



Government of **Western Australia**
Department of **Local Government and Communities**

Best Practice Guideline on the Identification, Investigation and Handling of Nuisance Dogs



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1. Introduction

This guideline is designed to assist local governments respond to nuisance barking complaints within their districts.

In conjunction with recent amendments to the *Dog Act 1976*, the objectives are to:

1. set out a clear process for investigation and action;
2. discourage vindictive complainants;
3. reduce the burden on complainants and local governments;
4. make complaints relatively quick to resolve;
5. remove ambiguity; and most importantly,
6. make owners responsible for the behaviour of their dog(s).

The basic premise of the Dog Act nuisance provisions is that local governments can, if it is concluded that a dog is causing a nuisance, issue an order (an abatement notice) which has effect for six months. If the nuisance continues, the owner breaches the abatement notice and an infringement notice can be issued, or a prosecution commenced. Rather than an owner being penalised for their dog causing a nuisance in the first instance, they are penalised for failing to abate the nuisance.

In this guideline the term “owner” is used to refer to the person liable for control of the dog. There may be circumstances where these are not the same person.

2. Legislative provisions

The *Dog Amendment Act 2013* amended the Dog Act to redefine nuisance. It also introduced a more structured approach to dealing with nuisance complaints, including clarifying that local governments can take action on one complaint.

Section 38 of the Dog Act provides for the following:

38. Nuisance dogs

For the purposes of this section, a dog is a nuisance if the dog —

- a) makes a noise, by barking or otherwise, that persistently occurs or continues to such a degree or extent that it unreasonably interferes with the peace, comfort or convenience of any person in any place; or
 - b) is shown to be allowed to behave consistently in a manner contrary to the general interest of the community; or
 - c) makes a noise, by barking or otherwise, that exceeds —
 - (i) a prescribed noise level measured by a prescribed method over a prescribed period of time; or
 - (ii) a prescribed number of times of occurrence during or over a prescribed period of time.
- (1) A person may lodge a complaint in a prescribed form with an authorised person, alleging that a dog is a nuisance.
 - (2) If an authorised person is satisfied that a dog is a nuisance as alleged in a complaint, the authorised person may issue an order to a person liable for the control of the dog requiring that person to prevent the behaviour that is alleged to constitute the nuisance by a time specified in the order.
 - (3) An order has effect for 6 months after the day on which it is issued.
 - (4) A person to whom an order is issued must comply with the order during the period in which it has effect.

Penalty:

- a) for an offence relating to a dangerous dog —
 - (i) a fine of \$10 000, but the minimum penalty is a fine of \$500;
 - (ii) for each separate and further offence committed by the person under the Interpretation Act 1984 section 71, a fine of \$500;
 - b) for an offence relating to a dog other than a dangerous dog, a fine of \$5 000.
- (5) This section does not apply to a dog while that dog is kept at an establishment licensed as an approved kennel establishment under section 27.

The intention is not to prescribe standards at this time, but to use this Best Practice Guideline to set out a process and possible standards for local governments to use. When these have been tested in Western Australia and have gained acceptance with the community and local governments, they can be prescribed.

3. Investigation process

Lodgement of complaint

1. Person advises local government of alleged nuisance

The owner of the dog may not be aware that their dog is causing a nuisance. If the complainant has not approached the owner, this should be recommended in the first instance. As an alternative to a personal approach, the complainant could place a letter into the letter box of the dog owner. This may not, however, always be practical and the complainant may not be comfortable with this action.

2. Issue nuisance complaint kit to the complainant

This kit should contain a copy of the form to use to make a complaint as to nuisance created by a dog (Form 7 in Schedule 1 of the *Dog Regulations 2013*), the Nuisance Barking Dogs fact sheet prepared by the Department (available at www.dlqc.wa.gov.au/dogs) and any policy adopted by the local government on this issue.

3. Complainant lodges Complaint Form (Form 7)

Ensure that the form contains sufficient information to enable investigation of the complaint. It should clearly identify the dog that is the subject of the complaint and details of the alleged nuisance: the type of nuisance, when the nuisance usually occurs and any known triggers for the nuisance.

Investigation of complaint

1. Advise the dog owner of the allegation

The authorised person should approach the owner of the dog advising that a complaint has been received and notify the owner of the times and potential triggers for the alleged nuisance. The dog owner should be advised of the process for dealing with the complaint and what steps they can take.

