, address and contact details. The keeper or carer of the attacking dog must tell the registrar of the attack as soon as practicable after the attack occurs. Not complying with these provisions attracts a maximum penalty of 50 penalty units which is considered reasonable and proportionate to the offence.

Clause 8D Provoking dog to attack
New section 51A

This clause makes it an offence for a person to provoke a dog to attack where the provocation causes the dog to attack. This provision is considered to be broader than the offence of 'encouraging a dog to attack' in section 51 and would include a situation where a person pokes or prods a dog for example. It also replicates the defence provisions for a dog attack and places an onus on a person to behave appropriately around a dog. The maximum penalty is 50 penalty units which is considered reasonable and proportionate to the offence.

Clause 8E Costs of impounding dogs
Omit section 52 (3)

This clause removes the requirement for a complainant to pay the costs of impounding a dog if the court finds the complaint to be frivolous or vexatious.

Clause 9 Complaints about attacking or harassing dogs

Proposed new sections 53A to 53E

This clause creates a number of new sections resulting in new responses to classes of dog attacks with appropriate powers to act by the registrar, and introduces a control order.

The clause enables a person to make a written complaint about an attack by a dog or a harassing, aggressive or menacing dog and gives the registrar the power to investigate the complaint. The registrar must investigate a complaint about an attack that caused the death of, or serious injury to, a person.

Class 1 attack

The clause requires the registrar to take action if reasonably satisfied by a complaint or otherwise that a dog attacked and caused the death or serious injury of a person or the death of an animal. In this case the registrar must destroy the dog unless the dog is not likely to be a danger to the public or another animal and certain considerations have been taken into account. If the registrar decides not to destroy the dog under this section, the registrar can declare the dog a dangerous dog and impose a dangerous dog licence or issue a control order for the dog. Appeal timeframes are 7 days if the registrar decides to destroy the dog for this kind of attack.

Class 2 attack

The clause requires the registrar to take action if reasonably satisfied by a complaint or otherwise that a dog attacked and caused an injury (other than a serious injury) to a person or serious injury to an animal. The registrar can destroy the dog, declare the dog a dangerous dog and impose a dangerous dog licence, issue a control order for the dog or release and/or take no action in relation to the dog. The registrar must consider the safety of the public in deciding whether or not to destroy the dog.

Class 3 attack

The clause requires the registrar to take action if reasonably satisfied by a complaint or otherwise that a dog harassed a person or animal or is aggressive or menacing to an extent that the dog may endanger the safety of the public. The registrar can declare the dog a dangerous dog and impose a dangerous dog licence or issue a control order to the dog's keeper.

This clause gives the registrar the discretion to investigate a matter regardless of whether there is a complaint.

These clauses also give the registrar the power to revoke a control order only on certain grounds and makes it an offence for a person to fail to comply with a control order. Failing to comply with a control order attracts a maximum penalty of 50 penalty units. This is considered reasonable and proportionate to the offence.

Clause 9A Inspection of attacking or harassing dogs

Omit section 54

This clause omits section 54 as a general inspection power has been introduced in to this Act.

Clause 9B Notice to affected neighbours

New section 55B

This clause consolidates provisions in the Bill and introduces a new general provision that gives the registrar the discretion, where a dog is declared a dangerous dog or where a control order or nuisance notice is issued, to give notice to neighbours where appropriate.

Clause 9C – 9F Seizure of dogs - general

Amend section 56

These clauses give a range of additional new seizure powers where: a dog is not registered; a dog is not identified by implanted microchip; a dog is not controlled in a public place; the keeper or carer fails to give an authorised person their name and address if required; a keeper is refused registration of a dog or the registration is cancelled; the keeper has not complied with a control order; the keeper is breeding without a breeding licence; the dog is illegally not de-sexed; or the authorised person reasonably believes that keeper or carer of a dog is not demonstrating responsible dog management, care or control or the safety of the public or other animals are at risk because of the keeper or carer's actions. This is aimed at improving both public safety and animal welfare outcomes.

