

**Submission
No 325**

COMPANION ANIMAL BREEDING PRACTICES IN NEW SOUTH WALES

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Companion Animal Breeding Practices in New South Wales (Inquiry)

1 The Broader Context

- 1.1 In 2009, the NSW Parliament debated a Bill introduced by Clover Moore to regulate the advertising and sale of companion animals, including a ban on their sale in pet shops. The Coalition, along with the then Labor government, did not support the Bill; it did, however, adopt a policy to have the legislation reviewed by a parliamentary inquiry into the protection of companion animals.¹
- 1.2 After its election in 2011, the Coalition did not pursue a parliamentary inquiry but did set up a Companion Animals Taskforce to provide advice on key companion animal issues, particularly strategies to reduce the high rate of cat and dog euthanasia. The Taskforce released a Discussion Paper, sought submissions from the community and released a Report in October 2012. While the Discussion Paper was fairly cursory and the Report's recommendations conservative, the latter did include establishment of a breeder licensing system.²
- 1.3 The government's response to the Report included in-principle support for a breeder licensing system but, as with the recommendations generally, to date not a lot has been achieved. By contrast, the electorally uncontroversial recommendations in relation to dangerous dogs set out in a separate report were quickly met with legislative change.³
- 1.4 While more limited in scope, the brief of this parliamentary inquiry nonetheless overlaps with matters investigated by the Companion Animal Taskforce. Yet, strangely, the ministerial media release announcing the Companion Animals Breeding Practices inquiry made no mention of the recent Taskforce Report;⁴ nor did the Minister for Primary Industries advert to it when I heard him interviewed about this inquiry on ABC local radio.
- 1.5 The Minister did refer to the Taskforce in the Legislative Council when calling for this inquiry on 12 May 2015 although he mistakenly referred to its establishment 'in 2014'.⁵ Noting that the Taskforce's brief included providing advice on 'irresponsible breeding or puppy factories' and that the Government has given in-principle support for a breeder licensing system, the Minister provided no explanation as to why the Taskforce apparently failed to provide the information that the Minister now seeks. He did, however, stress the need not to 'jeopardise the industry', to 'engage with a wide range of stakeholders to gain industry input' and to have 'a proper system in place – not vigilantes, who

¹ NSW, *Parliamentary Debates*, Legislative Assembly, 22 October 2009, Animals (Regulation of Sale) Bill 2008, p 18601.

² NSW Companion Animals Taskforce, Report to the Minister for Local Government and the Minister for Primary Industries, October 2012, Recommendation 1.

³ Government response to Companion Animal Taskforce Recommendations
<<http://www.olg.nsw.gov.au/sites/default/files/Government-response-to-Companion-Animals-Taskforce-recommendations.pdf>>.

⁴ Niall Blair, 'Puppy Breeding Practices to be Investigated' (Media Release, 12 May 2015).

⁵ NSW, *Parliamentary Debates*, Legislative Council, 12 May 2015, p 343.

trespass' to rid the industry of the 'few rogue operators'.⁶

- 1.6 This brief excursion into recent history illustrates the futility of more promises or further inquiries unless animal welfare submissions are given the same consideration as industry interests and governments are prepared to act promptly on inquiry recommendations. To do otherwise is not only to fail companion animals but to further disillusion and alienate the community in terms of the integrity of public policy processes.
- 1.7 A broader context is relevant to this inquiry in another way as well. As noted above, the terms of reference are to report on companion animal breeding practices in NSW, including the number of animals allowed to be kept by breeders and the sale of companion animals in pet shops. For the purposes of this inquiry the term 'breeding practices' must not be narrowly construed. Inadequate regulation of breeding affects animal welfare both because of the conditions in which some animals are kept and because uncontrolled breeding, from whatever source, contributes to the oversupply of animals and for many animals their consequent deaths.
- 1.8 According to the Companion Animal Taskforce Discussion Paper, in NSW, 'in 2010/11, approximately 64% of all cats and 33% of all dogs in pounds and animal welfare facilities were euthanased. This amounted to over 30,300 cats and 21,600 dogs.' The Discussion Paper also noted that the number of dogs abandoned at council pounds increased by 6% and cats by almost 25% between 2008/9 and 2010/11.⁷ Clearly, more dogs and cats are being bred than homes are available. This unregulated breeding and sale of companion animals reflects a view of animals as commodities that has implications for their welfare. For these reasons, my own submission reflects a broad interpretation of this inquiry's terms of reference.

2 Regulation of Breeding

- 2.1 A breeder licensing system should be introduced which limits the number of animals a breeder can keep and the number of litters each animal can have. The guidance of a range of animal protection bodies, as well as vets, should be sought with respect to the appropriate numbers. The system must also have enforceable standards with respect to the housing, exercise, food, socialisation and general welfare of the animals, including what happens to them when no longer used for breeding. The system must be mandatory, with the imposition of a penalty for any unlicensed person who breeds a companion animal. The cost of the licensing system should be borne by the users, supplemented by government funds where necessary. An effective compliance and enforcement regime, including unannounced random inspections of premises, is essential; without appropriate investigative powers and the resources for monitoring compliance and enforcing breaches, a licensing system is likely to be largely window dressing.
- 2.2 Regulation of breeding needs to apply to *any person* who breeds companion animals

⁶ Ibid.

⁷ NSW Companion Animals Taskforce, 'NSW Companion Animals Taskforce Discussion Paper' (Discussion Paper, Division of Local Government, Government of NSW, May 2012), [1.2].

or who allows animals to breed, whether by accident or design and regardless of motive, purpose or profit. This includes those who breed as a hobby and those who allow their pet an occasional litter for whatever reason. These people are sometimes collectively referred to as 'backyard breeders'. The need to capture this category may be particularly acute in the case of cats. It is widely recognised that cats are prolific breeders and, as noted above, a greater proportion of cats than dogs are routinely euthanased.

