Unintended Application of the CAA

Background Briefing Note to guide discussions with officers of the OLG – March 2021

<u>On behalf of an alliance of growing community groups protesting the evolving and unintended application of the CAA</u>:
Paws 4 Shoalhaven (contact: Sadhana Goulston)
Pittwater Unleashed (contact: Michele Robertson, Mitch Geddes)
Manly Dogs (contact: Adrian Breakspear)
North Curl Curl Dogs (contact: Alana Schwarz)
Callan Park Dog Lovers (contact: Louisa Larkin, Dr Jonica Newby)
Balmain Dog Lovers (contact: Justine Hoermann)
Unleash Our Beaches (contact: Dr Warwick Ian Prowse)

> *"Councils are locally elected, largely autonomous public bodies vested with wide powers to provide local government services and facilities within their areas of responsibility. In exercising these powers councils are principally accountable to their residents and ratepayers for ensuring that the needs of their communities are reasonably and adequately met. Local communities may negotiate the number and location of leash free exercise areas within their councils so that the needs of all residents, including dog owners and those members of the community who do not own dogs, are most adequately met."*
>
> DLG s.97 Review of Companion Animals Act 1998, June 2004

The purpose of this Briefing Note is to feature the circumstances of the recent *Byerley Case* as a simple demonstration of how the CAA is failing communities across NSW. In so doing, we point out this is not an isolated incident, but part of a pattern of behaviour that has persisted across NSW despite our previous efforts to reach out, *and call out*, this conduct. The tragedy of this is that the sentiment promoted by Council's letter-of-the-law or "mechanical" interface with the people runs counter to the relaxed and easy sense of community that has always emerged strongly as a goal whenever Councils conduct surveys to help shape their community plans and priorities in coastal LGA's.

Rather than present the Byerley Case as a rant merely to express disaffection, we present it as a window through which we can constructively observe *<u>what is happening</u>*, *<u>why it is a problem</u>*, and *<u>the easy fix (local Council issue)</u>*. Finally, we propose an *<u>enduring state-wide solution (OLG issue)</u>*. We are seeking to inform. It is our sincere hope that by doing so, the dog-owning public of NSW will come to feel a little less invisible to decision-makers when rules are being set to meet community need.

WHAT IS HAPPENING (Byerley Case)

On the evening of Thursday 15 February 2018, Barry and Nerida Byerley of Warriewood took their Kelpie "Mali" on an outing to Governor Phillip Park, Palm Beach. This location was of special importance to the Byerley family, who had visited the spot many times over the years.

Barry & Nerida with Mali at Governor Phillip Park, 2012

Having parked the car in a designated space on the lower level near the golf course, Barry and Nerida unloaded Mali and were scouting a good spot to sit with friends who were soon to meet them there. After about 20 minutes, at 5:50PM, a car pulled in alongside the Byerley's car and two rangers approached.

When engaged by the rangers, the Byerleys and Mali were approximately 10m from their parked car having at no time moved more than 30m from the car. This section of the park was otherwise deserted. The rangers indicated displeasure with the fact that Mali was not controlled by way of a leash, and set about taking details for the purposes of issuing a $220 fine.

