



**CORONERS COURT  
OF NEW SOUTH WALES**

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| <b>Inquest:</b>                                  | Inquest into the death of MJ  |
| <b>Hearing dates:</b>                            | 19 and 20 February 2024   |
| <b>Date of final submissions by the parties:</b> | 28 November 2024  |
| <b>Date of findings:</b>                         | 17 January 2025   |
| <b>Place of findings:</b>                        | Coroners Court of NSW, Lidcombe   |
| <b>Findings of:</b>                              | <b>Deputy State Coroner Carmel Forbes</b>   |
| <b>Catchwords:</b>                               | CORONIAL LAW- Dog attack of a five-week-old baby- Examination of the Companion Animals Act 1998 regulatory regime – Recommendations for regulatory changes  |
| <b>File number:</b>                              | 2021/198871   |
| <b>Representation:</b>                           | Dr D Kell SC with Mr C McGorey, Counsel Assisting, instructed by Ms Y Edgell and Ms R Campbell, NSW Crown Solicitor's Office<br><br>Ms B Epstein instructed by J Barry, Moray & Agnew Lawyers for the Central Coast Council<br><br>Mr L Chapman instructed by R Garrett, Moray & Agnew Lawyers for the Office of Local Government |
| <b>Non-publication order:</b>                    | Orders for non-publication have been made in this inquest. The Orders may be found on the Registry file   |
| <b>Findings:</b>                                 | <b>MJ</b> died between 10 and 11 July 2021 at <b>Central Coast</b> , New South Wales, from fatal injuries caused when he was attacked   |

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|                         | inside the family home by a dog, which was the family pet.  |
| <b>Recommendations:</b> | <p><b>To the Minister for Local Government and the OLG:</b></p> <ol style="list-style-type: none"> <li>1. The Minister and the OLG review the adequacy of the penalties for non-compliance with registration and identification requirements for dogs in the <i>CA Act</i> and the <i>Regulation</i>.</li> <li>2. The Minister and the OLG, in consultation with councils, develop and implement a Statewide public awareness and education campaign to educate dog owners and the community generally about the risks posed by dogs and how safely to interact with them.</li> <li>3. The Minister and the OLG, in consultation with councils and other stakeholders, introduce a licensing requirement for dog ownership, which may involve particular licence conditions calibrated for particular breeds of dogs and with applicants being required to undergo education with respect to safety and risk management.</li> <li>4. The Minister and the OLG examine the adequacy of the maximum penalties for the offences provided by ss 12A, 13, 14, 16 and 17 of the <i>CA Act</i>.</li> <li>5. The Minister and the OLG amend s 16 of the <i>CA Act</i> to delete subsection (2)(b).</li> <li>6. The Minister and the OLG amend s 18 of the <i>CA Act</i> to broaden the scope for exercise of that power.</li> </ol> |

7. The Minister and the OLG amend:

(a) the interim control obligations and interim powers enlivened under ss 36 and 58B of the *CA Act* upon the giving of a notice of intention to declare a dog (i) dangerous or menacing or (ii) restricted; and

(b) s 58(4) so as to make clearer its intended operation.

8. The Minister and the OLG introduce a general power in the *CA Act* for an authorised officer to direct an owner or person in control of a dog to secure the dog with a muzzle and / or lead for a specified period.

9. The Minister and the OLG amend s 58C of the *CA Act* (a) regarding the prohibition on an authorised officer making a restricted dog declaration if the owner provides a written statement by an approved breed assessor or approved temperament assessor; and (b) to require breed and/or temperament assessors to provide an outline of the assessment carried out (including, for the temperament assessment, where, over what duration, and in what conditions).

10. To the extent not already done, the Minister and the OLG investigate, or continue to investigate, facilitating reasonable access to DNA testing in NSW to assist breed identification of dogs.

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## REASONS FOR DECISION

### INTRODUCTION

1. This is an inquest into the untimely and tragic death of **MJ** who died on 11 July 2021, when he was just 5 weeks old.
2. **MJ** was the first born and very cherished son of his parents: **MJ's mother** and **MJ's father** who lived together at **Central Coast**.
3. Their 6-year-old pet dog named Bully also lived at the residence.
4. Sometime between 10 and 11 July 2021, most likely in the early hours of the morning on 11 July 2021, **MJ** died from multiple traumatic injuries inflicted by Bully.
5. About 4 weeks before **MJ**'s death, Bully attacked and killed a neighbour's dog. **MJ's father**, as the registered owner of Bully, was issued with a notice of intention to declare Bully a "restricted dog" under the *Companion Animals Act 1998* (NSW) (**CA Act**). Bully remained living with **MJ** and his parents. As of 10 July 2021, the statutory process had not been completed.
6. This inquest is a public examination of the circumstances surrounding **MJ**'s death. Section 81(1) of the *Coroners Act 2009* (NSW) (**the Act**) requires me, as the presiding Coroner, to record findings with respect to the date and place, and the manner and cause, of his death.
7. Section 82 of the Act permits me to make such recommendations as considered necessary or desirable in relation to any matter connected with a death. Pursuant to s 82(2)(a), public health and safety is a matter which will be of relevance to these recommendations.
8. An important purpose of this inquest is to consider what lessons can be learned from a tragedy such as the death of **MJ** and whether any changes to the regulatory regime for dog ownership may prevent a similar death in the future.

## REGULATORY REGIME FOR DOG OWNERSHIP

9. The regulatory regime for dog ownership in NSW is comprised by the *CA Act* and the *Companion Animals Regulation 2018 (NSW)* (**Regulation**).
10. The regulatory regime confers powers and responsibilities on (i) the Chief Executive of the Office of Local Government (**the Chief Executive**); and (ii) local government councils. The Minister for Local Government is responsible for the *CA Act*. The enforcement of the regime falls principally to the local government councils within their respective Local Government Areas.

### ***Obligations imposed on dog owners***

11. The *CA Act* imposes obligations on dog owners for the securing and safe management of dogs owned or under their control. The regulatory regime seeks to ensure compliance with its requirements by imposing criminal sanctions for non-compliance.

### ***Registration***

12. Part 9 of the *CA Act* provides for the creation and operation of the Register of Companion Animals (**Register**).
13. Owners must ensure that from the time that a “companion animal” (which, relevantly, includes a dog) is 12 weeks old, that it is “identified”: s 8(1). By reference to the Regulation (cl 5), a dog is to be identified by a microchip. Identification information includes “*the type of animal (dog or cat), and the breed of the animal*”: cl 8(g) of the Regulation. The owner of a dog can be guilty of an offence if the dog is not so identified: s 8(3).
14. Owners must also ensure that a companion animal is registered: s 9. This is a step separate from the identification requirement referred to above. The information recorded for a dog is to include its breed: s 80(1)(g). Registration of dogs can be undertaken at a relevant Local Government administration building or online through the NSW Pet Registry.

### ***Provisions for control and seizure***



15. Sections 12 to 28 of the *CA Act* set out provisions dealing with the responsibilities for control of dogs. A limited power of seizure is provided by s 18.

*Restricted, dangerous and menacing dogs*

16. The *CA Act* contains additional provisions, including restrictions, relating to dogs that fall within the statutory definitions of “*restricted dogs*”, “*dangerous dogs*” and “*menacing dogs*”.
17. The magnitude of requirements for these categories descends from restricted to menacing, with the former having the most restrictive obligations and the latter the least restrictive. This reflects the legislature’s view of the respective dangers of each category of dog.
18. A “*restricted dog*” includes specific breeds (including American pit bull terriers or pit bull terriers), a dog declared to be a restricted dog, or any breed, kind or description prescribed by the *Regulation*: s 55(1).<sup>1</sup>
19. An American Staffordshire Terrier is not a “*restricted breed*” under the *CA Act*.
20. By s 33(1), a dog is *dangerous* if it:
- (i) has, without provocation, attacked or killed a person or animal (other than vermin); or
  - (ii) has, without provocation, repeatedly threatened to attack or repeatedly chased a person or animal (other than vermin); or
  - (iii) is kept or used for the purposes of hunting (as defined in s 33(2)).
21. By s 33A(1), a dog is menacing if it:
- (i) has displayed unreasonable aggression towards a person or animal (other than vermin); or
  - (ii) has, without provocation, attacked a person or animal (other than vermin) but without causing serious injury or death.<sup>2</sup>

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<sup>1</sup> The *Regulation* does not presently prescribe any breed or kind of dog as “*restricted*”.

<sup>2</sup> The term “serious injury” is defined, non-exhaustively, in s 33A(4). Note also that s 33A(2) provides that the regulations may declare a breed or a kind of dog to be a *menacing breed or kind of dog*. The power to make that regulation is subject to s 33A(3). No such regulation has been issued to date.

22. A dog becomes a dangerous or menacing dog only upon the making of a declaration to that effect.

### **BULLY'S BREED**

23. Bully was a tan-coloured male dog. As at mid-2021, Bully was about 6 years of age. He was a sizeable dog, with his head about 70cm from the ground and the top of his back about 55cm from the ground. His muscular stature can be seen from tendered photographs.<sup>3</sup>
24. Professor McGreevy from the Sydney School of Veterinary Science at the University of Sydney, examined photographs of Bully and relevant documentary evidence.<sup>4</sup>
25. I accept Professor McGreevy's opinion that Bully was an American Staffordshire terrier<sup>5</sup> and, consistently with this, Bully had the "*conformation of a dog that could compete in show classes for American Staffordshire terriers*".<sup>6</sup>
26. In those circumstances, I am satisfied that Bully was not a "*restricted dog*" by reference to the breeds specified in s 55(1)(a)-(d1) of the CA Act or a crossbreed thereof.
27. Accordingly, although a Council ranger formed the belief in June 2021 that Bully was an American pit bull crossbreed, which led to the Team Leader Ranger Services forming the same view and issuing on 10 June 2021 a notice of intention to declare Bully a restricted dog, that belief was not a correct one. However, no criticism is made of the rangers involved. Professor McGreevy explained that there are substantial difficulties associated with correct breed identification with respect to a dog that may be an American Staffordshire terrier or an American pit bull or American pit bull crossbreed.

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<sup>3</sup> See photographs at BOE 1/20A pp 327, 328-333 and 2/44 pp 4-7; see also Crime Scene Examination Summary, p 2 (BOE 1/20).

<sup>4</sup> Professor McGreevy acknowledged that his ability to discern features may be limited by the quality and camera angle in the available images: report of Prof Paul McGreevy dated 14 February 2024 at [4.1.3] (p 5) (Exhibit 5).

<sup>5</sup> Ibid.

<sup>6</sup> Features relevant to that opinion are set out at pp 6 to 9 of Prof McGreevy's report dated 14 February 2024 (Exhibit 5).

28. However, even accepting that Bully was not a dog for which a restricted dog declaration could have been made, the notice of intention to declare Bully was nonetheless validly issued<sup>7</sup> and remained in force at the time of [MJ]'s death. That notice enlivened interim obligations for [MJ's father], as the dog owner, and an interim seizure power for authorised officers.
29. In the preparation of these findings, I have been assisted by Counsel Assisting's uncontested closing submissions.

## **BACKGROUND**

### ***Residence***

30. As at mid-2021, [MJ's] family lived in a three-bedroom home with a lounge room and kitchen area at the front of the home and a hallway leading to an integrated laundry and bathroom, with the three bedrooms accessible from the hallway.
31. [MJ]'s parents began leasing the residence, through a real estate agency, in November 2020.<sup>8</sup> They were thereafter described, by the agency, as having been “wonderful tenants”.<sup>9</sup>

### ***The history of Bully***

32. [MJ's father] purchased Bully in 2015 from a breeder, Andrew Farag, who was based in Sydney.
33. The dog Bully, along with six other pups from the same litter, was advertised for sale via a “Gumtree” advertisement on 24 June 2015.<sup>10</sup>

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<sup>7</sup> The power in s 58A(1) of the *CA Act* for an authorised officer to give notice to the owner of the dog of their intention to declare the dog to be a restricted dog is enlivened if the authorised officer “is of the opinion” that the dog is of the requisite breed/crossbreed. At that stage of the inquiry, the question is not whether the dog is *in fact* a restricted dog. It is highly unlikely that a court would conclude that a dog in fact being a restricted dog is a jurisdictional fact, non-satisfaction of which would render the notice invalid. See further *Timbarra Protection Coalition Inc v Ross Mining NL* (1999) 46 NSWLR 55 at [42] per Spigelman CJ (Mason P and Meagher JA agreeing)

<sup>8</sup> Statement of Kelly Flakus dated 4.8.2023 at [8] (BOE 1/32A, p 3).

<sup>9</sup> *Ibid* at [12].

<sup>10</sup> Gumtree advertisement dated 24 June 2015 (BOE 1/9A, p 5) (Annex B to Supplementary Statement of Det Sgt Michael Taylor (OIC) dated 9 January 2024).

34. On the Gumtree advertisement, the dogs were listed as “*Pure Breed American Staffy pups*”. This corresponds with the recognised breed of American Staffordshire Terrier, which is not a restricted breed.
35. Mr Farag purchased the parents of Bully, separately, in 2013 through a Gumtree advertisement.<sup>11</sup> Neither supplier of the parent dogs was a registered breeder, and Mr Farag received no paperwork at the time of sale as to their breed. Mr Farag said he was told by the respective suppliers that the dogs were “*pure breed American Staffordshire Terrier*” and believed that to be the case.<sup>12</sup>
36. Mr Farag said that neither of the parent dogs ever “*showed any aggression towards humans although the male would be aggressive towards other dogs*”.<sup>13</sup> Although both dogs had “*red in their nose*”, he said he did not believe the parent dogs were pit bulls as they were “*much smaller and had a different body shape.*”<sup>14</sup>
37. On 21 May 2015, the dog later named by MJ's father as Bully was born, along with other pups in the same litter. Mr Farag advertised the pups for sale on Gumtree and Facebook Marketplace as “*American Staffy's*”. He capped the price at \$500 per pup as he understood (incorrectly) that a sale price of over \$500 required that the sale be done from a registered breeder with documentation as to the dog's breed.<sup>15</sup>

### ***Bully's microchipping and registration***

38. On 26 September 2016, MJ's father arranged for Bully to have a microchip implanted.<sup>16</sup> At that time, MJ's parents lived within the Local Government Area (LGA) of Hornsby Council.

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<sup>11</sup> Statement of Andrew Farag dated 9 January 2024 at [3]-[7] (BOE 1/32B, Annex A, p 3). A photograph of the parent dogs is at BOE 1/32, p 3.

<sup>12</sup> Statement of Andrew Farag dated 9 January 2024 at [3]-[4] (BOE 1/32B).

<sup>13</sup> Ibid, at [5].

<sup>14</sup> Ibid, at [6].

<sup>15</sup> Ibid, at [8]-[9].

<sup>16</sup> Bully was microchipped (number 900164001255417).

39. When microchipped, the dog Bully was recorded – in terms of a breed description – as an “*American Staffordshire Terrier*”.<sup>17</sup>
40. On 28 May 2018, Bully was registered by MJ’s father through Hornsby Council.<sup>18</sup> Bully’s breed was recorded, on the Register, as “*American Staffordshire Terrier*”.<sup>19</sup> Consistently with the effect of evidence received during the Inquest,<sup>20</sup> one can readily infer that the breed recorded at the time of registration was based on the information that was recorded when Bully was microchipped on 26 September 2016.
41. Subsequently, on 7 June 2021, Bully’s registered address was changed from MJ’s father’s former Hornsby residence to that of the residence at Central Coast.<sup>21</sup>

#### ***Bully’s known behaviours before 6 June 2021***

42. Bully was reported by MJ’s parents to have had only a few minor fights, with another dog, in the period 2016 to 2018. This occurred while Bully was housed with that dog in the same yard. These incidents were not reported to the council. There is no record, within Hornsby Council and Central Coast Council (**the Council**), of Bully having been known or suspected of having attacked people or animals before 6 June 2021.<sup>22</sup>

#### ***Arrangements at the family residence as at June-July 2021***

43. At the time of MJ’s death, Bully lived mainly inside the house and slept on a pet bed beside the parents’ bed in the master bedroom.<sup>23</sup> There was no dedicated

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<sup>17</sup> Certificate of Identification, dated 26.9.2016 (BOE 1/9A p 6) (annex C to supp statement of Det Sgt Michael Taylor dated 9 January 2024). Bully’s date of birth was there recorded as 26 March 2015.

<sup>18</sup> Institutional statement of David Farmer dated 6.10.2023 (Q2) (BOE 2/34, p 1).

<sup>19</sup> Ibid, Q3a (BOE 1/34, p 1).

<sup>20</sup> See the evidence of Ben Rosen XN 20.2.2024, T109.26-28.

<sup>21</sup> Ibid, Q2 (BOE 1/34, annex A p 11).

<sup>22</sup> Supplementary statement of Det Sgt Taylor at [5(v)] p 3 (BOE 1/9A p 3). See also Institutional statement of David Farmer, dated 6.10.2023, Q4 and Q5 (BOE 2/34, p 2 (re Central Coast Council); and subpoenaed documents (re Hornsby Shire Council) at BOE 2/52 to 2/54.

<sup>23</sup> Crime Scene Examination Summary of CSO Ryan Barker dated 25.8.2021 (BOE 1/20 p 1) and see crime scene photographs at BOE 1/ 20A, pp 178, 179, 180 and 181).

enclosure for Bully nor did MJ's parents use a muzzle while Bully was inside the home.<sup>24</sup>

## **EVENTS ON 6 JUNE 2021**

### ***Report made to Central Coast Council on 7 June 2021***

44. On Monday 7 June 2021, Ranger Carlin of the Council received a report relating to the death of a dog that took place the previous day, on 6 June 2021. The dog and its owners lived at a neighbouring address to the MJ residence. These premises shared a rear yard fence with the MJ residence.

