

**Submission
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COMPANION ANIMAL BREEDING PRACTICES IN NEW SOUTH WALES

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ACT
Government

Submission to the

Inquiry into
Companion Animal Breeding Practices
in New South Wales

Legislating to Prevent Puppy and Kitten Farming:
The ACT's Experience

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Introduction

It is no great secret that many Australians love their pets. According to figures sourced from the RSPCA, Australia has one of the highest rates of companion animal ownership in the world. Nationally, approximately 36 per cent of households include a dog and 23 per cent include a cat. Obviously then a large number of Australian households consider that at least one dog, cat, or both are part of their family.

Multiple studies have found that there are many benefits to keeping a companion animal. These include positive impacts on the keeper's health and well-being, instilling a sense of responsibility in children and increasing participation in community life.

It is understandable then that there has been much concern throughout the Australian community in recent years about the animal welfare issues associated with the intensive breeding of dogs and cats for sale in the pet market. This breeding occurs in what is informally known as puppy and kitten farms, mills or factories. While there is no widely accepted definition of what constitutes a puppy or kitten farm, the RSPCA has proposed that a puppy farm be defined as 'an intensive dog breeding facility that is operated under inadequate conditions that fail to meet the dogs' behavioural, social and/or physiological needs'.¹ Such a definition could be expanded to include kitten farms. As the RSPCA explains, puppy (and kitten) farming usually occurs in large-scale commercial operations, but is not limited to them, and it can also occur in small breeding establishments.

The intensive breeding of companion animals can give rise to serious welfare issues. Unscrupulous intensive breeding facilities impose inadequate living conditions on the animals involved, particularly female animals and their offspring. Intensive pet breeding operations may place the operator's profit about their animals' health and welfare.

The ACT's response

As with other jurisdictions in Australia, the Canberra community has expressed its concern with the animal welfare issues associated with the intensive breeding of puppies and kittens. The ACT Government decided to respond to this concern with legislation to prevent intensive breeding of companion animals.

The Parliamentary Agreement for the 8th Legislative Assembly for the ACT provides for the introduction of legislation to regulate the breeding and sale of cats and dogs in the ACT. The decision was made that this regulation would be best achieved in two steps: the first step would be the creation of the *Code of Practice for the Sales of Animals within the ACT (Other than Stock and Poultry* (the sales code), which contains mandatory standards for the sale of

¹ RSPCA, *End Puppy Farming—The Way Forward*, 2010.

animals; the second step would be legislation to focus on the breeding of cats and dogs.

The sales code came into force on 21 October 2013. It provides mandatory and enforceable standards for the sale of animals, including standards for:

- the sale process;
- the killing of food animals offered for sale; and
- the transport of animals for sale purposes.

Following declaration of the sales code, the residual issue was progressing legislation to regulate the breeding of cats and dogs. This occurred with the enactment of the *Domestic Animals (Breeding) Legislation Amendment Act 2015* (ACT) (the Breeding Act) on 24 March 2015, with the unanimous support of Members of the ACT Legislative Assembly. The Breeding Act is due to commence in the second half of 2015 and the procedures and administration necessary to enforce the Act are currently being prepared.

Summary of the Breeding Act

The Breeding Act amends the ACT's *Animal Welfare Act 1992*, *Domestic Animals Act 2000* and *Domestic Animals Regulation 2001* to prevent puppy and kitten farming in the ACT. This is primarily done through two ways:

1. amendments to the Animal Welfare Act to create offences of intensively breeding female animals; and
2. amendments to the Domestic Animals Act to create a new breeding licensing scheme.

The opportunity was also taken to insert a general objects clause into the Animal Welfare Act to assist courts, authorised officers and inspectors to interpret the Act's aims. Following research, the objects clause in the *Animal Welfare Act 2002* (WA) was chosen as an appropriate model on which to base the new objects clause.

Amendments to the *Animal Welfare Act 1992* (ACT) to prevent puppy and kitten farming

The Breeding Act amends the Animal Welfare Act to insert new section 15B to create two offences of allowing a cat or dog to breed in contravention of a breeding standard declared by the Minister. A breeding standard may provide for any matter that the Minister reasonably considers is appropriate to protect the welfare, safety or health of fertile cats and dogs in relation to breeding. The declaration of a breeding standard will be by disallowable instrument (a form of legal instrument which may be disallowed (or vetoed) by the ACT Legislative Assembly). The Breeding Act provides specific examples of issues that the Minister may wish to include in a breeding standard, including:

- the minimum age for a dog before first mating;
- the age at which, or number of litters after which, a dog must be retired from breeding;
- the maximum number of litters a cat may have in a 12-month period, or in her lifetime.

The ACT's Animal Welfare Advisory Committee is currently drafting the first breeding standard, which will be completed in time for the Breeding Act's commencement in the second half of 2015.

An offence is created by new section 15B(4) of the Animal Welfare Act of *recklessly* allowing a female cat or dog to breed in contravention of a breeding standard. The maximum penalty for this offence is 50 penalty units.²

A further offence in new section 15B(5) of the Animal Welfare Act is of allowing a female cat or dog to breed in contravention of a breeding standard, with the intention of making a profit or commercial gain. This has a higher penalty than the offence in section 15B(4), at 100 penalty units.³

The Breeding Act also inserts new section 21(ea) into the Animal Welfare Act to explicitly provide that the Minister may declare a code of practice for the breeding and selling of cats or dogs with heritable defects.

