Inquiry into the Legislative and Regulatory Framework Relating to Restricted Breed Dogs

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Dog bite injury – A public health issue

Every two years in Australia approximately three persons die as a result of dog bite injury and for each year almost 2000 are hospitalised and more present at a hospital emergency centre. Children are over-represented in dog bite injury requiring hospitalisation and are mostly bitten on the face, neck and head. Adults are mostly bitten on the hands, fingers and arms. The most common location of dog bite injury is within a home environment rather than in a public place. Bite events often cause considerable trauma to all involved, including those injured, their family and the offending dog’s owner. Severe or multiple bites may result in the development of post-traumatic stress disorder.

Reducing dog bite trauma is a complex problem requiring a multi-dimensional approach. Authorities in recent years have approached this issue by regulating particular dog breeds because they were considered to be more dangerous than other breeds. This practise is referred to as breed-specific legislation. However, to date there is no published literature showing the efficacy of breed specific legislation in reducing dog bite injury. This research will review the current emphasis on breed specific legislation, by examining the associated evidence base and considering the potential utility of an integrated approach to dog bite injury prevention.

The above is the preamble to an incomplete PhD thesis titled “Dog Bite Injury: an investigation into the effectiveness of regulation”

The fundamental research question being addressed in this thesis is whether breed specific regulation is a flawed approach to reducing dog bite injury. The overall research question was to be addressed through consideration of a set of more specific research questions.

1. Is there any evidence that current breed specific regulation is effective?
2. If not, why?
   i) Can breed be reliably identified?
   ii) Is breed a strong predictor of risk?
   iii) Are there other important risk factors?
3. What would be an improved approach to preventing dog bite injury?

I have included as Attachment 1 to this submission, the draft chapter relating to the conceptual basis for an integrated approach to dog bite injury prevention. As this is unpublished I request that it remain confidential. I would be happy to make myself available if further clarification was required and to provide further detail on the areas of research undertaken to provide input into this integrated approach.

I am also able to provide you with detailed literature review if required. I have included a brief summary of the epidemiology of dog bite injury, dog bite risk factors, interventions and legislation below.

**Epidemiology of dog bite injury**

**Worldwide**

There is a vast amount of literature, worldwide, describing dog bite injury. Many are retrospective or prospective descriptive studies resulting from research on hospital presentation or admissions data with a focus on children (Bernardo et al., 1998; Bernardo et al., 2000; Bernardo et al., 2002; Bhanganada et al., 1993; Dwyer et al., 2007; Hon et al., 2007; Kahn et al., 2003; Mendez Gallart et al., 2002; Schalamon et al., 2006; Steele et al., 2007) or all ages (Bhanganada et al., 1993; Day et al., 2007; Feldman et al., 2004; Hoff et al., 2005; Marsh et al., 2004; Weiss et al., 1998).

Victims of dog bites share common characteristics across jurisdictions which include:

- An increased likelihood of children being bitten in their home or someone else’s home rather than in a public place.
- Over-representation for dog bite injury in children and older people.
- Over-representation for dog bite injury for males of all ages.
- Children mostly bitten on the face, neck and head.
- Adults mostly bitten on the hands, fingers and arms.
Australia

A number of case-series and cross sectional survey studies have been conducted in Australia, where similar observations have been made (Al Podbersek, 1990; Greenhalgh et al., 1991; MacBean et al., 2007; Nixon et al., 1980; Ozanne-Smith et al., 2001; Pitt et al., 1994; Podberscek and Blackshaw, 1991; Thomas and Buntine, 1987; Thompson, 1997).

Risk factors for dog bite injury

Very few analytic studies have been conducted to determine risk factors for dog bite including victim specific factors. While the general pattern and circumstances of dog bite injury have been described to some extent, few well conducted risk factor studies have been reported, particularly those designed to determine risk factors for the general population or for characteristics of owners, victim behaviour, breed, dog training and socialisation.

Dog owner-specific factors

No research was found in the literature that has systematically examined personality or behavioural characteristics of owners whose dog has been involved in a bite injury event. However, there have been two papers that have considered the characteristics of owners of “vicious” dogs (Barnes et al., 2006; Ragatz et al., 2009). The first study found that “vicious” dog owners had nearly 10 times more criminal convictions than other dog owners and the second study found that “vicious” dog owners reported significantly more criminal behaviours than other dog owners. A major flaw in both these studies is that both assumed particular breeds as “vicious” regardless of whether the individual dogs had actually ever offended by biting. They based their premise on literature that indicated these breeds as “high-risk” breeds in terms of aggression.

A paper examining a case series of 227 biting dogs published in Applied Animal Behaviour Science in 2001 (Guy et al., 2001c) described the characteristics of the dogs, their behaviour, and their victim while another paper by the same authors (Guy et al., 2001b) evaluated the association of potential risk factors with biting behaviour to determine risk factors in a veterinary caseload for dog bites to owners in a household setting. They randomly selected 227 biting and 126 non-biting dogs from a general veterinary caseload of 3226 dogs and found that both the mean weight and age of biting dogs were significantly lower than that of non-biting dogs. It was noted that small dogs may have appeared more aggressive because
the owners of large dogs were less likely to present to a veterinarian. Significant risk factors for an outcome of biting included: the dog being female (particularly if small), the presence of one or more teenage children in the home, a history of a pruritic or malodorous skin disorder which had received veterinary treatments, showing or being allowed any of the following behaviours in the first two months of ownership: aggression over food, the dog having slept on someone's bed or the dog having been given a significantly higher ranking for excitability based on its behaviour. Dogs which had bitten were also more likely to have previously shown fear of children, men, and strangers. The information presented in this study may be applicable only to small companion animal practice situations and not the general population as the study design was to determine risk factors for owners of dogs in a general veterinary caseload.

**Dog-specific factors**

A study reported in Pediatrics in 1994 (Gershman et al., 1994), was designed to determine dog-specific factors independently associated with a dog biting a non-household member. Cases were selected from dogs reported to Denver Animal Control for a first-bite episode of a non-household member. Controls were neighbourhood matched dogs with no history of biting a non-household member. There was no assessment of the role of the victim’s behaviour in the dog bite event or verification of the predominant breed as stated by the owner. It was reported that, in comparison to controls, biting dogs were more likely to be German Shepherd predominant breed or Chow Chow predominant breed, male, unneutered, residing in a house with 1 or more children and chained while in the yard. Children aged 12 years and younger were the victims in 51% of cases. It is possible that case detection bias existed with victims of some breeds more likely to report bite incidents. This may result in spurious association between biting and those breeds. It is unlikely that a similar scenario exists with respect to the other factors and reporting. However, there may be other associations, for example between neutering or chaining and breed that may result in spurious association between biting and breed. Similarly families with children may be more likely to have certain breeds. These potential study flaws could be overcome using stratification to adjust for confounding in the analysis.

Other studies have also attempted to measure the relative dangers of particular breeds and also used reliable measures of the relative frequency of the breeds in the dog population. One, a cohort study of over 3000 dogs (Guy et al., 2001c) found that German Shepherds were
no more likely to bite than Labrador Retrievers, a result the authors attributed to German Shepherds being involved in more cases of attacks outside the home which were not the subject of their study. The study also found that mixed breed dogs were no more likely to bite than pure breeds.

A survey of child dog bite victims presenting to the Emergency Department of the Adelaide Children's Hospital over an eighteen month period from January 1986 to June 1987 (Greenhalgh et al., 1991) used council dog registration figures as the denominator to determine breed bite rate and found that German shepherds were implicated more frequently than their prevalence in the community. This finding is not reliable as the denominator used to determine the breed bite rate was obtained from council registration figures which are not necessarily a true reflection of the dog population due to breed identification problems and not all dogs being registered. No distinctions were made between purebred or crossbred dogs.

A later study used emergency presentation data for 356 all age dog bites from another Adelaide hospital for the period January 1990 to June 1993, together with data from respondents of a 1992 community survey (Thompson, 1997) to consider bite risk for dog breeds. The proportion of dog attacks by various breeds was reported as was the relative risk of attack by those breeds (representation ratio) using the unverified self-reported breeds from the community survey to determine the distribution of breeds in the dog population. Thompson also stated that more dangerous dogs existed but they did not feature in the injury surveillance data because they comprised a small proportion of the dog population. He did not provide any justification either for his assertion that more dangerous dogs existed or for the statement that they didn’t feature because they comprised a small proportion of the dog population. It may equally have been the case that they didn’t feature in the injury surveillance data because they were not more dangerous.

A case-control study of dog bite risk factors in a domestic setting to children aged 9 years and under was conducted as a component of my research. The aim of this study was to investigate risk factors for dog bite-related injury in a domestic setting to children aged 0-9 years. In Victoria, children aged 0-9 years account for 83% of hospital admissions and 73% of hospital presentations for dog bite injury. More than two thirds of bites to children occur in a domestic setting. The study region comprised the catchment of seven emergency departments (EDs).
Case data were obtained from a call back study of 51 child dog bite victims who presented to the study EDs. Controls were 102 children aged nine years and under exposed to dogs in a domestic situation in the study region and who were not bitten. Data was collected via self-report in response to an interviewer-administered questionnaire. Unadjusted analysis identified several risk factors including overconfidence with dogs (OR 6.01, 95% CI 2.89-12.7), provocation by the child (OR 13.43, 95% CI 5.71-31.63), neuter status of the dog (OR 0.26, 95% CI 0.11-0.59) and lack of supervision (OR 10.32, 95% CI 3.80-28.01). Breed did not appear to be a factor with forty-three different pure bred and mixed-breed dogs involved in 51 bite incidents. This was presented at the World Injury Prevention Conference in October 2012 (See Attachment 2). Analysis, controlling for the effects of confounding variables is to be presented in my thesis.

Identification of risk factors has the potential to reduce dog bite-related injury to children in a domestic setting by guiding future interventions, including education and policy. This is the first time a case-control study of this nature, using hospital data, has been conducted.

