

“PIT BULL TYPES” DISCUSSION PAPER

(IN RESPONSE TO DISCUSSION PAPER FROM DR DAVID BERRY (LOST DOG’S HOME)
DATED 02/11/2007 TO ANIMAL WELFARE ADVISORY COMMITTEE ENTITLED “THE
ANIMAL WELFARE ISSUES ASSOCIATED WITH THE ADMINISTRATION OF THE
CURRENT DANGEROUS AND RESTRICTED DOG BREEDS LEGISLATION WITHIN THE
DOMESTIC (FERAL AND NUISANCE) ANIMALS ACT 1994 (DFNAA))

**Prepared by a Working Party
on behalf of the
Victorian Canine Assoc Inc.**

1. Executive Summary

This paper has been prepared by a Working Party on behalf the Victorian Canine Association Inc. Its purpose is to provide an objective argument in response to Dr David Berry’s (Lost Dogs Home) discussion paper presented to the Animal Welfare Advisory Committee (AWAC) entitled *The Animal Welfare Issues associated with the administration of the current Dangerous and Restricted Breeds legislation contained within the Domestic (Feral and Nuisance) Animals Act 1994 (DFNAA)*.

We comprehend the animal welfare problem Dr Berry seeks to resolve at the Lost Dogs Home. However, the Working Party found Dr Berry’s paper to be entirely subjective based on speculation and anecdotal evidence using emotion for effect. In our opinion it is flawed in its argument in a number of places, particularly in the areas surrounding the threat that American Staffordshire Terriers and Staffordshire Bull Terriers present in the community and the stereotyping of owners of these breeds. We also believe some of the recommendations put forward will actually exacerbate the animal welfare problems Dr Berry seeks to resolve by creating a platform for an increase in the number of seized dogs.

Dr Berry’s recommendation to broaden the Restricted Breeds definition under current legislation from American Pit Bull Terriers (APBT) to APBT *types* has been tried and tested in various jurisdictions around the world and been proved to be a dismal failure and one that in reality has been very expensive to the public purse as it leads to 2 significant problems:

1. The problem of accurate identification, and
2. The failure to deal with the fact that any dog can perform an act that may be viewed as dangerous

The Working Party has identified a large volume of evidence that highlights these 2 problems are very real and has included a number of actual case studies to demonstrate this in the paper. Of particular concern is the problem of wrongful identification. This is because whilst such APBT *type* legislation may be well meaning in its design, the cold harsh reality from practical experience with this type of legislation around the world is that legitimate ANKC recognised breeds such as the American Staffordshire Terrier and Staffordshire Bull Terrier that reside in large numbers in family homes in the care of responsible owners are, by pure virtue of their appearance alone, unnecessarily negatively affected by such legislation.

This Working Party had set out in preparation of this paper to give objective proof to the notion that legislators should focus on dangerous deeds by dogs rather than focus on breeds of dogs. However, as we set about this task, not only did the research highlight to us that any dog can perform an act that may be viewed as dangerous, it pointed more specifically to ownership issues as requiring the focus. The research reinforced that the correct focus of dog control measures ought to be the owners of dogs that breach accepted community behaviour standards. Such experts as Professor Irene Sommerfeld-Stur (2002), Unshelm et al (1993), Feddersen-Petersen and Hamann (1994) and Semencic (1984) amongst an array of others all agree that owners are the root of canine behavioural problems.

In Victoria, there is nothing in the current legislation, nor is there anything in Dr Berry’s recommendation that deals with this fundamental problem. Further, neither the current legislation, nor Dr Berry’s recommendations address the issue of constraining people that have dogs seized for being dangerous or restricted from acquiring another one or changing breed repeatedly thereby potentially tarnishing another breed’s reputation and in so doing potentially continue to endanger the community.

Given the weight of expert opinion that points to effective control residing in a focus on the owners of dogs, the Working Party concludes that it is necessary to look to solutions that focus on responsible ownership, but also protecting the rights of current responsible owners and further protecting those dogs that are good members of the community irrespective of their breed or type.

