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Local Government Update

Dog attacks causing injury: A guide to enforcement and dangerous dog declarations

By Andrew Wadham, McLeods

Many local governments in Western Australia have seen an increase in the number of dog attacks reported in recent times. There has also been an increase in the number of cases reported in the media. Following a dog attack, it is the responsibility of the local government to investigate and make decisions in relation to enforcement and what other measures, if any, should be taken to ensure the safety of the community and promote responsible dog ownership.

Infringements v prosecution

Following a dog attack investigation, the question is often asked whether an infringement should be issued to the person liable for the control of the attacking dog or prosecution proceedings should be commenced in the Magistrates Court. The issuing of an infringement allows the recipient to accept responsibility for the offence by paying a modified penalty rather than face a prosecution where the maximum penalty is significantly higher. For example, the modified penalty for a dog attack which causes physical injury is \$400, whereas the maximum penalty the Magistrates Court can impose for the same offence is \$10,000.

It can be advantageous to commence prosecution proceedings in certain cases, particularly in relation to attacks where physical injury is caused. In those cases, the modified penalty is unlikely to reflect the seriousness of the attack. Where prosecution proceedings are commenced, the Court will decide where on the scale of seriousness the attack lies and what the appropriate penalty should be. Prosecution proceedings also have a greater deterrent effect on individuals and, as dog attack cases are often reported in the media, can send a strong message to dog owners in the community. Furthermore, in some instances, the Court has the discretion to make other orders such as an order for the destruction of the attacking dog, or an order preventing a person from owning and keeping a dog for a period of time.

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The decision whether to declare a dog dangerous

Another important decision for a local government following a dog attack causing physical injury is whether the attacking dog should be declared a dangerous dog. This is one of the more difficult decisions faced by Community Safety Officers and Rangers who will necessarily weigh the broader community's interests with the interests of the dog owner on a case by case basis. While the primary consideration should be the safety of the community, the requirements to keep a dangerous dog may be considered onerous.

In our experience, strict policies or guidelines adopted by a local government in respect of these decisions are generally ineffective given that there are so many factors which can influence a decision of this type. There will be specific factors in each case that weigh in favour of or against a decision to declare a dog dangerous. For example, whether the dog has a history of attacks or offences under the *Dog Act 1976*, the nature and severity of the attack and how and where the attack happened are likely to be significant factors to be considered.

Ultimately, the decision to declare a dog dangerous is an administrative function at the discretion of the local government. Once a dog is declared dangerous, it is the responsibility of the owner to comply with all of the requirements and that of the local government to enforce any non-compliance with those requirements. While the decision to declare a dog dangerous is left squarely in the hands of local government, an aggrieved owner of a dog that has been declared dangerous does have the right to apply for a review of that decision to the State Administrative Tribunal. In our experience, where an attack causing injury has occurred, the Tribunal will be reluctant to set aside a decision to declare a dog dangerous unless the owner can show the dog has been rehabilitated and will not attack again.

Conclusion

Infringement notices are often issued for dog attacks where no physical injury is caused. However, the infringement penalty for attacks causing injury to other animals and particularly people, rarely reflects the seriousness of the attack.

Whether physical injury is caused as a result of a dog attack is a useful line in the sand when deciding between issuing an infringement and commencing prosecution proceedings. In almost all cases where dog attacks have caused physical injury, prosecution proceedings are more effective both in terms of ensuring the punishment matches the crime and promoting the message of responsible dog ownership within the community.

The information contained in this article should not be relied upon without obtaining further detailed legal advice in the circumstances of each case. For further information please contact Andrew Wadham on 9424 6244 or by email to awadham@mcleods.com.au.

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