

DOG OFFENCES - *DOMESTIC ANIMALS ACT 1994* (VIC) (DAA)

If You Have Been Charged with a Dog Offence You Need Representation

If yes, you must engage a law firm with proven experience in 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 dog offence charges very seriously and often impose harsh penalties, including the devastating loss of your pet dog. The relevant legislation is broad and includes a number of different offences with technical differences between the different offences and elements with precise definitions, including who the owner of the dog, which the prosecution must establish. 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 dog 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 risks and penalties and guiding you through the likely outcome and 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 (like whether you have made reparations to the victim or had to have the dog put down) 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 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).

Our Lawyers regularly attend professional development training to ensure we are up to date with the latest law in the area.

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

What are Dog Offences?

Dog offences are charges initiated by Council in relation to anyone who is responsible for a dog. They cover a broad range of actions and behaviours by dogs and their owners, including non-dangerous dog attacks, failing to restrain dangerous dogs off the owner's premises, an owner or person in control of a dangerous non-guard dog that attacks/bites an animal/person, results in death/serious injury/injury or rushes at/chases a person.

Questions to Consider Before Pleading Guilty or Not Guilty

To determine whether you have a good prospect of success in defending your dog offence in Court, it is important to weigh up the following important points:

- Has the prosecution correctly given me particulars of the charge/s I have been charged with?
- Does the prosecution have a strong case against me?
 - What is the link and is it clear?
- Should I plead guilty or not guilty where I defend my charge at a contested hearing or a trial?
- Was a co-accused charged or did I act alone?
- When did the offence occur and when was I charged by police?
- What options are available to minimise my sentence and ensure an optimal outcome with the Council in relation to my dog?
- Do I have a lawful reason to justify why I carried out the offence (can a defence be relied on to argue my innocence)?

Our experienced Lawyers will help answer all these questions and prepare a strong case for you.

Non-Dangerous Dog Attacks

Non-dangerous dog attacks are a serious criminal offence provided for under s 29 of the DAA. It is defined as an owner/person in apparent control of a non-dangerous or restricted dog breed that bites/attacks another person/animal which causes death (ss 29(3)-(4) DAA), a serious injury (ss 29(3)-(4) DAA) or injury (ss 29(5)-(6) DAA).

For example:

- A non-dangerous dog bites a person's leg which causes a laceration that requires medical treatment
- A non-dangerous dog bites a person's arm which causes bone damage

- A non-dangerous dog bites another dog with causes that dog to die
- A non-dangerous dog bites a person's hand which causes them to require cosmetic surgery to repair the damage

Previous cases show the opposing party will struggle to tender sufficiently strong evidence to prove this offence, which means the charge/s is often withdrawn by the opposing party.

What to Consider/Needs to be Established?

To determine whether you have been charged with non-dangerous dog attack, it is important to consider what constitutes the offence (see definition above). In other words, can the disputing party establish beyond reasonable doubt all elements of the offence?

- You were an owner/in apparent *control of a dog*?
 - The person in control need not be the owner of the dog to satisfy this element - although the owner is most often in control of the dog
- Which *attacked/bit* another *person/animal*?
- Resulting in *death, injury* or a *serious injury*?

If the disputing party cannot establish beyond reasonable doubt all elements of the offence, you are not guilty of the offence.

What is a Non-Dangerous Dog?

A 'non-dangerous' dog is a dog that fails to meet the below criteria.

A 'dangerous' dog (s 34A DAA) includes:

- A dog declared dangerous by a Council (ss 3; 34 DAA)
 - Dangerous dogs are: American Pit Bull Terrier (or Pit Bull Terrier), Perro de Presa Canario (Presa Canario), Dogo Argentino, Japanese Tosa and Fila Brasileiro (s 3(1) DAA)
 - A dog that has caused the death or serious injury to a person/animal by biting/attacking them
 - A 'menacing dog' and its owner have received 2 or more infringement notices for not properly restraining/muzzling the dog
 - The dog has been declared 'dangerous' under another state's/territory's laws
 - A guilty finding the dog has been involved in various dog attacks
 - For any other reason agreed by the Council
- A dog kept for guarding a non-residential premise
- A dog trained to bite/attack a person

What is Serious Injury?

