

Chair
Cabinet Business Committee

IMPROVING PUBLIC SAFETY UNDER THE DOG CONTROL ACT 1996

Purpose

1. The first part of this paper reviews dog control under the Dog Control Act 1996 (the Act) and its implementation. The second part discusses and recommends options to improve public safety around dogs. Some options identified centre on dogs or breeds that are perceived as high risk¹ and unregistered dogs, as improving control of these dogs is likely to deliver the greatest improvement in public safety.

Executive Summary

2. The Act was introduced after a major review and was amended in 2003, 2004 and 2006. The dog control regime relies upon the operation of the Act's obligations, powers, tools and other mechanisms, in combination with effective enforcement and education.
3. There is little systematic information collected or monitored on the incidence and characteristics of dog bites or attacks. It is therefore difficult to build an overall picture of the effectiveness of the dog control regime.
4. While there is no reason to consider that public safety around dogs is deteriorating, recent serious attacks have understandably revived public fear, anger, and demands for stronger control. Stronger measures might improve safety, but no system offers complete security.
5. After consultation with a range of stakeholder groups a number of options have been developed. Consultation has reinforced that dog control proposals, particularly those that are breed-based, tend to polarise community opinion. Wider testing of the acceptability of some options is proposed, including the identification of further breeds of dog for possible addition to Schedule 4 of the Act.
6. The options have been grouped into Phase 1 (A and B) and Phase 2.
7. Phase 1 options are those that can start now, including:
Phase 1A – Enhancing data, Voluntary measures & regulation
 - work on ways of enhancing the data available on dog safety and control;
 - the development of a set of national guidelines for councils to provide practical guidance and support in the implementation of the Act;
 - the development of consistent public messages on dog safety to inform people of the inherent risks that dogs pose and develop public understanding of dog behaviour;
 - the addition of the Presa Canario breed, via an Order in Council process, to the list of breeds/types of dog that are banned from import into New Zealand as a proactive, precautionary measure to protect the New Zealand community; and

¹ "High risk" is used to distinguish dogs or breeds that are seen as dangerous in a general sense by some members of the public from those dogs that are legally classified as dangerous or menacing under the Act.

Phase 1B - Legislation

- initiating a Bill to amend the Act to:
 - require the mandatory neutering of dogs classified as menacing because they are breeds or types listed in Schedule 4 of the Act;
 - create a power to give government the flexibility to specify by regulation additional policy matters that councils must consider in developing their dog control policies; and
 - simplify the process for adding more breeds to the import ban (which results in councils classifying these dogs as menacing).
- 8. The introduction of legislation to amend the Act will likely generate a large number of submissions across a broad range of matters related to dog control. The scope of their consideration could extend beyond the sections of the Act being amended.
- 9. The Phase 2 options introduce substantially new ideas into the regime, or involve substantial cost. It is proposed that these options be included in a public policy options discussion document, 'Improving Public Safety Under the Dog Control Act 1996: Policy Options' that sought public and stakeholder views. Other proposals or options may be added, along with material discussing and seeking comment on the overall effectiveness of the current regime.

PART 1: DOG CONTROL ACT 1996 AND ITS IMPLEMENTATION

Background

10. In April 2007, Virginia Ohlson was attacked by two dogs in Murupara and died as she was being taken to hospital. Following this attack the Department of Internal Affairs (DIA) was directed to consider by 31 August 2007 legislative and non-legislative options to improve dog control. This attack and several others since have highlighted and elevated public concern about dogs causing serious injury.

