

SOPHIE BROKENSHIRE

**Don't Bite the Hand: A Review of New Zealand's Dog
Attack Penalties**

Submitted for the LLB (Honours) Degree

Faculty of Law

Victoria University of Wellington

2022

Abstract

New Zealand's approach of ordering that dogs be destroyed after an attack is too strict. The Dog Control Act 1996 is meant to exist for the care and control of dogs, however the current state of the law only provides for dog control, and fails to take into account animal welfare concerns. If a dog bites a person or animal, there is a presumption of the dog's destruction, unless exceptional circumstances can be made out. However case law shows that exceptional circumstances are construed extremely narrowly. Qualifying exceptional circumstances are human-focussed, not animal-focussed. The presumption of destruction frequently creates disproportionate outcomes, with substantial emotional toll on dog owners. The approach taken to dogs that have attacked should be broadened. Aggravating factors, the dog's history of offending and the severity of the bite all should be relevant considerations. The treatment of dogs as property is out of step with the role that dogs play in the lives of many New Zealanders. Destruction should not be the only option available to a judge. Options such as removing the dog from its owner, dangerous dog classifications and behavioural training should at least be options for the judge to consider. Responsible dog owner licensing should be implemented for all dog owners. A movement away from the presumption of destruction can better balance the interests of public safety, animal welfare and responsible ownership.

Keywords: "Dog control", "Animal Welfare", "Destruction Orders", "Dog Control Act 1996", "Dog Attacks".

INTRODUCTION	2
Dog Control Act 1996	4
Dog Control Bill 1996	4
Dog Control Amendment Act 2003 and 2006	6
Dog Attack Penalties	8
Exceptional Circumstances	8
Defences	11
Summary of the destruction penalty	11
CRITIQUES OF THE CURRENT DOG CONTROL LAW	12
Adams v South Taranaki District Council	12
Dogs as property?	14
Summarising the critiques	16
ALTERNATIVE APPROACHES	16
Department of Internal Affairs 2016 Review of Dog Control Regime	16
Australian dog control legislation	18
Removal from owner after an attack	20
Dangerous Dog Classification Measures	22
A PATH FORWARD	25
CONCLUSION	26

I. INTRODUCTION

Dog attacks strike a chord with many New Zealanders. Most people know someone who has been attacked by a dog, and there are strong opinions on how dogs and their owners should be reprimanded. Dog attacks are well documented in the media.¹ This proximity means that the impact of dog control legislation is far-reaching across New Zealand.

Designing legislation that addresses dog attacks comes with some difficulty. Dogs are increasingly perceived as family members, with a study conducted of 2000 dog and cat owners revealing that their dog or cat is treated as a member of their family.² This perception evidences a strong public desire for animal welfare to be a key factor in dog control legislation.³ On the other hand, there is the public safety interest in preventing future attacks. This rationale supports imposing restrictions on a dog, and frequently supports retributive calls for a dog's destruction following an attack.⁴

The Dog Control Act 1996 governs dog control law in New Zealand. As the name suggests, the legislation is premised on the care and control of dogs, rather than animal welfare, creating a “misplaced focus on bad dogs rather than bad owners.”⁵

Four objects are identified as mechanisms to address the purpose of the Dog Control Act. However, all objects provide for ways in which dogs should be controlled, detailing the registration process, categorising dangerous or menacing dogs, preventing injury or distress to any person or other animals.⁶ A dog must be kept under control at all times.⁷

¹ Jill Jones “Barking up the wrong tree” (2003) NZLJ 98 at 98.

² Animal Medicines Australia “Pets in Australia: a national survey of people and pets” (22 October 2019) Animal Medicines Australia <<https://animalmedicinesaustralia.org.au/report/pets-in-australia-a-national-survey-of-pets-and-people/>> at 22.

³ Nerilee Ceatha “Learning with dogs: human-animal bonds and understandings of relationships and reflexivity in practitioner research” (2020) 32 ANZSW 77 at 78.

⁴ The use of the term ‘destruction’ instead of a dog’s death emerges from the legal view of animals as property. As property cannot die, it can only be destroyed.

⁵ David Tong and Vernon Tava “Moral Panics and Flawed Laws: Dog Control in New Zealand” in Peter Sankoff, Steven White and Celeste Black (eds) *Animal Law in Australasia* (2nd ed, The Federation Press, Sydney, 2013) at 109.

⁶ Sections 4(a)(i)-(iv).

⁷ Section 52(1).

Animal welfare provisions are fairly minimal, aside from provisions requiring a dog to receive adequate care, attention, exercise, food, water and shelter.⁸

If a dog attacks a person or any other pet, farm animals or protected wildlife, there is a presumption of the dog's destruction unless "the circumstances of the offence were exceptional and do not warrant destruction of the dog."⁹ The focus of this paper is whether the presumption of a dog's destruction following an attack is the best balance to be struck between dog control and animal welfare.

I will argue that the current presumption tips the balance too heavily towards dog control. A regime that places greater responsibility on a dog's owner, and leaves room for a wider discretion for destruction would better serve the balance to be struck between animal welfare and dog control. Consequently, a wider discretion would recognise the central role dogs play in the lives of New Zealanders.

To make this argument, I will first examine the origins of the Dog Control Act and subsequent amendments to show the disregard for animal welfare in favour of dog control. I will then analyse the destruction and attack provisions with reference to their case law to examine the application of the statute. I will identify several critiques of the current law, followed by the evaluation of alternative options for dog control legislation. Finally I will recommend the best approach for dog control law.

Isac J's judgment in *Adams v South Taranaki District Council* identifies some of the shortcomings of dog control legislation and will be closely examined. The judge had to determine if there were any exceptional circumstances meriting a dog avoiding a destruction order.¹⁰ The judgment revealed the extremely high bar to make out exceptional circumstances for a dog attack.¹¹ Isac J also drew attention to the strict approach to destruction as being not the most effective approach for dog control:¹²

⁸ Sections 54 (1) (a), s 54(1) (b).

⁹ Dog Control Act 1996, s 57(3).

¹⁰ *Adams v South Taranaki District Council* [2021] NZHC 3254 at [20].

¹¹ At [51]

¹² At [52].

Killing the dog in question does little to ensure the public will be protected in the future from the real problem, which is poor ownership.

II. Dog Control Act 1996

This section will discuss how the Dog Control Act regime introduced in 1996 moved away from this more discretionary approach to a far harder line on dog destruction.

Dog control statutes have existed in New Zealand as early as 1865, with primary purposes being around allowing farmers the right to destroy dogs who attack stock.¹³ In 1908, the Dogs Registration Act broadened the ambit with more emphasis placed on registration, as dogs were increasingly being held as pets.¹⁴ The Dogs Registration Act 1955 conferred a discretion on judges regarding destruction orders.¹⁵ The court could make a destruction order, or order that the dog be kept under proper control.¹⁶ This discretion was carried through in the following update of dog control legislation in 1982.¹⁷

The development of early dog control legislation shows an initial focus solely on control of dogs. The legislative developments show a recognition of dogs as pets, and their social significance. Dogs became fixtures in family homes, instead of primarily being working animals on farms.¹⁸ Therefore they needed to be registered, and dogs that attacked were entitled to an examination of any aggravating factors in the granting of a discretion, as opposed to an presumptive destruction. The discretion conferred under the 1955 Act signalled that destruction is not always appropriate.

A. Dog Control Bill 1996

The parliamentary debates for the Dog Control Bill in 1996 demonstrate a movement back to stricter control of dogs, with less regard for animal welfare.

