

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL
ADMINISTRATIVE DIVISION
REVIEW & REGULATION LIST**

VCAT REFERENCE: Z310/2013


CATCHWORDS

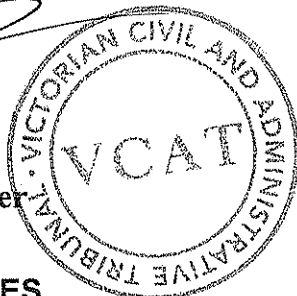
Review and Regulation List; *Domestic Animals Act 1994*; application to review determination of municipal council that subject dog is a member of a restricted breed; *Domestic Animals Act 1994*, Sections 3(3) and (4), 98A, 98 (2AA).

APPLICANT: Michael Ackerley
RESPONDENT: Greater Geelong City Council
WHERE HELD Melbourne
BEFORE: Senior Member I. Proctor
HEARING TYPE: Hearing
DATES OF HEARING: 17 & 18 December 2013
DATE OF ORDER 21 January 2014
DATE OF REASONS 21 January 2014
CITATION

ORDER

1. The date by which the application in this proceeding is made is extended to the date on which it was made.
2. The decision of the respondent is set aside.


Ian Proctor
Senior Member



APPEARANCES

For Applicant Mr R. Kendall QC with Ms C. Boston of Counsel
For Respondent Mr M. Sherwell, Solicitor

REASONS

Introduction

1. On 31 July 2013, Mr Brett Harris of Greater Geelong City Council (the Council) declared Zeus to be a restricted breed dog under section 98A of the *Domestic Animals Act* 1994 (the DA Act). The declaration was made after comparing the dog's appearance to the criteria set out in the "Standard for Restricted Breed Dogs in Victoria" (the Standard). Council served copy of the declaration on Mr Ackerley¹, the applicant in this proceeding.
2. On 18 September 2013, VCAT received an application from Mr Ackerley, under section 98(2AA) of the DA Act, applying for review of Council's decision.
3. VCAT must decide whether the dog is a restricted breed dog, as defined under the DA Act and so whether Council's declaration should be affirmed or set aside.

The VCAT hearing

4. On 17 and 18 December 2013, I heard the application. There was no opposition to VCAT making orders that Mr Ackerley's application be accepted out of time.
5. Mr Ackerley called veterinarian Dr John Ayerbe and dog judge Mr Colin Muir as expert witnesses. Council called Mr Brett Harris and Mr Bruno Preiato, both senior animal management officers.
6. I heard evidence and submissions, reserved my decision and have set aside Council's decision.

Legislative background

7. The DA Act's purposes are set out in section 3. It relevantly says,

The purpose of this Act is to promote animal welfare, the responsible ownership of dogs and cats and the protection of the environment by providing for—

 - (a) a scheme to protect the community and the environment from feral and nuisance dogs and cats; and ...
 - (c) the identification and control of dangerous dogs, menacing dogs and restricted breed dogs; and ...
8. In 2011, section 98A was inserted into the DA Act to provide for an *authorised officer* to declare a dog as a restricted breed dog². It says

If an authorised officer is of the opinion that a dog is a restricted breed dog, the authorised officer may make a declaration to the effect that the dog is a restricted breed dog

¹ As required under section 98B(1) of the Act.

² By *Animals Legislation (Responsible Ownership) Act* 2001

9. An *authorised officer* was and is an *authorised officer* appointed under section 72 of the DA Act.
10. The DA Act was further amended to repeal the panel process previously available to review restricted breed declarations and provide instead for review by VCAT. It also amended the prohibition on keeping a restricted breed dog at section 41EA of the DA Act, allowing for a two-year amnesty period within which to register restricted breed dogs. Concerning VCAT, the DA Act says,

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- (2AA) The owner of a dog may apply to the Victorian Civil and Administrative Tribunal for review of a decision by an authorised officer under section 98A to declare the dog a restricted breed dog.
- (2A) An application for review under subsection (1), (2) or (2AA) must be made within 28 days after the later of—
 - (a) the day on which the decision is made;
- (2B) For the purposes of subsection (2A), a decision referred to in subsection (2AA) is taken to be made when the notice of the declaration is served on the owner of the dog.

