IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

No. M19 of 2015

BETWEEN:

TANIA ISBESTER
Appellant

and

KNOX CITY COUNCIL
Respondent

APPELLANT'S SUBMISSIONS

Part I: Certification

1. We certify that this submission is in a form suitable for publication on the internet.

Part II: Issues

2. What is the standard of procedural fairness that applies to a non-statutory tribunal, namely the panel convened by the respondent local authority, to determine the fate of a domestic animal, such as the dog "Izzy"?
3. What is the applicable standard in respect of apprehended bias by reason of conflict of interest to be applied in cases where a panel of delegates of a municipal authority determines to take away an individual's right to property, in this case a domestic animal?
4. Is the standard for apprehended bias as described by this court in *Stollery v Greyhound Racing Control Board* (1972) 128 CLR 509 applicable to a non-statutory tribunal convened by a local authority to determine an individual's right to property?
5. Does a person who is an accuser in proceedings before a Magistrates' Court remain an accuser, for the purpose of determining apprehended bias, in a subsequent panel hearing held by a municipal council which is concerned with events arising out of the same incident?

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Part III: Section 78B of the Judiciary Act 1903

6. The Appellant has considered whether notices should be given in compliance with s 78B of the Judiciary Act 1903 (Cth). The Appellant considers that no such notices are necessary.

Part IV: Citations

7. The only citations available for these cases are medium neutral citations. The decision of the primary judge may be cited as *Isbester v Knox City Council* [2014] VSC 286. The reasons for judgment of the Court of Appeal of the Supreme Court of Victoria may be cited as *Isbester v Knox City Council* [2014] VSCA 214.

Part V: Facts

8. On 4 August 2012 and 9 June 2013 the Appellant's dogs "Izzy" and "Jock" were involved in a series of attacks on other dogs. During the course of one of those attacks two people were injured, one of them seriously. The Appellant accepted that Jock caused the injury and Jock was subsequently destroyed at the Appellant's request on 9 June 2013.[1]
9. The attacks were investigated by Mr Martonyi, an officer of the Respondent. Mr Martonyi was later supervised and directed by Ms Kirsten Hughes, who worked as a Local Laws Co-Ordinator for the Respondent.[2] When the evidence that Mr Martonyi had collected was considered to be insufficient to sustain one of the charges against the Appellant in respect of "Izzy", Ms Hughes directed him to go and collect further evidence.[3]
10. On 20 June 2013 and 24 June 2013 the Respondent, with Ms Hughes as informant on some of the charges including, relevantly, charge number 4, charged the Appellant with numerous offences under the *Domestic Animals Act 1994* (Vic) (the "**Act**").

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[1] Affidavit of Tania Louise Isbester sworn 19 November 2013, paragraph 36.
[2] *Isbester v Knox City Council* [2014] VSC 286 at [29].
[3] *Isbester v Knox City Council* [2014] VSC 286 at [115]; see also T 201.22-30, T 207.24-29.

11. Following the laying of charges the Appellant's solicitor, Mr Brett Melke, engaged in discussions with the Respondent's solicitors. By an email to the solicitors for the Respondent, sent on 28 August 2013, Mr Melke asked what the Council intended about the fate of the two remaining dogs, given that the dog Jock had already been euthanised.[4]
12. On 29 August 2013 Ms Hughes sent an e-mail to Ms Walsh of the Respondent's solicitors, which stated that the Council would be having a panel hearing to determine the fate of the dog after the Court hearing.[5]
13. On 29 August 2013 the Respondent's solicitors sent an email to Mr Melke which said, "Council will not be seeking an order from the court in relation to the destruction of the dogs."[6] That assurance was given by the Respondent's solicitors at the direction of Ms Hughes.[7] The email to Mr Melke did not say that the Council would be having a panel hearing to determine the fate of the dog.
14. On 12 September 2013 the Appellant pleaded guilty at the Ringwood Magistrates' Court to charges including charge number 4 on the charge sheet, which provided that Izzy had attacked or bitten a person and caused serious injury to that person on 4 August 2012 (being a contravention of section 29(4) of the Act). The finding of guilt by the Magistrates' Court, following that plea, of a contravention of section 29(4) of the Act enlivened the power under s 84P of the Act whereby the Council could decide to destroy the dog.
15. On 13 September 2013, the Respondent wrote to the Appellant to inform her that it intended to consider whether to exercise the power in s 84P of the Act to have Izzy destroyed and invited the Appellant to a 'panel hearing' on 30 September 2013. The letter said there would be three members of the panel. It stated that "The officer involved in the investigation may be present but they will not be involved in the decision making". The letter said that the chairperson, Steven Dickson, would make the decision about the dog. It

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[4] Affidavit of Tanya Isbester sworn on 19 November 2013, paragraph 35.
[5] Affidavit of Kirsten Hughes sworn on 19 December 2013, exhibit KH10.
[6] Affidavit of Tanya Isbester sworn on 19 November 2013, exhibit TLI-2.
[7] Affidavit of Kirsten Hughes sworn on 19 December 2013, paragraph 31 and *Isbester v Knox City Council* [2014] VSC 286 at [106].

invited the Appellant to attend the hearing and provide a written and/or oral submission to assist the Respondent to make a decision.[8]

16. Mr Melke prepared a written submission for the panel hearing on behalf of the Appellant.

17. The panel hearing was conducted in the Knox Civic Centre on 30 September 2013. The panel comprised three delegates appointed by the Respondent for the purposes of section 84P, Mr Angelo Kourambas, Ms Hughes and a Mr Dickson, who was the Manager of City Safety and Health.

18. The Appellant, together with Mr Otto, a neighbour, and some of her own and her neighbour's children, attended the panel hearing and made representations to the panel. The Appellant was not represented at the hearing. The panel also heard from Emily Edward and Jennifer Edward. Jennifer Edward was the alleged victim of the attack on 4 August 2012, wherein she received a 1.5 centimetre laceration to her finger.[9] The Appellant and her family and friends were asked to leave the room while the Edwards spoke, as they had told the panel that they would feel intimidated if the plaintiff and her supporters remained in the room.[10] During the panel hearing, Ms Hughes read out part of her notes of the ruling given by the Magistrate on 12 September 2013.[11]

19. After the panel hearing and following a discussion with the other members of the panel (in which Ms Hughes participated),[12] Mr Kourambas decided that Izzy should be destroyed. The Appellant was notified of the decision and the reasons for it in a letter from Mr Kourambas dated 15 October 2013, which stands as the Respondent's reasons for decision (the "Reasons"). Ms Hughes wrote or assisted in the writing of the Reasons.[13]

20. The Appellant appealed to the Supreme Court of Victoria, Common Law Division[14] citing jurisdictional error on the grounds of, inter alia, apprehended

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[8] Exhibit "KH 12" of the affidavit of Kirsten Hughes sworn on 19 December 2013.
[9] *Isbester v Knox City Council* [2014] VSC 286 at [11].
[10] *Isbester v Knox City Council* [2014] VSC 286 at [16].
[11] *Isbester v Knox City Council* [2014] VSCA 214 at [9].
[12] *Isbester v Knox City Council* [2014] VSC 286 at [103]; affidavit of Kirsten Hughes sworn on 19 December 2013, paragraphs 60 and 61.
[13] *Isbester v Knox City Council* [2014] VSC 286 at [17].
[14] *Isbester v Knox City Council* [2014] VSC 286.

bias, unreasonableness and procedural fairness. In her reasons dated 17 June 2014 (the "trial reasons"), the trial judge, Justice Emerton, found that none of the grounds was established and that there was no jurisdictional error.