¹³ Injuries by Dogs Act 1865.

¹⁴ Dogs Registration Act 1908.

¹⁵ Dogs Registration Act 1955.

¹⁶ Dogs Registration Act 1955, s 24(2)(b).

¹⁷ Dog Control and Hydatids Act 1982, s 56.

¹⁸ Otago Business School “The changing relationships between animals and their owners in New Zealand” University of Otago <<https://www.otago.ac.nz/business/research/otago609409.html>>.

In the second reading of the Dog Control Bill, the former Minister of Local Government Hon. John Banks wrestled with the hesitancy in enacting stricter destruction rules:¹⁹

I do not like seeing dogs destroyed because mostly the dogs are not responsible for the attack but ultimately if a dog attacks a child on a street the dog has to be put down.

Despite much of Hon. John Banks' vernacular referencing the intention to encourage responsible dog ownership, there appears to be a strong political pressure to 'crack-down' on dog attacks.²⁰ A justification as to the presumption of destruction is that if a dog attacks once, they will attack again.²¹ Therefore to ensure public safety, the only viable recourse is that they are destroyed.

A strong theme that emerges in the debates around the bill from the Labour Party opposition is about the emergence of 'fighting dogs' who are bred and trained to fight.²² The Hon. Jim Sutton explained through anecdotes of his constituents who had been subject to attacks that these dogs cannot be re-trained; "they are bred to kill, they are bred to guard, and they are bred to intimidate. That instinct is as powerful in them as the instinct to each grass in a cow."²³ The concern about the rise of fighting dogs appears to have influenced the tightening of the rules regarding a dog's fate, as the belief was formed that some dogs will never be able to change, and will continue to harm the community if not destroyed. Labour Party MP Chris Carter affirmed this position about 'fighting dogs'; "They are like loaded guns in the local community."²⁴

There was concern from the opposition that the Bill did not go far enough for dangerous dogs, but there was bipartisan support for the proposition that there should be a stricter presumption for destruction orders.²⁵

¹⁹ (27 March 1996) 554 NZPD (Dog Control Bill - Second Reading, Hon. John Banks).

²⁰ Above n 19.

²¹ Above n 19.

²² Above n 13.

²³ Above n 13.

²⁴ (27 March 1996) 554 NZPD (Dog Control Bill - Second Reading, Chris Carter).

²⁵ (27 March 1996) 554 NZPD (Dog Control Bill - Second Reading, Hon. John Banks).

B. Dog Control Amendment Act 2003 and 2006

The Dog Control Amendment Act 2003 emerged as a result of the well-publicised serious dog attack of seven year old Carolina Anderson. Carolina required fourteen hours of plastic surgery.²⁶

Jones argues this created such a stirring of moral panic, that politicians were forced to act, even where there was: “no evidence to suggest - let alone prove - that the canine population is behaving any differently from the way it has always done.”²⁷ The attack on Anderson was acknowledged as a key thrust for the amendment by Local Government Minister Chris Carter; “the Andersons have taken a tragic dog attack and turned it into something beneficial for New Zealand society.”²⁸

Moral panic is a term developed by social scientist Stanley Cohen. It refers to the phenomenon where a group of people (or animals in this instance) become framed as being backward to the advancement of society’s interest. This emerges as a result of the media portrayal of that group in a “stylised and stereotypical fashion” as a threat.²⁹ Consequently, public concern grows, and authorities (in this case parliamentarians) are forced to respond, and devise a method to cope with this threat.

Lodge and Hood argue that the moral frenzy around dog attacks “originates in micro-events that blow up major political crises.”³⁰ The conditions for a crisis here was a seemingly unprovoked attack on an innocent child.³¹ Dogs are framed by frequent media reports as vicious fighting dogs preying on small children or the elderly therefore impinging on the safety interests of civilians.³²

Anderson’s attack was used to create a moral urgency, instead of a statistical breakdown of what percentage of dogs attack, or evidence as to the severity of most dog attacks. While moral

²⁶ Jones, above n 1 at 98.

²⁷ Jones, above n 1 at 98.

²⁸ Chris Carter “Dog Control Bill passes with overwhelming support” (14 November 2003) Beehive.govt.nz <<https://www.beehive.govt.nz/release/dog-control-bill-passed-overwhelming-support>>.

²⁹ Stanley Cohen *Folk Devils and Moral Panics* (1st ed, Routledge, London, 1972) at 1.

³⁰ Martin Lodge and Christopher Hood “Pavlovian Policy Responses to Media Feeding Frenzies? Dangerous Dogs Regulation in Comparative Perspective” (2002) 10 *J. Contingencies Crisis Manag.* 1 at 1.

³¹ Lodge and Hood, above n 21 at 1.

³² Smith, above n 1 at 99.

panic is not the only influence for dog control reform, discourse as to dog attacks shows that panic was whipped up through media reports on dog attacks attacks as identified by Jones.³³

All incidents about dog bites, even the seemingly trivial ones, were religiously reported. Narrow escapes from dogs were also reported.

This amendment created the ‘menacing’ category of dogs with corresponding restrictions on ownership.³⁴ Further, certain breeds were banned, however this provision has since been repealed. This decision to repeal is suitable in light of evidence showing that there is no relationship between the breed of a dog and its likelihood to attack.³⁵ However it does evidence the weakness of a knee-jerk response to moral panic. Laws are created to appease a narrative that has been developed, without having the time to consider the evidence, or effects of the law.

The final change made by the amendment act allowed for the disqualification of owning a dog.³⁶ The 2006 Dog Control Amendment Act tightened rules around the ownership of menacing dogs.³⁷

Tong and Verna argue that the starting point of the Dog Control Act, combined with the 2003 and 2006 amendments culminated in legislation that unduly focuses on control, not care of dogs.³⁸ This creates the starting aim of the legislation to protect humans from dogs, which is the opposite of the starting point of animal welfare law which is that animals ought to be protected from people.³⁹

³³ Jones, above n 1 at 98.

³⁴ Dog Control Amendment Act 2003 ss 21-24.

³⁵ Kevin Stafford “Why was Carolina Anderson attacked?” (2003) 14 *Massey* 11 at 11.

³⁶ Dog Control Amendment Act 2003, s 14.

³⁷ Dog Control Amendment Act 2003, s 30A.

³⁸ Tong and Tava above n 5 at 112.

³⁹ Tong and Tava above n 5 at 112.

C. Dog Attack Penalties

I will now consider the operational provisions for dealing with dog attacks, and how these have been applied. The dog destruction provision has been described as “one of the harshest in the world” by a lawyer involved in dog prosecutions.⁴⁰ The destruction provision is set out.⁴¹

Dogs attacking persons or animals

- (1) A person may, for the purpose of stopping an attack, seize or destroy a dog if—
 - (a) the person is attacked by the dog; or
 - (b) the person witnesses the dog attacking any other person, or any stock, poultry, domestic animal, or protected wildlife.
- (2) The owner of a dog that makes an attack described in subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$3,000 in addition to any liability that he or she may incur for any damage caused by the attack.
- (3) If, in any proceedings under subsection (2), the court is satisfied that the dog has committed an attack described in subsection (1) and that the dog has not been destroyed, the court must make an order for the destruction of the dog unless it is satisfied that the circumstances of the offence were exceptional and do not warrant destruction of the dog.

If a dog attacks a person, domestic animal, protected wildlife, stock or poultry, their owner is liable for any damage caused by the attack and a fine not exceeding \$3,000.⁴² An attack has been defined to require deliberate, aggressive activity from the dog.⁴³ The severity or reason of the bite or attack is not regarded as relevant.

