

COUNCIL CHARGES - DOG ATTACKS

If You Have Been Charged with a Council or Dog Attack Offence You Need Representation

If yes, you must engage a law firm with proven experience in council and dog criminal law.

The criminal justice system (CJS) comprising police, Courts, Magistrates and Judges is a very unfamiliar and intimidating environment, particularly for unrepresented and/or first-time defendants. The CJS has the prosecutor's and public's best interests and rights, not yours. Courts take council and dog attack charges very seriously and often impose harsh penalties, including the devastating loss of your pet dog. There are a number of elements with precise definitions the prosecution must establish for relevant offences. Also, the amount of forensic evidence that must be preserved before it is lost/damaged (like witness statements) and the number of aggravating and mitigating factors that must be considered for this offence means being well prepared and seeking legal advice from us as soon as possible before facing a Court is critical to use helping you receive the most favourable outcome.

MK Law has a team of expert criminal defence lawyers across our 4 offices (Melbourne, New South Wales, South Australia and Western Australia) positioned close to the Courts where we have represented thousands of parties with council related and dog attack charges. We take allegations very seriously. During our confidential consultations, we carefully listen to our clients' unique instructions and side of the allegation, consider all relevant factors, provide strategic advice by explaining the possible penalties and guiding you through the most appropriate options (whether to plead not guilty or admitting guilt to the elements of the crime and dispensing the need for the prosecution to prove guilt) to avoid the most severe penalties being imposed.

We have prepared many strong and successfully plea and defence strategies in the Victorian Courts by fighting the charge/s if you have been wrongly accused (including conducting our own investigations, requesting disclosure material and statements from witnesses, analysing the police brief of evidence to identify elements of the offence that cannot be proven, proactively looking for evidence police have overlooked and vigorously cross examining/questioning the prosecution's case (like if they have not drafted statements or spoken to key witnesses), properly explaining the underlying circumstances of your offending and personal history to the Court and arranging and tendering evidence which supports your case, including forensics, defence witness statements, character references and psychological reports and engaging experts (to obtain data from your computer to help exonerate you) to be analysed and explained to the jury).

We appear in Court daily and know what works. We have in-house counsel who run contested hearings and trials from the beginning, so you will always receive the same lawyers who work on your case from the very beginning. If you decide to plead guilty, we will explain to the Court through legal submissions why you committed the offence in light of your personal and surrounding circumstances. This means we are well equipped in navigating this complex environment of the law to work through the particular legal processes, procedures and factors that guide the Court. We have your best intentions in mind to help defend you and persuade the Court to hand down the fairest and most lenient penalty (like avoiding imprisonment, reducing the number of your charges, having the charges dismissed/withdrawn and/or a costs order made out against the prosecution where you are paid all legal costs for your defence).

Contact our experienced team of council and dog criminal defence lawyers for free legal advice 24/7 on 1800 130 120 or marcus.mklawfirm.com.au.

What are Council Charges?

Council charges involve breaching local Council laws. They are minor offences which range from house improvements, failing to obtain building permits and allowing pet dogs to be a nuisance.

Council related offences include:

- Allowing a dog/cat to be a nuisance
- Failing to apply to register a dog/cat
- Non-dangerous dog attacks
- Carrying out plumbing work without a licence/registration
- Occupier of land contravening a planning scheme
- Carrying out work without a building permit
- Dangerous non-guard dog attacks or bites a person or animal - person in control
- Dog rushes at person - person in control
- Destroys, damages or in any way interferes with any works or a water corporation
- Dog found at large between sunrise and sunset
- Failing to comply with an improvement notice
- Failing to comply with an emergency/building order
- Failing to comply with a fire prevention notice
- Failing to comply with a planning scheme, permit or agreement under s 173
- Failing to restrain a dangerous dog off the owner's premises
- Failing to vote at any election without a valid and sufficient excuse
- Fishing closures - contravening a prohibition

What are Dog Offences and Dog Attack Laws?

In Victoria, dog offences are charges put in place by local or government Councils in relation to owners breaching their responsibilities for owning a domestic dog.

Councils across the Melbourne and Mornington Peninsula have various powers to deal unfavourably with council and dog offences.

