

DOG ACT 1928.

19 GEORGE V.
No. 3667.

An Act to consolidate the Law relating to Dogs.

[12th February, 1929.]

Dog Act 1915.

BE it enacted by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):—

Short title and commencement

1. This Act may be cited as the *Dog Act 1928*, and shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the *Government Gazette*.

Repeal.

First Schedule.

2. The Acts mentioned in the First Schedule to this Act to the extent thereby expressed to be repealed are hereby repealed. Such repeal shall not affect any declaration or registration made or any notice given under the said Acts or either of them before the commencement of this Act.

Interpretation.

Ib. s. 3.

Owner.

3. Proof that any person has had a dog in his possession or under his exclusive control for a period of fourteen consecutive days, or that any person is the occupier of any house or premises where a dog is usually kept or harbored or permitted to live or remain, shall be *prima facie* evidence that such person is the owner of such dog within the meaning of this Act: Provided that where there are more occupiers than one in any house or premises let in several apartments or lodgings or otherwise, the occupier of that particular part of such premises in which any dog is kept or harbored or permitted to live or remain shall be deemed to be the owner of such dog, and the burden of proof that any such person is not the owner thereof shall for the purposes of this Act be upon such person.

Owner of dog to register.

Ib. s. 4.

4. (1) Every owner of a dog shall within fifteen days from and after the first day of March in each and every year or within six months from the day on which such dog was littered register such dog.

(2) Notwithstanding anything in the last preceding sub-section the council of any municipality may appoint a day other than the first day of March for the registration (subject to this Act) in each and every year of dogs within the municipal district.

Dog Act 1921
s. 2.
Appointment by
council of date
for registration
of dogs.

(3) Notice of the appointment of any day as aforesaid shall be published in some newspaper generally circulating in the municipal district.

Publication of
notice.

(4) When any day has been so appointed this Act and the Schedules hereto shall, with respect to such municipal district, be read and construed with such alterations modifications and substitutions of the days and months and periods specified therein as are necessitated by or consequent upon such appointment.

Consequential
alterations &c.
in construction
of Act and
Schedules.

(5) In all cases where a day has been appointed under this Act for the registration of dogs within any municipal district the last preceding annual registration of dogs within such district shall be deemed (notwithstanding the expiration of the year in respect of which such registration was made) to be effective during the period between the termination of such year and the day so appointed.

Last preceding
annual
registration to
be effective until
date appointed
for new
registration.

5. Registration shall consist in delivering the description herein-after mentioned and in paying to the registration officer a registration fee of Five shillings. When a registration is made after the first day of September in any year, one-half only of the registration fee shall be payable in respect of such registration.

Registration
how made.
Dog Act 1916
s. 5.

6. Registration shall, if the place where it is intended to keep such dog is within a municipal district, be effected at the office of the council of such municipal district or at such other convenient place or places within such municipal district as the council thereof appoints; but if the place where it is intended to keep such dog is not within a municipal district, then such registration shall be effected at the court of petty sessions held nearest thereto.

Registration
where to be
made.
Id. s. 6.

7. Every person registering a dog shall at the time of such payment deliver or send to the registration officer a description of such dog embracing the several particulars mentioned in the Second Schedule hereto, with a declaration thereunder written of the truth thereof under the hand of the owner of such dog or of some person authorized by such owner in that behalf. Every registration shall be deemed to be in force from the day upon which the same has been so made until the last day of the month of February then next ensuing and no longer. The registration officer shall in every municipal district be the municipal clerk thereof or some other officer in that behalf appointed by the council thereof, and shall in every place not within a municipal district be the clerk of the court of petty sessions held nearest to the place where such dog is kept.

Description of
dog to be
delivered to
registration
officer.
Id. s. 7.
Second
Schedule.

8. Every person who knowingly makes a false declaration respecting any of the particulars contained in the said description or wilfully inserts in or omits from or wilfully causes or permits to be inserted in or omitted from such description any matter or thing whatsoever contrary to or for the purpose of concealing the truth, shall be liable to a penalty of not less than Ten nor more than Forty shillings.

Penalty for false
description.
Id. s. 8.

