

COMPANION ANIMALS AMENDMENT (OUTDOOR DINING AREAS) BILL 2010

Second Reading

The Hon. PENNY SHARPE (Parliamentary Secretary) [4.06 p.m.], on behalf of the Hon. Tony Kelly: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

The Companion Animals Act was designed 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.

The Bill has been drafted to maintain this balance.

The Government understands that greater liberties for dogs must be tempered with the need of the community to be able to walk the streets in safety and not have their health and welfare put at risk.

The last thing the Government and I'm sure the Opposition, which attempted to deal with this issue in a Private Member's Bill, wants is to allow a situation to arise which heightens the risk of dog attacks, especially on young children.

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 their immediate vicinity.

Advice from the NSW Food Authority is that there is no more risk of transmission of disease from dogs than there is from birds that are often flying in and around outdoor dining areas.

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 in 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, usually footpath areas that are covered by the Roads Act, 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 don't have dogs on tables or chairs where food is consumed.

- Dogs must not be provided with food in the outdoor dining area. 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 or other drink 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.

This is a consideration which the Opposition's bill has completely overlooked. The Opposition's bill would allow dogs such as the American Pitbull Terrier into outdoor eating areas, completely against acceptable safety standards for this breed of dog.

Following on from detailed consultation, the Government is pleased to amend the Bill to clarify the requirements for outdoor dining areas that operate wholly within an area designated "off-leash" by a local authority.

Dogs will be allowed to be off-leash in these areas and can be provided with food as long as the food is on the ground and not provided using apparatus that is used for human food consumption.

However, an important message to all dog owners is that any dog in an off-leash area must continue to be properly controlled by voice-command and proper training. The owner remains responsible for the dog's behaviour and for ensuring that it does not impact on the welfare of other people, dogs and animals in these areas.

With regard to the other proposed amendment for outdoor dining areas in public places that have been designated as an off-leash area, the Government is not willing to agree that dogs may sit on a person's lap or on a table or chair.

Dogs should not be allowed in the laps of patrons at cafe tables as the risk of food contamination or dog attack is contrary to the principles of safe dining.

However, I am pleased to confirm that the Minister for Local Government has sought advice from the Division of Local Government that has confirmed that where a small dog needed to be picked up by its owner to avoid any threat posed by another dog, this would be allowable in all outdoor dining areas.

Council officers have discretion in applying the requirements of the Act, which would apply to circumstances where it had become necessary for an owner to place their dog on their lap for its own safety. This is common sense.

It will be important that operators of outdoor dining areas in designated off-leash areas implement appropriate controls to manage the risk of incidents, as some dogs that are eating may be more likely to attack if disturbed. We don't want a child inadvertently disturbing a dog and being bitten.

The Government has discussed this issue with a proprietor of one such cafe, who is in support of the Government's proposed amendment.

During the development of this Bill, the Government has also consulted with the Restaurant and Caterers Association of NSW as well as the Local Government and Shires Associations who have strongly supported the changes.

The Restaurant and Caterers Association accepts that where an operator chooses to allow dogs in their outdoor dining area, the operator needs to manage his or her Food Safety and Occupational Health and Safety responsibilities and appropriately assess the risks of allowing dogs.

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 with any potential liability issues that may arise from allowing dogs in outdoor dining areas in this Bill.

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 are generally 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

It is also important to emphasize that owners of dogs have a responsibility to ensure that the behaviour of their dog does not impose a health or safety risk to others in the community and if incidents do occur, the owner of the dog is liable. The community has made it clear that it expects pet owners to be responsible.

This Bill responds to 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.