

Your Ref: Community Consultation: Dangerous Dog Laws

Our Ref: Criminal Law Committee: 21000339/184

11 November 2011

The Honourable Paul Lucas MP
Attorney-General, Minister for Local Government
and Special Minister of State
PO Box 15009
CITY EAST QLD 4002

By Email: attorney@ministerial.qld.gov.au

Dear Attorney

COMMUNITY CONSULATION- DANGEROUS DOG LAWS

We refer to your community consultation regarding a proposed amendment to strengthen dangerous dog laws in Queensland by introducing a new section to the *Criminal Code 1899* dealing with 'dangerous management of a dog'. We take this opportunity to make comments on this proposal. The Society has prepared this response with the assistance of the Criminal Law Committee which has a thorough understanding of the issues impacting this area of the law.

We have previously written to you to outline our position on your media release entitled "State Government considers strengthening dangerous dog laws". We **enclose** this submission for the purpose of this consultation process.

As discussed in the submission, the Society believes that section 289 of the *Criminal Code Act 1899* is sufficient in holding owners responsible for deaths by dangerous dogs. In our view, it is unnecessary to introduce another offence, as it is already essentially addressed by both the *Criminal Code* and the *Animal Management (Cats and Dogs) Act 2008*.

The correct management of a dog can be appropriately covered by a State-wide system that educates and regulates behaviour through a licensing system. We believe that the community will benefit more from a system that is aimed at the prevention of attacks, rather than focused on punishment in the event of an attack.

1. Proposed section 334A- Dangerous management of a dog

The Society is concerned that the wording of the proposed section is extremely broad and does not include important safeguards against unintended consequences.

Application to all dogs

There is no element in the proposed offence that identifies that the owner had knowledge that the dog in question had a propensity towards aggressiveness. Instead, the offence applies to all dogs. The Society believes that the offence must include a basis for why the person should have taken steps to mitigate the risk.

We understand that the *Crimes and Domestic Animals Acts Amendment (Offences and Penalties) Act 2011*, which introduced dangerous dog criminal laws in Victoria, only applied to dogs that are classified as dangerous, menacing or a restricted breed dog. This protection is important because it demonstrates that the owner was aware of the aggressive nature of the dog and did not take steps to protect the public. Without this protection, the Society is concerned that dog owners will be held responsible for attacks by their dogs, even when there was no warning beforehand that this behaviour could potentially occur.

Additionally the Victorian *Crimes and Domestic Animal Acts Amendment (Offences and Penalties) Act 2011* included a reasonable person test, and owners who fell below this standard would be guilty of the offence.

The Society advocates for the inclusion of a reasonable person test in the proposed Queensland legislation, so that an owner's "act or omission" in managing the dog can be determined against a reasonable standard of what would have been expected of a dog owner.

Lack of defences to the offence

Reasonable justification for the dog's behaviour in the incident is not specifically included in proposed section 334A. For example, section 195(1) of the *Animal Management (Cats and Dogs) Act 2008* states:

It is a defence to a prosecution for an offence against section 194 for the defendant to prove—
(a) the dog attacked, or acted in a way that caused fear to, the person or animal—
(i) as a result of the dog being attacked, mistreated, teased, or provoked by the person or animal;
or
(ii) to protect the owner, or a person accompanying the owner (the accompanying person), or the owner's or accompanying person's property.

The Society recommends that the proposed section 334A be amended to specifically include words to this effect, so as to provide dog owners with the ability to explain the actions of their dogs in the circumstances of the incident.

In the definition for proposed section 334A 'manage a dog dangerously' includes consideration of a number of factors such as:

(f) whether the restraint of the dog, if any, was appropriate in the circumstance; and
(g) for the use of a dog to protect persons or premises- whether the use of the dog was appropriate in the circumstances.

These considerations are phrased very broadly and do not specifically include if the dog itself has been provoked or attacked.

The Society also considers that the proposed maximum penalty of 10 years is unnecessarily high in the circumstances. Whilst we appreciate the seriousness of such an incident, we do not believe that attributing blame in such punitive terms will serve to assist the community. As we have stated previously, it is only through intervention strategies that such incidents can be prevented from taking place. This

should take the form of stringent regulation upon certain breeds of dogs or dogs which are known to be aggressive in nature.

If you have any questions regarding the contents of this letter, please do not hesitate to contact our Principal Policy Solicitor, Ms Matt Dunn on (07) 3842 5889 or m.dunn@qls.com.au or Ms Raylene D'Cruz on 3842 5884 or r.dacruz@qls.com.au.

Yours faithfully

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