Dog Act 1915
s. 9.
Receipt to be
given.

Third Schedule.

9. Every registration officer to whom such registration fee is paid shall enter in a book kept by him for that purpose and in the receipt to be given therefor a registered number for every dog so registered and shall deliver or send a receipt for the said fee in the form in the Third Schedule hereto, and every registration officer who on receipt of the proper registration fee and on being required refuses or neglects to deliver or send such receipt shall be liable to a penalty of Ten shillings for each offence.

List of registered
dogs to be
exhibited.
Ib. s. 10.

10. Every registration officer shall exhibit in his office during office hours for public inspection a correct list arranged in alphabetical order of the names of all persons who during the year then current have registered any dog at such office and the number of dogs registered by each person together with the registered number of such dogs. Any person applying for the particulars of any dog so registered or for the name of the registered owner thereof or for a certified copy of the receipt hereinbefore mentioned shall be entitled to receive such information and certified copy on payment of a fee of One shilling, and every registration officer who on being required so to do and after tender of the said fee refuses or neglects to give such particulars of the name of such registered owner or a copy certified by such registration officer of such receipt shall for each offence be liable to a penalty of Ten shillings.

Burden of proof.
Ib. s. 11.

11. In any proceeding under this Act for the non-registration of any dog it shall not be necessary for the informant to establish the fact of non-registration, but the proof of due registration shall lie on the defendant and the said receipt or a certified copy thereof shall be admissible in evidence for the defendant in proof of such registration and shall for the purpose of such proceedings be *prima facie* evidence in proof that the person therein described as the owner of any dog is the owner of such dog.

Penalty for non-
registration.
Ib. s. 12.

12. Every person who after the expiration of fifteen days from the first day of March in each and every year is the owner of any unregistered dog above the age of six months shall in respect of each such unregistered dog be liable to a penalty of not less than Five nor more than Ten shillings in addition to the registration fee, and on a second or subsequent conviction thereof before the last day of the month of February next following in respect of the same or any other dog he shall in respect of each such unregistered dog be liable to a penalty of not less than Ten nor more than Forty shillings in addition to such fee.

Registered dogs
to wear collars.
Ib. s. 13.

13. Every registered dog except foxhounds beagles and greyhounds engaged in public coursing matches shall have a collar round its neck with the words "Registered at" specifying the place of its registration and the name and address of its owner engraved or stamped legibly thereon. If a registered dog with a collar round its neck is found wandering at large, it may be seized by the police or by the officers of the municipality duly authorized in that behalf or any person may seize such dog and forthwith hand it over to such police or municipal officer of the municipal district to be dealt with under the provisions of this Act, and notice in writing of such seizure shall within forty-eight hours next following such seizure be by the person making the same delivered or sent by the post to the address on the said collar.

If within forty-eight hours after the delivery of such notice or the time at which the same would be delivered in the ordinary course of post the registered owner does not reclaim such dog and pay to the registration officer the sum of Two shillings and sixpence for the cost of keeping such dog, such dog may without any liability in respect thereof be sold by auction or destroyed without cruelty by some speedy means. Dog Act 1915.

14. Every dog found wandering at large^(a) without a collar round its neck engraved or stamped as aforesaid whether such dog is registered or not shall be seized by the police or by the officers of the municipal district duly authorized in that behalf in which such dog is so found or may be seized by any person and forthwith handed over to such police or officers of the municipal district to be dealt with under the provisions of this Act; and if within forty-eight hours after such seizure such dog is not claimed and the sum of Two shillings and sixpence for the cost of keeping such dog together with twice the registration fee in case such dog is not then registered paid to the registration officer, it may be sold by public auction or destroyed in manner aforesaid. Dogs found at large to be seized. *Ib.* s. 14.

15. The council of every municipality shall carry out the provisions of this Act, and every such council shall appoint a proper officer whose duty it shall be to enforce under the direction of the council the provisions of this Act and to seize and destroy subject to the provisions of this Act any unregistered dog found wandering at large unaccompanied by its owner or some other person in any street road thoroughfare or public place within the municipality. Appointment of officer by council of municipal district to enforce this Act. *Ib.* s. 15.