Dog Control Act 1996

11. The Act was introduced after a major review and was amended in 2003, 2004 and 2006. The main features of the regime are:
 - implementation by councils (or their contractors), which must adopt dog control policies, maintain the dog registration system, and enforce the Act;
 - power to seize, impound or destroy dogs in specified circumstances;
 - the options of imposing probationary dog ownership and disqualification;
 - registration of all dogs;
 - microchipping newly-registered, impounded, dangerous and menacing dogs;
 - dog owner obligations, with penalties for non-compliance;
 - classification of dogs as dangerous (individual dogs) or menacing (individual dogs or breeds/types), which imposes additional owner control obligations;
 - registration information is submitted to the National Dogs Database (NDD); and
 - since 2003, import bans on specified breeds and types of dog listed in Schedule 4 of the Act, which must also be classified as menacing by councils.
12. The Act provides for the addition of further breeds or types to Schedule 4 by Order in Council. There must be prior consultation with local government, animal welfare organisations, dog clubs and veterinary practices on any breed or type proposed. In considering such an Order, the Minister must have regard to: aggressive tendencies;

tendency to attack; risks to public safety; companion value; experience of other countries; and other relevant matters. A resolution of the House of Representatives is required before an Order in Council can come into force. The current list of scheduled breeds was based on overseas experience.

13. Dog control and the related perception of public safety are complex matters for which there is no "magic" solution. Many stakeholders have noted that the current regime provides effective powers, but that implementation, resourcing and enforcement vary across councils and produce variable results.
14. Devolving dog control enables local solutions for local circumstances, but produces variability in standards of safety. Stronger prescription in legislation of outcome or of processes that councils must follow would weaken local autonomy and potentially undermine the rationale for dog control being a local rather than central government responsibility.

Measuring the outcomes of the current regime

15. Council data, collated on the NDD, records a total of 484,358 dogs either registered since the start of the new registration year on 1 July 2007 or registered in previous years.² The NDD is primarily an operational registration database for cross-council co-operation. There is little systematic information collected or monitored on the incidence and characteristics of dog attacks. Other sources, such as the Accident Compensation Corporation (ACC) and the New Zealand Health Information Service (NZHIS), are not consistent, as they collect data for their own purposes. The option of requiring councils to collect a broad range of attack information was considered in 2003.³ A less extensive reporting requirement, requiring councils to report annually on their dog control policies and practices, was preferred [CAB Min (03) 34/4B refers].
16. It is therefore difficult to build an overall picture of the effectiveness of the dog control regime. There is no legislative requirement for councils to collect information exclusively relating to dog attacks and on actions taken by councils following a reported attack. The lack of data makes the targeting and monitoring of measures to mitigate the problems difficult.

Data on attacks

17. There are varying views as to whether the trend of dog bite incidents is increasing or decreasing. A recent article considered both ACC and NZHIS data (in addition to other sources) and concluded that while the incidence of both fatal and non-fatal dog bite attacks has increased in New Zealand over the past ten years "it is difficult to determine if this is real, or just an artefact of changed coding and reporting mechanisms."⁴ Some councils, such as Auckland, Manukau and Tauranga City Councils have reported decreases in attacks over recent years (although Tauranga advises that in its view the number of serious incidents has increased).
18. Some data relating to attacks from ACC and NZHIS is summarised in Table 1 below. The ACC data relates to new claims for dog bites causing moderate to serious

² NDD snapshot report, 7 August 2007.

³ This included:

- a generic description of the attack or rushing incident including where the person was attacked or, for attacks on animals, the type of animal attacked and location, e.g. public place, private home;
- a physical description of the dog, including whether the dog was registered;
- a generic description of the outcome or action, e.g. prosecution, infringement notice, warning.

⁴ David Healey, "Fatal dog bites in New Zealand", *New Zealand Medical Journal*, 10 August 2007, Volume 120, no 1259.

injuries. The NZHIS data relates to the numbers of people discharged from hospital following being bitten or struck by a dog. This data represents only a small part of the overall picture and at the more serious end of the scale. The absolute number of incidents since 2002/03 has not fluctuated greatly. Overall the data considered does not obviously point to growth in the number of incidents over the last five years.⁵

Table 1: ACC new claims for dog bites causing moderate to serious injuries* and hospital discharges after being bitten or struck by a dog since 2001/02**

Year	Total recorded ACC claims for dog bites	People discharged from hospital after being bitten or struck by dog
1999/2000	101	Data not comparable
2000/2001	153	Data not comparable
2001/2002	189	497
2002/2003	217	557
2003/2004	224	482
2004/2005	225	500
2005/2006	217	572
2006/2007	252	554

* Receiving an entitlement payment from ACC.

