



By email only

URGENT

Hon. Members of the Legislative Assembly
Parliament of Victoria

Dear Members

***Domestic Animals Amendment (Dangerous Dogs) Bill 2010
Debate adjourned to Tuesday 25 May 2010***

Lawyers for Animals (**LFA**) wishes to draw the Assembly's attention to what we perceive to be significant deficiencies in the *Domestic Animals Amendment (Dangerous Dogs) Bill 2010 (the Bill)*, scheduled for debate in the Legislative Assembly on Tuesday 25 May 2010.

LFA is a not-for-profit incorporated association run by a management committee of lawyers. Its objectives include alleviation of the suffering of animals by engaging with those who create or administer laws in Australia in order to strengthen legal protection for animals, and promotion of better animal welfare practices among animal related industries in Australia.

LFA is concerned that this law diminishes the protection available to animals under Victorian law and for this reason, respectfully urges Members to seek substantial amendments to key parts of the Bill in their current form. Our concerns are set out in detail below. We are available to discuss these matters and to assist further if required.

1. In summary:

LFA is concerned that the approach throughout the Bill is punitive, both to owners and animals, in that it

- Confers new powers on Councils to summarily destroy dogs, with no appeal rights, no meaningful procedural protections, on the basis of potentially

- unreliable evidence and for this reason **should not be supported** (Clause 23);
- Increases maximum penalties for a number of offences in the Act to a level out of proportion to the offences in most cases, without evidence of effectiveness, such that many people may be unable to afford to reclaim their companion animals (Clause 6, Clause 8(1), Clause 9);
 - Does not increase maximum penalties for key offences that relate to the treatment of animals (see paragraph 5 of our letter, below);
 - Does not encourage responsible companion animal guardianship by positive measures or incentives; and
 - Continues the unfortunate predilection in the *Domestic Animal Management Act* 1994 (**the Act**) towards subjecting animals to the risk of destruction because of the irresponsible behaviour of persons, treating animals as property, rather than as sentient creatures whose welfare should be protected by law.

We respectfully note that the title of the Bill is misleading, in its reference to “Dangerous Dogs”. Two of the three most significant provisions increase the powers of Councils to destroy any dogs, whether or not they have been declared a ‘dangerous dog’ by a Council following procedures under the Act.

1. Council powers to control and destroy dogs

Clause 23 of the Bill provides Councils and their authorized officers with a new power to summarily destroy dogs within 24-48 hours of their seizure, without a right of review, effective procedural protection against the potential for mistaken or excessive use of the power, and without provision for effective oversight, scrutiny or accountability in relation to the exercise of these powers. LFA accepts the need to protect animals and people from dogs that are proven to be dangerous, however the material currently before Parliament does not contain the evidence, if any, on which the proposed provision is sought to be justified nor any reasonable explanation for such extreme provisions..

As detailed below, LFA strongly recommends amendment of Clause 23 to prevent proposed ss.84TA, 84TB and 84TC from coming into force without substantial revision. Our concerns about all three provisions are set out below, followed by comments specific to each proposed new section of the Act.

- A. In relation to all three proposed provisions**, LFA is concerned that:
- **allowing destruction within 24 – 48 hours** (depending on the provision concerned) does not allow sufficient time for the rightful guardian of a seized dog to find the dog in a Council pound, and challenge the action/s or proposed action/s of the Council. This would be especially concerning in the case of a dog left in the temporary control of a third party who is not the lawful guardian of the dog at all. Any new provisions should be consistent with existing

- provisions in relation to the minimum time period before which a dog may be destroyed;
- **the explanatory memorandum provides no evidence of any need** for the provisions, of why existing and broad provisions allowing Councils to destroy dogs are not adequate, and how the proposed new provisions might more effectively safeguard the public. A dog confined to a pound for 8 days is no danger to the public during that time, so it is not clear why it should be permissible to destroy the dog within 24-48 hours, other than on the basis of cost considerations limited to the Council facility itself;
 - **these provisions permit destruction of a dog within 24-48 hours on the basis of what it may do** - a practice only extremely rarely permitted in laws relating to humans - at the discretion of authorised officers who are not required to be and, we understand, are not in practice qualified animal behaviourists;
 - As DPI itself recognizes, “[d]ogs arriving in a pound do so with no known history of behaviour or aggression. In addition, many such animals are normally frightened and disorientated and are likely to show different behaviour to that shown in a domestic situation.”¹ Seized dogs may also be hurt, injured or ill, likely to behave uncharacteristically, such that an objective assessment of their behaviour cannot be made, which could in many cases lead an authorized officer to misjudge the dog and be unable to predict its *likely behaviour*.
 - **there is no requirement that Councils or their authorized officers proactively attempt to identify** or notify the dog’s guardians (or notify or seek advice from any other persons who may be able or willing to act in the interests of the seized dog);
 - **there is no procedural fairness accorded to guardians (or other persons, who may be able or willing to act in the interests of the seized dog)** – ss.84TA(8), 84TB(3) and 84TC(8) expressly exclude the application of existing provisions of the Act which (i) require notification to guardians; and (ii) provide for recovery of seized dogs. It is no protection that authorised officers and/or Councils are required to record their reasons for decision: once the dog is destroyed, there is no redress. Nor is there any requirement to publish decisions or the reasons for them. In their current form these provisions appear to provide little safeguard for either the animal or a distressed guardian;
 - **there is no right of appeal** for guardians or anyone else who may be willing or able to act in the interests of the seized dog;
 - **there is no effective oversight or scrutiny of Councils and authorised officers**, and it is, in 2010, unacceptable that such powers should vest in persons who are **largely unaccountable** to the public or any other body in their exercise of these broad and significant new powers – again, we note

