



# Your Dog & The Law

Paw-er of Attorneys by Louise Fuller

**B**eing the owner of a 32-kilogram Bull Terrier who was designed specifically to be king of the kids for canine fun, I know why we can all have some concerns. We've all been there.

The afternoon parkfest has 20 spoiled dogs gadding about when suddenly one dog stops his commando rolls and starts running with reckless abandon. Brain off, legs on. Other dogs join in.

The human pack brace themselves as the party (pack?) aims randomly at them, most around calf or knee height. BANG! A Rotty collects someone from behind leaving them flat on their back and not too pleased. Why? Oh they'd just been given the all-clear on their hip replacement.

So, what happens in the legal sense here?

Obviously there are shades of grey with consent and accepting risks, and generally these arguments will be left to lawyers arguing before and in court. However, some things are less murky and you might be interested to know the rights you and your dog have. In New South Wales, the Companion Animals Act 1998 provides some useful information and I would encourage you read it (find it at [http://www.austlii.edu.au/au/legis/nsw/consol\\_act/caa1998174/](http://www.austlii.edu.au/au/legis/nsw/consol_act/caa1998174/)). This article is specifically aimed at New South Wales, but similar provisions should exist in other states and the common law rights are definitely national.

## 1. Dog attacks another dog, person, or animal

It might interest you to know that for an 'attack' a dog doesn't actually have to injure you or indeed touch you for the owner to be committing an offence. In addition to biting, an 'attack' includes the dog rushing at you or harassing and chasing you or another animal. The exception here is where the animals are vermin (that's the Act, not me defining it, rat-loving community!)

Interestingly, regardless of whether the dog is in an off-leash area, in a vehicle or cage, or is tied up, it means that an offence could be committed if the dog exhibits the same behaviour. If you are found guilty of having a dog like this, you could wear a \$5,500 fine and your dog can be seized, even if canine enamel didn't meet flesh. However, if your pooch behaved like this because it was being teased or hurt, or if it was defending you or your house, then there is no issue. It would be an interesting challenge in respect of Bluey guarding the tools on the back of your ute though, particularly if they were being stolen.

## 2. Liability for injury to an animal

If your dog attacks or chases another animal - causing it, for example, to throw itself off a cliff to escape - and it injures itself, then you are responsible to pay damages. Of course, the thing here is which dog started it and this may be a point of argument.

It is unclear whether a usually sedate big dog could easily defend biting a little dog that was attacking it.

The principle of "excessive force" may be applied, much in the same way it is if you shoot someone who is brandishing a banana at you. Still, it would be an interesting argument. Most of us have experienced examples of inherently aggressive dogs, and sometimes more aggressive owners who couldn't care less about their dog's behaviour and who allow, oh, make that observe their dogs continuing to intimidate other dogs and dog owners.

You don't have to passively accept this. These dogs and people should be reported to your local council. Take a phone photograph or video of the dog's aggressive behaviour and report them. Don't let these dogs and owners make everyone's life hell. Make the rangers do their jobs.

## 3. The dislocated knee

Now, this is where it gets murky and the issue of consent and participation enters the picture. It is difficult to determine what the legal outcome may be if someone is injured by a dog at play. Dog owners are responsible for the actions of their dogs in public places. The dog must be under "effective control", which includes a lead held by the person in control. But here lies the murkiness.

If you are at the usual afternoon doggy brat camp at the park and you are injured by an unintentional whack from a 50-kilogram ridgeback that dislocates your kneecap, largely because you both weren't looking, then where is the liability? The dog owner, the council?

Perhaps it could be argued that yes, you were injured, but you contributed to the injury because you weren't looking and protecting yourself against the dog play. It is an entirely different scenario to an intentional attack, but playing? Who can tell? It is best to make sure everyone is on alert during playtime and avoid these consequences.

## 4. Aggressive dogs not in control

You may not know that, under the Act, you can seize an aggressive dog (although you would want to be careful about it). If you have a reasonable expectation that the dog will attack and it is not in its own backyard, then you can seize it (in some circumstances you can actually destroy the dog, like if it is attacking stock or other animals). You must advise the council that you have detained the dog and take "reasonable steps to inform the owner". If the owner can't be identified, then the dog will go to the pound. Keep it in mind that just because a dog is aggressive, it doesn't mean you can hurt them.

## 5. Barking dogs (and parrots?)

The Act in New South Wales only refers to cats and dogs, and not parrots (or those annoying but charming little native birds that go "peep, peep" at 2:30am every morning). A dog is defined as a "nuisance dog" if it is always out of its yard, if it barks or howls persistently and this interferes with the "peace, comfort or convenience of any person in any other premises"; if it repeatedly poos outside its house with nobody cleaning it up; repeatedly runs at or chases any person, animal or vehicle, or if it endangers health or causes damage.

If this happens, then the council can give you an order to make sure you prevent the behaviour that constitutes the nuisance. This order lasts for 6 months after being issued. If an owner ignores the order, they will be stung with a fine of \$880 the first time and \$1550 the second and subsequent times. So, dogs can be nuisances if their owners let them behave in a certain manner (although, personally, I think the owners are most definitely the nuisance, not the dogs). For the parrot and other noises, the action would probably be through the council and may be an action in the tort of nuisance. It may be covered under a noise ordinance.

So what can you do? Be proactive. If someone has an aggressive dog making your life hell or you are walking in fear, then report them to the council before the damage is done.

If you need any further advice, the author can be contacted on 0401 718 521. This article is general in nature and is not to be regarded as legal advice.



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