

South Australia

**Criminal Law Consolidation (Protection for Assistance Animals) Amendment Bill 2015**

A BILL FOR

An Act to amend the *Criminal Law Consolidation Act 1935*.

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**The Parliament of South Australia enacts as follows:**

## Part 1—Preliminary

### 1—Short title

5 This Act may be cited as the *Criminal Law Consolidation (Protection for Assistance Animals) Amendment Act 2015*.

### 2—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

## Part 2—Amendment of *Criminal Law Consolidation Act 1935*

### 10 3—Insertion of Part 3D

After Part 3C insert:

### **Part 3D—Offences relating to assistance animals**

#### **83M—Interpretation**

(1) In this Part—

15 *assistance animal* means—

(a) a dog accredited under section 21A of the *Dog and Cat Management Act 1995* as—

(i) a disability dog; or

(ii) a guide dog; or

20 (iii) a hearing dog; or

- (b) a dog accredited under a law of a State or Territory that provides for the accreditation of animals trained to assist a person with a disability to alleviate the effect of the disability;

5 *disability dog*, *guide dog* and *hearing dog* have the same meaning as in the *Dog and Cat Management Act 1995*;

*own* a dog—see subsection (2);

*responsible for the control* of a dog—see subsections (3) and (4);

*serious harm*, in relation to an assistance animal, means—

- 10 (a) harm that endangers the animal's life; or  
(b) harm that results in the animal being so severely injured, so diseased or in such physical condition that it would be cruel not to destroy the animal; or  
15 (c) harm that consists of, or results in, serious and protracted impairment of a physical or mental function of the animal; or  
(d) harm that results in the animal being unable to satisfactorily perform its working function;

20 *working function*, of an assistance animal, means the function or functions for which the animal has been trained and is ordinarily used (whether or not the assistance animal also performs other functions).

(2) In proceedings for an offence against this Part—

- 25 (a) if it appears from a register under the *Dog and Cat Management Act 1995* or law corresponding to that Act that a dog was registered at or before the time of the alleged offence, the person in whose name the dog was last registered in that register will be taken to have owned the dog at the time of the alleged offence unless it is proved that  
30 the dog was subsequently (but before that time) registered in the name of another person; and  
(b) if a dog (whether registered or unregistered) is shown to have been habitually in the apparent ownership of a person, that person will, in the absence of proof to the contrary, be  
35 taken to have owned and to continue to own the dog.

(3) For the purposes of this Part, a person is responsible for the control of a dog while the person has possession or control of the dog.

(4) In proceedings for an offence against this Part—

- 40 (a) if it is proved that immediately before the alleged offence the dog was in company with or had been seen continuously and closely following a person, the person will, in the absence of proof to the contrary, be taken to have had possession or control of the dog at the time of the alleged offence; and

- 5 (b) an occupier of premises in which a dog was kept or permitted to live at the time of the alleged offence will be taken to have had possession or control of the dog at that time unless it is proved that another person of or over 16 years of age had possession or control of the dog at that time.

### **83N—Offences related to assistance animals**

- 10 (1) A person who owns or is responsible for the control of a dog is guilty of an offence if the dog causes the death of, or serious harm to, an assistance animal.

Maximum penalty: \$10 000 or imprisonment for 2 years.

- 15 (2) Subsection (1) does not apply to the death of, or the causing of serious harm to, an assistance animal where the death or harm occurs in the course of training the animal to perform its working function.

- 15 (3) In proceedings for an offence against subsection (1), it is a defence for the defendant to prove that he or she did not know, and could not reasonably have been expected to have known, that an animal the subject of the charge was an assistance animal.

- 20 (4) In proceedings for an offence against subsection (1), the prosecution need not prove that the defendant knew that the dog's action would cause the death of, or serious harm to, the assistance animal, or to a particular assistance animal.

- 25 (5) This section is in addition to, and does not derogate from, the *Dog and Cat Management Act 1995*.

### **83O—Court may order compensation and other costs**

- 30 (1) A court may, on application by the prosecutor or on the court's own initiative, make an order requiring a person found guilty of an offence against section 83N to pay an amount by way of compensation for veterinary and other expenses reasonably incurred in treating the assistance animal to which the offence relates.

- (2) A court must, if it does not make an order under this section, give its reasons for not doing so.

- 35 (3) Compensation under this section will be of such amount as the court considers appropriate having regard to any evidence before the court and to any representations made by or on behalf of the prosecutor or the person against whom the order is made.

- 40 (4) Compensation may be ordered under this section in relation to an offence despite the fact that compensation may be ordered under some other statutory provision that relates more specifically to the offence or proceedings in respect of the offence.

- (5) The amount paid to a person pursuant to an order under this section must be taken into consideration by a court or any other body in awarding compensation for the relevant loss or damage under any other Act or law.

(6) An order under this section—

(a) will, for the purposes of the *Criminal Law (Sentencing) Act 1988*, be taken to be a pecuniary sum (within the meaning of that Act); and

5 (b) may be enforced as if it were a compensation order made under section 53 of that Act.

### **83P—Evidentiary**

In any proceedings for an offence against section 83N—

10 (a) an apparently genuine document purporting to be signed by the Dog and Cat Management Board and to certify that a dog specified in the certificate was accredited as a disability dog, a guide dog or a hearing dog under the *Dog and Cat Management Act 1995* will, in the absence of proof to the contrary, be proof of the matters so certified; and

15 (b) an apparently genuine document purporting to be signed by a person or body that accredits animals as contemplated by section 9(2) of the *Disability Discrimination Act 1992* of the Commonwealth and to certify that an animal specified in the certificate was the subject of a specified accreditation will,  
20 in the absence of proof to the contrary, be proof of the matters so certified.