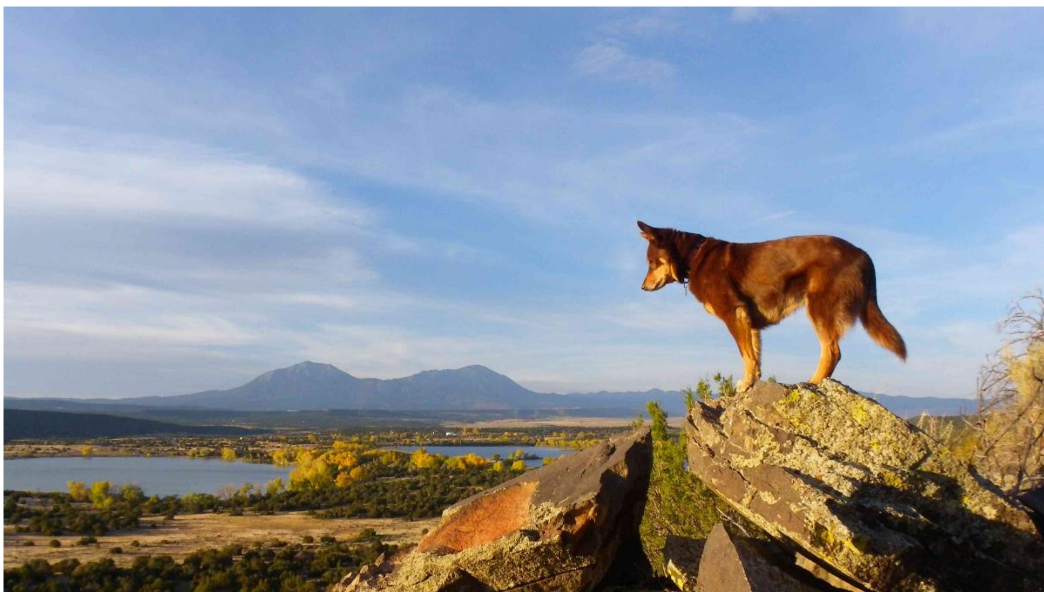
Astonished by the disposition of the rangers, the Byerleys explained that Mali was now in her 16th year, partially blind, and struggling greatly with her mobility. The Byerleys further explained that with her movement now so slow (more of a complicated shuffle than a walk), a leash is impractical. During the entire exchange with the rangers, which included the scanning of her chip, Mali remained fixed in her position.

When inquiring about the need to be issuing a fine, the Byerley's were reportedly told *"oh, we just received a phone call complaining about a dog off leash here"*. The speed with which this slick response came suggested to the Byerley's that the rangers were ready to jump to attention whenever a tip was phoned-in about a sighting of an off-leash dog.

According to the Byerley's, the male ranger (Scott), and a female ranger (Melanie Isbester) were "mechanical" in their behaviour - totally disinterested in, and unsympathetic toward the circumstances of this encounter. Mali died of old age twelve days later.

The visit to Governor Phillip Park was Mali's last "outing" with her "pack". Though she could no longer see well, she knew the location by its smells (rabbits, we suspect), and in her last year or so, there was nothing that delighted her quite so much as just sitting with her family sniffing the breeze and monitoring the chatter. The Byerley's chose Governor Phillip Park because it was a special place for Mali, but it was by no means the only special place she visited.

As a well-behaved pet, Mali took the Qantas flight to North America six years previously and enjoyed a 15-month tour through the National Parks of the USA and Canada. And we're not talking about the *"asparagus fern & feral rabbit"* variety of National Park - we're talking about world-renowned locations where an altogether different kind of ranger was on hand to greet Mali with a pat and a tasty treat as she passed through the gates to these magical locations. No evidence of the local NSW Council ranger disposition was to be found in these places *at all*.



Laptop State Park, Arizona

Jasper National Park, Alberta

State Park, Oregon

Lake Louise National Park, Alberta

Waterton National Park, Alberta

In the mid-ground of the Lake Louise photo, the Fairmont Chateau Hotel can be seen where Mali was a welcome guest - *even in the dining areas*.

Equipped with this healthy dose of reality gained though travelling in other parts, the Byerleys were understandably dumbstruck by the "mechanical" approach used by Scott and Melanie.

WHY IT IS A PROBLEM

There is no suggestion Scott and Melanie are nasty people. Indeed, Melanie reportedly gave the appearance she was uncomfortable with issuing the fine, but was powerless to temper Scott's greater enthusiasm for it. What *was* clear is that the rangers subscribe to a "letter-of-the-law" application of **s.13 (1) of the Companion Animals Act 1998** (the Act):

13 Responsibilities while dog in public place

(1) A dog that is in a public place must be under the effective control of some competent person by means of an adequate chain, cord or leash that is attached to the dog and that is being held by (or secured to) the person.