### ***Ranger Carlin's attendance on Mrs Frankland on 7 June 2021***

45. At around 11:30am on 7 June 2021, Ranger Carlin met with the residents of the neighbouring address, namely: Colleen Frankland and her husband Andrew Frankland.
46. Mrs Frankland reported that her cocker spaniel dog, named "Arrow", had been killed by a neighbouring dog (Bully).
47. Mrs Frankland further reported her suspicion that Bully had dragged Arrow from her yard, under the fence, into the neighboring yard, and then killed Arrow.<sup>25</sup>
48. Ranger Carlin was taken to the garage where she saw Arrow's body with several puncture wounds.<sup>26</sup>
49. Mrs Frankland reported to Ranger Carlin that:<sup>27</sup>
- (i) The previous day, Sunday 6 June 2021, Mrs Frankland and her husband had been in Cowra and left their dogs in the care of a dog sitter, Christine Whittle;
  - (ii) the dog sitter had phoned them at about 2:30pm and said that she could not

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<sup>24</sup> Supplementary statement of Det Sgt Taylor at [5] p 3 (BOE 1/9A).

<sup>25</sup> Statement of Christine Carlin dated 3 August 2021 (herein after "Carlin 1") at [5]-[6] (BOE 1/30); statement of Colleen Frankland dated 7 June 2021 at [9] (BOE 1/30C).

<sup>26</sup> Carlin 1 at [7] (BOE 1/30).

<sup>27</sup> This account was recorded in a notebook by Ranger Carlin, which Mrs Frankland signed: see statement of Colleen Frankland dated 7 June 2021 (BOE 1/30C).

locate *Arrow*;

- (iii) about half an hour later, the dog sitter phoned again and reported that she had found a hole under the fence leading to a neighbours' house, and that she had gone looking for *Arrow*;
- (iv) the dog sitter, Ms Whittle, further said that *Arrow* had been found in the neighbours' yard and was dead;<sup>28</sup>
- (v) Mrs Franklin and her husband had then driven straight home from Cowra and arrived at about 7:15pm that Sunday evening. Ms Whittle had left *Arrow* wrapped in a blanket on the garage floor; and
- (vi) Mrs Frankland observed muck and saliva around *Arrow*'s neck, wounds on his legs, and blood throughout his fur.<sup>29</sup>

50. At the time of Ranger Carlin's attendance, Christine Whittle was not present.

51. Ranger Carlin accompanied Mr and Mrs Frankland to a corner in their backyard, nearest to the front side gate. Ranger Carlin was shown a dugout (a hole) leading from their property into the [MJ] residence. The hole had been filled with rocks and bricks.<sup>30</sup>

52. Ranger Carlin did not see an excess or build-up of dirt on the Frankland's side of the property (or, later, on the neighbouring side of the fence when she inspected it).<sup>31</sup>

*Ranger Carlin's attendance at the [MJ] residence on 7 June 2021*

53. Ranger Carlin then went to the neighbouring [MJ] residence where she met with [MJ's grandmother] who is [MJ's father's mother] [MJ]'s paternal grandmother).<sup>32</sup> [MJ]'s parents were not then present.

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<sup>28</sup> Statement of Colleen Frankland dated 7 June 2021 at [3]-[5] (BOE 1/30C).

<sup>29</sup> Ibid at [8]; see also photograph taken by Ranger Carlin on 7 June 2021 (BOE 2/46, pp 10-11, 14).

<sup>30</sup> Carlin 1 at [10] (BOE 1/30). See also photographs taken by Ranger Carlin on 7 June 2021 (BOE 2/46, pp 8-9, 12-13).

<sup>31</sup> Carlin 1 at [11], [20] (BOE 1/30).

<sup>32</sup> Ibid, at [15].

54. [redacted] told Ranger Carlin information to the following effect:
- (i) [redacted] had been caring for her son's dog (Bully), as [redacted] and [redacted] were at the hospital after the recent birth of their first baby ([redacted] MJ (scheduled for discharge from hospital on 7 June 2021));<sup>33</sup>
  - (ii) around 2:30pm on 6 June 2021, [redacted] had gone to the [redacted] MJ residence and found a deceased dog (ie, Arrow) on the back porch;
  - (iii) shortly after that, the Frankland's pet sitter (Christine Whittle) had attended the property;
  - (iv) [redacted] told Ms Whittle that Arrow was dead and helped to wrap Arrow in a blanket and carry him to the Frankland's garage;<sup>34</sup> and
  - (v) [redacted] and [redacted] were very upset about the incident with Arrow.<sup>35</sup>

55. As recorded in her statement made to police, Ranger Carlin said that:<sup>36</sup>

- (i) she sighted Bully in the backyard while speaking with [redacted] MJ's grandmother;
- (ii) she formed the opinion that Bully "had Pitbull in him". This was based on his features specifically his "yellow eyes, liver coloured nose, white tips on [his] toes and solid build";
- (iii) she asked [redacted] MJ's grandmother if anyone had ever suggested Bully might have "Pitbull in him", to which [redacted] MJ's grandmother replied, "No, my daughter's a vet nurse and they've had him as a pup, he's an American Staffy"; and
- (iv) she asked, "How does he [Bully] go with other dogs" to which [redacted] MJ's grandmother responded, "He's a people dog" – which Ranger Carlin took to mean that Bully

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<sup>33</sup> Ibid, at [5] and [17]; and see also electronic File Note record made by Ranger Carlin on 8 June 2021, annexed to Carlin 1 (BOE 1/30 p 9 (Vol 1).

<sup>34</sup> In her statement dated 22 December 2023 at [13]-[14] (BOE 1/32C), Christine Whittle said that the owner of the dog ([redacted] MJ's father ) assisted with carrying Arrow back in a blanket (to the Frankland's house) and apologised.

<sup>35</sup> Carlin 1 at [17] (BOE 1/30).

<sup>36</sup> Ibid, at [18]-[19].



did not get along well with other dogs.

56. While at the MJ residence, Ranger Carlin scanned Bully's microchip. She checked its unique identification number in the Register, which recorded that Bully was a six year old de-sexed male identified as an "*American Staffordshire Terrier*".
57. Ranger Carlin observed that Bully had no prior incidences recorded on the Register for aggression or roaming (which indicated it had not previously come to the notice of authorities).<sup>37</sup>
58. Ranger Carlin took photographs of Bully and of the rear yard and then left.

*Ranger Carlin's belief that Bully was a pit bull cross*

59. Ranger Carlin gave evidence at the Inquest that she believed that Bully was a pit bull cross based on her training as a ranger and what she regarded as the potential "*indicators*" of pit bull terriers, which included them having "*yellow eyes*", "*liver (coloured) nose*", "*light pink-coloured toes*", and being tan in colour. She did not recall such indicators as having been recorded in any document but rather was information passed down verbally, over time, by more experienced rangers.<sup>38</sup>
60. Although Ranger Carlin was aware that Bully was registered as an *American Staffordshire Terrier* this did not exclude in her mind the possibility that Bully was a pit bull crossbreed. Ranger Carlin gave evidence to the effect that, on a number of occasions, she had encountered misdescriptions in the breed of dogs on the Register, including multiple instances of a dog having been registered as an American Staffordshire terrier breed but which, following a breed assessment process after the issuance of a notice of intention to declare the dog a restricted breed, was determined to be a pit bull cross.<sup>39</sup>

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<sup>37</sup> Supplementary statement of Christine Carlin dated 28 September 2023 (hereinafter "Carlin 2") p 2 (BOE 2/36).

<sup>38</sup> Carlin XN 19.2.2024 T27.41-29.1.

<sup>39</sup> Ibid, T35-36.

61. Ranger Carlin subsequently discussed with her supervisor, Team Leader Rosen, her opinion as to Bully's breed and that he had pit bull in him (that is, that he may be a pit bull crossbreed).
62. Relevantly, under the CA Act provisions regarding pit bulls or a pit bull crossbreed:
- (i) an "American Pit Bull terrier" falls within the definition of a "restricted dog" (s 55(1));
  - (ii) if Bully was a "pit bull cross" that could, subject to the CA Act, provide a basis for making a *restricted dog* declaration under s 58C; and
  - (iii) the making of a declaration would impose specific obligations on MJ's father as to the securing and control of Bully, along with providing additional statutory powers for authorised officers (outlined below).
63. In a contemporaneous electronic file note on 8 June 2021, Ranger Carlin recorded:<sup>40</sup>

*"Dog 'Bully' micro# 900164001255417, male, tan listed as Am Staff with indicators Pittbull X sustained small scratch on nose, photos attached.*

*MJ's grandmother states dog is a people person with no prior issues reported to Council.*

*Incident listed on CAR ref# A21062839. Given no witnesses to the incident it is impossible to determine if the deceased dog was dragged under the fence or entered yard of it's own accord (highly improbable), unable to proceed with enforcement action regarding dog attack offence.*

*NOI [Notice of Intention] – Restricted to be issued after discussion with Team Leader. MJ's grandmother asked if dog was ever considered to be a Pitbull which she denied. Given the circumstances MJ's grandmother [was] advised [that] contact with son and registered dog owner MJ's father ... would take place after 48 hours giving them time to settle with their newborn. Team Leader consulted 8/6/21 and supportive of decision."*

64. The "enforcement action" referred to in the file note concerned a possible offence under s 16(1) of the CA Act.<sup>41</sup>
65. By s 16(1), where a dog rushes at, attacks, bites, harasses, or chases any person or animal (other than vermin), whether or not any injury is caused to the person or

<sup>40</sup> See electronic File Note record made by Ranger Carlin on 8 June 2021, annexed to Carlin 1 (BOE 1/30 p 9).

<sup>41</sup> Carlin XN 19.2.2024 T32.36-43.

animal, the owner of the dog can be guilty of an offence.<sup>42</sup> However, by s 16(2), it is not an offence under s 16(1) if, relevantly, the incident occurs:

- (i) as a result of the dog being teased, mistreated, attacked or otherwise provoked (s 16(2)(a)); or
- (ii) as a result of the person or animal trespassing on the property on which the dog was being kept (s 16(2)(b)); or
- (iii) as a result of the dog acting in reasonable defence of a person or property (s 16(2)(c)).

66. Ranger Carlin's file note included the notation "*[g]iven no witnesses to the incident it is impossible to determine if the deceased dog was dragged under the fence or entered yard of its own accord (highly improbable), unable to proceed with enforcement action regarding dog attack offence*". This notation reflected Ranger Carlin's view that:

- (i) Bully had fatally attacked the neighbouring dog *Arrow*;
- (ii) it was likely that *Arrow* was attacked either while inside his yard or inside Bully's yard after being dragged in there under the fence by Bully;
- (iii) however, absent a direct eyewitness, the possibility that *Arrow* had, of its own volition, entered Bully's yard and was attacked there could not be excluded; and
- (iv) consequently, an offence under s 16(1) would not be established as the possibility the attack on *Arrow* was a "*result of [Arrow] trespassing on the property*" could not be excluded (s 16(2)(b)).

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<sup>42</sup> The maximum penalty is 100 penalty units, or 400 penalty units in the case of a *dangerous, menacing, or restricted dog*. Increased penalties are provided subject to proof of additional acts or criminal responsibility: see sub-sections (1AA), (1AB) and (1A).

67. The potential application of s 16(2) was also relevant to whether an authorised officer of the Council had power to seize the dog Bully under s 18. Section 18 of the CA Act provides (underlining added):

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

- (1) *If a dog attacks or bites any person or animal (except vermin) otherwise than in the circumstances referred to in section 16(2), an authorised officer may, at any time within 72 hours after the attack or bite
  - (a) *secure the dog on property that the officer has reason to believe is occupied by the dog’s owner, or*
  - (b) *seize the dog.**
- (2) *Any other person may seize the dog if the dog is on property owned or occupied by the person.*
- (3) *If the dog is on property that an authorised officer has reason to believe is occupied by the dog’s owner, the officer may seize the dog only if the officer is satisfied that
  - (a) *the dog cannot be kept adequately secured on that property, or*
  - (b) *the dog cannot be kept under the effective control of some competent person while it is on that property, or*
  - (c) *the owner of the dog has repeatedly failed to keep the dog secured on that property or under the effective control of a competent person while it is on that property (regardless of whether the dog is secured or under effective control at the relevant time).”**

68. Thus, subsection (1) excludes the exercise of the s 18 seizure power where “*the circumstances referred to*” in s 16(2) apply, which includes an attack in circumstances where the other dog trespassing on the property on which the attacking dog was being kept.

69. The precise circumstances of the attack of Arrow including whether the attack resulted from Arrow having entered, of its own volition, into the rear yard of the **MJ** residence have not been established. Accordingly, I accept Ranger Carlin’s view that enforcement action could not be taken against **MJ’s father** under s 16(1),

nor find it was unreasonable not to have purported to exercise the seizure power under s 18(1).

#### *Issuance of the notice of intent on 10 June 2021*

70. On 10 June 2021, Team Leader Rosen from the Council issued a “*Notice of Intention to Declare a Dog to be a Restricted Breed*” to MJ's father (the **Notice**).<sup>43</sup>

#### ***Obligations for restricted, dangerous, or menacing dogs***

71. The *CA Act* imposes obligations on owners of *restricted, dangerous, or menacing dogs*. Owners must obtain annual permits for a dog that is, or has been declared to be, a *restricted or dangerous dog*. A permit is not required for a dog declared to be *menacing*.<sup>44</sup>
72. More significantly, the *CA Act* imposes obligations on owners in relation to (i) the enclosure and (ii) the control of *restricted, dangerous and menacing dogs*, along with the selling and acceptance of ownership of such dogs.

#### *Enclosure requirements*

73. Regarding the enclosure requirement:
- (i) *Restricted dog*: While on the property at which it is ordinarily kept, a *restricted dog* must be kept in an enclosure, compliant with the minimum requirements specified by the *Regulation*, for which a certificate of compliance has been issued (under s 58H): s 56(1)(a1).<sup>45</sup>
  - (ii) *Dangerous dog*: While on the property at which it is ordinarily kept, a *dangerous dog* must be kept in an enclosure that meets the requirements prescribed by the *Regulation*: s 51(1).<sup>46</sup>

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<sup>43</sup> Statement of Ben Rosen dated 3 August 2024 (hereinafter “Rosen 1”) at [5] and annexure A (BOE 1/29, 1/29A). A copy of the notice is at BOE 1/ 29A, p 6.

<sup>44</sup> *CA Act*, ss 11C, 11D, 51(1)(l).

<sup>45</sup> With respect to a dangerous dog, an owner has three months from the date on which the dog is declared dangerous to comply with the enclosure requirement. Until that requirement is satisfied the dog must be kept in an enclosure that is sufficient to restrain the dog and prevent a child from having access to the dog whenever it is on the property it is ordinarily kept: ss 51(1)(c) and (c1).

<sup>46</sup> *CA Act*, s 51(1). The owner of the dog must obtain a certificate of compliance in relation to the prescribed enclosure: s 58H.

- (iii) Menacing dog: While on the property at which it is ordinarily kept, and while it is not under effective control of a person aged 18 years or above, a *menacing dog* must be enclosed to prevent a child accessing it:  
s 51(1A).<sup>47</sup>

74. Clause 32 of the *Regulation* specifies requirements for the enclosures on properties for *dangerous* and *restricted dogs* (but not for *menacing dogs*). These include that the enclosure must:<sup>48</sup>

- (i) be fully enclosed, constructed and maintained so the dog cannot dig under or escape from it;
- (ii) be constructed so a person cannot have access to it without the assistance of an occupier of the property who is above the age of 18 years;
- (iii) be designed to prevent children having access to the enclosure;
- (iv) not be positioned on the property such that people are required to pass through it to gain access to other parts of the property;
- (v) have a minimum height of 1.8 metres and a minimum width of 1.8 metres; and
- (vi) have walls, a fixed covering and a (self-enclosing) gate constructed of brick, timber, iron, or similar solid material or material that otherwise meets the specified requirements, as well as a floor constructed of sealed concrete.

75. A person is prohibited from owning a *dangerous* or *restricted dog* unless a certificate of compliance is in force for the enclosure in which the dog is required to be kept under ss 51(1)(a) or 56(1)(a1): s 58H(1).<sup>49</sup> In the case of a *restricted dog*, the owner has three months from the date on which the dog is born (e.g. assuming it is one of

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<sup>47</sup> *CA Act*, s 51(1A). The *CA Act* does not require that a menacing dog enclosure satisfy the certification requirements applicable for restricted or dangerous dogs.

<sup>48</sup> The required specifications are set out in Rosen 1 at [14] (BOE 1/29).

<sup>49</sup> An authorised officer of a council may issue a certificate of compliance: s 58H(2)-(3).

the breeds in s 55(1)), or (ii) the date on which the *restricted dog* declaration is made: s 56(1)(a1).<sup>50</sup>

76. With respect to a restricted dog, until the certificate of compliance requirement under paragraph (a1) is complied with, the dog, while on the property where it is ordinarily kept, must be kept in an enclosure that is “*sufficient to restrain the dog and prevent a child from having access to the dog*”: s 56(1)(a2).

#### *Dangerous dog. Control requirements*

77. Regarding the control requirement that the CA Act imposes on owners of *restricted*, *dangerous*, and *menacing dogs*:

- (i) *Dangerous dog* and *restricted dog*: Whenever outside its enclosure, a *dangerous dog* or *restricted dog* must be under the effective control of a competent person by specified means (chain, cord or leash) and muzzled: ss 51(1) and 56. This requirement applies even when the dog is within the property at which it ordinarily resides if it is outside its enclosure;
- (ii) *Menacing dog*: Whenever a *menacing dog* is outside its property it must be under effective control by a competent person by specified means and muzzled. This requirement does not apply when the dog is within the property at which it ordinarily resides s 51(1A).

78. If the control requirements are not complied with, an authorised officer is empowered to seize a *restricted dog* (s 57) or *dangerous dog* or *menacing dog* (s 52).

#### *Scenario with respect to Bully*

79. In the present case if, on or before 10 July 2021, an authorised officer had declared Bully to be a *restricted dog*:
- (i) **MJ's father** would have been required (a) to keep Bully under the “*effective control of a competent person*”, and (b) to keep Bully muzzled whenever he

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<sup>50</sup> In the case of a dangerous dog declaration, the owner has between 3 to 6 months, depending on the circumstances, to meet this requirement: s 51(1)(c).

was outside an enclosure; and

- (ii) while at the MJ residence and not muzzled, MJ's father would have been required to keep Bully in an enclosure (whether that be a temporary enclosure permitted under s 56(1)(a2) or a certified enclosure).
- (iii) If that scenario had applied, and had Bully been kept in an enclosure, or otherwise muzzled while at the MJ residence when not in an enclosure, there would have been a very low likelihood of MJ being fatally attacked by Bully. Unfortunately, however, as stated, such obligations – which would arise only on the making of a relevant declaration – did not apply at the time of MJ's death.

