



**CORONERS COURT
OF NEW SOUTH WALES**

Inquest:	Inquest into the death of Mrs Ada Holland
Hearing dates:	3-6 July 2023
Date of final submissions by the parties:	20 May 2024
Date of findings:	14 June 2024
Place of findings:	Coroners Court of NSW, Lidcombe
Findings of:	Deputy State Coroner Carmel Forbes
File number:	2020/97395
Catchwords	CORONIAL LAW - Dog attack on Collingwood Beach, Vincentia, NSW
Representation:	Dr D Kell SC with Mr C McGorey, Counsel Assisting, instructed by Ms Y Edgell and Ms R Campbell, NSW Crown Solicitor's Office Mr T Glover, for Shoalhaven City Council, instructed by Ms E Hourigan, Maddocks Mr M Nott, Solicitor, instructed by Ms G Holland, family Mr B Holland and C Woods, family Mr J Holland, family

	<p>Mr G Gleeson, solicitor, Office of Local Government, Department of Planning, Industry and Environment</p>
Findings:	<p>Identity</p> <p>The person who died was Ada Holland</p> <p>Date of death</p> <p>Mrs Holland died on 29 March 2020</p> <p>Place of death</p> <p>Mrs Holland died on Collingwood Beach, Vincentia NSW</p> <p>Cause of death</p> <p>Mrs Holland died as a result of fatal injuries she received when she was attacked by three dogs on a public beach.</p> <p>Manner of Death</p> <p>Mrs Holland died from injuries inflicted by dogs in a sustained attack on 29 March 2020. The attack occurred in a public place and was unprovoked. The attack occurred after the dogs left their owners' residence unaccompanied. A week earlier, on 22 March 2020, the same dogs had been reported to the Shoalhaven City Council after they left their owners' premises unaccompanied and one of them attacked a person without provocation.</p>
Recommendations:	<p>To the :</p> <p>Chief Executive Officer, Shoalhaven City Council</p> <ol style="list-style-type: none">1. The Council review its procedures, and the training provided to rangers, for responding to reports or suspected cases of dogs leaving their yard and or being

involved in an attack, to ensure that rangers whenever reasonably able to:

- a. Inspect a property's fencing to independently evaluate its adequacy, with specific regard given to whether the power to seize the dog(s) is reasonably enlivened (*Companion Animals Act 1998* (NSW) (**CA Act**), ss 18 and 36) and if so, whether that power should be exercised (even on a temporary basis pending improvements being made to the property).
- b. Inspect any changes made to the yard's fencing to independently evaluate improvements made to ensure that a dog(s) cannot leave the yard unaccompanied.
- c. Inquire with nearby residents to check if persons living near to the dog(s) report anything relevantly of concern regarding the dog(s) and or dog owner(s).
- d. Consider the known history of compliance with the regulatory regime under *the CA Act* and the *Companion Animal Act Regulation 2008* (NSW) (**Regulation**) and what that may indicate as to the likelihood an owner will implement measures to adequately secure his or her dog(s) and prevent future attacks.
- e. Ensure a specific record is made in the Council's electronic records for a particular owner – which is readily available to be

searched by council rangers and officers by reference to that person's name – of known or suspected instances of the owner having provided false, incorrect or misleading information to council rangers or officers about dogs owned by the person or under their control.

2. The Council develop guidelines and training regarding what matters might properly inform a ranger's evaluation of an owner's "competency" to effectively control and secure a dog(s) for the purposes of the *CA Act*.

To the Office of Local Government

3. To the extent not already done, the Office of Local Government (**OLG**) develop a standardised training package for council rangers, employed with councils in New South Wales, that are expected to respond to reports or suspected cases of dog escapes and/or attacks on persons or other dogs. This would extend to training and guiding rangers in:
 - a. The assessment of a dog's risk of future attack, including by reference to the known or suspected breed or type, the number and type of dogs at a premises, and any queries that may relate to this assessment (potentially involving scenario training using Ms Holland's case as an example).

	<ul style="list-style-type: none"><ul style="list-style-type: none">b. The assessment of a dog owners' competence to adequately secure and control a dog(s) under their control.c. The preconditions, and factors relevant to exercising, statutory powers of seizure and to issue notices to declare under the <i>CA Act</i>.4. The OLG examine the possibility of the enactment of a statutory limitation on the number of dogs, of the same breed or mixed breed or type (e.g. Staffordshire Bull Terriers), that can ordinarily reside at a specific premises or be under the control of owners living or accessing those premises.5. The OLG examine the appropriateness of the statutory thresholds and framing of the provisions in the <i>CA Act</i> for the issuance of notices to declare a menacing or dangerous dog. This extends to:<ul style="list-style-type: none">a. Ensuring greater clarity as to whether the dangerous dog threshold requires, in the case of an attack on a person, the occasioning of serious injury. (<i>s 33 and s 33 A CA Act</i>)b. Examining the sufficiency of the enclosure and control obligations enlivened upon a dog being declared menacing.6. The OLG review the adequacy of the statutory provisions in the <i>CA Act</i> and the Regulation concerning:
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- a. The maximum penalty for non-compliance with registration and identification/ microchipping requirements (including in the case of repeated non-compliance).
- b. The maximum penalties for an owner of a dog who does not take all reasonable precautions to prevent a dog escaping the property on which it is being kept.
- c. The maximum penalties for an offence of a dog rushing, attacking, biting, harassing, or chasing any person or animal when the dog is not a dangerous, menacing, or restricted dog (*CA Act, s 16*), including consideration of introducing an increased maximum penalty in cases where a person suffers a serious injury or death as a result of a dog rushing, attacking or biting the person.
- d. The maximum period of disqualification in the event of a contravention of s 16, particularly in cases that involve serious injury or death.
- e. the desirability of including in the *CA Act* an additional stand-alone offence of a dog attack causing serious harm or death to a person.

7. The OLG, in consultation with local government councils in New South Wales, consider implementing a public

	awareness campaign emphasising the dangers posed by specific breeds and types of dogs.
Non-Publication Orders:	Orders for non-publication have been made in this inquest. The Orders may be found on the Registry file.

INTRODUCTION

1. This is an inquest into the tragic death of Mrs Ada Zara “Sally” Holland.
2. On Sunday 29 March 2020, at about 6:55am, three dogs of mixed breed, that each included Staffordshire Bull Terrier, belonging to Candice Bernhard and Adam Newbold, left their residence at 19 Berry Street, Vincentia (the Premises) unaccompanied.
3. The three dogs made their way to nearby Collingwood Beach, Vincentia. Collingwood Beach is a dog free beach. Firstly, they began to attack a 79-year-old woman, Carole Evans. The dogs then attacked their owner, Candice Bernhard, who had arrived at the beach and unsuccessfully attempted to bring them home.
4. They then set upon Mrs Holland who was 90 years of age. Mrs Holland suffered extreme injuries from the sustained and brutal attack and went into cardiac arrest. Despite the efforts of emergency paramedics, Mrs Holland could not be resuscitated and was pronounced deceased.
5. The three dogs also attacked Mrs Holland’s daughter, Gloria Holland, and then another man.
6. Carole Evans and Gloria Holland were both seriously injured by the dog attacks and were admitted to hospital for treatment. Gloria Holland received 48 stitches and Carole Evans received 120 stitches. They were both severely traumatised by what occurred.
7. The ferocity of the attacks on multiple persons, culminating in the death of one of them, is shocking. This tragedy highlights the magnitude of injury that dogs can inflict. That is especially so when a dog is powerfully built, and the attack involves multiple dogs.
8. The role of a coroner, as set out in s 81 of the *Coroners Act NSW 2009* (**the Act**) is to make findings as to the:
 - a. identity of the deceased.
 - b. the date and place of their death.
 - c. the physical or medical cause of their death.

- d. the manner of their death, in other words, the circumstances surrounding the death.
9. This inquest is a public examination of the circumstances surrounding the dog attacks. A thorough and detailed account has been provided during the inquest with a particular view as to whether there are any lessons that could be learned to try and prevent a similar situation occurring again. Section 82 of the Act empowers this Court to make recommendations as are considered desirable in relation to any matter connected to the death.
10. Mrs Holland's inquest has considered the issues and possible recommendations that specifically relate to the circumstances surrounding her death.
11. Inquests commenced on 19 February 2024 into other recent deaths by dog attack. The circumstances in relation to Mrs Holland's death will form part of the evidence in those inquests, which will consider broader issues that relate more generally to dog attack deaths.
12. It is important that all steps that might mitigate the risk of a dog attack, are carefully and seriously considered with a view to learning from the past and hopefully reducing the number of attacks in the future.

Ms Ada Holland

13. Mrs Holland was born on 5 October 1929 in Yenda, New South Wales. She was affectionately known as Sally to her family and friends.
14. Mrs Holland met her husband in high school. After they married in 1946, and after the birth of their first child Gloria, they moved to Port Kembla where they lived for the next 20 years. Three more children, Carolyn, John, and Bruce quickly followed. They were a team for 65 years and shared a love of music and dancing and were often seen dancing around the house.
15. Mrs Holland taught sewing at two primary schools and was an avid dressmaker, making all her own ball gowns and the children's school uniforms.

16. In 1989 she designed a house in Vincentia and subsequently moved to Jervis Bay.
17. Volunteering was a major part of her life. She was a founding member of the Jervis Bay Day branch of the Country Women's Association: she was also instrumental in the formation of the Jervis Bay Evening branch. During 1990 she became involved in Meals on Wheels and Probus. She was a 'Telecross' caller for Red Cross for 20 years, making phone calls to people who felt isolated in their homes. She was also a member of the Huskisson Community Hall Committee for over 20 years, being their President for a number of years and at the time of her death.
18. In 2013, Mrs Holland was a member of the team who helped Collingwood Beach achieve Best Clean Beach in New South Wales, by being a volunteer rubbish collector all the years of her walking and swimming.
19. In both 2008 and 2014, Mrs Holland was a nominee for Shoalhaven's Citizen of the Year awards.
20. One activity Mrs Holland really enjoyed was her early morning walks on Collingwood Beach, followed by a swim. She was among a group of about 10-12, women with a couple of males, who called themselves the 'Collingwood Cougars' because they were all over 50. They swam there all year round.
21. Her children and friends have been severely traumatised and are left bereft by her unnecessary and savage death.

