
HOWLING AT THE MOON: DOES THE LAW PROVIDE ADEQUATE PROTECTION TO THE PUBLIC FROM THE DANGERS POSED BY DOGS NOT UNDER EFFECTIVE CONTROL?

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INTRODUCTION

A powerful dog mauling a defenceless young child is an image which generates fear in an anxious public mind. The protection of the public from the errant predations of intimidating canines is an instinctively appealing urge when the safety of children in particular, is a prime consideration. Creating tough laws to protect the vulnerable and punish the careless is a relatively easy, if not logical, next step.

Diametrically opposed to this harsh, dangerous outlook is the heart-warming emotional connection with affectionate, loyal and courageous dogs. Television icon, Lassie, "Spot" the Telecom advertisement dog, a heroic Police dog dying in the battle against crime or the playful mischievous puppy that becomes an inseparable part of a family, are all powerful reminders of strong, positive bonds that can be formed with these companion animals.

Striking an appropriate balance between the right to own and enjoy a dog as opposed to ensuring that the dog does not pose a nuisance or threat to others, can be a difficult goal to achieve. Owners do not warm to being placed on a short legislative leash while those who do not own dogs demand severe strictures matching well honed stereotypical images about inherent dangers posed by dogs to the public.

Has the New Zealand Parliament secured the right balance? This dissertation will first examine the evolution of dog control law in New Zealand and the changes in society that have unfolded since European settlement.

The second chapter will provide an analysis of statistical trends, identify some peculiarities within the current law and explore an emerging phenomenon of the popularity of certain aggressive dogs. This will place New Zealand and its dog control laws in context in preparation for a comparison with a number of other jurisdictions to ascertain whether there are better approaches to achieve the elusive balance between dog ownership rights on one hand, and public safety on the other. This is the focus of attention in the third chapter.

The fourth chapter will attempt to resolve the root of the problem in terms of unacceptable dog behaviour. Often colloquially termed "deed or breed", the cornerstone of this dissertation will be a critical examination of the influential role that an owner plays in affecting either positively or negatively, the behaviour of a dog. The principal argument

promoted is the targeted licensing of dog owners in recognition of the public hazard some dogs represent when placed in irresponsible hands.

The final chapter will profile other suggestions for reform of the law relating to dog control in New Zealand based on observations made in earlier chapters. These suggestions coupled with a targeted regime for licensing dog owners, are offered as a package to promote responsible dog ownership, provide swifter decision making in disputes over dog issues, penalise careless owners and strengthen public safety.

CHAPTER ONE – THE EVOLUTION OF DOG CONTROL IN NEW ZEALAND

Early Settlement

The first dogs to arrive in New Zealand came with the Maori and were known as *Kuri*.¹ The dog was valued by Maori for its flesh, which was considered a delicacy.² The hair and skin of the animal were used and prized as shoulder cloaks³. With the settlement of Pakeha and the establishment of sheep stations in the 1840s, Maori began to eat mutton in preference to dog flesh. As a consequence the *Kuri* lost its utility within the early economy and ultimately became extinct⁴.

The commencement of pastoral farming in the late 1840s brought the Border Collie breed of dog to New Zealand. This breed was kept for the purpose of rounding up sheep on large pastoral leases in Otago and South Canterbury⁵.

Immigration increased rapidly in the latter half of the nineteenth century.⁶ Propelled by immigration schemes and gold rushes, the population of New Zealand had grown to over 500,000 by 1881.⁷ Concomitant with this increase in population was the rise in the keeping of dogs for sport and companionship. Breeds such as Spaniels, Setters and other sporting and non-sporting dogs accompanied new immigrants during this period.⁸ The increased popularity of the dog as a companion and hobby pursuit is evident in the first official dog show being held in Dunedin in 1887.⁹

The sheep population in the fledgling nation also rose dramatically during this period. By 1878, the sheep population stood at 13.1 million compared to just 1.5 million 20 years earlier in 1858.¹⁰ Inevitably with such rampant growth of people, sheep and dogs, some form of law was needed to set out and regulate the rights and obligations of dog owners.

¹ David Filer *Man's Best Friend: A Celebration of New Zealand Dogs* (David Bateman, Auckland, 2009) at 5.

² Miriam MacGregor Redwood *A Dog's Life: Working Dogs in New Zealand* (AH & AW Reed, Wellington, 1980) at ix.

³ Ibid,at x.

⁴ Ibid.

⁵ Ibid,at 1.

⁶ Michael King *The Penguin History of New Zealand* (The Penguin Group, Auckland, 2003) at 178.

⁷ Malcolm McKinnon *New Zealand Historical Atlas* (David Bateman, Auckland, 1997) at 58.

⁸ SH Rastal *Show Dogs of New Zealand* (New Zealand Kennel Club, Wellington, 1950) at 8.

⁹ Ibid, at 8.

¹⁰ King, above n 6, at 197.

Embryonic Law

In 1865 the New Zealand Parliament passed its first statute relating to dogs in New Zealand.¹¹ The Injuries by Dogs Act had a very narrow scope and was principally confined to apportioning strict liability on owners of dogs that injured people or livestock. A notable feature of the statute, which ran to only six sections, was the provision that any dog running at large amongst sheep or cattle could be destroyed by the land owner.¹² This was an early harbinger of the importance of farming to the economy and the superior rights afforded to farmers in respect of wandering dogs.

Fifteen years later, Parliament repealed the 1865 statute and introduced a new law for dogs with a considerably wider ambit. The Dog Registration Act¹³ was a rather economical statute by modern day standards running to just 27 sections. The predominant focus of the Act was on the registration of dogs.¹⁴ In marked contrast with contemporary dog control laws, the 1880 statute was limited to offences relating to misdemeanours associated with improper registration.¹⁵

Interestingly, however, the Dog Registration Act did contain specific provisions addressing dangerous dogs. A dog that had bitten or injured people or livestock could be seized and destroyed by a constable, if not muzzled and at large¹⁶. Further, any person who saw a dog at large biting or attacking any person, horse, sheep or cattle was permitted to destroy the dog without being answerable for any damage sustained.¹⁷ These two provisions are in marked contrast to current law where the emphasis is on impounding dogs with limited power available for immediate destruction.¹⁸

¹¹ The Injuries by Dogs Act 1865.

¹² Ibid, s V.

¹³ The Dog Registration Act 1880.

¹⁴ Ibid, ss 4-13 and ss 20-22, inclusive.

¹⁵ Ibid, ss 20, 21 and 22 , which related to penalties for using counterfeit labels, obsolete labels and removing a registration label, respectively.

¹⁶ Ibid, s 15.

¹⁷ Ibid, s 16.

¹⁸ See for example the Dog Control Act 1996, s 57, which only allows a person to destroy a dog if being attacked or is a witness to an attack. Additionally s 71 places a clear obligation on a territorial authority to keep a dog in custody that is deemed a threat to public safety, with accompanying duties of ensuring that the dog is given proper care and exercise until its fate is determined by the court.

In 1908 Parliament consolidated and updated the law relating to dogs. Building on its 1880 predecessor, The Dogs Registration Act¹⁹ maintained an emphasis on the orderly registration of dogs. Procedures governing registration were bolstered by the introduction of a new provision²⁰ that permitted a land owner or any person authorised by a local authority, to destroy any unregistered dog found on private land. Once again this is in stark contrast to present day law where unregistered dogs must be held in custody for a period of seven days, before being sold or destroyed.²¹

The strictures associated with dangerous dogs or the control of dogs did not materially change. This was also the case in respect of the range of offences, which retained an accent on accurate and timely registration.²²

Urbanisation

Nearly 50 years were to elapse before the legislature turned its mind to reviewing the law, introducing the Dogs Registration Act 1955. New Zealand society had changed considerably in this intervening period. By 1926 the population of the country was 68 per cent urban.²³

Rapid urban growth, particularly in the upper North Island, occurred following the Second World War.²⁴ New industrial and residential suburbs “sprouted like mushrooms” on the periphery of Auckland, Wellington and Christchurch, and the smaller provincial centres of Palmerston North, Hamilton and Tauranga.²⁵

But these dramatic social changes appeared to have had little influence on Parliament’s thinking on laws relating to dogs. The 1955 Act continued the trend of deferring to bucolic interests, being heavily flavoured by the provisions introduced in 1880 and largely repeated in 1908. At just 38 sections it was similar in economy to its antecedents.

Once again registration of dogs was prominent in the 1955 statute. Notably, new provisions directed at the prevention of hydatids were enacted.²⁶ The relatively unfettered right of a

¹⁹ The Dogs Registration Act 1908.

²⁰ Ibid, s 16.

²¹ Dog Control Act 1996, s 69(3)

²² The Dogs Registration Act 1908, ss 18, 19, 20 and 21.

²³ James Belich *Paradise Reforged: A History of the New Zealanders from the 1880s to the Year 2000* (The Penguin Group, Auckland 2002) at 523.

²⁴ McKinnon, above n 7, at 75.

²⁵ Belich, above n 23, at 489.

²⁶ Dogs Registration Act 1955, pt II.

person to destroy a dog, having witnessed it being at large and biting or attacking another person or stock, was maintained.²⁷ The paramount position of the rural economy, despite the increasing urbanisation within the country, can be seen by the retention of the right of an owner of stock or their employee to destroy any dog running at large among stock or poultry.²⁸

The right of an occupier of land or local authority to destroy an unregistered dog found on private land was also retained in the 1955 Act.²⁹ Like the earlier statutes, the range of offences was relatively narrow and centred on the improper registration of dogs. However, a new offence of wilfully abandoning any dog was created.³⁰

Another 27 years was to pass before Parliament felt the need to update the law in respect of dogs. The Dog Control and Hydatids Act 1982 amalgamated registration and control of dogs with the treatment of hydatids. Since 1959 the control and eradication of hydatids had been the subject of a separate statute.³¹

The 1982 Act removed the ability of an occupier of land or a local authority to destroy an unregistered dog found on private land. For the first time in a dog registration and control statute, dog owners were subject to certain basic obligations such as the provision of food, water and shelter and a requirement of adequate exercise.³² Failure to discharge these obligations entailed liability to a maximum penalty of three months imprisonment or a fine of \$1,000.³³ This represented the first occasion in over 100 years of statutory law governing dog control that Parliament had introduced an offence which attracted a term of imprisonment.

The 1982 statute replicated the dog control provisions of its 1955 predecessor. It continued to defer to the nation's rural economy, by empowering the owner of any stock or poultry to immediately destroy a dog if running at large among stock or poultry.³⁴

²⁷ Dogs Registration Act 1955, s 25.

²⁸ Ibid, s 26.

²⁹ Ibid, s 15(1).

³⁰ Ibid, s 31.

³¹ Hydatids Act 1959, which was later superseded by the Hydatids Act 1968.

³² Dog Control and Hydatids Act 1982, s 53.

³³ Ibid, s 53(2).

³⁴ Dog Control and Hydatids Act 1982, s 59.

The Focus on the Control of Dogs

The nomenclature of the next statutory milestone in the evolution of the law pertaining to dogs in New Zealand signalled a change of emphasis from what had previously been the case. The Dog Control Act 1996 evolved from a report compiled by a government select committee enquiry into dog control policy.³⁵ Significantly, the committee concluded that a serious dog control problem existed in New Zealand.³⁶

A local government law reform bill³⁷, which contained significant changes in the law in regard to the control of dogs, was introduced into the House on 6 December 1994. The Minister of Local Government at that time, Hon John Banks, cited three specific objectives in respect of the proposed changes.³⁸ These were:

- (i) to encourage responsible dog ownership;
- (ii) to deter irresponsible dog ownership; and
- (iii) to enhance the ability of local government to deal with problem dogs and, more importantly, problem dog owners.