#### *Declaration process*

- 80. To analyse the actions taken by the Council with respect to Bully, it is necessary to understand the stages involved in the making of a declaration for a restricted dog under the CA Act.
- 81. A two-stage process exists for making a declaration as follows:
  - (i) *Firstly*, assuming satisfaction of the statutory thresholds, an authorised officer of a council (which may be a ranger), on their own initiative, may issue the owner of the dog a notice of intention to declare the dog restricted, dangerous or menacing: ss 35(1)-(2) and 58A.<sup>51</sup> The issuance of this notice enlivens specified control and securing obligations on the owner, which operate pending a determination whether a declaration should be made or not.
  - (ii) *Secondly*, following the issue of the notice the authorised officer must consider objections made within a specified period before proceeding to make a declaration (or not).<sup>52</sup>

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<sup>51</sup> The notice must set out the requirements the owner must comply with if a declaration is made and their right to object to the making of the proposed declaration within 7 days of the notice being given.

<sup>52</sup> See s 37 for *dangerous dog* or *menacing dog* declaration and s 58D for *restricted dog* declaration.



82. As for the notice period during which objections to the notice may be made:
- (i) in the case of a *menacing dog* or *dangerous dog*, an authorised officer may make a declaration after the period of 7 days following the giving of the notice of intention (assuming no objection is taken in that period);<sup>53</sup>
  - (ii) in the case of a *restricted dog*, an authorised officer may make a declaration 28 days after the giving of the notice (assuming no objection is taken in that period): s 58C(1). An authorised officer of a council may extend the 28-day period for a further period because of extenuating circumstances: s 58C(5).<sup>54</sup>
83. However, in the case of a *restricted breed* (or crossbreed) declaration, an authorised officer must *not* make the declaration:
- (i) if the owner provides a written statement from an “approved breed assessor” to the effect that the dog is not of the specified kind; or
  - (ii) if an approved breed assessor certifies the dog is not a breed or kind referred to in s 55(1)(a)-(d1), but is a crossbreed of any such breed or kind of dog, the owner provides a statement from an “approved temperament assessor” to the effect that the dog is not a danger to the public and is not likely without provocation to attack or bite any person or animal: s 58C(2).<sup>55</sup>
84. The Chief Executive is empowered to approve persons or bodies as “*approved breed assessors*” and / or “*approved temperament assessors*” for assessments carried out for the purposes of Division 6 of Pt 5.

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<sup>53</sup> See s 37(2) for a *dangerous dog* or *menacing dog* declaration.

<sup>54</sup> A dog owner has a statutory right of appeal to the Local Court against the making of a *dangerous dog* declaration (but not, it seems, against the making of a *restricted* or *menacing dog* declaration): s 41.

<sup>55</sup> Both types of assessors are defined in s 5(1) as a person or body approved by the Departmental Chief Executive for that purpose.

85. Under s 58C, an authorised officer of a council does not have the power to reject a written statement by an approved assessor or to make a *restricted* declaration if provided with such a statement.<sup>56</sup>
86. In this manner, the regulatory regime provided MJ's father with the right to object to the declaration proposed to be made.
87. Consistent with the above provisions, the Notice issued to MJ's father stated that:
- (i) he had 28 days to provide proof that Bully was not a restricted breed or crossbreed of a restricted breed; and
  - (ii) if 28 days elapsed and he did not provide such proof, Bully would be automatically declared to be a restricted breed and subject to the requirements set out in Schedule B to the notice.

***Request on 6 July 2021 for an extension of time to respond***

88. On 6 July 2021, MJ's father contacted the Council. He advised that his wife had recently given birth and asked for an extension of time to comply with the Notice. He was granted an extension time of two weeks, with the new expiry date to be 22 July 2021.
89. In order to resist the proposed declaration, in the usual course of events MJ's father would, at that stage, need to obtain an independent assessor statement as to Bully's breed type and temperament.<sup>57</sup>

***Interim obligations and powers following giving of notice***

90. Upon the giving of a notice of intention to declare a dog *restricted, dangerous or menacing*, and pending determination of the notice process:
- (i) interim obligations are imposed on dog owners; and

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<sup>56</sup> 57 Further, s 58C(6) provides that "any written statement provided by an approved breed assessor or approved temperament assessor for the purposes of this section may not be challenged, reviewed, quashed or called into question on any grounds before any court or tribunal in any legal proceedings".

<sup>57</sup> Supplementary statement of Det Sgt Taylor (OIC) at [5], p 3 (BOE 1/9A).

- (ii) interim powers are vested in authorised officers.

#### *Interim obligations on owners*

91. Regarding interim obligations on the dog owner, upon the receipt of a notice to declare the dog *restricted* the owner must:
- (i) when the dog is away from the property at which it ordinarily resides, ensure that the dog is under effective control of a competent person<sup>58</sup> by means of adequate chain, cord or leash and has a muzzle securely fixed to prevent it biting any person or animal (***the interim control obligation***): s 58B(1)(a) (see similarly s 36(1)(a) with respect to a *dangerous or menacing dog*);
  - (ii) ensure the dog, if not already registered, is registered within 7 days of receiving the notice: s 58B(1)(b) (see similarly s 36(1)(b) with respect to a *dangerous or menacing dog*) (the interim registration obligation has no relevance in Bully's case).
92. The *interim control obligation* applies only for 28 days *after* the notice is given or until the authorised officer notifies the owner whether the proposed declaration has been made, whichever happens first: s 58B(3) (see similarly s 36(2) with respect to a *dangerous or menacing dog*).
93. The *interim control obligation* does not require the use of an enclosure or muzzles or leads when the dog is at the property at which it is ordinarily kept. It differs in this respect from the control obligation that is enlivened if a declaration is made. However, an authorised officer may seize a dog under s 58B(4) if satisfied the dog is "*not confined, tethered or restrained in such a way as to prevent the dog attacking or chasing a person lawfully at the property where the dog is ordinarily kept*".
94. In the present case, upon the giving of the Notice (10 June 2021), **MJ's father** was required, for no more than 28 days, to ensure that when Bully was away from the residence he was:

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<sup>58</sup> The CA Act does not prescribe when a person is taken to be "*competent*".

- (i) kept under effective control of a competent person by means of adequate chain, cord or leash; and
- (ii) had a muzzle securely fixed to prevent him biting any person or animal.

95. Under the *CA Act*, this requirement did not apply while Bully was at the **MJ** residence, being the property at which Bully ordinarily resided. Moreover, the *interim control obligation* would have ceased to have effect by 10 and 11 July 2021 (when **MJ** was fatally attacked), given that this was beyond the 28-day time limitation provided.

#### *Additional powers of seizure arising from issuing of Notice*

96. Under the *CA Act*, the giving of a notice of intention to declare a dog as *restricted*, *dangerous*, or *menacing* confers statutory powers of seizure on an authorised officer with respect to the dog that is the subject of the notice. Therefore, in addition to the power to seize in s 18 the *CA Act* confers a power of seizure if an authorised officer is satisfied that:

- (i) the *interim control obligation* is not being complied with: ss 36(3)(a)(i) (*dangerous or menacing dog*) and 58B(4)(a)(i) (*restricted dog*). The power to seize on this basis is limited to a period of 28 days from the giving of the notice: see ss 36(3A) and 58B(4A);<sup>59</sup>
- (ii) the dog is not confined, tethered, or restrained to prevent the dog attacking or chasing a person lawfully *at the property* at which the dog is ordinarily kept: ss 36(3)(a)(ii) and 58B(4)(a)(ii); or
- (iii) the dog is not registered: ss 36(3)(b) and 58B(4)(b).<sup>60</sup>

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<sup>59</sup> Section 58B(4A) provides that “[a]n authorised officer may seize a dog ... only during the period when subsection (1)(a) applies in respect of the dog”.

<sup>60</sup> In the present case, at all relevant times Bully was registered.

97. If otherwise available, the interim seizure power may be exercised only within a maximum period of 28 days from the giving of the notice.<sup>61</sup>

***Could and should an interim seizure power have been exercised with respect to Bully?***

98. A question arises as to whether, within the 28 day period from the giving of the notice of intention to declare Bully a restricted dog, a power to seize Bully, under s 58B(4), could and should have been exercised by an authorised officer of the Council.

99. It would seem that, potentially, the only basis on which a power to seize Bully, under s 58B, might have been exercised was by reference to s 58B(4)(a)(ii), namely upon satisfaction that Bully was not “*confined, tethered or restrained in such a way as to prevent*” him from attacking or chasing a person lawfully at the property where he was ordinarily kept. In this respect:

- (i) there was no enclosure at the MJ residence within which Bully was to be placed (to keep him out of the reach of children);
- (ii) there were no plans disclosed by the owner to use muzzles or leads to secure Bully while he was in the yard, and to keep him from the inside of the house, pending the determination of the notice; and
- (iii) after the notice was issued there were no attendances by officers of the Council to investigate what measures had been put into place, even temporarily, to prevent against the possibility of an attack by Bully inside the house at the residence.

100. In assessing whether an interim seizure power could and should have been exercised with respect to Bully, the evidence of Ranger Carlin and Team Leader Rosen needs to be considered. Of the two, Team Leader Rosen was the senior officer at the Council and was the person who issued the Notice.

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<sup>61</sup> CA Act, ss 36(3A) (with respect to a dangerous or menacing dog) and 58B(4A) (with respect to a restricted dog).

*Evidence of Ranger Carlin and Team Leader Rosen regarding interim seizure power*

101. For her part, Ranger Carlin accepted, at the hearing of the Inquest, that she did not consider a power under s 58B to seize Bully. It appears she would have considered seizure only in the event there was another event of aggression or attack by Bully while the notice was active.<sup>62</sup>
102. Team Leader Rosen, with whom Ranger Carlin discussed Bully's case, was examined on his understanding of the seizure power arising under s 58B(4). Team Leader Rosen gave evidence to the effect that he was aware, in 2021, that there existed a seizure power in s 58B(4)(a), that is enlivened after a notice of intention to declare a dog a restricted breed is issued under the *CA Act* and before that declaration is made.<sup>63</sup>
103. However, Team Leader Rosen regarded the seizure power as subject to limitations. In his view, the Council did not have grounds under s 58B(4)(a) to seize Bully as "we were satisfied that the dog could be confined and restrained" in the backyard, that the dog was unlikely to escape from the backyard, and that a person visiting the house "could lawfully come to the door without having contact with the dog while it was in the backyard, so if they wanted to knock on the door or make a delivery, they could lawfully do that without coming into contact with the dog".<sup>64</sup>
104. Assuming the dog was adequately confined or restrained in the rear yard, in Team Leader Rosen's view s 58B(4)(a) would not authorise seizure if it was known that the dog would be permitted inside the house without being confined, tethered, or restrained, even when children would potentially be inside the house.<sup>65</sup>
105. In this respect, Team Leader Rosen said that he understood the term "lawfully at the property" in the wording of s 58B(4)(a)(ii) that "the dog is not confined, tethered or restrained to prevent the dog attacking or chasing a person *lawfully at the property* where the dog is ordinarily kept" – to mean the areas of the property

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<sup>62</sup> Carlin XN 19.2.2024, T46.29-43, T47.48-25.

<sup>63</sup> Rosen XN 20.2.2024, T102.27-103.4.

<sup>64</sup> Rosen XN 20.2.2024, T99.42-100.13.

<sup>65</sup> Rosen XN 20.2.2024, T103.6-12.

*outside* the house, namely the front and or back yard of the property. That was his understanding as of June 2021 and remained his view at the time of giving evidence.<sup>66</sup>

106. Given this view of s 58B(4), no consideration was given, or enquiries made, as to whether Bully was confined, tethered or restrained while *inside* the **MJ** house. Rather, Team Leader Rosen's evidence was that Council officers had no power under s 58B(4) to seize Bully "[b]ecause we were satisfied that the dog could be confined and restrained in the back[yard]."<sup>67</sup>
107. Team Leader Rosen also gave evidence to the effect that he could see value in a legislative requirement, if introduced, that a dog must be muzzled inside a house (and outside) in the period following the issuing of a notice to declare a dog dangerous or menacing and prior to a declaration being made.<sup>68</sup>
108. There is some force in Team Leader Rosen's observation that s 58B(4)(a)(ii) is "not very well worded"<sup>69</sup> and should be made clearer.<sup>70</sup> I am not satisfied that his view of the construction and limits of the seizure power in s 58B(4), is correct or that the term "lawfully at the property" (in s 58B(4)(a)(ii)) should be construed as applying only to a property's outdoor areas and as excluding the inside of the house. As a matter of construction, I am satisfied that the term "at the property" (in s 58B(4)(a)(ii)) means the whole of the property, both inside and outside the structure comprising the house. This accords with the ordinary and natural meaning of the term and the protective purpose of the provision.
109. On this preferred construction of the provision, an authorized officer of the Council could and should have considered whether a seizure power under s 58B(4)(a)(ii) ought to have been exercised in the 28 day period following the issuing of the Notice

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<sup>66</sup> Rosen XN 20.2.2024, T103.41-104.11.

<sup>67</sup> Rosen XN 20.2.2024, T42.45.

<sup>68</sup> Rosen XN 20.2.2024, T105.30-44.

<sup>69</sup> Rosen XN 20.2.2024, T104.29.

<sup>70</sup> Rosen XN 20.2.2024, T105.11-14.

given the belief that Bully was not confined, tethered or restrained (such as by muzzling) when inside the house.

110. It is significant that a senior officer of the Council, with considerable experience in animal management, found the provision not very well worded and appears to have misunderstood the scope of the power it afforded.
111. I am of the opinion that consideration should be given to amend s 58B (4) to make clearer its intended operation. All councils, through their authorised officers, should properly be familiar with the statutory powers available under the *CA Act* and clearly understand the circumstances when an interim power of seizure is available or should be exercised.<sup>71</sup>
112. In saying that, in these circumstances, there is no criticism of the views and actions of Ranger Carlin or Team Leader Rosen who were operating in the following circumstances;
- (i) MJ's parents evidently trusted Bully and did not consider him a threat to themselves or MJ
  - (ii) as of June 2021, Bully was 6 years old. To the knowledge of Ranger Carlin and Team Leader Rosen, there had been no report of Bully having ever attacked a person<sup>72</sup> and, beyond the incident involving *Arrow*, of having attacked an animal;
  - (iii) the attack on June 2021 was on a neighbouring dog (not a person); and
  - (iv) there was seemingly nothing in the parents' circumstances that may have constituted a 'red flag' for Council officers. This may be contrasted with, for example, the *Inquest into the death of Ada Holland [2024]* NSWCorC 36 in which, a week before the fatal attack on Ms Holland, Shoalhaven City Council rangers had contact with the relevant dogs and their owners. At the time of that contact, one of the dogs had recently attacked a person, and none of the

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<sup>71</sup> See proposed recommendation 7.

<sup>72</sup> See Rosen XN 20.2.2024, T101.21-102.13.



dogs were registered. The owners had previously been fined for non-compliance with requirements of the regulatory regime. These were matters relevant to the assessment of the owner's competence to manage the dogs at the property. Such factors did not arise in the case of MJ's father; and

- (v) if available, the power under s 58B (4) is a discretionary power. Reasonable minds might differ as to whether the power should have been exercised given what was known on 10 June 2021.

113. Furthermore, I accept Team Leader Rosen's evidence that consideration ought to be given for the introduction of a requirement that, in the period following the issuing of a notice to declare a dog *dangerous* or *menacing* (or *restricted*) and prior to a declaration being made, a dog must be muzzled inside a house, as well as when outside of it.

#### EVENTS OF 10-11 JULY 2021

##### *Events of Saturday 10 to Sunday 11 July 2021*

114. On Saturday evening, 10 July 2021, MJ's father and MJ's mother were at home in the loungeroom watching the football on television and listening to music. They had also bought pizzas for dinner.
115. MJ's father subsequently told police he fell asleep on the lounge while the television was playing and MJ's mother was sitting nearby him on a rocker chair.<sup>73</sup> NSW Police Force officer in charge, Detective Sergeant Michael Taylor (Detective Taylor), aptly described the rocker as a "low-lying chair".<sup>74</sup>
116. MJ's mother later told police that, when MJ's father was asleep, she was in the rocker chair feeding MJ and she fell asleep with MJ in her arms.<sup>75</sup> MJ's mother also said that Bully was "asleep probably" on his bed (in the main bedroom).<sup>76</sup>

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<sup>73</sup> Transcript of Body Worn Video (BWV) with MJ's father, 11 July 2021 (BOE 1/31), p 4. Photographs of the chair are at BOE 1/20A, photos 26-27, 52-55, 319, 322-326.

<sup>74</sup> Statement of DSC Michael Taylor (OIC), dated 19 July 2021, at [47] (BOE 1/9).

<sup>75</sup> Transcript of BWV with MJ's mother 11 July 2021 (BOE 1/32), p 2.

<sup>76</sup> Ibid, p 4.

117. In his subsequent statement to police, MJ's father described what happened next:<sup>77</sup>

*"Um, I'd fallen asleep. I woke up to MJ's mother with the baby in her hands, crying ... and she's just gone, ah, the, the dog's got the baby. So that's just, that's just as much as I know." (p 4)*

...

*"Um, MJ's mother had, from what I can gather, MJ's mother's woken up and realised the baby's not there. She's walked in and found the baby on the floor in the baby's bedroom, which is at the opposite end of the house. So, and, yeah, I don't, I don't know. I don't know what's going on, I just said, it's ... wake up, wake up ..." (p 8)*

*"Um, yeah, she told me she found the baby in the bed, on the, on the floor in the bedroom, in the baby's bedroom at the opposite end of the house, yeah. And she's walked, yeah, that's when she's walked into his room. Walked in there. Obviously she's walked in there and seen the baby, yeah. And ... that's when she's come running out to me, call the ambulance. Call the ambulance." (p 9)*

118. Photographs of the nursery, where MJ was found, are at BOE 1/20A, photographs 202-203.<sup>78</sup>

119. MJ's father stated that he saw wounds on MJ bruises all over his body, blood around his nose and a "big puncture wound" on his chest.<sup>79</sup>

120. A phone call was immediately made to Triple 0. Police and ambulance officers arrived promptly on the scene at about 2:27am on Sunday, 11 July 2021.