FACTS

22. Counsel Assisting helpfully set out the following facts that relate to the circumstances surrounding Mrs Holland's death.

The Dogs

23. As of 22 to 29 March 2020, Adam Newbold and Candice Bernhard owned:¹

¹ Photographs of the dogs are in Ex 1 Vol 3 Tab 82, being photographs taken by a council ranger who attended at 19 Berry Street on Sunday, 22 March 2020. Also Ex 1 Vol 1 Tab 23, being photographs taken by David Ward (husband of Bettina St John) earlier that same day.

- a. A black/brown brindle male dog named “*Brocky*” aged about 7 years. It weighed about 25 to 30 kgs and was about 60 cm tall to its shoulders.
 - b. A brown brindle female dog named “*Letty*” aged about 3 years. It weighed about 25 kgs and was about 50 cm tall to its shoulders.
 - c. A white female dog with brown markings named “*Calais*” aged about 18 months. It weighed about 25 kgs and was about 50 cm tall to its shoulders.
 - d. A grey/back male dog pup named “*Buster*” aged about 6 months. It was smaller in size than the other three dogs.
24. The first three dogs, but not the fourth dog, were involved in the attack on 29 March 2020.
25. From as early as 2014, Ms Bernhard and Mr Newbold owned Bullmastiff/Staffordshire cross dogs. By March 2020, dogs they owned had produced at least four litters. *Brocky* and *Letty* were the parents of *Calais* (who was one of 13 pups in a litter) and *Buster* (who was one of 6 pups in a litter). Ms Bernhard gave evidence that she gave away most of the pups to friends, persons known to her friends, or through posts via Facebook.
26. The three dogs involved in the attacks on 29 March 2020 have been variously described as a mixed breed:

Witness	Description
Candice Bernhard	She identified the dogs as “ <i>Bull Mastiff, Bull Arab Staffy</i> ” crosses. ²
Shoalhaven City Council (Council) Ranger Suzanne Hislop	She attended on Ms Bernhard on 31 August 2019 and recorded <i>Brocky’s</i> breed as “ <i>Staffordshire-cross</i> ” (which she believes she based on the identification given by Ms Bernhard).

² Ex 1 Vol 2 p 26.

Council Ranger Nicholas Kilminster ³	He attended on the dogs on 22 March 2020. He described <i>Brocky</i> (older male) to be a “ <i>bull mastiff cross breed with a number of other breeds</i> ”.
Council	Following the attack, Council Rangers identified the three dogs involved as “ <i>Staffy cross breeds</i> ”. ⁴

27. Paul McGreevy, Professor of Animal Behaviour and Welfare at the University of New England, provided an opinion as to the breed of the dogs involved in the attack.⁵ He did so, by reference to photographs and documents from the brief of evidence with which he was provided. In his view, the three dogs could have been Staffordshire Bull Terrier crosses. Professor McGreevy agreed with the view of Dr Anthony Bennett that the dogs were a mixture of multiple dog breeds which included Staffordshire Bull Terrier, although the specific breed composition cannot be ascertained. Their breed, or breed mixture, did not fall within the definition of “restricted dog” in s 55(1) of the *Companion Animals Act 1998* (NSW) (*CA Act*).⁶
28. Whatever their breed composition, the dogs were capable of inflicting significant injury as evidenced by the severe injuries occasioned to Mrs Holland, as well as to Carole Evans and Gloria Holland, on 29 March 2020.

Regulatory Regime

29. The regulatory regime for dog ownership in New South Wales is comprised of the *CA Act* and the *Companion Animals Regulation 2018* (NSW) (*Regulation*).

³ Ex 1 Vol 3 p 31.

⁴ Ex 1 Vol 3 p 69.

⁵ Ex 1 Vol 4 Tab 129.

⁶ Dogs falling within that definition attract the most severe restrictions under the *CA Act*. *Restricted dogs* are American Pitbull terrier or Pitbull terrier, Japanese toas, dogo Argentino (Argentinian fighting dog), fila Brasileiro (Brazilian fighting dog), any other dog or breed whose importation into Australia is prohibited under the *Customs Act 1901* (Cth), any dog declared to be restricted under Division 6 of the *CA Act*, and any other dog of a breed, kind or description prescribed by the *Regulation* for that purpose.

30. The Minister for Local Government is responsible for the *CA Act*. The regulatory regime confers powers and responsibilities on the Chief Executive of the Office of Local Government (OLG) and local government councils. The regime's enforcement principally falls to the respective local government councils within their Local Government Areas (LGA).
31. The regulatory regime creates statutory obligations with respect to the ownership and control of animals including dogs. For example, by s 12A(1) of the *CA Act*, a dog owner must take all reasonable precautions to prevent the dog escaping from the property on which it is being kept.⁷ The maximum penalty provided is 8 penalty units or, in the case of a "*dangerous*", "*menacing*", or "*restricted dog*" (as defined), 50 penalty units. The maximum penalty with respect to the three dogs involved in the attack on Mrs Holland was 8 penalty units as none had been declared dangerous, menacing or restricted.
32. The regulatory regime also provides for the creation and operation of the Register of Companion Animals (Register) which is operated by the OLG.⁸ Owners must ensure that a dog, from the time it is 12 weeks old, is "*identified*".⁹ The dog is to be identified by a microchip.¹⁰ That microchip has a unique number and information is recorded by reference to that number as to the dog's breed and ownership. The *CA Act* provides a modest criminal sanction for non-compliance with the requirement for a dog to be identified.¹¹
33. Owners must also ensure that a dog is registered: s 9(1). The information recorded for a dog is to include its breed: s 80(1)(g). The Council may issue to the owner a notice requiring the owner to register the dog within 14 days: s 10B (1). The owner must comply

⁷ For the purposes of s 12A, an "*owner*" includes a person who for the time being is in charge of the dog: s 12A(2). By s 12(1A), the regulations may, for the purposes of s 12A, specify what constitutes or does not constitute reasonable precautions to prevent a dog from escaping. It appears the Regulation does not specify such precautions.

⁸ Established by Part 9 of the *CA Act*.

⁹ *CA Act*, s 8(1).

¹⁰ *CA Regulation*, cl 5.

¹¹ *CA Act*, s 8(3) 8 penalty units or, in the case of a dangerous, menacing, or restricted dog, 50 penalty units.

with the notice. Failure to comply may result in the imposition of a fine (no imprisonment).¹²

34. As of March 2020, none of the dogs owned by Mr Newbold and Ms Bernhard were registered under the *CA Act*. Only the older female dog, *Letty*, was microchipped. In addition, none of the pups from the litters to which *Calais* and *Buster* belonged were registered or microchipped by Ms Bernhard or Mr Newbold before they were given away. It is not known whether the dogs given away were ever registered and microchipped by their subsequent owners.
35. Mr Newbold and Ms Bernhard had lived within the Council’s LGA since at least 2014. Before 22 March 2020, the Council had acted against them for non-compliance with regulatory requirements concerning their ownership of dogs. That action included:¹³

Sept 2014	The Council issued final notices to Ms Bernhard for the non-registration of two dogs (referred to in the notice as “ <i>Bullmastiffs</i> ” named <i>Narla</i> and <i>Lola</i>).
Jun 2015	<p>The Council issued a penalty notice to Ms Bernhard for failure to provide veterinarian treatment to an animal in her charge.¹⁴</p> <p>This notice was issued after Ms Bernhard surrendered a 10-week-old dog, identified as a male “<i>Bullarab</i>”, to an overnight kennel in March 2015. The animal was described to be emaciated, unable to stand and infested with fleas and intestinal worms. It was euthanised owing to its condition.</p> <p>Ms Bernhard gave evidence at the Inquest to the effect she believed the dog had failed to thrive after birth because of a congenital heart condition. She told the Court that she could not afford the cost of</p>

¹² *CA Act*, s 10B. A maximum fine of 50 penalty units for a first offence and 60 penalty units for a second or subsequent offence. In the case of a dangerous, menacing, or restricted dog, the maximum fine is 60 penalty units for a first offence and 70 penalty units for a second or subsequent offence.

¹³ Ex 1 Vol 1 Tab 9

¹⁴ Ex 1 Vol 3 p 96.

	taking the dog to a vet for treatment. The penalty notice was issued because she should have presented the animal for treatment at an earlier stage.
2 April 2015	A Council ranger attended on Ms Bernhard and Mr Newbold's then residence and issued two penalty notices to Mr Newbold for failing to register two Bull Mastiff dogs (not the dogs involved in the events of 22 and 29 March 2020).
7 Feb 2018	A Council reminder letter was issued to Ms Bernhard stating that she had to register her dog, <i>Letty</i> , and had 14 days to comply. ¹⁵
19 Mar 2018	A Council penalty notice was issued to Ms Bernhard for " <i>not comply with notice to register companion animal</i> " for her dog (<i>Letty</i>).
31 Aug 2019	Council Ranger Suzanne Hislop attended Ms Bernhard and Mr Newbold's then residence (141 Frederick St, Sanctuary Point). This followed the Council's receipt of a complaint that three dogs were being kept at the premises in a very poor condition. Ranger Hislop spoke to Ms Bernhard and ascertained there were three unregistered dogs at the premises (<i>Brocky, Letty and Calais</i>). Ms Bernhard advised that they were moving that week to a new residence, namely 19 Berry St, Vincentia.
4 Sep 2019	The Council issued a notice to comply letter to Ms Bernhard stating that she had 14 days to have the three dogs registered.
13 Jan 2020	The Council issued a penalty notice to Ms Bernhard at 19 Berry St, Vincentia for a second offence of failing to register her dog <i>Letty</i> . No action was taken in relation to the other two unregistered dogs.

¹⁵ Ex 1 Vol 9 p 45.