11. A restricted breed dog is now defined in section 3(1) of the DA Act as:

Restricted breed dog means a dog that is any one of the following breeds-

Japanese Tosa;

Fila Brasileiro;

Dogo Argentino;

Perro de Presa Canario (or Presa Canario);

American Pit Bull Terrier (or Pit Bull Terrier).

12. Sections 3(3) and 3(4) of the DA Act provide for a Gazettal of an approved Standard describing a restricted breed dog:

- (3) a dog that falls within an approved Standard for a breed of dog specified in a paragraph of the definition of restricted breed dog is taken to be a dog of that breed.
- (4) for the purposes of subsection (3) an approved Standard is a Standard that has been approved by the Minister and published in the Government Gazette.

13. Part 1 of the Standard relevantly provides:

1. A dog that meets the description of a dog in this Part is an American Pit Bull Terrier; except a dog in respect of which the owner has one of the following certificates stating that the dog is an American Staffordshire Terrier-
 - (a) a pedigree certificate from the Australian National Kennel Council
 - (b) a pedigree certificate from a member body of the Australian National Kennel Council
 - (c) a pedigree certificate from a national breed council registered with the Australian National Kennel Council

(d) a certificate signed by veterinary practitioner

14. Under section 51(2) of the *Victorian Civil and Administrative Tribunal Act* 1998, in determining this application for review, VCAT may affirm or vary the decision under review, make another decision in substitution for it or set aside the decision under review and remit the matter for re-consideration by the decision-maker.
15. VCAT must determine whether the decision under review was the correct one by making an independent assessment and an independent determination of the question (*Bausch v Transport Accident Commission* 11 VAR 117 at 137). The Act and the Standard should be interpreted in accord with Parliament's intention.
16. In *Dudas*, Kaye J. formulated the test, which VCAT must follow. It was submitted to him there were two "pathways" to conclude a dog is restricted breed dog. The 'first pathway' was submitted to be by concluding based on expert evidence alone that a dog is an American Pit Bull terrier. The second was submitted to be by concluding the dog falls within the Standard (see para 50). Kaye J. observed, from the VCAT transcript, that the VCAT hearing proceeded solely based on the 'second pathway' (para 51). His Honour did not again address the 'first pathway' issue.
17. Kaye J expressed his view of the correct test from paragraph 99

... the requirement that a dog "meet the description" of the American Pit Bull Terrier must contemplate, in my view, *a substantial, or high, level of correspondence between the characteristics of the particular dog in question, and the description of those characteristics in the Standard.* ... When pressed, counsel for both defendants accepted that, in order that a particular dog meet the description contained in the Standard, there must be substantial correspondence between the characteristics of the dog and the criteria contained in the Standard. That concession is clearly correct.

Obviously, in an individual case, the question whether there is the requisite high or substantial level of correspondence between the dog, and the Standard, will ultimately be one of appropriate judgment in the particular case. That judgment may depend on the expert opinion (if any) available to the authorised officer or, on review, to the Tribunal, as to whether any particular characteristics or criteria, specified in the Standard, are of particular importance in determining whether there is a *high or substantial level of correspondence between the characteristics in the Standard and the particular dog in question*, so that it can be properly concluded that the dog "meets the description" of the dog in the Standard. However, in the end, as a matter of proper construction, the relevant characteristics of the dog in question must be assessed, in quantitative and qualitative terms, to have a *substantial or high level of correspondence with the criteria* specified in the Standard, in order that it "meet the description" of a dog in that part of the Standard. (My emphasis)

