

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

**Submission No:** 46  
**Submitted by:** Animal Defenders Office  
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**Submitter Comments:**



## Animal Defenders Office

*Using the law to protect animals*

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The Chair  
State Development and Regional Industries Committee  
Parliament House  
George Street  
Brisbane QLD 4000

15 December 2023

**By email:** [SDRIC@parliament.qld.gov.au](mailto:SDRIC@parliament.qld.gov.au)

Dear Sir/Madam

### **Re: Agriculture and Fisheries and Other Legislation Amendment Bill**

Thank you for the opportunity to provide a submission to the Inquiry into the Agriculture and Fisheries and Other Legislation Amendment Bill (**the Bill**) by the State Development and Regional Industries Committee (**the Inquiry**).

Our comments on the Inquiry's terms of reference are set out below.

### **About the Animal Defenders Office**

The Animal Defenders Office ("ADO") is a national not-for-profit community legal centre that specialises in animal law. The ADO provides pro bono animal law services to the community. The ADO is a member of Community Legal Centres Australia Inc., the national peak body representing community legal centres across Australia.

A large part of the ADO's caseload consists of representing clients seeking review of decisions made by government authorities regarding their dogs, including decisions to destroy, dangerous dog declarations, and decisions to sell. For this reason the ADO's submissions on the Bill are confined to proposed changes to the *Animal Management (Cats and Dogs) Act 2008*.

Further information about the ADO can be found at [www.ado.org.au](http://www.ado.org.au).

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**THE ADO'S SUBMISSIONS AND RECOMMENDATIONS IN RESPECT OF THE  
INQUIRY INTO THE AGRICULTURE AND FISHERIES AND OTHER LEGISLATION  
AMENDMENT BILL 2023**

The ADO's submissions on Chapter 4 'Amendment of Animal Management (Cats and Dogs) Act 2008' in the Bill are set out below.

**Summary of comments**

<b>Clause in Bill</b>	<b>Amendment</b>	<b>Comments</b>
Clause 11-15	Increasing the maximum penalty for failing to comply with permit conditions under s. 81 from 75 to 150 penalty units (~ \$23,000).	Concerns expressed. Alternative measure suggested.
Clause 17	Creation of a new part (part 3) to Chapter 8 entitled 'Appeals' that limits appeals to decisions made by QCAT (in proceedings for the external review of a decision under section 127 or 127A to make a destruction order in relation to a dog) to questions of law only.	Not supported.
Clause 18	Insertion of a new section (s. 209B) enables the chief executive to make guidelines about matters relating to compliance with the Act	Partial support.
Clause 25	Omission of s. 64, which spelled out what it means to have been in 'effective control' + a new section on what effective control means.	Some proposed maximum penalties not supported.
Clause 60	Insertion of new Chapter 4A Prohibited dogs	Not supported.
Clause 66	Replacement of provisions on powers to destroy dogs in particular circumstances	Specified provisions not supported.

## GENERAL SUBMISSIONS

### Clauses 11-15: Increase in penalties

In the ADO's experience, it is often vulnerable and disadvantaged people who end up having to pay fines for their dog/s. The dog/s play an important role in their keeper's life, often being their main or only source of family and social interaction. The ability to pay for expenses relating to their dog(s) is already limited. Increasing the likelihood of debt for these people may not help the public policy problem of unruly or out-of-control dogs and would likely perpetuate the debt/poverty cycle for their keepers. An increase in penalties is also unlikely to act as a deterrent as people who want dogs due to the companionship they provide will keep dogs even if they cannot afford to have their dogs professionally trained.

The ADO submits that subsidised or free dog training for concession card holders would be a better option for dealing with this issue.

### Clause 17: Appeals

Decisions to destroy dogs are extremely serious decisions and must be subjected to scrutiny by independent decision-makers. In the ADO's experience pounds and councils often 'get it wrong'. There are various reasons for this but a recurring reason is that the relationship between the parties (the dog keeper(s) and the local authority) can be extremely acrimonious and often long-standing and this tends to affect decisions made by the local authorities. Facts often get mis-reported in business records at the local level, and these inaccuracies then get perpetuated through external review processes. In the ADO's view and with respect, Tribunals can and do make factual mistakes and in some instances these mistakes are material.

As pointed out in the Explanatory Notes for the Bill (p8), a mechanism for dealing with frivolous or vexatious appeals on questions of fact already exists. The *Queensland Civil and Administrative Tribunal Act 2009 (QCAT Act)* currently requires a person to seek leave to appeal decisions on questions of fact (or mixed law and fact) (s142(3)(b)). This means that unmeritorious appeals on questions of fact will be scrutinised and denied leave at this stage, ensuring the matter does not proceed to a full hearing and add to the Tribunal's appeal caseload.

Further, the ADO agrees with the observation in the Bill's Explanatory Notes that the proposed change 'may infringe upon the fundamental legislative principle provided for in section 4(3)(b)

of the LS Act [the Legislative Standards Act 1992 (QLD)], that legislation should be consistent with the principles of natural justice.<sup>1</sup>

Further evidence would be required to support the change in proposed **Chapter 8 Part 3**, including the number of appeals made on the basis of incorrect or immaterial factual errors, and the impact of these on the Tribunal's caseload.

In the absence of such evidence, and given the ADO's experience of the devastating consequences of decisions to destroy (killing a person's companion and 'family member') and the need for scrutiny of such decisions, the ADO does not support proposed **Chapter 8 Part 3**.