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)

Where Will my Matter be Heard?

Non-dangerous dog attack offences are a less serious (summary) criminal offence. Matters are usually dealt with in the lower Court (Magistrates Court of Victoria).

Defences

If you are pleading not guilty to your non-dangerous dog attack charge/s, possible defences you have available to lawfully explain your behaviour will depend on the circumstances surrounding the alleged offending. Every case is unique and requires an individualised plan and approach. Possible defences include:

- The opposing party **not being able to establish to the criminal standard of beyond reasonable doubt all elements of the offence**
 - You were not in control of a dog
 - The dog has never been trained to bite people
 - Your dog never bit another person
- **Factual error/dispute**
- **Impossibility**
- **Honest and reasonable mistake of belief**

Penalties

If you plead or are found guilty of s 29 DAA, one of the following penalties will likely be imposed:

- Term of **imprisonment**
- **Financial fine** (conviction or non-conviction)
 - **Ss 29(5)-(6) DAA**
 - **Minimum 10 penalty units** (approximately \$1600)
 - **S 29(3)-(4) DAA**
 - **Maximum 40 penalty units** (approximately \$6447.60)
- **Community corrections order** (conviction or non-conviction)
- **Menacing dog declaration**
- **Dangerous dog declaration**
- **Dog destruction/disposal order**
- **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)
- **Costs order** for care given to a dog over an interim period (s 84 DAA)
- **Forfeiture** for failing to pay money to the Council (s 84 DAA)

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

The Victorian Department of Treasury and Finance review and update financial penalties at the end of each financial year.

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.

Relevant Important Resources

- Victoria Legal Aid: dog matters
- SAC statistics: index page - ss 29(3)-(6) Domestic Animals Act 1994 (Vic)

Failing to Restrain a Dangerous Dog Off the Owner's Premises

Failing to restrain a dangerous dog off the owner's premises is a serious criminal offence provided for under s 41(1) of the DAA. It is defined as a person who as an owner fails to restrain the dog off their premises.

NB: This offence does not apply to guard dogs guarding non-residential premises.

Examples of Failing to Restrain a Dangerous Dog Off the Owner's Premises

Failing to restrain a dangerous dog off the owner's premises offences covers a broad range of actions and behaviours, and common everyday examples of cases we have successfully defended, include:

- A person letting their Dogo Argentine which is not muzzled or leashed to roam a public park, where the dog has been declared dangerous by Council
- A person walking their Presa Canario which is muzzled but not on a leash, where the dog has been declared dangerous by Council
- A person walking their Pit Bull Terrier on a leash but with no muzzle, where the dog is trained to bite people

Police Interview

If you have been alleged of failing to restrain a dangerous dog off the owner's premises, often you will be asked to attend a formal police interview that is recorded for the purposes of evidence and whether or not to formally charge you. At this stage, police have investigated the offence and have a range of evidence already against you that they will not inform you about (like statements from witnesses and the victim). Before the interview, you are given the option to contact a lawyer for legal advice/support /representation. We can provide you with specialised, clear and confidential legal advice over the phone or in conference at our offices that addresses all your concerns before beginning a police interview. This includes: helping you understand what amounts to data, what is a serious computer offence, whether to attend a police interview, what to expect at the interview, what questions will likely be asked, what your rights and obligations are during the interview (like what you are not obliged to tell/give them), whether you should provide your side to the allegation, whether you should answer all questions asked of you or exercise your right to silence with 'no comment' answers, whether you have to provide DNA and/or your computer/device and when you may receive it back and whether you will be reprimanded if you refuse to follow an order/instruction. We also prepare you well for answering questions police ask you to ensure you do not tarnish the defence that is later given in Court. We can also help you make a statement to police after the interview to explain your circumstances (if a defence is available). The police interview is not a time to explain your side of the story.