** NZHIS advises that the data since 2003/04 is provisional and subject to change over time.

Unregistered dogs

19. Dog registration is central to the dog control regime. It enables identification of a dog and the associated owner and address information. Effective enforcement action often cannot be taken where a dog and its owner cannot be identified. By definition, the size and nature of the unregistered dog population cannot be measured conclusively.⁶ Some councils have focused on unregistered dogs, reflecting concern that these dogs are a disproportionate source of problems.
20. Tauranga City figures show 81 out of 196 reported attacks during 2003-2007 were by unregistered dogs. Tauranga estimates that unregistered dogs are about 5-8% of the Tauranga dog population, yet are responsible for 41% of attacks there. 43% of Tauranga's impounded dogs are unregistered.
21. Auckland City has focused on unregistered dogs and now reports that there are no dogs known to the Council that are unregistered. Tauranga reports 97-98% registration of known dogs. However despite successful councils' efforts, there are likely to be some owners who keep unregistered dogs that are not known to the council.
22. Stakeholders consulted have been generally of the view that unregistered dogs are a disproportionate source of problem behaviour. Many consider that an unregistered dog problem will often be found in communities experiencing other problems such as low incomes or high crime rates. While data is limited, the views of stakeholders and the experience of two populous councils indicate that there appear to be benefits from targeting unregistered dogs.

⁵ Healey identified five fatal dog attacks. The first occurred in 1969 and the other four since 1997.

⁶ Estimates vary. The DIA's 2003 survey of councils gave an estimate of around 6%. The Tauranga City animal services manager has estimated that there are about 600,000 dogs, of which 50,000 or 8% unregistered. A recent *North and South* article referred to a "guesstimate" by a member of the New Zealand Veterinary Association that there about 40% unregistered.

Microchipping

23. The NDD records 50,475 microchipped dogs.⁷ Microchipping and the NDD together provide a nationwide and permanent means of identifying a dog and linking it to its owner. This helps councils to enforce owner responsibilities and keep track of problem dogs within and across council boundaries. Microchipping is not intended to stop dog attacks but it reinforces the registration regime. Dogs first registered before 1 July 2006 must be microchipped if they are classified as menacing or dangerous. All dogs first registered after 1 July 2006 must be microchipped unless exempt.

Assessing dog safety risks

24. Breed-based dog control systems reflect the public perception that some breeds or types of dog present higher risk than others. Other perceived determinants of risk could be bad training or treatment by irresponsible owners.
25. There is, however, a strong body of opinion against breed-based approaches. They are criticised as ineffective because of the difficulty in identifying a dog's breed, especially where a high risk breed has interbred extensively with others. Owners can also dispute or disguise the breed of their dogs. New Zealand and several other jurisdictions (see Table 2 below) have nevertheless adopted breed-based regimes. The stakeholders consulted were generally not supportive of breed-based approaches.
26. Implementation of breed-based approaches requires a clear process for identifying the breed of a dog. The common practice of breed identification has been incorporated into a New Zealand Standard for use by animal control officers. Breed is currently specified by owners when they register their dogs. There is no consistent nationwide checking of breed by, for example, a council officer or a veterinarian seeing the dog.⁸
27. A Queensland court recently found that the breed identification test used by a council was subjective and not subject to independent scientific testing or scrutiny. In this case, a dog was determined to be an American Pit Bull Terrier and seized by a council for destruction. The owner introduced DNA evidence to show that the dog was not an American Pit Bull Terrier.⁹
28. DNA has the potential to assist in identifying breeds, and research is being scoped on the possibility of identifying aggressiveness genes in breeds. The City of Port Phillip in Melbourne has commenced the use of DNA testing for the forensic identification of individual dogs involved in attacks from DNA traces left at the scene but this does not identify breed per se. The Allan Wilson Centre, Massey University, has confirmed that there are techniques that would be likely to enable the identification of pure bred dogs, although general application is some time away, and that the identification of the breeds in cross-bred dogs is likely to be difficult.

