

INQUIRY INTO PUPPY FARMS IN NEW SOUTH WALES

Questions on Notice – 7 April 2022

Questions on Notice for Animal Defenders Office

QoN1: The Hon. MARK BANASIAK: I have one final question on one of the other clauses. It is section 61ZE, and I raised this with Sentient just before. This is about prescribing a time frame prior to breeding of cats and dogs where they have to get that mandatory veterinary assessment. There have been some concerns raised through the inquiry that it is possibly not suitable for cats who have a bit more of a sporadic mating season and it is hard to predict. I wanted to seek the Animal Defenders Office's opinion as to whether you would be amenable to amending that, to make it a little bit more flexible for cats in terms of when they have to go get that assessment given that they have a sporadic mating season and a very short mating season?

A1:

Requiring that a cat used for breeding be health-checked by a veterinarian before breeding is accepted internationally¹ and in Australia².

The ADO notes that the Australian Veterinary Association addresses this proposed requirement in the Companion Animals Amendment (Puppy Farms) Bill 2021 ("the Bill") and does not object to it.³

Having cats checked by a veterinarian before breeding should already be part of good breeding practice. The current *NSW Animal Welfare Code of Practice Breeding Dogs and Cats (2021)* ("the Breeding Code") recommends a 'program for maintaining a feline leukaemia (FeLV) free population', and states that this:

should include a program of testing and vaccination of resident cats in accordance with veterinary advice, and **a requirement for a current negative test prior to breeding** (which applies to cats from the permanent population, new additions to the permanent population or visiting cats).⁴

It would therefore be reasonable to expect cat breeders to be able to incorporate into their breeding programs a veterinary check before a cat is used for breeding. The NSW Cat Fanciers Association Inc. states in its submission that '...the entire process from Day 1 of Mating to the puppy/kitten going to

¹ See EU Platform on Animal Welfare, 'Responsible Cat Breeding Guidelines', endorsed 3 Nov 2020 (at 3.1): 'Cats used for breeding must be health-checked by a veterinarian before breeding; they should be functionally fit, physically healthy (in good body condition and free from obvious signs of infection) and have good (confident and friendly) temperaments – these phenotypes are compatible with a good quality of life.' https://ec.europa.eu/food/system/files/2020-11/aw_platform_plat-conc_guide_cat-breeding.pdf

² See Australian National Cats Inc.: 'Before breeding cats should undergo a thorough health check by a veterinarian. This will include checking for any known breed genetic defects (that will affect the cat or its progeny's quality of life).' <https://www.ancats.com.au/code-of-ethics.html>

³ Submission #219, p6:

<https://www.parliament.nsw.gov.au/lcdocs/submissions/77986/0219%20Australian%20Veterinary%20Association.pdf>

⁴ Department of Primary Industries, *NSW Animal Welfare Code of Practice Breeding Dogs and Cats (2021)*, 8.2.2.3, p26, emphasis added.

its new home takes approximately 4 to 5 months.’⁵ Presumably some level of pre-planning (ie before ‘Day 1 of Mating’) already takes place with cats—at the very least having a male cat available—despite the apparent unpredictability of when the female cat may come into season. Breeders are also required to ‘establish a relationship with a veterinary practitioner who is able to attend to dogs and cats...’ (the Breeding Code, Standard 8.2.1.1) so a health check at short notice would not seem unreasonable.

It appears that the problematic issue is the unpredictable nature of a cat’s ‘mating season’ rather than the length of time allowed for vet certification under proposed s61ZE(1) as it applies to cats. In other words, it seems it would not make much difference if the specified period for the certification were 4 weeks or 4 months, as there would be little advance warning of when cats come into season so any pre-breeding preparation would have to be done close to the point of breeding or mating. On that basis, 4 weeks seems reasonable when applied to cats.

As a drafting note, the ADO suggests that the paragraphs in proposed subsection 61ZE(2) should be numbered (a) and (b) (rather than (i) and (ii)).

QoN2: The Hon. EMMA HURST: Do you think though that within the consumer law—just stepping away from the legislation that we have discussed or that I have put on the table with the Animal Justice Party—we need some kind of extended liability scheme for breeders where there is some kind of responsibility on breeders to cover for veterinary costs, for example, if an animal is sold that turns out to be sick?

A: [See our response to supplementary question 2 below]

QoN3: The Hon. EMMA HURST: On the topic of fair trading, earlier we talked about consumer law if people end up being sold a sick animal. Our office gets lots of calls about somebody that has bought a sick animal and they have called the breeder and who says, "That is fine, return the animal and we will reimburse you." When they ask what will happen to the animal, the breeder says "We will kill the animal." And then they are told "If you don't return the animal then we will not reimburse you." So there is whole mix of emotions and stuff and people do not want to return the animal that they have built a relationship with, knowing the animal will get killed. What do we need to do in that situation, given that it is not returning a lamp or a car? How do we fix the legislation in that space?

