

TRANSCRIPT

STANDING COMMITTEE ON THE ECONOMY AND INFRASTRUCTURE

Subcommittee

Inquiry into the legislative and regulatory framework relating to restricted breed dogs

Melbourne — 17 November 2015

Members

Mr Joshua Morris — Chair

Ms Colleen Hartland

Ms Gayle Tierney

Staff

Acting Secretary: Dr Chris Gribbin

Witnesses

Mr Rob Spence, Chief Executive Officer, and

Ms Claire Dunn, Manager, Environment and Regulatory Services, Municipal Association of Victoria.

The CHAIR — I will reopen our Standing Committee on the Economy and Infrastructure public hearing and welcome our witnesses who are present today. Today the committee is going to be hearing evidence in relation to the restricted breed dogs inquiry, and today's evidence is being recorded. I will just remind you that you are protected by what you say today under parliamentary privilege. Therefore you are protected for any action taken against you for what you say in here today. However, if you go outside and repeat the same things, those comments will not be protected by the same privilege. I will hand over to yourselves. If you could just, for the record, state your name and titles, and then begin with some opening comments, and then we will have some questions to follow up.

Mr SPENCE — I am Rob Spence, CEO of MAV.

Ms DUNN — I am Claire Dunn, environment manager and regulatory services manager.

Mr SPENCE — We have been involved with this issue since its inception, really, in, 2011, with the incident that occurred in Brimbank. Prior to that, with the legislation that went into the house and was part implemented, we did not have any involvement, but actually picked it up when the incident occurred in Brimbank and worked with the then government to try to ensure that it was implemented as effectively as possible.

What we have seen with the form of the legislation is that over time it is clear that there are impediments to the way it works, and in fact it does not work effectively. The key point we would make to you is that we are in a situation where councils are the core to this exercise. They actually are making the determination on a restricted breed dog. They are doing that off effectively a template prepared by the state, and then trying to take that through to its conclusion in terms of the decision on a restricted breed dog. What we have found is that when these matters end up at VCAT, we have had a significant number of them that have been overturned at VCAT.

I think what that identifies for us is that the issue with councils actually undertaking this function is problematic. The state has set up a model where all the responsibility and all the funding obligations sit with the council. Does the council have the necessary skills to determine whether these dogs are in fact restricted breed dogs? I think there is a question mark on that. Have we got a system that in fact efficiently allows us to deal with the issue? When Peter Walsh was the responsible minister I was involved in a working party with Joe Helper and David Southwick to work through this legislation and see if we could find a way through. We worked through the sublime and the ridiculous options at both extremes. What we found at the conclusion of it was that we could not find any easy solution for what is an incredibly complex issue. The people who own the dogs believe they are not restricted breed dogs. The council is assessing that they are. VCAT becomes the determining body. We have had some end up in the Supreme Court and so on. There is a massive cost to communities in doing that. Are we ending up with an effective model — one that in fact is protecting the community? Is there anything you want to add, Claire?

Ms DUNN — No, I would agree with all of that.

The CHAIR — Very good, thanks. We might open it up for some questions.

Ms HARTLAND — The City of Melbourne gave evidence just before yourself, and they had talked briefly about the idea of a panel that might be set up. The details are not really set in place, but the idea I think was that there would be an expert panel that would assist councils, because clearly one of the problems is — and you state that — there have been 19 VCAT decisions that have been set aside. Do you think that would be of assistance to councils?

Mr SPENCE — I do not think there is any doubt about that. The issue in this is having the appropriate skill set to determine whether the dog is or is not a restricted breed dog. We cannot say whether the councils have properly assessed or not, but what we know is that when it gets to VCAT there have been 19 of them overturned, against expert witnesses on the other side. In my view it would be much better if we had a state-auspiced expert panel where the authority for final determination, subject to VCAT and so on, would be through a state authority. I think that would be a great assistance to councils.

Ms DUNN — It might be worth adding that, as I understand it, there was a state panel in the previous iteration under the act, and as I understand it, that particular restricted breed dogs panel never reached a decision that a dog was in fact a restricted breed. There seems to be a larger question of whether the experts will ever find that a dog is in fact a — —

Ms HARTLAND — Was in that category.

Ms DUNN — Yes, correct, which goes to the problem of defining these dogs.

Ms HARTLAND — Yes.

Mr SPENCE — Yes. I was looking yesterday, just refreshing my memory after the amount of time we put into this earlier, at the American Pit Bull Terrier Network, I think it was called the conformation page, and I think even they struggle to know whether they are an American pit bull or not. The descriptors are really complex.