If we are training our rangers to be robots devoid of common sense, where a letter-of-the-law application of the CAA is the first, last and only concern, it would be reasonable to ponder why this approach is only selectively used for certain parts of the Act. Why, for instance, is there no similar zeal for meeting the requirements of **s.20 (2),** which reads:

20 Dogs defecating in public place

(2) Proper disposal includes disposal in a rubbish receptacle designated for the purpose by the local authority. It is the duty of a local authority for a place that is commonly used for exercising dogs (including an off-leash area) to provide sufficient rubbish receptacles for the proper disposal of the faeces of dogs that defecate in the place.

If letter-of-the-law application of the Act is the rule, why do we not have *"sufficient receptacles"* (or even any) in those places *"commonly used"* beyond merely the off-leash areas?

There is clearly a great interest in **s.13 (1)**, but equally clear is the fact that this interest does not in any way extend to an appreciation of the basis for its inclusion in the Act in the first place.

The need to control dogs with a leash was nothing new in 1998 when the Act was introduced. The new **s.13 (1)** is a carry-over of **s.8** of the (repealed) **Dog Act 1966**.

Whenever letter-of-the-law interpretation is causing unintended consequences (as is demonstrably the case here), it is helpful to examine context. The first place to examine context is **s.3A** which reads:

3A Principal object of Act

The principal object of this Act is to provide for the effective and responsible care and management of companion animals.

Regrettably, the broad "motherhood" nature of **s.3A** is not terribly instructive, leaving the most reliable interpretation of *"effective and responsible care and management*" to be found in the minister's Second Reading speech to the House, available here:
https://www.parliament.nsw.gov.au/Hansard/Pages/HansardFull.aspx#/DateDisplay/HANSARD-1323879322-17257/HANSARD-1323879322-17206

In that speech, the minister takes great care to describe the issues the bill is set to address. It is helpful to examine extracts of his speech in the order they appear:

> Responsible ownership includes considering the impact of companion animals on neighbours and those in the wider community as well as addressing environmental concerns… When animals become a problem for neighbours or wildlife it is often because they are not being given the care they deserve… Significant penalties are proposed for those who do not do the right thing by their companion animals and who allow them to impact adversely on other members of the community. It is a small number of irresponsible pet owners who cause most problems for the community. Their animals are the ones that roam the streets, pollute public areas, cause property damage, or attack people and other animals. These irresponsibly owned animals also provide the link between the domestic and feral animal populations that do such harm to Australia's native fauna.

These introductory remarks make reference to the issue of "roaming" – a recurrent theme elsewhere in the speech and also featuring prominently in the minister's related White Paper process. The minister then confirms the *object* of the bill is:

> To provide for the effective and responsible care and management of companion animals by:
> 1. promoting the welfare of companion animals
> 2. promoting community understanding and acceptance of the important role played by companion animals to many people in our society, including those who are socially isolated
> 3. creating a system of permanent identification and lifetime registration for companion animals
> 4. providing a legislative status for cats as well as dogs
> 5. strengthening restrictions applying to dangerous dogs
> 6. reducing the number of animals which are abandoned and euthanased
> 7. reducing the number of unowned and feral animals, and
> 8. promoting local companion animal planning and control strategies.

Setting aside the unrelated matter of *dangerous dogs* (as defined), it can be seen that, of all the eight *objects* of the bill, inclusion of **s.13 (1)** relates only to *objects* 4, 6 and 7. That is to say, the bill was designed to do much more than keep dogs in public places on a leash, and where the requirement to leash (non-dangerous) dogs is relatable to the *objects*, the context is clearly around the matter of roaming dogs at risk of becoming abandoned, euthanased, disowned and contributing to the feral population.

The minister goes on to advise the House of the thirteen *"significant features"* of the bill, summarised as follows:

> 1. **Permanent identification and lifetime registration for all companion animals**. Permanent identification will provide greater protection for animals and increase return rates of lost animals. It will also serve as a means to identify irresponsible owners and will provide a means of clearly distinguishing unowned animals… Currently each council maintains its own dog register. These

registers are not necessarily compatible and problems have arisen in returning lost dogs to their owners when the dog has strayed out of the council area where it is registered.

