

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Acaroglu v Moreton Bay Regional Council* [2020] QCAT 76

PARTIES: **HALIL ACAROGLU**
(applicant)

v

MORETON BAY REGIONAL COUNCIL
(respondent)

APPLICATION NO/S: GAR 246-19

MATTER TYPE: General administrative review matters

DELIVERED ON: 17 March 2020

HEARING DATE: 21 February 2020

HEARD AT: Brisbane

DECISION OF: Member Dr Collier

ORDERS:

- 1. The decision of Moreton Bay Regional Council declaring the dog Missy a menacing dog is set aside.**
- 2. The decision of Moreton Bay Regional Council ordering the destruction of the dog Missy is set aside.**

CATCHWORDS: ADMINISTRATIVE LAW – ADMINISTRATIVE TRIBUNALS – QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL – regulated dogs – declared menacing dog – dog destruction order – where a person was fearful of a dog – where the dog has ‘attacked’ a person – tests to determine whether a dog is menacing or dangerous

Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 19, s 20(1), s 20(2), s 24

Animal Management (Cats and Dogs) Act 2008 (Qld), s 3(d), s 59(1), s 59(2), s 89, s 89(1), s 89(2)(a), s 89(2)(b), s 89(7), s 90, s 94, s 95, s 104, s 127, s 127(4), Schedule 1 – s 1, s 2, s 3, s 4, s 5, s 6, Chapter 4

Bradshaw v Moreton Bay Regional Council [2017] QCATA 139

Briginshaw v Briginshaw (1938) 60 CLR 336

Chaplin v Sunshine Coast Regional Council [2019] QCAT 371

Lee v Brisbane City Council [2012] QCA 284

Lee v Brisbane City Council (No 2) [2012] QCATA 64
Nguyen v Gold Coast City Council Animal Management
 [2017] QCATA 121
Thomas v Ipswich City Council [2015] QCATA 97
Willis v Hume CC (Review and Regulation) [2013]
 VCAT 1033

**APPEARANCES &
 REPRESENTATION:**

Applicant: Self-represented
 Respondent: M Jackson, of counsel

REASONS FOR DECISION

- [1] Halil Acaroglu, who lives at 35 Alfred St Woody Point, owns a five-year-old entire 40kg brindle and white Bull Arab female dog, 'Missy'. Mr Acaroglu owns a second dog which is also homed at the same address, 'Max'; Max plays no part in these events.
- [2] Moreton Bay Regional Council ('Council') made two decisions in respect of Missy as a result of a complaint made to the Council by one person ('complainant'). The first was to declare Missy a menacing dog, and the second was to order the destruction of Missy. Mr Acaroglu seeks to have the Tribunal set aside both the menacing dog declaration and the destruction order.
- [3] There have been two occasions when Missy has interacted with the complainant.
- [4] The complainant was a young man aged 23 years when the relevant events described in this decision occurred.
- [5] The first occasion occurred on the footpath at or near the front of Mr Acaroglu's residence in early 2019, although the parties do not recall the precise date. The complainant details the event in his witness statement dated 26 August 2019, the relevant portion of which is recited later in this decision.
- [6] On this occasion Missy inflicted a scratch, apparently from the dog's nails, and a shallow bite that broke some skin on the complainant's leg arising from a bite inflicted by the dog outside the complainant's trousers.
- [7] When the complainant returned home he rang the police to report the incident but was advised by the police that they do not handle matters involving dogs. The matter was not reported to the Council.
- [8] The second occasion occurred at approximately 6:20pm on 7 March 2019 when Missy escaped from her residence and pursued the complainant. The complainant was injured when he fell while running away from Missy.
- [9] Upon returning home on this occasion the complainant's father rang the police about this incident and was informed that such complaints are handled by the Council. The complainant's father was put through to the Queensland Ambulance Service by the police, and the police notified the Council about the incident.

- [10] An ambulance attended the complainant at his residence approximately 30 minutes after the incident with Missy, transporting him to hospital where it was ascertained that the complainant had suffered swelling, pain, abrasions to the face, and a fractured arm (of the upper humerus) which was treated.
- [11] The complainant suffered from serious bruising and pain associated with his broken arm and complained that it was several months before substantial recovery was achieved and he still complains of suffering pain in some circumstances.
- [12] Contemporaneous hospital records confirm the injuries described by the complainant, as do photographs showing the extent of the bruising suffered.¹
- [13] Acting on advice from the police, the Council immediately commenced an investigation of the two incidents involving the complainant and Missy.
- [14] The Council acted in a timely way and undertook a thorough investigation of the incidents.
- [15] Before describing more of the facts, it is convenient at this point to describe the relevant laws in order to determine the obligations of Mr Acaroglu as the owner of Missy and the basis for a decision by the Tribunal.