A police interview is a very important phase of the process, and if it is not handled appropriately, it can limit your options. We understand how a police interview can impact your case in Court. We can accompany you at the formal police interview to help ease your apprehension and stress and avoid the risk compromising your situation. Police take note of everything you do and say which means nothing is "off the record" - they are experts in interrogation, obtaining admissions and information from you and making you appear like you are not telling the truth, to help them with investigations and building a strong case. It is important to be courteous during the interview as it will be played in Court, and if you are disrespectful, it may harm your credibility and defence.

What to Consider/Needs to be Established?

To determine whether you have been charged with failing to restrain a dangerous dog off the owner's premises, it is important to consider what constitutes the offence. In other words, can the disputing party establish beyond reasonable doubt all elements of the offence?

- You are the *owner* of a dog?
 - This is a person who keeps/harbours the dog or has the dog in their care for the time being, whether at large or in confinement (s 3 DAA)
- The dog is declared a *dangerous dog* (by Council or within the meaning of s 34A of the DAA)?
 - See above definition of a 'dangerous dog'
- The dog was *not appropriately restrained* (when off the owner's premises)?
 - A dog is properly restrained when:
 - Sufficiently muzzled to prevent the risk of injury by biting (s 41(1)(a) DAA); and
 - Under effective control by a chain, chord or leash (s 41(1)(b) DAA)

- The dog was *not a guard dog guarding a non-residential premises?*

If the disputing party cannot establish beyond reasonable doubt all elements of the offence, you are not guilty of the offence.

Where Will my Matter be Heard?

Failing to restrain a dangerous dog off the owner's premises is a less serious (summary) criminal offence. Matters are usually dealt with in the lower Court (Magistrates Court of Victoria).

Defences

If you are pleading not guilty to your failure to restrain a dangerous dog off the owner's premises charge/s, possible defences you have available to lawfully explain your behaviour will depend on the circumstances surrounding the alleged offending. Every case is unique and requires an individualised plan and approach. Possible defences include:

- The opposing party **not being able to establish to the criminal standard of beyond reasonable doubt all elements of the offence**
 - You are not the owner of the dog
 - The dog was not off the owner's property
 - The dog is not a 'dangerous dog'
 - The dog was correctly restrained (with a leash and muzzle)
- The dangerous dog is a **guard dog guarding non-residential premises** (s 41(2) DAA)

See other possible **defences** above.

Penalties

If you plead or are found guilty of s 41 DAA, one of the following penalties will likely be imposed:

- **Financial fine** (conviction or non-conviction)
 - Maximum **40 penalty units** (approximately **\$6447.60**)

See other possible **penalties** above.

Relevant Important Resources

- Victoria state government: owning a dangerous dog
- SAC statistics: fail to restrain dangerous dog off the owner's premises - s 41(1) *Domestic Animals Act 1994* (Vic)
- Melbourne pet minders: dangerous dogs and restricted breeds

Person in Control of a Dangerous Non-Guard Dog/Restricted Dog Breed that Attacks/Bites an Animal/Person

A person in control of a dangerous non-guard dog/restricted dog breed guarding non-residential premises that attacks/bites an animal/person is a serious criminal offence provided for under s 29(1)-(2) of the DAA. It is defined as a person who is in apparent control of a dangerous or restricted breed of non-guard dog guarding non-residential premises that attacks/bites another animal/person.

NB: This offence does not apply to guard dogs guarding non-residential premises or restricted breed dogs.