121. On arrival, police saw MJ's mother performing cardiopulmonary resuscitation (CPR) on MJ in the lounge room, under instruction from the emergency services operator on the phone, with MJ's father standing nearby. CPR was then taken over by police and then by paramedics.<sup>80</sup>

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<sup>77</sup> Transcript of BWV with MJ's father, 11 July 2021 (BOE 1/ 31), pp 4, 8 and 9.

<sup>78</sup> Crime scene photographs at BOE 1/20A, pp 202 to 203.

<sup>79</sup> Transcript of BWV with MJ's father, 11 July 2021 (BOE 1/31), pp 9-10.

<sup>80</sup> Statement of S/Cst David Ford dated 17 July 2021, at [7]-[9] (BOE 1/11).

122. Senior Constable Brett Alexander observed seeing a dog (Bully) in the back yard through the kitchen glass sliding doors and noticing “*blood on the snout of the dog.*”<sup>81</sup>
123. Senior Constable Alexander walked down the hallway of the property. At the end of the hallway on the left side, he saw a room set up as a child’s nursery. The room was clean and tidy with a child’s cot. He saw two blood stains on the carpet in that room.<sup>82</sup>
124. Inspector Robert Ryan, of the NSW Ambulance Service, arrived at the property and observed [MJ] being placed in a nearby ambulance. Inspector Ryan conducted an assessment of [MJ] and determined that resuscitation attempts should be ceased. Inspector Ryan subsequently described his observations and decision as follows:<sup>83</sup>

*“I saw that he [MJ] had been stripped of his clothing and was only wearing a nappy by memory. I noticed that the baby was pale, unconscious and was cold to touch. The body was floppy in nature and there was no respirations and no cardiac sounds on chest auscultation. I saw numerous puncture wounds to the anterior and posterior cavity region, along with contusions along the torso. I also noticed contusions and abrasions to the abdominal region extending down to this groin which I believed to be consistent with something sharp in nature sliding across the surface of the skin. Officer Mitchell initiated 30 second compressions on the baby, and it was noted blood was ejecting from the central anterior chest puncture site.*

*I believed that the injuries found on the baby were consistent with a potential dog bite. At 5 weeks old, the baby’s bones are largely cartilaginous (still forming) and a significant force would go through the baby’s skin quite easily. I made the decision to cease resuscitation at 0234 due to injuries incompatible with life.”*

### **Questioning of the parents and examination of the scene**

125. Detective S/Cst Taylor, General Duties Supervisor Sergeant Jemima Howe and Senior Constable Emily Stallard attended shortly after 2:20am. A crime scene was

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<sup>81</sup> Statement of S/Cst Brett Alexander dated 28 August 2021 at [14] (BOE 1/13) (photos of Bully outside the glass sliding door, and having his height measured).

<sup>82</sup> Statement of S/Cst Brett Alexander dated 28 August 2021 at [18]-[19] (BOE 1/13).

<sup>83</sup> Statement of Robert Ryan, dated 25 August 2021 at [8]-[10] (BOE 1/23).

established. Senior Constable Stallard and Detective Taylor then travelled to Gosford Hospital, where MJ's body was being kept. They obtained separate versions of events from MJ's father and MJ's mother recorded on Body Worn Video.

126. During the giving of her account, MJ's mother was asked whether there had been any issues with the dog (Bully) being in their bedroom. MJ's mother replied:

*"No. Like, I've been on alert all the time ... it's something I've obviously been considering for weeks now. Like, do, because I don't trust the dog around him, like, I don't leave them [ie, the dog and the baby] alone. And he [Bully] was ... never ... aggressive."*<sup>84</sup>

127. After leaving Gosford Hospital, Detective Taylor returned to the MJ residence and met with Crime Scene Officers (CSO McGann and Ryan Barker). Five empty bottles of full-strength beer had been located. In his statement, Detective Taylor records that "there was no evidence of excessive drinking or drug taking" by MJ's parents.<sup>85</sup>

128. Detective Taylor observed a small blood stain in front of the feeding / rocker chair consistent with MJ having been pulled down by Bully. He did not see any drag or blood marks.<sup>86</sup>

129. Crime Scene Officer Ryan Barker examined the property and provided an examination summary, concluding that:

"Conclusion:

*There do not appear to be any suspicious circumstances surrounding the death of MJ. There were no signs of neglect or mistreatment toward the deceased visible at the scene, and the house was kept in a clean and tidy manner. The version of events provided by the parents, evidence at the scene, and the injuries viewed on the deceased by CSO McCann support the fact that MJ's death was the result of multiple dog bites.*

*The death of MJ appears to be accidental in nature and does*

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<sup>84</sup> Transcript of BWV with MJ's mother, 11 July 2021 (BOE 1/32), p 5.

<sup>85</sup> Statement of DSC Michael Taylor, at [31] (BOE 1/9).

<sup>86</sup> Ibid, at [32].

*not appear suspicious.”<sup>87</sup>*

130. In his principal statement for the Inquest, Detective Taylor similarly stated his view (at [46]) that:<sup>88</sup>

*“In relation to the death of [REDACTED] MJ, I am of the view that there are no suspicious circumstances and that he has died as a result of injuries inflicted by [the dog] ‘Bully’ in a tragic incident on the morning of the 11<sup>th</sup> July 2021”.*

### ***Bully euthanised on 11 July 2021***

131. On 11 July 2021, the dog Bully was euthanised by Dr Emetia Cull, a veterinarian. This was arranged through the Council.<sup>89</sup> Dr Cull completed documentation for the euthanising of the dog. In an “initial” Certificate of Death, dated 11 July 2021, Dr Cull listed Bully as being a “Pitbull”.<sup>90</sup>
132. Later, an amended Certificate of Death, dated 12 July 2021, was issued that listed Bully as an “American Staffordshire Terrier”.<sup>91</sup>
133. Dr Cull stated that she had recorded the breed of Bully as “Pitbull” in the initial certificate based on information from the ranger or the representative she dealt with for the euthanasia procedure. Additionally, Dr Cull stated to police:<sup>92</sup>

*“In my opinion ‘Bully’ looked like a ‘Pitbull’ due to the red nose, green eyes and American Staffordshire Terrier body”.*

134. Dr Cull said that, on 12 July 2021 (the day following the euthanising of the dog), Council rangers had contacted her clinic and asked for a change to be made to the breed indicated on the death certificate. This data was entered in a certificate by the vet nurse and then signed by Dr Cull.<sup>93</sup>

## **AUTOPSY AND PATHOLOGIST FINDINGS**

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<sup>87</sup> Crime Scene Examination Summary (CSO Ryan Barker), p 3 (BOE 1/20). See also statement of Dt S/Cst Michael Taylor, dated 19 July 2021, at [34] (BOE 1/9).

<sup>88</sup> Statement of Dt S/Cst Michael Taylor, dated 19 July 2021, at [46] (BOE 1/9).

<sup>89</sup> Rosen 1 at [11] (BOE 1/29); Statement of Dr Emetia Cull, dated 9 February 2024, at [5] (BOE 1/32D).

<sup>90</sup> See the certificate at BOE 1/34B (annexure B to statement of David Farmer, dated 6 October 2023, p 12).

<sup>91</sup> See the certificate at BOE 1/32D, p 4

<sup>92</sup> Statement of Dr Emetia Cull, dated 9 February 2024, at [9] and [11] (BOE 1/32D).

<sup>93</sup> Ibid, at [12]; and see also Clinical Summary at BOE 1/32D, pp 5-5; Cull XN 19.2.2024, T56.14-33.

135. Dr Leah Clifton, Staff Specialist in Forensic Pathology, Department of Forensic Medicine at Newcastle, performed an autopsy on 13 July 2021. In her report dated 31 March 2022,<sup>94</sup> Dr Clifton opined that the direct cause of MJ's death was "Chest Trauma" (p 2). The pattern of injuries received was consistent with MJ having been "mauled by a dog" (p 4).

#### **FINDING AS TO MANNER AND CAUSE OF DEATH**

136. I am satisfied that MJ died sometime on 10 or 11 July 2021 at Central Coast New South Wales, from fatal injuries caused when he was attacked inside the family home by a dog, which was the family pet.

#### **REFLECTIONS / REGULATORY CHALLENGES**

137. Material received into evidence includes material about other fatal dog attack matters and material relevant to the regulation of dog ownership.
138. The following paragraphs examine matters relating to the efficacy of the regulatory regime and provide context for potential recommendations.

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<sup>94</sup> Paediatric Autopsy Report of Dr Leah Clifton, dated 31 March 2022 (BOE 1/7).

### ***Incidence of serious injury and death from dog attacks in NSW***

139. There have been a concerning number of fatal dog attacks in New South Wales between 2009 and 2023, the details of which are included below. I am considering some of these deaths in related proceedings.

| <b>Date of the fatal attack</b> | <b>Matter</b>                       | <b>Key facts</b>   |
|---------------------------------|-------------------------------------|--|
| Jan 2009                        | <i>Burke Inquest</i> <sup>95</sup>  | <p><i>Deceased:</i> child (3 years old).</p> <p><i>Location of attack:</i> residential home of friends of the deceased's parents. The deceased and her sibling (14 months old) were visiting (being minded by their parents' friends). The dogs ordinarily lived at that home.</p> <p><i>Breed of dogs (4 dogs suspected to be involved in attack):</i> breed of dog not specified in findings (at least 3 of the 5 dogs at the home described to be <i>Bull Mastiff-Cross-Rhodesian Ridgebacks</i><sup>96</sup>).</p> |
| Mar 2018                        | <b>JK</b> Inquest <sup>97</sup>     | <p><i>Deceased:</i> infant (13 months old).</p> <p><i>Location of attack:</i> residential home of a family member (grandmother). The attack occurred when the deceased, and her parents, were visiting the family member's home.</p> <p><i>Breed of dog (1 dog):</i> <i>Rottweiler</i>.</p> <p><i>Registration status:</i> dog not registered (was microchipped).</p> <p><i>Known history to council (before fatal attack):</i> no known prior attacks on animals or people.</p>                                       |
| Jan 2019                        | <i>Amatto Inquest</i> <sup>98</sup> | <p><i>Deceased:</i> adult male (40 years old).</p> <p><i>Location of attack:</i> residential home at which the deceased lived with the dogs' owners (where the dogs ordinarily lived).</p>   |

<sup>95</sup> Deputy State Coroner MacMahon delivered findings in the *Inquest into the death of Ruby-Lea Burke* on 21 September 2011: Exhibit 7, Compendium Volume (CV), Tab 44 (vol 3).

<sup>96</sup> See <https://www.smh.com.au/national/frenzied-dogs-killed-ruby-lea-inquest-20110920-1kjdy.html#>.

<sup>97</sup> The holding of an inquest into the death of **JK** was dispensed with on 19 September 2018: see Coroners Act, s 25(1).

<sup>98</sup> The holding of an inquest into the death of **SG** was dispensed with on 25 February 2020.

| Date of the fatal attack | Matter                    | Key facts  |
|--------------------------|---------------------------|--|
|                          |                           | <p><i>Breed of dogs (2 dogs involved in attack):</i> Staffordshire Bull Terrier (not a restricted breed).</p> <p><i>Registration status:</i> one dog registered (and microchipped). The other dog not registered (was microchipped).</p> <p><i>Known history to council (before fatal attack):</i> one dog was reported to have attacked a person less than 2 years before fatal attack (non-fatal but serious injuries suffered). Attack occurred at the residential property at which the dog ordinarily lived (victim of non-fatal attack was a real estate agent visiting premises).</p> |
| May 2019                 | OR Inquest <sup>99</sup>  | <p><i>Deceased:</i> adult female (72 years old).</p> <p><i>Location of attack:</i> residential home at which the deceased lived with the dog and her husband.</p> <p><i>Breed of dog:</i> registered as American Staffordshire Terrier.</p> <p><i>Registration status:</i> registered (and microchipped).</p> <p><i>Known history to council (before fatal attack):</i> no known history of attacks or aggression.</p>   |
| Jun 2019                 | SG Inquest <sup>100</sup> | <p><i>Deceased:</i> adult male (50 years of age).</p> <p><i>Location of attack:</i> inside the residential home at which the deceased ordinarily lived. The dog belonged to the deceased's flat mate and ordinarily lived there.</p> <p><i>Breed of dog:</i> registered as a Staffordshire cross.</p> <p><i>Registration status:</i> registered (and microchipped).</p> <p><i>Known history to council (before fatal attack):</i> no known history of attacks or aggression.<sup>101</sup></p>   |

<sup>99</sup> The holding of an inquest into the death of OR was dispensed with on 27 April 2020.

<sup>100</sup> The holding of an inquest into the death of SG was dispensed with on 25 February 2020.

<sup>101</sup> From available records, it appears that the dog involved in the fatal attack was not euthanised after SG's death but was rehomed or adopted out to a family through an animal shelter (who subsequently returned the dog reporting fears about the dog's behaviour and the family's young son). The dog was transferred to an RSPCA facility interstate. The current status of the dog is not known. See timeline for the dog Luna in CV 3/41 p 30, and see also CV 3/41 pp 12-14.



| Date of the fatal attack | Matter                                | Key facts  |
|--------------------------|---------------------------------------|--|
| Mar 2020                 | <i>Holland Inquest</i> <sup>102</sup> | <p><i>Deceased:</i> adult female (90 years of age).</p> <p><i>Location of attack:</i> public beach after the 3 dogs left their property unaccompanied. Before and after the fatal attack, the dogs attacked at least three other people, including the deceased’s adult daughter and a 79-year-old female friend of the deceased causing serious injuries.</p> <p><i>Breed of dogs (3 dogs):</i> crossbreed of multiple breeds which included <i>Staffordshire Bull Terrier</i> (not restricted breed).</p> <p><i>Registration status:</i> none of the 3 dogs registered (only one microchipped).</p> <p><i>Known history to council (before fatal attack):</i> several notices and penalty notices issued for non- registration of dogs. One report of an unprovoked attack on a person living near to the dogs’ home about one week before the fatal attack.</p> |
| Jul 2021                 | MJ Inquest                            | <p><i>Deceased:</i> infant (5 weeks old).</p> <p><i>Location of attack:</i> family home (where the dog ordinarily lived).</p> <p><i>Breed of dog (1 dog):</i> <i>American Staffordshire Terrier</i> (not restricted breed).</p> <p><i>Registration status:</i> registered (and microchipped).</p> <p><i>Known history to council (before fatal attack):</i> one report of suspected attack on another dog about one month before fatal attack.</p>   |

<sup>102</sup> I delivered findings in the *Inquest into the death of Ada Zara (“Sally”) Holland* on 14 June 2024.

| Date of the fatal attack | Matter                                | Key facts   |
|--------------------------|---------------------------------------|---|
| Nov 2022                 | <i>Pollard Inquest</i> <sup>103</sup> | <p><i>Deceased:</i> child (2 years old).</p> <p><i>Location of attack:</i> motel accommodation at which the child, sibling and mother were temporarily staying and where dogs ordinarily lived (owned by motel operator).</p> <p><i>Breed of dogs (2 dogs):</i> Rottweiler (primary attacker) and Australian cattle dog (crossbreed).</p> <p><i>Registration status:</i> neither dog registered (only one dog microchipped).</p> <p><i>Known history to council (before fatal attack):</i> no known history of attacks or aggression against people for either dog.</p> |
| Feb 2023                 | <b>RM</b> inquest <sup>104</sup>      | <p><i>Deceased:</i> infant (5 weeks old).</p> <p><i>Location of attack:</i> residential home of a family member (not the deceased's home). The attack occurred when the deceased, and her parents, went to a family gathering at the family member's home.</p> <p><i>Breed of dogs (2 dogs):</i> Rottweilers.</p> <p><i>Registration status:</i> both dogs registered (and microchipped).</p> <p><i>Known history to council (before fatal attack):</i> no known history of attacks or aggression for either dog.</p>   |

### **Breeds involved in attacks**

140. The NSW Office of Local Government (**OLG**) is the NSW Government agency responsible for strengthening the sustainability, performance, integrity, transparency and accountability of the local government sector. As the OLG website states, the OLG has a policy, legislative, investigative and program focus in regulating the State's 128 local councils, and also works collaboratively with the local government sector to support local councils to deliver for their local communities.

<sup>103</sup> The Inquest into the death of Jyedon Pollard.

<sup>104</sup> A decision has not yet been made whether to dispense with the holding of an inquest into the death of **RM**.

