

Dangerous dogs—Victorian Legislation

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INTRODUCTION

This Paper discusses the progressive development and implementation of Victorian legislation to regulate, protect and control the ownership of dangerous dogs; and attempts to explain the rationale and objective of the legislation. For the purpose of this Paper a dangerous dog is considered to be a dog which has attacked people or other dogs and/or potentially dangerous dogs which have shown aggressive tendencies.

BACKGROUND

On 29 November 1994 the then Victorian Government proclaimed the introduction of new legislation titled the “*Domestic (Feral & Nuisance) Animals Act 1994*” which sought to come into effect throughout Victoria on 9 April 1996 and repealed and replaced the existing *Dog Act 1970*. The draft legislation in one form or another had taken several years and two Governments to develop as it sought to undertake a fundamental change in philosophy and legislative approach to domestic animal management by promoting/rewarding responsible animal ownership, whilst increasing control and retribution of irresponsible owners. These guiding principles are clearly articulated and entrenched in the Purpose detailed in the front of the Act which states:

“The purpose of this Act is to promote animal welfare, the responsible ownership of dogs and cats and the protection of the environment by providing for —

- (a) A scheme to protect the community and the environment from feral and nuisance dogs and cats; and*
- (b) A registration and identification scheme for dogs and cats which recognises and promotes responsible ownership; and*
- (c) The identification and control of dangerous dogs; and ...”*

At the time of its introduction the *Domestic (Feral & Nuisance) Animals Act 1994* contained a provision to enable Council to declare a dog dangerous, however through a close working relationship with local government and other animal/animal welfare agencies, the legislation has undergone extensive change. These legislative changes now enable Council to pronounce menacing dogs that continually offend to be declared dangerous dogs and to place restrictions on the ownership and control of specific breeds of dogs.

Consequently the Victorian Legislation now has a four tiered approach to dealing with the issue of dangerous and/or potentially dangerous dogs. A summary of the various provisions and their application methodology is as follows:

Menacing dog

Menacing dog provision was introduced in the Act in December 2000 when it was identified that a number of Victorian Councils were reluctant to prosecute a dog which rushed or chased a person. This reluctance was as a result of these offences being linked to other offences such as actual attacks and worrying (the grabbing around the throat and shaking furiously) and were therefore considered minor by Council and the Courts which was reflected in the action taken and the penalties imposed. To ensure these offences were considered seriously they were subsequently separated and a 'rush' was defined as a dog which:

“approaches a person to a distance of less than 3 metres in a menacing manner, displaying aggressive tendencies that may include snarling, growling and raised hackles.”

Penalty for a dog that rushes or chases a person is up to \$400.

Additionally, or alternatively, if a dog has rushed or chased a person, Council or its delegated officer may declare the dog to be a menacing dog. In seeking to declare the dog a menacing dog Council must:

- notify the owner of its intent,
- allow the owner the opportunity to make both written and oral submission, and
- Council must consider any submissions submitted to it before making a declaration.

Following consideration of submissions received, Council may still decide to declare the dog a menacing dog. However, it must serve notice on the owner in person or via registered post within seven days after making the declaration giving the reasons for making the declaration. Council may also impose conditions with respect to the dog being muzzled or leashed outside the owner's property.

If aggrieved by the declaration the owner has 28 days to appeal Council's decision to the Victorian Civil and Administrative Appeal Tribunal for determination. Alternatively a Court may declare a dog to be a menacing dog upon charges of rushing or chasing being proven at which time the owner may only appeal to a higher court.

Dangerous dog

With the introduction of the *Domestic (Feral & Nuisance) Animals Act 1994* came the opportunity for Councils to declare certain dogs as dangerous dogs based on their actions, training and intended use. Whilst the 'dangerous' provision was in the initial legislation it has been reviewed and refined to include the following aspects.

Dogs that may be declared 'dangerous':

- a dog that has caused serious injury to a person or animal by biting or attacking that person or animal. (*Serious injury is defined as broken bone, lacerations requiring multiple sutures, cosmetic surgery, total or partial loss of sensation of any body part*),
- a menacing dog when its owner has received 2 infringements for further rushes, chases or breach of restraint condition in public places,
- if a dog has been declared dangerous by another Council.

A dog is automatically a dangerous dog under the Act if:

- the dog is kept as a guard dog for the purpose of guarding non-residential premises, or
- the dog has been trained to attack or bite a person or any thing when attached to or worn by a person.

The process and appeal rights with respect to Council declaring a dog a dangerous dog are similar to that of a menacing dog. However, a dog in this instance, cannot be declared dangerous by the Court.

Owners of dangerous dogs have strict restrictions imposed on them to ensure their dog does not pose a threat to the community and these restrictions include:

- the keeping of the dog indoors or in child proof enclosure constructed in a manner to prevent escape with a weatherproof sleeping area and a floor space of at least 10 square metres unless actually guarding a secure non residential property;
- the dog must be microchipped and at all times wear a distinctive reflective collar;
- the property is to be appropriately signed at every entrance; and
- the dog is to be leashed and muzzled when outside the owner's property.

The owner of a dangerous dog must notify Council within 24 hours if the dog attacks another person or animal, is missing, changes ownership or address or dies.