Clause 10 New section 56A

Amend new section 56A

This clause requires an authorised person to seize a dog if there is a complaint that a dog attacked and caused the death of or serious injury to a person. An authorised person has discretion to seize a dog that is the subject of other, less serious, complaints. If a dog is seized the authorised person must impound the dog or if satisfied the dog can be kept securely and safely on premises, order a home impoundment of the dog. A home impoundment can be with conditions. A person commits an offence with a maximum of 50 penalty units if they do not comply with a home impoundment. This is

considered reasonable and proportionate to the offence.

Clause 12 Section 57 (a)

Retain existing section 57 (a)

This clause retains existing section 57 (a) as it is important to keep the current requirement that a dangerous dog must be seized where a keeper has contravened a dangerous dog licence and the authorised person reasonably believes, having regard to the safety of the public, that the contravention justifies the seizure.

Clause 12A Seizure – multiple dog licence

Substitute section 58

This clause gives the registrar the ability to seize a dog if the keeper has not complied with a multiple dog licence.

Clause 13 Seizure and impoundment

Substitute sections 59 and 60

This clause substitutes sections 59 and 60 to require an authorised person to seize a dog if the person reasonably suspects the dog attacked a person and the attack caused the death of or serious injury to a person. An authorised person may seize a dog if the person suspects the dog attacked and caused a non-serious injury to a person, a serious injury to an animal, harassed a person or animal or is aggressive or menacing.

This clause also gives an authorised person the ability to impound a seized dog and make reasonable enquiries of the keeper's identity if not known and give written notice to the keeper. Notice can be by phone. This clause also gives an officer the discretion for a home impoundment, for example where a dog is seized because the dog is not registered the dog can be impounded at home under express direction that the dog is kept on the premises and is not allowed off the premises and the keeper has 24 hours to register the dog. It is an offence not to comply with a home impoundment direction with a maximum penalty of 50 penalty units. This is considered reasonable and proportionate to the offence.

Clauses 13A – 13B Amend sections 61 and 62 (2) (d)

These clauses make minor changes to sections 61 and 62 to say that a notice of seizure must include certain information where relevant and to reflect the new seizure powers as part of this Bill.

Clause 13C Releasing dogs seized under general seizure power

New section 62 (2) (g) and (h)

This clause requires the registrar to consider the safety of the public and other animals and whether the keeper is able to exercise responsible dog management, care or control before releasing a seized dog that is not a declared dangerous dog back to its keeper.

Clause 13D – 13F Releasing dogs seized and holding period

Amend section 62

This clause amends section 62 so that the registrar can decide not to release a dog that was seized where the registrar extends the holding period while an investigation is ongoing. This clause also defines holding period. The holding period will only exceed 28 days after the day the dog was seized where the registrar gives written notice before the end of 28 days. This is only intended to be extended where an investigation is complex and more time is needed and it is potentially unsafe to release the dog.

Clause 15A – 15C Amend section 63 (2)

These clauses make minor amendments to section 63 (2) to reflect new clause 15D below.

**Clause 15D Releasing dogs seized under power relating to
multiple dogs**

New section 63 (2) (i) and (j)

This clause adds new considerations for the registrar in that the registrar must be satisfied that the keeper is able to exercise responsible dog management, care or control and there is not an unacceptable risk to public safety if a dog is released after being seized in relation to a contravention of a multiple dog licence.

Clause 15E – 15H Releasing dogs seized under multiple dog licence

Amend section 63

These clauses amend section 63 so that the registrar can decide not to release a dog that was seized because of a contravention of a multiple dog licence where the registrar extends the holding period while an investigation is ongoing. The holding period will only exceed 28 days after the day the dog was seized where the registrar gives written notice before the end of 28 days. This is only intended to be extended where an investigation is complex and more time is needed and it is potentially unsafe to release the dog.

Clause 15I - 15J Releasing dogs seized under attacking and harassing power

Amend Section 64 (1), new section 64 (2) (g) and (h)

These clauses amend section 64 so that the registrar must only release a dog that is seized under section 59 where the registrar is satisfied that the keeper is able to exercise responsible dog management, care or control and there is not an unacceptable risk to public safety, considering any control order if there is one imposed.