21. In relation to the question of apprehended bias her Honour said:

    (a) procedural fairness had not been excluded by the *Domestic Animals Act 1994* (Vic) and that as a consequence the Respondent was required to accord procedural fairness to the owner of a dog before exercising the power in section 84P of the Act;[15]

    (b) it was necessary to determine the content of the requirement having regard to the statutory framework;[16]

    (c) The correct test for apprehended bias by way of conflict of interest and apprehended bias by way of pre-judgment was the test set out in *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337;[17]

22. Her Honour then decided, inter alia, that:[18]

> The requirement that there be an absence of personal interest in the decision and a willingness to give genuine and appropriate consideration to the dog owner's submissions can be satisfied even where the delegate has been involved in the earlier prosecution. In my view, a fair minded observer would not apprehend that there might be a disqualifying predisposition from the fact that the decision-maker under s 84P(e) was also involved in the prosecution of the owner for offences under s 29(4) of the Act.
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> (emphasis added)

And said at [113]:

> It follows that I am not persuaded that a fair-minded observer might apprehend that Ms Hughes, had she been the decision-maker or part of the decision-making body, might not have approached the decision to be made under s 84P other than on its legal and factual merits. The plaintiff must not only identify what she says might have led Ms Hughes to approach the question of the fate of Izzy other than on its legal or factual merits, she must also articulate a logical connection between that matter and the feared deviation from a decision on the merits. In the present context, the mere assertion that Ms Hughes had an 'interest' in the question of Izzy's fate by reason of her involvement in the prosecution of the plaintiff does not articulate the relevant connection to establish a reasonable apprehension of bias.

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[15] *Isbester v Knox City Council* [2014] VSC 286 at [82].
[16] *Isbester v Knox City Council* [2014] VSC 286 at [83].
[17] *Isbester v Knox City Council* [2014] VSC 286 at [84].
[18] *Isbester v Knox City Council* [2014] VSC 286 at [111].

23. Her Honour distinguished the decision of this court in *Stollery v Greyhound Racing Control Board* (1972) 128 CLR 509, on the basis that the person in question in *Stollery* was in the position of an accuser before the Board, and the matter was one where the Board was required to act in a judicial manner.[19]

24. The Appellant appealed to the Court of Appeal on the grounds that the decision of the panel was affected by apprehended bias by way of pre-judgment and by conflict of interest.

25. In their joint judgment dated 10 September 2014, the Court of Appeal quoted extensive portions of the trial judge's reasons including the whole of paragraphs 83 to 87 and 96 to 98 (with apparent approval) and paragraphs 108 to 111 (with express approval).

26. Their Honours also held:

    (a) the rules of natural justice applied to the panel hearing;[20]

    (b) natural justice in the circumstances required a lack of conflict of interest on the part of the decision-maker, and an absence of pre-judgment;[21]

    (c) Ms Hughes was the accuser in criminal proceedings against the Appellant before the Magistrates' Court;[22]

    (d) Ms Hughes had a material part in the decision-making process by the panel and they would not base their decision on this aspect of the matter upon the fact that she was not the decision-maker;[23]

    (e) Ms Hughes obtained information from the Ministry of Housing as to the future possible accommodation of the dog prior to the panel hearing;[24]

    (f) Ms Hughes undertook procedural tasks associated with the panel hearing.[25]

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[19] *Isbester v Knox City Council* [2014] VSC 286 at [112].
[20] *Isbester v Knox City Council* [2014] VSCA 214 at [38].
[21] *Isbester v Knox City Council* [2014] VSCA 214 at [50].
[22] *Isbester v Knox City Council* [2014] VSCA 214 at [70] and [79]; see also T 280.17-T 281.21.
[23] *Isbester v Knox City Council* [2014] VSCA 214 at [68]; see also T 254.26-T 258.55 and T 280.17-T 281.21.
[24] *Isbester v Knox City Council* [2014] VSCA 214 at [59]; see also T 208.1-T 209.23.

27. The observations made by the Court of Appeal concerning the role of Ms Hughes are illuminated by the evidence given by Ms Hughes at trial. At T 280.17-T 281.8, Ms Hughes accepted that she instructed Mr Martonyi to get further evidence from Mrs Edwards, determined which charges should be laid, gave instructions to the solicitor for the Council, decided that there should be a panel hearing, negotiated the plea deal with the Appellant, drafted the letter giving notice of the panel hearing, drafted the reasons for decision of the panel, and played a major role in the decision process. At T 218-219 Ms Hughes said that the Council policy was not to seek a destruction order from the Court but to hold a panel hearing as soon as possible after the Court case.[26] She said at T 219.17-21:

> The intent was to contact her with the date and serve the appropriate letters on her immediately after the court case so that we could go through that panel process as quickly as possible.

At T 287.26-29 Ms Hughes demonstrated her central role in the criminal case by saying:

> "Well, we, um, wanted to obtain sufficient proof to sustain the charges that were laid so we looked at gathering that evidence to, um, to meet the points of proof for each of the charges."

28. Further, in her affidavit at paragraph 31, Ms Hughes swore that she instructed the Council's solicitor that the Council would not seek an order from the Court for the destruction of the dog. She then said: ".....however, the Council would convene a panel to determine the question whether 'Izzy' would be declared to be a dangerous dog or destroyed."

29. The appeal was dismissed on all grounds. In respect of the conflict of interest grounds, the Court of Appeal said that:

    (a) the question of whether the Council should destroy the dog required the exercise of an administrative decision which raised different issues from those raised by the prosecution in the Magistrates' Court;[27]

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[25] *Isbester v Knox City Council* [2014] VSCA 214 at [60]; see also T 280.17-T281.21.

