

To dock, or not to dock?not a short tale.

By Mike Ferrar.

The issue of docking a dog's tail has become a seriously vexed question. There are factions, both for and against, and there's a fair amount of dogma. Misinformation abounds, and getting to the bottom of it all isn't easy. One is also left with the impression, on delving deeply, that some of the misinformation isn't out there by accident. Some in the factions seem very determined to ensure that their dogma with a long tail prevails.

So, what's so vexing about it? Around the issue, there are a number of intimidating words and phrases bandied about. "It's illegal"; "the Ban", and "at your own risk" are some of these. A glance through some of the *dramatis personae* involved is helpful. You have the South African Veterinary Council (SAVC), the South African Veterinary Association (SAVA), the National Council of the Societies for the Prevention of Cruelty to Animals (NSPCA), SA Wingshooters Association, The Working Spaniel Association, The Weimaraner Club, the Kennel Union of South Africa (KUSA) and its Field Trial Liaison Council (FTLC), The Docked Breeds Association of South Africa, and, significantly, the State, which is brought in to the matter through its own Legislative Statute. The nub of the matter turns on two issues: firstly whether the practice of docking of tails constitutes cruelty, and secondly whether the practice of docking of tails constitutes a contravention of the Law, i.e. is illegal. These two issues are inextricably linked, since the answer to one question determines the answer to the other.

I walked headlong into the issue on having a litter of English Springer Spaniels born to my beautiful Springer, Georgie, who herself has a docked tail, as does the Sire of the Litter. The question of the docking of their tails suddenly assumed enormous urgency, since if it was to be done, it would have to be done within three or four days of birth. I sms'd our nearest vet – not close by here in my *platteland* environment, nor easy to consult as he ranges the Karoo, out of cell range, doing what city dwellers would describe as House Calls. An "SMS" is by definition a Short Message Service; no scope for detail, and his reply was pretty succinct. "It's illegal. Can't do it." Why illegal, I wondered? And what makes it so? I had heard that there was something about docking of tails, but was very sketchy on detail. So I set about investigating, with my lawyerly instincts on full alert. I first looked for legislation – something that expressly stated "It is an offence to dock any tail on any dog" and stated further that "Any person found guilty of having docked a dog's tail, shall be guilty of an offence, and shall be liable to be sentenced to a fine of not less than R....., ormonth's imprisonment, or both". And if it is now illegal, why? It usen't to be, so what has precipitated the

change? My delving has produced much of interest, not a little controversy, some clarity, and quite some muddy water.

The Vets are adamant. They won't do it. Their principal reason for their refusing to do it lies in the decision by the SAVC that *"as of 1 June 2008, it will no longer condone routine tail docking of puppies by veterinarians."* The SAVC is the statutory body that regulates the veterinary and para-veterinary professions and is authorised and empowered by the Veterinary and Para-Veterinary Professions Act No. 19 of 1982 to set and maintain professional standards for Veterinarians and Para-Veterinarians. The SAVC explains the import of their decision as follows: ¹

"Veterinarians who perform tail docking, unless for justifiable medical reasons, will be liable for prosecution under the Animal (sic) Protection Act No. 71 of 1962. Veterinarians found guilty under this Act will automatically be investigated for unprofessional conduct by the SAVC under the Veterinary and Para-Veterinary Professions Act, 1982."

The SAVC goes on to explain:

"The National Council of SPCAs (NSPCA), as the body primarily responsible with applying the tenets of the Animal (sic) Protection Act has in the past not enforced the relevant clause in the Act due to the fact that the SAVC has in the past "condoned" the performing of the procedure. This has created a legal loophole that would have made the successful prosecution of any person based on the Animal (sic) Protection Act unlikely to succeed. This has now changed with the SAVC decision. Although the SAVC decision only directly affects veterinarians, lay people who perform the procedure will now also be liable under the Animal (sic) Protection Act."