- 2.3 Present regulatory provisions in NSW focus on a category of breeders rather than on breeding generally. The primary legislative mechanism in NSW for regulating breeders is the *Animal Welfare Code of Practice – Breeding Dogs and Cats* (2009) but its application is limited. According to its Preface, the Code is 'designed for everyone involved in the activity of breeding dogs and cats' but section 3.2 defines 'breeding' as the 'business of breeding of litters of animals for sale'. The unhappy phrasing of section 2.2 (the Code 'applies to the welfare of dogs and cats which are involved in the business of breeding') is unhelpful.
- 2.4 In any case, the legal status of the Code is dependent on its incorporation in the *Prevention of Cruelty to Animals Regulation 2012* (NSW). Section 4(1) of the *Prevention of Cruelty to Animals Act 1979* (NSW) defines *animal trade* as a trade, business or profession in the course of which any animal is kept or used for a purpose prescribed for the purposes of this definition. Part 4 of the Regulation deals with Animal Trades, with cl 25 prescribing trades and relevant codes of practice as per Sch 1. The relevant prescribed animal trade is listed in Sch 1 as *an animal breeding establishment (that is, a business in the course of which dogs or cats are bred for fee or reward)*. Clause 26 mandates, *inter alia*, compliance with the relevant Code by the proprietor of a business that conducts an animal trade and each person concerned in its management, as well as any person employed by or working in the business. Failure to comply constitutes an offence.
- 2.5 As currently incorporated in the Regulation, the Code's reach is circumscribed by the language of s 4(1) of the Act and cll 25-26 and Sch 1 of the Regulation. This means that the Code does not apply to the breeding of animals generally but to the breeding of animals as a business activity. In legislating for a breeder licensing system, care must be taken to amend the law in such a way that a licensing system captures *all* breeding of companion animals; any amendment that relies only on the animal trades provisions of the legislation may help to address the problems of intensive breeding but will not deal with animal welfare problems that may be associated with backyard breeders. With respect to the latter category, it is desirable that other measures accompany a penal approach, for example the introduction of widespread subsidised desexing programs.

3 Pet Shops

- 3.1 The 'implications of banning the sale of dogs and cats in pet stores' is specifically included in this inquiry's terms of reference. From this I infer that such a ban is now considered worthy of consideration by the inquiry. The phrasing is curious, however, and could suggest a concern to pre-empt arguments in favour of a ban by ensuring that the economic impact of banning pet shop sales feature strongly in submissions. Be that as it may, as the issue of pet shops has been raised I would make the following points.

- 3.2 I have observed many breaches of the *Animal Welfare Code of Practice – Animals in Pet Shops* over the years, including in some businesses that display membership of the PIAA. Pet shop employees often seem young and appear to have little understanding of animal welfare. Yet even the very modest recommendation by the Companion Animals Taskforce Report that at least one staff member working in a pet shop, breeding establishment, pound or animal shelter must hold a *Certificate II – Animal Studies* qualification was rejected by this government on the ground that it ‘places a regulatory and cost burden on small businesses and volunteer organisations and places their viable operation at risk.’⁸
- 3.3 Pet shops provide an outlet for intensive animal breeding and backyard breeding and encourage impulse purchases. More generally, the public display of animals for purchase helps to construct social norms and attitudes in relation to animals that may not be conducive to their welfare. Notwithstanding the opposition of industry stakeholders, it is important to question the appropriateness of treating animals as things to be displayed and poked at in busy shopping centres, rather than as sentient beings to be treated with dignity and respect. While I strongly support individual responsibility with regard to care of pets, the government should also *model* responsible behaviour by showing leadership in banning these sales even though this would offend sectional interests.

4 Problems with Animal Welfare Regulation

- 4.1 At a more general level, companion animal welfare problems reflect broader issues with the existing regulatory regime. In view of the specific focus of this inquiry I will confine myself to the following brief remarks.
- 4.2 Companion animal regulation is typical of the fragmentation of responsibility for animal welfare in NSW. As the Companion Animals Taskforce illustrates, companion animal issues span the primary industries and local government portfolios, a fragmentation that contributes to a lack of accountability and delay in implementing proposals.
- 4.3 Animal welfare should not be in the hands of a ministry whose priorities lie elsewhere, as illustrated by this inquiry process. Following the Minister’s initial media release announcing an inquiry,⁹ no further information was forthcoming via either the Minister’s media releases or those of the DPI. Nor was there any information on the DPI website with respect to the submission process and closing date. Ironically, the site still boasts ‘information regarding the establishment of the State’s first Companion Animals Taskforce’.¹⁰
- 4.4 The above might be mere tardiness in updating a website but the most cursory perusal of the DPI’s core business reveals the conflict of interest where animal welfare is concerned. This includes matters in relation to pet shops and breeding establishments where commercial interests may hold sway.

⁸ Government Response to Companion Animals Taskforce Recommendations, above n 3.

⁹ Niall Blair, above n 4.

¹⁰ <<http://www.dpi.nsw.gov.au/agriculture/livestock/animal-welfare/general/the-companion-animals-taskforce>>.

- 4.5 Fragmentation and conflicts of interest would be overcome by the establishment of an independent and properly resourced office of animal welfare to administer and enforce all animal welfare legislation and to co-ordinate matters where more than one other government agency has a role. A separate office of animal welfare could also play a crucial role in relation to matters that require a national approach, for example the regulation of online advertising of pets for sale.

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This submission includes some material also submitted to the NSW Companion Animals Taskforce.