Breed-specific measures overseas

29. Table 2 below outlines the breeds specified in various breed-based regimes. A fuller discussion of the regimes is included in Appendix 1.

⁷ NDD snapshot report dated 7 August 2007.

⁸ Hamilton City physically checks dogs registered as breeds similar to Schedule 4 breeds.

⁹ *Dino Da Fre v Logan City Council*, Magistrates Court of Queensland, No. 005440/05.

Table 2: Comparison of breed bans or restrictions across peer jurisdictions

Breed/type	UK	Ontario	Queensland, NSW, SA, Victoria	New Zealand
American Pit Bull	✓	✓	✓	✓
Pit Bull Terrier		✓		
Japanese Tosa	✓		✓	✓
Brazilian Fila	✓		✓	✓
Dogo Argentino	✓		✓	✓
Presa Canario			✓	
Staffordshire Bull Terrier		✓		
American Staffordshire Terrier		✓		

30. The United Kingdom and Ontario have imposed a ban on the ownership, importation, breeding, sale or transfer of the specified breeds. In the United Kingdom, dogs existing when the ban was introduced could be retained subject to controls, with provision made for owners to be compensated for early surrender.
31. A discussion document on Tasmania's current dog legislation review recommended against a breed-based approach, but half the submissions received on the topic favoured it. Singapore has recently introduced new rules that list Part I or II breeds, with differing levels of control.¹⁰

Enforcement

32. Inconsistency of enforcement across councils reflects the differing needs and approaches of different communities. It can be argued, however, that it is reasonable to expect a consistent standard of personal safety. Some councils follow up on known dogs that are not registered, issue infringements, and seize and impound dogs kept in breach of the Act. They also build relationships with their community and promote the benefits of companion animals, which can assist a positive change in the behaviour of dog owners.

PART 2: OPTIONS TO IMPROVE PUBLIC SAFETY AROUND DOGS

Balancing immediate safety response and evidence-based policy development

33. While there is no reason to consider that public safety around dogs is deteriorating, recent serious attacks have understandably revived fear, anger, and demands for stronger control. Stronger measures might improve safety, but no system offers complete security.
34. Any changes would be subject to variable implementation by councils unless consistent standards were specified in detail, measured and enforced. Without data that can demonstrate improvements and put risk into perspective, every serious attack will bring further calls for toughening of the regime. These calls cannot be moderated by reference to evidence. After every serious attack, the previous enhancements of the dog control regime are criticised as ineffectual.
35. This cycle could, in principle, be broken by a period of stability in the dog control regime combined with extensive data gathering to monitor the outcomes of the regime in detail. Good data would allow policy and operational changes to be

¹⁰ Part I: American Pit Bull, Japanese Tosa, Staffordshire Terrier, American Staffordshire Terrier, American Bull Dog, Akita, Neapolitan Mastiff. Part II: Presa Canario, Bull Mastiff, Bull Terrier, Doberman Pinscher, German Shepherd, Rottweiler.

accurately targeted and their effects subsequently measured. The emotive nature of dog safety debates means that governments may never have this luxury. A proposal to collect more data over the medium term could, on its own, be characterised as an inadequate response to a serious safety concern. Its value may, however, be acceptable as part of a wider package.

36. In the absence of good evidence, several problems have been identified:
- there continue to be serious dog attacks;
 - a continued (though probably low) level of non-registration undermines the regime by allowing owners to evade responsibility and frustrate council regulatory and enforcement efforts;
 - variable regulatory and enforcement approaches across councils can lead to varying degrees of safety; and
 - there may be inconsistency in education on behaviour around dogs.

