

**STATEMENT**

*(Evidence Act 1977, section 92)*

**MAGISTRATES COURT OF QUEENSLAND**

**BEENLEIGH**

Logan City Council Local Law No. 4

Appeal against destruction order

BETWEEN

**DINO DA FRE**

**Complainant**

AND

**LOGAN CITY COUNCIL**

**Respondent**

**YVONNE SYDENHAM-CLARKE** of Kalina Park, Warrandyte Road, North Ringwood, in the State of Victoria, states:-

1. I make this statement, at the request of Dino Da Fre in relation to certain matters concerning the content, purpose and intended use of dog breed standards.

**Experience and knowledge**

2. I have been continuously involved in dog breeding for more than 50 years, and have been a member of the Australian National Kennel Council (“**ANKC**”) for all of that time.
3. I obtained my first accreditation as an ANKC judge in 1965, and became an ANKC accredited All Breeds Judge in 1984.
4. In order to obtain that accreditation, I undertook a total of 25 years of training and study under programs and procedures determined by the ANKC. For each breed group (Toys, Terriers, Hounds, Working Dogs, Utility Dogs and Non-sporting Dogs), the training and study comprises:-
  - (a) attendance at lectures and passing mini-examinations on each breed within the group;
  - (b) passing 2 in-depth examinations on the breeds in the group;

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Signed:

(Yvonne Sydenham-Clarke)

- (c) judging a minimum of 200 dogs under the general supervision of accredited judges, and being formally assessed twice by senior ANKC judges during this period;
  - (d) after assessing at least 200 dogs, then doing a final practical test under the assessment of 3 senior ANKC judges.
5. Upon successfully completing all of those steps, a person is recognised by the ANKC as a Championship Judge for the group, and accredited to award Championship Certificates at any dog show recognised by the ANKC, and at shows recognised by a comparable group in another country.
  6. In Victoria, a person may be a trainee in up to 2 groups at any one time. A person who completes this training in respect of all 7 groups may then be accredited by the ANKC as an All Breeds judge, and then becomes qualified not only to award Championship Certificates for individual breeds, but also “Best in Show” awards ANKC or overseas dog shows.
  7. I have thus been continually involved for 37 years in dog breed judging, in dog shows conducted in Australia under the recognition of the ANKC, and in dog shows conducted in the United Kingdom, Europe, Asia, Scandinavia and New Zealand under the recognition of equivalent bodies in those countries.
  8. I have personally bred many litters of Samoyeds under the auspices of ANKC regulations since 1952, including ANKC national champions in that breed, and champions in that breed recognised by equivalent organisations on five continents.
  9. Other aspects of my experience are set out in my curriculum vitae at Attachment A.
  10. I have, as a result of this involvement, spent most of my adult life working with and applying dog breed standards.
  11. I have also, as a result of study from recognised texts for the purposes of my breeding activities, obtained knowledge of the basic genetic principles applicable to the passing of physical characteristics from one generation of dogs to the next. “Genetics of the Dog” by Malcolm B Willis is one such text which is written for breeders and

which is generally accepted and applied as a standard reference work on the subject by dog breeders.

### **What are breed standards?**

12. The purpose of ANKC breed standards (and similar standards promulgated by other organisations) is to describe the ideal features of dogs for show judging purposes. Breed standards are applied by show judges to pedigreed dogs whose breed is established and undisputed as a basis for assessing the relative quality of the animal to determine which dogs should be awarded prizes or awards over others at dog shows.
13. Breeders will also use breed standards to assess the show judging prospects of pedigreed dogs which they have bred, and to attempt to identify potential breeding stock which is closest in appearance to the ideal as represented by the breed standard, as part of choosing which dogs to mate in the hope of producing offspring of the same or better show judging quality as the parents.
14. Breed standards are, by their nature, descriptive and subjective. A dog which wins at one show may have different results at another show based upon a different subjective interpretation of the extent of compliance of the dog with the breed standard by a different judge.
15. Even in this use of breed standards, which is their proper use, breed standards do not prescribe anything in objective or scientifically precise terms, and still require the user to exercise subjective judgement about the quality of pure bred animal as compared to another of the same breed.
16. Use of a breed standard as a basis for determining the breed of a dog, where that breed is not known as a matter of fact and is a question in dispute, is a completely nonsensical process. It is not a process recognised by any dog breeder or dog judge anywhere in the world so far as I am aware. The reasons for that are self evident -- it is meaningless and illogical to attempt to determine the breed of a dog by using a document which is prepared on the basis that it will only be used in connection with a pure bred dog whose breed is already known.