Legal framework

- [16] In reviewing a decision, the Tribunal does so by way of a fresh hearing on the merits.² The Tribunal must decide the review in accordance with the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) and the Act giving jurisdiction to hear the matter.³ The Tribunal stands in the shoes of the decision maker and is required to produce the correct and preferable decision.⁴
- [17] The Tribunal may confirm or amend the decision, or set aside the decision and substitute a new decision, or set aside the decision and return the matter for reconsideration to the decision-maker for the decision, with the directions the Tribunal considers appropriate.⁵
- [18] The principal legislation regulating domestic cats and dogs which gives the Tribunal power to hear this matter is the *Animal Management (Cats and Dogs) Act 2008* (Qld) ('AM Act').
- [19] Section 3 of the AM Act sets out the purpose of the Act, which includes to promote the responsible ownership of cats and dogs.⁶
- [20] A menacing dog may be declared by the Council if one of the following criteria is satisfied:⁷

(2) A dangerous dog declaration may be made for a dog only if the dog—

(a) has seriously attacked, or acted in a way that caused fear to, a person or another animal; or

¹ Redcliffe Hospital documents attached as Exhibit 1, and photographs attached as Exhibit 2, to the complainant's Witness Statement taken by Moreton Bay Regional Council dated 26 August 2019.

² *Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 20(2).

³ *Ibid*, s 19.

⁴ *Ibid*, s 20(1).

⁵ *Ibid*, s 24.

⁶ AM Act, s 3(d).

⁷ *Ibid*, s 89.

(b) may, in the opinion of an authorised person having regard to the way the dog has behaved towards a person or another animal, seriously attack, or act in a way that causes fear to, the person or animal.

(3) A menacing dog declaration may be made for a dog only if a ground mentioned in subsection (2) exists for the dog, except that the attack was not serious.

- [21] Section 127 of the AM Act gives an authorised person⁸ the power to destroy a regulated dog.⁹
- [22] When making a decision as to whether to destroy a dog, the decision-maker must take into consideration:¹⁰
- (a) the purposes of the AM Act generally;¹¹
 - (b) the purposes of Chapter 4 of the AM Act specifically;¹² and
 - (c) how the AM Act states those purposes are to be achieved.¹³
- [23] Whether a dog was acting in response to being attacked, provoked or teased is ‘not irrelevant’ and ‘all the circumstances need to be taken into account in the exercise of the discretion.’¹⁴
- [24] When reviewing a destruction order the Tribunal is required to undertake extensive enquiry before exercising its discretion under section 127(4) of the AM Act.¹⁵
- [25] The standard of proof required in findings of fact by the Tribunal is that the Tribunal must be ‘comfortably satisfied’ having regard to the nature and consequence of the facts to be proved.¹⁶

Actions taken by the Council

- [26] As a result of the complaint and its investigations, on 20 March 2019 the Council issued a Proposed Regulated Menacing Dog Declaration Notice in respect of Missy to Mr Acaroglu as Missy’s owner. In this regard I am satisfied that this notice was delivered to Mr Acaroglu on 20 March 2019 as alluded to (but not specifically stated) by Letitia Travers in her Witness Statement dated 6 September 2019, and confirmed in the written statement of Mr Acaroglu.¹⁷ This notice concerned only the incident involving the complainant on 7 March 2019, and not the incident that occurred earlier in 2019.
- [27] In the notice dated 20 March 2019 the Council gave the reasons for the proposed regulated dog declaration as being:
1. On 7 March 2019, the dog Missy did escape from the property unaccompanied and unrestrained, and did attack and cause fear to a person.

⁸ Ibid, s 104.

⁹ Ibid, Chapter 4.

¹⁰ *Nguyen v Gold Coast City Council Animal Management* [2017] QCATA 121, [33].

¹¹ AM Act, s 3.

¹² Ibid, s 59(1).

¹³ Ibid, ss 4 and 59(2).

¹⁴ *Lee v Brisbane City Council (No 2)* [2012] QCATA 64.

¹⁵ *Bradshaw v Moreton Bay Regional Council* [2017] QCATA 139.

¹⁶ *Briginshaw v Briginshaw* (1938) 60 CLR 336.

¹⁷ Summary for Halil Acaroglu of 35 Alfred St Woody Point, QLD 4019, filed 13 September 2019, [1].

2. As a result of that incident, bodily injuries were sustained to the left arm and shoulder of the person.
3. On 8 March 2019, the Council was made aware of the incident and commenced investigations.
4. As a result of those investigations, the Council determined that it was reasonable to believe that the dog attacked and caused injury/fear to a person or another animal.
5. Accordingly, the evidence before the Council, confirm that it is appropriate and necessary for the Council to declare the dog a regulated menacing dog in the interest of public safety.

[28] On 25 March 2019 Mr Acaroglu made a written representation to the Council concerning the Council's proposed declaration. In his letter to the Council Mr Acaroglu made the following points:

- (a) Missy has no history of being harmful towards any person;
- (b) She is a socialised dog;
- (c) She has escaped from his residence previously and has been returned to him from people that have called him to retrieve the dog;
- (d) Some people who pass Mr Acaroglu's residence deliberately stir up his dogs; and
- (e) He would like the Council to provide more details concerning the injuries received by the complainant.

