

# **LOCAL GOVERNMENT AND OTHER LEGISLATION AMENDMENT BILL (No. 2) 2001**

## **EXPLANATORY NOTES**

### **GENERAL OUTLINE**

#### **Objectives of the Legislation**

The Bill provides for amendments to the *Local Government Act 1993* (LGA) to:

- (a) Introduce a State regulatory framework for dog breeds that are subject to the Commonwealth's importation ban;
- (b) Expand the membership of the Local Government Grants Commission from 5 to 6, to include a person with particular knowledge of Aboriginal and Torres Strait Islander local governments;
- (c) Clarify that a joint local government may, with the consent of its component local governments, disperse funds that are not required for the exercise of its exclusive jurisdiction for any other local government purpose, and make a similar clarification in respect of the Townsville-Thuringowa Water Supply Board (a local government entity similar to a joint local government); and
- (d) Enable the State to supervise the financial arrangements of Local Government Owned Corporations (LGOs) under the *Statutory Bodies Financial Arrangements Act 1982* (SBFA Act).

The Bill also amends the *Queensland Treasury Corporation Act 1988* (QTC) to make clear that in applying the SBFA Act to LGOs, the performance dividend requirements do not apply.

#### **Reasons for the Bill**

Following a number of dog attacks on the Gold Coast attributed to pit bull terriers the Government undertook investigations into regulatory

measures to control dangerous dogs. The Commonwealth Government has banned the importation of four breeds of fighting dogs, including the pit bull terrier, in the interests of public safety. A number of States have introduced regulatory frameworks for these breeds of dog. The provisions in the Bill providing for the regulation of these breeds (referred to as restricted dogs) will compliment the existing regulatory controls on dangerous dogs administered by local governments through local laws.

The Bill will also enable necessary State Government financial supervision to occur in the context of the ongoing implementation by local governments of corporatisation reforms; assist the Local Government Grants Commission to take full account of the circumstances of Aboriginal and Torres Strait Islander local governments in its deliberations; and clarify the powers of joint local governments and the Townsville-Thuringowa Water Supply Board to disburse funds to perform additional functions where necessary approvals have been obtained.

### **Way in which the objectives are to be achieved**

The objectives of the Bill are to be achieved by amending the LGA:

- to apply a regulatory framework to those breeds of dog banned from importation by the Commonwealth in the interests of public health and safety;
- to improve the advice on the allocation of Financial Assistance Grants to Aboriginal and Torres Strait Islander local governments by increasing the membership of the Local Government Grants Commission to include a person with particular knowledge of Aboriginal and Torres Strait Islander local governments;
- to clarify the powers of joint local governments and the Townsville-Thuringowa Water Supply Board; and
- and the QTC to require State approval of certain financial arrangements of LGOs.

### **Why this way of achieving the objectives is reasonable and appropriate**

There are no alternatives to amending legislation to achieve the objectives of the Bill.

## **Alternatives to the Bill**

There are no alternatives considered appropriate for achieving these policy objectives.

## **Administrative cost to Government**

The costs to Government of implementing the provisions of the Bill relating to the State regulatory framework for restricted dogs and the supervision of financial arrangements for LGOCs will be administrative in nature and will not be significant. The cost of an additional member on the Local Government Grants Commission is only an additional cost of approximately \$7,000 per annum. Costs will be met within existing budgetary allocations. There are no additional implementation costs for the clarifying amendments relating to joint local governments and the Townsville-Thuringowa Water Supply Board.

## **Consistency with Fundamental Legislative Principles**

Provisions relating to LGOCs, the membership of the Local Government Grants Commission, and the powers of joint local governments and the Townsville-Thuringowa Water Supply Board to disburse funds on additional functions do not infringe fundamental legislative principles.

In respect of provisions relating to the State regulatory framework for restricted dogs, a number of issues have been considered in balancing the need for a workable regime for councils and compliance with fundamental legislative principles, whilst achieving the objectives of public health and safety. As a result it may be argued that some provisions of the Bill infringe fundamental legislative principles. The provisions, outlined below, are considered necessary for the creation and implementation of the regulatory framework in the interests of public health and safety.

The following provisions in the Bill may infringe fundamental legislative principles:

Section 1193D Relationship with local laws

Section 1193E What is a “restricted dog”

Sections 1193K Prohibition on acquisition and supply, 1193L Prohibition on breeding, 1193M Permit required for restricted dog, 1193N Compulsory de-sexing, 1193ZA Identification, 1193ZB Muzzling and effective control in public, 1193ZC Enclosure, 1193ZD Public notice, 1193ZE Place where dog is usually kept, 1193ZF

Notice of other restricted dog permit for dog, and 1193ZG Notice of change of address

Section 1193ZW Notice and taking effect of declaration

Section 1193ZX Relationship with ch 15, pt 5

Section 1193ZZ Requirements for giving notice

Sections 1193ZZB Additional entry powers and 1193ZZC Seizure powers

Section 1193ZZP Veterinary surgeon certificates

Section 1193ZZT Defence for restricted dog owner

### **Section 1193D Relationship with local laws**

Section 1193D allows a local law that prohibits possession of restricted dogs to apply instead of chapter 17A. Local laws that set higher standards than the provisions of chapter 17A in relation to permit conditions can also apply instead of these provisions. Provisions that do not have sufficient regard to the institution of Parliament offend fundamental legislative principles. The provision implements the policy intent to set minimum State-wide standards for the regulation of restricted dogs while allowing local governments to set higher standards through local laws, including prohibiting restricted dogs.

### **Section 1193E What is a “restricted dog”**

Section 1193E provides the definition of restricted dog to be four specified breeds or type of dog and crossbreeds of these dogs. These specified breeds of dog are banned from being imported into Australia by the Commonwealth under the *Customs Act 1901* (Cwlth). Provision is made for a regulation to prescribe other breeds of dog to be restricted dogs, but only where the Commonwealth amends its legislation to prohibit the importation of an additional breed or type of dog. Legislation that does not have sufficient regard to the institution of Parliament offends fundamental legislative principles. The intent of section 1193E is to apply a regulatory framework to the breeds of dog subject to the Commonwealth importation ban. The regulation making is necessary to achieve this intent, because the Commonwealth could use its regulation making power to prohibit other breeds or types of dog from importation.

**Sections 1193K (Prohibition on acquisition and supply), 1193L (Prohibition on breeding), 1193M (Permit required for restricted dog), 1193N (Compulsory de-sexing) and permit conditions provided in sections 1193ZA to 1193ZG**

These sections impose various prohibitions and restrictions in relation to restricted dogs, such as a prohibition on breeding, sale or exchange and a requirement for compulsory de-sexing. An obligation is placed on owners of restricted dogs to obtain a permit and comply with a range of conditions attached to the permit. Legislation that does not have sufficient regard to the rights and liberties of individuals offends fundamental legislative principles.

In formulating the policy proposal for a regulatory framework for restricted dogs, the Department of Local Government and Planning obtained advice in relation to the proposed prohibition on the breeding, sale or exchange, and the compulsory de-sexing of restricted dogs. The advice was to the effect that the requirements would most likely not involve an “acquisition of property”. The fact that the State or a third party does not accrue any proprietary benefit as a result of the regulatory requirements and prohibitions supports this conclusion.

The advice further provided that while the proprietary rights and commercial interests of owners who currently breed, sell or exchange restricted dogs in a commercial manner may be adversely affected by the proposed legislation, this does not give rise to any right to compensation or cause of action at general law.

These provisions are considered necessary in order to provide a means of controlling existing dogs, whilst progressing toward the ultimate aim of a reduction in populations of these breeds of dog in the State.

**Section 1193ZW Notice and taking effect of declaration**

Part 4 of chapter 17A provides a process for local governments to declare a particular dog to be a restricted dog. The legislation provides two methods of declaring a dog to be a restricted dog. In one method a local government may declare a restricted dog based on an expert opinion from a veterinary surgeon about the breed of the dog. Where this method is used, the owner of the dog does not have a right to appeal the decision. Where a local government does not obtain an expert opinion, the owner may appeal the decision to the Magistrates Court within a certain timeframe. Whether legislation has sufficient regard to the rights and liberties of individuals depends on, *inter alia*, whether the legislation makes rights and liberties, or

obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.