16. If the council of any municipality fails to perform any duty imposed upon it by this Act, any ratepayer of such municipality may complain in writing to the municipal clerk of such district. If within twenty-eight days from the service of such complaint on such municipal clerk the performance of such duty is not in good faith commenced, such council shall forfeit to such ratepayer together with full costs of suit the sum of Twenty pounds for each week commencing from the date of the service of such complaint as aforesaid during which default has continued, and the same may be recovered by suit in a county court; but no such suit shall be commenced without the written consent of a law officer or after the expiration of six months from the date of the service of such complaint as aforesaid. Penalty on municipality neglecting to enforce this Act. *Ib.* s. 16.

17. If any registered dog save as herein excepted is found in any public place without a collar round its neck engraved or stamped as aforesaid or having a name or address that is incorrect engraved or stamped thereon, the owner of such dog shall be liable to a penalty of not less than Five nor more than Forty shillings. If any unregistered dog is found wearing a collar which purports to exhibit thereon the name of a place of registration, the owner of such dog shall in addition to the penalty for not registering such dog to which he is liable under this Act be liable to a penalty of not less than Ten shillings nor more than Five pounds. If a member of the police force or any officer of a Penalties. *Ib.* s. 17.

(a) A dog waiting outside a shop for its owner who is within the shop is not wandering at large within the meaning of this section.—*Alberd v. Hickinbotham*, 26 V.L.R., 682.

Dog Act 1916. municipality seizes or destroys or causes to be seized or destroyed any dog otherwise than in accordance with the provisions of this Act, he shall be liable to a penalty of not less than Twenty shillings nor more than Five pounds, and if the dog is destroyed shall in addition pay to the owner the full value of such dog.^(a)

Penalty for removing collar.
Id. s. 18. 18. Every person not being the owner who wilfully removes the collar from the neck of a registered dog shall be liable to a penalty of not more than Five pounds.

Owner or occupier of enclosed land may destroy any trespassing dogs not under control.
Id. s. 19. 19. The owner or occupier of any field paddock yard or other place enclosed by a fence in which any sheep cattle or poultry are confined or any person acting under the authority of such owner or occupier may without incurring any liability in respect thereof shoot or otherwise destroy any dog found at large therein whether the owner of such dog is or is not known: Provided that it shall not be lawful to shoot or otherwise destroy as aforesaid any dog accompanied by and under the control of its owner or other person.

Owner permitting dog to accompany him liable for all damage occasioned by such dog.
Id. s. 20. 20. If any dog rushes at attacks worries or chases any person or any horse cattle or sheep the owner of such dog shall be liable to a penalty of not more than Five pounds, and whether such penalty has been recovered or not such person or the owner of such horse cattle or sheep may on a complaint recover from the owner of such dog a sum of money as compensation for any actual damage occasioned by such dog. The fact that such dog was immediately before such rushing at attacking worrying or chasing in company with and had been seen habitually closely following the person informed against or complained of or issued from the premises occupied by such person shall for all the purposes of this section be *prima facie* evidence that the person so informed against or complained of is the owner of such dog. It shall not be necessary to prove a previous mischievous propensity in such dog or the owner's knowledge of such previous mischievous propensity or that such attacking worrying or chasing or any damage occasioned thereby was attributable to neglect on the part of such owner.^(b)

(a) Where a municipal officer appointed under the provisions of the Act wrongfully seizes a dog, the owner of the dog may prosecute him for the wrongful seizure.—*Aberd v. Hickenbotham* 26 V.L.R., 662.

(b) This section applies only to proceedings before justices for a penalty, or to recover compensation for the actual damage done. In an action in the Supreme Court to recover damages in respect of injuries inflicted by a dog, it is still necessary to allege and prove scienter.—*Lane v. Casey*, 12 V.L.R., 380.

In a proceeding under the corresponding section of the *Dog Act 1890*, to recover a penalty it was shown that the informant, the person attacked by the dog, had no interest in the penalty, and was not an officer authorized to prosecute by the municipality in which the alleged offence occurred.

