



## Tail docking in South Africa: Legal opinion

Source: Mason Inc – Petrus Coetzee  
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*The SPCA made its position on tail docking clear when a SABBA member was recently served with a Court Order for the removal of 'illegally docked' puppies in KZN. The puppies were quickly returned, but it appears that the SPCA will use all means possible to obtain the first prosecution for the tail docking of puppies. Several other SABBA members have also been approached by the SPCA.*

*SABBA had already advised members that in terms of published legislation it would be very difficult to prosecute breeders for docking the tails of their puppies, unless it could be proven that they were treated in a 'cruel and inhumane manner' or 'maimed'. See [Arguments for and against tails](#) and [KUSA: 'No law prevents tail docking'](#) on the SABBA website.*

*Due to the unclear legal position, our member sought clarification of the current law from Criminal Defence Attorneys. Their feedback confirmed and expanded upon SABBA's interpretation, but the Association agreed to pay R3 000 towards the legal costs in view of the possible benefits to other members who may find themselves in similar situations in the future. SABBA members in KZN, as well as from abroad have also pledged their support. Please contact [Alan Pittam](#), SABBA Board member for KZN if you would like to contribute to the legal costs. We publish the legal opinion in full for the benefit of all members, and other interested parties.*

### **Legal opinion: Attorneys Mason Inc, Pietermaritzburg – Mr Petrus Coetzee**

'At present, there is a ban on docking dogs' tails, effective from 1 June 2008 in terms of the Veterinarians Code of Conduct. The SA Veterinary Council has resolved to issue the ban - effectively the ban prohibits **veterinarians** from docking tails.

Should a vet or any person now dock a dog's tail, it would be an offence and they would be liable to prosecution in terms of sec 2(1) (a) of the Animal Protection Act 7 of 1962.

Given the fact that there can be prosecution for being cruel to an animal or a charge arising out of cruelty to animals, any person can be prosecuted in terms of Sec (2)(1)(a) of Act 7 of 1962 for an **alleged** offence.

### **Whether they can be successfully prosecuted is a different matter all together.**

Prior to the SAVC passing the ban in its Code of Conduct on docking, the docking of dogs' tails was condoned, i.e. the act of docking itself was overlooked or disregarded as being cruel and inhumane, this was contained in the previous Code of conduct and allowed breeders to perform the docking.

The SAVC has since amended its Code of Conduct pertaining to the docking of dogs' tails and came into operation on 1 June 2008. The SAVC has **attempted** to remove the condonation of tail docking, causing the actions of persons who dock tails to be unlawful and illegal.

As it stands, there is no notification of the resolution, which has been taken by the SAVC. There is no notification in the Government Gazette nor is there Ministerial approval as required by the Veterinary and Para Veterinary Professions act 19 of 1982. .

Rules as contained in Section (30) of the Veterinary and Para Veterinary Professions Act No. 19 of 1982 make provision for the Council (SAVC) to make certain rules.

Section 30(1) (g) authorises the Council to make rules on any matter, which the council deems necessary or expedient for the promotion of its objects or for the exercise of its powers or for the performance of its functions.

The SAVC has resolved to ban tail docking on **ethical** considerations. This ban would accordingly be a rule, which falls within the council's power in terms of Section 30(1) (g).

In terms of Section 30(2), the rule created under Section 30(1) (g) would primarily be for vets who deal with domestic pets.

Section 30(3), which states that: no rule made in terms of Subsection (1) or any amendment or withdrawal thereof shall be of force and effect until approved by the Minister and published in the Gazette by the Registrar.

Because the rule has not been published in the Government Gazette or been given Ministerial approval, (through search of the Government website re: Government Gazettes and telephone call to Ms Singh of the SAVC) it has no effect, **the law has not been changed.**

If prosecution is instituted this could be a possible defence, it will be difficult for the state to prove that the docking causes the puppy unnecessary pain and suffering and or maims the animal.

The prosecution would have to lead medical and scientific evidence to prove that the docking of dogs' tails is cruel.

The facts of each case will have to be considered as our courts adopt a casuistic approach. If the docking was performed in a manner, which establishes beyond a reasonable doubt that same constituted ill treatment, torture or maiming of an animal, any prosecution in terms of Section 2(1) of Act 71 of 1962 will succeed.

The prosecution will have to lead expert evidence (for example the evidence of a vet) that the docking was performed in such a **shocking** manner, that the only inference to be drawn by the court is that the dog would have suffered. This in turn will then prove that ill treatment, torture, or maiming occurred.

Provided the docking in your case was done professionally, it is doubtful that the prosecution will succeed in proving that there was ill treatment, torture or maiming'.