There may be particular circumstances where the potential delays involved with appeals to the Magistrates Court may impede the effectiveness and workability of the legislation and compromise public health and safety. Where a local government has not obtained an expert opinion from a veterinary surgeon prior to making a restricted dog declaration, it is considered appropriate that the decision be subject to appeal. Where a local government has relied upon the professional expertise of a veterinary surgeon in making its decision, the same right of appeal is not considered appropriate. However, in these circumstances an owner could seek a review of the decision under the *Judicial Review Act 1991*. In addition, the council will have to give the owner the right to respond to its assessment before a declaration is made. This provides an opportunity for an owner to demonstrate that the dog is not a restricted dog.

### **Section 1193ZX Relationship with ch 15, pt 5**

Section 1193ZX deals with the relationship between chapter 17A for restricted dogs and powers of entry in the existing chapter 15, part 5 of the LGA. Subsection (3) provides that compensation cannot be claimed or ordered to be paid under section 1104 for loss or expense caused by the seizure or destruction of a restricted dog. Legislation that does not provide fair compensation for the compulsory acquisition of property may offend fundamental legislative principles.

The seizure and destruction powers under chapter 17A are necessary for the enforcement of the regulatory framework in the interests of public health and safety. The circumstances in which these 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.

### **Section 1193ZZ Requirements for giving notice**

Section 1193ZZ gives a local government authorised person power to issue compliance notices where non-compliance with the requirements of chapter 17A is reasonably suspected. Whether legislation has sufficient regard to the rights and liberties of individuals depends on, *inter alia*, whether the legislation makes rights and liberties, or obligations, dependent

on administrative power only if the power is sufficiently defined and subject to appropriate review.

While an owner of a restricted dog may not appeal against the decision to issue a compliance notice, a defence against non-compliance with the notice is provided in section 1193ZZA, if the recipient proves that when the notice was given, the person had not committed, was not committing, or was not about to commit the offence stated in the notice. There may be circumstances where immediate action by an owner of, or responsible person for, a restricted dog is needed in the interests of public health and safety. In this regard, the use of compliance notices provides an effective enforcement tool. Provision of an appeal right in such circumstances would not achieve the desired outcome.

### **Section 1193ZZB Additional entry powers and 1193ZZC Seizure powers**

Sections 1193ZZB (Additional entry powers) and 1193ZZC (Seizure powers) give an authorised person power on reasonable suspicion of certain matters to enter a place and seize a dog, without a warrant. Provisions that confer power to enter premises and search for or seize property without a warrant may offend fundamental legislative principles.

These powers are necessary in the circumstances to ensure enforcement of the legislation and public health and safety is protected. In exercising the power to enter a place in section 1193ZZB, an authorised person may not use force and must follow certain procedural requirements under section 1088 of the LGA to produce an identity card, and tell the occupier the purpose of the entry and that it is permitted without the occupier's consent or a warrant. Also, actions taken by authorised persons under these sections are subject to safeguards provided in sections 1193ZZD (Receipt for seized dog in certain cases) and 1193ZZG (Power to destroy restricted dog).

### **Section 1193ZZP Veterinary surgeon certificates**

Section 1193ZZP provides that a certificate signed by a veterinary surgeon concerning the breed or type of a dog mentioned in section 1193E(1) (What is a "restricted dog") is evidence that the dog is a restricted dog. This provision enables the certificate to be tended as evidence without the veterinary surgeon being required to verify the certificate in court. Provisions that adversely affect the rights and liberties of individuals

offend fundamental legislative principles. In this regard evidentiary provisions should be limited to non-contentious matters.

It may be argued that the provision deals with a matter that will often be contentious. However, proceedings under chapter 17A will be primarily dependent on expert evidence and it would be onerous for local governments to be required in every circumstance to call an expert to give evidence, particularly where an appellant does not rely on expert evidence.

### **Section 1193ZZT Defence for restricted dog owner**

Section 1193ZZT provides a defence in a proceeding for an offence against chapter 17A, if the owner can prove another owner has been convicted of the same offence and has met or paid any penalty imposed. Legislation that reverses the onus of proof in criminal proceedings without adequate justification can offend fundamental legislative principles.

The definition of an owner under section 1193F for the purposes of chapter 17A includes the person registered as the owner, the person who has proprietary rights in relation to the dog, and the person who keeps the dog. Subsection (1)(d) provides that if the person is a minor, the parent or guardian of the minor can be taken to be the owner. In prosecuting an offence under chapter 17A, a local government will be able to commence proceedings against a person to whom the definition of owner applies for an offence under chapter 17A. Given the broad definition, section 1193ZZT is necessary to prevent multiple prosecutions for the same offence.

### **Consultation**

Consultation has been undertaken on all provisions of the Bill with relevant State agencies, local government representative bodies, relevant local governments, relevant professional associations, community groups and members of the public.

The Department of Local Government and Planning released draft legislative proposals for the State regulatory framework for restricted dogs in mid-September and called for submissions in response to the proposals. A total of 253 submissions were received by the close of submissions on 2 November 2001. Of these, 34 were supportive of the proposals while 218 were opposed to the proposals and one could not be classified either way. However, of the 218 submissions opposed, 179 were one of either two versions of a form letter. All of these were received via a Departmental



email address set up to facilitate the public consultation process. If the form letters are removed from the analysis, submissions in support become 34 and opposed 39.

The following State agencies were consulted:

**State regulatory framework for restricted dogs**

- Office of the Queensland Parliamentary Counsel
- Department of Primary Industries
- Department of the Premier and Cabinet
- Department of Aboriginal and Torres Strait Islander Policy
- Department of Justice and Attorney General
- Queensland Treasury
- Office of Rural Communities, Department of Primary Industries
- Employment Task Force, Department of Employment and Training
- Business Regulation Reform Unit, Department of State Development
- Residential Tenancies Authority

**Other amendments**

- Queensland Treasury
- Department of Aboriginal and Torres Strait Islander Policy
- Business Regulation Reform Unit, Department of State Development
- Office of Rural Communities, Department of Primary Industries
- Department of the Premier and Cabinet
- Employment Task Force, Department of Employment and Training

Other key stakeholder groups consulted include the following:

**State regulatory framework for restricted dogs**

- Brisbane City Council
- Local Government Association of Queensland
- South East Queensland Regional Organisation of Councils
- Royal Society for the Prevention of Cruelty to Animals

- Australian Veterinary Association Queensland Division
- Canine Control Council

**Other amendments**

- Brisbane City Council
- Local Government Association of Queensland
- Caloundra City Council
- Maroochy Shire Council
- Caloundra-Maroochy Water Supply Board
- Hervey Bay City Council
- Townsville-Thuringowa Water Supply Board
- Townsville City Council
- Thuringowa City Council

The position of key stakeholder groups on the State regulatory framework for restricted dogs is as follows:

Royal Society for the Prevention of Cruelty to Animals (RSPCA)

The RSPCA supports the Commonwealth ban on the importation of the dogo Argentino, fila Brasileiro, Japanese tosa, and American pit bull terrier or pit bull terrier. The RSPCA supports the proposed State regulatory framework for restricted dogs which parallels the Commonwealth legislation.

The RSPCA's general policy on animal management does not support breed specific regulation, but due to recent events, the RSPCA does support the regulation of dogs prohibited from importation by the Commonwealth. However, the RSPCA does not support the extension of the regulatory framework to other breeds of dog.

A revised policy which supports the Commonwealth importation ban of the four breeds of fighting dog, is currently being considered by the national body, RSPCA Australia. The chief executive officer of RSPCA (Qld) has indicated that he anticipates that the national body will adopt this policy in February 2002.

Following adoption of this policy, RSPCA shelters will not rehouse abandoned dogs of these breeds.

Australian Veterinary Association Queensland Division (AVA)

The AVA does not support breed specific legislation, and as such does not support the Bill.

