

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Keegan v Toowoomba Regional Council* [2020] QCAT 32

PARTIES: **MICHAEL VINCENT KEEGAN**
(applicant)

v

TOOWOOMBA REGIONAL COUNCIL
(respondent)

APPLICATION NO/S: GAR089-19

MATTER TYPE: General administrative review matters

DELIVERED ON: 24 January 2020

HEARING DATE: 22 August 2019

HEARD AT: Toowoomba

DECISION OF: Member Quinlivan

ORDERS: **1. The decision made by the Toowoomba Regional Council in an internal review dated 18 February 2019 to confirm the destruction order notice made on 16 January 2019 in relation to the dog, Red is confirmed.**

CATCHWORDS: ADMINISTRATIVE LAW – ADMINISTRATIVE TRIBUNALS – QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL – DOG DESTRUCTION ORDER – where a person suffered bodily harm as a result of an attack by a dog – where an animal was killed by a dog – where a dog had been declared a menacing dog – where owner had not complied with the regulations with respect to managing a dangerous dog.

Animal Management (Cats and Dogs) Act 2008 (Qld) s 3, s 4, s 64, s 97, s 98, s 127

Queensland Civil and Administrative Act 2009 (Qld) s 20, s 21, s 121

Nguyen v Gold Coast City Council Animal Management [2017] QCATA 121

Thomas v Ipswich City Council [2015] QCATA 097

APPEARANCES &

REPRESENTATION:

Applicant: Self-represented
 Respondent: Represented by K Jefferies

REASONS FOR DECISION

- [1] On 11 March 2019, Mr Michael Keegan filed an application in the Queensland Civil and Administrative Tribunal seeking:

“...an unbiased and independent review of TRC’s continued persecution of our dogs particularly the grounds for Red to be declared “menacing” in the first instance and subsequent destruction orders issued.

We seek that QTAC [sic] remits to TRC an instruction to lift the Destruction notice pertaining to Red with suggestion that in the interest of animal justice and fairness Red is to retain his right to also live in peace and harmony without prosecution and be relocated to a property in Rural Qld”

Background

- [2] Mr Keegan states that Toowoomba Regional Council (TRC) seized the family dog “Red” on 14 January 2019 and issued a destruction order on 16 January 2019.
- [3] He sought a review of that decision on 28 January 2019. TRC concluded their review and affirmed their own decision to destroy Red on 18 February 2019.
- [4] Mr Keegan provided a large amount of material in support of his application. At the hearing on 22 August 2019, Mr Keegan represented himself and the only evidence that he sought to rely on was a witness statement by himself dated 30 April 2019 in the following terms:
- (a) on 14 January 2019, TRC issued a proposed destruction order on Red alleging Red attacked a resident residing on Stephens Street at a property adjacent to 198 Perth Street, Toowoomba. Despite there being a TRC “Menacing Dog” sign clearly visible from the back fence, the resident trespassed on 198 Perth Street, South Toowoomba which provoked Red to defend his bordering property at 198 Perth Street. Red did not attack the complainant but defended his property against trespass.
 - (b) in order to conserve public funds and time, I believe that instead of TRC carrying out Red’s death sentence, Red would be allowed to go to a new home out Western Queensland preferably on a cattle property where he would be useful and happy. Red is a pure bred [sic] Australian blue heeler cattle dog with a beautiful temperament.
- [5] On 17 June 2019, the Tribunal made a Direction that the present Application by Mr Keegan filed on 11 March 2019 was to proceed as a review of the decision made by TRC to issue a destruction order for Red, and not as a review of the decision to make a Menacing Dog declaration.
- [6] Following the hearing, Mr Keegan provided additional material as follows:

- (a) email dated 2 September 2019 regarding the role of the TRC in these proceedings;
 - (b) email dated 2 September 2019 comparing the TRC to the Khmer Rouge and seeking to relocate Red to Western Queensland;
 - (c) email attaching copies of correspondence to the Tribunal, the Mayor of Toowoomba and various media. The correspondence contained submissions and references to the conduct of these proceedings.
- [7] Each of these submissions was considered in the preparation of these Reasons. The TRC did not have an opportunity to respond to them.