18. I understand his honour to be using the words “high” and “substantial” as synonyms (words with the same meaning). To do otherwise, would produce absurd results. As a test, there can only be one level of compliance. If “substantial” was taken to require a lower level of compliance than “high” then his honour need have only employed the word "substantial".
19. His honour went on (at para 111) to set out the task of the decision maker in forming an opinion, under section 98A³. I understand the steps of the task as he described them to be:
 - (a) Assess each aspect of the anatomy specified in the Standard (eg. the neck) and of each of the individual parts of the description of that aspect of the dog’s anatomy (for the neck the parts are moderate length, great strength, tapering from the head into the shoulders, slight arch over the crest and free from loose skin or dewlap); and
 - (b) Note the aspects of a particular part of the anatomy that comply with the Standard, and those which do not; and
 - (c) Take the above analysis into account when making an overall assessment as to whether there is, in totality, a high or substantial degree of correspondence between the dog in question and the restricted breed dog described in the Standard
20. In *Linehan v Hume CC* (General) [2012] VCAT 1975, I observed while describing the question as “moot” in the matters before him, Kaye J seemed to agree that the “*Briginshaw*” approach is the applicable standard of proof which should be adopted by the VCAT (para 42). I said that in doing so, the “*Briginshaw*” approach⁴ should be used.
21. I note that in *Kalamaras v Cardinia SC* (General) [2013] VCAT 1017, Macnamara J sitting as a VCAT Vice president said that given that this proceeding includes no allegation of criminal conduct, it is not immediately evident why the *Briginshaw* standard of proof should be engaged. He assumed that the rationale for its application is that the animals, the subject of this proceeding, are liable to destruction depending on the outcome. Macnamara J regarded the issue as moot because the findings he made could be reached applying either the simple balance of probabilities test, the usual test for civil proceedings or the *Briginshaw* standard.
22. In the same fashion, the issue is moot in this proceeding.

The Standard and the evidence

23. While the issue of whether evidence given by authorised officers is admissible at VCAT in these proceedings has been raised in similar proceedings before, this proceeding saw a far more concerted set of submissions made and responded to.

³ With which Croucher J agreed in *Applebee v Monash City Council* (No 2) [2013] VSC 680 at 25

⁴ *Briginshaw v Briginshaw* (1938) 60 CLR 336

24. In summary, Mr Kendall on behalf of Mr Ackerley submitted with reference to the law of evidence and judicial authority that the opinions of authorised officers are not admissible as those officers are not experts under the law of evidence. Mr Sherwell for the Council responded in part, with reference to judicial authority, that authorised officers in giving evidence in these proceedings are giving evidence of observed facts and not evidence in the nature of expert opinion.
25. I need not decide the issue because in my view the outcome is the same whether I except the authorised officers opinions, which in my view are outweighed by Dr Ayerbe's and Mr Muir's opinions, or not. Therefore, without deciding the issue, I have regarded the authorised officers' opinions as admissible.
26. This proceeding differs from some previous proceedings concerning the identification of restricted breed dogs in that neither party challenged the honesty of witnesses for the other party. Also, witnesses for Mr Ackerley were not challenged on the basis that given they oppose the Government's policy concerning the banning of restricted breed dogs, their evidence is infected by those beliefs and so cannot be relied on.

Decision

27. I have set aside the declaration that the dog known as Zeus is a dog of a restricted breed under the DA Act.

Declaration with reference to the Standard

28. At the Appendix to these reasons, I summarise each witness's evidence and my findings.

Aspect of Anatomy from Standard	Finding
Slightly longer in length than high	Complies
Withers to elbow to ground	Complies
Head	Does not comply
Lips	Does not comply
Teeth	Complies
Nose	Complies
Eyes	Does not comply
Ears	Complies
Neck	Does not comply
Forequarters	Does not comply
Body	Does not comply
Forechest	Complies

Back	Complies
Loin	Complies
Hindquarters	Does not comply
Feet	Does not comply
Tail	Complies
Coat	Complies
Colours	Complies
Height at withers	Complies
Weight: 14 kgs – 36 kgs	Complies

29. Given that analysis, having made an overall assessment, in my view there is not in totality a substantial or high level of correspondence between the characteristics of Zeus and the description of those characteristics in the Standard.
30. In *Ozzimo v Hume CC* (General) [2012] VCAT 549 in which Mr Muir gave evidence, Dr French said
- I accept Mr Muir’s characterisation of the most important features that a dog must have in order to comply with the Standard, namely, its hindquarters, its forequarters, its general musculature, the length of its loin, its head shape and construct, and the fall away in its cheeks. He also said it was necessary to look at the whole dog. This characterisation is consistent with the overall description of an American Pit Bull Terrier on p 3 of the Standard under ‘*General Appearance and Characteristics*’.
31. Here, I have found the head, forequarters, hindquarters as well as other features, do not comply.
32. As I have said in previous decisions, in the normal course, where there is dispute in opinion between an experienced veterinarian and an authorised officer of the Council, VCAT is likely to give greater weight to the veterinarian’s evidence. The same has tended to apply to experienced dog judges.
33. I have no doubt Mr Harris and Mr Preiato are experienced capable senior animal management officers who serve the Geelong community well. Mr Harris has 13 ½ years of work experience. Mr Preiato has 6 years work experience and has owned greyhounds for about 20 years. However, it is clear that they have little experience with respect to the identification of restricted breed dogs with reference to the Standard. They do not say they have expertise relevant to the Standard. Only Mr Harris has had the opportunity to attend a course run by the relevant Victorian government department in 2012, intended to equip animal management officers to identify restricted breed dogs. Mr Harris and Mr Preiato have both attended a nation conference for animal