I would say that having an expert panel would certainly help. We attempted to get experts involved in it, working with the state to try to get vets and others assisting councils, and we could not get people to participate. It is a difficult issue. There is a strong view out there, 'It's the deed, not the breed'. There are many views about the way forward. Is it appropriate training of dogs? Is it more about responsible pet ownership? All of these things feed into what is a very complex pot. There is a view that we need a more sophisticated model than we have got at the moment.

The CHAIR — You spoke about having difficulty bringing a group together. What were the impediments to bringing a group together?

Mr SPENCE — It was hard to tell, but we had discussions with a couple of groups and we thought we had opened the door to getting assistance to assess, but potentially I suspect it influences the role of the individual in their other work — that if they are seen to be assessing animals as restricted breeds, it affects the other work they do.

Ms DUNN — Certainly we had discussions with DOGS Victoria and it looked like we might set up an arrangement there, but as I understand it their members got wind of that and were very strongly opposed to breed-specific legislation, so DOGS Victoria then did not proceed with the agreement — not that we had actually got to the stage of drafting anything, but we had certainly met.

Mr SPENCE — So if their membership — and I am not saying they are — are of the view that it is the deed not the breed, then having people assessing on breed is problematic for the organisations. That is what makes this a really complex issue, I think.

Ms DUNN — The same with the AVA and vets. If you declare a dog a restricted breed dog and that is upheld and it has not been registered, then the outcome is to put the dog down, which goes against everything that vets train and believe in.

The CHAIR — Yes.

Ms TIERNEY — Rob, from the work that you did, the Calgary model, was that looked at at all or were you more focused on the breed aspect?

Mr SPENCE — No, we looked at the Calgary model. There was a whole range of issues looked at — comprehensive registration of dogs, training of owners — the full scope. We were not narrowly looking at just the breed issue, because we were looking for a comprehensive solution to what is a difficult problem. It was at a time where there was a lot of heat over the child's death in Brimbank and nervousness in the community about what people perceive as dangerous dogs in the restricted space. So we did cover the full scope.

Without spending a squillion dollars, the solution is a difficult one, I think. You can go for a simple model. If we stay with the legislation as it is, then you could have a panel, an expert advisory properly resourced to deal with the issues, but is that ultimately the perfect model? Is the perfect model for us to not be looking at breed particularly but trying to ensure that we look at the issues around the characteristics of the dog and how you can try to deal with their emotional issues and so on? One of the things we worry about is that in taking dogs and impounding them for great periods, you are doing them significant damage. The fact that they are locked up for 12 months or something while we are trying to make a decision is not helpful for the animal or for the community in general.

Ms TIERNEY — So what were considered to be the limitations of the Calgary model when you are dealing with it at the time?

Mr SPENCE — I would have to go back and have a look at the detail of that again. I have not revisited it for some time. Claire, have you?

Ms DUNN — I think one of the issues in Victoria is that there is no central registration system, so there is a lack of good data out there around attacks and the like. Also councils each have their own systems to register dogs, to keep statistics on attacks and the like. I think for something like the Calgary model to work effectively you would probably need statewide data, including registration data. I think one of the ideal solutions would be to create shared IT systems and the like, but that is obviously very costly, and we still do not really have a very good grasp on how big a problem it is that we are dealing with, because that data is also not readily available.

Mr SPENCE — So we were trying to turn our minds to ‘How big is the issue we are trying to deal with relative to the cost of the fix?’, and the Calgary model requires a comprehensive shift in the way you operate. I cannot remember the stats now, but my rough memory is that maybe 40 per cent or something of dogs are not registered is the view, so there is a stack of dogs out there that we have no sense of what they are and whether they are appropriately registered in terms of breed. There are significant issues with it. But what nut are we trying to crack here? At the moment we are dealing with a small number of breeds that are considered restricted. Do we want a whole model to deal with it?

With dangerous dogs it is different because there has been an incident and actions taken after the incident. We do not want issues with incidents, and we are trying to deal with it by using restrictions on breed to fix that problem. I have been around for a million years in this space, in the public sector, and this is one of the toughest I think in terms of a sensible policy solution that I have come across.

The CHAIR — I think we have certainly had that picture painted for us as well from this side. One question that I had was in relation to the way different councils apply the Domestic Animals Act. Do you have a view on whether or not there is an inconsistent approach across councils about how the restricted breed dog legislation is being implemented by councils, and is there a best practice model that is being exhibited by some groups?