Examples of Persons in Control of a Dangerous Non-Guard Dog/Restricted Dog Breed that Attacks/Bites an Animal/Person

A person in control of a dangerous non-guard dog/restricted dog breed guarding non-residential premises that attacks/bites an animal/person offence covers a broad range of actions and behaviours, and common everyday examples of cases we have successfully defended, include:

- A person's Japanese Tosa in their front yard bites a child who enters the front yard to collect their basketball
- A person walking their Fila Brasileiro, where the dog lashes out at a cat and causes a laceration on their leg
- A person enters a vet with their Pit Bull Terrier on a leash, where the dog escapes the control of the person and bites a border collie dog on the face

What to Consider/Needs to be Established?

To determine whether you have been charged with controlling a dangerous non-guard dog/restricted dog breed guarding non-residential premises that attacks/bites an animal/person, it is important to consider what constitutes the offence (see definition above). In other words, can the disputing party establish beyond reasonable doubt all elements of the offence?

- The dog is declared a *dangerous/restricted dog breed* (by Council or within the meaning of s 34A of the DAA)?
 - See above definition of a 'dangerous dog'
- The dog was *not a guard dog guarding a non-residential premises*?
- The dog *attacked/bit another animal/person*?
 - 'Attacking' has no definition in the DAA
 - Its ordinary meaning is taken to mean biting, rushing at or chasing an animal/person
- You were in *apparent control of the dog* when the attack/biting occurred?
 - 'Apparent control' is not defined in the DAA
 - Various circumstances amount to being in apparent control including:
 - Walking a dog on a leash
 - Walking a dog without being restrained on a leash
 - Keeping a dog in a front yard with a low fence it can easily escape from
 - Locking a dog behind a gate on private property
 - Transporting a dog in a motor vehicle

- The person need not be the dog's owner to be in apparent control

If the disputing party cannot establish beyond reasonable doubt all elements of the offence, you are not guilty of the offence.

Police Interview

Persons charged with this offence generally have a good record with the law because they are innocently walking their dog when an unexpected incident arises.

See further details [above](#).

Where Will my Matter be Heard?

Controlling a dangerous non-guard dog/restricted dog breed guarding non-residential premises that attacks/bites an animal/person is a less serious (summary) criminal offence. Matters are usually dealt with in the lower Court (Magistrates Court of Victoria).

Defences

If you are pleading not guilty to your controlling a dangerous non-guard dog/restricted dog breed guarding non-residential premises that attacks/bites an animal/person charge/s, possible defences you have available to lawfully explain your behaviour will depend on the circumstances surrounding the alleged offending. Every case is unique and requires an individualised plan and approach. Possible defences include:

- The opposing party **not being able to establish to the criminal standard of beyond reasonable doubt all elements of the offence**
 - You were not in apparent control of the dog when the attack/biting occurred
 - The dog never attacked/bit another animal/person
 - The dog is not a 'dangerous dog' or 'restricted breed dog'
 - The dog was a guard dog guarding a non-residential premise
- **Factual error/dispute**
- **Impossibility**
- **Honest and reasonable mistake of belief**

See other possible **defences** [above](#).

Penalties

If you plead or are found guilty of s 29(1)-(2) DAA, one of the following penalties will likely be imposed:

- Term of **imprisonment**
 - Maximum **6 months**
- **Financial fine** (conviction or non-conviction)
 - Maximum **120 penalty units** (approximately **\$19342.80**)

- A **diversion** (conviction or non-conviction)
 - Most likely if first time offender or offender with a mental illness
 - Non disclosable outcome is made against you, which means whilst you take responsibility for the offence, it occurs in circumstances where your criminal record remains clean
 - See [here](#) for more information on a diversion

See other possible **penalties** [above](#).

Relevant Important Resources

- [*Domestic Animals Act 1994 \(Vic\)*](#)
- [Law Foundation of Victoria - dangerous dogs and dog attacks](#)

Person in Control / Owner of a Dog that Rushes at a Person

A person in control (or owner) of a dog that rushes at/chases a person (also known as a dog/cat that is a nuisance) is a more minor criminal offence provided for under s 29(7) (or s 29(8) if an owner) of the DAA. It is defined as a person who is in apparent control of a dog that charges/chases a victim.