The hydatids provisions in the 1982 Act had recently been repealed.³⁹ The objects of the Dog Control Act ultimately passed by Parliament were twofold:

- (i) to make better provision for the control of dogs; and
- (ii) to make provision in relation to damage caused by dogs.⁴⁰

The new legislation introduced several new provisions to give effect to these objects, namely:

- (i) The requirement for a territorial authority to classify a dog as “dangerous”⁴¹ where the owner has been convicted of an offence of having a dog attack a person or animal.⁴² The

³⁵ Internal Affairs and Local Government Committee *On the Inquiry into Dog Control Policy* (July 1993).

³⁶ Ibid, at 9.

³⁷ Local Government Law Reform Bill 1994 (69-1).

³⁸ (6 December 1994) 545 NZPD 5455.

³⁹ Biosecurity Act 1993, sch 3.

⁴⁰ Dog Control Act 1996, s 4.

⁴¹ Dog Control Act 1996, s 31.

⁴² In contravention of the Dog Control Act 1996, s 57A(2).

effect of classifying a dog as dangerous was that it had to be contained within a securely fenced portion of the owner's property, muzzled when in public and neutered.⁴³

(ii) The introduction of a sterner penalty of three months imprisonment and/or a fine not exceeding \$5,000, in respect of an owner of a dog that attacks any person or protected wildlife, causing serious injury to the former or death to the latter.⁴⁴

(iii) The establishment of a regime of infringement offences and fees to expeditiously address minor transgressions.⁴⁵

(iv) The empowerment of a territorial authority to disqualify a person from being an owner of a dog if the person commits three or more infringement offences within a continuous period of 24 months⁴⁶ or the person is convicted of an offence (other than an infringement offence) against the Act.⁴⁷

(v) The granting of enhanced powers of entry on to land and premises where a dog control officer has good cause to suspect that an offence under the Act or a bylaw is being committed.⁴⁸

In *Hamilton City Council v Fairweather*,⁴⁹ Baragwanath J observed that when construing legislation the courts were required to give effect to important societal values.⁵⁰ In terms of the values inherent within the Dog Control Act 1996, he cited the protection of people and certain kinds of animals from attack by dogs, the recognition that dogs are living creatures of greater significance than mere chattels and the presumption against penalisation of an owner who has taken every precaution to act responsibly.⁵¹ While noting that these values can and do conflict, Baragwanath J emphasised that they all operated on the presumption against unreasonable operation of the law.⁵² However the judge was in no doubt about the primary focus of the statute, concluding that the Act placed a strict obligation on an owner to keep a dog under control at all times.⁵³

⁴³ Dog Control Act 1996, s 32.

⁴⁴ Ibid, s 58.

⁴⁵ Ibid, s 65, with the description of offences and associated fees detailed in sch 1.

⁴⁶ Dog Control Act 1996, s 25(1)(a).

⁴⁷ Ibid, s 25(1)(b).

⁴⁸ Ibid, s 14.

⁴⁹ *Hamilton City Council v Fairweather* [2002] NZAR 477(HC)

⁵⁰ Ibid, at [36].

⁵¹ Ibid, at [37].

⁵² Ibid.

⁵³ At [48].

A Child's Face Disfigured by a Dog Attack

The name of Carolina Anderson will undoubtedly, for some time to come, be associated with stronger dog control laws. Carolina was playing with two friends on a grassed area of a public reserve in Auckland on a January evening in 2003, when she was subjected to a sustained attack by a dog. She was just seven years of age. The incident had its denouement in *Owen v Police*.⁵⁴ Priestley J noted that the child's, forehead, upper cheeks, and general head area were extensively ripped by the dog's fangs, with pieces of flesh being ripped off her left cheek and scalp as well as one of her eyes being detached from its socket.⁵⁵ The attack was recently described by Allan J in *Dwyer v South Taranaki District Council* as, "by far the worst case".⁵⁶

Prior to this particular incident, reform of the law in terms of the identification of dangerous breeds of dogs had been mooted in a Local Government Law Reform Bill but had not progressed after being reported back from a select committee on 9 September 1999.⁵⁷ A series of particularly vicious dog attacks, culminating in the injuries suffered by Carolina Anderson, prompted community outrage and was the catalyst for the Minister of Local Government at that time, Hon Chris Carter, to instigate a wider review of dog control laws.⁵⁸ The resuscitated Local Government Law Reform Bill, as reported by the Local Government and Environment Committee, sought to find an appropriate balance between the rights of dog owners and the rights of the general public to be better protected from risks posed by dogs.⁵⁹

The debate in the House of Representatives at the time was punctuated by the high degree of consensus among political parties on the need for law reform to control dogs. Only ACT New Zealand voted against the motion that amendments recommended by a majority of the Local Government and Environment Committee be agreed to.⁶⁰ ACT New Zealand and Independent MP Donna Awatere Huata were also the only dissenters to the renamed Dog Control Amendment Bill being read a third time.⁶¹

⁵⁴ *Owen v Police* HC Auckland A44/02, 13 June 2003.

⁵⁵ *Ibid* at [6].

⁵⁶ *Dwyer v South Taranaki District Council* [2012] NZHC 3580 at [14].

⁵⁷ Local Government Law Reform Bill (No 2) 2003 (307-3) (select committee report) at 1.

⁵⁸ (5 November 2003) 613 NZPD 9750.

⁵⁹ Select committee report, above n 57, at 2.

⁶⁰ (5 November 2003) 613 NZPD 9761.

⁶¹ (13 November 2003) 613 NZPD 10039.

The Dog Control Amendment Act 2003 contained three key provisions to improve the control of dogs and to protect the public from dangerous or aggressive dogs. The first important measure was to ban the importation of four specific breeds or types of dog that were regarded as inherently aggressive.⁶² Secondly, a new dog classification of “menacing” was introduced.⁶³ This enabled a territorial authority, if it considered that a dog posed a threat to any person, stock, poultry, domestic animal or protected wildlife, to classify it as a menacing dog. The effect of this classification is that the dog must be muzzled when at large or in any public place, with the territorial authority also having the discretion to insist that the dog be neutered.⁶⁴

Thirdly, there was a significant increase in penalties for owners of dogs that caused serious injury. The maximum fine was increased from \$5,000 to \$20,000 with the maximum term of imprisonment being sharply increased from three months to three years.⁶⁵ This latter increase was arguably in response to the decision in *Owen*⁶⁶ where a two month sentence was considered “right on target”,⁶⁷ even though Priestley J described the offence as being “near to the most serious of cases”.⁶⁸

Conclusion

Over the first century following Parliament’s initial foray in shaping dog control law in New Zealand, the primary focus appeared to lie with protecting farming interests. Given the rapid urbanisation that occurred in the first half of the 20th century, the lack of concern for dog control in an urban environment is somewhat surprising. Inevitably, this has led to several reviews on the adequacy of dog control laws in response to rising public concern about the prevalence of dog attacks on people and the serious nature of the injuries sustained. But a question still remains whether the strong emphasis placed on the control of dogs and stiffer penalties for recalcitrant owners has led to improvements in public safety.

⁶² Dog Control Amendment Act 2003, s 50. The breeds of dog listed were the Brazilian Fila, Dogo Argentino and the Japanese Tosa with the American Pit bull terrier incorporated in pt 2, sch 4 as a type of dog subject to a ban on importation. A fourth breed, Perro de Presa Canario, was added on 18 November 2011 by the Dog Control (Perro de Presa Canario) Order 2010/369.

⁶³ Dog Control Act 1996, s 33A as amended by the Dog Control Amendment Act 2003, s 24.

⁶⁴ Dog Control Act 1996, s 33E as amended by the Dog Control Amendment Act 2003, s 21.

⁶⁵ Dog Control Act 1996, s 58 as amended by the Dog Control Amendment Act 2003, s 37.

⁶⁶ *Owen v Police*, above, n 54.

⁶⁷ *Ibid* at [31].

⁶⁸ *Ibid* at [15].

CHAPTER TWO - STATISTICS, TRENDS AND PECULIARITIES

Dog Population

The National Dog Database (NDD) was established in August 2007 as a result of an amendment in 2004 to the Dog Control Act.⁶⁹ The new provision requires all territorial authorities to provide statistics to the Secretary for Local Government on dogs, owners, infringement notices and offences.

For the year ending 30 June 2010 a total of 488,766 dogs was recorded in the NDD as being registered.⁷⁰ However, a total of 542,595 dogs was listed in the NDD for the same year.⁷¹ Of this total, 46,540 dogs had been registered previously while a further 7289, representing 1.3 per cent of the total of all dogs, were listed in the NDD without any registration information but which had come into contact with territorial authorities.⁷² These statistics suggest that the number of unregistered dogs in New Zealand could constitute up to 10 per cent of the total dog population.

The most common breed of dog in the NDD is the Labrador Retriever which makes up 13.8 per cent of the national dog population.⁷³ The second most popular dog is the Huntaway which comprises 8.4 per cent of the dog population and reflects its wide use in farming.⁷⁴

The statistics confirm a rise in popularity of the American Pit Bull Terrier, a type of dog that is subject to a ban on importation and mandatory muzzling when at large or in a public place.⁷⁵ For the year ending 30 June 2010, the American Pit Bull Terrier registered population stood at 5269, a sharp increase of 8.2 per cent on the total recorded the previous year.⁷⁶ More concerning from a public safety viewpoint is the fact that at the same time the NDD recorded 6,727 American Pit Bull Terriers in New Zealand.⁷⁷ Given the registered

⁶⁹ The NDD was established by s 35A of the Dog Control Act 1996, which was incorporated into the statute on 7 July 2004 by s 15 of the Dog Control Amendment Act 2004.

⁷⁰ Department of Internal Affairs *Local Government Information Series; Dog Safety and Control Report For 2009/10* (June 2011) at 2.

⁷¹ Ibid.

⁷² Ibid, at 7.

⁷³ Ibid, at 9.

⁷⁴ Ibid.

⁷⁵ Dog Control Act 1996, S 33C and sch 4.

⁷⁶ Department of Internal Affairs, above n 70, at 9.

⁷⁷ Ibid, at 10.

population was only 5,269, a reasonable inference to be drawn would be that up to 1,458 dogs or 27.7 per cent of the American Pit Bull Terrier population could be unregistered.

By comparison, the numbers of other restricted dogs contained in the NDD are very modest. In 2010 there were 88 Dogo Argentinoes, which was seven fewer than that recorded in the previous year in 2009.⁷⁸ The numbers of Brazilian Fila remain stable at just four while there is no Japanese Tosa registered on the NDD.⁷⁹ Based on these statistics, it is clear that the American Pit Bull Terrier, despite being a restricted breed, has a strong toehold in New Zealand.

The total number of dogs classified in the NDD as “dangerous” for the year ending 30 June 2010 was 645. This is a 16 per cent increase on the number of dangerous dogs recorded in May 2008.⁸⁰ In terms of the “menacing” classification, 7,297 dogs were listed within this category for the year ending 30 June 2010. This represents a 26.5 per cent increase on the number of menacing dogs recorded two years previously in May 2008.⁸¹ Based on the growth in dangerous and menacing dog classifications in the two year period between 2008 and 2010, it could be argued that dog control problems in the country have become more acute since the 2003 amendments to the Dog Control Act 1996. But this only paints a partial picture

Injuries and Prosecutions

Injuries sustained from dogs biting people have increased over the past decade. In 2009/10 there were 9,855 new claims lodged with the Accident Compensation Corporation (ACC) relating to bites from dogs.⁸² By comparison in 2002/03, the year prior to the amendment of the Dog Control Act which introduced greater emphasis on the control of dogs and increased sanctions for serious offences, ACC recorded 7,638 new claims for dog bites.⁸³ This represents an increase of 29 per cent which is approximately commensurate with the rise in the numbers of dogs classified as dangerous or menacing. It is conceded, however,

⁷⁸ Ibid, at 9.

⁷⁹ Ibid.

⁸⁰ Ibid, at 7.

⁸¹ Ibid.

⁸² Ibid, at 2.

⁸³ Ibid, at 16.

that the dog bite claims increase runs over a seven year period whereas the increase in dangerous and menacing classifications was recorded over just a two year period.