**Logan City Council (SEQROC) Identification Checklist**

17. Attached to this statement (Attachment B) is a document supplied to me by Dino Da Fre which I am advised by him was used by one of the Council's witnesses in this case to identify the subject dog "Rusty" as a Pit Bull Terrier or "Pit Bull Type". I am advised that the same document was used, for the same purpose, by each of the Council's other breed identification witnesses in this case.
18. I am advised that other evidence in this case is expected to show that this Identification Checklist has been developed by extracting or adapting wording from the United Kennel Club ("UKC") breed standard for the American Pit Bull Terrier. I make that assumption.
19. The UKC is a United States body with similar aims, objectives and operations to the ANKC. UKC breed standards are formulated and promulgated for the same purposes as ANKC breed standards. The ANKC does not have a breed standard for the American pit bull terrier.
20. On that assumption that the checklist was developed from a breed standard:-
  - (a) whoever has purported to develop an identification checklist to attempt to determine breed where that is in dispute, for any dog, but particularly for a crossbred dog, has done so on the basis of a total misconception about the nature and purpose of breed standards;
  - (b) if the process in which the checklist is used is one of identifying a correlation between the physical features described in a breed standard (or descriptions in the checklist which reflect a breed standard) and the physical features of a dog in question, as the basis of identifying that a dog of unknown breed is in fact a dog of the particular breed described in the breed standard, I can say that, based on my knowledge and experience, that this process is not one recognised by any professional dog breeder, dog judge or relevant breeding or judging organisation anywhere in the world.

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Signed:

(Yvonne Sydenham-Clarke)

**Identification based on physical features**

21. None of the checklist feature descriptions are unique identifiers of an APBT. All of the feature descriptions can be individually applied to a broad range of ANKC recognised breeds.
22. I have identified at least, 5 different pure breed dogs recognised by the ANKC which, if objectively assessed against the identification checklist, using the instructions in the checklist and applying my knowledge and experience of breed standards and dog breed features, would easily and uncontroversially be scored with sufficient "points" to "substantially meet the description of an American pit bull terrier type". Those breeds are:-
- (a) Boxer;
  - (b) Bulldog;
  - (c) English Mastiff
  - (d) Dogue de Bordeaux
  - (e) Italian Corso.
23. I can say by reference to my own knowledge of the general principles of the genetics of dog breeding gained over my years as a breeder and a judge that, in respect of each of the physical features referred to on the checklist:-
- (a) a dog exhibiting that feature may have inherited it from a parent, grandparent or more distant ancestor;
  - (b) without actual evidence of the parentage and bloodlines of the dog, it is impossible to say which particular ancestor may have contributed that feature, or whether any ancestor was of one particular breed or another which exhibited that feature.
24. It follows that a dog which exhibits a high number of features which are consistent with the checklist descriptions may have inherited those features as a "collection" from parents, grandparents or more distant ancestors, each of which exhibited some of those features.

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Signed:

(Yvonne Sydenham-Clarke)

25. What this means for the process used by the Council in the present case is that, even if the features on the identification checklist did constitute a set of features which uniquely described an American pit bull terrier if all found in a given dog (which they do not, as I have just explained), it is nevertheless quite possible for a dog to exhibit all or most of those features, inherited from a range of ancestors, none of which contained any element of American pit bull terrier.
26. The fact that breed standards are not identification documents and that the features on the checklist are not unique to the American pit bull terrier, even as a collection, simply reinforces that the whole process of purporting to rely upon the checklist is a basis for determining disputed breed is complete nonsense -- something with no scientific validity of which I am aware, and something which certainly has no professional or technical validity from the perspective of breeders who use and work with breed standards, for their proper purpose, every day.

