

Submission
No 6

INQUIRY INTO PUPPY FARMING IN NEW SOUTH WALES

Organisation: Animal Defenders Office

Date Received: 7 March 2022



Animal Defenders Office

Using the law to protect animals

ABN: 12837355070 | Member: CLCNSW Inc. | GPO Box 2259 Canberra ACT 2601 | www.ado.org.au | contact@ado.org.au
The Animal Defenders Office Inc. is accredited by the National Association of Community Legal Centres.

The Director
Inquiry into puppy farming in New South Wales
Parliament House
Macquarie Street
Sydney NSW 2000

By email: puppyfarms@parliament.nsw.gov.au

Dear Sir/Madam

Submission to the Inquiry into puppy farming in New South Wales

Thank you for the opportunity to provide a submission to the Inquiry into puppy farming in New South Wales (“the Inquiry”) by a select committee of the Legislative Council of New South Wales (“the select committee”).

The Inquiry relates to the Companion Animals Amendment (Puppy Farms) Bill 2021 (“the Bill”).

Our comments on the Bill and issues raised in the Inquiry’s terms of reference (1)(a)-(d) are set out below.

About the Animal Defenders Office

The Animal Defenders Office (“ADO”) is a not-for-profit community legal centre that specialises in animal law. The ADO provides pro bono animal law services to the community. The ADO is a member of Community Legal Centres NSW Inc., the peak body representing community legal centres in NSW.

Further information about the ADO can be found at www.ado.org.au.

GENERAL COMMENTS

Term of reference 1(a): the provisions of the Bill

Currently New South Wales (“NSW”) has one of the weakest regulatory frameworks for dog and cat breeding in Australia.¹

Other jurisdictions have introduced new laws to crack down on intensive breeding of dogs and cats and unscrupulous breeders. The most recent is the *Dog Amendment (Stop Puppy Farming) Act 2021* passed by the WA Parliament in December 2021.

Comprehensive laws that regulate dog and cat breeding are therefore overdue in NSW.

¹ Animal Defenders Office, ‘ADO Fact Sheet - Legal status of puppy and kitten farms in Australia’, March 2022, <https://tinyurl.com/2p9bwp25>.

The Bill would amend the *Companion Animals Act 1998* (NSW). The Bill aims to:

- (a) regulate the conduct of businesses breeding companion animals and other companion animal businesses, and
- (b) provide enforcement powers for the purposes of regulating the conduct of companion animal businesses.²

In the ADO's view the Bill achieves its aims by proposing appropriate regulatory controls on the breeding of companion dogs and cats.

The proposed measures are balanced, proportionate and necessary, and will go a long way to stamping out intensive and unscrupulous dog and cat breeding in NSW.

For these reasons the ADO supports the Bill and recommends that it be passed.

Comments on specific provisions in the Bill

Bill (amendment clause/proposed provisions)	Comments
Clause 1 Name of Act	<p>The Bill's name refers only to 'Puppy Farms'.</p> <p>The term 'puppy farm' is not defined or used elsewhere in the Bill.</p> <p>The Bill clearly deals with dog <i>and</i> cat breeding. Intensive breeding of kittens is just as insidious as puppy farming in terms of negative animal welfare consequences for the animals used and bred.</p> <p>For these reasons the ADO suggests the name of the Bill be amended to refer to 'Puppy and Kitten Farms'.</p>
Clause 2 Commencement	<p>The ADO supports the proposed one-year phase-in period for the measures proposed in the Bill. This would give all stakeholders adequate time to prepare for the new regulatory framework.</p>
Schedule 1 Amendment of Companion Animals Act 1998	
Item 1. Part 6A [Regulation of companion animal businesses]	
Proposed section 61B <i>Meaning of "breeding arrangement"</i>	<p>This provision would regulate breeding arrangements known as 'guardian arrangements', where people pay for an animal but the breeders retain an entitlement (usually by contract) to take the animal back to use for breeding. The Bill would make it easier to terminate these arrangements in the interests of the animal, for example when the animal needs to be desexed (thus preventing further breeding).</p> <p>In the ADO's experience this is warranted. The ADO receives requests for assistance from people who have 'purchased' a puppy but their possession of the animal is subject to a breeding arrangement. This arrangement ultimately causes significant distress to the new keepers of the animals. If the animal is a female she can be away from her new family for a relatively long time while being used for breeding. The travel times and distances between the breeders and the animal's new family can be lengthy, and having to make the trip multiple times can be stressful for both the animal and keepers. There are also</p>

² Explanatory note p1, <https://www.parliament.nsw.gov.au/bill/files/3885/First%20Print.pdf>.

