

# TRANSCRIPT

## STANDING COMMITTEE ON THE ECONOMY AND INFRASTRUCTURE

### Inquiry into the legislative and regulatory framework relating to restricted breed dogs

Melbourne — 21 October 2015

#### Members

Mr Joshua Morris — Chair

Ms Colleen Hartland

Mr Khalil Eideh — Deputy Chair

Mr Craig Ondarchie

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#### Witnesses

Mr Steven Dickson, Manager, City Safety and Health, and

Ms Maria Macri, Coordinator, Prosecutions, Knox City Council.

**The CHAIR** — I will begin by declaring open the Standing Committee on the Economy and Infrastructure public hearing. This evening's hearing is in relation to the inquiry into restricted breed dogs. I would like to welcome everybody who is present here this evening. I will begin by explaining that the committee is hearing evidence today in relation to the restricted breed dog inquiry, and evidence is being recorded. This hearing is to inform the report, which is due to be tabled in March 2016. Witnesses present may well be invited to attend future hearings as the inquiry continues. All evidence taken today is protected by parliamentary privilege. Therefore you are protected for what you say here today, but if you go outside and repeat the same things, those comments may not have the same protection of privilege. I welcome our witnesses this evening. I might begin by asking you to introduce yourself and inform us of your particular positions.

**Mr DICKSON** — Thank you. Steven Dickson is my name. I am the manager, city safety and health, with the Knox City Council, and animal management falls within my portfolio.

**Ms MACRI** — I am Maria Macri. I am the coordinator of prosecutions and lawyer at Knox City Council. I deal predominantly with animal management prosecutions and legal matters.

**The CHAIR** — Fabulous. Very good. Today's evidence, as I did previously say, is being recorded, and you will be provided with proof versions of the transcript within the next week. The transcripts will ultimately be made public and posted on the committee's website. I would like to invite you both, in whichever order you would like, to speak to the committee, making some opening statements, and then we can proceed to some questions from there. I will throw over to whomever would like to begin.

**Mr DICKSON** — I will make a start. Generally what we wanted to do was talk about some of the key points in our submission, and particularly around point 9 — some of the statements we have made in there. Knox City Council at the moment has a heightened sense of awareness of all things related to animal management. We have recently had a dog attack — probably two years ago — and council's decision was contested through the Supreme Court, the Court of Appeal and right through to the High Court of Australia. So Knox council itself — the actual council — has been very careful in wanting to monitor council's policies in animal management and to try to fill the gaps that currently exist within the Domestic Animals Act. That has become a real challenge for council — how to fill some of the gaps. It is not specifically related to restricted breeds, but it is in that general issue of what we hear generally about dog attacks and the impact that dogs have on our community. Council has put a lot of effort into looking at different provisions of the act to try to ensure that in our future decisions we prevent ourselves from being exposed to subsequent Supreme Court appeals. It would be fair to say some of the animal welfare organisations are focusing on Knox council at the moment as well.

Some of the key points from our submission that we want to quickly sketch through are about the registration of dogs and microchipping. Council believes that there is a loss of information across Victoria as people move and as animals move, and we believe that at the moment there is no requirement for microchipping or in fact for council registration details to even be kept up to date under the act — not only dog history but also owner history. At the moment it is quite easy for someone who has a dog that is declared dangerous to simply move across municipal boundaries and to be lost. There are about four or five different companies that provide microchipping services. They do not work together collectively. As I said, there is no requirement to keep that data up to date, and we believe that it would make the whole issue of animal management far simpler if there were one common registration type approach in Victoria that went across municipal boundaries — one registration detail which links to the dog but also ties the owner of that dog in. Part of our submission later will touch on the fact that in many dog attacks we can attribute that the owner, as being the responsible animal owner, in fact often contributes to these attacks, not so much the actual breed of the dog.

The second point I wanted to clarify was the definition of a dog attack. A particular incident often means that where there is a dog attack, if a person has a laceration on a finger, under the current act provisions that would be determined as being a serious dog attack when in actual fact a reasonable person would say that perhaps it is not as serious. We believe that the act could be simplified with a better definition of what a laceration is and what a serious attack is.

It would enable council for some less serious matters to perhaps not be required automatically — as it is for a serious attack — to progress the matter through the Magistrates Court where in effect perhaps more simplistic methods, such as issuing an infringement notice or developing other animal management tools, may be a

preferred option to get the outcome we are wanting with less onerous requirements placed upon council. Maria, would you like to make some comments?

**Ms MACRI** — Yes. The points I wish to make focus predominantly on some of the legal issues that we faced at Knox. I have been there for about 15 months now, so I have come across a few holes in the legislation — or perhaps grey areas, as we like to describe them. One of the issues we face, particularly with serious dog attacks, is retaining custody of the dog at the end of a prosecution.