The number of prosecutions also indicates the extent of offending. For the year ending 31 December 2009, there were 317 charges under the Dog Control Act 1996.⁸⁴ Of this total, 207 resulted in a conviction.⁸⁵ This level did not veer significantly from the previous year where 306 charges were brought, resulting in 196 convictions.⁸⁶ Of all the prosecuted charges instigated in 2009, 51 per cent were made under section 57 of the Dog Control Act in relation to dogs attacking people or animals.⁸⁷

Although no specific statistics are available to provide confirmation, the large difference between the high number of dog bites recorded by ACC and the relatively low numbers, in comparison, of prosecutions under the Dog Control Act, may be attributable to two factors. First, it is highly likely that a reasonable number of bites from dogs were inflicted on family members by dogs being kept as pets. In these circumstances it would be understandable that there would be a reluctance to report an incident of a pet biting a family member to the territorial authority. Secondly, it is quite likely that territorial authorities would not instigate a prosecution against an owner, in regard to attacks of a less serious nature, if the owner agreed to have the dog destroyed. In these types of instances, destruction of the dog in the interest of public safety is likely to be a more pressing concern than punishment of the offending owner.

Dog Destruction Orders

One of the peculiarities of the Dog Control Act 1996 is the difficulty of obtaining a destruction order for a dog from the court in a situation where the owner is unwilling to accede to a territorial authority's wishes that a dog be voluntarily euthanased. The Act does not confer any power on a territorial authority to determine that a dog be destroyed following, for example, an attack on a person or animal. This authority is vested with the

⁸⁴ Ibid, at 19.

⁸⁵ Ibid, at 20.

⁸⁶ Ibid.

⁸⁷ Ibid.

court.⁸⁸ In the case of a dog attack resulting in serious injury to a person or the death of protected wildlife, the court must, on convicting the owner, order the destruction of the dog unless it is satisfied that the circumstances of the attack were exceptional.⁸⁹ In *Milner v Hastings District Council* Gendall J emphasised that there had to be special or substantially unusual circumstances existing before the court could exercise the power not to justify destruction.⁹⁰

Notwithstanding the explicit language in the statute relating to a dog's fate when it has attacked and caused serious injury, the time and expense endured by a territorial authority in securing a destruction order, when confronted with an obdurate owner, can be onerous. An analysis of 15 cases since 2006, that wended their way through to the High Court, revealed that on average it took 11.9 months from the date of the incident for a decision on the status of a destruction order to be obtained.⁹¹ The shortest period of time amongst the 15 cases was five months,⁹² while the longest, which occurred in two separate cases, was 28 months.⁹³ There is only one case among the group where an appeal against a destruction order was upheld.⁹⁴ Of the remainder, 13 destruction orders were executed, with one case remitted back to the District Court for a rehearing.⁹⁵

The case of *King v South Waikato District Council*⁹⁶ epitomises the protracted and costly process that can be endured by territorial authorities in obtaining a destruction order. The offending dog was an American Staffordshire Terrier, which attacked and killed a pet rabbit. The dog, known as "Jimbo", was placed in the Council pound as a result of that attack and

⁸⁸ Dog Control Act 1996, s 57A (2)(b) and s 58, which gives the court jurisdiction to make a destruction order upon conviction of an owner of a dog causing injury to a person or damage to property.

⁸⁹ Dog Control Act 1996, s 58.

⁹⁰ *Milner v Hastings District Council* HC Napier AP5/2004, 1 April 2004 at [9].

⁹¹ *Brown v Manukau City Council* [2007] NZHC 613; *Campbell v Police* [2008] NZHC 860; *Tangohau and Duran v Hastings District Council* [2008] NZHC 1509; *Allen v Manukau City Council* HC Auckland CRI -2009-404-330, 15 December 2009; *Jorion v Kapiti District Council* [2010] NZHC 1411; *Paraha v Manukau City Council* [2006] NZHC 1261; *Hetherington v Manukau City Council* [2010] NZHC 1741; *Power v NZ Police* [2011] NZHC 1574; *Nicol v Whakatane District Council* [2012] NZHC 727; *Downey v Tauranga City Council* [2012] NZHC 1835; *Evans v Queenstown Lakes District Council* [2012] NZHC 2963; *Anand v Auckland City Council* [2013] NZHC 445; *King v South Waikato District Council* [2013] NZHC 596; *Orr-Walker v Auckland Council* [2013] NZHC 784; *Turner v South Taranaki District Council* [2013] NZHC 1603.

⁹² *Allen v Manukau City Council*, above n 91.

⁹³ *Power v NZ Police* and *King v South Waikato District Council*, above n 91.

⁹⁴ *Nicol v Whakatane District Council*, above n 91.

⁹⁵ *Paraha v Manukau City Council*, above n 91.

⁹⁶ *King v South Waikato District Council*, above n 91..

while being contained in the pound, attacked another dog. After 28 months, two District Court hearings and a further two High Court hearings, Brewer J finally sealed the dog's fate, dismissing the owner's appeal against a District Court destruction order.⁹⁷ Throughout the litigation process the dog was detained in the Council pound in the interests of public safety.⁹⁸ The total costs to the South Waikato District Council in detaining the dog and legal expenses pursuing a destruction order were reported to be approximately \$90,000.⁹⁹ The New Zealand Kennel Club provides an average life expectancy of 12-14 years for an American Staffordshire Terrier.¹⁰⁰ Using the mid point of 13 years, "Jimbo" the dog would have spent just under 20 per cent or a fifth of its normal life expectancy being incarcerated. While it is acknowledged that the case of "Jimbo" is exceptional, the average length of time of 11.9 months in the 15 High Court cases analysed, does give rise to serious questions about whether the interests of the public, the owner or the dog are being served with such an arduous and costly process.

Unregistered Dogs

The level of statutory protection afforded to unregistered dogs is another peculiar feature of the current law. The Dog Control Act compels a territorial authority to impound any unregistered dog for seven days from the date of seizure before it can be sold or destroyed.¹⁰¹ The lack of discretion conferred on a territorial authority to be able to act more decisively prior to the expiry of seven days is surprising in light of some specific problems posed by unregistered dogs.

There is some evidence that unregistered dogs are disproportionately represented in statistics related to attacks on people. In 2003 a survey of 25 councils revealed that 46 per cent of the 809 recorded attacks on people in 2001/02 were caused by unregistered dogs.¹⁰² By way of illustration, the dog that attacked Carolina Anderson in *Owen* was unregistered.

⁹⁷ Ibid.

⁹⁸ As authorised by s 71 of the Dog Control Act 1996.

⁹⁹ Siena Yates "Jimbo the dog's days are over" *The Waikato Times* (online ed, New Zealand, 27 March 2013).

¹⁰⁰ The New Zealand Kennel Club web site accessed on <www.nzkc.org.nz>

¹⁰¹ Dog Control Act 1996, s 69(3).

¹⁰² Department of Internal Affairs *Survey of Territorial Authorities on Dog Control Issues- Final Report* (June 2003) at 35.

Animals Before People?

A curious aspect of the law in New Zealand is the primacy that appears to be afforded to the status of animals. This superior status is apparent in the rights conferred on an occupier of land or a person exercising control, to be able to seize and destroy any dog that is at large and a threat to protected wildlife.¹⁰³ It is also redolent in the long standing right of an owner of stock, or an agent of an owner, to seize or destroy any dog running at large among stock or poultry.¹⁰⁴

There is no equivalent provision in the case of a dog running at large among people. The Dog Control Act only allows a dog to be seized or destroyed by a member of the public if the person concerned is attacked by a dog, or witnesses a dog attacking another person.¹⁰⁵ When juxtaposed against the importance afforded to farm livestock and protected wildlife, it would seem that the limited protective mechanisms for people against the unwanted predations of dogs, provided within the current law, are not commensurate with the value that society normally places on human life.

This point is reinforced by comparing sanctions involving attacks on people with those applied to attacks on animals. The Dog Control Act provides for a maximum term of imprisonment of three years and a fine not exceeding \$20,000 for an owner of a dog that causes serious injury to any person.¹⁰⁶ In contrast the Animal Welfare Act 1999 provides for a maximum term of imprisonment of five years and a fine not exceeding \$100,000, in the case of a person wilfully ill-treating an animal, which results in permanent disability, death or serious injury to the animal.¹⁰⁷

This comparison has particular relevance given that the two statutes were enacted by Parliament in the latter half of the 1990s, with both being subject to further review and subsequent amendments in the past decade.¹⁰⁸ It is therefore surprising that the legislature has seen fit to place higher penalties for attacks on animals, than for dogs attacking and injuring people.

¹⁰³ Dog Control Act 1996 s 59.

¹⁰⁴ Ibid, s 60.

¹⁰⁵ Ibid, s 57.

¹⁰⁶ Ibid, s 58(a).

¹⁰⁷ Animal Welfare Act 1999, s 28.

¹⁰⁸ Dog Control Amendment Act 2003,s 37, above n 68 and the Animal Welfare Amendment Act 2010, s 5.

Status Dogs

A trend that has emerged in contemporary society is the desire of certain types of people to own a breed of dog that conveys power and intimidates people. Appellations such as “status dog”, “trophy dog” and even “weapon dog” have entered the public lexicon to describe this modern phenomenon.¹⁰⁹ A leading commentator, Simon Harding, asserts that a sizeable number of owners of aggressive breeds now empathise with their pariah social status and actively identify and associate themselves with the image of aggression, violence and strength for which breeds such as Pit Bull Terriers, Staffordshire Bull Terriers, Mastiffs and Rottweilers, are reputed.¹¹⁰

This phenomenon is alive and well in both the United States and the United Kingdom. In the United States, for example, the number of Pit Bull Terrier-type dogs increased from a few hundred in the 1960s to an estimated 500,000 by 1986.¹¹¹ According to Harding, there is now a noticeable, if yet unquantifiable, rise in the number of aggressive bull breeds on United Kingdom streets.¹¹²

In New Zealand the numbers of Pit Bull Terrier- type dogs have increased rapidly in recent years, as detailed earlier in this chapter. In consequence parks and other public spaces are being used by aggressive dogs and their owners, potentially endangering the safety of the public, particularly children at play. Harding cites, for example, an attack by a Bull Mastiff on a nine year old boy in April 2009 while riding a bike in a Battersea park.¹¹³ This type of incident has strong, if not haunting, parallels with the case of Carolina Anderson in *Owen*.¹¹⁴

Harding’s research into the motivation for owning an aggressive dog indicates a number of factors including protection, fashion, establishment of money-making breeding operations or building a specific image.¹¹⁵ A major concern cited in the United Kingdom and United States is “back street” breeders who mass breed dogs for financial gain. Some dogs are bred

¹⁰⁹ Simon Harding *Unleashed: The phenomena of status dogs and weapon dogs* (The Policy Press, Bristol, 2012) at 4.

¹¹⁰ Ibid.

¹¹¹ Simon Harding, above n 109, at 27.

¹¹² Ibid, at 234.

¹¹³ Ibid, at 192.

¹¹⁴ *Owen v Police*, above n 54.

¹¹⁵ Simon Harding, above n 109, at 235.

for aggression and pose a significant threat to the public if placed with an inexperienced or careless owner. Dog experts have denounced the actions of irresponsible owners who have willingly encouraged aggressive behaviour or have allowed this behaviour to be reproduced genetically.¹¹⁶

In New Zealand the popularity of the Trade Me auction website has increased the ability of indiscriminate dog breeders to sell puppies to a larger, and possibly unsuspecting, pool of purchasers. As an illustration, a search on the website on 31 July 2013 revealed that there were 732 litters for sale. A refined search, which involved the word “bull” in order to capture breeds such as Pit Bull Terrier, Bull Terrier, American Staffordshire Terrier, and Bull Mastiff amongst others, produced 51 litters.¹¹⁷

Conclusion

Despite the efforts of Parliament in strengthening the law to protect the public from wayward or vicious dogs and to encourage responsible dog ownership, there is little evidence of improvement on either of these fronts. There have been significant increases recorded in the numbers of dogs classified as dangerous or menacing and an accompanying trend of a rise in the number of injuries sustained from dog bites. The growth in the popularity of the American Pit Bull Terrier, and evidence that a reasonable proportion may be unregistered, is further cause to harbour concern for the safety of the public.

