Mitchell Shire Council Submission

Addendum to the Submission for DELWP - Legislative Council Standing Committee

Additional issues identified have been inserted into the response below;

9 What are the key concerns the Council has about the current regulatory framework?

Dangerous Dog Legislation

In dealing with these sections of the Act, Council has attempted to cover gaps which currently exist within the legislation. Issues identified include:

Definition of laceration – a relatively minor incident which has broken the skin must be dealt with through the arduous process of holding a dog until the outcome of a prosecution. In these instances Council is unable to issue an infringement which may be a more suitable form of punishment

Definition of menacing – which discusses rushing at or chasing a person or biting a person or animal that is not of a serious injury

Release of a seized dog – section 81 (2)(b) states that a dog can be seized under reasonable suspicion of being involved in an attack. Section 84Q(1)(c) states that a dog seized for an offence under Division 3 of Part 3 or 3B of Part 3 must be held until the outcome of the prosecution is known. There is no provision to release the dog if the investigation does not provide evidence to proceed with a prosecution

Release of a seized dog which is a dangerous dog - Section 78(2)(b) allows an authorised officer to seize a dangerous dog if they reasonably suspect it has been involved in an offence under Division 3 Part 3. Section 84M states that a dog or cat may be recovered if seized under certain sections of the Act and lists criteria to be met such as an application form being completed and a fee being paid, but does not include 78(2)(b), and therefore does not include a dangerous dog.

This issue then leads into the next, which is that there is currently no provision specific to applying a fee for the release of a dangerous dog. Currently we are relying on the Local Government Act 1989 in relation to the power to set fees. The release fee for seized dogs is stipulated in Council’s Fees and Charges schedule which is adopted by Council. All owners of dogs that are seized receive notification within the seizure notification of the daily fee for their dog’s stay with Council.

Retaining custody of a dog following prosecution – an offence is dealt with in a Magistrates’ Court for the owner of an offending dog. The Magistrate makes a determination and outcome for penalties for the owner. Council determines the outcome of a dog through different means, and there is no provision to hold the dog following the Court outcome whilst undergoing this process.

Offences for dangerous dogs – whether an infringement is available or whether prosecution is required in open court in the first instance, we believe that there is inconsistency as to the relevance of the offence and the penalty which applies.
28 days to comply with a declaration – this is a huge safety risk to the community as the decision to declare a dog dangerous is certainly not done lightly. There is no provision to hold the dog pending compliance, and Section 98(3) states that the decision takes effect from the end of the review period, if at the end of that period an application has not been made. If an application has been made, the timeline the decision and therefore the risk to the community is extended until the determination of the Tribunal.

Revocation of a dangerous dog on non-residential property - section 34A states that a dog is a dangerous dog if guarding non-residential property or is trained to attack. Section 34(4)(b) states that a declaration in this section cannot be revoked, but there is no mention of revocation for 34A. Many dogs introduced to guard non-residential properties are family dogs, are not trained guard dogs and often not dangerous. There is nothing to say that these declarations cannot be revoked which needs to be clarified. Is this the intention of the legislation, that if a dog is removed from guarding a non-residential property it is no longer a dangerous dog, even though it may have never been trained to guard or attack or have ever committed an act of attack?

Alternatively, there are many dogs guarding non-residential properties which are not friendly, socialised dogs. Can or should these dogs be allowed to be removed from this role as guard dogs and placed back onto residential properties in the community?

If not socialised or friendly, should there be the ability for Council to then declare them dangerous or impose another restriction on them which would protect the community?

There is a need for a temperament, amicability and/or dangerousness test of some scale to be developed to be able to determine whether a dangerous dog removed from guarding non-residential property should be allowed to be kept as a normal dog in the community.

It is clear that a dog that has been trained to attack remains trained to attack, and although section 34A(2) states;

\[
\text{the dog has been trained to attack or bite any person or any thing when attached to or worn by a person.}
\]

....there is no punctuation in this clause leaving interpretation open.

Is the intention of this clause to refer to 'a person....when attached to or worn by a person'? or 'any thing' must be attached to or worn by a person, therefore a thing cannot be an animal. There is no definition for a 'thing' and no mention of training to 'attack an animal'.

Other questions this clause raises include;

- Is it a risk for an ex-Police dog to retire with its handler in the community that the dog has resided in all of its life?
- Should the 'dangerous' label remain, or be removed?
- Is there a level of training or scale that needs to be applied rather than a label and strict controls?

I believe an improvement might be;

\[
\text{the dog has been trained to attack or bite any person, or any thing, when attached to or worn by a person.}
\]
...although rewording of the whole sentence would be preferred.

The following sections mention the term 'rush' as an offence, but there is no offence to rush at an animal, although you may not ‘set a dog to rush an animal’, nor ‘train a dog to rush an animal’.

S29(7) or 29(8) If a dog rushes at or chases any person

S28 A person must not wilfully set on or urge a dog to attack, bite, rush at or chase any person or animal except when hunting in accordance with the provisions of the Prevention of Cruelty to Animals Act 1986.

S28A A person must not train a dog to attack, bite, rush at, chase or in any way menace persons, animals or anything worn by persons, unless the dog is so trained......by a registered domestic animal business and the training is authorised under that registration

There is an evident gap for animals being chased or rushed at by a dog. If an owner of livestock finds a dog in the vicinity of livestock they can destroy it. If an authorised officer finds a dog chasing or rushing at livestock he/she can only issue a wandering at large infringement. Similarly, if a horse is chased it may end up in a fence causing thousands of dollars of damage, but the dog hasn’t actually bitten it and therefore the dog can neither be declared dangerous, nor even be considered menacing, resulting in an owner either wearing the expense or having to take expensive civil action.

There needs to be a rebalancing of offences within this section with the introduction of an offence for chasing or rushing at animals.

When determining whether a dog should be declared, whether it is for a dangerous dog, restricted breed or menacing, Mitchell Shire Council’s process aligns with the Charter of Human Rights and follows the lines of natural justice to ensure a consistent, yet impartial, decision is made through the following process:

A panel of independent senior managers from Mitchell Shire Council (not involved in the investigation or subsequent enforcement action) will sit on a panel hearing at which time the owner of the dog and any other relevant parties (victim, witness, etc.) will be afforded the opportunity to make a submission to be heard, either orally or in writing.

The panel will hear submissions, a report from the investigating officer including a risk assessment, then meet to determine the best outcome based on a risk management approach.

The panel will make a recommendation to the Coordinator Community Compliance based on all evidence and previous history known. The Coordinator Community Compliance will then make a decision.

This type of process should be formalised through the legislation to ensure consistency across the State and having regard to the recent High Court decision on Isbister v Knox City Council.

Council has utilised Animal Management Agreements (Appendix 1) in the past to deal with these ‘lost in the middle’ offences, but unfortunately as they are not ‘endorsed’ or evolved from legislation they are not enforceable, rather more of an ‘informal agreement’.
Many times offences requiring a panel hearing decision are the result of an 'accident' or set of unfortunate circumstances. Often there is opportunity to correct the influencing factors which led to the incident to ensure it doesn't happen again, such as fencing, socialisation, obedience training.

There is an opportunity to incorporate something similar to an *Animal Management Agreement* into the legislation to afford Council an alternative in the decision making process for a positive outcome for the dog owner as well as the community that is also enforceable. A copy of a typical Animal Management Agreement is provided as Appendix 2. Alternatives that have been be included on the AMA include training, desexing, fencing and socialisation, but are not limited to these conditions.