[29] On 29 March 2019 the Council issued a Regulated Menacing Dog Declaration Notice and a Compliance Notice in respect of Missy. This Declaration Notice was consistent with the earlier proposed regulated dog declaration and conformed with the requirements of the AM Act. The Compliance Notice set out the obligations imposed on Mr Acaroglu as the owner of a regulated menacing dog, in particular those listed in paragraph [45], below. Among other obligations, the Compliance Notice required Mr Acaroglu to provide a suitable enclosure for Missy as a regulated dog by 11 April 2019.

[30] Mr Acaroglu refused to accept the Council decision to declare Missy a menacing dog. As a result of his refusal to accept this decision, Mr Acaroglu refused to do at least the following things that he was required to do as a result of the Council's declaration, namely, he refused to:

- (a) Confine Missy to an approved enclosure;
- (b) Ensure that Missy wear a distinctive collar and tags; and
- (c) Place a sign at every entrance to the property where the dog is kept warning of the presence of a dangerous dog.

[31] On the basis that Mr Acaroglu had failed to comply with his obligations as the owner of Missy, a declared menacing dog, on 16 May 2019 Council sought and obtained a warrant to seize Missy, which the Council did on 20 May 2019. Mr Acaroglu was not at home at the time Missy was seized.

- [32] On or about 23 May 2019 the Council issued Mr Acaroglu a further Compliance Notice requiring that, by 6 June 2019, he provide a suitable enclosure for Missy at his residence. This notice inspired Mr Acaroglu to place some barriers on the front fence of his residence for the purpose of deterring escape by Missy. However Mr Acaroglu did not provide a suitable enclosure for Missy as required by the Compliance Notice, and the Council assessed the barriers at the fence to be insufficient for the purpose of restraining Missy and otherwise not compliant with the obligations on Mr Acaroglu as the owner of Missy.¹⁸
- [33] By way of an application dated 29 May 2019 Mr Acaroglu requested that the Council review its decision to declare Missy a menacing dog. The essential points raised in his application were as follows:
- (a) There has been no evidence to show that Missy was a menacing dog;
 - (b) He has not received some of the relevant notices from the Council; and
 - (c) Missy was seized by the Council without warning.
- [34] Fleur Holyland, in her capacity as Senior Case Management and Compliance Officer for the Council, considered Mr Acaroglu's application for review, and on 10 June 2019 the Council issued a Review Notice in which Mr Acaroglu's concerns were addressed and the original decision to classify Missy as a menacing dog was upheld.
- [35] Based on the fact that the Council was in possession of Missy, and that Mr Acaroglu had failed to comply with the Council's two Compliance Notices and indicated his intention not to comply, on 26 June 2019 the Council issued a destruction order in respect of Missy in accordance with s 127 of the AM Act.
- [36] On 3 July 2019 Mr Acaroglu filed an application with the Council requesting the Council review its decision to declare Missy a menacing dog.
- [37] By written notice dated 10 July 2019 Mr Acaroglu was informed that the decision-maker upheld the original decision of the Council to declare Missy a menacing dog.
- [38] On or about 1 August 2019 Mr Acaroglu made a request to the Council to review the Destruction Order in relation to Missy.
- [39] On 28 August 2019 the Council, through its Acting Regulatory Services Compliance Officer, Fleur Holyland, affirmed its original decision to destroy Missy, but execution of the Order has been suspended pending the decision of this Tribunal.
- [40] While Mr Acaroglu has made several claims in relation to a failure of the Council properly to notify him by serving him in a timely manner with relevant notices and orders, if this occurred, and I am not satisfied that it has, it has not prejudiced his position except to the extent that he claims he would have had Missy assessed by a trained animal expert had he known Missy was about to be seized by the Council. I will deal with this issue later.
- [41] Throughout the process described above there have been many attempts at communication between Council officers and Mr Acaroglu which were largely unsuccessful because either: Mr Acaroglu was uncontactable by telephone; there was no person at the property when visited by Council officers; or Mr Acaroglu was aggressive and uncompromising when speaking to Council officers. In this regard I

¹⁸ As conceded by Mr Acaroglu in his closing oral submissions

accept as correct the version of events set out by the Council in the Respondent's Statement of Reasons prepared by Fleur Holyland dated 20 August 2019.¹⁹ I also accept the version of events in this regard described by Letitia Travers in her Statement of a Witness dated 23 August 2019.²⁰ My reasons for accepting these versions of events are three-fold. First, Mr Acaroglu appeared at the hearing as a forceful and uncompromising person quite likely to engage in aggressive conduct of the type described in the statements referred to. Second, the Council officers appeared, from their evidence, to approach the situation involving Missy in a professional and objective manner. Third, there is ample evidence, such as dated photographs showing Council officers delivering documents to Mr Acaroglu's residence, for me to conclude that the documents shown were delivered by the Council as attested.