**Interventions - literature**

**Education**

Four studies were identified that had evaluated educational interventions. A pilot study conducted in the United States (Spiegel, 2000) utilised pre- and post-program questionnaires to determine if a school-based education program was an effective means of informing children aged 5 to 12 years old about dog bite safety. The questionnaire assessed children’s learning of the appropriate behaviors when interacting with dogs, dog bite prevention, and changes in their understanding of dog behavior. The program appeared to be highly effective in helping children understand how to prevent or avoid potentially threatening situations involving dogs. The program was most effective at teaching children that, neighborhood and family dogs are most likely to cause dog bite-related injuries, they should never run away from a dog, and they should never touch a dog that is sleeping or eating. For most groups, there was also an increased level of recognition of canine body language. It was recommended that future investigations should concentrate on monitoring actual changes in child behavior. This study had several limitations. It was noted that it was difficult to control for differences between schools that chose to participate and those which chose not to. All of the former were enrolled in the program, thereby providing the potential for participant bias,
selection bias, convenience sampling, and overall, “volunteerism.” All seven schools were private, which may limit the degree to which findings can be applied to other populations.

The other three studies evaluated Australian educational interventions. One was a randomised controlled trial of an educational intervention targeted at primary school children (Chapman et al., 2000). Eight primary schools in metropolitan Sydney were randomly selected. The schools were cluster randomised into intervention and non-intervention control schools with four in each group and two classes in each school were then selected to participate. 346 children aged 7-8 years participated. The intervention consisted of a 30 minute lesson from an accredited dog handler and dog, demonstrating appropriate behaviour around dogs. They were also given activities to be undertaken before and after the demonstration. Seven to ten days later the children were observed unsupervised in the playground with a docile dog tethered 5 metres away from its owner. Children from control schools were also presented with a dog in similar circumstances. The study concluded that the educational intervention increased the precautionary behaviour around strange dogs in the short term but further research was required to determine whether the program could influence children’s behaviour in the long term. The study was criticised for not taking into account cluster randomisation in the analysis which would take into account the likelihood the actions of children from one school were more similar to each other than to the actions of children from another school. After re-analysis a positive intervention effect was still present.

A second study used a questionnaire to investigate parents’ beliefs about their children’s behaviour around familiar and strange dogs. A brief educational program on 192 kindergarten children with a mean age of 4.7 years was then evaluated (Wilson et al., 2003). The study concluded that children in the 4 to 6 year age group could benefit from an instructional program about dog safety with an increased knowledge of dog-safe behaviour and/or increased caution in approaching dogs. The authors reported a number of limitations to this study. First, the results indicated a general increase in caution (number of “no” responses) in those experimental groups that recorded the greatest increase in knowledge about dog-safe behaviour. Because the number of questions requiring a “yes” or “no” were not balanced, it was possible that the generalised increase in caution accounted for the experimental findings. Another limitation was that the dependent measures were indirect.
While the children were able to identify high risk situations they did not determine a corresponding change in their behaviour.

While the US study (Spiegel, 2000) and the two Australian studies (Chapman et al., 2000; Wilson et al., 2003) found positive learning outcomes in the short term, none of the studies considered a longer term measure of the educational interventions.

A more recent Australian study (Coleman et al., 2008) did assess the immediate and longer-term learning outcomes of a program delivered to young children in their preparatory year of primary schooling. The children’s retention of knowledge was examined at 2 weeks, 2 months and 4 months. There was little evidence of retention of this information 2 and 4 months after instruction. The authors suggested a need for follow-up instructions to improve the longer-term retention of information.

The four studies demonstrated that educational dog safety programs can increase knowledge and precautionary behaviour in the short term. However, their effectiveness in teaching children how to avoid a dog attack is not known.

**Legislation**

**Dog Control**

The issue of dog bite injury and dangerous and aggressive dogs has become a significant issue. In attempting to deal with this, regulatory agencies have over time implemented various regulations focused on particular practices of dog owners thought to increase the potential for dog bite injury. Within Australia, the first regulations related to containment of dogs to the owner’s property and leash laws, followed by measures to control and manage known aggressive dogs (i.e. dogs defined to be “dangerous” as a result of an incident, most likely involving injury to a human or another animal). While there has been no scientific evaluation of these regulations, it is accepted that regulations of this type may have contributed to a reduction in the likelihood of a dog bite injury event in public areas or by known aggressive dogs (Seksel, 2002).
Breed Specific Legislation

In the United States in the 1980’s regulation was introduced which involved the restriction or banning of specific breeds of dogs. In an American Veterinary Medical Association report (Task Force on Canine Aggression and Human-Canine Interactions, 2001) the issue of the effectiveness of breed specific legislation was considered in detail. The task force concluded that dog bite statistics are not accurate for a variety of reasons associated with the data such as misidentification of breed by the victim and the media. They noted that large breeds are typically identified as problem dogs whereas smaller breeds may bite as much or more but the injury is less substantial and may therefore not be reported. The taskforce also concluded that breed specific legislation was inappropriate because it may provide the impression that banning or restricting certain breeds of dog manages the problem. They felt that this could give people a false sense of security and result in dog owners acquiring a dog and failing to recognise the scope of their responsibilities to the community in the context of the potential danger the dog may pose.

Very few studies have attempted to quantify the effect of breed specific regulations on dog bite injury and those that have, concluded that breed specific regulations have been ineffective in reducing injury by dog bites. In the United Kingdom a comparative prospective study was conducted of mammalian bites (bites of humans by all mammals, not just dogs) attending at one hospital Emergency Department in a three month period before implementation of the Dangerous Dogs Act (DDA) in 1991 and again for a three month period two years later (Klaassen et al., 1996). It should be noted that only a brief period of time was assessed thereby limiting the value of this study. This report found that introduction of the Act resulted in no significant decline in the proportion of mammalian bites by dogs with 73.9% before and 73.1% after. Prior to the introduction of the Act, the Alsatian was the most common breed with 24.2% of cases, the same as the proportion of mammalian bites that were by humans. The percentage of bites involving so-called ‘dangerous’ breeds increased from 6% pre legislation to 11% post legislation. The authors concluded that the Dangerous Dogs Act 1991 had done little to protect the public from mammalian bites and that the Act has singled out certain ‘dangerous’ breeds without any substantive data to support it. They also concluded that if legislation is to reduce injury from dog bites there should be much wider control of the dog population in general and not just targeting of the breeds referred to in the DDA.
Similar conclusions were reached in Spain, based on the analyses of dog-bite related incidents from Aragon over a ten year period from 1995 to 2004 with the aim of assessing the impact of the Spanish Dangerous Animals Act on the epidemiology of dog bites (Rosado et al., 2007). The authors concluded that the implementation of the Spanish legislation exerted little impact on the epidemiology of dog bites and the criteria to regulate only so-called dangerous breeds was unsuitable and unjustified.

**Australia**

There has been no scientific evaluation of the impact of breed specific legislation in Australia. A paper examined bite data reported to the New South Wales Government by Local Government authorities (Collier, 2006) and concluded that the data did not support the view that the breed targeted by regulation was a uniquely dangerous breed and breed-specific laws directed at restricting it had not been demonstrated by authorities to be justified by its attack record.

In Australia, in 1995, the death of an elderly woman in Toowoomba, Queensland was widely reported as an attack by an American Pit Bull Terrier. The dog involved was said to be a cross breed of unknown origins (Collicutt, 1996) and had been registered with Toowoomba Council as a Labrador cross (Shultz, 2003). Following this, several Queensland Councils introduced restrictions or total bans on American Pit Bull Terriers and crosses. Unlike the situation in Victoria where there is an overriding Act governing domestic animal management, Councils in Queensland are reasonably autonomous in regard to their ability to make stand-alone Local Laws. Consequently Queensland Councils are able to make restrictions quite separate to those required by Queensland State Legislation. Restrictions have been extended to other breeds and crosses by some Queensland Councils. More than 15 breeds and crosses have been targeted (CCCQ, 2002; DLGP, 2003) and one Council, as well as restrictions on particular breeds, has had restrictions on dogs over a particular weight or height.

Following the initial breed specific controls described above some States have extended their regulatory measures to incorporate more stringent requirements in regard to restricted breeds. In Victoria, for example, the Domestic (Feral and Nuisance) Animals Act does not allow the registration of any of the pure breeds prohibited from importation by the Australian Government in 1991, if they were not in existence in Victoria prior to November 2, 2005.
Thus if a dog is identified as a purebred of one of these breeds it may only be registered as a “restricted breed” if it was in existence in Victoria prior to November 2, 2005 and currently registered (as anything) with a Local Council. From September 2010, the legislation was widened to cover dogs which met a physical standard, not yet produced, with a two year moratorium in which dogs who theoretically met this non-existent standard were encouraged to “safely” register with Councils. This was rather difficult given the standard didn’t exist. This did not affect the legislation as it applied to purebreds. With the sad death of Ayen Chol in August, 2011 this moratorium was cut short and the legislation targeting dogs by appearance commenced on September 30, 2011. This meant that dogs who were not in existence in Victoria prior to September 1, 2010 or not registered with a Council as any breed prior to September 30, 2011 were unable to be registered and would be killed regardless of whether it has committed any offence or whether the owner had any knowledge of the perceived breed. A hastily prepared Standard for the Identification of Restricted Breed Dogs in Victoria became available. This document had many contradictions with text describing a physical characteristic one way and accompanying photos displaying opposite characteristics! This made reviews difficult in VCAT.

