

Fact Sheet – Barking Dog Information for the Complainant



MORNINGTON
PENINSULA
Shire

Dogs are an important part of our community, but dogs that bark excessively can become a nuisance and create friction between neighbours and others in the area.

Introduction

Barking dogs remain one of the more difficult complaints for Council to assist complainants in resolving. Mornington Peninsula Shire receives numerous complaints regarding noise from barking dogs.

Even though dogs may appear to be “barking for no reason” they are in fact trying to communicate something to their owner, or anyone who is willing to pay attention.

Approaching the dog’s owner in a neighbourly manner and discussing your concerns with them sometimes easily resolves this type of complaint. The dog’s owner may not realise that the barking is causing a nuisance to other people.

Try the following steps to resolve the issue in a neighbourly manner

- Approach the dog’s owner when the problem arises and state your case.
- If the dog owner is not approachable, or you are not comfortable approaching them, try placing the “*Dear Neighbour Letter*” (available on Council’s website) in their letterbox.
- If the neighbour takes no action or does not agree that a problem exists, you can lodge a complaint with Council.

Legal requirements for enforcement

- If you wish to formally lodge your complaint, you need to acknowledge that you are lodging an allegation of a criminal offence under the *Domestic Animals Act 1994 (the Act)*.
- The Act makes it an offence to allow a dog to be a nuisance by persistently or continually barking to such a degree that it unreasonably interferes with the peace and comfort of another person in any other premises. To be a nuisance, the level of interference caused by the dog barking must be more than irritating or annoying or inconvenient.

- The submission of a *Barking Dog Complaint Form* and *Barking Dog Diary* is no different from attending a police station and making a statement. These documents are legal documents and must be completed accurately and in good faith. You must also be willing to defend this evidence at Court.
- It is important you keep a comprehensive diary over the course of the investigation that shows the patterns of the dog’s barking behaviour. Remember, in a Court of law the evidence you give may be subject to cross-examination.
- Council may take the matter to Court if all avenues available to rectify the nuisance have been exhausted and the noise continues to be a problem.
- The success of any Court action relies on the evidence of the complainant.
- If relevant information and evidence is not provided, Council will be unable to pursue the matter.

It is unlikely that a barking dog that wakes a person up every now and then would be found to be a nuisance. However, a dog that persistently barks and wakes a person every morning over an extended period, is likely to be a nuisance.

Lodging a complaint with Council

If you want to lodge a complaint with Council, you must do the following:

- contact the Environment Protection Unit on 5950 1050 - an Administration Team member will assist and explain the process to you.
- identify the correct address of the offending dog/s and explain the level of noise and the effect it has on you.

Once you have lodged a complaint, an Administration Team member will send you a *Barking Dog Complaint Form* and a *Barking Dog Diary*. Once you have received these documents, you must:

- complete the *Barking Dog Diary* for a period of 14 consecutive days (you will need to live in close proximity to the barking dog/s in order to accurately collect evidence for the diary).

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- return the *Barking Dog Complaint Form* and *Barking Dog Diary* to Council within 21 days of receipt.
- cooperate with the Community Safety Officer from Council who investigates the matter.

You may be asked to continue to complete another *Barking Dog Diary* for a further period as asked by the Community Safety Officer. This will monitor whether the noise has abated as a result of any previous action taken or continues.

Council has limited options if you wish to remain **anonymous** and may not be able to take action.

Council action

Council will appoint a Community Safety Officer who will:

- study the *Barking Dog Diary* to establish barking patterns to determine the reason for the dog barking and if the barking is a nuisance or mere annoyance.
- attend the area and confirm the barking whenever possible.
- contact and advise the dog owner of the complaint, discuss possible solutions and inform them of their responsibilities.

If the investigation confirms that a nuisance exists and that an offence has occurred, Council may take enforcement action, which may include issuing of a direction, formal warning, an infringement notice or referring the matter to the Magistrates' Court.

- If the matter proceeds to Court, you must provide a formal statement to support the complaint and must be willing to testify in Court.
- The Community Safety Officer will update you throughout the investigation.

Please be patient as Council attempts to work with your neighbour to resolve the nuisance. The action taken to minimise the barking will take time to implement. Only the Courts have the power to make an Abatement Order to remove a dog after the offence has been proven.

How Council determines nuisance barking

When deciding if barking constitutes a nuisance as defined in the Act, the Community Safety Officer will look at several factors, including:

- where the barking is taking place.
- how long the barking goes on for and whether it is ongoing.
- the time of day or night the barking occurs.
- the days the barking occurs and how regularly it occurs.
- the impact the interference is having on people.
- what a reasonable person would think of the interference.

When Council will not take action

- If the Community Safety Officer determines that the barking is not a nuisance as defined in the Act.
- If at any point the noise is abated, or reaches an acceptable level, the complaint will be closed.
- Council will not get involved in any domestic dispute between you and your neighbour. If this happens, Council may inform you to take your own civil legal action.
- When the *Barking Dog Complaint Form* and/or *Barking Dog Diary* have not been submitted.
- If you fail to cooperate with the Community Safety Officer during the investigation.

Other options to abate the noise

The **Dispute Settlement Centre** provides free advice to help neighbours sort out problems such as barking dogs. Please contact them at:

The Dispute Settlement Centre of Victoria
4th Floor, 456 Lonsdale Street

Melbourne VIC 3000

☎ 1300 372 888

🌐 disputes.vic.gov.au

Civil Nuisance Action, where the Civil Court would determine whether, on the balance of probabilities, the noise is affecting the use and enjoyment of land. You must speak to your lawyer for advice about this option.