

Summary of Results and analysis of public submissions on the discussion document *Improving Public Safety under the Dog Control Act 1996: Policy Options*.

Introduction

1. The discussion document *Improving Public Safety under the Dog Control Act 1996: Policy Options* covered nine policy options. For each option, the following analysis provides:
 - background on what the Dog Control Act 1996 (the Act) currently provides in relation to the option;
 - a description of what the discussion document asked submitters;
 - an overview of the support for, or opposition to, the option and main suggestions put forward by submitters; and
 - comment by the Department of Internal Affairs (the Department) on whether the option should be pursued, taking into account the results of consultation.

Option 1 - Include additional breeds in Schedule 4 of the Act

Background

2. The Act bans the import of dog breeds/types listed in Schedule 4. There are currently four listed.

Discussion document

3. The discussion document asked what additional dog breeds should be added to Schedule 4 and what criteria should be used to identify breeds for inclusion.

Results of submissions

4. There was minimal support for adding more breeds to Schedule 4, with only the Presa Canario mentioned by more than 10% of submitters. The main criteria suggested for adding breeds to Schedule 4 were those breeds not already in the country that had proven dangerous overseas, those 'bred specifically for fighting', or those that could be proven to be dangerous by statistical analysis.

Comment

5. The Minister of Local Government must consider several matters set out in section 78C of the Act before recommending adding another breed/type to the Schedule. The matters suggested by submitters are already within the scope of the criteria in the Act. The process for seeking to add the Presa Canario breed to Schedule 4 is also underway. No further amendments are recommended.

Option 2 – Increase controls imposed on dogs classified as dangerous, including destruction

Background

6. Under section 31(1) of the Act, a dog may be classified as dangerous:
 - where the owner has been convicted of an offence against section 57A(2), which is a dog rushing at a person, animal or vehicle and causing injury or damage. The Court has discretion to order destruction of the dog;
 - where the territorial authority, on the basis of sworn evidence attesting to aggressive behaviour, has reasonable grounds for believing the dog is a danger; and
 - where an owner admits in writing that the dog is a threat.

Discussion document

7. The discussion document asked whether the current controls imposed on dogs classified as dangerous are sufficient, whether the criteria for determining 'dangerousness' are appropriate or should be changed, and whether dogs classified as dangerous should be destroyed.

Results of submissions

8. A large majority thought current controls on dogs classified as dangerous were sufficient. There was some support, mainly from territorial authorities, for requiring 'dangerous dogs' to wear special collars and owners to have signs at their property, or for a discretionary power to require dog-related training for the owner. There was overwhelming opposition to mandatory destruction, with most believing a case by case approach was appropriate.

Comment

9. Collars and signs are included by a few territorial authorities in their dog control policies but support for these controls was not unanimous. While a discretionary ability to require training has some merit, there are a number of disadvantages. Requiring a reluctant dog owner to attend and pay for a course may not bring about any change in behaviour; it may be difficult to find an appropriate course willing to take such an owner and his or her 'dangerous' dog; and providing information may be just as effective. No legislative change is recommended.

Option 3 – Increase the controls on dogs classified as menacing to the level of controls for dogs classified as dangerous

Background

10. Dogs may be classified as menacing under section 33A and section 33C of the Act. Under section 33A, a territorial authority may classify a dog as menacing if it considers the dog may pose a threat because of observed or reported behaviour of the dog, or because of any characteristics typically associated with the dog's breed or type. Under section 33C, a territorial authority must classify as menacing a dog it

reasonably believes is 'wholly or predominantly' of one or more breeds listed in Schedule 4.

11. If a dog is classified as menacing, the dog must be confined within a vehicle or cage or muzzled if it is in a public place or a private way. The territorial authority may also require the dog to be neutered.
12. As noted under paragraph 6, dogs may be classified as dangerous under section 31 of the Act where: the owner has been convicted of an offence for a dog rushing at a person, animal or vehicle and causing injury or damage; the territorial authority has reasonable grounds for believing the dog is a danger; and where an owner admits in writing that the dog is a threat.
13. If a dog is classified as dangerous, the owner must ensure that it is kept in a securely fenced portion of the owner's property that it is not necessary to enter to obtain access to at least one door of any dwelling. The dog must also be confined within a vehicle or cage if it is in a public place or a private way, or be muzzled and controlled on a leash (except in specified dog exercise areas), and must also be neutered.
14. There were 5,837 dogs classified as menacing on the National Dog Database (NDD) as at August 2008 – 2,310 were classified under section 33A and 3,527 were classified under section 33C of the Act.