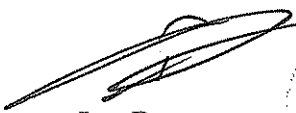
management officers, which in part concerned restricted breed dogs. Both have undertaken such identifications about six times, as has Mr Preiato.

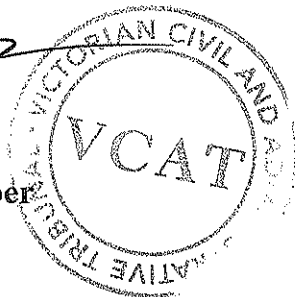
34. In giving evidence at hearing, both officers expanded on the ‘tick a box’ approach as shown in their Restricted Breed Dog Identification and Declaration Process form. They had taken a careful approach to the task. However, in cross-examination, Mr Harris and Mr Preiato showed their, understandable, lack of detailed knowledge about the significance and at times meaning of the description in the Standard of parts of a dog with respect to particular aspects of its anatomy. While not a major issue, Mr Preiato did not know the meaning of the anatomical term “occiput”, which appears in the Standard with reference to the skull. While they also showed that the best of their ability they had conscientiously conducted the identification, their views were not based on the type of detailed knowledge Dr Ayerbe and Mr Muir displayed as they gave their opinions.
35. At hearing, Mr Preiato acknowledged he is the less experienced of the two and when in doubt on a particular issue concerning the standard tended to accept Mr Harris's opinion.
36. Mr Harris and Mr Preiato worked together to complete the Restricted Breed Dog Identification and Declaration Process form, dated 25 July 2013 which was filed as Council’s witness statement in this proceeding. On that day, they took photographs and video both of which were presented in evidence and to which they referred in giving oral evidence at hearing.
37. Mr Preiato return to see the dog shortly before the hearing, took more photographs, which were also presented for the hearing. Shortly before the hearing, Mr Preiato obtained a copy of the above form, considered to refresh his memory and made notes on it to that end.
38. Dr Ayerbe inspected the dog five times. He prepared a draft report in August 2012 related to a Supreme Court proceeding, returned four times and prepared his report in this proceeding. He said he returned four times to check his dog against his evolving understanding of the Standard as he gave evidence in various proceedings. For example, he says at one point he did not understand the Standard’s requirement with respect to a dog lips. After discussion with dog judges, he came to an understanding reflected in reporting this proceeding.
Cross examination
39. Mr Muir inspected the dog in November 2013, taking 30 to 40 minutes. Despite it being put to him that he looked at but did not handle the dog, he maintained he handled it to a sufficient extent. As an aside, no witness encountered difficulty in handing Zeus.
40. While I summarise my approach to the issues relevant to this proceeding in the attached appendix, I will comment separately on the issue of whether Zeus is slightly longer in length and height, given the starkly different evidence on this point.

41. The Standard says the overall outline of the breed indicates it to be slightly longer in length (point of shoulder to buttocks) than height (withers to ground). Interpreted in percentage terms, this could be taken as saying the dog's length should be between 101% and say 105% (or perhaps 110%) of the dogs' height.
42. Here the evidence and calculations are as follows.