The legislative provisions

- [8] The relevant legislation is the *Animal Management (Cats and Dogs) Act 2008* (AM Act). Part 4 of the AM Act deals with the power of a Council to make declarations that particular dogs are dangerous, menacing or restricted dogs.
- [9] The decision under review is a destruction order, made under section 127 of the AM Act.
- [10] The Tribunal is required to deal with the application for a review under the *Queensland Civil and Administrative Act 2009*. The review is a fresh hearing on the merits with the purpose being to produce the correct and preferable decision.¹ In considering the matter the Tribunal has all the functions and powers of the original decision maker.
- [11] The purposes of the AM Act are to:
- (a) provide for the identification of cats and dogs; and
 - (b) provide for the registration of dogs; and
 - (c) provide for the effective management of regulated dogs; and
 - (d) promote the responsible ownership of cats and dogs.
- [12] Section 4 of the AM Act requires that these purposes are to be primarily achieved by imposing obligations on regulated dog owners and imposing obligations on particular persons to ensure dogs do not attack or cause fear.²
- [13] Another aim of the AM Act is to protect the community from damage or injury, or risk of damage or injury, from particular types of dogs known as ‘regulated dogs’, and to ensure that dogs are not a risk to community health or safety and are controlled and kept in way consistent with community expectations and the rights of individuals.
- [14] When a dog is declared to be a Menacing Dog, it becomes a ‘regulated dog’ within the meaning of the AM Act. Such a declaration can be made only if the dog:

¹ *Queensland Civil and Administrative Act 2009*, s 20.

² *Animal Management (Cats and Dogs) Act 2008*, s 3-4.

- (a) has seriously attacked, or acted in a way that caused fear to a person or another animal; or
 - (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.
- [15] A Menacing Dog declaration may be made for a dog only if a ground mentioned above exists for the dog, except that the attack was not serious.
- [16] ‘Seriously attack’ means to attack in a way causing bodily harm, grievous bodily harm or death.
- [17] ‘Bodily harm’ and ‘grievous bodily harm’ have the meaning given to them in the *Criminal Code Act 1899 (Qld)* (Queensland Criminal Code). Bodily harm means ‘any bodily injury which interferes with health or comfort’. Grievous bodily harm means:
- (a) the loss of a distinct part or an organ of the body; or
 - (b) serious disfigurement; or
 - (c) any bodily injury of such a nature that, if left untreated, would endanger or be likely to endanger life, or cause or be likely to cause permanent injury to health.
- [18] While an external review is being considered by the Tribunal, a seized dog cannot be destroyed.

The evidence

- [19] The events giving rise to these proceeding started with investigations conducted by the TRC regarding whether on 27 June 2016, Mr Keegan’s dog Red, while accompanied by his other dog, Sue seriously attacked and killed a female cat, while the cat was in a place where it was legally entitled to be.
- [20] On 30 June 2016, Animal Management Officer (AMO) Coleman issued infringement notices to Mr Keegan for Red and Sue wandering at large.
- [21] On 5 July 2016, Mr Keegan was issued with a Compliance notice to provide a proper enclosure for his dogs at his property at 198 Perth South, Toowoomba by 20 July 2016. The street is located in a suburban part of Toowoomba with other properties on at least three sides. He was also advised that it was proposed to declare both dogs to be Regulated Dogs, that is Menacing Dogs.
- [22] On 10 July 2016, Mr Keegan sought a review of that decision.
- [23] On 16 July 2016, AMO Lampard reported that Red and Sue attacked a cat and also rushed at the cat’s owner. The matter was reported to the TRC.
- [24] On 1 August 2016, Red was confirmed to be a Menacing Dog after TRC reviewed its decision following the request by Mr Keegan. At that time Mr Keegan was provided with a Regulated Dog Declaration Information Notice and a Schedule B document advising of the requirements for keeping a declared Menacing Dog.