Discussion document

15. The discussion document asked whether the current controls on menacing dogs were sufficient, and if there was support or opposition to raising the controls to the level required of 'dangerous' dogs.

Results of submissions

16. The majority did not support any change to controls on dogs classified as 'menacing' (although the option of requiring mandatory neutering is considered under option 4). A fairly large majority were opposed to increasing the controls on menacing dogs to the same level as for dangerous dogs; some noted that this would effectively mean there was only one classification. Some submitters thought the threshold for classifying dogs as menacing was too subjective and therefore opposed any harsher controls.

Comment

17. The Act allows for territorial authorities to have additional requirements for dogs classified as menacing in their dog control policies (such as leash requirements), and some territorial authorities already do so. This is considered appropriate to meet the needs of different communities, such as urban and rural. It is considered useful to retain separate 'dangerous' and 'menacing' classifications. No legislative change is recommended.

Option 4 - Mandatory neutering of dogs classified as menacing under section 33A

Background

18. Under section 33A of the Act, a territorial authority may classify a dog as menacing if it considers the dog may pose a threat because of observed or reported behaviour of the dog, or because of any characteristics typically associated with the dog's breed or type.

Discussion document

19. The discussion document asked whether there should be mandatory neutering of dogs classified as menacing under section 33A of the Act.

Results of submissions

20. A small majority (59%) supported mandatory neutering of menacing dogs. A small number of submitters wanted recognised breeders excluded from any mandatory neutering requirement.

Comment

21. Some territorial authorities already require mandatory neutering of menacing dogs in their dog control policies. In addition, the Act gives territorial authorities discretion to require neutering of a 'menacing' dog on a case by case basis. Some of the 2,337 dogs classified under section 33A will already be neutered, either because it was required by a territorial authority or done voluntarily by the owner.
22. Neutering may help reduce aggression in an individual dog (although the evidence is equivocal) and would stop any aggressive tendencies being passed on. However, as one submitter noted, a dog may act out of fear or in a perceived need to defend itself or its owner or territory. While the behaviour may have been unacceptable, it may have been 'normal' for the dog in the circumstances. Some territorial authorities were also concerned that mandatory neutering would result in dogs going 'underground' where they are more of a threat.
23. Implementation and enforcement could prove difficult and costly, and it is likely some categories of owner would seek exemptions (e.g. working dogs, 'recognised' breeders). As it is something territorial authorities can (and some do) include in their dog control policies, no legislative change is recommended.

Option 5 - Dog owner and breeder licensing

Background

24. Dog owners can be placed on probation for committing a relevant offence or for three infringement offences. Infringement offences include, amongst others: failure to carry leash in public; failure to keep a dog under control, failure to comply with a council bylaw; and failure to comply with requirements of disqualification or probation. Owners classified as probationary are required to give up their ownership of any unregistered dogs, but they may keep registered dogs they owned at the date they were made probationary. They may also be required by the

territorial authority to undertake, at the owner's expense, a dog owner education programme or dog obedience course (or both).

25. The Act also contains provisions for disqualifying people from owning dogs for up to five years and imposing higher levels of control on owners of menacing and dangerous dogs.

Discussion document

26. The discussion document asked:

- whether submitters supported licensing of dog owners;
- if so, whether this should be for all dog owners or targeted in some way;
- whether dog breeders should be licensed;
- whether a central government agency or local authority should administer such a scheme; and
- how it should be funded.

Results of submissions

27. A small majority (58%) supported owner licensing. This was more popular with individual submitters (69% support) than with organisations (66% opposed). Of territorial authorities, 74% opposed it. The majority who supported licensing thought all dog owners should be licensed rather than targeting it to some owners. A larger majority (66%) supported dog breeder licensing. There was almost even support for central government agency and local authority administration of owner licensing. The majority thought owner licensing should be funded by dog owners through fees.

Comment

Owner licensing

28. In 2003, owner licensing with an education/training prerequisite was considered by the Ad Hoc Ministerial Group on Dog Control. It was not recommended as an amendment to the Act because:

- making it more difficult to own a dog legally may well result in a greater proportion of dogs owned illegally; and
- facilitating legal ownership and registration provides opportunities to communicate with and educate owners, as well as allowing identification of dogs and where they are kept.