Held, that he was not entitled to prosecute.—

Loft v. Wade (No. 2), 24 V.L.R., 216.

In proceedings under this section to recover compensation for actual damage sustained by being attacked by a dog, evidence tendered by the defendant is inadmissible to show that the dog was of a quiet disposition or that he was ignorant of the mischievous propensity of the animal.

Quære, whether it can be shown that the dog was irritated by the complainant.—*Reg. v. Hare, ex parte Schneider*, 14 V.L.R., 89.

Where a dog attacks a horse on which a person is riding, such an attack is an attack on the rider, for which he can recover damages under this section.

The word "owner" includes a bailor.

The words "actual damage" include compensation for personal injury, necessary expenses incurred by reason of the injury, and loss of wages, but not a solatium for pain and suffering.—*McKinnon v. Dwyer*, 1906 V.L.R., 28.

21. Every owner of any slut who allows her to be at large in any street or public highway whilst she is in heat, shall be liable to a penalty of not more than Five pounds.

Dog Act 1915 s. 21.
Sluts not to be at large at certain times.

22. No person shall exercise or train any greyhound within the limits of any city town or borough save in the grounds belonging to such person or in respect of which he has obtained a right or permission for such purpose unless every such greyhound is first properly muzzled and kept muzzled during the time he is so exercised or trained and every person who acts in contravention of this section shall be liable to a penalty of not less than Five nor more than Twenty shillings for the first offence, and a penalty of not less than Ten nor more than Forty shillings for any subsequent offence.

Greyhounds not to be trained within any city town or borough except on private property.
Ib. s. 22.

23. Every person who wilfully sets on or urges any dog to attack worry or chase any person or any horse sheep poultry or cattle shall be liable to a penalty of not more than Twenty pounds or to imprisonment with or without hard labour for a term of not more than three months.

Wilfully urging dog to attack &c.
Ib. s. 23.

24. All offences against this Act shall be heard and determined and all fines and penalties in respect thereof shall be awarded and imposed and the value of any dog improperly destroyed and the damages or compensation for any injury occasioned or done by any dog as hereinbefore mentioned shall be ascertained and recovered in a summary way before a court of petty sessions.

Offences to be heard and determined and damages to be ascertained by justices.
Ib. s. 24.

25. All fees paid in respect of anything done and all fines and penalties paid or recovered in respect of offences committed within any municipal district shall be paid and belong to the council of such municipal district for the use of such municipal district.

Application of fines &c.
Ib. s. 25.

26. Nothing in this Act shall apply to any dog *bona fide* kept and used as a guide for any blind person: Provided that such dog is duly registered in accordance with the provisions of section four of this Act, and that no fee shall be charged for such registration.

Dogs used by blind persons not affected.
Ib. s. 26.

SCHEDULES.

FIRST SCHEDULE.

Section 2.

Number of Act.	Title of Act.	Extent of Repeal
2641	<i>Dog Act 1915</i>	The whole.
3169	<i>Dog Act 1921</i>	The whole.

Section 7.

SECOND SCHEDULE.

FORM OF DESCRIPTION.

A description of _____ dogs now owned and intended to be kept by A.B.
of _____ in _____ during the year ending on the last
day of February 19 _____ .

Number of Dogs.	Premises on which each Dog is intended to be kept.	Sex.	Age.	Colour or peculiar mark.	Description or kind of Dog.

I the said A.B. [or I C.D. the duly authorized agent of A.B. in his behalf] do declare the above description to be true in every particular to the best of my knowledge and belief.

Dated this _____ day of _____ A.D. 19 _____
A.B. [or C.D.]

Section 9.

THIRD SCHEDULE.

RECEIPT.

Received this _____ day of _____ 19 _____ the sum of _____
for _____ dogs registered by A.B. of _____ in _____ for
year ending on the last day of February 19 _____ the particulars whereof contained in the
following description were given at the time of registration.

Number of Dogs.	Premises on which each Dog is intended to be kept.	Sex.	Age.	Colour or peculiar mark.	Description or kind of Dog.

or Registration Officer
[or as the case may be.]

E.F. Clerk of Petty Sessions
or Town Clerk of