

Agriculture and Fisheries and Other Legislation Amendment Bill 2023

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To whom it may concern,

RE: Agriculture and Fisheries and Other Legislation Amendment Bill 2023 RSPCA Qld Submission

We appreciate the opportunity to have input into this review and to advocate for animals and dog owners impacted by this proposed Amendment Bill.

There are a number of proposals that have been included in the Amendment Bill following consultation with the public on the Strong dog laws: Safer communities Discussion Paper which RSPCA Qld has a position on as outlined below.

1. Breed Specific Legislation (BLS)

The Bill has proposed removing the ability for any permits to be issued for new restricted breed dogs, effectively banning those breeds from Queensland going forward. The RSPCA opposes dangerous dog legislation that targets dogs and dog owners that have no known history of menacing or dangerous behaviour, discriminating against them based on their breed or appearance.

The RSPCA considers that any dog of any size, breed or mix of breeds can be dangerous and dog management strategies should focus on the behaviour of the individual dog. This position is consistent with a large volume of evidence and global opinion.

The breeds currently listed as restricted under the *Customs (Prohibited Imports) Regulations 1956 (Cwlth)* are already prohibited from being imported into Australia and prohibited from being owned and registered in many local council areas in Qld. Of the five breeds in question, RSPCA has no knowledge of four of the five breeds existing in this State. Those 4 dog breeds are:

- Dogo Argentino
- Fila Brasileiro
- Japanese Tosa
- Perro de Presa Canario or Presa Canario

The fifth breed listed is the American Pit Bull Terrier which is not a recognised breed of dog in Australia. Pit Bull is a descriptive label given to dogs that loosely share some physical features. For the purposes of this document, we will use the term Pit Bull.

Identification problems

Legislation targeting specific breeds, needs to provide a mechanism for how the people responsible for identifying prohibited breeds can do so with confidence. In the case of a Pit Bull, this is simply not possible. There are three potential ways to identify a dog's breed; its pedigree, its appearance or its DNA. In the case of the Pit Bull, all of these methods have major problems.

Pedigree

Evidence of a dog's pedigree is a helpful way to rule out if a dog is a Pit Bull or not. For instance, a dog with a pedigree certificate indicating that it is an American Staffordshire Terrier, cannot be classified as a Pit Bull (*Animal Management (Cats and Dogs) Act 2008*). A pedigree certificate is not an option for identifying Pit Bulls in Australia as it is not a recognised breed of the Australian National Kennel Council.

Visual Identification

Visual identification is a flawed method for identifying Pit Bulls and is a major reason why breed-specific legislation cannot be effectively enforced. A number of studies have demonstrated that dog-related professionals, including veterinarians, are not able to accurately identify the predominant breed of different dogs.^[1,2,3]

Genetic Testing (DNA)

The Australian Veterinary Association state in their 2012 report, *Dangerous dogs – a sensible solution*^[4] that it is not possible to precisely determine the breed of the types of dogs targeted by breed-specific legislation either by appearance or by DNA analysis. Dr Vankan (2023), former Science Leader of the University of Queensland's Animal Genetics Laboratory supports this view:

"DNA-based breed identification is not reliable and could not be used as evidence in a court of law. There is currently no standardisation in the establishment and analysis of these tests. Accuracy claims by commercial companies are untested by scientific scrutiny and published comparisons between different companies demonstrate a wide variability in test results, as might be expected in an unregulated commercial environment. Breed prediction analysis relies heavily on the selection of animals used to define the reference breed populations. Individuals belonging to rare pure breeds, or dogs native to a particular region that have not been included as a reference population may not be identified or may be mis-identified. Without standardisation in the analytical pipeline, DNA-based breed identification cannot be considered a valid tool for forensic or legislative enforcement purposes."^[5]

Further, in an email response, Sofronidis (2023) from Orivet Genetic Pet Care, a leading genetic testing organisation in Australia states that:

"these breeds have been restricted/banned and therefore pedigrees limited and thus making the test unable to confirm purity. The main issue with Breed ID tests is that they are predictive and designed to answer questions around mixed breed/rescue/pound dogs, they simply do not work to clarify whether a dog is pure (100%)."^[6]

As none of the methods for identification can be relied upon to enforce breed-specific legislation, these sections of the Act will be difficult to enforce and open to challenge. In addition to issues of identification is the complex issue of dog behaviour.

