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Local Government and Other Legislation Amendment Bill (No 2) 2001:

The Regulation of Dangerous Domestic Dogs

The Local Government and Other Legislation Amendment Bill (No 2) 2001 provides specific legislation regulating the management of particular breeds of domestic dogs determined to be dangerous so as to require registration as restricted dogs. The restricted breeds are the American pit bull terrier, the dogo Argentino, the fila Brasileiro and the Japanese Tosa. The amendment has similar provisions to those currently operating in some other States and a number of Queensland local authorities have previously prohibited these breeds of dog from being kept in their geographical areas whilst others have placed restrictions on them.

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Research Brief No 2001/35

Queensland Parliamentary Library
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ISSN 1443-7902

ISBN 0 7345 2809 4

December 2001

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CONTENTS

1	INTRODUCTION	1
2	DOGS BRED SPECIFICALLY FOR FIGHTING.....	2
3	INJURIES FROM DOG BITES – QUEENSLAND AND OTHER JURISDICTIONS.....	3
4	EXAMPLES OF HUMANS AND ANIMALS BEING ATTACKED	5
5	ADOPTION OF LOCAL LAWS AND SUBORDINATE LOCAL LAWS OR LOCAL LAW POLICIES	7
6	BREEDS OF DOG MORE PRONE TO AGGRESSIVE BEHAVIOUR	9
7	BREED SPECIFIC LEGISLATION V GENERAL DANGEROUS DOG LEGISLATION	10
8	GENERAL ARGUMENTS FOR AND AGAINST THE TARGETING OF SPECIFIC BREEDS.....	12
8.1	ARGUMENTS IN FAVOUR OF SPECIFIC TARGETING.....	12
8.2	SOME SCEPTICISM OF THE EFFECTIVENESS OF SPECIFIC BREED LEGISLATION AND BREED IDENTIFICATION	13
8.3	BREED IDENTIFICATION.....	16
9	LEGAL LIABILITY FOR ANIMALS	16
9.1	COMMON LAW	16
10	THE LOCAL GOVERNMENT AND OTHER LEGISLATION AMENDMENT BILL (N0.2) 2001	18
10.1	PENALTY LEVELS UNDER THE CURRENT BILL	23
11	STATUTORY PROVISIONS IN OTHER JURISDICTIONS.....	24
11.1	TASMANIA	24
11.2	NEW SOUTH WALES	26
11.3	SOUTH AUSTRALIA.....	27

11.4	WESTERN AUSTRALIA	29
11.5	AUSTRALIAN CAPITAL TERRITORY.....	30
11.6	VICTORIA.....	32
11.6.1	Animals Legislation (Responsible Ownership) Bill 2001.....	35
11.7	NEW ZEALAND	37
11.8	UNITED KINGDOM.....	39
12	CONCLUSION	42
	APPENDIX.....	44
	RECENT QPL RESEARCH PUBLICATIONS 2001	3

1 INTRODUCTION

The Local Government and Other Legislation Amendment Bill (No 2) 2001 was introduced into the Queensland Legislative Assembly on 27 November 2001. The government first announced in July 2001 that, in the light of an increasing number of dog attacks on humans, it was considering introducing a Bill to regulate the ownership and management of dangerous domestic dogs. In September 2001, the Queensland Government released a comprehensive Consultation Kit containing a discussion paper and a draft Local Government Amendment Bill concerning possible options for the regulation of restricted domestic dogs.¹

Recent developments have also taken place in New South Wales, which has enacted legislation (the *Companion Animals Amendment Act 2001*) to cover the regulation of dangerous dogs to a greater extent than has been done in the past² and in Victoria, where a Bill declaring particular breeds of dogs to be restricted (the *Animals Legislation (Responsible Ownership) Bill 2001*) passed the third reading stage in the Legislative Assembly on 22 November 2001 and passed the third reading stage in the Legislative Council on 4 December 2001.³

Legislation has long been central to the control of domestic animals such as dogs. A combination of increased urbanisation and changing community attitudes and expectations has resulted in a continual need to review and amend such legislation.

Dog attacks are of great concern to the general public. This is particularly so in the case of small children and the elderly. Only a minority of the number of dogs that are in the community are ever involved in attacks on persons and other animals. However, all domestic dogs have the potential to bite in situations where they are frightened, protective of something or being possessive. In 1996 there were 82,000 dogs registered with the Brisbane City Council whilst it was estimated there were approximately another 20,000 that were not registered.⁴

¹ Queensland. Department of Local Government and Planning, *Draft Legislation Proposals: A regulatory framework for restricted dogs*, Consultation Kit, September 2001.

² The New South Wales legislation is discussed further in Part 11.2 of this Research Brief.

³ The Victorian Bill is discussed further in Part 11.6 of this Research Brief.

⁴ 'New Companion animal laws - Brisbane City Council', <http://www.petnet.com.au/uam/best96.html> Downloaded 14 August 2001.

One Queensland local authority has given its support to government plans to ban the breeding and selling of pit bull terriers.⁵ The Executive Director of the Queensland Local Government Association has announced the Association's support for the state-wide initiative, as approximately half of the State's local authorities maintain existing model laws concerning dangerous dogs.⁶

A summary table of the Queensland local authorities that place restrictions on specific breeds of dogs is contained in the **Appendix** to this Research Brief. It is estimated that across Australia approximately 5,000 people own one or more American pit bull terriers, a breed which is one of the particular breeds being targeted under the Local Government and Other Legislation Amendment Bill (No 2) 2001 (Qld).⁷

2 DOGS BRED SPECIFICALLY FOR FIGHTING

The formation and improvement of utility breeds (of which dogs bred for fighting are but one) based on selection and specific matings commenced in Great Britain in the middle of the 18th century. Breeders' Associations gradually developed an interest in both pure breeding and cross breeding. Among Breeding Associations the breeding of dogs specifically for the purpose of fighting has never been accepted as a valid breeding objective which has led to the non-recognition of those fighting breeds on the registers of Breeding Associations.

The consequences of the domestication process, coupled with inter-breeding, have been so great that the differences between breeds now exceeds the differences that would have existed between the species under natural conditions. Generally, fighting dogs such as the American pit bull terrier and the Japanese tosa were bred from the stock of working dog breeds that exhibited strength, endurance and intelligence necessary for hunting and the working of other animals. These were attributes that were prized in rural societies.⁸

⁵ 'Baillon welcomes pitbull ban', *ABC News Online – Qld Regional*, 30 July 2001.

⁶ Peter Morley, 'Queensland clamps down on pit bulls', *Sunday Mail*, 29 July 2001. http://news.com.au/common/story_page/0,4057,2457336%255E421,00.html Downloaded 5 September 2001.

⁷ Sally Finlay, 'Pit bull publicity harmful', *The Age*, 9 October 2000, <http://www.theage.com.au/news/20001009/A39201-2000Oct8.html> Downloaded 5 September 2001.

⁸ *The New Encyclopaedia Britannica*, Volume 1, pp 903-908.

The *Animal Care and Protection Act 2001* (Qld) provided increased penalties for persons found to have organised dog fights and also for persons who attended any such event.

3 INJURIES FROM DOG BITES – QUEENSLAND AND OTHER JURISDICTIONS

The Queensland Injury Surveillance Unit (QISU) based at the Mater Hospital, South Brisbane, collated statistics concerning the number of hospital reported injuries caused by dog bites. The statistics are based on emergency department presentations at the following 7 hospitals:

- Mater Children's Hospital (Brisbane)
- Mater Adult Hospital (Brisbane)
- Mater Private Emergency Care Centre (Brisbane)
- Queen Elizabeth II Jubilee Hospital (Brisbane)
- Redland Hospital
- Logan Hospital
- Royal Children's Hospital (Brisbane)
- Mt Isa Hospital
- Mackay and District Hospitals.

The statistics do not include the number of bite victims who may have sought medical attention from private practitioners and who did not require hospital treatment. Consequently, the statistics kept by QISU would be conservative in relation to the actual incident rate of dog attacks.

In approximately two-thirds of the recorded cases, the bites were sustained in a residential setting. Within this category, 40% of dog bite victims were attacked in their own homes with a further 26% of attacks occurring on the property of another (often a neighbour's yard). Only 25% of recorded attacks occurred in a public place such as a footpath or roadway. Almost half (45%) of children presenting with bites presented as a result of being bitten by a dog. Twenty-nine percent of recorded injuries required

admission to hospital.⁹ In 1996 dog-related injuries accounted for 216 recorded incidents of injuries sustained in the home environment.¹⁰

The South Australian Health Commission has reported similar figures in the past with 40% of dog attacks occurring in the victim's house or yard and 30% occurring in a friend's or neighbour's yard. The Commission also reported that children under 12 years of age are most at risk from dog bites with the 1-4 year age group recording the highest rate of injury.¹¹

In Victoria the Injury Surveillance System recorded 902 attacks on children under 15 years of age between 1989 and 1991. These statistics were only collated from 5 Victorian hospitals with the result that they too are conservative. The level of seriousness can be gauged by comparing injuries from dog bites with injuries sustained from other occurrences. The rate of child hospitalisation because of dog attacks for those under 4 years of age in Victoria is approximately 37 per 100,000. This compares with 28 per 100,000 resulting from motor vehicle accidents and 12 per 100,000 as a result of child abuse for the same age group.¹²

The first fatality resulting from a dog attack in Western Australia occurred in 1995 when a 83 year old woman died after being attacked by more than one Rottweiler in the backyard of her home. The victim had earlier complained to the local council about the dogs being on the loose.¹³

The Research Institute for Injury Studies based at Flinders University in Adelaide collated Australia-wide injury figures relating to dog bites and reported:

- The location of attacks were:
 - Home of the owner: 35%
 - Another private home: 24%

⁹ Queensland Injury Surveillance Unit, 'Dog Bites', *Injury Bulletin*, No 6, June 1991. <http://www.qisu.qld.gov.au> Downloaded 14 August 2001.

¹⁰ Queensland Injury Surveillance Unit, 'Injuries in the home', *Injury Bulletin*, No 46, December 1997.

¹¹ 'Safety Rules OK!: Dog Attacks', www.safetyrules.health.wa.gov.au/others/factsheets/dogattacks.htm, Downloaded 14 August 2001.

¹² Stephen Goss, 'Dog bite injuries', *Hazard: Publication of the Victorian Injury Surveillance System*, Edition 12, September 1992, p 12.

¹³ 'Pet Sounds', *Home Safety and Security*, Spring 1995, p 18.

- Roads or footpaths: 20%
- The number of males bitten (62%) outnumbered the number of females bitten (37%).
- 51% of the victims required a significant level of treatment with 13% requiring admission to hospital.
- The age group 0-14 years accounted for 50.1% of all hospital admissions.
- The age group 0-4 years recorded the highest mortality rate from dog attacks, representing 36.4% of those killed whilst the elderly over 85 years recorded the next highest fatality rate from dog bites with 27.3% of those who died. These age groups represent those least able to defend themselves.¹⁴

A study conducted by the United States Centre for Disease Control and Prevention in 1996 concluded that restrictions on specific breeds of dogs alone would do nothing to reduce the number of fatal dog attacks in that country. The study reported that the actions of owners is a major contributor to dog attacks. The authors concluded that irresponsible owners would also have to be addressed under any legislation.¹⁵

4 EXAMPLES OF HUMANS AND ANIMALS BEING ATTACKED

The Mt Isa City Council implemented new animal by-laws at the beginning of July 2001. Under the new by-laws an owner was issued with a fine of \$1,500 after her three dogs attacked a person in a public place in July 2001. After the attack, two of the three dogs were destroyed.

Mt Isa Mayor Ron McCullough said the increased fines were aimed at encouraging pet owners to be responsible. Owners issued with on-the-spot fines will still have the right to have the matter dealt with by a court but they may now choose to pay the on-the-spot fine issued by the Council. The Council announced that it would conduct a house to house audit of dog ownership with owners of unregistered dogs being fined for that offence with an on-the-spot fine.¹⁶

¹⁴ Renate Kreisfeld and Stan Bordeaux, 'Injury resulting from dog bites', *Short Reports*, Research Centre for Injury Studies Flinders University, <http://www.nisu.flinders.edu.au/pubs/shortreps/canines.html> Downloaded 16 August 2001.