¹ *Things You Should Know About Animal Shelters and Pounds*, DPI Victoria, available at <http://www.dpi.vic.gov.au/dpi/nrenfa.nsf/LinkView/D2B170D3558FDABBCA256D780013EFD051F52E6260BC77B8CA2572B10008EED4>, accessed on 21 May 2010.

- there is no requirement to publish details of Councils' exercise of these powers;
- **there is no requirement for training authorised officers** who will be empowered, under at least one of these provisions, to kill a dog immediately on seizure.

We note that **Clause 15** requires Councils to report to the Secretary to DPI the dogs destroyed under proposed ss.84TA, 84TB and 84TC. LFA suggests that Clause 15 should be **amended** to require that this information be made public by each Council and by the Secretary. The public should be informed of the details of Councils' exercise of these powers to summarily destroy dogs. We recommend that this material should be on Council websites, updated regularly, and included in Council annual reports required under the *Local Government Act 1989* (Vic).

Further concerns specific to the proposed provisions are set out below.

B. Proposed s.84TA empowers Councils to destroy a dog within 48 hours of seizing the dog if

- an authorised officer holds the reasonable belief that the guardian "*would be guilty*" of an offence under s.24 and 26 of the Act (ie merely because the dog is at large outside the owner's premises, not securely confined, or in a place subject to a Council order); and
- the dog is unregistered and the dog's owner cannot be identified; and
- at the time of or after the seizure the authorized officer reasonably believes the behaviour of the dog "*has resulted, or is likely to result, if the dog were at large*", in *rushing, chasing*, attacking or biting a person or animal (*no injury*), attacking or biting a person or animal (non-serious injury), attacking or biting a person or animal (serious injury), attacking or biting (causing death).

This is an extreme measure on what may be very insubstantial evidence in some cases (eg. a 'rushing' that may, in fact, be play behaviour by a dog). LFA suggests that s.84TA(1)(c) be amended so that the only basis for action pursuant to proposed s.84TA is a reasonable belief that the behaviour of the dog during the time it was at large has resulted in

- attacking or biting a person or animal (*serious injury*), or
- attacking or biting (*causing death*).

This change should protect an animal from being destroyed on the basis of unsubstantiated allegations of dog aggression or mere speculation on the part of authorised officers who may be under significant resource pressure. It would also prevent the misapplication of disproportionate punishment upon a dog and guardian, for the guardian's failure to register (and microchip) their dog. However, such a power (ie in a s.84TA amended in accordance with LFA's suggestion) should, we submit, still be subject to procedural protections, an extended minimum time for exercise of the power, consistent with existing provisions of the Act and the other matters referred to in Part 1A of this letter.

There is provision for (but no requirement to make) 'guidelines' or 'practice notes' to be approved by the Minister. In any event, should clause 23 of the Bill be enacted *in any form*, LFA suggests that the Bill be **amended** to require the making of guidelines governing the practice of assessing the risk to the public of a dog which is at large, and to ensure that the making of same is subject to the provisions of the *Subordinate Legislation Act 1994* (Vic).

The proposed s.84TA(9) appears to provide that *only* if a Council decides not to destroy a dog does the guardian receive any notice of the seizure or have any ability to recover the dog – though this is not clear, due to the drafting of this clause. Given that one basis for destroying the dog is that the owner cannot be identified, it suggests that those drafting the proposed provisions are well aware that 48 hours may not be long enough for a guardian to locate a seized dog.