The OLG, which is part of the Department of Planning, Housing and Infrastructure, is the key adviser to the NSW Government on local government matters.<sup>105</sup>

141. The OLG collates annual statistics on dog attacks sourced from councils throughout NSW. Quarterly NSW council statistics indicate that, of all dog breeds, the *American Staffordshire Terrier* had the highest incidence of attacks in NSW between 2018- 2021:<sup>106</sup>

| Total dog attacks reported by NSW Councils per year |  | 2021*   | 2020 | 2019   | 2018 | Total |
|---|--|---|------|--------|------|-------|
|   |  | 2401  | 4274 | 5080   | 5028 | 16783 |
| Top 20 attacking dog breeds in NSW                  |  | Number of attacking dogs in NSW by breed per year |      |        |      |       |
|   |  | 2021*   | 2020 | 2019** | 2018 | Total |
| 1.  | American Staffordshire Terrier               | 413   | 677  | 506    | 433  | 2029  |
| 2.  | Bull Terrier (Staffordshire)                 | 210   | 435  | 397    | 335  | 1377  |
| 3.  | Australian Cattle Dog                        | 138   | 232  | 212    | 205  | 787   |
| 4.  | German Shepherd Dog                          | 115   | 204  | 202    | 189  | 710   |
| 5.  | Bull Terrier (Staffordshire) – Cross Breed   | 60  | 135  | 116    | 120  | 431   |
| 6.  | Rottweiler                                   | 58  | 128  | 121    | 109  | 416   |
| 7.  | Australian Kelpie                            | 61  | 95   | 96     | 76   | 328   |
| 8.  | American Staffordshire Terrier – Cross Breed | 39  | 95   | 79     | 78   | 291   |
| 9.  | Mastiff – Cross Breed                        | 32  | 82   | 75     | 95   | 284   |
| 10.   | Border Collie                                | 56  | 99   | 63     | 63   | 281   |
| 11.   | Siberian Husky                               | 50  | 77   | 76     | 76   | 279   |
| 12.   | Labrador Retriever                           | 44  | 60   | 57     | 70   | 231   |
| 13.   | Australian Kelpie – Cross Breed              | 49  | 27   | 60     | 52   | 188   |
| 14.   | Bull Terrier                                 | 0   | 46   | 63     | 71   | 180   |
| 15.   | Bull Mastiff                                 | 15  | 69   | 31     | 51   | 166   |
| 16.   | Australian Cattle Dog – Cross Breed          | 35  | 15   | 59     | 51   | 160   |
| 17.   | Mastiff                                      | 36  | 46   | 51     | 20   | 153   |
| 18.   | Boxer  | 17  | 57   | 18     | 31   | 123   |
| 19.   | Bull Mastiff – Cross Breed                   | 0   | 41   | 36     | 41   | 118   |
| 20.   | Jack Russell Terrier                         | 0   | 42   | 37     | 33   | 112   |

\*01/01/2021-30/06/2021 \*\*The 2019 July-September data is not publicly available

142. However, in the view of the OLG, there is underreporting of dog bite attacks. In this respect, most attacks occur in the home where the dog lives and owners may be reluctant to report such attacks owing to a concern as to the consequences for the dog, which may be removed from the home, impounded and possibly destroyed.<sup>107</sup>

### ***Dog attack hospital admissions***

<sup>105</sup> See OLG website: <https://www.olg.nsw.gov.au/>.

<sup>106</sup> A caveat with respect to this data is the potential inaccuracy with breed identification in particular cases, given the difficulties in accurate identification based on features and/or the unreliability arising from self-reports of owners. Nor do these statistics provide figures for the number of attacks relative to the total number of dogs of the particular breed type.

<sup>107</sup> Statement of Douglas Walther, Executive Director, OLG, dated 16 February 2024 (Exhibit 6) at [47].

143. The authors of an academic article titled “The incidence of public sector hospitalisations due to dog bites in Australia 2001-2013”, published in the Australian and New Zealand Journal of Public Health (2017), relevantly state:<sup>108</sup>

*“This study has identified a number of patterns in the statistical data for dog bite injuries in contemporary Australia. On average each year between 2001 and 2013, 2601 persons required hospitalisation for dog bite injuries in Australia at an annual rate of 12.39 per 100,000. **The highest incidence density was for infants and children aged 0–4 years and the next highest was for 5–9 year olds.**”* (emphasis added)

144. An article published in 2022 by clinicians at the Sydney Children’s Hospital (SCH), titled “Paediatric dog bite injuries: a 10-year retrospective cohort analysis from Sydney Children’s Hospital”,<sup>109</sup> relevantly found that:

- (i) some 628 patients presented to SCH with dog bites during the study period (seemingly 10 years);
- (ii) of those persons, 273 (43.5%) patients received treatment in the Emergency Department only with the remaining 355 (56.5%) patients admitted for treatment;
- (iii) the average patient age was 5.69 years;
- (iv) facial and other head and neck injuries were most common (64.4%); and
- (v) the mean clinical cost per dog bite injury was \$2,968.

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<sup>108</sup> Mithun Rajshekar et al, “The incidence of public sector hospitalisations due to dog bites in Australia 2001-2013” (2017) 41 Aust NZ J Public Health 377 at 379 (CV 3/26).

<sup>109</sup> “Paediatric dog bite injuries: a 10-year retrospective cohort analysis from Sydney Children’s Hospital” ANZ J Surg 92 (2022) 1149-1152 (CV 3/27).

## **Other reports / literature**

145. In 2012, the Australian Veterinary Association (AVA) published a report titled *Dangerous Dogs – A Sensible Solution (AVA Dangerous Dogs report)*.<sup>110</sup> In that report, the AVA stated (citations omitted):<sup>111</sup>

*“Most scientific studies report that children are more likely to be bitten by dogs than adults. In their 2001 paper, ‘A community approach to dog bite prevention – AVMA Task Force on Canine Aggression and Human–Canine interactions’, Beaver et al noted that:*

*‘Children are the most common victims of serious dog bites. Seventy per cent of fatal dog attacks (Sacks et al 2000) and more than half of bite wounds requiring medical attention involve children.’ (Beaver et al 2001)*

*In a review of United States research into victims of dog bites, Overall and Love found that:*

- *Most dog bites affect children under 15 years of age.*
- *60-75% of those bitten are under 20 years of age, and most are 5-9 year olds.*
- *After 1 year of age, the incidence increases through to ages 5-9.*
- *Children are bitten 2-3 times more frequently than would be expected on the basis of their population proportion.*
- *45% of 3,200 children 4-18 years of age reported being bitten during their lifetime.*
- *Children are at least three times more likely to experience a bite needing medical attention than are adults.*

*An extensive telephone based survey of 1184 families in Belgium revealed a 2.2% annual prevalence of dog bites to children, and research from Indiana, USA mirrored these findings. Far less than 50% of bites were reported to medical or legal authorities (Kahn et al 2004).*

*The number of dog bite cases presented to hospital emergency departments was about one quarter of those caused by road accidents and one-third of those caused by burns received at home. Of the dog bite cases, 65% of patients were bitten at home and 35% in public. In 86% of*

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<sup>110</sup> Australian Veterinary Association, *Dangerous Dogs – A Sensible Solution* (2012). A copy of the report is annexure D to the statement of Douglas Walther (OLG) dated 16 February 2024 (Exhibit 6), and is also at CV 1/3, annx D.

<sup>111</sup> AVA *Dangerous Dogs report* – annexure D to the statement of Douglas Walther (OLG) dated 16 February 2024 (Exhibit 6), at pp 24-25 (pp 3-4 of the report). See also CV 1/3, annx D.

*the home bites and 31% of the public bites, the bite was determined to result mainly from the child's or adult's behaviour. Bites at home occurred when there was no adult supervision (Kahn et al 2003).*

*Figures like these are from medical reporting sources, and reflect the likelihood of a bite being reported. Children are generally shorter, weaker and have poorer judgement than adults. They also actively interact with dogs differently to adults, so are more likely to be bitten on the face and head causing complex, serious and disfiguring injuries. However, children typically require significantly shorter periods of hospitalisation than do adults (Ozanne- Smith et al 2001). Beaver (2001) concisely summarises the findings:*

*'Children's natural behaviours, including running, yelling, grabbing, hitting, quick and darting movements, and maintaining eye contact, put them at risk for dog bite injuries. Proximity of a child's face to the dog also increases the risk that facial injuries will occur.'*

#### **Dangers posed by American Staffordshire Terriers**

146. On 12 May 2021, about two months before **MJ**'s death, the Council wrote to the Premier of NSW advising that:<sup>112</sup>

- (i) the Council's LGA has the highest population of dogs in the State and leads the State for the highest number of dog attacks in NSW; and
- (ii) a recent review of dog attack data revealed that roughly 25% of dogs responsible for dog attacks in the Council's LGA were American Staffordshire Terriers.

147. The Council further advised that, at a meeting on 27 April 2021, the Council resolved to write to the Premier and the Minister for Local Government seeking a review of the list of dangerous dog breeds and requesting that consideration be given to including *American Staffordshire Terriers* on the "dangerous dog breed list" (understood to be a reference to the breeds specified in s 55(1) as *restricted dogs*).

148. In the letter, the Council further stated that:

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<sup>112</sup> Letter dated 12 May 2021 from Dick Persson AM, Administrator of the Council to the Premier, reproduced in annx C to the statement of David Farmer dated 6 October 2023 (BOE 2/34, annx C, pp13-14). See also CV 1/4, tab D.

*“Whilst it is understood the American Staffordshire Terrier is a popular breed, data and dog attack reports from the community shows that this breed is highly represented in dog attacks and may be considered an aggressive breed, particularly toward other animals.”*

149. In its institutional statement in these proceedings, in relation to whether there are specific breeds that it considers pose a heightened risk of attacks, the Council stated (at [16]):<sup>113</sup>

*“Council’s view is that the American Staffordshire Terrier breed poses a heightened risk of attacks. The attached reports on dogs that are declared dangerous, menacing and restricted breed specify the breed, and show that roughly 25-30% of these dogs are American Staffordshire Terrier (or a cross- breed of such).”*

***Increased risk by dog that has previously attacked a person or animal***

150. In a supplementary report dated 9 March 2024,<sup>114</sup> Professor Paul McGreevy provided his expert opinion to the effect that a dog that has been involved in an attack on a person or animal is thereafter at increased risk of attacking a person or animal in future. Professor McGreevy relevantly stated (at [2.1]):

*“There are no peer-reviewed reports on this possibility, not least because the ethics of establishing a definitive empirical study of this sort would be unacceptable. However, in my opinion, if a dog is involved in an attack on an animal or person, that dog is thereafter at increased risk of attacking a person or animal in future. This likelihood reflects the proximate increase in arousal of the dog after its first attack and what it is likely to learn from the encounter.*

*Dogs have the dental weaponry to inflict severe wounds and to kill members of their own social group, let alone strangers. So, the costs of combat can be significant. In general, they avoid conflict and their ability to keep the peace is remarkable.*

*However, under extreme conditions in nature and under manufactured conditions in the fighting pit, they may cross the threshold into combat. They may be motivated to show agonistic responses (i.e., defence or aggression) to push away a fear-eliciting threat or defend their resources (e.g., food, territory or offspring). After crossing the threshold into conflict, they may either die from the encounter or survive and learn from it.*

*The dog that survives physical combat will either be emboldened and learn to cross the threshold more readily to guard resources or be more*

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<sup>113</sup> Statement of David Farmer dated 6 October 2023 at [16] (BOE 2/34, p 9). See also CV 1/4.

<sup>114</sup> CV 2/18.

*fearful, as a result of the encounter, and therefore more highly motivated to remove threats. Either way, it is generally at increased risk of attacking in future.”*

151. I am satisfied that:

- (i) There have been a concerning number of dog attacks on people in NSW in the past 15 years which have resulted in serious injury or death.
- (ii) Most attacks, fatal or otherwise, are on infants or children at the home at which the dog ordinarily lives. Attacks on strangers in public places are less common (in the matters outlined above, the only case of a fatal attack on a stranger in a public place was that of *Ada Zara Holland*).
- (iii) Infants or children are at greater risk owing to their size and vulnerability and, potentially, owing to their behaviours with or around dogs.
- (iv) Most victims are known to the dog before the attack, with many living at the home where the dog ordinarily lives.
- (v) Many fatal attacks have involved *American Staffordshire Terriers* (or cross-breeds thereof), *Staffordshire Bull Terriers* (or crossbreeds thereof) and *Rottweilers*.
- (vi) In many cases, the dogs that committed fatal attacks were not known to councils or authorities for previous attacks on people.
- (vii) The absence of a known or past attack on a person is not a definitive indicator of whether a dog may go on to seriously or fatally attack someone.
- (viii) That said, and consistently with the expert opinion of Professor McGreevy, a dog that has previously attacked a person or animal may thereafter be at increased risk of attacking a person or animal in future.
- (ix) Many owners may underappreciate the risks posed by their dog(s). This may be based on the absence of any prior events of concern (in **MJ**'s case, tragically, the dog Bully was trusted by **MJ**'s parents and considered by them to pose no risk to anyone in the home).



152. From the perspective of resourcing, I note that:

- (i) The enforcement of the regulatory regime for management and control of dogs, for the purposes of minimizing the risk of serious or fatal dog attacks, necessarily involves expenditure of resources.
- (ii) Sight also should not be lost of the resources expended in responding to serious or fatal attacks including costs associated with medical treatment and hospitalizations for injuries, council rangers and police responding and investigating serious / fatal attacks and any related court proceedings.
- (iii) If the regulatory regime is not effective (or not as effective as it could be) at minimizing the risk of serious and fatal dog attacks, significant costs may be borne in the response to serious or fatal attacks.

***Limitation of the dangerous and menacing dog provisions***

153. The *dangerous* and *menacing dog* provisions of the *CA Act* are reactive. They may be engaged once a suspected event has occurred, such as an attack without provocation or a display of unreasonable aggression. These provisions are not apt to reduce the incidences of fatal dog attacks when the dog is not previously known to a council for aggression or attacks. For practical purposes, this is a significant limitation given that, experience highlights, there may well be no known prior attacks by the dog in question (whether on a person or animal) before a fatal attack is committed.

154. The *restricted dog* provisions of the *CA Act* are focused on the breed of the dog and not a specific event. However, the protection afforded by this part of the regime depends, inter alia, on:

- (i) The breeder, supplier, and / or owner accurately identifying that the dog is one of the breeds identified in s 55(1) and complying with the applicable restrictions.
- (ii) The authorised identifier accurately identifying the breed at the time of microchipping.

- (iii) If the dog comes to the attention of a council but has not yet been identified as a *restricted* breed, the dog's breed then being accurately recognised such as potentially to enable a *restricted* dog declaration to be made.
- (iv) If a subsequent dispute follows over the breed, the approved breed assessor accurately identifying the dog's breed.

155. However, significant difficulties arise:

- (i) in accurately identifying whether a dog is an *American Pit Bull Terrier* or *pit bull terrier*, or a crossbreed thereof; and/or
- (ii) in accurately distinguishing *American Pit Bull terriers* or *pit bull terriers* (which are restricted breeds) from *American Staffordshire Terriers* and *Staffordshire Bull Terriers* (which are not restricted breeds).

156. The difficulties with correct breed identification provide a significant impediment to the efficacy of the *restricted dog* provisions of the CA Act.

157. If a *restricted dog* is not accurately identified, its owner will not be made subject to the obligations that the legislature considers are necessary for such animals in the interests of community safety.

158. A further limitation with the *restricted dog* provisions concerns the mechanisms available to challenge a notice of intent to declare a dog *restricted*.

### ***Similarities / shared ancestry of certain terriers***

159. Expert evidence from Professor McGreevy<sup>115</sup> is to the effect that the *American Staffordshire Terrier* is a direct descendant of the *American Pit Bull terrier*,<sup>116</sup> and is widely considered the “show version” of the *American Pit Bull terrier*.<sup>117</sup>

Consistently with this, the *American Staffordshire Terrier* is closely related to the

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<sup>115</sup> See CV 2/15 to 2/19.

<sup>116</sup> McGreevy XN 20.2.2024, T73.1-3 and T73.43-45

<sup>117</sup> Report of Prof Paul McGreevy dated 14 February 2024 at [4.1.6] (p 6) (part of Exhibit 5 in the MJ Inquest); see also at CV 2/16

*American Pit Bull Terrier* in terms of breed and temperament.<sup>118</sup> The *American Staffordshire Terrier* is also derived from the *Staffordshire Bull Terrier*.<sup>119</sup> The *American Staffordshire Terrier* and the *Staffordshire Bull Terrier* descend from dogs bred and used as fighting dogs, and the “pit” in the name “American Pit Bull terrier” was originally a reference to the fighting pit.<sup>120</sup> Most breeds of this kind, in the community today, are many generations removed from their fighting descendent. However, some physical and temperamental traits, which ensured the survival of their fighting descendent, have been passed on over generations.

160. This common ancestry is relevant to the significant difficulties that can arise in distinguishing between an *American Pit Bull Terrier* or *pit bull terrier* and an *American Staffordshire Terrier*.
161. The above is important also in respect of the level of protection afforded by the regulatory regime. Although an *American Pit Bull Terrier* will attract significant enclosure and control requirements under the *CA Act*, related breeds such as the *American Staffordshire Terrier* and *Staffordshire Bull Terrier* do not.
162. Furthermore, both *American Staffordshire Terriers* and *American Pit Bull Terriers* pose particular risks because of their muscular make up and jaw strength.<sup>121</sup> Compared to other dogs, they also share a similar impulsivity for initiating acts of aggression.<sup>122</sup>

***Difficulties in accurately identifying American Pit Bull Terrier or pit bull terrier***

163. Professor McGreevy gave evidence that breeds are typically identified from a dog’s appearance and its alignment with a *breed standard*, and that:<sup>123</sup>

*“[The breed standard] describes the ideal appearance and, to some extent, the temperament of a breed, primarily for show purposes. In the show ring, dogs are judged against this standard. Theoretically, the dogs*

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<sup>118</sup> McGreevy XN 20.2.2024, T72.42-48 and T78.36-79.30.

<sup>119</sup> Report of Prof Paul McGreevy dated 14 February 2024 at [4.2.3] and [4.2.6] (p 12) (CV 2/16).

<sup>120</sup> McGreevy XN 20.2.2024, T73.4-25.

<sup>121</sup> Rosen XN 20.2.2024, T110.20-25.

<sup>122</sup> McGreevy XN 20.2.2024, T87.6-88.12 and T88.37-45.

<sup>123</sup> Report of Prof Paul McGreevy dated 22 June 2023 at [6.1.a.6] p 9 (part of Exhibit 5 in the **MJ** Inquest); see also at CV 2/15.

