

CITY OF WEST TORRENS



Council Policy: Animal Nuisance Complaints

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Responsible Manager:	Manager Compliance and Waste
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COUNCIL POLICY – Animal Nuisance Complaints

1. Preamble

- 1.1 Cases of animal nuisance can be protracted, generate conflict amongst neighbours and be difficult to resolve to the satisfaction of all parties. This can result in distress to both complainants and the person responsible for the animal alike and increase pressure to find an early solution to often complex cases.
- 1.2 While Council is aware of the emotional distress that protracted cases of animal nuisance can generate, it is also mindful of the need to:
- gather clear, factual and impartial evidence
 - afford natural justice to all parties
 - provide a reasonable period of time for voluntary action to occur
 - consider appropriate enforcement action
 - only commence legal action as a last resort, subject to there being a reliable body of evidence to prove an ongoing offence.

2. Purpose

- 2.1 The purpose of this policy is to:
- Clarify Council's approach to animal nuisance complaints, consistent with the Council Policy: *Order Making*.
 - Specify the minimum conditions to be satisfied before enforcement / legal action is taken against the person who is responsible/causing the animal to be a nuisance.

3. Scope

- 3.1 This policy deals with complaints of animal nuisance received under the *Dog and Cat Management Act 1995* (barking or nuisance dogs) and under the *Local Nuisance and Litter Control Act 2016* - Part 4, Division 1, section 17 (animals, whether dead or alive). It does not deal with menacing or dangerous dogs which are covered separately under the *Dog and Cat Management Act 1995*.
- 3.2 This policy should be read in conjunction with all relevant Acts and standard operating guidelines for Compliance and Waste staff.

4. Definitions

- 4.1 **Animal nuisance** under both the *Dog and Cat Management Act 1995* and the *Local Nuisance and Litter Control Act 2016* refers to Animals, whether dead or alive, that unreasonably interferes with or are likely to interfere unreasonably with the enjoyment of the area by persons occupying a place within, or lawfully resorting to, the area.

Under the *Dog and Cat Management Act 1995*, animal nuisance refers to a dog that has a tendency to engage in behaviour that includes:

- wandering at large (section 43(1))
- attacking, harassing, chasing or otherwise harming the health of a person or an animal or bird owned by or in the charge of another person (whether or not actual injury is caused) (section 44(2))

- creating a noise, by barking or otherwise, which persistently occurs or continues to such a degree or extent that it unreasonably interferes with the peace, comfort or convenience of a person (section 45A(5))
- defecating in a public place when the person responsible for the control of the dog does not immediately remove the faeces and dispose of it in a lawful and suitable manner (section 45A(6))
- damaging property (section 66).

Under the *Local Nuisance and Litter Control Act 2016*, owned animal noise nuisance refers to a noise that constitutes an unreasonable interference with the enjoyment of a neighbouring premises by persons occupying those premises.

4.2 **Person in control of or responsible for an animal** refers to either the owner of an animal, or the person in possession of or responsible for the control of an animal.

4.3 **Enforcement / legal action** refers to the:

- Issuing of a Control (Nuisance Dog) Order or a Control (Barking Dog) Order under the *Dog and Cat Management Act 1995*, requiring a person responsible for the animal causing a nuisance to take steps to prevent the dog repeating the behaviour that gave rise to the order.
- Issuing of an expiation notice for causing nuisance.
- Issuing a Nuisance Abatement Order under *Local Nuisance and Litter Control Act 2016*; Part 5 (30) to the person responsible for the animal causing a nuisance to discontinue or take action so as to resolve a case of animal nuisance.
- Direct prosecution of an alleged offender through the Courts which may result in a monetary fine and / or the imposition of a Court order.

5. Policy Statement

5.1 General Approach

Council's approach is to only consider enforcement / legal action against a person after all reasonable avenues of reconciliation of problems have been exhausted. This includes:

- Encouraging neighbours to communicate and resolve their differences early.
- Formally investigating, educating and helping to diagnose and resolve the nuisance behaviour.
- Providing clear information to owners on their responsibilities and permitting a reasonable time for owners to rectify a breach before enforcement / legal action is commenced.

This approach is consistent with the Council Policy: *Order Making*.

5.2 Evidence Collection

In order to build a reliable body of evidence, Council may require:

- At least one formal written complaint before proceeding to investigation.

- The witnesses to be either living or working in a location where they could be expected to 'observe' the nuisance behaviour and reliably identify the source of the problem.
- appropriate witness statement from individual who resides at one or more of the addresses. The witnesses to be able and willing to complete a diary of the nuisance behaviour over a period of time (to show the pattern of nuisance behaviour) and to continue to do so up until a court date.
- Witnesses who are prepared to give evidence in court.
- Evidence that corroborates the initial allegations i.e. agreement between different pieces of evidence on the pattern of nuisance behaviour. This includes the evidence provided through the:
 - Diary notations of the original complainant
 - Evidence independently gathered by Council officers
- An independent report or subjective assessment attesting to the impact that the animal nuisance has on the health of a complainant or on public health or safety, if it is considered necessary to prove the offence.

5.3 Enforcement / Legal Action

When enforcement / legal action is being considered, Council officers will follow the steps set out in their standard operating guidelines and Council Policy - *Enforcement* to ensure the consistent, fair and accurate application of legislation.