36. Ms Bernhard did not dispute receiving the non-compliance notices in 2018. At the Inquest, Ms Bernhard gave evidence that in 2018, before their move to the Premises, herself and Mr Newbold were in a “*bad state*” and using drugs. Ms Bernhard did not dispute the dogs were in poor condition as of August 2019. She said this was related to difficulties she and Mr Newbold were experiencing at the time.
37. With respect to Ranger Hislop’s attendance at Ms Bernhard’s then residence on 31 August 2019, Ranger Hislop recorded being told by Ms Bernhard that the dog *Calais* was microchipped, but the dogs were otherwise unregistered and not microchipped.¹⁶ In evidence at the Inquest, Ms Bernhard accepted that she mistakenly told Ms Hislop that *Calais* was microchipped when *Letty* was the only dog that was microchipped.
38. Ranger Hislop subsequently determined from records that the dog *Calais* was not microchipped, and that the information Ms Bernhard had verbally provided about this was incorrect. At the time, Ranger Hislop did not consider the provision of incorrect information by Ms Bernhard, about the status of one of her dogs, as significant. Ranger Hislop did not make a record in the Council’s electronic records system about the fact that Ms Bernhard had provided her with inaccurate information. This meant that Council rangers who subsequently came into contact with Ms Bernhard were not on notice of this fact.
39. In giving evidence at the Inquest, Ranger Hislop was asked about a scenario (akin to that which in fact occurred on 22 March 2020) in which a dog escapes an owner’s yard, and a responding ranger is faced with assessing the confidence he or she could have in an owner’s assurances that the dog would be securely confined in future. Ranger Hislop agreed that a prior occasion of the owner giving incorrect information to a ranger would be a relevant factor in that assessment.

¹⁶ Ex 1 vol 3 p 69.

Events between August 2019 and 22 March 2020

40. In about August to early September 2019, Ms Bernhard and Mr Newbold moved to the Premises, with their young children and three dogs. The pup *Buster* was born shortly after this move. In early 2020, Ms Bernhard gave birth to their third child.
41. The Premises is a bricked ground level house with an unfenced open front yard and a large, fenced rear yard. The front entrance to the house is on the western side of the premises. A roofed carport adjoins the house on its eastern side.
42. The residential lease permitted Ms Bernhard and Mr Newbold to have two dogs at the Premises. In about October 2019 their real estate agent learnt of the presence of the third dog at the property. On being advised of this, the landlord indicated an openness to trialling the third dog remaining at the Premises, however that arrangement was never formalised.¹⁷ Ms Bernhard and Mr Newbold did not disclose to the real estate agent their subsequent ownership of the fourth dog, *Buster*, who was born after they moved to the Premises.
43. Access between the front and rear yard of the Premises is blocked by fencing on the eastern and western side of the house.
44. As of August 2019, the eastern side fencing was a metal gate that ran along the rear side of the carport (closest to the backyard). The gate had thin metal vertical bars evenly spaced across it.
45. After moving to the Premises, Mr Newbold shifted the metal gate from the rear side to the front side of the carport. The gate's hinges were affixed to the carport's front pole closest to the neighbouring property side. The gate shut against a drainpipe fixed to the side of the house. At that position, the gate was fastened by a chain tightened around the pipe and the fence. This alteration was done with the approval of the real estate agent.
46. Subsequently, Mr Newbold affixed a bamboo screen and green shade cloth along the gate. This was principally to block the view from the front yard through the gate, but it

¹⁷ Ex 4 The real estate agent said that she was advised at the time by Ms Bernhard or Mr Newbold that they were looking after the third dog for a relative who was overseas.

was also intended to stop the dogs pushing out through the spaces between the thin metal vertical bars within the gate and through the space beneath the gate.

47. By 22 March 2020, the bamboo sheeting was brittle. Some parts of the sheeting that extended beneath the gate to the ground had broken away.
48. On 8 January 2020, Ms Bernhard and Mr Newbold were issued a notice of termination of their lease. The notice specified they had 90 days to vacate the Premises. This notice was issued after the real estate agent received complaints from nearby residents about the noise coming from the Premises. The noise complaints did not relate to the dogs but other noise. Further noise complaints were received in February and March 2020 relating to the use of gardening equipment and power tools.
49. After Mrs Holland's death, police obtained information from various persons living near the Premises. These persons described observations of unrestrained and unaccompanied dogs that matched the description of the dogs owned by Mr Newbold and Ms Bernhard and/or were seen coming from or going to the Premises. The accounts record instances of the dogs being unaccompanied and moving about in the street and other residences. This included the following reports of persons who resided near the Premises:

Witness	Description
JPH	On about 6 January 2020, JPH witnessed four dogs run out of yard of the Premises', across a neighboring front yard and then up Berry Street into Duncan Street. After Mr. Newbold was informed the dogs were out, JPH saw Mr. Newbold drive off in his car (presumably to look for the dogs) and Ms. Bernhard (then pregnant) walking up Berry Street to look for them. ¹⁸ During the time Mr. Newbold and Ms. Bernhard lived at the Premises, JPH noticed their dogs out of their yard on several occasions. This was usually the oldest female dog, which JPH saw out walking through people's yards.

¹⁸ Ex 1 Vol 2 Tab 36.

TF	<p>In about December 2019, TF saw a brown “<i>mastiff x staffy</i>”, which looked like it had recently had pups, standing in the Premises front yard next to the driveway. A few weeks later, TF saw a white “<i>skinny staffy</i>” out the front of the Premises and then walking off down the street.</p> <p>About two weeks later that same dog approached TF’s children in or near to TF’s front yard. The dog chased one of TF’s children and grabbed her skirt. TF used a hose to make it run away. About a week later, TF observed that same dog run towards TF and his children out the front of their house. Afterwards, TF observed the dog run into the front yard of the Premises.¹⁹</p>
RH	<p>About a month after Mr. Newbold and Ms. Bernhard moved into the Premises, RH saw a skinny dark female “<i>bulldog type dog</i>” (which looked like it had recently had pups) in RH’s front garden. RH watched the dog walk into the front yard of the Premises. RH saw that dog on other occasions in RH’s front yard.²⁰</p>

50. In addition to these reports, Mr David Ward (the husband of Bettina St John) gave evidence at the Inquest to the effect that, in about late February or early March 2020, he had seen three dogs (unaccompanied) running along the street towards the beach. He indicated these were the same three dogs that he observed (and photographed) on 22 March 2020 after one of them had attacked his wife, Ms St John.²¹
51. In her oral evidence at the Inquest, Ms Bernhard did not deny the possibility that the dogs had left the yard unaccompanied, unbeknownst to her and Mr Newbold, on multiple occasions between late 2019 and March 2020.
52. Ms Bernhard described significant personal difficulties she was experiencing in September 2019 to March 2020. She was caring for two young children with a third child

¹⁹ Ex 1 Vol 2 Tab 37.

²⁰ Ex 1 Vol 2 Tab 38.

²¹ Ex 1 Vol 2 Tab 32.

born in early 2020. There were difficulties in her relationship with Mr Newbold, which culminated in an apprehended violence order being issued against Mr Newbold for Ms Bernhard's protection in February 2020. The order prohibited Mr Newbold from residing at the Premises, although he could visit there under certain conditions.²² Ms Bernhard was not able to walk the dogs herself, and she depended on Mr Newbold to exercise the dogs away from the Premises. Mr Newbold was residing elsewhere, some distance away (approximately 30-to-45-minute drive), and this limited the time Mr Newbold was at the Premises and able to exercise the dogs.

53. Thus, there was only limited, if any, exercising of the dogs away from the yard by Mr Newbold in the months preceding 22 March 2020.
54. The dogs were also receiving less food than previously in the weeks before 22 March 2020. Ms Bernhard gave evidence about financial difficulties she experienced in this period. She still purchased 'dry kibble' to give to the dogs every day, which she supplemented with leftovers, but she could not afford canned foods and meats of the kind she previously purchased for the dogs. This may account for the conditions of the dogs as of 29 March 2020. Following their seizure, Dr Bennett (veterinarian) observed the dogs to be in a "*very poor physical condition and malnourished.*"²³
55. I accept the evidence that the dogs left the Premises, unaccompanied, on multiple occasions prior to 22 March 2020. They likely exited under the carport gate in a similar fashion to 22 and 29 March 2020. The lack of exercise, lack of direct supervision and, possibly, hunger, may have contributed to the dogs leaving the Premises.
56. On the morning of 22 March 2020, *Brocky, Letty* and *Calais* left the rear yard of the Premises. They likely did so by pushing through the space under the carport gate. They left the Premises unaccompanied and unbeknownst to Ms Bernhard and Mr Newbold. Shortly thereafter, they came to be nearby to the residence of Bettina St John and her husband, David Ward.

²² The conditions included a prohibition on Mr Newbold attending if he was under the influence of illicit substances.

²³ Ex 1 Vol 2 Tab 33.

57. At about 7:45am, Ms St John arrived home from shopping. She parked her car in her driveway and was unloading groceries to take inside. Ms St John saw three dogs running towards her. The smaller white dog, namely *Calais*, bit her on the front of her right shin. The attack was unprovoked. The bite pierced her jeans and caused minor grazing and bruising to her right shin with no blood loss.²⁴ It caused her pain and to scream.
58. Soon after, Ms St John and Mr Ward left in their car to look for the dogs. They found them in a nearby street, at which point Mr Ward took photographs of them.²⁵ Mr Ward also phoned the Council's after hours contact number and arrangements were made for a Council ranger to attend their residence that morning.
59. Mr Ward and Ms St John followed the dogs as they made their way back into Berry Street towards the Premises. They each saw one of the three dogs push under the carport gate. They also heard a male voice, coming from the rear yard, yell out words to the effect "*Get in here*".²⁶
60. Mr Ward and Ms St John returned to their home to await the arrival of a Council ranger. They also took photographs of Ms St John's bite injuries.²⁷
61. At about 8:30am, Council Ranger Kilminster and Ranger Meier (the **Rangers**) attended Ms St John and Mr Ward's residence. Ranger Kilminster was the more senior officer and was the supervisor of Ranger Meier. Each of the two rangers was, by delegation from the Council, an authorised officer for the purposes of the *CA Act*. Ranger Kilminster took the lead in the discussions with Ms St John and Mr Ward and the Council's response to the complaint that Ms St John made.
62. Ms St John reported to the Rangers that she had been attacked (bitten) by a dog, that the dog was one of three dogs, and that she and her husband had followed the dogs to the Premises. She showed the Rangers her ripped jeans, the marking on her lower leg and the photos of the dogs taken by Mr Ward.