Canine Control Council (CCC)

The CCC fully supports the proposed regulatory framework for restricted dogs.

Local Government Association of Queensland (LGAQ)

The LGAQ supports the proposed regulatory framework for restricted dogs.

South East Queensland Regional Organisation of Councils (SEQROC)

The SEQROC in principle supports the Bill. SEQROC, Brisbane City Council, Gold Coast City Council and a number of other councils raised concerns regarding the ability of councils to issue on-the-spot fines for restricted dog offences.

Local governments

The response from local governments has been generally very supportive of the proposed State regulatory framework. However, some councils were concerned with enforcement of the regulatory framework.

## **NOTES ON PROVISIONS**

### **PART 1—PRELIMINARY**

#### **Short title**

*Clause 1* provides for the short title of the Act.

#### **Commencement**

*Clause 2* provides for the commencement of the Act.

Provisions relating to the State regulatory framework for restricted dogs will commence on a day to be fixed by proclamation. The intent is that the requirements of the legislation concerning restricted dogs will begin to apply four months after enactment. This is intended to give local governments adequate time to set up systems to administer the new arrangements.

The remaining provisions of the Bill, ie, the provisions relating to the membership of the Local Government Grants Commission, the powers of joint local governments and the Townsville-Thuringowa Water Supply Board to disburse funds on additional functions and LGOCs will commence on assent.

## **PART 2—AMENDMENT OF LOCAL GOVERNMENT ACT 1993**

### **Act amended in pt 2**

*Clause 3* provides that part 2 amends the *Local Government Act 1993* (LGA).

### **Amendment of s 3 (Definitions)**

*Clause 4* amends section 3 to bring the LGA into line with the Office of the Parliamentary Counsel's current drafting standards by relocating the dictionary to a schedule to the LGA and inserts definitions for the purposes of chapter 17A.

### **Amendment of s 9 (Act applies only so far as expressly provided)**

*Clause 5* amends section 9 to apply provisions dealing with the regulation of restricted dogs to the Brisbane City Council. It is intended that the regulatory framework for restricted dogs will apply to all local governments. This amendment is necessary because unless expressly provided for, the provisions of the LGA do not apply to the Brisbane City Council. This is due to the fact that Brisbane City Council operates under the LGA and the *City of Brisbane Act 1924*.

### **Amendment of s 13 (Act applies only so far as expressly provided)**

*Clause 6* amends section 13 to apply the regulatory framework to Aboriginal and Torres Strait Islander local governments. It is intended that the regulatory framework for restricted dogs will apply to all local governments in Queensland, including Aboriginal and Torres Strait Islander local governments.

This amendment is necessary because, unless expressly provided for, the provisions of the LGA do not apply to Aboriginal and Torres Strait Islander local governments. This is because Aboriginal and Torres Strait Islander local governments operate under the LGA and the Community Services Acts<sup>1</sup>.

The Community Services Acts give certain powers of entry to authorised officers. However, these would be insufficient to enforce the regulatory framework for restricted dogs. As such, provision is made for Aboriginal and Torres Strait Islander local governments to appoint authorised officers with the powers of entry and inspection under the LGA necessary for the enforcement of the regulatory framework for restricted dogs.

### **Amendment of s 14 (How Act applies to Aboriginal and Torres Strait Islander local governments)**

*Clause 7* amends section 14 for the purposes of chapter 17A. It is necessary to amend section 14 of the LGA, which deals with how the LGA applies to Aboriginal and Torres Strait Islander local governments where there are differences between terms used in the LGA and terms used in the Community Services Acts.

### **Amendment of s 31 (Inconsistency with State law)**

*Clause 8* amends section 31, and the heading to the section, which deals with the relationship between State law and local laws made by local governments.

Currently, the LGA provides that local governments have jurisdiction to make local laws on any matter on which the State can make laws. It further provides that, if a State law and a local law are inconsistent, the State law prevails over the local law to the extent of the inconsistency.

---

<sup>1</sup> Reference to the Community Services Acts means the *Community Service (Aborigines) Act 1984* and the *Community Services (Torres Strait) Act 198*

The intent of the amending legislation is provide a minimum State-wide standard for the regulation of restricted dogs and allow local governments, through local laws, to either prohibit the keeping of restricted dogs in their areas or to set higher standards on some elements of the regulatory framework. Without this amendment local laws that set higher standards would be invalid because of the inconsistency with State law.

The relationship between local laws regulating restricted dogs and the provisions of the LGA is provided under the new section 1193D.

### **Replacement of s 60W (Disbursement of surplus in operating fund of joint board)**

*Clause 9* replaces section 60W (Disbursement from operating fund of joint board for purposes other than its jurisdiction) to clarify the powers of the Townsville-Thuringowa Water Supply Board to disburse funds on additional functions.

The new section 60W updates the terminology from the previous section 60W. It replaces the reference to disbursing “a surplus in the operating fund” with a requirement that the Board determine that a proposed disbursement “is not required for exercising its jurisdiction”. This is because changes in local government accounting practices with the adoption of accrual accounting mean “surplus” no longer has an appropriate meaning.

Under section 60E of the LGA, the Townsville-Thuringowa Water Supply Board was given the jurisdiction to provide bulk water to its component councils (ie Townsville and Thuringowa City Councils) and to other bulk water customers.

This amendment will enable the Board, if it determines that funds in its operating fund are not required for exercising its jurisdiction, to disburse such funds for any local government purpose. The Townsville and Thuringowa City Councils must approve the purpose for which the disbursement is to be expended. This approval may relate to a single instance or for a continuing purpose extending beyond the financial year. The Board may disburse funds directly to an approved purpose or to Townsville and Thuringowa City Councils. Both the Board and the component Councils may undertake activities relating to the approved purpose.

**Amendment of s 191 (Local Government Grants Commission and its members)**

*Clause 10* amends section 191 by increasing the Commission's members from 5 to 6 persons, and requiring the extra member to be a person with particular knowledge of Aboriginal and Torres Strait Islander local government.

The Commission makes recommendations to the Minister for Local Government and Planning on the distribution of the Financial Assistance Grants to Queensland's 125 local governments as well as its 32 Aboriginal and Torres Strait Islander local governments. This amendment expands the expertise of the Commission by bringing additional knowledge of Aboriginal and Torres Strait Islander local governments to its deliberations.

**Amendment of s 193 (Vacation of and removal from office)**

*Clause 11* amends section 193 to update a reference to section 191 to reflect the changes made to that section by amendments in this Bill.

**Amendment of s 213 (Quorum at meetings)**

*Clause 12* amends section 213 to increase the number of members constituting a quorum at meetings of the Local Government Grants Commission from 3 to 4 members.

**Amendment of s 222 (Disqualification and vacation of office for certain offences)**

*Clause 13* amends section 222 as part of the shifting of definitions to the dictionary. Subsection 4 previously provided a definition for the purposes of section 222. The definition has been relocated to the dictionary by other amending legislation and is therefore omitted from the section.

**Replacement of s 542 (Disbursement of surplus in operating fund of joint local government)**

*Clause 14* replaces section 542 (Disbursement from operating fund of joint local government for purposes other than exclusive jurisdiction) to clarify the powers of joint local governments to disburse funds on additional functions.

*Local Government and Other Legislation Amendment  
Bill (No. 2) 2001*

---

The new section 542 updates the terminology from the previous section 542. It replaces the reference to disbursing “a surplus in the operating fund” with a requirement that a joint local government determine that a proposed disbursement “is not required for exercising its exclusive jurisdiction”. This is because the changes in local government accounting practices with the adoption of accrual accounting have made “surplus” no longer appropriate.

A joint local government is created by a regulation made under the LGA, which establishes the jurisdiction for the joint local government within its geographic area. Section 46 gives joint local governments exclusive jurisdiction in their geographic area for the function(s) for which they were created. Once a joint local government is created, the component local governments cannot exercise jurisdiction over these matters within the joint local government’s geographic area (unless delegated to do so).

However, section 542 was intended to provide joint local governments with the option to use funds that are surplus to requirements to expand into other local government functions if the component local governments approved the undertaking of such additional functions.

