

Supreme Court clarifies the seizure and detention powers of local governments under the Dog Act 1976

By Austen Mell

Introduction

In *Van Der Berg v City of Perth* [2025] WASC 197, the Supreme Court of Western Australia decided a judicial review application concerning the seizure and detention of a dog by the City of Perth (**City**). The applicant challenged the lawfulness of the seizure under the *Dog Act 1976* (**Dog Act**), sought the immediate release of the dog, as well as an injunction against further seizures, damages, and costs. The Court ultimately found the seizure was lawful and rejected the applicant's claims for damages and costs, and in doing so, clarified the operation of local governments' seizure powers under the Dog Act.

Background of the application

In May 2025, the City received a complaint from two members of the public about an attack by the applicant's dog in Forrest Place, Perth. The complainants provided photographs of an injury caused by the applicant's dog, and CCTV footage from Forrest Place at the time showed the applicant's dog lunging at members of the public over 15 times. In response, the City approached the applicant in a nearby shopping complex to obtain her details. After a brief stand-off, the City advised the applicant that her dog would be seized under section 29(3) of the Dog Act and seized her dog accordingly.

The applicant filed an urgent judicial review application soon after alleging the seizure and detention of her dog was unlawful. The City argued the seizure and subsequent detention of the dog was lawful, and relied on sections 29(3)(a) and (d) of the Dog Act, which allow an authorised person to seize a dog if it appears an attack has occurred.

In deciding the application, five issues were identified by the Court for determination –

1. Was a warrant required in order to seize the applicant's dog?
2. Was the Ranger who seized the dog properly authorised under the Dog Act?
3. Did the City's Rangers comply with section 11(3) of the Dog Act by producing a certificate of authority when requested and, if not, did this render the seizure unlawful?
4. Was the City's notice of seizure lawful, specifically, was it compliant with the Dog Act and *Dog Regulations 2013* (**Dog Regulations**)?
5. Was the ongoing detention of the applicant's dog lawful?

Was a warrant required to seize the applicant's dog?

The applicant argued that her dog could only have been lawfully seized pursuant to a warrant issued under section 29(5a) of the Dog Act. Specifically, the applicant asserted the warrant was required because the seizure occurred two days after the alleged attack, and the City's Ranger was not present at the incident.

The Court rejected the applicant's argument, ruling that section 29(3)(a) of the Dog Act – which the City relied on to seize the dog – did not require the City's Rangers to be physically present at the time of the alleged attack, nor was the seizure required to take place the same day of the attack. The Court held that the term "appears" in section 29(3) only requires the authorised person to have a factual basis for believing an attack occurred. The Court therefore found the seizure of the applicant's dog was lawful.

Was the City's Ranger an 'authorised person' under the Dog Act?

The Court also rejected the applicant's argument that the City's Ranger was not authorised to seize her dog because he was not an authorised person for the purposes of the Dog Act. The Court held the City's Ranger was duly authorised, as the City's CEO had delegated their power to appoint authorised persons to a General Manager of the City who had authorised the City's Ranger in accordance with section 10AA of the Dog Act and section 9.10 of the *Local Government Act 1995*.

Did the City's Ranger produce a valid certificate of authority?

The applicant further claimed the City's Ranger failed to produce their certificate of authority as required by section 11(3) of the Dog Act. Body-worn camera footage presented in Court showed that the applicant did not in fact request the Ranger's certificate of authority during the seizure and the Court found, in any case, a failure to produce a certificate of authority on request did not invalidate the seizure of the applicant's dog.

The Court otherwise found that the Ranger did hold the requisite certificate of authority and that despite slight deviations from the prescribed certificate under the Dog Regulations, this did not invalidate the Ranger's certificate of authority.

Was the City's Notice of Seizure lawful?

Though the City's 'Notice of Seizure' given to the applicant deviated from the prescribed form in the Dog Regulations by including additional details about the dog and seizure, the Court noted the slight deviations were permissible as they did not materially affect the Notice's substance or mislead the applicant. Nor did it render the Notice defective or the seizure unlawful, as the City's Ranger verbally informed her of the section they relied upon at the time of the seizure.

Was the ongoing detention of the applicant's dog lawful?

As none of the applicant's challenges to the seizure succeeded, the Court held the initial seizure and detention were lawful. In relation to the ongoing detention of the applicant's dog, the City relied on sections 29(8) and 29(10)(e) of the Dog Act to continue to detain the applicant's dog. This was because the applicant had not paid the impound costs incurred by the City and the City was concerned that releasing the dog would give rise to an offence, as the applicant was not compliant with the signage and enclosure requirements for dangerous dogs under section 33GA of the Act.

The Court held that the City's decision to detain Ollie under section 29(10)(e) to prevent an offence if released was permissible under the Dog Act and not legally unreasonable, as the applicant agreed she was not compliant with the dangerous dog requirements under section 33GA and the outstanding impound costs were reasonably incurred. The Court agreed with the City's interpretation of section 29, namely, that local governments have the ability to detain a dangerous dog until satisfied that the dog can be safely returned to its owner.

Conclusion

As none of the applicant's challenges succeeded, the application for review was ultimately dismissed.

The decision clarifies that section 29(3) of the Dog Act grants local governments broad discretion to seize dogs based simply on a reasonable belief of an attack. That is, a warrant is not required where an authorised person reasonably believes an attack has occurred and it is not necessary that the authorised person be present at the incident. The Court also clarified that dogs may continue to be detained where releasing them would give rise to an offence under the Dog Act.

The decision also makes useful comments in relation to the use of prescribed forms. As a general rule, effort should be made to ensure forms such as notices of seizure or certificates of authority that are prescribed by legislation are used by local governments as close to the form of the legislation as possible. However, in this case, the Court clarified that minor deviations to the final version of forms will not invalidate an otherwise lawful seizure under the Dog Act provided that the deviations do not affect the substance of the forms and are not misleading.

From a practical perspective, this proceeding also underscores the fact that the use of body-worn cameras has the potential to be a double-edged sword for local governments. While they may be helpful for collecting evidence and increasing safety and security for officers, the footage may also be the subject of intense scrutiny by a court or other entity which reviews the footage. In this instance, the footage demonstrated that the Ranger performed his duties to an extremely high standard on the relevant day, as reflected by the Court's findings. However, this process should serve as a reminder for all officers that they must always perform their functions to a similar standard, as their conduct could be the subject of a similar review process in future, irrespective of whether body-worn cameras are used.

The information contained in this article should not be relied upon without obtaining further detailed legal advice in the circumstances of each case. If you would like to discuss any of these matters further, please contact Austen Mell (amell@mcleods.com.au) or Tim Beckett (tbeckett@mcleods.com.au) at McLeods Lawyers.

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