	Harris & Preiato	Ayerbe	Muir
Length (cm)	53	43	59
Height (cm)	52	53	56
Length as % of height	102%	81%	105%

43. Each of the witnesses used steel measuring tape to take measurements. The witnesses were questioned about each of their measurement methods relating to the requirements of the Standard and, allowing for the imprecision of the Standard, appeared to take a reasonable approach. For example, Mr Harris and Mr Preiato worked together double checking their measurements. All witnesses stood by their measurements, agreeing that accurate measurement is difficult.
44. I have found the dog complies in this respect given that both the authorised officers (giving 102%) and Mr Muir (giving 105%) take measurements which accord with the Standard's requirement. My view is more likely than not that the accurate measurement is somewhere close to the majority measurements taken, rather than the remarkably different measurement taken by Dr Ayerbe.


 Ian Proctor
 Senior Member



Appendix – Comparison of evidence about the dog and the Standard

Item from Standard	Dr Ayerbe	Mr Muir	Mr Harris & Mr Preiato	VCAT Finding
General Appearance and Characteristics				
The American Pit Bull Terrier is a medium sized dog and is strongly built with well defined muscles. The breed is noted for its climbing ability and subsequent strength in its hindquarters.	No direct comment.	Does not comply – dog is light, fairly tall and rangy. Does not have required strength nor climbing ability. Gives the appearance of being square, but measurement suggest is longer in body than height.	Complies	Not necessary to make finding given findings below.
The overall outline of the breed indicates it to be slightly longer in length (point of shoulder to buttocks) than height (withers to ground). Bitches may be slightly longer than males.	Does not comply - Length is 43 cms. Height is 53cms.	Complies - Length is 59cm. Height is 56 cm.	Complies - Length is 53cm. Height is 52cms	Complies – see body of decision.
Distance from withers to the elbow and the elbow to the ground is generally equal.	Does not comply - Withers to elbow is 25 cms. Elbow to ground is 28cms.	Complies – Withers to elbow is 28 cms. Elbow to ground is 29cms.	Complies - Withers to elbow is 26 cms. Elbow to ground is 28cms.	Complies – Taking the approach that if the two distances were equal, each would be 50% of the total distance from ground to withers, the greatest disparity in the evidence (Dr Ayerbe) is 25 cm and 28 cm, which gives witness to elbow 47% and elbow

Appendix – Comparison of evidence about the dog and the Standard

Item from Standard	Dr Ayerbe	Mr Muir	Mr Harris & Mr Pretiato	VCAT Finding
<p>Head</p> <p>The head is proportionate to the dog. Viewed from above, the general shape of the head is that of a blunt wedge, large and broad.</p>	<p>Does not comply - The head is large in comparison to the rest of the body. The width of the skull between the ears is 13cm. The length of the skull from occiput to posterior aspect of the nose is 20cm. The width at the posterior aspect of the nasal bone is 3.5 cm. By definition this shape is not “a blunt wedge” it is by definition “pointed”, or as Dr Ayerbe said in cross-examination triangular.</p>	<p>Does not comply - The head is reasonably proportionate to the dog (a little wide). Viewed from above, the general shape of the head is triangular resulting from a wide skull and long narrowing muzzle.</p>	<p>Complies – In cross-examination, Harris says it is a wedge when viewed from front. Pretiato spoke of viewing the head from above but not right directly overhead.</p>	<p>to ground 53%. This appears, in % terms, generally equal.</p>
<p>Viewed from the side, the skull and muzzle are on parallel planes separated by a moderately deep stop. Arches over the eyes are well defined but not pronounced (refer figure 3).</p>	<p>Does not comply - Viewed from the side the skull and the muzzle are on “converging” plains and are not on parallel plains. The stop is long in</p>	<p>Does Not Comply – Viewed from the side the skull and muzzle are not on parallel planes. The skull is clearly rounded, dropping into a relatively</p>	<p>Complies – In cross-examination, Harris says was not aware of parallel planes issue and would not disagree with view that skull and muzzle are not on parallel planes.</p>	<p>Does not comply - prefer evidence of Dr Ayerbe and Mr Muir, given their greater experience and expertise.</p>
<p>Viewed from the side, the skull and muzzle are on parallel planes separated by a moderately deep stop. Arches over the eyes are well defined but not pronounced (refer figure 3).</p>	<p>Does not comply - Viewed from the side the skull and the muzzle are on “converging” plains and are not on parallel plains. The stop is long in</p>	<p>Does Not Comply – Viewed from the side the skull and muzzle are not on parallel planes. The skull is clearly rounded, dropping into a relatively</p>	<p>Complies – In cross-examination, Harris says was not aware of parallel planes issue and would not disagree with view that skull and muzzle are not on parallel planes.</p>	<p>Does not comply - prefer evidence of Dr Ayerbe and Mr Muir, given their greater experience and expertise.</p>

