

Developing a Biosecurity Bill for South Australia

Submission

September 2023

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Summary of recommendations

The Local Government Association of South Australia (LGA) makes the following recommendations in relation to the draft Biosecurity Bill:

- Management, regulation, and enforcement of dog fence related costs is the responsibility of the State Government, even in an emergency.
- Recommends that the power of the State Government to tax councils, contained in section 21 of the Bill should be removed from the draft Bill.

The LGA recommendations represent a change from the wording in section 27A of the current Dog Fence Act 1946. The LGA is simply recommending the revocation of powers that the government has never used. For the reasons set out in this submission, the existence of these powers is inappropriate.

The LGA recommendations therefore mean no change to the practical application of dog fence laws.

Introduction

About the Local Government Association of South Australia

The Local Government Association of South Australia (LGA) is the voice of local government in South Australia, representing all 68 councils across the state and the Anangu Pitjantjatjara Yankunytjatjara.

The South Australian *Local Government Act 1999* recognises the LGA as a public authority for the purpose of promoting and advancing the interests of local government. The LGA is also recognised in and has prescribed functions in 29 other South Australian Acts of Parliament. The LGA provides leadership, support, representation and advocacy relevant to the needs of our member councils.

The LGA is a strong advocate for policies that achieve better outcomes for councils and the communities they represent.

Developing a Biosecurity Bill for South Australia

The Local Government of South Australia welcomes the opportunity to make a submission on the proposed Biosecurity Bill (the Draft Bill), the subject of consultation on the State Government's YourSay website.

The LGA is particularly grateful for the team of expert PIRSA officers who made time to provide a briefing on the Draft Bill. The briefing was very thorough, and the PIRSA team adeptly answered the questions posed by the LGA.

The LGA agrees with the aims of the Draft Bill and accepts that the Draft Bill will effectively achieve these aims. If the one concern of the LGA (articulated below) is resolved, the LGA will be in a position to offer its support for the Draft Bill.

The LGA Concern

The LGA is concerned about proposed section 21 of the Draft Bill which gives the Dog Fence Board (with the approval of the Minister) an unfettered discretion to impose a new state tax upon councils.

The LGA acknowledges that:

- Identical clauses are currently contained in the Dog Fence Act 1946.
- That since the enactment of these sections, the Dog Fence Board has not once made a section 27A declaration and no council has been required to make a section 27A payment.

The LGA understands the underlying policy behind current section 27A is as follows:

- During normal times the costs of funding the Dog Fence Board and maintaining the dog fence will be shared between the State Government and defined large landholders.
- That if dogs were to break through the dog fence, then significant increased costs could be incurred by a wider range of landholders. In these circumstances, then wider range of landholders should contribute to those additional costs.

The LGA understands that the same underlying policy aim is behind proposed new section 21 the Draft Bill. That is, smaller property owners should help contribute to costs, in emergency situations. The LGA supports this underlying policy aim.

Unfortunately, the drafting of current section 27A and proposed section 21 are at wide variance with the underlying policy aim. The LGA notes:

- In the case of a section 21 declaration, the additional costs are not imposed on small landholders. They are imposed on councils. Councils are not provided with any legislative power to recover these costs from small landholders (or any other ratepayer). *The Landscapes SA Act 2019*, by contrast empowers a council to collect the Landscapes Levy from landholders, to offset the monies they are required to pay to their regional landscapes board.
- A section 21 declaration would raise council rates paid by all ratepayers by an amount between 0.25% and 1% (depending on the mix of urban and rural properties). Most ratepayers will receive no value from this additional impost.
- The power to issue a section 21 declaration does not require:
 - Any damage to the dog fence;
 - Any dogs to have broken through the dog fence;
 - Any damage to livestock or farmer property;
 - Any unusual costs to have been incurred by the dog fence board or any landholder.

In fact, a section 21 declaration can lawfully be made for the sole purpose of raising additional state revenue.

- The declaration could apply to metropolitan councils or other councils, remote from the dog fence. This further emphasizes the lack of relationship between the provisions of section 21 and the underling policy aim.
- No time limit need apply to a section 21 declaration. For example, the declaration need not be limited to the period during and immediately following an incursion of dogs. A declaration could be made and declared to be permanent.
- There is no relationship between the costs incurred as a result of an incursion of dogs and the funds raised pursuant to section 21 (ie 1% or 0.25% of total rates revenue). Section 21 cannot accurately be characterised as a mechanism to recover dog-related costs. It is not a fee for service. Section 21 is simply a broad state tax imposed on councils, that does not need to be tied to any particular policy outcome.
- The State Government already has mechanisms in place to apply property-based taxes pursuant to various statutes (eg Land Tax and the Emergency Services Levy). The State Government already collects dog fence fees from large landholders. The State Government has the practical means to collect additional fees from other land holders (alternatively, as suggested later in this submission, emergency increased costs could be met from Budget contingency funds, as occurs with a range of natural disasters.)

Why should councils meet this cost?