It is implicit in their reasoning that the fact that they no longer condone routine tail docking of puppies provides support for the view that tail docking constitutes either a maiming of a dog, or causes unnecessary suffering. Their policy statement, whilst clear in stating that any veterinarian found guilty of an offence under the Animals Protection Act will be automatically investigated for unprofessional conduct, is not clear on whether a tail docking *per se*, for which the veterinarian has not been prosecuted under the Animals Protection Act, is itself regarded as unprofessional conduct, for which the veterinarian can be censured in terms of the Veterinary and Para-Veterinary Professions Act. In this regard, legal opinion exists that is of the view that the SAVC has failed to properly and lawfully amend its Code of Conduct pertaining to the docking of dogs tails, in that the procedures for notification of the Resolution bringing about the change

¹ Extracts from "The South African Veterinary Council policy on tail docking in dogs", accessed in 2010 from website www.savc.co.za/taild.htm

have not yet been properly complied with, nor has Ministerial Approval, as required by the Veterinary and Para-Veterinary Professions Act, been given.²

The Legislative Statute relevant to the issue is the Animals Protection Act No. 71 of 1962, passed by the State with the specific purpose of consolidating and amending the laws relating to the prevention of cruelty to animals, repealing the old Prevention of Cruelty to Animals legislation, and which came into force on 1 December 1962. There have been various amendments to certain of the provisions of this act since December 1962. The sections relevant to this discussion are:

- Section 2(1)(a) of the Act, which provides that any person who: “.....ill-treats,tortures or maimsor cruelly.....terrifies any animal;” shall be guilty of an offence under the Act;
- Section 2(1)(r) of the Act, which provides that any person who: “by wantonly or unreasonably or negligently doing, or omitting to do any act or causing or procuring the commission or omission of any act, causes any unnecessary suffering to any animal;” shall be guilty of an offence under the Act;
- Persons found guilty of these offences under the Act shall be liable to a fine not exceeding R4000 or in default of payment to imprisonment for a period not exceeding 12 months or to such imprisonment without the option of a fine.
- Section 8 of the Act, which confers certain powers upon officers of the “society for the prevention of cruelty to animals” with the written authority of a Magistrate, to make arrests without a warrant, and to conduct searches of the premises of any person reasonably suspected of having committed an offence under the Act.
- Section 9 of the Act, which provides that if at the trial of any person on a charge of an offence under the Act, the court is satisfied that any person or body has without reasonable cause and vexatiously lodged the complaint which has led to such a trial, the court may award costs against such person or body.

Thus, I found nothing expressly stating that it is an offence to dock any tail on any dog, nor did I find any legislative change, since December 1962, precipitating the change of view of tail docking from what was previously commonplace and regarded as legal, to what my local vet had sms'd me: “It’s illegal. Can’t do it.”

² Tail Docking in South Africa: Legal Opinion. Mason Inc, Attorneys, Pietermaritzburg – Petrus Coetzee, 1 October 2009.

My delving continued. What do persons and bodies other than the Vets, and their professional body think?

SA Wingshooters have published a most interesting Fact Sheet,³ which points out that the docking of tails in certain gundog breeds is a practice which has been carried out for centuries *in order to prevent injury and pain* (my italics). They assert that docking is a humane procedure that, when properly carried out, prevents serious injury and distress, and which, unlike neutering, is far less stressful with no hormonal or other side effects. They also have published some rather telling statistics. Pointing out that since there was little need to investigate tail docking in South Africa in the past, few South African statistics existed at the time of their research. However, Sweden banned tail docking in 1989, and statistics there reveal that since then, there has been a massive increase in tail injuries amongst previously docked breeds. Within the 50 undocked Pointer litters registered in that year with the Swedish Kennel Club, 38% of dogs suffered tail injury before they were 18 months old and two years later, by 1991, the number of individuals with tail injuries had increased to 51% in the same group (Gunilla Strejffert, *Report to the Swedish Breed Council for German Short Haired Pointers, 1992, Borlange, Sweden*). Even more alarming is the finding that only 16% of injury cases had improved, 40% showed no improvement, and more than half the dogs with tail injuries had regressed within the two year period! The conclusion drawn by SA Wingshooters is that the tail docking of gundog breeds is practised *not for cosmetic reasons* (my italics), but to prevent serious injury. They recognise that Field working is a human induced activity for which we must accept the responsibility, which responsibility gives rise to a duty to prevent distress to our animals, the prophylaxis for which is tail docking. Out of their research, and experience comes this Policy Statement:

1. From a professional veterinary point of view, failure to dock and clip in the prescribed manner the tails and dew claws of specific gundog breeds intended for field work, is considered unethical; and
2. From a legal point of view, such failure is regarded as constituting animal cruelty.