[26] And *Isbester v Knox City Council* [2014] VSCA 214 at [17] where the Court of Appeal referred to the usual practice of the Council.

[27] *Isbester v Knox City Council* [2014] VSCA 214 at [71].

(b) the panel hearing was not required to be, and was not in fact, a quasi-judicial hearing;[28]

(c) the reasonable observer would regard it as entirely appropriate that the panel might include a person having a practical understanding of what needs to be done to protect the community from dog attacks, having regard to the circumstances of the particular case;[29]

(d) Ms Hughes had no "special" or "personal" or "special personal" interest in the matters in issue;[30]

(e) Ms Hughes could not be considered to be an accuser in relation to the panel hearing nor a party to an adversary proceeding.[31]

30. Their Honours distinguished the decision of this court in *Stollery* on the basis that:

(a) the panel hearing was not a quasi-judicial hearing;[32]

(b) Ms Hughes was not in the position of an accuser at the panel hearing;[33]

(c) Ms Hughes had no special or personal interest in the matters in controversy.[34]

Part VI: Argument

The test for apprehended bias

31. The test for determining whether a person should disqualify himself or herself by reason of apprehended bias is "whether a fair-minded lay observer might reasonably apprehend that the judge might not bring an impartial and unprejudiced mind to the resolution of the question the judge is required to decide": *Johnson v Johnson* (2000) 201 CLR 488 at 492; *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337 at 345.

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[28] *Isbester v Knox City Council* [2014] VSCA 214 at [72].
[29] *Isbester v Knox City Council* [2014] VSCA 214 at [74].
[30] *Isbester v Knox City Council* [2014] VSCA 214 at [73] and [80].
[31] *Isbester v Knox City Council* [2014] VSCA 214 at [70], [75] and [79].
[32] *Isbester v Knox City Council* [2014] VSCA 214 at [78].
[33] *Isbester v Knox City Council* [2014] VSCA 214 at [79].
[34] *Isbester v Knox City Council* [2014] VSCA 214 at [80].

32. This test, set out in *Ebner*, gives voice to the long-established maxim that justice must not only be done, but must be seen to be done.[35] It is supported by the foundation principle *nemo judex in sua causa*.

Applying the test for apprehended bias

33. When assessing whether the test for apprehended bias has been satisfied it is first necessary to determine whether the matter in question is a conflict of interest case or a pre-judgment case. As Spigelman CJ said in *McGovern v Ku-Ring-Gai Council* (2008) 72 NSWLR 504 at 510:

> A conflict of interest requires a different analysis as to the relationship, as reasonably perceived, between the interest and the decision. Questions of fact and degree do not arise in the same way. In a pre-judgment case it is necessary to consider the degree of 'closure' of the allegedly closed mind. Where a relevant conflict of interest is established the reasonable apprehension follows almost as of course.

Apprehended bias by way of conflict of interest

34. At pp 511-2, paragraphs [38] to [40], of *McGovern* Spigelman CJ said:

> [38] In the context of multi-member decision-making bodies that are not courts, or subject to the same stringent requirements as courts, a disqualifying conflict of interest of a character which the apprehended bias principle would require the person not to participate in, indeed not even be present at, the decision-making process has been held to exist where:
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> · The person is the complainant or accuser with respect to the matters the subject of inquiry (Dickason v Edwards [1910] HCA 7; (1910) 10 CLR 243; Stollery v Greyhound Racing Control Board [1972] HCA 53; (1972) 128 CLR 509).
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> .....
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> [39] All of these cases appear to me to involve a conflict of interest, rather than pre-judgment. The conduct of the particular member(s) of the multi-member decision-maker went well beyond a manifestation that s/he was or they were not open to persuasion.
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> [40] In such cases, the independent observer might reasonably believe that the influence on the others of the person(s) who manifested bias of that character could well go beyond the usual process of internal debate. Accordingly, an independent observer could reasonably conclude that the entire collegiate body may not bring an impartial mind to the decision-making process. However, the pre-judgment situation is not necessarily, indeed not usually, of that character.

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[35] *R v Sussex Justices; Ex parte McCarthy* [1924] 1 KB 256 at 259 per Lord Hewart CJ.

35. In *Stollery v Greyhound Racing Control Board* (1972) 128 CLR 509 the Court held that the presence of a person who was an accuser during deliberations by the Greyhound Racing Control Board in a disciplinary matter could cause a reasonable man to 'very properly' suspect that the opportunity to influence the decision of the Board might have been used. That is, a reasonable apprehension of bias was found to exist because of the potential for the accuser to exert influence over decision-making process.

36. Barwick CJ said:[36]

> I am of opinion that in the circumstances Mr. Smith was in the position of an accuser, accusing the appellant of having done an act detrimental to the control of the sport. It seems to me, therefore, that he was not in a position to participate either in the discussion or decision of the question whether or not what had occurred was an act detrimental to the control and regulation of greyhound racing, or of the question of what was the appropriate penalty to be inflicted if the first question should be answered unfavourably to the appellant.

At pp 518-519 his Honour quoted extensively from the judgment of Lord Hewart LCJ in *R v Sussex Justices; Ex parte McCarthy.*[37] His Honour then said at p 519:

> As in that case, so in this the continued presence of a disqualified person is fatal to the validity of the decision taken as the result of deliberations in his presence.[38]

37. Gibbs J said:[39]

> It is, however, clear that it would not be in accordance with the principles of natural justice for a person who was in truth the accuser to be present as a member of the tribunal when the charge which he had promoted was heard, even if he took no actual part in the proceedings: *Reg. v. London County Council; Ex parte Akkersdyk* (1892) 1 QB 190, at pp 195-196 ; *Dickason v. Edwards* [1910] HCA 7; (1910) 10 CLR 243, at pp 252-253, 256, 263. The very presence of a person who has brought forward a complaint may, even unconsciously, inhibit the discussions and affect the deliberations of the other members of the tribunal.

38. In *Dickason v Edwards* (1910) 10 CLR 243 Isaacs J described the prohibition against the same person occupying multiple positions in a case as giving rise

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[36] *Stollery v Greyhound Racing Control Board* (1972) 128 CLR 509 at 516.
[37] [1924] 1 KB 256.
[38] See also the judgment of Menzies J at 520.
[39] *Stollery v Greyhound Racing Control Board* (1972) 128 CLR 509 at 527.

to an "incompatibility" that prevented the affected person from sitting as a decision maker:[40]

> The principle then is plain that if a Judge is disqualified, he must not even be present during the hearing of the case. One disqualification is pecuniary interest. If that exists there is an end of the matter at once and the Court goes no further. Dimes v. Grand Junction Canal Co.[10] and Allinson v. General Council of Medical Education and Registration[11] are both distinct and express authorities upon that point. But there is another kind of disqualification and that is what I may term "incompatibility." If it is incompatible for the same man to be at once judge and occupy some other position which he really has in the case, then primâ facie he must not act as a judge at all. That is a fundamental and essential principle of justice.