Appendix – Comparison of evidence about the dog and the Standard

Item from Standard	Dr Ayerbe	Mr Muir	Mr Harris & Mr Preiato	VCAT Finding
<p>comparison to the length of the skull. At the time of examination, the arches over the eyes were well pronounced.</p> <p>Muzzle: Slightly shorter in length to the skull (i.e. 2:3 ratio for muzzle:skull). It is broad, deep and powerful with a slight taper to the nose and falls away slightly under the eyes.</p>	<p>Does not comply - The length of the skull is 15cm. The length of the muzzle is 8 cm and the length of the stop is 3 cm. The muzzle is approximately half the size of the skull not 2:3. It is not broad and deep.</p>	<p>Does not comply - The muzzle give the appearance of being long appearing almost 1:1. Mr Muir did not measure to calculate ratio. Partially Complies - The muzzle is reasonably broad and deep there is some slight fall away under the eyes.</p>	<p>Complies - Did not measure for muzzle:skull ratio.</p>	<p>Complies – Dr Ayerbe is the only witness to measure the muzzle, skull and stop. Standard is not appear to contemplate separately measuring the stop, therefore dividing the stop measurement in half and apportioning to each of the muzzle and scale gives the skull of 16.5 cm and a muzzle of 9.5 cm, which in percentage terms show a 63% 37% ratio (a 2:3 ratio being 60%/40%). Evidence on other aspects supports compliance.</p>
<p>Head profile: see diagrams in the Standard</p>			Complies	Does not comply – see parallel plane commentary above.
<p>Skull: Large, fairly flat, broad and</p>	Does not comply. -	Does Not Comply -	Complies	Complies - prefer evidence of Dr

Appendix – Comparison of evidence about the dog and the Standard

Item from Standard	Dr Ayerbe	Mr Muir	Mr Harris & Mr Preiato	VCAT Finding
<p>deep, slightly tapering towards the stop. There is a deep median furrow reducing in depth from stop to occiput. Cheek muscles are prominent but free of wrinkles. When the dog is alerted wrinkles will form on the forehead.</p>	<p>The skull is wide with a taper towards the stop. No median furrow could be determined at the time of examination. The cheek muscles did have wrinkles intermittently at the time of examination. Occasionally there were wrinkles on the forehead.</p>	<p>The Skull is large, but not flat, rounding toward the stop rather than a flat taper. There is a deep, but overly wide median furrow from the occiput to the stop. There is little apparent musculature to the cheeks and there is noticeable wrinkling and loose skin present over the cheeks.</p>		<p>Ayerbe and Mr Muir, given their greater experience and expertise.</p>
<p>Lips: Clean and tight</p>	<p>Complies - The lips are clean and tight.</p>	<p>Does not Comply - Lips are not clean and tight. The upper lip drops well past the length of tees and the bottom lip rolls back from the mouth. Inconsistent with need for a fighting breed.</p>	<p>Complies</p>	<p>Complies – accept majority opinion.</p>
<p>Teeth: Large and a complete scissor bite i.e. upper teeth closely</p>	<p>Complies</p>	<p>Complies</p>	<p>Complies</p>	<p>Complies</p>

Appendix – Comparison of evidence about the dog and the Standard

Item from Standard	Dr Ayerbe	Mr Muir	Mr Harris & Mr Pretiato	VCAT Finding
overlapping the lower teeth and set square to the jaws. Nose: Large with wide open nostrils and may be of any colour.	Complies	Partially complies - Nose is relatively small for this muzzle, with red nose leather. Nostrils are wide open.	Complies	Complies – accept majority opinion.
Eyes: Medium in size, round in shape and set low in the head – not prominent. Eyes can be all colours except blue. The eye rims are the same colour as the skin colour.	Does not comply - The eyes are “oval” shaped and not round. The rims (eye lids) are pink and are not the same colour as the skin (when fur is parted). (Photographs 3 and 8)	Does Not Comply - Eyes are set reasonable low and not prominent. Eye shape is almond. Complies - Eye rims are skin colour.	Complies - In cross-examination, Harris and Pretiato says eyes more almond when relaxed (round when excited).	Does not comply - prefer evidence of Dr Ayerbe (with caveat below) and Mr Muir, given their greater experience and expertise. Do not accept Dr Ayerbe’s approach that eye rims are to be the colour of the skin is viewed between parted coat. Standard appears to refer to visible skin, the approach taken by all other witnesses in all proceedings before me being skin on the nose and lips.
Ears: The shape and carriage of the ears will vary from dog to dog.	Complies	Partially Complies - Ears are set back and	Complies	Complies – accept majority opinion.