²⁴ Ex 1 Vol 1 Tab 21.

²⁵ Ex 1 Vol 1 Tab 23.

²⁶ Ex 1 Vol 1 Tab 23.

²⁷ Ex 1 Vol 1 Tab 21.

63. Mr Ward also informed the Rangers that he had previously seen the dogs on the loose, unaccompanied, out of the Premises.
64. Neither ranger doubted the accuracy of the report that Ms St John and Mr Ward made to them.
65. Ranger Kilminster advised Ms St John and Mr Ward that a formal statement would be required if action was to be taken against the owners. The Rangers believed that a formal written statement was required if action was to be taken against the owners for any contravention of the *CA Act* or Regulation comprising the issuing of a fine or the commencement of criminal proceedings against the dog owners (e.g., for an offence of a dog attacking a person or animal contrary to s 16 of the *CA Act*).
66. Ms St John was provided with a document titled "*Dog Attack or Threatening Dog Statement*" to fill out.
67. The Rangers left soon after to attend on the dog owners.
68. At some point that morning, Ms St John began to enter details into the document but ultimately did not complete it that day.
69. Rangers Kilminster and Meier then attended at 19 Berry Street. They spoke with Ms Bernhard and Mr Newbold at the front door of the Premises.
70. This was the first time either ranger had been to the Premises or had any dealings with Mr Newbold and Ms Bernhard or their dogs.
71. When informed by the Rangers of the reported attack, Ms Bernhard and Mr Newbold indicated they had not realised the three dogs had left the Premises but did not dispute that had occurred. They stated that the fourth dog, the pup *Buster*, had been with them inside that morning.
72. In the view of the Rangers, Ms Bernhard and Mr Newbold presented as cooperative and appropriately concerned.
73. The owners stated that only one dog (*Letty*) had been microchipped and that all four dogs were unregistered. The owners brought each dog to the front doorway to allow the Rangers to scan each dog with a microchip scanner and to photograph each dog.

74. The older male (*Brocky*) and the younger female (*Calais*) appeared to Ranger Kilminster to be “*skittish*” and uncomfortable, but none of the dogs behaved aggressively when scanned. Ranger Kilminster noted that none of the dogs were wearing collars.
75. The owners said the dogs were unregistered as they had no money and had recently had a baby. Mr Newbold stated he intended to get the dogs registered once he was paid some moneys owed to him. They had also been evicted and were packing up to move.
76. Neither Mr Newbold nor Ms Bernhard informed the Rangers that Mr Newbold was restricted from residing at the Premises and therefore not in a position regularly to supervise the dogs.
77. Before departing, Ranger Kilminster told Mr Newbold and Ms Bernhard that the complainant (Ms St John) had not yet provided a formal statement but may do so. He indicated that if a formal statement was made the owners may receive a fine over the event. Ranger Kilminster said he would mail them a notice to require registration of the dogs.
78. Each ranger gave evidence to the Inquest to the effect that Mr Newbold and Ms Bernhard had assured them the dogs would be secured, in the rear yard, so that they would not escape again.
79. In his evidence, Ranger Kilminster further said that when he left 19 Berry Street, Vincentia, he felt satisfied that the owners now had awareness that their dogs had escaped earlier that morning and that they were “*sufficiently aware of their obligations to secure the dogs on their property*”.²⁸ The owners had also assured him they would get the dogs registered as soon as they had the means to do so.
80. The Rangers did not:
 - a. Question Mr Newbold and Ms Bernhard about how the dogs got out of the yard unbeknownst to the owners or question them about the particular steps they would take to prevent a re-occurrence in future.
 - b. Examine the fence and gate before leaving the Premises.

²⁸ Ex 1 Vol 2 Tab 31A.

- c. Subsequently return to the Premises, at any time prior to the attacks on Collingwood Beach on 29 March 2020, to check that steps had in fact been taken by the dog owners – and that such steps were adequate – to ensure that the dogs could not escape from the Premises. Nor did any other Council officer; or
- d. Make any enquiries of nearby residents to ascertain if there were other reported issues with the dogs being outside the rear yard of the Premises. Had that occurred, the Rangers may have learned that the dogs had been seen outside the Premises’ rear yard, unaccompanied, on other occasions.

81. Ranger Kilminster gave evidence that:

“[I]t was not part of my usual practice, to inspect the yard, fence, and gates of a premises to ensure that dog could be adequately secured in circumstances where the owner was present at the property and, they appeared to be a competent person. I also note that this was not a legislative or Council policy requirement to inspect the yard, fences or gates of a premises in this circumstance.”²⁹

82. Ranger Kilminster’s reference to a “competent person” picks up on the use of that term in s 18(3)(b) CA Act.

83. Rangers Kilminster and Meier returned to Ms St John and Mr Ward’s residence. This was about 30 minutes after they first attended their home. Ranger Kilminster told Ms St John and Mr Ward they had spoken to the dog owners and that:

- a. The owners were remorseful about what had occurred and would take steps to ensure the dogs would not escape again.
- b. The owners were in financial hardship, had a baby and a further baby on the way, and had only recently secured employment. They would be out of pocket covering the registration of the dogs.
- c. The owners would be moving out in a couple of weeks’ time and were also looking to give away one of the dogs they owned.

²⁹ Ex 1 Vol 2 Tab 31A.

84. The matters communicated by the Rangers caused Ms St John to hesitate about proceeding with a formal complaint, especially when told of the financial impact on the family. Ms St John and Mr Ward believed the Rangers would have satisfied themselves that the owners would secure their premises to ensure there would be no repeat of the dogs leaving unaccompanied. Ms St John and Mr Ward were also concerned at the potential of the dog owners learning of their identity if they proceeded with the formal complaint and the owners sought disclosure of their complaint.
85. Ms St John and Mr Ward decided not to complete a formal written statement but to do so in future if they saw the dogs out again unaccompanied. Mr Ward gave evidence that their decision not to proceed had been contingent on the Rangers' assurance that the dogs would be adequately secured in their yard from that time on. Ms St John gave evidence to similar effect.
86. The matters communicated by Rangers Kilminster and Meier, to Ms St John and Mr Ward, put things in a favourable light insofar as the stated intentions of the dog owners were concerned. That was so despite the Rangers having never previously met or had any dealings with the owners, having limited knowledge about them, and with the Rangers themselves having not examined the fence or spoken to nearby residents.
87. Mr Ward said in evidence he did not perceive Ranger Kilminster, in their interactions, as trying to dissuade a formal complaint being made. Nonetheless, the matters communicated by the Rangers were clearly influential to Ms St John and Mr Ward's decision not to proceed with a formal statement at that time.
88. In any event, the absence of a formal statement did not preclude the Rangers from taking other action such as seizure of the dog(s) or issuing a notice to declare the dogs dangerous or menacing, although they did not do so. The Rangers already had information from Ms St John's verbal report as to the circumstances of the attack and which dog was principally involved. It was open to authorised officers to rely on information provided verbally in determining whether to seize the dog(s) and or issue a notice of intent to declare the dogs *menacing* or *dangerous*.
89. In their respective evidence, there was a divergence between the two rangers about their understanding of the procedure and process involved. Ranger Kilminster believed

that the absence of a formal statement from a complainant did not prevent a ranger from taking action under the *CA Act* to seize the dog and/or issue a notice of intention to declare a dog *dangerous or menacing*. By contrast, Ranger Meier's understanding was that a signed statement was needed at least before a notice of intention could be issued.

90. At the Inquest, each ranger was questioned about the scenario that, in August 2019, Ms Bernhard had given incorrect information to a Council ranger (Suzanne Hislop) to the effect that a particular dog, *Calais*, was microchipped when in fact it was not, but that no electronic Council record had been created and maintained to indicate as such. Ranger Kilminster gave evidence to the effect that, had he been aware of it on 22 March 2020, such information would have been relevant to his decision-making process in that it would have affected his perception of the reliability of Ms Bernhard and whether he could take on face value what he was being told by her. He gave evidence that it would have been highly desirable that such information had been included in Council records such as, at the time, the Council's electronic management system (MERIT) database.
91. Ranger Meier gave evidence to similar effect.
92. Later in the day on 22 March 2020, Ranger Kilminster manually entered information about the Rangers' response to the incident involving Ms St John into MERIT and checked available electronic records about the owners and or the dogs (TRIM and Pinforce).
93. These checks revealed that Mr Newbold had received prior penalty notices for the non-registration of dogs in 2014 and 2015. According to Ranger Kilminster, he found no penalty notice history for Ms Bernhard, although Council records show Ms Bernhard was issued a notice in June 2015.
94. Ranger Kilminster also checked the Register. The check did not reveal any "adverse incidents" relating to the one dog that had been microchipped (*Letty*). As none of the other dogs were microchipped, they did not have a profile on the Register. None of the checks completed indicated the dogs had previously left the owners' yard unaccompanied or had previously been involved in an attack.

95. No further action was relevantly taken by the Council or the Rangers between 22 March 2020 and the attack on Mrs Holland on 29 March 2020.
96. Mr Newbold suspected that the dogs escaped the rear yard on 22 March 2020 by pushing through a space beneath the carport gate on the eastern side of the Premises. After the Rangers attendance that day, Mr Newbold said he placed metal signs and a bench alongside the base of the gate on its rear side. Other items, such as an air compressor and car battery, were used to hold the signs up against the gate. Mr Newbold also said he placed a yellow rectangular sign at the point at which the gate closed. This was “wedged” between the gate and drainpipe that the gate was chained to, to keep it shut.³⁰ He did this with the aim of blocking the dogs’ access to the space between the gate’s base and the ground.
97. These steps taken by Mr Newbold did not adequately address the deficiencies with the gate. This is particularly so considering the number and size of the dogs at the Premises and that one dog had already bitten a nearby resident in the street without warning or provocation on 22 March 2020. The inadequacy of the steps taken by Mr Newbold is demonstrated also by the fact that the three dogs again escaped from the Premises on 29 March 2020. I accept the evidence of the NSW Police Force officer in charge (OIC), Detective Senior Constable Sheaff, that the steps taken by Mr Newbold to secure the dogs in the yard were completely inadequate to keep those dogs in that yard.