B. Proposed s.84TB empowers an authorized officer to *immediately destroy* a dog if an authorized officer reasonably believes that the dog is “behaving in a manner or in circumstances that will result in imminent serious injury or death to a person or other animal”, whether or not the dog is registered or the owner identifiable.

A dog does not have to have been already declared a 'dangerous dog', a 'menacing dog' or a 'restricted breed dog', or to have been involved in any previous incidents to be destroyed by a Council under this provision. For example, a dog who defended its unconscious owner might be destroyed unnecessarily, denying the dog (and the dog's owner) any of the procedural protections required under the Act.

LFA understands this provision extends to Council officers powers conferred on inspectors under the *Prevention of Cruelty to Animals Act 1986* (Vic). LFA considers that the POCTA provision is quite sufficient, and *suggests that the proper test for more extreme and unlimited provisions should be whether or not less restrictive and final measures*, such as catching and restraining the dog in the usual manner, have been attempted or are not appropriate.

C. Proposed s.84TC empowers Councils to *destroy an already-declared 'dangerous dog', within as little as 24 hours of seizure*, where an authorized officer holds the reasonable belief that the guardian “*would be guilty*” of an offence under s.24 and 26 of the Act (ie the dog is at large outside the owner's premises, not securely confined or in a place subject to a Council order), unless the authorized officer reasonably believes the dog is 'at large' due to an action or omission of a person who is not the guardian of the dog.

The proposed s.84TC(9) appears to provide that *only* if a Council decides not to destroy a dog does the guardian receive any notice of the seizure or have any ability to recover the dog – though the drafting is not clear in this part of the Bill. Given that

the owner must be known to the Council because of the previous 'dangerous dog' declaration, the operation of this provision seems particularly egregious. There may be circumstances in which a 'dangerous dog' is deliberately released by a third party without the guardian's consent, but the guardian of the animal is not provided with an opportunity to explain and prove this to the Council. This deficiency should be rectified in the draft provision.

We reiterate that LFA strongly recommends substantial amendment of Clause 23, in accordance with the comments set out above.

2. VCAT proceedings

LFA notes that several proceedings are now to be heard in the Victorian Civil and Administrative Tribunal (VCAT) rather than the review panels constituted under the Act (the Bill abolishes these panels). Though we note the Minister's Second Reading speech gives the reason for this change as ensuring procedural fairness and transparency, LFA respectfully suggests that the Bill include a provision to **amend** the Act to ensure an expedited hearing procedure be established in VCAT, given that proceedings in this jurisdiction may take longer to initiate and to reach hearing and decision than under the existing review panels. This may mean that an animal spends much longer in a pound. We note further that VCAT proceedings may be much more costly for both the animal's guardian and Councils, particularly if not expedited.

3. Penalties

A. Increased penalties

As we have already stated, LFA is concerned that the majority of the increases to penalties effected by the Bill are disproportionate in relation to the risk to the public and will very likely prevent average Victorians from reclaiming their companion animals, and will affect those least able to pay.

Clause 6 doubles the maximum penalties in s. 10 of the Act for failing to apply for registration of a dog or cat, and for failing to apply for renewal of such registration to \$2336.40. This is an extraordinarily high penalty. The Minister's Second Reading Speech makes no reference to these increases, nor to any evidence that increasing penalties would or might lead to greater compliance with the law. LFA is concerned that the maximum penalty for these offences is disproportionate and may discourage owners in financial straits from claiming their pets from Council pounds.

Clause 8 doubles the maximum penalty in s.20 of the Act for a dog or cat being found outside its owner's premises without a council identification marker, to \$233.64. Given that, with only a few statutory exceptions, permanent identification such as microchipping is now compulsory in order for dogs and cats in Victoria to be

registered, it is not clear why the absence of a council marker should attract such a high penalty, especially since cats notoriously slip their collars when caught in obstructions – indeed collars are designed to allow this, and DPI recommends their use.² LFA asks whether prosecution guidelines are in place across Victorian local government, to ensure that prosecutions are not initiated under this provision where an animal is microchipped, or has removed its own collar and council marker.

Clause 9 doubles the maximum penalties for dogs found at large outside an owner's premises or not securely confined to the owner's premises, to \$700.92 during daylight hours, and \$1168.30 in darkness. Again, this appears disproportionate to the offence. The Minister's Second Reading Speech states that increased penalties are a "greater incentive for responsible dog ownership" without any reference to evidence that increasing these penalties will lead to greater compliance by the public. LFA asks that prosecution guidelines be set in place across Victorian local government, to ensure that prosecutions are not initiated under this provision where the dog is at large or not securely confined through no fault of the owner, having been for example, accidentally released by a visitor, or terrified by a hail or fire storm or fireworks.

