

IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: COR 2011 003068

FINDING INTO DEATH WITH INQUEST

Form 37 Rule 60(1)

Section 67 of the Coroners Act 2008

Inquest into the Death of: AYEN CHOL

Delivered On:	28 September 2012
Delivered At:	Coroners Court of Victoria Level 11, 222 Exhibition Street Melbourne Victoria
Hearing Dates:	27, 28, 29 and 31 August 2012
Findings of:	K. M. W. PARKINSON, CORONER
Representation:	Mr J. Constable for Brimbank Council Mr S. Mukerjea for the Department Of Primary Industry Ms A. Burnard for Mr Lazor Josevski and Mr Nick Josevski Mr C. Pearson for Mr Zlate Lazarovski
Police Coronial Support Unit Assisting the Coroner	Leading Senior Constable Kelly Ramsey

I, K. M. W. PARKINSON, Coroner having investigated the death of AYEN CHOL

AND having held an inquest in relation to this death on 27, 28, 29 and 31 August 2012
at MELBOURNE

find that the identity of the deceased was AYEN CHOL

born on 25 May 2007

and the death occurred on 17 August 2011

at 9 Lahy Street, St Albans, Victoria 3021

from:

1 (a) HEAD AND NECK INJURIES SUSTAINED IN A DOG ATTACK

in the following circumstances:

1. An inquest was held into the death of Ayen Chol on 27, 28, 29 and 31 August 2012. An extensive brief¹ was prepared by the investigating police officers, Detective Senior Constable Michael Saliba and Detective Senior Constable Andrew Eyries.
2. The brief included statements of witnesses who have been called to expand upon their statements and statements from a large number of persons who have not been called but whose statements form part of the evidence before me.
3. The brief also includes photographs of the scene, victims, the dog, its locale and environs and to the extent that witnesses cooperated with police initially, the background of the dog, its demeanour and its breeding. I have also received documentary material from the Australian Veterinary Association (AVA) during the course of the proceedings, which has been provided to all interested parties. Whilst I do not refer to all of the material or its contents, I have considered all of this material in my finding in this matter.

¹ Exhibit 30

4. Those witnesses who made statements and who were also called to give oral evidence were:

Family members, Ms Anglina Mayout; Ms Jacklin Anciato; Achol Mawier; Mr Lazor Josevski; Mr Nick Josevski; Dr Jane Dunnett, Veterinarian; Mr Tim Christie, Animal Management Officer; and Team Leader Regulatory Services Mr John Petrero of Brimbank City Council; Ms Tracy Helman, Manager Policy and Education, Department Of Primary Industries; Mr John Petrero; Detective Senior Constable Andrew Eyries of Victoria Police.

5. During the course of the proceedings, further relevant witnesses were identified and located. They attended to provide further information. They were Dr Michael Beattie, a registered veterinarian who attended the dog and Mr Zlate Lazarovski, cousin of the dog owner and the person who bred the dog.

AYEN CHOL AND THE EVENTS OF THE EVENING OF 17 AUGUST 2011

6. Ayen Chol was four years old. She was born on 25 May 2007. Ayen's parents were born in the Sudan and in 2005 came to Australia from Egypt. Ayen is survived by her mother and father and by her two brothers.
7. On 17 August 2011, Ayen was at home with her mother, Ms Jaclyn Anciato, her aunt Ms Anglina Mayout, a cousin, Ms Achol Mawier and other family members, including a number of children. Her father was overseas at the time. Ayen was inside the premises and in the lounge room of the property.
8. At approximately 8.00pm that evening, Ms Mayout and Ms Mawier went outside of the property to the street to load some items into a car. A dog, subsequently identified as a dog owned by the Josevski family and known to them as Rex, ('the dog') was observed to be wandering in the street unattended. The dog was a four year old tan and white American Pit Bull Terrier of solid build and weighing 39.5 kilograms. Ayen Chol was four years old and she weighed 20 kilograms.

9. Ms Mayout reports that the dog rushed at the family members as they left the house. She reports that it was very aggressive, growling and showing its teeth. They reported that they managed to scare the dog off by waving their bags around and that the dog then ran across the road and appeared to be playing with people across the road. The evidence is that the family members did not encourage, engage with or initiate contact or involvement with the dog.
10. The dog went into a property opposite Ayen's home. Witnesses at the property describe that the dog appeared to be wanting to play, however they were concerned to ensure that it left their property and were concerned by its appearance and size.
11. The dog left those premises and then again ran towards Ayen's family members who were at their car. Ms Mayout reports that it was again being very aggressive and growling at them. One of the children was so afraid of the dog that he climbed onto the roof of the car. The dog was reported to have been growling and baring its teeth at the family members. It ran at Ms Mawier. She hit the dog with her handbag and it is reported that it grabbed the handbag in its mouth and ripped it apart, spilling its contents onto the road. Ms Mawier then ran towards the house in an attempt to escape the attacking dog. The front door was open and she ran inside, pursued by the dog into the living area.
12. Ms Mayout was still outside and stated that she then heard the children inside the house screaming and ran inside. Ms Mayout then observed the dog attacking Nyadeng, her 5 year old daughter. Nyadeng was on the floor of the lounge room in front of the couch and the dog was biting the back of her head. Ms Mayout reports that the dog was shaking her child and growling and the child was screaming. Ms Mayout ran and grabbed the dog by the collar, which she described as a hard band like a belt with steel studs.
13. As she grabbed the dog collar with her right hand, the dog turned and grabbed her left arm. She attempted to pull her arm out of the dog's mouth, the dog fastened on her arm and its teeth went into her arm and hand. She states that the dog was shaking her arm and that it was very painful. She called out to her sister-in-law to hit the dog and Ms Mawier picked up a table and hit the dog. It then let go of her arm and ran to the back of the house.