What constitutes a 'menacing dog'?

- [42] The AM Act empowers a local government to declare a particular dog a menacing dog²¹ if the dog has attacked, or acted in a way that caused fear to a person or another animal,²² or may, in the opinion of an authorised person having regard to the way the dog has behaved towards a person or another animal, attack, or act in a way that causes fear to the person or animal.²³
- [43] In this case, a conclusion that Missy constitutes a menacing dog will be satisfied if Missy has attacked or acted in a way that caused fear to the complainant.
- [44] The process under which a dog may be declared a menacing dog is set out in detail in ss 90, 94 and 95 of the AM Act.
- [45] Owning a menacing dog imposes a number of particular obligations on the owner of the dog. These include:
- (a) Housing the dog at a nominated and approved residential address;²⁴
 - (b) Confining the dog to an approved enclosure;²⁵
 - (c) Ensuring that the dog is identifiable as a menacing dog by having the dog wear a distinctive collar and tags;²⁶
 - (d) Having the dog implanted with a Prescribed Permanent Implantation Device ('PPID');²⁷
 - (e) Placing a sign at every entrance to the property where the dog is kept warning of the presence of a dangerous dog;²⁸
 - (f) Ensuring that the dog is muzzled at all times when outside the approved property;²⁹ and

¹⁹ [35]–[47].

²⁰ [33]–[46].

²¹ AM Act, s 89(1).

²² Ibid, s 89(2)(a).

²³ Ibid, s 89(2)(b).

²⁴ Ibid, Schedule 1 ss 1 and 6.

²⁵ Ibid, Schedule 1 s 4.

²⁶ Ibid, Schedule 1 s 2.

²⁷ Ibid.

²⁸ Ibid, Schedule 1 s 5.

²⁹ Ibid, Schedule 1 s 3.

(g) Ensuring that the dog is under adult control at all times.³⁰

[46] In the Victorian case of *Willis v Hume CC*,³¹ the Senior Member observed that the consequences of declaring a dog to be a dangerous dog (and, for the purposes of this case, declaring a dog a menacing dog) are significant,³² and that, in his view, the question to answer when exercising the discretion of whether to make a declaration concerning a dog, is:³³

... whether the dog poses a greater risk to people and animals, **compared to other dogs** ... (emphasis added)

[47] The learned member went on to list some relevant criteria when making a decision on whether to make a declaration about a dog, which include the:³⁴

- (a) conduct of the owner before the attack;
- (b) circumstances of the attack;
- (c) likelihood of the circumstances being repeated and the dog repeating the attack;
- (d) apparent nature of the dog;
- (e) conduct of the owner and those around him or her;
- (f) skill of the owner and those likely to be in charge of the dog in controlling the dog;
- (g) conduct of the owner since the offending conduct in attempting to minimise future risk;
- (h) insight of the owner and those likely to be in charge of the dog into future risk posed by the dog; and
- (i) welfare of the dog's owner and of others affected by the [dog's] behaviour.

[48] I would, respectfully, add a further criterion to this list:

- (j) in respect of the victim of a dog attack, any pre-existing level of anxiety or phobia concerning dogs inherent in the victim.

[49] After a review of animal cases I have been unable to find any Australian case involving circumstances similar to those here: where a dog has chased a person, had the opportunity to inflict injury on that person, but has not, itself, inflicted an injury on that person.

Evidence for the Council

[50] The complainant detailed the events of his first interaction with Missy in his witness statement dated 26 August 2019. I recite the relevant portions of the complainant's version of events from his statement, as follows:³⁵

³⁰ Ibid.

³¹ (*Review and Regulation*) [2013] VCAT 1033.

³² Ibid, [38].

³³ Ibid, [39].

³⁴ Ibid.

³⁵ Complainant's Witness Statement taken by Fleur Holyland of Moreton Bay Regional Council dated 26 August 2019.

7. Around the start of 2019, the owners of the dogs were arriving home in their car.
8. The car, a truck type vehicle was parked in front of their house and I was walking on the grass past their house.
9. They opened the boot of the truck and the dog ran to me, jumped up on two legs and jumped on me. The dog had its paws on my thigh.
10. I wanted to get the dog away from me.
11. The dog scratched and bit my leg. It then stopped and was standing next to me.
12. The male owner called the dog and the dog stopped and went over to him.
13. The dog owner did not say anything to me.
14. I was shocked and went home. When I got home I saw the marks on my leg. There was a reddy purple mark on my leg, and there was a scratch and bite mark. The bite was not very deep but had broken the skin. It wasn't bleeding. I was wearing jeans at the time, otherwise I think it would have been worse.
15. I called the police, however I was informed that it was not a police matter. I did not report this first incident to the Council as I didn't know that Council were the ones to deal with this type of incident.