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3. Introduction

A Working Party was formed for the purpose of preparing a discussion paper for the Victorian Canine Association in response to a memorandum from Dr David Berry of The Lost Dog's Home to the Victorian Government's Animal Welfare Advisory Committee (AWAC). The title of Dr Berry's paper, dated 2 November 2007 is *The Animal Welfare Issues associated with the administration of the current Dangerous and Restricted Breeds legislation contained within the Domestic (Feral and Nuisance) Animals Act 1994 (DFNAA)*. In that paper Dr Berry provides the following recommendations, amongst others, to AWAC:

- Broaden the definition of APBTs to APBT *types* and define this new standard in terms of conformation and temperament in the Regulations
- Determine that all APBT *type* dogs must be desexed prior to reaching sexual maturity.

Following a general overview of Dr Berry's paper, this paper will take an objective approach, using actual case studies from around the world, to highlight the proven pitfalls of breed specific or breed referencing legislation. In so doing we will demonstrate that the adoption of the two recommendations in question will prove ineffective in reducing the risk posed by dangerous dogs in the community and will actually exacerbate the animal welfare problems at the Lost Dog's Home that Dr Berry seeks to resolve through his recommendations. Following this we will take up the issue of irresponsible owners introduced by Dr Berry in his paper, identifying that as the real problem to be tackled in dog management and control within the community and we will conclude with some recommendations of our own to deal with this.

4. General Overview of Dr Berry's Discussion Paper

In general terms we found Dr Berry's paper to be highly subjective relying on anecdotal and speculative evidence using emotion to capture attention. This is despite the relatively freely available range of empirical and objective data on the subject matter. To this end “overseas experience has revealed that breed specific legislation has failed to improve the incidence of dog attacks and dog bites” (Seksel, K., 2002, p2).

The Working Party fully comprehends and shares the concerns Dr Berry raises in relation to the welfare of the seized dogs incarcerated at the Lost Dogs Home awaiting final resolution of their fate through the court system. We also share his concern for any future additions to the number of dogs already held in the facility, and as such we agree that a practical and humane solution must be found to this problem. This Working Party also fully accepts the views expressed by Dr Kersti Seksel, a Registered Specialist in Veterinary Behaviour, when she observed “management of the issues associated with dangerous dogs is a significant issue for regulatory agencies worldwide” (Seksel, K., 2002, p2), and acknowledge the difficult issues that arise for the Lost Dogs Home as a result of this.

Dr Berry suggests that amongst a list of breeds, some of which are not officially recognised, the Australian National Kennel Council (ANKC) recognised American Staffordshire Terrier and Staffordshire Bull Terrier are American Pit Bull Terrier (APBT) *types* (Berry, D, 2007, p2), going on to say in reference to both APBTs and APBT *types*, “these dogs are a danger to people (especially young children and the elderly)” (Berry, D, 2007, p2). However data from the American Temperament Testing Society (ATTS) clearly contradicts this assertion.

ATTS results for 2006 indicate that both the American Staffordshire Terrier and the Staffordshire Bull Terrier have a pass rate above the Society's all-breeds average. The ATTS found that the pass rates for these breeds were 83.9% and 85.1% respectively which compares

quite favourably to the average for all breeds of 81.5% (taken from 27,162 test subjects). Of note, this is higher than that of popular breeds such as the Golden Retriever (83.8%), Border Collie (80.0%) and the Dalmatian (81%) (Battista, F, 2007).

Further, in relation to the American Staffordshire Terrier, its official Breed Standard Extension attests to the breed as “absolutely never aggressive towards humans. They are not a guarding breed by nature and trust most people to be their friends, confident in these relationships”

In relation to the Staffordshire Bull Terrier, a key aspect of its official Breed Standard is their special relationship with children, one of only 2 breeds worldwide that have this in their official Breed Standard, as follows - *Characteristics: Traditionally of indomitable courage and tenacity. Highly intelligent and affectionate, especially with children.* This aspect of the breed has given rise to it being known of as the “Nanny Dog” in its country of origin, the UK, its special place and loving and caring nature towards people, and children in particular, being widely documented throughout its history.

In relation to the actual Pit Bull Terrier itself, Dr Seksel’s research contradicts Dr Berry’s opinion:

While working as an animal behaviourist in the USA I had the opportunity to examine approximately 20 American Pit Bull Terriers at a kennel involved in breeding them for fighting. None of these animals showed signs of aggression toward humans.

Seksel, K, 2002, p6

Dr Berry’s claims that these breeds represent a danger to the community are unscientific and seemingly have no empirical foundation.

Dr Berry also suggests “many owners of the APBT *type* are irresponsible and ignorant ...” (Berry, D, 2007, p3). Having already included the American Staffordshire Terrier and Staffordshire Bull Terrier as APBT *types* earlier in his paper, it is a natural conclusion that this therefore necessarily applies to the owner of these 2 breeds.