This legislation has been a resounding failure causing much pain and suffering and expense to affected dog owners and also expense to Councils with absolutely no benefit to dog bite injury prevention. I have attended most Victorian Civil and Administrative Tribunal (VCAT) Reviews and I have been astonished with what I have observed. In one case, evidence was presented on behalf of the Council by a Local Laws Officer and reinforced by their legal representation that a scissor bite was indicative of a pit bull. Seriously? This same Local Laws Officer gave evidence, intended to reinforce his “expertise”, that he had attended training through the Department of Primary Industries at which he named particular breeds of dogs as being present when in fact they were not. I have confirmation of this by the department in writing. Whether this was from ignorance or deliberate only he knows. Sadly these dogs died. This evidence is available on tape if the Committee are interested in listening to it. In another hearing a Local Laws Officer stated that the occiput was on the cheek of a dog and the pastern on the shoulder. Fortunately the particular VCAT member hearing this review knew otherwise and this dog went home. Unfortunately this Local Laws Officer was considered to be an expert in many more cases to follow. The Senior Local Laws Officer who gave evidence in VCAT against a dog that subsequently won in the Supreme Court stated in VCAT as evidence of his expertise that he knew the difference between an
Alsation and a German Shepherd Dog. There is no difference. A transcript of this is also available to the Committee. I have attached as Attachment 3, which I request also to remain confidential a table of VCAT cases (not necessarily complete) and their outcome.

One of these VCAT cases involved a dog called Bobo. I have attached as Attachment 4, a power point presentation given to Melbourne University Veterinary students in 2012. Essentially the seminar referenced Bobo’s case. I would be very keen to discuss this case in detail. Bobo lost in VCAT by the application of “partial compliance” with the required physical characteristics. How partial compliance can be applied to specific physical characteristics is beyond me. This belief has since confirmed by the judiciary in later cases, yet Bobo was killed.

It is my belief that the State should revisit their obligations as a model litigant and with that in mind I refer to Attachment 5, “The State as a Model Litigant”. Councils in particular have acted inappropriately if not illegally in many instances but no-one seems prepared to act on this. For example, (and I have many) one Council, as standard practise provided all owners of seized dogs with a letter stating that the owner was responsible for all impoundment costs until the outcome of prosecution and that they would be invoiced on a fortnightly basis. Many people, particularly those in the lower socio economic bracket, confronted by the cost of around $28 per day felt they had no choice but to surrender their dogs. This of course is totally wrong as there is no debt until a finding of guilt and no ability by any Council to invoice prior to any court finding. How many dogs were surrendered, possibly unnecessarily? Refer Attachment 6.

**Ayen Chol**

The tragic death in August 2011 of Ayen Chol was the catalyst for the shortened moratorium. Until then, no dog bite related deaths in Victoria had been attributed to a dog identified as a pit bull or pit bull cross.

My ongoing research has found that from 1979 to 2012, there have been over 33 dog bite related deaths in Australia, 11 of these in Victoria. Only one other dog involved in a death in Australia had previously been described as a pit bull cross dog.
I made four unsuccessful Freedom of Information requests for photos of the involved dog. These were to the Victorian Police, the Department of Primary Industries and twice to Brimbank City Council. Subsequently the Coroner ruled that no photos were ever to be released. Why?

I attended the inquest and was dismayed by the process. Dangerous breeds were referred to throughout. There was no mention of the Victorian Standard for the Identification of Restricted Breed Dogs which the subject dog was said not to comply with. The subject dog’s male parent was assessed on two separate occasions (one shortly AFTER the inquest) and said not to comply. The dog was destroyed without assessment by behavioural experts nor was an autopsy performed to identify any health issues that may have contributed to its reactions.

The dog had left the property unsupervised via a roller door that activated by unknown means. There was no separation from the backyard where the dog was kept nor was there a front gate. The owner had commissioned an independent report into the activation of the roller door. This came as a complete surprise to the Coroner as the Victorian Police assisting had not looked at this aspect. It is my belief that there should be a law requiring separation of the backyard and roller door when a dog is kept at the property, in particular if there is also no front fence or gate preventing escape from the property. This is a simple and logical response that would prevent any future incidents of this type. Why wasn’t it considered and recommended?

**Evidence base for breed specific legislation**

The full extent of dog bite injury in Australia is difficult to measure as there are no reporting requirements.

There are data available on deaths. Hospital-treated dog bite injury is available through emergency department presentation data and hospital admissions data. But comprehensive data on medical practitioner treated injury and non-medically treated injury are not available.

Within Australia there are no reliable statistics available on the breed of dogs involved in injury events, mainly because breed identification based on phenotype is reported to be
inaccurate, even when experienced observers are involved (Collier, 2006; Coppinger and Coppinger, 2001; Voith et al., 2009). Furthermore no scientifically based research indicates current DNA testing technology reliably identifies breed composition. The issue of breed identification in dog attacks is further complicated, and errors potentially increased, by reliance on media reports for breed identification (Beck et al., 1975; Collier, 2006; Overall and Love, 2001; Podberseck, 1994; Sacks et al., 1989; Sacks et al., 2000). Selective reporting of incidents and their detail by the media may also misrepresent the role of breed in dog bite injury (Podberseck, 1994). Due to the lack of systemic data collection on the dog population, combined with the noted problems of breed identification, accurate breed denominator data are not available to allow estimation of breed specific bite injury rates.

Second, the effectiveness of breed specific regulatory measures has not been clearly demonstrated, nor has any literature been identified where this approach has been examined for potential harmful effects, such as emotional trauma to the owner. The evaluation of injury interventions is critical to ensure that health gains are made, any disbenefits are taken into account, and finite public resources are used effectively.

Third, breed specific regulatory measures may reflect a simplistic and unrealistic appreciation of the causal factors (Task Force on Canine Aggression and Human-Canine Interactions, 2001). It is well recognised that a dog's reaction in any situation depends on at least six interacting factors (Seksel, 2002; Wright, 1991). Current breed specific regulation removes responsibility for dog biting incidents from dog owners and places the focus on dogs. It may also engender a false and dangerous perception that breeds not included in particular regulations will not be associated with risk of biting. A fundamental principle of injury prevention is that the most effective solutions involve a multi-dimensional approach (Ozanne-Smith and Williams, 1995), which in the instance of dog bite injury would involve dog owners, parents, children, the community at large, local authorities and legislators. Supporting this approach, there is some evidence that a multidimensional prevention program in the State of Nevada achieved a 15% reduction in the incidence of bites (Task Force on Canine Aggression and Human-Canine Interactions, 2001). There is also much support worldwide for a model referred to as the Calgary model developed in Calgary, Alberta, Canada by Bill Bruce.
Why Dogs bite

There is much to be said as to why dogs bite. Today, dogs are increasingly isolated from other dogs, with stringent conditions imposed by governments on their management; changing social systems and urbanisation adding further stress on the animals involved. It is possible that excessive restriction of social interaction with humans and other dogs and animals may result in inappropriate behaviour.

Aggressive tendencies are innate in all canine species. Dog aggression can be divided into two distinct types; normal or expected under certain conditions and abnormal or excessive reactions (Neville, 1991). Most forms of dog aggression are multi-dimensional. Dog aggression has also been categorised into the following broad categories (Blackshaw, 1991; Fogle, 1990; Luescher and Reisner, 2008; Neville, 1991); play aggression, protective aggression (including territorial and parental aggression), fear aggression (including pain induced aggression), learned aggression, predatory aggression which is extremely rare and idiopathic aggression.

Veterinarian Dr Bruce Fogle in his book The Dog’s Mind (Fogle, 1990) asserted that fear aggression is the most common type of aggression that pet dogs exhibit and is the most common cause of dog bites in children. He stated “these dogs bite children for many reasons. If they have not been properly socialised to children they can think of them as a new and unfamiliar species. To the dog’s mind our children are quite different to us. Prepubertal children smell different as well as being smaller. They move in a much jerkier fashion” and “fear aggression can be caused by a previous painful experience with a child when, for example, the dog’s hair was pulled”

From the perspective of the offending dog, a bite can be considered intentional or unintentional. Intentional dog bite injury is the consequence of an aggressive response by a dog. Unintentional injury may arise when the dog’s teeth impact inadvertently with a person’s body, as in, for example, a collision during a game of ball, and is not the result of an aggressive response from the dog. The causal factors for an injury event of this type are easy to describe. Determination of causal factors for intentional dog bite injury events is more complex.
In any situation a dog's response depends on at least six interacting factors including heredity, early experience, later socialisation and training, health (medical and behavioural), current environment and victim behaviour (Seksel, 2002; Wright, 1991). It follows that a dog’s aggressive response, if any and the level of aggression would also be also linked to the above factors. For dog bite prevention measures to be effective the above dog-related predisposing influences need to be considered.

**Summary**

Instead of focusing on a particular breed, or responding to single events as they occur, and reacting emotively, we need to systematically examine all of the circumstances surrounding dog bite incidents.

If you cannot reliably identify a dog’s breed background (and cross breed dogs add a further dimension), laws targeting breeds will never work, regardless of whether you think the original justification is valid.

We need better data and reporting, and better education for parents, dog owners and the general public on how best to avoid a dog bite incident.

Knee-jerk reactions by governments do not tend to create good public policy. We do not need any more laws or restrictions that are doomed to failure from the onset. We need a strategy based on the best research evidence that we have to hand.

Breed bans simply do not address other recurrent patterns associated with dog attacks such as irresponsible or uneducated dog ownership.

Measures taken need to address human ownership practices, as dogs of many breeds and crosses feature in dog attacks. No single, or even group of breeds, have been shown to account for the majority of dog attacks in Australia.

The best way to prevent children being injured is to have approach that considers all possible factors, as is the case with almost every other injury issue.
This approach should include strategies targeted towards the general public, dog owners, parents and dogs. Enforcement of existing control and leash laws and education and knowledge will help. It is important children are supervised with dogs. These essential measures will enhance responsible ownership of any breed or cross breed.
Bibliography


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Chapter 3 – Conceptual Framework

3.1 Overview

It is basic human nature to avoid injury. Prior to the twentieth century injury prevention was of a simple nature. The need to provide some protection for the combatants participating in the age old pursuit of warfare, for example, led to the use of defensive or protective coverings such as shields or body armour (Rivara, 2001). In the eighteenth century the first societies with a focus on injury prevention were formed, one in Amsterdam and one in Britain, both promoting awareness of water safety (Pearn et al., 2004). It was only in the last half of the twentieth century that a scientific approach has been applied to injury control research (Rivara, 2001) and frameworks for injury prevention and control have been developed.