- [25] On 18 August 2016, Red was declared to be a Menacing dog.
- [26] On 6 September 2016, AMO Coleman in company with his supervisor attended Mr Keegan's property to address the requirements of Schedule B and to see if Red's enclosure was compliant with the Regulations.
- [27] On 28 September 2016, AMO Coleman attended at Mr Keegan's property and observed Red to be outside his enclosure and wandering unsupervised in the yard at 198 Perth St, South Toowoomba.³
- [28] On 30 September 2016, AMO Coleman returned to the property and had a conversation with the Applicant. He observed Red come down the side of the driveway.⁴
- [29] On 23 June 2017, Red was impounded by ex-AMO Hanson while wandering at large in Louise St, Toowoomba without a collar. Mr Keegan was fined \$853.00 and paid a release fee of \$200.00.⁵
- [30] On 4 December 2017, an incident occurred where Red jumped the fence at the front of the Mr Keegan's property and attempted to bite the bin man. Mr Paul Maher provided a statement dated 12 January 2018 that he was employed by JJ Richards and was servicing bins for an infirm service at 200 Perth St, Toowoomba. He observed a dog in the front yard of 198 Perth St, Toowoomba that was barking and growling at him. He recognised it as the same dog that on 13 November 2017 had jumped the rear back fence between 198 and 200 Perth St, Toowoomba and attacked him.
- [31] Mr Maher described the dog's behaviour as "barking and growling". He said that he was frightened by the dog and screamed at it to get away. He said that he lashed out and tried to kick the dog as well as throw a wheelie bin at it. He then sought shelter in the laundry at 200 Perth St, Toowoomba. He said he saw the dog go back to 198 Perth St. He claimed that Mr Keegan was aware of the dog being out.⁶
- [32] On 8 December 2017, Red barked savagely at AMO Lampard at 198 Perth St, South Toowoomba. Mr Keegan was issued with four infringement notices. Consequently, a Non-Compliance Notice was issued.⁷
- [33] On 28 March 2018, TRC issued a Destruction Notice⁸ for Red.
- [34] AMO Lampard confirmed that the Council's records showed on 12 December 2017 the following breaches:⁹
- (a) the dog was not currently registered as a Regulated Menacing Dog in accordance with Serial 2 of Schedule B.

³ Statement of R. Coleman dated 17 April 2019, [35].

⁴ Ibid, [36]-[37].

⁵ Statement of J. Crowther dated 22 July 2019, [7].

⁶ Statement by Mr. P Maher dated 12 January 2018, [3]-[11].

⁷ Statement of T. Lampard 17 April 2019, [17]-[38].

⁸ Destruction Notice dated 28 March 2018.

⁹ Ibid, p 201 of Respondent's material.

- (b) the dog did not appear to be wearing an attached Regulated Dog identification tag, in accordance with Serial 3 of Schedule B.
- (c) the dog was not contained in a compliant enclosure at 198 Perth St, South Toowoomba, in accordance with Serial 5 of Schedule B.
- (d) a sign/notice was not placed at or near where the dog is usually kept notifying the public that a regulated dog is kept there, in accordance with Serial 6 of Schedule B.

[35] At the hearing of this matter, Mr Brian Smith, a neighbour of Mr Keegan, gave evidence that on Monday, 14 January 2019, he had been working in his yard which is adjacent to Mr Keegan's property. He had observed that Red was loose in the back yard of the Applicant's property. He described Red as "barking savagely, high pitched and aggressively"¹⁰ at him and he also noted another dog being present and acting in a similar manner. He could clearly identify the two dogs. He stated that they both had their hackles up and appeared to be "pissed" off. He claimed that Red had been aggressive in the past.