Appendix – Comparison of evidence about the dog and the Standard

Item from Standard	Dr Ayerbe	Mr Muir	Mr Harris & Mr Pretato	VCAT Finding
<p>Generally they are set fairly high on the skull, not large and may be half pricked or rose shaped (i.e. folding backwards and exposing the inner burr of the ear).</p> <p>Neck: Moderate length and with great strength, tapering from the head into the shoulders. A slight arch over the crest. The neck must be free from loose skin or dewlap (loose, pendulous skin under the throat).</p>	<p>Does not comply - The neck is long and has no taper. There is some loose skin under the throat. There is a slight arch over the crest.</p>	<p>low on the skull. Ears are general carried lad back and are rose.</p> <p>Does Not Comply - The neck is moderate to short. There is a slight arch to the crest but little to no taper. There is noticeable pendulous skin under the neck forming a slight dewlap</p>	<p>Complies</p>	<p>Does Not Comply - prefer evidence of Dr Ayerbe and Mr Muir, given their greater experience and expertise.</p>
<p>Jaw line well above the backline</p>	<p>Assume no comment = complies</p>	<p>Assume no comment = complies</p>	<p>Complies</p>	<p>Complies</p>
<p>Forequarters : Strong forelegs, well boned and muscular with elbows fitting close to the body. Viewed from the front the forelegs are set moderately well apart and in a straight line to the ground.</p>	<p>Does not comply - The forelegs are not “well boned” and the elbows do not fit close to the body. Viewed from the front legs not straight to the ground.</p>	<p>Does not comply - Forelegs are moderately well boned with some noticeable musculature. Elbows are held out from the body. Forelegs are set narrow and angle noticeably inwards. Front pasterns are short and noticeably</p>	<p>Complies but Harris in cross-examination agrees forelegs and elbows do not comply</p>	<p>Does Not Comply - prefer evidence of Dr Ayerbe and Mr Muir, given their greater experience and expertise.</p>

Appendix – Comparison of evidence about the dog and the Standard

Item from Standard	Dr Ayerbe	Mr Muir	Mr Harris & Mr Preiato	VCAT Finding
<p>The pasterns are short and fairly straight but with flexibility. Viewed from the side, the legs are straight with some flexibility in the pasterns.</p>	<p>Does not comply - The pasterns are long, “angled” and turn outward.</p>	<p>splayed. As a result the legs do not form the straight line to the ground. Does not comply - Front pasterns are short and have a prominent forward sit from the wrist, accordingly, when viewed from the side the legs are not straight and offer little flexibility.</p>	<p>Complies</p>	<p>Does not comply - prefer evidence of Dr Ayerbe and Mr Muir, given their greater experience and expertise.</p>
<p>Body: Powerfully built with a deep chest of moderate width.</p>	<p>Does not comply - The chest wide and not of “moderate” width.</p>	<p>Does not comply - Chest is relatively narrow.</p>	<p>Complies – Mr Preiato thought in July 2013 dog was still young and would mature. In his view this has happened.</p>	<p>Does Not Comply - prefer evidence of Dr Ayerbe and Mr Muir, given their greater experience and expertise.</p>
<p>Forechest: Should not extend far beyond the point of shoulder or below the elbow. Well ribbed back with moderate tuck up (concave underline of the body curving upwards from end of the ribs to waist).</p>	<p>Complies</p>	<p>Complies</p>	<p>Complies</p>	<p>Complies</p>
<p>Back: Broad, strong, firm and</p>	<p>Complies, but</p>	<p>Does Not Comply -</p>	<p>Complies</p>	<p>Complies – Accept majority</p>