In Australia, the National Injury Prevention and Safety Promotion Plan 2004 – 2014 (National Public Health Partnership (NPHP), 2005) has a vision of “Governments, private sector and communities working together to ensure that people in Australia have the greatest opportunity to live in a safe environment free from the impact of injuries”. A major principal of this plan is evidence-based planning: “Injury prevention and safety promotion activity will be based on evidence of effective interventions and, where possible, good information about the political and social controls in which interventions will be introduced”.

Consistent with Australian Government vision, this PhD research will challenge the current emphasis on breed specific legislation as an intervention for dog bite injury, by
examining the evidence base for this approach, and examine the potential utility of an integrated approach to dog bite injury prevention. The conceptual basis is drawn from two fundamental approaches to developing prevention programs, one from the injury field, and the other from health education and promotion. These underpin the integrated approach to injury control and health education developed by Andrea Gielen (Gielen, 1992b). Gielen integrated William Haddon's injury strategies and Lawrence Green's PRECEDE framework into one program planning framework that addresses both behavioral and non-behavioral components of an injury problem. This Chapter outlines each of these approaches and the integrated framework and then applies the framework to dog bite injury, highlighting the contribution this thesis is intended to make.

3.2 Injury prevention program frameworks

3.2.1 Haddon’s matrix

William Haddon, Jr., in the late 1950’s developed a framework for analysing injury by dividing the injury problem into factors and phases involved in an injury event. Haddon’s Matrix provided a framework for injury causation and focused attention on interaction of aspects that had previously not been considered (Haddon, 1980; Robertson, 1983). Haddon’s Matrix is illustrated in Figure 1.

<table>
<thead>
<tr>
<th>Phases</th>
<th>Human Host</th>
<th>Agent / Vehicle (vector)</th>
<th>Environment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre-event</td>
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<tr>
<td>Event</td>
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<tr>
<td>Post-event</td>
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</table>

Figure 1: Haddon’s Matrix
Haddon’s Matrix consists of the following Phases:

- **Pre-injury event phase / Primary prevention**
  By acting on the causes of an injury event, the injury event itself may be prevented (e.g. secure fencing to contain dogs, pool fences).

- **Injury event phase / Secondary prevention**
  An attempt is made to prevent an injury or reduce the seriousness of an injury when an event actually occurs by designing and implementing protective mechanisms (e.g. wearing a seatbelt or helmet).

- **Post injury event phase / Tertiary prevention (Treatment and Rehabilitation)**
  The seriousness of an injury or disability is reduced by providing adequate care immediately after an event has occurred, as well as in the longer term by working to restore the highest level of physical/mental function possible for the injured person.

Haddon’s Matrix consists of the following Factors:

- **The Human Host** refers to the person at risk of injury.

- **The Agent** of injury is energy (e.g. mechanical, electrical) that is transmitted to the host through a **vehicle** (inanimate object) or **vector** (person or animal).

- **The Physical Environment** includes all the characteristics of the setting in which the injury event takes place.
The matrix may be expanded by subdividing the human host factors into categories such as abilities and limitations. Vector factors might be divided into injury-enhancing versus protective characteristics, and the environment can be divided into physical and socio-cultural aspects. Interactions between different cells should also be considered (Robertson, 1983).

Having identified the factors that contribute to a set of injuries and the phases of the injury process in which the factors interact, Haddon developed ten strategies for identifying specific interventions (Gielen, 1992b; Haddon, 1980; Robertson, 1983). The ten strategies defined by Haddon are:

1. prevent the creation of the hazard in the first place
2. reduce the amount of the hazard brought into being
3. prevent the release of the hazard that already exists
4. modify the rate or spatial distribution of release of the hazard from its source
5. separate, in time or space, the hazard from that which is to be protected
6. separate the hazard and what is to be protected by interposition of a material barrier
7. modify relevant basic qualities of the hazard
8. make what is to be protected more resistant to damage from the hazard
9. begin to counter the damage already done by the hazard
10. stabilise, repair, and rehabilitate the object of the damage
Haddon's strategies contributed to a shift away from education as the principal method of injury prevention to also include modifying the environments in which injuries occur and developing a multi-strategic approach to injury prevention (Williams, 1999).

Haddon’s Matrix combined with the ten strategies for identifying specific interventions has been useful for the systematic identification of the range of possible intervention points for any specific injury type. Intervention strategies usually fall into the following major groups: legislation/regulation (accompanied by enforcement), environmental/design changes, education/behaviour change/incentives, advocacy or community or organisation based (Ozanne-Smith and Williams, 1995). However, Haddon’s concepts do not provide a ready translation into a prevention program plan. Others have sought to address shortcomings in Haddon’s matrix with Gielan most comprehensively addressing this limitation by integration with the PRECEDE framework.

### 3.2.2 PRECEDE framework

PRECEDE, an acronym for predisposing, reinforcing, and enabling causes in educational diagnosis and evaluation, is used to develop educational behaviour change interventions. This framework focuses on predisposing factors that provide the rationale or motivation for behaviour (including knowledge, attitudes, beliefs, values and perceptions), enabling factors that allow a motivation or aspiration to be realised (including personal skills and availability and cost of health resources), and reinforcing factors subsequent to behaviour that provide reward, incentive, or punishment for a behaviour and contribute to its persistence or extinction (NCIPC, 1989).
3.2.3 Gielen’s integrated planning framework

The unified framework proposed by Gielen, integrating Haddon’s injury countermeasures and Green’s PRECEDE framework is used to “facilitate multidisciplinary, comprehensive approaches to developing injury prevention programs that are efficient and effective” (Gielen, 1992a). Gielen stated that “the diagnostic process requires analysis of epidemiological data on the injury problem; the legal environment affecting the injury problem; the engineering and technical aspects of the problem; behavioural contributors to the problem; effectiveness of previous intervention efforts; feasibility of new approaches; and availability of program resources”. Gielen details four steps to the process (omitting the social diagnosis which is the first phase of the PRECEDE model) which are illustrated in Figure 2 and described as follows.

Step 1: Epidemiological Diagnosis – analysis of epidemiological data on the injury problem.

In this step, epidemiological literature and data on the injury problem are analysed to enable specification of the epidemiological dimensions of the problem. These include morbidity and mortality statistics, identification of characteristics that may predispose the individual to risk of injury and the specific injury hazard.

Step 2: Environmental and Behavioural Diagnosis

This step involves identifying (1) the non-behavioural determinants, the vector and its environment, and (2) the behavioural determinants, the relevant host factors that contribute to injury risk. An accurate diagnosis may be reliant on robust research evidence.
With respect to dog bite injury, the vector is the dog. Characteristics of particular types of dogs that make them high risk for contributing to a bite injury should be investigated and documented as well as characteristics on high risk environments. For example, to what extent does breed or size contribute to the injury hazard? Similarly, what are the characteristics of the environment in which the dog is kept that contribute to injury risk?

The behavioural component refers to the host factors. An assessment is required of the extent to which behaviours on the part of individuals at risk contribute to the injury hazard. With respect to dog bite injury, a major behavioural risk factor may be a young child running up to a dog and hugging them, particularly if the child is unknown to the dog. Children may also excite dogs by running and screaming and elicit an inappropriate response from the dog.

**Step 3: Influencing Factors Diagnosis**

For both the non-behavioural and behavioural determinants of an injury, there are multiple factors that operate to determine whether an injury event will occur and the severity if it does occur. These factors can be categorised into predisposing, enabling, and reinforcing factors. As in Step 2, an accurate diagnosis may be reliant on robust research evidence.

With non-behavioural determinants of an injury these factors refer to the qualities of the physical hazard itself rather than the individual at risk. Haddon strategies are used as a guide for this component of the framework. Predisposing factors are those that govern how much hazard exists. In relation to dog bite injury the relevant non-behavioural predisposing factors are the existence of dogs and the number and size of dogs in the
community. Enabling factors are those that allow the hazard to be released and determine the amount that is released. As applied to dog bite injury, these factors could include allowing dogs to roam freely in neighbourhoods, parks or other public spaces, and temperament issues resulting from poor breeding or lack of appropriate socialisation or management. Reinforcing factors govern the extent of the damage that occurs once the hazard is released, such as the vulnerability of the individual involved and the availability of adequate first-aid or emergency and rehabilitation services.

With respect to behavioural determinants of an injury, the predisposing, enabling, and reinforcing factors refer to behaviours or beliefs of the individual or society that contribute to the occurrence and severity of the injury. Predisposing factors relate to the knowledge, attitudes and beliefs of the individual that may contribute to the hazards release and determine the amount that is released. In relation to dog bite injury, predisposing factors may include individual’s understanding, knowledge and attitudes about dog behaviour and responsible interactions with dogs. Enabling factors refer to the availability and accessibility of skills and resources related to the hazardous behaviour. For the dog bite injury problem, enabling factors include the availability of training in dog behaviour and management or poor skills regarding the physical and environmental requirements of a healthy dog. Reinforcing factors relate to the social acceptability of the hazardous behaviour. With respect to the dog bite injury problem, reinforcing factors may include a lack of societal expectations for responsible dog ownership and practices or encouragement from dog training clubs, veterinarians, government agencies and others.

**Step 4: Intervention Planning**
Steps 1 to 3 outline the most important factors associated with the injury problem and specific interventions may then be targeted to address the predisposing, enabling and reinforcing factors for both the non-behavioural and behavioural determinants. Potential interventions may then be considered in light of social and political acceptability. The types of interventions can be categorised as technological/environmental, legislative/enforcement and education/behaviour change interventions (NCIPC, 1989). Technological/environmental interventions generally address factors associated with non-behavioural determinants; education/behaviour change interventions may address factors associated with behavioural determinants; and legislative/enforcement interventions may address factors associated with either non-behavioural or behavioural determinants (Gielen, 1992a).