These clauses also make a minor change to section 64 (1) to reflect changes in this Bill.

Clause 15K – 15M Releasing dogs seized under attacking and harassing power

Amend section 64

This clause amends section 64 so that the registrar can decide not to release a dog that was seized because of a contravention of a dangerous dog licence where the registrar extends the holding period while an investigation is ongoing. The holding period will only exceed 28 days after the day the dog was seized where the registrar gives written notice before the end of 28 days. This is only intended to be extended where an investigation is complex and more time is needed and it is potentially unsafe to release the dog.

Clause 15N Releasing dogs declared dangerous after seizure for offence

Substitute section 65

This clause substitutes section 65 so that if a dog is declared to be a dangerous dog after it is seized the registrar can only release that dog to a person if the person is the dog's keeper, there is a dangerous dog licence in force for the dog and relevantly, that the keeper is able to exercise responsible dog management, care and control and there is not an unacceptable risk to the safety of the public or other animals from releasing the dog in accordance with the conditions of a dangerous dog licence.

Clause 16 New Section 65A

Amend new clause 65A (3)

This clause means that the registrar can release a dog seized under section 56A where the registrar is satisfied that the keeper is able to exercise responsible dog management, care and control, there is not an unacceptable risk to public safety or other animals considering any dangerous dog licence or control order and that any relevant fees have been paid. Under this clause the registrar must release the dog if the registrar is satisfied of the matters in

section 62 (2) and the investigation is completed.

Clause 16A – 16D Amend section 66 and section 67

These clauses make minor amendments to references in section 66 and section 67 to reflect changes in this Bill.

Clause 16E Selling dogs (other than dangerous dogs) if keeper unfit

New section 67A

This clause introduces a new requirement that where a dog is seized and the registrar is reasonably satisfied that the dog's keeper is unable to exercise responsible dog management, care or control or there is an unacceptable risk to public safety from release of the dog, the registrar may notify the dogs keeper in writing that he/she has decided to sell the dog. The keeper has 7 days to appeal the decision. This is intended to give the registrar the ability to cancel registration and re home a dog that is the subject of clearly irresponsible ownership, including in situations where there is animal neglect or other welfare concerns.

Clause 16F Selling or destroying dangerous dogs generally
Substitute section 68 (2) (c)

This clause reduces the timeframe for notice to the keeper for destroying a dangerous dog from 28 days to 7 days. Under existing section 68 (3) the keeper also has 7 days to make an application for review. This clause makes the two provisions consistent.

Clause 16G Destroying dogs – public safety concerns
New section 68A

This clause gives the registrar the power to decide to destroy a dog if there is an unacceptable risk to the safety of the public or other animals and the dog cannot be reasonably rehoused, retrained or otherwise rehabilitated so that the dog is no longer an unacceptable risk to the safety of the public or other animals. The registrar must notify the dog's keeper in writing and the dog's keeper has 7 days to apply for a review of the decision. This is considered to be a new class of responding to a situation where there are clearly exceptional circumstances in relation to a dog's behaviour.

Clause 16H Relinquishing ownership of dogs

Amend section 69 (1)

This clause amends section 69 (1) so that the section applies to any dog seized under this Act.

Clause 16I Returning seized dog to its keeper

Substitute section 70 (4)

This clause reflects that the registrar may return a seized dog to its keeper with a control order for the dog.

Clause 16J Offence – breeding dogs or cats without licence

Amend section 72 (1) (b)

This clause makes it a strict liability offence to breed a dog or a cat without a breeding licence, regardless of whether the sale is for profit or gain.

Clause 16K Breeding licence – approval or refusal

Substitute section 72B (2)

This clause requires the registrar to refuse to approve an application for a breeding licence if the applicant is disqualified from keeping a dog or any other animal and gives the registrar the discretion to refuse to approve an application on a number of other grounds, including on grounds of public safety or the safety of other animals, any breach of animal welfare laws or if the applicant has failed, or is unable, to exercise responsible dog management, care or control.

