

# QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Siberian Husky and Alaskan Malamute Rescue of Queensland Inc v Moreton Bay Regional Council* [2019] QCAT 98

PARTIES: **SIBERIAN HUSKY AND ALASKAN MALAMUTE RESCUE OF QUEENSLAND INC**  
(applicant)  
v  
**MORETON BAY REGIONAL COUNCIL**  
(respondent)

APPLICATION NO/S: GAR436-18

MATTER TYPE: General administrative review matters

DELIVERED ON: 12 April 2019

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: Member Kanowski

ORDERS: **The application to review a decision filed by Siberian Husky and Alaskan Malamute Rescue of Queensland Inc on 30 November 2018 is dismissed.**

CATCHWORDS: ANIMALS – VARIOUS STATUTORY PROVISIONS – REGULATION OF COMPANION ANIMALS – OTHER MATTERS – where local government made dangerous dog declaration – where foster carer applied for internal review of the decision – where dog owned by a rescue organisation – whether rescue organisation entitled to seek review by tribunal

*Animal Management (Cats and Dogs) Act 2008 (Qld), s 181(2), s 187(2), s 188*

REPRESENTATION:

Applicant: E Pike, Secretary of the Applicant

Respondent: D MacKellar, Regulatory Services Compliance  
Coordinator of the Respondent

APPEARANCES:

This matter was heard and determined on the papers pursuant to section 32 of the *Queensland Civil and Administrative Tribunal Act 2009 (Qld)* ('QCAT Act').

## REASONS FOR DECISION

### Introduction

- [1] This decision addresses a preliminary point that has arisen in a review proceeding. The question to be decided is whether the Siberian Husky and Alaskan Malamute Rescue of Queensland Inc ('SHAMROQ') is entitled to seek review of a particular decision of the Moreton Bay Regional Council ('Council').
- [2] The decision involved declaring the dog Arabella a dangerous dog.
- [3] I identified on 7 December 2018 that a question arises as to whether SHAMROQ is entitled to seek a review by the Tribunal, given that the Council's internal review notice was addressed to Ms Andrea Rogers.<sup>1</sup>
- [4] Answering this question will involve consideration of various provisions in the *Animal Management (Cats and Dogs) Act 2008 (Qld)* ('*Animal Management Act*'). That is the Act which gives the Tribunal jurisdiction to review decisions relating to dogs.

### Background

- [5] Without at this stage entering into the question of ownership of the dog, suffice it to say that at different times Arabella has been in the care of Ms Rogers, and for a time she was in the care of Mr Robert Constantine.
- [6] SHAMROQ is a charity involved in caring for 'rescue dogs'. It arranges fostering and adoption.
- [7] SHAMROQ has advised the following, which I accept. Arabella was transferred into its care in October 2017 from the Animal Welfare League of Queensland. Ms Rogers then become a foster carer of Arabella. In May 2018 Mr Constantine adopted Arabella. After the incident in June 2018 which led to the dangerous dog declaration, Mr Constantine returned Arabella to SHAMROQ. Arabella returned to the foster care of Ms Rogers. It is not indicated exactly when Arabella returned to Ms Rogers, but the timing is not critical for present purposes.
- [8] According to the Council, Arabella has since been moved to New South Wales.

### *Legislative framework*

- [9] The process under the *Animal Management Act* for deciding to make a dangerous dog declaration (set out in Chapter 4), and for reviewing such a decision (set out in Chapter 8), is outlined below. Chapter 4 refers to 'a local government', while Chapter 8 refers to 'the chief executive' making internal review decisions, but for simplicity I will refer to these entities simply as 'Council'.
- [10] Under Chapter 4 of the *Animal Management Act*, a Council must first give a 'proposed declaration notice' to any owner of the dog.<sup>2</sup> The notice must advise of the right of an owner to make representations to show why the proposed declaration

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<sup>1</sup> *Siberian Husky and Alaskan Malamute Rescue of Queensland Inc v Moreton Bay Regional Council* [2018] QCAT 414.

<sup>2</sup> *Animal Management Act*, s 90.

should not be made.<sup>3</sup> The Council must consider any representations.<sup>4</sup> The Council can then make a declaration.<sup>5</sup> If it makes a declaration, the Council must then give any owner of the dog an ‘information notice’.<sup>6</sup>

- [11] Reviews are dealt with in Chapter 8 of the *Animal Management Act*. Internal reviews (by a Council) are dealt with in Part 1 of the Chapter, while external reviews (by QCAT) are dealt with in Part 2 of the Chapter.
- [12] The relevant Part 1 provisions may be summarised as follows. An ‘interested person’ may apply for an internal review of the decision, and such an application is termed a general review application.<sup>7</sup> ‘Interested person’ is defined as a person who has been given, or is entitled to be given, an information notice about the decision, as well as ‘the owner of, or responsible person for, the dog’.<sup>8</sup> After receiving a general review application, the Council must make an ‘internal review decision’.<sup>9</sup> The Council must ‘give the applicant notice (... the review notice) of the internal review decision’.<sup>10</sup>
- [13] The relevant Part 2 provision is section 188:

A person who is given, or is entitled to be given, a review notice for a decision under part 1 may apply, as provided under the QCAT Act, for an external review of the decision.

