

## **Agriculture and Fisheries and Other Legislation Amendment Bill 2023**

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# Submission

## State Development and Regional Industries Committee

Sunshine Coast Regional Council  
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Acknowledgements

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## Introduction

Sunshine Coast Council (SCC) seeks to provide feedback to the State Development and Regional Industries Committee in relation to the proposed amendments to the *Animal Management (Cats and Dogs) Act 2008* contained within the *Agriculture and Fisheries and Other Legislation Amendment Bill 2023*, introduced into the Queensland Parliament on 16 November 2023.

## Abbreviations

Abbreviations used in this submission include:

AMA – *Animal Management (Cats and Dogs) Act 2008* (Qld)

QCAT – Queensland Civil and Administrative Tribunal

SCC – Sunshine Coast Council

AFOLA - *Agriculture and Fisheries and Other Legislation Amendment Bill 2023*

## Submission

### Effective Control in Public Places – Penalty under section 193(e)(ii)

SCC supports the introduction of a state-wide requirement for dogs to be effectively managed in public places. SCC additionally supports the increase in maximum penalties where dogs not under effective control in a public place attack a person or other animal.

However, SCC opposes the maximum penalty proposed under section 193(e)(ii) of the AFOLA.

SCC takes a strong stance in relation to responsible animal ownership. Council employs eight Beach Patrol and Monitoring Officers who specialise in community animal education and undertake regular

patrols of beaches, parks, reserves and other Council controlled land to ensure compliance with the local law requirement for dogs to be on leash. Officers consistently issue infringements to dog owners identified as not meeting the local law requirement for effective control in a public place. SCC has issued over 650 infringements between 1 January 2023 to 15 December 2023.

Schedule 1 provides an overview of current penalties issued by Council's in the Southeast of Queensland. Predominantly the maximum prescribed penalty is 20 penalty units where a person is identified as having their dog off leash in a public place. In 2023/2024 this equates to an on-the-spot penalty of \$309 for non-compliance.

The proposed amendment to the AMA would increase the on-the-spot penalty to \$774.

Council opposes the introduction of 50 penalty unit as:

- It will endanger the safety of Beach Patrol and Monitoring Officers; and
- The amount is disproportionate to other simple offences in Queensland; and
- The changes will reduce compliance and enforcement in the community.

### **Endanger Safety**

As discussed above, Council currently has eight Beach Patrol and Monitoring Officers who undertake regular patrols throughout the SCC area. These staff strive to educate community members in relation to responsible pet ownership whilst issuing penalties to dog owners who failure to maintain effective control of their dog in a public place.

Beach Patrol and Monitoring Officers are not authorised to carry firearms, conducted energy weapons (Taser), batons or any other kind of personal protection equipment which may cause harm to another person. Officer safety is supported by patrols being undertaken in pairs and the use of Body Warn Cameras ("BWC") to record interactions. Review of the officers BWC shows a consistent escalation in behaviour and/or aggression when the customer is informed that the penalty amount is \$309.

Additionally, Council receives significant written feedback in relation to the penalty amount for the offence of having a dog off leash in a public area. Community members consistently express concerns that the penalty amount is disproportionate to the offence and the burden of paying the infringement causes financial hardship.

Based on the current community feedback, and cost of living increase, SCC believes that increasing the on-the-spot penalty to \$774 will create community animosity towards SCC Beach Patrol and

Monitoring Officers and increase the probability of officers being verbally and physically assaulted. As SCC is committed to ensuring staff are safe and supported in the workplace, any escalation in aggression or violence towards officers will reduce enforcement action to ensure officer safety.

### **Disproportionate**

SCC believes that the proposed maximum penalty is disproportionate to the offence committed. By comparison, the following offences in Queensland have a lower penalty:

- Driving without due care and attention - \$619 fine.
- Unauthorised damage to property where the loss is less than \$250 - \$500 fine.
- Leaving a premises with respect to food, drink, accommodation, or like goods and services, of the value of \$150 or less without making payment - \$300 fine.
- Speeding between 21-30km/hr over the speed limit - \$696 fine.
- Failing to stop for a red traffic - \$619 fine.
- Failing to stop for a pedestrian, or rider of a bicycle or personal mobility device on a children's crossing - \$464 fine.