This amendment clarifies the original intent of section 542 to enable a joint local government, if it determines that funds in its operating fund are not required for the exercise of its exclusive jurisdiction, to disburse such funds on other local government functions outside its exclusive jurisdiction. The component local governments must approve the purpose for which the disbursement is to be expended. This approval may relate to a single instance or for a continuing purpose extending beyond the financial year. It is intended that the joint local government may disburse funds:

- directly to an approved function;
- to meet recurrent costs associated with an approved function; or
- to its component local governments or another entity to undertake the approved function.

However, this additional function does not become an exclusive function of the joint local government, and its component local governments can concurrently undertake the function.

### **Insertion of new s 708A**

*Clause 15* inserts a new section 708A (Application of Statutory Bodies Financial Arrangements Act 1982). Section 708A provides that an LGOC established by a local government to conduct a business activity is a



statutory body for the SBFA Act. This amendment means the Treasurer's approval will need to be obtained for borrowings and other financial arrangements of LGOs.

### **Amendment of s 1082 (Definitions)**

*Clause 16* amends section 1082 to provide a new heading for the section and relocates the definition of "public place" provided in section 1082 to the dictionary. Section 1082 provides definitions for chapter 15, part 5 of the LGA. A definition of public place is also needed for the purposes of chapter 17A, for the regulation of restricted dogs. By relocating the definition of public place from section 1082 to the dictionary, the definition is applied to the whole of the LGA, including chapter 17A.

### **Amendment of s 1105 (Local Law about dogs)**

*Clause 17* amends section 1105 to enable local government authorised persons to use powers of entry and seizure in a local law about dangerous dogs for the purposes of entry and seizure for restricted dogs.

### **Insertion of new ch 17A**

*Clause 18* inserts a new chapter—

## **‘CHAPTER 17A—REGULATION OF RESTRICTED DOGS**

The chapter provides a State regulatory framework for four breeds of dog banned from importation by the Commonwealth under the *Customs Act 1901* (Cwlth) deemed restricted dogs. The four breeds are the dogo Argentino, fila Brasileiro, Japanese tosa and the American pit bull terrier or pit bull terrier. Local governments will be responsible for administration of the regulatory framework.

## **PART 1—PRELIMINARY**

### ***Division 1—Purpose and application of chapter***

#### **1193A Purpose of ch 17A and its achievement**

*Section 1193A* provides the purposes of the chapter and how they will be achieved.

#### **1193B Application to Brisbane City Council**

*Section 1193B* applies chapter 17A to the Brisbane City Council.

#### **1193C Application to Aboriginal and Torres Strait Islander local governments**

*Section 1193C* applies chapter 17A to Aboriginal and Torres Strait Islander local governments.

#### **1193D Relationship with local laws**

*Section 1193D* provides for the relationship between local government local laws that regulate restricted dogs, and the provisions of chapter 17A. The intent of the State regulatory framework is to set minimum standards for the regulation of restricted dogs while allowing local governments to set higher standards through local laws, including prohibiting restricted dogs.

Because local governments have jurisdiction to make local laws in this area, the provisions of section 1193D address a number of scenarios. These are where a local law:

- (a) prohibits restricted dogs absolutely;
- (b) partially prohibits restricted dogs; and
- (c) allows the keeping of restricted dogs.

Subsection (1) provides that where a local government has a local law that prohibits restricted dogs absolutely, chapter 17A does not apply.

Subsection (2) deals with the situation where a local law partially prohibits restricted dogs, for example the local law may prohibit the

*Local Government and Other Legislation Amendment  
Bill (No. 2) 2001*

---

keeping of one or more of the breeds of restricted dog after a certain date. Subsection (2) provides that chapter 17A must apply to the population of restricted dogs that is allowed under the local law, but does not apply to the population prohibited under the local law. The local law continues to apply to the prohibited population. Chapter 17A applies where a local law has no prohibition on the keeping of restricted dogs.

Subsection (3) provides that chapter 17A does not prevent a local law from imposing requirements in relation to dogs generally. The intent is that provisions of a local government's local law that are not specific to a particular breed or type of dog, such as a general requirement for registration, general hygiene requirements such as faecal collection and removal etc, will continue to apply to all dogs including restricted dogs.

Subsection (4) provides that if this chapter and a local law are inconsistent about a requirement, the local law is invalid to the extent of the inconsistency if it imposes a less onerous obligation or lower standard on an owner of, or a responsible person for, a restricted dog than the obligations or standards imposed on the person under this chapter. The intent of this section is to apply the minimum standard rule to those matters upon which a local government can make local laws about restricted dogs. Apart from prohibiting restricted dogs, chapter 17A prescribes the matters upon which a local government can make local laws about restricted dogs as follows:

Section 1193R Requirements for application

Section 1193T Deciding application

Division 2 – Permit conditions

Section 1193ZI Requirements for application (renewals)

Section 1193ZJ Deciding application (renewals)

As such, where a local government has a local law that complies with the minimum standard rule, the local law would apply to the regulation of restricted dogs in addition to chapter 17A.

Subsection (5) provides that this section applies to a local law, whether made before or after this chapter. The effect of this provision is that chapter 17A could apply in combination with either existing local laws or any local laws made after its commencement.

Subsection (6) provides definitions for the terms “exempted person” and “prohibits” used in section 1193D.

***Division 2—Interpretation for chapter***

**1193E What is a “restricted dog”**

*Section 1193E* provides a definition of “restricted dog”. The list of restricted dogs is the four dog breeds banned from importation by the Commonwealth. Subsection (3) provides a regulation making power to prescribe another breed or type of dog to be a restricted dog but only if under the *Customs Act 1901* (Cwlth) it is prohibited from importation.

**1193F Who is an “owner” of a restricted dog**

*Section 1193F* provides a definition of “owner” of a restricted dog. An owner includes the person registered as the owner, the person who has proprietary rights in relation to the dog, and the person who keeps the dog. Subsection (1)(d) provides that if the person is a minor, the parent or guardian of the minor can be taken to be the owner.

The intent in providing a broad definition of owner of a restricted dog is to ensure the administration and enforcement of the regulatory framework is workable for local governments. For example, a local government will be able to commence proceedings against a person to whom the definition of owner applies for an offence under chapter 17A. But in any prosecution of the person, it will be a defence if the person establishes that another owner of the restricted dog has been convicted of the offence.

Subsection (2) provides for a number of circumstances when a person is not an owner of a restricted dog. The meaning of owner does not include a person who merely occupies a place where a restricted dog is kept, for example, a houseguest or flatmate. Also, the term owner does not include a person who keeps a restricted dog as an employee of someone else. In this case, the employer is taken to be the owner of the restricted dog for the purposes of chapter 17A.

**1193G Who is a “responsible person” for a restricted dog**

*Section 1193G* provides a definition of “responsible person” for a restricted dog. It is necessary to provide this term to ensure that the requirements of chapter 17A apply at all times, that is, when a person other than an owner has the immediate control of the dog or is responsible for the dog.

As with the term “owner”, the intent in providing a broad definition of responsible person of a restricted dog is to ensure the administration and enforcement of the regulatory framework is workable for local governments.

The meaning of responsible person does not include a person who merely occupies a place where a restricted dog is kept, for example, a houseguest or flatmate. Also, the term responsible person does not include a person who keeps a restricted dog as an employee of someone else. In this case, the employer is taken to be the responsible person for the restricted dog for the purposes of chapter 17A.

### **1193H When a dog is under “effective control”**

*Section 1193H* provides a definition of “effective control” for the purposes of chapter 17A.

One of the permit conditions for keeping a restricted dog will be that the dog is under the effective control of a person when in a public place. For a restricted dog, being under effective control means that the dog is being controlled by someone who is physically able to control the dog, either by:

- holding it by a leash of appropriate dimensions, quality and type to restrain the dog and ensure it is not a risk to community health and safety; or
- by tethering the dog and supervising it.

The definition of effective control also allows for a restricted dog to participate in exhibitions or obedience training, provided the event is supervised by a body recognised by the relevant local government, for example, a recognised breed association.

