

2019 Australian Institute of Animal Management Workshop

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South Australian Civil and Administrative Tribunal Jurisdiction



South Australia has recently altered the jurisdiction for reviews of a reviewable decision made under the *Dog and Cat Management Act 1995*. What was once an appeal to the Administrative and Disciplinary Division of the District Court is now a review conducted by a member of the South Australian Civil and Administrative Tribunal (SACAT).

Clare & Gilbert Valleys Council v Crawford [2005] SADC 135

Cogent reasons

Hasler v Mid Murray Council

Review of Control Order

- the Council issued a Notice of Intention to Issue a Control (Menacing Dog) Order after a dog attacked a child at a caravan park;
- the attack was unprovoked;
- the victim sustained lacerations to her upper lip, requiring reconstructive surgery;
- there were no witnesses;
- the Council received submissions from the dog owner and determined to reduce the Control Order to a Control (Nuisance Dog) Order;
- the dog owners applied to SACAT for review of the Control (Nuisance Dog) Order.



Hasler v Mid Murray Council



Review of Control Order

- the matter was listed for a compulsory telephone conference;
- during this conference, the applicant was informed that the Council was seeking further medical evidence regarding the extent of the injuries;
- it was disputed that the injuries were sustained from a bite;
- the matter was listed for a compulsory conference at SACAT;
- while the facts remained disputed, the applicant conceded the injuries were inflicted by the dog;
- the applicant agreed to a Control Order whereby the dog did not have to be subject of a physical restraint in order to undertake dog obedience classes when present at a designated Dog Park;
- the Tribunal made such orders to vary the Control (Nuisance Dog) Order.

Kerr v City of Charles Sturt

Review of Destruction Order

- the Council issued a Destruction Order after a dog attacked a person on a bicycle;
- the victim suffered puncture wounds to her calf;
- history of the dog biting persons on the calf;
- Control (Dangerous Dog) Order previously issued by City of Marion;
- other than the victim and applicants, there were no other witnesses;
- applicant applied to SACAT for a review of the Destruction Order.



Kerr v City of Charles Sturt

Review of Destruction Order



- the applicant had a history of non-compliance in relation to dog ownership and management;
- this case involved the applicant breaching the Control (Dangerous Dog) Order by not ensuring the dog wore a dangerous dog collar at all times;
- the dog did not have a muzzle that was securely fixed on its mouth capable of preventing it from biting a person;
- SACAT found there was a clear breach of the Control (Dangerous Dog) Order;
- the Executive Senior Member of SACAT also held the dog was unduly dangerous;
- the Destruction Order was affirmed by SACAT.

Kerr v City of Charles Sturt

Review of Destruction Order



‘Addressing submissions that were made before me, I would add that the purpose for imposing an order under Division 3 of Part 5 of the Act is never to impose a penalty or punishment. Rather, it is to achieve the public objectives of the Act, including the promotion of responsible dog ownership and ensuring safety of persons and animals. Those objectives may be achieved in various ways.’

Selvanera v City of West Torrens

Review of Prohibition Order

- applicant displayed non-compliance in relation to dog ownership and management;
- dog escaped the premises on a number of occasions;
- the dog attacked persons and/or other dogs;
- the Council issued a Control (Dangerous Dog) Order;
- after further incidents of wandering at large and attacking, the Council issued a Prohibition Order against the dog owner;
- the dog owner applied to SACAT for a review of the Prohibition Order.



Selvanera v City of West Torrens



Prohibition Order Appeal

- the Council sought for the dog to be destroyed;
- after discussions with the applicant, the Council agreed to dispose the dog to German Shepherd Rescue SA;
- applicant showed no empathy for the victims – did not want to accept responsibility for what had happened;
- in fact, the applicant concocted a story to provide the dog an alibi for the last attack, including false statements provided by her and a number of her friends;
- the Tribunal considered the impact the dog's loss would have on the appellant, particularly her mental health to which the applicant produced medical reports in support;
- the Tribunal considered whether the criteria for a Prohibition Order were made out and whether it was indeed appropriate in the circumstances.

Selvanera v City of West Torrens



Prohibition Order Appeal

- the Tribunal accepted the applicant did not intend the attack to occur;
- the dog was in the care of another person at the time of the last incident, however the Tribunal was not persuaded that the applicant took all reasonable steps to avoid the occurrence of the attack;
- the applicant failed to arrange for the dog and herself to undergo an approved training course and did not take any precautions to prevent the attack occurring;
- the Tribunal determined the criteria for the making of the Prohibition Order was made out;
- the Tribunal found the applicant was not equipped to responsibly manage a dangerous dog or a large, boisterous dog who is difficult to control;
- the Prohibition Order was affirmed but reduced to a period of 18 months.

Ivka v City of Charles Sturt

Review of Control Order

- the Council issued a Control (Menacing Dog) Order after a dog attacked a person on the dog owner's property;
- the victim was invited on to the property by the dog's owner;
- the dog attacked without warning;
- the victim suffered lacerations and puncture wounds to his face;
- there were no other witnesses;
- applicant applied to SACAT for a review of the Control (Menacing Dog) Order.



Ivka v City of Charles Sturt



Norman
Waterhouse

Review of Control Order

- SACAT reviewed the Council's decision to issue the Control Order;
- in doing so the Tribunal obtained additional evidence throughout the proceedings which was not available to the Council's delegate at the time of making the original decision;
- the applicant sought a Control (Nuisance Dog) Order;
- SACAT considered the proper interpretation of 'menacing', with reference to District Court decisions;
- SACAT determined the Control (Menacing Dog) Order was appropriate and the Council's decision was upheld.

Q & A