14. The other children in the household, who had taken refuge on top of the kitchen table, then ran out of the front of the house. Ms Mayout told Ms Mawier to call the police and she then picked up her injured daughter and carried her out of the house. She did not see the subsequent attack upon Ayen.
15. The evidence is that Ms Mayout and her daughter sustained serious injury as a result of the dog bites and were transferred to the Sunshine Hospital where they underwent surgery. The reports of the doctor and plastic surgeon who attended their injuries are contained in the inquest brief².
16. Ayen, who was in the living room, was terrified by the dog and its attack upon her family members. She clung to her mother's leg and screamed in terror. The dog then latched onto Ayen's face and neck and would not let go despite the brave intervention of her mother.
17. Ms Anciato stated that she and Ayen observed the attack upon Nyadeng and Ms Mayout and that :

"During the whole attack my daughter Ayen was holding my leg very tightly. She was very scared and she was screaming. I was standing near the dining room table when the dog grabbed my daughter, Ayen, by the face and neck and pulled her away from me. She was holding onto my legs at the time. When the dog first grabbed my daughter, I heard her scream once and I never heard her scream again. The dog was shaking my daughter from side to side and was dragging her backwards into the kitchen. He dragged her to the fridge and he could not go any further because there was a wall. The dog would not let go of my child's face, he was just shaking my daughter. I was hitting the dog with my hands and trying to pull the dog away but he would not let go of my daughter....I then remember a man come in and he grabbed the collar around the dog's neck and the dog let go of my daughter and the man took the dog out." ³

18. Mr Tony Josevski attended at the premises with his father, restrained the dog and removed it to their premises.

² Exhibit 30 - IB pages 79 to 91

³ Exhibit 3 - Statement of Ms Jacklin Anciato dated 24 August 2011

19. Ms Anciato states that she made efforts to resuscitate Ayen, however that with every breath she administered she could feel the air coming out through the wound in her neck. She stated that with all of the blood and the injuries she observed on her child she knew that her child was dead. Ambulance officers were unable to resuscitate Ayen and she was deceased at the scene.
20. City of Brimbank Animal Management Officer, Mr Tim Christie⁴, attended at the Josevski premises at the request of police to assist with containing and removing the animal. The dog was removed to the University of Melbourne Veterinary Hospital at Werribee where it was sedated and subsequently euthanased.

HOW THE DOG ESCAPED THE PREMISES

21. The evidence is that the dog had escaped the Josevski premises by way of an open garage roller door. The garage door, which was usually secured, had been either opened or left ajar. The door was in the fully open position. The garage door is operated by a remote control device. That device was in the possession of Mr Josevski when he entered the house earlier that evening. He stated that he placed it on the key rack. His evidence was that he had checked the roller door when he shut it as he came inside and that it was secure. All other garage door remote control devices were accounted for and no other family member recalled opening the door that evening.
22. The roller door was tested at the instance of Victoria Police and reported to have been in working order⁵. A further report obtained by Mr Lazor Josevski, provided during the course of the inquest, made oblique reference to radio remote control frequencies and the desirability of adjusting the frequency on the door to ensure that there was no interference by other remote control devices⁶. The evidence however, does not enable me to establish how it is that the door came to be open.

⁴ Exhibit 12 - Statement of Mr Tim Christie dated 3 February 2012

⁵ Exhibit 8 – Chamberlain report roller door 29 August 2011

⁶ Exhibit 9 – Undated Report – J&E Roller Door

23. The roller door allows direct access from the garage to the street. From the garage there is direct access to the rear yard where the dog was kept. There was no impediment to the dog exiting from the yard directly through the roller door, if the roller door was open. Once through the roller door, there was no fence or gate to prevent the dog from directly accessing the street⁷.

FORENSIC PATHOLOGIST EXAMINATION

24. Ayen was examined by Dr Sarah Parsons, Forensic Pathologist with Victorian Institute of Forensic Medicine who provided a report to the Coroner. Dr Parsons reported that in her opinion the medical cause of Ayen's death was - Head and Neck Injuries sustained in a dog attack. She reported 18 separate injury sites to the head and neck. Dr Parsons summarised the findings of the post mortem CT scan and angiography as follows:

"The summary of radiological findings as extracted from Dr Chris O'Donnell's report were as follows:

- 1. Large soft tissue defect in the right antero-lateral face including a comminuted and displaced fracture of the right mandibular body, and a comminuted fracture of the right zygoma with absence of the right zygomatic arch.*
- 2. Loss of the lower right mandibular dentition.*
- 3. Inferior displacement of the right cornu of hyoid*
- 4. Fractures to the left C2, 3 and 4 transverse processes and fracture to the left C4 facet mass with displacement anteriorly.*
- 5. Angiography demonstrated contrast filling of the left vertebral artery and contrast leaking into soft tissue adjacent to the left C4 facet mass fracture.*
- 6. Remaining neck structures and intracranial arteries including the left common and internal carotid arteries otherwise fill normally with only minimal contrast leak into the right facial area at the site of marked soft tissue loss.*
- 7. No other sites of substantial contrast leak from the arterial system in the remainder of the body."*

⁷ Exhibit 6 - Photographs of dog owners premises

25. Dr Parsons commented and concluded;

"I attended the scene at 9 Lahy Street St Albans and was met by Michael Saliba and Andrew Eyries who informed me of the attack. I was taken inside the residence and the deceased was identified laying on the floor of the kitchen. She had significant visual injuries to the face and neck area. There was a large amount of blood including numerous areas, which appear to represent drag marks within the kitchen and blood within the hallway. Following an external examination, review of the Form 83 post mortem CT scan and angiography a reasonable cause of death in this 4 year old female is: 1(a) Head and neck injuries sustained from a dog attack."