Council appreciates the State Government's stance in relation to encouraging responsible dog ownership through increased penalties. However, in instances where no attack has occurred, no fear has been caused and no property has been damaged, the penalty amount should be proportionate to the offence. As noted above, other hazardous activities which may endanger public health and safety have been assigned a lower maximum penalty.

### **Reduce Compliance and Enforcement**

As discussed above, Council currently has eight Beach Patrol and Monitoring Officers who undertake regular patrols throughout the SCC area. These staff interact with the community, advising on registration and microchipping requirements and issuing infringement where persons do not have their dogs under effective control in public places.

Increasing the on-the-spot penalty from \$309 to \$774 will lead to a reduction in the issuing of penalties, limit opportunities for in-field education and endanger officer safety.

SCC strongly advocates for the maximum penalty for not having a dog under effective control in a public place to remain at 20 penalty units. Although Council acknowledges that a higher penalty may act as a deterrent and discourage people from committing the offence, this is only the case where the higher penalty is enforced. SCC believes that the current penalty (\$309) is sufficient to modify constituents' behaviour and can be readily enforced with limited risk to Council officers.

## Additional recommendations to improve effectiveness of legislation

Additionally, SCC suggests that other legislative amendments details below may assist with preventing repeat attacks.

First, is it recommended that section 125(1)(c) of the AMA be updated to allow authorised persons to seize regulated dogs where the relevant person for the dog has not complied with the mandatory conditions. Currently section 125(1)(c) states:

*If an authorised person has, under Part 2, entered a place and the person reasonably suspects a dog mentioned in the part is at the place, the person may seize the dog if:*

*(c) “the dog is a regulated dog—a compliance notice has been given in relation to the dog and the person reasonably believes the notice has not been complied with”*

### **Suggested update:**

*If an authorised person has, under part 2, entered a place and the person reasonably suspects a dog mentioned in the part is at the place, the person may seize the dog if:*

*(c) the dog is a regulated dog and -*

*(i) the dog is not being kept in accordance with the conditions under section 97 and 98; or*

*(ii) a compliance notice has been given in relation to the dog and the person reasonably believes the notice has not been complied with.*

Second, it is recommended that an authorised person be allowed to enter a property for the purpose of seizing or attempting to seize a regulated dog not being kept in accordance with section 97 and 98. Currently section 112 of the AMA only allows for seizure where ‘a delay in entering the property will result in (A) a risk to community health or safety or (B) the dog being concealed or moved to avoid a requirement under chapter 4...’. Adding section (c), as noted below, clarifies an authorised person’s powers of entry.

### **Suggested update:**

*112 Additional entry powers for particular dogs*

*(1) An authorised person may enter at a place if—*

*(a) the person reasonably suspects a dog is at the place and—*

*(i) the person reasonably suspects the dog is a restricted dog—no restricted dog permit has been issued for the dog; or*

(ii) any delay in entering the place will result in—

(A) a risk to community health or safety; or

(B) the dog being concealed or moved to avoid a requirement under chapter 4; or

(b) its occupier has been given a compliance notice and the entry is made at a time stated in the notice to check compliance with the notice, or

(c) the person reasonably suspects a regulated dog is at the place and reasonably suspects that the regulated dog is not being kept in accordance with the conditions under section 97 and 98.

(2) A power under subsection (1) cannot be exercised using force. Note— For power to enter using force, see section 118.

(3) However, for subsection (1)(a)(ii) and (1)(c), an authorised person may enter the place, or part of the place, with the help and using the force that is necessary and reasonable in the circumstances if the place is not a place where a person resides.

Third, it is suggested that a liability provision be included in the AMA which makes the owner of a dog strictly liable for any injury or death caused by a dog. Currently in Queensland a person who suffers loss due to a dog attack must rely upon the common law and prove either scienter or negligence.

For a scienter action a plaintiff must prove that the responsible person for the dog had actual or presumed knowledge of the animal's dangerous propensities. "...to render the defendant liable, proof must be directed to his knowledge regarding the propensity of the individual animal whose activities have given rise to the institution of legal proceedings."<sup>1</sup>

Queensland is the only jurisdictions (excluding the Northern Territory) which has not introduced strict liability for domestic dog attacks. It is recommended that a provision, similar to that of New South Wales be introduced into the AMA.