¹⁵ 'Dog ownership laws fail to curtail fatal attacks', *The Washington Post*, 11 June 1996, p Z05. <http://www.grapevine.net/~wolf2dog/Article2.htm> Downloaded 14 August 2001.

¹⁶ Tamara Kerswell, 'Dog owners feel fine bite', *The North-West Star*, 1 August 2001, p 1.

In August 2001 a ridgeback cross and a bull terrier cross were identified as being responsible for an attack that resulted in the death of three sheep. The two dogs concerned had frequented the property where the sheep had been grazing and had not shown aggressive tendencies toward the property owners. A spokesperson for the Hervey Bay Shire Council said that the attack was an isolated one but when the dogs had again returned to the property after the attack they were impounded.¹⁷

In Thuringowa, in July 2001, a woman was attacked by a pit bull on the footpath when the dog broke out of its owners' property. The owners did not have a permit for keeping the dog and were fined \$150 by the council for allowing the dog to roam at large. The offending dog was later destroyed.¹⁸ A couple of days later, a woman required hospital treatment when a neighbour's dog of an uncertain breed chased her from its property and continued the attack after scaling the fence.¹⁹ An 8 year old boy was admitted to hospital suffering puncture wounds and scratches to the upper part of his body and one hand after being attacked by a dog of an unknown breed in Townsville in August 2001.²⁰

An 11 year old boy required medical treatment for puncture wounds after being attacked by two roaming dogs of an unknown breed at Sunrise Beach at the Sunshine Coast in August 2001. Under by-laws of the Noosa Shire Council, dogs which attack persons are declared to be dangerous dogs and required to be muzzled in public and on-the-spot fines of up to \$375 are also applicable.²¹

In November 2001 a Gold Coast woman was attacked by a pit bull terrier after the dog jumped a fence and mauled her whilst she was on the footpath. The offending dog was later destroyed by the Gold Coast City Council under its local law power.²²

¹⁷ 'Sheep devoured in violent dog attack', *Fraser Coast Chronicle*, 7 August 2001, p 3.

¹⁸ Clayton Smales and Joanna Mather, 'Dog mauls woman', *Townsville Bulletin*, 18 July 2001, p 3.

¹⁹ Smales and Mather, p 3.

²⁰ 'Dog attack puts boy in hospital', *Townsville Bulletin*, 4 August 2001, p 3.

²¹ Veronica Carew, 'Boy hurt when two dogs attack', *Sunshine Coast Daily*, 18 August 2001, p 5.

²² Chris Taylor, 'Mum in pit bull agony', *The Sunday Mail*, 2 December 2001, p 20.

5 ADOPTION OF LOCAL LAWS AND SUBORDINATE LOCAL LAWS OR LOCAL LAW POLICIES

Local laws and subordinate local laws (referred to as Local Law Policies) for the keeping and control of animals have been universally adopted by Queensland local authorities since they were introduced under the legislative authority of Chapter 12 Part 2 of the *Local Government Act 1993*. However, the content of these instruments varies between local councils.

A full text of the local laws and policies passed by each council can be obtained from the following [web site](http://www.localgovernment.qld.gov.au/local_govt/local_laws_main.html)
http://www.localgovernment.qld.gov.au/local_govt/local_laws_main.html

The model laws relating to the keeping and control of animals adopted by councils have a number of common features, some of which are:

- Animals in public places must be under the effective control of the person in charge of the animal and, if this is not the case, the animal may be seized and impounded. To be effectively under control, a dog must be on a leash that is being held by a person who is physically capable of controlling the dog. If the dog is in a vehicle, it must be either confined within the vehicle or tethered to the vehicle in such a manner that it cannot leave the vehicle nor attack or worry any person or any other animal.
- Local authorities may order the registration of particular animals such as dogs, the number of animals that may be kept at the one location and any requirements as to the safety of persons outside the location.
- A requirement on the part of animal owners to keep their animals in proper enclosures to prevent them from wandering or escaping.
- Local authorities may prohibit absolutely the keeping of a specific species or breed of animal or the keeping of an animal in specific parts of the local authority area.
- An obligation on the part of owners or handlers in control of dogs not to allow them to attack or worry any person or animal.
- The local authority may declare a particular dog or a specific breed of dog to be a 'dangerous dog'.
- The declaration of a specific dog as 'dangerous' is based on the dog's behaviour in that it already has caused, or is likely to cause, injury or worry to any person or other animal. A 'dangerous dog' declaration could also be based on the dog having been trained to protect persons and/or property, and attack persons. There is also a general provision that a council may declare any particular dog or breed of dog to be dangerous that has been so declared by another council.

- A requirement that a ‘dangerous dog’ in a public place must be muzzled by its handler.
- ‘Dangerous dog’ status can also result in specific requirements for their keeping, ensuring their secure custody and the safety of persons, and for the provision of the appropriate warning signs to alert the public.
- ‘Dangerous dogs’ found wandering may be seized and destroyed.
- Any dog that attacks (or threatens to attack) a person or animal, with or without causing injury or damage, may be seized and destroyed.
- Any such destruction order is appealable in the Magistrates Court. Local councils also have the authority to seize and destroy any dog summarily without notice to the owner if the dog has been seized on more than 3 occasions in the last year or is considered to be dangerous and not reasonably controllable.

In addition to these above matters, local authorities may make local law policies for the enforcement of further specific matters relating to the keeping and control of animals.

For example, some local authorities in Queensland have passed local law policies that have prohibited the keeping of particular breeds of dogs. These breeds and the councils concerned are listed in **Table 1** to the **Appendix** of this Research Brief.

In 1996, the Brisbane City Council was the first local authority in Queensland to announce restrictions on the ownership of pit bull terriers. A dangerous classification of the breed allowed the council to:

- Make it an offence to walk the dogs in public unleashed and unmuzzled.
- Make it an offence for the dogs to be in a public place without being under the control of an adult.
- Make it an offence not to fence properties on which such animals were housed.

Of the 125 local authorities across the State, only 7 have passed local law policies containing provision for the implanting of microchips in registered dogs. These are the Banana, Beaudesert and Jondaryan Shires, the cities of Caloundra, Redcliffe and Townsville and the township of Goondiwindi.

The process of urban development whereby the outer fringes of towns and cities progressively encroach on grazing lands provides increased opportunity for stock injuries. Larger dogs are more capable of injuring livestock than smaller dogs but a tendency within smaller dogs to be aggressive may trigger predatory pack behaviour in their larger but more dangerous companions.²³

²³ Richard Murray and Helen Penridge, *Dogs in the Urban Environment: A Handbook of Municipal Management*, Published by Chiron Media, Mackay, 1992, p 16.

The use of microchips for the identification of domestic dogs is a positive step in relation to dogs that are caught attacking farm animals. The more widely used method of a tag attached to a collar is far less effective in this regard as it can be torn off during attacks.

6 BREEDS OF DOG MORE PRONE TO AGGRESSIVE BEHAVIOUR

A 1996 South Australian study highlighted 5 breeds of dog that heavily contributed to the number of injurious attacks in that State. The report concluded that breeds such as german shepherds, bull terriers, blue/red heelers, dobermans and rottweilers were 4 to 5 times more likely to be the cause of bites requiring medical treatment than the more common breeds. When collies are added to this list, the 6 breeds combined made up approximately 38% of the dog population in that State but were responsible for 75% of recorded dog attacks.²⁴

The report further indicated that the American pit bull breed had previously been banned in South Australia and their number only accounted for a very small percentage of the State's dog population. Consequently they did not appear in the survey data.²⁵

When the Queensland government announced that it intended to legislate to restrict the ownership of American pit bull terriers, the Deputy Mayor of Townsville urged the government to consider that most dog attacks have not been committed by pit bulls, but by other breeds.²⁶

In Melbourne on 31 November 2001 there were two separate attacks by rottweilers which resulted in a sixty year old man and a fifty-eight year old woman being hospitalised. The sixty year old man's injuries suggested that he was lucky to survive the attack.²⁷

Neither the Australian National Kennel Council nor the Victorian Canine Association recognise the pit bull breed and they are disbarred from being entered into dog shows organised by either of these two bodies.

²⁴ Peter Thompson, 'The public health impact of dog attacks in a major Australian city', *Medical Journal of Australia*, v 167, 4 August 1997, pp 129-132, p 131.

²⁵ Peter Thompson, p 131.

²⁶ Townsville Deputy Mayor Ann Bunnell, cited in Alex Murdoch, 'Bite put on pit bulls', *Townsville Bulletin*, 31 July 2001, p 6.

²⁷ Orietta Guerrero, 'Two hurt by rottweilers', *The Age*, 1 December 2001. <http://www.theage.com.au/news/state/2001/12/01/FFXBMR4UMUC.html> Downloaded 3 December 2001.

There are many professional veterinarians who believe that the pit bull terrier is a breed that is unpredictable because of its natural instincts that make it an excellent fighting dog, a purpose for which it was initially bred but which is now generally outlawed in western countries. A study conducted by the Humane Society of the United States concluded:

*A long history of breeding for fighting has given pit bulls a genetic predisposition for abnormal aggressiveness. Their behaviour is totally abnormal in an evolutionary or ecological sense and is strictly the result of human intervention.*²⁸

7 BREED SPECIFIC LEGISLATION V GENERAL DANGEROUS DOG LEGISLATION

The Australian Veterinary Association does not support measures that target particular breeds of dogs. The Association believes that the attention of governments would be better directed at programs of public education and canine training.²⁹

When Victoria introduced the Domestic (Feral and Nuisance) Animals Bill 1994, the responsible Minister indicated that the government was introducing animal management legislation in conjunction with public awareness and education programs.³⁰ The Minister also indicated that the legislation targeted dangerous behaviour and not perceived characteristics of a breed or type of dog.³¹ The Opposition supported the Bill, particularly the provisions relating to additional controls over recognised dangerous dogs.³²

There is the argument that, whilst pit bulls are not responsible for most dog attacks, the number of incidents involving them should be examined on a percentage basis, given the small number of the breed that are owned by householders.³³

²⁸ R Lockwood and K Rindy, 'Are 'pit bulls' different?: An analysis of the pit bull terrier controversy', *Anthrozoos*, 1987, (1), pp 2-8, p 8.

²⁹ Australian Veterinary Association, 'Dog attacks: banning breeds won't work, say experts', *Media Release*, 6 November 1997.

³⁰ Hon WD McGrath MLA, Domestic (Feral and Nuisance) Animals Bill, *Victorian Parliamentary Debates, Legislative Assembly*, 8 September 1994, p 187.

³¹ Hon WD McGrath MLA, p 189.

³² Mr Kilgour MLA, *Victorian Parliamentary Debates, Legislative Assembly*, 14 October 1994, p 1115.

³³ Editorial, 'Protection of community', *Townsville Bulletin*, 31 July 2001, p 8.

The President of the Victorian Chapter of the American Pit Bull Terriers Club of Australia says the Chapter opposes breed-specific legislation but does acknowledge that the breed is a high-responsibility dog which should only be owned by those who have made an informed choice.³⁴ Generally, canine groups support general legislation as opposed to breed-specific legislation as it is argued that such legislation does not work effectively. Such groups support the enactment and enforcement of strict laws that target aggressive dogs of any breed or cross-breed. This type of legislation is commonly referred to as generic vicious dog laws. Hallmarks of this legislative approach are such restrictions as:

- Confinement in locked, escape-proof enclosures whilst outdoors on the owner's property
- The use of muzzles when in public
- The purchase of public liability insurance.