Bill (amendment clause/proposed provisions)	Comments
	<p>situations where the animal has behavioural or medical issues which according to expert veterinary advice would be best addressed by desexing the animal.</p> <p>The new keepers of animals must be able terminate the agreement when it is in the best interest of the animals, without fear of being sued for breach of contract.</p> <p>The ADO supports the proposed measures in s61B as necessary and proportionate.</p>
<p>Proposed section 61C</p> <p><i>Meaning of “business code of practice”</i></p>	<p>The ADO notes that:</p> <ul style="list-style-type: none"> • The paragraph numbers in subsection (1) are out of order ((a), (c), (b), (d)). • The Code of Practice in paragraph (1)(b) was revised and published on 30 August 2021.³ <p>The ADO suggests that the specific codes be prescribed in regulation so that they can be more easily amended when the codes are updated or changed. Subsection 61C(1) could specify broad subject matters or types of companion animal trades or businesses (as defined in proposed section 61D), such as animal boarding establishments, pet shops, and breeding.</p>
<p>Proposed section 61E</p> <p><i>Meaning of “companion animal breeding business”</i></p>	<p>The ADO supports the minimum threshold of 3 fertile cats or dogs for a companion animal breeding business, while noting that there can still be significant welfare issues even with only a pair of breeding animals or even one breeding animal (eg a fertile female). The proposed minimum of 3 breeding animals is in line with requirements in Victoria.⁴</p> <p>For clarity, the ADO suggests replacing ‘less’ with ‘fewer’ in paragraph 61E(1)(b); or, alternatively replacing ‘no less than’ with ‘at least’.</p>
<p>Proposed Division 2</p> <p><i>Registration of companion animal business premises</i></p>	<p>Proposed Division 2 would specify requirements for registering companion animal business premises.</p> <p>The ADO supports the proposed measures in Division 2.</p> <p>In addition to the measures proposed in Division 2, the ADO suggests that neighbours should be notified of applications to register premises, or to renew registration of premises, and be given an opportunity to object. Living close to a companion animal business premise may have a negative impact on neighbouring premises, for reasons including the smell or noise (barking, or worse, debarked dogs), or the general distress of living close to intensively confined animals used for the commercial production of puppies and kittens.</p>
<p>Proposed section 61M</p>	<p>The ADO suggests that the reference in subsection 61M(3) to ‘subsection (2)(a)’ should be amended to ‘paragraph (2)(a)’.</p>

³ <https://www.dpi.nsw.gov.au/animals-and-livestock/animal-welfare/animal-care-and-welfare/other/companion-animal-files/animal-welfare-code-of-practice-breeding-dogs-and-cats>.

⁴ *Domestic Animals Act 1994* (VIC), s 3(1), definition of **domestic animal business**, paragraphs (b) and (c).

Bill (amendment clause/proposed provisions)	Comments
<i>Courts may suspend [etc]</i>	
<i>Divisions 4, 5 Source numbers and Business information register</i>	
Sections 61S-61Y	<p>The ADO supports:</p> <ul style="list-style-type: none"> • The proposed requirement in Division 4 that companion animal businesses, animal rescues, ‘microbreeders’, and other sellers of dogs and cats must obtain a ‘source number’ from their local council. This would provide members of the public wishing to purchase a dog or cat with some reassurance that the seller is legitimate and has been authorised to sell by the local authority. This should in turn make it more difficult for ‘rogue’ or illegal breeders to operate. • The establishment of a business information register. This would enable authorised officers and prospective purchasers of dogs and cats to inspect and find out important information about breeders, breeding premises, and sellers of the animals.
<i>Division 6 Offences</i>	
<p>Section 61ZC</p> <p><i>Proprietors of companion animal breeding businesses must not have more than 10 fertile female dogs or cats</i></p>	<p>The ADO supports the proposed provision in section 61ZC that a proprietor of a companion animal breeding business commits an offence if they have more than 10 fertile female dogs or cats at any one time.</p> <p>This measure would mitigate the extremely negative welfare outcomes associated with high stocking densities in breeding businesses.</p> <p>The measure is in line with limits on fertile female dogs used for breeding in other jurisdictions.⁵</p> <p>Allowing a higher number of animals to be kept at any one time is tantamount to sanctioning puppy or kitten factory farms.</p>
<p>Section 61ZD</p> <p><i>Proprietors of companion animal breeding businesses must ensure dogs and cats undergo routine veterinary checks</i></p>	<p>The ADO supports the proposed provision in section 61ZD requiring a proprietor of a companion animal breeding business to have each dog or cat in the business examined by a veterinary practitioner at the specified times.</p> <p>This is a critical measure that would help ensure that unhealthy or ill animals are not used for breeding purposes.</p> <p>There is a strong need for such a measure. The ADO has received requests for assistance from new purchasers of puppies and kittens who are affected by illnesses or conditions that, according to veterinary evidence, were likely contracted at the breeders’ premises. In the case of ringworm in kittens/cats, this can have a long-lasting and devastating</p>