Under section 81 of the Domestic Animals Act an authorised officer can seize a dog that the officer reasonably suspects has been involved in an attack. Then the act permits council to hold, and in fact we must hold, that dog until the end of a prosecution and until the outcome is known. The problem then becomes what happens when we get to the end of that prosecution, we are successful in that prosecution and then need to make a determination as to whether the dog will be declared dangerous. This is where the act goes silent in terms of serious dog attacks. The act does talk about rights of recovery for the owner to recover the dogs. In other instances, where it has been seized under different sections of the act, but in particular in relation to section 81, there is no comment about how the dog can be recovered or any explicit right for council to continue to hold that dog.

The act does talk about, if we are unsuccessful in the prosecution, the rights of recovery, and that is pretty straightforward. The reason why this is a concern for council is that council does not want to find itself in a position where it has been successful in a prosecution and wants to release a potentially dangerous dog or a dog that it wishes to destroy back into the community until council has had the opportunity to go through the proper decision-making processes. At Knox we have taken the view that we will retain the dog, and I believe that there are legal inferences that can be drawn from the act that say that we have the power to do it, but it would be much preferred to have an explicit statement in the act that specifically sets out the rights to retain the dog until such time that a decision has been made with respect to whether it will be declared or destroyed.

That then leads me to the next point I wanted to make about dangerous dog declarations, and that is that a dangerous dog declaration does not come into effect until 28 days after essentially the appeal period has been passed. What that means is there is that 28-day period in which it is a bit of a no man's land in that council either holds the dog until there is compliance with the dangerous dog requirements or releases the dog back out into the community without that compliance. So it would be good to have some clarity around that.

We had an instance just recently where we found ourselves faced with this situation where we declared the dog dangerous and the owner wanted the dog back immediately, despite having not complied with the dangerous dog requirements — being the housing, the cage and so on being properly built and so on. Like I said, at Knox we have taken the view that we will wait until compliance is achieved or that 28-day period has passed before we release the dog back to the owner. So far there has not been any issue with that.

We have sought advice from the department about this, and the advice that we got was, 'Each council should make its own policies with respect to returning the dog'. What this means is that there are some councils who are returning the dog straight after the end of a prosecution and there are some councils, like Knox, who are holding on to the dogs until there is compliance with the dangerous dog requirements. Obviously this is an issue with respect to ensuring consistency across the state, and it also means that councils are exercising powers without legal certainty. From my perspective, they are the two big legal issues that we are faced with at Knox under the Domestic Animals Act.

One of the other points I wish to make is that there may be some usefulness in actually setting out in the act some criteria for consideration when determining whether a dog is declared dangerous. VCAT has set some criteria in this regard, but it would be good for decision-makers to have some legislative guidance on: what exactly is a dangerous dog, what things should we be considering? I will hand over to Steve.

**Mr DICKSON** — Thank you. We are going through a bit of a story. If it does not come through from the time that there is a complaint, there is a dog attack and there are different stages that you go through and say, 'Is the local government investigating and seeking compliance in the matter?'

Leading on from Maria's last comment is the issue where under the act there is a provision to declare a dog to be menacing and to declare a dog to be a dangerous dog. There is a significant and very large gap between the requirements to be placed on a menacing dog and the requirements to be placed on a dangerous dog, and we

found that over a period of time sometimes that gap is very, very broad. ‘Menacing’ perhaps is insufficient for the nature of the deeds that the dog has done, and yet a dangerous dog declaration is very costly to the owner and it is very restrictive.

Council would be keen if in the review of the act perhaps a proposal could be established in the act where council might be able to bridge that gap by perhaps having as an additional tool the ability to implement an animal management plan for that owner. Perhaps the animal does not need to have a concreted cyclone mesh cage in the backyard, but we need a set of requirements. So for council to have the ability, clearly the act should set out the type of things that council might consider, so that there is consistency across local government, but enable perhaps the opportunity for council to develop an animal management plan. Councils could do that now. Council could determine not to elect to declare a dog dangerous and implement an animal management tool; however, that would not be enforceable under the act. The owner could accept that opportunity that was offered by council, but the moment that opportunity was not followed up on, council has lost its ability to take any further action, perhaps allowing a dangerous dog to be put back into the community. So just another tool that we would be keen if this committee could consider in reviewing the act.

**Ms MACRI** — The last point that we wanted to highlight is that there are some provisions relating to dangerous dogs where the only way in which we can enforce the breach of that provision is to undertake a prosecution, which in some cases is considered pretty heavy-handed for things such as somebody failing to put on their dog the appropriate dangerous dog collar. We recently had an instance of this where they on a number of occasions had not had the collar on the dangerous dog — it was a dog being held at a commercial premises — and the only way that we could undertake any sort of enforcement action was through a prosecution, which we did. However, in that case we thought perhaps being able to issue an infringement notice would have been a more appropriate way to deal with that. We have also recently had another situation where a dangerous dog was being walked in public without the muzzle. Again the only option we had to consider was prosecution, and in that one instance we decided not to take this person to court for that. However, we would have liked to have had the option to issue an infringement notice, which we felt would have been an appropriate way to deal with the matter in that circumstance.