NB: Given this is a more minor dog offence, it may not be necessary to seek legal representation. However, if an order is being sought against the dog or the dog has a history for being a nuisance, it may be vital to seek legal representation from us.

Examples of Persons in Control / Owner of a Dog that Rushes at a Person

A person in control (or owner) of a dog that rushes at a person offence covers a broad range of actions and behaviours, and common everyday examples of cases we have successfully defended, include:

- A person is paid to walk other owner's dogs - they do not use a leash and the dog bolts towards another pedestrian on the footpath
- A person is asked by a friend to look after their dog whilst they go to a toilet in a nearby park - they hold the dog on a leash, but the dog uses force to bolt towards a person in the park and you cannot withhold any more force so let go of the leash

What to Consider/Needs to be Established?

To determine whether you have been charged with being in control of (or owning) a dog that rushes at a person, it is important to consider what constitutes the offence (see definition above). In other words, can the disputing party establish beyond reasonable doubt all elements of the offence?

- The dog *chased/charged at a person*?
 - An injury by the person who was chased/charged at need not result to make out this element
- You were in *apparent control of the dog* when this occurred?
 - See [above](#) the circumstances that may amount to being in 'apparent control'

If the disputing party cannot establish beyond reasonable doubt all elements of the offence, you are not guilty of the offence.

Where Will my Matter be Heard?

Being in control of (or owning) a dog that rushes at a person is a less serious (summary) criminal offence. Matters are usually dealt with in the lower Court (Magistrates Court of Victoria).

Defences

If you are pleading not guilty to your controlling (or owning) a dog that rushes at a person charge/s, possible defences you have available to lawfully explain your behaviour will depend on the circumstances surrounding the alleged offending. Every case is unique and requires an individualised plan and approach. Possible defences include:

- The opposing party **not being able to establish to the criminal standard of beyond reasonable doubt all elements of the offence**
 - You were not in **apparent control** of the dog when the attack/biting occurred (it was a stray dog you never controlled)
 - The dog never attacked/bit another animal/person
 - The dog is not a ‘dangerous dog’ or ‘restricted breed dog’
 - The dog was a guard dog guarding a non-residential premise
- **Factual error/dispute**
 - The dog was not chasing/charging at the supposed victim
- **Impossibility**
- **Honest and reasonable mistake of belief**
- The **event occurred** as a result of the dog (s 29(9) DAA):
 - Being **teased, abused or assaulted** by the victim (rather than the dog chasing them unprovoked)
 - The person was **trespassing on the premises** the dog was residing on when the dog chased them
 - **Another animal was on the premises** the dog was residing on
 - **A person known to the dog was attacked** in front of the dog
 - **Approaching the victim in a playful way** (the dog did not actually chase the victim)
 - You were being **attacked by another person** and the **dog charged at the person to protect you**
- The event occurred **during a hunt the dog was taking part in** (s 29(10) DAA) in line with the *Prevention of Cruelty to Animals Act 1986*

See other possible **defences** above.

Penalties

If you plead or are found guilty of s 29(7) or s 29(8) DAA, one of the following penalties will likely be imposed:

- **Financial fine** (conviction or non-conviction)

- S 29(7) DAA
 - Maximum **4 penalty units** (approximately \$644)
- S 29(8) DAA
 - Maximum **120 penalty units**
- **Paying compensation** for damage caused by the dog (s 29(11) DAA)
- A **diversion** (conviction or non-conviction)
 - See [above](#) and [here](#) for more information on a diversion

See other possible **penalties** [above](#).

