



Animal Defenders Office

Using the law to protect animals

ABN: 12837355070 | Member: CLCNSW Inc. | GPO Box 2259 Canberra ACT 2601 | www.ado.org.au | contact@ado.org.au
The Animal Defenders Office Inc. is accredited by the National Association of Community Legal Centres.

NSW Department of Primary Industries
c/o Animal Welfare
Locked Bag 21
Orange NSW 2800

By email: animalwelfare.submissions@dpi.nsw.gov.au

Dear Sir/Madam

Submission on the NSW DPI Consultation Paper: Licensing and regulation of cat and dog breeders

Thank you for the opportunity to provide submissions about the *Consultation Paper: Licensing and regulation of cat and dog breeders* ("Consultation Paper") prepared by the Department of Primary Industries ("DPI") in New South Wales ("NSW").¹

About the Animal Defenders Office

The Animal Defenders Office ("ADO") is a nationally accredited not-for-profit community legal centre that specialises in animal law. The ADO is run by volunteer professionals and students. The ADO produces information to raise community awareness about animal protection issues and works to advance animal interests through law reform.

The ADO is a member of Community Legal Centres NSW Inc., the peak body representing community legal centres in NSW.

Further information about the ADO can be found at www.ado.org.au.

The ADO's submissions on the measures proposed in the Consultation Paper are set out in detail below.

Introduction

Currently in NSW, any breeder who breeds cats or dogs for fee or reward is required to comply with the *NSW Animal Welfare Code of Practice: Breeding Dogs and Cats* ("Breeding Code").² It is an offence under animal welfare regulations not to comply with the Breeding Code.³

NSW law does not require breeders to be registered or hold a licence.

The Consultation Paper proposes to bring in a limited licensing scheme for some dog breeders. It also proposes to remove the current requirement to comply with the Breeding Code for certain dog and cat breeders.

¹ Available at: <https://www.dpi.nsw.gov.au/animals-and-livestock/animal-welfare/animal-welfare-reform/regulating-cat-and-dog-breeders-consultation-paper>.

² *Prevention of Cruelty to Animals Regulation 2012* (NSW), clause 26 and Schedule 1.

³ *Ibid.*

Animal welfare concerns associated with dog and cat breeding

The ADO accepts that there are inherent welfare problems associated with dog and cat breeding. These can affect the breeder animals used to produce numerous litters and often kept in inadequate conditions.⁴ Offspring are affected due to ‘exaggerated physical features, inbreeding and inherited diseases’.⁵ Dog and cat breeding also leads to welfare problems for other healthy dogs and cats who are euthanased because they cannot find a home.⁶

Responses to Discussion Questions

Q1. Do you have any comments on the principles for designing a licensing scheme?

For as long as it remains legal to use dogs and cats for breeding purposes in NSW, the ADO supports the introduction of a licensing scheme that:

- applies to breeders of both dogs and cats;
- applies to all breeders regardless of size, number of breeding animals, purpose, profit or intention;⁷
- is underpinned by frequent, regular and unannounced enforcement activity to ensure licence conditions are being met; and
- contains the elements and objectives set out in the Report by the Joint Select Committee on Companion Animal Breeding Practices in NSW (“the Report”), recommendations 10 and 11.⁸

A licensing regime modelled on the above principles would go some way towards improving transparency and upholding public confidence in the regulatory framework for breeding dogs and cats in NSW.

Best practice model—the Australian Capital Territory

The ADO submits that the regulatory framework applying to cat and dog breeders in NSW should be modelled on the regulatory framework in the Australian Capital Territory (“ACT”). The ACT requires all breeders of dogs and cats to apply for a licence, and it is an offence to breed a litter from a dog or cat without holding a licence.⁹ Under the ACT scheme there are no exemptions for non-commercial and hobby breeding, and/or ‘accidental’ breeding. In addition, any person breeding from a cat or dog must comply with the *Animal Welfare (Breeding Standard) Determination 2015 (No 1)* (“the ACT Breeding Standard”) which imposes restrictions on breeding animals based on age, number of litters,

⁴ RSPCA Australia, *RSPCA Policy A06 Breeding of companion animals*, updated 9 December 2020, <https://kb.rspca.org.au/knowledge-base/rspca-policy-a06-breeding-of-companion-animals/>.

⁵ ‘What animal welfare problems are associated with dog breeding?’, *RSPCA Knowledgebase*, updated 24 June 2021, <https://kb.rspca.org.au/knowledge-base/what-animal-welfare-problems-are-associated-with-dog-breeding/>; ‘What are the health and welfare issues associated with exaggerated physical features in cats?’, *RSPCA Knowledgebase*, updated 24 June 2021, <https://kb.rspca.org.au/knowledge-base/what-are-the-health-and-welfare-issues-associated-with-exaggerated-physical-features-in-cats/>.