**Mr DICKSON** — Just in summary, whilst we cannot speak on behalf of other local governments, certainly Knox City Council joins with its Eastern Regional Metropolitan Council group, and all of the issues that we have discussed here today — and that includes from the Manningham, the Knox, the Yarra Ranges, the Maroondah, the Whitehorse — we have at our quarterly meetings. All of these type of issues are routinely brought up. Each council is saying, ‘How do you guys deal with this? How do you deal with that?’. There is a lot of confusion in local government, and the gaps in the act are creating the confusion.

The concern is more importantly now being manifest, where there is a greater incidence of some of the animal welfare groups supporting financially individual citizens to take action against local government. It is becoming a significant problem. The fear would be, which I think Knox council has to some degree experienced, where councils will be more reticent to want to take any strong actions, certainly in a matter that we fear might result in significant legal costs. As we have seen today in the local media with a lady from Ballarat council wanting to know what council is doing about following up about a second dog attack, the community expects councils to take strong action and yet councils are struggling in some of these areas. We appreciate your time in listening to us.

**The CHAIR** — Excellent. Thank you. We have some questions from the committee now if you are happy with that.

**Mr DICKSON** — Absolutely.

**The CHAIR** — I am interested in your comments about animal welfare organisations challenging particularly Knox council in regard to some of the prosecutions and the like. Can you fill us in with a bit more detail about what that looks like?

**Mr DICKSON** — What that looks like? It is certainly public knowledge. BAWP — have you heard of the organisation BAWP; Barristers Animal Welfare Panel — recently supported an action against council. That was not an action that actually related to anything specifically under the Domestic Animals Act, I point out. That was a procedural matter. They are a group that will consider certainly supporting people in taking action against

council. In the most recent one — can you remember the name of the group? I have just lost track of the name of it.

**Ms MACRI** — That was the Dogs On Trial.

**Mr DICKSON** — Dogs on Trial. There are quite a few community groups which are emerging, and they have obviously shared some financial support from their organisations. In fact in the recent incident that Maria mentioned with this dog owner who demanded that his dog be released immediately, in fact it was suggested to council that perhaps they might consider and seek an injunction to the Supreme Court. Then this organisation was assisting in raising funds to support these people's actions against council at VCAT. There is a strengthening mood in the community to take action against any decisions against animals, regardless of whether in fact the animal perhaps does deserve some sort of stronger treatment. Local governments are not very well placed in fighting some of these matters through social media. What we are dealing with is petitions online, Facebook, Twitter. We are really being trolled in social media. Clearly councils and local governments cannot engage in having a debate through social media, and that is where misinformation is being disseminated through the community.

**The CHAIR** — These determinations, are they being made at a council level, at an authorised officer level? In terms of what types of prosecutions to proceed and the like, who is making these decisions?

**Mr DICKSON** — Yes, that is made at the officer level, so officers in local governments are the delegated authority to make those decisions.

**Ms MACRI** — However, decisions in terms of determining whether a dog is dangerous are made by senior officers in council, who have been delegated by council to make these decisions. As a result of the High Court case, Knox has just gone through a very rigorous process and reviewed its entire process, from start to finish, in terms of the decision-making with respect to issuing the prosecution, determining when a destruction order will be sought, determining how that will be sought and then going on to determining whether a dog is declared dangerous. As a result of the High Court saying that an officer involved in a prosecution essentially is an incompatible role with being the person who determines whether the dog is a dangerous dog and therefore should be declared, Knox has decided to remove that decision-making process completely out of the department that manages animal management and put it within a completely separate department. In our case it is the corporate development director that will be making those decisions, and that is to ensure that there can be no suggestion whatsoever that there is any incompatibility between the two roles of prosecutor and then decision-maker determining whether a dog has been declared dangerous.

**Mr DICKSON** — In actual fact, leading on from that, Knox council does have the authority under the act. Once there is a finding of guilt at the Magistrates Court, council then has a trigger to consider whether to do nothing, declare a dog dangerous or in fact to euthanase that dog. As a result of the processes that council has been through the current policy position for Knox council is it will no longer make the decision to euthanase a dog. In fact if we believe that perhaps the dog attack was of a serious enough nature that may require the consideration of euthanasia, then we actually refer that matter to the Magistrates Court. We will ask the magistrate to make that decision, and if the magistrate determines not to destroy or euthanase that dog, council will take no further action in that direction and would then only consider a declaration or in fact to do nothing.

