

**Submission
No 338**

COMPANION ANIMAL BREEDING PRACTICES IN NEW SOUTH WALES

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Animal Law Committee

Companion Animal Breeding Practices in NSW

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The NSW Young Lawyers Animal Law Committee (**Committee**) makes the following submission to the inquiry into companion animal breeding practices in NSW (**the Inquiry**).

NSW Young Lawyers

NSW Young Lawyers is a division of the Law Society of New South Wales. NSW Young Lawyers supports practitioners in their professional and career development in numerous ways, including by encouraging active participation in its 16 separate committees, each dedicated to particular areas of practice. Membership is automatic for all NSW lawyers under 36 years and/or in their first five years of practice, as well as law students. NSW Young Lawyers currently has over 15,000 members.

The Committee is comprised of a group of just over 280 members interested in animal welfare, the status of animals in the legal system and the development of laws regulating the treatment of animals. The Committee aims to raise awareness and provide education to the legal profession and wider community, whilst increasing understanding about the importance of protecting animals from abuse and neglect. A common theme amongst Committee members is a passion and desire to use our skills and the law to help improve the lives of animals.

Introduction

The issues in companion animal welfare and management

Across Australia, including in NSW, poor companion animal welfare and management¹ is having widespread consequences, including notably:

1. Severe health problems in individual animals caused by selective breeding for specific aesthetic traits. RSPCA Australia reports that in Australian pedigree dogs these problems include: difficulty breathing, difficulty walking, difficulty giving birth without veterinary intervention, serious problems with their eyes, serious problems with their skin and chronic back and hip problems.²

In addition, lack of genetic diversity in any given breed results in greater susceptibility to genetic diseases and other conditions such as Syringomyelia in Cavalier King Charles Spaniel (a disease caused by the dog's skull being too

¹ In making these submissions, the Committee has focused on issues and recommendations relevant to cats and dogs. The Committee is not in a position to comment on the extent to which these issues and recommendations are also relevant to other companion animals.

² RSPCA Australia, 'Pedigree Dogs FAQ' (undated) available here: <http://www.rspca.org.au/campaigns/pedigree-dogs/pedigree-dogs-faq#sthash.reZgIgnQ.dpuf> (accessed on 1 June 2015).

small for its brain); certain cancers and epilepsy in Boxers in Australia; enzyme deficiencies in Australian English Springer Spaniels; kidney diseases in Bull Terriers; spinal problems including abnormal cartilage that can lead to ruptured discs in Dachshunds (this can cause extreme pain and potential neurological problems); and, in the case of English Bulldogs in Australia, an inability to give birth naturally.³

2. Poor health and welfare for breeding animals caused by a combination of high-intensity commercial breeding operations, and relevant authorities being insufficiently resourced to ensure these types of breeders are compliant with relevant laws and codes of practice. In Victoria, recent investigations by the RSPCA and other not-for-profit organisations have provided some insight into the extent of the health and welfare issues for animals in these facilities. They have uncovered operations where breeder animals were kept in wire cages for the duration of their lives,⁴ fed mouldy food and given green drinking water.⁵ RSPCA Australia states that the incidence of 'puppy farms' is a major animal welfare issue throughout Australia, and can often result in severe long-term health and/or behavioural problems in breeding dogs and puppies as a result of the poor conditions in which they are bred and a lack of adequate socialisation.⁶ These health and behavioural problems impose costs on unwitting buyers.
3. High rates of impounding and euthanasia. In NSW, on average 48,600 cats and 68,800 dogs are impounded each year.⁷ In 2010/11, pounds in NSW euthanised approximately 30,300 cats (i.e. around 60% of impounded cats) and 21,600 dogs.⁸ Despite this, commercial breeders continue to generate a market for animals.
4. Loss of native wildlife. Failure to properly manage breeding and ownership of companion animals contributes to the wild cat and dog population. The

³ RSPCA Australia, note 2.

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⁶ RSPCA Australia, 'What is a puppy farm?' (last updated 21 May 2015) available here: <http://kb.rspca.org.au/What-is-a-puppy-farm_322.html> (accessed on 1 June 2015).

⁷ NSW Companion Animals Taskforce, 'Discussion Paper' (May 2012) available here: <<http://www.dlg.nsw.gov.au/dlg/dlghome/documents/Information/Companion%20Animals%20Taskforce%20Discussion%20Paper%20May%202012.pdf>> (accessed 29 May 2015) p 4.

⁸ NSW Companion Animals Taskforce, 'Discussion Paper', note 7, p 4.

Australian Wildlife Conservancy estimates there are between 5-18 million wild cats in Australia, and that they kill around 75 million native animals daily.⁹

The necessity of a holistic response

The Committee is of the view that the issues identified above are symptomatic of a system which allows for the treatment of companion animals as commodity items; in which the breeding, selling and ownership of companion animals is perceived as a right, rather than a responsibility; and where commercial objectives are considered a legitimate factor to be weighed against ensuring high animal welfare. In addition to the negative externalities of this system (identified above), the Committee is of the view that this is not an appropriate way to treat animals.