⁶ RSPCA Australia, *RSPCA Policy A06 Breeding of companion animals*, op.cit.

⁷ This reflects the current approach to regulating dog and cat breeding in the Australian Capital Territory (“ACT”); see *Domestic Animals Act 2000* (ACT) s 72.

⁸ Joint Select Committee on Companion Animal Breeding Practices in New South Wales, Parliament of New South Wales, *Inquiry into Companion Animal Breeding Practices in New South Wales* (Report 1/56, August 2015) p x, available at: <https://www.parliament.nsw.gov.au/tp/files/30564/Final%20Report%20-%20Inquiry%20into%20Companion%20Animal%20Breeding%20Practices%20in%20NSW.pdf>.

⁹ *Domestic Animals Act 2000* (ACT) ss 72, 72A. This is a strict liability offence: s 72(4).

and characteristics such as poor health or transmissible diseases.¹⁰ Failure to comply with the ACT Breeding Standard is an animal welfare offence.¹¹

The ADO also suggests that the NSW regulatory framework should include the following elements that are based on measures already established in other Australian jurisdictions:

- Pet shops that sell dogs and/or cats should only be allowed to sell animals from an approved source such as animal shelters, pounds or registered foster carers.¹²
- Breeders should be prohibited from breeding a dog or cat who is known to be, or shows signs of being, in poor health. Likewise, breeders should be prohibited from breeding a dog or cat with a known genetic fault that would have a negative impact on the quality of life of the offspring, or with a disease that has the potential to be transmissible to any offspring.¹³
- There should be a limit on how often cats and dogs can be bred; the range of ages at which they can and cannot be bred; and the maximum number of litters a single breeding animal can have in their lifetime.¹⁴ Veterinary representative bodies and animal welfare organisations such as Animals Australia, the RSPCA and the Animal Welfare League should be consulted to ensure that these limits reflect contemporary understandings about best practice in animal welfare.
- There should be a limit on the total number of breeding dogs or cats a licensed breeder may keep, taking into consideration the size of the facilities and the ability of the breeder to achieve positive animal welfare outcomes.¹⁵ The maximum number should be small (ie fewer than 5) so as to avoid the intensive breeding of dog and cats, which is commonly referred to as ‘puppy/kitten farms’. This should also be informed by consultation with veterinary representative bodies and leading animal welfare organisations including Animals Australia, the RSPCA, and the Animal Welfare League.

Proposed principles for designing a licensing scheme

The ADO makes the following specific comments in respect of the principles for designing a licensing scheme proposed in the Consultation Paper.

Easy to understand

The ADO agrees that a licensing scheme should be as clear as possible, so that it can be readily interpreted and applied by breeders and enforcement agencies. Having a scheme that is vague or uncertain could result in adverse outcomes for animal welfare, as well as for breeders who fail to understand and comply with the scheme. To this end, the ADO submits that the only way to avoid

¹⁰ *Animal Welfare Act 1992* (ACT) s 15B(4).

¹¹ This is also a strict liability offence: *Animal Welfare Act 1992* (ACT) s 15B(6).

¹² *Domestic Animals Act 1994* (VIC) s 63AAB and *Dog Act 1976* (WA) new Part VIA (uncommenced at time of writing).

¹³ *Animal Welfare (Breeding Standard) Determination 2015 (No 1)* (ACT), clause 1.

¹⁴ This could be informed by the current limits in other jurisdictions. In the ACT the maximum number of litters a breeding animal can have is restricted to 8 for cats and 4 for dogs. The age at which they can breed is restricted in cats from 12 months to 7 years, and in dogs from 18 months to 6 years. See *Animal Welfare (Breeding Standard) Determination 2015 (No 1)* (clauses 2, 3, 5 and 6). In Victoria a female dog can be used to breed no more than 5 litters and a female cat no more than 8 litters in their lifetime. See *Code of Practice for the Operation of Breeding and Rearing Businesses (2014)* parts 6(3)(c) and 7(3)(c).

¹⁵ For example, Victoria restricts the intensive breeding of dogs and imposes a limit of 10 breeding female dogs, unless the breeder is an approved commercial dog breeder and obtains permission to have up to 50 female dogs. See *Domestic Animals Act 1994* (VIC) s 44B. The ADO considers these number to be too high and tantamount to the intensive breeding of dogs known as ‘puppy farms’.

uncertainty about the applicability of rules¹⁶ is to follow the approach in the ACT,¹⁷ and have the licensing scheme and Breeding Code apply to all breeders equally. Creating a new set of complex rules to replace an existing set of complex rules is not the answer.