#### **Restricted Breeds Review Panel**

27. I am a member of the Restricted Breeds Review Panel constituted under section 98E of the *Domestic (Feral And Nuisance) Animals Act 1994* of Victoria.
28. The panel is required by the legislation to be appointed by the relevant Minister and to consist of persons appointed “because of their knowledge of or experience in the identification of dog breeds”.
29. The statutory purpose of the panel is to hear review applications made by the owners of dogs which have been declared by a local government officers dogs of a restricted breed. The restricted breeds in the Victorian legislation include American pit bull terrier.
30. The Committee has had little work to do because Victorian local governments do not generally make declarations in respect of dogs which are crossbred or otherwise of unknown parentage. The Committee has met to consider review applications on only three occasions since I was appointed in 2002.

**31.** In my capacity as a member of that Committee, I will not uphold a declaration of a dog as an American pit bull terrier unless there is direct evidence of its actual parentage to confirm that breeding. If that evidence does exist, I will have reference to the UKC breed standard as a confirming tool to satisfy myself that there is no very significant departure from the standards which might raise an issue for further investigation as to whether the breeding information is incorrect. However, I would never in my Committee capacity purport to identify a dog as being an American pit bull terrier merely on the basis of a comparison with breed standard descriptions in circumstances where actual breed is unknown. For the reasons already given, that is a meaningless process which can say nothing of any scientific or technical validity about the actual breed of the dog.

All the facts stated above are true to my knowledge and belief, and the opinions stated are my own opinions, honestly held on the basis of my breeding experience and knowledge set out in this statement.

Dated: \_\_\_\_\_ July 2005

Signed:

**(Yvonne Sydenham-Clarke)**

<b>Name</b>	Yvonne Sydenham-Clarke
<b>Organisation</b>	Kalina Kennels
<b>Address</b>	Kalina Park Warrandyte Road North Ringwood Victoria 3134 Australia
<b>Communications</b>	03 9876 1136 AH 0409 849 605 Mobile 03 9876 2445 Facsimile <a href="mailto:sydenhamclarke@bigpond.com.au">sydenhamclarke@bigpond.com.au</a> Email
<b>Internet homepage</b>	<a href="http://www.kaynineonline.com/kalina">http://www.kaynineonline.com/kalina</a>
<b>Samoyeds</b>	Brought Samoyeds to Australia in 1952 and developed breed internationally including importation of 28 Exported and have champions on five continents Presently run kennel of 20 breeding stock
<b>Judging profile</b>	All breeds judge Australia Awarded challenge certificates regularly since 1965 Judged internationally UK, Europe, Asia, Scandinavia New Zealand, Australia for 37 years
<b>UK Championship show highlights</b>	Crufts Samoyed Association of Great Britain twice National Working Breeds Scottish Kennel Club Leeds Kennel Club Manchester Kennel Club Blackpool Kennel Club Three Counties Kennel Club Southern Counties Kennel Club Various group and best in show levels Italy, Spain, Scandinavia, Ireland
<b>UK Open Show highlights</b>	Darlington Kennel Club North West Canine Society Stithians Agricultural Society Liver Kennel Club Stockport Kennel Club Swords Kennel Club, NI
<b>Positions held</b>	Victorian Canine Association Judges Training Scheme current facilitator, lecturer and examiner for Championship Show licenses Samoyed Club Victoria Life member 30 years, Patron 20 years, former President 10 years, current Vice President 15 years Ladies' Kennel Association past President and current committee member and life member Samoyed Association Great Britain Vice President
<b>Current aspirations</b>	To continue pre-eminent Samoyed breeding program To continue international judging appointments To continue to develop judges' skills through Victorian training program
<b>Member of Department of Primary Industries, Victoria</b>	Restricted Breeds Committee 2002



SEOROC



1049231

"ATTACHMENT B"...