[36] Mr Smith gave evidence that he was not aware that Red was a Declared Menacing Dog, and said that he had only been told by his neighbour that the Council had made him put up a pen and the dogs were meant to be kept in it.

[37] Mr Smith stated that he started to trim some branches that were hanging over his fence from Mr Keegan's property which was his regular practice. He denied trespassing on Mr Keegan's property. He said that he reached up to pull a branch down and Red "launched" at him and bit his right elbow. He said that Mr Keegan came out of his house but appeared disinterested in what had occurred.

[38] Mr Smith attended a local Medical Centre and after receiving treatment, he reported the matter to the Police. The Medical Report from Dr Lance Garcia stated:

"This serves to confirm that Mr Smith consulted me (on 15 January 2019) with a history of a dog bite to his right elbow.

The wound showed bruising plus a number of linear abrasions over the medical epicondyle with superficial puncture wounds consistent with a shallow dog bite¹¹".

[39] Mr Smith stated that he did not know Red's history and denied that he had acted in any way that might encourage Red to act aggressively towards him. He said that he had seen Red outside his enclosure "quite often". He said that the dog was often unsupervised in the yard. He also claimed to have witnessed Red "jump and climb approximately 1.5 meters of his enclosure pen¹².

[40] Mr Smith specifically denied seeing a sign warning that there were dangerous dogs on the property. It was apparent at the hearing that there was ongoing animosity between Mr Keegan and Mr Smith.

¹⁰ Statement of B Smith.

¹¹ Medical Report, Dr Lance Garcia 15 January 2019.

¹² Ibid, [10]-[34].

- [41] Ms Lilian Warfield, a neighbour of the Applicant also gave evidence that on 18 March 2018 she was trimming some tree branches on the fence line she shared with Mr Keegan. She stated that she thought that she might have startled the dog she knew as Red who then jumped over the fence into her yard. She had observed the dog previously tied up on the porch but thought that it had managed to release itself. She stated that she immediately retreated inside to get her partner.
- [42] She and her partner tried to engage with Red who started barking at them aggressively and ran towards them. She tried to contact Mr Keegan by phone but apparently, he had not been home for a few weeks. She finally contacted his daughter who she thought may have been coming over to feed Red. Eventually an AMO attended and impounded Red.
- [43] Ms Warfield admitted to being scared of Red but acknowledged that he did not attack anyone because they were inside. She confirmed that the dog had not been in its enclosure at the time.

Decision

- [44] The Appeal Tribunal has provided a relevant statement of principle in *Thomas v Ipswich City Council (Thomas)*:¹³

“It is clear that the Animal Management 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 for 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.”

- [45] The Appeal Tribunal added:¹⁴

“As determined in Thomas’s case, the question, and the exercise of discretion that follows, is to be based on 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”.

- [46] Senior Member Brown sitting in the Appeal Tribunal,¹⁵ stated that he would pose the question slightly differently from that in *Thomas*:

“...the essential question is whether the dog can be controlled taking into consideration the threat, or likely threat, to the safety of other animals or to people by attacking them or causing fear, posed by the dog.

Determining whether a dog can be controlled will require a consideration by a decision maker of a range of matters which might include:

- a) The relevant history of the behaviour of the dog giving rise to consideration of the making of a destruction order;

¹³ [2015] QCATA 097, [18].

¹⁴ Ibid, [50].

¹⁵ *Nguyen v Gold Coast City Council Animal Management* [2017] QCATA 121.

- b) Any other relevant history of the behaviour of the dog including the circumstances giving rise to the declaration that the dog is a regulated dog;
- c) The current behaviour of the dog including whether the behaviour of the dog has been, and/or could be, modified through appropriate training;
- d) The arrangements for the dog at its place of residence including the security of any enclosure and whether any interaction by the dog with persons, including household members and other persons entering upon the property, poses a threat of harm to such persons;
- e) The risk the dog poses to community health or safety including the risk of harm to people and other animals outside the place of residence of the dog;
- f) Compliance by the owner of the dog with any permit conditions imposed as a result of the dog being declared a regulated dog;
- g) Whether the owner of the dog demonstrates insight into, and understanding of, the dog's behaviour and has acted appropriately to mitigate any risk posed by the dog to people or animals;
- h) The rights of individuals, including the owner of the dog.