Proportionate costs

The ADO agrees in principle that the costs of the licensing scheme should be scaled to the size of the breeding enterprise. Again, the ADO submits that the basic requirement to obtain a licence should be placed on all breeders, regardless of size, number of breeding animals, purpose or intention. While there should be a basic fee that all breeders must pay, costs above that could be scaled.

Minimises unintended consequences

The ADO is concerned that the proposed regulatory framework, which would exempt large numbers of breeders from the animal welfare requirements in the Breeding Code and licence conditions, could ultimately worsen protections for animal welfare in dog and cat breeding enterprises.

Q2. At what threshold (e.g. fewer than a certain number of breeding animals), should a cat or dog breeder be considered an Exempt Breeder, meaning they are not required to hold a licence or comply with the Breeding Code?

The ADO does not support exemptions to a licensing scheme or the Breeding Code

The Consultation Paper proposes that some breeders should be exempt from the welfare requirements under the existing Breeding Code and any licensing scheme introduced in the future. The Consultation Paper seeks feedback only on the criteria for exempting breeders, and not on the more important policy issue of whether there should be exemptions. The exemption criteria, or 'licensing thresholds', considered in the Paper include the number of breeding animals used and the purpose for which the animals are bred.¹⁸ Under the proposed approach, any breeder exempted from the existing Breeding Code and/or a future licensing scheme would not have to comply with the welfare obligations imposed by these regulatory measures.

The ADO's position is that strong animal welfare measures should be imposed on all breeders, regardless of the size of the breeding enterprise, the purpose for which the animals are bred (for example, as a hobby or to produce working animals), or whether the animals are bred for fee or reward. Accordingly, the ADO does not support exempting any breeders from welfare requirements under the existing Breeding Code or a future licensing scheme. The ADO submits that better animal welfare outcomes will be achieved by placing more, not fewer, requirements on all breeders.

Numbers of animals not a determining factor of welfare outcomes

The 2015 Report found that there is 'no evidence that the number of animals kept by breeders is in itself a factor which determines welfare outcomes of breeding animals'.¹⁹ The Consultation Paper refers to this as a 'key finding'.²⁰ The ADO submits that this means that there may be just as poor animal welfare outcomes for breeders with low numbers of breeding animals as for breeders with

¹⁶ According to the Consultation Paper '[s]ome stakeholders have indicated that the current approach is confusing and hard to define' (p 10).

¹⁷ *Domestic Animals Act 2000* (ACT) ss 72, 72A, and *Animal Welfare Act 1992* (ACT) s 15B.

¹⁸ Consultation Paper, pp 9-12, and discussion questions 2 and 4.

¹⁹ 2015 Report, Finding 2, pp ix and 33-34.

²⁰ Consultation Paper p 6.

high numbers. For this reason, all breeders should be required to comply with welfare codes of practice and licence conditions.

Compliance and enforcement issues

A consequence of not requiring certain breeders to hold a licence is that authorised officers will not be able to assess whether the breeder is a 'fit and proper' person to breed animals.²¹ Moreover, enforcement officers will not be able to conduct proactive compliance checks²² as these unregulated breeders will be unknown to authorities. This is especially problematic in the context of backyard breeding, with which significant animal welfare concerns are associated.²³

Flawed premise for exemptions

The ADO submits that NSW has one of the least regulated breeding industries for dogs and cats in Australia.²⁴ Therefore, the ADO rejects exempting certain breeders merely on the grounds that breeders do not wish to comply with the regulatory framework, or that current requirements are too onerous. It is unacceptable to suggest that sufficient protections for animals used by these breeders are in place because these breeders 'can still be subject to normal compliance powers under POCTAA where there is suspicion of an offence'.²⁵ This could be said for any person in charge of an animal, and is too low a threshold for breeders who use animals in situations where there are inherent animal welfare risks. It is also problematic given the inability of enforcement officers to conduct proactive compliance checks on unregulated breeders (as discussed above).

The proposed approach compares unfavourably to other jurisdictions in Australia

The Consultation Paper's purported analysis of other jurisdictions' approaches to distinguishing between types of breeders is unreferenced which makes it difficult to assess the evidential basis of the analysis (p 11).

The ADO's examination of legislative requirements in other jurisdictions indicates that NSW is lagging behind jurisdictions such as the ACT, Victoria, Queensland, South Australia and Tasmania. These jurisdictions already require breeders of dogs and/or cats to be registered or to obtain a licence to breed these animals.²⁶

As discussed earlier, the ADO submits that the NSW regulatory framework should be modelled on the ACT scheme, where the ACT Breeding Standard and the requirement to be licensed apply to all breeders.²⁷

²¹ This is a requirement under recent amendments to the *Dog Act 1976* (WA), section 26J(2)(d) (uncommenced at time of writing).

