

19 October 2018

Canberra Liberals
C/O Nicole Lawder MLA
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BY EMAIL: lawder@parliament.act.gov.au

Dear Ms Lawder

Domestic Animals (Dangerous Dogs) Legislation Amendment Bill 2018

Thank you for the opportunity to comment on the *Domestic Animals (Dangerous Dogs) Legislation Amendment Bill 2018* (the Amendment Bill). The RSPCA shares your desire to see safe and responsible dog ownership in the ACT. We have a keen interest in ensuring that human/animal interactions in the ACT are positive and that dog owners are aware of their responsibilities to their dogs as well as the people and other animals their dogs may come into contact with. We are also very keen to see effective monitoring and enforcement of dog control legislation.

The RSPCA works closely with state, territory, and local governments around the country in the development and administration of dog control legislation. Recent amendments to the ACT's *Domestic Animals Act 2000* have made it one of the most stringent in the country in terms of the powers afforded to authorised officers to act proactively to prevent dog attacks and other anti-social dog behaviours. We do, however, acknowledge and support the fact that more could be done.

Dog behaviour is complex and that is why strategies for managing dangerous dogs requires a multifaceted approach. It is vitally important that legislation is carefully considered to ensure that it achieves its intended objectives without creating unintended consequences that may lead to great hardship and injustice for dogs and their owners. That is why we have carefully considered the Amendment Bill and provide our comments to help inform its development.

We trust the information will be of assistance. We are seeking an opportunity to discuss these and other issues relating to the management of dangerous dogs with you and your office in more detail as a follow on from the meet and greet early October at the shelter in Weston.

Yours sincerely,



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RSPCA Australia comments

As a general principle, discretion is important in exercising statutory powers to avoid the automated application of law that may lead to unintended and unjust outcomes. We believe that discretion should only ever be taken away from authorised officers and other statutory decision-makers in exceptional circumstances where no other decision but for the one required by law could reasonably be made in the circumstances. It is for these reasons that we are concerned about some of the proposed changes in the Amendment Bill, which are outline below.

Proposed changes to dangerous dog declarations

We are concerned about the proposed changes to s.22 of the Act regarding the circumstances in which the registrar must declare a dog to be dangerous. Under the Act, the registrar must declare a dog to be dangerous if it has “attacked and caused the death of or serious injury to a person”. Section 6 of the Amendment Bill proposes to remove “death or serious injury” thereby making any “attack”, no matter the consequence or lack thereof, a circumstance that compels the registrar to declare a dog dangerous. Our concern is that this could lead to a range of unjust and unintended outcomes. Every dog that bites a veterinarian or groomer during the course of their work would be declared a dangerous dog. No doubt this would result in a significant increase in the number of smaller breed dogs such as Chihuahuas, Maltese Terriers, Jack Russel Terriers and Dachshunds also being declared dangerous dogs. Evidently, this would be contrary to the intention of the legislation.

Additionally, the Amendment Bill proposes to compel the registrar to declare a dog dangerous if it has “attacked and caused the death of or serious injury to a domestic animal”. A “domestic animal” is simply defined as “a dog or cat or any other animal kept on premises by a person.” This could include a dog attacking a pet rabbit or backyard chicken. Most dogs still have intact prey drives, with animals like free ranging chickens and rabbits likely to stimulate that prey drive in dogs. Prey drive is not the same as human-directed or dog-directed aggression, therefore the registrar must have the option to manage these incidents in the most appropriate manner. This also needs to be considered in other sections of the Amendment Bill that deal with dogs attacking other animals.

Proposed changes to the seizure of dogs

Section 8 of the Amendment Bill proposes to amend s.56A of the Act to compel authorised officers to seize a dog simply upon the receipt of a written complaint which alleges a dog is menacing or harassing. The Amendment Bill would remove the authorised officer’s discretion (currently provided for under s.59 of the Act) and compel the officer to seize the dog even without having to be personally satisfied the dog was in fact menacing or harassing providing the written complaint is not on face value “frivolous or vexatious”.

We believe a requirement of this nature would most definitely lead to an unduly harsh application of the law and will result in many hundreds of dogs being seized from their families in circumstances where it simply was not warranted according to any reasonable expectation of human and animal safety.

These changes will certainly mean an increase in the number of seized and euthanased dogs in the ACT. The increase in seized dogs, which would need to be housed and cared for throughout the duration of the investigations would also come at a considerable additional expense for the TCCS. With an increase in the volume of investigations, it is likely the length of time required to investigate each complaint would extend

significantly. This very situation has taken place in the UK as a result of their Breed Specific Legislation. Local councils are having to place seized dogs in private boarding kennels for weeks, sometimes months at a time, whilst investigations are taking place, resulting in significant costs and poor animal welfare outcomes.

These changes also open the door to vexatious complaints. The requirement for an authorised officer to seize a dog while investigating means that a member of the public concerned about a dog's barking or who holds a grudge against the owner, will be able to have someone's dog seized if they complain that the dog 'harassed' them or their pets. With no burden of proof, it allows dogs to be seized who have done no harm, potentially causing immense distress for both the owner and the animal. Additionally, dogs that are considered 'dog reactive', meaning they bark at other dogs when restrained on a lead, could be considered 'harassing' by a member of the public. These dogs, when restrained on a lead, present no harm to other dogs or humans as their barking is merely reactive to the presence of another dog. It would be unjust to subject these dogs to seizure and an investigation purely based on a complaint from a member of the public who does not understand dog behaviour.

Complexities of dog behaviour and need for further community education

Dog behaviour is complex. Dog attacks occur for a multitude of reasons. There are several different types of aggression shown by dogs, such as owner, stranger, dog and prey directed aggression. All of these stem from different motivations and most dogs will demonstrate some aggression at some point in their lives. For many dogs, aggression stems from fear. A dog that is fearful and unable to escape from a fear-inducing stimuli will communicate their unease via body language. If that body language fails, for example if a person is unable to read a dog's body language, then a dog may bite. This is just one example of the many complexities of dog bites and dog attacks. This nuance around dog attacks is the reason why legislation which focuses on punishing attacks, rather than attempting to prevent them via community and dog owner education, will do little to decrease the number of reported dog attacks.

The complexities of dog attacks necessitate a multifaceted response, including the ability of the registrar and authorised officers to distinguish between circumstances and judge the best course of action. Having mandatory actions such as seizures and destruction orders will do little to decrease the rates of dog attacks in the ACT and will cause great distress for the owners of dogs subjected to these orders. Effective policy on dog attacks must start at the front end of the problem, focussing on pet owner education and community education.

There are some excellent resources available which have examined the policy options for managing dog bites. We would refer you to "Dog Bites: Problems and Solutions" by the Animals and Society Institute, available here: https://www.nationalcanineresearchcouncil.com/sites/default/files/Dog-Bites-Problems-and-Solutions-2nd-Edition_0.pdf. Additionally, the "Independent Review into the Management of Dogs in the ACT" is another fantastic resource which includes many recommendations specific to the Canberra region available here: https://www.tccs.act.gov.au/_data/assets/pdf_file/0003/1251345/Independent-Expert-Review-into-the-Management-of-Dogs-in-the-ACT.pdf

We also feel that as the impetus for these amendments appears to be an increase in the number of reported dog attacks, it is important to conduct further analysis of these attacks before any changes are made to the legislation. An increase in recorded attacks without context such as the way in which attacks are recorded, the nature of these attacks and the surrounding circumstances, presents a situation that warrants further investigation to guide any legislative amendments that may be required.