One of the most stringent applications of specific dog breed legislation was passed in the Port of Spain in 2000. In Port of Spain the *Dangerous Dogs Act* has the following features:

- Pit bull terriers, fila Brasileiro and Japanese tosa breeds are banned with respect to importation and breeding.
- Owners of these breeds are to ensure they have been desexed.
- Owners of all these breeds must obtain a licence which will only be issued when the following have been complied with:
 - The owner has had the premises in which the dangerous dog is to be kept inspected and certified as being safe.
 - A policy of public insurance has been taken out by the owner.
 - A certificate verifying that the animal has been de-sexed is obtained.
 - An annual licence fee of \$500 has been paid.
 - Owners are to ensure that the dog's registration tag is worn on the dog's collar and the registration number has been branded onto the inner ear of the dog.
- Owners of dangerous dogs are to be held strictly liable for injury or damage caused by their animals.
- The offence of allowing a public insurance policy to lapse carries a maximum penalty of \$A 2,500 and up to 3 years imprisonment.³⁵

³⁴ Sally Finlay, 'Pit bull publicity harmful', *The Age*, 9 October 2000, <http://www.theage.com.au/news/20001009/A39201-2000Oct8.html> Downloaded 17 August 2001.

³⁵ 'Dangerous Dogs Bill', http://www.nemwil.com/dangerous_dogs.html Downloaded 23 August 2001.

The city of Revere in Massachusetts once had a specific breed regulation that covered pit bulls. However, over a period of time, the city found that it could not be appropriately enforced and would not stand up to being challenged in the courts. The end result was the breed-specific regulation was replaced with a general dangerous dog regulation.³⁶

8 GENERAL ARGUMENTS FOR AND AGAINST THE TARGETING OF SPECIFIC BREEDS

8.1 ARGUMENTS IN FAVOUR OF SPECIFIC TARGETING

- There are particular breeds that too large and powerful and, coupled with their unpredictable nature, this makes them inappropriate as pets for humans.
- Those specific breeds have been confirmed through statistics and experience as having been involved in attacks on humans to a greater extent than their presence in the dog population.
- That breeds of dogs more prone to aggression toward humans and other animals simply do not fulfil a positive social need.
- The breeds that are more frequently involved in fatal attacks are those of large size and they are often trained as watchdogs.
- Provocation is an improbable justification for fatal attacks with the consequence that such attacks are caused by the aggressive behaviour of the dog concerned.
- Dangerous dogs tend to be used to, and unafraid of, humans and as such, they may present a danger at any time and strike without warning.
- It is important to establish greater control measures over larger dogs as they are capable of causing more damage when they do attack.

8.2 ARGUMENTS AGAINST SPECIFIC TARGETING

- Dog attack statistics are unreliable as there is no certainty as to the exact breed to which the dog/s in question belonged.
- All dogs by their very nature are capable of biting humans.
- Public education on how to interact with dogs and how to be responsible owners is better than placing bans on specific breeds.

³⁶ Dina Fraumeni, 'Initiation: Fighting Revere's pit bull ordinance', *National Animal Interest Alliance*, http://www.naiaonline.org/body/articles/archives/fight_revere.htm Downloaded 17 August 2001.

- Bans on specific breeds tend to result in the ‘sins’ of other breeds being ignored.
- Specific bans are not easy to enforce because of the uncertainty of breed identification.
- It’s not the breed that makes a dog dangerous; it’s the irresponsible attitude of the owner.
- It is the deed that should be punished, not the breed.

8.3 SOME SCEPTICISM OF THE EFFECTIVENESS OF SPECIFIC BREED LEGISLATION AND BREED IDENTIFICATION

The banning of a specific breed(s) of dog(s) that are perceived as dangerous to humans has been a widely implemented strategy of urban animal management across many jurisdictions. For instance, the pit bull terrier, as well as some other breeds, have been specifically targeted in such jurisdictions as Denmark, Finland, France, Holland, Norway, Poland, Germany, Sweden, many municipalities in Canada, United Kingdom, France and the United States.

Closer to home, South Australia has specific breed legislation, and Victoria has introduced similar legislation, which has recently passed the third reading stage in both the Legislative Assembly and the Legislative Council. The Brisbane City Council has prohibited the breeding of pit bull terriers within its area. The Redlands Shire has similar by-laws as does the City of Toowoomba. The City of Gold Coast has announced that it too is prepared to ban the breeding of pit bulls within its boundaries.

The breeds of dogs that have generally been restricted in other places are pit bull terrier, Japanese toska, rottweillers, dogo Argentino, neopolitan mastiff, staffordshire terriers and fila brasileiro. Germany has the largest list of prohibited dogs with some 13 different breeds that **cannot** be owned or bred and a further list of 30 breeds that **can** be owned and bred but must be muzzled at all times whilst in public.³⁷

However, whilst there is a large degree of support for specific breed legislation, there are those who are not so positive about the usefulness of such measures. For instance, a study conducted in the United States in 1996 that reviewed deaths caused by dog attacks in the United States between 1989 and 1994 concluded:

Breed specific approaches to the control of dog bites do not address the issue that many breeds are involved in the problem and that most of the factors

³⁷ ‘Dog Holocaust in Germany’, <http://thelittledoglaughed.com/GermanDogLaw/GerDogLw.html>
Downloaded 30 August 2001.

*contributing to dog bites are related to the level of responsibility exercised by dog owners. To prevent dog-related deaths and injuries we recommend public education about responsible dog ownership and dog bite prevention, stronger animal control laws, better resources for enforcement of these laws...*³⁸

The study reported an annual death rate of 15 lives in the United States between 1979 and 1988 due to dog attacks. American pit bulls were responsible for 41.6% of these deaths, three times more than the next breed of dog responsible – German shepherds.

For the years specifically studied (1989-1994), 56.9% of the 109 persons killed were children less than 10 years of age. Pit bulls once again recorded the highest attack rate by being responsible for 28.6% of deaths. The report indicated that fatalities from dog attacks represented an extreme manifestation of the more common problem of dog bites generally which was located in the top 12 causes of non-fatal injuries requiring medical attention.³⁹ The report cautioned against the perception that specific breeds should be targeted, as specific representation of breeds in attacks fluctuates over time.

The study compared the national level of injuries resulting from dog attacks with the level of injuries from accidents involving playground equipment which results in a similar level of fatal accidents but a much lower level of non-fatal injuries. For instance, in 1994, there were 800,000 injuries suffered as a result of dog bites whilst there were 170,000 injuries suffered from the use of playground equipment.

The study went on to document the public policy response to playground equipment injuries. The recognition that playground injuries required a public policy response resulted in the development of standards for equipment and playgrounds, training and inspection programs, dedication of staff to maintenance and the creation of a nationally funded centre for playground safety to educate the general public. The study lamented the fact that the dog bite problem had not enjoyed a similar prevention effort.

The authors of the study suggested that the amelioration of dog attacks in America is an integral part of the movement towards the containment of health care costs through patient education, community advocacy, better statistical collection and analysis. The authors suggested:

- Increased patient education, particularly with children who are in the high-risk category.

³⁸ Jeffrey Sacks, Randall Lockwood, Janet Hornreich and Richard Sattin, 'Fatal Dog Attacks, 1989-1994', *Pediatrics*, 97(6), 6 June 1996, pp 891-895, p 891.

³⁹ Sacks, Lockwood, Hornreich and Sattin, p 894.

- At the community level, support for school-based educational programs on bite prevention, dog behaviour and responsible dog ownership and training.
- At the community level, support for animal control programs as well as the regulation of dangerous and vicious dogs.
- Greater effort in data collection that would reveal detailed information such as circumstances of the attacks including ownership, breed, sex, neuter status and particular animal history for the purpose of evaluating prevention effort programs.

The study suggested that it was unproductive to view the dog attack problem as unique to any one breed of dog.⁴⁰

A more recent survey conducted by the American Veterinary Medical Association supports the report's observation that responsible breeds change over time by showing that Rottweilers have overtaken pit bulls as the number one cause of fatal dog attacks in the United States. The survey revealed that between 1991 and 1998 Rottweilers were responsible for 33 fatal attacks whilst pit bulls were responsible for 21 fatal incidents. The study commented that the number of fatal dog attacks highlighted widespread mistreatment of dogs and a growing public ignorance of how to behave around dogs and that parents were failing to warn children to stay away from unfamiliar dogs.⁴¹

The survey indicated that Rottweilers and pit bulls combined accounted for 67% of dog attack fatalities in the United States during 1997 and 1998 and concluded that, as these breeds accounted for only a small proportion of the total dog population of over 50 million in the United States, those two breeds appear to represent a breed-specific problem in relation to fatalities.⁴²

⁴⁰ Sacks, Lockwood, Hornreich and Sattin, p 894.

⁴¹ 'Study: Rottweilers responsible for most fatal dog attacks on humans', <http://www.cnn.com/2000/HEALTH/09/15/deadly.dogs.ap/> 15 September 2000. Downloaded 14 August 2001.

⁴² United States of America. Humane Society, 'Blame the Breed?: Report questions the efficacy of breed-specific bans in reducing dog bite-related injuries', http://www.hsus.org/programs/companion/animal_sheltering/currentissue/may_jun01/frontlines_blamebreed.html Downloaded 3 September 2001.

8.4 BREED IDENTIFICATION

Whilst there is widespread support for the concept of breed specific bans there is also concern as to the practical difficulties involved. For instance, the Mayor of the City of Mt Isa has stated:

There's so many derivatives of the pit bull, the American pit bull, that it is difficult to identify them...That was one of the hold ups we had and I think it's a hold up we still face even if the State government do ban them, being able to identify pure bred pit bulls...⁴³

Seven of the 125 local authorities in Queensland have provisions within their respective local law policies to provide specifically for the identification of pit bull terriers by referring to *Guidelines for the Identification of Pit Bull Terriers and Pit Bull Terrier Types* published by the Canine Control Council of Queensland. The local authorities are the Toowoomba City, and the Shires of Cloncurry, Douglas, Eacham, Herberton, McKinlay and Taroom.

9 LEGAL LIABILITY FOR ANIMALS

9.1 COMMON LAW

In relation to injuries or damage caused by domestic animals, the common law recognised that owners of animals would be responsible for any damage caused by their animals provided that the animal belonged to a species or class which was known to be dangerous. The common law term used was the Latin term '*scienter*' which means 'knowingly'. The *scienter* principle said that the extent of an owner's liability for the damage caused by his or her pet/s would be determined by whether the owner had actual or presumed knowledge of the animal's propensity to cause injury or damage.

An owner of an animal that was regarded as dangerous was regarded at common law as being liable without proof of *scienter*. Dogs as a specific class of animal were generally classed as domesticated and therefore harmless. At common law it was necessary to prove that the dog's owner knew from past conduct that the dog was likely to act viciously. It was not sufficient to show that the animal behaved in a way typical for its

⁴³ 'Mount Isa to support dangerous dog ban', *ABC News Online – Qld Regional*, 30 July 2001.

particular species. Proof of the behaviour of the particular animal was required for the owner to be held liable.⁴⁴

An example of how the *scienter* principle works in practice can be found in the 1984 case of *Jones v Linnett*, which also illustrates other circumstances under which animal owners may be liable for injuries or damage caused by their animals.⁴⁵ This case involved a number of incidents in which the German shepherd and doberman dogs of Linnett attacked/harassed and injured the corgi dog of Jones. Jones applied to the court for an injunction to be served on Linnett for the purpose of restraining his dogs from entering the property of Jones and permitting his dogs to attack the dog owned by Jones.

The German shepherd and the doberman had caused injury to the Corgi on three occasions, as a result of which it required veterinary treatment. As there was no boundary fence to keep the German shepherd and the doberman in, the owner agreed to chain them up until a fence was erected but this was not satisfactorily done and the harassment of the corgi continued on the property of its owner. A wire enclosure was made to protect the corgi from any further injury as the German shepherd and the doberman still kept returning to the property to harass the corgi. In granting the injunction, Ryan J said:

*There is clear evidence in the statements contained in the affidavits that the defendants' dogs have frequently attacked the plaintiff's dog, that the defendants had knowledge of the attacks, and that they have continued for almost three years.*⁴⁶

The court agreed to the injunction against the owner of the two dogs on the basis that the owner of the attacking dogs knew of their aggressive behaviour and had no defence to the granting of an injunction.

