



Speech by
**Hon. NITA
CUNNINGHAM**

MEMBER FOR BUNDABERG

Hansard 11 December 2001

LOCAL GOVERNMENT AND OTHER LEGISLATION AMENDMENT BILL [No. 2]

Hon. J. I. CUNNINGHAM (Bundaberg—ALP) (Minister for Local Government and Planning) (6.53 p.m.), in reply: I thank all honourable members who have participated in the debate on the Local Government and Other Legislation Amendment Bill. I appreciate the support of members on both sides of the House for this very important legislation and I appreciate the complimentary comments on the work of members of my department.

As members are aware, this bill seeks to achieve a number of objectives in the areas of control over specific dog breeds, the membership of the Local Government Grants Commission, the powers of joint local governments and the application of the state government powers of financial oversight in the Statutory Bodies Financial Arrangements Act 1982 to local government owned corporations.

Firstly, the bill establishes a state regulatory framework for those dog breeds that are subject to the Commonwealth's importation ban and crossbreeds of those dogs. Secondly, the bill will expand the membership of the Local Government Grants Commission from five to six and will require the additional member to have particular knowledge of Aboriginal and Island councils. Thirdly, the bill will clarify that a joint local government may, with the consent of its component local governments, disburse funds that are not required for the exercise of its exclusive jurisdiction for any other local government purpose. A parallel amendment is proposed to clarify that the Townsville Thuringowa Water Supply Board may also disburse such funds in this way. Lastly, the bill will enable the state to supervise the financial arrangements of LGOCs under the SPFA Act.

I will now respond to the matters raised by the Scrutiny of Legislation Committee. The committee has raised questions in respect of three areas of the bill: whether the bill has sufficient regard to the rights of owners and other persons dealing with restricted dogs, on the one hand, and the general public, on the other; the range and extent of additional enforcement powers conferred in chapter 17A; and the liability for fencing costs where a dividing fence forms part of a restricted dog enclosure and needs to be upgraded to meet the new requirements.

In relation to the first matter, the bill establishes a regime that imposes significant prohibitions and restrictions upon owners and persons responsible for restricted dogs. However, those breeds of fighting dogs have been banned by the Commonwealth from importation into Australia because they pose a threat to public health and safety. It is only appropriate that such dogs, which are already in the community, should have restrictions placed on their ownership to better protect the general public from damage or injury. It is considered that the legislation strikes an appropriate balance between the rights of those who may wish to own such dogs and the public health and safety rights of members of the community. Other states have introduced similar legislation to ensure there are controls in place for the breeds of dog that the Commonwealth has banned from importation.

In relation to the second matter, the specific enforcement powers provided in the bill are necessary for the effective operation of the regulatory regime for restricted dogs. While chapter 15, part 5 of the Local Government Act 1993 provides general powers of entry to local government authorised persons without a warrant, these are not tailored for the specific purpose of regulating the breeds of dog which are subject to the Commonwealth importation ban and, as such, are insufficient to achieve the objectives of the bill.

The additional powers of entry given in chapter 17A are limited to the specific circumstances: where an authorised person reasonably suspects a restricted dog is at a place and no permit has been issued for the dog and any delay in entering the place would result in a risk to community health and safety or the dog being concealed or moved to avoid a requirement under chapter 17A; or the entry is at a time given in a compliance notice for the purpose of checking compliance with the notice.

In exercising those powers, an authorised person may not use force and must follow certain procedural requirements under section 1088 of the Local Government Act to produce an identity card and to tell the occupier the purpose of the entry and that it is permitted without the occupier's consent or a warrant. Additional powers are also given for the subsequent seizure and destruction of restricted dogs in limited circumstances. Provisions of the bill exclude entitlement for compensation to owners for loss or expense caused by the seizure or destruction of a restricted dog. The circumstances in which those powers may be exercised relate primarily to incidents of non-compliance with the requirements of chapter 17A or where there is a risk to community health and safety. Providing compensation to owners in these circumstances is not considered appropriate. However, local governments can recover certain costs associated with seizure and destruction of restricted dogs. This is consistent with the legislation in other states.

In relation to the last matter, section 1193ZZW provides for the liability of costs where a dividing fence forms part of a restricted dog enclosure. The effect of the section is that if a dividing fence is built or extended to form part of an enclosure for a restricted dog, the Dividing Fences Act 1953 sets out the procedures for resolving the liability for costs.

The committee has raised a question—and this was also raised by the member for Nicklin—as to the position of a landowner where there is an existing dividing fence which meets the standards of the DFA but their neighbour wants to demolish it and replace it with a fence that meets the requirements of chapter 17A. In these circumstances, section 1193ZZW applies the DFA. Under the DFA, a person must give their neighbour notice in writing or a notice to fence. The notice to fence must state clearly where the fence will be erected, what sort of fence is planned, a proposal for construction of the fence, which should include who will undertake the construction, the proposed dates, the expected cost and expected contribution.