Clause 16L Breeding licence – approval or refusal

Insert section 72B (3) (g)

This clause requires the registrar to consider the safety of the public and other animals in deciding whether or not to approve or refuse an application for a breeding licence.

Clause 16M Breeding licence - duration

Amend section 72C

This clause places an expiry date on a breeding licence of 2 years unless sooner surrendered or cancelled.

Clause 16N Breeding licence - conditions

New section 72E (1A)

This clause gives the registrar the express ability to impose a condition on a breeding licence that limits the number of litters a dog or cat can breed.

Clause 16O Breeding licence - cancellation

Substitute section 72G (1)

This clause requires the registrar to cancel a breeding licence where the licensee is disqualified from keeping a dog or any other animal. This clause gives the registrar the discretion to cancel a breeding licence in additional circumstances, including where the registrar becomes aware of new circumstances, the registrar reasonably believes that the licensee has failed, or is unable, to exercise responsible dog or cat management, care or control or it is otherwise appropriate to do so.

Clause 16P Offence – advertising requirements

Substitute section 72K

This clause makes it an offence for any person to breed a dog or cat and publish an invitation to buy the dog or cat where the person does not hold a breeding licence. The offence of breeding without a licence attracts a maximum penalty of 50 penalty units. This is considered reasonable and proportionate to the offence.

This clause also makes it a lesser offence for a person who holds a breeding licence to breed a dog or cat and publish an invitation to buy the dog or cat where the breeding licence number is not included.

Clause 16Q Offence – surrender of breeding licence

Amend section 72L

This clause removes section 72L as it is no longer required with the other changes made in this Bill.

Clause 16R Dogs and cats to be de-sexed if over certain age

New section 74 (5) (c)

This clause inserts a new defence to this section for when a veterinary surgeon certifies in writing that de-sexing the dog would be a serious health risk to the dog.

Clause 16S Sale of older dogs and cats not de-sexed

Substitute section 74A

This clause makes it a strict liability offence for a person to sell a dog or cat that has not been de-sexed, where the dog or cat is over a certain age and the person does not hold a permit. The maximum penalty for this offence is 50 penalty units. This is considered reasonable and proportionate to the offence. This clause also inserts a new defence for when a veterinary surgeon certifies in writing that de-sexing the dog would be a serious health risk to the dog.

Clause 16T Approval or refusal of applications

Substitute section 76 (2)

This clause requires the registrar to consider a number of additional factors in deciding whether or not to grant a permit for a dog or cat not to be de-sexed, including the safety of the public and any other relevant matter. The clause also gives the registrar the ability to issue a permit for a stated period or on any other condition.

Clause 16U Term of permits

Omit section 78

This clause removes section 78 as it is no longer needed with clause 16M.

Clause 16V Production of permits

Substitute section 79 (1)

This clause makes it an offence for a person not to show an authorised person their de-sexing permit within 24 hours of being asked to show the permit. This is a strict liability offence.

Clause 16W Identification of dogs and cats - requirement

Amend section 84 (1) and (2)

This clause increases the maximum penalty units for sections 84 (1) and (2) from 5 to 15 penalty units. This is considered reasonable and proportionate to the offence.

Clause 16X When an animal nuisance exists

Substitute section 109

This clause adds to the circumstances when an animal nuisance can be found to exist by including, for a dog, repeated occurrences of the dog not being kept under control by the dog's keeper or carer and if the dog is not restrained in contravention of this Act.

Clause 16Y Offence of animal nuisance

Amend section 110 (1)

This clause increases the maximum penalty units for section 110 (1) from 10 to 15 penalty units. This is considered reasonable and proportionate to the offence.

Clause 16Z Complaints about animal nuisance

Amend section 111 (2)

This clause amends section 111 (2) to give the registrar the discretion as to whether to investigate a complaint. All reasonable and serious complaints would be investigated.

Clause 16ZA - ZC Issue of nuisance notices

Amend section 112

These clauses correct wording in this section to reflect that an animal must cause the animal nuisance.