⁵ For example Victoria: *Domestic Animals Act 1994* (VIC) s 44B ‘Ten fertile female dog limit for breeding domestic animal business’.

Bill (amendment clause/proposed provisions)	Comments
	<p>impact on the new family, requiring significant and ongoing deep-clean measures of the entire premises, and expensive procedures to check and clear the new animal.</p>
<p>Section 61ZE <i>Proprietors of companion animal breeding businesses must obtain veterinary certification before breeding</i></p>	<p>The ADO supports the proposed provision in section 61ZE requiring a proprietor of a companion animal breeding business to have any dog or cat used for breeding assessed by a veterinary practitioner and certified as suitable for breeding, within four weeks of being used for breeding.</p> <p>It is presumed that this provision applies to either a female or male animal.</p> <p>It is also presumed that the matters specified in subsection 61ZE(2) do not constitute an exhaustive list ie the assessment may consider matters other than those specified in subsection 61ZE(2).</p> <p>The ADO submits that the measure proposed in section 61ZE would reduce the likelihood of animals being used inappropriately for breeding when too old or carrying congenital defects. The latter can result in new owners having to spend thousands of dollars in veterinarian bills and/or special foods rectifying and/or living with the defects (for example, overbites in Dachshunds).</p>
<p>Section 61ZF <i>Proprietors of companion animal breeding businesses must not breed dogs or cats in certain circumstances</i></p>	<p>The ADO supports the proposed provision in section 61ZF that would prohibit a proprietor of a companion animal breeding business from breeding from an animal more than twice, or if a heritable defect is identified in a previous litter, or with an animal related by blood.</p> <p>The ADO submits that these are proportionate measures that would properly protect dogs and cats used for breeding and help stamp out harmful and costly heritable defects.</p>
<p>Section 61ZI <i>Proprietors of companion animal breeding businesses must prepare health management plans</i></p>	<p>The ADO supports:</p> <ul style="list-style-type: none"> • The proposed provision in section 61ZI that would require a proprietor of a companion animal breeding business to prepare and comply with a health management plan for the dogs and cats used by the business. <ul style="list-style-type: none"> ○ This proposed requirement would impose crucial external scrutiny of and accountability on breeders, by requiring an expert in animal care (ie a veterinarian) to review the health and welfare arrangements for the animal. • The requirement to include protocols about the retirement and rehoming of dogs and cats, as proposed in subparagraph 61ZI(1)(b)(v). <ul style="list-style-type: none"> ○ This would oblige breeders to consider the interests of their animals after they cease being of commercial use to the breeders, and help obtain an acceptable outcome for the animals once they cease being used. • Making it compulsory to comply with a health management plan as proposed in subsection 61ZI(2).