EXAMINATION OF THE DOG BY VETERINARY SURGEONS – EVIDENCE AS TO BREED TYPE AND CHARACTERISTICS

26. Dr Jane Dunnett, Veterinary Surgeon of the University of Melbourne Veterinary Hospital at Werribee, examined the dog on the evening of 17 August 2011. Dr Dunnett's evidence was that it was necessary to use what she described as significant amounts of sedative drugs to sedate the dog. She stated that she had encountered many Pit Bull and Pit Bull type dogs in her career and that she was confident that the dog she observed was such a dog.
27. Dr Dunnett's evidence was that in general such dogs exhibit the physical characteristics of a Pit Bull from very early in their development and that you can almost always tell a Pit Bull or Pit Bull type from the age of six weeks⁸.
28. Her evidence was that because there are no kennel club or breeders standards for Pit Bull terriers, the dog is not a recognised breed and so the expression 'Pit Bull Terrier type' was more appropriate. This was not however to be confused with the expression cross. She stated that the dog known as Rex was in her opinion a Pit Bull terrier type and 90% Pit Bull⁹.
29. Her evidence was that there were no characteristics associated with the dog, which might entitle a person to confuse the dog with a mastiff cross, and that a professional veterinarian should not be confused¹⁰.

⁸ T.144.9

⁹ T.159.1

¹⁰ T.157.18

30. She noted that the dog was an adult uncastrated male of approximately 40kg in body weight and that:

"The dog was well muscled with a reddish coloured haircoat and that the haircoat was contaminated with what appeared to be dried blood. This was mainly evident over the head, shoulders, thoracic (front) limbs and cranial (foremost) torso¹¹."

31. Dr Dunnett stated:

"Traditionally Pit Bulls were bred to be aggressive; they were bred to be intimidating; they were used as status symbols for want of a better term; they were used extensively and they still are for dog fighting, so the characteristics that those people would like are large, powerful dogs, strong jaws and a tendency to become aggressive very quickly and to become consistently aggressive and not back down.¹²"

32. Dr Dunnett's understanding was that these characteristics were the reason why the importation of such dogs was prohibited by the Commonwealth Parliament and why they were otherwise regulated as restricted breeds in Victoria.

33. Her evidence as to temperament was that whilst she was wary of all dogs she treated, she was particularly wary of Pit Bull Terriers because the dogs are exceptionally powerful. They will also become aggressive rapidly and without warning and that is a common characteristic of the breed¹³.

34. Dr Crosser, the veterinarian who euthanased the dog on 18 August 2011, reported that the dog was an American Pit Bull Terrier or Pit Bull Terrier Cross. He stated¹⁴:

"The necropsy examination of this animal was restricted to an external examination as per requested. The examination was performed immediately following euthanasia at 4.00pm on the 18/8/2011. The carcass is of an adult (range 2-6 year old), entire (uncastrated) male dog weighing 40kg. A micro-chip is not detectable on repeated scanning over the whole carcass with a micro-chip reader. The dogs external

¹¹ Exhibit 11- Statement of Dr Jane Dunnett dated 22 August 2012

¹² T 148.24 – 149.8

¹³ T149.15

¹⁴ Exhibit 30 – IB page 120 report of Dr E Crosser dated 22 August 2011

appearance is consistent with it being of Pit Bull Terrier or Pit Bull Terrier cross breed. Being of medium to large size, solidly built with a short red-brown coloured coat (Pit Bull Terrier breed standards refer to "red" for this colour) with a small white stripe marking on the ventral neck and chest. The eyes are a light brown-tan colour. The nose is brown in colour (Pit Bull Terrier breed standards refer to this as "red nose"). The skull is broad and flat with widely spaced eyes. The muzzle is broad and of medium length. The lower lips are slightly pendulous. The dog is in good body condition (body condition score 4 out of 5).

Large areas of the coat of the face, muzzle, neck and shoulder are discoloured by dried blood tinged fluid. There is matted fur coated in dried dark maroon coloured material (frank blood) around the face. There are small numbers of similarly appearing small (<10mm diameter) spatters of dried blood extending along the flanks. There are no external wounds on the dog to which to attribute the blood.

There are multiple variably sized (ranging from 15 x 8mm, up to an extremely large 55 (width x 20 (height) mm diameter), chronic calluses, some of which have a central portion of shallow ulceration, over pressure points (lateral aspects near joints and over dorsal aspect of the paws) of the distal limbs, elbows hocks and hips. The fur surrounding the calluses over both hips is discoloured bright red (suggestive of a recent application of disinfectant or insect repellent stock spray). Dorsal neck length (poll to shoulder) 260mm. Weight 40kg."

THE BREED OF DOG

35. Having considered all of the evidence, including that of the veterinary surgeons Dr Dunnett and Dr Crosser and the evidence of the Council Animal Management officer Mr Christie and the evidence and veterinary records of Dr Beattie, I am satisfied that the dog was properly to be described as an American Pit Bull Terrier for the purposes of Victorian restricted dog breed regulation at the time of Ayen's death.
36. I am satisfied on the evidence that the dog was an American Pit Bull Terrier, that it was not a cross breed and that it fell within the description and definition of "restricted breed dog" as defined in the *Domestic Animals Act 1994*, from its birth and as at 17 August 2011.

37. This description and classification was confirmed by the vaccination certificate provided to the Breeder, Mr Lazarovski in 2007 and to one of the owners, Mr Nick Josevski.¹⁵ It was the evidence of the veterinarian who first attended the dog in the litter¹⁶ and who attended the animal on nine occasions from 2007 to 2010 thereafter. It was the understanding of at least one of the occupants of the house where the animal was kept, Mr Tony Josevski, who described the dog as a Pit Bull to police immediately after the event¹⁷. It was also the evidence of the City of Brimbank animal management officers¹⁸ and of the veterinarian who was responsible for sedating and destroying the dog and by the veterinarian who examined the dog after euthanasia¹⁹.
38. This breed according to the documents tendered²⁰ and the evidence of the veterinarian, Dr Dunnett, had a propensity to attack and that there were no specific indicators of the likely onset of an attack²¹.
39. Therein lies the problem and it is reasonable to conclude that is why American Pit Bull Terriers are restricted breeds. This evidence gives a context to the evidence of Mr Nick Josevski and Mr Lazor Josevski that the dog had never shown signs of aggression. The dog, a restricted breed attacked a number of people without warning and with such force that two people, an adult and a child were hospitalised and one person, a four year old child, was killed. The possibility of this type of unexpected attack is the reason for the restricted breed regulation.