Options

37. After consultation with a range of stakeholder groups, including councils, animal control officers, the SPCA, veterinarians, and academics, options have been developed that target:
- high risk dogs or breeds;
 - unregistered dogs;
 - enforcement by councils;
 - education – consistent messages on behaviour around dogs; and
 - enhanced data on dog control.
38. The options proposed in this paper have been developed on the assumption that a redesign of dog control from first principles is not an option.
39. Consideration has been given to whether provisions to strengthen the regime could be added to the Act, but only activated by the Government if future circumstances demand them. This approach has been discounted at this stage because it would be inconsistent with good legislative practice if attempted within the current structure of the Act.
40. Another approach considered is to amend the Act to establish a broad central government power to create and amend aspects of the dog control regime through regulations or other instruments permitted by the Act. This approach has also been discounted at this stage because taking councils' and dog owners' duties and rights out of a primary statute could undermine the rationale for dog control to be a local government role. Phase 1B below does, however, propose changes that would extend the use of regulation making powers, but with specific and limited scope.
41. Initial stakeholder consultation has identified a range of options. While focusing mainly on institutional stakeholders, consultation has reinforced that dog control proposals polarise opinion. This has led to the recommendation that some of the proposals be subject to wider testing of their acceptability through release of a policy options discussion document.
42. The options outlined in Table 3 below are therefore grouped into two phases. Phase 1 (A and B) includes action that can start now. Phase 1A – Enhancing data, Voluntary Measures & Regulation includes further work on enhancing data, the

development of guidelines and initiation of the Order in Council process to add the Presa Canario breed of dog to Schedule 4. Phase 1B - Legislation provides for initiation of a Bill to introduce a limited number of changes into the Act. There would be an overlap between Phases 1B and Phase 2, which could potentially undermine the purpose and usefulness of public consultation under Phase 2. Past experience has illustrated that the scope of amendments to the Act may extend beyond the sections initially subject to amendment, by the weight and range of submissions received.

43. Phase 2 includes options introducing substantially new ideas into the regime or involving substantial cost. It is proposed that the Phase 2 options be included in a public policy options discussion document seeking public and stakeholder views. The Phase 2 options cover a range of possibilities, rather than being an integrated package that could be adopted as a whole. Some of the Phase 2 options approach the limits of compatibility with the current regime and would require significant consequential amendment. This phased approach would allow some initiatives to be commenced while exploring the development of further options.

Table 3: Summary of options and further work

Option	Timing	Cost*	Target	Legislation required
Phase 1 – Action now				
<i>Phase 1A – Enhancing data, Voluntary measures & regulation</i>				
1. Further work on enhancing data	Medium / Long	Moderate to high	All	Possibly
2. Guidelines for enforcement	Short	Low to Moderate	Enforcement	No
3. Education – consistent messages	Short	Low to Moderate	Behaviour around dogs	No
4. Add Presa Canario to Schedule 4	Short / Medium	Low	High risk dogs	No
<i>Phase 1B - Legislation</i>				
5. Mandatory neutering of Schedule 4 menacing dogs	Medium / Long	Moderate	Enforcement	Yes
6. Add to mandatory components of dog policy by regulation	Medium / Long	Low	Consistent enforcement	Yes
7. Simplify and rebalance the Schedule 4 process	Medium / Long	Medium / Long	High risk dogs	Yes
Phase 2 – Policy options discussion document				
8. Additional breeds included in Schedule 4	Short / Medium	High	High risk dogs	No
9. Destruction of dogs classified as dangerous	Medium	High	High risk dogs	Yes
10. Increase controls on current menacing dogs to the dangerous level	Medium	High	High risk dogs	Yes
11. Council may require proof of breed	Medium	Moderate to high	Enforcement	Yes
12. Probationary owners to surrender dangerous and menacing dogs	Medium / Long	Low	Enforcement	Yes
13. Increase dog containment standard	Medium / Long	High	Enforcement	Yes
14. Round up / faster destruction of unregistered dogs	Medium / Long	High	Unregistered dogs	Yes
15. Owner licensing	Medium / Long	Very high	High risk dogs	Yes

* The costs considered include those of developing and implementing options for central government and councils, ongoing operational costs for councils, and ongoing compliance costs for dog owners.