B. Other penalties requiring increase

In contrast, **there has been no increase in the maximum penalties for offences in the Act** which LFA suggests should be increased, such as:

- abandoning a dog or cat (s.33) – for which the maximum penalty is \$1168.20 (less than half the proposed maximum penalty for failing to apply for or renew registration of a dog or cat under s.10);
- destroying an animal other than humanely [s.84V(1)] – for which the maximum penalty is \$584.10;
- unlawfully seizing, selling, injuring or destroying a cat or dog (s.84ZA) - for which the maximum penalty is \$350.46;

LFA respectfully suggests all three of these provisions of the Act be amended to increase the penalties, so that penalties are proportionate to the offences.

4. Other matters

• 'Dangerous dog' declarations

Clause 11 of the Bill adds an additional ground on which a Council (as defined) may declare a dog to be a 'dangerous dog' pursuant to s.34(1) of the Act. It provides a number of circumstances in which a Council must not make such a declaration, for example, where the incident on which the declaration is proposed to be made occurred because the dog was being teased, abused or assaulted. LFA suggests that s. 34(2) of the Act be **amended** to provide that in addition, a Council must not

² See *Responsible Pet Ownership: All About Cats*, DPI, available at <http://new.dpi.vic.gov.au/pets/all-about-cats>, accessed on 23 May 2010.

make a 'dangerous dog' declaration when the incident in question occurred because the dog was ill or suffering from a medical condition evidenced by some written veterinary advice.

- **Regulation of domestic animal breeding businesses**

LFA respectfully calls upon the Government and the Parliament to increase the regulation and monitoring of the operations of animal breeding establishments, commonly referred to as "puppy farms". In this regard, we refer you to recent reports aired on ABC 1, and the stories at the following links:

<http://www.abc.net.au/news/stories/2010/03/31/2861050.htm>

<http://www.abc.net.au/news/stories/2010/03/30/2860398.htm>

We note that Councils tend to inspect shelters and challenge rescue organisations, while failing to act against 'puppy farm' and back yard breeders who contribute to irresponsible animal guardianship and trading, and to the numbers of companion animals euthanized in Victoria each year.

- **'Pound' dogs and cats given away for 'scientific procedures'**

LFA also draws the Assembly's attention to the provision that allows Councils to donate cats and dogs for "scientific procedures": s.84V(2). Notwithstanding our opposition to the destruction of animals in pounds, arguably this is preferable to a life, of short or long duration, undergoing scientific experimentation. LFA suggests the Bill be **amended to repeal s.84V(2) of the Act**.

For all of the reasons set out above, LFA respectfully asks members of the Assembly to **seek significant amendments to, or withdrawal of the clauses of the Bill highlighted above** (see schedule attached). If you have any queries or we can be of any assistance in this regard, please contact the principal author, Jenny Morris, using the contact details listed below.

Yours sincerely

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Clause	Suggested action	Schedule
		LFA Letter page ref
6	Remove clause from Bill – maintain existing penalty	6
8	Remove clause from Bill – maintain existing penalty	6
9	Remove clause from Bill – maintain existing penalty	7
11	Amend - add amendment to s.34(2) of the Act to add a ground on which a Council must not make a dangerous dog declaration – where the incident occurred because the dog was ill or suffering from a medical condition evidenced by written veterinary advice	7
15	Amendment – information about exercise of any power to destroy animals should be made public in Council's Annual Report, and by Secretary to DPI	4
23	Amendment – substantial revision <ul style="list-style-type: none"> • Destruction of dog permissible <i>only</i> where less restrictive/final measures have failed • <i>More time</i> required before dog may be destroyed – consistent with existing provisions of the Act • Insert requirement that assessment of dog to be made <i>only</i> by trained animal behaviourist • Insert <i>appeal rights and procedural protections</i> • Insert requirement that councils/authorised officers required to <i>pro-actively attempt to identify dog's guardian</i> • Insert <i>oversight/scrutiny and accountability provisions</i> • Insert requirement for <i>training of authorised officers in humane destruction</i> 	2-6
Insert new clauses		7
• Amend s.33 to increase penalty for abandoning a dog or cat		7
• Amend s.84V(1) to increase penalty for destroying an animal other than humanely		7
• Amend s.84ZA to increase penalty for unlawfully seizing, selling, injuring or destroying a cat or dog.		7
• Delete s.84V (2) so that it is no longer lawful to donate cats and dogs for “scientific procedures”.		8
• Increase regulation of animal breeding establishments (‘puppy farms’) and back yard breeders.		8
• Provide for expedited hearings at VCAT in relation to domestic animal matters		6