¹⁵ Exhibit 29 – Veterinary records Dr Beattie

¹⁶ Dr Beattie

¹⁷ Exhibit 13

¹⁸ Exhibit 12

¹⁹ Dr Crosser IB Page 120

²⁰ Exhibit 11 Statement - Dr Jane Dunnett dated 22 August 2012

²¹ Transcript page 149

**THE VETERINARIAN DR BEATTIE AND HIS EVIDENCE AS TO BREED,
PREVALENCE OF BREED AND ATTENDANCES UPON THE DOG**

40. Dr Michael Beattie is a registered veterinarian who works exclusively by home visits. His records show that he has attended upon 99 dogs²² he has identified and designated as American Pit Bull Terriers, a restricted breed.
41. These records included his identification of the dog in this case, as an 'American Pit Bull Terrier'. His records also show that he also identified its sire, owned by Mr Zlate Lazarovski, (a dog known as Boss) as an 'American Pit Bull Terrier'. Neither dog was identified in these veterinary records as being cross breeds and in fact were identified by him as not being cross breed dogs.
42. According to Dr Beattie's records the majority of the 99 restricted breed dogs owned by his clients have not been micro-chipped or neutered. Dr Beattie's evidence was that he was unaware whether the dogs were registered as he did not collect that information. The records were for the period 1999 to 2011²³. Dr Beattie treated dogs identified as American Pit Bull Terriers, which were not neutered, and not micro-chipped as recently as January 2012. Having regard to the evidence before me in relation to the ending of the registration amnesty, it is reasonable to conclude that the majority of the 99 dogs on his records are unregistered and thus their existence is unknown to the authorities.
43. Dr Beattie first attended the dog and vaccinated it when it was still in the litter with the Breeder, Mr Lazarovski. Mr Lazarovski's evidence was that he arranged for the vet to come to the home to vaccinate the entire litter at approximately six weeks of age.
44. The vaccination documentation provided to Mr Nick Josevski emanated from this vaccination visit. The vaccination document, according to both Dr Beattie and Mr Lazarovski, contained the information identifying the dog as an American Pit Bull Terrier.

²² Exhibit 29

²³ Exhibit 29

45. Dr Beattie attended at Mr Josevski's premises at least annually to vaccinate the dog and on other occasions when required. The dog did not visit the vet at any clinic. Dr Beattie attended the dog at Lahy Street, St Albans on nine occasions in the period 2007 to 2010. His last attendance was on 14 October 2010²⁴. Despite these attendances, Dr Beattie's evidence was that the first he became aware that the dog under his veterinary care was responsible for the death of a child, was when police attended at his premises during the course of these proceedings to serve a witness summons.
46. His initial evidence in the proceedings was that he did not recall how it was he came to provide veterinary services to the dog. He stated that he believed it may have been from contact from the owner Mr Josevski. He initially made no mention of Mr Lazarovski or of attending upon two litters of American Pit Bull Terriers at his premises.
47. When asked to look through his records to see if he did know anyone by the name of Lazarovski, and whether he had treated any of his animals, he located records relating to a Mr Mick (sic) Lazarovski and then recalled that he had first seen the dog in question when it was still part of the litter at the breeders premises' in 2007. He also then identified that there had also been an attendance upon a litter at that location in 2005.
48. In total 15 American Pit Bull Terriers were produced from two litters in 2005 and 2007. His records show that he attended Mr Lazarovski's premises on 20 September 2007, to vaccinate four female and four male American Pit Bull pups at six weeks of age and had attended on 10 January 2006, to vaccinate four female and three male American Pit Bull pups at six weeks of age.
49. The records also describe the attendance as being upon the 'Breeder' and the client as Mr Lazarovski. He also attended the sire of the puppies at Mr Lazarovski's premises on seven occasions between 10 January 2006 and 11 March 2007. His records show that the sire, known as 'Boss', was an American Pit Bull Terrier, not a cross breed and not de-sexed. His evidence and records²⁵ also show that he attended upon other American Pit Bull Terrier dogs from each litter at the premises at which they were kept by the subsequent owners.

²⁴ Exhibit 29

²⁵ Exhibit 14 and Exhibit 29 - Veterinary Records Dr Michael Beattie

**CONTAINMENT REQUIREMENTS APPLICABLE TO RESTRICTED BREED DOGS
AND APPLICABLE TO THE DOG IN QUESTION ON 17 AUGUST 2011**

50. The Department identified that as at 17 August 2011 the *Domestic Animals Act 1994* (Version 51) and the *Domestic Animals Regulations 2005* (Vic) operated to provide for the identification, monitoring and control of restricted breed dogs in the community. Restricted breed included American Pit Bull terriers and Pit Bulls.
51. The regime included mandatory registration, special control provisions in the Act for restricted breed dogs relating to de-sexing, micro-chipping, collars, leashes, muzzles, warning signs and enclosures. There was also a comprehensive education program designed to educate the community as to the special restrictions applicable to restricted breed dogs. The regulatory regime included penalties but not criminal offences in relation to failure to comply with the requirements.
52. The Act and the regulations applicable to a restricted breed dog at the time of this attack required that the dog be confined in a suitable enclosure at all times. The Department Of Primary Industries helpfully identified the containment requirements which were applicable. The evidence is that they did not differ substantially from those, which are currently in place²⁶. It is, and was, a requirement for restricted breed dogs to be secured at premises in the following way:
- a. when inside a dwelling, confined in such a manner that it cannot escape and that a person cannot enter the dwelling unless admitted by an occupier who is over 17 years of age; and
 - b. when outside a dwelling, kept in an enclosure (**prescribed enclosure**) which meets the following criteria:
 - c. the dog cannot escape;
 - d. a person cannot have access to it without the assistance of an occupier of the premises who is over 17 years of age;

