

Agreement in Principle

Mrs BARBARA PERRY (Auburn—Minister for Local Government, Minister Assisting the Minister for Planning, and Minister Assisting the Minister for Health (Mental Health)) [10.04 a.m.]: I move:

That this bill be now agreed to in principle.

I am introducing the Companion Animals Amendment (Outdoor Dining Areas) Bill 2010 as a result of the feeble attempt by the Opposition at drafting laws in response to calls by a passionate group of constituents in Mosman to allow dogs in outside cafés. Before outlining the bill, I remind the House of what this Government's legislation aims to provide. The Companion Animals Act was developed to strike a balance between the benefits of owning a companion animal and the protection of the community from animals that may represent a nuisance or risk to public health and safety. This bill has been drafted to maintain this balance.

While dog owners may wish to have greater liberties for their dogs, the Government understands that this needs to be tempered with the need of the community to be able to walk the streets in safety and not have their public health put at risk. The member for Terrigal attempted to deal with this issue in his private member's bill, and I am sure that the last thing that the Government and the member for Terrigal want is to allow a situation to arise that heightens the risk of dog attacks, especially on young children. Given the circumstances that have arisen in Mosman, the desire in the wider community for dogs to be allowed with their owners in some outdoor cafés, and the failure of the Opposition's attempts to deal with this issue, the Government has drafted this bill.

The bill aims to allow people to have their dog with them in an outdoor dining area, while minimising the impact that dogs can have on others who may like to enjoy their coffee or meal without having a dog in the immediate vicinity. Advice from the NSW Food Authority is that there is no more risk of transmission of disease from dogs than from birds that often fly around an outdoor dining area. As long as dogs are kept on the ground, and interaction between dogs and other people who are eating food is minimised, the food safety risks are low. Accordingly, the Government's bill will amend the Companion Animals Act to provide a limited exemption to the existing prohibition on dogs in food consumption areas. Importantly, this bill maintains the prohibition on dogs in any food preparation areas and human food consumption areas that are not outdoor dining areas.

Allowing dogs into a food preparation area significantly increases the risk of an animal transferring a pathogen via direct contact with food and food handlers. For this reason, dogs should not be permitted in, or travel through, any area where food is prepared. The Government's amendments are targeted wholly and solely on removing the prohibition of dogs from outdoor dining areas where food is consumed. This bill also provides an explicit right for operators of outdoor dining areas to decide, when allowed under a licence agreement or development consent, whether they will allow dogs into their outdoor dining areas.

To make it abundantly clear, this bill does not provide dog owners with an absolute right to enter any outdoor dining area with their dog. As many of these outdoor dining areas are set up on public land under licence from the local council, it will be important that operators of outdoor dining areas liaise with their council to ensure that their licence agreement allows this activity to occur. Where the operator of an outdoor dining area decides to allow dogs in an outdoor dining area, the following mandatory conditions must be complied with. The outdoor dining area must not be enclosed and must be able to be entered by the public without passing through an enclosed area. An area is enclosed if it is substantially or completely enclosed by a ceiling or roof and walls and windows.

A dog that is in the outdoor dining area must be under the effective control of a competent person and be restrained by a chain, cord or leash attached to the dog. This means the dog must be tethered and under the direct control of a competent person at all times. Dogs must be on the ground at all times. This ensures that we do not have dogs on tables or chairs where food is consumed. Dogs must not be provided with food. This is to minimise public health risks as well as avoid situations where a dog attack could occur. As we know, it is important to be cautious around dogs while they are eating. Providing water to a dog will be acceptable. Dangerous and restricted dogs are not permitted in outdoor dining areas. There is no way we want these dogs in these areas, even when muzzled.

The bill introduced by the member for Terrigal has completely overlooked this consideration. His bill would allow dogs such as the American Pitbull Terrier into outdoor eating areas, which is completely against acceptable safety standards for this breed of dog. The member for Terrigal's bill also has ignored safety aspects when it comes to café tables in council designated dog off-leash areas. The member for Terrigal's bill would allow for dogs to roam free around café tables in off-leash areas, increasing safety risks for café patrons as well as café workers. This issue has been dealt with much more sensibly in the Government's bill.

The Companion Animals Act will continue to require that any outdoor dining area in an off-leash area must be clearly designated to enable off-leash dogs to be excluded from the outdoor dining area. Only tethered dogs will be permitted in these areas and only if the café operator agrees. This would not apply in off-leash areas where

there may be a kiosk that does not provide a formal outdoor dining area. Council officers will use their discretion to determine whether a business is providing a designated outdoor dining area. The proposal of the member for Terrigal's bill would be a recipe for dog attacks.

During the development of this bill the Government consulted with the Restaurant and Caterers Association of New South Wales and the Local Government and Shires Associations, which both support the proposal to give restaurant operators an explicit right to choose whether they allow dogs into their outdoor dining areas. The Restaurant and Caterers Association accepts that where an operator chooses to allow dogs in their outdoor dining area, they need to manage their Food Safety and Occupational Health and Safety responsibilities and appropriately assess the risks of allowing dogs into that area. As public liability is dealt with through the licence agreement or development consent between the outdoor dining operator and the landowner, which in many cases is the local council, it is unnecessary to deal in this bill with any potential liability issues that may arise from allowing dogs in outdoor dining areas.

Therefore, operators of outdoor dining areas will need to ensure that the proposed exemption conditions for food consumption areas are complied with or they will risk complaints being made. This will include complying with the requirement that dogs are not allowed in enclosed areas. The intent of this bill is to allow dogs in outdoor dining areas that generally are provided on public footways using temporary infrastructure to delineate the area. To ensure our legislation is clear and consistent, the Minister for Primary Industries has agreed to use his powers under the Food Act to make a regulation to modify a provision in the Food Standards Code. This provision will allow dogs in outdoor dining areas where it is permissible under the Companion Animals Act.

The benefit of the proposed approach is that it clearly provides operators of outdoor dining areas with the discretion to allow dogs in such areas. Where operators of outdoor dining areas decide to allow dogs, the onus will be placed on them, within their existing business compliance framework, to consider issues including impacts on other patrons, occupational health and safety responsibilities, liability for incidents and other risk issues before they decide to allow dogs within their premises. This bill supports a need identified by the community of New South Wales in a practical and sensible way while minimising the risk of incidents involving dogs. I commend the bill to the House.