*that most closely match the standard should be ranked highest in the competition.”*

164. *Dogs New South Wales*<sup>124</sup> and with *Dogs Australia*<sup>125</sup> issue breed standards for specific dog breeds such as the *American Staffordshire Terrier* and *Staffordshire Bull Terrier*.<sup>126</sup>
165. Neither *Dogs New South Wales* nor *Dogs Australia* provide breed standards for an “*American Pit Bull Terrier*” or a “*pit bull terrier*”. Nor does the *CA Act* or the *Regulation* define what features an “*American Pitbull terrier* or *Pitbull terrier*” has or how that breed is to be distinguished from an *American Staffordshire Terrier*, the latter having similar physical features to the former.<sup>127</sup>
166. In Professor McGreevy’s opinion, an *American Staffordshire Terrier*, which is described by a recognised breed standard, is closely related to what is regarded as an *American Pit Bull Terrier*. The close relationship is in terms of breed type and temperament.<sup>128</sup>
167. This view accords with that of the Council. In the Council’s view, absent a recognised breed standard for the *American Pitbull Terrier* or *pit bull terrier*, the closest breed standard for an *American Pitbull Terrier*, for a dog with similar physical characteristics, is that of the *American Staffordshire Terrier*.<sup>129</sup>
168. In Victoria, an approved standard about what constitutes an “*American Pit Bull terrier (or Pit Bull terrier)*” has been issued (**Victorian Gazette Standard**).<sup>130</sup> The

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<sup>124</sup> The trading name of Royal New South Wales Canine Council Ltd. By cl 35 of the *Regulation*, any breed identification certificate or breed registration certificate issued by Royal New South Wales Canine Council Ltd (trading as *Dogs New South Wales*) in relation to a dog is prescribed for the purposes of s 58C(3) of the *CA Act*, but only if the certificate contains the unique identification number of the microchip that has been implanted in the dog.

<sup>125</sup> The trading name of the Australian National Kennel Council (ANKC). This is the peak body in Australia responsible for registered pure-bred dogs.

<sup>126</sup> See <https://www.dogsnsw.org.au/Breeds/Breed-Standards?search.GroupID=2> and <https://www.dogsaustralia.org.au/BrowseBreed/browse-a-breed?search.GroupID=2>

<sup>127</sup> Central Coast Council institutional statement (David Farmer, 6 October 2023), p 2: BOE 2/34.

<sup>128</sup> Report of Prof Paul McGreevy dated 14 February 2024 at [4.1.7] p 12 (Exhibit 5).

<sup>129</sup> Central Coast Council institutional statement (David Farmer, 6 October 2023), p 2: BOE 2/34.

<sup>130</sup> Victorian Government Gazette S22 (31 January 2014): CV 2/21. The Victorian Gazette Standard specifies that it is “the approved standard for the purposes of section 3(3) of the Domestic Animals Act 1994 [Vic]” and that under s 3(3) of the Domestic Animals Act 1994 (Vic), “a dog that falls within this approved standard for a breed of dog specified above is to be taken to be a dog of that breed”.

Victorian Gazette Standard stipulates height, weight, muzzle length relative to the skull and other features for the *American Pit Bull Terrier* and provides visual diagrams to assist in identification / recognition of that breed of dog.

| Attribute      | <b>Dogs Australia standard for American Staffordshire terriers</b>  | <b>Victorian standard for American pit bull terriers</b>  |
|----------------|---|---|
| Head and Skull | <p>Head medium length, deep through, broad skull, very pronounced cheek muscles, distinct stop. Muzzle medium length, rounded on upper side to fall away abruptly below eyes.</p> <p>Jaws well defined. Underjaw to be strong and have biting power. Lips close and even, no looseness. Nose definitely black, Dudley nose undesirable.</p> | <p>*Muzzle is slightly shorter in length to the skull, being a 2:3 ratio of muzzle to skull. ††</p> <p>**The head is proportionate to the dog. ††</p> <p>**The general shape of the head is that of a blunt wedge, large and broad. ††</p> <p>**The skull and muzzle are on parallel planes separated by a moderately deep stop. ††</p> <p>**The skull is large, fairly flat, broad and deep, slightly tapering towards the top. ††</p> <p>**Muzzle is broad, deep and powerful with a slight taper to the nose and falls away slightly under the eyes. ††</p> <p>**There is a deep median furrow reducing in depth from stop to occiput.</p> <p>**Cheek muscles are prominent but free of wrinkles. ††</p> <p>**When the dog is alerted wrinkles will form on the forehead.</p> <p>**Lips are clean and tight. ††</p> <p>**Teeth are large and a complete scissor bite ie. upper teeth closely overlapping the lower teeth and set square to the jaws.</p> <p>**Ears are set high on the skull, not large and half pricked or rose shaped (ie folding backwards exposing the inner burr of the ear). ††</p> <p>***Nose is large with wide open nostrils and may be of any colour. ††</p> |

|      |  |   |
|------|--|---|
| Eyes | Dark and round, low down in skull and set far apart. Light or pink eyes undesirable. No pink eyelids. †  | <p>***Arches over the eyes are well defined but not pronounced. ††</p> <p>***The eye rims are the same colour as the skin colour. ††</p> <p>***Eyes are medium in size, round in shape and set low in the head – not prominent. ††</p>                                |
| Neck | Heavy, slightly arched, tapering from shoulders to back of skull. No looseness of skin. Medium length. † | <p>**The neck is moderate length and with great strength, tapering from the head into the shoulders. ††</p> <p>**The neck must be free from loose skin or dewlap (loose, pendulous skin under the throat). ††</p> <p>***Neck has a slight arch over the crest. ††</p> |

169. In Professor McGreevy’s view, the Victorian Gazette Standard’s written description of the features of an *American Pit Bull Terrier* does not meaningfully assist in distinguishing an *American Pit Bull Terrier* from an *American Staffordshire Terrier*, using the *Dogs Australia* standard for *American Staffordshire Terrier*.<sup>131</sup> Professor McGreevy illustrated the difficulties with this comparison in Table 1 of his report dated 14 February 2024, which summarises described attributes for each (e.g. head and skull, eyes, forequarters, hindquarters).<sup>132</sup>

170. By way of example, with respect to the similarity of the written descriptions of attributes, the following portions of a Table setting out the descriptions is extracted from Professor McGreevy’s report (*symbol † indicates the American Staffordshire Terrier features he considers arise in Bully’s case and symbol †† indicates the American Pit Bull Terrier features he considers arise in Bully’s case*):<sup>133</sup>

<sup>131</sup> Report of Prof Paul McGreevy dated 14 February 2024 at [4.1.9] p 6 (Exhibit 5); see also at CV at 2/16.

<sup>132</sup> Professor McGreevy further noted that, while the Victorian Gazette Standard’s visual illustrations of the *American Pit Bull Terrier*, in tandem with its written description, may be helpful, there are no equivalent visual illustrations of the *American Staffordshire Terrier* within the *Dogs Australia* standard.

<sup>133</sup> Report of Prof Paul McGreevy dated 14 February 2024 at [4.1.3] p.5, with Table 1 at pp 6-10 (Exhibit 5); see also at CV 2/16.

171. Professor McGreevy further opined, in reference to Ranger Carlin’s suspicion that Bully was a pit bull cross, that:<sup>134</sup>

*“[4.1.4] I note that it was this dog’s allegedly yellow-tinted eyes that caused Central Coast Council ranger Christine Carlin to suspect the dog ‘might be a pit bull [terrier], or pit bull crossbreed’. I further note that the Victorian standard for the American pit bull terrier states that ‘eyes may be of any colour’ while the breed standard of the American Staffordshire terrier states, rather indecisively, that ‘light or pink eyes [are] undesirable’. Neither standard specifically mentions yellow-tinted eyes.*

*[4.1.5] I have too little faith in any putative distinction that a breed standard (e.g., for an American Staffordshire terrier) can draw between that breed and a similar non-recognised type. The reasons my lack of faith are based on breed standards’ routine lack of morphometric specificity (e.g., arguably all dogs, and indeed all quadrupeds, have a neck that ‘tapers from shoulders to back of skull’), the use of language that is open to interpretation (e.g., ‘keenly alive to his surroundings. His courage is proverbial’) and redundant (e.g., forelegs set rather wide apart to permit chest development).*

*[4.1.6] I further note that the American Staffordshire terrier is widely, although not officially, considered the ‘show’ version of the American pit bull terrier. I was asked to confirm whether an ‘American pit bull terrier’ is a ‘recognised’ breed akin to that for ‘American Staffordshire terrier’. The term ‘recognised’ is loaded in this context since it begs the question: ‘recognised by which body?’ American pit bull terrier is not recognised as a breed by any of the official dog breeding organisations in Australia.”*

172. The difficulties in accurately identifying a dog as an *American Pit Bull Terrier* has been considered by the Victorian Parliamentary Inquiry into the legislative and regulatory framework relating to restricted-breed dogs (**Victorian Inquiry**). In its final report completed 23 March 2016, the Victorian Inquiry relevantly stated (at [4.1]):<sup>135</sup>

*“The chapter begins with a brief examination of what is meant by a ‘breed’. This seemingly simple proposition turns out to be far from clear.*

*It then looks at how authorities can identify which dogs are restricted-breed dogs (specifically Pit Bulls). Serious concerns about both*

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<sup>134</sup> Report of Prof Paul McGreevy dated 14 February 2024 at [4.1.4] to [4.1.6] pp 5-6 (Exhibit 5); see also CV 2/16.

<sup>135</sup> A copy of Chapter 4 of the final report of the Victorian Inquiry is annexure E to the statement of Douglas Walther dated 16 February 2024, pp 161-189 (report pp 71-99) (Exhibit 6); see also CV 1/3.

*visual and genetic methods of identifying Pit Bulls have been raised as part of this Inquiry. It appears that definitively identifying a dog as a Pit Bull is challenging. This is clearly seen from the rulings by the Victorian Civil and Administrative Tribunal (VCAT). In the majority of cases where VCAT has made rulings on whether or not a dog is a Pit Bull, VCAT has ruled against the council officers, even though council officers are the people given the responsibility for identifying restricted-breed dogs by the legislation.”*

173. The “VCAT” rulings referred to by the Victorian Inquiry concerned successful challenges to determinations by Victorian council officers that a dog was an *American Pit Bull Terrier* or *pit bull terrier* based on the Victorian Gazette Standard.

174. The Victorian Inquiry further stated (at [4.3.2]):

*“In conclusion, the Committee notes that there are significant difficulties with identifying a dog’s breed based on its appearance. This becomes even more difficult for animal management officers given their lack of expertise in breed identification and limited training. However, even if the responsibility for identifying restricted-breed dogs were given to people with more animal expertise, difficulties with visual identification of breed would continue.*

175. Further, the Victorian Inquiry stated (at [4.8]) (citations omitted):

*“... the Committee considers that it is clear that there is no current way to definitively identify whether or not a dog is a Pit Bull. This poses a serious problem for [Breed Specific Legislation]. As Ms Linda Watson argued in her submission:*

*‘If you cannot reliably identify a dog’s breed background (and cross-breed dogs add a further dimension), laws targeting breeds will never work, regardless of whether you think the original justification is valid.’*

*The problems with identifying Pit Bulls have also meant that local councils have incurred substantial costs and both owners and dogs have been placed under emotional strain through lengthy appeals which have ultimately overturned council decisions.”*

176. In NSW, the OLG acknowledges the significant difficulties with correct breed identification for dogs, including in respect of *American Staffordshire Terriers* and *American Pit Bull Terriers*. In its institutional statement in the *Holland* inquest, the



OLG referred to the opinions of Professor McGreevy as to reliable breed identification and said:<sup>136</sup>

*“The evidence prepared by Dr Paul McGreevy for this inquest identifies the difficulties that exist with identifying a dog by ‘breed’, based on specific traits and appearances of what is typical of a particular ‘breed standard’ (those standards having been produced by Dogs Australia / The Australian National Kennel Council for exhibition purposes). The OLG does not disagree with this evidence.”*

177. In its institutional statement dated 16 February 2024, the OLG further stated that:<sup>137</sup>

- (i) There appears to be a broad consensus among experts to the effect that the legislative controls by reference to breed are ineffective.<sup>138</sup>
- (ii) The Victorian Inquiry found that the relationship between breed and risk was not sufficiently understood to reliably introduce regulations by reference to breed alone.<sup>139</sup>
- (iii) “Major stakeholders”, such as the RSPCA and the AVA, do not support breed specific legislation.<sup>140</sup>
- (iv) The AVA’s view is that: (a) breed on its own is not an effective indicator of aggression in dogs, and (b) breed-specific legislation ignores the “human element” whereby dog owners may seek equivalents (non-restricted breeds with an equivalent size, strength and propensity for aggression).<sup>141</sup>
- (v) There is a real challenge in identifying any specific dog breeds to include on a list of restricted or prohibited dogs. This is not least because many dogs are mixed-breeds which are not amenable to precise identification.<sup>142</sup>

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<sup>136</sup> OLG letter dated 24 August 2023, p 2: CV 1/2.

<sup>137</sup> Statement of Douglas Walther (OLG) dated 16 February 2024 (Exhibit 6) at [48]-[50]: CV 1/3.

<sup>138</sup> *Ibid*, at [48].

<sup>139</sup> *Ibid*.

<sup>140</sup> *Ibid*.

<sup>141</sup> *Ibid*, at [49].

<sup>142</sup> *Ibid*, at [54d].

178. In his evidence, Professor McGreevy further said that *American Staffordshire Terriers* and *pit bulls* are difficult to tell apart,<sup>143</sup> and that it is a challenging task for a council ranger to determine if a dog is an *American Staffordshire Terrier* or a dog that is either an *American Pit Bull Terrier* or a dog that has some *pit bull* in it.<sup>144</sup>
179. The above matters highlight the difficulties in correct breed identification, and in reliably distinguishing between *American Pit Bull Terriers* and *pit bull terriers* as compared to *American Staffordshire Terriers* and *Staffordshire Bull Terriers*. This significantly undermines the efficacy of the protection afforded by the *restricted dog* provisions.

***Difficulties with correct breed identification arise from an early stage***

180. The difficulties in accurately identifying an *American Pit Bull Terrier*, and in distinguishing an *American Pit Bull terrier* from an *American Staffordshire Terrier*, do not arise merely when a dispute occurs between an owner and authorised officer over that issue.
181. The difficulty arises also at an earlier point in time, when a dog undergoes identification (microchipping). Owners must ensure that, from the time that a dog is 12 weeks old, it is “identified”: s 8(1) of the *CA Act* (see further at [9] above). The *identifying* (microchipping) must be performed by an *authorised identifier*, which means a veterinary practitioner or a person accredited as an authorised identifier, or someone under the supervision of the *authorised identifier*.<sup>145</sup>
182. The microchipping of a dog, and the registration of the dog on the Register, are separate processes although each involves the recording of a breed for the dog in question. Most registrations on the Register will be completed without sighting the dog. In most cases, the information about the breed recorded at the time of

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<sup>143</sup> McGreevy XN 20.2.20024, T76.25-28 (CV 2/19).

<sup>144</sup> McGreevy XN 20.2.20024, T83.10-27 (CV 2/19).

<sup>145</sup> Clause 6 of the Regulation prohibits a person implanting a microchip unless the person is an “*authorised identifier*” or does so under the supervision of an *authorised identifier* who is a veterinary practitioner. The term *authorised identifier* is defined in cl 3(1).

registration is likely to be based on the breed identified, and recorded, at the earlier *identification* stage (time of microchipping). According to the OLG:

*“[The] breed of the companion animal is determined by the veterinary practitioner or authorised identifier who microchips the animal. The identification is based on the physical appearance of the animal at that point in time and the breed of the mother of the litter, if known.”<sup>146</sup>*

183. The difficulty with this identification is:

- (i) Ensuring the accuracy of the identification which is based on the assessment of the dog’s physical features. If an expert such as Professor McGreevy has difficulties in distinguishing an *American Pit Bull Terrier* from an *American Staffordshire Terrier*, it is reasonable to assume that authorised identifiers would have similar difficulties.
- (ii) Identification at this early stage of a dog’s life may be more difficult because the dog has not yet fully developed.
- (iii) Information reported to the authorised identifier, such as about the owner’s belief of the dog’s breed and its lineage, may not be available or may not be correct.

184. These concerns – about the difficulty with correct breed identification arising from an early stage of the dog’s life – are consistent with evidence that I received in this Inquest. Thus, Dr Emetia Cull, veterinarian, gave evidence to the effect that it is very hard to determine, including at the stage that a dog is being microchipped / identified, whether a dog is an *American Staffordshire Terrier* or a dog that has some *pit bull* in it.<sup>147</sup> Dr Cull said that, for any person, it would be:

*“very hard ... to be able to distinguish, especially in a younger dog, or even in an older dog, whether it’s a staffy [ie, American Staffordshire terrier] versus a pit bull.*

...

*I’d say it’s harder [in the case of] puppies because they haven’t grown into their adult musculature”.*<sup>148</sup>

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<sup>146</sup> OLG institutional statement 24 August 2023 (Holland inquest), p 2: CV 1/2.

<sup>147</sup> Cull XN 19.2.2024, T57.45-58.12 (CV 2/20).

<sup>148</sup> Cull XN 19.2.2024, T57.48-50 and T58.18-19 (CV 2/20).

185. Dr Cull further said that “between pit bulls and AmStaffs, it’s impossible to tell with puppies which one it is.”<sup>149</sup>
186. The problem with accurate breed identification is compounded by the fact that, once a dog is microchipped, details of the breed are recorded on the Register. Thereafter, as noted above, any description of the breed on the Register, including when the dog is registered, is generally reliant upon the information that was obtained and recorded at the microchipping stage.<sup>150</sup>
187. The difficulty in accurately identifying and distinguishing between an *American Staffordshire Terrier* and an *American Pit Bull Terrier* (or a crossbreed thereof) is compounded by the fact that, as recognised by witnesses who gave evidence,<sup>151</sup> there is an obvious disincentive to disclose that a particular dog is an *American Pit Bull Terrier* or a dog that has some *pit bull* in it. This disincentive may appear at many levels.
188. On this basis, it is plausible to infer the likelihood of a number of dogs in NSW that are registered as *American Staffordshire Terriers* and which are, in reality, *American Pit Bull Terriers* or crossbreeds thereof.

***Importance of public education and awareness campaigns***

189. I am of the opinion that public education and awareness campaigns have an important role to play in protecting the community from dog attacks. This is particularly so given:
- (i) The vast ownership of dogs in the community;
  - (ii) The prevalence of dog attacks, which sometimes cause significant injury and even death;
  - (iii) The importance of dog owners being educated as to the significant risks posed by dogs, including particular breeds, and the responsibilities of dog owners in terms of ensuring their dog is effectively controlled and secured to minimise

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<sup>149</sup> Cull XN 19.2.2024, T60.5-6 (CV 2/20).