[51] The second interaction involving the complainant and Missy occurred on 7 March 2019. The relevant portions of the complainant's statement dated 26 August 2019 are recited as follows:³⁶

16. On 7 March 2019, I was coming home from work at approximately 6:20pm.
17. I got off the bus on Oxley Avenue, and was walking up the street to my home...
18. I was walking on the road and not on the nature strip in front of the house [25 Alfred St] ...
- ...
23. The dog was following me along the fence line and was barking aggressively at me. It was snarling, I had taken my headphones out because the dog was getting closer to me and I was starting to get worried.
24. The dog then climbed up onto the low brick wall and was on its stomach. It then pushed itself over.
25. At that point I began to panic and I started running. I was feeling very scared and terrified. I thought the dog was going to kill me or severely injure me.
26. I was still on the road that that time. I was running past the next property to get to my house. I was running faster than I thought I could. I felt like I was running faster than I could normally. I was so scared.
27. I could hear the dog running toward me.
28. The dog was chasing me and I tripped onto the road.
29. I fell onto my left shoulder.
30. At that time, I felt the pain of falling down and I could not move my arm.
31. I became even more afraid that the dog would get me while I was on the ground.

³⁶ Ibid.

32. I didn't know what was going to happen to me. The only chance was for me to get away from the dog and run home.

33. I turned around and could see the dog coming for me. Even though I could not move my arm, I got up and ran to my house.

34. I didn't see the dog after that.

35. I came into my house.

[52] Part of the inquiry undertaken by the Council was an earlier interview with the complainant on 14 March 2019. It should be noted that this interview occurred over five months before the evidence recited above. Letitia Travers of the Council conducted the interview and a copy of the transcript of that interview has been provided to the Tribunal.³⁷ A portion of this transcript deals with the events of 7 March 2019, as follows:

21. **Letitia Travers:** What happened when you walked past the property?

22. **VICTIM:** So, I got off the bus at the bus stop there and I was listening to music. I was walking past and the dog came up and went to the fence as it usually does. It goes up to the fence and snarls and barks every day.

23. **Letitia Travers:** Was it snarling and barking at this stage?

24. **VICTIM:** Yes, and then, unlike normal, where it just jumps up on the fence and, you know, barks. This time it goes to the concrete part of the fence and jumps onto it.

25. **Letitia Travers:** Yep.

26. **VICTIM:** And it shuffles itself over and comes over and starts to chase after me.

27. **Letitia Travers:** So it got up onto some concrete and jumped onto it and then it was able to ...

28. **VICTIM:** It jumped up onto the concrete part ... the brick part of the fence, sorry, and shuffled itself over and then landed in the front yard, the footpath area, sorry, and then it chased after me.

29. **Letitia Travers:** Did you start running?

30. **VICTIM:** Yeah, so I started running and so, it caught up to me and attempted to bite me. It missed and that caused me to trip and land on my shoulder.

31. **Letitia Travers:** As it was chasing you, caught up to you ...

32. **VICTIM:** Yep.

33. **Letitia Travers:** Tried to bite. Where did it try to bite you?

34. **VICTIM:** On my leg, but it didn't actually get me.

35. **Letitia Travers:** But missed?

36. **VICTIM:** But caused me to trip, so ...

37. **Letitia Travers:** And caused you to trip, and you tripped over on the cement?

38. **VICTIM:** Ah, on the road itself.

39. **Letitia Travers:** Okay, and where did you land?

³⁷ Exhibit LT2 to the Witness Statement of Letitia Travers dated 23 August 2019.

40. **VICTIM:** Right on my shoulder.

41. **Letitia Travers:** What did the dog do them [sic]?

42. **VICTIM:** It appeared to be scared, or I might have kicked it as I went down so it ran back a couple of metres. So, I saw it coming back as I was getting up. So, I got up immediately, as it was coming back and, yeah, it just sprinted clear.

43. **Letitia Travers:** Okay. How were you feeling this whole time?

44. **VICTIM:** Immensely scared.

45. **Letitia Travers:** What did you think it was going to do?

46. **VICTIM:** Bite me. It's bit me before so yeah, I thought it would be a repeat of that but worse.

47. **Letitia Travers:** Why did you think it would be worse?

48. **VICTIM:** Because the last time it bit me the owners were there. After it attacked me, they kind of called it away. And this time there was nobody around. No one else. No ... even anyone on the street or anything like that.

[53] The complainant gave evidence in person before the Tribunal affirming the correctness of both of his earlier written statements.

[54] The complainant gave testimony concerning his interactions with Missy, including the incident on 7 March 2019, in some detail. In particular, the following facts arose from his testimony:

- (a) The complainant was fearful of Missy;
- (b) When in the front yard of Mr Acaroglu's residence, Missy was inclined to bark at the complainant, and did so on numerous occasions;
- (c) Missy escaped the confines of Mr Acaroglu's front yard and, observing this, the complainant began to run;
- (d) Missy chased the complainant until the complainant fell, at which time he sustained his injuries;
- (e) The complainant believed that Missy was close enough to him when he fell to have grabbed his leg;
- (f) When the complainant fell, Missy did not descend on the complainant and inflict injury, but held back about two metres from the complainant; and
- (g) When the complainant recovered sufficiently from his fall he again began running to his home. He may have been chased by Missy during this period, but Missy never inflicted any injury on the complainant; the complainant's injuries were sustained solely from the fall.