The court indicated the animals' owner could be held liable on three grounds:

1. when an animal goes onto another's property, the owner of the animal may be liable for the tort of trespass
2. owners may be liable in the tort of negligence if they allow their animals to be placed in a position where it could be reasonably foreseen that the animal might cause damage

⁴⁴ Peter Hennessy, 'What You Should Know About Liability for Injuries Caused by Dogs at Home and at Large', Paper presented to the *First National Conference on Urban Animal Management in Australia*, Brisbane, 1992: Proceedings of the Conference, pp 47-58, p 49.

⁴⁵ *Jones v Linnett* [1984] 1 Qd R 570.

⁴⁶ *Jones v Linnett* [1984] 1 Qd R 570 at 575.

3. owners may be liable, independent of negligence, for damage caused by an animal that was considered a tame domestic animal but had vicious tendencies which were known to the owner (*scienter*).⁴⁷

10 THE LOCAL GOVERNMENT AND OTHER LEGISLATION AMENDMENT BILL (NO 2) 2001

Clause 18 of the Bill inserts **s 1193A** into the *Local Government Act 1993* which indicates that the purpose of the legislation is to maximise community safety from harm caused by restricted dogs. The Bill specifically targets four breeds of dog, these being the dogo Argentino, fila Brasilerio, Japanese tosa and the American pit bull terrier (**s 1193E**).

There is provision in the new Bill (**s 1193E(1)(c)**) for other breeds of dog to also be declared restricted dogs but this may only occur in respect to breeds that have been prohibited from importation into Australia under Commonwealth law.

The relationship with existing local laws is an important issue as many local councils have already put restrictions into place. **Section 1193D** provides that existing local laws prohibiting the possession of a restricted dog will not be invalidated with the result that the existing authority of the local law will prevail (**s 1193D(1)**). However, **s 1193D(4)** provides that where a local law is inconsistent with a provision of the Bill, to the extent that the local law imposes a less onerous obligation on an owner the provisions contained in the Bill will prevail over the local law.

Table 1.1 in the Appendix to this Research Brief contains a list of the 28 local councils that have declared the four breeds to be prohibited breeds under a local law.

If a local council has not put a local law into place concerning the possession of restricted dogs, it will be responsible for the administration and enforcement of the provisions of the amendment Bill.

Local laws in relation to general issues concerning the possession and management of dogs that do not specifically relate to restricted breeds will continue to be effective (**s 1193D(3)**).

Section 1193K(1)&(2) will provide for a prohibition on the acquisition and supply of restricted dogs respectively. This prohibition will prevail over all acquisitions and supply of restricted dogs that take place after the commencement of the Act that do not involve transactions related to the direct distribution of the estate of a deceased person or cannot be justified by way of a 'reasonable excuse'. The nature of such a legislative provision

⁴⁷ *Jones v Linnett* [1984] 1 Qd R 570 at 574.

has been commented on previously in the High Court where Brennan CJ, Toohey, McHugh and Gummow JJ said:

The term 'reasonable excuse' has been used in many statutes and is the subject of many reported decisions. But decisions on other statutes provide no guidance because what is a reasonable excuse depends not only on the circumstances of the individual case but also on the purpose of the provision to which the defence of 'reasonable excuse' is an exception.

...When legislatures enact defences such as 'reasonable excuse' they effectively give, and intend to give, to the courts the power to determine the content of such defences. Defences in this form are categories of indeterminate reference that have no content until a court makes its decision. They effectively require the courts to prescribe the relevant rule of conduct after the fact...⁴⁸

New ss **1193L(1)** will place a prohibition on the breeding of restricted dogs. The section would be contravened if the breeding actually takes place. However, the wording of the subsection suggests that the provision will be contravened if it can be shown that a restricted dog was given or taken possession of with the 'intention' of breeding.

Section 1193N provides for the de-sexing of restricted dogs that are being kept under the authority of a permit issued by the relevant local council under s **1193M**. Generally, de-sexing will be required by the time the dog is 6 months old. The Australian Capital Territory is the only other Australian jurisdiction that provides for the de-sexing of dogs and this is a requirement of dog ownership generally and does not only relate to restricted dogs. The de-sexing of restricted dogs is used in other jurisdictions such as New Zealand, the United Kingdom and Port of Spain in the Republic of Trinidad and Tobago.

As with other Australian jurisdictions, it will be an offence for a person in charge of a restricted dog to allow or encourage that dog to attack or cause fear to another animal or a person (s **1193P**).

Section 1193Q will provide for the granting of a permit for the keeping of one restricted dog per residence provided the residence is occupied. **Section 1193Q(3)** allows for the granting of a permit to keep more than one restricted dog at a particular residence. However, any local law that prohibits the keeping of more than one dog will prevail over this provision.

Generally, local councils will not be able to issue a permit for the keeping of a restricted dog over the age of 9 months unless the applicant provides documentary proof (by way of a veterinary surgeon's certificate) that the dog has been de-sexed (s **1193R(c)**).

⁴⁸ *Taikato v R* (1996) 139 ALR 386 at 393.

Failure to de-sex the relevant dog is grounds for rejection of the application (s **1193T(2)(c)**).

New **Division 2** provides for permit conditions that are in line with those in force in the other Australian States. New s **1193ZA** provides that a restricted dog must be identified by, at least, a tag attached to a collar. However, **subsection 3** of that section further provides that a regulation may be made that provides for additional methods of identifying restricted dogs such as microchipping or tattooing. Any such regulation would ‘add to’ the collar identification that is the minimum standard required by the section.

In the event that there is no regulation in existence that requires additional identification in the form of microchipping or tattooing, **1193Y(2)** provides that local councils may impose through local laws conditions that provide for more onerous obligations or higher standards with respect to issues covered by **Division 2**. In practical terms this could mean that restricted dogs would be collared and tagged under the Act, and microchipped or tattooed under a requirement of a local law.

Restricted dogs are to be effectively controlled on a leash and muzzled whilst in public (s **1193ZB**). This provision is similar to those applicable in other Australian States. The keeping of a restricted dog within an enclosure that is child-proof and escape-proof (s **1193ZC**) and well signed (s **1193ZD**) are also requirements that are common in the other States.

Local councils will be required to keep a restricted dog register for their respective areas in which specific information such as breed, colour, sex and identification number are to be kept (s **1193ZN(2)**) with the details of the restricted dog being available for public inspection (s **1193ZO**).

Part 4 empowers local authorities to issue a restricted dog declaration for a particular dog that the council believes is covered by the definition of a restricted dog but is not registered as such (s **1193ZQ**). The owner of such a dog must be notified by way of a written proposed declaration notice and be allowed 14 days to make representation as to why the dog should not be so classified (s **1193ZR**). If, after examining any representation received from the dog’s owner, the local council is satisfied that the dog is of a breed encompassed by the definition in s **1193E**, the council is obliged to make the declaration in full (s **1193ZV**).

Under s **1193ZU** in **Part 4** the owner of any dog that is the subject of a proposed declaration notice has an obligation to ensure that the dog (whilst in public) is muzzled, leashed and under control.

Under **Part 5 Division 2** local councils will be able to issue compliance notices to owners or persons in charge of restricted dogs whom it is reasonably believed have, or who are, or who are about to, commit an offence provided for under **Chapter 17A**.

Any compliance notice that is issued is to require the person to whom it is addressed or directed to either cease committing the offence or to take other action that will remedy the matter (**s 1193ZY**). An authorised council officer may give a compliance notice verbally if the circumstances require immediate action to be taken but this must also be followed up as soon as practicable with a written compliance notice (**s 1193ZZ(2)**).

Authorised council officers are given entry powers under **s 1193ZZB** to enter a place where it is reasonably suspected that a restricted dog (for which there has been no restricted permit issued) is at that location. Entry may be effected after a compliance notice has been issued to the occupier or immediately if the circumstances warrant such action but in either case council officers are not authorised to use force in effecting entry.

Any dog suspected of being a restricted dog that is found in a place that is entered under the authority of **s 1193ZZB**, may be seized under the following circumstances:

- if it is reasonably believed that it is a risk to community health or safety; or
- it has attacked or threatened to attack a person or other animal; or
- a restricted dog permit has been refused; or
- a permit has not been issued and the dog may be removed to avoid seizure; or
- a current compliance notice has been ignored (**s 1193ZZC**).

A restricted dog that is seized may be destroyed if it is reasonably believed that the dog is dangerous and cannot be controlled by the person who has possession of it. Where the seizure has not resulted from a failed permit application to keep the dog at the place, and there is no registered owner, or the registered owner cannot be located, and the dog is not subject to a restricted dog declaration, the dog's destruction can not take place until 5 days has elapsed (**s 1193ZZG**).

Under **Part 6** any person who has received an information notice concerning a decision made by a local council pertaining to a restricted dog will have a right of appeal to a Magistrates Court within 14 days of receiving the notice (**s 1193ZZI**).

The effect of a restricted dog declaration issued by a local council will not be disturbed by the initiation of an appeal to a Magistrates Court unless that declaration is specifically stayed by the court for the duration of the appeal (**s 1193ZZJ**).

In determining an appeal a Magistrate has the same powers of decision making as the local council entity that made the initial decision that is being appealed. The Magistrate is not bound by the normal rules of evidence but must ensure that natural justice is applied throughout the hearing. The appeal hearing is to be by way of a re-hearing that is not affected by the original decision of the local council (**s 1193ZZK**).

The use of the words ‘An appeal is by way of re-hearing’ used in s 1193ZZK(2) has previously been examined by the courts. In the Queensland case of *Re Schubert*⁴⁹ Williams J quoted from the High Court case of *Sperway Constructions*⁵⁰ where Mason J said:

Where a right of appeal is given to a Court from a decision of an administrative authority, a provision that the appeal is to be by way of a re-hearing generally means that the Court will undertake a hearing de novo, although there is no absolute rule to this effect

*...there may be ground for saying that an appeal calls for an exercise of original jurisdiction or for a hearing do novo.*⁵¹

Mason J went on to state that the grounds for a court looking at a matter brought before it by way of appeal under a provision similar to s 1193ZZK(2) were:

- The nature of the proceedings before the administrative authority may show that it was not intended that the courts would be confined to the information placed before the administrative authority.
- The administrative authority may not reach a decision by way of a hearing or make a record of how it does reach its decision.
- The administrative authority may not be obliged to apply the rules of evidence in reaching its decision.

Mason J concluded:

But in the end the answer will depend on an examination of the legislative provisions rather than upon an endeavour to classify the administrative authority...

*Primarily it is a question of elucidating the legislative intent...*⁵²

The approach taken by the courts is to ascertain whether or not the legislature intended appeals of this nature to be determined without the courts being restricted to the examination of information/material that was available to the initial administrative decision-maker.

⁴⁹ *Re Schubert* [1989] 2 Qd R 99 at 102.

⁵⁰ *Builders' Licensing Board v Sperway Constructions (Syd) Pty Ltd* (1976) 135 C.L.R. 616

⁵¹ *Builders' Licensing Board v Sperway Constructions (Syd) Pty Ltd* (1976) 135 C.L.R. 616 at 621

⁵² *Builders' Licensing Board v Sperway Constructions (Syd) Pty Ltd* (1976) 135 C.L.R. 616 at 622.

Section 1193ZZL provides that a Magistrate hearing an appeal may determine to confirm the original decision, substitute another decision for the original decision, or set aside the original decision and return it to the administrative authority with directions the court considers appropriate.

From the Magistrates Court, appeals will lie to the District Court on questions of law only, not decisions given (**s 1193ZZM**). This is a general approach that is taken in other legislation such as appeals from the Magistrates Court or the Queensland Gaming Commission to the District Court under **s 38** *Gaming Machine Act 1991*.