2. **An ongoing co-ordinated and effective community education program**. There is provision for a proportion of the lifetime registration fees to be used to establish a statewide companion animals fund… Local councils will also be encouraged to take a more active role in community education at their local level. This strategy will be central to achieving the objects of the legislation…
3. **The fee structure**. As permanent identification and registration have been separated, the fee for permanent identification will not be set by regulation but will be left to market forces.
4. **Desexing**. In order to provide an incentive for people who are not registered breeders to desex their animals, the lifetime registration fee for an entire animal will be $100.
5. **Funding of implementation**. The majority of funds to implement the bill will come from dog and cat owners via registration fees. It is envisaged that the new arrangements will allow councils to allocate sufficient additional resources to properly implement the new legislation. This will mean more effective policing of offences involving dogs, including ensuring less pollution on our streets and in our waterways, fewer roaming dogs off leashes in our parks, fewer attacks on native wildlife by roaming or feral cats and dogs, and better policing of the new and much stricter controls on dangerous dogs.
6. **Advisory Board**. The bill provides for the creation of a statewide Companion Animals Advisory Board.
7. **Limits on numbers of animals**. As a community we are concerned about the numbers of unwanted animals which are handed in to pounds and animal shelters each year. Many of these animals cannot be rehoused and are euthanased. These provisions make us aware of the particular responsibilities we have to manage animals which have not been desexed, both to ensure the welfare of the animals concerned and to reduce the number of unplanned kittens and puppies for which responsible owners are not able to be found… Councils will retain their ability to limit numbers under the Local Government Act 1993 in particular instances where there is a problem.
8. **Continuing provisions of the Dog Act 1966**. Most of the existing provisions of the Dog Act 1966 in relation to dog control are included in the bill. This includes the provisions relating to detaining any stray animal and delivering it quickly to the council pound.
9. **Codes of practice**. There is provision for codes of practice for the care and management of companion animals to be developed.
10. **Dangerous Dogs**. The bill makes separate provision for nuisance and dangerous dog orders… As promised, the Government is strengthening the provisions applying to dangerous dogs. The Government has listened to and acted upon the widespread community concern about continuing dog attacks. Penalties for offences involving dangerous dogs will be significantly increased to deter irresponsible ownership practices…
11. **Disqualification**. Irresponsible ownership will also be discouraged by the provisions relating to disqualification from owning a dog. For instance, if the owner has been convicted under section 35A of the Crimes Act 1900, the owner will be permanently disqualified.
12. **Service Dogs**. The bill contains the power to make regulations in respect of the regulation and accreditation of trained assistance animals.
13. **Cats**. The inclusion of cats within the scope of the bill is an essential component of the management of cats. Without a legislative framework for domestic cats control of stray and feral populations is impossible.

As done above with the eight *objects*, it is helpful to now examine the minister's thirteen *"significant features"* of the bill to identify any relatability to the requirement to keep dogs in public places on a leash. Only when describing *"significant features" 1, 5* and *8* does the minister use language that provides any context at all for the need to keep dogs in public places on a leash.

Feature 1 deals primarily with better management of lost animals or strays. *Feature 5* also clearly aims to achieve *"fewer roaming dogs in parks"* and *"fewer attacks on native wildlife by roaming or feral cats and dogs".* And *Feature 8* includes specific mention of provisions relating to stray animals.

For the sake of completeness, the minister's White Paper materials can also be consulted as a record of the *objects*, as efficiently collated here:
https://www.parliament.nsw.gov.au/researchpapers/Documents/companion-animal-legislation/01-98.pdf

While this collation, known as **Briefing Paper 1/98**, contains much contextual guidance, the most pointed reference to **s.3A** *"responsible care and management"* is to be found in **Section 4** and is summarised here:

If companion animals are not responsibly looked after then problems such as the following occur:

1. Failure to desex animals leads to an increase in the population, which often then results in unwanted animals either being put down or dumped.