**Mr EIDEH** — Just a simple question. From the figures provided, the statistics about the complaints recorded in council's customer request system, we notice that the numbers have been reducing in 2015. So in 2011 the incidents were high, and then all of a sudden they suggest coming down, and by 2015 they are significantly reduced. In your view, why? You suggest it has gone down from 37 to 21, then from 93 to 41, and all the figures suggest that in 2015 it has dropped, so what is the reason?

**Mr DICKSON** — I cannot give you a reason. I know council has been very consistent. We have certainly increased some of our patrols in the community. At one stage we have done a service review in our local laws animal management function and found that probably our officers were spending about 100 per cent of their time just reacting to scenarios. So we have made some structural changes in staffing, and we have now reversed the decision to where we are probably still spending about 70 per cent of officers' time in proactively responding to complaints and such, to dedicating about 25 per cent of their time now to more proactive education-type duties, perhaps doing some patrols in parks. I cannot give you statistics to indicate that that definitely has had that outcome.

**Mr EIDEH** — That is what I thought — there could have been a bit of education.

**Mr DICKSON** — But we are trying to do a bit more working with the community. We are not sure if that has made a difference. I do not know whether you can predict clear factors other than to say that in most dog attacks that we have been involved in, and I think Maria made a comment on it, we find the responsibility of the animal owner is more often than not a key factor in that attack. When there are serious attacks, you look at whether the owner has traditionally registered the dog, whether they engage in any sort of animal training, whether the dog has regular vet attendances. I am not saying that is 100 per cent, but there is definitely a common factor in a person being responsible with the animal and linking that to dog attacks.

**Mr ELASMAR** — Thanks, Steve and Maria. In your contribution you said you rang the department to get advice, and some of them said it is up to the council, but I still do not know where Knox stands. Which decision have you made in Knox?

**Ms MACRI** — Yes. We have made the decision to retain the dog until there is compliance with the dangerous dog requirements, even though it puts everyone in an awkward position, because essentially we are asking someone to comply with the dangerous dog requirements even though the declaration has not come into effect, and 95 per cent of the time most people will accept the declaration and go ahead and do what they need to do. However, in the case we had recently he was still considering an appeal. In that case we were in a position where if we return the dog before compliance and then he goes on to an appeal, that can take months, and so we have a dog in the community that is potentially a dangerous dog that is not complying with the requirements.

Ultimately he complied and we have returned the dog, so it has not been a real issue that we have had to face in a legal court yet, but there is the potential for that. Certain threats were made and so on.

**Mr ELASMAR** — That was my following question, so you gave me the answer anyway. Your submission noted that the state government should investigate and reform the current arrangements for the sale and breeding of dogs, including restricted breeds. Why is this a concern for Knox, and what recommendation would you make in this regard?

**Mr DICKSON** — Maria, do you have a comment on that?

**Ms MACRI** — The first thought that came to mind is that we have been involved in at least one matter I am aware of, but obviously things only come to me as the lawyer when they get very sticky. We have been involved in one matter where a pet shop owner was bringing in dogs from we do not know where — we do not know where these breeders are — and it is alleged that one of them died whilst in the custody of that pet shop owner. It was alleged that the dog was sick when it came in. So there were concerns about where these dogs were coming from and our ability to try to find where those dogs had come from. I believe that may be where that submission has come from.

**Mr FINN** — I am particularly interested in the lack of standardisation, if you like, between various councils, because that obviously is going to lead to confusion, particularly when you have a boundary going down one street. One side of the street has one set of rules, and the other side of the street has a completely different set of rules. Would councils — would Knox council, for example — be prepared to give up some powers in order for the state government or the state Parliament to legislate for the standardisation of these rules across all councils, because I know that currently each council has the power to make its own policy? I am just wondering if Knox council would feel inclined to give up the power to make that policy if it meant we had a standardisation across the board.

**Mr DICKSON** — I might respond to that question by saying that I do not know I would view that perhaps as giving up powers as opposed to providing support and clarification in the decisions we make under the act. I think with standardisation such as we have covered in our standard criteria to declare a dog dangerous — we are here talking about particularly restricted breeds legislation — the difficulty in that has been that there has been a lot of documentation put together to assist councils in declaring and defining what a dangerous dog is, but there is so much conjecture and differing opinions about the application of that, that that has been in fact the challenge here. The government has given councils the ability to make these decisions to declare dogs dangerous. The difficulty is — and that is my point — that we are getting challenged legally now because there is no clarity and there are no consistent guidelines. I do not think any council would consider that they are losing power other

than that they are being given consistent criteria to assist us in actually exercising our power. I think councils are becoming more reticent to want to exercise the power because of fear of some of these very costly court outcomes. In a rate-capping environment it has become very tight.

**Mr FINN** — But you would be very happy for the government to legislate all the standardisation across the board to give you the certainty that you talk about.