29. It is not clear that licensing would offer sufficient additional benefits to make it worthwhile. People who currently do not register their dogs would be unlikely to obtain a licence. Local Government New Zealand commented: "the compliance and enforcement costs of licensing all owners would outweigh the benefits. The additional demands proposed on every dog owner could be expected to add little to dealing with non-compliant or irresponsible owners...Any licensing programme would require a centralised licensing/data capture point and require a high level of funding."

30. The Department knows of no other comparable jurisdictions that have implemented compulsory owner licensing.
31. Implementation and enforcement would prove difficult and costly. Some submitters drew parallels with driver licensing or firearms licensing. One territorial authority noted that the majority of owners are responsible and do not come to the attention of territorial authorities, and that requiring responsible people to attain a licence would penalise the majority as a result of the actions of a minority. In multi-person households, the dog could be looked after by any number of people. It is not realistic to expect that the licensed person will be the only one in control of the dog. If one 'fails' their licence, the dog may still live at the residence owned by another household member. There are also people who walk other people's dogs to consider.
32. A number of submitters supporting owner licensing believed it should not cost anymore than current registration. This is considered unrealistic if owner licensing was to include some form of testing, an education component, and possibly mandatory property checks. One territorial authority noted that the cost of administering such a scheme would be significant and could not be justified when the objectives of dog control are considered. They also considered that there would be opposition from the rural community as the majority of problems are created by dogs from the urban areas.
33. The most common reason for supporting the proposal was that owners would have opportunities to learn, and would have to prove they had adequate knowledge about dogs.
34. The introduction of owner licensing would mark a significant change to the dog control system. There is no compelling justification for introducing such a major change and no evidence that owner licensing would be beneficial without major costs in implementation and enforcement. Voluntary good owner schemes can facilitate responsible dog ownership. A number of territorial authorities currently give registration fee discounts to 'responsible' owners who have completed training, or for other ways of recognising responsible ownership. The promotion and endorsement of voluntary schemes would seem to be more desirable than introducing a compulsory form of owner licensing, which could be perceived as imposing more unnecessary regulation on the majority of responsible owners. As one submitter said: "We need a change in social behaviour and attitude, not more rules, thanks!" For these reasons, this option is not recommended for further consideration.

Dog breeder licensing

35. As noted, a majority supported dog breeder licensing.
36. This would also be very difficult to enforce for some of the same reasons noted above. There are additional problems, identified by some territorial authorities, such as defining who is a breeder. Some submitters thought that anyone with an unneutered dog would have to be defined as a breeder. Only 40% of dogs (208,822) are recorded on the NDD at August 2008 as being neutered. This means that 310,100 dogs

are not neutered. Given this number, the Department considers the machinery needed to define a breeder, implement and enforce breeder licensing would be considerable and costly, as it would likely require regular property checks.

37. The Department considers education and incentives for neutering, such as reduced registration fees, are preferable to dog breeder licensing. No change is recommended.

Option 6 - Territorial authorities may require proof of breed

Background

38. Details of a dog's breed may be required by territorial authorities when registering a dog. Breed identification is important for banning importation, and requiring dogs to be classified as menacing. There is no requirement for further checking of the breed. While there are penalties for giving false information, owners could disguise the breed to avoid the breed-specific controls. Breed may also be important for improved statistics on dog attacks.

Discussion document

39. The discussion document asked if territorial authorities should be able to require proof of a dog's breed at registration. Alternatively, the requirement for a dog to be "wholly or predominantly" of a breed or type could be broadened by terms such as "significantly" or "noticeably". Respondents were also asked if they could suggest alternative ways of resolving difficulties in identifying a dog's breed.

Results of submissions

40. A small majority opposed territorial authorities being able to require proof, mainly because of the difficulty (and cost) associated with trying to prove a particular dog's breed. Seventy-seven per cent of territorial authorities opposed it. A substantial majority opposed broadening the threshold for breed identification to "significantly" or "noticeably", mainly due to the subjective nature of these terms. Various circumstances when territorial authorities could require proof of breed were suggested with the biggest category being dogs that were considered for classification as dangerous or menacing. The two most common suggestions for identifying dog breed were 'expert' opinion or DNA testing.

Comment

41. The provision of the Act where breed has the most consequences is in relation to a menacing classification under section 33C. Currently an owner may object to such a classification, and provide evidence that the dog is not of a Schedule 4 breed or type. It is therefore considered the current provisions are sufficient. As no change to the proof of identity requirements is proposed, alternative methods for identifying breeds are not such an issue. No change is recommended.

