

# **Developing the proposed NSW Companion Animal Legislation**

**Ros Riordan**

## **ABSTRACT**

New South Wales is currently in the process of developing legislation geared to the welfare of companion animals, initially concentrating on cats and dogs although with the possibility, in future, of extension to cover other species.

This paper outlines the underlying philosophy of the legislation and the process being followed to undertake broad community consultation on the issues and options proposed to be included in the legislation.

Some of the contentious issues which require further consultation are noted and the revised time frame for developing the draft Bill is outlined.

## **WHY A NSW COMPANION ANIMALS ACT?**

The Government's commitment to developing legislation to protect cats as well as dogs was part of its election promise to thoroughly overhaul the range of legislation dealing with the welfare of animals.

The trigger for this election commitment was the Government's response to changed expectations in the community about the need to put in place legislation to more effectively protect animal welfare.

Having said that, I should ask you to remember that New South Wales is in the process of developing legislation and that my comments at this stage about the provisions of the legislation are proposals which may change as the draft Bill is subject to further consultation and Parliamentary debate.

## **ISN'T THERE ALREADY A DOG ACT IN NSW?**

Australians have always considered it a right to have animals - for work, assistance and companionship. The expectation of the community, however, is that Government will take an increasing role in protecting the rights of animals, the amenity of the community and the environment.

This creates a few clashes of peoples' rights. My rights to walk down the street with my dog without the fetter of a lead impinges directly on the rights of others to be able to walk down the same street without the fear of an unleashed dog running up to them - and certainly without having to dodge or step in dog excrement which has not been picked up by the owner.

The *Dog Act 1966*, as amended, does not reflect the community's current concerns about the welfare of animals. The Act is being reviewed, with some provisions to be carried over into the new legislation, and with new provisions to enable the Act to have a more proactive role in ensuring the welfare of dogs as well as the amenity of the community. Certain anomalies in the old Act will be revised to better protect community amenity and new provisions relating to the responsibilities of owners will be included.

## **WHY INCLUDE CATS IN THE LEGISLATION?**

As well as our expectations about responsible ownership of dogs, there are changing expectations about the need for people to exercise some degree of control over their cats. The right of people to have cats is widely accepted, but there are increasing conflicts between the rights of people to have cats and the rights of those who choose not to have cats and who want to be able to enjoy their space without feline interruption.

As a society, we are also increasingly concerned about the welfare of cats which are bred and dumped and which subsequently live hazardous lives. There are also environmental concerns caused by cats - those which are owned which may forage into their neighbours' yards and catch the birds the neighbours have painstakingly encouraged into their garden by selective planting; those which are semi-owned and depend on supplementation of their diet by hunting; and those which are unowned, which may interbreed with owned and semi-owned cats, but which live entirely on scrounging or hunting.

The introduction of legislation to give cats a legal status is as contentious now as the introduction of the Dog Act 1966 was at that time. Many people are concerned that the new legislation will be specifically directed at colonies of unowned cats, particularly those living in the wild.

The proposed Companion Animals Act is unlikely to have a short term impact on unowned cats living in the wild. It is anticipated that successfully implemented local companion animal management plans will cause a down-turn in the interbreeding of owned and unowned cats, but control of unowned cats in the wild is outside the scope of this legislation.

There are those in the community who advocate control of unowned cats by carrying out a 'desex and return' program, so that cats live out their natural lives without further breeding. Others believe it is more humane to catch and euthanase unowned cats in the wild, believing that their quality of life is precarious and only maintained by predation on native birds, lizards and snakes and native and introduced animals. Depending on the approaches that are most suitable for the local area, a local management plan may be able to incorporate both these viewpoints.

The control methods chosen will depend on a variety of local issues such as whether stock are adversely impacted on by unowned or straying animals or whether there are particular habitats of ground nesting birds or small mammals which may be particularly subject to predation.