1. Exceptional Circumstances

The only exception to a destruction order after a dog has attacked is where there are exceptional circumstances.⁴⁴ In this section, I examine the case law on the meaning of that phrase, revealing

⁴⁰ 1 News “Inside the fight to get New Zealand dogs off death row” *1 News* (New Zealand, 20 May 2021).

⁴¹ Dog Control Act 1996, s 57.

⁴² Sections 57 (1)

⁴³ *Turner v South Taranaki District Court* [2013] NZHC 1603; [2013] NZAR 1046.

⁴⁴ Section 57(3).

that what qualifies as an exceptional circumstance has been construed extremely narrowly by the courts.

Halliday v New Plymouth District Council provided a list of factors that can be considered in order to rebut the presumption of destruction.⁴⁵ The relevant factors were the nature of the attack, the dog owner's history, any bad behaviour of the dog in the past, any measures the dog owner had taken in order to prevent an attack, and any reasons why these measures did not prevent an attack.⁴⁶

Taking reasonable steps to prevent an attack will not always be sufficient to prevent a destruction order. In *Milner v Hastings District Council*, Ms Milner's dogs Panter and Reanna attacked a number of ewes after escaping from her farm.⁴⁷ The dogs were secured outside Ms Milner's house, but they both escaped. Neither dog had attacked any person or animal in the past. The judge delineated the exceptional circumstances from reasonable circumstances.⁴⁸ The destruction order cannot be mitigated by showing reasonable steps were taken, rather that something exceptional occurred in order for the dog to succeed in attacking someone or something.

Gendall J referred to someone entering a property of a chained dog and baiting them until they attacked, or the dog owner fainting and the dog escaping their control and attacking as an exceptional circumstance.⁴⁹ This narrow construction of exceptional circumstances was justified by reference to the purpose of the Dog Control Act:⁵⁰

The Legislature has so decreed that there be protection provided to the public in its widest

forms and the feelings and considerations of owners of dogs who attack have to take second place to the dominant consideration of the legislation.

⁴⁵ *Halliday v New Plymouth District Council* [2005] CRI-2005-443-11 at [14].

⁴⁶ At [42].

⁴⁷ *Milner v Hastings District Council* HC Napier AP5/04 2004.

⁴⁸ At [9].

⁴⁹ At [9].

⁵⁰ At [14].

Qualifying exceptional circumstances are less about the dog, and are more about the owner. While dogs are the subject of the destruction order, the main way to evade this consequence is by reference to the dog's owner. This points to acceptance of fallibility and aggravating factors for humans, while not affording this to dogs. There is evidence to show a dog's likelihood of acting aggressively is influenced by factors including a person reading a dog's body language correctly, their access to food, water and shelter, proper socialisation and the presence of pain.⁵¹

Exceptional circumstances being granted can be seen in *Nicol v Whakatane District Council*. Ms Nicol had owned Rottweilers for nearly 20 years.⁵² Axle, one of her Rottweilers, approached a meter reader who was working on Ms Nicol's property.⁵³ The reader had visited the house before without any difficulty.⁵⁴ Axle advanced at the man, causing him to fall over, and Axle proceeded to bite him on the wrist before being called off by Ms Nicol.⁵⁵ The worker sustained injuries caused by the fall, but the bite did not require any medical attention.⁵⁶

Gendall J discussed the *Halliday* factors in determining whether exceptional circumstances existed.⁵⁷ The severity of the bite, the fact that Ms Nicol had owned Rottweilers for nineteen years without any attacks, and Axle having no history of attacking were all given consideration.⁵⁸ However the most weight was given to the fact that Ms Nicol usually takes steps to prevent such attacks occurring; her home is fully fenced and in the past she has kept her dogs inside whenever the metre reader attended the property.⁵⁹

The judge then considered why these steps were not effective in the circumstances at issue. At the time of Axle's attack, Ms Nicol had recently split from her partner.⁶⁰ She also had a mouth abscess swelling up her face, and had that morning visited the doctor for treatment and had

⁵¹ Aleksandra Kleszcz and others "Review on Selected Aggression Causes and the Role of Neurocognitive Science in the Diagnosis" (2022) 24 *Animals* (Basel) 1 at 12.

⁵² *Nicol v Whakatane District Council* [2012] NZHC 727 at [3].

⁵³ At [4].

⁵⁴ At [4].

⁵⁵ At [6].

⁵⁶ At [9].

⁵⁷ At [15].

⁵⁸ At [17]-[19].

⁵⁹ At [20].

⁶⁰ At [20].

been instructed to sleep.⁶¹ When Ms Nicol returned home from the doctor, she left the back door open. The judge found these circumstances to be exceptional. *Nichols v Whakatane District Council* illustrates just how high the bar is for exceptional circumstances to be established. It also shows that it is not enough for a dog's behaviour to be unusual, or out of character. Rather there must be clear reasons as to why this attack could not have happened normally. .

1. Defences

There is also a common law defence of complete absence of fault. In *King v South Waikato District Council Jimbo*, a dog, had attacked a rabbit while Jimbo was not under the care of his owner, rather he was under the care of the owner's friends, Mr and Mrs Whata.⁶²

The second attack occurred when Jimbo was impounded and attacked another dog who was also in the pound.⁶³ It was accepted that at the time of this attack, Jimbo was under the effective control of the Council officers working at the pound.⁶⁴ Ms King submitted that she could not be criminally liable for the offences due to this lack of any control over Jimbo.⁶⁵

Heath J concluded that s 57 is a strict liability offence. The burden of proof for a complete absence of fault demands that there is a high standard of care, that the defendant has done everything a reasonable person would have done to avoid the harm.⁶⁶ Without making out the criminal offence for the owner, the court is unable to make out a destruction order.⁶⁷ Jimbo's destruction order was not made, as Ms King could establish a complete absence of fault. This is consistent with defences only being available for humans, rather than for dogs.

D. Summary of the destruction penalty

If a dog bites a person or animal, and the owner is prosecuted there is a near presumption of destruction for the dog. This is irrespective of the severity of the bite, or the dog's past conduct. The qualifying exceptional circumstances are constructed extremely narrowly, and are

⁶¹ At [20].

⁶² *King v South Waikato District Council* [2012] NZHC 2264 at [7].

⁶³ At [6].

⁶⁴ At [7].

⁶⁵ At [20].

⁶⁶ *Civil Aviation Department v MacKenzie* [1938] NZLR 78 (CA).

⁶⁷ *King v South Waikato District Council* above n 42 at [32].

predominately granted for exceptional circumstances in regards to the dog owner, not the dog. This approach fails to take into account the animal welfare concerns of dogs being sentenced to death where they may have never bitten before, and were confused or provoked.

III. CRITIQUES OF THE CURRENT DOG CONTROL LAW

I will now consider some of the principle critiques of the destruction order through a close analysis of the recent judgment of *Adams v South Taranaki Council*.⁶⁸ The judge aptly highlighted some of the challenges with the current law. I will explore the problems with conceptualising dogs as property and reflect upon the disproportionate grief that destruction orders cause to dog owners.

A. Adams v South Taranaki District Council

Adams v South Taranaki District Council provides insight into the ways the operation of destruction orders can produce unfair results.⁶⁹ This decision was an appeal against a sentence issuing that the appellant's dog, Rastus, must be destroyed.⁷⁰

Mr Adams is an elderly man who lives in Taranaki. Rastus, his dog, was described as his "very dear canine companion" that Mr Adams relied upon for protection and companionship.⁷¹ There were two attack incidents.