Available Powers Under the Regulatory Regime

98. Section 18 of the *CA Act* provides a general power of seizure:

“18 Dog that has attacked or bitten may be secured or seized

(1) If a dog attacks or bites any person or animal (except vermin) otherwise than in the circumstances referred to in section 16(2), an authorised officer may, at any time within 72 hours after the attack or bite—

(a) secure the dog on property that the officer has reason to believe is

³⁰ Exhibit 2 image 17 of 40.

occupied by the dog's owner, or

(b) seize the dog.

(2) Any other person may seize the dog if the dog is on property owned or occupied by the person.

(3) If the dog is on property that an authorised officer has reason to believe is occupied by the dog's owner, the officer may seize the dog only if the officer is satisfied that—

(a) the dog cannot be kept adequately secured on that property, or

(b) the dog cannot be kept under the effective control of some competent person while it is on that property, or

(c) the owner of the dog has repeatedly failed to keep the dog secured on that property or under the effective control of a competent person while it is on that property (regardless of whether the dog is secured or under effective control at the relevant time)."

99. For the purposes of s 18(1), the two Council rangers seemingly had reasonable grounds to believe that a dog owned by Mr Newbold and Ms Bernhard (namely, *Calais*) had attacked or bitten Ms St John. Subsection (3) was relevant as the dog was at a property occupied by its owners when the Rangers attended.

100. Each of the matters in subsection (3) may fairly be thought of as questions to which an authorised officer should specifically turn his or her mind in responding to a report of a dog attack.

101. In his statement to the Inquest, Ranger Kilminster stated: "[i]n my opinion during my attendance at the time, section 18(1)(a) did not apply as the Owners were present and appeared in my assessment to be competent persons. I had no authority to seize the dogs."³¹ For his part, Ranger Meier gave evidence to the effect that, on 22 March 2020, he did not give any consideration to exercising a power of seizure under s 18 of the CA

³¹ Ex 1 Vol 2 Tab 31A.

Act. This was principally because the Rangers had been given an assurance by the owners that the dogs would be contained on the property.

102. The *CA Act* provides that an authorised officer (which relevantly includes a Council ranger) may declare a dog to be “*restricted dog*”, “*dangerous dog*” or “*menacing dog*” assuming the officer’s satisfaction of specific matters.

103. None of the dogs owned by Mr Newbold and Ms Bernhard was a *restricted* breed or eligible to be the subject of a *restricted* dog declaration. An issue arising is whether there were reasonable grounds to believe that one or more of the dogs was *dangerous* or *menacing* and, if so, what difference that might have made had action commenced before 29 March 2020 to declare the dog(s) *dangerous* or *menacing*.

104. By virtue of s 34(1) and (1A) of the *CA Act*, an authorised officer may declare a dog to be a *dangerous dog* or *menacing dog* if satisfied the dog is *dangerous* as that term is defined in s 33 or *menacing* as that term is defined in s 33A.

105. By s 33(1), a dog is *dangerous* if it:

- a. has, without provocation, attacked or killed a person or animal (other than vermin), or
- b. has, without provocation, repeatedly threatened to attack or repeatedly chased a person or animal (other than vermin), or
- c. is kept or used for the purposes of hunting.³²

106. By s 33A(1), a dog is *menacing* if it:

- a. has displayed unreasonable aggression towards a person or animal (other than vermin), or
- b. has, without provocation, attacked a person or animal (other than vermin) but without causing serious injury or death.

107. By s 33A(4), a “serious injury” includes:

³² By s 33(2), a dog is not to be regarded as being kept or used for the purposes of hunting if it is used only to locate, flush, point or retrieve birds or vermin (vermin for the purposes of this subsection includes small pest animals only such as rodents).

- a. any injury that requires hospitalisation of a person or animal,
- b. a broken bone that requires medical or veterinary attention,
- c. a major laceration (that is, a wound caused by the tearing of body tissue or by multiple punctures caused by more than one bite from a dog) that requires medical or veterinary attention,
- d. a partial or total loss of sensation or function in a part of the body that requires medical or veterinary attention,
- e. any other injury requiring medical or veterinary attention, of the same level of seriousness as the injuries described in paragraphs (b)–(d),
- f. an injury that requires a person to have cosmetic surgery.

108. Ms St John’s injury suffered on 22 March 2020 did not constitute a “*serious injury*” as defined in s 33A(4).

109. There is potential for confusion, or at the very least lack of clarity, when reading ss 33(1) and 33A(1) side by side.

110. On the one hand, s 33(1) contemplates a dog being declared *dangerous* if it has, without provocation, *attacked* or killed a person or animal (other than vermin).³³ Section 33(1) does not expressly require that an actual bite occur, or actual injury be occasioned.

111. On the other hand, the definition of menacing in s 33A expressly captures attacks of a person or animal that do not involve “*serious injury*”.

112. It is perhaps difficult to conceive what work the menacing threshold relevantly has to do if an attack or bite, which did not occasion “*serious injury*”, is captured by the dangerous dog threshold in s 33(1).

113. The Council, while evidently taking the view that the provisions lack clarity, seemingly construes ss 33(1)(a) and 33A(1)(b) such that an attack, of the kind suffered by Ms St John, can satisfy only the *menacing dog* threshold (and not the *dangerous dog*

³³ The term “*attack*” is not defined for the purposes of s 33(1) or elsewhere in the CA Act. However, the term arises in other sections consistent with it not requiring an actual bite. For instance, by s 16(1) a dog owner is criminally liable if his or her dog “*rushes at, attacks, bites, harasses or chases any person or animal*”. Similarly, the seizure power in s 18(1) uses language of “[i]f a dog attacks or bites any person or animal”.

threshold) as the attack or bite did not involve “*serious injury*”. A potential difficulty with that approach is that it essentially requires the reading into s 33(1)(a) of a requirement that is not expressly provided for – e.g. reading s 33(1)(a) as applying only where a dog has attacked a person or animal, *causing serious injury*, or killed a person or animal (other than vermin). Had the legislature intended s 33(1)(a) to be construed in that way, it could have more clearly framed the subsection in that manner.

114. Another possibility is that the legislature intended that some overlap exist between the *dangerous* and *menacing dog* definitions. This is, in effect, to vest an authorised officer with the discretion to issue a *menacing dog* declaration even if the *dangerous dog* threshold may technically also be satisfied. This might thus permit consideration of matters such as the circumstances of the attack (eg., lack of serious injury), the owner’s history, whether the dog is at low risk of inflicting *serious injury* in future, and whether the more onerous obligations arising under a *dangerous dog* declaration are thought to be warranted.
115. The dog that had bitten Ms St John on 22 March 2020 – namely *Calais* – would meet the description of, at least, a *menacing dog*. That dog had, without provocation, attacked a person (Ms St John) on 22 March 2020, but without causing serious injury or death (s 33A(1)). This empowered the Council, by its two rangers, to have issued, on 22 March 2020, a notice of intention to declare the dog (*Calais*) a menacing dog (ss 34, 35).
116. On the information then known, on 22 March 2020 or any time up to the attacks on 29 March 2020 none of the other three dogs owned by Mr Newbold and Ms Bernhard would have satisfied the statutory criteria for a *dangerous* or *menacing dog*. Accordingly, they could not then have been the subject of a notice of intention to declare any of those three dogs *dangerous* or *menacing*.
117. The making of a declaration imposes obligations on the dog owner with respect to its enclosure. While on the property at which it is ordinarily kept:
 - a. a *dangerous* dog must be kept in an enclosure that complies with the requirements specified by the Regulation (an owner has 3 months from the

date on which the dog is declared dangerous to comply),³⁴

- b. a *menacing* dog, while not under effective control of a person aged 18 years or above, must be enclosed in such a manner as to prevent a child accessing it.³⁵

118. The obligations enlivened also include a control obligation, namely:

- a. Whenever outside its enclosure, a *dangerous* dog must be under the effective control of a *competent person* by specified means (chain, cord, or leash) and muzzled.³⁶ This requirement operates even when the dog is within the property at which it ordinarily resides assuming it is outside its enclosure.³⁷
- b. Whenever outside or away from the property at which it ordinarily resides, a *menacing* dog must be under effective control by a competent person by specified means (including by muzzle). This requirement does not operate when the dog is within the property at which it ordinarily resides.³⁸

119. From 1 July 2020, owners are required to obtain annual permits for dogs that are, or have been declared to be, a *restricted or dangerous dog* (permits are not required for *menacing dogs*).³⁹

120. The *CA Act* provides a staged process for the making of a declaration, namely:

- a. Assuming satisfaction of the statutory thresholds, an authorised officer of a council (eg. a ranger), on his or her own initiative, may issue the owner of the dog a notice of intention to declare the dog *restricted, dangerous or*

³⁴ *CA Act*, s 51(1). The owner of the dog must obtain a certificate of compliance in relation to the prescribed enclosure: s 58H.

³⁵ *CA Act*, s 51(1A). The *CA Act* does not require that a menacing dog enclosure satisfy the certification requirements applicable for restricted or dangerous dogs.

³⁶ *CA Act*, s 51(1).

³⁷ With respect to a *dangerous* dog, an owner has three months from the date on which the dog is declared dangerous to comply with the *enclosure* requirement. Until that requirement is satisfied the dog must be kept in an enclosure that is sufficient to restrain the dog and prevent a child from having access to the dog whenever it is on the property it is ordinarily kept: ss 51(1)(c) and (c1).

³⁸ *CA Act*, s 51(1A).

³⁹ *CA Act*, ss 11C, 11D, 51(1)(l).

menacing.⁴⁰

- b. The owner has 7 days from receiving the notice to make objections to the authorised officer about the making of the proposed declaration. The authorised officer must consider objections made within that period before proceeding to make a declaration (or not).⁴¹
- c. If a declaration is made, the authorised officer is to notify the dog owner of the decision and its consequences.⁴² A dog owner then has a right of appeal to the Local Court against the making of the declaration.⁴³

121. Had a *notice of intention* to declare the dog involved in the attack on Ms St John been issued on 22 March 2020, the earliest time a *declaration* could have been made was 30 March 2020. A declaration could not have been lawfully made by or before 29 March 2020.