As identified by the NSW Companion Animals Taskforce in its 2012 Report, companion animal welfare and management is a whole of community responsibility involving breeders, pet shops, pet owners, vets, law enforcers, local and state government, and animal shelters and holding facilities.¹⁰ No one group or entity can be looked at in isolation. Consequently, and as foreshadowed by the terms of reference, the Committee has made recommendations which relate to issues beyond companion animal breeding. In these submissions, the Committee has made recommendations for changes to the regulatory framework applying to breeders, sellers, owners and veterinarians, as well as the introduction of government-subsidised programs.

Some of these recommendations involve changing guidelines in certain Animal Welfare Codes of Practice into standards. This would have the effect that a person who did not comply with the relevant requirements would be liable to a penalty infringement notice or prosecution under clause 26 of the *Prevention of Cruelty to Animals (General) Regulation 2012* (NSW). The Committee recommends that in the light of this, the statutory defence for failing to comply with the relevant Codes of Practice should be expanded to include the following:

1. acting on advice from an independent veterinarian;
2. acting in the welfare interests of the animal (or other animals); and
3. necessary for workplace health and safety.

⁹ Australian Wildlife Conservancy, 'Feral Cat Research' (undated) available here: <<http://www.australianwildlife.org/field-programs/feral-cat-research.aspx>> (accessed 29 May 2015).

¹⁰ NSW Companion Animals Taskforce, 'Report to the Minister for Local Government and the Minister for Primary Industries' (October 2012) available here: <<http://www.olg.nsw.gov.au/sites/default/files/Companion-Animals-Taskforce-report-to-Ministers.pdf>> (accessed 29 May 2015) at 1.

Breeders

The current position

In NSW, breeders are required to comply with the standards in the 'Animal Welfare Code of Practice – Breeding dogs and cats' (*the Breeding Code*). Breach of a standard in the Breeding Code can result in a penalty infringement notice or prosecution under clause 26 of the *Prevention of Cruelty to Animals (General) Regulation 2012* (NSW). The Breeding Code also contains some guidelines which are treated as recommendations and have no statutory force.

The Committee is of the view that the standards in the Breeding Code need to be strengthened in some respects. For example, there is no requirement or incentive for breeders to prevent inbreeding, to take steps to ensure that animals carrying heritable diseases are not bred, to not breed old animals, to limit the total number of litters an animal can have in its lifetime, or to restrict the number of animals per facility. Further, breeders are not required to be registered or licenced, or to de-sex animals prior to sale.

The Committee's recommendations

Licencing

Recommendation one: The *Companion Animals Act 1998* (NSW) should be amended to include a provision that a person may not own or be in control of an un-desexed cat over the age of four months, or an un-desexed dog over the age of six months, unless the person has a state-issued licence.

Licences should be issued sparingly and only after the RSPCA or the Animal Welfare League (**AWL**) has conducted an initial assessment of the proposed breeding premises and ensured the owner will meet the requirements of the Breeding Code.

There should be an annual fee payable for any licence, and the fee should be commensurate with the RSPCA or AWL's costs of conducting a preliminary assessment and annual inspections. There should be a penalty for any person found to own an un-desexed cat over four months of age, or an un-desexed dog over the age of six months, without a licence. The penalty should be set at an amount which would deter people from engaging in unlicensed breeding (having regard to the lucrative nature of high-intensity, commercial breeding businesses).

Rationale: In circumstances where the number of cats and dogs entering pounds, shelters and other animal holding facilities has become unmanageable, and there are not enough homes available for the existing population of these animals, breeding additional

companion animals is irresponsible and should be discouraged. However, the Committee recognises that a total ban of companion animal breeding is unlikely to be accepted by the community and could result in the proliferation of a black market. The Committee considers that an appropriate balance is to restrict breeding to licence holders, issue only a limited number of licences, and issue licences only to people who can demonstrate that they will breed responsibly and comply with the Breeding Code.

The Committee is aware that participants in the companion-animal breeding industry may be of the view that there is a portion of consumers who demand animals directly from breeders or pet shops as distinct from animals in pounds, shelters and animal holding facilities, and that therefore, any reduction in breeding will not reduce the number of animals in those facilities. The Committee considers this to be a very narrow view: even assuming this position were true, the situation may be different if the public were better informed of overpopulation issues, and were aware that dogs and cats from pounds, shelters and animal holding facilities make just as good pets as animals from breeders. In addition, this view may also seem predicated on the assumption that people have a right to own a particular breed of companion animal, regardless of the implications this has for animal welfare and the societal costs imposed.

The Committee recommends the imposition of a licensing fee to address the fact that there will be an inherent monitoring and enforcement cost to ensure that breeders are compliant with the Breeding Code. In circumstances where the relevant authorities do not necessarily have the resources to conduct the necessary monitoring and enforcement, it is important that the licensing framework be a user-pays system.

The NSW Companion Animals Taskforce similarly recommended a compulsory breeder licencing system, on a user-pays basis,¹¹ and the NSW Government supported this recommendation in principle.¹² The RSPCA has also called for compulsory registration of dog breeders in an effort to end puppy farming.¹³ A breeder licencing system is also supported by the Pet Industry Association of Australia.¹⁴

The Committee notes that other jurisdictions in Australia have already implemented a breeder licencing or registration system:

¹¹ Ibid at 6.