Bill (amendment clause/proposed provisions)	Comments
<p>Section 61ZK</p> <p><i>Proprietors of companion animal breeding businesses must comply with certain requirements to cease breeding and retire and rehome dogs and cats</i></p>	<p>The ADO supports the proposed provision in section 61ZK that would require a proprietor of a companion animal breeding business to cease using a dog or cat for breeding and to retire the animal in the proposed circumstances.</p> <p>The ADO queries the lack of a provision dealing with male cats and suggests that a ‘retirement age’ for male cats used for breeding be included in section 61ZK.</p> <p>The ADO notes for drafting purposes that the word ‘is’ in subparagraph 61ZK(1)(a)(iii) is not necessary as it repeats the word ‘is’ in paragraph 61ZK(1)(a).</p>
<p>Sections 61ZL-N</p> <p>[Types of animals received or sold by pet shops]</p>	<p>The ADO supports the proposed provisions in sections 61ZL-N specifying the types of dogs and cats who could be received or sold by a pet shop. The effect of these provisions would be to that only animals from a rehoming organisation can be sold in pet shops.</p> <p>The ADO shares the concerns of RSPCA Australia about the under-regulation of pet shops and how the trade in dogs and cats through pet shops creates a market for animals from puppy and kitten farms.⁶</p> <p>The proposed measures would go a long way to stamp out unscrupulous breeders who keep high numbers of breeding animals in intensive and poor conditions.</p> <p>The ADO notes that other jurisdictions in Australia have implemented similar measures.⁷</p>
<p>Section 61ZP</p> <p><i>Persons must not advertise dogs and cats for sale without source numbers</i></p>	<p>The ADO supports the proposed requirement that any person advertising an animal for sale (whether for profit or a fee) must include the ‘source number’ in the advertisement.</p> <p>As mentioned above, this would provide members of the public wishing to purchase a dog or cat with some reassurance that the seller is legitimate and has been ‘vetted’ by the local authority. This should in turn make it more difficult for rogue or illegal breeders to operate.</p> <p>The ADO notes that the proposed section 61ZP would complement section 23A of the <i>Prevention of Cruelty to Animals Act 1979</i> (NSW) (“POCTAA”) which requires certain information to be provided when dogs or cats are advertised for sale or for giving away. The latter is important as giving away puppies and kittens may be prevalent amongst ‘backyard’ or accidental breeders.</p>

⁶ RSPCA Australia, ‘What is the RSPCA’s view on pet shops?’, updated 30 April 2019, <https://kb.rspca.org.au/knowledge-base/what-is-the-rspcas-view-on-pet-shops/>.

⁷ For example, in Victoria pet shops may sell only dogs or cats from an approved source such as animal shelters, pounds or registered foster carers: *Domestic Animals Act 1994* (VIC) s 63AAB. In December 2021 WA enacted a similar measure (as yet uncommenced): *Dog Act 1976* (WA) Part VIA.

Bill (amendment clause/proposed provisions)	Comments
	<ul style="list-style-type: none"> The ADO notes that the Australian Capital Territory (“ACT”) requires <i>all</i> breeders of dogs and cats to apply for a licence,⁸ and it is an offence to breed a litter from a dog or cat without holding a licence or to sell or give away a dog or cat without providing the person’s breeding licence number.⁹ Under the ACT scheme there is no exemption for non-commercial, hobby, or ‘accidental’ breeding.
Schedule 1 Amendment of Companion Animals Act 1998	
Item 2. Part 7A, Division 3 [Powers relating to companion animal businesses]	
Part 7A, Division 3 <i>Powers relating to companion animal businesses</i>	<p>The proposed provisions in new Part 7A, Division 3, would create new enforcement powers in relation to the regulation of companion animal businesses.</p> <p>The ADO supports the proposed provisions on the grounds that they would be essential for the effective monitoring, investigation and enforcement of the new regulatory requirements for companion animal businesses.</p> <p>The ADO suggests that consideration be given to allowing other animal charitable organisations to be prescribed for the purposes of proposed paragraph (c) in the definition of the term ‘enforcement officer’.</p> <p>The ADO supports the limited power to enter residential premises and to seize animals (s69J(3) and s69K(4)). This takes into account that animal breeding businesses often take place inside people’s homes. The ADO submits that the proposed provision is proportionate and contains sufficient checks and balances to ensure that any intrusion on a person’s privacy would be minimised, while allowing necessary compliance and enforcement action to occur.</p>

Term of reference 1(b): the animal protection issues associated with puppy farming

Recent investigations of intensive puppy and kitten breeding establishments have brought to the public’s attention the unacceptable animal welfare conditions associated with these establishments.¹⁰ Problems include over-breeding, inbreeding, inadequate and crowded housing conditions, poor hygiene/socialisation/nutrition, genetic defects, illness, little or no veterinary care, and high mortality rates.

In addition to substandard physical conditions, animals raised or used in puppy and kitten farms often present psychological and behavioural issues. Again, this has been repeatedly documented

⁸ *Domestic Animals Act 2000* (ACT) ss 72, 72A. It is a strict liability offence to breed a litter without a licence: s 72(4).

⁹ *Domestic Animals Act 2000* (ACT) s 72K. This is a strict liability offence: s 72K(4).