Generally, the cost of erecting a fence between properties in order to comply with the requirements for the keeping of restricted dogs is to be treated as if the fence was being erected under the provisions of the *Dividing Fences Act 1953* (**s 1193ZZW**).

Similarly to the legislation in other Australian States, the Bill provides that any existing civil right or remedy that is available to any person will remain enforceable (**s 1193ZZX**).

10.1 PENALTY LEVELS UNDER THE CURRENT BILL

The *Penalties and Sentences Act 1992* provides that the monetary value of a penalty unit is \$75. The penalties provided for in the Bill are:

The offences of unlawfully acquiring or supplying a restricted dog under **s 1193K** will attract a maximum penalty of \$11,250.

The offence of giving or taking possession of a restricted dog for the purpose of breeding or allowing or encouraging such a dog to breed under **s 1193L** will carry a maximum penalty of \$11,250.

The offence of unlawfully owning or possessing a restricted dog for which a local authority has refused to issue a permit under **s 1193M** will attract a maximum penalty of \$5,625.

The offence of unlawfully not complying with the obligation of de-sexing a restricted dog covered by **s 1193N** affords a maximum penalty of \$11,250.

Under **s 1193O** the unlawful abandonment of a restricted dog attracts a maximum penalty of \$22,500 as does the offence of allowing or encouraging a restricted dog to attack another animal or person under **s 1193P**.

Failure to comply with the conditions of a restricted dog permit issued by a local council attracts a maximum fine of \$5,625 under **s 1193Z**.

An owner of a dog that is the subject of a proposed restricted dog declaration notice who does not ensure that the dog is muzzled, controlled and leashed whilst it is in public

in accordance with s **1193ZB** will be liable to a maximum penalty of \$5,625 under s **1193ZU**.

Failure (without reasonable excuse) to comply with a compliance notice that is issued in accordance with ss **1193ZY** and **1193ZZ** will attract a maximum penalty of \$5,625.

Penalties determined by a court for any of the above offences are to be remitted to the relevant local council (s **1193ZZV**).

11 STATUTORY PROVISIONS IN OTHER JURISDICTIONS

Much of the common law relating to injuries caused by dogs has been modified by legislation in all States except Queensland. As there is no equivalent legislation in Queensland, the liability for an injury caused by a dog is governed by the common law rules. Queenslanders suffering injuries or damage from the actions of dogs rely on the *scienter* principle, the law of negligence, occupier's liability, nuisance and trespass.⁵³

In other jurisdictions, provisions governing the liability of owners for the actions of their dogs can be found in such legislation as the *Dog Act 1966* (NSW), *Dog and Cat Management Act 1995* (SA), and the *Dog Control Act 2000* (Tas).

11.1 TASMANIA

In 2000, Tasmania passed the *Dog Control Act*, **Section 7** of which obliges each council to develop and implement a policy of dog management within its geographical area. Such a policy is to include:

- a code of responsible ownership; and
- the provision of declared areas into which dogs may or may not be taken; and
- a fee structure for registration; and
- any other matter of relevance.

The council has to invite and take into account public submissions before finalising the policy.

Dog management policies are to be reviewed every 5 years with public submissions also being sought at that time.

⁵³ Peter Hennessy, pp 51&53.

Section 19 of the Act places an obligation upon owners and persons in charge of dogs to ensure that they do not allow or incite their dogs to attack or chase any person. Under that section, owners and persons in charge of a dog are also required to inform the local council of any incident in which a person was attacked. Section 19 will be contravened whether the person under attack suffers an injury or not.

Section 19(5) provides for a defence to the offence of allowing or inciting a dog to attack if the dog was being used to reasonably defend any person or property or the dog was being teased, abused or assaulted.

Section 29 provides for the declaration of **particular dangerous dogs** by local councils by way of a notice served on the owner. The section is not breed-specific as the issuance of such a notice depends on the behaviour of the dog concerned. Notices may be issued to owners of dogs that have caused serious injury to a person or another animal or where there is reasonable cause to suspect that the dog is likely to cause serious injury to a person or another animal. **Section 31** provides appeal rights to a Magistrates Court within 14 days of being served with the notice.

Once a particular dog has been declared dangerous, the owner is required to have the dog implanted with a microchip for permanent identification purposes (**s 29(2)**).

Section 32 obliges the owner or person in charge of a dog that has been declared a dangerous dog to ensure that, when the dog is in a public place, it is:

- muzzled; and
- on a lead that is no more than 2 metres in length; and
- under the control of a person at least 18 years of age.

When the dog is not in a public place, it has to be housed in a child-proof enclosure or secured with a lead when not under adult supervision.

Properties housing designated dangerous dogs are to be suitably signed at every entrance.

Persons witnessing or subject to a dog attack may restrain or destroy the attacking dog. This also applies to situations where persons witness a dog attack on another animal. Any such incident is to be reported to the local council by the person who restrains or destroys the dog in question. In cases of destruction any registration disc worn by the dog is to be returned to the local council (**s 41**).

Under **s 42**, authorised persons may seize or destroy a dog that has caused injury to a person or death or serious injury to another animal or is behaving in a manner that indicates that it is likely to do such things. Under the Act authorised officers include police officers, authorised officers of local councils, and national parks and wildlife rangers (**s 3**). Veterinary surgeons are also authorised to take such action (**s 42**).

Any person who destroys a dog in accordance with the provisions of the Act is immune from liability over such destruction (s 44).

Divisions 6 & 7 of Part 3 of the Act contain the usual provisions covering dogs causing a nuisance and the requirement to apply for, and obtain a permit to keep more than 2 dogs over the age of 6 months. An application for such a licence may be objected to by any resident residing within 200 metres from the property in which the dogs are, or are to be housed. Refusal on the part of a local council to grant a licence may be appealed in the Magistrates Court.

11.2 NEW SOUTH WALES

Part 5 of the *Companion Animals Act 1998* provides for the declaration of dangerous dogs by local authorities. A declaration has effect throughout the State; it is not limited in its operation to the area of the council (s 34(3)). Dangerous dogs are described as those that have, without provocation, attacked or killed a person or other animal; or repeatedly threatened to attack or repeatedly chased a person or animal (s 33). When in public, dogs classified as dangerous are to be under the effective control of a competent person at the end of a leash and muzzled. There is no definition as to exactly what is meant by the term 'competent person' but it is reasonable to assume that it would not necessarily be confined to those of adult age as a minor may be physically capable of controlling such a dog. However, s 51 of the Act provides a general obligation on the part of owners that their dogs are not at any time to be solely under the control of a person under the age of eighteen.

When a local authority has determined that a particular dog should be declared dangerous, it must notify the owner accordingly to allow the owner to object. If an owner is unsuccessful by way of objection to the local authority, there is a right of appeal to a Local Court constituted by a Magistrate sitting alone (s 41). Local Courts also have authority to make a dangerous dog declaration (s 44). Any such declarations made are effective state-wide.

Dangerous dogs are to be de-sexed and they must be kept in child-proof enclosures on the properties on which they are ordinarily kept with appropriate signage warning that a dangerous dog is kept on the premises.

Section 54 of the Act re-iterates that civil liability of owners of dangerous dogs is not affected in any way by the dangerous dog declaration that is made in accordance with the provisions of the Act.

Section 55 declares that certain breeds of dogs are restricted dogs. The breeds concerned are:

1. pit bull terriers
2. American pit bull terriers
3. Japanese tosas
4. dogo Argentino
5. fila Brasileiro.

Owners of restricted dogs are required to comply with management and control requirements almost identical to that required for dogs declared to be dangerous. For restricted dogs, however, there is no requirement that they be de-sexed but as with dangerous dogs they cannot be sold or given away to a person under the age of eighteen. Civil liability applies to the owners of restricted dogs as with dangerous dogs.

The Local Government Minister introduced the Companion Animals Amendment Bill 2001 which provides for increased penalties for the owners of declared dangerous dogs which are found to have breached provisions of the 1998 Act. The 2001 amending Act, which was assented to on 19 June 2001 and commenced on 1 October 2001, provides for the new offence of attacks by dangerous dogs in aggravated circumstances. Owners under these circumstances will be liable for increased penalties if the attack has occurred as a result of the owner of the dangerous dog failing to comply with the existing control requirements for the dog under s 51. The new offence under such aggravating circumstances carries a maximum penalty of \$22,000 and/or 2 years imprisonment. The owners of dangerous dogs convicted of the new aggravated offence will also be disqualified permanently from owning a dog.

The amendments to the Act came in the wake of 213 reported dog attacks in New South Wales in 2000. Seventy percent of these attacks occurred in a public place. The 213 attacks were spread across 29 different breeds.⁵⁴

11.3 SOUTH AUSTRALIA

The *Dog and Cat Management Act 1995* provides for restrictions on specific breeds of dogs. **Section 45** makes it an offence to advertise to sell or give away, or sell or give away, any breed of dog that is a 'prescribed breed'. **Section 4** of the Act lists four breeds of dog that are prescribed dogs under the Act. These breeds are the American pit bull terrier, fila Brasileiro, Japanese tosa, and dogo Argentina.

⁵⁴ 'Dangerous dog owners face prison', *Sunday Telegraph*, 19 August 2001.

This type of provision goes further than the ability to declare a particular dog a dangerous dog that has to be managed or controlled in a particular way. It allows restrictions to be placed on changing ownership of particular breeds. Placing restrictions on the changing of ownership of such breeds will tend to result in those breeds either dying out or being restricted to only a very small percentage of the total dog population.

Section 50(b) of the Act allows local councils to make a Control (Dangerous Dog) Order. A dog that is subject to such an order must, when on its owner's premises, be kept either indoors or in an enclosure from which it cannot escape. In any other place, it must be fitted with a muzzle and under the effective control of a person on a lead. Unlike the Tasmanian legislation, there is no requirement that the dog be under the control of an adult when it is in a place other than its owner's premises. Appropriate warning signs are to be placed on all entrances to the premises indicating that a dangerous dog is usually on the premises. The dog must wear an authorised collar at all times.

Section 50(c) is a similar provision that provides for similar precautions on the control and management of dogs that have been made the subject of Control (Nuisance Dog) Orders.

In both instances, there is a further obligation on the part of owners to ensure that they take all reasonable steps necessary to ensure that their dogs do not repeat the type of behaviour that led to the orders being made in the first instance.

Section 51(2) provides for the grounds upon which dangerous and nuisance dog orders may be made by local councils. A dog can be made the subject of a relevant order if it is deemed to be unduly dangerous or a nuisance, or has attacked, harassed or chased a person or animal in such circumstances that would constitute an offence against the Act. A procedure for making such orders is set out in **s 52**. A right of appeal lies to the District Court (**s 58**).

Section 44 provides for the offence of setting on or urging a dog to attack, harass or chase a person or another animal. This offence applies unless the dog was being genuinely used in the reasonable defence of a person or property or driving off another animal that was trespassing on the owner's property.

Section 48 provides for the lawful injury or destruction of a dog when that occurs during an act that amounts to the reasonable and necessary protection of life or property. A dog found to be roaming without supervision on the land of another on which animals are being farmed may be injured or destroyed by the occupier of the property for the purpose of saving the animals being farmed from injury or death. Any such incident carries with it an obligation to inform police, the local council and the dog's owner, if possible.

Section 66 of the Act modifies the common law approach to liability attaching to owners of dogs. Generally, owners are liable in tort law for injury, damage or loss caused by their dogs. Under **s 66(2)** a complainant does not have to prove negligence or knowledge on the part of the dog's owner of its vicious, dangerous or mischievous propensity. If the dog in question is owned by a person under 18 years of age, that person's parents are regarded as the dog's owner for the purposes of liability. The common law approach whereby it must be shown that the dog's owner knew of the dog's disposition and behaviour for the purpose of liability has been overturned by this legislation.