122. Importantly, the giving, by an authorised officer, of a notice of intention to declare a dog *dangerous* or *menacing* enlivens interim obligations on a dog owner. Upon the receipt of a notice, the owner must:

- a. At all times when a dog is away from the property, at which it ordinarily resides, ensure that the dog is under effective control of a competent person by means of adequate chain, cord or leash and has a muzzle securely fixed to prevent it biting any person or animal (*the interim control obligation*): s 36(1)(a).⁴⁴
- b. Ensure the dog (if it is not already registered) is registered within 7 days of receiving the notice (*the interim registration obligation*): s 36(1)(b).

⁴⁰ CA Act, ss 35(1) and (2). The notice must set out the requirements the owner must comply with if a declaration is made and their rights to object to the making of the proposed declaration within 7 days of the notice being given.

⁴¹ CA Act, s 37.

⁴² CA Act, s 38.

⁴³ CA Act, s 41(1).

⁴⁴ The CA Act does not prescribe when a person is taken to be “competent”.

123. The interim obligations apply whatever the category of the proposed declaration (e.g., *dangerous*, or *menacing*). A contravention of these obligations attracts a maximum penalty of 50 penalty units.
124. A dog the subject of a notice to declare it *dangerous* or *menacing* is taken “*not to be under effective control*” (when away from the property at which it ordinarily resides) if the person has more than 2 dogs under his or her control at the one time.⁴⁵
125. Significantly, the giving of a notice of intention to declare a dog as *dangerous* or *menacing* has the effect of expanding the statutory powers of seizure of the relevant dog.
126. Thus, by s 36(3) an authorised officer may seize a dog, the subject of a notice of intention to declare it *dangerous* or *menacing*, while the notice of intent is operative, if the authorised officer is satisfied that:⁴⁶
- a. the interim control obligation has not been complied with,
 - b. the dog is not confined, tethered, or restrained in such a way as to prevent the dog attacking or chasing a person lawfully at the property where the dog is ordinarily kept, or
 - c. the dog is not registered (regardless of whether the 7-day period from the issuance of the notice has expired).
127. If s 18 of the *CA Act* were enlivened, the power of a Council ranger to seize a dog on 22 March 2020 (or at any time up to the attacks on 29 March 2020) related only to the dog which, relevantly, had attacked or bitten a person (s 18(1) and (3)), namely *Calais* – which had bitten Ms St John earlier that day. Section 18 did not provide a power to seize any of the other three dogs that were at the Premises.
128. That said, the potential significance of a seizure of *Calais*, on 22 March 2020 or at any time up to the attacks on 29 March 2020, should not be overlooked. If *Calais* had been

⁴⁵ *CA Act*, s 36(5) (in the case of a dog the subject of an intent to declare *dangerous* or *menacing*) and s58B (2) (in the case of a dog the subject of an intent to declare *restricted*). This includes one dog which is the subject of the notice of intention to declare.

⁴⁶ Section 36(4) in the case of a notice of intent to declare *dangerous* and *menacing* dogs and s 58B (4) in the case of a notice of intent to declare *restricted*.

seized – for example, pending satisfaction as to the adequacy of the steps taken to secure the dogs in the yard – proper steps may thereafter have been taken, by the owners, to secure the dogs at the Premises, such that they would not later have been able to escape.

129. So too, the statutory power, in the Council through its two rangers, to give a notice of intention to declare a dog a *menacing* dog was limited to the particular dog that had bitten Ms St John on 22 March 2020, namely *Calais*.
130. That said, if the Council, by its rangers, had issued a notice of intention to declare the dog menacing in respect of the dog *Calais*, then this would have triggered the obligation under s 36(1)(b) for the owners to register the dog within 7 days. Pursuant to s 36(3)(b), the Council, by its rangers, would be empowered to seize the dog *Calais* regardless of whether the 7 day period had expired. If the power of seizure had been exercised this may similarly have reduced the number of dogs that subsequently escaped on 29 March 2020.

Events On 29 March 2020

131. On the morning of Sunday, 29 March 2020, shortly before 7am, the three dogs *Brocky*, *Letty* and *Calais* left the rear yard of the Premises by pushing under the carport gate near to where it shut against the drainpipe. They left unrestrained and unaccompanied. Once out they made their way together to Collingwood Beach.⁴⁷
132. Ms Bernhard was awoken by a metallic sound coming from outside near to where the gate was, which she suspected was the sound of the metal sign being shifted or pushed from its position where the gate shut. She got up to investigate and discovered that the (three) dogs were not in the rear yard. She went out to search for the dogs and eventually made her way to Collingwood Beach. When she left, Mr Newbold was asleep at the Premises.

⁴⁷ Ex 1 Vol 2 Tab 51.

133. Carole Evans (aged 79 years) was a friend of Mrs Holland. Most mornings, after a walk along the beach, she would meet up with Mrs Holland (and other friends) and they would swim together.

That morning, Carole Evans was walking alone along Collingwood Beach in a northerly direction heading to meet Mrs Holland and others for their regular swim. The dogs approached and set upon Carole Evans, biting her hands, buttock, thighs and lower legs and pulled her to the ground. They continued to maul Carole Evans while she was on the ground. Carole Evans screamed for help and tried to stand.

134. By this time, Ms Bernhard had arrived at the beach and saw the attack. Ms Bernhard intervened to try to assist Carole Evans and was herself bitten.

135. The three dogs then ran off in a southerly direction along the beach. Ms Bernhard stayed with Carole Evans and phoned emergency services (Triple 0).

136. As a result of the attack, Carole Evans suffered serious injuries to her lower left leg, both her hands, left forearm, upper left arm, right forearm, both her buttocks and right upper thigh. She was taken by ambulance to hospital and underwent surgery. She remained in hospital until 6 April 2020. Her injuries included:

- a. right arm: 8 x 4cm full thickness tears through muscle (forearm), 5cm haematoma (forearm) with deep large puncture wound; 4cm laceration around lateral elbow.
- b. left arm: 2 x 4cm lacerations and 1 x puncture wound to the arm, 5cm jagged laceration to wrist.
- c. right leg: 15cm buttock haematoma with overlying puncture wounds, and
- d. left leg: haematoma and puncture wound to the left buttock, laceration and puncture wounds to the posterior knee, and deep lacerations to the lateral and posterior calf.

137. The three dogs continued along the beach where they encountered Mrs Holland, who was walking along the beach in a northerly direction to meet her friends and daughter Gloria for a swim. The three dogs set upon Mrs Holland in an unprovoked attack. At

various points in time, several persons, including Mrs Holland's daughter, Gloria, attempted to distract the dogs but were unsuccessful.

138. After the three dogs attacked Mrs Holland, and before returning to attack her further, they attacked Gloria Holland. Gloria had been walking along Collingwood Beach on her way to meet her mother. When Gloria realised what was occurring, she ran to assist her mother. When she got close, the three dogs ran at her and started biting her legs and hands and pulled her to the ground. The attack caused her the following injuries:

- a. right arm: 2-3cm dorsal hand laceration, lacerations to her right forearm and large bruising to her right shoulder
- b. right leg: 4cm lower leg laceration and right ankle puncture wounds
- c. left arm: 2 cm laceration to her wrist, and
- d. left leg: 2 x wounds to her posterior calf, deep left posterior calf wound and puncture wounds to her left thigh.

139. Other persons at the beach also observed the attack and attempted to intervene.⁴⁸ That included Peter Tate,⁴⁹ who lived nearby and attended after hearing screams. The dogs turned on him and one of them bit his right forearm, before they turned and ran away from him.

140. Paramedics arrived at the scene and provided emergency treatment, along with officers from the NSW Police Force and the Australian Federal Police.

141. Mrs Holland suffered extreme injuries including tearing on her upper and lower limbs and injuries to her trunk. Paramedics treated Mrs Holland on the beach and administered pain relief. She was taken into the back of an ambulance parked on Montague Street. On being taken to the ambulance, Mrs Holland went into cardiac arrest and cardiopulmonary resuscitation (CPR) was commenced.

142. Mrs Holland was taken by ambulance to the local football oval and met by an emergency doctor and rescue helicopter. CPR was continued and other medical steps taken. There

⁴⁸ Ex 1 Vol 1 Tab 17.

⁴⁹ Ex 1 Vol 1 Tab 22.

was no improvement in Mrs Holland's condition. Mrs Holland was pronounced deceased at the oval at about 8:30am.

143. The three dogs left the beach area and were seen in an area where ambulances had begun to park and treat people adjacent to the beach. Ms Bernhard was seen yelling at the dogs to go home and trying to coax them away from any ambulance.⁵⁰

144. Ms Bernhard managed to coax the three dogs into the rear of a Council ranger's vehicle that had arrived on the scene. The dogs were later conveyed to an animal shelter. Council rangers, along with police, also attended the Premises and took custody of the fourth dog, *Buster*, who was surrendered by Mr Newbold.

145. A veterinarian, Dr Anthony Bennett, inspected the dogs at the animal shelter on 29 March 2020 after their seizure. Dr Bennett observed the three older dogs to be in an aggressive state and to charge at the door towards him. Dr Bennett described each dog as being "*in very poor physical condition and malnourished*",⁵¹ stating:

*"Once I was able to get close to the dogs and handle them I noticed that each dog appeared to be in very poor physical condition and malnourished. As vets we use a body score system when assessing an animal's condition, which gives a range of 1 to 5. A score of 5 is overweight and a score of 1 is emaciated. I believe these dogs were a score of 1. These dogs would've been very hungry. They were also suffering from flea infestations."*⁵²

146. All four dogs were euthanised that same day at the animal shelter.

147. Mr Newbold participated in a video recorded walk-through of the Premises on 29 March 2020, in which he indicated how he found the signs and some perspex positioned after he learnt the dogs had escaped.