The first involved a courier driver, who was delivering a parcel to Mr Adam's property in early 2020. Rastus attacked the driver. Consequently, Rastus was classified as a menacing dog under the Dog Control Act, requiring Rastus to be muzzled and desexed.⁷² Mr Adams resisted the classification.⁷³

The second incident occurred in September 2020. A pedestrian was walking past Mr Adams' property, when Rastus attacked him from behind, biting his ankle and causing him to fall

⁶⁸ *Adams v South Taranaki District Council* above n 7 at [53].

⁶⁹ *Adams v South Taranaki District Council* above n 7 at [53].

⁷⁰ *South Taranaki District Council v Adams* [2021] NZDC 15381.

⁷¹ *Adams v South Taranaki District Council* above n 7 at [1] and [18].

⁷² Dog Control Act, s 33A.

⁷³ *Adams v South Taranaki District Council* above n 7 at [5].

down.⁷⁴ He sustained more tooth marks on his arm.⁷⁵ Later that day a Council officer came to Mr Adams' property.⁷⁶ Rastus was in the control of a woman as Mr Adams was not home. A disagreement followed as to Rastus' seizure, leading to the officer to head back to his car to call the police. Rastus attempted to attack the officer, but the officer fended off Rastus with a weapon used for this purpose, hitting Rastus five to six times. The officer sustained a small scratch, and ripped trousers.⁷⁷ Rastus was impounded.

Mr Adams appealed the decision from the District Court's destruction order.⁷⁸ He did not contest the fact that Rastus attacked. The District Court judge acknowledged that in the case of the Dog Control Act, 'attack' is construed broadly;⁷⁹

It is not a vicious dog being restrained, let loose, in order to deliberately be set upon an individual. It is a dog that lunges at a person using the most effective tools at its disposal.

Mr Adams submitted that the wounds sustained by both victims were minimal, that by nature Rastus was not a dangerous dog, the attacks both occurred either on or very close to Mr Adams property, and he was acting in a defensive manner.⁸⁰ Adams emphasised the great emotional cost of Rastus being put down as his companion.

The great emotional cost of dog owners losing their dog is not clearly contemplated by the Dog Control Act. Mr Adams was an elderly man who lived alone, and relied upon Rastus for companionship in a rural area of New Zealand. Mr Adams received charges under the Act for being the owner of a dog that attacked a person, which had a fine Mr Adams was to pay.⁸¹ Mr Adams only appealed the destruction order with the "entire focus of his challenge is to save his

⁷⁴ *Adams v South Taranaki District Council* [2021] NZDC 10777 at [9].

⁷⁵ At [9].

⁷⁶ At [11].

⁷⁷ At [13].

⁷⁸ *Adams v South Taranaki District Council* above n 7 at [2].

⁷⁹ *Adams v South Taranaki District Council* above n 46 at [5].

⁸⁰ *Adams v South Taranaki District Council* above n 7 at [18].

⁸¹ *Adams v South Taranaki District Council* above n 7 at [10].

dog from destruction.”⁸² Pets fulfil emotional and social needs, particularly for older people.⁸³ Having to experience their dog being destroyed can be an extremely difficult process to go through and should be considered as a counter-argument to having such a strict presumption of destruction.

Isac J felt confined by the tight wording of s 57(3) destruction order, and this was a source of displeasure.⁸⁴ In a prior judgment regarding s 57(3) it was noted by the judge that:⁸⁵

One might think that the question of public safety and what is to be done with a dangerous

A dog ought to be unshackled from the criminal responsibility of its owner.

B. Dogs as property?

Another critique stemming from the current state of dog control laws is the legal perception of dogs as property, thus capable of being ‘destroyed’ is problematic.

In New Zealand, the relationship between a human pet owner and its dog is proprietary. A human owns a dog and can use the animal as they see fit within the confines of the law. In *Haenga v Porirua City Council*, Isac J pointed to the fact that most dog-owners in Aotearoa would not regard their pets as property capable of destruction.⁸⁶ This terminology is inconsistent with other legislation. In the Animal Welfare Act, animals are not defined in property terms, rather they are recognised as sentient beings.⁸⁷ The judge argues the usage of destruction for sentient beings is “surprising”.⁸⁸

This differing approach can partly be attributed to the different purposes of the statutes. The Animal Welfare Act exists to promote the welfare of animals, whereas the Dog Control Act has a strong emphasis on the control of dogs.⁸⁹ However this raises the normative question of

⁸² *Adams v South Taranaki District Council* above n 7 at [2].

⁸³ Jennifer W. Appelbaum and others “The Impact of Pets on Everyday for Older People in the COVID-19 Pandemic” (2021) 9 Public Health Front. 1 at 10.

⁸⁴ *Adams v South Taranaki District Council* above n 7 at [51].

⁸⁵ *Haenga v Porirua City Council* [2021] NZHC 1549 at [35].

⁸⁶ *Haenga v Porirua City Council* above n 55 at [36].

⁸⁷ Animal Welfare Act 1999, Long Title.

⁸⁸ *Haenga v Porirua City Council* above n 55 at [36].

⁸⁹ Animal Welfare Act 1999, s 9, Dog Control Act s 4.

whether dogs should be continued to be perceived solely as property. The origins of dogs as property harks back to the Anglo-Christian worldview that God created humankind to control all animals and land.⁹⁰ Contrastingly, dogs have enjoyed a revered position in western society, exemplified by the popular maxim that a dog is ‘man’s best friend’.

In New Zealand’s pre-colonial context, dogs (kurī) were consumed by Māori for their flesh and their skins were used for coats.⁹¹ However, as sheep were introduced into Aotearoa, this practice dissipated.⁹² Recent archaeological research has shown that some kurī were hunters for a hapu, and were perceived as companions for Māori.⁹³ This was evidenced by some kurī having names and whakapapa.⁹⁴ This suggests that dogs have been used as property in a true sense by Māori in the past, however there were also psycho-social relationships between Māori and kurī in a pre-colonial context.

Both pre-colonial Aotearoa and post-colonial conceptions of dogs at minimum do not shut the door for dogs being perceived as something other than property. Alternatives for consideration include dogs being given legal personhood status.⁹⁵ David Hambrick writes in support of this approach:⁹⁶

But removing animals from the legal category of “property” and granting them rights just means granting them the type of protection implicit in the context of a right-access to legal action, consideration before a court, and the possibility of compensatory relief.

Implicit in the granting of rights could signal a movement away from the strict liability approach for dog attacks. A dog’s right to life would likely engage a level of balancing. An animal rights-focussed approach would at least examine the proportionality of killing the animal as a response to their attack.

⁹⁰ Georgiana Jane Fraser “Legal personhood for animals in New Zealand” (LLB (Hons) Dissertation, University of Otago, 2016 at 7.

⁹¹ Miriam MacGregor Redwood *A Dog’s Life: Working Dogs in New Zealand* (AH & AW Reed, Wellington, 1980) at ix.

⁹² Macgregor above n 62 at x.

⁹³ Patricia Pillay, Melinda S. Allen and Judith Littleton “Canine Companions or competitors? A multi-proxy analysis of dog-human competition” (2022) 139 *J. Archaeol. Sci.* 1 at 13.

⁹⁴ At 9.

⁹⁵ Fraser, above n 61 at 31.

⁹⁶ David Hambrick “A Legal Argument Against Animals as Property” in Marc d. Hauser, Fiery Cushman and Matthew Kamen (eds) *People, Property or Pets?* (Purdue University Press, Indiana, 2006) 55 at 56.