Sitting suspended from 7 p.m. to 8.30 p.m.

Mrs NITA CUNNINGHAM: The neighbour then has one month within which to reach an agreement with the owner of the restricted dog about the construction of the fence. If the parties are able to reach an agreement within one month, they will be bound by that agreement. Where no agreement is reached within one month, either party may apply to the Small Claims Tribunal for an order to fence. The tribunal then determines the kind of fence to be constructed, the apportionment of costs for the fence, the time within which the fence is to be built and, if necessary, the fencing line and any compensation by way of annual payment to be paid to an owner for the loss of occupation of any land.

The DFA sets out a process to enable the interests of each landowner to be taken into account, and it is open to a referee or a magistrate to apportion costs between the parties as determined by the merits. I will provide a formal response in writing to the committee about these issues by the due date of 30 January 2002.

Finally, I will address the specific issues raised by members during the debate. The member for Warrego raised a number of questions, including how we identify the breeds of restricted dogs and crossbreeds. The bill provides councils with two options in identifying dogs. The first option enables councils to obtain an expert opinion from the veterinary surgeon as to the particular dog's breed. Once this opinion is obtained, the council must notify the dog's owner of their intention to declare the dog to be a restricted dog and provide a copy of the opinion. The owner is given the opportunity to provide written representations to the council regarding the dog's breed. The council must then make a decision based on all of the information before it. However, an owner retains the right to judicial review of the council's decision.

The second option enables the council authorised officer to declare a dog to be a restricted dog based on his or her knowledge and observation of the dog. In this case, the owner has a right of appeal to the Magistrates Court. After the legislation is passed, my department intends to conduct a state-wide training program for councils regarding breed identification. The Canine Control Council has previously provided assistance to councils regarding breed identification for these breeds of dog and it has indicated its preparedness to continue to assist councils in this regard in light of the bill.

The key elements of the Queensland legislation are similar to the regulatory frameworks established by other states for those breeds of dog prohibited from importation by federal legislation. Both New South Wales and South Australia have had legislation which they have implemented for a number of years and they have effectively dealt with the breed identification issue.

The member for Warrego also asked whether it was necessary to introduce breed-specific legislation. There is certainly widespread concern in the community, and these dogs are prohibited from entry into Australia because of health and safety issues. The Commonwealth has found it necessary to ban these dogs from importation. The New South Wales and South Australian governments already have controlling legislation. Victoria has legislation before the parliament and I believe Western Australia is following similar lines. So, yes, I believe it is necessary to introduce this legislation in Queensland.

The member for Warrego also asked whether the effectiveness of the legislation will be reviewed by the department. The department maintains a rolling program of reviews of all parts of the Local Government Act to ensure that they are meeting their objectives. In the case of new legislation the department would also analyse any difficulties that councils and others may have with the implementation. If there is sufficient justification, I would be prepared to consider proposals to improve the existing law in the light of implementation difficulties.

In relation to the question of whether the department will monitor councils during the four-month review of their local laws and what happens if councils do not complete that review, my department intends to conduct a state-wide training program after the legislation is introduced. The program will cover breed identification and the review of local laws to ensure implementation of a minimum standard across the state. The bill provides that the state legislation will be a minimum standard for the regulation of restricted dogs. If a local law is inconsistent with the state legislation and imposes a lower standard or obligation than the state legislation, the local law will be invalid. In such a situation the requirements in this bill will apply.

Where joint local governments disburse funds on local government functions other than their exclusive jurisdiction these additional functions should not become an exclusive jurisdiction of the joint local government. This was another question that the member for Warrego posed. In reply I say: only the jurisdiction given to a joint local government under the regulation that sets it up as an exclusive jurisdiction. Any function on which the joint local government spends surplus funds with the approval of its component local governments remains a function which the joint local government and all its component local governments can undertake. It is a shared function. The explanatory notes make clear that this is the intent of the amendment.

The member for Warrego also raised the issue that local government members on the grants commission should come from councils with unqualified audits. It is certainly important that any members appointed to the Local Government Grants Commission have the qualifications to carry out their role. This is the basis on which the legislation is drafted, and the same arrangements will apply to the new position on the commission. But it is important to note that people with local government knowledge and experience are not there as representatives of their councils. They are selected on the basis of their qualifications.

It would be impractical to use a requirement of the kind suggested by the member in selecting the members of the commission. Local governments can have qualified audits for a range of technical issues beyond the capacity of any individual councillor to directly influence. In recent years there have been occasions when up to half of local governments established under the Local Government Act have had qualified audits on a range of technical issues.

The member for Surfers Paradise asked what happens if a person has a restricted dog and they have to go into a nursing home. Does the dog have to be destroyed? The bill prohibits the acquisition or supply of a restricted dog. However, the bill provides for limited exceptions to this prohibition. Where the owner of a restricted dog passes away, the ownership of the dog may be transferred by distribution under their estate to a new owner. The bill provides that acquisition or supply will also be permitted where a person has a reasonable excuse. It is considered that a person could ably argue under the reasonable excuse clause that their movement into a nursing home would fall within such circumstances. The new owner would have to apply for a permit and could appeal the court's decisions on that.