2. Neglecting or dumping animals… shows lack of consideration for the plight of another living thing: animals left unattended are at risk of sickness and disease; injury and starvation; causing a nuisance by raiding garbage bins and scattering the contents; attacking other animals - and inevitably breeding by animals at large will lead to a further increase in the population, perpetuating the problem.
3. Concern is also expressed that animals left uncontrolled have an environmental impact, particularly on native birds and animals (Note: there is a clear "cat" context here).
4. If dogs are not appropriately controlled there is a risk not only that people and other animals using these facilities may be harmed but also that the animal itself may be injured.
5. Dogs defecating in public spaces is also of concern from both an environmental perspective and from a user perspective.
6. Dogs left unattended for long periods of time while their owners are not at home can create a nuisance for neighbours.

As can be seen here (at 4), there is finally a reference to a need for appropriate control to manage the risk of harm to people and animals (including the dog itself), yet the need to manage roaming or stray dogs "at large" remains prominent.

Finally, at **Section 5** of **Briefing Paper 1/98**, the *"fundamental principles of responsible companion animal care"* with respect to impacts on the community are listed as follows:

All carers have a responsibility to provide the community with:

1. respect for the rights of other animal carers and for people who do not own companion animals
2. protection from nuisance and injury caused by their companion animal
3. protection of other companion animals, livestock and native animals, from their companion animal
4. protection from stray, dumped and uncared for animals by ensuring responsible breeding practices

It is important to note that not one of these four foundation principles is threatened in any way by a dog being momentarily off leash in most circumstances.

In summary, when taking the Second Reading speech and the related White Paper materials in total, it is clear the Act was drafted to achieve many things. And many provisions of the Act relate closely to the prominent issue of managing "roaming" animals. There is also no doubt that the management of "roaming" animals is designed to: reduce euthanasia rates of impounded "at large" animals; reduce the incidence of nuisance activity such as raiding garbage bins; reduce cross-over and propagation of the feral population; reduce "at large" predation on native wildlife (though this is noted primarily as a cat issue); reduce unwanted and occasionally harmful interaction with humans and animals; reduce incidence of uncollected dog waste.

The Byerley case did not involve a roaming dog. It involved a very old dog in her last days of life. It involved an immobile old dog with no interest in moving beyond a tight radius of her owner. But she was momentarily off leash, so a fine was issued. Letter-of-the-law, NSW style.

It is not disputed that Mali was off leash at the time of the engagement with Melanie and Scott. As such, the letter-of-the-law application of **s.13 (1)** was open to the rangers if this was their assessment of what was necessary.

But even when bringing a letter-of-the-law mindset to their dealings with the community, this immovable precision clearly does not extend to getting the paperwork right. As shown below, the incident was processed under **s.12A (1)** and refers to "Roaming Dog" having been "collected". When these details were disputed as not in accordance with the facts, the fine was withdrawn.

B J Byerley
60 Narrabeen Park Parade
WARRIEWOOD NSW 2102

Our ref: An2018/00465

Dear Mr Byerley

Roaming Dog at Beach Road, PALM BEACH

I refer to the Roaming Dog (982 009 100 755 752 – Australian Kelpie) which was collected by Council Rangers on 15/02/2018.

This is an offence under Section 12A (1) Companion Animals Act.

In accordance with Council's Compliance and Enforcement Policy, Council has elected to issue a Penalty Infringement Notice of $220.

THE EASY FIX (local Council issue)

The embarrassing absurdity of the rigid mindset giving rise to the *Byerley Case* is that, had it occurred in a park a little further south - within the former Manly portion of the amalgamated Northern Beaches LGA - the situation would not have arisen.

Even if the Council organisation regards letter-of-the-law, mechanical interaction with the community a desirable thing, and the “Melanies and Scotts” down the line have no choice or say in the matter, the standing provisions of the **Manly Council D70 Urban Dog Management Policy** serve to kill off this kind of encounter.