The Macquarie Dictionary defines “many” as “constituting or forming a large number” (Macquarie University, 1981, p 1068). The Working Party, despite extensive research, could not find any empirical or objective data that supports Dr Berry’s claim, rendering it, in our opinion, a purely speculative statement. In light of this, the Working Party refutes this statement, citing that in the main families have chosen the Staffordshire Bull Terrier, the 4th most popular pure bred dog (Victorian Canine Association, 2007, p3), as its family pet primarily based on its reputation with children. Given this, Dr Berry’s views in this regard would no doubt be found as offensive to a large majority of American Staffordshire Terrier and Staffordshire Bull Terrier owners.

Dr Berry then states “American Staffordshire Terriers are just as dangerous as the APBT.” (Berry, D, 2007, p3). Reported incidents do not support this statement. Despite extensive research, this Working Party cannot find a single reported incident attributed to this breed in this state.

5. The Lessons learned from other jurisdictions around the world utilising Breed Specific or Breed Referencing legislation

Experience from around the world in the few jurisdictions where the type of recommended legislation has been introduced is that it introduces 2 significant problems:

1. The problem of accurate identification, and
2. The failure to deal with the fact that any dog may perform an act that may be viewed as dangerous

In relation to the first of these problems there is a large body of evidence available from actual case studies to show this is not only a problem, but a very expensive one for the public purse, through costs that arise from incorrect identification. A prime example of the failure of this type of legislation can be found in the UK where the Dangerous Dogs Act (DDA) has been a miserable failure since its introduction in 1991. Basing it's assumption of a dangerous dog on 'the type known as pitbull', the DDA has failed to curb dogs incidents and has cost an estimated \$40 million to the public purse in enforcement and subsequent court costs that are usually resolved in favour of the dog owner (UK Parliament, 2006).

Our research has revealed hundreds of case studies where wrongful identification is highlighted. Just a small example of these is as follows:

In most jurisdictions the determination about whether a dog belongs to a banned breed or breed mix is made by police officers, animal control or dog wardens. In the case of *City of Toledo v. Tellings*, there was evidence the dog warden would make a subjective determination if a dog was a pit bull type. If a dog was 50% pit bull but didn't resemble a pit bull, then the dog was not considered a pit bull type. If a dog looked like a pit bull, regardless of the % of breed, he considered it a pit bull type. The warden agreed one cannot really tell whether or not the breeding of many dogs includes pit bull. There was evidence about 10 other breeds resemble pit bulls. The court noted "Criminal charges have likely been brought based on purely individual and speculative decisions on whether the jaw of a dog is "massive" enough or the chest is muscular enough or the brow is broad enough to be designated as a "pit bull," rather than some other similar breed, such as a bull dog, boxer-mix, or bull mastiff". The court found it was likely many non-pit bull type dogs had been misidentified. The court found the statutes unconstitutionally vague because the process of identifying a pit bull type was too subjective, basically that there is no definitive way to prove a mixed breed is a pit bull type. (Allan, L, 2006)

In the UK the case of Jessie an 8 year old toothless and paraplegic Staffordshire Bull Terrier cross highlights the wrongful identification issue. Jessie was described in court as incapable of savaging so much as a paper bag, yet was seized as a Pit Bull *type* under the UK's DDA when she wandered away from her owner. The court action that followed saw Jessie incarcerated for more than 2 years as her fate was determined (Weaver, M., 1996). This is just one of an array of cases arising out of the UK's DDA that now caused MP's in that country to review the breed referencing aspects of their DDA (Johnston, P., 1996).

Taylor v Gold Coast Council is a classic example of how a Staffordshire Bull Terrier can become embroiled by pitbull referencing laws. Mr Taylor's dog, Fonzie, was an alleged pitbull terrier type that was on death row for four months, due to the Gold Coast Council's breed referencing laws. Magistrate Jennifer Batts said she was not satisfied that the council's dog control officers had sufficient qualifications to determine the breed of suspected dangerous dogs. Mr Taylor, went to court to win back his 'best mate' after Fonzie which Mr Taylor successfully argued in court that Fonzie is a Staffordshire Bull Terrier was picked up

by animal control officers after they identified him as a pit bull type, using a questionnaire-style criteria test. Following this case the council itself admitted that its laws are flawed due to the problem of identification (Gold Coast Bulletin, 2004).