A preliminary application of the integrated planning framework to the issue of dog bite injury is illustrated in Figure 3.

### 3.3 Summary and study context

As raised in Section 3.1, this study will challenge the current emphasis on breed specific legislation as an intervention for dog bite injury, by examining the evidence base for this approach, and examine the potential utility of an integrated approach to dog bite injury prevention.

Information to enable epidemiological diagnosis for dog bite injury will be derived in Chapter 4, with the review of dog bite injury data in Victoria used to describe the epidemiological dimensions of dog bite injury in Victoria. Potential behavioural and non-behavioural determinants and factors that may influence whether a dog bite will occur,
and the severity, if a bite does occur, will also be considered for the environmental and behavioral diagnosis.
Figure 2: An integrated planning framework for injury prevention programs as proposed by Gielen.
Predisposing Factors
- Existence of dog
- Exposure to dog
- Roaming dog
- Unknown dog

Fence backyard
Enclosure
Muzzle

Non-behavioral Determinants
- Breed or size of dog
- Spay/neuter status of dog
- Health of dog
- Chained dog
- Family dog or guard dog

Enabling Factors
- Amount and distribution of size of dog
- Allowing dogs to roam freely

Determinants
- Amount and distribution of size of dog
- Allowing dogs to roam freely

Behavioral Determinants
- Young children running up to dogs and hugging them, children exciting dogs by running and screaming
- Inappropriate animal management

Behaviors of the individual that contribute to the occurrence and severity of the injury

Victim Behaviors

Predisposing Factors
- Knowledge, attitudes and beliefs regarding dogs and dog behavior and responsible interactions with dogs

Enabling Factors
- Availability and accessibility to training in dog behavior and management and the physical and environmental requirements of a dog

Determinants
- Availability and accessibility to training in dog behavior and management and the physical and environmental requirements of a dog

Injury Control Program Components

Step 4

Step 3

Step 2

Step 1

Figure 3: Preliminary application of Gielen’s integrated planning framework to dog bite injury

Injury Problem
Victoria
<1 fatality per year
482 hospital admissions per year.
1,628 hospital presentations per year.
Children and elderly over represented.
Children more likely to be bitten in a domestic situation

Legislative / Enforcement Interventions
- Ban dogs
- Require licensing of dog owners
- Mandate muzzle use
- Require dog safety courses for parents / prospective parents
- Require dog training
- Controls for known aggressive dogs

Engineering / Technical Interventions
- Fence backyard
- Enclosure
- Muzzle

Educational / Behavioral Interventions
- Socialise dogs as puppies to other animals and people including children
- Appropriately train dogs
- Ensure health of dog
- Dog safety courses for parents and children
- Dog behaviour courses
- Dog training courses

Influence Factors

Reinforcing Factors
- Social expectations that promote responsible dog ownership and practices

Determinants
- Social expectations that promote responsible dog ownership and practices

Figure 0x-6
The serious injury and death data compiled for Chapter 4 will be further utilised to test the null hypothesis of no regulation effect in relation to breed specific legislation in Victoria. A quasi-experimental design is employed utilising time series techniques to compare relative rates of dog bite related serious injury or death between before and after periods of regulation in Victoria. A secondary analysis explores the legitimacy of using the combined state and territories of Tasmania and the Australian Capital Territory, where there have been no regulations restricting specific breeds of dogs, as a control for periods of regulation in Victoria.

Although a number of case-series and cross sectional survey studies have been conducted in Australia (Al Podberscek, 1990; Greenhalgh et al., 1991; MacBean et al., 2007; Ozanne-Smith et al., 2001; Podberscek and Blackshaw, 1991; Thompson, 1997) which have identified potential risk factors for dog bite injury there has been no analytic study conducted to determine risk factors for dog bite injury. Injury determinants and influencing factors for dog bite injury will be partially addressed through a case-control study presented in Chapter 7 which will consider dog bite injury in a domestic environment to children aged nine years and under. This will identify those characteristics that are over- (or under-) represented among those children and dogs associated with dog bite related injury. This study has a case-control design, which tests the hypothesis that certain child, environmental, dog and dog-owner factors are significantly associated with serious injury among children aged 9 years and under who are exposed to dogs in a domestic setting. This work will contribute to the environmental, behavioral and influencing factors diagnosis for dog bite injury.
Bibliography


A CASE-CONTROL STUDY OF DOG BITE RISK FACTORS IN A DOMESTIC SETTING TO CHILDREN AGED 9 YEARS AND UNDER

doi:10.1136/injuryprev-2012-040580a.7

L Watson, K Ashby, L Day, S Newstead, E Cassell. Monash University Injury Research Institute, Australia

Background In Victoria, children aged 0–9 years account for 83% of hospital admissions and 73% of hospital presentations for dog bite injury. More than two thirds of bites to children occur in a domestic setting.

Aim/Objectives/Purpose The aim of this study was to investigate risk factors for dog bite-related injury in a domestic setting to children aged 0–9 years.

Methods The study region comprised the catchment of seven emergency departments (EDs). Case data were obtained from a call back study of 51 child dog bite victims who presented to the study EDs. Controls were 102 children aged 9 years and under exposed to dogs in a domestic situation in the study region and who were not bitten. Data was collected via self-report in response to an interviewer-administered questionnaire. Data was analysed using logistic regression.

Results/Outcomes Unadjusted analysis identified several risk factors including overconfidence with dogs (OR 6.01, 95% CI 2.89 to 12.7), provocation by the child (OR 13.43, 95% CI 5.71 to 31.63), neuter status of the dog (OR 0.26, 95% CI 0.11 to 0.59) and lack of supervision (OR 10.32, 95% CI 3.80 to 28.01). Breed did not appear to be a factor with forty-three different pure bred and mixed-breed dogs involved in 51 bite incidents. Additional analysis controlled for the effects of confounding variables.

Significance/Contribution to the Field Identification of risk factors has the potential to reduce dog bite-related injury to children in a domestic setting by guiding future interventions, including education and policy. This is the first time a case-control study of this nature, using hospital data, has been conducted.
A CASE-CONTROL STUDY OF DOG BITE RISK FACTORS IN A DOMESTIC SETTING TO CHILDREN AGED 9 YEARS AND UNDER


Inj Prev 2012 18: A3
doi: 10.1136/injuryprev-2012-040580a.7

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## Restricted Breed Dogs

**Victorian Civil and Administrative Tribunal (VCAT) Review Case Summaries as at June, 2015**

<table>
<thead>
<tr>
<th>Dog/s</th>
<th>Council</th>
<th>Date seized</th>
<th>Decision Date</th>
<th>Outcome</th>
<th>Supreme Court</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jaxon</td>
<td>Knox CC</td>
<td>Unknown</td>
<td>Withdrawn 22/5/2012</td>
<td>Withdrawn – dog killed</td>
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<tr>
<td>Chuck</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Unknown</td>
<td>Hume CC</td>
<td>Unknown</td>
<td>4/01/2012</td>
<td>Lost – struck out at Directions Hearing. Owner didn’t appear</td>
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<tr>
<td>Unknown</td>
<td>Hume CC</td>
<td>Unknown</td>
<td>24/4/2012</td>
<td>Lost – struck out. Owner didn’t appear. Costs awarded $6,228 or $9,728 –cost confusion</td>
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<tr>
<td>Bear</td>
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<td>2/08/2011</td>
<td>10/5/2012</td>
<td>Lost – killed 14/06/2012</td>
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<td>10/5/2012</td>
<td>Lost – killed 14/06/2012</td>
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<td>Ace</td>
<td>Banyule CC</td>
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<td>30/3/2012</td>
<td>Lost – killed by RSPCA May 2012</td>
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<td>Tess</td>
<td>Hume CC</td>
<td>5/12/2011</td>
<td>30/4/2012</td>
<td>Won – went home 30/04/2012</td>
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<tr>
<td>Lilla</td>
<td>Hume CC</td>
<td>Not seized</td>
<td>21/8/2012</td>
<td>Lost - kept as Restricted Breed Dog</td>
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<tr>
<td>Tonka</td>
<td>Kingston CC</td>
<td>17/02/2012</td>
<td>5/6/2012</td>
<td>Won – went home 5/06/2012</td>
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<tr>
<td>Narlah</td>
<td>Casey CC</td>
<td>26/01/2012</td>
<td>6/6/2012</td>
<td>Won - went home 6/06/2012</td>
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<tr>
<td>Mya</td>
<td>Yarra CC</td>
<td>21/03/2012</td>
<td>3/7/2012</td>
<td>Won – went home 4/07/2012</td>
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<tr>
<td>Tia</td>
<td>Darebin CC</td>
<td>24/10/2011</td>
<td>20/6/2012</td>
<td>Lost</td>
<td>Appealed. Won 29/11/2012. Went home (with pups born in pound)</td>
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<tr>
<td>Dog/s</td>
<td>Council</td>
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<td>Decision Date</td>
<td>Outcome</td>
<td>Supreme Court</td>
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<tr>
<td>Shae</td>
<td>Hume CC</td>
<td>20/03/2012</td>
<td>16/7/2012</td>
<td>Won – not released pending dog attack charge. Still held Jan 31 2013. Guilty - Declared Dangerous. Owner unable to comply - killed</td>
<td>Appealed- Supreme Court Appeal allowed (won). Heading back to VCAT.</td>
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<tr>
<td>Rocket</td>
<td>Cardinia</td>
<td>25/03/2012</td>
<td>31/7/2012</td>
<td>Lost</td>
<td>Heard in VCAT June 6 ,7, and 13 2013. Won -decision July 26, 2013. Rocket went home July 26. VCAT cost application won September 2013. 50% of costs awarded against Council</td>
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<td>Moonee Valley CC</td>
<td>20/04/2012</td>
<td>24/7/2012</td>
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<td>Bobo</td>
<td>Hume CC</td>
<td>20/03/2012</td>
<td>20/8/2012</td>
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<td>Appealed – Hearing March 2013 Dog surrendered on solicitor’s advice to owner and against our wishes. Bobo killed. Cost $26,000</td>
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<td>28/11/2012</td>
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<td>Appealed (review application rejection in VCAT) to Supreme Court allowed. Supreme Court Hearing May 23, 2013. Won by BAWP. Going back to VCAT Directions Hearing July 1, 2013.</td>
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<td>Decision Date</td>
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<td>Max</td>
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<td>20/9/2012</td>
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<td>Boss</td>
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<td>Council withdrew post VCAT application. Dog went home 20/12/12</td>
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<td>Decision Date</td>
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<td>Hearing December 17 and 18, 2013 Decision January 21, 2014</td>
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The State as Model Litigant

Introduction

The Commonwealth and the States all have a common law responsibility to act as a model litigant. There is no model plaintiff principle, model corporate plaintiff principle and certainly not a model litigant-in-person principle – yet whether plaintiff or defendant the State is expected to behave as a model litigant. It doesn’t matter which Court, which claim, which area of law the claim involves, whether the Commonwealth or State is plaintiff, defendant or third party, whether the claim is pre-litigation, interlocutory, trial, appeal or even in a costs-recovery phase – the Commonwealth or State must behave as a model litigant.