[47] There is nothing in the AM Act that requires a particular process to be followed before a destruction order can be made. However, it does emphasise the seriousness of a destruction order and the necessity to consider whether the threat can be satisfactorily addressed by means that do not extend a destruction order.

[48] The sequence of events leading to the destruction order against Red is further dealt with in the materials provided by the TRC. The TRC sought to rely on the entirety of their material filed with the Tribunal.

Findings of fact

[49] The TRC provided evidence from numerous witnesses of whom three were required to give oral evidence. Of the other witnesses, eight gave direct evidence about the incidents involving Red. Four were Council officers who gave evidence of their investigations into the incidents and the seizure of the dog, and one Council officer gave evidence about the procedures followed and the care and keep of the dog.

[50] Mr Keegan provided with his Application for review, his initial submissions to the Tribunal and his final submissions including submissions provided by him after the hearing was completed. There were also a large number of emails with attachments which had been sent to the Tribunal both before and after the hearing, advocating on behalf of Red.

[51] At the time of the incidents Red was located at 198 Perth Street, South Toowoomba, with Mr Keegan. Mr Keegan's other dog Sue was apparently relocated at some time during this history. There was some information to suggest that Sue was returned to her breeder.

- [52] I find that Red in the company with another dog attacked and killed a cat on 27 June 2016. This was a serious attack on an animal that led to Red being declared a Menacing Dog.
- [53] On 14 January 2019, Red attacked a neighbour of Mr Keegan, Brian Smith causing him to suffer bodily harm.
- [54] I find that Red attacked Mr Smith causing fear and puncturing his skin and causing “superficial puncture wounds consistent with a shallow dog bite”.¹⁶ This constituted a serious attack to a person.
- [55] I find that the evidence relied on by the TRC provides numerous instances where Red has acted in a manner that caused fear to a person or another animal.
- [56] These include the incident on 18 March 2018 described in a statement by Ms Lilian Warfield, another neighbour of Mr Keegan. Ms Warfield described how Red jumped over their dividing fence and started barking aggressively at her and her partner while running towards them. This incident required assistance from an AMO to remove Red from their property.
- [57] Ms Warfield gave oral evidence that the dog had scared her, it was not securely enclosed and she had been unable to leave her house until the dog was removed.
- [58] There has been no recent history regarding Red because he has been impounded since January 2019.
- [59] The Tribunal’s discretion must be exercised to achieve the correct and preferable decision on the merits, in a fair and just way, and in accordance with the statute concerned.

Likelihood of compliance with the requirements of the dangerous dog provisions

- [60] The owner and persons responsible for a declared dangerous dog must ensure that the permit conditions in section 97 of the AM Act are complied with. Section 97 requires that the permit conditions imposed under sections 2 to 6 and 8 of Schedule 1 of the AM Act to be complied with.
- [61] The Regulations require:
- (a) the implantation of a prescribed permanent identification device and the wearing of a collar with an attached identifying tag (in the form specified) at all times.
 - (b) a sign complying with regulations must be placed at or near each entrance to the registered place for the dog notifying the public that a relevant dog is kept at the place.
 - (c) the dog must usually be kept at the registered place.
 - (d) if the dog is at its registered place it must usually be kept in an enclosure unless there is a reasonable excuse.

¹⁶ Medical Report from Dr Lance Garcia, Toowoomba, dated 15 January 2019.