¹² NSW Government, 'Government Response to Companion Animals Taskforce Recommendations' (undated) available here: <<https://www.olg.nsw.gov.au/public/dogs-and-cats/companion-animal-taskforce>> (accessed 1 June 2015).

¹³ RSPCA Australia, 'Discussion Paper: Legislating to End Puppy Farming – the Way Forward' (May 2014) available at <www.rspca.org.au> (accessed 6 June 2015).

¹⁴ The Pet Industry Association, 'Pet Industry Association supports stricter regulations for all dog breeders and pet shops' (20 February 2015) available here: <<https://piaa.net.au/pet-industry-association-supports-stricter-regulations-for-all-dog-breeders-and-pet-shops/>> (accessed 8 June 2015).

1. In Victoria, breeding establishments are required to register with their local council if the establishment has three or more fertile female dogs and it sells dogs.¹⁵ The maximum penalty for non-compliance with the registration requirements is \$88,566; and councils and RSPCA inspectors have the ability to apply for court orders to seize animals from non-compliant and unregistered breeding premises.¹⁶
2. In the ACT, s 74 of the *Domestic Animals Act 2000* requires a person who owns a cat over three months or a dog over six months that is not desexed to have a permit. This applies regardless of whether the person intends for the animal to breed. The *Domestic Animals (Breeding) Legislation Amendment Act 2015* establishes a licensing scheme for breeders.¹⁷ Under s 72B(2) of that Act, the registrar must refuse to issue a breeding licence unless satisfied that the applicant can comply with the requirements of the *Animal Welfare Act 1992* and any approved or mandatory code of practice.

Standards of facilities

Recommendation two: The following guidelines in the Breeding Code should be made standards:

1. 4.2.1, which relates to the qualifications and experience of staff employed to care for animals;
2. 6.1.2, which relate to accommodation facilities;
3. 6.2.2, which relate to environmental conditions;
4. 6.3.2, which relate to security;
5. 7.1.2, which relate to animal care practices;
6. 7.2.2, which relate to feeding and watering practices;
7. 7.3.2, which relate to cleaning and disinfection practices;
8. 7.4.2, which relate to transport of animals;
9. 8.1.2.2, which relates to additional care for animals in their last week of pregnancy;
10. 8.2.2, which relate to quarantining diseases; and
11. 10.1.2, which relate to breeding and rearing.

¹⁵ Department of Environment and Primary Industries, 'Regulations for Dog Breeders' (last updated 10 April 2015) available here: <http://www.depi.vic.gov.au/pets/domestic-animal-businesses/breeding-and-rearing-businesses/regulations-for-dog-breeders> (accessed 1 June 2015). There is an exemption for breeders which (a) belong to an applicable breeding organisation (AO) that requires its members to operate in accordance with a code of ethics, and (b) have less than 10 fertile female dogs. Following changes made in April 2015, this exception will only apply if at least all but two of the females are registered with an AO.

¹⁶ See section 63A of the *Domestic Animals Act 1994* (Vic) which provides that a person or body must not conduct a domestic animal business that does not comply with the relevant code of practice. The penalty is 600 penalty units for a body corporate and, in any other case, 246 penalty units. See also, Department of Environment and Primary Industries, note 15.

¹⁷ This Act has not yet commenced.

Rationale: In keeping with recognition of the fact that breeding of companion animals is not a right, but a responsibility, and that animals are not a commodity, breeders must adhere to the highest standards of animal welfare. To that end, many of the current guidelines in the Breeding Code should be made compulsory standards. This recommendation is consistent with recommendation two made by the NSW Companion Animals Taskforce¹⁸ which was supported in principle by the NSW Government.¹⁹

Recommendation three: The cage sizes in Tables 1 and 2 of the Breeding Code should be reviewed, and the minimum floor, height and width areas should be significantly increased.

Rationale: In its 2010 paper, the RSPCA outlined some of the issues that arise when dogs are kept in confinement:

Dogs and puppies are unable to express normal behaviours (they have no space to exercise, play or explore) and this can lead to the development of repetitive behaviours, also called 'stereotypies', and other psychological problems. Repetitive behaviours are one of the most serious indicators of long-term welfare problems and can include circling, excessive licking of paws, flanks or the cage and howling. Dogs in these situations can develop severe mental illness, which can affect their ability to be re-homed.²⁰

The minimum cage sizes specified in the Breeding Code do not appear adequate to protect animals from the issues that can arise from being kept in confinement. The Committee notes that in Victoria the *Code of Practice for the Operation of Breeding and Rearing Businesses (2014)* (**the Victorian Code**) prescribes larger pen sizes for dogs and cats than those set out in the Breeding Code.²¹

The minimum cage sizes in the Breeding Code should be increased to ensure that NSW breeders are complying with best practice and the cages, as a minimum, do not constrain the physical and mental needs of an individual animal. The Breeding Code currently encourages breeders to 'ensure that the physical and mental needs of individual animals

¹⁸ NSW Companion Animals Taskforce, note 10, at 8.

¹⁹ NSW Government, note 12.