[55] Following observation of the complainant at the hearing I concluded that the complainant is a somewhat introverted person exhibiting noticeable timidity. This conclusion is supported by the following facts:

- (a) Neither during nor immediately after his first interaction with Missy in early 2019 did the complainant raise any concern about Missy with Mr Acaroglu;

- (b) The complainant describes his reaction to Missy escaping the confines of her yard as being one of ‘panic’, or being ‘immensely scared’.
- (c) The complainant applied to give his evidence to the Tribunal from another room rather than in front of Mr Acaroglu because the complainant is evidently intimidated by him;³⁸ and
- (d) The hearing room was re-arranged at the request of the complainant so that he sat in the witness box as far as possible away from Mr Acaroglu when giving his testimony.

[56] Mr Acaroglu presented at the Tribunal as possessing a forceful and uncompromising personality. The difficulties that various Council officers described their statements and testimony concerning their dealings with Mr Acaroglu appear credible.

Evidence for Halil Acaroglu

[57] In her testimony Letitia Travers of the Council stated that there has been no complaint received by the Council about Missy, either before or after the events of 7 March 2019, except for those involving the complainant.

[58] Mr Acaroglu alluded during the hearing to the complainant having provoked Missy on occasions. There is no independent evidence of this having occurred. In his testimony the complainant denied ever having provoked or teased either dog owned by Mr Acaroglu. I accept the complainant’s version of events that he had not intentionally provoked Missy or Max prior to, or on, 7 March 2019.

[59] The evidence of the Council, accepted by Mr Acaroglu, was that Missy has escaped from Mr Acaroglu’s residence on several occasions. This speaks of a want of responsible ownership on the part of Mr Acaroglu, although I note that Mr Acaroglu’s evidence in this regard was that the dog had been returned to him by a neighbour on each occasion who, according to Mr Acaroglu, commented on the benign nature of Missy.

[60] Mr Acaroglu complained that he has never been given the opportunity to have Missy examined by a qualified person to assess her nature. He said this arose because Missy was seized by the Council without him being given proper notice.

[61] The attendant who has looked after Missy while she has been in Council custody, Dale Naumann, provided a Statutory Declaration dated 31 December 2019 commenting on Missy’s nature. Mr Naumann is employed by the Council to attend to seized animals and, while he is not formally qualified, has had training relevant to his work, including with the RSPCA. By the date of his Statutory Declaration Mr Naumann had cared for Missy for over seven months. Mr Naumann described Missy as interacting calmly with him and others, including for bathing and veterinary and other activities. I conclude that Mr Naumann has found Missy to be a normal, tractable, dog with no inherent aggressive tendencies. Mr Naumann’s unsworn statement was not tested by cross-examination. I give his statement some, but limited, weight.

[62] Mr Acaroglu supplied statements from four people attesting to Missy’s generally benign nature: Deanna Pallister, Rayleen Beveridge, David Cunado, and Mona

³⁸ This application was refused by the Tribunal because it is beneficial to observe a witness during a hearing, and there was no sufficient reason to grant the request.

Meiner. Each of these parties gave an unsworn statement and was not cross-examined on their statements. As a result, I give the statements by these people little weight.

- [63] Since the events of 7 March 2019 Mr Acaroglu has erected a higher fence around parts of his residence for the purpose of restraining Missy from escaping, although the Council averred that the additional fencing, as constructed, is not sufficient to restrain Missy to Mr Acaroglu's residence without further work.
- [64] Mr Acaroglu testified that he does not have the means to provide a suitable enclosure for a menacing dog, nor for the higher registration fee applicable to a menacing dog.

Applying the law and evidence

- [65] The first question to answer is this: is Missy a menacing dog within the meaning of the law? Only if the answer to that question is yes does the further issue of whether Missy should be destroyed need to be examined.
- [66] I am comfortably satisfied that the following events took place:
- (a) In early 2019 Missy, while being transferred from a car to her house, interacted with the complainant causing him fear and inflicting some minor abrasions and contusions to the complainant. At this time, Missy was under the control of Mr Acaroglu who was not aware that the complainant had suffered distress as a result of the encounter; and
 - (b) On the evening of 7 March 2019 Missy escaped from the confines of Mr Acaroglu's residence, that Missy pursued the complainant, that the complainant was fearful of the dog during this encounter, and that the complainant suffered injuries to his person, including a fractured humerus bone and abrasions and consequent contusions, as a result of falling while running away from Missy.
- [67] Missy may be declared a menacing dog if she has attacked or acted in a way that caused fear to a person.³⁹
- [68] Before deciding this issue, however, there are further matters that need to be considered. First, in respect of the incident on 7 March 2019, Missy did not inflict the injuries on the complainant directly, they were a consequence of his fall. So, did Missy 'attack' the complainant?
- [69] The answer to this question on similar facts has been considered by earlier Tribunals. To have attacked a person or other animal a dog need not have made physical contact with that person or other animal, hostility or aggression can be sufficient.⁴⁰
- [70] On the evidence available, however, I could conclude that Missy chased the complainant without an evident intention to harm him. Such a conclusion is supported by the fact that, when the complainant was vulnerable on the ground after falling, Missy did not attack, much less inflict any injury upon, the complainant.