²⁶ DPI submissions pages 25 to 26, *Domestic Animals Act 1994* (Vic) Section 41G and Regulation 6 made pursuant to that Act; and Exhibit 21 - Statement of Ms Tracy Helman dated 14 March 2012

- e. a minimum height and width of 1.8 metres;
- f. a minimum area of 10 square metres;
- g. a weatherproof sleeping area;
- h. must be constructed of brick, timber, concrete, iron, mesh or similar solid material;
- i. must be constructed in a manner that prevents the dogs from escaping under, over or through the enclosures;
- j. must be designed to prevent children climbing into the enclosure;
- k. if it contains gates, must incorporate self-latching gates, which are locked whenever the dog is in the enclosure, and must not require people to pass through the enclosure in order to access the premises.

53. There was no such enclosure at the property. The dog was not contained in a secure manner and neither, according to the owners, was the dog usually tied up.
54. The dog was not contained in the manner which is prescribed for an American Pit Bull Terrier (or other restricted breed) dog. The containment provisions which are similar in some senses to those provided in relation to the regulation of swimming pools, require an enclosed area with minimum enclosure heights, self closing gates and doors which prevent the dog from escaping from the compound either into the house, grounds of the yard or leaving the property.
55. The evidence is also that had the owners complied with the law and contained the dog in an enclosure, which complied with legislated requirements, the dog would not have been able to escape the premises, even with the garage roller door open. To that extent, the evidence about the roller door and the circumstances in which it came to be open is beyond the point, as the door was never an effective way of containing the dog and was not authorised as such.

COUNCIL KNOWLEDGE OF THE EXISTENCE OF THE DOG

56. The evidence is that the responsible council body, the City of Brimbank, was unaware of the existence of the dog. The council is responsible for approximately 200,000 residents in the municipality with 17,000 registered animals. Council Officer Mr John Petrero stated ²⁷:

“At the time of the tragic events in Lahy Street, St Albans on 17 August 2011 that are the subject of this Inquest, Council had numerous working processes which governed investigation procedures for a variety of situations relating to dogs. These included unregistered dogs, dogs wandering at large, nuisance dogs and aggressive dogs or those involved in attacks. These procedures could not be brought to bear in relation to the dog involved in the attack on 17 August 2011 that is the subject of this Inquest as Council was not aware of the existence of the dog in question at any time prior to the attack being reported to Council on the night in question. The only way that Council could have been aware of the existence of the dog in question would have been through either resident reports or officer observations. Searches of Council records confirm that there were no resident reports or officer observations recorded in relation to the presence of the dog in question at the address at which I now understand the dog resided.”

LEGISLATIVE AND PRACTICAL SUPERVISION AND REGULATION OF RESTRICTED DOGS

57. The regulatory scheme as at 17 August 2011, required the registration, neutering and micro-chipping of restricted breed dogs, in addition to specific containment measures and muzzling in public and appropriate signage at premises. Council was able to enforce these matters in the case of registered restricted breed dogs. In relation to restricted breed dogs, which were not registered, they relied upon being told of the existence of the dog by a member of the public or by the detection of the dog by their enforcement officers during regular patrols.

²⁷ Exhibit 16 – Statement of Mr John Petrero dated 29 May 2012

THE FAILURE TO UPDATE THE COUNCIL RECORDS AND TO PUT THE COUNCIL ON NOTICE THAT THE DOG EXISTED.

58. The evidence of the Council Officers was that had they been aware of the existence of the dog, prior to the event and in the period when the amnesty for registration applied, a number of requirements would have been imposed upon the owners of the dog, which would have resulted in secure arrangements for its containment and management. The Council Officers also gave evidence as to the steps, which have been taken to supervise, educate and regulate restricted breed dogs in the community.
59. The Josevski family had owned and registered two German Shepherd dogs for many years prior to obtaining the American Pit Bull Terrier dog known as Rex. They had registered each previous dog individually, changed the identification details from one dog to another upon the decease of the first dog and renewed the registration on an annual basis.
60. Council records show that they continued to pay registration fees for the second German Shepherd dog long after that dog had died. There was a short period of time when both the German Shepherd and the American Pit Bull were at the same premises, however the German Shepherd dog was destroyed in 2007. leaving the American Pit Bull at the premises.
61. From 2007 to 2011 the owners, Mr Lazor Josevski and Mr Nick Josevski, continued to maintain the fiction with the council, that the German Shepherd dog was still alive and that this was the only dog at the premises. This is evidenced by the council dog registration documentation for the period²⁸.
62. I am satisfied that the failure to update the council records on the part of the 'owners' of the dog, was a deliberate and successful attempt to conceal the dog from the authorities and to avoid the scrutiny, supervision and limitations associated with owning a restricted breed dog.

²⁸ Exhibits 18, 19 and 20

63. I am satisfied that the conduct was not inadvertent and that the failure to update the record or to register the dog was not driven by a lack of understanding of English or an inability to read the registration documents. The evidence is that even if Mr Lazor Josevski had difficulties with the written language, his sons are at least literate in both spoken and written English.
64. The evidence is that Mr Lazor Josevski was able to negotiate the process of obtaining a pensioners discount for the registration of the German Shepherd dog, both before and continuing after its decease. This required contact with the council and exchange of information. Mr Lazor Josevski was able to conduct these types of transactions and understand the minutiae of the documentation relating to the pensioner discount provisions. I am satisfied that it is likely he was also readily able to understand the directives regarding prohibited breeds.