**Mr DICKSON** — I believe that is really what we are trying to push with our submission tonight, yes.

**Ms TIERNEY** — I hear what you are saying about the legislation and costs and the amount of resources that the council obviously expends in this area. But Steve, I wanted to just drill down a little bit more on the comment you made about the behaviour of dogs — that the ownership of the dog is a contributing factor towards the behaviour of the dog. We have heard evidence of that as well. In the experience of councils, are there certain breeds of dogs that you can identify over and above anything else that have been involved in a range of dog attacks?

**Mr DICKSON** — I guess I would answer that question by saying we certainly have seen linkages between the animal and owner. That is not a hard and fast rule, though. Sometimes very good animal owners have just got a dog that does get out. Often in our community we think of dogs as loving pets and like our children, and we expect them to act in a certain social manner. In fact at the end of the day they are still animals.

**Ms TIERNEY** — That is right.

**Mr DICKSON** — A lot of dogs will be loving animals to their families, but if they see a cat run, something just triggers in the head, because at the end of the day they are an animal, and they are living in our community.

To say, ‘Can you define it by certain breeds?’, our submission does briefly touch on that. There are a lot of breeds that we find that we deal with, and certainly in dog attacks most people would probably say that Staffordshire terriers are a very loving dog. They are a very human, warm and friendly animal, and they are great with people. But they — and I am not saying every particular Staffordshire terrier — are often involved in other dog attacks, because they are a dog that has that nature. Huskies are another breed of dog, and a lot of people love them. They are a very attractive, handsome-looking dog, but quite often they can manifest certain more aggressive behaviours with other animals. They are not restricted breed dogs. You may well wonder that perhaps some of the restricted breed dogs that we currently have covered in legislation are breeds of dogs that when involved in an attack perhaps are capable of inflicting more damage. But I do not really believe that we could say that any one breed of dog is more aggressive than the others.

Certain breeds may inflict more damage, but I think there is certainly the way the animal owner handles their dog. Dogs should be contained and made sure they are safely contained in properties and kept on leashes when they are in the community. If those simple checks and balances are put in place, there should not be a problem. Some breeds of dogs are just naturally more friendly to other animals; some perhaps are less so. But I do not want to sit here and categorise any particular breed.

**Ms TIERNEY** — That is fair enough, but you know the debate. Is it learnt bad behaviour that the dog learns versus is it in their DNA, and is it in particular breeds of dogs and their DNA? I am gathering from what you are saying largely you believe it is learnt bad behaviour. Is that right?

**Mr DICKSON** — Yes. I might give you a humorous little anecdote. Not many people have ever seen a Chihuahua in a Magistrates Court being charged as being in a vicious dog attack, and yet they are naturally quite a snappy, aggressive little animal. But they do not perform much damage, do they, when they bite someone. They might nip the back of someone’s ankle, and you would not think of taking a Chihuahua to court. If perhaps a pit bull terrier was to bite someone’s leg, they just naturally do more damage. Hence are we actually talking about dogs that attack, or is it the damage that they can inflict?

**Ms TIERNEY** — Two other areas. One is in relation to preventive measures. If you can get preventive measures to work, it is less cost and obviously it is a better relationship between council and pet owners, and obviously the animal benefits as well. What have you done to go into that space, and what have you seen working in other jurisdictions? The last question is in relation to education, because you say that the public

'schools Responsible Pet Ownership program is not sufficient or effective'. I would like to hear more about what you would recommend in that space as well.

**Mr DICKSON** — I think that is a challenge. Council has a domestic animal management plan, and we have certainly considered community education. We run an annual event called Pets in the Park, where we invite all of our dog and cat owners to that activity to try and provide information to community about what it is to be a responsible pet owner. We support our local dog obedience club. We think it is important that when people get a dog they can recognise early that — I certainly have dogs myself — not every dog is the same. I have seen some dogs just display different mannerisms. I think people need to recognise that if their dog does display certain tendencies, that they need to understand that perhaps they do need to get some assistance in how to train those behaviours out of their dog.

You do wonder whether, getting in early, at school level, education has a bigger impact in children bringing things back home. Often children have more interaction with dogs than perhaps their parents do in some respects. You might wonder that perhaps there could be education programs that could talk to children about how to look after your animal from a humane perspective but also about how to look after your animal to ensure that they are social in the community, that they are people friendly and other animal friendly — just give people simple skills. Teaching a dog is not a complex science. It just needs consistent reinforcement of messages with your dog. If your dog reacts in a negative fashion, you just need to reinforce that behaviour with the dog immediately.

**Ms MACRI** — If I could just add one thing that I have noticed over my time in the past 15 months, in my experience as a prosecutor, a lot of people I deal with seem to attribute human characteristics to their animal. There needs to be education that, as someone mentioned earlier, a dog is still a dog at the end of the day, and they do have certain characteristics that you need to be able to manage and control. That is something that has come across a number of times to me, that there seem to be people attributing those human characteristics to animals and particularly dogs.