### **1193I Definitions for ch 17A**

*Section 1193I* provides definitions for the purposes of chapter 17A.

## **PART 2—RESTRICTIONS AND PROHIBITIONS**

Part 2 provides for restrictions and prohibitions in relation to restricted dogs. The part makes failure to comply with these provisions an offence, and provides penalties for such offences.

### **1193J Application of pt 2**

*Section 1193J* provides in subsection (1) that part 2 does not apply to a local government in relation to a restricted dog if the dog has been surrendered to it.

Subsection (2) provides that section 1193K (Prohibition on acquisition or supply) does not apply to another person for an act if the act is the surrender of the dog to the relevant local government.

### **1193K Prohibition on acquisition or supply**

*Section 1193K* prohibits the acquisition and supply of a restricted dog by any person without a reasonable excuse and provides definitions for “acquire” and “supply”. This prohibition also applies to a proposed restricted dog, that is, a dog the subject of a proposed declaration notice that has not been withdrawn, or a restricted dog declaration that has been stayed under section 1193ZZJ.

### **1193L Prohibition on breeding**

*Section 1193L* prohibits the breeding of restricted dogs.

### **1193M Permit required for restricted dog**

*Section 1193M* makes it an offence for a person, unless the person has a reasonable excuse, to own, or be the responsible person for a restricted dog unless a restricted dog permit has been issued for the dog.

### **1193N Compulsory de-sexing**

*Section 1193N* provides that a person who owns a restricted dog must ensure it is de-sexed within 3 months after the later of - the person

obtaining a restricted dog permit for the dog, or the dog turning 6 months, unless de-sexing is not in the interests of the dog's health.

### **1193O Abandonment prohibited**

*Section 1193O* provides that an owner or responsible person must not abandon a restricted dog, unless the person has a reasonable excuse.

### **1193P Prohibition on allowing or encouraging dog to attack or cause fear**

*Section 1193P* provides that a person must not allow or encourage a restricted dog to attack, or act in another way that causes fear to, an animal or person.

## **PART 3—RESTRICTED DOG PERMITS**

Part 3 provides for the permit regime for keeping restricted dogs and includes a requirement for each local government to establish and maintain a register of restricted dogs. Owners of restricted dogs will be required to obtain a permit to keep a restricted dog and comply with the permit conditions attached to the permit.

### *Division 1—Obtaining permit*

#### *Subdivision 1—Permit applications*

### **1193Q Who may apply for permit**

*Section 1193Q* provides that an adult may apply to the relevant local government for a permit to keep a restricted dog at a stated place within the local government area.

Subsection (2) provides that there must be a detached house at the place for which the permit application is made and that a person usually lives there. The intent of this section is to prevent restricted dogs from being

kept in multi-residential complexes or from being used as guard dogs for commercial premises. This provision is considered necessary to protect public health and safety as well as the welfare of individual dogs.

Subsection (3) provides that a permit application may be made for more than one restricted dog for the same place only if the keeping of more than one restricted dog or more than one dog of any breed or type is permitted under a local law of the relevant local government.

### **1193R Requirements for application**

*Section 1193R* provides the information to be provided in an application for a restricted dog permit. The application must be in the approved form (a form approved by the chief executive under section 1202 of the LGA) and include such information as the owner's name and address, details about the dog, including its age, breed and gender and whether the dog has been de-sexed.

The application must also include the address of the place for which the application is made and the type of each structure at the place. The place for which the permit is made may be different to the residential address of the applicant. The requirement to specify the type of each structure is to enable the local government to ascertain whether there is a detached house at the place. Section 1193Q provides that a permit application cannot be made for a place unless there is a detached house at the place, and that someone usually lives there.

A recent colour photo of the dog must accompany the application and include the fee for the application as set by the local government.

An application must include enough information to enable the local government to decide the application. A local government may also require other information or documents to accompany an application by local law.

### **1193S Local government may seek further documents or information**

*Section 1193S* provides that a local government may, after receiving a permit application, by written notice seek further information from the applicant that is relevant to the application.



### **1193T Deciding application**

*Section 1193T* provides that a local government must consider and either grant or refuse a permit application within 21 days following receipt of an application, or receipt of additional information relating to an application.

Subsection (2) provides that a local government must refuse an application if:

- (a) the applicant is a minor, or has been convicted of an offence against chapter 17A and the conviction is not a spent conviction; or
- (b) it is not satisfied the place for which the permit is made has a detached house in which someone usually lives; or
- (c) the dog is 9 months old and has not been de-sexed.

Subsection (3) provides that subsection (2)(c) does not apply if de-sexing would not be in the interests of the dog's health.

Subsection (4) provides that a local government may, by local law, provide other circumstances for refusal of an application. For example, a local government may wish to provide that persons convicted of an offence under its local law dealing with the keeping and control of animals must be refused a permit.

Subsection (5) provides that if a local government decides to grant a permit it may impose a condition provided for under a local law made under section 1193Y(2).

### **1193U Criteria for decision**

*Section 1193U* provides the criteria a local government must consider in deciding an application. Provision is made for a regulation to prescribe additional criteria.

While the section provides criteria that must be considered, these are not exhaustive and as such a local government is not prevented from considering other criteria, provided they fit within the purposes of chapter 17A.

***Subdivision 2—Action after decision on application***

**1193V Grant of application**

*Section 1193V* provides that as soon as practicable after deciding to grant a permit application, a local government must issue the applicant with the restricted dog permit.

**1193W Permit term**

*Section 1193W* provides that a restricted dog permit expires 1 year after the day the holder is issued the permit.

**1193X Notice of refusal of permit application**

*Section 1193X* provides that as soon as practicable after deciding to refuse a permit application, a local government must give the applicant an information notice about the decision.

An information notice, as defined under section 1193I, means a written notice stating:

- (a) the decision and the reasons for it; and
- (b) that the person to whom the notice is given may appeal against the decision to a Magistrates Court within 14 days after the person receives the notice; and
- (c) how to appeal.

Thus, a decision by a local government to refuse an application for a permit for a restricted dog can be appealed.

***Division 2—Permit conditions***

Division 2 provides a range of permit conditions for each permit and imposes an obligation for a holder of a restricted dog permit, and any responsible person for the dog, to ensure each permit condition is complied with. An offence is provided for non-compliance with a permit condition.

### **1193Y Operation of div 2**

*Section 1193Y* provides that the division imposes conditions on each restricted dog permit.

Subsection (2) provides that a local government may impose other conditions on a permit under a local law, provided the conditions provide for more onerous or higher standards than the obligations provided for under the conditions under the division.

### **1193Z Obligation to comply with permit conditions**

*Section 1193Z* provides that a restricted dog permit, and any responsible person for the dog, must ensure each permit condition is complied with for the dog.

### **1193ZA Identification**

*Section 1193ZA* provides that a restricted dog must wear a collar with an identifying tag at all times. Provision is made for a regulation to prescribe the type of tag and the information to be contained on it. Where a regulation is not made, these matters are to be decided by the relevant local government for its area, either under a local law or by a resolution of the local government.

### **1193ZB Muzzling and effective control in public**

*Section 1193ZB* provides that, when in a public place, a restricted dog must be muzzled and under the effective control of someone who has not more than 2 dogs of any breed or type at the same time. However, this does not apply if the dog is inside an enclosed part of a vehicle or restrained in such a way that prevents any part of the dog from being outside the vehicle.

A local government can specify a higher standard for muzzling and effective control of a restricted dog in public, under a local law.

### **1193ZC Enclosure**

*Section 1193ZC* provides that there must be an enclosure which is maintained for a restricted dog at the place for which the permit has been given. The dog must be usually kept in the enclosure, unless there is a reasonable excuse.

The enclosure must be childproof and be built to prevent the dog from escaping. The enclosure must also conform to any standards prescribed under a regulation.

A local government can specify a higher standard for a restricted dog enclosure, under a local law.

### **1193ZD Public notice**

*Section 1193ZD* provides that a sign must be placed at or near the entrance to the place for which the permit has been given, notifying the public that a restricted dog is kept at the place.