Far from being a handicap that fetters the State, I see the model litigant obligation as a prism within which to assess the State’s conduct to ensure the highest standard of propriety and ethics are met.

In this paper, I will consider:

- The common law basis for the Model Litigant obligation.
- The importance of the Model Litigant obligations.
- What are the Model Litigant obligations?
- How have the courts interpreted the Model Litigant obligations?
- What should the Model Litigant obligations mean in practice?

The State of Victoria as litigant

The State of Victoria is the biggest user of the court system in Victoria. At any one time, there are several hundred cases involving the State in the State Courts and also in the Federal and High Courts.

Most of these cases involve the State being sued as a defendant. The claims against the State are extraordinarily diverse and include:

- Sexual abuse claims by former wards of the State.
- Assault, false imprisonment and malicious prosecution claims against police officers.
Charitable trusts, where the Attorney’s role is the protector of charities.

Contempts of court, where the administration of justice is undermined eg publication contempts.

Applications under the Crimes (Mental Impairment) Legislation by persons found not guilty of criminal charges by reason of insanity.

Constitutional cases.

Applications under the Hague Convention to return children to the jurisdiction they were removed from.

Judicial review.

Commercial litigation.

Personal injury claims by persons dying of asbestosis.

Alleged wrongful seizures by the police and the Sheriff.

Forged mortgage cases against the Registrar of Titles brought by innocent defrauded registered proprietors of land.

Inquests.

Public interest immunity claims.

But no matter in which diverse area of law the State is immersed in litigation, it must behave as a model litigant. In my view, the model litigant principles are best understood in a four stage process:

Why are the Model Litigant principles important?

What are the Model Litigant principles?

How have the Courts interpreted the Model Litigant principles?

What should the Model Litigant principles mean in practice?

But first a little history.

Common law origin and evolution of the Model Litigant principle

As long ago as 1912, Sir Samuel Griffith, the Chief Justice of the High Court (and formerly an Attorney-General, Premier and Chief Justice in Queensland) made these comments in relation to a technical pleading by the Commonwealth Attorney-General:

The point is a purely technical point of pleading and I can’t refrain from expressing my surprise that it should be taken on behalf of the Crown. It is to be regarded as axiomatic that the Crown never takes technical points, even in civil proceedings, and a fortiori not in criminal proceedings.

I am sometimes inclined to think that in some parts – not all – of the Commonwealth the old fashioned, traditional and almost instinctive, standard of fair play to be observed by the Crown in dealing with subjects, which I learned a very long time ago to regard as elementary, is either not known or thought out of date. I should be glad to think that I am mistaken.

The concept of a standard of ‘fair play’ by the State is not a peculiarly Australian concept. For example, in a 1949 English case the court criticised the government’s technical defence in a tax case and stated:
At the same time I can’t help feeling that the defence is one which ought to be used with great discretion, and that for two reasons. First, because the defendants being an emanation of the Crown, which is the source and fountain of justice, are in my opinion bound to maintain the highest standards of probity and fair dealing, comparable to those which the courts, which derive their authority from the same source and fountain, impose on the officers under their control…

Chief Justice King of the South Australian Supreme Court commented in 1987:

The Court and the Attorney-General, to which the Crown Solicitor is responsible, have a joint responsibility for fostering the expeditious conduct of and disposal of litigation. It is extremely important that the Crown Solicitor’s Office set an example to the private legal profession as to conscientious compliance with the procedures designed to minimise cost and delay.

These types of judicial comments evolved into the model litigant principles adopted by the Commonwealth in 1997 and by the State of Victoria in 2001.

Why are Model Litigant principles important?

The model litigant rules are very important because they are all about fair play, about how government should conduct its litigation, about ensuring that the public has good reason to trust its public officials and the way its public officials and lawyers conduct litigation affecting rights of its own citizens. The Government must not abuse its power. It must not act arbitrarily or capriciously.

As to the philosophical importance underpinning model litigant principles, a Canadian government lawyer expressed it this way:

In the Canadian context at least, public service lawyers must never forget that they are using the authority of the Minister, the Minister of Justice and Attorney-General; this is crucial in our system of Parliamentary Government where elected officials are responsible and accountable. This reminds us that our authority is not really ours; it is held in trust … The main duty of the Minister is to enhance respect for the Constitution and the law and thus it flows that this is the main duty of public service lawyers.

Note the compelling view of Justice Finn in the Hughes Aircraft case as to the arguable absence of self-interest by the State - its only true interest is a public interest.

As with any agency of government – and I do not mean by this that it is thereby within ‘the shield of the Crown’ – it has no private or self-interest of its own separate from the public interest it is constitutionally bound to serve.

There is, I consider much to be said for the view that, having no legitimate private interest in the performance of its functions, a public body (including a State owned company) should be required as of course to act fairly towards those with whom it deals at least in so far as this is consistent with its obligation to serve the public interest (or interests) for which it has been created…

In differing ways these instances reflect policies in the law, albeit in specific contexts, (a) of protecting the reasonable expectations of those dealing with public bodies; (b) of ensuring that the powers possessed by a public body, ‘whether conferred by statute or by contract’, are
exercised ‘for the public good and (c) of requiring such bodies to act as ‘moral exemplars’: government and its agencies should lead by example.’

**What are the Model Litigant principles?**

The Model Litigant Principles of the State of Victoria are to be found in the Standard Legal Services to Government Panel Contract. Schedule 4 sets out government policies in relation to equal opportunity and also Model Litigant Principles. Clause 2 provides:

In providing Project Services, the Firm shall ensure that the status of the State and any client as a model litigant is not compromised.

For the purposes of sub-clause 2.1 of this Schedule 4, the Attorney-General may, from time to time, issue model litigant principles …. with which the State is required to comply.

In 2001 the Attorney-General issued such guidelines as follows:

**Guidelines on the State of Victoria’s Obligation to Act as a Model Litigant**

1. In order to maintain proper standards in litigation, the State of Victoria, its Departments and agencies behave as a model litigant in the conduct of litigation.

2. The obligation requires that the State of Victoria, its Departments and agencies:

   (a) act fairly in handling claims and litigation brought by or against the State or an agency;

   (b) act consistently in the handling of claims and litigation;

   (c) avoid litigation, wherever possible;

   (d) pay legitimate claims without litigation, including making partial settlements of claims or interim payments, where it is clear that liability is at least as much as the amount to be paid;

   (e) where it is not possible to avoid litigation, keep the costs of litigation to a minimum, including by:

      (i) not requiring the other party to prove a matter which the State or the agency knows to be true; and

      (ii) not contesting liability if the State or the agency knows that the dispute is really about quantum,

   (f) do not rely on technical defences unless the State’s or the agency’s interests would be prejudiced by the failure to comply with a particular requirement;

   (g) do not take advantage of a claimant who lacks the resources to litigate a legitimate claim; and

   (h) do not undertake and pursue appeals unless the State or the agency believes that it has reasonable prospects for success or the appeal is
otherwise justified in the public interest.

Notes:

1. The State of Victoria acknowledges the assistance of the Commonwealth in developing these Guidelines. The Guidelines are based on the Directions on the Commonwealth’s Obligation to Act as a Model Litigant, which were issued by the Commonwealth Attorney-General pursuant to s 55ZF of the Judiciary Act 1903.

2. The obligation applies to litigation (including before courts, tribunals, inquiries, and in arbitration and other alternative dispute resolution processes) involving State Departments and agencies, as well as Ministers and officers where the State provides a full indemnity in respect of an action for damages brought against them personally. Ensuring compliance with the obligation is primarily the responsibility of the agency which has responsibility for the litigation. In addition, lawyers engaged in such litigation, whether Victorian Government Solicitor, in-house or private, will need to act in accordance with the obligation to assist their client agency to do so.

3. In essence, being a model litigant requires that the State and its agencies, as parties to litigation, act with complete propriety, fairly and in accordance with the highest professional standards. The expectation that the State and its agencies will act as a model litigant has been recognised by the Courts. See, for example, Melbourne Steamship Limited v Moorhead (1912) 15 CLR 133, 342; Kenny v State of South Australia (1987) 46 SASR 268, 273; Yong Jun Qin v The Minister for Immigration and Ethnic Affairs (1997) 75 FCR 155.

4. The obligation to act as a model litigant may require more than merely acting honestly and in accordance with the law and court rules. It also goes beyond the requirement for lawyers to act in accordance with their ethical obligations.

5. The obligation does not prevent the State and its agencies from acting firmly and properly to protect their interests. It does not therefore preclude all legitimate steps being taken to pursue claims by the State and its agencies and testing or defending claims against them. The commencement of an appeal may be justified in the public interest where it is necessary to avoid prejudice to the interests of the State or an agency pending the receipt or proper consideration of legal advice, provided that a decision whether to continue the appeal is made as soon as practicable.