In the case of *Da Fre v Logan Council* the dog in question was misidentified as being of a pitbull type, the Council finally admitting its error, during an appeal hearing, returning the dog after 14 months of incarceration, immediately prior to the judgement being handed down. Nevertheless, court transcripts clearly indicate from the Magistrate’s comments in summing up that the decision was likely to go against the council, no doubt prompting the Council’s admission through release of the dog. Despite the dog being released prior to the final judgement, costs of over \$100,000, including those awarded to the Plaintiff, were incurred by the council in this case. (Queensland Magistrates Court, 2005)

At the time of preparing this paper another case (*Chivers v Gold Coast Council*) is running in the Queensland Supreme Court, where again the Plaintiff is attempting to prove that the dog in question has been wrongly indentified as a pitbull type. Ms Chivers argues her dog is an American Staffordshire Terrier, but has yet to convince the Council. Years have passed and a search for the dog’s pedigree certificates was fruitless, the Court was told, because the pet shop owner who sold the dog was no longer in business. As a result a long court battle has ensued centred around appropriate identification of the dog. Sources close to this case have informed the Working Party that costs at this stage are estimated at approximately \$500,000. On top of that, Mrs Chivers contends the original way the council assessed Tango was flawed and she hoped a Supreme Court Judge would overrule the decision.

In relation to the second of the two problems identified above, there is also a wealth of material that shows that any dog can perform an act that may be viewed as dangerous. Further it is often breeds that Dr Berry describes as being APBT *types* are often initially incorrectly blamed. One needs to look no further than media reports of dog incidents where conclusions are jumped to as to the type of dog being blamed for the incident often accompanied by an incorrect photo of a different dog to highlight the claim, to find upon closer examination that the claims are completely incorrect. Just once such example of this is:

Pit Bull Horror New York Daily News, February 7, 2004

Pit Bull Mauls 3-Year-Old's Face New York Newsday February 6, 2004

A Bronx family owned a Boxer dog and a German Shepherd puppy that usually were kept in the basement as guard dogs. Two days before the girl was bitten, the family took in a Pit Bull. The 3-year-old was alone playing with three dogs when the dogfight started. At this point the girl was bitten in the face by the Boxer, yet initial reports as shown in the headline above blamed the Pit Bull. It was later acknowledged that the Pit Bull (also reported to be a Pit Bull mix and a "pet Bulldog") was not involved in the attack on the girl. (Allan, L, 2006).

The Working Party’s research shows that any breed of dog both pure bred and cross bred can perform acts that may be viewed as dangerous and this is supported by dog incident statistics from a wide array of jurisdictions. In fact these statistics from Victoria show that in the case of the American Staffordshire Terrier and Staffordshire Bull Terrier that these breeds expressed as a percentage of their overall populations they rank as amongst the best breeds in the community. “Indeed, American records indicate that several toy breeds have killed infants, and a recent unpublished Australian study recorded very serious injuries to children inflicted by toy breeds” (Collier, S., 2006, p20).

The weight of practical evidence shows the two issues above are very real. Whilst such APBT *type* legislation may be well meaning in its design, the cold harsh reality is that legitimate ANKC recognised breeds such as the American Staffordshire Terrier and Staffordshire Bull Terrier that reside in large numbers in family homes in the care of responsible owners will be, by pure virtue of their appearance alone, unnecessarily negatively affected by such legislation.

Quite apart from the resultant unnecessary emotional strain, legal challenges and public costs this leads to, we would contend that it has the potential to dramatically increase the numbers of seized dogs leading to a significant increase in the animal welfare problems that Dr Berry seeks to overcome.

6. Owners – the real issue

The case studies referred to above, including the large number the Working Party have identified, along with the practical experience flowing from the UK’s DDA, strongly attest to the fact that Breed Specific or Breed Referencing legislation creates more problems than it seeks to resolve, not to mention the massive financial impost that those new problems place on the public purse.

In the USA, the AVMA Task Force on Canine Aggression and Human-Canine Interaction concluded that breed specific legislation was inappropriate because it lulls people into a false sense of security that banning or restricting certain breeds of dog manages the problem, resulting in dog owners acquiring a dog and failing to undertake their responsibilities to the community in the context of the potential danger the dog may pose. (Beaver B et al, 2001, p 1745).