The sign must be of the dimensions, quality and type and contain the information prescribed under a regulation, or required under a local law or a resolution of the relevant local government.

### **1193ZE Place where dog is usually kept**

*Section 1193ZE* provides that the dog must not usually be kept at another place other than the place for which the permit is given.

A local government can set a higher standard for this permit condition, under a local law.

### **1193ZF Notice of other restricted dog permit for dog**

*Section 1193ZF* provides that if a holder of a restricted dog permit obtains another restricted dog permit for the dog, the holder must immediately give the local government written notice of the permit. This provision applies where there is a change in the address of the place where the restricted dog is kept to one outside the local government area.

### **1193ZG Notice of change of address**

*Section 1193ZG* provides that the holder of a permit must give notice to the relevant local government of the person's new residential address within 7 days after making the change. This requirement relates to the permit holder's address and not to the place for which the permit has been given, ie, the place where the restricted dog is kept.

While the place for which a permit is given and the permit holder's residential address may be the same, this may not necessarily be the case.

Section 1193ZG and section 1193ZL (Application for change of place for permit) accommodate changes to a permit holder's residential address and a change in the place for which the permit is given, separately.

If the holder's new residential address is in another local government area, the holder must also give the notice to this local government.

### ***Division 3—Renewals***

#### **1193ZH When permit may be renewed**

*Section 1193ZH* provides that a holder of a restricted dog permit may apply to the relevant local government to have the permit renewed, provided the permit has not expired or there is less than 21 days until the permit expires, or the applicant has been convicted of an offence against chapter 17A and the conviction is not a spent conviction. If the permit has expired, or is within the 21 days of expiry, the permit holder would be required to make a new application. If a person had been convicted of an offence against chapter 17A and it was not a spent conviction, the person would be not be eligible to make a new application.

#### **1193ZI Requirements for application**

*Section 1193ZI* provides the requirements for a renewal application. The application must be in the approved form (a form approved by the chief executive under section 1202 of the LGA) and be supported by enough information to enable the local government to decide the application. The renewal application must be accompanied by the fee fixed by the local government and any other information or documents required by the local government under a local law.

#### **1193ZJ Deciding application**

*Section 1193ZJ* provides that a local government must consider and either grant or refuse a permit application within 21 days following receipt of an application, or receipt of additional information relating to an application.

The local government must refuse the application if the applicant has been convicted of an offence against chapter 17A and the conviction is not

a spent conviction. The local government may specify other circumstances where an application must be refused under a local law.

In deciding the application, the local government must have regard to section 1193U (Criteria for decision) and may seek additional documents or information in the way provided in section 1193S (Local government may seek further documents or information).

As soon as practicable after deciding the application, the local government must, if it grants the permit, issue the permit, or, if it refuses the application, give the applicant an information notice. An information notice is a written notice advising the applicant of the local government's decision, the reasons for the decision, that the decision is appealable within 14 days of receiving the notice and information about how to appeal.

### **1193ZK Renewed term**

*Section 1193ZK* provides that a renewed restricted dog permit expires 1 year after it is issued.

## ***Division 4—Amendments***

### **1193ZL Application for change of place of permit**

*Section 1193ZL* provides that a holder of a restricted dog permit may apply to change the place for which the permit has been given. This relates to the place where the dog is kept, not the permit holder's residential address.

However, a permit holder cannot apply to change the place if the place is outside the local government area. If the place is another local government area, the permit holder would be required to apply for a new permit from that local government, and if the person was granted the permit, immediately give the first local government written advice about the permit (section 1193ZF Notice of other restricted dog permit for dog).

In deciding the application for a change to the place for a restricted dog, division 1 and part 6 apply to the application, with the necessary changes, as if it were a permit application, ie, the person makes a new application for a permit and has the same appeal rights that apply to a new application.

### **1193ZM Amendment by relevant local government**

*Section 1193ZM* provides that a local government may amend a restricted dog permit if the amendment is to correct a clerical or formal error, or does not adversely affect the holder's interests, or is at the holder's written request. However, in making such amendments the local government must give written notice to the permit holder and record the amendments in its restricted dog register.

An amendment to a permit cannot be inconsistent with a permit condition or impose a condition on a permit other than a permit condition that has already been imposed.

### *Division 5—Miscellaneous provisions*

#### **1193ZN Restricted dog registers**

*Section 1193ZN* provides that each local government must keep a register of restricted dogs for its area – a restricted dog register. The register must contain the information prescribed under the section.

Provision is made for a regulation to prescribe additional information that must be contained in a register. A register may also include other information the local government considers appropriate and be kept in a way the local government considers appropriate, for example, in electronic form.

#### **1193ZO Public access to registers**

*Section 1193ZO* provides that a local government's restricted dog register is open to the public for inspection. However, if section 8(2) (Documents open to inspection not to contain information about protected person) of the LGA applies to a holder of a restricted dog permit, their name and postal address must not be disclosed to the public in a restricted dog register.

#### **1193ZP No transfer of restricted dog permit**

*Section 1193ZP* provides that a restricted dog permit cannot be transferred.

## **PART 4—RESTRICTED DOG DECLARATIONS**

Under section 1193M, a person must not own, or be a responsible person for, a restricted dog, unless there is a restricted dog permit for the dog. While section 1193M places an obligation on an owner of a restricted dog to obtain a permit to keep the dog, part 4 provides local governments with the power to declare a dog to be a restricted dog where they believe a dog that is not registered as a restricted dog meets the definition of a restricted dog, ie, it is one of the four breeds that the Commonwealth bans from importation or is a cross breed of one of these breeds.

### **1193ZQ Power to make declaration**

*Section 1193ZQ* provides that a local government may, by complying with the requirements of part 4, declare a dog to be a restricted dog.

### **1193ZR Notice of proposed declaration**

*Section 1193ZR* provides that if a local government proposes to make a restricted dog declaration it must give any owner of the dog written notice – a proposed declaration notice. The proposed declaration notice must contain certain information including, identifying the dog by its breed or type, colour, sex or other noticeable distinguishing features or marks. The proposed declaration notice must also state that the local government proposes to declare the dog to be a restricted dog, and invite the owner to make written representations to the local government within 14 days about why the proposed declaration should not be made. The notice must also state that the representations may include a written opinion from a veterinary surgeon or other evidence about the dog's breed or type and advise the owner of the requirements of section 1193M (Permit required for restricted dog).

If a local government has obtained an expert opinion about the dog's type or breed, this opinion may accompany the notice of proposed declaration sent to the owner.

### **1193ZS Proposed declaration notice does not limit other powers**

*Section 1193ZS* provides that the giving of a proposed declaration notice does not limit the powers of an authorised person under chapter 17A, part 5



(Enforcement matters) or chapter 15 part 5 (Enforcement of local government acts) or under a local law.

### **1193ZT Withdrawing proposed declaration notice**

*Section 1193ZT* makes provision for a local government to withdraw a proposed declaration notice by giving written notice of withdrawal to any owner of the dog.

### **1193ZU Owner's obligations if proposed declaration notice in force**

*Section 1193ZU* provides that if a proposed declaration notice has been given for a dog, each owner of, and responsible person for, the dog must ensure the requirements of section 1193ZB (Muzzling and effective control in public) are complied with for the dog. Section 1193K (Prohibition on acquisition or supply) also applies where a dog is subject to a proposed declaration notice.

### **1193ZV Making declaration**

*Section 1193ZV* provides that a local government must consider any representations and evidence provided by the owner about the dog's breed before making a restricted dog declaration. However, if after considering the representations the local government is satisfied the dog is a restricted dog, it must make a restricted dog declaration.

### **1193ZW Notice and taking effect of declaration**

*Section 1193ZW* provides that as soon as practicable after deciding to make a restricted dog declaration, a local government must give notice in writing to any owner of the dog about the declaration.

If the local government obtained an expert opinion from a veterinary surgeon confirming the breed or type of the dog meets the criteria to be a restricted dog and this accompanied the proposed declaration notice, an owner does not have the right to appeal the decision of the local government to declare the dog to be a restricted dog. The notice informing the owner about the declaration must simply state the decision and the reasons for it.