11.4 WESTERN AUSTRALIA

Section 26 of the *Dog Act 1976* authorises local councils to pass local laws to prohibit and/or regulate the number of dogs over the age of 3 months that may be kept at a particular place, or the number of dogs of a specified breed that may be kept. There is a proviso under **s 26(3)(b)** that the maximum number of dogs that councils can allow to be kept on the one premises is six if the premises do not relate to approved kennel establishments.

The Act provides for appropriate management and control of dogs by owners both on their premises and in public places. Under **s 33D(1)**, persons in control of dogs are liable to a maximum fine of \$10,000 if the dog or dogs under their control attack or chase any person or any other animal. This provision applies whether or not injury is caused, but is qualified by certain defences. A stronger penalty of a maximum \$10,000 fine or 12 months imprisonment or both applies to any person who sets on or urges a dog to chase or attack any person or another animal (**s 33D(2)**).

Similarly to the Tasmanian legislation, local councils have the authority to declare a particular dog a dangerous dog but there is also the additional authority for local councils to declare dangerous dogs generally, which would include a particular breed (**s 33E**).

Where dangerous dog declarations are made in particular cases, this is to be done only if the dog has caused injury or damage by attacking or chasing a person, animal or vehicle or has repeatedly shown a tendency to attack or chase, or to threaten to attack (**s 33E(1)**). Owners of dogs declared dangerous have a right of appeal over that decision firstly to the council and subsequently to the local court.

Dogs declared to be dangerous are to be muzzled at all times whilst in public places and kept on a lead controlled by a person who is physically able to control the dog. Being **physically able to control the dog** is an issue that is not repeated in the legislation of the other States and Territories. The other jurisdictions mostly rely on an adult being in

control. This issue has ramifications for personal liability as not all adults would be capable of controlling large dogs to an appropriate standard (s 33F(3)(c)).

Dogs declared to be dangerous may be excluded from particular areas and any enclosure within which the dog is kept must be escape-proof with young children being restricted in their access. Owners of designated dangerous dogs are also to ensure that, at all times, their dogs wear collars prescribed by the council signifying that the dog is a dangerous dog. Appropriate signage is also to be located at all entrances to the property indicating that a dangerous dog is kept at that location (s 33F(5)).

Any person in control of a dog declared to be dangerous is to notify the local council within 24 hours if an attack by the dog occurs (s 33K(2)(a)).

Where a dog declared to be dangerous also constitutes a nuisance, the owner can be liable to a maximum penalty of \$4,000 and a daily penalty of \$400. The penalty for dogs other than dangerous dogs is \$2,000 and a daily penalty of \$200 (s 38(1a)).

A Local Court has the authority to order, or issue an order at the request of a local council, for the destruction of a dog found to have attacked and caused injury or damage. Any owner who fails to comply with a destruction order is liable to a maximum penalty of \$4,000 and a daily penalty of \$400 (s 39).

Generally, any contravention of the Act will result in a penalty twice as severe for owners of dogs declared dangerous than for owners of other dogs.

As with the South Australian legislation, there has been a modification of the common law approach. It is not now necessary to show that an owner of a dog knew of the propensity of the dog to be aggressive toward humans and other animals, or to show negligence on the part of the owner (s 46(3)).

11.5 AUSTRALIAN CAPITAL TERRITORY

In the ACT, the *Domestic Animals Act 2000* covers domestic animals, such as dogs. The Act forms part of a package introduced by the ACT Government for control of animals in the Territory. A new requirement has been introduced to ensure that any dog born or acquired after the commencement of the Act (21 June 2001) is de-sexed unless the owner has been granted a permit to keep their pet sexually entire.⁵⁵ All dogs over 56 days old have to be registered.

⁵⁵ Mr B Smyth MLA, Minister for Urban Services, Domestic Animals Bill 2000, Second Reading Speech, Australian Capital Territory Legislative Assembly, *Hansard*, 7 September 2000, pp 2954-2956, p 2955.

Section 22 provides that the registrar (a position created by s **121**) must declare a dog to be dangerous if –

- the dog has been trained as a guard dog, or is kept as such for guarding non-residential premises; or
 - the dog has previously been declared a dangerous dog under comparable State legislation.
- If a dog has attacked or harassed a person or animal, the registrar may declare a dog to be a dangerous dog after taking into account all of the circumstances surrounding the incident.
 - Appropriate notice must be provided to the keeper of the dog, describing the consequences of keeping a dangerous dog.
 - A person must have a licence to keep a dangerous dog (s **23**).
 - The application is made to the registrar who may grant or refuse the issue of a licence after considering the following issues:
 - the size and nature of the relevant premises and its security;
 - the suitability of the facilities for keeping the dog on the premises;
 - the potential impact on the neighbours;
 - any conviction or finding of guilt against the applicant within the last 10 years for an offence against a state or territory law relating to the welfare, keeping or control of an animal;
 - the likelihood of harm being caused to any member of the public or an animal (s **25**).

Conditions may be placed on any licence issued and may include conditions concerning the confining of the dog to the premises where the dog is kept under the licence; the dog leaving the premises; and requiring the keeper (ie the registered keeper of the dog) and dog to undergo an approved course in behavioural or socialisation training for the dog.

A carer of a dangerous dog must not, without reasonable excuse, be in a public place with a dangerous dog unless it is wearing a muzzle and a keeper of such a dog must not, without reasonable excuse, allow the dog to be in public without the keeper or someone else who is in charge of the dog (s **27**). A ‘carer’ is defined as a person over 14 years of age who is in charge of the animal at a particular time.⁵⁶ In addition, the registrar may issue a warning sign to a keeper of a dangerous dog which has to be prominently displayed on the premises where the dog is kept (s **28**). Monetary fines of \$1,000 and \$500 respectively attach for any breach by an individual of these requirements. Under s **57** a dangerous dog can be seized by an authorised officer if:

⁵⁶ *Domestic Animals Act 2000 (ACT)*, Dictionary.

- the keeper does not have a dog licence; or
- the licence is cancelled; or
- the keeper has contravened a licence condition; and the officer reasonably believes, having regard to the safety of the public, that the contravention justifies the seizure.

The registrar may sell a dangerous dog in certain circumstances set out in **s 68**.

In addition, it is an offence for a carer with a dog, without reasonable excuse, to allow a dog (and it appears that this is not confined to a dangerous dog) to attack or harass a person or animal (**Part 2, Div 2.6**). A number of defences apply. The consequences of a breach are that the dog must be destroyed, unless there are special circumstances which justify not doing so, in which case the dog is to be declared to be a dangerous dog and ordered to undertake an approved course in behavioural or socialisation training. It is also an offence for a person to encourage a dog to attack or harass a person or animal.

The keeper of the dog is liable to pay compensation to the person who has suffered personal injury or property damage or whose animal has died or been injured as a result of the attack or harassment (**s 55**). Compensation may be recovered whether or not a prosecution has been brought against the keeper and whether or not any such prosecution is successful.

11.6 VICTORIA

Under the *Domestic (Feral and Nuisance) Animals Act 1994*, which came into effect in April 1996, the problem of young children being bitten was addressed. There is a greater onus on dog owners to be more responsible in the supervision of their dogs. In the event of dog attacks, owners may suffer penalties such as fines and also payment of costs incurred by victims. The offending dog may also be declared to be dangerous by the local council and there is also the other option that the dog may be destroyed. The Victorian legislation takes into account the environmental and behavioural factors that can affect individual dogs when consideration is being given to a declaration that a particular dog is dangerous instead of implicating particular breeds.⁵⁷

Section 10 of the Act provides for the registration of all dogs over the age of 6 months in Victoria. Owners failing to register may result in the imposition of a maximum \$500 penalty. **Section 28** provides for the offence of wilfully setting on or urging a dog to

⁵⁷ Karen Ashby, 'Dog Bites', *Hazard: Publication of the Victorian Injury Surveillance System*, Edition 26, March 1996, pp 7-13, p 11.

attack, rush at, chase, or bite any person or animal. The maximum penalty applying to s 28 is also \$500.

Section 29 provides for the liability of owners for the damage caused by their dogs attacking and injuring any person or other animal. Liability for damage in circumstances where the dog was being provoked, or the victim was trespassing on premises in which the dog was being kept, or where the dog reacted to a person being attacked by another person or animal, does not lie strictly. In such cases liability is determinable by the courts under common law concerning negligence and damage.

Sections 34 to 41 are provisions that provide for the regulation of dangerous dogs. Under s 34 local councils may declare a particular dog to be dangerous if, without provocation, it causes serious injury to a person or another animal by biting, attacking, rushing, chasing or worrying. Without incident, a dog may also be declared to be a dangerous dog if it has been trained to attack persons or animals for the purpose of guarding persons and/or premises that are not residential by nature.

Declared dangerous dogs must be kept either indoors or within a child-proof enclosure whilst on the owner's property (s 38). As with legislation in other States, appropriate warning signs are to be erected on the property warning that a dog is kept at the place (s 39).

Dogs declared dangerous must be muzzled and maintained on a lead whilst in any public place. A first offence against this provision carries a maximum penalty of \$500 whilst subsequent offences may attract \$1,000 (s 41). Dangerous dogs that are seized for contravention of the Act may be sold or destroyed by the local council concerned (s 80). Council decisions in relation to the declaring of dangerous dogs are reviewable by the Victorian Civil and Administrative Appeals Tribunal (s 98). Dogs that are declared dangerous are required to wear a specific red and yellow, diagonally striped, reflective collar that easily distinguishes their classification.⁵⁸

With respect to the declaration of dangerous dogs, there has been some dissatisfaction aired over the requirement that this cannot be done until after a specific animal has caused serious injury. It has been argued that councils should be able to declare a dog dangerous on the grounds of breed or behaviour that has not resulted in serious injury.⁵⁹

⁵⁸ 'Dealing with dogs: Dangerous Dogs', http://www.nre.vic.gov.au/pets/02/sdd_danger.htm Downloaded 7 September 2001.

⁵⁹ Paul Connor, 'Domestic (Feral and Nuisance) Animals Act 1994: Efficient regulation or dog's breakfast?', *Local Government Law Journal*, 2(1), August 1996, pp 16-19, p 17.

The Victorian government announced in November 2000 that it would examine the effectiveness of introducing amending legislation to place a ban on American pit bull terriers. A spokesperson for the Agriculture Minister said that preliminary advice to the Minister suggested the banning of specific breeds would raise complex definitional issues particularly in relation to cross-bred animals. The Opposition agricultural spokesperson argued that cross-breeding would render specific bans on breeds impossible to enforce.⁶⁰

The position of the Victorian branch of the RSPCA is somewhat different on the issue with the Society arguing that pit bulls are a one-off breed and that every effort should be made to minimise their contact with humans in order to reduce the risk of attacks.⁶¹

Section 41A of the *Domestic (Feral and Nuisance) Animals (Amendment) Act 2000* provided for the additional classification of ‘menacing dog’. A menacing dog is one that (without provocation) has rushed or chased a person. The control of a dog that has been declared menacing includes muzzling and leashing whilst in public. Where any menacing dog is found to have been allowed to continue this behaviour on at least two further occasions, the local council may declare the dog to be dangerous.⁶²

The amending Act also provided for the inclusion within the term ‘dangerous dog’ of guard dogs that are used for the guarding of non-residential premises as well as any dog that has been trained to attack or bite any person.

Similarly to New South Wales, the government announced that it would introduce harsher penalties for owners of dogs who are found to attack persons (up from the existing level of a \$500 maximum fine).⁶³

In June 2001 the Minister for Agriculture announced the start of a consultation process on proposed amendments to the *Domestic (Feral and Nuisance) Animals Act 1994*. Among the proposed amendments that were considered were proposed increases in penalties for the owners of dogs who attack humans or other animals and the creation of specific offences for organised dog fighting and the mandatory leashing of all dogs in

⁶⁰ Gabrielle Costa, ‘Wretched pit bulls facing ban’, *The Age*, 11 November 2000, <http://www.theage.com.au> Downloaded 31 August 2001.

