

Review of dangerous dog declarations made under the Dog Act 1976

By Tim Beckett

Background and Legislation

Under the *Dog Act 1976* (**Act**), a local government may declare a dog to be a dangerous dog if the dog causes injury to a person or animal by an attack or demonstrates a tendency or repeated behaviour of attacking or threatening to attack.

While a declaration can only be made if at least one of those criteria is satisfied, it does not automatically follow that every dog that meets these criteria will be considered to be a dangerous dog. Where a local government makes such a declaration, the owner of the subject dog has a right to object to the local government and/or make an application to the State Administrative Tribunal (**Tribunal**). There are many authorities from the Tribunal which consider whether a dog ought to remain declared as a dangerous dog, irrespective of whether the attack or incidents giving rise to the declaration have been substantiated.

In addition to the right to seek a review of the original declaration, section 33H(1) of the Act allows a dog owner to apply for revocation of a declaration, '*if the local government is satisfied that the dog can be kept without the likelihood of any contravention of this Act*'. Under section 33H(4) of the Act, such an application can be made one year after the declaration has been made or a previous such application has been determined.

Decision in *Hunter and City of Joondalup* [2025] WASAT 36

In a recent Tribunal decision, *Hunter and City of Joondalup* [2025] WASAT 36 (**2025 Decision**), Member Conley delivered an extremely helpful analysis of the relevant legislation and the matters to be considered in determining whether a dog should be declared as a dangerous dog and, further, whether that declaration should be revoked upon a further application being made by the dog owner.

The 2025 Decision related to an application under section 33H(1) of the Act, as the dogs the subject of this proceeding had been the subject of a previous unsuccessful application for review of the original decision to declare the dogs as dangerous dogs in the Tribunal (**2023 Decision**). In that proceeding, the Tribunal made findings that both of these subject dogs had carried out two separate attacks, several weeks apart, resulting in injuries to other animals. The application for review was dismissed and the declarations were affirmed.

The 2023 Decision was also unsuccessfully appealed to the Supreme Court, see *Hunter v City of Joondalup* [2024] WASC 148 (**Supreme Court Decision**). In the Supreme Court Decision, Quinlan CJ dismissed the appeal, but noted at [63]:

'It is now almost 17 months since the City declared that the appellants' dogs were dangerous dogs. In accordance with s 33H of the Dog Act, it is open to the City... to consider afresh whether the declarations remain necessary. That is an assessment that can, and should, be made on the most up-to-date material. A local government may do this, of its own motion, at any time.'

Accordingly, the Tribunal was effectively required to determine whether the declarations remained necessary, as assessed on the 'most up-to-date material', having regard to the question of whether it could be 'satisfied that the dog can be kept without the likelihood of any contravention of this Act'.

It should be noted that the 2025 Decision is now, at the time of publication of this article, the subject of further Supreme Court appeal proceedings.

Scope of 2025 Decision

For the purposes of the 2025 Decision, the factual findings in the 2023 Decision as to the incidents the subject of the original declarations remained undisturbed. While the applicant still maintained a different view to details of those incidents, the 2025 Decision was only concerned with a current assessment whether the dogs should remain declared as dangerous dogs. In making that decision, the Tribunal received evidence from the applicant himself and each of the parties called evidence from dog behaviour experts.

The details of the evidence received by the Tribunal at the final hearing are considered in comprehensive detail in the 2025 Decision and there is no need to repeat the factual findings for this article. However, the commentary and analysis within the 2025 Decision as to the types of matters to be considered in the context of an application to revoke a declaration are likely to have broad application for local governments.

The Tribunal addressed the relevant test for determining an application under section 33H of the Act at [52], namely:

'The dangerous dog declarations...cannot be revoked unless, in relation to each dog, the Tribunal is satisfied that the dog can be kept without the likelihood of any contravention of 'this Act'.'

The Tribunal later elaborated on the application of this test at [203], stating:

'If a dog owner is seeking to have a dangerous dog declaration revoked before the Tribunal, they will need to provide expert evidence to the Tribunal about their dog's behaviour and, specifically, whether or not their dog's behaviour poses a risk to humans or other animals. The expert evidence as to the dog's behaviour is required to assist the Tribunal to decide whether or not the Tribunal is satisfied that the dog can be kept without any contravention of the Dog Act or Dog Regulations. In particular, the Tribunal will be looking to see whether there has been a positive change in the behaviour of the dog since the behaviour which resulted in the making of the dangerous dog declaration.'

From a practical perspective, it is helpful to understand that an application of this type effectively places the onus on the applicant to demonstrate a positive change in the behaviour of the dog as, in the absence of such a change, it would be difficult to be satisfied that there will not be any future contravention of the Act.