³⁹ AM Act, s 89(2)(a).

⁴⁰ *Lee v Brisbane City Council* [2012] QCA 284.

- [71] Second, was the complainant's fear of Missy reasonable? Further, does the complainant's fear of Missy have to be reasonable, or is the test a subjective one? That is, is the test of whether the complainant's fear of Missy, which was a real and genuine fear, an objective test or a subjective test?
- [72] There is a condition recognised in the Diagnostic and Statistical Manual of Mental Disorders (DSM), 5th edition, relating to specific phobias, including cynophobia, or fear of dogs. If a person has cynophobia and is fearful of dogs, is a dog who escapes and chases that person, but does not otherwise harm that person, a menacing dog?
- [73] This is not to suggest that the complainant suffers cynophobia because there was no evidence before the Tribunal to support such a conclusion. The point in raising this issue is to identify that some people have a greater sensitivity to and fear of dogs than others, and this could well reflect in their reaction to a dog's behaviour.
- [74] It would not be reasonable to conclude that, if a person suffering cynophobia, or a similar condition, was fearful of a particular dog simply because that dog acted in a way that caused fear to that person (but would not cause such fear in an ordinary person in the same circumstances) that that dog constitutes a menacing dog.

Is Missy a menacing dog?

- [75] My analysis of this question follows the process outlined in paragraph [47], above.

Conduct of the owner before the attack

- [76] There was evidence that Missy had escaped on several occasions from the confines of her home before the incident on 7 March 2019. Mr Acaroglu had not taken steps before this date to improve the way his dogs were confined.
- [77] I am satisfied that the first incident involving the complainant and Missy in early 2019 occurred but, in the absence of a contemporaneous complaint by the complainant, Mr Acaroglu was unaware of this incident. Missy came to Mr Acaroglu when called and appears to have been reasonably controlled during this incident.

Circumstances of the attack

- [78] On the evidence before the Tribunal the 'attack' by Missy on 7 March 2019 appears to be more of a pursuit of the complainant than an attack based on an aggressive intent. While the initiating circumstances are unclear, it may be that the complainant began moving quickly away, or running, from Missy as the dog struggled to get over the front fence. Once the complainant was running, Missy pursued him. According to his testimony, the complainant fell and suffered his injuries as he looked around for the dog. The complainant fell – he was not pushed by the dog in an attack mode. When the complainant was vulnerable on the ground the dog did not attack him. If the complainant was correct in his belief that he had kicked the dog as he fell it is unlikely that this would have deterred an aggressive dog. Yet Missy stopped the pursuit when the complainant was on the ground, waited about two metres away from the complainant, and only resumed the pursuit when the complainant recovered and again began running. During this encounter the dog inflicted no scratches or bites on the complainant.

- [79] I conclude from this recital of facts and all the other evidence that Missy is not an inherently or unusually aggressive dog.

Likelihood of the circumstances being repeated and the dog repeating the attack

- [80] The complainant stated that he had passed Mr Acaroglu's residence regularly for two years before the incident on 7 March 2019. While the complainant was scared of the 'snarls and barks' of Missy, the evidence disclosed that he had been chased by Missy only once in those two years, on 7 March 2019.
- [81] Unless Mr Acaroglu improves the fences around his residence and ensures their inviolability by the dogs, there is a real possibility that the complainant will again be pursued by Missy.
- [82] The evidence disclosed that Mr Acaroglu has taken steps to improve the height of the fences around his residence, but the Council noted that these improvements had defects and were of limited effectiveness.
- [83] I conclude that Mr Acaroglu is on the border of being an irresponsible dog owner. Without attention to the control of his dogs, and improvement to the quality of the fencing used to confine the dogs, the probability of the dogs' escape remains significant. However I am not satisfied that Missy is an aggressive dog, and the likelihood that she will attack and inflict injury on a person appears quite low.
- [84] Using the test applied in *Chaplin v Sunshine Coast Regional Council*⁴¹ that the risk attached to an event can be assessed by considering two factors: probability; and consequence, in this case while the probability of a repeat event remains significant, the consequences for an ordinary person of Missy escaping appear to be low. Overall, the risks attached to a repeat incident do not appear significant.