²⁰ RSPCA Australia, 'Discussion Paper: Puppy Farms' (January 2010) available here: <<http://www.rspcavic.org/documents/get-involved/Issues-Take-Action/Puppy%20Factories/RSPCAPuppyFarmDiscussionPaperJan2010.pdf>> (accessed 7 June 2015) at 3.

²¹ The *Code of Practice for the Operation of Breeding and Rearing Businesses (2014)* came into effect on 30 October 2014. The code can be accessed here: <<http://www.depi.vic.gov.au/pets/domestic-animal-businesses/breeding-and-rearing-businesses>>.

do not become constrained by their spatial environment',²² however, this encouragement has no force.

Recommendation four: The Breeding Code should include a standard to the effect that an animal cannot be killed for commercial reasons (that is, other than where an animal is unhealthy and its health cannot be restored).

Rationale: The introduction of the proposed standard would encourage responsible breeding practices, help ensure that animals are not bred unless there is a real chance that a home will be found for them, and deter breeders from culling companion animals simply because they do not meet the aesthetic requirements for the breed. For example, this standard would ensure that practices such as culling healthy Rhodesian Ridgeback simply because they do not have a 'ridge', will no longer be considered legitimate business practice.²³

Breeding restrictions

Recommendation five: There should be a limit on the maximum number of animals that can be kept in a facility. The maximum number of animals per facility should be determined by the RSPCA or the AWL when they conduct their preliminary inspection of a proposed breeding premises. This recommendation could be effected by including in the Breeding Code a standard to the effect that the person must comply with the conditions of their licence. Such a standard could be monitored by annual RSPCA or AWL inspections as well as through the microchip alert system described below.

Rationale: Overcrowding is a major issue in puppy farms. In a 2010 paper, the RSPCA set out some of the welfare issues that can arise as a result of overcrowding in puppy farms. These issues include unsanitary living conditions; the accumulation of urine and faeces; easy transmission of contagious diseases; an increased burden of parasites such as mites, fleas, intestinal worms and ringworm; development of psychological issues that often prevent successful re-homing; and aggression between animals competing for resources.²⁴

The Committee notes that the Victorian Code contains blanket restrictions on the number of animals that small businesses can house together (see sections 6(5) and 7(5) of the Victorian Code in relation to the maximum number of dogs and cats respectively). This recommendation of the Committee allows for a more tailored approach.

²² Breeding Code, at 10.

²³ RSPCA Australia, note 2.

²⁴ RSPCA Australia, note 20, at 3.

Recommendation six: There should be a limit on the number of litters an animal can have in her lifetime. The appropriate limits for cats and dogs should be determined by government in consultation with independent veterinarians. This requirement could supplement standards 10.1.1.9 and 10.1.1.10 in the Breeding Code which limit the number of litters an animal can have in a two year period. Such a standard could be monitored through the microchip alert system described below.

Rationale: The RSPCA notes that puppy farms often subject female breeding dogs to frequent breeding cycles where animals are constantly either pregnant or feeding pups. This puts enormous strain on their bodies and can result in increased risk of postpartum infections and eclampsia (both of which are fatal); increased incidence of worm and parasite infestations in the breeding animal and her pups; health issues such as hair and weight loss; and increased mortality rates.²⁵

Although the standards already include a limit on the number of litters an animal can have in a two year period, the Committee is of the view that, given the strain having a litter puts on an animal, there should also be a limit on the number of litters an animal should have in her lifetime. This is consistent with the Victorian Code which mandates that a female dog must have no more than five litters in her lifetime, after which she must be retired from breeding (see section 6(3)(c)) and a female cat must not have more than two litters in a 12 month period and must have no more than eight litters in her lifetime, after which she must be retired (see section 7(3)(c)).

Recommendation seven: There should be a limit on the maximum age an animal can be made to produce litters. The appropriate age limits for cats and dogs should be determined by government in consultation with independent veterinarians and included as a standard in the Breeding Code. Such a standard could be monitored through the microchip alert system described below.

Rationale: A senior animal should not be made to breed. The Committee notes that the RSPCA similarly recommends that the age for retirement from breeding must be based on veterinary advice.²⁶

Recommendation eight: First and second degree matings should be prohibited. This could be implemented by including a standard to this effect in the Breeding Code.

Rationale: The RSPCA considers both first and second degree mating of dogs to be of great concern because it can increase the chances of inherited disorders in animals and

²⁵ Ibid, at 5.

²⁶ RSPCA Australia, note 13, at 4.

make them less resistant to disease.²⁷ The RSPCA's view is supported by scientific research conducted by the University of Sydney, which found that the risk of inherited diseases (particularly common inherited diseases) increases for offspring of second-degree relatives, and increases further for offspring of first-degree relatives.²⁸

Inbreeding is a widespread problem in Australia (particularly due to the demand for pedigree animals). For example, the RSPCA reports that while the Australian National Kennel Council (ANKC) regulations prohibit the registration of progeny that are the result of matings between first degree relatives (e.g. mother-son, father-daughter, brother-sister), the ANKC does not prohibit the mating of second degree relatives (such as grandfather-granddaughter).²⁹

When breeders are permitted to inbreed, they pass on the costs to unwitting future owners who may have to spend more on veterinary care for the animal, or who may have paid a lot of money for an animal that dies young. The Committee recommends that inbreeding be prohibited to reduce the risk of breeders passing on these financial and welfare costs.