Even colonies of unowned cats which are being well cared for by an individual or group may be provided for in a local companion animal management plan, as long as the animals are in good health and the legislation is complied with.

## **WHAT ARE OUR EXPECTATIONS?**

The expectations we have as a community may be placed in the context of what we expect, as a civilised and growing society.

- Is it a mark of a civilised society to have so many unwanted animals dumped or abandoned each year?
- Is it a mark of a civilised society to have so many animals euthanased each year, particularly unwanted litters of puppies and kittens?
- Is it a mark of a civilised society to have so many cases of cruelty to animals reported and investigated each year?
- How does the dichotomy arise that we, as a civilised society with a generally high level of concern for animals and an understanding of their benefits to us, fail to ensure that the basic welfare of so many animals is met?

Other concerns are that the legislation, whilst addressing the welfare of animals, must also address the issues concerning the drawbacks of companion animals. These include the many cases of dog attacks, particularly on children, and the issues of community and environmental amenity which may be detrimentally affected by companion animals.

The Government's overhaul of all animal welfare legislation includes the review of the Prevention of Cruelty to Animals Act (POCTA) by the Minister for Agriculture; the review by the National Parks and Wildlife Service of the provisions relating to the keeping and breeding of native birds; and the development, by the Minister for Local Government, of the proposed NSW Companion Animals Legislation, to incorporate relevant provisions of the Dog Act 1966.

The emphasis of the Companion Animals Legislation will be community education and responsible management of animals.

## **THE DRAFTING PROCESS**

The process commenced in December 1995 when the Minister issued an invitation to a wide range of people, organisations, government departments and instrumentalities to attend a first meeting regarding the proposed legislation. From this meeting nominations were called to form the Working Party.

It was anticipated that the Working Party would have 8 - 10 members but, because of the overwhelming number of nominations and the range of interests requiring representation, the Minister finally appointed 16. In many cases these people have been able to represent a 'class' interest rather than the views of only one organisation or lobby group.

The members of the Working Party have been essential to the drafting process.

The task of developing legislation covering cats and dogs is a huge one. It is also one on which almost everyone has a strong opinion, ranging from belief in the absolute benefits to belief in the absolute drawbacks of companion animals.

There are also many people in between, who recognise the benefits of companion animal ownership but temper this recognition with an understanding of the problems which arise, for animals as well as humans, when animals are managed in an irresponsible way.

## **REVIEW OF OVERSEAS LEGISLATION**

The Working Party's first task was to review other companion animals legislation in Australia and overseas.

This review backed up the Government's intention that the NSW legislation would take the line of animal welfare and responsible ownership and would aim to make all provisions of the new legislation workable.

One of the main overseas pieces of legislation reviewed was the *English Dangerous Dogs Act 1991*, which replaced the *Dogs Act 1871*. The new English legislation placed a ban on dogs described as 'pit bull type'.

The English law has resulted in many lengthy and expensive court cases. The main problem is the lack of adequate definition of 'pit bull type', which might be applied to dogs, for example, such as a Staffordshire Terrier cross Labrador. A second problem is that the English Act does not satisfactorily define 'injury'. If a dog has 'injured' it may be anything from a person being savaged to death to someone knocked down and winded by an over friendly Labrador. There is no provision under the Act to consider the circumstances under which the dog has attacked and 'injured' - even when the dog may have been seriously provoked. The only provision is to have the dog put down.

## **TO BAN, OR NOT TO BAN, CERTAIN BREEDS?**

In 1991 the Commonwealth moved to ban importation of four breeds of dogs into Australia, including the American Pit Bull Terrier. The intention was thwarted, however, because of the lack of a standard breed definition as the breed is known by several names and continued to be imported into Australia as American Staffordshire Terrier, cross Labrador, etc.

Australia is now home to many dogs which might be defined as 'pit bull type', including any breed or cross breed of dog which has been bred for fighting characteristics. If legislation in New South Wales was introduced to ban the breeds of dogs most commonly involved in attacks then German Shepherd Dogs, Rottweilers and Australian Cattle Dogs would be much higher on the list than 'pit bulls'.