Dog related offences arise under the *Domestic Animals Act 1994* (DAA) and the *Crimes Act 1958* (CA) (most serious dog offences), including:

- Dogs/cats on private property without permission (s 23 DAA)
- Dogs/cats found at large (ss 24-25 DAA)
- Offence to set dog to attack (s 28 DAA)
- Offence to train dog to attack (s 28A DAA)
- Offences for dog attacks (s 29 DAA)
- Failing to control a dangerous, menacing or a restricted/unregistered breed dogs that kills a person (s 319B CA)

- Recklessness as to whether controlling dangerous, menacing or a restricted/unregistered breed dogs may place another person in danger of death (s 319C CA)
 - Ss 319B and 319C also apply to owners of attack trained dogs and guard dogs
 - Restricted breed dogs are dangerous dogs because they pose a greater risk to public safety than other dog breeds.
 - Dangerous dogs are: pit bull terrier, presa canario, dogo argentino, Japanese tosa and fila brasileiro (s 3(1) DAA).
 - See [here](#) (Animal Welfare Victoria) for more information on how to manage a restricted dog breed

Examples of Council and Dog Offences

Local council and dog offences covers a broad range of actions and behaviours, and common everyday examples of cases we have successfully defended, include:

- A person's dog escaping and attacking another animal and/or person

Requirements for Owning a Dangerous Dog

Owners of dangerous dogs must follow strict obligations imposed by Council. Any breach can result in many charges and serious penalties, which will impact the quality of the dog's life - see possible penalties [below](#).

Obligations include the need for:

- The dangerous dog to remain in a prescribed enclosure (limited to adult access) on the owner's property to prevent the dog from escaping
- Displaying suitable warning signs at the premises the dog resides at (s 39 DAA)
- The dog to wear a prescribed red and yellow striped collar at all times (s 39 DAA)
- Muzzling (and fitting the dog with a suitable leash) and effectively supervising/controlling the dog when outside the premises (s 41 DAA)
- Registering the dog with the Council
- The dog to wear the Council marker
- The dog to have an ISO microchip
- Placing the dog and owner's details on the Victoria registry for declared dogs
- Desexing the dog following an attack

See [here](#) (Animal Welfare Victoria) for more information on how to manage a dangerous dog.

Penalties

If you plead or are found guilty of a council or dog attack offence, one of the following penalties will likely be imposed:

Councils have recently increased penalties for dog attacks, whereby owners may be liable to serve a term of imprisonment.

- Term of **imprisonment**
 - Most common for more serious offences - may be immediate
 - Maximum **10 years** (dog kills a person - s 319B CA)
 - Maximum **5 years** (dog endangers a person's life - 319C CA)
- A **financial fine** (conviction or non-conviction)
 - Most common for less serious offences
- A **community corrections order** (conviction or non-conviction)
- **Menacing dog declaration**
- **Dangerous dog declaration**
- **Dog destruction/disposal order**
 - Likely or serious dog attack cases
- **Return dog to owner order**
 - Common for cases involving serious dog attacks
 - Requires the consent of the dog owner before being prosecuted
 - If unsuccessful, the animal will either be claimed to be dangerous or the loss of having the dog be put down
- **Requiring an owner to modify their home to better house a dog** (s 84 DAA)
- **Preventing a person from owning a dog** (s 84 DAA)
- A **costs order** for care given to a dog over an interim period (s 84 DAA)
- A **forfeiture** for failing to pay money to the Council (s 84 DAA)

NB: the Magistrate or Judge cannot direct the defendant serve the sentence concurrently with any other sentence, and cannot make an order that suspends the whole/part of the defendant's sentence (*Sentencing Act 1991*).

In order to have a conviction or non-conviction applied for any of the penalties above, our Lawyers must make the relevant s 8 application to the Court following the conviction.

A conviction is where you have a disclosable criminal history, whilst a non-conviction is where you have no disclosable criminal history.

What is a Menacing Dog Declaration?