**Ms HARTLAND** — I have a couple of questions. Can you tell me roughly how much council has spent on legal costs since the legislation came into force?

**Mr DICKSON** — Wow! Collectively — —

**Ms MACRI** — I think the short answer is no.

**Mr DICKSON** — I do not think I could. I think it is probably pretty much public knowledge, but in the most recent case that I mentioned to the High Court, council could be potentially looking at costs of around \$600 000 for one case, and we have numerous cases. I can tell you multiple councils in our own eastern metropolitan region — Whitehorse, Monash — have all experienced several hundred thousand cases. So if you start bringing this together, we are talking about many, many millions of dollars each year that are being expended on legal matters which, to be honest, are very simple little matters, which we would hope could be able to be resolved through perhaps clarification of the legislation to prevent some of these current gaps and loopholes that allow people to take actions.

**Ms HARTLAND** — Could we ask you to take that on notice and possibly supply to the committee roughly the figure that has — —

**Mr DICKSON** — What we spent since the implementation of the Domestic Animals Act on legal costs. That will be a challenge, but we will do the best we can.

**Ms HARTLAND** — Even if it can be a rough figure because — —

**The CHAIR** — An estimate would be great.

**Ms HARTLAND** — I think it is a really important one, because when we want to look at the kinds of dog management programs, such as looking at the Calgary model, that you might want to bring in, the money could be much better spent, rather than on the prosecution — and to avoid future prosecutions. I was struck by the statement you made about taking it to the Magistrates Court, and then if the magistrate does not say that the dog should be euthanased, then you are not going to take it any further. What do you think the council's liability would be if that dog went on then to attack someone else or to kill a child when it had that history?



**Mr DICKSON** — I would probably answer that by saying that is a very good question. However, council would be requesting of the magistrate to consider euthanasing the dog, and if the magistrate made the decision to not euthanase the dog, I guess our current position at council is we believe that would have exonerated our liability in the matter. We could then consider the lesser issue of declaring it dangerous. Having said that, though, I am sure that some lawyer could certainly make an argument on that. Maria is our lawyer; I do not know whether she would make a comment. But let us be honest, she can make an argument on a lot of different topics. I would imagine there could be some discussion on whether in fact even though the magistrate did not determine to do it, it has not exactly exonerated council's responsibility to still consider that. That has just been our policy position because of some of the experiences we have been through.

**Ms HARTLAND** — Do you want to add to that?

**Ms MACRI** — Not really, because obviously with those kinds of things it is very circumstantial, and it is hard to give a yes/no answer in terms of liability. But I would support the comments that Steve made, that if councils put it to a magistrate, in fact we would be exposing ourselves in terms of another potential case by making the decision to destroy a dog when a magistrate has said, 'No'. We would have to come up with some very good grounds to say, 'Yes, in fact it should be destroyed'.

**Ms HARTLAND** — I completely understand the position of council. I think it is just that tricky issue if that dog then attacks again.

**Mr DICKSON** — I do not think these will be easy questions we plan to ask the magistrate. I do not think many magistrates to date have actually had that question imposed upon them. I would imagine this is going to be very challenging for some of the magistrates. Destroying someone's dogs is a pretty challenging question to be asked.

**Ms HARTLAND** — As someone who has always had dogs — I had a bull terrier who was extremely well behaved, and I now have a small terrier who is very badly behaved — so I think your point about breed is a really difficult one. I actually will not let my little terrier around children, because she is very naughty.

**Mr DICKSON** — A bit like people: we are all a bit different.

**Ms HARTLAND** — Yes, very indulged.

**The CHAIR** — Indeed. Some more than others. You have made some comments about the High Court case that Knox was involved in. Can you give us a bit of an overview of what happened, what took it to the High Court and what the implications of the results were?

**Mr DICKSON** — We had a matter that we took to the Magistrates Court. There was a group of three Staffordshire Terrier-type breed dogs that were involved in an attack. Quite some months later they were involved in a series of attacks in one day — they were out together — really quite serious attacks. One woman in one of the attacks was bringing her little pug terrier who was quite sick into a vet practice. These three dogs saw this woman crossing the street with a dog in her arms. The three dogs lunged at the woman and brought her down. I think a gentleman got a broom handle and had to try to stave off one of the dogs — in fact, one of the worst attacking dogs. The vet herself came out and actually injected the dog to knock it out, and that woman sort of lost the top of her finger, hanging by a thread. I think there was a range of attacks.

Council took that to the Magistrates Court. The magistrate found all the charges proven. The magistrate on the day — and I am quoting from this transcript — actually indicated that if he had the power he would have put this particular animal owner in jail. That decision was challenged at the Supreme Court.

**The CHAIR** — Can I just clarify that the magistrate ordered that the dogs be euthanased at that point?

**Mr DICKSON** — No, we did not request that because we were planning to, as had been our current policy, if we got a finding of guilt, bring it back to a council panel process and then take submissions from the owner and consider all things. At that stage we did not want to rush the decision. We wanted to make sure that we really did get it right.