Relevant considerations for dangerous dog declarations

Previous Tribunal authorities relating to dangerous dog declarations have identified various considerations relating to the subject dog and the manner in which the dog is kept. The 2025 Decision has addressed those matters in some detail, noting that this review process requires an assessment of the subject dog and, importantly, the owner of the dog.

In relation to the dog, the Tribunal provided the following list of considerations at [70]:

- (a) the behaviour giving rise to the making of the dangerous dog declaration;*
- (b) the dog's personal details such as breed, age, size, health, whether desexed;*
- (c) any relevant characteristics of the breed and any genetic factors;*
- (d) the dog's antecedents and, in particular, whether there have been any further incidents involving the dog since the making of the dangerous dog declaration;*
- (e) the dog's training and rehabilitation since the incidents giving rise to the making of the dangerous dog declaration; and*
- (f) whether the dog currently poses a risk to the safety of humans or other animals.*

The Tribunal also addressed the importance of assessing the owner of the subject dog, stating at [71]:

'A dog's behaviour is generally reflective of the ability of the person liable for the control of the dog to exercise effective control over and manage the dog.'

The Tribunal went on to identify the following considerations relating to dog owners at [72]:

- (a) their insight into the behaviour of the dog which led to the making of the dangerous dog declaration;*
- (b) their insight into, and understanding of, the dog's behaviour more generally;*
- (c) measures which they have taken in response to the conduct which led to the making of the dangerous dog declaration;*
- (d) their compliance with the Dog Act and Dog Regulations (including the requirements of the dangerous dog declaration);*
- (e) their proposals for future keeping of the dog;*
- (f) their ability to control the dog;*
- (g) their willingness to engage with the relevant local government authority charged with the enforcement of the Dog Act and the Dog Regulations; and*

(h) any other matters bearing upon responsible dog ownership.

This wide range of factors demonstrates the nature of the enquiries or assessments to be made by local governments in considering a proposed revocation of a declaration.

Insight and cooperation of dog owner

While many of the criteria established in paragraph 72 would appear to be self-evident, the reference to the insight of a dog owner into the behaviour of their dog was especially relevant in the 2025 Decision.

In that respect, the Tribunal made the following observations at [199]:

‘the risk that [the dogs] pose to other dogs is elevated because I have found that Mr Hunter has no insight into the conduct of his dogs which gave rise to the making of the dangerous dog declarations against them’.

Similarly, while it is relatively common for dangerous dog owners to express grievances in respect of local government decisions or processes, there is still a need for owners of dangerous dogs to comply with their relevant requirements of a declaration, which typically includes some level of cooperation or, at the very least, engagement with the relevant local government. This engagement is also relevant to the question of whether a dog owner is likely to comply with the requirements of the dangerous dog declaration generally.

Future considerations

While the 2025 Decision upheld the decision of the City of Joondalup to refuse to revoke the relevant declarations, the Tribunal added some concluding observations to assist all parties in dealing with applications of this type in the future, stating at [207]:

‘A local government may, before dealing with an application to revoke a dangerous dog declaration, require the owner and the dog to attend a course in behaviour and training approved by the local government, or otherwise to demonstrate a change in the behaviour of the dog. Although the local government has a discretion, rather than an obligation, to exercise this power, the making of a requirement under s 33H(2) of the Dog Act would assist a dog owner in knowing what they need to do to demonstrate a change in the behaviour of their dog. This is because the local government, as a body charged with the enforcement of the Dog Act, is arguably in a better position than the dog owner to know what steps will need to be taken to demonstrate a positive change in the dog’s behaviour.’

That is, a local government will not be required to produce or facilitate expert evidence to support an application to revoke a declaration. However, the Tribunal encouraged local governments to assist dog owners in knowing what they need to do to demonstrate a change in the behaviour of their dog.

Those comments also are consistent with an observation made by the Supreme Court in the Supreme Court decision, where Quinlan CJ noted (at [64]) that engagement between the parties as to the requirements for a declaration would be revoked ‘would be likely to produce a more timely and acceptable resolution to all concerned than further litigation’.

Ultimately, a local government still needs to be satisfied that a dog can be kept without the likelihood of a further



contravention of the Act in order to revoke a declaration. However, a local government is not prevented from helping dangerous dog owners understand what, if any, steps may be available to assist with the consideration of such an application.

The information contained in this article should not be relied upon without obtaining further detailed legal advice in the circumstances of each case. For any comments or questions on this article please contact Tim Beckett (tbeckett@mcleods.com.au).

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