<sup>150</sup> Rosen XN 20.2.2024, T109.1-28.

<sup>151</sup> Carlin XN 19.2.2024, T36.26-37.8; Cull XN 19.2.2024, T60.14-17 (CV 2/20); McGreevy XN 20.2.2024, T76.28-31 (CV 2/19).

- the risk of an attack, both in the home and in public;
- (iv) The limitations of the protections provided by the *restricted, dangerous and menacing* dog provisions in the *CA Act* (outlined above).
190. In Chapter 6 of its final report, the Victorian Inquiry emphasised the importance of education strategies around dog safety, including as to: (i) how to safely interact with dogs; (ii) how to appropriately care for a dog (including training and socialisation); and (iii) how to select an appropriate dog.
191. The AVA Dangerous Dogs report noted studies showing that well designed and appropriately targeted programs to educate children and parents about behaviours around dogs have been effective. The AVA recommended that a proportion of dog registration fees be directed to education, they made specific recommendations about training parents to protect small children from dogs and about safe behaviour of children around dogs.<sup>152</sup>
192. In a Law Society Journal article titled “*Dog attacks inquest prompts debate over laws and public education*”, the Manager of Animal Rehoming for Blacktown City Council is quoted as stating that there is “*an urgent need for a statewide campaign – similar to the sunscreen campaign designed to win over sceptics – that targets dog owners who don’t understand why, or do not want to desex, register and train their dogs*”.<sup>153</sup>
193. Typically, individual councils provide their own education campaigns around dog ownership.
194. In an institutional statement dated 16 February 2024, the OLG also described its involvement in education programs. Without being exhaustive this has included:<sup>154</sup>
- (i) Since 2011, OLG’s implementation with councils of a State-wide responsible pet ownership and dog safety education program known as the Responsible

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<sup>152</sup> Australian Veterinary Association: Dangerous Dogs – A Sensible Solution (2012), annexure D to the Statement of Douglas Walther (OLG) dated 16 February 2024 (Exhibit 6) at pp 44-45 (pp 23-24 of 47 of the report); see also at CV 1/3.

<sup>153</sup> LSJ article, “Dog attacks inquest prompts debate over laws and public education”, CV 3/31, p 3.

<sup>154</sup> Statement of Douglas Walther dated 16 February 2024 at [15]-[36] pp 2-4 (Exhibit 6): CV 1/3.

Pet Ownership Education Program (**RPO**).

- (ii) The RPO is the most direct intervention the OLG is involved with in terms of education to owners, families and the wider community about animal safety.
  - (iii) The RPO involves trained staff ("Pet Educators") attending schools and pre-schools throughout NSW (as of February 2024 the RPO had conducted 13,587 visits to primary / pre-schools and provided 23,628 education sessions to 914,055 children).
  - (iv) In 2013, the OLG launched an online learning tool to children's education (Kindergarten to Year 2) around responsible pet ownership and dog safety.
  - (v) In October 2023, the OLG invited all councils in NSW to attend companion animal or pet related events run by respective councils to provide information, brochures and advice around responsible pet ownership and promote community engagement.
  - (vi) As of February 2024, the OLG was reviewing the scope of the RPO and was said to be committed to improving the content of its website.
  - (vii) The Minister for Local Government has committed to a review of the companion animals legislative framework, which will include considering recommendations from the dog attack coronial inquests and recent parliamentary inquiries into pounds and veterinary services.
195. Without detracting from the importance of the above initiatives, by individual councils and the OLG, I am satisfied that there is an opportunity for an increased emphasis upon education and public awareness programs. I am satisfied of the potential benefits that may flow from such programs in terms of helping to reduce the risks posed by dogs and dog ownership.
196. In addition, increased consideration could be given to whether such programs are likely to be more effective if they are coordinated by a central executive body, such as the OLG, rather than the bulk of such programs being individually provided by

councils. Potential benefits from such a focus would include: (i) better resourcing, with greater economies of scale as opposed to individual councils each engaging in their own education programs; (ii) potentially greater reach across NSW, particularly from a Statewide advertising campaign like that utilised in South Australia;<sup>155</sup> and more consistent messaging.

197. In any Statewide public awareness campaign, consideration could be given to informing the public about matters including: (i) the severity of injuries that dogs can inflict, particularly dogs of muscular builds like American Staffordshire Terriers, Staffordshire Bull Terriers, Rottweilers (or crossbreeds thereof); (ii) that in some cases serious or fatal injuries are inflicted on infants and children, although adults are also at risk; (iii) that serious and fatal dog attacks have been inflicted on people with whom the dog ordinarily lives or whom the dog already knows; and (iv) that dogs that have committed fatal attacks have had no known history of past aggression or attacks on animals or people (and that the presence of such past aggression is not a totally reliable indicator of whether a dog may attack a person).

#### ***Licensing regime for dog owners***

198. The existing regulatory regime under the *CA Act* and the *Regulation* requires that all dogs be identified (microchipped) and registered. The regulatory regime does not require satisfaction by a dog owner of their fitness or capacity to comply with regulatory requirements before registration of the dog takes place.
199. The *CA Act* does provide that, in the case of a *dangerous dog*, an annual permit is required to own the dog (s 11C) and, in the case of a *restricted dog* (including one declared as such), an annual permit is required to own the dog (ss 11D and 56(1)(i)).
200. As for the issuance of permits, the Departmental Chief Executive may, upon receipt of an application for a permit, carry out any investigations and inquiries that the Departmental Chief Executive considers necessary to enable the proper consideration of the application: s 11I(4). A permit may be subject to any condition

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<sup>155</sup> See <https://dogandcatboard.com.au/gooddogsbaddays>

prescribed by the *Regulation*, or any condition imposed by the Departmental Chief Executive: s 11K. By s 11N, the *Regulation* may make provisions as to the grounds for refusal of permits.

201. Part 4 (cl 26-28) of the *Regulation* concerns annual permits. Part 4 does not specify criterion for eligibility to hold a permit (e.g. fitness / competence) or specify the matters to be considered in granting or refusing an application for a permit.
202. Whatever potential protection the permit requirement for *dangerous* and *restricted dogs* might be thought to offer in terms of public safety, such protection is necessarily limited by virtue of the fact that, in the case of a *dangerous dog*, a dog will be declared *dangerous* only if an event or incident occurs. It is possible a dog that commits a serious or fatal attack may have no known history of aggression or attacks and not be subject to a *dangerous dog* declaration. Further, in the case of a *restricted dog*, breeds such as the *American Staffordshire Terrier* are not captured by the provisions. There may also be dogs that are not accurately identified as to their breed type and thus not the subject of action under provisions dealing with *restricted dogs*.
203. Outside of the permits required for the ownership of a *dangerous* or *restricted dog*, the regulatory regime does not require people to be licensed to own or possess a dog.
204. By way of comparison, a regulatory regime operates in NSW for the possession and control of firearms: *Firearms Act 1996* (NSW) (**FA Act**). Under that regime:
  - (i) It is an offence to possess or use a “firearm” unless authorised to do so by a licence or permit: s 7A (1), *FA Act* (maximum penalty 5 years).
  - (ii) The Commissioner of Police (NSW Police Force) (**Commissioner**) may issue or refuse an application for a licence to possess a firearm: s 11(1), *FA Act*.
  - (iii) A licence must not be issued unless (non-exhaustive):
    - a. The Commissioner is satisfied that the applicant is a fit and proper person



and can be trusted to have possession of firearms without danger to public safety or to the peace: s 11(3), *FA Act*.

- b. In the case of a person who has never held a licence before, a licence must not issue unless the applicant has completed, to the satisfaction of the Commissioner, such firearms training and safety courses as prescribed by the regulations: s 11(3)(b), *FA Act*.
  - c. The Commissioner is satisfied that the storage and safety requirements (set out in Part 4 of the *FA Act*) are capable of being met by the applicant.
  - d. Specified categories of licences may be issued considering differing circumstances (i.e. the purpose for which the firearm is sought to be used).
205. The licensing regime for firearm possession and use reflects the significant dangers that firearms pose (e.g. cause fatal injuries). It also reflects the risks posed when firearms are not secured and used responsibly by fit and competent persons. Requiring applicants to undergo firearms training and safety courses safeguards against such risks.
206. Although dog ownership does not pose the same level of risk as firearm ownership, the number of reported dog attacks and the large population of dogs in NSW demonstrates a compelling argument for a licensing regime for dogs.
207. The possession of dogs poses considerable risks to children and vulnerable adults. Especially if the dog owner has inadequate awareness of the risks and does not put effective measures in place to minimise such risks, such as by securing and controlling their dog.
208. This inquest has received evidence supportive of a regime that would require owners to be educated in responsible dog ownership and to demonstrate some level of competency. This includes evidence given by Dr Emetia Cull, an experienced veterinarian, to the effect that dog owners ought to be licensed so as to ensure that persons are competent and have training on how to deal with specific issues with animals. This would assist to ensure their animals are not put in

situations of risk. Training would also assist owners to pre-empt a circumstance when their dog may be uncomfortable, and which could lead to aggressive behaviour. Training around the risks of permitting a child to have unsupervised exposure to a dog would also be beneficial.<sup>156</sup>

209. In the Victorian Inquiry, Professor Coleman of the Animal Welfare Science Centre told the inquiry:

*“I am of the view that pet owners, but particularly dog owners ... should be licensed. So it is not the dog that is licensed, it is the owner that is licensed, and I think to get that there should be some sort of, even if it is fairly rudimentary, hurdle to pay. We do it for drivers’ licences. We have no difficulty in having somebody go up to the desk, answer 20 questions and get their licence. Why not do that for companion animals?”<sup>157</sup>*

210. In its final report, the Victorian Inquiry touched on the possibility of “*Licensing of owners or mandatory education in responsible ownership*” (Chapter 7 at [7.7]).<sup>158</sup>

Ultimately, the Victorian Inquiry did not make recommendations in favour of such a proposal, stating:

*“The Committee considers that these powers, combined with education campaigns and an effective suite of measures to combat irresponsible owners, are a more practical option than owner licensing. Incentives such as reduced registration fees may also be an effective way of encouraging owners to undertake training for themselves and their dogs.”*

## ISSUES

211. I have been informed that the NSW Government has made a commitment to review the CA Act and Regulations in 2025. I am of the opinion the Companion Animals Review (**CA Review**) should consider the following issues that have arisen in the coronial investigation into **MJ**’s death.

### ***Penalties for non-compliance with the CA Act and the Regulation.***

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<sup>156</sup> Cull XN 19.2.2024, T62.36-63.44, T65.29-34 (CV 2/20).

<sup>157</sup> CV 1/3, p 265.

<sup>158</sup> See CV 1/3, pp 265-66.

212. There are no known statistics that reliably report on the number of dogs in the community that are not microchipped and / or registered. However, the evidence in this and related inquests demonstrates that there is likely to be a significant number of such dogs.
213. The following related inquests involved fatal dog attacks where dogs were not microchipped or registered:
- (i) *Ada Zara Holland* – of the three dogs involved in the attack, none were registered and only one was microchipped. The dog owners previously received penalty notices and reminder notices from councils about the requirement to register but did not comply with them.
  - (ii) *Colin Amatto* – of the two dogs involved in the attack, one dog was not registered.
  - (iii) *Jyedon Pollard* – of the two dogs involved in the attack, none were registered and only one was microchipped.
214. The inquests have also included evidence of dogs bred by non-professional breeders being supplied without microchipping. In this respect:
- (i) In this inquest, Bully was purchased from a breeder, who had advertised pups for sale online on Gumtree and Facebook Marketplace. The dogs were not microchipped, and no formal documentation was provided regarding the breed of the dog.
  - (ii) In the *Ada Zara Holland* inquest, the dog owners had Staffordshire cross dogs that produced four litters over about a six-year period. Most pups were supplied by the owners, without a microchip or registration, to friends or through posts on Facebook. There is no known means of tracing through the Register where these dogs are now.
215. Councils recognise that there is likely to exist, within their boundaries, a large population of unregistered dogs, of varying and unknown breeds, but face practical limitations in being able to address this problem.

216. The Register is of central importance to the integrity of the regulatory regime as it is intended to provide a record of the number of dogs in the community, the breed of those dogs, and identifying information as to the owners. However, if dogs are not being microchipped or registered it cannot be reliably known how many dogs, including of the kind involved in the fatal attacks in the matters considered, are in the community.
217. The following penalties prescribed for contraventions with the *identifying* and *registration* requirements are not such as to deter non-compliance. In this respect:
- (i) The maximum penalty for not having a dog *identified* under s 8 is 8 penalty units (increases to 50 penalty units in the case of a *dangerous, menacing or restricted dog*): s 8(3).
  - (ii) The maximum penalty for not having a dog registered under s 9 is 50 penalty units (first offence) or 60 penalty units (second or subsequent case) (in the case of a *dangerous, menacing or restricted dog*, the respective maximums increase to 60 and 70 penalty units): s 9(1).
218. This Court has been informed that the Minister and the NSW Government are committed to reconsidering the maximum penalties and disqualification periods that presently apply under the *CA Act* and Regulations to ensure that they operate consistently with community expectations with respect to dog attacks and the need to require all companion animal owners to exercise greater personal responsibility for the behaviour of animals under their care.
219. The OLG has also informed the Court that it will further analyse the issue that emerged during the course of the evidence in these dog attack inquests concerning the difficulties that Council Officers experience when seeking to take enforcement action.

220. I propose to make a formal recommendation that the Minister and the OLG review the adequacy of the penalties for non-compliance with registration and identification requirements for dogs in the *CA Act* and the *Regulation*.

***Public awareness and education campaign about the risks posed by dogs.***

221. The independent experts, Dr Cull and Professor McGreevy, emphasised the importance of dog owner education and responsibility. There is a compelling case for a strengthened and continuing public awareness and education campaign on a Statewide basis. The areas of education should include a focus upon the risks posed by dogs, including types of dogs and how to select a suitable dog, how safely to interact with dogs, how appropriately to care for a dog, and how to train and socialise a dog.
222. The Minister and the OLG accept that public education and awareness campaigns have an essential role to play in protecting the community from dog attacks. They have informed the Court that the development of a public awareness campaign targeting specific breeds and types of dogs will require further examination and analysis particularly in relation to the current restricted breed framework and any potential unintended consequences of such a campaign. The Minister and the OLG also acknowledged the proposal made that consideration must be given to the OLG playing a coordinating role in terms of the rollout of an education programme across Local Government Authorities to ensure consistency of the training.
223. The OLG is developing a suite of educational resources for councils to raise awareness within their communities about significant companion animal issues. This includes awareness of the risk of dog attacks and strategies to reduce the risk of attack. It is expected that these will comprise a series of social media “tiles” the councils can download and use and print for circulation within their communities. This resource will be centrally directed and funded and will provide dog owners information about responsible training techniques, the importance of socialising especially young dogs, the need for supervision, and information for owners and members of the public on how to stay safe around dogs.

224. I am informed there is already a form of this resource which is presently available and has been available since the 17th of September 2024. There is also a brochure being developed which includes further information highlighting that young children are at the greatest risk with most of the dog attacks happening at home or the home of friends and family.
225. The OLG has also informed this court that it has undertaken review of the Companion Animal education programme and is considering strategies drawn from a range of both Australian and international jurisdictions to ensure that anything that is produced by the OLG reflects the up-to-date research in this specialised field. To that end, representatives of the OLG in 2023 attended the Australian Institute of Animal Management conference to absorb the latest information and research from organisations along with the RSPCA academics and recognised international speakers.
226. I propose to recommend that the Minister and the OLG, in consultation with councils, develop and implement a Statewide public awareness and education campaign to educate dog owners and the community generally about the risks posed by dogs and how safely to interact with them.

***Licensing requirement for dog ownership***

227. There are powerful considerations in favour of a person being required to be licensed to own a dog. I am of the opinion that the continuing instances of serious and fatal attacks by dogs in NSW justifies consideration by the Minister and the OLG considering a licensing requirement for dog ownership. The requirement could include:
- (i) Specifying general requirements for all applicants for a licence (including completion of an online or in-person safety awareness program).
  - (ii) Requiring a person to obtain a specific category of licence to own or have certain breeds such as *American Staffordshire Terriers, Staffordshire Bull Terriers, Rottweilers*, or crossbreeds thereof (or imposing conditions that prohibit a person under a general licence from owning or having dogs

suspected of being one of these breeds or crossbreeds thereof).

- (iii) Potentially imposing more or different conditions if a person seeks to own one of these kinds of breeds. This might include assessing whether the applicant is a fit and proper person to own dogs of this kind (given known risks) and requiring an applicant to complete additional education courses about risks and risk management (involving both the dog in the home and away from the home). Additional conditions might also be imposed requiring the applicant to implement particular control measures such as leads or muzzles.
- (iv) Prohibiting registration of a dog to a person if the person's licence does not authorise ownership or possession of that breed or crossbreed.

228. The need for education and training for dog owners, which could be sought to be ensured by conditions of a licence, is underscored by aspects of the expert evidence of Professor McGreevy. For example, Professor McGreevy gave evidence of the particular risks faced by toddlers or other children who may get on all fours with a dog such as an *American Staffordshire Terrier*. Professor McGreevy relevantly said the *American Staffordshire Terrier* and the *American Pit Bull Terrier* share a similar propensity for:

*“initiating aggression, acts of aggression. The umbrella term for behaviour that is either defensive or assertively initiating aggression is ... agonistic behaviour, so that's a recognition that some of those responses can be defensive. But, yes, they are more likely to show agonistic responses than, let's say, a breed like a springer spaniel that's been selected for sniffing rather than biting.*

*And*

*... the selection of dogs in the pit cannot be ignored, because the genes that survive each combat are the genes that have coded for very quick dispatch of the protagonist. So the dogs go for the neck and, and ... they dispatch the protagonists very quickly. Unfortunately sometimes a human can adopt a quadrupedal stance and that's when toddlers are particularly at risk if they walk around - if they toddle around a corner on all fours, a dog that is the descendant of dogs that have been selected purely for fighting will not stand around and do the maths. That dog will go in there potentially to dispatch what could be another dog. So ... it's very important that the Court understands that impulsivity*

*is a trait that, that is going to increase the risk of injuries and deaths.”<sup>159</sup>*

229. I note that the Office of Local Government have informed this Court that due to the complexities involved in taking this step, including the need for a legislative response, this matter will be specifically referred to the 2025 *CA Review* for further consideration.