Clause 16ZD Seizure, impounding and return of nuisance animals

Substitute section 114, 114A and 114B

This clause amends existing sections 114, 114A and 114B so that an authorised person can act to seize an animal on animal nuisance grounds, regardless if whether there are proceedings instituted. It also gives an authorised officer the ability to seize an animal where the keeper has not complied with a nuisance notice. The clause also clarifies when the registrar must impound a dog seized under this section and release a dog seized under this section. The clause also gives the registrar the ability to issue a control order.

This clause also specifies what information must be included in the seizure notice and removes section 114 (2) which is replaced by a general entry of premises provision under this Bill.

Clause 16ZE – 16ZF Destruction of vicious animals

Amend section 116

These clauses amend section 116 so that a vicious animal can be destroyed if it cannot be impounded, as well as seized, and to require a police officer to consider not only the safety of the public and other animals but also the safety of people exercising functions under this Act in deciding whether to take action because of the viciousness of an animal.

Clause 16ZG Power to enter premises

Substitute sections 128, 129 and 130

This clause replaces the existing general entry of premises provisions to clearly state when an authorised person can enter premises, for the purposes of this Act, including where an authorised person can enter without consent and without a search warrant.

Clause 16ZH Inspection of premises

Amend section 131

These clauses amend sections 131 and 132 to make them consistent with clause 16S and the new general entry of premises and power of entry provisions.

Clause 16ZI – 16J Consent to entry

Amend section 132 (1), 132 (4) and (5)

These clauses amend the cross references in section 132 to be consistent with the changes in this Bill.

Clause 16ZK Search warrants

Amend definition of related thing

This clause amends the definition of related thing to include a thing in relation to which the authorised person is satisfied it is necessary to exercise any of the powers mentioned in new section 128 (1) (e) (i) to prevent the committing, continuing or repeating of an offence under this Act.

Clause 16ZL Power to require name and address

Amend section 134 (3)

This clause increases the maximum penalty units for sections 134 (3) from 5 to 15 penalty units. This is considered reasonable and proportionate to the offence.

Clause 16ZM Inspection of animals

New section 134A

This clause introduces a new section that gives an authorised officer the power to ask a keeper or carer of an animal to produce the animal for inspection where the officer believes there is a contravention of this Act or the keeper of a dog has not complied with a special licence, breeding licence or control order or nuisance notice. Not complying with this new section is an offence with a maximum penalty of 50 penalty units. This is considered reasonable and proportionate to the offence.

Clause 16ZN Dishonoured cheques and credit transactions

Amend section 142

This clause removes reference to tag as tag registration is no longer required under this Bill.

Clause 16ZO Transitional provisions

Omit Part 11

This clause omits the transitional provisions as they are no longer relevant and out of date.

Clause 16ZP Dictionary

Amend note 2

This clause adds 'veterinary surgeon' as a term that is defined by the Legislation Act.

Clause 16ZQ Dictionary

New definition of control order

This clause inserts a definition of control order which is used throughout this Bill.

Clause 16ZR Dictionary

Remove registration tag

This clause removes registration tag from the dictionary as tag registration is no longer required under this Bill.

Clause 16ZS Dictionary

New definition of sell

This clause inserts a definition of sell, which includes giving an animal to an entity responsible for animal welfare or rehousing abandoned or seized animals.

PART 3 DOMESTIC ANIMALS REGULATION 2001

Clause 17A-B New sections 5 (ca) and 6 (aa)

This clause inserts the unique identification number for a microchip into section 5 and 6 as tag registration is no longer required under this Act and microchip will be the only form of required registration.

Clause 17C Omit section 6A

This clause removes section 6A which has been replaced by amended provisions in this Act.

Clause 17D Amend section 7

These clauses amend section 7 to remove reference to registration tag, and other minor amendments that give effect to a microchip only system of registration, as required by this Act.

Clause 17E Schedule 1

New Item 1A

This clause gives the keeper of a dog an appeal right in relation to the decision of the registrar to cancel the registration of the dog.

Clause 18 – 18B Schedule 1

Amend table of items

These clauses amend the table of items in Schedule 1 in relation to reviewable decisions.

Clause 18C Dictionary, note 3

Omit registration tag

This clause omits 'registration tag' as tag registration is no longer required under this Act.