⁶¹ Gabrielle Costa, <http://www.theage.com.au> Downloaded 31 August 2001.

⁶² Hon K Hamilton MLA, Minister for Agriculture, Victoria. *Parliamentary Debates*, Legislative Assembly ‘Domestic (Feral and Nuisance) Animals (Amendment) Bill’, 26 October 2000, v 449, p 1219.

⁶³ Victoria. Hon K Hamilton MLA, Minister for Agriculture, ‘Progress on Animal Welfare’, *Media Release*, 19 February 2001.

public places. The government announced that it was also looking at possible measures for the management of potentially aggressive dogs identifiable as specific breeds.⁶⁴

11.6.1 Animals Legislation (Responsible Ownership) Bill 2001⁶⁵

On 31 October 2001, the Animals Legislation (Responsible Ownership) Bill was initiated in the Victorian Legislative Assembly. The Bill makes amendments to the *Prevention of Cruelty to Animals Act 1986* and the *Domestic (Feral and Nuisance) Animals Act 1994*. The Animals Legislation (Responsible Ownership) Bill passed the third reading stage in the Victorian Legislative Assembly on 22 November 2001. It was introduced into the Legislative Council on 27 November 2001 and passed the third reading stage on 4 December 2001.⁶⁶

The Bill declares particular breeds of dogs (that are prohibited from being imported into Australia) to be restricted (**cl 9**). The breeds concerned are exactly the same as those listed in the current Queensland Bill. Under the Victorian Bill there is an obligation placed on owners to declare whether or not the dogs that they are applying to register are members of a restricted breed (**cl 12**). There is no mandatory requirement for local councils to register or renew the registration of a restricted dog. Any refusal by a local council to register a restricted dog will be appealable to the Victorian Civil and Administrative Tribunal.

Owners of restricted dogs will be required to ensure that their animals are permanently identified using a method required under regulations to the Act (**cl 15**). Methods such as micro chipping and/or tattooing may be specified under regulations. Similarly to other jurisdictions, the Victorian Bill provides that owners of restricted dogs must ensure that the dogs are securely confined on their premises and that appropriate signage is erected. When a restricted dog is located outside the premises of the owner, there will be a requirement that it be muzzled and restrained and controlled on a lead.

Generally, the maximum number of restricted dogs that any one person will be allowed to own will be two, although local councils will be able to issue permits to allow the keeping

⁶⁴ Victoria. Hon K Hamilton MLA, Minister for Agriculture, 'Proposed Amendments to Animal Acts', *Media Release*, 1 June 2001.

⁶⁵ Clauses in the Bill refer to the Bill as amended by the Legislative Assembly and sent to the Legislative Council: Animals Legislation (Responsible Ownership) Bill – 'As Sent to the Second House Print': <http://www.dms.dpc.vic.gov.au/pdocs/bills/B01036/B01036S.html>

⁶⁶ *VICHANSARD*: Victorian Parliamentary Hansard, 4 December 2001 – Parliament of Victoria: <http://www.parliament.vic.gov.au/hans.html>

of more than that number. There will be a prohibition on the transfer of ownership of restricted breed dogs to minors (ie persons less than 17 years of age) and anyone less than this age will also be prohibited from being in charge of a restricted dog in public.

The owners of restricted dogs will have 60 days within which to comply with all their legal obligations unless there has been an application for a review lodged with the local council against the declaration. When such an application is lodged the time period will be 30 days from the day of the review decision. The Bill provides that the review is to be conducted by a review panel with members appointed by the relevant Minister.

Under the Bill the maximum penalty for setting on or urging a dog to attack another animal or person has been increased from \$500 to \$12,000 or 6 months imprisonment (**cl 24**). Under current legislation local councils are required to remit \$1.00 for each dog registered to the State government to be used for funding research into domestic animal management. Under the Bill this amount will rise to \$2.50 (**cl 27**).

The Victorian government received a recommendation from the Animal Welfare Advisory Committee that amendments be made to the principal Act in relation to the declaration of dangerous dogs. Whilst the Committee recommended that pit bull terriers be declared dangerous on the basis of breed, the Victorian Canine Association (as a member organisation of the Committee) acknowledged that it had reservations about a blanket declaration because of the difficulty associated with the identification of pit bull terriers. It was also reported in the media that the government could be left open to legal claims in situations where there is dispute over breed identification.⁶⁷

The American Pit Bull Terrier Association of Australia argued that it would have been more appropriate for the Victorian government to introduce licences for breeders and sellers and the introduction of measures to ensure that local authorities uniformly enforced existing provisions of the Act.⁶⁸

The Bill inserts a **proposed new Part 7, Division 7** into the Domestic (Feral and Nuisance) Animals Act 1994 to establish procedures for identifying restricted breed dogs. The review rights set out above apply to declarations (made under new Part 7, Division 7) that a dog is a restricted breed dog.

⁶⁷ Richard Baker, 'Experts split over pit bull crackdown', *The Age*, 31 October 2001 <http://www.theage.com.au/news/state/2001/10/31/FFX83UDJETC.html> Downloaded 31 October 2001.

⁶⁸ Julie Szego, 'Loyal owner may be a dog's best friend', *The Age*, 31 October 2001 <http://www.theage.com.au/news/state/2001/10/31/FFXTADKJETC.html> Downloaded 31 October 2001.

11.7 NEW ZEALAND

The *Dog Control Act 1996* provides for an ownership classification of dogs termed 'probationary owner'. When an owner of a dog is convicted in a court of offending against the Act, that owner may be classified as a probationary owner by the relevant local authority. Additionally, any owner who commits 3 or more infringement offences in relation to provisions of the Act within a two year period may be classified as a probationary owner (s 21). There is provision for an objection to be lodged against such a classification with the local authority (s 22).

Being classified as a probationary owner results in that owner not being allowed to be a registered owner of a dog unless that dog was owned as of the date that the offence occurred or the third infringement offence occurred. The classification, unless earlier cancelled, lasts for a period of two years. Probationary owners are liable to pay an additional surcharge of 50% on all dog control fees payable as an owner (s 23). Any unregistered dog in the possession of an owner who is classed as a probationary owner must be disposed of forthwith (s 24).

Probationary owners convicted of an offence against the Act in a court are liable to be disqualified from dog ownership by the local authority. Additionally, any probationary owner who commits 2 infringement offences whilst a probationary owner may also be disqualified from dog ownership (s 25). There is provision for an objection to be lodged with the local authority and a further appeal right to the District Court against disqualification of ownership (ss 26 & 27). Failure to dispose of a dog after disqualification makes the offending owner liable to a maximum \$1,500 fine (s 28).

Local authorities may declare a dog to be a dangerous dog if in a public place it causes death, injury or endangers a person or another animal or rushes at a vehicle in a manner that would be likely to cause an accident (s 31).

Local authorities may take sworn statements from any person attesting to aggressive behaviour of a dog. If the local authority believes that the behaviour constitutes a threat to the safety of any person or other animal, the local authority may declare the offending dog to be a dangerous dog (s 31).

The Act provides for the usual control and management of dangerous dogs whilst on the property of their owners as well as in public places. Additionally, dangerous dogs are to be neutered and attract a registration fee of 150% of the level that applies to dogs that are not classified as dangerous. Dangerous dogs may only be disposed of with the approval of the local authority. Any attempt to sell a dangerous dog without local authority consent renders owners liable to a maximum fine of \$1,500 (ss 32-33).

Failure to register a dog over the age of 3 months renders owners liable to a maximum fine of \$1,500 on summary conviction (s 42). An owner of any dog that attacks any

person causing serious injury or the death of any protected wildlife, is liable to a maximum fine of \$5,000 or 3 months imprisonment or both. The court is obliged to order the destruction of the dog unless such destruction is not justified (s 58).

Permitting a dog known to be dangerous to be at large unmuzzled may attract a maximum fine on summary conviction of \$1,500 and destruction of the dog (s 62).

As with legislation in Australian States, liability for injury or damage caused by a dog does not rely on the owner knowing about the dog's aggressive behaviour (s 63).

Commensurate with the issues raised in the American study mentioned in Section 3 of this Research Brief, the lack of statistical data concerning dog attacks has been highlighted as an inhibiting factor for local authorities in New Zealand in their efforts banning dangerous dog breeds within their geographical areas.⁶⁹

Some local authorities made submissions to a Parliamentary Committee examining the Dog Control Bill in 1996. The Waitakere City Council was one such council whose animal welfare services manager submitted that specific breed legislation would be unworkable:

The idea of a breed ban sounds great at face value, but if one looks into the issue then it is very difficult not to realise that such a move would be a big and costly mistake.

It is an acknowledged fact, both here and overseas, that dog behaviour is determined by the behaviour of the owner or handler, irrespective of the breed. The potential for a dog to inflict injury ranges across breeds, within breeds, and across the entire spectrum of the dog population... It is just not logical to single out a specific breed as dangerous.

There is no doubt that a black-market for those breeds will develop and experience overseas has shown that the cost of attempting to enforce such ill conceived legislation is horrendous. In addition, people will simply cross-breed existing dogs to achieve whatever variation they want and negate the aim of the proposed legislation anyway.

Even the Veterinary Association states that vets would find identification of pit bulls extremely difficult. So how can dog control officers, and members of the general public be expected to identify the dog and then enforce any new law.

⁶⁹ 'Breed banning thwarted – MP', *The Dominion*, 1 October 1997. <http://library.northernlight.com/BM19981022040361404.html?cb=0&sc=0> Downloaded 3 September 2001.

In my view - and it is backed by international experience - is that these sorts of laws are impractical, onerous and not enforceable.⁷⁰

11.8 UNITED KINGDOM

The *Dangerous Dogs Act 1991* introduced for the first time into England breed-specific legislation that also contained mandatory destruction provisions for certain offences. The provision relating to mandatory destruction orders was removed in 1997 when the courts were allowed to exercise a discretion after examining the circumstances. The 1991 Act was introduced after a spate of unprovoked dog attacks on humans (mainly children) and an increase in fighting dogs such as American pit bull terriers, Japanese tosas, dogo Argentinos and filo Brazilerios that were increasingly being imported into the country.⁷¹

A House of Commons Select Committee reviewed the operations of the Act in 1996.⁷² The Committee examined whether targeting pit bull terriers as a specific breed was an effective measure. In examining the issues, the Committee stated:

It is common ground that legislation of some kind is appropriate to help ensure the safety of citizens against the dangerous behaviour of dogs. But there is a range of views as to how strict the legislation should be. For most people it is a matter of balance between the needs of the population as a whole and the rights of animals and their owners.⁷³

In addressing the issue of whether specific dog breeds should have been targeted under the legislation, the Committee heard evidence from interested groups and recorded the following arguments:

- Problems with dangerous dogs are compounded by bad dog ownership.
- Attacks attributed by specific breeds are proportional to the population of the breed and not to the nature of the breed.
- The origins of a breed as a fighting dog does not contain an inherent element of danger as many breeds were originally bred for this purpose.

⁷⁰ 'Banning breeds not effective way to beat dog danger', Waitakere City Council, <http://waitakere.govt.nz/> Downloaded 4 September 2001.

⁷¹ Patsy Hughes, 'Dogs', House of Commons Library, *Research Paper* 98/6, 2 January 1998, p 8.

⁷² United Kingdom. House of Commons Home Affairs Committee, *The Operation of the Dangerous Dogs Act 1991*, First Report Volume 1, HC 146 1996/97.

⁷³ House of Commons Home Affairs Committee, p vi.

- Whilst all dogs were capable of biting, some breeds were more prone to inflicting more serious injuries because of their tendency not to let go of the victim.