230. I propose to recommend that the Minister and OLG introduce a licensing requirement for dog ownership, which may involve particular licence conditions calibrated for particular breeds of dogs and with applicants being required to undergo education with respect to safety and risk management.

***Adequacy of the maximum penalties for the offences provided by ss 12A, 13, 14, 16 and 17 of the CA Act***

231. The following offences have the following penalties:

- (i) Section 12A – Taking all reasonable precautions to prevent a dog from escaping from the property on which it is being kept (maximum penalty of 8 penalty units or in the case of a *dangerous, menacing or restricted dog*, 50 penalty units).
- (ii) Section 13 – Maintaining effective control of a dog in a public place (maximum penalty of 10 penalty units or in the case of a *dangerous, menacing or restricted dog*, 100 penalty units).
- (iii) Section 14 – Dogs prohibited in some public places (maximum penalty of 10 penalty units or in the case of a *dangerous, menacing or restricted dog*, 100 penalty units).
- (iv) Section 16 – A dog rushing at, attacking, biting, harassing or chasing any person or animal whether or not injury is caused (maximum penalty of 100 penalty units or in the case of a *dangerous, menacing or restricted dog*, 400 penalty units) (increased penalties provided where reckless act or omissions alleged and / or if the dog is *dangerous or restricted*).

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<sup>159</sup> McGreevy XN 20.2.2024, T87.3.



- (v) Section 17 – Dog must not be encouraged to attack (maximum penalty of 200 penalty units or, in the case of a *dangerous, menacing or restricted dog*, 700 penalty units or imprisonment for 5 years).
232. These provisions operate to require dog owners to enact reasonable measures to secure and control their dog, both at the property at which it ordinarily resides or while in public, and to minimise the risks posed by dogs to members of the public.
233. The Minister and the OLG have informed this Court that this issue will be specifically considered in the 2025 *CA Review*. The Minister has already committed to evaluating maximum penalty amounts, disqualification periods, provisions regarding reasonable measures to secure and control companion animals, and potential additional dog attack defences.
234. A recommendation to a similar effect was made by me in the *Inquest into the death of Ada Zara Holland* (Recommendation 6b-d).<sup>160</sup> Additionally, in that matter I recommended that the OLG examine the creation of a new, stand-alone offence for a dog attack causing serious harm or death to a person (Recommendation 6e).
235. I propose to recommend in this matter that the Minister for Local Government and the OLG examine the adequacy of the maximum penalties for the offences provided by ss 12A, 13, 14, 16 and 17 of the *CA Act*. It is important to ensure that the applicable penalties adequately deter non-compliance with these provisions.

***Section 16 of the CA Act.***

236. Section 16(2)(b) of the *CA Act* provides that an offence is not committed under s 16(1) if the dog attack resulted from the person or animal trespassing on the property on which the dog was being kept. Section 16(2)(b) applies irrespective of the severity of the attack. Where a dog severely injures a person or animal on their property, even if the entry of the person or animal is momentary, the owner is not liable for an offence under s 16(1). This may be the case where, for example, a

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<sup>160</sup> *Inquest into the death of Ada Holland* (2020/97395) [2024] NSWCorC 36.

child enters the yard in which the dog is housed with the intention of quickly retrieving a ball that has unwittingly gone into the yard.

237. The limitation imposed by s 16(2)(b) also impacts the general seizure power in s 18, which cannot be exercised in the circumstances referred to in s 16(2).
238. If subsection (2)(b) were to be deleted, a potential exculpation from liability would still arise under s 16(2)(c) if the attack resulted from the dog acting in reasonable defence of a person or property. It is possible that limb might be engaged in instances of trespass but while allowing for consideration by a court of, inter alia, the ferocity or severity of an attack in considering whether the dog should be taken to have acted in reasonable defence of property.
239. The Minister and the OLG agree to consider this issue at the 2025 *CA Review*.
240. I propose to recommend that s 16 of the *CA Act* be amended to delete subsection (2)(b).

### ***Section 18 of the CA Act***

241. Council considered that s 16(2)(b) of the *CA Act* might be engaged regarding Bully's suspected attack on the neighbouring dog on 6 June 2021.
242. This view meant that Council did not have the option of exercising the seizure power under s 18(1). That would be so even if an authorised officer considered that, in the interests of public safety, Bully ought to be seized on an interim basis pending further investigations.
243. A particular difficulty for authorised officers (council rangers) who initially respond to a suspected dog attack is that, at least for a time, they may have incomplete information about:
- (i) What occurred (including the possibility that there are no direct eyewitnesses to the event).
  - (ii) The manner in which, if at all, the dog suspected of the attack was secured or controlled by its owner before the attack, and how effective such

arrangements might be in future.

- (iii) The history of the dog owner, including as to their past compliance with obligations under the *CA Act* and *Regulation*, and any other information relevant to an assessment of their competence and reliability.

244. The interests of public safety may be undermined if a general power of seizure, at least as an interim measure, is not readily available to an authorised officer and which makes appropriate allowance for the above difficulties.

245. The present framing of s 18 unduly limits its scope and the circumstances in which it may be exercised. The limiting features of s 18 include:

- (i) The inclusion of the words “otherwise than in the circumstances referred to in section 16(2)” in subsection (1);
- (ii) Limiting the time for seizure to be within 72 hours of a suspected attack or bite in subsection (1);
- (iii) The limitation on seizure specified in subsection (3), which requires an authorised officer to be “satisfied” that a dog cannot be adequately secured on the property, cannot be kept under the effective control of some competent person while it is on the property, or that the dog owner has “repeatedly failed to keep the dog” secured or under effective control (an authorised officer may not have enough information to make this determination, although there may be ongoing risks if the dog is not seized).

246. The Minister and OLG inform this court that they will consider this issue at the 2025 *CA Review*.

247. I propose to recommend that the Minister and the OLG amend s18 of the *CA Act* to broaden the scope for exercise of that power.

### ***Sections 36 and 58B of the CA Act***

248. In hindsight it would have been preferable in this case for an interim control obligation to have been more effective.

249. The interim control obligations should be amended to require – at least in a notice to declare a dog restricted (and possibly also for dangerous and menacing dog notices) that the dog be: (a) kept under the effective control of a competent person; and (b) muzzled whenever it is outside an enclosure, even when it is at the property where it ordinarily resides. This amendment would ensure conformity between the interim control obligation and the obligations that would be imposed if the declaration were made.
250. The duration of the interim control obligation should also be amended so that it is not limited to 28 days from the giving of the notice. It would be preferable that the obligation operates until a determination is made whether to make the declaration. The duration of this limitation period also affects the power of seizure that arises during the notice period (outlined further below): see ss 36(2) and 58B(3).
251. As for the interim seizure power that arises in ss 36(3)-(3A) and 58B(4)-(4A) upon the giving of the notice of intention to declare a dog *restricted, dangerous or menacing*, there is utility in the Minister and the OLG examining whether the framing of these provisions unduly limits the interim seizure power, because:
- (i) The power to seize, when the *interim control obligation* is not being complied with, is limited to a maximum of 28 days from the giving of the notice. As highlighted in this Inquest, extensions may be requested and / or it may not be possible to determine if a declaration should be made within that 28 day period. The power to seize should continue while the notice remains extant.
  - (ii) As regards the limbs in ss 36(3)(a)(ii) and 58(4)(a)(ii), it may be difficult for an authorised officer properly to determine, within a short time, whether a dog “*is not confined, tethered or restrained in such a way as to prevent the dog attacking or chasing a person lawfully at the property where the dog is ordinarily kept*”. The authorised officer may have incomplete information in the early stages. There would be utility in examining the operation of these subsections.

252. Given the apparent uncertainty, in practice, as to whether the term “lawfully at the property” (in s58B(4)(a)(ii)) should be construed as applying only to a property’s outdoor areas and as excluding the inside of a house, consideration should be given to amending s 58B to make clear its intended operation.
253. The Minister and OLG inform this court that they agree to consider these issues at the 2025 *CA Review*.
254. I propose to recommend that the Minister and the OLG amend:
- (a) the interim control obligations and interim powers enlivened under ss 36 and 58B of the *CA Act* upon the giving of a notice of intention to declare a dog (i) *dangerous or menacing* or (ii) *restricted*; and
  - (b) s 58(4) to make clearer its intended operation.

***General power in the CA Act to direct person to secure the dog with a muzzle and / or lead***

255. The *CA Act* does not provide a statutory power that permits authorised officers to direct that an owner, or person in control of a dog, secure the dog with a muzzle and / or a lead for a specified period (whether in public or while the dog is in the property where it ordinarily resides).
256. In terms of public safety, there would be utility in authorised officers having this power. In appropriate cases, it would provide a practical interim measure while further investigations and processes are undertaken, or pending other measures being implemented (e.g. installation of an enclosure) and, possibly, in lieu of exercising a seizure power.<sup>161</sup>
257. One benefit of muzzles and leads is that they are relatively low cost and readily available.

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<sup>161</sup> Note that, by s 15(1), a dog to which s 15 applies (which, under the Regulation, is a greyhound) must at all times have a muzzle securely fixed on its mouth in such a manner as will prevent it from biting any person or animal except, relevantly, when the dog is in or on any property where the owner is an occupier or where the dog is ordinarily kept (maximum penalty of 8 penalty units). Section 15 thus does not impose a muzzling requirement when the dog is at the property at which it ordinarily resides.

258. The proposal to create a general muzzling power was raised by the Penrith City Council in its institutional statement in the *Amatto* inquest:<sup>162</sup>

*“Finally, Council powers should be expanded to mandate certain requirements depending on the situation. For example, the power to order that a dog be muzzled when walked (for a dog who has never escaped a property but lunges and bites when walking onlead with their owner). It would also be beneficial for Council powers to be expanded to include the ability to request that enclosures be built on rural properties for dogs that do not meet the definition of a ‘dangerous dog’ but are considered either to be a ‘nuisance’ or ‘menacing’ dog. Under the CA Act, enclosures are currently only required for dangerous dogs. Giving Council the power to request enclosures be built on rural properties for nuisance or menacing dogs would be beneficial as many rural properties are not adequately fenced. This allows dogs to roam freely and become a nuisance. The only way to prevent the roaming is to contain the dog using an enclosure.”*

259. The Minister and OLG inform this court that they agree to consider these issues at the 2025 CA Review.

260. I propose that the Minister and the OLG introduce a general power in the CA Act for an authorised officer to direct an owner or person in control of a dog to secure the dog with a muzzle and /or lead for a specified period.

### **Section 58C of the CA Act**

261. By s 58C(2) of the CA Act, an authorised officer must not make a *restricted dog* declaration within the notice period (including the period granted by extension) if the owner of the dog provides the officer with:

- a. a written statement by an approved breed assessor to the effect that the dog is not of a breed specified in s 55(1)(a)-(d1) or a crossbreed thereof; or
- b. a written statement by an approved temperament assessor to the effect that the dog is not a danger to the public and is not likely, without provocation, to attack or bite any person or animal.

262. The statements provided will typically have limited information about how the assessment was completed, what observations the assessor made, in what

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<sup>162</sup> Statement of Greg McCarthy dated 12 December 2023 at [118] p 28: CV 2/8.

circumstances (e.g. with other dogs, alone, etc) and how the assessor arrived at his or her conclusion. This is a matter of continuing frustration for council officers.<sup>163</sup>

263. Team Leader Rosen, in his statement dated 4 October 2023 pointed out with regard to these assessments:

*“The proof for breed assessment required to be provided to Council must be obtained either from Dogs NSW or by obtaining a written statement from an approved breed assessor. The proof for temperament assessment must be obtained from an approved temperament assessor, who is required to be accredited through Office of Local Government (‘OLG’). The assessments only provide a yes or no answer to the breed and/or temperament, and do not provide any further information in that assessment. In my experience, it is very uncommon for both breed and temperament assessments to find that a dog should be declared a restricted breed.”*

Team Leader Rosen expanded on his views about the lack of transparency with this process in his evidence in the hearing.<sup>164</sup>

264. It is undesirable, from a public safety perspective, that the authorised officer has no capacity to question the utility of a written statement received and, if considered appropriate, to seek his or her own independent assessment. In the circumstances, consideration should be given to providing appropriately worded exceptions to the prohibition in s 58C.
265. The Minister and OLG inform this court that they agree to consider these issues at the 2025 CA Review.
266. I propose to recommend to the Minister for Local Government and the OLG the amendment of s 58C of the CA Act (a) regarding the prohibition on an authorised officer making a restricted dog declaration if the owner provides a written statement by an approved breed assessor or approved temperament assessor; and (b) to require breed and/or temperament assessors to provide an outline of the

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<sup>163</sup> See e.g. Carlin XN 19.2.2024, T41.34-42.34; Rosen XN 19.2.2024, T107.32-50.

<sup>164</sup> Rosen XN 19.2.2024, T106-108.

assessment carried out (including, for the temperament assessment, where, over what duration, and in what conditions).

### **DNA Testing**

267. There are difficulties in accurately identifying the breed of a dog by visual inspection. DNA testing may permit more reliable breed identification. Dr Cull gave evidence about the assistance she has derived from the use of DNA testing to determine dog lineage.<sup>165</sup>
268. The Minister and OLG inform this court that they agree to consider these issues at the 2025 *CA Review*.
269. I propose to recommend that The Minister and OLG continue to investigate, facilitating reasonable access to DNA testing in NSW to assist breed identification of dogs.

### **CONCLUSION**

270. The circumstance surrounding **MJ**'s death and the subsequent examination of the prevailing regulatory regime demonstrate that it is in the interests of public health and safety for the regime to be reviewed and amended. The OLG and Government have acknowledged that the *CA Act* must consider a shift from something of a passive and reactive approach to regulation. Instead, the *CA Act* should ensure that pet owners take greater personal responsibility and are held accountable for the care and management of their companion animals.
271. The OLG recognizes that the regulatory framework also needs to further empower enforcement agencies and authorized officers with the resources and knowledge to respond to individual circumstances and to provide for adequate enforcement sanctions which are aligned to reflect seriousness of breaches.
272. In 2025 the NSW Government is reviewing the *CA Act* and Regulations. The 2025 *CA Review* will take a broad-based approach considering: responsible ownership of

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<sup>165</sup> Cull XN 19.2.2024, T60.



companion animals, compliance, and enforcement role of councils and the important consideration of the issues relating to the rehoming of companion animals.

273. The 2025 *CA Review* will include extensive consultation with key stakeholders, including NSW Local Councils, pet owners, breeders, veterinarians, rehoming and rescue organisations, animal welfare organisations, Department of Primary Industries in regional development, NSW Police, and NSW Department Communities and Justice.
274. A discussion paper to initiate the 2025 *CA review* is expected to be published in early 2025 for public comment. The paper will invite feedback on the three key focus areas relating to the management of companion animals.
275. The review is scheduled to commence at the conclusion of the series of dog attack inquests that I have been conducting and at the conclusion of the relevant Parliamentary Inquiries. I am informed that the timing of the review has been specifically set to allow those conducting the review to benefit from the findings from the inquests into dog attacks and the Parliamentary Inquiries.
276. There has been no objection by any party to any of the changes to the regulatory regime that I propose to recommend. The weight of all the evidence shows that it is desirable and in the interests of public health and safety for the regulatory regime to be reviewed and amended. While further regulations relating to pet ownership may be considered onerous by some, I am of the opinion that any disadvantage is far outweighed by the saving of lives and prevention of injury.
277. I extend my deepest sympathies to **MJ**'s family. I trust that the lessons that have been learnt from the circumstances surrounding his death will assist in preventing a similar death in the future.

#### **FINDINGS PURSUANT TO S. 81(1) CORONERS ACT 2009**


278. [REDACTED] MJ [REDACTED] died between 10 and 11 July 2021 at [REDACTED] Central Coast New South Wales, from fatal injuries caused when he was attacked inside the family home by a dog, which was the family pet.

## **RECOMMENDATIONS PURSUANT TO S 82 CORONERS ACT 2009**

### **I recommend to the Minister for Local Government and the OLG:**

1. The Minister and the OLG review the adequacy of the penalties for non-compliance with registration and identification requirements for dogs in the *CA Act* and the *Regulation*;
2. The Minister and the OLG, in consultation with councils, develop and implement a statewide public awareness and education campaign to educate dog owners and the community generally about the risks posed by dogs and how safely to interact with them;
3. The Minister and the OLG, in consultation with councils and other stakeholders, introduce a licensing requirement for dog ownership, which may involve particular licence conditions calibrated for particular breeds of dogs and with applicants being required to undergo education with respect to safety and risk management;
4. The Minister and the OLG examine the adequacy of the maximum penalties for the offences provided by ss 12A, 13, 14, 16 and 17 of the *CA Act*;
5. The Minister and the OLG amend s 16 of the *CA Act* to delete subsection (2)(b);
6. The Minister and the OLG amend s 18 of the *CA Act* to broaden the scope for exercise of that power;
7. The Minister and the OLG amend:
  - (a) the interim control obligations and interim powers enlivened under ss 36 and 58B of the *CA Act* upon the giving of a notice of intention to declare a dog (i) dangerous or menacing or (ii) restricted; and

- (b) s 58(4) so as to make clearer its intended operation;
8. The Minister and the OLG introduce a general power in the *CA Act* for an authorised officer to direct an owner or person in control of a dog to secure the dog with a muzzle and / or lead for a specified period;
  9. The Minister and the OLG amend s 58C of the *CA Act* (a) regarding the prohibition on an authorised officer making a restricted dog declaration if the owner provides a written statement by an approved breed assessor or approved temperament assessor; and (b) to require breed and/or temperament assessors to provide an outline of the assessment carried out (including, for the temperament assessment, where, over what duration, and in what conditions); and
  10. To the extent not already done, the Minister and the OLG investigate, or continue to investigate, facilitating reasonable access to DNA testing in NSW to assist breed identification of dogs.



C Forbes

Deputy State Coroner

17 January 2025