Penalties for breaching the Dangerous Dog provisions vary from \$500 - \$1,000. Based on information available at the time of preparation no dog which has been declared a dangerous dog has reoffended.

DOG ATTACKS

Under the *Domestic (Feral & Nuisance) Animals Act 1994* it is an offence to set a dog to attack, bite, rush or chase another person or animal except when hunting in accordance with the *Prevention to Cruelty to Animals Act 1986*. Similarly it is also an offence to allow a declared dangerous dog to attack or bite another person or animal. In both these instances there is either a clear intent or prior knowledge of the propensity of the dog to attack and therefore the Victoria Government has imposed a penalty of up to \$12,000 or six months imprisonment.

For lesser offences and often first time offences the penalty has been set at a maximum of \$1,000. Nevertheless in all cases the owner (being the person in charge of the dog) is liable for any damages caused by the conduct of that dog.

Additionally the dog may be seized and detained by the authorised officer if the officer reasonably suspects that the owner is guilty of setting or allowing the dog to attack or bite a person. However, legal proceedings must be commenced as soon as possible and, subject to being found guilty, the dog may be destroyed by Council or Court Order. The owner of the dog is liable for costs of impounding in the event of the charges being proven.

GENERAL EXEMPTION

Despite the above provisions, a dog or its owner is not guilty of an offence, unless they wilfully set the dog onto a person or animal, if the incident occurred:

- because the dog was being teased, abused or assaulted,
- because another person was trespassing on the premises on which the dog was kept,
- because another animal was on the premises on which the dog was kept, or
- because another person known to the dog was being attacked in front of the dog,
- as part of a hunt in which the dog was taking part and was conducted in accordance with the *Prevention of Cruelty to Animals Act 1986*.

RESTRICTED BREEDS

The most recent amendment to the Act occurred in December 2001 whereby the Government imposed restrictions and conditions on the owning of the following breeds :

- Pit and/or American Bull Terrier,
- Dogo Argentino,
- Fila Brasileiro, and
- Japanese Tosa.

The restrictions imposed on owning one of the aforementioned breeds is yet to be finalised, however it is expected to include:

- secure prescribed fencing,
- permanent identification by way of microchip,
- warning signs on the property,
- muzzling and on lead when off property,
- limitation on the ownership to a person over age eighteen, and
- a limit of two dogs kept without a Council permit.

The introduction of restricted breeds under Victorian legislation was implemented due to an intensive media campaign and is limited to pure breed dogs or dogs deemed to be one of the aforementioned breeds. One of the impediments when introducing legislation of this nature is that Pit and/or American Bull Terriers are not recognised breeds in Australia and may be the result of mating a fight-winning cross-breed dog and fight-winning bitch.

In order to overcome this impediment, and for the purpose of the Act, an authorised officer may deem a dog to be any one of these restricted breeds.

If in the event the owner denies the breeding of the dog they may present the dog to a panel of experts for review and determination with no rights of appeal. Whilst at the time of writing this paper such a panel has not been formalised, the panel proposal is an attempt to overcome the legislative impediments experienced in the United Kingdom. In the United Kingdom the Courts have been inundated with lengthy and costly legal challenges to the allocation of breeds resulting in prolonged impoundment of dogs whilst the Courts attempt to resolve this matter.

CONCLUSION

As the above information demonstrates there are a number of options available to Victorian animal control officers to address the inappropriate and aggressive behaviour of irresponsible pet owners and their dogs. However legislation alone can not prevent horrific attacks from occurring as regrettably accidents and irresponsible behaviour will continue, despite legislation, as it does in all aspects of life.

To address the attacks that legislation can never prevent, that is attacks on young children by family dogs or accidental events, the Act provides funding for an extensive education campaign both for school children and the community in general. Education of parents as well as children should reduce these horrific attacks on our children. The *Domestic (Feral & Nuisance) Animal Act 1994* promotes responsible pet ownership through reduced registration fees for responsibly owned pets, particularly those that are obedience trained, microchipped, desexed, etc, whilst endeavouring to deter and penalise those owners who allow their animals to rush, chase, attack or bite another person or animal.

The major challenge ahead for our industry is to ensure the legislation available is appropriately and consistently enforced throughout Victoria with the full support of the Courts.

ABOUT THE AUTHOR

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Russell McMurray is currently employed at Bayside City Council, Victoria, as Manager Amenity. He has a staff of approximately seventy including full and part-time, and his diverse portfolio includes the management of Animal Control Functions as well as local laws, traffic, environmental health, immunisation, planning enforcement and school crossing supervision. Russell differs from most managers in that he commenced his career in Local Government as an Officer and has subsequently attained two tertiary qualifications in the field of human services.

He is Ministerially appointed as the Local Government representative on the State Government's Animal Welfare Advisory Committee and Responsible Pet Ownership Education Steering Committee. He was also the founder and initial Convenor of the Local Government Professionals, Statutory Services Special Interest Group and has served on other advisory committees dealing with urban animal management issues.

This combination of experience and academic qualifications has made Russell and his team leaders in innovation and expertise within their fields, providing advice and guidance to other Local and State Government organisations.