Dog Behaviour

Aggressive behaviour in dogs is a complex issue and breed specific legislation does not consider that a number of studies have shown that there can be much variation within breed as between breed,

"findings indicate that breed alone is not a reliable predictor of individual behavioural tendencies, including those related to aggression, and therefore breed specific legislation is unlikely to be an effective instrument for reducing risk"^[7]

Additional research shows that owner behaviour can have a direct impact on dog aggression and personality and a paper in the Journal of the American Veterinary Association stated that,

“the co-occurrence of multiple factors potentially under the control of dog owners: isolation of dogs from positive family interaction and other human contact; mismanagement of dogs by owners; abuse or neglect of dogs by owners; dogs left unsupervised with a child or vulnerable adult who may be unfamiliar to the dog; and maintenance of dogs in an environment where they are trapped, neglected, and isolated and have little control over either the environment or choice of behavior.”^[8]

Victoria, Australia - Example

Breed-specific bans were introduced in Victoria in 2011 and have since been amended following recommendations from the Parliament of Victoria, Inquiry into the legislative and regulatory framework relating to restricted-breed dogs.

Below is a brief summary of the findings and recommendations of this Inquiry.

Domestic Animals Act 1994 – Amendments Timeline

April 2011

Amendments to the Domestic Animals Act 1994 made following the tragic death of four-year-old Ayeen Chol from a dog attack in 2011, effectively banning restricted breeds.

June 2015

A Parliamentary Inquiry was established to examine the regulatory framework relating to restricted-breed dogs and its effectiveness.

March 2016

Committee call for change on restricted-breed dogs allowing restricted breed dogs to be registered in Victoria.^[9]

September 2016

Victorian Government response to the inquiry accepts the recommendation to reform the legislation and allow Pit Bulls to be registered in Victoria.^[10]

Conclusions from the Victorian Inquiry

- Victoria’s current system of identifying and dealing with restricted-breed dogs is not working.
- The clearest indicator of the current system’s failure can be seen in the appeals to the Victorian Civil and Administrative Tribunal about declarations that dogs are Pit Bulls. The Tribunal has overturned 74 per cent of the declarations by council officers that have been appealed since 2011.
- The appeals process has also resulted in (sometimes large) litigation costs for councils, trauma for the dog owners and negative impacts on the dogs from long-term confinement. A number of councils indicated to the Committee that they are now reluctant to declare dogs to be Pit Bulls or no longer contest appeals.
- The Committee recommended that the Government lift the current ban on the registration of Pit Bulls that have not previously been registered. Allowing the registration of Pit Bulls would mean that councils could no longer seize and euthanase them solely because of their breed.

- The Committee considers that the resources and energies of local councils would be better devoted to encouraging responsible dog ownership generally, rather than focusing on identifying and managing Pit Bulls.

The report published in March 2016 outlines the findings of extensive research on the topic of the inquiry and covers in detail the challenges associates with breed-specific legislation^[9].

RSPCA Qld strongly encourages legislative decision makers to review this report before introducing additional breed-specific legislation in Queensland. According to many submissions from councils in Victoria, councils generally lose these appeals at either VCAT or the Supreme Court and incur significant cost in the process. It would be irresponsible of the Queensland Government to progress with legislation that has proven to add significant cost to councils to enforce this legislation and defend appeals with no overall benefit. Not to mention the cost to families to defend their pet and major welfare concerns for the dogs who are unnecessarily impounded for months or even years awaiting a decision on their life.

International Evidence

Several countries and towns had repealed or amended breed-specific laws due to concerns about their effectiveness and fairness, the cost of enforcing the legislation and of caring for the dogs through their entire determination and appeals process. In Italy, the Netherlands, and a number of US states, breed specific legislation has been repealed following research demonstrating that it had no significant impact upon the prevention of dog bites.^[11]

The National Canine Research Council refer to evidence that documents the failure of breed-specific legislation in the article World-Wide Failure of BSL.^[12]

The table below represents some of the jurisdictions that have introduced BSL and reviewed the legislation after a period of time.

