

Supplementary Questions for Animal Defenders Office

SuppQ1. Victoria has an “Anti-Puppy Farm Legal Clinic” that is partly funded by the Victorian Government. Do you think a similar Government-funded legal clinic would be useful in NSW? How do you think this clinic could assist people who have inadvertently purchased a dog from a puppy farm?

A: The ADO is familiar with the Anti-Puppy Farm Legal Clinic operated by the Animal Law Institute in Victoria. We understand that there is a high demand for its services, and we commend the Animal Law Institute for its work.

The ADO supports the concept of a government-funded specialist legal clinic in NSW. A specialist clinic would be best equipped to provide assistance to the public in this area, rather than add the service to bigger, generalist community legal centres or other service providers. These service providers tend not to have the subject matter expertise or the resources to assist people with ‘animal’ problems.

The ADO has assisted and continues to assist clients with issues related to potential puppy and kitten farming. However, as a small volunteer team that already provides legal assistance on all matters of animal protection across all Australian jurisdictions, the ADO inevitably turns away a number of cases due to a lack of resources. The ADO is therefore keenly aware of the unmet legal need in NSW regarding people who have unwittingly bought their companion animal from unscrupulous breeders.

We note that the Clinic in Victoria is not fully funded by the Government and as a result, cannot employ sufficient solicitors to meet the demand for legal assistance. Were a clinic to be established in NSW, it would need to be funded so as to be able to take on an appropriate number of lawyers to run the clinic and to provide community outreach and legal education in this in-demand area of the law.

SuppQ2. It was suggested by some dog breeding organisations that there should be an “extended liability” scheme for breeders in circumstances where animals who have sold end up with a health or genetic condition that could have been prevented. Would you support this idea,

¹⁵ *Domestic Animals (Fees) Determination 2021 (No 2)*, Item 2.9.

and if so, how do you think it could work in practice in conjunction with the existing Australian Consumer Law provisions?

A: Where an animal suffers an illness as a result of breeding practices, including the conditions under which the animal was raised at the start of life, it should be incumbent on the breeder to be held accountable.

The ADO supports an extended liability scheme, on condition that such a scheme does not replace the measures proposed in the Bill.

As outlined in our submission to the Inquiry and our testimony provided at the hearing, the ACL is an inadequate mechanism to protect animal owners against negligent breeders. In our experience, most clients at our community legal centre are either unwilling or unable to commence proceedings under the ACL to seek compensation for their unwell (or deceased) kittens and puppies. This is usually because of a combination of the following reasons:

- Such proceedings are stressful, prolonged and expensive;
- The associated costs of such proceedings can quickly exceed the costs of originally purchasing and treating an unwell animal;
- The remedies offered under ACL cannot address the emotional distress suffered by the client, and may in fact exacerbate that distress;
- Where a decision is made to award financial compensation, the amount is often limited and inadequate (for example, the court may stop calculating compensation from the point where a breeder asks for the animal to be returned to them);
- It is difficult to obtain evidence that an animal was unwell before purchase;
- Evidence that an animal is sick shortly after purchase is expensive and requires local veterinarians to be willing to participate in legal proceedings;
- Some illnesses that are congenital may not become apparent until later in the animal's life; and,
- Although breeders usually offer for an animal to be returned or exchanged (either before, during or as a result of ACL proceedings), no clients of the ADO have considered this to be an appropriate, adequate or desired remedy.

Were an extended liability scheme to be created in NSW, it would be important to address a number of obstacles to commencing ACL proceedings, such as:

- The return or exchange of an animal should not be considered a valid course of action (this is both inadequate for the owner and risky for an animal to be returned to a potentially negligent breeder);
- Breeders should be responsible for the costs of ongoing care for an animal who has been confirmed to have a congenital illness.

SuppQ3. A number of breeding organisations gave evidence to the effect that some puppy farms can be difficult to find – and that we shouldn't bother outlawing puppy farming as those facilities would simply become illegal but continue to run.

(a) What is your response to this perspective?

