

# Barking

## My dog is noisy.

Dog owners are responsible for the care and well being of their pets. People sometimes forget that their dogs can affect other people's lives as well as their own and unfortunately the effect is not always a positive one.

Often, people are not aware of the problems their dogs are creating for others until someone complains. Complaints about excessive noise are amongst the most frequent received by councils. A dog is the responsibility of its owner, who must ensure that it is safe and well behaved at all times.

### **Dogs bark for a variety of reasons.**

There are several factors that can cause a dog to bark excessively. They are:

- Discomfort or illness;
- Boredom or loneliness;
- Lack of adequate food and water;
- The kennel and its location may not be right;
- Changes to the dogs usual lifestyle;
- A lack of exercise;
- A lack of training;
- Discomfort from fleas or worms;
- Children playing nearby;
- Night lights and shadows at night;
- Strange noises on windy nights;
- Fireworks and thunderstorms;
- High altitude planes or wailing sirens;
- Guarding territory.

A dog which is continually barking or howling is extremely irritating and may attract an expiation notice issued under the Dog and Cat Management Act 1995, if a complaint is lodged with council. Council officers have to determine whether or not the dog (either alone or together with other dogs regardless of ownership) creates a noise, by barking or otherwise, persistently or continues to such a degree or extent that it unreasonably interferes with the peace, comfort or convenience of a person. If established as such, the owner of the dog may be guilty of an offence under Section 45A(5) of the Act.

Reasonable barking, for example when the family returns home or to protect the property from strangers, is acceptable. However, if barking is continuous or for no apparent reason, it may become an issue for the council to investigate or, if a person considers that the barking has caused them such loss or discomfort that compensation should be sought, they may take civil action against the owner of the dog.

### **What happens if the Council becomes involved?**

The first task of the council is to determine if the complaint is valid. Sometimes, the wrong dog is accused of barking, sometimes the complaint is the result of a neighbourhood dispute and sometimes one neighbour is overly sensitive to the barking and none of the other neighbours even notice it.

Once it has been established that the barking dog is a problem and the accused dog is identified, there are several ways council can manage the issue. They are:

- Settle the complaint informally through mediation;
- Issue the owner with an expiation notice;
- Issue barking dog orders in accordance with the Act;
- Prosecute the owner for breaching the Act;

Councils often handle a barking complaint informally if they believe it is appropriate. Not all noise nuisances require legal resolutions. For example, most owners are willing to work with the council to find ways to stop their dog from barking so much. Most councils do not take legal steps against an owner without giving them the opportunity to fix the problem first.

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## **What could happen if I am unable or unwilling to comply with requests during the mediation process?**

If the council is unable to resolve the complaint informally, they will conduct a full investigation of the situation. The investigation will include talking to other surrounding neighbours who may also be affected by the dog's noise.

Diary sheets will be provided to the person complaining, adjoining neighbours and the dog owner. Information collected from these sheets is vital and care must be taken to ensure that they are completed correctly otherwise they may not be admissible as evidence should the matter be prosecuted. If the diary sheets substantiate the barking complaint, the council may choose to issue an expiation notice to the owner, to prosecute the offending owner or to issue a barking control order.

## **What are the next steps if the problem persists and the owner refuses to comply?**

Councils have the ability to issue "Control (barking dog) Orders" to require dog owners to control their dogs in a specific manner. This can be done in addition to expiation, or as an alternative to expiation. Usually, an explanatory letter will be sent to the dog owner allowing them between seven and twenty-one days to rectify the problem. If the problem is not corrected, the council may proceed to issue a letter of intention to issue a control order in accordance with the provisions of the Act.

If the order is issued, and subsequently contravened by the dog and owner, the council will take steps to give effect to the order.

Councils have the ability to instigate an immediate prosecution against dog owners that allow their dogs to create a noise nuisance. Prosecutions are usually only instigated if the offense is extreme or if the owner refuses, or cannot comply, with the requirements of a barking dog order. If a person is found guilty by the Courts, a penalty may be imposed and the

courts can require the owner to implement strict controls on the dog or remove the dog from the property. Contravention of a court order is serious offense.

## **What happens when all parties have exhausted all avenues to resolve the problem through the provisions of the Dog and Cat Management Act?**

Residents have the right to take civil action against a dog owner to alleviate a noise nuisance. This action is instigated through a Court of Summary Jurisdiction. If a complainant is not satisfied with the action that council is able to take, they have the right to further pursue the matter civilly. The complainant, not the council, must instigate this action.

If, however, the complainant believes that local council has not handled the matter in accordance with its obligations, the issue can be taken to the State Ombudsman's Office.

## **Conclusion**

Councils take noise and barking dog complaints very seriously but they are difficult to investigate and resolve. Councils can provide residents with information about reducing dog noise problems. They may provide referrals to an expert, for example a veterinarian or dog behaviorist, if they consider such assistance would help.