Supplementing these worrying trends are the rather generous rights provided to dogs and their owners, which appear to trump the interests and concerns of the wider community. The sacrosanct period of seven days in which a local authority has no discretion to determine the fate of an unregistered dog, the potentially arduous process in securing a destruction order from the courts and harsher penalties imposed for people attacking animals than dogs attacking people, suggest that dogs and their owners, irrespective of how responsible they may be, are in a reasonably strong legal position. This raises a serious question of whether community safety is being adequately safeguarded. The next chapter will examine dog control law in other jurisdictions and whether there are some provisions which could merit adoption in New Zealand.

¹¹⁶ Karen Delise *Fatal Dog Attacks: The Stories Behind the Statistics* (Anubis Press, New York, 2002) at 53.

¹¹⁷ The Trade Me web site accessed on <www.trademe.co.nz/pets&animals/dogs/puppies>

CHAPTER THREE- OTHER JURISDICTIONS: WHAT CAN WE LEARN?

When making comparisons with the laws of other countries, it is conventional to pay particular attention to common law counterparts, due to the similarity of their legal systems. This chapter will follow that route but will also consider a European country, with a system of civil law, which has recently reformed dog ownership laws.

Australia

With the exception of a nation-wide ban on the importation of five breeds of dogs introduced by the Commonwealth in 1991,¹¹⁸ all dog control laws in Australia are within the purview of state legislatures.

Victoria is the state which has most recently completed a review of its laws governing the control of dogs. Its primary statute is the Domestic Animals Act 1994 but, following a spate of dog attacks, the Victorian government signalled its intention to strengthen the law relating to dangerous dogs.¹¹⁹ The Act was subsequently amended in 2010 to increase penalties for certain offences and broaden the scope for the classification of dangerous and menacing dogs.¹²⁰ A further amendment pertaining to restricted breeds was enacted the following year.¹²¹

The reviews undertaken by the Victorian Parliament did not initially result in any significant strengthening of the law directed at protecting the public from dog attacks. In the case of a person in apparent control of a dog, the maximum sentence in the amended statute, if the dog attacks or bites another person or animal, is six months imprisonment or a fine not exceeding 120 penalty units.¹²² However, this sanction only applies to a dog that has been classified dangerous or is one of the five restricted breeds defined in the statute.¹²³

The myopia inherent in the tariff placed on an attack by a dog, classified as a dangerous or a restricted breed, was graphically illustrated in the death of a four year old girl in the Melbourne suburb of St Albans in August 2011. The child, Ayen Chol, was inside her parent's

¹¹⁸ Customs (Prohibited Imports) Regulations 1956 (Cth), reg 3, sch 1. The breeds banned are American Pit Bull, Pit Bull Terrier, Fila Brasileiro, Dogo Argentino and Japanese Tosa.

¹¹⁹ Victorian Parliamentary Library Research Service *Research Brief: Domestic Animals Amendment (Dangerous Dogs) Bill 2010* Number 6, May 2010, at 1.

¹²⁰ Domestic Animals Amendment (Dangerous Dogs) Act 2010 (Vic).

¹²¹ Domestic Animals Amendment (Restricted Breeds) Act 2011 (Vic).

¹²² Domestic Animals Act 1994 (Vic), s 29(1).

¹²³ Ibid, s 3.

residence when a dog that had escaped from a neighbouring property entered the house via an open door and attacked children inside. The child clung to her mother but the dog attacked the child's face and ripped her away from the mother.¹²⁴ The forensic pathologist reported 18 separate injury sites to the deceased child's head and neck.¹²⁵ Like the dog that attacked Carolina Anderson in *Owen*, the dog that killed Ayen Chol was unregistered.

The owner of the offending dog pleaded guilty to four charges and was sentenced to a total fine of \$11,000.¹²⁶ The dog had not previously come to the attention of the authorities so therefore was not classified as dangerous¹²⁷ and, as it was unregistered, did not fall within the definition of a restricted breed. This conclusion was reached despite the Coroners inquest determining, after considering expert veterinarian evidence, that the offending dog was an American Pit Bull Terrier, which fell within the description and definition of a restricted breed.¹²⁸ It was also revealed that the offending owner had deliberately not registered the dog to avoid the scrutiny, supervision and limitations associated with owning a restricted breed of dog.¹²⁹

In these circumstances, and the law in Victoria as it was at that time, only a monetary penalty could be imposed on the dog owner. Given that a small, vulnerable child was killed in her family's home, such a sentence seems manifestly inadequate.

The Victoria Parliament acted with alacrity to this perceived injustice, effecting an amendment to the Crimes Act providing a maximum term of imprisonment of 10 years for failing to control a dangerous, menacing or restricted breed dog that kills another person.¹³⁰ In addition, a new offence of being reckless as to whether a dangerous, menacing or restricted breed dog may place another person in danger of death was introduced, carrying a maximum penalty of five years imprisonment.¹³¹

At a more pragmatic level, the Victorian statute does have a feature which appears to provide territorial authorities with an effective mechanism to swiftly deal with dogs that

¹²⁴ *Inquest into the Death of Ayen Chol*, Coroners Court of Victoria, Melbourne, COR 2011 003068, 28 September 2012, at [17].

¹²⁵ Ibid, at [24].

¹²⁶ *Police v Josevski VMC*, B13033596, 29 July 2012.

¹²⁷ *Inquest into the Death of Ayen Chol*, above n 124, at [56].

¹²⁸ Ibid, at [35].

¹²⁹ Ibid, at [62].

¹³⁰ Crimes and Domestic Animals Acts Amendment (Offences and Penalties) Act 2011(Vic), s 3, which inserted s 319B into the Crimes Act 1958 (Vic)

¹³¹ Ibid, s 3 which inserted s 319C into the Crimes Act 1958 (Vic)

pose a nuisance to the community. Any animal found within a prohibited area, as defined in a local bylaw, can be destroyed by an authorised officer.¹³² This power is unavailable to New Zealand territorial authorities, which can specify prohibited areas for dogs in a bylaw,¹³³ but if a dog is found in one of these areas, the only option open to territorial authorities is impounding.¹³⁴

Tasmania has followed Victoria in providing sterner penalties for offences involving dogs declared dangerous or dogs belonging to one of the five restricted breeds. The Dog Control Act 2000 provides a maximum penalty of imprisonment for one month, a fine not exceeding 30 penalty units, or both, in regard to an owner of a dangerous or restricted breed dog that attacks or bites any person or animal.¹³⁵ Yet the owner of a dog, that is neither dangerous nor a restricted breed, is only liable for a fine not exceeding 10 penalty units, where the dog attacks a person or animal, causing serious injury to the person or death to the animal.¹³⁶ Such differential treatment for offences based around the type of offending dog is difficult to comprehend.

While the maximum penalty under the Tasmanian statute is a term of imprisonment not exceeding one year, this only applies to the specific instance of an owner of a dangerous dog that has previously attacked a person or animal and commits a similar offence.¹³⁷

In Queensland, the State Parliament passed a new statute addressing dog control, the Animal Management (Cats and Dogs) Act 2008. Surprisingly, the Act does not prescribe imprisonment for an offence of a dog attacking a person causing injury, with only a fine being able to be imposed.¹³⁸

The Queensland statute, as in New Zealand, has classifications of “dangerous” and “menacing” dogs with additional obligations for owners,¹³⁹ while people wishing to keep a restricted breed¹⁴⁰ must apply to a local Council for a permit.¹⁴¹

¹³² Domestic Animals Act 1994 (Vic), s 43.

¹³³ Dog Control Act 1996, s 20.

¹³⁴ Ibid, s 52.

¹³⁵ Dog Control Act 2000 (Tas), s 19(4).

¹³⁶ Ibid, s 19(3).

¹³⁷ Ibid, s 19A(7).

¹³⁸ Animal Management (Cats and Dogs) Act 2008 (Qld), s 194.

¹³⁹ Ibid, sch 1. The obligations involve being implanted with a microchip, muzzled when in a public place and be adequately confined in an approved enclosure when on private property

¹⁴⁰ Defined in Customs (Prohibited Imports) Regulations 1956 (Cth), above n 118.

¹⁴¹ Animal Management (Cats and Dogs) Act 2008, s 71.

In recognition of the gap that exists between high-level criminal negligence offences and lower tier offences contained in the Animal Management (Cats and Dogs) Act 2008,¹⁴² the Queensland government introduced an amendment into its criminal code creating a new offence of dangerous management of a dog.¹⁴³ In a similar vein to Victoria, the new offence would have attracted a maximum penalty of 10 years imprisonment. However the proposed amendment lapsed on 19 February 2012.¹⁴⁴

Western Australia appears to be following the legislative path forged by Victoria. The Dog Amendment Bill 2013, which had its second reading on 26 June 2013,¹⁴⁵ provides for a new offence, punishable by ten years imprisonment, where the owner of a dangerous dog that kills or endangers the life of a person.¹⁴⁶ Once again the focus on offending by dangerous dogs is apparent. The Bill also proposes to increase the penalty for an attack on a person or animal by a dangerous dog to a \$20,000 fine or two years imprisonment, or both, compared to current maxima of \$10,000 and a term of one years imprisonment, irrespective of the status of the offending dog.¹⁴⁷

The other two major states in Australia have yet to emulate the punitive perspective on owners of dangerous dogs, exhibited by Victoria and Western Australia. In South Australia the Dog and Cat Management Act 1995 provides for a maximum penalty of a fine of \$10,000 or a term of imprisonment of two years for a person who sets on or urges a dog to attack a person or animal.¹⁴⁸

The New South Wales State Parliament last updated its penalty provisions under the Companion Animals Act 1998 in 2005.¹⁴⁹ The amendment to the Act provides for a maximum penalty of 500 penalty units or a two year term of imprisonment, or both, for an owner of a dangerous or restricted dog which attacks or bites any person.¹⁵⁰

It remains to be seen whether a vicious mauling by three American Bulldogs of a jogger in suburban Sydney, in May 2013, will be a catalyst for strengthened dog control laws in that

¹⁴² Department of Local Government and Planning (Qld) *Management of dangerous and potentially dangerous dogs in Queensland; Civil liability and other issues associated with the regulated dog provisions of the Animal Management (Cats and Dogs) Act 2008*, (February 2012) at 5.

¹⁴³ Law Reform Amendment Bill 2011, cl 35.

¹⁴⁴ Department of Local Government and Planning (Qld), above, n 142.

¹⁴⁵ <www.parliament.wa.gov.au>

¹⁴⁶ Dog Amendment Bill 2013 (WA), cl 36.

¹⁴⁷ Ibid, cl 33(2).

¹⁴⁸ Dog and Cat Management Act 1995 (SA), s 44.

¹⁴⁹ Companion Animals Amendment Act 2005 (NSW).

¹⁵⁰ Ibid, s 33.

state. The mauling of the 49 year old male lasted approximately five minutes, with the three dogs chewing through his chest, inflicting injuries so horrific that paramedics, when arriving at the scene, could see the victim's heart through an open wound.¹⁵¹ Whilst the man narrowly escaped death, it is sickening to contemplate what may have occurred had the victim been a child.

The death of a two year old boy in Denilquin, south-western New South Wales on 4 August 2013, as a result of an attack by a Mastiff-cross may prove to be the tipping point to galvanise the state legislature into law reform action. The victim was at his grandmother's house when mauled by a dog belonging to his cousin.¹⁵² Just five days later a spokesperson for the New South Wales Local Government Minister commented that the government was committed to strengthening dog control laws and revealed that the Minister believed the current penalties in the Companion Animals Act 2005 were not in line with community expectations.¹⁵³

Canada

Canada has a federal system of governance with provincial governments similar to the state governments in Australia. By comparison, however, dog control laws in Canada are in stark contrast to Australia. While the states in Australia have comprehensive laws regulating the registration and control of dogs, Canada has a light legislative touch and small reach on laws relating to dogs whether promulgated by either federal or provincial governments.