2. Provide the owner with a Nuisance Barking Kit for Owners

It is suggested that this contains the Nuisance Barking Dogs fact sheet prepared by the Department (available at www.dlgc.wa.gov.au/dogs), any policy adopted by the local government on this issue, and any other relevant information. This could include the following:

- a list of organisations that offer behaviour training in the local area
- a list of puppy training organisations in the local area
- a list or map of dog exercise areas in the local area
- a chew toy, or a suggestion to purchase some chew toys and a list of local pet shops.

3. Authorised person satisfies him or herself that a nuisance has occurred

This can be done in a number of ways:

- owner admits to the nuisance
- personal observation of the nuisance (especially at the times or in relation to the triggers identified in the complaint)
- corroborating statements (possibly through the use of a Form 7)
- use of a bark count collar (see below).

The Act only requires that the authorised person is satisfied that a dog is a nuisance as alleged in the complaint. The best way of doing this is at the discretion of the local government and should be tailored to the particular circumstance.

A record should be kept by the authorised person of the basis on which they have drawn their conclusion.

Issue of Abatement Notice

1. Report back to the owner on findings

If the authorised person is satisfied that the dog is causing a nuisance, then advise the dog owner of that conclusion. Issue an Abatement Notice to the person liable for the control of the dog and advise them that a breach of the Abatement Notice constitutes an offence. That is, it is not the fact that the dog has caused a nuisance that constitutes the offence, but the fact that the owner does not prevent future instances of nuisance.

3. Abatement Notice

A Form is being prepared for this purpose and will be included in the *Dog Regulations 2013*. In the meantime, a local government can issue a written notice being an order under section 38 of the *Dog Act 1976*. This should clearly identify the owner, the dog and the behaviour that is causing the nuisance. The order requires the person liable for the control of the dog to prevent the behaviour from a date specified in that order.

The authorised person may give the owner a reasonable period, for example seven days, to commence preventative measures before the order takes effect.

The order stays in effect for six months from the date specified in the order.

4. Owner in Denial

If the owner does not believe that their dog is causing a nuisance and nuisance barking has been alleged, the owner may agree to the use of a bark count collar. Refer to the section below.

Issue of Infringement Notice or other action

1. Nuisance continues

If the nuisance does not subside, and investigations by the authorised person indicate continued nuisance, the owner may be issued with an Infringement Notice (Form 8 of the *Dog Regulations 2013*). Please see the preceding section as 3. Abatement Notice applies.

The modified penalty for this offence (breach of section 38(5)) is \$400 for a dangerous dog and \$200 for all other dogs.

2. Repeat Offenders

For repeat offences, the local government may decide to institute court action.

4. Bark Count Collars

Dog owners sometimes deny that it is their dog causing a nuisance. By encouraging the voluntary use of a bark counting collar, it will prove if it is or isn't their dog. This approach will work well with the new nuisance provisions, as it isn't an offence for a dog to be a nuisance; rather it is an offence not to abate the nuisance once a nuisance has been identified and an abatement notice is issued.

Generally, bark counting collars record up to 100 barks each hour and after a period of time the information can be retrieved and graphed to show when the dog is barking. This enables an authorised person to determine whether a dog is causing a nuisance. It also reveals the times that the dog is more likely to bark and this can help to pinpoint the triggers – and provide solutions to the nuisance. It is therefore an effective educational tool.

It is suggested that if bark count collars are used, only the owner is aware the collar is operational – not the complainant. This is to avoid the possibility of complainants intentionally aggravating the dog and encouraging it to bark.

5. What may constitute a nuisance barking

Nuisance is very subjective. For that reason, there is no set standard to specify what constitutes nuisance barking and at this stage no standard is being prescribed in regulations.

There are, however, some standards which may be used to assist authorised persons to determine if barking is at nuisance levels. The standards below are used in other jurisdictions. They are not necessarily tried and tested at court.

When these standards have been tested in this State and have gained acceptance with members of the community and local government, the Department will give consideration to their inclusion in regulations.

Standards

- If a dog barks for more than six minutes in any hour between 6.00am and 10.00pm on any day; or
- if a dog barks for more than three minutes in any 30 minute period between 10.00pm and 6.00am on any day; or
- if a dog barks 240 or more times between 6.00am and 10.00pm, and 32 barks overnight.

6. Feedback

The document is intended to be a best practice guideline, and the Department welcomes feedback on the success or otherwise of the standards and suggested process, including from local governments that have adopted a different approach or may already have a policy in place.

Please provide your feedback via email to dogs@dlgc.wa.gov.au

Best Practice Guideline on the Identification, Investigation and Handling of Nuisance Barking Dogs (March 2014) is available for viewing and download from the Department of Local Government and Communities website: www.dlqc.wa.gov.au/dogs

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