Councils have powers to impose a menacing dog declaration on an owner if:

- Their dog has chased/rushed at a person or bitten another animal (which results in an injury – but need not be a serious injury)
- If another state (with equivalent laws) has imposed a declaration
- The owner is found guilty of an offence under ss 29(7) or (8) of the DAA

Councils do not have powers to impose a menacing dog declaration on an owner if:

- The person who requested the order trespassed on property the dog resided at
- The dog was abused/harassed
- The owner of the dog was being attacked in the presence of their dog

If the Council decides to make the order, the Council are required to notify the dog owner within 7 days of making the order (ss 41B-C DAA). The owner has a right to request the Council to consider more submissions before deciding the order is appropriate in the circumstances.

Owners with a menacing dog declaration have specific obligations (under s 41D DAA) to inform Council if:

- Their dog resides at a new address
- Their dog is owned by another person/s
- Their dog chases/rushes at another person
- Their dog is missing

Any time the dog leaves the premises, it must be muzzled (to prevent the risk of biting) and kept on a leash (to maintain effective control).

Any breach of the above often results in criminal charge/s being imposed and/or financial fines.

What is a Dangerous Dog Declaration?

A dangerous dog declaration is a requirement in Victoria that for the owner to maintain ownership of their dangerous dog, they must comply with their Council's strict restrictions under the DAA and the *Domestic Animals Regulations 2015* (DAR). The declaration strictly applies throughout all parts of Victoria and cannot be revoked, amended or altered. The purpose of the restrictions is to protect members of the community from risks posed by dangerous dogs. A failure to comply has major consequences.

A dog is declared 'dangerous' by authorised Council officers, where (ss 34; 34A DAA):

- The dog is kept for guarding non-residential premises
- The dog is trained to attack/bite any person or thing (attached to/worn with the person)
- The dog has caused death or serious injury to another person/animal
 - A 'serious injury' is an injury that requires medical/veterinary treatment or cosmetic surgery (s 3 DAA) as a result of:
 - Biting
 - Attacking
 - A broken bone
 - A laceration
 - Loss of sensation (total/partial)
 - Loss of function in the body (total/partial)
- An owner previously receiving a menacing dog declaration or 2 or more infringements regarding ss 41E; 29(5)-(8) of the DAA for the same dog
- The dog previously being declared dangerous under other legislation

If the Council decides to make the declaration, they are required to notify the dog owner within a timely manner (s 35 DAA). The owner has a right to respond in written or verbal form.

Councils do not have powers to impose a dangerous dog declaration on an owner if:

- The person who was attacked trespassed on property the dog resided at
- The dog was abused/harassed
- The person who knows the dog was being attacked in the presence of the dog
- The person who knows the dog was being attacked as a result of the dog engaging in a hunt
- Another animal trespassed on property the dog resided at

What is a Destruction Order?

A dog destruction order is contained under ss 84 and 84TC of the DAA. It gives Councils extensive power to hand down the order when the owner of the dog is guilty of an offence (ss 24 or 26 DAA); the registered owner of the dog cannot be identified, and the Council believes on reasonable grounds the dog would breach s 29 of the DAA.

This order must be made within 24 hours after seizing the dog, and it must be formally recorded. The Council must not destruct the dog until at least 48 hours after formally recording the seizing. However, the Council has discretion to immediately destroy the dog if they believe on reasonable grounds the dog is behaving in a way that will cause imminent death or serious injury to another person or animal (s 84TB DAA). Where a dangerous dog is found at large, if the Council are satisfied the owner of the dog is guilty of an offence under ss 24 or 26 of the DAA, they can destroy the dog. The Council must not destruct the dog until at least 24 hours after formally recording the need to destruct the dog.

Can I Appeal a Council Decision?

Destruction orders cannot be overturned. However, administrative/judicial review laws allow the owner of the dog to appeal the order to the Supreme Court of Victoria if they believe the Council failed to follow lawful procedure when deciding to impose the order.

Where a Magistrate makes the order in Court, you may appeal the decision to the County Court of Victoria. This involves the Council making the application in Court following a guilty plea by the dog owner, giving them the power to act. However, Councils more often make this decision following a guilty plea in Court with other Council members (outside of Court).

Other decisions by the Council that may be appealed (not to the Supreme Court but to the Victorian Civil and Administrative Tribunal (VCAT) (s 98AA DAA)) following an internal review, include:

- Dangerous dog declaration
- Menacing dog declaration
- Restricted breed declaration

NB: This information applies equally to cases involving cats