The Animal Pedigree Act 1988 is the only federal statute pertaining to dogs that applies throughout Canada. The Act is concerned with the promotion of breed improvement and therefore is of no relevance to this dissertation.

In terms of provincial statutes, there are only two that specifically deal with dangerous dogs and public safety, with the most substantive being in Ontario. The Owners Liability Act¹⁵⁴ has a particular focus on banning the importation and breeding of pit bulls and stipulates

¹⁵¹ Megan Levy "Dog owner fined four months before jogger attacked" *Sydney Morning Herald* (online ed, Sydney, 27 May 2013)

¹⁵² Leesha McKenny "Toddler killed in dog attack at grandmother's house" *Sydney Morning Herald* (online ed, Sydney, 5 August 2013)

¹⁵³ Neil Keene "Dog laws across NSW are on a tight leash" *The Daily Telegraph* (online ed, Sydney, 9 August 2013)

¹⁵⁴ Owners Liability Act 1990 (Ont).

that existing dogs be sterilized and muzzled when in a public place.¹⁵⁵ The Act sets a maximum penalty of a \$10,000 fine, a prison term not exceeding six months, or both, for any breach of its provisions. With only 20 sections in total, the Ontario legislation appears unsophisticated in comparison to New Zealand and Australian statutes on the same subject.¹⁵⁶

The only other province with a dedicated law on dog control is Alberta. The Dangerous Dogs Act¹⁵⁷ is simplistic in the extreme, having only three sections, directed at the mischief of dogs biting people. The sanctions are minuscule with a maximum fine of \$5.00 per day being able to be imposed for failure to comply with an order to keep a dog under control.¹⁵⁸

The provinces of British Columbia and New Brunswick, while not having specific laws concerning the control of dogs, do confer power on territorial authorities within their jurisdiction to make bylaws regulating the control of dogs.¹⁵⁹ In the case of New Brunswick, this power expressly includes the ability to define a fierce or dangerous dog and the prohibition or regulation on keeping these types of dogs.¹⁶⁰

England and Wales

In England and Wales there are two statutes which, despite their vintage and relative brevity, still have application when considering current law relating to the control of dogs. The Dogs Act 1871 has a provision empowering the court to order destruction of a dog that is considered to be dangerous and not being kept under effective control.¹⁶¹ The importance of rural livestock is evident in the Dogs Act 1906, which permits any dog that has injured cattle or poultry, or chased sheep, to be treated as a dangerous dog under the Dogs Act 1871.¹⁶²

These vintage statutory provisions were inadequate to keep pace with societal changes and the particular hazards to public safety posed by the increasing proclivity of some urban people to keep and breed aggressive dogs. The Dangerous Dogs Act 1991 (DDA) was enacted in response to a number of incidents where people had been seriously injured or

¹⁵⁵ Ibid, ss 6 and 7.

¹⁵⁶ Ibid, s 18.

¹⁵⁷ Dangerous Dogs Act 2000 (A)

¹⁵⁸ Ibid, s 2.

¹⁵⁹ Local Government Act 1996 (BC), pt 22 and Municipalities Act 1973 (NB), s96.

¹⁶⁰ Municipalities Act 1973 (NB) s96(1)(g).

¹⁶¹ Dogs Act 1871 (UK), s 2.

¹⁶² Dogs Act 1906 (UK), s 1.

killed by attacks from dogs.¹⁶³ The Act was introduced in haste and has proved to be ineffective and hugely unpopular.¹⁶⁴

The rationale underpinning the introduction of the DDA was “to prevent persons from having in their possession or custody dogs belonging to types bred for fighting.”¹⁶⁵ In pursuit of this objective, the statute banned the importation and breeding of four inherently aggressive breeds, namely, the Pit Bull Terrier, Japanese Tosa, Dogo Argentino and Brazilian Fila.

The DDA established a new offence of a dog being dangerously out of control, attracting a maximum penalty of two years imprisonment, a fine, or both.¹⁶⁶ A crucial deficiency, however, is that the offence only relates to a dog being dangerously out of control in a public place,¹⁶⁷ or a place where it is not permitted to be.¹⁶⁸ This has meant that serious injuries and fatalities arising from dog attacks occurring in a family home are outside the reach of the DDA. The following instances, which all involve a dog being in a place where it was permitted to be, illustrate the tragic shortcomings of the legislation in England and Wales:¹⁶⁹

- In December 2010, a 52 year old woman died in a dog attack in her home in Wallington, Surrey.
- In November 2009, a four year old boy was killed by a dog owned by his uncle in Wavertree, Liverpool.
- In February 2009, a three and a half month old baby from the County of Caerphilly was fatally injured by the family’s two dogs.
- In January 2008, a nine year old girl was attacked and disfigured by a dog at a neighbour’s house in Rotherham, South Yorkshire.
- In December 2007, a 13 month old child was killed by a dog at his grandparent’s home in Wakefield, West Yorkshire.

¹⁶³ Bridget Martin “Pit Bull Terriers and the Dangerous Dogs Act 1991” (2008) 8 J Animal Welfare L 7 at 7.

¹⁶⁴ Editorial “Dangerous Dogs and the law” (2010) 166 *Veterinary Record* 344 at 344.

¹⁶⁵ Dangerous Dogs Act 1991 (UK), long title.

¹⁶⁶ Dangerous Dogs Act 1991 (UK), s 3.

¹⁶⁷ Ibid, s 3(1).

¹⁶⁸ Ibid, s 3(3).

¹⁶⁹ Department for Environment, Food and Rural Affairs *Promoting more responsible dog ownership: Proposals to tackle irresponsible dog ownership* (April 2012) at 8.

- In January 2007, a three year old child was killed by her uncle's dog in the uncle's home.

The failure of the DDA to stem the tide of dog attacks on people can also be viewed through the lens of statistics. The numbers of dog attacks that required admission to a hospital rose from 2,915 in 1997/98 to 6,118 in 2010/11, constituting an increase of 210 per cent.¹⁷⁰ It is perhaps not surprising that the DDA was labelled by Laura Vallance of the Dogs Trust as "probably the worst bit of legislation that's ever come into the statute books".¹⁷¹

The mauling to death of a 14 year old girl, Jade Anderson, by five dogs in a house at Atherton, Manchester in March 2013,¹⁷² appears to have finally jolted Parliament into amending the DDA. On 9 April 2013, Lord de Mauley, Parliamentary Under-Secretary of State for Resource Management, the Local Environment and Environmental Science, forwarded a draft Bill to the Chairman of the Environment, Food and Rural Affairs Committee for pre-legislative scrutiny.¹⁷³ The Bill proposes to amend section 3 of the DDA by extending criminal liability for dog attacks to all places in England and Wales, with a defence available in the instance of a dog attacking a trespasser that has entered or is in the process of entering the home.¹⁷⁴

In the interests of holding dog owners to account and enhancing the safety of the public, particularly vulnerable children, it can only be hoped that this Bill has a swift and smooth passage through the legislative process, so that it can plug a gaping hole in the current law.

Germany

The Federal Republic of Germany comprises 16 states, one of which, Lower Saxony, has recently introduced significant reforms to the laws relating to the ownership of dogs. The State Parliament passed the Lower Saxony Act for the Keeping of Dogs on 26 May 2011.¹⁷⁵

¹⁷⁰ Ibid, at 9.

¹⁷¹ "Dog attack hospital admissions rise for the fifth consecutive year" *The Telegraph* (online ed, London, 19 January 2012).

¹⁷² Zoe Williams "After the death of Jade Anderson, what should we do about dangerous dogs?" *The Guardian* (online ed, London, 29 March 2013).

¹⁷³ <www.parliament.uk>

¹⁷⁴ Draft Dangerous Dogs (Amendment) Bill 2013 (UK), cl 1.

¹⁷⁵ Niedersächsisches Gesetz über das Halten von Hunden (translation:Lower Saxony Act for the Keeping of Dogs)

The principal objective of the new statute is to protect the public from the dangers posed by dogs.¹⁷⁶

A key feature of the new law is the need for new owners of dogs to demonstrate competency in caring for a dog by satisfactorily completing theoretical and practical tests.¹⁷⁷ The criteria for the theoretical tests cover knowledge of animal welfare standards, social behaviour of dogs and the specific breed proposed to be kept, training and legal obligations of a dog owner.¹⁷⁸ The practical component of the test involves a qualified veterinarian inspecting the intended pet dog to assess whether it has been socialised and is not dangerous.¹⁷⁹

The new licensing regime, which came into force on 1 July 2013, exempts existing dog owners who have kept a dog for a continuous two year period within the past 10 years, provided that no offence has been committed in that period of time.¹⁸⁰ Another interesting feature of this ground-breaking law is the imposition of mandatory insurance on dog owners. Owners are required to obtain insurance cover of 500,000 euros for a dog causing harm to a person and 250,000 euros for a dog causing harm to an asset.¹⁸¹

Conclusion

Strengthening existing laws to target miscreant dog owners is a common theme when comparing dog control laws in other jurisdictions. Only Canada appears to have a benign approach to the burgeoning problem of aggressive dogs and the threats posed to community safety. Conversely, in the Australian states of Victoria and Western Australia, a clear legislative signal has been sent that owners of dogs which attack and kill people can expect to spend up to ten years in jail.

A common, but lamentable feature, of the experience in Australia, and England and Wales, is legislative haste to strengthen laws following a fatal dog attack on a child. This is the same approach taken in New Zealand where the last major reform of the law occurred after the well-publicised dog attack on Carolina Anderson. The only difference in New Zealand was that the attack was not fatal.

¹⁷⁶ Ibid, s 1(1).

¹⁷⁷ Ibid, s 3(1).

¹⁷⁸ Ibid, s 3(2).

¹⁷⁹ Ibid, s 13.

¹⁸⁰ Ibid, s 3(6) (1).

¹⁸¹ Ibid, s 5.

The law reforms in Australia, England and Wales and New Zealand have adopted a punitive emphasis in the interests of reflecting the community's displeasure at dog owners' failure to keep their dogs under effective control. But Lower Saxony in the Federal Republic of Germany has shifted the emphasis to determining whether people are competent to own and keep a dog. This raises a vital question as to whether the legislative focus should be on the breed of dog, the deed committed or the owner. This will be traversed in the next chapter.

CHAPTER FOUR—IS IT THE BREED, THE DEED OR THE OWNER?

The Breed

The propensity of jurisdictions, including New Zealand, to place importation and breeding prohibitions on certain breeds or types of dogs, begs the question whether some dogs are inherently vicious. Scientific, academic, medical and dog owner support for this contention is limited, with commentators citing the media as playing an influential role in shaping the public's mind on the negative portrayal of some breeds of dogs.

A modicum of support for the argument that some breeds of dogs are pre-disposed towards displaying aggressive behaviour can be obtained from a 1997 study closely analysing the behaviour of 112 dogs. Of the total dogs tested, 75 were from a group comprising American Staffordshire Terriers, Brazilian Filas or Dogo Argentinoes.¹⁸² The study concluded that the proclivity for exhibiting aggression was based on genetics as well as environmental factors.¹⁸³ According to the authors of the study, the modus operandi of their tests would be suitable for use in a breeding programme for controlling aggressive tendencies in dogs belonging to certain breeds.¹⁸⁴

The news media is frequently cited by academics as fomenting fear and loathing of certain breeds of dogs. The Pit Bull Terrier-type of dog, which encompasses the American Staffordshire Terrier, Staffordshire Bull Terrier and the American Bull Terrier, is an example of a breed that has gone from hero to public enemy. The loveable dog in the popular television programme “The Little Rascals” was an American Staffordshire Terrier while President Teddy Roosevelt kept a pet Pit Bull Terrier in the White House. This wholesome, “family dog” image was eviscerated by frenzied media coverage in the 1980s of severe attacks and deaths caused by Pit Bull Terriers, generating fear and an increased interest amongst those seeking an impregnable guard dog or a dog that could be used for fighting.¹⁸⁵ The increased media attention is believed to be responsible for a dramatic

¹⁸² Willem J Netto and Doreen J Planta “Behavioural testing for aggression in the domestic dog” (2007) 52 Applied Animal Behaviour Science 242-263.

