

A tiered approach to dealing with inappropriate dog behaviour in NSW

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Often as a result of a dog attack on another person or animal the local authorities are left with the decision to declare a dog a "Nuisance Dog" or a "Dangerous Dog". These control orders can be unsuitable for the offence and are either too lenient or too harsh.

Degrees of dangerousness can be established on the basis of injury severity in dog attack incidents. These categories of dangerousness include "menacing" or "threatening" behaviour that does not involve a bite being inflicted.

By changing the *Companion Animals Act 1998* to include the term "Menacing Dog" and a description of the control orders required, this second tier to control orders would provide local authorities with the opportunity to improve the welfare of dogs reduce costs to the owner and ensure a safer community in an effective and timely manner.

Introduction

Early in 1998 the *Companion Animals Act 1998* was introduced into New South Wales and replaced *The Dog Act 1966*.

This legislation was developed to capture the ever changing perceptions of the community, to apply best practice companion animal (dogs & cats) control and education, and increase the enforcement provisions for local council their Law Enforcement and Animal Management officers.

Since the commencement of the *Companion Animal Act 1998* (referred to as the Act), the Act has been reviewed approximately every five years. This review has taken place with advice from selected experts, local council law enforcement officers, legal representation and parliamentary advice.

The reviews looked at adapting the appropriate level of legislation to an ever changing government or community expectation and closing any loopholes that may exist in the Act. Changing this legislation benefits the community and allows the local authority to enforce the Act with greater expectations of compliance and community confidence.

At times, new bills are introduced to parliament to strengthen the Act; these bills are driven by community expectations, media sensationalism or political gain. The introduction of these new bills has resulted in changes to the Act, which could be debated as a kneejerk reaction.

This paper will examine the recommendations for a tiered approach when enforcing control orders on dogs in the community, provide examples of how these recommendations would benefit local councils, law enforcement officers and dog owners, and take into consideration the welfare of the dog.

Current situation

Under the current legislation (the Act) when a dog attacks a person or another animal, other than vermin, the local authority has the option of applying a Nuisance Order or a Dangerous Dog Order. This often depends on the severity of the attack and provides the local authority with an option to apply a Nuisance Order that ceases after six months or declare the dog dangerous which could be in force for the life of the dog and at great expense to the owner.

Quite often there could be a case for an order to be imposed on an owner of a dog due to the dog menacing the area. This type of dog falls between the "nuisance dog" and the "dangerous dog" and meets similar definition under Section 21 of the Act "Nuisance Dog".

(1) (d) *repeatedly runs at or chases any person, animal (other than vermin and, in relation to an animal, otherwise than in the course of droving, tending, working or protecting stock) or vehicle, or*

(e) *endangers the health of any person or animal (other than vermin and, in relation to an animal, otherwise than in the course of droving, tending, working or protecting stock), and*

Section 33 of the Act "Meaning of Dangerous",

(b) *has, without provocation, repeatedly threatened to attack or repeatedly chased a person or animal (other than vermin), or*

(c) has displayed unreasonable aggression towards a person or animal (other than vermin)

This type of dog could be deemed as a "Menacing Dog" as the definitions are similar for Section 21 (1) (d) & (e) and Section 33(b) & (c) of the Act.

The tiered approach system

A tiered approach system of control requirements has many benefits for the local authority, as well as the welfare of the dogs and their owners.

"Vermin" for the purposes of this section includes small pest animals only (such as rodents).

Tier 1 "Nuisance Dog Orders", this type of order could apply for a dog which is an annoyance to another property owner or person without threat and could be described as:

Nuisance Dog definition

- a. habitually at large (roaming); or
- b. is making a noise, by barking or otherwise, that persistently occurs or continues to such a degree or extent that it unreasonably interferes with the peace, comfort or convenience of any person in any other premises; or
- c. repeatedly defecates on property (other than a public place) outside the property on which it is ordinarily kept; or
- d. repeatedly causes substantial damage to anything outside the property on which it is ordinarily kept

This type of order would continue to be applied for a period of six months. The Nuisance Order would state the owner of the dog is required to prevent the behaviour that is alleged to constitute the nuisance.

Tier 2 "Menacing Dog Orders", this type of order could apply for a dog that has a level of aggression displayed when territorially protecting its property, their owner or has attacked another animal on the first occasion, other than vermin and the attack resulted in a minor injury or no injury sustained and could be described as:

Menacing Dog definition

- a. Repeatedly runs at or chases any person, animal (other than vermin and, in relation to an animal, otherwise than in the course of droving, tending, working or protecting stock) or vehicle; or
- b. Endangers the health of any person or animal (other than vermin and, in relation to an animal, otherwise than in the course of droving, tending, working or protecting stock); or
- c. Without provocation, repeatedly threatened to attack or repeatedly chased a person or animal (other than vermin), or

- d. Displayed unreasonable aggression towards a person or another animal (other than vermin); or
- e. Has attacked a person or another animal resulting in minor or trivial injuries

The Menacing Order would be issued to the owner of the dog requiring the owner to comply with the following:

- The dog must be desexed (if it is not already desexed) within 28 days after the date the owner of the dog is given notice by the council that it has made the declaration
- If the owner appeals against the declaration to a Local Court within those 28 days, the order is stayed until the appeal is either withdrawn or determined
- The dog must be kept in a child-proof enclosure, (a secure fenced rear yard to the dwelling with a gate capable of being locked and tamper proof)
- One or more signs must be displayed on that property showing the words "Warning Dangerous Dog" in letters clearly visible from the boundaries of the property on which the dog is ordinarily kept
- When the dog is away from the property where it is ordinarily kept the dog must be under the effective control of a competent person by means of an adequate chain, cord or leash and have a muzzle securely fixed on its mouth in such a manner as will prevent it from biting any person or animal

Tier 3 "Dangerous Dog Orders", this type of order could apply for a dog that has caused severe injury or death as a result of an attack on another person or multiple animals, i.e. livestock and could be described as:

Dangerous Dog definition

- a. Dog has history as a "Menacing Dog" and a control order is current or has been repealed; or
- b. Without provocation, attacked or killed a person or multiple animals, i.e. stock (other than vermin); or
- c. The attack on a person or another animal was particularly vicious and the dog was extremely aggressive; or
- d. Is kept or used for the purposes of hunting

The Dangerous Dog Orders would exist as currently written in section 51 of the *Companion Animals Act 1998*.



a lot of potential adopters, who may think that the dog will be like that normally. Often this is just a temporary thing, resolving itself as the dog has a little more freedom and is no longer staring at bars all day.

Cage rage is common in dogs that have been shut up in a cage for too long. They look upon the cage as their territory and become very aggressive.

Tying a dog to a chain or a leash all day long also causes dog mental health problems. The dog is a pack animal and cannot sustain loneliness. After some time the dog feels neglected and starts becoming aggressive because the dog cannot have its freedom. This frustration turns to anger and the dog will soon increase its aggression.

Dogs may develop Obsessive Compulsive Disorder (OCD). This mental health problem is mostly seen in dogs that are anxious, stressed or bored. If caused by boredom, OCD can be avoided by upping the activity level of the dog. Increased activities, fun and play will pull the dog out of this harmful mental health problem.

A caged dog is a trapped and cornered dog. In a confrontational situation, the dog no longer has the "flight" option, and "fight" is all that is left. Most of these mental health problems can be reduced or resolved by providing sufficient obedience training and more freedom for the dog.

RSPCA Australia considers that the welfare of an animal includes its physical and mental state and that good animal welfare implies both fitness and a sense of well-being.

The RSPCA believes that an animal's welfare should be considered in terms of five freedoms, which form a logical and comprehensive framework for analysis of welfare within any animal.

1. **Freedom from hunger and thirst:** by ready access to fresh water and a diet to maintain full health and vigour.
2. **Freedom from discomfort:** by providing an appropriate environment including shelter and a comfortable resting area.
3. **Freedom from pain, injury or disease:** by prevention through rapid diagnosis and treatment.
4. **Freedom to express normal behaviour:** by providing sufficient space, proper facilities and company of the animal's own kind.
5. **Freedom from fear and distress:** by ensuring conditions and treatment which avoid mental suffering.

RSPCA Policy A09 Housing of Companion Animals states:

- 9.1 All housing facilities for companion animals must be designed and maintained to provide a clean, comfortable and safe environment and to meet the behavioural and physiological needs of the particular animal.
- 9.2 Where companion animals are usually confined in a restricted environment (such as in cages, hutches or similar housing), they must be given regular opportunities for exercise, as appropriate for the species, in a safe, predation-free and escape-proof area (such as an outdoor run or enclosed indoor area).

Benefits of a tiered approach

- Fewer dogs would be euthanized
- Decrease in appeals and referrals to court
- Dog owners in low socio-economic areas would be able to meet a control order that involves reducing the severity/costs
- The welfare of the dog must be considered when applying control orders for dangerous dogs

Conclusion

In my opinion, not all dog attack offences fit the control orders as presently written in the Act. They are either too lenient or too extreme in the majority of cases to fit less significant offences. Therefore, a case must be considered to include within the Act a provision for declaring a dog a "Menacing Dog", should they display the level of behaviour as previously explained.

This additional tier of control orders would provide a local authority an additional tool within the parameters of the legislation (should it be adopted) to effectively manage these types of dogs and perhaps have a flow-on effect of reducing additional costs to the owner, reducing local court appeals, an early finalisation and closure for local authority and owner, and allow for the welfare of the dog to be taken into account.

Acknowledgements

RSPCA Policy A09 Housing of Companion Animals
The *Companion Animal Act 1998* (NSW)

The National Consultative Committee on Animal Welfare position Statement #24 (1995)

After leaving the service, Noel took up a position with Parramatta City Council as a general duties Ranger for four years. His knowledge of dog behaviour was



Noel left Parramatta City Council in 2003 to take up his present position with Penrith City Council. In 2005 Noel received an award from WorkCover and Unions NSW after designing and arranging for a local company to manufacture the new vehicles that complied with OH&S requirement for transporting companion animals. Noel provides advice to Council on companion animal and livestock concerns as they arise in the urban and rural environments of Penrith.



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