The Committee notes that the Victorian Code prohibits first-degree mating and recommends against second-degree mating in the absence of appropriate prior expert advice (see sections 6(3) and 7(3) for dogs and cats respectively).

Desexing

Recommendation nine: A person should not be permitted to sell (or otherwise transfer ownership of) a cat unless the cat has been desexed or the acquirer holds a breeding licence. This could be effected by introducing this as a standard in the Breeding Code and in the Animal Welfare Code of Practice – Animals in Pet Shops (**the Sellers Code**).

Rationale: Cats have the capacity to reach sexual maturity from as early as 16 weeks of age and can produce multiple litters per year.³⁰ Because cats reproduce early and prolifically, domestic cats have bred faster than they can be accommodated. Owners inadvertently become cat breeders and will then often surrender the mother cat and kittens to pounds and shelters.³¹ The G2Z, Australian Cat Action Plan, describes the consequences of this as follows:

²⁷ RSPCA, Australia, note 2.

²⁸ Frank Nicholas, 'The difference between mating first-degree and second-degree relatives' (18 October 2010) available here: <<http://www.rspca.org.au/campaigns/pedigree-dogs/pedigree-dogs-faq>> (accessed 7 June 2015).

²⁹ RSPCA Australia, note 2.

³⁰ G2Z, 'Australian Cat Action Plan 2014-2016' (draft 3, undated) available here: <<http://www.g2z.org.au/assets/pdf/G2Z%20Australian%20Cat%20Action%20Plan%202014-2016%20130914.pdf>> (accessed 1 June 2015).

³¹ G2Z, note 30.

The huge numbers of cats entering pounds and shelters in the warmer months results in overcrowding in some pounds and shelters. Many cats and kittens become stressed and succumb to infectious diseases such as cat flu and ringworm. Due to lack of space, and sometimes the facility design, these animals are often not segregated effectively or provided with treatment. A lack of fostering programs in many facilities also means these animals have no opportunity to be placed in a less stressful, disease free environment. Euthanasia is therefore usually the management strategy even though these are only minor illnesses which can be cured.

While some animal welfare organisations have foster care programs, it is often difficult to keep up with the numbers of kittens and cats requiring fostering in the warmer months, which means facilities are still overcrowded and stressful, and euthanasia rates increase.³²

There are "no significant health concerns with early age desexing in kittens", and indeed there are "significant health and behavioural benefits".³³ The Committee recommends that in the light of animal welfare and societal costs that arise from failure to desex cats before reproductive age, it is imperative to ensure that all cats other than breeder cats are desexed before four months of age. This is unlikely to be achieved simply by placing a requirement on owners: in 2011 only 43% of the almost 500,000 microchipped cats on the Companion Animal Register were desexed despite there being financial incentives in place to encourage desexing.³⁴ While cat owners will also be responsible for ensuring that their cat is desexed under recommendation one (above), a requirement on sellers is easier to enforce.

Recommendation ten: A person should not be permitted to sell (or otherwise transfer ownership of) a dog unless the dog has been desexed; or the seller has made provisions for funding a desexing procedure; or the acquirer holds a breeding licence. Funding arrangements could include the seller providing the new owner with a de-sexing voucher at point of sale; or through an arrangement whereby any veterinarian who carries out the procedure can charge the seller. The latter arrangement could be facilitated by recommendation eleven. This recommendation could be implemented by introducing this as a standard in the Breeding Code and in the Sellers Code.

Rationale: The Committee understands that there may be some health risks associated with desexing dogs at a young age. For this reason, the Committee does not recommend

³² G2Z, note 30, at 8.

³³ NSW Companion Animals Taskforce, note 7, at 1.

³⁴ NSW Companion Animals Taskforce, note 7, at 51.

mandatory desexing prior to sale of a dog. However, breeders should nevertheless be responsible for ensuring that all animals provided to an unlicensed owner are desexed.

Microchips should record breeder details

Recommendation eleven: The Breeding Code should require breeders to microchip animals as soon as possible, at their own expense, and for the information recorded on the microchip to include:

1. the breeder's details including licence number; and
2. the microchip identification number of the animal's mother.

Microchip databases should have a mechanism for recognising a threshold number of puppies or kittens that can be recorded to any one breeding dog or cat, or breeder registration number, and for sending an automatic notification to the relevant local government authority if the number is exceeded. Similarly, the system should alert authorities where newborn animals have been linked to a mother whose age exceeds the maximum age limit for breeding.

Rationale: The ability to trace the origin of cats and dogs to the breeder and to the animal's mother, in conjunction with an automatic alert system, can provide a cost-effective mechanism for monitoring breeders to ensure they are complying with their obligations under the Breeding Code, in particular, the following two existing standards:

- 10.1.1.9 Bitches must not have more than two litters in any two year period, unless with the written approval of a veterinary practitioner; and
- 10.1.1.10 Queens must not have more than three litters in any two year period, unless with the written approval of a veterinary practitioner;

and the following standards recommended in this submission:

- recommendation 5 which provides for a limit on the number of animals per facility;
- recommendation 6 which provides for the maximum number of litters an animal can be made to have in her lifetime; and
- recommendation 7 which provides for a the maximum age an animal can be made to continue to breed.