See sections 25 – 28 of the *Companion Animals Act 1998 No 87* [NSW], which read:

25 Liability for injury to person or damage to personal property

(1) The owner of a dog is liable in damages in respect of—

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<sup>1</sup> *Draper v Hodder* [1972] 2 QB 556 at 569

- (a) bodily injury to a person caused by the dog wounding or attacking that person, and
- (b) damage to the personal property of a person (including clothing) caused by the dog in the course of attacking that person.

(2) This section does not apply in respect of—

- (a) an attack by a dog occurring on any property or vehicle of which the owner of the dog is an occupier or on which the dog is ordinarily kept, but only if the person attacked was not lawfully on the property or vehicle and the dog was not a dangerous dog, menacing dog or restricted dog at the time of the attack, or
- (b) an attack by a dog that is in immediate response to, and is wholly induced by, intentional provocation of the dog by a person other than the owner of the dog or the owner's employees or agents.

(3) This section does not apply in respect of a police dog or a corrective services dog.

(4) This section does not affect the liability apart from this section of any person for damage caused by a dog.

## 26 Continuation of liability when person dies from dog attack

Where the death of a person is caused by a dog wounding or attacking the person and the person would (had death not ensued) have been entitled under section 25 to recover damages from the owner of the dog in respect of bodily injury caused by the wounding or attack, the wounding or attack is, for the purposes of the Compensation to Relatives Act 1897, taken to be a wrongful act such as would (had death not ensued) have entitled the injured person to maintain an action against, and recover damages from, the owner of the dog in respect of that act.

## 27 Liability for injury to animal

(1) The owner of a dog is liable in damages in respect of injury (whether or not fatal) to another animal (whether or not a dog, but other than vermin) caused by the dog attacking or chasing it.

(2) This section does not apply in respect of—

- (a) a dog attacking or chasing another animal on any property or vehicle of which the owner of the dog is an occupier or on which the dog is ordinarily kept, but only if the dog is not a dangerous dog or menacing dog under this Act at the time of the incident, or
- (b) a dog attacking or chasing another animal in the course of droving, tending, working or protecting stock, or



(c) a dog attacking or chasing another animal where the attacking or chasing is in immediate response to, and is wholly induced by, intentional provocation of the dog by a person other than the owner of the dog or the owner's employees or agents, or

(d) a dog attacking or causing injury to another animal, where its doing so is in immediate response to, and is wholly induced by, an attack on the dog made by the other animal.

(3) This section does not affect the liability apart from this section of any person for damage caused by a dog.

Finally, SCC also suggests that in addition to the term of imprisonment as a penalty for serious attacks, the AMA also be updated to include a provision allowing for a Court to issue a prohibition order. Such a provision already exists under section 183 of the *Animal Care and Protection Act 2001 (Qld)*, which states:

#### 183 Prohibition order

(1) The court may order (a prohibition order) that a person convicted of an animal welfare offence must not possess or purchase or otherwise acquire—

(a) any animal; or

(b) a stated type of animal; or

(c) any animal, or a stated type of animal, for trade or commerce or another stated purpose.

(2) A prohibition order may be made permanently or for a stated period.

## Schedule 1

Penalty amounts for effective management/control for Southeast Queensland Council's

	Effective Management/Control	Prohibited area
Sunshine Coast Council	20 penalty units	20 penalty units
Noosa Shire Council	20 penalty units	20 penalty units
Brisbane City Council	20 penalty units	-
City of Gold Coast	40 penalty units	-
Moreton Bay Council	20 penalty units	20 penalty units
Redland City Council	20 penalty units	20 penalty units
Gympie Regional Council	20 penalty units	20 penalty units
Logan City Council	30 penalty units	-
Scenic Rim Council	20 penalty units	20 penalty units
Ipswich Council	20 penalty units	20 penalty units
Somerset Council	20 penalty units	20 penalty units
Toowoomba Council	20 penalty units	20 penalty units
Lockyer Valley Council	20 penalty units	20 penalty units
South Burnett Council	20 penalty units	20 penalty units
Southern Downs Council	20 penalty units	20 penalty units