⁵⁰ Ex 1 Vol 2 Tab 43; Ex 1 Vol 2 Tab 44; Ex 1 Vol 2 Tab 46. See also photographs of the dogs taken by a paramedic Ex 1 Vol 2 Tab 47.

⁵¹ Ex 1 Vol 2 Tab 33.

⁵² Ex 1 Vol 2 Tab 33.

148. It is also evident from the videoed walk-through, and photos taken at the scene on 29 March 2020, that the bamboo sheeting positioned in front of the gate was aged, frail and had broken away in places beneath the base of the gate.
149. Mr Newbold reported finding the yellow sign, which he previously placed against the house wall between the gate and drainpipe, pushed over towards the gate's eastern side. This left a space under the gate near to where it shut against the drainpipe. He also found gravel on the paved ground near to the base of the drainpipe which indicated to him that the dogs had dug around that spot.
150. Mr Newbold directed police to broken cable ties on the ground on the front yard side of the gate, and to a small amount of dog hair affixed to the bottom end of a bamboo shaft near to where the gate shut. He expressed the belief that one or more dogs pushed the sign aside from inside the carport. This gave them access to a space beneath the gate which they managed to push through.
151. The broken cable ties on the ground and the dog hair at the base of the bamboo shaft, which was seen by the attending police and photographed,⁵³ appears consistent with the dogs having pushed out under the fence at that position.
152. The paved ground dipped near to where the gate shuts against the drainpipe. This created a large gap below the gate at this spot as compared to where it was affixed at its eastern side. Police measured that gap to be about 17cm. Owing to the manner in which the gate was affixed, the gate could also be pushed upwards on its vertical axis. In her evidence at the Inquest, the OIC described the movement of this gate when she examined it on 26 May 2020. The OIC said: "*[b]ecause the gate's only hinged on the one end of it and it's - the length of it, it enables it to be able to be lifted up and down, and - and for it to open you needed to be able to lift it up to get over that bump that's affixed down near the ground on the wall as well*", while noting that the gate as at 26 May 2020 was not bearing the weight of the bamboo sheeting, shade cloth and chain.
153. In the OIC's opinion, the gate likely had some upper movement to it on 29 March 2020, accepting that the magnitude of the movement may not have been as extreme as seen

⁵³ Ex 2 images 26-36.

on 26 May 2020. The upward movement meant the dogs could have pushed the gate upwards when they forced their way under the gate.

154. At the time of the videoed walk-through on 29 March 2020, the yellow sign was “wedged” up to the drainpipe. Mr Newbold told police he earlier put the sign back, in that position, to secure the pup *Buster* within the rear yard when he went to the hospital to visit Ms Bernhard. In his sworn evidence, Mr Newbold maintained that the yellow sign had been wedged in that position and denied it might not have been fixed right up against the house wall before the dogs got out.⁵⁴ Ms Bernhard herself did not see the position of the sign before she left earlier that morning, but she believed the sign would have been in that position before the dogs escaped.

155. If the yellow sign had been positioned in the manner described by Mr Newbold, it is not evident how the dogs caused the sign to move in a horizontal direction. I am satisfied on balance that the dogs left that morning by pushing under the carport gate near to where the gate shut against the drainpipe. I am also satisfied that Mr Newbold did not take adequate steps to prevent the dogs from escaping.

Charges

156. Ms Bernhard and Mr Newbold were charged and prosecuted in the Local Court at Nowra for the offence under s 16(1)(a) of the *CA Act* of being the owner of a dog that attacks another person (Mrs Holland) whether or not injury is caused. Ms Bernhard entered a plea of guilty to two such charges, while Mr Newbold entered a plea of guilty to one charge. On 9 May 2022, each of them was convicted and fined \$5,000.⁵⁵ Both were disqualified from owning a dog for five years.

ISSUES

157. An issues list was prepared prior to the inquest commencing to provide structure to the hearing. Some of the issues are no longer of great relevance. I have considered all

⁵⁴ Ex 2 image18 of 40.

⁵⁵ Pursuant to s 23 of the *CA Act*.

the submissions made by the parties and I am of the view that the following matters are the relevant issues that require comment.

WAS THE COUNCIL RESPONSE ON 22 MARCH 2020 AND IN THE PERIOD UP TO THE ATTACKS ON 29 MARCH 2020 ADEQUATE

158. Each of the two rangers, Ranger Kilminster and Ranger Meier, gave evidence to the Inquest to the effect that the principal reason they did not take action on 22 March 2020 was because they accepted an assurance given to them by the dog owners, Mr Newbold and Ms Bernhard, that they would ensure the dogs would be secured, in the rear yard, so that they would not escape again. The Rangers passed on this assurance to Ms St John and Mr Ward, who believed that the Rangers would have satisfied themselves that the owners would secure the premises to ensure that the dogs would not escape again.
159. Ranger Kilminster gave evidence to the effect that when he left the dog owners premises on 22 March 2020, he felt satisfied that the owners had an awareness that their dogs had escaped earlier that morning and that they were *“sufficiently aware of their obligations to secure the dogs on their property”*.⁵⁶
160. Accepting that the owners had given the Rangers an assurance they would take steps to secure the dogs in the rear of the property, there were at least four possibilities arising from that assurance:
- a. *First*, that the owners had no intention of adhering to their stated assurance and would fail to take any steps.
 - b. *Secondly*, that the owners, when providing their assurance, intended to adhere but would in fact later fail to take any steps.
 - c. *Thirdly*, that the owners do take particular steps, but those steps are inadequate (and not such as would prevent the dogs from escaping), and
 - d. *Fourthly*, the owners take steps that are adequate.

⁵⁶ Ex 1 Vol 2 Tab 31A.

161. As of 22 March 2020, the Council, by its rangers, could not reasonably be sure which of these four possibilities would eventuate. The two rangers involved had no previous dealings with the dog owners and could not be sure that they would adhere to the assurance they gave. Indeed, what the Rangers did know, on 22 March 2020, was that the dog owners had previously failed to comply with legal requirements under the *CA Act* in that all four dogs on the Premises were unregistered and only one of them was microchipped. The Rangers had also been told, by Mr Ward, that he had seen the dogs on the loose on a previous occasion.
162. In the circumstances the Rangers should have inspected the fencing at the premises to ascertain how the dogs escaped on 22 March 2020 and returned to the Premises in the period shortly after to check that the owners had taken steps to fix the gate.
163. Had the Rangers returned to the Premises to inspect the gate, they would readily have appreciated that the steps taken by the owners were inadequate. This would have provided a basis for the Rangers to seize the dog *Calais* pursuant to s 18(3) of the *CA Act* in that, in the circumstances, the officer seemingly could be satisfied that the dog “cannot be kept adequately secured on that property” (s 18(3)(a)).
164. The Council could also appropriately have issued, on 22 March 2020, a notice of intention to declare the dog *Calais* a menacing dog (ss 33A(1), 34(1A)). This would have triggered the interim obligations on the dog owners, including to register the dog within 7 days, and empowered a ranger to seize the dog *Calais* if it remained unregistered, even prior to the expiry of the 7 days (ss 36(3)).
165. In evidence at the Inquest, Ranger Kilminster said that the practice at Council is now to issue a Notice of Intention to Declare a dog menacing upon receipt of a report of a dog having attacked a person which the authorised officer believes is more likely than not have occurred. This is the case whether or not a signed statement from the victim has been obtained. This is said to represent a “new policy” put in place by the Council.
166. In his evidence at the Inquest, Mr Anthony Pearman, head of the Ranger Services Unit at the Council, confirmed that, as at March 2020, it was not standard practice for Council rangers to return to check the adequacy of steps taken by dog owners to secure their dogs. Mr Pearman said that the practice has now changed, and Council rangers would

promptly issue a notice of intention to declare (a dog menacing) and would subsequently return to the relevant premises to ensure that the dog owner is complying with the obligations arising under the notice of intention.

167. After 29 March 2020, the Council (through Mr Pearman) conducted an internal review and concluded that the Rangers had not breached any practice or procedure in their response on 22 March 2020.⁵⁷
168. The approach taken by Council on 22 March 2020 was inadequate. Even though there were no previous complaints to the Council about the dogs, and the owners had reassured the Rangers that the dogs would be secured, there was a real missed opportunity by the Council to prevent the events on 29 March 2022. Rangers responding to a reported dog escape or attack should be circumspect in accepting, at face value, any assurances given by dog owners. That is so even if the owners present in their subsequent dealings with rangers to be co-operative, remorseful, and rational and the rangers are not on notice of any prior incident or attack. Rangers should make efforts to source other information to scrutinise the owners' statements and to inform their response. The owner's history of non-compliance with registration requirements may also be informative in assessing what confidence a ranger can have in an owner adequately securing their dog in future. It is also imperative that rangers check that any assurances given by an owner are adhered to. They could also check with neighbours to see if the dogs had a history of escaping and or attacking. At the very least, the Council could have assured itself that the dog owners had secured the dogs into their yard. In this inquest the Rangers acknowledged that they would have done things differently had they known what they now know. The Council has responded to this incident by making some relevant changes to its practices and procedures.
169. I propose to make recommendations reflecting the shortcomings that were born out by the evidence at this inquest.

⁵⁷ Ex 1 Vol 3 Tab 69

WHAT OTHER CHANGES HAVE BEEN IMPLEMENTED AT SHOALHAVEN CITY COUNCIL SINCE THE DOG ATTACK ON GLORIA HOLLAND

170. *First*, the Council has implemented what it describes as a “zero-tolerance” approach to non-registration. Rangers must issue penalty notices when dogs are found to be unregistered rather than merely issuing a compliance notice.

171. *Secondly*, assuming a ranger is satisfied that an attack by a dog has occurred and can identify the dog(s) involved, rangers must issue a notice of intent to declare the dog(s) *menacing* or *dangerous* (or *restricted* if that is indicated by the dog’s breed).