Even if certain breeds may be over-represented in attacks, perhaps reflecting the popularity of the breed, the vast majority of that same breed are not involved in attacks. A ban on such popular breeds of dogs would not be publicly accepted and would therefore not be enforceable. The proposed legislation aims to reduce, not increase, the number of animals euthanased.

The legislation proposes to take a 'deed not breed' approach, on the basis outlined above and because the Working Party believe that any dog may be trained to be a 'canine good citizen' or, conversely, may be trained to be vicious. Responsible management and training of any dog - understanding its characteristics and temperament and how it will fit in with the owner's lifestyle - is seen as the most likely way to lessen the frequency of attacks. This particularly applies to dogs which have been bred to enhance fighting qualities.

The proposed 'deed not breed' approach in relation to perceptions about the American Pit Bull Terrier does not meet with unanimous approval however, as evidenced by the recent decision of the Local Government Conference to call for a ban on the breed. Along with several other proposals this remains a contentious one which will be the subject of much more debate.

While the question of whether or not it is feasible or desirable to ban certain breeds of dogs continues, the debate has spread to cats with the recent introduction into Australia of the hybrid Bengal cat. The Bengal cat has particular characteristics, such as love of water and ability to occupy and hunt in the forest canopy, which would make it a particularly able predator if it were to establish colonies in the wild.

The hybrid Bengal cat, however, has been bred back several times with the domestic cat, enabling its initial entry into the country. Authorities have yet to determine if it will be classified as a domestic or exotic cat.

## **OTHER AUSTRALIAN LEGISLATION**

The main Australian legislation which was reviewed includes the Victorian Domestic (Feral and Nuisance) Animals Act 1994 and the South Australian Dog and Cat Management Act 1995. Legislation in other states and territories is being developed but these two Acts are already in force.

Cats now have legal status in South Australia and Victoria, protecting cats and their owners. It is an offence to unlawfully seize or destroy a cat. Victoria has introduced compulsory registration for cats and given local Councils the power to introduce local cat curfews. South Australia has introduced a voluntary scheme of cat registration but any unidentified cat caught in areas such as national parks may be destroyed.

Responsible care and community education have been central to the development of the legislation in both the above states and both provide for a proportion of registration fees to be used for community education.

The proposed NSW Companion Animals Act, in its title, reflects the intention that the legislation's primary focus is to ensure the welfare of animals. While penalties will be contained in the Act, the emphasis on responsible ownership and management of animals - for their own benefit and the benefit of their owners and the public generally - will have the greatest emphasis.

The Green Paper produced by the Working Party was distributed widely for public comment and resulted in almost 5,000 submissions. These are now being analysed and will form the basis of the draft Bill.

From these submissions and the Working Party's findings there remain a number of issues requiring further specific consultation and review.

## WHAT ARE SOME OF THE INTERESTS TO BE BALANCED?

The Working Party is now paying particular attention to the varying rights and issues which require balancing if the NSW legislation is to be fair, meet its aims and be able to be enforced.

Some of these are:

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| the proposal to change the system of annual registration by introducing a system of permanent lifetime identification, to ensure the safety of animals   | Vs | the present unavailability of technology, particularly a multi-chip reader, to cost effectively permanently identify companion animals |
| the need to ensure responsible breeding practices for cats and dogs, perhaps by restricting 'free to good home' arrangements, by requiring all breeders of entire animals to be registered as breeders | Vs | ensuring that moggies and bitsers continue to be available as companion animals  |
| the need to ensure that people understand the commitment 'for the life of their animal' and only take on the responsibility for an animal if they are willing and able to provide for its needs        | Vs | ensuring that people on low or fixed incomes are not precluded from owning a companion animal for cost reasons                         |
| the need to ensure people have access to open space to exercise their animals, and thus ensure the animal's welfare and prevent them becoming bored and possibly a neighbourhood nuisance              | Vs | ensuring people without animals have access to public open space which is free from free-running dogs and dog faeces                   |
| the need to ensure amenities and services are accessible so people with disabilities are able to be accompanied by their assistance/alert animal   | Vs | ensuring public health and safety requirements are met   |
| ensuring funds are available for community education   | Vs | ensuring costs aren't prohibitive  |
| ensuring a balance between costs to general community  | Vs | ensuring costs aren't prohibitive for companion animal owners  |
| ensure the legislation is enforceable  | Vs | ensure the legislation does not add to the burden on local resources   |
| ensuring the legislation contains provisions which meet the local needs of urban areas   | Vs | ensuring the legislation provides workable provisions for country people   |