Relevant Important Resources

- [SAC statistics: s 29\(7\) Domestic Animals Act 1994 \(Vic\) - dog rushes at person - person in control](#)
- [Dog attacks FAQs](#)
- [Responsible pet ownership](#)

Having a Dog/Cat on Private Property Without Permission

A person in control (or owner) of a dog/cat that enters private property where you have previously been advised they did not have permission to be on is a more minor criminal offence provided for under s 23 of the DAA.

What to Consider/Needs to be Established?

To determine whether you have been charged with controlling (or owning) of a dog/cat that enters private property where you have previously been advised they did not have permission to be on, it is important to consider what constitutes the offence (see definition above). In other words, can the disputing party establish beyond reasonable doubt all elements of the offence?

- You *own* a *dog/cat*?
- You were *served a notice* under s 19(3) - your dog/cat entering the owner's/occupier's property without permission?
- The *dog/cat entered/remained on private property*, the subject of the notice?
 - The dog/cat must have been on the private property more than 1 time to make out this element
 - The notice may allow an authorised officer to seize the dog/cat whilst it is on the property
 - They are required to immediately inform the relevant Council
 - If the authorised officer can identify the owner of the dog/cat, they must serve notice (personally or by post) of objection about the incident on them within 5 days of seizing the dog/cat
 - A copy must be given to the owner/occupier of the property within 24 hours of serving the notice

If the disputing party cannot establish beyond reasonable doubt all elements of the offence, you are not guilty of the offence.

Where Will my Matter be Heard?

Dogs/cats on private property without permission offences are a less serious (summary) criminal offence. Matters are always dealt with in the lower Court (Magistrates Court of Victoria).

Defences

If you are pleading not guilty to your charge/s for having a dog/cat on private property without permission, possible defences you have available to lawfully explain your behaviour will depend on the circumstances surrounding the alleged offending. Every case is unique and requires an individualised plan and approach. Possible defences include:

- The opposing party **not being able to establish to the criminal standard of beyond reasonable doubt all elements of the offence**
 - You are not the owner of the relevant dog/cat
 - The dog/cat was not found on private property you had previously been told they could not be on

See other possible **defences** above.

Penalties

If you plead or are found guilty of s 23, one of the following penalties will likely be imposed:

- **Financial fine** (conviction or non-conviction)
 - First offence - **1 penalty unit**
 - 2 or more offences - **3 penalty units**

See other possible **penalties** above.

Training a Dog to Attack

A person who trains a dog to attack is a more minor criminal offence provided for under s 28A of the DAA.

What to Consider/Needs to be Established?

To determine whether you have been charged with training a dog to attack, it is important to consider what constitutes the offence. In other words, can the disputing party establish beyond reasonable doubt all elements of the offence?

- You *trained a dog*?
- To *attack, bite, rush at, chase or menace a person, animal or thing worn by a person*?
 - If the dog is trained, this does not meet the threshold of satisfying this element
 - Trained means conducting (or being employed by a person who is conducting) a domestic animal business on premises which is authorised under the registration (Part 4)

If the disputing party cannot establish beyond reasonable doubt all elements of the offence, you are not guilty of the offence.

Where Will my Matter be Heard?

Training a dog to attack is a less serious (summary) criminal offence. Matters are dealt with in the lower Court (Magistrates Court of Victoria).

Defences

If you are pleading not guilty to your training a dog to attack charge/s, possible defences you have available to lawfully explain your behaviour will depend on the circumstances surrounding the alleged offending. Every case is unique and requires an individualised plan and approach. Possible defences include:

- The opposing party **not being able to establish to the criminal standard of beyond reasonable doubt all elements of the offence**
- You **trained your dog under an authorised registration regime**

See other possible **defences** above.

Penalties

If you plead or are found guilty of s 28A, one of the following penalties will likely be imposed:

- **Term of imprisonment**
 - Maximum **3 months**
- **Financial fine** (conviction or non-conviction)
 - Maximum **60 penalty units**

See other possible **penalties** above.