This approach could take into account a dog's history of attacks, any extenuating circumstances that may have caused the dog to attack, any preventative steps the owner had taken to prevent an attack and the severity of the attack and injuries sustained.

C. Summarising the critiques

The current dog destruction orders continue to regard dogs as property, which is out of step with a common understanding of the role of dogs in New Zealand. The criteria for exceptional circumstances does not take into account material factors such as if the dog has attacked before, and the severity of the attack. The strictness of the destruction order creates substantial emotional pain for dog owners.

IV. ALTERNATIVE APPROACHES

I will now consider alternative proposals for dog control regarding destruction orders to establish the viability of other models. This supports my argument that there are better ways a balance between animal welfare and dog control can be achieved.

A. Department of Internal Affairs 2016 Review of Dog Control Regime

In November 2016, the Department of Internal Affairs, under the instruction of Louise Upston (the former Associate Minister for Local Government) called for a new strategy to reduce the prevalence and severity of dog attacks.⁹⁷ The review was intended to “complement a renewed focus on education about dog owner responsibility and safety around dogs.”⁹⁸

\$850,000 of government funding was to be allocated towards a neutering programme that would enable subsidised neutering in high risk dog attack regions.⁹⁹ Most of the proposed reforms focus on additional measures for dogs classified as menacing or dangerous.

One aspect was to require a high-risk dog owner licence. This means that dogs classified as menacing or dangerous could only be acquired by owners holding such a licence.¹⁰⁰ This measure was to ensure that owners were well-equipped to handle dogs who have been

⁹⁷ Department of Internal Affairs *2016 Review of Dog Control Regime* (22 September 2016) at 1.

⁹⁸ Department of Internal Affairs above n 131 at 3.

⁹⁹ Department of Internal Affairs above n 131 at 4.

¹⁰⁰ Department of Internal Affairs above n 131 at 4.

determined to be high-risk either by virtue of their breed or from rushing at someone or something in the past.¹⁰¹ Upston identified that obtaining such a licence may include; “education requirements and owner testing, mandatory property inspections, and dog temperament checks.”¹⁰²

In a Cabinet paper in November 2016, Upston justified the proposal “I have consistently heard that irresponsible dog owners are the biggest contributing factor to dog attacks.”¹⁰³

The licensing scheme was to include, at minimum, four elements. First, dog owners must show the capacity to control their dog.¹⁰⁴ Second, the owner must show understanding of dog behaviour, and their legal responsibility for the dog.¹⁰⁵ Third, dog control officers would investigate the property where the dog and its owner reside.¹⁰⁶ Fourth, the dog has to pass a temperament test.¹⁰⁷

This proposals were to be enacted via an amendment to the Dog Control Act.¹⁰⁸ However, no such amendment occurred. This may have been due to the fact that the election of 2017 saw the incumbent National Party government lose to the Labour coalition.

Discussions of this reform, and a movement to an owner-focussed model signals movement to a position that acknowledges the importance of proper dog training and education, rather than strict control of dogs.

The idea of an owner licence requirement is compelling because it recognises the responsibility of dog owners in regards to dog attacks. Auckland City Council is one of the several city councils in New Zealand that offer a Responsible Dog Owner Licence (RDOL). These licences

¹⁰¹ Department of Internal Affairs (2) “National Strategy to reduce the risk and harm of dog attacks” (September 2016) at [65].

¹⁰² Department of Internal Affairs (2) at [66].

¹⁰³ Department of Internal Affairs (3) at [16].

¹⁰⁴ Department of Internal Affairs (3) at [20.1].

¹⁰⁵ Department of Internal Affairs (3) at [20.2].

¹⁰⁶ Department of Internal Affairs (3) at [20.3].

¹⁰⁷ Department of Internal Affairs (3) at [20.4].

¹⁰⁸ New Zealand Law Society “New law coming to reduce the risk of dog attacks” (22 September 2016) NZLS <<https://www.lawfoundation.org.nz/style-guide2019/chapter-7.html#top>>.

allow for dog owners to get a discount on their dog registration fee each year.¹⁰⁹ In order to obtain a licence for the Auckland Council, the owner must undertake a written test about dog ownership, have owned the dog for over a year, have registered your dog within time, with no substantial charges or penalties under the Dog Control Act.¹¹⁰

The presence of RDOLs and similar licences with other councils indicates that introducing a dog licensing system for ‘high-risk’ dogs would not be a far cry from measures already in place. Implementing such measures could reduce the risk of dogs biting in the first instance.

B. Australian dog control legislation

Isac J raised the possibility of decoupling criminal responsibility of the owner from the destruction of a dog.¹¹¹ The judge suggests that a more effective approach than criminalising dog attacks could be seen in preventative efforts that owners can take to ensure their dog does not attack others.¹¹² Australian dog control legislation provides insight into other approaches to dog attacks. Most territories in Australia do not have such a strict destructive presumption.¹¹³

The New South Wales Companion Animals Act 1998 has a materially different starting point than New Zealand’s Dog Control Act, with its purpose being on “effective and responsible care and management” of cats and dogs.¹¹⁴ This shifts the focus on controlling dogs, to promoting responsible management of pets by the owner. This is reflected in the approach to destruction of dogs.

A destruction order may be made where a dog attacks another person, pet, poultry or farm animal.¹¹⁵ However the court can only make the order until it is satisfied that a control order, or an order removing the dog from its owner will be insufficient to mitigate the threat the dog presents to the public.¹¹⁶ A control order requires an owner to act within a set period of time

¹⁰⁹ Auckland Council “How to apply for a Responsible Dog Owner Licence (RDOL)” (2022) <aucklandcouncil.govt.nz/dogs-animals/responsible-dog-owner-licence/Pages/apply-responsible-dog-owner-licence.aspx>.

¹¹⁰ Auckland Council, above n 139.

¹¹¹ *Adams v South Taranaki District Council* above n 7 at [26].

¹¹² At [26].

¹¹³ Tong and Tava above n 5 at 123.

¹¹⁴ Companion Animals Act 1998, s 3A. (NSW).

¹¹⁵ Companion Animals Act 1998, s 48(2)(a) (NSW).

¹¹⁶ Section 48(3) (NSW).

to prevent the likelihood of the dog attacking again.¹¹⁷ This includes desexing the dog, engaging in behavioural or socialisation training for the dog, or another mode of training “associated with responsible pet ownership”.¹¹⁸

This legislation provides far wider discretion for judges for attacking dogs. It is clear responsible dog ownership is promoted through ordering training that can improve a dog’s behaviour and lower its propensity to attack in the future. Secondly, the mechanism of removing the dog from its owner recognises that a dog may have rights independent of an owner’s activity.

Under the New South Wales legislation, if a dog has attacked in a manner that causes serious injury or death to a person there is a presumption of destruction unless exceptional circumstances can be made out.¹¹⁹ Under the Tasmanian Dog Control Act 2000, actual injury must be established in order for there to be an offence of a dog attack.¹²⁰ Other territories in Australia grant a discretion as to destruction rather than a presumption.¹²¹

This is contrasted with New Zealand’s approach for any dog attack, irrespective of the harm done. This presents what is an unusually strict approach, where causing the death of a guinea pig and a chicken is treated in the same manner as causing the death or serious injury of a person.

The New South Wales legislation goes to some lengths to prevent a destruction order being made in the first instance. As evidenced from the Companion Animals Bill, at second reading it is clear that animal welfare was a key purpose of the Act:¹²²

workable legislation which promotes the welfare of animals and a balance between the needs of people in the community who own companion animals and those who do not. Responsible ownership includes considering the impact of companion animals on neighbours and those in the wider community.