If the local government did not provide an expert opinion from a veterinary surgeon about the dog with the proposed declaration notice, the

notice informing the owner about the decision to declare the dog to be a restricted dog, must be an information notice. That is, the notice must state the decision, the reasons for it, advise that the decision is appealable within 14 days and provide information about how to appeal.

Subsection (4) provides that the decision takes effect on the later of the following days:

- (a) the day any owner of the dog is given the notice;
- (b) a later day of effect stated in the notice.

This provision is necessary to allow the owner of a dog declared to be a restricted dog time to apply for a permit to keep the dog.

## **PART 5—ENFORCEMENT MATTERS**

### *Division 1—Preliminary*

#### **1193ZX Relationship with ch 15, pt 5**

*Section 1193ZX* provides that the powers given to authorised persons under the part are in addition to powers given to authorised persons under chapter 15, part 5 (Enforcement of local government acts). The intent is that local government authorised persons can rely on enforcement powers under chapter 15, part 5, including powers given in a local law made under section 1105, in addition to powers under this part, to administer and enforce chapter 17A.

The section makes provision for compensation to be claimed for damage caused by an authorised person in exercising a power under this part or chapter 15, part 5. However, the section limits the extent to which compensation can be claimed or ordered to be paid. Under section 1104 (chapter 15, part 5), compensation can be claimed by a person in a court of competent jurisdiction, if the person incurs loss or expense because of the exercise of a power under chapter 15, part 5. In relation to restricted dogs, a person will not be able to claim compensation where a loss or expense is caused by the seizure or destruction of a restricted dog.

### ***Division 2—Compliance notices***

#### **1193ZY Power to give compliance notice**

*Section 1193ZY* gives local government authorised persons power to issue compliance notices to an owner or a responsible person where the authorised person believes an offence against chapter 17A has been committed, is being committed, or is about to be committed.

The compliance notice may require the person to stop committing the offence or take action to remedy the matter.

A compliance notice may also state that the authorised person proposes, at a stated time, to enter the premises of which the owner or responsible person is the occupier to check compliance with the notice. The notice may also state how the owner or responsible person may show that the compliance action has been taken.

#### **1193ZZ Requirements for giving notice**

*Section 1193ZZ* prescribes the information that a compliance notice must include. Provision is made for a compliance notice to be given verbally in certain circumstances. If a compliance notice is given verbally, the authorised person must confirm the notice in writing as soon as practicable after giving the notice verbally.

#### **1193ZZA Failure to comply with notice**

*Section 1193ZZA* provides that a person must comply with a compliance notice, unless the person has a reasonable excuse. It is a reasonable excuse if the person has not committed, was not committing, or was not about to commit, the offence stated in the notice.

### ***Division 3—Powers for restricted dogs***

Division 3 gives local government authorised persons limited additional powers of entry for specific situations that are not covered by the existing powers under chapter 15, part 5 of the LGA. Powers to seize a restricted dog in certain circumstances are also provided.

### **1193ZZB Additional entry powers**

*Section 1193ZZB* provides that a local government authorised person may enter and stay at a place if the authorised person suspects a restricted dog is at a place but no permit has been issued, and, the person considers any delay in entering the place would result in a risk to community health or safety, or the dog being concealed or moved, or, the entry is at the time stated in a compliance notice. However, an authorised person may not use force in exercising a power under this division.

In exercising a power under this section, an authorised person must follow certain procedural requirements including the requirement under section 1088 of the LGA to produce an identity card before entering, and tell the occupier the purpose of the entry and that the authorised person may enter the place without the occupier's consent or a warrant.

If an authorised person enters, or proposes to enter a place under this section, section 1102 of the LGA applies as if the entry had been or is being made under chapter 15, part 5, division 4. Section 1102 provides, *inter alia*, that an authorised person may search any part of the place or inspect, test, photograph or film anything in or on the place.

### **1193ZZC Seizure powers**

*Section 1193ZZC* provides local government authorised persons with powers to seize a restricted dog in certain circumstances.

This section applies where an authorised person has under this division or chapter 15, part 5, entered a place and the person reasonably suspects a restricted dog is at the place. The authorised person may seize a dog if the person reasonably believes the dog has attacked, threatened to attack or act in a way that causes fear to an animal or person, or the dog is, or may be, a risk to community health or safety.

A restricted dog may also be seized if:

- (a) a permit application to keep the dog at the place has been refused; or
- (b) no restricted dog permit has been issued for the dog and there is a risk the dog may be concealed or moved to avoid a requirement under chapter 17A; or
- (c) a compliance notice has not been complied with.

Also, an authorised person may seize the dog from a public place, if it is not under a person's effective control.

### **1193ZZD Receipt of seized dog in certain cases**

*Section 1193ZZD* provides that where an authorised person seizes a dog, either under this division or under a local law, the person must, as soon as practicable, give a written receipt to the registered owner of the dog or the person who had control of the dog immediately prior to it being seized. The written receipt must give a general description of the dog and its condition and state that the dog has been seized.

### **1193ZZE Return of dog if not restricted dog**

*Section 1193ZZE* provides that, if following seizure, the particular dog is found not to be a restricted dog, it must be returned to its owner or other person entitled to possession of it.

### **1193ZZF Return of restricted dog to registered owner**

*Section 1193ZZF* applies where an authorised person has seized a restricted dog under this division or a local law and the dog has, or appears to have, a registered owner.

Subsection (2) provides that in these circumstances, a restricted dog must be returned within 14 days of being seized, unless:

- (a) the owner has surrendered the dog; or
- (b) a destruction order has been made for the dog; or
- (c) the dog is needed as evidence for a legal proceeding or proposed proceeding for an offence involving the dog; or
- (d) the owner has not complied with a permit condition.

However, subsection (3) provides that an authorised person must return the dog to the owner as soon as practicable if an event as follows happens:

- (a) if subsection (2)(b) applies – an appeal is made against the order and, as a result of the appeal, the order is no longer in force;
- (b) if subsection (2)(c) applies – the dog’s continued retention as evidence is no longer required;
- (c) if subsection (2)(d) applies – all permit conditions are complied with for the dog.

### **1193ZZG Power to destroy restricted dog**

*Section 1193ZZG* provides powers for local government authorised persons to destroy restricted dogs after seizure in certain circumstances. This section applies if an authorised person has, under this division or a local law, seized a restricted dog.

An authorised person may without notice, immediately destroy a restricted dog if the person reasonably believes the dog is dangerous and the person cannot control it, or an owner has asked that the dog be destroyed.

Subsection (3) provides that an authorised person may destroy a restricted dog 5 days after seizure in two circumstances. The first is where the following applies:

- (a) the dog was not seized under section 1193ZZC(1)(b), that is, where a restricted dog has been seized because a permit application to keep the dog at the place has been refused; and
- (b) there is no registered owner, or apparently no registered owner; and
- (c) the dog is not the subject of a restricted dog declaration.

The second circumstance is where the relevant local government does not know of anyone who owns, or is a responsible person for the dog.

If subsection (3) does not apply, an authorised person may make an order (a destruction order) stating that the person proposes to destroy the dog 14 days after the order is served. The destruction order must be served on the registered owner of the dog, or if there is no registered owner, any owner or responsible person for the dog, and must be accompanied by an information notice. An information notice must state the decision of the local government, the reasons for it, that the decision can be appealed within 14 days and provide information about how to appeal.

If there is no appeal against the destruction order, the dog may be destroyed. If an appeal is made against the destruction order, the authorised person may destroy the dog if the appeal is decided or otherwise ended, and, the order is still in force.

## **PART 6—APPEALS**

### **1193ZZH Who may appeal**

*Section 1193ZZH* provides that a person who is given an information notice about a decision under chapter 17A may appeal against the decision to a Magistrates Court.

### **1193ZZI Starting appeal**

*Section 1193ZZI* sets out the requirements for starting an appeal in the Magistrates Court. An appeal is started by filing a notice with the clerk of the Magistrates Court and serving a copy of the notice on the decision maker (the relevant local government).