A: While it is generally expected that consumers will return faulty goods when seeking a refund, the concept of a ‘returnless refund’ is becoming more common, especially with online shopping where items may be expensive to ship and hard to resell.⁶ The ADO submits that this approach should apply to animals for the same reasons, regardless of how they are bought and sold. Animals could be exempted from any requirement to return items to sellers when the purchaser is entitled to a refund in the case of a ‘major problem’.⁷ Such an approach would be appropriate for welfare reasons,

⁵ Submission #9, 7th page (submission pages not numbered):

<https://www.parliament.nsw.gov.au/lcdocs/submissions/77782/0009%20NSW%20Cat%20Fanciers%20Association.pdf>.

⁶ <https://www.shopify.com/retail/returnless-refunds>.

⁷ <https://www.fairtrading.nsw.gov.au/buying-products-and-services/repairs,-replacements-and-refunds#major>; s260 ACL.

and/or where the breeder has stopped operating, and in recognition of the significant bond that can develop between humans and their animals. To achieve this, NSW fair trading law could be amended to clarify that where a consumer is entitled to a refund as a remedy under the Australian Consumer Law (“ACL”)⁸, the consumer is not required to return the item to the supplier if the item being refunded is an animal (living or deceased).⁹ This amendment could be made as part of the Bill (in a different Schedule).

QoN4: The Hon. EMMA HURST: The second part was what other measures should we be looking at potentially to clamp down on dodgy backyard breeding? ... Is that working in the ACT? Is that system working in the way that you would hope it to?

A: The requirement to apply for a licence to breed a cat or dog (“breeding licence”) was introduced in the ACT in 2015.¹⁰ It applied to any person wishing to breed a litter from a dog or cat for profit or commercial gain. In December 2017 the reference to ‘for profit or commercial gain’ was removed, which meant that it became an offence for anyone to breed a litter from a dog or cat without holding a licence.¹¹

The government entity responsible for administering the breeding licence regime is the Transport Canberra and City Services Directorate (“TCCS”). In its 2015-16 Annual Report, it reported that 38 breeding licences were issued. It did not report on any compliance or enforcement action in relation to persons breeding a litter from a dog or cat. No TCCS annual report after this date reports on breeding licences.¹²

In 2018 an independent review into the management of dogs in the ACT was undertaken by an expert panel.¹³ It made the following recommendation about breeding licences:

DAS [Domestic Animal Services] should introduce stronger regulations for people who breed dogs and strictly enforce any non-compliance.

In its response published later in 2019 the Government agreed and stated:¹⁴

Recent legislative changes in December 2017 and April 2018 have resulted in much stronger regulations around illegal breeding. The number of rangers have been increased and targeted compliance programs will be undertaken for illegal breeding activities, and will form part of DAS’ educate, engage and enforce model.

In 2019 the Government reported that progress was ‘underway’ and that:

⁸ For example s261(d) ACL. Note this provision does not require that the faulty product be returned.

⁹ For example the *Fair Trading Act 1987* (NSW) Part 3 (“The Australian Consumer Law”), or Part 6 (“Enforcement and remedies”), Division 4 (“Remedies applying to ACL matters and local matters”).

¹⁰ *Domestic Animals Act 2000* (ACT) s72, inserted by the *Domestic Animals (Breeding) Legislation Amendment Act 2015*.

¹¹ *Domestic Animals Act 2000* (ACT) s72.

¹² https://www.cityservices.act.gov.au/about-us/annual_report.

¹³ <https://www.cityservices.act.gov.au/pets-and-wildlife/domestic-animals/about-das/independent-review-into-dog-management>.

¹⁴ https://www.cityservices.act.gov.au/data/assets/pdf_file/0018/1360062/April-2019-Progress-Update-on-Government-Response-to-the-Independent-Expert-Review-into-the-Management-of-Dogs-in-the-ACT.pdf.

DAS Field staff continue to investigate reports of illegal breeding under the legislation. Under the Canberra Dog Model the legal avenues for procuring dogs will be monitored and a zero-tolerance approach to illegal breeding will be taken.

No further updates are available.

A request for further information about applications for and enforcement of breeding licences from TCCS has been submitted but as yet no further information has been provided.

The current breeding licence fee is \$431.40.¹⁵ Unlike for other licences, a renewal fee is not listed.

Therefore not enough information about the ACT breeding licence scheme is available to be able to make an assessment as to how well (or not) the scheme is working. This illustrates a common problem with animal welfare and animal management laws – a lack of transparency and enforcement action makes it impossible to evaluate the regulatory framework.

n