The costs of managing South Australia's biosecurity risks and dog fence costs have traditionally fallen on the State Government. The State Government uses its legislative powers to recover some of these costs from large landowners.

The LGA submits that dog fence costs fall within the remit of the State Government and that no policy argument exists to require councils to meet these costs, whether in usual or unusual times.

It has been suggested that, in the case of a significant incursion of dogs inside the dog fence, that a wider percentage of the community would be impacted and councils, as the representatives of local communities, should therefore meet these additional costs.

The LGA strongly rejects this argument. The logical extension of this argument is that, as representatives of communities, councils should pay for

- additional costs incurred by the Health Department in times of epidemic;
- the additional costs of funding SAPOL, in times of unusual lawlessness; or
- the costs of funding Australia's defence forces, in times of war.

There is no justification for the usual responsibilities of the State Government transferring to the local government sector, in emergency situations.

A far more apt analogy can be made with natural disasters such as floods. In situations where a State Government department or a local council might otherwise be overwhelmed in an emergency, state and federal governments provide emergency support. The LGA understands that recent State Budgets have indeed made increased provision for emergency funding, for a range of reasons.

The LGA therefore submits that, to prepare for a potential time of dog-related emergency, arrangements be made between PIRSA and the Department of Treasury, to ensure unusual costs can be met.

The LGA further notes that the provisions of section 21 are ill-suited to an emergency. If the Dog Fence Board made a section 21 declaration on (for example) the first of January in any year, it could potentially be 17 months before the Board was lawfully able to collect money from local councils. In such a situation, it is likely that the Treasury or PIRSA would have to fund the Board's shortfall in the interim, to ensure the emergency is immediately addressed. The time delays inherent in section 21 reinforce the LGA's argument that the section is not aimed at addressing a dog-related emergency; rather it is a blunt taxing power.

Review

The LGA acknowledges that when section 27A was inserted into the Dog Fence Act in the mid-1990s, cautious support for this change was offered by the LGA to the State Government.

Unfortunately, since that time there have been many occasions when the State Government has used its legislative powers and existing discretion, to impose new costs on councils. Examples include:

- A 40% increase in the solid waste levy, costing councils an extra \$8.5 million in 2019/20.
- A requirement on councils to collect the Landscapes Levy on behalf of regional landscapes boards, without the ability to claim compensation for actual costs incurred, leaving councils millions of dollars out-of-pocket.
- Transfer of responsibility from the Environmental Protection Agency to councils, for regulating litter and local nuisance laws in 2016, without any compensatory funds enabling councils to provide this service and without an ability for councils to recover costs from the community.
- The Electoral Commission increased costs imposed for the conduct of local government elections by around 30% in 2022.
- In 2022-23, the Essential Services Commission unilaterally doubled¹ the price it charged councils for a mandatory review of the council's sustainability.

The advantages of a review of legislation is that decision-makers can take into account updated information and identified risks can be ameliorated. Given the foreseeable risks inherent in the continuing existence of such a broad and blunt taxing power, the cautious support given by the LGA for such a clause is hereby revoked.

Additional Issues

The LGA makes the following observations, which we ask PIRSA to turn their attention to:

- Section 280(1)(b) of the proposed Act calls on the owner or occupier of land to exercise a discretion as to whether this is the case. Advice from PIRSA indicates that "*biosecurity risk relating to a decision to detain stock would need to be assessed based on the relevant circumstances in each instance*". Unlike a farmer or other owner of private land in areas used for raising stock, most council officers will not be experienced in dealing with stock and will not be qualified to form such a view. The LGA recommends further work, preparing information about how such an officer should exercise such a discretion. A more prudent approach may entail:
 - An obligation on a council officer to *inform* PIRSA (rather than to actually make the section 280(1)(b) decision); and

- For the relevant PIRSA officer to then exercise the section 280(1)(b) discretion.
- The LGA notes PIRSA advice that the special additional powers available under an emergency order are short-term in nature, can only be issued by the Chief Executive and is intended for use in high risk/high impact situations. The LGA also notes that State Government funding in emergency situations and in relation to the subsequent recovery phase is discretionary in nature. The LGA recommends that, if not currently possible, laws or administrative arrangements be amended to that it becomes legally possible:
 - For these funds to be applied to the emergency arrangements contemplated in the Biosecurity Act; and therefore
 - For councils to recover their reasonable costs incurred during such an emergency.

Submission

The LGA strongly supports PIRSA and the Dog Fence Board, as they manage their statutory duties in relation to biosecurity. The State Government can expect the ongoing cooperation, in protecting South Australia from biosecurity threats.

The LGA:

- Submits that management, regulation and enforcement of dog fence related costs is the responsibility of the State Government, even in an emergency.
- Recommends that the power of the State Government to tax councils, contained in section 21 should be removed from the Draft Bill.

Given this clause has not been invoked in the past three decades, the LGA submission represents no change from previous or current practice.

The LGA would support the proposed Biosecurity Bill, provided the amendment outlined above is made.

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