### **Clause 18: Guidelines**

As a frequent user of companion animal laws, the ADO finds such guidelines, where they exist, to be very useful. They provide an insight into matters decision makers should take into account and are therefore good for transparency in government decision-making.

The ADO notes, however, that despite the existence of a power to make guidelines, if the power is discretionary then the guidelines are often not made. A way of ensuring guidelines are made would be useful in the proposed **s209B**.

The ADO therefore supports proposed **s209B** but suggests that it include a way to ensure the guidelines are actually made.

### **Clause 23: Power to make declaration**

In matters involving dog attacks, much can turn on the nature of any dog bite or wound inflicted during the incident.

The change in proposed **s89(7)(b)** would expand the definition of 'seriously attack' so that dogs could be declared dangerous if they 'maim' or 'wound' an animal. The latter terms are not defined in the Bill.

In general, the ADO submits that maiming and wounding another animal may be too low a threshold to enliven the dangerous dog declaration power in s89. To remedy this, if the terms are retained the ADO submits that the terms 'maim' and 'wound' should be defined or guidance provided as to when a maiming or a wound triggers the power under s89. Otherwise

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<sup>1</sup> [5723T1910-F06D.pdf \(parliament.qld.gov.au\)](https://www.parliament.qld.gov.au/5723T1910-F06D.pdf) p21.

a slight wound, as animals are prone to inflict or receive throughout their lives, may be deemed sufficient to declare a dog to be dangerous when in all the circumstances such a declaration may not be warranted.

The ADO therefore submits that 'maim' and 'wound' be clarified or removed altogether from proposed **s89(7)(b)**.

### **Clause 25: effective control provisions**

In proposed **section 193**, paragraph (a) of the penalty provision refers to 'the attack' yet there has been no previous reference to an attack to warrant the use of the definite article ('**the** attack'). The proposed provision should clarify what attack it is referring to.

As part of the definition of 'effective control' in proposed **s192(2)**, a person will have effective control if they can control the dog by using voice command. The ADO notes that in some circumstances it may be hard to establish that someone 'is able to supervise the dog and control the dog by using voice command'. For example, if an incident arises where a dog attacks, despite the keeper's best efforts to call the dog back, but there is evidence from a dog trainer that the dog responds to the keeper's verbal commands, will the proposed test have been met or passed? It is difficult to guarantee that dogs always listen to their keepers.

The ADO does not support the proposed maximum penalty of imprisonment for unregulated dogs in proposed penalty provision **s193(a)(iii)**. In the ADO's experience responsible pet owners can be caught by surprise when their dog ends up biting another person or animal, for example in an accidental melee on a shared footpath or foot-and-cycle path. One year's imprisonment is completely disproportionate to the impugned conduct. Bites can happen spontaneously in unpredictable situations. Any term of imprisonment would be unwarranted in this situation.

The ADO does not support the proposed maximum penalty of imprisonment for unregulated dogs in proposed penalty provision **s194(a)(iii)**. One year's imprisonment is completely disproportionate to the conduct. In the ADO's experience 'act in a way that causes fear to, a person or animal' would be too low a threshold and a very subjective standard. Dogs naturally cause fear to other animals (eg cats). Some people are also naturally very frightened of dogs. Neither the dog nor the keeper should be at risk of harsh penalties for this natural feature of dogs. If we do not want dogs who may cause fear to a person or animal, then we should ban the keeping of dogs. They are animals, not inanimate accessories.

## **Clause 60: Prohibited dogs**

The ADO does not support breed specific legislation (**BSL**) for the reasons outlined by RSPCA Australia in its fact sheet on BSL.<sup>2</sup> In the ADO's experience of dog-attack matters, any breed can be involved and who bites whom or what can depend on factors such as age, personality, 'dog dynamics', and circumstances.

The ADO therefore does not support proposed **clause 60**.

## **Clause 66: Power to destroy dogs**

The ADO does not support giving any person the power to destroy a dog in situations other than where a person or animal is under immediate threat to their life from the dog. The circumstances in proposed **s127(2)(a)** are too broad and subjective to enliven a power to destroy. They could cover situations where the authorised person takes unusual behaviour by a dog to be 'out of control' when that is not in fact the case. They could also cover a situation where an authorised office cannot control a dog but another person can (eg the person by whom the dog is ordinarily kept). Once destroyed, it is too late to inquire into the reasonableness of the authorised person's belief or the actions of the authorised person in killing the dog.

The ADO therefore does not support the power to destroy that would be created by proposed **s127(2)(a)**.

The ADO also suggests that dogs who would fall under proposed **s127(3)** should be given a chance of being taken by an appropriate sanctuary or rescue group. The proposed provision should require authorised officers or councils to contact at least one such sanctuary or rescue group before destroying the dog and giving the sanctuary or group sufficient time to consider taking the dog and arranging transport. Such a provision could be modelled on s64B of the *Companion Animals Act 1998* (NSW) ('Rehoming seized or surrendered animals').

The ADO therefore does not support proposed **s127(3)**.

The ADO does not support mandatory destruction powers. Each incident should be assessed on its particular circumstances, weighing up factors such as the circumstances of the incident, the prospects of rehabilitating the dog, and the risk to public safety.

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<sup>2</sup> 'What is the RSPCA's view on breed-specific legislation', RSPCA Australia, updated 25 January 2023, <https://kb.rspca.org.au/knowledge-base/what-is-the-rspcas-view-on-breed-specific-legislation/>.

The ADO therefore does not support proposed **s127AA(2)**.

Thank you for taking these submissions into consideration.

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**Animal Defenders Office**