THE EVIDENCE OF MR NICK JOSEVSKI

65. Mr Nick Josevski's evidence was that he did not know that the dog was an American Pit Bull Terrier, that he did not know the breed was restricted and did not know what an American Pit Bull Terrier was. His initial evidence in the proceeding was that prior to the 17 August 2011, the words "American Pit Bull Terrier" carried no meaning for him and that no-one had ever told him that the dog may be an American Pit Bull Terrier²⁹.
66. He subsequently recanted this evidence³⁰ and conceded that the Veterinarian, Dr Beattie may have told him this and that it may have been on the vaccination documentation, however he could not remember. Again, later in his evidence he conceded that he was told by Dr Beattie that "he might possibly be a "Pit Bull", on the first occasion Dr Beattie attended at his home to update the vaccination of the dog and that he might then have been aware of Pit Bulls being involved in dog attacks³¹.

²⁹ T71 - 73 evidence of 27 August 2012

³⁰ T90.17 evidence of 28 August 2012

³¹ T104 -105 evidence of 28 August 2012

67. I am satisfied that he did know and understand the dog was a restricted breed and understood that it was so designated because there were concerns as to the safety of the dog and the propensity of the breed to attack.
68. Mr Nick Josevski was told by the Veterinarian, Dr Beattie, it was identified on the vaccination certification with which he was supplied by his cousin who bred the dog, and it is contained on the records for the dog held by Dr Beattie. Mr Nick Josevski advised the court that he had possession of the vaccination and treatment documentation supplied by Dr Beattie, however it had been misplaced.
69. Dr Beattie's evidence was that he was generally guided by the owner in identifying the breed of the dog being presented for treatment, however he would also exercise his professional skills to identify the dog type. In this case an American Pit Bull Terrier. Dr Beattie also gave evidence that it was his usual practice to advise owners of restricted breed dogs that they were required to be micro-chipped, neutered and contained in a prescribed manner and that he directed the owners to the local council for further information about the requirements. His evidence was that this advice would have been given by him to Mr Nick Josevski.
70. There was extensive evidence from the Council Officers, Mr Christie and Mr Petraro and Ms Helman of the Department Of Primary Industry as to the information provided to the community relating to the identification and restrictions upon American Pit Bull Terriers and Restricted Breed Dogs. The evidence is of a multiplicity of publications and publicity as to these dogs, how to identify them and their regulatory requirements, both before and after the death of Ayen³².
71. The evidence establishes that Mr Nick Josevski was one of the owners of the dog, he obtained it for the household, and it was he who arranged the veterinary attendances, collared the dog, and arranged for the dogs provisions. His evidence was also that he had seen articles in newspapers and on television and spoken to friends about Pit Bull Terriers prior to the death of Ayen.

³² Exhibits 17 and 22 – Publications by Department of Primary Industry (Victoria) distributed by both the Department and by the City of Brimbank

72. Mr Nick Josevski was an entirely unsatisfactory and untruthful witness who admitted to the court that he had intentionally misled the court as to a number of matters. He gave untruthful evidence and withheld information in the face of questions being asked of him as to important matters relating to the origin of the dog which killed Ayen and how it was that the dog had come into his possession³³. I am also satisfied that he continued to give untruthful evidence when he maintained that he did not know that the dog was a Pit Bull Terrier and that he thought it was a mastiff.
73. The evidence entitles a conclusion that only by wilful blindness would Mr Nick Josevski not have been aware that: (a) the dog was an American Pit Bull Terrier; (b) it was a restricted breed dog; and (c) that there were restrictions in relation to the owning and housing of a restricted breed dog.
74. I do not accept the evidence of Mr Nick Josevski. I do not accept his explanation that he did not know the dog was a Pit Bull Terrier, or that it was a restricted breed or that he was required to have the dog registered, de-sexed and micro-chipped.

THE EVIDENCE OF THE DOG BREEDER - MR ZLATE LAZAROVSKI

75. Mr Zlate Lazarovski's evidence was that the dog was identified by the vet as an American Pit Bull Terrier, but that he believed the sire of the dog was a mastiff. He stated that he knew the vet had described the dogs as American Pit Bull Terriers and that he 'just went along with that'. His evidence was that he was also told by 'others' that the dog was a Pit Bull³⁴.
76. Despite the veterinary records in both 2005 and 2007, identifying an attendance upon him as the "Breeder" of the litter of American Pit Bull Terriers, he stated that he did not breed the dogs to sell. His evidence was that litters of seven and eight dogs respectively were an 'accident' and that he did not know that he was required by law to have his dogs, the breeding pair, neutered.
77. He stated that he had each dog in the litter vaccinated by Mr Beattie at a cost of \$50.00 each, but that he gave the dogs away at no charge, to people who responded to a notice he posted on

³³ T97 - 98

³⁴ T308 -315

the wall of the local milk bar. His evidence was also that he did not recover the cost of the vaccination from the new owner.

78. His evidence was that he did not know anything about Pit Bull regulation and that he did not know that these dogs were American Pit Bulls and that in any event he was not concerned and it was not a problem for him. He did however state that he had at some time 'had a look on the internet' to see about the dogs.
79. He was unable to remember what information he had obtained or when it was he had looked. Suffice to say at some time around the time of the birth of the litter, which contained the dog known as Rex, he was provided with the vaccination documentation on which a professional vet had identified each of the dogs of the litter as American Pit Bull Terriers and not cross breeds. I am satisfied that he was alive to the issue of restrictions upon owning American Pit Bull Terriers.
80. I do not accept the evidence of Mr Lazarovski. I do not accept his explanation that he did not know the dog(s) were American Pit Bull Terriers, nor that this was a restricted breed, nor that he was required to have the dogs he retained de-sexed and micro-chipped.
81. The witnesses, Mr Nick Josevski and Mr Zlate Lazarovski, have been at pains to describe or to attempt to describe the dogs they own (or owned) as anything but American Pit Bull Terriers. They persisted in this approach throughout their evidence and even in the face of professional opinions of veterinarians as to the identification of the dog(s) as American Pit Bull Terriers.