¹⁸³ Ibid, at 261.

¹⁸⁴ Ibid.

¹⁸⁵ Safia Gray Hussein “Attacking the Dog-Bite Epidemic: Why Breed –Specific Legislation Won’t Solve the Dangerous Dog Dilemma (2006) 74 Fordham L Rev 2847 at 2854.

increase in the incidence of impromptu street fighting in the United States.¹⁸⁶ This has led to a mistrust of the breed with the media being cited as playing “no small part” due to the portrayal of it as a “terrifying menace, engineered to fight and kill”.¹⁸⁷ Abetting this negative impression is the fact that Pit Bull Terriers were responsible for approximately one third of all fatal attacks on people in the United States between 1981 and 1992.¹⁸⁸ Yet just four years later, Rottweilers, a breed not prohibited in any legislation, were recorded as being responsible for almost 50 per cent of canine homicides in the United States between 1993 and 1996.¹⁸⁹

In New Zealand, an academic, Jill Jones, has levelled criticism at the “media frenzy” which followed the attack on Carolina Anderson in 2003, with reporters “relentlessly hunting for news of dog attacks”.¹⁹⁰ She warns how moral panic can set in as a consequence of this omnipotent media coverage leading to laws that are inevitably flawed.¹⁹¹

The swing in fashion of breeds considered aggressive and dangerous can be seen with the likes of the Great Dane, Doberman Pinscher and German Shepherd which endured similar unsavoury reputations for public menace in the 1970s.¹⁹² Such oscillating public opinion on breeds of dogs deemed vicious and untrustworthy can frustrate more objective thinkers, who caution against the adoption of convenient labels for certain types of dogs. Lynn Marmer for example, contends that “one breed is not inherently good or evil, vicious or docile, harmful or helpful.”¹⁹³

Scientific and medical studies support this view. Assessments carried out on the American Pit Bull Terrier, Staffordshire Bull Terrier and American Staffordshire Terrier revealed that all three achieved above average pass rates on the American Temperament Test, with the results placing these dogs on a par with, or slightly above, the Golden Retriever.¹⁹⁴ Several medical studies do not include breed as a relevant factor in determining the propensity of a

¹⁸⁶ Michael Oropallo “Taking the bite out of Pit Bull Attacks: Is there an answer? (1988) 15 Ohio NU L Re. 83 at 88.

¹⁸⁷ Devin Burstein “Breed Specific Legislation: Unfair Prejudice & Ineffective Policy”(2004) 10 Animal Law 313 at 313.

¹⁸⁸ Hussein, above n 185, at 2581.

¹⁸⁹ Ibid.

¹⁹⁰ Jill Jones “Barking up the wrong tree” [2003] 3 NZLJ 98.

¹⁹¹ Ibid.

¹⁹² Jamey Medlin “Pit Bull Bans and the Human Factors Affecting Canine Behavior” (2007) 56 DePaul L Rev 1285 at 1295.

¹⁹³ Lynn Marmer “The New Breed of Municipal Dog Control Laws: Are they Constitutional?” (1984) 53 U Cin L Rev 1067 at 1081.

¹⁹⁴ Medlin, above n 192, at 1296.

dog to bite. Factors such as heredity, sex, early experience, socialisation and training, health, reproductive status, quality of ownership and supervision and victim behaviour have been identified as being influential.¹⁹⁵

Irresponsible breeding has undoubtedly exacerbated problems in regard to the public perception of certain breeds being inherently aggressive. A desire to promote aggression and a lack of concern with unstable temperaments has contributed to a lower quality of dog within a specific breed.¹⁹⁶ Street fighting amongst urban gangs, where dogs are status symbols and conflict represents an owner's masculinity or toughness, has led to haphazard breeding of dogs with little thought given to preserving bloodlines and enhancing a specimen.¹⁹⁷ Financial motives have also been identified as contributing to the indiscriminate breeding of dogs, with the term "puppy millers" used to describe the practice of breeding bitches as often as possible until their financial and physical utility is exhausted.¹⁹⁸ The emphasis on extracting a financial return allows other undesirable traits, such as inbreeding and a lack of socialisation of young puppies with humans, to be routinely present within these types of breeding establishments.¹⁹⁹ This leads to a proliferation of poor quality and potentially dangerous dogs being made available to the public for purchase.

The British Veterinarian Association has been implacably opposed to legislation based on banning or restricting certain breeds. Apart from problems associated with defining breeds and breed types, the Association maintains that singling out a select few breeds for regulatory control fails to recognise that a significant portion of the individual dogs within each identified breed may not be susceptible to aggressive behaviour.²⁰⁰ An additional concern of the Association is the false assumption that dog breeds not included in any legislative restriction or ban will not be inclined to show aggression.²⁰¹

The British medical profession has also had reservations about the merits of a breed-specific approach to control the dangers posed by aggressive dogs. It noted in a 1991 study that the

¹⁹⁵ Hussein, above n 185, at 2869.

¹⁹⁶ Medlin, above n 192, at 1305.

¹⁹⁷ Matthew Heger "Bringing RICO to the Ring: Can the Anti-Mafia Weapon Target Dogfighters?"(2011) 89 Wash UL Rev 241 at 246.

¹⁹⁸ Delise, above n 116, at 32.

¹⁹⁹ Ibid, at 33.

²⁰⁰ Editorial "Dangerous dogs and the law" (2010) 166 Veterinary Record 344 at 344.

²⁰¹ Ibid.

breeds most commonly represented in dog bites incidents were Staffordshire Bull Terriers, Jack Russell Terriers, Medium-sized Mongrels and Alsatians.²⁰²

The shortcomings of categorising certain breeds as being inherently dangerous and warranting strict statutory controls is evidenced by the wide range of dog breeds responsible for fatal attacks on people. A study in the United States, analysing human deaths from dog attacks from May 1975 to April 1980, identified 15 individual breeds responsible, from the giant Great Dane through to the diminutive Dachshund.²⁰³

Given these findings and widespread concern about making arbitrary judgments on a breed of dog and its propensity for aggression, it is not surprising that legislation which targets a breed, as opposed to deed or behaviour, has been the subject of strident criticism. A fitting encapsulation of the prevailing sentiment is that the legislation creates a false sense of public security through oversimplification of the problem and under-inclusiveness of the solution.²⁰⁴

The Deed

Unlike the other common law jurisdictions analysed in chapter three, dog control law in New Zealand places a greater emphasis on the deed or act of a dog as opposed to its breed or classification in respect of potential danger to the public. While a breed- based approach has been adopted in regard to the ban on importation and mandatory muzzling of five specific breeds or types of dogs,²⁰⁵ the Dog Control Act 1996 predominantly concentrates on regulating the behaviour of dogs irrespective of breed or type. This is evidenced in the offence provisions where no distinction is made on sanctions imposed for transgressions committed by a certain breed, type, or classification of dangerous or menacing dog.²⁰⁶

This approach of “the deed rather than the breed” has strong support from a wide ambit of interests. The American Veterinary Medical Association, the American Kennel Club, the American Society for Cruelty to Animals and the Humane Society of USA all support

²⁰² Rachel Besser “Dog attacks: it’s time for doctors to bite back”(2007) 334 BMJ 385 at 425.

²⁰³ Jeffrey J Sacks and others “Breeds of Dogs Involved in Fatal Human Attacks in the United States Between 1979 and 1998” (2000) 217 J American Vet Med Assn 836 at 839. The breeds responsible for deaths were German Shepherd, Husky, Saint Bernard, Bull Terrier, Great Dane, Malamute, Golden Retriever, Boxer, Dachshund, Doberman Pinscher, Collie, Chow Chow, Labrador Retriever and Yorkshire Terrier.

²⁰⁴ Hussein, above n 185 at 2881.

²⁰⁵ Dog Control Amendment Act 2003,s 50, above, n 65.

²⁰⁶ Dog Control Act 1996, ss 53,57, 57A and 58,all of which pertain to the control of dogs and dogs attacking people and animals.

dangerous dog laws which are based around the conduct of a dog as opposed to breed.²⁰⁷ The British Veterinary Association supports a “deed not breed” approach, believing dogs should be targeted for their actions not what they may look like.²⁰⁸ In the realm of animal law a view proffered is that the easiest and most effective way to protect people from dog attacks is to create and enforce laws requiring the appropriate containment of all dogs, regardless of breed.²⁰⁹

The New Zealand Kennel Club in its submission to proposed dog control law reforms in 2003 maintained that any control measures should be aimed at specific rogue animals and specifically urged that the deed rather than the breed should be targeted.²¹⁰ In a similar vein, Local Government New Zealand questioned the appropriateness of a breed-specific approach to legislation, contending that any breed of dog had the potential to be dangerous and that the priority for law reform resided in achieving responsible dog owner behaviour, irrespective of the breed.²¹¹

The Owner

During a debate on the introduction of the Local Government Law Reform Bill on 6 December 1994, The Hon John Banks, Minister of Local Government, proclaimed, “I believe there are no bad dogs. I believe there are some bad owners.”²¹² This viewpoint resonates with a number of individuals and organisations interested or concerned about effective dog control laws.

Experts have asserted that a dog’s tendency to bite is the result of at least five factors:²¹³ genetics, early socialisation to people, training for obedience, quality of care and supervision and the behaviour of the victim. Only the last item on this list is completely beyond the influence of the dog owner. Genetics can be largely controlled by human behaviour while the other factors identified are entirely influenced by the owner.²¹⁴ The commitment by an

²⁰⁷ Hussein, above, n 185, at 2875.

²⁰⁸ Editorial, above, n 200.

²⁰⁹ Burstein, above, n 187 at 327.

²¹⁰ New Zealand Kennel Club “Submission to Local Government and Environment Committee on the Local Government Law Reform Bill (No 2) and Supplementary Order Paper No 79” at 4.

²¹¹ Local Government New Zealand “Submission to Local Government and Environment Committee on the Local Government Law Reform Bill (No 2) and Supplementary Order Paper No 79” at 7.

²¹² (6 December 1994) 545 NZPD 5455.

²¹³ Orapallo, above n 186, at 98.

²¹⁴ Medlin, above, n 192, at 1304.

owner to socialise a puppy, undertake obedience training and keep vigil on its wellbeing in order that it is well fed, exercised, adequately housed and supervised, can have a significant impact on how a dog reacts with people. Unsocialised, poorly bred dogs can exhibit extreme aggression towards humans.²¹⁵ There is a strong view that no dog is inherently dangerous or vicious, but merely becomes this way due to human manipulation.²¹⁶ It has also been argued that a good dog owner can virtually eliminate the dangers posed by an aggressive dog, while conversely an irresponsible owner who mistreats and abuses a non-aggressive dog could transform it into a vicious animal.²¹⁷

In assessing liability in dog bite cases, one academic writer has suggested that instead of focusing on a dog's conduct the point of an inquiry should shift to examining the conduct of the owner.²¹⁸ The rationale for this assertion is that an owner has the greatest influence on the potential for a dog to cause harm by creating the conditions and environment in which the animal is raised.²¹⁹ This has led to the suggestion that banning certain breeds from existence will not alter irresponsible human behaviour, nor reduce the number of dangerous dogs.²²⁰ A similar lament has been expressed from a medical perspective where a plea has been made for attention to be focused on the person who holds the other end of the lead –or who may not be holding the lead—rather than placing blame on the dog.²²¹

Given the widespread support for the proposition that an owner possesses an influential role in orchestrating either positive or adverse outcomes in regard to the control of dogs and enhancing public safety, it is surprising that the control of ownership of dogs has not featured, to any great degree, in statutes within common law jurisdictions. One critic of breed-specific laws has put forward a counter-argument that, as people determine whether dogs will be useful inhabitants of a community or nuisances, they should be a target for legislators, particularly those who breed and foster viciousness in dogs.²²² This is in harmony

²¹⁵ Delise, above n 116, at x.