- [14] Finally, it should be noted that ‘owner’ and ‘responsible person’ are widely defined in sections 9 and 10 of the *Animal Management Act*. For example, ‘owner’ includes registered owner, usual keeper, and owner in the property sense. ‘Responsible person’ includes the person with immediate control of the dog.

*The steps in the process relating to Arabella*

- [15] The following matters are apparent from the documents:
- (a) the Council alleges that Arabella attacked another dog on 18 June 2018 – that is the incident that led to the dangerous dog declaration;
  - (b) on 15 August 2018 the Council sent a proposed declaration notice to Mr Constantine;
  - (c) on 20 September 2018 the Council sent an information notice to Ms Rogers which informed her that the Council had made a dangerous dog declaration;
  - (d) on 2 November 2018 the Council sent a review notice to Ms Rogers;
  - (e) on 30 November 2018 SHAMROQ filed the application in the Tribunal for a review of the 2 November 2018 decision.

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<sup>3</sup> Ibid, s 90(1)(e).

<sup>4</sup> Ibid, s 94(1).

<sup>5</sup> Ibid, s 94(2).

<sup>6</sup> Ibid, s 95.

<sup>7</sup> Ibid, s 181(2).

<sup>8</sup> Ibid, Schedule 2.

<sup>9</sup> Ibid, s 186.

<sup>10</sup> Ibid, s 187(2).

- [16] The Tribunal at this stage does not have the full chain of documents, which typically would include representations made in response to the proposed regulated dangerous dog declaration notice, and the general review application.
- [17] According to written submissions from the Council, it was SHAMROQ that made representations in response to the proposed declaration notice, and Ms Rogers who made the general review application.
- [18] If it was SHAMROQ which provided representations in response to the proposed declaration notice, it is noteworthy that the information notice was addressed not to SHAMROQ but to Ms Rogers. It seems that the Council's records had been updated in the interim.
- [19] SHAMROQ's written submissions do not precisely indicate whether it shares the Council's view of the history, but it does comment:
- Andrea Rogers has made submissions to council in the past due to council instructions despite SHAMROQ telling the investigating officer numerous times that we were the legal owners. SHAMROQ has been dealing with 2 different councils, Moreton Bay Regional Council and Brisbane City Council which has caused some confusion at numerous times.
- [20] There have been dealings with Brisbane City Council over compliance issues because Ms Rogers lives in Brisbane. However, it is undisputed that it is the Moreton Bay Regional Council that is the proper respondent in QCAT because it made the dangerous dog declaration decision.
- [21] SHAMROQ in its submissions says that it is the legal owner of Arabella. It has provided a registration notice issued by Brisbane City Council confirming ownership of Arabella by SHAMROQ as at 25 September 2018.
- [22] There does not appear to be any dispute that Ms Rogers made the 'general review application' for the internal review. I find that she did. Accordingly, the Council had to give the review notice to her as the applicant for the internal review. Ms Rogers could, therefore, have applied to the Tribunal for an external review, under section 188 of the *Animal Management Act*, as 'a person who is given ... a review notice'.
- [23] Instead, SHAMROQ has applied to the Tribunal for an external review. It was not given a review notice, so the only basis on which it could apply for an external review under section 188 would be if it was 'entitled to be given ... a review notice'. However, SHAMROQ was not entitled to be given a review notice because it did not make a general review application for an internal review.
- [24] It appears that SHAMROQ was the owner of the dog as at September 2018 at least. Therefore it too could have made a general review application for an internal review. However, it did not.
- [25] Only Ms Rogers made a general review application for an internal review. Presumably she was also entitled to do so: if she was caring for the dog at the time

she would have come within the definitions of both ‘owner’ and ‘responsible person’.<sup>11</sup>

- [26] It follows that Ms Rogers was the only person given, and the only person entitled to be given, a review notice. Therefore only Ms Rogers was entitled to apply to QCAT for an external review. She has not exercised that right.
- [27] SHAMROQ was not given a review notice. Nor was it entitled to be given a review notice, as it was not an applicant for the internal review. Therefore SHAMROQ is not entitled to apply to QCAT for an external review. This is so even if the Council should have, but did not, give SHAMROQ an ‘information notice’ when the dangerous dog declaration was made.

### **Conclusion**

- [28] QCAT may dismiss a proceeding that is misconceived: section 47 of the QCAT Act.
- [29] As SHAMROQ is not entitled to apply to QCAT for an external review, its application to review a decision is misconceived. It should be dismissed.

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<sup>11</sup> See paragraph [14] above.