Location	Breed-Specific Legislation Outcome	Reason
Cincinnati, Ohio, USA ^[13]	Repealed	Expense to enforce and completely ineffective.
Cleveland, Ohio, USA ^[13]	Rescinded	Cost and effectiveness concerns.
Prince George's County, MD, USA ^[13]	Task Force recommended repealing breed ban	Cost of maintaining a single Pit Bull through the entire determination and appeals process. Also witnessed the introduction of large, powerful dogs not subject to the ban.
Great Britain ^[14]	Repeal recommended	The estimated cost to the UK government of determining whether an individual animal belonged to a specified breed was in the order of \$14mil and no reduction in the incidence of dog bites. Although the United Kingdom has prohibited the sale and breeding of pit bulls since 1991, the law has had no impact on the number of dog attacks
Germany ^[12,14]	Withdrawn	Government-mandated temperament tests showed that there was no scientific basis for increased aggressiveness in the specified breeds

Netherlands ^[12,14]	Abolished	Following assessment of the validity of the legislation and its impact.
Italy ^[12,14]	Removed Restrictions	Review of 'deemed dangerous' breeds

Anti-BSL laws have been passed in 21 of the 50 state-level governments in the United States, prohibiting or restricting the ability of jurisdictions within those states to enact or enforce breed-specific legislation.^[15]

In the United States, 128 cities and towns have repealed bans or breed-specific legislation since 2018^[16].

This table represents some of the Global Veterinary and Expert Authorities Position on BSL^[17].

Authority	Position on BSL	Reason
Australian Veterinary Association	Not Supported	The AVA does not believe that breed-based approaches reduce public risk. The AVA is opposed to breed-based dog control measures because the evidence shows that they do not and cannot work.
British Veterinary Association	Not Supported	It is clear from current evidence that the Dangerous Dogs Act has not improved human safety around dogs.
American Veterinary Society of Animal Behaviour	Not Supported	The AVSAB's position is that such legislation is ineffective, and can lead to a false sense of community safety as well as welfare concerns for dogs identified (often incorrectly) as belonging to specific breeds.
Canadian Veterinary Association	Not Supported	The Canadian Veterinary Medical Association (CVMA) supports legislation on dangerous dogs if it is directed at fostering the safety and protection of the general public and domestic animals, is not discriminatory toward a specific breed, and considers the welfare of all animals deemed to be dangerous.
Canada Safety Council	Not Supported	Violent or irresponsible individuals who want an aggressive dog will seek out an animal not included in the ban.
Canadian Kennel Club	Not Supported	BSL legislation may include dogs which are not dangerous, while excluding those that are.
National Companion Animal Coalition	Not Supported	BSL is not an effective tool to protect the public from vicious or dangerous dogs.
Centres for Disease Control and Prevention	Not Supported	CDC recommends against using breed as a factor in dog-bite prevention policy, any dog of any breed has the potential to bite.
National Canine Research Council	Not Supported	Effective laws hold all dog owners responsible for humane care, custody, and control of all dogs regardless of breed or type.

RSPCA Qld advocates for decision making that is informed by available scientific evidence. Currently, the evidence does not support assumptions that certain breeds of dog are inherently dangerous or that the act of banning those breeds will decrease the rate of dog bites or attacks. The overwhelming evidence, including experience with breed banning in Australia, demonstrates that it will be ineffective in its aim of keeping our communities safer.

On a final note, we need to consider human behaviour and the likely consequences for people who desire vicious dogs. If the type of dog they desire is banned, they will circumvent the law by breeding or training new types of dangerous dogs that meet their needs as seen in the US.^[13]

We strongly urge the Government to take the learnings from other jurisdictions, including right here in Australia and remove these additional breed bans from this Amendment Bill. In addition, include provisions that prevent the introduction of such legislation into local laws.

2. Effective Control in Public Places

The proposed provision would require an owner or responsible person for a dog to ensure that it is not in a public place unless it is under effective control.

RSPCA Qld supports these new provisions in the Bill however would recommend further consultation with enforcement agencies to ensure the specific elements of each offence are worded correctly to ensure these new provisions can be enforced as intended.