Mr SPENCE — I would say that it is variable. Some councils I suspect — and I do not know this, but I suspect — have said, ‘This is really difficult to manage, and we will be really cautious about where we step. We want to be clear that we are dealing with a restricted breed dog, absolutely clear, before we get anywhere near it’. Others, City of Hume and so on, have had a pretty tough life dealing with restricted breed dogs, and I think they have been incredibly diligent in trying to do it, in fact putting staff at risk and so on, having to have the police with them when they are going into properties and so on to deal with the issue. It is variable, but there is concentration or the perceived concentration of these animals in particular areas. In Hume the view is that there is quite a concentration in that area, and they have done a good job trying to manage it.

Ms DUNN — In the case of Hume I think probably the majority of the seizures or investigations they did were triggered by dob-ins. They were not actively out necessarily looking for pit bulls, they were getting an awful lot of dob-ins from neighbours and other people.

Mr SPENCE — Yes. Across the breed space it is interesting to look at the stats and see the number of registrations of breeds that are close to American pit bulls but are not American pit bulls. Some will have very high proportions and some will have lower. It is that crossover point that is interesting to sort of think through too, as to what the animal actually gets registered as.

Ms DUNN — Especially with the American Staffordshire terrier, which you have no doubt heard that in the US you can use both terms interchangeably and it is sort of accepted that it is the one dog. I think there is even a Queensland Supreme Court decision that found the two breeds are one and the same. Yet here in Victoria we have a specific exemption for American Staffordshire terriers.

The CHAIR — Going back to the City of Hume, do you have any idea of the cost and the like that it has cost the city to implement the type of legislation that we are talking about?

Mr SPENCE — We could get that information for you.

Ms DUNN — Yes.

The CHAIR — I think it would be interesting to have that.

Ms HARTLAND — Maybe if we could get the cost across the state of what it is costing, because I know in Knox's evidence I think one court case was \$600 000.

Mr SPENCE — That is right. Monash and Knox have had some expensive ones.

Ms DUNN — Overall costs or legal and court costs?

Mr SPENCE — I think we would try and break it down and see what we could get for you. We will get as fine a grain detail as possible.

Ms HARTLAND — Yes, that would be good.

Mr SPENCE — But I take your point, Colleen, that a simple solution may be to have a panel. That has always been in my mind. But we have not been able to get the state to bite — I should not use that term, but to accept that as a proposition. The responsibility has sat with councils. I think if you look statewide, it will tell you what the sorts of costs have been, yes.

The CHAIR — Do you see the MAV as playing a role, whether it be with the work of a potential panel? Is that something that you see the MAV having a place in?

Mr SPENCE — Potentially, yes. We have been deeply involved in this up until probably 12 months ago. After the incident at Brimbank a big part of my life was working on this issue and trying to resolve the issues around it. Potentially MAV could assist in this. We just want a model that works, and that the policy is sophisticated enough to deal with the issues, but not going overboard. As in the work we did for Peter Walsh, the potential cost of registration systems and so on is enormous, and to do what?

Ms TIERNEY — Rob, in your submission you say that local councils have tried to get assistance from the state government. I am assuming that is both political parties?

Mr SPENCE — With this government, they moved straight into this process, so we have accepted that. But the previous government, yes, definitely.

Ms TIERNEY — With that assistance not being forthcoming, are there any reasons given?

Mr SPENCE — I think there was a view that the sort of templates and so on were as far as the government was going to go with it, yes. To be fair, because Labor brought the legislation in, the coalition had to implement it and advance the implementation of it. I think, to be fair, with the government too it was a 'Suck it and see', and we have sucked it and we have seen what it looks like and it does not work. I suspect they were hoping that the model ultimately would be successful, but it has proven not to be I would say.

Ms TIERNEY — If I was to be ultra-simplistic at the moment, what would be the first three things or four things that you would like to see changed in the current legislation?

Mr SPENCE — In the perfect world we would like to see the state looking after this, but I think I am a realist. I think issues around clarity in the assessment is really the key, assuming we stay with the legislation with restricted breed dogs. I think that is the first question. Do you really want to stick to that, or is it the deed, not the breed? If you want to stick to restricted breed dogs, then the assessment is the key to it: is it or is it not? The group that is doing the assessment, do they have the credibility to support the decision right through the process, and should that be borne by local government? I would say no.