RSPCA Australia has also recommended the introduction of this type of recording and enforcement system.³⁵ In addition, ensuring the breeder's details are recorded to the microchip will assist with the implementation of recommendation fourteen (below). The cost of implementing this system could be borne by breeders on a user-pays basis.

Advertising

Recommendation twelve: A person should not be permitted to promote an animal for sale or giveaway in advertisements and at point of sale without displaying the animal's

³⁵ RSPCA Australia, note 13, at 2.

microchip number or the breeder's licence number. However, there should be an exemption made for animal welfare and rescue organisations and council pounds who advertise cats and dogs. This recommendation should be implemented as a standard in both the Breeding Code and the Sellers Code.

Rationale: Mandatory listing of an animal's microchip number or the breeder licence number would allow for easier identification of non-compliant breeders and sellers. A similar recommendation was also made by the RSPCA³⁶ and the NSW Companion Animals Taskforce,³⁷ and was supported by the NSW government.³⁸ The Committee notes that a similar requirement already exists in Victoria where it is an offence to advertise the sale of a dog or cat unless the microchip identification number of the animal is included in the advertisement or notice.³⁹

Transfer of ownership

Recommendation thirteen: The person in charge of a breeding facility should be required to ensure the implementation of policies, procedures and staff training that eliminate the sale of animals to inappropriate purchasers and ensure that prospective buyers are matched to suitable dogs and cats. Such matching should consider the characteristics and lifestyle of the buyer, the type and behavioural attributes of the animal including exercise requirements, and the environment of the new home, including yard size and presence of children. This recommendation could be implemented by changing existing guidelines 9.1.2.6 and 9.1.2.11 in the Breeding Code to standards.

Equivalent standards should be inserted in the Sellers Code.

Rationale: In 2010/11, 47% of cats arriving at NSW Council pounds were abandoned, with a substantial increase (of almost 25%) in the number of abandoned cats between 2008/9 and 2010/11.⁴⁰ Recommendation thirteen is intended to address this problem by requiring breeders and sellers to ensure animals are sold to appropriate owners and thereby deter impulse purchasers.

³⁶ RSPCA Australia, 'End Puppy Farming – the Way Forward' (November 2010) available at <<http://kb.rspca.org.au/afile/325/76/>> (accessed 8 June 2015) at 5.

³⁷ NSW Companion Animals Taskforce, note 10, at 9.

³⁸ NSW Government, note 12.

³⁹ Department of Environment and Primary Industries, 'Microchip numbers needed in pet sale advertisements' (last updated 13 January 2015), available here:

<<http://www.depi.vic.gov.au/pets/domestic-animal-businesses/breeding-and-rearing-businesses/microchip-numbers-needed-in-pet-sale-advertisements>> (accessed 7 June 2015).

⁴⁰ Verrinder J. 'Estimated numbers of dogs and cats abandoned and killed in Australia 2009/10' available here:

<<http://www.g2z.org.au/pdf/Calculation%20of%20National%20Figures%2009%2010%20incl.%20Healthy%20Treatable.pdf>> (accessed 8 June 2015).

Similar recommendations were by the NSW Companion Animals Taskforce⁴¹ and were supported in principle by the NSW Government.⁴² Further, these recommendations are consistent with the objective of the Breeding Code that 'the transfer of ownership of animals should be used to promote socially responsible pet ownership, and to reduce the destruction of companion animals'.

Seller's and breeder's guarantee

Recommendation fourteen: Breeders and sellers should be required to provide new owners with:

1. a five day cooling-off period, under which a person can return an animal for any reason within five days of purchase and receive a refund to the value of 75% of the purchase price; and
2. a guarantee that if an animal is returned within 21 days of sale accompanied by a statement from a veterinary practitioner that the animal is unacceptable for health reasons, the business must take back the animal and refund 100% of the purchase price.

This should be a mandatory standard in the Breeding Code and in the Sellers Code.

Rationale: These requirements would create a disincentive for breeders and sellers of animals to inbreed animals, breed animals with hereditary diseases, or to breed animals in conditions that increase the risk of infectious disease. The Committee notes that similar requirements are set out in section 5 of the Victorian Code which provide:

Where an animal is returned to the business within 3 days of sale, for any reason not supported by a statement from a veterinary practitioner, the business must take back the animal and refund 75% of the purchase price.

Where an animal is returned to the business within 21 days of sale accompanied by a statement from a veterinary practitioner that the animal is unacceptable for health reasons, the business must take back the animal and refund 100% of the purchase price.

If an animal is diagnosed with, suffering from, dies of, or is euthanased from a physical defect or disease that is traceable to the point of sale within 3 years of purchase, the business must refund 100% of the purchase price where the owner of the animal provides supporting statements from a veterinary practitioner, including test results where a suitable test is available. Owners of the animal must make veterinary reports and test results available to the breeder for the breeder to obtain their own veterinary advice (second opinion) for the purpose of informing future breeding management. If the reason for diagnosis, death, or euthanasia is a result of a heritable defect, the parents and any offspring from

⁴¹ NSW Companion Animals Taskforce, note 10, at 8 and 13.