¹¹⁷ Section 47 (NSW).

¹¹⁸ Section 47(3) (NSW).

¹¹⁹ Companion Animals Act 1998, s 48 (3A).

¹²⁰ Dog Control Act 2000 s 19A (Tas).

¹²¹ Section 29(5) Domestic (Feral and Nuisance) Animals Act 1994 (Vic).

¹²² (6 May 1998) NSWPD 4489.

The Minister for Local Government Ernie Page had developed the bill alongside a working party “representing a wide range of animal welfare and environmental groups as well as local and State Government.”¹²³ The clear focus on animal welfare and responsible ownership of companion animals oriented the legislation to a place where destruction was not the first solution for a dog who has bitten.

C. Removal from owner after an attack

A measure that could be implemented following an attack could be permanently removing the dog from its owner. This could be an option to be considered prior to a destruction order being made. The New South Wales Companions Animals Act empowers a court to permanently remove a dog from its owner.¹²⁴ The dog can be removed from its owner and delivered to a council pound, or an “approved premises”.¹²⁵ An approved premises is defined by reference to an approved person, and refers to an approved animal welfare organisation, or someone who has been authorised to access information for identifying the lost or seized animals.¹²⁶

Sending a dog to an approved animal welfare organisation, such as the SPCA in New Zealand provides opportunities for the dog to be given to an owner or foster home who is experienced with dogs who have bitten or attacked in the past. However the success of this strategy is contingent on the ability for a new owner to reduce the dog’s propensity for bad behaviour. The level to which a dog can be rehabilitated depends on several factors according to dog behaviour expert Kelly Snider.¹²⁷ The more dangerous the previous bite history is examined by depth of puncture wounds, amount of wounds, if the dog thrashed while biting the subject, and if there was any bruising.¹²⁸ The more dangerous the dog’s history, the more difficult and intensive it will be to retrain such a dog.¹²⁹ For more dangerous dogs, tools such as muzzles,

¹²³ (6 May 1998) NSWPD 4486.

¹²⁴ Animal Companions Act s 48(3) (NSW).

¹²⁵ Animal Companions Act s 62 (NSW).

¹²⁶ Animal Companions Act s 62A (NSW).

¹²⁷ Kelly Snider *Turning Fierce Dogs Friendly* (Fox Chapel Publishing, Pennsylvania, 2018) at 187.

¹²⁸ At 188.

¹²⁹ At 189.

cages and electric collars may need to be implemented to assist in this training.¹³⁰ However the consensus from animal behavioural science is that dogs can be rehabilitated.¹³¹

Having the option for a court to order the removal of a dog from an owner has several strengths. First it would serve to decouple an owner's criminal responsibility, of having a dog to be out of control, from the fate of the dog. An owner's behaviour and attitude to their dog "can contribute to the causation and maintenance of problem behaviour."¹³²

It would be particularly effective in circumstances where there is a younger dog who is owned by someone who has a history in raising dangerous dogs. If a dog could be rehomed via a programme, if there was effective training and suitable owners the dog could live a fulfilled life instead of facing death via a destruction order. This is naturally preferable from an animal rights and welfare perspective. It would also be effective for dogs that have bitten, but not caused serious injury.

However these strengths can only be realised with certain conditions. The new owner must have the resources to retrain the dogs. There must also be capacity for programmes such as the SPCA to take on potentially dangerous dogs without risk to themselves. This may require government investment in these programmes in offering resources for rehabilitating these dogs.

This approach is not appropriate for all circumstances. Where a dog has bitten someone and caused them high levels of harm, it would be inappropriate to send them to an adoption facility if it was evident that they had a history of serious attacks. In the period between 2004 and 2014, there were 4,958 dog bites that required hospitalisation in New Zealand.¹³³ This is 11.31 admissions per 100,000 people, per year.¹³⁴ This rate was higher than inpatient rates for the US, UK and Australia.¹³⁵ Dogs causing serious injuries from their attacks would be ill-suited to be adopted out without any other forms of wrap-around protections, such as rehabilitative

¹³⁰ Snider, above n 101 at 190.

¹³¹ Terri M. Bright and Louise Hadden "SafeWalk: Improving Enrichment and Adoption Rates for Shelter Dogs by Changing Human Behaviour" (2016) JAAWS 95 at 97.

¹³² Vallerie O'Farrell "Owner Attitudes and Dog Behaviour Problems" (1997) *Appl. Anim. Behav. Sci.* 205 at 206.

¹³³ Jonathan Mair, Natasha Duncan-Sutherland and Zachary Moaveni "The Incidence and Risk Factors of Dog Bite Injuries Requiring Hospitalisation in New Zealand" 132 *NZMJ* 8 at 9.

¹³⁴ Mair, Duncan-Sutherland and Moaveni above n 107 at 12.

¹³⁵ Mair, Duncan-Sutherland and Moaveni above n 107 at 12.

training from an animal behaviourist. This acknowledges the risk of a careful balance between care and control of dogs.

Another weakness of a removal approach is that it does not rectify some of the key injustices some dog owners face with the current dog control laws. As acknowledged in *Adams v South Taranaki*, a key objection to the presently strict rules is that they lose their companion.¹³⁶ Mr Adams objected to the destruction because his dog kept him company as he lived alone in a rural town.¹³⁷ While avoiding destruction would be preferable for these owners, if the dog was removed from them, they suffer similar consequences in that they lose their companion over an attack that may not have even required medical care.

Removing a dog from its owner could be appropriate in certain circumstances. This is contingent on there being adequate resourcing for the organisation that holds the dog, and the adopter to retrain the dog effectively to reduce risk. By itself, it would not be appropriate for all dogs, particularly those who have caused serious injury. Therefore, if it were to be incorporated into the Dog Control Act, a similar approach should be taken as in New South Wales Companion Animals Act.¹³⁸ This approach only allows for a destruction order to be made if it can be satisfied that a control order or a removal order will fail to protect the public from the threat.¹³⁹ The advantage of this approach is that a removal order is available for a judge, but only in circumstances where it would be effective in protecting public safety. Therefore dogs that are unsuitable for such an order will not face this removal.

D. Dangerous Dog Classification Measures

The Dog Control Act has an approach to classifying dogs as dangerous.¹⁴⁰ Dogs will be classified as dangerous if they commit an offence under section 57A(2) of the Act, which is where a dog rushes at a person or animal, consequently causing injury or damage to property.¹⁴¹ A dog can also be classified as dangerous if the local council has reasonable

¹³⁶ *Adams v South Taranaki District Council* above n 7 at [53].

¹³⁷ *Adams v South Taranaki District Council* above n 7 at [18].

¹³⁸ Companion Animals Act s 48(3) (NSW).

¹³⁹ Section 48(3).

¹⁴⁰ Dog Control Act 1996, s 31.

¹⁴¹ Dog Control Act 1996, s 57A(2).

grounds to believe they pose a threat to public safety.¹⁴² The consequence of this classification is a comprehensive set of rules and actions a dog owner must take.

The dangerous dog classification arose from the Dog Control Amendment Act, which followed the attack of Carolina Anderson. A key purpose of this addition was to create a raft of measures for dogs that acted aggressively, without actually attacking anyone. As put by the Minister of Local Government Chris Carter: “keeping dogs on leashes, muzzling dangerous breeds and so on will apply, so that communities, especially children, will be safer.”¹⁴³

The classification creates a preventative approach to dog control that recognises the ways in which harm can be mitigated. This approach is at odds with the strict presumption found for destruction orders. The dangerous dog actions will be analysed in order to see if they could form an appropriate approach for dogs that have attacked, instead of a destruction order.