(emphasis added)

39. The unifying factor in each of *Stollery* and *Dickason*, then, is that once the conflict of interest, or incompatibility, is established, no further enquiry is necessary – the affected person is automatically prohibited from being a decision-maker.[41]

Ebner and the two-stage test

40. At [113] of her judgment the trial judge referred to the two-stage test set out in *Ebner* at p 345 by stating that the Appellant must not only identify what she says might have led Ms Hughes to approach the question of the fate of Izzy

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[40] (1910) 10 CLR 243 at 259. In *Stollery* Barwick CJ referred to *Dickason* with approval at 518 and 520 as did Menzies J at 521 and Gibbs J at 527.

[41] See also *R v The Optical Board of Registration; Ex parte Qurban* [1933] SASR 1 at 8 where Richards J quoted with approval Eve J in *Law v. Chartered Institute of Patent Agents* [1919] 2 Ch. 276 where his Lordship said, one circumstance "which has always been held to bring about disqualification is the fact that the person whose impartiality is impugned has taken part in the proceedings, either by himself or his agent, as prosecutor or accuser." And also *Carver v Law Society of NSW* (1998) 43 NSWLR 71 at 87 where Powell J said, "...I must say that it is my view that it could not be said that a fair minded and reasonable observer who became aware that one of those who had been involved in the investigation of, and the making of the decisions in relation to, matters to be determined by a tribunal of which that person was a member, could not reasonably entertain an apprehension that that person might not bring an impartial and unprejudiced mind to the resolution of the question involved." Sheppard A-JA said at page 102 of *Carver* stated, "Rather, it is the appearance of bias which is in question. The applicable principle is that stated by the High Court in *Livesey v NSW Bar Association* (1983) 151 CLR 288 at 293-294: "A judge (or, I would add, a member of a tribunal such as that in question here) should not sit to hear a case if in all the circumstances the parties or the public might entertain a reasonable apprehension that he might not bring an impartial and unprejudiced mind to the resolution of the question involved in it."

other than on its legal or factual merits, she must also articulate a logical connection between that matter and the feared deviation from a decision on the merits. It appears that likewise, the Court of Appeal, in referring to the need for a "special" or "personal" or "special personal" interest in the matter,[42] was also seeking to apply the *Ebner* test.

41. The Appellant submits that the two-stage test developed in *Ebner* at p 345 for determining whether apprehended bias is made out, is not relevant to apprehended bias by way of conflict of interest. Rather, *Ebner* was confined to a consideration of apprehended bias of a pre-judgment kind. In *Ebner*, the Court considered the circumstances in which a judge should be disqualified for having a pecuniary interest in a party before him or her. *Stollery* was not considered in *Ebner*. The decision in *Dickason* was discussed in *Ebner*, but was only raised (and overruled) in one respect, namely that a pecuniary interest in a matter automatically prevented a person from being a decision maker in that matter. In *Ebner* this Court did not modify the decision in *Dickason* concerning conflict of interest. It did not refer to *Stollery*. The principles concerning the requirement for impartiality (and hence that there be no conflict of interest) remained those described in *Dickason* and *Stollery*.

APPEAL GROUND 4

<u>The Court of Appeal applied the wrong test for a conflict of interest</u>

42. The Court of Appeal erred in saying that the absence of a "special" or "personal" or "special personal" interest in the matters in issue by Ms Hughes was relevant to the question of whether or not the Appellant had demonstrated a conflict of interest (reasons at [73] and [80]). No such requirement is specified in *Dickason* or *Stollery*.

APPEAL GROUND 5

43. Alternatively the Appellant submits that if a "special" or "personal" or "special personal" interest in the matters in issue is required, then the Court of Appeal erred in holding these requirements not been made out. Ms Hughes supervised the investigation and was the informant on the relevant charge. She instructed the Council's solicitors about the plea bargain. She prepared the letter convening the panel hearing. She sought and obtained information

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[42] *Isbester v Knox City Council* [2014] VSCA 214 at [73] and [80].

from the Department of Human Services, Office of Housing, to the effect that the Department opposed the return of the Appellant's two dogs to her property. And she placed her notes of the Magistrates' ruling in evidence before the panel.[43] As a consequence the Court of Appeal should have held that she had a "special" or "personal" or "special personal" interest in the question of whether the dog Izzy ought to be destroyed.[44]

APPEAL GROUND 6

Procedural fairness and its application to a non-statutory panel

44. It was not disputed by either the trial judge or by the Court of Appeal (and it was accepted by the Respondent) that the Respondent was required to accord procedural fairness to the Appellant before exercising the power in section 84P of the Act.[45] What was in issue was the *content* of the procedural fairness which the panel was required to afford the Appellant.

45. Where a decision-maker is required to afford a person procedural fairness or natural justice (which terms are used interchangeably), the decision maker is as a matter of course required to "act judicially".[46] The Court of Appeal erred in saying that "the hearing was not required to be, and was not in fact, a quasi-judicial hearing" and that this was a relevant consideration in determining whether or not Ms Hughes was affected by a conflict of interest (reasons at [72]). Whether or not the panel hearing was "quasi-judicial" is not to the point.[47] The fact is that the Court of Appeal had already accepted that the principles of procedural fairness applied to the panel (reasons at [510]).

The content of procedural fairness as it applied to the panel

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[43] Affidavit of Kirsten Hughes sworn on 19 December 2013, paragraph 47.

[44] According to the test as set out by the Court of Appeal, for a conflict of interest to be established, it would be necessary for the Appellant to show that not only was Ms Hughes the accuser but had some "special" interest above that. This is not the law as set out in *Stollery* or *Dickason*. See also the decision in *The Optical Board of Registration. R v The Optical Board of Registration; Ex parte Qurban* [1933] SASR 1

[45] See *Annetts v McCann* (1990) 170 CLR 596 at 598, which was quoted by the Court of Appeal (reasons at [37]).

[46] See the observations of Gleeson CJ in *S157/2002 (2003) 211 CLR 476 at 489-490* and the review of the authorities by Deane J in *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321 at 365-7.

[47] In *S157/2002* at 490, Gleeson CJ accepted that the duty to observe common law requirements of procedural fairness was the same as a duty "to act judicially".