Amendments to the *Domestic Animals Act 2000 (ACT)* to regulate breeders of dogs and cats

The Breeding Act amends the Domestic Animals Act to create a new licensing scheme to regulate breeders of dogs and cats in the ACT, in order to strengthen the proposed amendments to prevent puppy and kitten farming. This licensing scheme will be administered by the Registrar of Domestic Animal Services (DAS).

The purpose of the new breeding licensing scheme is to ensure that dog and cat breeders are well aware of their responsibilities for the welfare of their animals when conducting business. Administratively, it is envisaged that breeding licences will be linked to an application for a licence to keep a sexually-entire dog or cat, which is currently required by section 74 of the Domestic Animals Act.

One major benefit of the breeding licensing scheme is that it creates a level playing field for legitimate breeders, by eliminating unscrupulous breeders from the industry who would seek to profit from animal cruelty.

New section 72 of the Domestic Animals Act creates an offence of breeding a litter from a dog or cat for profit or commercial gain without holding a breeding licence. The maximum penalty for this offence is 50 penalty units.

A breeding licence will be required if a person is the keeper or carer of a female dog or cat and the person intends on breeding a litter from the dog or cat for profit or commercial gain. The legislation does not specifically apply to people whose dog or cat might have an 'accidental' litter, although it must be noted that the Domestic Animals Act already provides that a person must not keep a sexually-entire dog or cat without a permit.

² At time of writing, 50 penalty units is equal to \$7,500 for an individual or \$37,500 for a corporation.

³ 100 penalty units is equal to \$15,000 for an individual or \$75,000 for a corporation.

The Registrar must not issue a breeding licence unless satisfied that the applicant can comply with the requirements of the Animal Welfare Act and any approved or mandatory code of practice made under that Act.

Before issuing a breeding licence, the Registrar must consider specific criteria, including:

1. the number and kind of animals kept by the applicant at the premises to which the application relates;
2. the size and nature of the premises to which the application relates;
3. the suitability of facilities on the premises for keeping dogs or cats;
4. the potential impact on the occupiers of neighbouring premises;
5. whether the applicant is a member of a recognised breeding organisation (which can be declared by the Registrar);
6. any conviction or finding of guilt of the applicant within the last 10 years against a law of a State or Territory for an offence relating to the welfare, keeping or control of an animal; and
7. any other matter the Registrar considers relevant.

New section 72C of the Domestic Animals Act provides that breeding licences remain in force unless surrendered by the licensee or cancelled. This provision was inserted to reduce the regulatory burden on breeders of complying with the new legislation. Breeders will therefore not have to periodically renew their breeding licences.

Further, new section 72K of the Domestic Animals Act provides a strict liability offence for the holder of a breeding licence to not include his or her breeding licence number in any published advertisement to buy a dog or cat that he or she has bred. The maximum penalty for this offence is 10 penalty units.⁴

This advertising requirement has two main benefits:

1. it gives legitimate breeders the benefit of being able to clearly identify themselves to their potential customers through the display of their unique breeding licence number; and
2. it assists DAS to conduct compliance checks.

The Breeding Act also makes amendments to the *Domestic Animals Regulation 2001* (ACT) to provide for review rights to the ACT Civil and Administrative Tribunal for decisions made about the new breeding licensing scheme.

Consultation on the Breeding Act

In order to ensure that the breeding licensing scheme protected animals but also did not place an undue regulatory burden on legitimate breeders, targeted consultation with relevant stakeholders occurred during the Act's development. This consultation occurred with the following organisations:

- ACT Animal Welfare Advisory Committee;
- ACT Canine Association Inc;
- Australian National Cats Inc;
- Australian Veterinary Association (ACT);

⁴ Equal to \$1,500 for an individual or \$7,500 for a corporation.

- Capital Cats Inc;
- RSPCA ACT and RSPCA Australia; and
- Pet Industry Association of Australia.

All consulted stakeholders were supportive of the Bill's aim of preventing intensive dog and cat breeding operations in the ACT. Many constructive and practical comments were received from stakeholders, which helped to shape the eventual Act.

Opportunities for community participation

Despite existing legislation and the hard work of animal welfare organisations, unscrupulous intensive animal breeders can be successful in hiding their maltreatment of animals.

The community therefore can play an important role along with Government in helping to prevent irresponsible companion animal breeding. The commencement of the ACT's Breeding Act will allow members of the public to participate in stopping intensive dog and cat breeding in a number of ways, such as avoiding the purchase of a puppy or kitten from an unlicensed breeder and by reporting suspicious pet breeding activities to DAS for investigation.

Overwhelmingly, it appears that the community expects that companion animal breeding practices are undertaken within appropriate welfare standards. The commencement of the Breeding Act in the second half of this year will ensure that legal action can be taken against irresponsible dog and cat breeders who seek to operate within the ACT.