A: The ADO submits that this perspective is out of line with legal theory and the purpose of criminal law in Australia. Instead, strong and clear legislation is essential to tackle the issue of puppy and kitten farming in the State and to act as a deterrent to rogue breeders.

When such facilities are discovered, there must be legislative provisions to allow for swift prosecution against puppy and kitten farms and their proprietors.

Clear legislative provisions are also necessary to help breeders understand their obligations and ensure their practices are lawful.

(b) Do you think that the risk of some unidentified puppy farms trying to still operate illegally is a reason not to outlaw the practice of puppy farming? If not, why not?

Please see answer to part (a).

(c) Do you think the ‘source number’ provisions in the Companion Animals Amendment (Puppy Farms) Bill 2021 will assist in helping authorities track down illegal puppy farms and unethical backyard breeders? If so, please explain how.

A: The ADO supports the introduction of mandatory ‘source numbers’ as outlined in the Bill. Illegal and unethical breeders depend on an easy and untraceable points of sale in order to profit from breeding companion animals. Therefore, the scheme will make it harder for rogue breeders to sell their animals only if there is general community awareness that persons advertising dogs and cats for sale must use a source number, and that the absence of a source number is a warning sign of a rogue breeder. Where numbers are used, compliance checks need to be undertaken to demonstrate that the scheme cannot be circumvented by simply making up a source number for the purposes of advertising.

Under current legislation, advertisements listing animals for sale could have a Breeder Identification Number, a microchip number, or a rescue organisation number, which creates confusion and prevents buyers from searching a centralised database prior to sale.

The introduction of mandatory source numbers that link to a central and publicly searchable register would streamline both the process for buyers to confirm that the breeder is registered and the ability of authorities to monitor the use and listing of animals for sale.

4. What would be the impact of allowing intensive, large-scale dog breeding facilities to remain legal in NSW? Does the fact that these facilities are currently legal affect the ability of authorities to prosecute and remove animals from these facilities? If so, please explain how.

A: Allowing intensive, large-scale dog (or cat) breeding facilities to remain legal in NSW would increase the likelihood of unscrupulous breeders continuing to operate and poor animal welfare practices to flourish.

The capacity for care in animal facilities is optimised with fewer animals. Larger facilities naturally run the risk of reduced individual care for each animal.

Allowing the facilities to remain legal means that relevant authorities (RSPCA, AWL and NSW Police) must rely on gathering enough evidence to prosecute under animal welfare criminal laws, with their high standard of proof and complexities in prosecuting, sentencing, and obtaining court orders. Spreading the enforcement burden to other entities (eg council staff) would assist in cracking down on rogue intensive breeders.

5. At the hearing Sentient raised concerns about breeding of animals with specific traits that are known to cause serious health issues, such as brachycephalic breeds.

- a. Do you think this is an area in need of legislative intervention in order to protect animals?**

A: Yes, the ADO supports the introduction of provisions to prevent the intentional breeding of animals with specific traits that are likely to, or do, cause serious health issues.

- b. Do you think there are provisions that could be added to the Companion Animals Amendment (Puppy Farms) Bill 2021 to address this issue? If so, please provide detail.**

A: Proposed section 61ZF in the Bill could be expanded to make it an offence to breed a litter from a dog or cat if the dog or cat is exhibiting signs of or is known to carry:

- a debilitating genetic fault; or
- a specific disease transmissible from parent to offspring.¹⁶

The Bill could also create cruelty offences to be inserted in the *Prevention of Cruelty to Animals Act 1979* (NSW) (POCTAA) (or its successor) of:

- breeding an animal with a heritable defect that causes diseases listed elsewhere eg in a Schedule; and
- permitting an animal to suffer from a heritable disease or specific traits that are known to cause serious health issues.¹⁷

¹⁶ This is based on the *Animal Welfare (Breeding Standard) Determination 2015 (No 1)* (ACT), clause 1.

¹⁷ This is based on the Victorian POCTAA 1986, s15C.