172. During the Inquest, Ranger Kilminster stated:

“In my employment as a ranger for Shoalhaven City Council, I have issued numerous dangerous, menacing, and restricted breed orders, so I am aware of the justification required for issuing such orders. These orders were generally issued once an investigation into a reported dog attack was completed which was a normal timeframe for such orders to be issued at that time. There were no policies that mandated that orders were required to be issued within a certain time period. I could have issued a notice of intention to declare the dogs menacing under the CA Act in the days following 22 March 2020. There was no timeframe under the CA Act or Council policy in which I was required to issue a Menacing Notice of Intent. It has always been my practice to issue notice of intentions to declare dog(s) menacing or dangerous and ensure the staff I supervise also issue same orders in line with the criteria contained within section 33 and 33A of the CA Act. However, since the incident with Mrs Holland, I have been an advocate for change within our unit with regards to our approach and operating procedures with these orders. Currently, as a minimum requirement, during our initial attendance upon receipt of a reported dog attack, we issue either a notice of intention to declare dog(s) menacing or dangerous during our initial attendance to the owner where we are satisfied, on the balance of probabilities, that the attack was more likely than not to have happened.”

173. At the Inquest, Ranger Kilminster gave evidence about the change in practice:

“Q. Do you say that ... it was no part of your job as a council ranger in March 2020 to check whether a dog that’s already reportedly attacked a person is being adequately secured and contained in their yard?”

A. It was not part of my usual practice and it wasn’t something that council expected of us to do in those circumstances.

...

A. However--

Q. What’s the however?

A: - - - at this point in time we actually have a new policy in place where we issue a notice of intent to declare menacing or dangerous at the first outset instead of the old practice when we were doing it back then which was at the end of an investigation as part of a recommendation into the owners.

Q. Yes.

A. So now we attend, we go to the address. If we believe that it’s more likely to have happened than have not have happened we issue a notice of intent to the owners to declare either menacing or dangerous depending on the circumstances and we move forward from there.”

174. Ranger Kilminster also said that a notice of intent to declare a dog menacing or dangerous will be issued on the basis of an oral report, even in the absence of a formal written statement, assuming there is no basis to doubt that a dog attack has occurred, and the identity of the dog(s) involved.
175. *Thirdly*, the Council has amended its standard operating procedures to provide rangers with greater guidance on the declaration process, applicable timeframes and various statutory powers arising under the CA Act of relevance to dog attacks.
176. *Finally*, the Council has prepared a training guide about the seizure of animals and the issuing of notices of intent to declare under the CA Act. This training guide was implemented in 2023. Before 22 March 2020, the Council did not provide specific training to its rangers on the seizure powers under the CA Act and their exercise.

177. Although the Council has made the above changes in response to this tragic event it is important that the new regime addresses the training of rangers in a comprehensive and thorough manner. Accordingly, I propose to make a set of relevant recommendations.

CHARGES

178. Despite the circumstances of Mrs Holland's horrific death, the maximum penalty that applied to the owners of the dogs was an \$11,000 fine and five-year disqualification from owning a dog.⁵⁸ The penalties do not adequately reflect the seriousness of the offence. The maximum penalty for cases of dog attacks where persons suffer serious or fatal injuries should be increased.

DOG BREEDS

178. Staffordshire Bull Terrier mix breed dogs can clearly inflict significant and fatal injuries. That is so even if a particular dog may not be generally considered as vicious towards other persons at other times, including children. There have been statutory inquiries in New South Wales and Victoria that have considered the issue of potential prohibitions of specific breeds. This is a complex issue. This issue will be considered in inquests into other dog attacks deaths which are currently in progress. The potential magnitude of injury that a dog may inflict is compounded if there is more than one such dog involved in the attack. In this case three dogs simultaneously attacked and overwhelmed their victims. The prospect of fending off an attack, or surviving, is likely to be greater if only one dog is involved in the attack.

179. In late 2019 and early 2020 Mr Newbold and Ms Bernhard did not adequately care and control their four dogs. This was, in part, a result of their personal and relationship difficulties. They also had a history of non-compliance with registration requirements under the CA Act.

⁵⁸ S 16(1)(a) CA Act

180. It is legitimate to question, in any event, what, if any, protection the current Register offered the community as of March 2020 with respect to Ms Bernhard and Mr Newbold's dogs. The three dogs that attacked Mrs Holland on 29 March 2020 were unregistered, with only one dog, *Letty*, being microchipped. Those same dogs had been unregistered, and except for *Letty* were not microchipped, when one or more Council rangers attended on the owners on 31 August 2019 and again on 22 March 2020. The modest criminal sanctions for non-compliance seemingly did not provide any deterrence to Ms Bernhard and Mr Newbold from owning dogs even if they could not afford their registration.
181. The broader issues relating to the current regime will be considered in the Inquests into dog attack deaths that are taking place this year. In the meantime, the Office of Local Government and Local Councils in New South Wales should implement a public awareness campaign emphasising the dangers posed by specific breeds and types of dogs.

CONCLUSION

182. The current regime that regulates dog ownership relies on dog owners, local councils, and the Office of Local Government. The effectiveness of this regime is an issue at other dog death inquests currently being heard by this court.
183. Hopefully, the recommendations made in this inquest will help prevent a similar death.
184. I thank Mrs Holland's family for participating in this inquest. Their daily attendance at the inquest and the family statements they have made are a testament to their love and respect for Mrs Holland and the ongoing grief and trauma they suffer as a result of her savage and unnecessary death.

Findings pursuant to s 81(1) of the *Coroners Act 2009*

Identity

The person who died was Ada Zara Holland.

Date of death

Mrs Holland died on 29 March 2020.

Place of death

Mrs Holland died on Collingwood Beach, Vincentia NSW.

Cause of death

Mrs Holland died as a result of fatal injuries she received when she was attacked by three dogs on a public beach.

Manner of Death

Mrs Holland died from injuries inflicted by dogs in a sustained attack on 29 March 2020. The attack occurred in a public place and was unprovoked. The attack occurred after the dogs left their owners' residence unaccompanied. A week earlier, on 22 March 2020, the same dogs had been reported to the Shoalhaven City Council after they left their owners' premises unaccompanied and one of them attacked a person without provocation.

Recommendations pursuant to s 82 of the *Coroners Act 2009*

To the Chief Executive Officer, Shoalhaven City Council

1. The Council review its procedures, and the training provided to rangers, for responding to reports or suspected cases of dogs leaving their yard and or being involved in an attack, to ensure that rangers whenever reasonably able to:
 - a. Inspect a property's fencing to independently evaluate its adequacy, with specific regard given to whether the power to seize the dog(s) is reasonably enlivened (*Companion Animals Act 1998* (NSW) (**CA Act**), ss 18 and 36) and

if so, whether that power should be exercised (even on a temporary basis pending improvements being made to the property).

- b. Inspect any changes made to the yard's fencing to independently evaluate improvements made to ensure that a dog(s) cannot leave the yard unaccompanied.
 - c. Inquire with nearby residents to check if persons living near to the dog(s) report anything relevantly of concern regarding the dog(s) and or dog owner(s).
 - d. Consider the known history of compliance with the regulatory regime under *the CA Act* and the *Companion Animal Act Regulation 2008 (NSW)* (**Regulation**) and what that may indicate as to the likelihood an owner will implement measures to adequately secure his or her dog(s) and prevent future attacks.
 - e. Ensure a specific record is made in the Council's electronic records for a particular owner – which is readily available to be searched by council rangers and officers by reference to that person's name – of known or suspected instances of the owner having provided false, incorrect or misleading information to council rangers or officers about dogs owned by the person or under their control.
2. The Council develop guidelines and training regarding what matters might properly inform a ranger's evaluation of an owner's "competency" to effectively control and secure a dog(s) for the purposes of the *CA Act*.

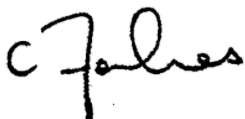
To the Office of Local Government

3. To the extent not already done, the Office of Local Government (**OLG**) develop a standardised training package for council rangers, employed with councils in New South Wales, that are expected to respond to reports or suspected cases of dog

escapes and/or attacks on persons or other dogs. This would extend to training and guiding rangers in:

- a. The assessment of a dog's risk of future attack, including by reference to the known or suspected breed or type, the number and type of dogs at a premises, and any queries that may relate to this assessment (potentially involving scenario training using Ms Holland's case as an example).
 - b. The assessment of a dog owners' competence to adequately secure and control a dog(s) under their control.
 - c. The preconditions, and factors relevant to exercising, statutory powers of seizure and to issue notices to declare under the *CA Act*.
4. The OLG examine the possibility of the enactment of a statutory limitation on the number of dogs, of the same breed or mixed breed or type (e.g. Staffordshire Bull Terriers), that can ordinarily reside at a specific premises or be under the control of owners living or accessing those premises.
5. The OLG examine the appropriateness of the statutory thresholds and framing of the provisions in the *CA Act* for the issuance of notices to declare a menacing or dangerous dog. This extends to:
- a. Ensuring greater clarity as to whether the dangerous dog threshold requires, in the case of an attack on a person, the occasioning of serious injury. (*s 33 and s 33 A CA Act*)
 - b. Examining the sufficiency of the enclosure and control obligations enlivened upon a dog being declared menacing.
6. The OLG review the adequacy of the statutory provisions in the *CA Act* and the Regulation concerning:

- a. The maximum penalty for non-compliance with registration and identification/microchipping requirements (including in the case of repeated non-compliance).
 - b. The maximum penalties for an owner of a dog who does not take all reasonable precautions to prevent a dog escaping the property on which it is being kept.
 - c. The maximum penalties for an offence of a dog rushing, attacking, biting, harassing, or chasing any person or animal when the dog is not a dangerous, menacing, or restricted dog (*CA Act*, s 16), including consideration of introducing an increased maximum penalty in cases where a person suffers a serious injury or death as a result of a dog rushing, attacking or biting the person.
 - d. The maximum period of disqualification in the event of a contravention of s 16, particularly in cases that involve serious injury or death.
 - e. the desirability of including in the *CA Act* an additional stand-alone offence of a dog attack causing serious harm or death to a person.
7. The OLG, in consultation with local government councils in New South Wales, consider implementing a public awareness campaign emphasising the dangers posed by specific breeds and types of dogs.



Magistrate Carmel Forbes

■ Deputy State Coroner

14 May 2024

Coroners Court of NSW, Lidcombe