**Ms MACRI** — The owner did plead guilty, so it was not a contested hearing. She did plead guilty to about 20 different charges.

**Mr FINN** — What happened to the pug?

**Mr DICKSON** — What then happened, there were a whole range of reasons, I think there were about 28 — —

**Ms MACRI** — I think the pug survived.

**Mr DICKSON** — Yes, sorry, the pug survived. Was that the question? It was really council's process. We call it a dog attack panel. It was our panel process that was challenged at the Supreme Court as to whether it was considered a fair and reasonable process, and there is a matter council would like clarified: when council takes submissions, what should that process look like? The act is silent on how it should be other than council can make a decision. It does not guide council how to actually do that or how the panel process should be structured. Our process was challenged in the Supreme Court, and we were successful at the Supreme Court. It was then challenged at the Court of Appeal. Our officer involved in it was praised at the Supreme Court for being diligent in all of her actions. When the matter went to the High Court the matter was simply that one of the — —

**The CHAIR** — So you were also successful in the Supreme Court? It was appealed all the way through by the dog owner.

**Mr DICKSON** — We were successful at the Supreme Court. We were successful at the Court of Appeal. The opposing side then took us to the High Court, and the matter that came out was the fact it was one officer. Would a reasonable person consider that one officer who would be involved in bringing the matter to court would have a conflict of interest? That was the matter, so it was nothing to do with the act. But clearly we might well say if the act had been clearer — you talk about taking away our powers — just tell us how to conduct these processes so that we cannot be challenged.

**Ms MACRI** — It was about apprehended bias and that perception of bias, not in fact actual bias, and there was no suggestion that the officer involved on the panel was biased — it was just that because she had been the informant, the prosecutor, she may have appeared to have been biased. She in fact was not the decision-maker either; she simply was on a panel that informed the decision-maker.

**Mr DICKSON** — The outcome in the High Court was it did not release the dog; it simply meant that the council had to remake the decision two years later. The decision came back to council to remake, and that became our real challenge: how do we do that?

**The CHAIR** — So how do you do that?

**Mr DICKSON** — We appointed three bail justices who were completely external of council to remake the decision. No council officer was involved in that process, and a lot of things had happened in the previous two years. Interestingly the opposing side made it clear that if the bail justices had made a decision still to euthanase that dog — they did not make that decision at the end of it — they still would have taken us back to the Supreme Court on the basis that no group or organisation the council could have appointed, even external bail justices, would be capable of making an independent decision. So that was our challenge.

**The CHAIR** — So it is just a catch 22 situation, isn't it?

**Mr DICKSON** — Yes.

**The CHAIR** — Are these dogs still alive?

**Mr DICKSON** — One of the dogs was euthanased at the time voluntarily by the owner. We gave one of the dogs back. It was actually a 12-month-old pup, and we figured it was not one of the main aggressors; it was just generally involved in the frenzy. The third dog was the matter that was the subject of the court case. Subsequently the decision was made — you may well consider the reasons behind it — that the animal was actually transferred to the South Australian RSPCA. It was taken out of the state because the domestic animals act and dangerous dog declarations do not travel across state boundaries and South Australia does not have declaration requirements. Therefore the dog has been handed over to South Australia. You may well argue whether that was in the best interests. I am not sure; I cannot comment. But that was the decision that the independent group made.

**Ms HARTLAND** — Where is that dog now? Still with the South Australians?

**Mr DICKSON** — That dog is currently in the care of the RSPCA in South Australia. They are assessing the dog as to whether it can be rehabilitated and what can happen.

**Ms HARTLAND** — This is the case that has cost you \$600 000.

**Mr DICKSON** — Correct.

**Ms MACRI** — That amount would include the council's legal costs as well as the appellant's legal costs.

**Ms HARTLAND** — And also the time. Was there a time calculation?

**Mr DICKSON** — We have not factored in the amount of time that officers at council spent. Wow!

**Ms HARTLAND** — So you could add several hundred thousand dollars just on the time factor.

**Mr DICKSON** — I would suggest quite easily, yes.

**Ms HARTLAND** — Again taking away from time where you could have actually been setting up a dog management program.

**Mr DICKSON** — Doing more beneficial community activities, yes.

**Ms HARTLAND** — Okay. So the legislation is seriously flawed. It has problems.

**Ms MACRI** — Just one comment following on from that: the act seems to have been put together over time in a piecemeal fashion. When I first started to look at this act, I confess it did my head in trying to find various sections that applied to the one action, like a prosecution. Like I mentioned before, you start seizing the dog at section 81, and then you jump to section 84Q, I think, that tells you how long you can then hold the dog for, then you jump back to section 84P. There seems to be no logical flow to the act. I know that there are probably many acts that are like that, but given the processes that we have been through it just seems to be more pronounced in this one.