46. It is necessary to consider the statutory framework when determining the content of procedural fairness. This accords with the decision of this court in *NCSC v News Corp Ltd* (1984) 156 CLR 296, which was referred to by the Court of Appeal (reasons at [42]).

47. Further, it is established that, when a statute confers power upon a public official to destroy, defeat or prejudice a person's rights, interests or legitimate expectations, the rules of natural justice regulate the exercise of that power unless they are excluded by plain words of necessary intendment.[48]

48. Section 29 of the Act deals with "offences and liabilities relating to dog attacks". Section 29(12) of the Act provides that "if a person is found guilty of an offence under this section with respect to a dog, the court may order that the dog be destroyed by an authorised officer of the Council of the municipal district in which the offence occurred." This sub section was originally section 29(5) of the *The Domestic (Federal and Nuisance) Animals Act* 1994.[49] Section 84P of the Act was introduced by an amendment made by Act number 65/2007 which took effect on 12 November 2007.

49. The Act, as amended, does not contain any directions as to the process by which a municipal council is to exercise the power conferred on it by section 84P(e). There is nothing to suggest that common law principles of procedural fairness do not apply to the decision provided for in section 84P(e).

50. The trial judge said that in relation to the panel:[50]

> ... a requirement for impartiality exists to the extent necessary to give the persons affected by the decision under s 84P(e) – the owner of the dog and possibly any victim of an attack – a genuine hearing as to whether the dog is capable of living safely in the community.
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> (emphasis added)

51. And at [111]:

> The requirement that there be an absence of personal interest in the decision and a willingness to give genuine and appropriate consideration to the dog owner's submissions can be satisfied even where the delegate has been involved in the earlier prosecution".

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[48] *Annetts v McCann* (1990) 170 CLR 596 at 598; see reasons at [37].

[49] The Act, which was originally called *The Domestic (Federal and Nuisance) Animals Act* 1994, was assented to on 9 April 1996: Government Gazette 20 July 1995 page 1824. The title of the Act was changed to the *Domestic Animals Act* 1994 by section 3 of the *Animals Legislation Amendment (Animal Care) Act* 2007, No. 65/2007.

[50] *Isbester v Knox City Council* [2014] VSC 286 at [110].

(emphasis added)

52. Thus the trial judge referred to the need for a "genuine hearing" and for a "genuine consideration". It is submitted that a hearing can not be "genuine" in the sense used if one member of the panel of delegates has a conflict of interest.

53. At [50] the Court of Appeal said that her Honour's formulation of the essential aspects of procedural fairness, with which they agreed, required a lack of conflict of interest on the part of the decision-maker, and an absence of pre-judgment. At [53] their Honours said "The appellant's legitimate expectation was simply that they would be persons who had no conflict of interest in the matter and had made no prejudgment of the matter."

Conflict of interest as it applied to the panel

54. Just as the content of procedural fairness is determined by the statutory context, so too is the content of what constitutes a reasonable apprehension of bias. In *Hot Holdings Pty Ltd v Creasy* (2002) 210 CLR 438 McHugh J said at 460:

> While the test for a reasonable apprehension of bias is the same for administrative and judicial decision-makers, its content may often be different. What is to be expected of a judge in judicial proceedings or a decision-maker in quasi-judicial proceedings will often be different from what is expected of a person making a purely administrative decision.

55. An examination of the statutory scheme in the Act – most relevantly a comparison of sections 29(12) and 84P(e) – reveals nothing to suggest that there ought to be any modification to the principles of apprehended bias, as they apply to the panel.

56. The decision whether or not to ask a court to make an order authorizing a council officer to destroy a dog lies with a prosecuting Council. If a Council were to ask a court to make such an order the court would be required to accord the dog's owner procedural fairness. Relevantly, the court would be expected to be free from bias (actual or apprehended) and there would be no suggestion that the content of that bias could or should in any way be modified or "watered down". There is nothing in the statutory scheme to suggest that the requirement for impartiality (or the absence of conflict of interest) should

differ between a decision made the court and a decision made by a panel concerning whether a dog should be destroyed.

57. Further, the requirement to be free of a conflict of interest is absolute. One is either free from a conflict of interest, or not. Neither the judgment of the trial judge nor that of the Court of Appeal explained how considerations of the statutory framework could operate to diminish the content of the requirement that there be no conflict of interest. Indeed, were it to be so, and if the panel members were free to exhibit a little "conflict of interest" then in fact the decision could not be described as one in which the dog owner received a "genuine hearing" at all.[51]

APPEAL GROUND 1

Ms Hughes was an accuser before the panel

58. It is submitted that the Court of Appeal erred in concluding that Ms Hughes was not an accuser before the panel[52] and that it did not apply the correct test in so determining. The Court of Appeal took too narrow a view of what it is meant by the term "accuser". Of course there were two separate hearings in relation to the dog Izzy. Ms Hughes played an active role in each of them.

59. In *Rendell v Release on Licence Board* (1987) 10 NSWLR 499 (CA) it was argued that an officer, Detective Sergeant Conwell, the nominee of the police, should not have participated in the Board's consideration of an application for early release, given that the officer had been closely associated with the prosecution of the applicant on the charge for which he was imprisoned. There was no evidence before the Court on the present attitude of the officer towards the applicant. Nevertheless, in obiter dicta, the Court (Kirby P, Priestley and Clarke JJA) said of the officer's involvement:[53]

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[51] In *Dickason* a conflict of interest was held to exist in relation to a non-statutory panel. See further the comments of Spigelman CJ at pp 511-2, paragraph [38] of *McGovern*, in which his Honour described various examples of conflict of interest as applying in the context of multi-member decision-making bodies that are not courts.

[52] See especially *Isbester v Knox City Council* [2014] VSCA 214 at [70], [75] and [79].

[53] *Rendell v Release on Licence Board* (1987) 10 NSWLR 499 at 507-8. See also *Stollery v Greyhound Racing Control Board* (1972) 128 CLR 509 where Gibbs J said at 507: "*The very presence of a person who has brought forward a complaint*

> The fact remains that the presence on the Board of one member so closely identified with the prosecution of the claimant on a charge of murder, at the very least gives some ground for arguing that an objective observer would reasonably apprehend bias.

60. *Rendell* demonstrates that once a person is identified as an accuser, that person will remain an accuser in all hearings arising out of the same incident.

61. The comments in *Rendell* referred to above were later endorsed in *Tuch v South Eastern Sydney and Illawarra Area Health Service* [2009] NSWSC 1207. *Tuch* involved a complaint made against the applicant by a Professor Ward. The issue was whether or not Professor Ward had exercised too much control over a Review Committee which was established to resolve the complaint.