Professor Irene Sommerfeld-Stur conducted extensive research to establish the linkages between aggressiveness in dogs and certain breeds. In that research she concludes that humans are responsible for a large part of the behaviour disorders in dogs of all breeds. In particular she found “it becomes evident, that especially misguided motivation of dog owners can make dangerous dogs out of normal dogs and this independently of breed” (Sommerfeld-Stur, I., 2002, p18). These observations are supported by the research of Unshelm et al (1993), Feddersen-Petersen and Hamann (1994) and Semencic (1984) amongst an array of others.

This Working Party undertook this paper with the view to promoting the notion of punishing the deed rather than the breed in relation to identification of dangerous dogs, however, the research suggests to us that we must equally or perhaps even moreso look at the owner of the dog behind the deed. We have reached the conclusion that there is enough evidence to suggest that any breed of dog may perform dangerous acts in the wrong hands. This is something that Dr Berry also alludes to in his paper when he touched on the notion of irresponsible owners (Berry, D, 2007, p3).

Karen Delise, in her book analysing the stories behind dog incident statistics probably sums up the reality of dog control and therefore the correct point of focus perfectly, “with any breed of dog, the function or purpose it serves in its owner’s life is directly related to the behaviour of the dog” (Delise, K, 2002, p87).

It is clear to this Working Party that owners are the true issue that our legislators should be focussing on in addressing dog control issues.

7. Recommendations

The Working Party supports those of Dr Berry’s recommendations that relate to the provision of properly designed purpose built facilities to house and humanely provide for the needs of dogs held for lengthy periods while court proceedings ensue. We do not agree that this should be a centrally located facility, but recommend more than one such facility be provided at various locations throughout the state to allow ready access for owners to visit such dogs.

We have concerns as to the appropriateness of a temperament test that Dr Berry suggests that where a dog is suspected of being of a particular type that the test should ensure these dogs should be “challenged” (Berry, D, 2007, p2). We agree that a temperament test is a valid mechanism for assessing the suitability of a dog that finds its way into a pound for re-homing, but such a test should be identical for all dogs given the fact that the evidence shows that any breed of dog can become dangerous, particularly if coming from an irresponsible owner.

In the previous section we discussed that there is a body of evidence that points to the owners of dogs that become dangerous as being the real issue to focus on. Neither the current laws, nor the recommendations put forward by Dr Berry do anything to constrain people that have dogs seized for being dangerous or restricted from acquiring another one or changing breed repeatedly thereby potentially tarnishing another breed’s reputation and in so doing potentially continue to endanger the community.

The Working Party believe the real solution to the issue of controlling dangerous dogs must have as a necessity a focus on responsible ownership, but also protecting the rights of current responsible owners and further protecting those dogs that are good members of the community irrespective of their breed or type.

The solution must in our opinion:

- force people to be responsible owners or potentially lose the right to own a dog
- control irresponsible owners from repeatedly changing breeds
- introduce a form of control on the very small number of people who seem intent on breeding “designer cross-breeds” with less than desirable temperaments
- protect the rights of the responsible owners of breeds that have the potential to be misidentified under the breed specific or breed referencing recommendations being discussed.

Further, with over 1.8 million households in Victoria (Australian Bureau of Statistics, 2001) and 40% of those having dogs (University of Queensland, 2005), compared to the number of dogs that attract the attention of the authorities for the wrong reasons, it is necessarily concluded that the overwhelming number of dogs are good members of the community, and therefore should not be threatened by legislation that singles them out through their appearance.

8. Conclusion

“In summary it can be captured based on the discussed literature, that dogs certainly represent in principle a potential for endangerment of people and other animals, that the danger that emanates from a dog, however, stands no objective connection with breed association and cannot be established a priori with sufficient reliability” (Sommerfeld-Stur, I., 2002, p25)

The animal welfare problems at the Lost Dogs Home for the long term incarcerated dogs as described by Dr Berry should be of profound concern to all animal loving human beings.

There needs to be a workable solution found to it. However, it is the strong belief of this Working Party that changes to legislation to reference APBT *types* is not the correct answer and this view is very well supported by a vast array of research.

We recommend that the legislators in this state direct their energies towards legislation that focuses on responsible ownership, but also protecting the rights of current responsible owners and further protecting those dogs that are good members of the community irrespective of their breed or type. We believe that a scheme of this nature has a real capacity to see a reduction in the numbers of dogs that become problems in the community and through this does contribute to a resolution of the problem that Dr Berry raises.

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