**Mr DICKSON** — There is no doubt dog attacks are very political, sensitive issues, and you can see governments react when something happens and the community is outraged, that being manifest now, as Maria said, with an act with a range of, over time, iterations.

**Ms HARTLAND** — Because this legislation was done in haste at the time, because it was in response to the death of a child in Brimbank, we did not get it right then. So this is the opportunity for this committee to revisit and look at the things that need to be got right, so we have quite a big responsibility here. I do not know whether you want to comment, but I feel like we have a huge responsibility.

**Mr DICKSON** — I would comment that the reason Knox council particularly wanted to meet with you tonight was that we are incredibly pleased because of the journey we have been on and, I think it would be fair to say, overjoyed that your committee is considering this current piece of legislation. We are hoping that there perhaps could be some light at the end of the tunnel. We are here asking you to undertake this review.

**Mr FINN** — It is just that we do not hear that from local government very often. I just wanted to make sure that that was what you wanted!

**Mr DICKSON** — I am not talking about planning, just animal management!

**Ms HARTLAND** — One more question: the other comment you made that I was really quite interested in was about the fact that when we talk about dangerous breeds it is about the amount of damage that they can inflict, but it may not necessarily be totally their nature to inflict that damage. How do we look at that? How do we define which are the breeds that we need to look at, which are the breeds that we need to have some restrictions on or which are the breeds that we need to say — especially dogs that are imported into this country, that we should not allow to come? Do you have any sense of how we should look at that?

**Mr DICKSON** — I really do not. I think that is the real vexing question here. As I have said earlier, I do not think you can pin it down to the breed. I think all breeds are capable of an attack. Some breeds certainly are capable of inflicting more damage because of their strength, their power; sometimes they are very much more powerful.

**Ms HARTLAND** — The jaw.

**Mr DICKSON** — Some dogs have a jaw structure which is that locking structure. Does that mean every one of those breed of dogs is a problem? That is a real challenge. Whether some of these breeds are restricted breed dogs or perhaps there needs to be some level of control, I do not know.

**Ms MACRI** — I think it is about finding perhaps those experts who can give you some expert guidance on that. We recently had a declaration process where an owner of an animal brought an animal behaviourist along to speak about huskies. She made comments that huskies have a prey drive and they go after small animals, and if you declare this husky, then you should be declaring all huskies. I actually think that is a very good point. Maybe huskies are not animals that should be kept in residential areas, given they have these natural drives. But at the end of the day I am not an expert, and neither is Steven, in how these animals function and what drives they indeed have. I think you need to find the people who have that appropriate expertise.

**Ms HARTLAND** — Just one more: adding onto that, maybe it is not that you can answer the question for us but maybe you could give us guidance in terms of the questions we should be asking those experts from the experience you have had.

**Mr DICKSON** — I think you are hearing the submission — I do not know whether you have heard it yet — from people from Melbourne University, and Dr Robert Holmes. We have recently worked with Dr Holmes. There was a tendency for council in taking some dogs to court to engage animal behaviourists thinking, ‘We want to get these decisions right. Should this dog be declared dangerous?’. Council does not take it lightly to euthanase a dog. We were trying to get every piece of expert advice to just make us feel more comfortable in whatever decision we made. If we were going to give the dog back to the owner and the person who was the victim of an attack says, ‘You’re giving the dog back!’, we need a good reason as to why we are doing that, so we have started engaging animal behaviourists.

Recently in some of our interactions with Dr Holmes his comment to council was, ‘I don’t think that is a very safe thing for council to be straying into. I don’t believe that there is a science yet that someone can just visit with a dog for an hour or so and give you a position on whether that dog’s dangerous’. He talked about how certain dogs display tendencies, and perhaps if they have aggressive tendencies when they are younger probably those tendencies will be manifested more as they get older — perhaps a bit like people. You know, as we get a bit older, we get a bit more crusty. There is that gap for council. How do we find out? How do we get good information to guide us? I would like to think that part of this review might be working with some of our academic people involved in animal behaviour to try to help them flesh out and give council some support back to this criterion. I would love it if we could use animal behaviourist assessments to guide our decision-making, but then I hear that maybe there is not a science there and we should not be relying on that. We are not the experts in animals; we are just seeing all the problems.

**Ms HARTLAND** — Very helpful.

**The CHAIR** — As there are no further questions, at this point I thank you both very much for your attendance here this evening. I think it has been most enlightening about the processes that local government is going through and the difficulties with the act we are looking at. I think we have all found it most enlightening. I remind you that you will be provided with a proof transcript from tonight, and you will have the opportunity to review that in the coming weeks. Once again, thank you very much for your attendance here this evening.

**Ms MACRI** — Thank you for having us.

**Mr DICKSON** — We have appreciated the opportunity. Thank you very much.

**Committee adjourned.**