62. In finding that Professor Ward had acted as both accuser and decision maker, Johnson J said about accusers at [194]:

> I accept the Plaintiff's submission that the *"accuser"* principle, emerging from cases such as *Stollery* and *Ong*, is not confined only to circumstances where the alleged "accuser" is a witness against the person. It applies to a person who in substance made the complaint leading to the establishment of an inquiry, in particular, where the person has formed the view that the complaint was made out: *Ong* at 134-135.

63. Johnson J said further at [203]:

> A reasonable observer may readily form the view that Professor Ward had an interest in the Review Committee vindicating the decision to suspend the Clinical Trial. In this context, the concept of *"accuser"* should be understood as Professor Ward having initiated action adverse to the Plaintiff, with the correctness of that action to be subject to assessment by the Review Committee. In these circumstances, it seems to me that Professor Ward may be accurately characterised as an *"accuser"* for the purpose of application of the *Stollery* and *Ong* principle. In the words of the Court in Hall v NSW Trotting Club Limited at 387E-F, Professor Ward was "*so directly and personally involved in the matters under consideration that the only reasonable inference is that [she] must have an interest in the outcome of the proceedings*".
>
> (emphasis added)

64. It is submitted that Ms Hughes did not cease to be an accuser simply because the Magistrates' Court proceeding had been determined by the Appellant's conviction. The fact that the Magistrates' Court hearing and panel hearing

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may, even unconsciously, inhibit the discussions and affect the deliberations of the other members of the Tribunal."

raised different issues[54] is not relevant to the question of whether or not Ms Hughes was an accuser before the panel (reasons at [71]). What is relevant is that the panel hearing and the Magistrates' Court hearing both arose out of the same incident (see *Tuch* and *Rendell*). They are inextricably linked.[55] The panel hearing could not have occurred without the Appellant first being convicted in court.

65. Therefore, the Court of Appeal erred in holding that Ms Hughes was not an accuser before the panel (reasons at [69], [70] and [79]) and that Ms Hughes' role as a decision maker on the panel did not constitute apprehended bias by way of a conflict of interest (reasons at [68], [69] and [74]).

APPEAL GROUND 2

66. In the alternative, it is submitted that Ms Hughes was an accuser before the panel because of her conduct subsequent to the Appellant's conviction in the Magistrates' Court. Ms Hughes prepared the letter to the Appellant which notified her of the panel hearing. She presented to, and read part of her notes of the Magistrates' Court hearing to the panel during the panel hearing.[56] She sought and obtained information from the Department of Human Services, Office of Housing, to the effect that the Department opposed the return of the Appellant's two dogs to her property. Accordingly, Ms Hughes is properly categorized as an accuser before the panel, being someone who initiated the panel process and led evidence before it. The Court of Appeal erred in not finding her to be an accuser before the panel.

APPEAL GROUND 3

67. The Appellant repeats the arguments made in paragraphs 64 and 65 hereof; refers to the test for apprehended bias by way of a conflict of interest as

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[54] Notwithstanding that the court has power to order that a council officer destroy a dog (section 29(12) of the Act).

[55] See Ms Hughes' evidence in cross-examination at T 201.21-31, T 202.1-11, T 202.25-30, T 219.17-21, T 280.24 – T 281.8, and in re-examination at T 287.20-29.

[56] See *R v West Coast Council; Ex Parte Strahan Motor Inn (A Firm) (1995) 4 Tas R 411* where Zeeman J observed at [37] that the relevant councillor made representations to the council opposing an application and that in doing so he moved from being an elected representative to being in effect a party to the application.

enunciated in *Dickason* and *Stollery*[57] and submits the Court of Appeal erred in finding that an objective observer[58] might not reasonably apprehend that the panel might not have brought an impartial mind to the resolution of the matter (being whether or not the dog Izzy should be destroyed). It is submitted that where a conflict of interest is established, as in this case, the reasonable apprehension follows almost as a matter of course.[59]

Part VII: Legislation – Legislative Provisions are Attached to the Appellants' Submissions

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68. *Domestic Animals Act 1994* (Vic) version 61, being in effect as at 30 September 2013. Sections 1, 3(1) (definition of "laceration" and "serious injury"), 10, 17, 29, 34, 78, 84M, 84O, 84P, 98 (see attachment).
69. Those provisions are still in force, in that form, at the date of making the submissions.

Part VIII: Orders sought

70. The Appellants seek orders that:

20 (1) That the appeal be allowed, with costs.

(2) That the orders of the Court of Appeal be set aside and that in lieu thereof it be ordered that the appeal to that court be allowed with costs and that the decision and orders of the trial judge made on 17 June 2014 be set aside.

(3) An order pursuant to Order 56 of the Supreme Court (General Civil Procedure) Rules 2005, quashing the decision of the Respondent made on 15 October 2013, and prohibiting the Respondent from acting upon its decision to destroy the Appellant's dog "Izzy" pursuant to the power given by s 84P of

30 the *Domestic Animals Act 1994* (Vic).

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[57] And the principles applied in, inter alia, *The Optical Board*, *Manion v Rankin* (1918) 14 Tas LR 76 at 78-9.

[58] As to what is required of the "objective observer", see *Webb v R* (1994) 181 CLR 41 per Dean J at 73 and *Johnson v Johnson* (2000) 201 CLR 488 per Kirby J at 506.

[59] See also *R v The Optical Board of Registration; Ex parte Qurban* [1933] SASR 1.

(4) An order that the Respondent pay the Appellant's costs of the Application made by the Appellant by way of Originating Motion dated 20 November 2013.

Part IX: Time Allowance

71. The Appellants seek 1.5 hours for the presentation of oral argument.

Dated: 10 March 2015

10 .....

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IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY No. M106 of 2014

BETWEEN:

TANIA ISBESTER
Appellant

and

KNOX CITY COUNCIL
Respondent

ATTACHMENT TO THE APPELLANT'S SUBMISSIONS

LEGISLATIVE PROVISIONS

1. *Domestic Animals Act 1994* (Vic) version 61, being in effect as at 30 September 2013. Sections 1, 3(1) (definition of "laceration" and "serious injury"), 10, 17, 29, 34, 78, 84M, 84O, 84P, 98 (see attachment).
2. Those provisions are still in force, in that form, at the date of making the submissions.

1 Purpose

The purpose of this Act is to promote animal welfare, the responsible ownership of dogs and cats and the protection of the environment by providing for—

(a) a scheme to protect the community and the environment from feral and nuisance dogs and cats; and

(b) a registration and identification scheme for dogs and cats which recognises and promotes responsible ownership; and

(c) the identification and control of dangerous dogs, menacing dogs and restricted breed dogs; and

(d) a registration scheme for domestic animal businesses which promotes the maintenance of standards of those businesses; and

(e) matters related to the boarding of dogs and cats; and

(ea) the regulation of the permanent identification of dogs, cats, horses and other animals; and

(f) payments to the Treasurer from fees received by Councils under this Act; and

(g) other related matters.