The first measure an owner must take is ensuring the dog lives in a fully fenced part of the owner’s property.¹⁴⁴ Secondly, the dog cannot be at large in public or in private without being muzzled and on a leash.¹⁴⁵ This approach would allay some of the concerns mentioned by politicians in the creation of the Dog Control Act as they discussed the right to feeling safe on the streets.¹⁴⁶ If a dog was securely fenced in a property, their risk to other people is reduced significantly. Coupled with the requirement for muzzling and leashes, even if someone was on the dog owner’s property, a dog would have much less ability to attack another person. Muzzling is widely recognised as being a safe and effective measure to reduce a dog’s capacity to bite without impacting its welfare.¹⁴⁷

The requirement of being on a leash with a muzzle even when on the owner’s fully fenced property is a substantial incursion into the freedom of the dog, and the owner’s use of the dog. Under s 32(1)(a) the dog cannot be at large in public “or in any private way” unless it is confined

¹⁴² Dog Control Act 1996, s 31.

¹⁴³ (11 November 2003) 613 NZPD 9888.

¹⁴⁴ Dog Control Act 1996, s 32(1)(a).

¹⁴⁵ Dog Control Act 1996, s 32(1)(b).

¹⁴⁶ (27 March 1996) 554 NZPD (Dog Control Bill - Second Reading, Hon. John Banks).

¹⁴⁷ Debra Horwitz and Gary Landsberg “Muzzle Training for Dogs” (2015) VCA Animal Hospitals <<https://vcahospitals.com/know-your-pet/muzzle-training-for-dogs>>.

within a vehicle or cage.¹⁴⁸ This means a dog cannot run around freely, and can only be exercised when the owner can facilitate this. Due to the seriousness in how the dog is limited under this process, this consequence could be appropriate for dogs who have caused a more serious injury, but in the judges mind, destruction is not warranted.

After being classified as dangerous, the dog owner must produce evidence that the dog has been neutered, or a veterinarian's note specifying why the dog could not get neutered.¹⁴⁹ There is a scientific basis that "there is consistent evidence that desexing dogs is associated with a reduced risk of dog bite".¹⁵⁰ Therefore neutering dogs is seen as a measure to lessen a dog's risk to the public. This measure could suitably be integrated into considerations for a judge to make before a destruction order is made.

Further, the owner of a dangerous dog would be charged 150% of any dog control fees than if the dog were not classified as dangerous.¹⁵¹ This approach is consistent with Isac J's suggestion in *Adams v South Taranaki District Council* in promoting a greater level of owner responsibility instead of the dog solely suffering the consequences of an attack.¹⁵² This is presumably to reflect the greater cost that dangerous dogs carry to society. This approach may not be suitable when considering destruction orders, as there are already fines in place for dog owners following their dogs' attack.¹⁵³ Adding an additional dog control fee increase may add undue confusion to the provision.

Finally, the owner cannot give or sell the dog to another owner without the written consent from the territorial body.¹⁵⁴ This exists to prevent potentially dangerous dogs being given to those who do not know how to handle such a dog, and cause injury. Such a transfer of ownership would increase the risk to public safety. This provision serves a different purpose to consider if a judge should make a destruction order, so it would be unsuitable to incorporate into a mandatory consideration before making a destruction order.

¹⁴⁸ Dog Control Act 1996, s 32(1)(b).

¹⁴⁹ Dog Control Act 1996, s 32(1)(c).

¹⁵⁰ Katina D'Onise, Susan Hazel and Charles Caraguel "Mandatory desxing of dogs: one step in the right direction to reduce the risk of dog bite? A systematic review." 23 *Inj. Prev.* 212 at 217.

¹⁵¹ Dog Control Act 1996, s 32(1)(e).

¹⁵² *Adams v South Taranaki District Council* above n 7 at [26].

¹⁵³ Fines not exceeding \$3,000, in addition to liability for damage as a result of the attack. Dog Control Act 1996, s 57(2).

¹⁵⁴ Dog Control Act 1996, s 32(1)(f).

The dangerous dog provisions offer a more thorough and proportionate response to responding to the threat of public safety caused by dogs. The measures in total are comprehensive and restrictive, and would be very likely to prevent a dog attack. A possible solution could be a discretion conferred upon a judge, to order that a dog is to be classified as a dangerous dog, instead of facing a destruction order immediately. Or alternatively, as explored above, some parts could form mandatory factors a judge must consider before making a destruction order.

V. A PATH FORWARD

From analysing the operation of destruction orders in New Zealand, and looking at alternative responses for dealing with dogs who have bitten, there are two shortcomings in the current legislation.

First, the presumption of destruction following any attack, regardless of its severity, is too strict. The criteria for establishing exceptional circumstances to avoid a destruction order is extremely narrow, meaning that many dogs, when their owners are charged for attacks, are sentenced to death. Review of different jurisdictions, particularly that of Australian territories, shows that there are alternative measures to improve dog control while striking a fairer balance from an animal welfare and rights perspective.

Secondly, the focus in devising legislation has been tipped too heavily in favour of dog control, not animal welfare, or owner responsibility. This has been a reaction to current political pressures and disproportionate media coverage, rather than evidence. As a consequence, there are extremely rigid rules that edge close to a presumption of destruction following an attack. Until responsible ownership is encouraged, there will continue to be dogs that attack unprovoked and face destruction due to poor training and irresponsible owner conduct. It also reveals a tendency to rely upon public misconceptions about dogs, rather than a scientific backing. Propelled by a proprietary understanding of dogs, it fails to take into account the crucial role that dogs play in the life of many New Zealanders, and the deep emotional cost to owners of having their dog destroyed.

In light of these shortcomings, I recommend that the Dog Control Act should be amended.

First, the language of the Dog Control Act should change from recognising dogs only as property, to also as sentient beings. This approach is consistent with the Animal Welfare Act 1999 and in line with ordinary usage in New Zealand.¹⁵⁵ Correspondingly, destruction orders should be changed to euthanization orders of dogs. This change recognises the emotional connective value that dogs have in the lives of their owners and conveys the brevity of the order.

Second, the presumptive approach to destruction should be amended. Destruction orders should only be ordered when there are not any other safe and viable options available to the judge. This ought to be a discretionary exercise, and based on the balancing of public safety against the animal welfare interests. Alternative options at the judge's disposal should include removal of the dog from its owner, a dangerous dog classification, behavioural training and desexing of the dog. Many dogs would be saved from their deaths if this approach was to be taken, and it will better represent the proposed purpose of the Dog Control Act, which is the “care and control of dogs.”¹⁵⁶

Further, in determining whether a destruction order should be made, factors of the dog’s behaviour should be relevant considerations. This should include the severity of the bite, the dog’s history of attacking or biting and any provocations to the dog. This would change the current approach, where exceptional circumstances to avoid a destruction only seem to cover behaviour on behalf of the dog owner, not the dog. Dog attacks are multifaceted and having a discretion is much more appropriate than a presumptive approach as a judge can determine the seriousness of the risk a dog poses. The current approach leaves no space for these relevant considerations, and has posed considerable upset to those whose pets have been destroyed on the basis of not being able to argue on the facts of their circumstance.