⁴² NSW Government, note 12.

those parents still held by the business must be tested and managed for that heritable defect as per Sections 6 (3) (a) and 7 (3) (a).

Test results and death certificates must be linked with the animal's microchip number.

Rehoming obligations

Recommendation fifteen: Breeders should be encouraged to take responsibility for rehoming all animals which come from the breeder's facilities including ex-breeding animals, and animals which have been sold to new owners but subsequently abandoned or surrendered.

Rationale: Because a breeder is responsible for contributing to the population of companion cats and dogs in circumstances where the population is already unmanageable, breeders should seek to rehome (or financially support the rehoming of) any animals whose microchip links to the breeder's licence number. Irresponsible breeders are profiting while imposing a cost on the already stretched resources of shelters, pounds and other animal holding facilities. In addition, breeders who take on this responsibility will be more incentivised to:

1. restrict the numbers of animals bred to a socially responsible amount;
2. ensure prospective buyers are matched to suitable dogs and cats; and
3. ensure animals are not sold to inappropriate purchasers.

The Committee notes that some breeders and pet shops are already participating in such programs: the Pets Industry Association of Australia claims to have a 'Dogs Lifetime Guarantee Pets Traceability and Rehoming Policy' pursuant to which they will rehome any dog that ended up in a pound/shelter that was originally purchased from one of their pet shops;⁴³ and Pets Australia has a rehoming policy which applies to both cats and dogs from participating Pets Australia member pet shops or Pets Australia member accredited breeders.⁴⁴ This suggests that rehoming obligations do not render breeding businesses un-profitable. The Committee takes the view that these types of programs should be encouraged.

This recommendation is also consistent with the objective of the Breeding Code that 'the transfer of ownership of animals should be used to promote socially responsible pet ownership, and to reduce the destruction of companion animals'.⁴⁵

⁴³ The Pet Industry Association, note 14.

⁴⁴ Pets Australia's rehoming policy can be viewed here: <<http://petsaustralia.org/the-big-issues/pet-industry-rehoming-scheme-pet-traceability-scheme-australian-pet-industry-rehoming-scheme/>> (accessed 8 June 2015).

⁴⁵ Breeding Code, at 24.

Pet shops

The current position

In NSW, pet shops are required to comply with the standards in the Sellers Code. Breach of a standard in the Sellers Code can result in a penalty infringement notice or prosecution under clause 26 of the *Prevention of Cruelty to Animals (General) Regulation 2012* (NSW). The Sellers Code also contains some guidelines which are treated as recommendations and have no statutory force.

The Committee is of the view that the Sellers Code may be strengthened in a number of instances. For example, there is no standard requiring sellers to take steps to ensure that animals are not sold to inappropriate purchasers; or to ensure that animals are sourced from appropriate breeders.

The Committee's recommendations

A number of the recommendations made above in relation to the Breeding Code were flagged as being equally applicable to the Sellers Code. In addition to these recommendations, the Committee makes the following recommendation, which is specific to pet shops.

Sourcing animals

Recommendation sixteen: Pet shops should be required to source a certain quota of animals from shelters and pounds, and pet shops should not be permitted to sell an animal from a breeder other than a licenced breeder.

Rationale: The sale of animals in shops may appear to encourage the treatment of animals as commodity items. A number of pet shops have already stopped the sale of non-rescue animals, including most notably Petbarn,⁴⁶ and Pets Domain (in South Australia)⁴⁷.

⁴⁶ See Petbarn's pet adoption policy here: <<http://www.petbarn.com.au/services/adoptions/>> (accessed 8 June 2015).

⁴⁷ Pets Domain announced on 11 March 2013 that it had entered into agreement with a rescue/adoption group to start a co-operative program in South Australia, which would see the final phase out the sale of puppies in all stores across South Australia. The announcement is available here: <<https://www.facebook.com/petsdomain/posts/496831880380995>> (accessed 8 June 2015).

The Committee notes that in 2014, the Victorian Labor party announced plans to restrict pet stores to sell only dogs and cats that are linked with a registered animal shelter.⁴⁸ Similar restrictions have been imposed on pet shops overseas including in Los Angeles where pet shops must source their cats, dogs and rabbits from shelters and rescue organisations or face a fine.⁴⁹

Owners

The current position

An owner's obligations in respect of companion animals are governed by the *Companion Animals Act 1998* (NSW) and the *Prevention of Cruelty to Animals Act 1979* (NSW).

The Committee is of the view that the laws relating to pet ownership can be strengthened in some instances. For example, they do not require that the owner provide any regular veterinary checks or vaccinations for the animal; they do not require an owner to ensure that their animal is desexed; and they do not require cat owners to take any steps to minimise the risk of their cat harming native wildlife. However, the Committee considers that one of the biggest issues in relation to pet ownership is that owners are not aware of their obligations.

The Committee's recommendations

The Committee makes the following recommendations, which are specific to pet owners.