This Policy is endorsed by The SA Wingshooters Association, The Hunt, Point and Retrieve Field Trail Association, The Working Spaniel Association, The Weimaraner Club, and The KUSA Field Trial Liaison Council.

Interesting contrasting views – one view holding that the docking of tails constitutes cruelty, the other that failure to dock tails, in certain circumstances, constitutes cruelty!

³ SA Wingshooters Fact Sheet, 2005, accessed in 2010 from website www.wingshooters.co.za

But all of this doesn't answer the central questions – is tail docking illegal, and if so, why? I then considered what would have to take place to convict a tail docker, in terms of the Animals Protection Act.

- Any prosecution of an alleged offender would have to be at the instance of the State through the office of the Public Prosecutor in the court having jurisdiction over the area in which the offence is alleged to have taken place. Whilst the charge may be laid at a Police Station by, for example, an officer of the Society for the Prevention of Cruelty to Animals, the matter would have to be investigated by the Police, and the facts placed before the Public Prosecutor who would ultimately decide whether there is a case to be answered or not.
- The Onus is upon the State to prove beyond a reasonable doubt that the relevant provisions of the Act have been contravened by the alleged offender - the accused.
- The only provisions of the Act relevant in a tail docking are Sections 2(1) (a) and 2(1) r quoted above. The terms to be interpreted are “maim”, and “causes unnecessary suffering to an animal”.
- The Act provides no definition of the term “Maim”, therefore the ordinary dictionary meaning of the term would apply. Ordinarily, a maiming is an injury to the body which causes the loss of, or the use of a limb. Ordinarily, a limb means an arm, leg, or the analogous part of an animal, such as a wing. Thus it is doubtful, at least, that the docking of a tail constitutes a maiming.
- Does docking cause “unnecessary suffering”? Both elements, “unnecessary” and “suffering” need to be established beyond reasonable doubt. The arguments put forward in the SA Wingshooters Fact Sheet on the question of necessity are compelling, and not refuted by the SAVC Policy. There is considerable experiential and scientific evidence garnered over many years of tail docking that if done within 5 days of birth, the procedure causes little or no pain, and hence suffering.

With all of this swirling around in my mind, I contemplated trying to put some order into the confused picture confronting me, and have come up with the following:

- I do not believe that it is illegal for anyone to dock tails, provided that the procedure is done within 5 days of birth, and it is done properly, as it would have been done by a Veterinarian prior to the SAVC pronouncement.
- The Law has not changed. The intention of the Legislature, at the time of passing the Animals Protection Act was not to ban tail docking, otherwise it would have specifically said so. The practice was then well established, and

would have required clear and unambiguous language to put a stop to it. No change has been brought about by any of the subsequent Amendment Acts passed by the Legislature.

- My view of the matter has been reinforced recently by the Director of Public Prosecutions declining to proceed with a prosecution of this nature recently in KwaZulu Natal.
- I don't blame the vets for refusing to do it. Any busy practitioner probably doesn't have the time, or the inclination, or, with no disrespect, the legal skills to delve into the niceties of proper compliance procedures in terms of the Veterinary and Para-Veterinary Professions Act, so as to decide whether or not the SAVC Policy is enforceable. Neither is a busy practitioner likely to risk being investigated for unprofessional conduct, regardless of the prospects of being found not guilty.
- What has changed is attitude. A vociferous animal rightist lobby has adopted the attitude that tail docking is an unacceptable practice. That lobby now seeks to "bend" the legislation to suit their view, and to interpret it in a manner for which the Legislature never intended. Not all caring and discerning dog lovers share this attitude, and with good reason.
- Any Body, or person, seeking to lay a charge against anyone properly docking a dog's tail, would be well advised to consider the risks in doing so posed by the provisions of Section 9 referred to above.
- Until such time as there is clear legislation passed by Parliament on the issue, tail docking will remain legal.
- Georgie's next litter are likely to have docked tails – unless market research dictates otherwise!

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