6. The obligation does not prevent the State from enforcing costs orders or seeking to recover its costs.

Who is bound by the model litigant guidelines?

On any view, the model litigant guidelines have wide-reaching application.

- Extends to litigation involving State Departments and agencies as well as Ministers and officers where the State
provides a full indemnity in respect of an action for damages brought against them personally.

- Extends to all litigation including before courts, tribunals, inquiries, and arbitration and other alternative dispute resolution processes.
- Extends to all litigation involving the State irrespective of State’s status as plaintiff, defendant, third party etc.
- Extends to statutory corporations spending public monies.
- Extends to private lawyers, in-house Government lawyers and VGSO.

**Differences between the Commonwealth and State Model Litigant Guidelines**

The first note to the State’s Guidelines acknowledges that the guidelines are based on the Commonwealth Model Litigant Guidelines issued by the Commonwealth Attorney-General pursuant to s 55ZF of the *Judiciary Act 1903*. The State’s Model Litigant Guidelines and the notes attached to the Guidelines almost exactly mirror the Commonwealth’s guidelines. But there are some differences:

1. **Dealing promptly with claims**

The Commonwealth has an additional positive obligation to deal with claims promptly and not cause unnecessary delay in handling claims in litigation. There is no such express obligation in the State guidelines. The absence of an express obligation probably does not matter, having regard to King CJ’s comments concerning the desirability of expeditious conduct by the Crown Solicitor’s Office.

2. **Apology**

   - The Commonwealth guidelines include a requirement that the Commonwealth apologise where the Commonwealth or the agency is aware that it or its lawyers have acted wrongfully or improperly. This requirement is wholly absent in the State guidelines.

   - Where clients are prepared to settle claims for ‘real money’, and not merely nuisance value settlements, and plaintiffs are insistent upon an apology as part of any settlement, it would seem appropriate for the State to provide an appropriately worded apology. This accords with the spirit of the model litigant guidelines. It also accords with some areas of tort law where the absence of an apology can increase the humiliation of a plaintiff and increase the damages payable.

   - Note that an apology is not to be interpreted as an admission of liability (see ss 141 and 14J of the *Wrongs Act 1958*).

3. **Alternative dispute resolution**

   - The Commonwealth Model Litigant guidelines were revised in 2005 to include a specific guideline encouraging full and effective participation in ADR.

   - The 2005 revision also added a specific clause stating that merits reviews were covered by the model litigant principles.
Judicial interpretation of the Model Litigant principles

There are no Victorian cases which have considered the Model Litigant principles since the Victorian Attorney-General issued his Model Litigant guidelines. However, there have been several cases where the Federal Court has looked at the Commonwealth Model Litigant obligations.

In Challoner v Minister for Immigration & Multicultural Affairs (No 2) [2000] FCA 1601, Drummond J made an order restraining the Minister for Immigration and Multicultural Affairs from cancelling Mr Challoner’s electronic travel authority (in the nature of a visa). Mr Challoner was in detention. Mr Challoner sought to review the cancellation decision. Drummond J proposed an urgent hearing date of 13 November. The Minister’s solicitor asked for an even earlier date. On 6 November 2000, his Honour indicated the final hearing could occur the very next day – 7 November 2000. Late on 6 November 2000, the Commonwealth sought to reconvene the court to apply for an adjournment because preferred counsel was not available on 7 November, and the Commonwealth also wished to prepare further materials. His Honour considered that Mr Challoner would require three to four weeks to answer the Commonwealth’s proposed material, and that the Minister was not ready to proceed on 7 November, let alone 13 November – the date first proposed by the court.

His Honour criticised the Commonwealth’s conduct:

It seems to be immensely regrettable that the Commonwealth has conducted this litigation in the way I have outlined, against the background of Mr Challoner’s continued detention, upon which it has insisted until this late stage. It would be immensely regrettable for any litigant to urge, over the Court’s offer of a very expedited hearing, an even quicker hearing and then to put off the hearing in circumstances which includes reasons of the kind that have been advanced on behalf of the Commonwealth. The extent to which that becomes regrettable is enhanced because it is the Commonwealth which has left itself open to this criticism.

In Wong Tai Shing v Minister for Immigration, Multicultural and Indigenous Affairs [2002] FCA 1271 Wilcox J ruled that the relevant Minister must answer certain interrogatories. His Honour indicated he would publish written reasons at a later date. The parties were notified the written reasons would be published on 18 October 2002. The day before the reasons were published, the Minister filed an application for leave to appeal from his Honour’s ruling.

Not surprisingly, his Honour criticised the Commonwealth’s decision to appeal prior to considering the Judge’s reasons. His Honour stated:

I would have expected that any litigant, let alone a Commonwealth Minister, to pay the Court the courtesy of considering a judge’s reasons for decision before deciding to contend the judge was wrong.

While the Minister’s decision to appeal before considering the Judge’s reasons does not directly infringe the exact terms of the Model Litigant guidelines, it certainly runs contrary to the spirit of the guidelines. Accordingly, government departments, Ministers etc ought not prematurely announce decisions to appeal prior to consideration of Judge’s reasons. To do
otherwise is, at best, discourteous to the court.

In *Wodrow v Commonwealth of Australia* [2003] FCA 403, the court considered a claim against the Commonwealth in tort and contract by a former engineer, who alleged his incapacity for work resulted from chronic anxiety and neurosis caused by his employment with the Commonwealth. Although Mr Wodrow won at first instance, he ultimately failed before the High Court. The Commonwealth sought to enforce a costs order in its favour seven years after the order had been made and Mr Wodrow sought to have the application for taxation of costs dismissed because of inordinate delay inconsistent with the Commonwealth’s Model Litigant obligation. Stone J held that the Model Litigant obligations do not prevent the Commonwealth from enforcing costs orders or seeking to recover costs. His Honour held that the Model Litigant obligation ‘… does not impinge the Commonwealth’s ability to enforce its substantive rights’.¹⁰

In *Applicant A226 of 2003 & Ors v Minister for Immigration & Multicultural & Indigenous Affairs*, Driver FM was concerned about the possible affect of a costs order in favour of the Minister upon the health and welfare of child applicants. He was concerned that it would be inconsistent with the Model Litigant principle to seek costs against an opposing party if there were no intention to enforce the costs order that might be made. However, he ultimately accepted the submissions of the Commonwealth that seeking and enforcing costs orders are separate stages in the handling of proceedings and may turn on different considerations. For example, when a costs order is sought, there may be insufficient information available regarding the financial circumstances of the party to determine whether enforcement action will be appropriate. Accordingly, there is nothing objectionable in pressing for a costs order against an apparently impecunious party on the basis that if the party’s financial circumstances changed for the better, the order might be enforced.

### The State’s behavioural bar – how high is it?

- The overarching obligation is that the State behave as a model litigant for the stated purpose of maintaining ‘proper standards in litigation’.
- This obligation to behave as a model litigant requires the State to act positively in five different ways, and to refrain from three specified sorts of behaviour subject to certain qualifications. The positive behaviours required by the State are to act fairly, to act consistently, to avoid litigation where possible, to pay legitimate claims without litigation and to keep litigation costs to a minimum. The three negative injunctions upon the State require the State to not rely upon technical defences, to not take advantage of a claimant who lacks resources and to not pursue appeals unless there are reasonable prospects for success or the appeal is justified in the public interest.
- Note carefully the concise summary in Note 3 of the model litigant principles – in essence being the model litigant requires that the State … acts with complete propriety, fairly and in accordance with the highest professional standards.
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- The obligation to act as a model litigant requires more than merely acting:
  (a) honestly;
  (b) in accordance with law and court Rules; and
  (c) ethically.

The last two bullet points above compel the conclusion that the State’s behavioural bar is an extremely high bar to jump over.

The devil in the detail - what do the model litigant principles mean in practice?

Although the model litigant principles can be easily stated, their application often requires matters of fine judgment and degree. It is possible for reasonable lawyers to disagree on the precise application of the model litigant principles in particular circumstances. However, I offer the following views.

Act fairly

- Pervasive obligation applies at all stages of litigation process.
- Do not act arbitrarily, capriciously or in a high-handed fashion.

Act consistently

- The State should not treat citizens arbitrarily – the State should not settle one claim and fight an identical claim. Treat similar claims similarly.
- State can distinguish between different plaintiffs in class action or in a multiple plaintiff litigation scenario, provided principled basis for distinction exists eg different causes of action, different wrongdoers, different damage suffered by plaintiffs, differing degree of involvement by plaintiffs in underlying facts, etc.

Avoid litigation

- Always be open to ADR at all stages of process. Initiate early mediation or settlement where the State has no viable defences.
- Serve Calderbank offers or offers of compromise under Court Rules.
- Provide preliminary advice as soon as possible on the strengths and weaknesses of your client’s position, in particular, whether your client has viable defences which will be upheld by the court.
- Where the State has a claim against someone, try to resolve the claim without issuing court proceedings.
- Many cases for State cannot readily be settled (eg contempt of court, Crimes Mental Impairment cases, judicial reviews).

Pay legitimate claims

- Where liability clear and no defences available, State should try to settle.
- If the plaintiff and the State cannot agree on reasonable compensation, consider serving an offer of compromise, admitting liability, and running a trial on the issue of quantum only. If the plaintiff fails to beat the offer of compromise, the plaintiff may be penalized with an order that it pays the State’s costs after the offer was served.
• The guidelines do not require the State to cave in to spurious, vexatious and dubious claims. The State can properly decide to defend such claims.

**Minimise costs**

• State should try and get to the heart of cases as quickly as possible. Assess the client’s defences. Provide preliminary advice as soon as possible. Do not string out the case as long as possible to increase costs, wear down an opponent, or derive some tactical advantage.

• State should avoid over-servicing. Assess reasonable resources required for each file. Avoid creating artificial teams of lawyers to deal with matters capably handled by one solicitor.

• Every brief to counsel should be marked clearly with the specified fee. Under no circumstances should briefs be sent to counsel unmarked.

