

Dog Control (Category 1 Offences) Amendment Bill

Member's Bill

As reported from the Primary Production Committee

Commentary

Recommendation

The Primary Production Committee has examined the Dog Control (Category 1 Offences) Amendment Bill and recommends that it be passed with the amendments shown.

About the bill as introduced

The Dog Control (Category 1 Offences) Amendment Bill is a Member's bill in the name of Ian McKelvie MP. The bill aims to reduce the time it takes for certain charges to be heard under the Dog Control Act 1996. It also aims to improve the welfare of the dogs involved in prosecutions under the Dog Control Act by reducing the time dogs spend in impounding facilities while proceedings are carried out.

The bill as introduced would amend the Dog Control Act to allow Justices of the Peace (JPs) and Community Magistrates to hear category 1 offences. Section 6(1) of the Criminal Procedure Act 2011 defines category 1 offences as those with a maximum penalty of a fine or a community-based sentence. Section 355 of that Act also authorises judicial JPs to sit as judicial officers in the District Court criminal jurisdiction when the legislation creating the offence provides for it. Community magistrates have jurisdiction over some category 1 offences under section 356 of the Act.

Proposed amendments

We propose several amendments to the bill, which we discuss below.

Exclusion of certain offences

Clause 4 of the bill as introduced, inserting new section 64A, would exclude three offences (set out in sections 32(2), 54(2), and 57(2)) from the list of offences that could be heard by a JP or Community Magistrate. We recommend that section 54(2)

be removed from the excluded offences because it is a category 2 offence. (The offence under this section relates to ensuring that a dog receives proper care and attention and adequate exercise.)

We note that sections 32(2) and 57(2) were excluded because they have an exceptional circumstances test—that is, a court must order that a dog be destroyed unless it is satisfied that the circumstances of the offending were exceptional. We do not consider that judicial JPs should have this power.

For consistency, we recommend that four more offences that include legal tests should also be excluded. They are:

- section 57A(2) (dogs rushing at persons, animals, or vehicles)
- section 61(2) (orders relating to dog seen worrying stock)
- section 62(4) (allowing dogs known to be dangerous to be at large unmuzzled)
- section 78(3) (possessing a dog in contravention of regulations under the Act).

We received advice that our proposed amendment would enable judicial JPs to hear 29 of the 277 cases for category 1 offences that were heard in 2017/18. However, we note that the amendment may result in behavioural change from local authorities. They may be more inclined to take prosecutions if the bill is enacted, allowing JPs to hear category 1 offences under the Dog Control Act.

Removing Community Magistrates from the bill

We were advised that the bill as introduced would exclude certain category 1 offences from a Community Magistrate’s jurisdiction and reduce their ability to hear some offences that they currently preside over. Section 356 of the Criminal Procedure Act already allows Community Magistrates to hear any category 1 offences with a penalty below \$40,000, regardless of whether they are named in the legislation.

Therefore, we recommend amending clause 4, inserting new section 66A, to remove the reference to “Community Magistrate”.

Appendix

Committee process

The Dog Control (Category 1 Offences) Amendment Bill was referred to the committee on 5 September 2018. The closing date for submissions was 27 November 2018. We received and considered 13 submissions from interested groups and individuals. We heard oral evidence from one submitter.

We received advice from the Department of Internal Affairs.

Committee membership

Hon David Bennett (Chairperson)

Kiritapu Allan

Hon Nathan Guy

Kieran McAnulty

Mark Patterson

Stuart Smith

Rino Tirikatene

Hamish Walker

Ian McKelvie took part in the consideration of this item of business.

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Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Ian McKelvie

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Member's Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Dog Control (Category 1 Offences) Amendment Act **2018**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent. 5

3 Principal Act

This Act amends the Dog Control Act 1996 (the **principal Act**).

4 New section ~~64A66A~~ and cross-heading inserted

After section ~~6466~~, insert: 10

*Category 1 offences***64A66A Jurisdiction for category 1 offences**

- (1) The District Court presided over by 2 or more Justices of the Peace ~~or 1 or more Community Magistrates~~ has jurisdiction in respect of any category 1 offence under this Act. 5
- (2) **Subsection (1)** does not apply to the ~~following~~ offences described in the following sections:
- (a) section 32(2):
 - (b) ~~section 54(2):~~
 - (c) section 57(2): 10
 - (d) section 57A(2):
 - (e) section 61(2):
 - (f) section 62(4):
 - (g) section 78(3).
- (3) In this section, **category 1 offence** has the same meaning as in section 6(1) of the Criminal Procedure Act 2011. 15

Legislative history

3 May 2018
5 September 2018

Introduction (Bill 57-1)
First reading and referral to Primary Production Committee