Option 7 - Probationary owners to surrender dogs classified as dangerous or menacing

Background

42. As noted in paragraph 24, dog owners can be placed on probation for committing a relevant offence or for three infringement offences. Owners classified as probationary are required to give up their ownership of any unregistered dogs.

Discussion document

43. The discussion document asked whether probationary owners should be required to surrender any registered dogs that are classified as dangerous or menacing, either immediately or after failing some training course.

Results of submissions

44. A small majority thought probationary owners should not retain ownership of dogs classified as dangerous or menacing. However, some territorial authorities believed this option could conflict with a court's decision. If an owner is convicted of an offence, under the Act a territorial authority must either disqualify the owner or make them a probationary owner. Ordinarily if the court has not ordered destruction, the owner is made a probationary owner and can keep the dog. Under this option the dog would be taken from the probationary owner which would be contrary to the Court's decision to allow the owner to keep the dog.

Comment

45. Only 90 owners were classified as probationary on the NDD at August 2008. The limited use of these provisions by territorial authorities would suggest they are applying it in a targeted way. It is likely that if a territorial authority believes the owner should give up ownership of their dog(s) the territorial authority would use the disqualification provisions of the Act rather than the probationary provisions. No change is recommended.

Option 8 - Increase dog containment standard

Background

46. All dogs must be either under direct control or "the owner of a dog must, at all times ensure that ...the dog is confined within the land or premises in such a manner that it cannot freely leave" (section 52A). In addition, dogs classified as dangerous must be "kept in a securely fenced portion of the owner's property that it is not necessary to enter to obtain access to at least one door of any dwelling" (section 32).
47. The discussion document asked if owners' responsibilities should be made clearer and more explicit, and whether the dog containment standard should be increased.

Results of submissions

48. A large majority thought containment standards could be clearer or more explicit, but many thought this was a matter for education rather than legislation. A small majority opposed increasing the dog containment standard for all dogs. Of those who supported it, many favoured a standard similar to that required for dangerous dogs (that is, kept in a securely fenced portion of the owner's property that it is not necessary to enter to obtain access to at least one door of any dwelling).

Comment

49. The current standard is 'outcome' based – that is, the dog should not be able to freely leave the property – it is not prescriptive as to the type or height of fencing, for example. This gives owners flexibility to suit their type of property to the type and size of their dog.
50. Increasing the standard to the same level as required for dangerous dogs would be costly and would disadvantage some owners, such as those who do not own their own house and those on low incomes. It is also considered the scale of any problems do not warrant it.
51. A proposal to increase the standard for all dogs to allow dog-free access to a door was rejected by the Local Government and Environment Committee in 2003. The Committee noted: "the dog-free access to a door requirement was widely opposed because of anticipated costs. The diminished effectiveness of dogs kept for security purposes was also relevant."¹ No legislative change is recommended.

Option 9 - Round up and faster destruction of unregistered dogs

Background

52. All dogs must be registered. Registration is central to dog control and links a dog to its owner. Section 42 provides an offence of failing to register a dog. The Act provides for unregistered dogs to be impounded, and unclaimed dogs can be disposed of after seven days.

Discussion document

53. The discussion document asked if clear obligations should be imposed on territorial authorities to round up unregistered dogs and allow them to be destroyed in less than seven days.

Results of submissions

54. A large majority supported territorial authorities having to 'round up' unregistered dogs, however many believed this was already the law. A large majority opposed territorial authorities being able to destroy dogs in a shorter period, with just over half of them believing that seven days was reasonable. A minority favoured longer than seven days.

Comment

55. While some territorial authorities supported the option it was clear there were differences in interpreting what it actually meant. The option would have imposed obligations on territorial authorities to seize and impound unregistered dogs. Some territorial authorities interpreted this as

¹ Commentary on Local Government Law Reform (No 2) Bill. Page 15.

including other options they can take to get owners to register their dogs before impounding them (such as issuing infringement notices and property visits) and considered that they were already adequately meeting this goal.

56. A requirement to 'round up' (meaning seize and impound) unregistered dogs could be costly and unnecessary if another option, such as issuing an infringement notice, achieved the same objective. Some territorial authorities noted that staff numbers or pound space is not sufficient to effectively do this, and considered that a range of options to encourage and enforce dog registration should be used.
57. Territorial authorities already have powers to impound a wandering dog. The SPCA noted that the advent and growth of micro-chipping would mean stray dogs could be returned to their owners rather than being impounded, although still attracting a fine. There is little support for destruction of impounded dogs in less than seven days, and this is not considered desirable. No legislative change is recommended.