The notice must be filed within 14 days of the appellant being given the information notice about the decision. However, the Magistrates Court may extend the time for filing the notice of appeal.

### **1193ZZJ Stay of operation of restricted dog declaration**

*Section 1193ZZJ* provides that the Magistrates Court may grant a stay of the operation of a restricted dog declaration appealed against to secure the effectiveness of the appeal. Without this provision, an owner would be obliged to de-sex the dog before the appeal was decided. Subsection (5) provides that an appeal against a restricted dog declaration affects the declaration, or the carrying out of the declaration, only if it is stayed.

However, a stay may not be granted unless a condition is imposed that each owner of, and responsible person for, the dog must, until the appeal is decided, comply with the requirements under section 1193ZB about muzzling and effective control in a public place.

Section 1193K (Prohibition on acquisition or supply) also applies to a dog the subject of a restricted dog declaration that has been stayed under this section.

A stay may be granted on other conditions the court considers appropriate.

### **1193ZZK Hearing procedures**

*Section 1193ZZK* provides for the hearing procedures for the Magistrates Court in deciding an appeal.

### **1193ZZL Court's powers on appeal**

*Section 1193ZZL* provides the Magistrates Court's powers on appeal. The Court may:

- (a) confirm the decision appealed against; or
- (b) set aside the decision and substitute another decision; or
- (c) set aside the decision and return the matter to the decision maker with directions the court considers appropriate.

If the court substitutes another decision, the substituted decision is taken to be the appealed against decision. This provision is needed to clarify that a substituted decision cannot be appealed against to the Magistrates Court.

### **1193ZZM Appeal to District Court**

*Section 1193ZZM* provides that a decision of the Magistrates Court can be appealed in the District Court but only in relation to a question of law.

## **PART 7—MISCELLANEOUS PROVISIONS**

### *Division 1—Evidentiary aids*

#### **1193ZZN Application of div 1**

*Section 1193ZZN* provides that division 1 applies to a proceeding under or in relation to chapter 17A.

#### **1193ZZO Appointments and authority**

*Section 1193ZZO* provides that unless a party to a proceeding requires proof of it, the following must be presumed:



- (a) the appointment of an authorised person;
- (b) the power of an authorised person to do anything under this chapter or chapter 15, part 5.

### **1193ZZP Veterinary surgeon certificates**

*Section 1193ZZP* provides that a certificate signed by a veterinary surgeon concerning the breed or type of a dog is a restricted dog under section 1193E(1) (What is a “restricted dog”) is evidence that the dog is a restricted dog. The intent of this provision is to enable the certificate to be tended as evidence without the veterinary surgeon being required to verify the certificate in court.

### **1193ZZQ Other evidentiary aids**

*Section 1193ZZQ* provides for the application of section 1117 (Evidentiary value of copies and certificates) for a proceeding about an offence under chapter 17A. The provision is necessary to ensure that the matters listed in the section are taken to be a record of a local government within the meaning of section 1117 and therefore admissible as evidence in a proceeding under chapter 17A.

## ***Division 2—Other provisions***

### **1193ZZR Failure to decide application taken to be refusal**

*Section 1193ZZR* provides that if a local government does not decide a permit or renewal application within 21 days, the application is taken to have been refused.

### **1193ZZS Surrender of restricted dog**

*Section 1193ZZS* provides for the surrender of a restricted dog by an owner. Once a dog is surrendered under this provision, it becomes the property of the relevant local government and the local government must destroy the dog as soon as practicable.

### **1193ZZT Defence for restricted dog**

*Section 1193ZZT* provides that it is a defence in a proceeding for an offence against this chapter, for the owner to prove another owner has been convicted of the same offence, and paid the penalty in relation to the conviction.

### **1193ZZU Recovery of seizure or destruction costs**

*Section 1193ZZU* provides for certain costs associated with seizure and destruction of restricted dogs to be recovered by the local government.

### **1193ZZV Payment of penalties for offences against ch 17A**

*Section 1193ZZV* provides that where a court orders a person to pay a penalty for an offence against chapter 17A, the penalty must be paid to the relevant local government.

### **1193ZZW Cost of restricted dog enclosure—dividing fence**

*Section 1193ZZW* provides for the determination of liability for costs in relation to meeting the enclosure requirements under chapter 17A where a dividing fence forms part of an enclosure. The intent is that the owner of a restricted dog should bear the costs associated with meeting the requirements for an enclosure under chapter 17A. Subsections (1) and (2) apply where the owner of the restricted dog is also the owner of the land where the restricted dog is to be kept.

The effect of subsections (1) and (2) is that if a dividing fence is built or extended to form part of an enclosure for a restricted dog, the adjoining owners must pay half the costs each of building the fence to the standard required under the *Dividing Fences Act 1953* (DFA). The DFA is premised on this basis, however, under the DFA a court can make orders about the apportionment of costs between owners. The balance of the costs, ie the portion that is attributable to meeting the standard for enclosures under chapter 17A, is borne by the owner of the restricted dog.

Subsection (3) deals with the situation where an owner of a restricted dog is a tenant at the place where the dog is to be kept. The intent in this situation is that liability for costs be a matter for negotiation between the tenant and the lessor. The effect of subsection (3) is that provisions of the *Residential Tenancies Act 1994* will apply, rather than the DFA, so that an enclosure for a restricted dog is treated as an improvement to the property.

A tenant would apply in writing to the lessor to construct an adequate enclosure. The lessor and tenant can negotiate regarding liability for the cost of the structure and also as to the tenant's obligation to leave or remove the structure upon vacating the premises.

### **1193ZZX Chapter does not affect other rights or remedies**

*Section 1193ZZX* preserves the rights of individuals to take civil action in relation to restricted dogs. In effect, chapter 17A does not affect or limit a civil right or remedy at common law or otherwise. The intent of these provisions is to clarify that a person may take legal action for damage or injury caused by a restricted dog despite the fact that the owner may be subject to legal action for the same matter by a local government.'

### **Insertion of new ch 19, pt 7, and schedule**

*Clause 19* inserts a new part and schedule—

## **‘PART 7—TRANSITIONAL PROVISIONS FOR LOCAL GOVERNMENT AND OTHER LEGISLATION AMENDMENT ACT (No. 2) 2001**

Chapter 19 of the LGA contains transitional provisions for the purposes of the LGA. The new part 7 provides transitional provisions for the purposes of chapter 17A. The provisions in this part enable local governments to review existing local laws and subordinate local laws within a four-month period following proclamation of the legislation, and to repeal any provisions that would be redundant because of the enactment of the provisions of chapter 17A. A schedule is inserted in the LGA for the purpose of relocating the dictionary.

### **1269 Application to Brisbane City Council.**

*Section 1269* applies this part to the Brisbane City Council.

### **1270 Review of pre-existing local laws**

*Section 1270* requires a local government to review its local laws and subordinate local laws in force immediately before enactment of the *Local*

*Local Government and Other Legislation Amendment  
Bill (No. 2) 2001*

---

*Government and Other Legislation Amendment Act (No. 2) 2001* (pre-existing laws) to identify any provisions that would be redundant due to the enactment of chapter 17A and which should be repealed.

If a local government identifies a redundant provision it must, by resolution, make a repealing local law to repeal the redundant provision. This is a simpler process than the full local law making process provided for under chapter 12. Section 1270 sets out additional requirements in relation to making a repealing local law under this section, such as publishing a notice in the gazette and giving the Minister certified copies of the local law.

### **1271 Expiry of pt 7**

*Section 1271* provides that the transitional provisions expire four months after they commence.’

## **PART 3—AMENDMENT OF QUEENSLAND TREASURY CORPORATION ACT 1988**

### **Act amended in pt 3**

*Clause 20* provides for part 3 to amend the *Queensland Treasury Corporation Act 1988*.

### **Replacement of s 19AAA (Division does not apply to local governments)**

*Clause 21* replaces section 19AAA (Division does not apply to local governments or local government owned corporations) to clarify that the requirements to remit performance dividends to the State do not apply to LGOCs.