EVIDENCE OF IRRESPONSIBLE DOG OWNERS AND UNDERGROUND BREEDING OF THESE DOGS

82. The evidence in this case establishes that there are owners of restricted breed dogs in the community who do not comply with the legal requirements to neuter, micro-chip, register and securely contain the dog. This is despite the extensive publicity and education campaigns and enforcement attempts made by Local Government bodies and the Department Of Primary Industry over many years.

83. The evidence supports a conclusion that there are a group of these owners who consider themselves either beyond the reach of the law or above the law. The veterinary records exhibited speak for themselves in terms of the number of restricted breed dogs treated by that vet alone, which are not micro-chipped or neutered and which continued to be bred after the coming into effect of laws prohibiting importation and requiring the neutering of all of these dogs.
84. The evidence of the breeder of the restricted breed dog, Mr Lazarovski, and the owners, Mr Nick Josevski and Mr Lazor Josevski revealed an absolute disregard for the law and for the regulatory process governing this breed of dog. In the case of Mr Lazarovski and Mr Nick Josevski there was a complete lack of any insight into any public interest issues including safety issues which may arise from the breeding or keeping of these dogs.

BREED SPECIFIC REGULATION AND ITS RELEVANCE TO THIS INQUEST

85. I am aware that there is a debate in some sectors of the community, including by way of the veterinary representative body, the AVA, as to the appropriateness of what is described as Breed Specific Regulation. The AVA has not sought to be an interested party in the proceedings however has provided some publications for the information of the coroner and parties. The issues that the AVA raises in its publications relate to dogs in general being a danger if they are temperamentally so inclined, bred poorly, raised poorly or trained poorly and that breed specific regulation is, according to them, not an effective means of regulating to protect the community.
86. It is clear from the materials that the Parliaments of both the Commonwealth and State have since 2001, determined upon regulatory framework and that a great deal of investigation, consultation and consideration has been undertaken by authorities in considering the regulatory regime.

87. It is not necessary, in establishing the circumstances and the contributing factors in the death of Ayen Chol, to inquire into the general effectiveness or otherwise of breed specific regulation and I do not intend to. In this case it is clear that a failure by the owners to comply with the legislated regulation was in a direct sense a contributing factor in the death of the child Ayen.

88. In this case the evidence is clear, that a dog, which was a restricted breed, killed Ayen. It was an American Pit Bull Terrier and the law in relation to keeping such a breed had not been complied with. It was the failure to comply with the regulatory regime, and not the regulatory regime itself, which in a direct sense caused and contributed to the death of the child.

FACTORS CAUSING AND CONTRIBUTING TO DEATH

89. I find that Ayen Chol died on 17 August 2011 and that the cause of her death was Head and Neck Injuries sustained from a dog attack and that her death was preventable.

90. I find that the owners of the dog Mr Lazor Josevski and Mr Nick Josevski contributed to the death by their failure to comply with the law as it relates to restricted breed dogs.

91. I find that the owners of the dog Mr Lazor Josevski and Mr Nick Josevski contributed to the death by knowingly owning and concealing a restricted breed dog from relevant authorities.

92. I find that the owners of the dog Mr Lazor Josevski and Mr Nick Josevski contributed to the death by failing to provide containment of the dog in accordance with the legislation and regulations as they relate to restricted breed dog.

93. I find that the failure of the owners of the dog to secure the dog in a manner which would prevent escape from the yard in the event of the garage door failing was a contributing factor to the death.

94. I find that the actions of Mr Zlate Lazarovski in knowingly breeding and supplying the restricted breed dog to Mr Nick Josevski, in the knowledge that it was a restricted breed dog and that the breeding of the dog was unauthorised, contributed to the death.

95. I find that had Mr Zlate Lazarovski complied with the law in relation to the requirements to neuter the breeding pair, the dog would not have been produced, the dog attack would not have occurred and the death of Ayen Chol would have been prevented.

COMMENTS

Pursuant to section 67(3) of the *Coroners Act* 2008, I make the following comment(s) connected with the death:

1. As earlier stated, extensive and adequate containment requirements relating to restricted breed dogs had been enacted by parliament prior to 17 August 2011. Such requirements had they been complied with, would have been adequate to prevent the dog's escape and would have prevented the death. Additional legislative regime has now been adopted, including the publication of Identification standards which have also been gazetted and which provide extensive guidance for the identification of American Pit Bull Terrier dogs. I therefore make no further comment on that matter.
2. The evidence is that the City of Brimbank has allocated extensive resources and has actively and in a considered manner pursued the regulation and management of animals, including restricted breed dogs in its community. That they were unaware of the existence of the dog is not due to any lack of vigilance on the part of council or its officers, but rather as a result of the deliberate concealing of the animal.
3. Department Of Primary Industry publications note the importance of socialisation of dogs and teaching humans how to relate to animals and of training of dogs. No doubt these are important steps in protecting the community. However, ultimately the responsibility is on the owner of the animal to comply with the law and to control and contain their animals.
4. If the community cannot be confident that there is no risk from a breed, including a cross breed of dog, or that the risk can be contained, then the dog should not be able to exist in the community. That is the decision which has been made by the regulators in relation to restricted breed dogs of which this dog, an American Pit Bull Terrier was one.