After taking evidence, the Committee phrased its response in the following way:

*We fully accept that dogs of the same type of breed may differ greatly one from another. Nevertheless we accept that some types of dogs – because of a combination of their size, strength and behavioural characteristics – are a greater risk than others. For some of these, it may be better to remove the type altogether, before such dogs cause injury, than merely to be able to put down significant numbers of the dogs once they have actually caused the injury.*⁷⁴

In examining the issue of whether the pit bull terrier should have been specifically targeted in the legislation, the Committee indicated that it had received conflicting evidence as to their characteristics but the Committee tended to agree with evidence that the breed posed a danger:

*...expert veterinary evidence submitted has suggested that, although there can be great difficulty in deciding on what is and what is not a pit bull terrier, nevertheless its overall characteristics produce a dog which is “physically immensely strong, physically and psychologically tenacious, potentially extremely dominant, potentially aggressive and potentially suddenly changeable in behaviour”.*⁷⁵

*... Overall, we are satisfied that there is evidence that the pit bull terrier posed particular dangers to the police and the public, and that it was reasonable to subject them to more rigorous controls than other dogs, leading so far as possible to their elimination.*⁷⁶

Section 1 of the *Dangerous Dogs Act 1991* was designed to eliminate pit bull terriers from the United Kingdom in a way that allowed existing dogs to be kept by their owners as long as they were neutered and controlled. When the Act required registration of all pit bull terriers by 30 November 1991, there were 8,600 dogs that were subsequently registered. The ramifications of s 1 were that by 1996 the number of registered pit bulls had declined to 3,500.⁷⁷

⁷⁴ House of Commons Home Affairs Committee, p vi.

⁷⁵ House of Commons Home Affairs Committee, p vii.

⁷⁶ House of Commons Home Affairs Committee, p viii - ix.

⁷⁷ House of Commons Home Affairs Committee, p x.

The decline in the breed had been achieved under the Act by banning the breeding, importing, selling or giving away of bull terriers and neutering whilst their control was achieved by compulsory registration, the use of muzzles and leads whilst in public, identification tattooing, and third party insurance.

Having satisfied itself that the pit bull terrier breed should remain the subject of strict regulation under the Act, the Committee examined the complex issue of breed identification. **Section 1** of the Act uses the phrase “*any dog of the type known as the pit bull terrier*”, which in practical terms was perceived as being difficult to apply.

The Committee heard evidence from the Magistrates’ Association to the effect that the determination of whether a dog was of a type known as the pit bull terrier was a difficult one for Magistrates without the assistance of expert advice. The Crown Prosecution Service acknowledged that this expert advice was difficult to obtain because of the small pool of experts available to prosecutors and defendants alike.⁷⁸

However, the Committee went on to conclude that, on balance, despite difficult cases the police, prosecutors and the courts do not face unacceptable difficulties in being asked to determine the breed of a particular dog.⁷⁹

However, the Committee did recommend the repeal of **s 5(5)** which provided for the reversal of the general burden of proof. Under the section, the owners of dogs charged with infringements were required to prove that their dogs were not of the pit bull type. The Magistrates’ Association described this reversal of the burden as a denial of a fundamental constitutional right to expect that a complaint must be proven.⁸⁰

Penalties for breaches of **s 1** of the Act were heavily criticised in evidence to the Committee. Mandatory destruction applied to such offences as failure to keep a pit bull terrier muzzled at all times whilst in a public place even if the dog was frail and infirm, or in the owner’s car, and for the offence of incomplete registration. The Committee recommended that this provision be repealed to allow the courts to exercise a discretion in ordering the destruction of pit bull terriers found to have offended against the Act.⁸¹ The government implemented this recommendation in 1997.⁸²

⁷⁸ House of Commons, Home Affairs Committee, p xii.

⁷⁹ House of Commons, Home Affairs Committee, p xii.

⁸⁰ House of Commons, Home Affairs Committee, p xiii-xiv.

⁸¹ House of Commons, Home Affairs Committee, p xvii.

⁸² *Dangerous Dogs (Amendment) Act 1997* (UK). See also Patsy Hughes, ‘Dogs’, House of Commons Library, *Research Paper* 98/6, pp 10-11.

12 CONCLUSION

The four specific breeds targeted in the Local Government Amendment Bill 2001 (Qld) have been the subject of bans or ownership restrictions in jurisdictions both in Australia and overseas. South Australia already has restrictions on those breeds, and, in the Victorian Parliament, a Bill that will place restrictions on ownership, similar to those contained in the Bill currently before the Queensland Parliament, has recently passed the third reading stage in both the Legislative Assembly and the Legislative Council.

The four breeds provided for in the Queensland Bill are currently prohibited by 28 local councils throughout the State. Eight other local councils have declared the pit bull terrier to be a dangerous breed with restrictions being placed on ownership. Two local councils have placed restrictions on the ownership of all four breeds. Four local councils have placed a prohibition only on the bull pit terrier.

In addition to the four breeds provided for in the Queensland Bill, one local council has placed management restrictions on the neapolitan mastiff, whilst another has placed management restrictions on the greyhound breed and another on the doberman and german shepherd. Currently, there are over 40 Queensland local authorities that have placed restrictions on the ownership and/or management of the four breeds targeted in the Local Government and Other Legislation Amendment Bill (No 2) 2001 by either declaring them to be prohibited, restricted, prescribed or dangerous breeds.

APPENDIX

Compiled from http://www.localgovernment.qld.gov.au/local_govt/local_laws_main.html

TABLE 1.1

The American Pit Bull Terrier, the Dogo Argentino, the Fila Brasileiro and the Japanese Tosa are prohibited breeds in the following local government areas:		
Aramac Shire	Barcaldine Shire	Barcoo Shire
Beaudesert Shire	Blackall Shire	Boonah Shire
Boulia Shire	Bulloo Shire	Caloundra City
Chinchilla Shire	Diamantina Shire	Douglas Shire
Fitzroy Shire	Hervey Bay City	Ilfracombe Shire
Isisford Shire	Jericho Shire	Kilcoy Shire
Longreach Shire	Mirani Shire	Murweh Shire
Quilpie Shire	Redcliffe City	Redland Shire
Stanthorpe Shire	Tambo Shire	Toowoomba City
Waggamba Shire		

TABLE 1.2

The American Pit Bull Terrier (only) has been categorised as a dangerous breed in the following local government areas:		
Atherton Shire	Cardwell Shire	Cloncurry Shire
Cooloola Shire	Eidsvold Shire	Maryborough City
McKinlay Shire	Monto Shire	

TABLE 1.3

The American Pit Bull, Dogo Argentino, Fila Brasileiro, and Japanese Tosa have been declared restricted dogs in the following local government areas:	
Brisbane City	Gladstone City

TABLE 1.4

The American Pit Bull Terrier (only) has been declared to be a prohibited breed in the following local government areas:		
Cambooya Shire	Isis Shire	Livingstone Shire
Woocoo Shire		

TABLE 1.5

The American Pit Bull Terrier, the Neapolitan Mastiff, the Fila Brasileiro and the Japanese Tosa are classified as **dangerous** dogs in the following local government areas:

Mackay City

TABLE 1.6

Any breed of dog declared to be dangerous by any other local authority is to be declared a **dangerous** dog in the following local government areas:

Mareeba Shire

TABLE 1.7

The American Pit Bull Terrier has been declared a **prescribed** dog in the following local government areas:

Pine Rivers Shire

TABLE 1.8

The American Pit Bull and the Greyhound have been declared **dangerous** breeds in the following local government areas:

Broadsound Shire

TABLE 1.9

The American Pit Bull Terrier, the Dogo Argentino, the Fila Brasileiro and the Japanese Tosa are categorised as **dangerous** dogs in the following local government areas:

Burnett Shire

TABLE 2.0

The American Pit Bull Terrier, the Doberman, and the German Shepherd are categorised as **dangerous** dogs in the following local government areas:

Kilkivan Shire

The **American Pit Bull Terrier** was originally bred as a fighting dog in the 1800s. It was bred from the Bull and Terrier dog (now extinct) that was imported into America from England around 1870 with that breed being crossed with the Staffordshire Bull Terrier. The Bull and Terrier was bred for its aggression to other dogs, its unrelenting bravery, its high pain threshold, a willingness to fight to the end and an unmatched affection for people. The initial motivation for the cross breeding that resulted in the American Pit Bull Terrier was to obtain a more powerful fighting dog. The American Pit Bull Terrier is not regarded as suitable for inexperienced dog owners as it can be aggressive toward other dogs and given the right circumstances, towards people other than their owners to whom they are very loyal.

The American Customs Service recognises the breed for possessing an intense focus which is a positive attribute for dogs used in the detection of illegal drug importation into America. However, the Service does not use the breed because it would not present a good image if such dogs were used at airports where a lot of people would be horrified at their appearance. The Commonwealth government banned the importation of pit bulls in 1992 whilst New South Wales and South Australia have restrictions on ownership.



Internet source sites:

<http://www.canismajor.com/dog/amerpit.html#History>

<http://www.colbypitbull.com>

The **Dogo Argentino** is of the Mastiff family. It is a large dog distinctively white in colour with a black muzzle. Breeding began in the early part of the 20th century with the contemporary version emerging in 1964. It represents cross breeding of the Bull Terrier, Bulldog, Spanish Mastin, Pointer, Boxer and Irish Galgo. The crossover of these breeds has resulted in a dog of massive structure with a muscular body that is insensible to pain and able to fight other animals even those larger than itself. The Dogo Argentino is smooth haired with a head structure similar to the American Pit Bull.



The **Japanese Tosa** is one of 10 breeds of native dogs. It is also known as the Japanese Mastiff or Japanese Fighting dog. The present day Tosa represents the results of cross breeding of a number of other breeds that were foreign to Japan with the native Japanese dog Nihon-Inu. The breeds crossed were the Mastiff, Great Dane, Bulldog, Bull Terrier and Pointer. The name Tosa is derived from the district in which it was originally bred. The Tosa is a large dog bred specifically for fighting which is still practised in Japan today. It lives to 10-12 years of age and is recognised as having the qualities of a natural guard dog with a big head, broad chest and muscular build with great agility for its large size.



Internet source location:

<http://www.geocities.com/strawdogsbatosahistory.html>

<http://www.allpets.co.za/dogbreeds/tordoriba1.htm>

Fila Brasileiro is a large and massive dog (weighing up to 70 kg) that is recognised as the national dog of Brazil. It is a fast, muscular and agile dog with a reputation as being versatile as a working dog by being suitable for a number of tasks such as hunting, tracking, herding and guarding. It also has a reputation as being ferocious with strangers making it ideally suited as a guard dog. The breed was developed approximately 400 years ago by cross breeding of the bloodhound, the English mastiff and the German bullen beiser. Breeders acknowledge that owners need to have their Fila under control at all times.



Internet source site:

<http://www.geocities.com/strawdogsbatosa/history.html>

Staffordshire bull terriers are a breed of dog that is often confused with the American pit bull terrier but it is a much smaller dog than the pit bull terrier but does have great strength for its size. The breed has a reputation of high intelligence and affection especially with children. The Staffordshire bull terrier is a cross between the English bull dog and the terrier with it first emerging in the early 1800s with the word staffordshire being included because it was in Staffordshire County that the breed first emerged. Like the pit bull terrier the Staffordshire bull terrier was originally bred for fighting but this use has long since been discontinued but individual owners do use them for the hunting of wild animals such as pigs. **The Staffordshire bull terrier is not included in the list of those dogs to be declared restricted on the basis of breed.**



Bull terriers are a close variation of the Staffordshire bull terrier and like the Staffordshire can be confused with the American pit bull as well as the Staffordshire breed. The breed is the result of the crossing of the British bull dog with the English white terrier and the Dalmation. As with the Staffordshire and the American pit bull, the bull terrier was used for fighting. Contemporary specimens of the breed come in a normal size and a miniature size. The bull terrier has a striking head shape similar to that of an egg with small fine ears that can be held upright. Although it is now where as near as large as the American pit bull, the bull terrier shows its strength through its muscular body and is not suitable for every owner. **The bull terrier is not among the list of breeds to be declared restricted.**



Internet source location: <http://www.thebullterrier.com/bullterriers.html>

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