This is because *that* Policy is structured in a way that lists sensitive areas where dogs are not to go, or can only go at certain times or on leash, and then for the balance of Council green space, **Clause 2, 3** applies as follows:

> 3. All other reserves under the care, control and management of Council may be used for the exercising or training of dogs provided that such activities do not conflict or interfere with any other users or authorised events on such reserve.

Had this mindset applied to the former Pittwater portion of the amalgamated LGA, Governor Phillip Park would have qualified as one such *“other reserve”*, and the presence of Mali off leash would have been of no consequence to anyone. *And the last outing with her family would have been far more befitting this legendary dog.*

The problem with **Pittwater Council Dog Control Policy 30** is that it switches the default, where apart from a few areas listed within the Policy where dogs are permitted off leash, all other areas are happy hunting grounds for rangers who spot any dog off-leash for any reason.

The sight of a distant groodle playing fetch, in an otherwise unused bit of park,
has Council rangers in a state of panic and issuing fines against s.13 (1)

As Northern Beaches Council sets its mind to integrating the dog policies of its pre-amalgamation LGA’s, it will be interesting to see which approach is to be used. Will the **Integrated Dog Policy** be modelled on the **Manly Council D70 Policy**, with its **18 years of relative peace and harmony**, or will it be modelled on the **Pittwater Council Dog Control Policy 30**, with the **17 years of confusion and acrimony** it has wreaked? Choosing the former is the easy fix locally.

But this exposé is not all about policy – we’re talking about humans dealing with humans. When our rangers become a *“dial-up, on command”* resource to be instantly dispatched on nothing more than a snooty phone call about a dog momentarily in the wrong place, we are left to ponder whether this is reasonable and efficient use of this costly compliance resource.

If Council officers think it is fair game to use **s.13 (1)** for petty technicalities as we have seen here, there is clearly a need for some appreciation of the *objects* of the Act. ***A greater understanding of what the Act set out to achieve can never be a bad thing***.

THE ENDURING STATE-WIDE SOLUTION (OLG issue)

Although the Byerley Case is an example drawn from the Northern Beaches of Sydney, where tensions have been running hot for many years with respect to inadequate provision of off-leash space, the very same tensions are rising across other parts of NSW.

A prime cause of this tension is the “weaponisation” of the on-leash rule by narrow interest groups who deploy a modern-day ***reimagination*** of why this rule, and the “Dogs Prohibited” rule (where it is deployed), came into existence. The ***reimagination***, is that the objective is said to be rooted in “environmental protection” when the contextual materials reviewed above make clear that this was not the case. Insofar as a danger to native fauna was canvassed when drafting the CAA, this was in the context of roaming/stray dogs (and more relevantly, cats) left to their own devices and at some risk of crossing over into the feral population. The supervised family dog, that has benefited from basic training and love, is at no risk at all of becoming the dog that gave rise to the CAA provisions aimed at solving the problem of roaming/stray dogs.