- (e) the enclosure must be childproof and stop the dog from escaping and be of the dimensions specified in the regulations.
- (f) it must not require a person seeking entrance to the front entrance to the dwelling house to go through it.
- (g) it must have a weatherproof area for a dog, for example a kennel.
- (h) if the dog is in a vehicle it must be enclosed and restrained to stop the dog hanging out.
- (i) if the dog is not at its registered place, it must be muzzled and under the effective control of someone who also has the control of no more than one other dog.
- (j) any change of address must be notified to the relevant authority within seven days.

[62] I am satisfied that Mr Keegan has provided an enclosure. It is unclear whether it is adequate and complies with the Regulations. The evidence does not support any findings that Mr Keegan has paid anything but cursory attention to the matters set out in the Regulations that he should have attended to. To the contrary, the evidence supports a finding that Mr Keegan regularly allows Red to roam his property largely unsupervised or contained as required.

[63] I am not satisfied that Mr Keegan can be relied upon to ensure that all the other requirements to keep the public safe from this dog will be complied with.

[64] I am satisfied that Red constitutes a threat to the safety of other animals by attacking them and in at least one or possibly two instances killing them. The threat that Red poses may only be satisfactorily dealt with by the destruction of the dog.

[65] Other concerns are that:

- (a) Mr Keegan continues to deny his own or Red's contribution to the events which have occurred;
- (b) he has little insight or appreciation of the danger posed by Red;
- (c) he has displayed little or no sympathy or concern for those who were attacked by Red; and
- (d) he demonstrates no genuine respect for those who make decisions about the dog laws, and those who enforce those laws.

[66] Mr Keegan continues to blame the victims of his dogs for the fear and injuries they experienced. He has attempted to escalate these matters to the Council. He rationalises Red's the behaviour as just normal behaviour for a dog by asserting that "...dogs don't like cats, they kill cats!" In his view, his dogs were just doing their jobs as neighbourhood watch dogs.

[67] Instead of expressing any concern about any of the incidents, despite the evidence of their occurrence at the time being overwhelming, on each occasion he has blamed

the victims in one way or another, even to their face immediately after the incident. This appears to have been his automatic reaction.

- [68] Mr Keegan attempts to present himself as a reasonable person with genuine affection for his dogs but this is not reflected in his expressed views or actions.
- [69] When the non-Council witnesses, including the victims, complain about what happened, according to Mr Keegan it was not anything the dog did but something that the witnesses brought upon themselves.
- [70] Overall, any steps taken by Mr Keegan to provide a suitable enclosure for Red are far outweighed by the concerns that have been identified.
- [71] Despite the number of incidents, I find that Mr Keegan does not accept that Red is dangerous and needs to be managed appropriately.
- [72] Mr Keegan has no appreciation or understanding of the fear and vulnerability of members of the public who are confronted by Red. Therefore, he has not shown any inclination to protect them from the dog.
- [73] Mr Keegan's priority has not been public safety but appears to be to continue his submissions to relocate Red to some undetermined location in Western Queensland.
- [74] In this matter the Tribunal is required to exercise a discretion that requires a balancing of the public interest of community safety against Mr Keegan's private interest to maintain his ownership of Red. There is some evidence that Mr Keegan's daughters have their own relationships with Red. These matters have not been pursued by Mr Keegan.
- [75] His submissions to the Tribunal demonstrate a lack of insight regarding his own actions to the point of irresponsibility. In the circumstances, I am not satisfied that Mr Keegan will comply with the requirements for keeping a dangerous dog. He is also likely to disregard any directions by those officers who will need to check that he is complying with the safeguards for dangerous dogs, making it difficult to enforce those requirements. I find that he cannot be relied upon to keep the public safe from the dog.

Conclusion

- [76] Having considered all of these matters, I am satisfied that Red poses a significant danger to the community and I find that it is most unlikely that Mr Keegan would manage Red in a way that is compliant with the Regulations in the future. Therefore, the Order is:
1. The decision made by the Toowoomba Regional Council in an internal review dated 18 February 2019 to confirm the destruction order notice in relation to the dog, Red made on 16 January 2019 is confirmed.