Ms DUNN — One of the other issues with the legislation is once you make a declaration you cannot revoke it. You are sort of then locked into a process which generally goes to VCAT and potentially to Supreme Court. We have said very clearly in our submission councils are not breed experts, so we would rather they not do the assessment and that that move to another party. There is also in our experience a number of experts who are willing to say the dog is not a pit bull, and it would have been probably helpful if they could provide that testimony ahead of a case going to VCAT, so council could say, 'Well, on that basis we have to reach a decision that it is not a pit bull', and case closed in a way.

Mr SPENCE — What we have had to deal with is supporting councils who are in that bind. Say the dog in Brimbank was an American pit bull, say it was, and it killed a child, and this legislation was in place, and the council had assessed it and said, ‘No, we don’t think so, it’s not’, then it is a terrible thing to weigh on anybody I think. The council officers I think have been really sensitive and stressed out in trying to work through this, because they have got a legislative obligation over here and they want to do the job as best they can and ensure that the community is safe.

Ms DUNN — The dogs they are declaring, they are firmly of the view that it is a pit bull dog. I think experience shows, and we have said it again in the submission, that it seems likely that even a model pit bull dog probably would not be found to be a pit bull under the current framework.

The CHAIR — In terms of — and this is something the committee has certainly looked at — there being a longer approach that can be taken to legislation in terms of changes to looking at deed rather than breed, there is always the concern about what is happening right now and what is going to happen in the next couple of months that is going to ensure the community remains safe. Would the MAV see, even if it was just as an interim measure, a panel that could assess restricted breed dogs in the view that there may be an opportunity for further changes to the legislation that may look at deed rather than breed to facilitate councils to have that surety that there is an expert panel that would look at dogs and be able to assess them with a level of certainty that is not provided at the moment?

Mr SPENCE — There is no doubt we would support that. That is a short-term response but taking a long-term view on how we get this model operating effectively.

Ms TIERNEY — Can I just invite some comments you might have in terms of what you think responsible behaviour might be in relation to the media when we have the situations we have had? It seems that, for us, the media does have an important role in providing proper information to people, and yet we tend to get tabloid front-page articles about this, and there is not a genuine discussion out there in the community.

Mr SPENCE — Yes. I think it would be great if we were in a world where that sort of stuff does not happen. Our experience in recent times has been that trying to get the media to effectively report — and sensitively and sensibly report — stuff is hard to achieve. In the ideal world there would be a proper explanation of the issues you are dealing with when there has been a dog attack and so on, not overplaying it. Just thinking this through, I did a stack of media through this period about restricted breed dogs and dangerous dogs and so on. There is a significant community misunderstanding about restricted breed dogs and dangerous dogs, and the whole lot just gets mixed up in a mash of how the legislation works — ABC radio or the papers and so on. I think clarity in terms of the model helps, but I do not think you will ever get away from big front pages. When the MAV can feature in the *Herald Sun* because we cancelled training sessions for councillors, it says something about the quality of the media.

Ms HARTLAND — Obviously we all think that there are real flaws with the current legislation, so if the government was to bring new legislation after this committee report, if there was a draft exposure period, would that be something you would welcome?

Mr SPENCE — Yes.

Ms HARTLAND — So that you could actually look at the legislation and reflect on what we have had for the last four years to see whether that new legislation would work better than what we have now?

Mr SPENCE — We would welcome that, and that did not happen with this piece of legislation. I am not blaming the coalition for this, Labor brought in the legislation — —

Ms HARTLAND — And it was in response to a hideous situation.

Mr SPENCE — That is right, yes, and governments have to do that. I accept that, but I think we are now much more sensitive to the issues, and it is an appropriate time to sit down and work through the legislation. If there is an exposure draft, that is fantastic, because we can give it due consideration, make submissions and try to get the model right.

Ms TIERNEY — In the list of priorities for councils generally, would this issue be in the top half a dozen?

Mr SPENCE — In terms of not having any control over it and it being unmanageable in terms of both risk and responsibility, I would have it in the top group, yes, for particular councils, definitely.

Ms TIERNEY — Yes.

The CHAIR — Thank you very much for your testimony here this morning. I just remind you that you will be provided with a transcript of today's evidence for you to proofread and return to the committee, and eventually that will find its way onto the committee's website. At this point I would like to thank you very much for your testimony this morning.

Mr SPENCE — We look forward to seeing where you get to, because we had a go a few years ago and could not get there.

The CHAIR — Yes, let us hope we can get somewhere. Thank you.

Mr SPENCE — I hope you do. Thank you.

Witnesses withdrew.