3 Definitions

(1) In this Act—

laceration means a wound caused by—

(a) the tearing of body tissue; or

(b) multiple punctures caused by more than one bite from a dog;

serious injury means—

(a) an injury requiring medical or veterinary attention in the nature of—

(i) a broken bone; or

(ii) a laceration; or

(iii) a partial or total loss of sensation or function in a part of the body; or

(b) an injury requiring cosmetic surgery;

10 Requirement to apply for registration

(1) The owner of a dog or cat must apply to register that dog or cat with the Council of the municipal district in which the dog or cat is kept, if the animal is over 3 months old.

Penalty: 20 penalty unit

(2) The owner of a dog or cat which is registered must apply for renewal of the registration of that dog or cat with the Council of the municipal district in which the dog or cat is kept, before the expiration of the current registration.

Penalty: 20 penalty units.

(3) If a person is making an application under subsection (1) in relation to a dog, that person must include with the application a declaration as to whether or not the dog in respect of which the application is made is a restricted breed dog.

Penalty: 10 penalty units.

(4) This section does not apply in relation to a dog or cat that is being kept at an animal shelter or Council pound that is a domestic animal business conducted on premises that are registered under section 47.

17 Registration of dangerous and restricted breed dogs

(1) A Council may register or renew the registration of a dangerous dog and may impose conditions upon the registration of that dog.

(1AA) Subject to subsection (1A), a Council must not register a restricted breed dog.

(1A) A Council may register a dog as a restricted breed dog if—

(a) the dog was in Victoria immediately before the commencement of the **Domestic Animals Amendment (Dangerous Dogs) Act 2010**; and

(b) the dog was registered in Victoria immediately before the commencement of the **Domestic Animals Amendment (Restricted Breeds) Act 2011**.

Note

Under sections 10A(4) and 10C(6), a Council cannot register a restricted breed dog unless the dog is desexed (subject to the exception under section 10B(1)(e)) and the dog has been implanted with a prescribed permanent identification device.

(1B) A Council may renew the registration of a restricted breed dog.

(1C) A Council may impose conditions on the registration or the renewal of the registration of a dog under subsection (1A) or (1B).

(2) If the Council proposes to exercise a discretion not to register or renew the registration of a dangerous dog or a restricted breed dog that is able to be registered or have its registration renewed by the Council under this Act, the Council must—

(a) notify the owner; and

(b) allow the owner the opportunity to make both written and oral submissions to the Council.

(3) The Council must consider any submission to it before making its decision.

(4) If the Council has decided not to register or renew the registration of a dangerous dog or a restricted breed dog, it must serve written notice of that decision on the owner.

(5) The notice must—

(a) be served within 7 days of the making of the decision; and

(b) give reasons for the decision.

29 Offences and liability relating to dog attacks

(1) If a dangerous dog, that is not a guard dog guarding non-residential premises, or a restricted breed dog attacks or bites any person or animal, the person in apparent control of the dog at the time of the attack or biting, whether or not the owner of the dog, is guilty of an

offence and liable to a term of imprisonment not exceeding 6 months or to a fine not exceeding 120 penalty units.

(2) If a dangerous dog, that is not a guard dog guarding non-residential premises, or a restricted breed dog attacks or bites any person or animal, the owner of the dog, if not liable for the offence under subsection (1), is guilty of an offence and liable to a term of imprisonment not exceeding 6 months or to a fine not exceeding 120 penalty units.

(3) If a dog that is not a dangerous dog or a restricted breed dog, attacks or bites any person or animal and causes death or a serious injury to the person or animal, the person in apparent control of the dog at the time of the attack or biting, whether or not the owner of the dog, is guilty of an offence and liable to a penalty not exceeding 40 penalty units.

(4) If a dog that is not a dangerous dog or a restricted breed dog, attacks or bites any person or animal and causes death or a serious injury to the person or animal, the owner of the dog, if not liable for the offence under subsection (3), is guilty of an offence and liable to a penalty not exceeding 40 penalty units.

(5) If a dog that is not a dangerous dog or a restricted breed dog, attacks or bites any person or animal and the injuries caused by the dog to the person or animal are not in the nature of a serious injury, the person in apparent control of the dog at the time of the attack or biting, whether or not the owner of the dog, is guilty of an offence and liable to a penalty not exceeding 10 penalty units.

(6) If a dog that is not a dangerous dog or a restricted breed dog, attacks or bites any person or animal and the injuries caused by the dog to the person or animal are not in the nature of a serious injury, the owner of the dog, if not liable for the offence under subsection (5), is guilty of an offence and liable to a penalty not exceeding 10 penalty units.

(7) If a dog rushes at or chases any person, the person in apparent control of the dog at the time the dog rushed at or chased the first-mentioned person, whether or not the owner of the dog, is guilty of an offence and liable to a penalty of not more than 4 penalty units.

(8) If a dog rushes at or chases any person, the owner of the dog, if not liable for the offence under subsection (7), is guilty of an offence and liable to a penalty of not more than 4 penalty units.

(9) In any proceeding for an offence under this section, it is a defence to that offence if the incident occurred because—

(a) the dog was being teased, abused or assaulted; or

(b) a person was trespassing on the premises on which the dog was kept; or

(c) another animal was on the premises on which the dog was kept; or

(d) a person known to the dog was being attacked in front of the dog.

(10) In any proceeding for an offence under subsection (3), (4), (5), (6), (7) or (8), it is a defence to that offence if the incident occurred as part of a hunt in which the dog was taking part and which was conducted in accordance with the **Prevention of Cruelty to Animals Act 1986**.

(11) If a person is found guilty of an offence under this section with respect to a dog the court may, in addition to any other order made by the court, order that the person pay compensation for any damage caused by the conduct of the dog.

(12) If a person is found guilty of an offence under this section with respect to a dog, the court may order that the dog be destroyed by an authorised officer of the Council of the municipal district in which the offence occurred.

34 Council may declare a dog to be dangerous

(1) A Council may declare a dog to be a dangerous dog—

(a) if the dog has caused the death of or serious injury to a person or animal by biting or attacking that person or animal; or

(b) if the dog is a menacing dog and its owner has received at least 2 infringement notices in respect of the offence in section 41E; or

(c) if the dog has been declared a dangerous dog under a law of another State or a Territory of the Commonwealth that corresponds with this Division; or

(ca) if there has been a finding of guilt or the serving of an infringement notice (which has not been withdrawn and the penalty has been paid under the **Infringements Act 2006**) in respect of 2 or more offences under section 29(5), (6), (7) or (8) in respect of the dog; or

(d) for any other reason prescribed.