Failing to Control a Dangerous, Menacing or Restricted Breed of Dog that Kills a Person

Failing to control a dangerous, menacing or restricted breed of dog that kills a person is a criminal offence provided for under s 319B(1)-(2) of the DAA.

What to Consider/Needs to be Established?

To determine whether you have been charged with failing to control a dangerous, menacing or restricted breed of dog that kills a person, it is important to consider what constitutes the offence (see definition above). In other words, can the disputing party establish beyond reasonable doubt all elements of the offence?

S 319B(1)

- You were the *owner of dangerous, menacing or restricted breed of dog?*
- You *failed to keep the dog under control?*

- The dog *killed another person*?
- A reasonable person in the circumstances would have known by failing to keep the dog under control, another person would be at risk of death?

S 319B(2)

- You were *not* the owner of dangerous, menacing or restricted breed of dog?
- You had charge/care of a dog?
- You failed to keep the dog under control?
- You were *reckless* as to whether or not the dog was a dangerous, menacing or restricted breed of dog?
- The dog *killed another person*?
- A reasonable person in the circumstances would have known by failing to keep the dog under control, another person would be at risk of death?

If the disputing party cannot establish beyond reasonable doubt all elements of the offence, you are not guilty of the offence.

Where Will my Matter be Heard?

Whilst failing to control a dangerous, menacing or restricted breed of dog that kills a person is a serious (indictable) offence, matters are always dealt with in the lower Court (Magistrates Court of Victoria).

Defences

If you are pleading not guilty to your failing to control a dangerous, menacing or restricted breed of dog that kills a person charge/s, possible defences you have available to lawfully explain your behaviour will depend on the circumstances surrounding the alleged offending. Every case is unique and requires an individualised plan and approach. Possible defences include:

- The opposing party **not being able to establish to the criminal standard of beyond reasonable doubt all elements of the offence**
 - You did **not own a dangerous, menacing or restricted dog breed that killed a person**
 - You did not **have charge of such a dog**
 - You did **not fail to keep your dog under control**
 - You were **not aware the dog was capable of such behaviour**

See other possible **defences** above.

Penalties

If you plead or are found guilty of s 319B(1) or (2), a serious custodial sentence will likely be imposed (even if you are not the owner of the dog), including:

- **Term of imprisonment**

- Level 5 offence (maximum **10 years**)

See other possible **penalties** above.

Dog Found at Large

An owner's dog found at large is a criminal offence provided for under ss 24(1)-(2) of the DAA.

What to Consider/Needs to be Established?

To determine whether you have been charged with your dog being found at large, it is important to consider what constitutes the offence. In other words, can the disputing party establish beyond reasonable doubt all elements of the offence?

S 24(1)

- You were the *owner of a dog*?
- The *dog was found at large outside your premises or not securely confined to your premises*?
- The dog was *not confined between sunrise and sunset*?

S 24(2)

- You were the *owner of a dog*?
- The *dog was found at large outside your premises or not securely confined to your premises*?
- The dog was *not confined between sunrise and sunset*?

If the disputing party cannot establish beyond reasonable doubt all elements of the offence, you are not guilty of the offence.

Where Will my Matter be Heard?

Dogs being found at large matters are always dealt with in the lower Court (Magistrates Court of Victoria).

Defences

If you are pleading not guilty to your dog found at large charge/s, possible defences you have available to lawfully explain your behaviour will depend on the circumstances surrounding the alleged offending. Every case is unique and requires an individualised plan and approach. Possible defences include:

- The opposing party **not being able to establish to the criminal standard of beyond reasonable doubt all elements of the offence**
 - Your **dog was not found outside your dwelling**
 - Your **dog was securely confined**

Penalties

If you plead or are found guilty of ss 24(1)-(2), the penalty imposed will often depend on the time of day/night your dog was found, including:

- **Financial fine** (conviction or non-conviction)
 - **S 24(1)**
 - **Maximum (6 penalty units)**
 - **S 24(2)**
 - **Maximum (10 penalty units)**

See other possible **penalties** above.