Thirdly, the current Responsible Dog Licensing should be expanded to all dog owners to complete in their first year of owning a dog. Ensuring all dog owners can recognise aggravating behaviour in their dogs, and have the tools at their disposal to de-escalate situations is a key preventative measure to lower the tendency and severity of dog attacks. This recommendation

¹⁵⁵ Animal Welfare Act 1999, Title.

¹⁵⁶ Dog Control Act, s 4.

acknowledges the key role that owners play in their dogs behaviour, and emphasises the importance of the commitment that owning a dog is.

VI. CONCLUSION

The presumption of a dog's destruction is unnecessarily strict. It produces cases of dogs being destroyed where they could have been rehabilitated. The current operation of the law does not place enough responsibility on bad dog owners, and the consequence is borne by their dogs. Until the root causes of irresponsible ownership can be addressed, the frequency of dog attacks will persist.

Animal welfare has been neglected in the operation of the Dog Control Act at the expense of the control. Case law shows that it is nearly impossible for a dog to be discharged from a destruction order under extremely narrow exceptional circumstances. Allowances need to be made for a judge to consider the circumstances of the attack, and the dog's history. Further, there ought to be different orders that can be made following an attack, rather than just a destruction. The current approach provides extremely disproportionate outcomes, with dogs being destroyed after a minor bite that may not have caused any injury.

Dogs continue to play an important psycho-social role in the lives of many New Zealanders. Legislation needs to reflect the animal welfare stakes, as well as the public safety interests. The recommendations detailed can allow for a more humane, flexible and considered approach to an issue that affects many communities.

A Cases

Adams v South Taranaki District Council [2021] NZHC 3254.

Civil Aviation Department v MacKenzie [1938] NZLR 78 (CA).

Haenga v Porirua City Council [2021] NZHC 1549 at [35].

Halliday v New Plymouth District Council [2005] CRI-2005-443-11.

King v South Waikato District Council [2012] NZHC 2264.

Milner v Hastings District Council HC Napier AP5/04 2004.

Nicol v Whakatane District Council [2012] NZHC 727.

South Taranaki District Council v Adams [2021] NZDC 15381.

Turner v South Taranaki District Court [2013] NZHC 1603; [2013] NZAR 1046.

B Legislation

1 New Zealand

Animal Welfare Act 1999.

Dog Control Act 1996.

Dog Control Amendment Act 2003.

Dog Control and Hydatids Act 1982.

Dogs Registration Act 1908.

Injuries by Dogs Act 1865.

2 Australia

Companion Animals Act 1998, s 3A. (NSW).

Dog Control Act 2000 s 19A (Tas).

Section 29(5) Domestic (Feral and Nuisance) Animals Act 1994 (Vic).

C Books and Chapters in Books

David Hambrick “A Legal Argument Against Animals as Property” in Marc d. Hauser, Fiery Cushman and Matthew Kamen (eds) *People, Property or Pets?* (Purdue University Press, Indiana, 2006) 55.

David Tong and Vernon Tava “Moral Panics and Flawed Laws: Dog Control in New Zealand” in Peter Sankoff, Steven White and Celeste Black (eds) *Animal Law in Australasia* (2nd ed, The Federation Press, Sydney, 2013).

Kelly Snider *Turning Fierce Dogs Friendly* (Fox Chapel Publishing, Pennsylvania, 2018).

Miriam MacGregor Redwood *A Dog’s Life: Working Dogs in New Zealand* (AH & AW Reed, Wellington, 1980).

Stanley Cohen *Folk Devils and Moral Panics* (1st ed, Routledge, London, 1972).

D Journal Articles

Aleksandra Kleszcz and others “Review on Selected Aggression Causes and the Role of Neurocognitive Science in the Diagnosis” (2022) 24 *Animals* (Basel) 1.

Jennifer W. Appelbaum and others “The Impact of Pets on Everyday for Older People in the COVID-19 Pandemic” (2021) 9 *Public Health Front.* 1.

Jill Jones “Barking up the wrong tree” (2003) *NZLJ* 98.

Jonathan Mair, Natasha Duncan-Sutherland and Zachary Moaveni “The Incidence and Risk Factors of Dog Bite Injuries Requiring Hospitalisation in New Zealand” 132 *NZMJ* 8.

Katina D’Onise, Susan Hazel and Charles Caraguel “Mandatory desxing of dogs: one step in the right direction to reduce the risk of dog bite? A systematic review.” 23 *Inj. Prev.* 212.

Kevin Stafford “Why was Carolina Anderson attacked?” (2003) 14 *Massey* 11.

Martin Lodge and Christopher Hood “Pavlovian Policy Responses to Media Feeding Frenzies? Dangerous Dogs Regulation in Comparative Perspective” (2002) 10 *J. Contingencies Crisis Manag.* 1 at 1.

Nerilee Ceatha “Learning with dogs: human-animal bonds and understandings of relationships and reflexivity in practitioner research” (2020) 32 *ANZSW* 77.

Patricia Pillay, Melinda S. Allen and Judith Littleton “Canine Companions or competitors? A multi-proxy analysis of dog-human competition” (2022) 139 *J. Archaeol. Sci.* 1.

Terri M. Bright and Louise Hadden “SafeWalk: Improving Enrichment and Adoption Rates for Shelter Dogs by Changing Human Behaviour” (2016) *JAAWS* 95.

Vallerie O’Farrell “Owner Attitudes and Dog Behaviour Problems” (1997) *Appl. Anim. Behav. Sci.* 205.

E Internet Materials

1 News “Inside the fight to get New Zealand dogs off death row” *1 News* (New Zealand, 20 May 2021).

Animal Medicines Australia “Pets in Australia: a national survey of people and pets” (22 October 2019) Animal Medicines Australia
<<https://animalmedicinesaustralia.org.au/report/pets-in-australia-a-national-survey-of-pets-and-people/>>.

Auckland Council “How to apply for a Responsible Dog Owner Licence (RDOL)” (2022)
<aucklandcouncil.govt.nz/dogs-animals/responsible-dog-owner-licence/Pages/apply-responsible-dog-owner-licence.aspx>.

Chris Carter “Dog Control Bill passes with overwhelming support” (14 November 2003) Beehive
<<https://www.beehive.govt.nz/release/dog-control-bill-passed-overwhelming-support>>.

Debra Horwitz and Gary Landsberg “Muzzle Training for Dogs” (2015) VCA Animal Hospitals <<https://vcahospitals.com/know-your-pet/muzzle-training-for-dogs>>.

Department of Internal Affairs *2016 Review of Dog Control Regime* (22 September 2016).

Department of Internal Affairs “Further policy decisions to support the national strategy to reduce the risk and harm of dog attacks” (November 2016).

Department of Internal Affairs “National Strategy to reduce the risk and harm of dog attacks” (September 2016).

New Zealand Law Society “New law coming to reduce the risk of dog attacks” (22 September 2016) NZLS <<https://www.lawfoundation.org.nz/style-guide2019/chapter-7.html#top>>.

Otago Business School “The changing relationships between animals and their owners in New Zealand” University of Otago <<https://www.otago.ac.nz/business/research/otago609409.html>>.

F Parliamentary Materials

1 New Zealand

(27 March 1996) 554 NZPD (Dog Control Bill - Second Reading).

(11 November 2003) 613 NZPD 9888 (Dog Control Amendment Bill- Third Reading).

2 Australia

(6 May 1998) NSWPD 4489 (Companion Animals Bill - Third Reading).

G Theses and research papers

Georgiana Jane Fraser “Legal personhood for animals in New Zealand” (LLB (Hons) Dissertation, University of Otago, 2016).