²² Compliance Paper, p 9.

²³ 'Backyard breeding is a term used to describe irresponsible breeding of animals. ... Backyard breeding contributes to the unwanted companion animal population in the community. Uncontrolled breeding and overpopulation inevitably leads to the euthanasia of healthy unwanted animals.' From 'What is a backyard breeder', *RSPCA Knowledgebase*, updated 1 May 2019, <https://kb.rspca.org.au/knowledge-base/what-is-a-backyard-breeder/>.

²⁴ Animal Defenders Office, 'Puppy farms and kitten mills: are they legal in Australia?', Fact Sheet, updated March 2021, available at <https://www.ado.org.au/faq>.

²⁵ Consultation Paper, p 10.

²⁶ See *Domestic Animals Act 2000* (ACT) s 72; *Domestic Animals Act 1994* (VIC) Part 2; *Animal Management (Cats and Dogs) Act 2008* (QLD) s 43E; *Dog and Cat Management Act 1995* (SA) s 69; *Cat Management Act 2009* (TAS) s 29.

²⁷ *Animal Welfare Act 1992* (ACT) s 15B, *Domestic Animals Act 2000* (ACT) s 72.

Deleterious impact of exemptions on the effectiveness of the Breeding Code

The exemptions proposed in the Consultation Paper would dilute the effectiveness of the Breeding Code in leading to improved welfare outcomes for breeding animals, and cause confusion about the scope of its application (for example, differing interpretations in the community of what constitutes a 'hobby breeder'). These exemptions could also result in members of the public questioning whether exempted breeders are genuinely concerned about the welfare of animals in their care.

Applying for a licence and complying with the Breeding Code are clear ways in which breeders of dogs and cats in NSW can commit to ensuring positive animal welfare outcomes for the animals in their care, and may increase public confidence in breeders in general.

Q3. At what threshold (e.g. more than a certain number of breeding animals) should a dog breeder be considered a Large Breeder, meaning they must hold a licence and comply with the Breeding Code?

The ADO refers to its response to question 2 above. The ADO does not support distinctions in the regulatory framework based on the size of the breeding enterprise. The ADO recommends that all breeders be required to hold a licence and comply with the Breeding Code. This view is based on the 'key finding' in the 2015 Report that there is no causal connection between the number of animals kept by breeders and animal welfare outcomes.

Q4. Do you think that working dog breeders should also be considered Exempt Breeders, meaning they are not required to hold a licence or comply with the Breeding Code?

The ADO does not support exempting working dog breeders from a requirement to comply with the Breeding Code or to hold a licence under a future licensing scheme. The ADO submits that the purpose for which the dogs are bred, such as to produce working animals or as a hobby, does not reduce the need to comply with animal welfare requirements. In other words, the animal welfare concerns associated with breeding dogs (and cats) are the same regardless of the purpose for which the animals are bred. The welfare of the animals used to breed and their offspring, and the conditions in which they are kept, are important regardless of the type of dog or the intended purpose of the offspring. The ADO supports a single licensing scheme and application of the Breeding Code across all breeders without exception.

General comments

Key details on the proposed licensing scheme are missing

The ADO notes that details are missing from the Consultation Paper which makes the provision of informed comments difficult.

Missing details include:

- information about the process of enforcing a licensing scheme, such as who will be responsible for enforcement of the new scheme, including inspections; and
- the proposed application process for obtaining a licence, including factors that the regulatory authority would consider in granting a licence (for example, whether the applicant has a record

of animal cruelty offences, or other factors that might impact on the applicant's ability to meet the welfare needs of their animals).

Conclusion

The introduction of a robust, universal and transparent breeders licensing scheme in NSW is the least the NSW Government can do to demonstrate that it 'is committed to maintaining high standards of animal welfare and promoting responsible pet ownership in NSW'.²⁸ The NSW Government should not adopt exemptions to the licensing scheme and Breeding Code if it genuinely seeks to improve protections for breeding animals and their offspring in NSW.

Thank you for taking our submissions into consideration.

Daniel Cung
Senior Lawyer (volunteer)

Tara Ward
Managing Solicitor (volunteer)

Animal Defenders Office
GPO Box 2259, Canberra ACT 2601
contact@ado.org.au | www.ado.org.au
ABN: 12 837 355 070 | Member: CLCNSW Inc. and CLC Australia Inc.

The Animal Defenders Office acknowledges the Traditional Owners of country throughout Australia and their continuing connection to land, sea and community. We pay our respects to them and their cultures and to their Elders both past and present.

31 December 2021

²⁸ Consultation Paper, p 4.