Set On Dog to Attack

Set on dog to attack is a criminal offence provided for under s 28 of the DAA.

What to Consider/Needs to be Established?

To determine whether you have been charged with set on dog to attack, it is important to consider what constitutes the offence. In other words, can the disputing party establish beyond reasonable doubt all elements of the offence?

- You *wilfully set on/urged a dog to attack, bite, rush at or chase another person/animal?*
- The *dog was not hunting* (under the requirements of the *Prevention of Cruelty of Animals Act 1986*)?

If the disputing party cannot establish beyond reasonable doubt all elements of the offence, you are not guilty of the offence.

Where Will my Matter be Heard?

Set on dog to attack matters are always dealt with in the lower Court (Magistrates Court of Victoria).

Defences

If you are pleading not guilty to your set on dog to attack charge/s, possible defences you have available to lawfully explain your behaviour will depend on the circumstances surrounding the alleged offending. Every case is unique and requires an individualised plan and approach. Possible defences include:

- The opposing party **not being able to establish to the criminal standard of beyond reasonable doubt all elements of the offence**
 - You never urged the dog to attack, bit, rush at or chase a person/animal
- The dog **attacked, bit, rushed at or chased a person/animal during lawful hunting**

Penalties

If you plead or are found guilty of ss 24(1)-(2), the penalty imposed will often depend on the time of day/night your dog was found, including:

- **Term of Imprisonment**
 - Maximum **6 months** or **120 penalty units**

Recklessness as to Whether Controlling a Dangerous, Menacing or Restricted Breed of Dog May Place Another Person in Danger of Death

This is an indictable (serious) offence provided for under s 319C of the DAA.

What to Consider/Needs to be Established?

To determine whether you have been charged with recklessness as to whether controlling a dangerous, menacing or restricted breed of dog may place another person in danger of death, it is important to consider what constitutes the offence. In other words, can the disputing party establish beyond reasonable doubt all elements of the offence?

S 319C(1)

- You *own a dangerous, menacing or restricted breed of dog?*
- You *recklessly engaged in conduct* whereby the *dog was not under control?*
- *Without lawful excuse?*
- Your *conduct was at risk of placing or did place another person in danger of risk?*

S 319C(2)

- You are a *person (but not the owner of a dangerous, menacing or restricted breed of dog)?*
- At the time you were *in charge/care of a dog?*
- You are *reckless as to whether or not it is a dangerous, menacing or restricted breed of dog?*
- You *recklessly engaged in conduct* whereby the *dog was not under control?*
- *Without lawful excuse?*
- Your *conduct was at risk of placing or did place another person in danger of risk?*

If the disputing party cannot establish beyond reasonable doubt all elements of the offence, you are not guilty of the offence.

Where Will my Matter be Heard?

Recklessness as to whether controlling a dangerous, menacing or restricted breed of dog may place another person in danger of death matters are dealt with in the Magistrates and County Courts of Victoria.

Defences

If you are pleading not guilty to your charge/s for recklessly caring for your dog, possible defences you have available to lawfully explain your behaviour will depend on the circumstances surrounding the alleged offending. Every case is unique and requires an individualised plan and approach. Possible defences include:

- The opposing party **not being able to establish to the criminal standard of beyond reasonable doubt all elements of the offence**
 - You are not the owner of the relevant dog (only relevant to s 319C(2))
 - You had charge of the relevant dog
 - Your recklessness did not mean the dog was not under control and placed another person in danger of death
- You have a **lawful excuse** for your conduct

Penalties

If you plead or are found guilty of s 319C(1) or (2), possible penalties (regardless of whether you are the owner of the misbehaving dog) can be quite serious, and include:

- **Term of imprisonment**
 - Level 6 offence (maximum **5 years**)

See [here](#) (the Dog Offences page) for more information.