• State should embrace truth in pleadings ie should not routinely deny allegations unless proper to do so.

• State should actively consider formal admissions of liability where it has no viable defences.

• State should carefully consider notices to admit served by parties and consider admitting facts or authenticity of documents and not routinely disputing such facts or documents.

• The State should seek a preliminary trial on a question of law where appropriate, if it will shorten litigation.

• Solicitors must never, ever put their own economic self-interest in fee generation above the client’s interest.

• State should make a careful assessment of commercial considerations balanced against other countervailing considerations.

**Don’t take technical defences**

• Unclear what ‘technical’ defences mean. Any available defences at common law or statute should be pleaded.

• Limitations defences generally pleaded by Commonwealth and by State eg. sexual abuse claims by wards of State.

• The State can and should plead defences open to it (eg s 110(3) of the *Transfer of Land Act* in context of an innocently defrauded registered proprietor of land).

• The obligation to not take technical defences arguably extends to technical points of litigation practice and procedure. For example:
  • late service of documents where no prejudice suffered.
  • incorrect forms for documents.
Don’t take advantage of claimant who lacks resources

- The State should not issue applications without a proper purpose just to increase costs pressures on litigants.
- The State should avoid litigation by paper warfare. Develop strategies to ensure the litigation runs on your own timetable and not any unilaterally imposed timetable by lawyers deluging you with faxes, emails etc.
- The State should make a careful assessment of seniority of counsel and not brief counsel disproportionately senior to issues in dispute.
- The State should strike out unmeritorious Statements of Claim. If the State fails to do so, the State may be embroiled in lengthy litigation over a number of years, culminating in potentially lengthy and expensive trials.
- The State should allow plaintiffs to amend the statements of claim if plaintiffs can produce proper claims disclosing viable causes of action.

Don’t appeal unless reasonable prospects for success or in public interest

- obtain advice on prospects of success from solicitor and counsel to ensure appeal has sound prospects or is in the public interest.
- Where an appeal is brought in the public interest (eg Mansfield), consider whether the State should agree to not seek costs or even pay the respondent’s costs.

The fair but firm principle

It has often been said that the model litigant principles require fairness, but do not preclude firmness. As to firmness, I believe a number of principles can be stated to guide the State in its conduct of litigation:

- There is nothing in the guidelines which precludes the State seeking to win cases.
- The State should properly maintain any claim to legal professional privilege and protect public interest immunity, especially in relation to sensitive documents such as Cabinet documents.
- The State should set aside subpoenas where appropriate to do so. The State should claim costs for setting aside subpoenas and legal costs incurred in responding to subpoenas.
- For a good example of specifically permissible behaviours, the ACT model litigant guidelines specifically do not prevent the ACT from:
  - enforcing costs orders or seeking to recover costs;
  - relying on claims of legal professional privilege or other forms of privilege;
  - pleading limitation periods;
  - seeking security for costs;
  - opposing unreasonable or oppressive claims or processes; or
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- requiring opposing litigants to comply with procedural obligations.

- Provided the State is not taking mere ‘technical points’, the State can and should use the rules of the court to maximum advantage. For example, offers of compromise. The State can derive huge costs advantages and place plaintiffs under extreme pressure to settle by utilising the Rules concerning offers of compromise. A plaintiff who fails to beat at trial an offer served by the State will face a penalty of a costs order after the date when the offer was served.

**Behaviour not expected of a model litigant**

As a result of the model litigant principles, there are a number of things the State should avoid in conducting its litigation:

- The State should not play litigation ‘fast and loose’, nor adopt a ‘win-at-all-costs’ strategy, nor adopt a ‘take no prisoners’ approach. The State should avoid conduct which will embarrass the State.

- The State should not use delaying tactics to extract a litigation advantage. Whilst experience suggests that certain time limits and orders are occasionally not complied with, such non-compliance should never be a deliberate strategy designed to thwart an opponent or secure a practical advantage.

- The State should not commence any legal proceedings for any ulterior or improper purpose.

- Avoid personality driven litigation.

- Avoid oppression in litigation. Avoid flurries of interlocutory skirmishes to scare plaintiffs into submission. Fight fair.

**Danger zone one - costs issues**

**Seeking costs orders**

The model litigant guidelines specifically allow the State to seek costs orders. However, there may be cases where the seeking of such a costs order is inappropriate. For example, where the case raises a novel point of public importance.

Note that different considerations may apply to decisions to seek costs orders and to enforce costs orders.

**Enforcing costs orders**

The model litigant principles specifically allow the State to enforce costs orders. The usual means of enforcement available include obtaining a warrant of seizure and sale and, in appropriate cases, even selling the judgement debtor’s interest in land. I would suggest great caution be exercised in any proposed sale of an unsuccessful litigant’s interest in land, as such action could conceivably lead to adverse publicity. Careful advice canvassing all the risks should be given. Likewise with bankruptcy.

**Seeking security for costs**

If a plaintiff loses a trial and appeals, the State is entitled to, and generally should, seek security for its costs incurred in the appeal. In 2003, the State of Victoria sought security for costs from the Court of Appeal in relation to an appeal from a plaintiff who lost a trial. The indisputable evidence before the Court of Appeal was that the plaintiff was completely
impecunious and could not possibly pay the State’s costs if he lost the appeal. The court was initially reluctant to grant such security.

Ormiston JA stated:

It was suggested in an argument, which was barely taken any further for want of authority, that the respondents were not entitled to seek security because in effect the State of Victoria was the respondent or, in the case of the first respondent, the State of Victoria stood behind that person.

It may be in other circumstances and at another time upon argument, some consideration might have to be given to the question, but it seems not presently relevant in this case.\(^\text{11}\)

In a similar claim made by the State within weeks of the above order for security being granted, Buchanan JA said:

I am reluctant to make an order stifling a genuine appeal where the Respondent, the State of Victoria, is in a position to fund its defence of the appeal without relying upon obtaining an order for costs against the appellant.\(^\text{12}\)

His Honour considered the appellant’s prospects of success were low, and he granted the security sought by the State. However, there is plainly judicial disinclination to grant the State such security.

Danger zone two - litigants in person – do special principles apply?

How do model litigant principles apply to litigants in person? The principles themselves make no distinction between litigants in person and represented litigants. However, experience and common sense dictate that litigants in person should be treated carefully by the State. The power imbalance between citizen and State is even greater. Litigants in person should be given greater clarification of the process by lawyers acting for the State. For example, clear warning letters should be sent before court applications are made to strike out claims. Give litigants in person a chance to avoid a costs order by terminating proceedings promptly. Be extra fair. Make sure letters you write will withstand critical scrutiny by a judge. Make them as clear as possible. Proceed cautiously!

Enforcement of model litigant principles

Interesting questions here include:

- If there’s a breach, who is obliged to report it?
- What if client does not accept legal advice that proposed conduct infringes the guidelines?
- Can a party rely upon breach in Court?

At the Commonwealth level, the Office of Legal Services Co-ordination is charged with monitoring compliance with the model litigant guidelines. Ultimate Commonwealth responsibility rests with AG.

- Compliance with guidelines not enforceable except by Attorney-General.\(^\text{13}\)
- Non-compliance cannot ‘be raised’ in any proceeding except by Commonwealth.\(^\text{14}\)
Attorney-General can require production of records or documents and person cannot refuse to comply because of legal professional privilege or duty of confidence.  

At State level:

- Ensuring compliance is primarily the obligation of the State, and the lawyers assist the State in the process.

- As the guidelines are issued by the Attorney, and in his capacity as the first law officer of the State, the Attorney has ultimate responsibility for ensuring that the guidelines are followed.

- In practice, the Office of the Government Legal Services deals with any alleged breaches and reports to the Attorney-General.

Other accountability mechanisms include:

- Auditor General
- Parliamentary questions and inquiries
- Ombudsman
- Media

**Future of the model litigant principles**

- The model litigant principles are here to stay. They have been operative at Commonwealth level for nine years and, as can be seen from the comments of Griffith CJ, the underlying rationale has been around for almost 100 years.

- There are no reported cases in Victoria referring to model litigant behaviour. This will change in coming years, as their wide-reaching application becomes better known.

- The Victorian Attorney-General in his recent justice statement, expressed a desire to review the model litigant policy with a particular focus on ADR.
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   - Directions on the Commonwealth’s Obligation to Act as a Model Litigant (Appendix B)

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7. ‘The Management of Disputes Involving the Commonwealth: Is Litigation Always the Answer?’ (Conference held at Canberra on 22 April 1999).

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Footnotes:
2. Sebel Products v Commissioners of Customs and Excise (1949) 1 Ch 409, 413.
7. Challoner v Minister for Immigration & Multicultural Affairs (No 2) [2000] FCA 1601, [12].
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12. Kostiw and Donis v Stefanoski (unreported , Court of Appeal, 19 September 2003)
15. Judiciary Act 1903 s 55ZH(1).
17. Attorney-General’s Justice Statement, 38.
18. The author acknowledges the most helpful assistance of Chris Young, former research assistant for the Solicitor-General for Victoria, Pamela Tate SC, in compiling this bibliography.
27 March 2012

Dear Boris KAMAN

RE: COUNCIL SEIZURE OF YOUR DOG

Your dog has been seized by the Hume City Council in relation to alleged breaches of the Domestic Animals Act 1994.

Date of Seizure: 20TH MARCH 2012
Breed: PIT BULL TERRIER
Gender: MALE ENTIRE
Colour: TAN AND WHITE
Microchip No.: NIL

You will be responsible for any and all costs for the housing of your dog pending the outcome of the investigation.

The cost of housing your dog/s is $27.50 per day and Council will invoice these costs to you on a fortnightly basis.

Please note that the cost of housing your dog is separate to any infringement notice or Court imposed costs that may arise as a result of the investigation.

If you require any further assistance or information regarding this matter, please contact our City Laws staff on 9205 2200.

Yours faithfully,

ROBERT SAWYER
CITY LAWS COORDINATOR