Sourcing animals

Recommendation seventeen: A person should not be permitted to purchase (or otherwise obtain) an animal from a breeder other than a licenced breeder. This could be introduced by an amendment to the *Companion Animals Act 1998* (NSW). Consideration needs to be given to exempting working dogs on rural properties from this requirement.

Rationale: The Pet Industry Association of Australia estimates that only around 15% of animals are sold in pet shops, and the remainder are sold online, or through newspaper classifieds, often by breeders who are not compliant with the Breeding Code and who remain undetected by law enforcers.⁵⁰ It is difficult to regulate the sale of animals that occur online. This means that even with the introduction of a licencing system proposed

⁴⁸ Victorian Labor, 'Puppies safer under Labor: The crackdown continues' (6 October 2014) accessible here: <<https://www.viclabor.com.au/media-releases/puppies-safer-under-labor-the-crackdown-continues/>> (accessed 8 June 2015).

⁴⁹ Lissa Christopher, 'Rescue cats and dogs set trends in pet stores' *Sydney Morning Herald* (4 November 2012) <<http://www.smh.com.au/environment/animals/rescue-cats-and-dogs-set-trend-at-pet-stores-20121103-28quc.html>> (accessed 8 June 2015).

⁵⁰ The Pet Industry Association, note 14.

under recommendation one, there will be a number of unlicensed operators who continue to breed animals, and violate the Breeding Code. The most effective way of preventing breeders from operating without a licence is to decrease demand for animals bred at those facilities. People may be less likely to purchase animals from unlicensed breeders if there were a penalty for doing so.

It is important that any amendment to the Companion Animals Act to this effect only comes into force after:

1. the implementation of the breeder licencing system (see recommendation one above), and
2. the development and dissemination of a government subsidised education program to raise awareness of responsible pet ownership, including responsible sourcing of animals (see recommendation eighteen below).

Education program

Recommendation eighteen: A government subsidised educational program on responsible pet ownership should be developed and disseminated. The program should include the following:

1. information to encourage adoption from pounds and shelters in NSW;
2. information regarding the new breeder licencing system;
3. information to discourage the purchase of animals from unlicensed breeders; and
4. the responsibilities of owning a cat or dog.

The costs of the program could be offset by breeder licence fees, and could be supported by other private sector participants including pet shops.

Rationale: The Committee is of the view that it is important for the public to be aware of the issues relating to companion animal breeding and management for two reasons:

1. to ensure that people source animals responsibly, look after their animals, and comply with ownership obligations. For example, if more owners were made aware of the requirement that they update the microchip or registration details of their pet when they move, this may assist pounds and shelters to return lost animals to their owners (thereby reducing the strain on resources at those facilities); and
2. to ensure the government has public support for any steps taken to improve the legislative and regulatory framework relating to companion animals.

Although the program may be expensive, the costs could be recovered in the long term if the program is successful in reducing the number of animals in shelters, pounds and other animal holding facilities; and if it results in unscrupulous breeders going out of business and thereby reducing the burden on law enforcers.

The Committee notes that a similar recommendation was made by the NSW Companion Animals Taskforce⁵¹ and supported by the NSW Government.⁵²

Veterinarians

Recommendation nineteen: Veterinarians should be required to report to the RSPCA or the AWL any cases where they suspect an animal has been inbred, or otherwise bred in conditions which fall below the standards of the Breeding Code.

Rationale: Veterinarians are in a unique position to identify if an animal is diseased, or has behavioural problems, which may be attributable to poor breeding practices. This reporting requirement will assist law enforcers to track down unlicensed breeders, or identify when licenced breeders are not complying with the Breeding Code.

Government

Recommendation twenty: The government should legalise trap, neuter and release programs which assist in controlling the population of wild and stray cats.

Rationale: In an effort to reduce the impact of wild and stray cats on native wildlife, the government should consider compassionate population control methods. Trap, neuter and release programs are reported to be effective at reducing cat populations over time, however it is currently not legal for these programs to be carried out. The Committee notes that the *Animal Welfare (Population Control) Bill* was intended to provide immunity from civil liability and exemptions from licensing and other requirements to facilitate programs for controlling the population of stray, abandoned or wild cats.⁵³ The Committee supports the introduction of a bill to this effect.

Concluding Comments

The Committee applauds the NSW Government's inquiry into companion animal breeding. However the Committee is of the view that issues relating to the management of companion animals should be addressed through a holistic overhaul of the legislative and regulatory framework that relates to companion animals. Accordingly, the Committee has made recommendations in relation to the laws and regulations affecting breeders, pet shops, owners and veterinarians.

In addition to the recommendations made in this submission, the Committee is currently reviewing the regulatory framework that applies to pounds and may make separate

⁵¹ NSW Companion Animals Taskforce, note 10, at 25.

⁵² NSW Government, note 12.

⁵³ This bill lapsed on 13 February 2015.

submissions to the government on how pound policies and practices can be improved to reduce the number of healthy companion animals euthanized in NSW.

NSW Young Lawyers and the Committee thank you for the opportunity to make this submission. If you have any queries or require further submissions please contact the undersigned at your convenience.

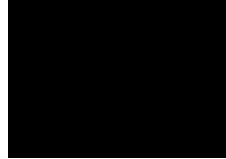
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