²¹⁶ Diane Hale "Man Bites Dog with Ohio's Vicious Dog Statute" (1989) 37 Clev St L Rev 119 at 144.

²¹⁷ Burstein, above n 185, at 324.

²¹⁸ Lynn Epstein "There are no Bad Dogs, Only Bad Owners: Replacing Strict Liability with a Negligence Standard in Dog Bite Cases" (2006) 13 Animal Law 129 at 131.

²¹⁹ Ibid.

²²⁰ Ibid, at 1318.

²²¹ Besser, above, n 202, at 425.

²²² Marmer, above, n 193, at 1081.

with academic opinion that the law should acknowledge ownership as a significant factor in determining a dog's propensity for aggression.²²³

Targeted Licensing of Owners

The pivotal principle underpinning this dissertation is that people should have to obtain a licence to own and keep a dog. Like New Zealand, jurisdictions in Australia and England and Wales have been forced to legislate in response to brutal dog attacks on members of the public. The ensuing legislative amendments have concentrated on increasing penalties for owners of dogs that attack. However, a more relevant question which legislators appear reluctant to address, is whether there should be a minimum threshold imposed before people can own and keep a dog. The new licensing regime introduced in Lower Saxony in the Federal Republic of Germany is a new "high water mark" for regulating dogs and their owners. It is a clear demonstration of the widely accepted principle that people have the most influence on a dog's temperament and behaviour.

The New Zealand Kennel Club supported owner registration as a more equitable method of licensing dogs in its submission in 2003 on the Local Government Law Reform Bill.²²⁴ The possibility of licensing dog owners in New Zealand was given some consideration by the Department of Internal Affairs when it undertook public consultation on possible reform of dog control laws in 2007.²²⁵ The production of a discussion paper canvassing possible law reform options to improve dog safety and control was ordered by the Minister of Local Government, Hon Nanaia Mahuta, in response to a fatal dog attack in April that year.²²⁶ This continued the trend, both in New Zealand and other jurisdictions, of Parliament instigating urgent reviews of the law following a serious or fatal dog attack.

General or targeted licensing of dog owners was one of nine options, on which the views of the public were sought.²²⁷ The rationale revealed for the suggestion of licensing all dog owners was to ensure that people owning and controlling dogs were "fit and proper persons."²²⁸ Other benefits identified in the 2007 discussion paper were the strong

²²³ Hussain, above, n 185, at 2883.

²²⁴ New Zealand Kennel Club, above n 210, at 7.

²²⁵ Department of Internal Affairs *Improving Public Safety under the Dog Control Act 1996: Policy Options* (December 2007).

²²⁶ Ibid, at 2.

²²⁷ Ibid, at 15.

²²⁸ Ibid.

reinforcement of owner responsibility for dog behaviour and dog safety along with effective testing and enforcement contributing to a reduction in irresponsible ownership and improved animal welfare.²²⁹

On the other side of the coin, the costs associated with regulating, establishing, administering and enforcing owner licensing was considered to be significant, although no estimate of quantum was provided.²³⁰ A further negative attribute cited was the possible need for central government to set national standards and administer any licensing system, thus potentially reducing local council and community discretion in dog control matters.²³¹ However, a similar situation occurs with building control where a national code is promulgated by central government and the processing of building consent applications in compliance with this code is undertaken by building control officers employed by local councils.²³²

The reaction from the public to the suggestion of licensing of dog owners was encouraging with 58 per cent of submitters expressing support.²³³ The differing perspectives of the public and territorial authorities are very evident as 69 per cent of individual submitters were supportive while 74 per cent of submitting councils opposed dog owner licensing.²³⁴

The Department of Internal Affairs, in its analysis of the submissions, concluded that it was unconvinced licensing of owners would produce additional benefits to make it worthwhile.²³⁵ It identified likely non-compliance by people who are disinclined to register their dogs, enforcement difficulty and the high costs of implementation as reasons for not recommending the proposal for further consideration.²³⁶ Again, no estimate of costs for a dog owner licensing regime was provided, with the Department insisting that there was no evidence that owner licensing would be beneficial, without major costs in implementation

²²⁹ Ibid.

²³⁰ Ibid, at 16.

²³¹ Ibid.

²³² Building Act 2004, ss 17,19,40,45 and 67.

²³³ Department of Internal Affairs *Summary of Results and analysis of public submissions on the discussion document Improving Public Safety under the Dog Control Act 1996: Policy Options* (undated) at [27].

²³⁴ Ibid.

²³⁵ Ibid, at [29].

²³⁶ Ibid at [29] and [31].

and enforcement and placing its faith in voluntary good owner schemes to facilitate responsible ownership.²³⁷

If nothing else, the research undertaken reveals that dogs placed with an irresponsible owner can have a lethal and deadly effect. It is not difficult to draw comparisons with the licensing provisions of firearms. The Arms Act 1983 requires a test of a “fit and proper person, “to determine whether an individual should be issued with a licence.²³⁸ Many law-abiding people own firearms for recreational purposes such as hunting, yet a licence is required for all individuals who wish to own a firearm and there are strict controls in respect of their distribution and ownership in recognition that, placed in the wrong hands, they are a danger to society.²³⁹

Motor vehicles are also potentially dangerous when controlled by inexperienced drivers. The Land Transport Act 2008 provides for a comprehensive licensing regime where applicants for a licence are subjected to both theoretical and practical tests to prove competency in driving to justify the issue of a licence.²⁴⁰ One of the stated reasons for having a driver licensing system is that to drive a vehicle is a privilege which is only given to people who pass the driver licensing test and demonstrate respect for the rights and safety of others.²⁴¹

The same rationale could easily be applied to dog ownership. Although costs associated with a licensing system and the inclination of a truculent few to endeavour to evade mandatory obligations has clearly not influenced public policy in the area of arms and vehicles, it is nonetheless cited as an insuperable obstacle in relation to dog ownership.

A targeted licensing system could ameliorate concerns about the cost of implementation and enforcement. Dogs used for professional purposes could be excluded on the basis that they do not form any part of the dog problem. Accordingly, farm dogs, police dogs, narcotic detection dogs and those used to assist the sight-impaired, would not be subject a licensing system.

²³⁷ Ibid at [34].

²³⁸ Arms Act 1983, s24.

²³⁹ See for example, the Arms Act, s40 requiring a person in possession of a firearm, airgun pistol or restricted weapon to give name, address and date of birth on demand by the Police or s43 which establishes an offence for any person selling or supplying a firearm or airgun to an unlicensed person.

²⁴⁰ Land Transport Act 1998, s26.

²⁴¹ The New Zealand Transport Agency web site accessed on <www.nzta.govt.nz>

Targeting could be further refined on the basis of size. All dogs have the ability to cause injury and potentially kill, but it is larger dogs with size and power that pose the most danger when partnered with an irresponsible or inexperienced owner. The states of Brandenburg and North Rhine-Westphalia in the Federal Republic of Germany have recognised this by including dogs of at least 40 centimetres in height and those with a weight in excess of 20 kilograms, within its dangerous dog regulations.²⁴²

Another potential criterion could be the age of the dog to reflect that as a dog ages it may be less energetic and therefore no longer pose a risk to the public. The problem with age is determining or nominating the age at which a dog is deemed to be less dangerous. This assumes that life expectancy of dogs is uniform but that is not the case. For example the average life expectancy of the Irish Wolfhound is 5-7 years whereas the American Staffordshire Terrier is 12-14 years.²⁴³ The age of a dog is therefore not viewed as being a useful or accurate criterion for dog owner licensing.

The approach adopted by the state of Lower Saxony in the Federal Republic of Germany, profiled in the previous chapter, may also provide some succour to critics who harbour fears about the costs involved in any dog licensing system. Providing an exemption to existing dog owners, who can point towards an exemplary past record, is an effective means by which to ensure that responsible people are not unnecessarily captured in the licensing solution.

Conclusion

There is a paucity of academic, scientific and veterinarian support for the notion that some breeds of dogs are inherently vicious and need to be the subject of stricter regulatory controls. There is strong support for the “deed rather than deed” approach to legislation, with widespread recognition that the owner of a dog wields considerable influence on how it interacts with people.

Despite this influence, laws continue to be enacted around the common law world with an emphasis on both the breed and punishing the behaviour of the dog. Regulating ownership of dogs in the acknowledgement that an intemperate animal and a careless owner can form

²⁴² Claudia Haupt “Who let the Dangerous Dogs Out? The German States hasty legislative action, the Federal law on Dangerous Dogs and the ‘Kampfhunde’ decision of the Federal Constitutional Court”(2006) 2 J Animal L 27 at 32.

²⁴³ The New Zealand Kennel Club, above n 100.

a dangerous cocktail, is a concept which warrants serious consideration, in the interests of safeguarding the public.

Rather than waiting for inevitable attacks to occur before imposing sanctions on an owner, licensing dog owners is a more proactive approach aimed at preventing dogs being owned by those who have a nonchalant or cavalier attitude towards public safety. Licensing dog owners is not a “silver bullet” in its own right and needs to be viewed alongside other potential improvements to the law in New Zealand, which will be canvassed in the final chapter.

CHAPTER FIVE- OTHER POTENTIAL LAW IMPROVEMENTS

Reduce Protection of Unregistered Dogs

A perplexing aspect of the current law in New Zealand is the seven day grace period granted to an unregistered dog before a territorial authority can sell or destroy it.²⁴⁴ During this period the territorial authority has obligations to provide proper custody, care and exercise of the incarcerated dog,²⁴⁵ but there are no correlative rights to destroy an obviously dangerous dog.

As mentioned in the second chapter, there is some evidence that unregistered dogs are disproportionately represented in statistics relating to attacks on people. An unregistered dog is not lawful in terms of the Dog Control Act and, up until the time of seizure, could well be unknown to a territorial authority.²⁴⁶ The lack of knowledge of existence of an unregistered dog is precisely the predicament that the local Council found itself in with the fatal attack on a four year old girl in Melbourne in August 2011.²⁴⁷

It is acknowledged that in some instances dogs may be unregistered due to a genuine oversight of the owner. This is why a grace period should be allowed to enable the territorial authority to inquire about the ownership of the dog. But it is contended that the seven day holding period for an unregistered dog should be at the discretion of the territorial authority rather than, at present, a strict provision irrespective of circumstances.

The mandatory impoundment of an unregistered dog for a seven day period can also pose a risk of a dog being unlawfully released. Council pounds, particularly in smaller rural Councils, can be located in a relatively isolated area without permanent staff on site. The reality of this risk was recently revealed in Greymouth, where a Bull Mastiff that had previously attacked a pensioner was set free after an unknown person or persons broke into the pound.²⁴⁸ Just two weeks later, another forced entry resulted in all dogs within the same pound being illicitly liberated.²⁴⁹

²⁴⁴ Section 69(3), above n 104.

²⁴⁵ Dog Control Act 1996, s 67.

²⁴⁶ Dog Control Act 1996, s 42(1), which establishes an offence for any dog owner who fails to register the dog before three months of age.

²⁴⁷ *Inquest into the Death of Ayen Chol*, above n 124, at [56].

²⁴⁸ Viv Logie "Mass break out at Greymouth dog pound" *The New Zealand Herald* (online ed, Auckland 18 June 2013)

²⁴⁹ Ibid.