**COPY**

(NAME OF COUNCIL & LOGO)<sup>1</sup>

Identification Checklist – American Pit Bull Terrier

Date: 04 10 105

Time: 07:30

Keeper's Name: DINO DE FRE

Address: 131 SPRINGWOOD RD SPRINGWOOD

Dogs Name: RUSTY ; K25-323 Sex  M  F  MALK

DeSexed: Yes /  No / Unknown

Approximate Age: ADULT

Registration No:

Microchip Number:

Colour/Primary: TAN

Secondary:

Distinguishing Features:

LOGAN CITY COUNCIL  
RECEIVED  
- 6 APR 2005  
CENTRAL RECORDS

Assessing Officer's Name: A FREDERICKSEN

Officer Code:

Ratings -

0- Does Not Comply **NB:- (comment required)**

1- Partly Complies

2- Substantially Complies

3- Fully Complies

Body Part	Rating
1. Head - medium in length and is wedged Shaped	0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input checked="" type="checkbox"/> 3 <input type="checkbox"/>
2. Head shape - has a skull shape which is flat and widest at the ears with prominent cheeks free from wrinkles	0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input checked="" type="checkbox"/>
3. Muzzle - square, wide and deep	0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input checked="" type="checkbox"/>
4. Muzzle - well pronounced jaws, displaying strength	0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input checked="" type="checkbox"/>
5. Upper teeth - meet tightly over lower teeth (scissor bite)	0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input checked="" type="checkbox"/>
6. Ears - set high on the head and free from wrinkles	0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input checked="" type="checkbox"/>

Body Part	Rating
7. Eyes - round to Almond	0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input checked="" type="checkbox"/>
8. Eyes - set far apart, low down on the skull	0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input checked="" type="checkbox"/> 3 <input checked="" type="checkbox"/>
9. Nose - wide open nostrils	0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input checked="" type="checkbox"/> 3 <input type="checkbox"/>
10. Neck - muscular and slightly arched	0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input checked="" type="checkbox"/>
11. Neck - tapers from shoulder to head	0 <input checked="" type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/>
12. Neck - free from looseness of skin	0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input checked="" type="checkbox"/>
13. Shoulders - strong and muscular with wide sloping shoulder blades	0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input checked="" type="checkbox"/>
14. Loin - short and strong	0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input checked="" type="checkbox"/>
15. Back - slightly sloping from withers to rump	0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input checked="" type="checkbox"/> 3 <input type="checkbox"/>
16. Back - slightly arched at the loins with the loins slightly tucked	0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input checked="" type="checkbox"/> 3 <input type="checkbox"/>
17. Chest - deep, but not too broad, with well sprung ribs	0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input checked="" type="checkbox"/>
18. Tail - Short in comparison to the size of the dog, tapers to a fine point and not carried over the back	0 <input type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/>
19. Legs - medium to large, round boned and reasonably strong	0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input checked="" type="checkbox"/>
20. Feet - of medium size	0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input checked="" type="checkbox"/>
21. Thighs - well developed muscles	0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input checked="" type="checkbox"/>
22. Coat - short and stiff to touch	0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input checked="" type="checkbox"/> 3 <input type="checkbox"/>
23. Height from withers to ground	48.7 cm
24. Common photo match	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

Total Points: 56 /66

Officer's Comments:

11 NECK IS STRAIGHT.

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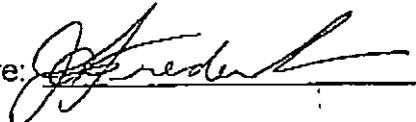


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**COPY**

**Procedure Checklist for determining if a Dog is an American Pit Bull Terrier or an American Pit Bull Terrier Type**

1. Photographs are to be taken at the time of assessment and are to be taken from the side, front and back with specific shots taken of any outstanding physical American Pit Bull Terrier Characteristics.
2. A Digital camera should be used for photographing dogs
3. An authorised officer is to carry out an assessment of the dog and complete a checklist score sheet.
4. Each item on the checklist has a grading of 0 to 3. A grading of 0 indicates no compliance and a comment is required, 1 indicates part compliance, 2 indicates substantial compliance and 3 indicates full compliance.
5. A total score of 1 to 45 indicates that the dog does not substantially meet the description of an American Pit Bull Terrier.
6. A total score of 46 to 66 points indicates that the dog Substantially meets the description of an American Pit Bull Terrier type.
7. This template should only to be used by officers who have attended Pit Bull identification training.

Officer's Signature:  Action Request No. \_\_\_\_\_

Local Authority: LOAN CITY COUNCIL