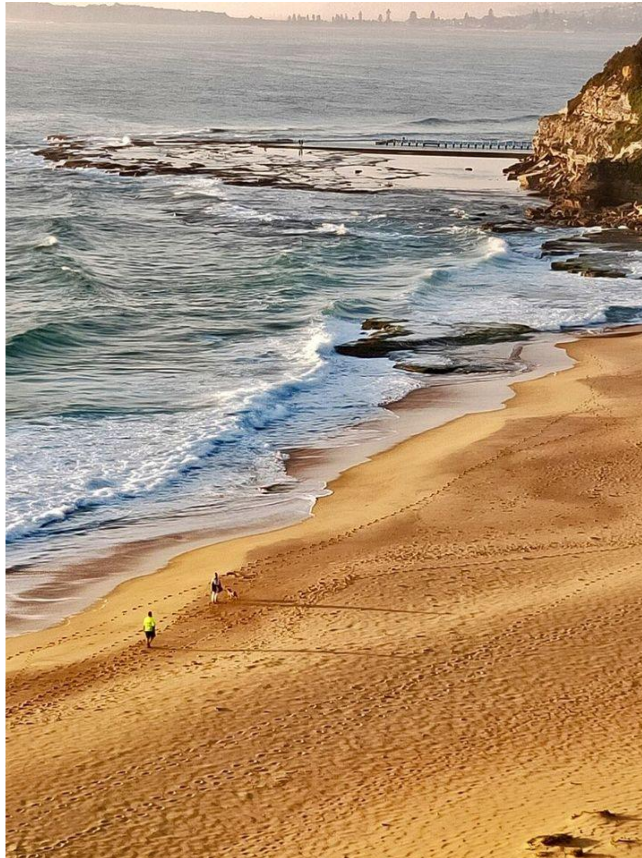
The prohibition of dogs in beach areas, when introduced on the Northern Beaches over 20 years ago, was to manage a ***nuisance*** issue. That is, the possibility of sandy paw prints across towels, the occasional leg-cock on a beach bag, and the undesirability of dogs being near people who were uncomfortable with them, all needed to be managed. This was done though introduction of a “no dogs on the beach” rule, and dog-owners understood this need. But modern-day ***reimagination*** of the objective to be served here has seen a ***creeping regulation*** taking place in recent years where foreshore areas that were never the subject of the “no dogs on the beach” rule suddenly became off-limits in the name of an “environmental protection” thrust that has never been put to the people. The respective dog policies of the former Manly and Pittwater LGA’s (which remain in force today) were drafted without the benefit of a definition of “beach”, and the ***creeping regulation*** has seen any foreshore area on the harbour or Pittwater now caught up in this, thereby denying families with dogs access to the swimming spots they had hitherto enjoyed for generations.

The bans on dogs at our surf beaches had nothing to do with “environmental protection”. Even in Wildlife Protection Areas (WPA’s) - designated by Councils using processes of variable transparency ***specifically to protect wildlife*** - there is no automatic prohibition of dogs. Such a prohibition requires an additional explicit order of Council, around which there exists a sufficiently-transparent process. WPA’s across Sydney from the Blue Mountains to the Northern Beaches have WPA’s where dogs are not banned, but are merely required to stay “on leash, on path”. This is a policy setting that works well, as a long walk with the dog allows bushland areas to be taken in along the way (often making the walk worthwhile), without forcing kids and dogs out and along the edge of busy roads.

The ***creeping regulation*** sees beach areas not only treated as WPA’s (when they are not), but treated as WPA’s on a presumption that such a designation bans dogs (which it doesn’t).

Taken together, the letter-of-the-law application of **s.13 (1)** and the modern-day ***reimagination*** of the reason for some of our dog controls, sees the dog-owning public increasingly forced into smaller, less-attractive areas when vast expanses lack the activation that they could easily accommodate by way of a sensible, balanced approach. We have verifiable cases of rangers accosting and fining dog-owners for:

- Momentarily stepping onto intertidal area in order to skirt around a fallen tree that was blocking the shoreline path (a path where dogs are allowed),
- Allowing their unleashed dog to walk 20m from their car to the gate of the off-leash area,
- Allowing their unleashed dog to step outside the front gate onto the Council nature strip alongside the owner’s letterbox, and
- Deigning to take a pre-work 6am walk on an unoccupied stretch of sand.



6:30am ambush on an otherwise deserted Turimetta Beach

Unintended application of the CAA - with all the ***reimagination*** - facilitates this nonsense, and it must stop.