Apparent nature of the dog

- [85] Mr Acaroglu has owned Missy for over four years. In that time the Council has had no complaints about Missy except those by the complainant. The other available evidence suggests that Missy is a tractable dog with no inherent aggressive tendencies.
- [86] The fact that Missy has not been examined by a qualified dog handler is unfortunate but appears to arise from the strict qualifications imposed by the Council during the conduct of such an examination (such as the need for the dog handler to provide an extensive series of indemnities) and, possibly, the cost of an examination, given Mr Acaroglu's apparent impecunity.
- [87] It would have been valuable for the Tribunal to have had before it a report on Missy's nature prepared by an experienced dog-handler but, in the absence of such evidence, I have had to infer the dog's nature from all the evidence.

Conduct of the owner and those around him or her

- [88] There is nothing more to add here that has not been mentioned elsewhere.

Skill of the owner and those likely to be in charge of the dog in controlling the dog

- [89] I have commented adversely on Mr Acaroglu's responsibility as a dog owner earlier. There has been no evidence to suggest that Mr Acaroglu's landlord or her two

⁴¹ [2019] QCAT 371.

teenage sons, who reside at the property with Mr Acaroglu, are not reasonable and careful in their handling and management of Missy.

Conduct of the owner since the offending conduct in attempting to minimise future risk

[90] Mr Acaroglu has attempted to construct a more significant barrier on the fence around his residence since the incident of 7 March 2019. This speaks to him attempting to meet some of the conditions necessary to properly confine his dogs. At the same time, the Council believes that the work undertaken is not sufficient.

[91] In addition to its other remedies the Council is able to prosecute Mr Acaroglu in the event that either of Mr Acaroglu's dogs escape from his residence. This, combined with the Council's powers to seek compensation from an owner for impounding a dog should act as some incentive to Mr Acaroglu to become a more responsible dog owner.

Insight of the owner and those likely to be in charge of the dog into future risk posed by the dog

[92] Mr Acaroglu has shown little insight relating to Missy's conduct. He refused the demand of the Council to place a special collar and tag on Missy, he refused to place signs around his residence warning of the presence of a menacing dog, and he has been unwilling to listen to the advice given to him by responsible officers of the Council. As observed earlier, this does not reflect well on him as a responsible dog owner.

Welfare of the dog's owner and of others affected by the dog's behaviour

[93] Mr Acaroglu has owned Missy since she was eight weeks old and is attached to the animal, but she provides for no special need of his.

Any pre-existing level of anxiety or phobia concerning dogs inherent in the victim

[94] There is insufficient evidence for me to draw any inference, much less a conclusion, that the complainant suffers from anxiety or any phobia concerning dogs. But, on the evidence before the Tribunal, only the complainant has been demonstrated to have been troubled by Missy.

[95] On the evidence, the complainant exhibits a fear of dogs, perhaps just Missy, above that of an ordinary person.

[96] While people's interests are to be preferred above those of animals, there has to be a balance struck between the interests of the owner of a dog, and his animal, and a person who exhibits a fear of dogs greater than that of an ordinary person.

[97] I am comfortably satisfied that the complainant exhibits a fear of dogs, perhaps just Missy, greater than that of an ordinary person and that, in this case, his fear alone is not sufficient to satisfy the test that Missy be declared a menacing dog.

Conclusions

[98] I refer to the test proposed in paragraph [46], above: the question to answer when exercising the discretion of whether to make a declaration concerning a dog, is whether the dog poses a greater risk to people and animals, **compared to other dogs.**

- [99] This formulation invites an objective test of a dog's behaviour. The objective behaviour has to be that of a normal, well socialised dog with no unusual aggressive tendencies – a dog on the Clapham omnibus. The evidence disclosed during the hearing satisfied me that, on this test, Missy poses no greater risk to people and animals, compared to other dogs. On this test, therefore, there is insufficient ground to declare Missy a menacing dog.
- [100] Because Missy is not a menacing dog she should be released into the custody of Mr Acaroglu without delay. The order for the destruction of Missy must, as a necessary result, be set aside.
- [101] I am also cognizant, in respect of the destruction order on Missy, of the Appeal Tribunal's comments in *Thomas v Ipswich City Council*:⁴²

It is clear that the AM Act is primarily directed towards the effective management and responsible ownership of dogs and that the destruction of a dog is a 'last resort'. It is generally where the mechanisms in the Act from management fail, or are ineffective that destruction arises. The essential question is whether the dog constitutes, or is likely to constitute, a threat to the safety of other animals or to people, by attacking them or causing fear, to the extent that the threat may only be satisfactorily dealt with by the destruction of the dog.

- [102] In this context 'last resort' does not mean that all other possible avenues of conduct must have been exhausted, but that a dog should not be destroyed unless there is clear reason to do so and there remains no feasible alternative. This is not the case with Missy.

Orders

1. The decision of Moreton Bay Regional Council declaring the dog Missy a menacing dog is set aside.
2. The decision of Moreton Bay Regional Council ordering the destruction of the dog Missy is set aside.

⁴² [2015] QCATA 97, [18].