5. The evidence in this case, which illustrates an unprovoked and sustained attack upon a four year old child in her own home, supports that approach to the regulation of those dogs and their cross breeds. The issue here was the failure in compliance.
6. Prior to the recent regulatory changes in August 2011, there remained a capacity for people to manipulate the regulatory regime by incorrectly describing or reporting the breed. By describing an American Pit Bull Terrier as a Mastiff or as an American Staffordshire or as a cross breed, they sought to avoid the application of the classification 'restricted breed' to their American Pit Bull Terrier dog.
7. This has now been partly addressed by the regulatory changes implemented by the State Government which clarifies, insofar as there may have been any past uncertainty, that Pit Bull cross breed dogs fall within the regulatory definition of American Pit Bull Terrier. These changes were consequent upon the death of Ayen and can only be regarded as a good measure and one more step in the process of protecting the community.
8. However, there are additional measures which in my view are necessary in order to strengthen the capacity of Local Government authorities to respond to what has been evidenced in this case as the continuance of illicit or underground breeding, trade and ownership of restricted breed dogs.
9. There is no obligation upon a veterinary professional to mandatorily report to authorities if they are called upon to treat or to attend any dog which is a restricted breed dog or may be a restricted breed dog which is not registered, neutered and micro-chipped.
10. The AVA, in correspondence dated 24 ^{Sept}~~August~~, 2012 (filed after the conclusion of the inquest and therefore not available to the interested parties prior to this finding) amongst other submissions relating to the appropriateness of breed specific regulation, submitted that mandatory reporting would compromise veterinary surgeons and that veterinarians were not necessarily qualified to identify accurately the breed of a dog. No doubt the professional veterinarian will be assisted by the recently gazetted identification guidelines.

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8. However, there are additional measures which in my view are necessary in order to strengthen the capacity of Local Government authorities to respond to what has been evidenced in this case as the continuance of illicit or underground breeding, trade and ownership of restricted breed dogs.
9. There is no obligation upon a veterinary professional to mandatorily report to authorities if they are called upon to treat or to attend any dog which is a restricted breed dog or may be a restricted breed dog which is not registered, neutered and micro-chipped.
10. The AVA, in correspondence dated 21 September, 2012 (filed after the conclusion of the inquest and therefore not available to the interested parties prior to this finding) amongst other submissions relating to the appropriateness of breed specific regulation, submitted that mandatory reporting would compromise veterinary surgeons and that veterinarians were not necessarily qualified to identify accurately the breed of a dog. No doubt the professional veterinarian will be assisted by the recently gazetted identification guidelines.

11. Mandatory reporting is a regulatory tool frequently required of many professionals, doctors, nurses, teachers, where public health or safety is at risk. There does not appear to be any good reason why a veterinary professional ought not meet the same standards in relation to a dog which he or she believes may be an American Pit Bull Terrier.
12. The evidence of the veterinarian was that he was not in a position to comment upon whether he felt he had a moral obligation to report, and so it is not open to conclude that such reporting would be likely by professionals, absent a legal obligation to do so. The evidence also revealed some concern that to require a vet to report may result in a dog not being taken for treatment. On balance, the public interest in reporting outweighs this matter.
13. The absence of any obligation upon the veterinarian to take effective steps to notify authorities of the existence of the restricted breed dog which was not micro-chipped, not de-sexed and not contained in accordance with the relevant legislation and regulation was significant in this case. Mandatory reporting may have resulted in this dog being brought to the attention of authorities earlier and assist Local Government authorities in carrying out their dog regulation responsibilities.
14. The evidence in this proceeding is that there continue to be people who are breeding American Pit Bull Terriers. There are no specific regulations or in particular criminal penalties directed at the breeding of, or specifically at the persons who breed restricted breed dogs. Whilst there are regulatory provisions in relation to the 'owning' of the dog, it would seem to me that if the Parliament's intention is ultimately to remove this breed of dog from the community, then the most appropriate place to start and to regulate is the breeding of the dogs.
15. The Parliament ought to consider the introduction of criminal penalties for the breeding of Restricted Breed Dogs.
16. There appears to be ongoing argument in some quarters as to the accurate identification of a dog as a restricted dog breed, notwithstanding the extensive standards which have been gazetted. This argument continues despite the gazettal and despite the multiple publications by DPI and by Councils.

17. Currently Local Government authorities are charged with the financial and administrative burden of proving that a dog, believed by their animal management officers to be a restricted breed dog, is a restricted breed dog. This may reduce the capacity of the responsible local authorities to intervene and act quickly. This obligation ought to be shifted to the owner or custodian of the dog. Where there is any doubt, the onus should be on the owner of the dog to establish that the dog is not a restricted breed dog and not upon the local government regulatory authorities.

RECOMMENDATIONS

Pursuant to section 72(2) of the *Coroners Act 2008*, I make the following recommendation(s) connected with the death:

1. That the Victorian Parliament legislate to expressly prohibit the breeding of restricted breed dogs and that a criminal sanction attach to any such breeding activity.
2. That the *Domestic Animals Act 1994 (Vic)* be amended to require Veterinary Surgeons to mandatorily report to regulatory authorities if they are called upon to treat or to attend any dog which is a restricted breed dog or may be a restricted breed dog, which is not registered, neutered and micro-chipped.
3. That the onus of establishing that a dog, suspected by regulatory authorities to be a restricted breed dog, is not a restricted breed dog, be placed on the owner of the dog and that the *Domestic Animals Act 1994 (Vic)* be amended to this effect.

Pursuant to section 73(1) of the *Coroners Act 2008*, I order that the following not be published on the internet:

Any material which has been prohibited for publication by suppression orders made by the court on 3 September 2012 and 29 September 2012.

I direct that a copy of this finding be provided to the following:

The parents and family of Ayen Chol;

The interested parties;

The investigating member;

The Minister for Primary Industries, the Honourable Peter Walsh MP;

The Secretary, Department Of Primary Industries;

The Minister for Local Government, the Honourable Jeanette Powell MP;

The Secretary, Department of Local Government.

Signature:



K. M. W. PARKINSON

CORONER

Date: 28 September 2012