## THE ROLE OF PLANNING

The legislation proposes that local animal management plans be established as an extension of the management plans local Councils are now required to produce each year under the *Local Government Act 1993*.

This would enable each local government area, possibly in conjunction with neighbouring Councils, to develop a management plan which suits their local area - taking into account any areas of vulnerable habitat which may require protection and any specific problems which may require introduction of controls over companion animals.

In this way the legislation will provide for the development of plans appropriate to differing areas including urban, rural and bushland areas.

The development of management plans would be carried out in close consultation with the community. It is proposed that a wide range of views be included in the planning committee which draws together the management plans. For example, a local government area which includes a national park might include: councillors, local government planning and enforcement staff, police, animal breeders, representatives of wildlife groups and animal welfare organisations, schools, representatives of government departments such as Agriculture, National Parks & Wildlife, vets, farmers' representatives, community members, etc.

Depending on the local population and the configuration of the area, the animal management committee may meet twice in the first year and thereafter annually, for review purposes, or it may meet several times each year. Again, the pattern would be developed to suit the local area.

Local government has long accepted its role in planning and development control. Increasingly local government has been called on to extend its planning role by including a social amenity and service role in its local planning instruments. This has meant local government increasing its knowledge of the local community, and the needs of special interest groups within the community, so that it is better able to plan and develop services to meet the range of needs within the community.

Social planning is now included as a requirement in every local government management, or business, plan.

Traditionally dogs and cats have had roles as companions, as workers and as medical/disability assistance and/or alert animals. Research carried out by the companion animals industry in conjunction with health workers indicates that the benefits of companion animals to health and wellbeing, particularly to people who are socially isolated, has probably been understated.

On the other hand, as our population grows, complaints to local councils about companion animals are increasing. Barking dogs and dog faeces are two of the major complaint areas, with the foraging of cats being a complaint growth area.

A more proactive role for local government is required to encourage companion animal owners to lawfully meet their animal's needs. This role includes community education, provision of a sufficient number of well-located dog off-leash areas with facilities for faeces collection as well as the traditional enforcement role. This will depend, however, on funding being available to enable local government to take on this expanded role. It will require careful planning so that other members of the community are not adversely impacted upon by setting aside spaces for dogs.

## **WHERE TO FROM HERE?**

As part of the Government's commitment to wide debate the next stage will be the development of a draft Bill, which will also be distributed for community consultation.

The revised timetable anticipates that the draft Bill will be ready for distribution for comment around the beginning of February 1997. Allowing for a 6 - 8 week consultation period and subsequent analysis time it is likely the Bill will be ready for consideration by Parliament by April or May 1997.

I hope to be able to provide an update to the Conference in November.

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Ros Riordan enjoys a peripatetic career in the community services industry and in public sector management. She has worked for a number of local councils in rural NSW and metropolitan Sydney and came to work for the Minister on a temporary basis in late 1995. Realising she has friends of both the human and animal variety, the Minister hijacked her into staying on "...for just a few more months..." to work on the development of the NSW Companion Animals Legislation. Ros expects to work for the Minister "...for just a few more months...". She was likewise hijacked into chairing the Companion Animals Working Party.

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