The new Section 194 covers Effective Control. We note that there is a new provision:

2(c) the dog is being confined or tethered in, or on, a vehicle in a way that prevents the dog moving any part of its body beyond the vehicle.

This new provision appears to contradict a recent change to the *Animal Care and Protection Act 2001*, Section 33 Transport Dogs.

33 (1) A driver must not transport a dog inside a vehicle if any part of the dog, other than its head, is able to protrude from the vehicle.

We recommend that Section 194 is amended to be consistent with the *Animal Care and Protection Act 2001*.

3. Increase in Maximum Penalties and Criminal Offence Associated with Dog Attacks

RSPCA does not object to higher maximum penalties for offences or introducing a new criminal offence proposed in the Amendment Bill.

Further to this, we recommend that penalties associated with prohibited events (dog fighting) under the *Animal Care and Protection Act 2001* also be reviewed. Under S21, Prohibited events, the maximum penalty for these offences is 300 penalty units (\$46,440) and 1 year's imprisonment.

RSPCA Qld has had significant experience investigating dog fighting offences and the subsequent dangerous dogs that this blood sport creates. These are the most dangerous of all dogs we have seen in our animal shelters in the last few years. These investigations demonstrate that if a dog fighter wants to train a dog to maim and kill another dog, they have the ability create very dangerous dogs whose behaviour can be unpredictable around humans and other animals.

These dog owners operate underground and will not be known to Council through dog registrations. They make huge efforts to breed the best fighting dogs including sourcing sperm from prize fighting stud dogs internationally and importing this into Australia. Without stronger penalties and risk of longer terms of imprisonment, dog fighting syndicates will continue to find ways to breed and train the most dangerous dogs in our communities.

4. QCAT Appeals

Although we commend the Government for considering the QCAT appeals process in the Amendment Bill, we do not consider the proposed changes to have practical benefits.

The proposed changes will only be relevant at the point of an appeal of a QCAT review decision which is at the tail end of an already protracted legal process.

The average wait time to finalise an application for a review of a government agency decision, published on the QCAT website as at 11th December 2023, is 46 weeks ([Timeframes | Queensland Civil and Administrative Tribunal \(qcat.qld.gov.au\)](https://www.qcat.qld.gov.au/timeframes)). At this point the application can be heard, and a decision reached. The owner can then appeal this review decision at which point, the proposed changes will become relevant.

As mentioned earlier in this submission, these lengthy legal processes are costly to Council, traumatic for owners and compromises the welfare of the dogs involved due to long-term confinement. The negative impact to those who are required to care for them in Council Pounds is also significant.

If the breed ban does come into effect, we would expect to see the number of internal review decision and QCAT applications increase, with dog owners defending their pets' lives who have been seized based on their appearance alone. If the Victorian experience is repeated in Queensland, we will see QCAT overturn declarations by council officers due the difficulty in definitively identifying the breed of dog (particularly in the case of a dog declared to be a Pit Bull by a Council Officer). This means more cost to councils and more traumatic impacts for families and their pets.

RSPCA considers the long-term confinement of dogs in council pounds to have significant negative impacts on the welfare of the dog and therefore priority should be given to any QCAT application that involves an impounded animal.