(2) The Council must not make a declaration under subsection (1)(a) if the incident occurred—

(a) because the dog was being teased, abused or assaulted; or

(b) in the case of injury to a person, because the person was trespassing on the premises on which the dog was kept; or

(c) in the case of injury to another animal, because the animal was on the premises on which the dog was kept; or

(d) because another person known to the dog was being attacked in front of the dog; or

(e) as part of a hunt in which the dog was taking part and which was conducted in accordance with the **Prevention of Cruelty to Animals Act 1986**.

* * * * *

(4) A declaration under this section—

(a) has effect throughout Victoria; and

(b) cannot be revoked, amended or otherwise altered.

78 Seizure of dangerous dogs

(1) An authorised officer of a Council may seize a dangerous dog that is in the municipal district of that Council if the dog is able to be registered or have its registration renewed by the Council under this Act and if—

(a) the Council has made a decision to refuse to register or renew the registration of the dog; and

(b) any review of that decision has affirmed the decision or the owner has not applied for a review of that decision within the time fixed for review under section 98(2A).

(2) An authorised officer of a Council may seize a dog that is in the municipal district of that Council if the dog is a dangerous dog and—

(a) the owner has been found guilty of an offence under Division 3 of Part 3 with respect to that dog; or

(b) the authorised officer reasonably suspects that the owner has committed an offence under Division 3 of Part 3 with respect to that dog.

84O Power to sell or destroy dogs or cats seized under this Part

(1) The Council or person or body holding a cat seized under this Part may destroy the cat as soon as possible after its seizure if—

(a) the cat does not bear an identification marker or a permanent identification device; and

(b) the cat is wild, uncontrollable or diseased.

(2) If the owner of a dangerous dog or a restricted breed dog seized under this Part is entitled to recover the dog under Division 5 and does not recover the dog in accordance with that Division within the period provided for recovery, the Council or person or body retaining custody of the dog must destroy the dog as soon as possible after the expiry of that period.

(3) If the owner of a dog or cat (other than a dangerous dog or a restricted breed dog) seized under this Part is entitled to recover the animal under Division 5 and does not recover the animal in accordance with that Division within the period provided for recovery, the Council or person or body retaining custody of the animal must sell or destroy the animal as soon as possible after the expiry of that

period in accordance with any relevant Code of Practice made under section 59.

(4) An authorised officer may destroy a dog or cat seized under this Part if a veterinary practitioner has certified that the dog or cat—

(a) should be immediately destroyed on humane grounds; or

(b) is diseased or infected with disease.

84P Further power to destroy dogs

The Council may destroy a dog which has been seized under this Part at any time after its seizure if—

(a) the dog is a dangerous dog or a restricted breed dog that is able to be registered or have its registration renewed under this Act and if—

(i) the Council has made a decision to refuse to register or renew the registration of the dog; and

(ii) a review of that decision has affirmed the decision or the owner has not applied for a review of that decision within the time fixed for review under section 98(2A); or

(b) the dog is a restricted breed dog—

(i) that is not able to be registered or have its registration renewed by the Council under this Act; and

(ii) if the dog was seized by an authorised officer in the reasonable belief that it was a restricted breed dog, the provisions of this Part have been complied with; or

(c) the dog is a dangerous dog whose owner has been found guilty of an offence under Division 3 of Part 3 with respect to that dog; or

(d) the dog is a restricted breed dog whose owner has been found guilty of an offence under Division 3B of Part 3 with respect to that dog; or

(e) the dog's owner has been found guilty of an offence under section 28, 28A or 29 with respect to the dog; or

(f) a person other than the dog's owner has been found guilty of an offence under section 29 with respect to the dog.

98 Review of decisions by Victorian Civil and Administrative Tribunal

(1) The proprietor of a domestic animal business conducted on a premises registered under Part 4 or a person applying for registration of premises under Part 4 to conduct a domestic animal business may apply to the Victorian Civil and Administrative Tribunal for review of a decision by the Council—

(a) to refuse to register or to renew the registration of a premises; or

(b) to refuse to transfer registration to a new premises; or

(c) to suspend the registration of a premises; or

(d) to impose terms, conditions, limitations or restrictions on the registration of a premises; or

(e) to revoke the registration of a premises.

(1A) A Council conducting a domestic animal business on a premises registered under Part 4 or a Council applying for registration of premises under Part 4 to conduct a domestic animal business may apply to the Victorian Civil and Administrative Tribunal for review of a decision by the Minister—

(a) to refuse to register or to renew the registration of a premises; or

(b) to refuse to transfer registration to a new premises; or

(c) to suspend the registration of a premises; or

(d) to impose terms, conditions, limitations or restrictions on the registration of a premises; or

(e) to revoke the registration of a premises.

(2) The owner of a dog may apply to the Victorian Civil and Administrative Tribunal for review of a decision by the Council—

(a) to declare the dog to be dangerous under section 34; or

(aa) to declare the dog to be a menacing dog; or

(b) if the dog is a dangerous dog or a restricted breed dog that is not prohibited from being registered or having its registration renewed by the Council under section 10A(4), 10C(6) or 17(1AA), to refuse to register or renew the registration of the dog.

(2AA) The owner of a dog may apply to the Victorian Civil and Administrative Tribunal for review of a decision by an authorised officer under section 98A to declare the dog a restricted breed dog

(2A) An application for review under subsection (1), (2) or (2AA) must be made within 28 days after the later of—

(a) the day on which the decision is made;

(b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the applicant requests a statement of reasons for the decision, the day on which the statement of reasons is given to the applicant or the applicant is informed under section 46(5) of that Act that a statement of reasons will not be given.

(2B) For the purposes of subsection (2A), a decision referred to in subsection (2AA) is taken to be made when the notice of the declaration is served on the owner of the dog.

(3) A decision made under this Act by a Council or an authorised officer which is subject to review by the Victorian Civil and Administrative Tribunal takes effect—

(a) if an application for a review of the decision is not made, at the end of the period within which such an application could have been made; or

(b) if such an application is made, in accordance with the determination of the Tribunal.

(4) If the decision which is subject to review is a refusal by the Council to renew registration of a premises on which a domestic animal business is being conducted, the registration of that premises continues—

(a) if an application for review of the decision is not made, until the end of the period within which that application could have been made; or

(b) if an application is made, in accordance with the determination of the Tribunal.