Appendix – Comparison of evidence about the dog and the Standard

Item from Standard	Dr Ayerbe	Mr Muir	Mr Harris & Mr Preto	VCAT Finding
level and with a slight incline at the withers.	acknowledges in photographs presented to a hearing that the back does not appear level.	The back is light. The back is firm but not level, with an incline at the withers dropping into the back, then rising over the loin and rounding into the buttocks.		opinion.
Loin: Short and deep with a slight slope to the croup.	Complies	Partially complies - loin is short and reasonably deep, but quite rounded into the buttocks.	Complies	Complies – accept majority opinion.
Hindquarters: Strong and muscular hindquarters that are in balance with the forequarters. Thighs are well developed and muscular.	Does not comply - The hindquarters are moderately developed and not in balance with the forequarters as the latter are finer in comparison.	Does not comply - Hindquarter is quite light. While there is some visible musculature, the skeletal structure is light (lightly boned) and not well developed. The hindquarter is not in balance with the forequarter.	Complies	Does Not Comply - prefer evidence of Dr Ayerbe and Mr Muir, given their greater experience and expertise.
The hock joint should be well bent and the rear pasterns close to the	Does not comply - The hock joints are	Does not comply - The hock joint is	Complies, but in cross-examination, Preto agrees rear	Does Not Comply - prefer evidence of Dr Ayerbe and Mr

Appendix – Comparison of evidence about the dog and the Standard

Item from Standard	Dr Ayerbe	Mr Muir	Mr Harris & Mr Pretato	VCAT Finding
<p>ground, perpendicular and parallel to each other.</p>	<p>over flexed. The rear pasterns are elevated from the ground and are not parallel to each other but bend inward. They are neither close to the ground, perpendicular or parallel to each other.</p>	<p>reasonably well bent, but not to the extent the rear pasterns are erect. Pasterns (rear) are relatively long. The dog is cow hocked with both legs point outward from the hock. Therefore the pasterns are not perpendicular or parallel. Rear pasterns also sit forward, but not to the extent of the front.</p>	<p>legs are cow hocked.</p>	<p>Muir, given their greater experience and expertise.</p>
<p>Feet The feet are round and in balance with the size of the dog, well arched and tight. The pads are hard and well cushioned. Nails are strong. Dewclaws may be removed.</p>	<p>Does not comply - The feet are flat or “dropped” and not tight, and are small in comparison with the size of the dog. The pads are soft not hard.</p>	<p>Does Not Comply - The feet are flat not tight or well arched. Toes are splayed with the centre digits protruding significantly beyond the outer digits. Complies in that nails are strong and pads are hard and well cushioned.</p>	<p>Does not comply – Flat Feet.</p>	<p>Does not comply</p>

Appendix – Comparison of evidence about the dog and the Standard

Item from Standard	Dr Ayerbe	Mr Muir	Mr Harris & Mr Pretato	VCAT Finding
<p>Tail The tail is set in line with the back and tapers to a point. At rest the tail is carried low and when excited may be carried raised but never curled over the back. The length of the tail should reach approximately to the hock joint.</p>	Complies	Does not comply - Tail attaches low (resulting from high rounded croup) the tail is generally carried high. The length is above the hock joint. The tail most closely resembles the standards incorrect line drawing 1.	Complies	Complies – prefer majority opinion.
<p>Coat The coat is short, smooth, glossy and of a harsh texture, free of undercoat.</p>	Does not comply - Coat is short with a smooth texture and not a harsh texture.	Complies - The coat is short. Smooth and glossy without harsh texture.	Complies	Complies – prefer majority opinion.
<p>Colours All colours and combination of colours are acceptable, with the exception of blue merle and pure white. White feet and a splash of white on the chest are not uncommon on solid coloured dogs.</p>	Complies	Complies	Complies	Complies
<p>Height at withers: 43 cm – 53 cm</p>	53cms.	56 cm	52 cm	Complies – prefer majority opinion.

Appendix – Comparison of evidence about the dog and the Standard

Item from Standard	Dr Ayerbe	Mr Muir	Mr Harris & Mr Pretato	VCAT Finding
Weight: 14 kg – 36 kg.		28.7 kg	27 kg	Complies