References

1. Voith, VL, Trevejo, R, Dowling-Guyer, S, Chadik, C, Marder, A, Johnson, V & Irizarry, K 2013, 'Comparison of visual and DNA breed identification of dogs and inter-observer reliability Victoria', American Journal of Sociological Research, vol. 3, no. 2, pp.17-29
2. Olson KR, Levy, JK, Norby, B, Crandall, MM, Broadhurst, JE, Jacks, S, Barton, RC & Zimmerman MS 2015, 'Inconsistent identification of pit bull-type dogs by shelter staff', The Veterinary Journal, vol. 206, no. 2, pp.197-202
3. Kathleen C. Croy, Julie K. Levy, Kim R. Olson, Michael Crandall, Sylvia J. Tucke 2012-Croy-Maddies-Shelter-Medicine-Conference-Abstract.pdf (ufl.edu) accessed 13/7/23
4. Australian Veterinary Association (2012), Dangerous Dogs – A Sensible Solution <https://www.ava.com.au/siteassets/advocacy/dangerous-dogs/dangerous-dogs-a-sensible-solution-final.pdf>
5. Vankan D. (2023) 'Genetic testing for Dog Breed ID purposes' Interview by Rachel Woodrow via microsoft teams, 18 July.
6. Sofronidis, G (2023) Orivet Genetic Pet Care, E-mail to Rachel Woodrow, 11 July.
7. Comparison of behavioural tendencies between "dangerous dogs" and other domestic dog breeds – Evolutionary context and practical implications (2022) <https://onlinelibrary.wiley.com/doi/pdf/10.1111/eva.13479>
8. Gary J. Patronek et al., Co-Occurrence of Potentially Preventable Factors in 256 Dog Bite-Related Fatalities in the United States (2000–2009), 243 J. AM. VETERINARY MED. ASS'N 1726, 1731 (2013).
9. Parliament of Victoria, Legislative Council Economy and Infrastructure Committee (2016). Inquiry Into the legislative and regulatory framework relating to restricted-breed dogs, [report--inquiry-into-legislative-and-regulatory-framework-relating-to-restricted-breed-dogs.pdf](https://www.parliament.vic.gov.au/~/media/Parliament/Victoria/Committees/Economy%20and%20Infrastructure/Inquiry%20into%20the%20legislative%20and%20regulatory%20framework%20relating%20to%20restricted-breed%20dogs/Report%20-%20Inquiry%20into%20the%20legislative%20and%20regulatory%20framework%20relating%20to%20restricted-breed%20dogs.pdf) ([parliament.vic.gov.au](https://www.parliament.vic.gov.au))
10. Victoria State Government (2016) Government response to the Parliamentary Inquiry into the legislative and regulatory framework relating to restricted-breed dogs, [Microsoft Word - 24082016 Final Government Response to Parliamentary Inquiry into RBD \(clean 2\).docx](https://www.parliament.vic.gov.au/~/media/Parliament/Victoria/Committees/Economy%20and%20Infrastructure/Inquiry%20into%20the%20legislative%20and%20regulatory%20framework%20relating%20to%20restricted-breed%20dogs/Microsoft%20Word%20-%2024082016%20Final%20Government%20Response%20to%20Parliamentary%20Inquiry%20into%20RBD%20(clean%202).docx)
11. F Cooke, M Radford, UK Parliament Committees (2018). [DDL0380 - Evidence on Dangerous Dogs: Breed Specific Legislation](https://www.parliament.uk/committees/deregulation-and-reform/committees/committees-deregulation-and-reform/committees-deregulation-and-reform-ddl0380-evidence-on-dangerous-dogs-breed-specific-legislation) ([parliament.uk](https://www.parliament.uk))
12. National Canine Research Council (no date) World-Wide Failure of Breed Specific Legislation, [world-wide-failure.pdf](https://www.fairdog.dk/world-wide-failure.pdf) ([fairdog.dk](https://www.fairdog.dk)).
13. Safia G. Hussain, Michigan State University (2006) Attacking the Dog-Bite Epidemic: Why Breed-Specific Legislation Won't Solve the Dangerous-Dog Dilemma.
14. Australian Veterinary Association (2012), Dangerous Dogs – A Sensible Solution <https://www.ava.com.au/siteassets/advocacy/dangerous-dogs/dangerous-dogs-a-sensible-solution-final.pdf>.
15. Overview of States that Prohibit Breed-Specific Legislation by State Law (2022) [Overview of States that Prohibit BSL | Animal Legal & Historical Center](https://www.animallaw.info/overview-of-states-that-prohibit-bsl) ([animallaw.info](https://www.animallaw.info))
16. BSL Continues to Crumble (2021) [BSL Continues To Crumble - Pitbullinfo.org](https://www.pitbullinfo.org/bsl-continues-to-crumble)
17. Repealing Breed-Specific Legislation: moving beyond breed to save dogs and strengthen communities, Washington DC (2019) [repealing-breed-specific-legislation.pdf](https://www.humanepro.org/repealing-breed-specific-legislation.pdf) ([humanepro.org](https://www.humanepro.org))