It needs to be emphasised that dogs are more likely to be unregistered due to owner indifference as opposed to a genuine oversight in regard to the need apply for and maintain registration. A survey of territorial authorities conducted by the Department of Internal Affairs in 2003 disclosed that an irresponsible attitude was the prime reason why owners failed to register their dogs and noted that people who possess dangerous dogs often refuse, or endeavour to avoid, registration.²⁵⁰

A less tolerant approach to the plight of unregistered dogs may also act as an incentive for dog owners to keep their dogs confined to private property. This would negate the argument of critics of dog owner licensing who assert that it would be futile given the intransigence of some owners to register their dogs. However, if unregistered dogs could be seized and destroyed at a territorial authority's discretion, it would place a greater incentive on an owner either to register the dog or take greater care that it did not stray from its property for fear of its demise. Either outcome seems more beneficial than what the current law offers.

It is also germane to note that the notion of restricting protection given to unregistered dogs is not new and if implemented would in part, revive a provision that was in vogue approximately 100 years ago. As mentioned in the first chapter, The Dogs Registration Act 1908 provided that a land owner or any person authorised by a local authority could destroy any unregistered dog found on private land.²⁵¹

A degree of flexibility in favour of a dog owner could be introduced, if so desired, by replicating the "three strikes" provisions for serious violent offending contained in the Sentencing and Parole Reform Act 2010.²⁵² Under this concept owners who fail to register their dogs could receive warnings and an increased severity of penalty, such as a fine, until the third occurrence of non-registration, whereby the dog would mandatorily be destroyed. The advantages of this approach are that it gives owners ample opportunity to have dogs registered as well as removing the discretion from territorial authorities as to the fate of a dog. The main disadvantage would be the potential for an unregistered dog to wreak havoc in a community prior to receiving a third and fatal "strike".

²⁵⁰ Department of Internal Affairs, above n 102, at 15.

²⁵¹ The Dogs Registration Act 1908, above n 20.

²⁵² Sentencing and Parole Reform Act 2010, ss 86B,86C and 85D.

Establishment of an Animals Tribunal

Tribunals exist in order to provide simple, speedier, cheaper and more accessible justice than ordinary courts.²⁵³ Tribunals have been used extensively in New Zealand as a means by which to efficiently process large numbers of minor disputes in an informal forum while at the same time avoiding unnecessary expense.²⁵⁴

The range of activities governed by tribunals is extensive. Dedicated tribunals deal with disputes in areas as diverse as copyright, employment relations, civil claims less than \$15,000, motor vehicles, land valuation, human rights, tenancies, liquor licensing and weather-tight homes.²⁵⁵

The New Zealand Law Commission considers that tribunals offer the advantage of adjudicators being able to develop a specialist knowledge of a particular area,²⁵⁶ whether because they are appointed for their expertise in a specific area or because the relevant area of law is often quite narrow.²⁵⁷

Given the gamut of activities presently governed by tribunals in New Zealand, the concept of a specific adjudicating body for animals has considerable appeal. The analysis provided in the second chapter of High Court cases, in which dog destruction orders were sought, highlights how protracted and inefficient the courts can be in expeditiously determining, what many would suggest, are relatively straightforward issues.

An Animal Tribunal could investigate and adjudicate on a range of issues relating to domestic or companion animals, production animals and wildlife. It could include matters pertaining to animal welfare, cruelty, ethics associated with utilising animals in experiments or medical trials and dog control.

A tribunal with an animal focus would not only benefit disaffected dog owners. Prompt adjudication would also appeal to prosecuting agencies which have to weigh up the daunting cost and time of taking action through the courts against the gravity of the alleged offence, when making a decision on whether to proceed with a prosecution. The existence of an Animals Tribunal could make decisions to prosecute considerably easier to reach.

²⁵³ William Wade and Christopher Forsyth *Administrative Law* (9th ed, Oxford University Press, Oxford, 2004) at 906.

²⁵⁴ Public and Administrative Law Reform Committee *First Report of the Public and Administrative Law Reform Committee of New Zealand : Appeals from Administrative Tribunals* (Government Printer, Wellington , 1968) at 3.

²⁵⁵ <www.justice.govt.nz>

²⁵⁶ Law Commission *Tribunals in New Zealand* (NZLC IP6, 2008) at 44.

²⁵⁷ Ibid.

Compulsory mediation is a feature that could prove effective in the sphere of animal law. A statutory obligation to participate in mediation prior to disputes proceeding to adjudication presently exists in legislation governing the Tenancy Tribunal, Employment Relations Authority and the Human Rights Review Tribunal.²⁵⁸

Professor Kathy Hessler of Case Western Reserve University School of Law has extolled the benefits of mediation in animal law issues. She has cited benefits in terms of efficiencies of cost and time, as well as the parties' ability to exert control over the outcome and, to some extent, the process.²⁵⁹ Furthermore, mediation is considered to provide a range of options through which society can consider and potentially address increasingly difficult questions in the evolving field of animal law.²⁶⁰

While critics may point towards a potentially light workload as not warranting the establishment of an Animals Tribunal, there are several counter-arguments. First, although only 317 charges were laid in 2009 under the Dog Control Act, this number may have been greater if a prosecuting agency had access to a tribunal with its swifter decision-making ability. Secondly, the total charges laid do not include appeals or grievances that might be lodged by owners disaffected by a decision of a territorial authority. Thirdly, the charges relate only to dogs and not other animals which would be within the purview of the proposed tribunal. Fourthly, notwithstanding the criticism of a potentially light workload, some existing tribunals have quite small workloads with the Land Valuation Tribunal and Human Rights Tribunal, receiving on average less than 20 and 49 applications, respectively, per annum over the period of 2001-2006.²⁶¹

Finally, in the interests of success, a new tribunal should be imbued with a clear statutory objective. The clear directive of "speedy, informal and practical justice" provided to the Employment Relations Authority is an example worthy of replication.²⁶²

Introduction of a New Offence of a Dog Killing a Person

The Dog Control Act 1996 provides a maximum sentence of a three year term of imprisonment for an owner of a dog that attacks any person and causes serious

²⁵⁸ See Residential Tenancies Act 1986, s 76, Employment Relations Act 2000, s 159 and Human Rights Act 1993, s 77.

²⁵⁹ Kathy Hessler "Mediating Animal Law Matters" (2007) 2 J Animal L & Ethics 21 at 51.

²⁶⁰ Ibid, at 35.

²⁶¹ Law Commission, above n 256, at 142-143.

²⁶² Employment Relations Act 2000, s 174.

injury.²⁶³ However, there is no specific provision covering the situation where a dog attacks a person and causes death. Were this situation to occur, under the present law a maximum term of three years imprisonment is all that could be imposed.

This seems inadequate. As the Australian experience revealed in the tragic death of four year old Melbourne child, Ayen Chol, the absence of a specific sanction covering an attack by a dog on a person causing death can leave a sense of unease that the law does not adequately reflect the opprobrium which such attacks attract.

The likelihood of New Zealand experiencing a child death from a dog attack and having to face up to the inadequacy of its current law was recently brought into view by an incident in Christchurch. The incident, which occurred on 3 August 2013, involved two Rottweilers mauling an eight- year old boy, inflicting wounds to the scalp, face and legs.²⁶⁴ The dogs belonged to the family of the victim and in the words of a witness, the intervention of the victim's father "probably saved his life".²⁶⁵ The attack was described by a St John Intensive Care Paramedic as the worst seen in over a decade of attending animal attacks.²⁶⁶

To accommodate the abhorrent occurrence of a dog attacking and killing another person, it is suggested the law should be strengthened along similar lines to what has been introduced in Victoria, and is currently being contemplated in Western Australia. This would involve a separate offence of failing to control a dog that kills another person and, like Victoria, should attract a maximum term of imprisonment of 10 years. Unlike Victoria, however, and consistent with the approach adopted to date, the suggested amendment of the Dog Control Act in New Zealand should not differentiate whether the fatal attack emanates from a dangerous, menacing or restricted breed of dog. Put simply, if as a result of an owner's inadequate control, a dog attacks and kills a person, then the sentencing tariff should include liability to a commensurate sentence of imprisonment.

Destruction of Dogs Found in a Prohibited Area

As alluded to in the first chapter, historical deference to New Zealand's rural economy has left undisturbed a land owner's statutory right to seize and destroy a dog if it is running at

²⁶³ Dog Control Act 1996, s 58.

²⁶⁴ Blair Ensor "Rottweilers had attacked a child before" *The Christchurch Press* (online ed, Christchurch 20 August 2013).

²⁶⁵ Ibid.

²⁶⁶ Ibid.

large amongst stock or poultry.²⁶⁷ An equivalent provision does not exist in the urban area either in favour of a land owner or a territorial authority.

At present a territorial authority can prohibit dogs from specified public places under a dog control bylaw,²⁶⁸ but is not able to destroy a dog before the mandatory seven day impounding period has expired.²⁶⁹

A better approach, which would provide more balance between rural and urban interests, would be to provide a territorial authority with the ability to seize and destroy dogs found at large in certain prohibited areas enshrined within a bylaw. These prohibited areas might include kindergartens, pre-school facilities, primary schools and neighbourhood playgrounds where vulnerable young children are present. Once again a degree of insight can be obtained from the Domestic Animals Act 1994 in Victoria, where territorial authorities have this power in areas suitably defined in a local bylaw.²⁷⁰

²⁶⁷ Dog Control Act 1996, s 60.

²⁶⁸ Ibid, s 20(1)(a).

²⁶⁹ Section 69(3), above n 101.

²⁷⁰ Domestic Animals Act 1994, s 43.

GENERAL CONCLUSIONS

Dog control law in New Zealand has been incrementally strengthened by Parliament in response to societal changes and, more latterly, as a reaction to widely publicised dog attacks on people. Despite acknowledging that owners have a very influential role in determining and controlling a dog's behaviour, Parliament has eschewed the opportunity to place greater legislative emphasis on the dog owner rather than the dog and its actions.

A decade after the last significant reform of the law in New Zealand, statistics on the numbers of dogs declared either dangerous or menacing, and dog bite injuries recorded by ACC, suggest that public safety has not improved. Further, protracted legal action to obtain a destruction order from the court and the inability of territorial authorities to promptly determine the fate of unregistered dogs, undermine endeavours to protect the public from potentially dangerous dogs.

A comparison with other jurisdictions reveals that there are some sensible provisions in New Zealand in the Dog Control Act 1996 where the emphasis is on the act or deed rather than the status or breed of the dog. This avoids anomalous situations, as have occurred in Australia, where harsher penalties in respect of imprisonment for a dog owner that allows a dog to attack another person is only available if the dog has previously been classified as dangerous or menacing.

But there is a recent law change in Australia that warrants serious consideration in New Zealand. The decision of the Victorian Parliament to introduce a maximum term of imprisonment of 10 years for an owner that fails to control a dog that kills another person breaks new ground in regard to expressing public disapproval of dog attacks on people.

One of the depressing features of examining the development of the law relating to control of dogs, both in New Zealand and other countries, is how often the legislature has been forced to act following a vicious dog attack.

Scientific, academic, veterinarian and canine experts do not support the contention that some breeds are inherently vicious. While irresponsible breeding is cited as a factor, there is also strong agreement that a diligent owner who trains, exercises and socialises a dog has an important influence on its behaviour towards other animals and people. The ineluctable conclusion to be drawn from this dissertation is that a dog in the hands of an inexperienced, irresponsible or careless owner is potentially hazardous to public safety. Accordingly,

targeted licensing of dog owners as a means to control dogs that are most at risk of attacking people is a concept that demands serious scrutiny and should not be quickly discarded on the grounds of cost.

The German state of Lower Saxony has provided a valuable lead on how an owner licensing system can operate without unreasonably ensnaring responsible people. Licensing of dog owners is not about being anti-dog or curtailing enjoyment of owning and keeping a dog. Rather, it recognises that like vehicles and firearms, dogs can attack and kill if placed with the wrong person. Hopefully, New Zealand will not have to endure the anguish and horror of a child being killed by a dog, before it comes to the realisation that current dog control legislation does not provide adequate protection to the public from the dangers posed by dogs not under effective control.

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