The member for Surfers Paradise was also concerned about the reference to crossbreeds and asked whether they can be defined. There is no legal definition of each of the breeds or types of restricted dogs. Because these dogs are banned from importation by the Commonwealth there is no recognised breed standard for these breeds as they are not shown at competitions in Australia. The Canine Control Council has assisted councils in the past regarding this issue and has indicated its ability to continue this role. The Canine Control Council judges the breed or type of dog on the basis of physical characteristics. The same physical characteristics would be used to make a decision regarding crossbreeds of dogs prohibited by the Commonwealth from importation.

However, during the debate honourable members might have heard the member for Maryborough speaking about the possibility of using DNA to identify dogs. My department is not aware of this research. The information which the department has received is that there is currently no scientific means, such as DNA testing, of accurately testing to determine whether a particular dog is one

of the restricted breeds or a crossbreed of one of those restricted breeds. However, following the provision of this information by the member for Maryborough my department will make further investigations.

The member for Maryborough was concerned about sweeping bans on certain breeds when training owners is the more appropriate approach. The primary purpose of the bill is to provide for the regulation of restricted dogs, not the banning of them. These breeds of dog were banned from importation by the Commonwealth a number of years ago. Under this legislation these dogs may be kept in Queensland but owners must obtain a permit for keeping a restricted dog and must comply with the permit conditions and requirements of the state legislation.

The Department of Primary Industries provides funding to the RSPCA and the Australian Veterinary Association. These organisations provide a number of programs which educate members of the community regarding ownership and interaction with companion or larger animals. For example, the AVA provides the pets and people education program which forms part of the syllabus for primary schools in Queensland. Under the model local law, a council may currently prohibit outright the keeping of a special breed of dog in its area or may impose conditions for the keeping of specific breeds of dogs or for dogs that have committed dangerous behaviour or threatened dangerous behaviour. That is the current law. The member for Maryborough also was concerned that more breeds could be added to the list of restricted dogs. The bill provides that the only way that additional breeds or types of dog could be added to the current list of restricted dogs is if the Commonwealth amended its legislation to prohibit another breed or type of dog.

The member for Darling Downs spoke of his concerns about commercial pig hunters. I can understand his concerns for his constituents. However, we cannot bring in laws that apply to some owners and not others. In the case of pig hunters, if their dogs are restricted dogs they will have to be registered as such. We also heard from a number of members that pet owners should be more responsible. I agree wholeheartedly. However, as we heard also, some people breed these dogs to be mean and encourage them to attack. This legislation should stop that from happening.

The member for Gladstone was concerned that the state government provide additional resources to assist councils to implement the proposed legislation. There are no specific funds provided to councils to support implementation of the legislation. The bill deals with a subject which is a core area of responsibility for local government. Councils clearly will be able to charge permit application fees. Further, the bill specifically provides that moneys paid into court as fines for offences under the bill will go back to local government.

The member for Gladstone also was concerned that, if a council does not make a decision on a renewal application in the prescribed time, it is a deemed refusal and wanted to know if this meant the dog could be involuntarily taken away? The provision in the bill regarding deemed refusal reflects the current drafting practice of the Office of Parliamentary Counsel. Where the deemed refusal of a renewal of a permit occurs, the owner of the dog may appeal this deemed decision to the Magistrates Court. The member for Gladstone also was concerned that if there is a debate on whether or not the dog is a restricted dog, who makes the final decision? The bill provides for two methods of declaring a dog to be a dangerous dog. Firstly, where a council obtains an expert opinion prior to declaring a dog to be a restricted dog, the council makes the final decision on the dog's breed. A council must consider the expert opinion and any written representations made by the dog's owner, and this decision may be judicially reviewed where an owner institutes such an action. Where a council uses the second method of an authorised officer making a declaration, the decision may be appealed to the Magistrates Court. In this situation the magistrate makes a decision based on the evidence presented to the court.

There was also a suggestion that there might not have been enough support following release of the draft legislation. There were only 218 against, and this included 179 form letters. As we have some 3.5 million people in Queensland, only 218 objections shows that this legislation is clearly supported.

Finally, almost every speaker to this bill has spoken of a personal dog attack, and there would not be one person in this House who has not seen or heard of a vicious dog attack. This parliament owes it to all Queenslanders to take this action to protect our residents from those breeds of dogs that have been bred to fight. As I said in my second reading speech, there are certain fighting dogs that people cannot bring into Australia for public health and safety reasons. For those very same reasons, if a person has one of those dogs or a crossbreed in Queensland this bill will require that extra controls apply. This action has enormous support in communities throughout Queensland and it has the support of both sides of the parliament. I encourage everyone to support it.