There are four legislative issues we raise with OLG:

1. Call for codified discretionary powers
Enforcement officers have discretionary powers, but there is mounting evidence of these not being accessed at times when they reasonably ought to be. A "Discretion Protocol", along the lines of that proposed here (see attached), sees spirit-of-the-law finally having some chance of competing with letter-of-the-law application of **s.13 (1)**. Coming back to the Byerley Case, how unworkable would it have been if the ranger had instead just said to the Byerleys: *"Hey, beautiful old dog there. I see she's no concern to anyone, but if someone sees me walk on by while she's still off leash it could be a bad look for me. Thanks for hooking her up."*

2. Establishment of the "30-second rule"
As a key feature of the Discretion Protocol, the so-called "30-second rule" should be encouraged, whereby the ability to demonstrate effective control "by way of a leash" is given a 30-second grace period from commencement of the engagement. Where the owner has been unable to demonstrate control "by way of a leash" within that grace period, the officer would be entitled to progress the assessment of whether a **s.13 (1)** fine or warning is warranted.

3. Review of the 2018 increase in the s.13 (1) fine from $220 to $330
It appears the 50% increase in the penalty for a **s.13 (1)** breach, from $220 to $330, was an outcome of the "Review of the Companion Animals Regulation 2008" process, where materials informing that process contemplated increases in penalties *"to reflect inflation and reduce the high rate of offending in relation to certain offences".* It is unclear from where the call for such a hefty increase came, nor is it clear whether any such call for this increase was ever properly weighed against the views and perspectives likely to have been offered by groups such as ours. As explored in this Briefing Note, there are many explanations for *"a high rate of offending"* against **s.13 (1)** including letter-of-the-law application of the Act, and inadequate provision of off-leash

space. The 50% increase appears excessive, and on its own, a lazy and unimaginative way of attempting to improve levels of compliance. At $330 for a **s.13 (1)** off-leash breach, along with $330 for walking on the wrong side of a post and rail fence, thereby triggering the momentary **s.14 (1)** prohibited place breach, the owner attracts a $660 fine. Yet if that owner were to be pulled over by the police for texting while speeding, a composite fine of only $456 would apply ($337 + $119). For these two scenarios, it is difficult to reconcile the quantum of penalty against the potential risk to the community, and this is reason enough for a review of this 2018 change.

4. OLG to encourage shared off-leash activation of open space as the default

> *"The Minister for Public Spaces would have responsibility for enhancing and expanding the State's parks and gardens and open spaces, ensuring that there is sufficient open space across NSW, and that public spaces are made welcoming and attractive."*
>
> NSW Government media release – 3 February 2019

> *"There were elements of Open Space in Planning, but it wasn't given the prominence or emphasis that it's given today. It was one of those areas that fell between the gaps in between different government silos. I think agencies in the past thought of it as their land, but it's not – it's the people's land and we're trying to change that thinking."*
>
> Hon. Rob Stokes MP – Sydney Morning Herald, 5 May 2019

> *"Different parts of Sydney will have different opportunities. We're now reaching the limits of how far Sydney can physically grow so we've got to be much more thoughtful about the land that we do have."*
>
> Hon. Rob Stokes MP – Radio 2GB, 15 April 2019

Faced with limited open space, the NSW Government well recognises the need to be activating that space *we do have*, even if this requires a reminder that *public land is for the public*. Yet set against this increasing need to be activating public space, policies on the ground are all too often causing *less activation*, as is demonstrated by the ***creeping regulation*** driving off-leash activity out of existence. The former Manly Council has wrestled with competing recreational demands in a densely-populated and constrained LGA for longer than most, and its **D70 Policy** has proved to be workable over the longer term. The key element of the **D70 Policy** is its activation of Council reserves (permitting shared off-leash activity as the default) other than in those areas specifically assessed and listed as requiring a leash control (timed, or outright), or an outright dog prohibition. This approach, encouraged more broadly across NSW, would allow greater use of our parks, and also allow key nesting sites to be protected as necessary in beach and foreshore locations without the blanket bans which serve the dog-owning public so poorly. In many cases, as with popular use by beachgoers, this need is highly seasonal, leaving vast expanses underutilised for most of the year. The NSW Government can find more and more money for things like the Greater Sydney Crown Land Open Space Activation Program, but ultimately it needs to be ***sending a clear message through statutes such as the CAA*** in order to have these activation aims properly reflected in Council policy outcomes.