¹⁰ See, for example, <https://www.rspcansw.org.au/blog/media-releases/puppy-breeder-convicted-of-aggravated-animal-cruelty/>, <https://www.rspcansw.org.au/blog/media-releases/inspectors-seize-79-dogs-from-central-west-nsw-breeding-establishment/>, <https://www.oscarslaw.org/blog/strawberry-her-short-life-is-her-message> and <https://www.smh.com.au/national/nsw/animal-cruelty-fears-for-300-dogs-trigger-raids-at-rural-nsw-puppy-farms-20200916-p55w65.html>

following investigations and veterinary examinations of animals from these establishments. Moreover, a 2017 scientific study published in the *Journal of Veterinary Behaviour* reported that:

...dogs born in high-volume commercial breeding establishments and sold to the consumer directly via the Internet or indirectly through retail pet stores revealed an increased incidence of behavioural and emotional problems that cause distress in adulthood compared with dogs from other sources, especially non-commercial breeders.¹¹

Given that this finding relates to 'high-volume' breeding establishments, the ADO submits that behavioural and emotional problems would be similar if not exacerbated in puppy and kitten farms, which are characterised by intensive breeding under inadequate conditions.

The ADO also notes that, with 'the biggest boom Australia has seen in pet ownership' due to the ongoing COVID-19 pandemic, key stakeholders are now demanding that 'animal welfare must be explicitly protected as an essential service/activity.'¹²

An additional animal protection issue is that puppy and kitten farming contributes to the issue of oversupply in the companion animal market, which results in a large number of surrendered and abandoned healthy animals euthanised each year before another home is found for them.¹³ The NSW Parliament is to be applauded for passing the Companion Animals Amendment (Rehoming Animals) Bill 2021 this year¹⁴ which will protect pound animals against convenience killing. The ADO submits, however, that passing the Companion Animals Amendment (Puppy Farms) Bill 2021 is the vital next step to reduce the number of abandoned or surrendered animals in need of rehoming in Australia, and to protect animals from the unconscionable animal welfare issues associated with puppy and kitten farming.

Term of reference 1(c): the consumer protection issues associated with the sale of dogs from puppy farms online and in pet shops

According to research, approximately 40% of Australian households have at least one dog (with 62% having had a dog at some point) and 27% have at least one cat.¹⁵ Even if only a proportion of these animals came into human households via online sales and from pet shops, that would equate to a large number of consumer transactions and potential consumer protection issues.

More recently, the rate of acquiring companion animals has surged as Australians spend more time at home during the COVID-19 pandemic.¹⁶ Unfortunately, this demand has likely increased the

¹¹ McMillan, F., 'Behavioral and psychological outcomes for dogs sold as puppies through pet stores and/or born in commercial breeding establishments: current knowledge and putative causes' (2017) 19 *Journal of Veterinary Behavior* 14-26, <https://www.sciencedirect.com/science/article/pii/S1558787817300102>.

¹² Animal Medicines Australia, 'Pets and the Pandemic: a social research snapshot of pets and people in the COVID-19 era', 16 August 2021, <https://animalmedicinesaustralia.org.au/report/pets-and-the-pandemic-a-social-research-snapshot-of-pets-and-people-in-the-covid-19-era-2/>.

¹³ In her [Second Reading Speech](#) when introducing the Companion Animals Amendment (Rehoming Animals) Bill 2021 in the NSW Upper House on 10/11/2021, the Hon Emma Hurst MLC stated: 'In New South Wales, tens of thousands of homeless dogs and cats are killed each year. In 2019-20 almost 4,000 dogs and 8,000 cats were killed in New South Wales pounds.'

¹⁴ The Companion Animals Amendment (Rehoming Animals) Bill 2021 passed Parliament on 23 February 2022: <https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=3905>.

¹⁵ Animal Medicines Australia, 'Pets in Australia: A national survey of pets and people' (2017, Newsgate Research).

¹⁶ Animal Medicines Australia, 'Pets and the Pandemic: a social research snapshot of pets and people in the COVID-19 era', 16 August 2021, <https://animalmedicinesaustralia.org.au/report/pets-and-the-pandemic-a-social-research-snapshot-of-pets-and-people-in-the-covid-19-era-2/>.

market for prospective pets produced in puppy and kitten farms. The ADO's experience as a community legal centre would support such a view. The centre has experienced a notable rise in clients seeking legal advice after discovering within days (or sometimes, hours) of their purchase that their new puppy or kitten is unwell. This can range from carrying highly contagious diseases to fatal defects. Sometimes the young animal is carrying a condition that will kill the animal in months, so the new keepers find they have bonded with an animal whom they know will die slowly before the year is out.

These cases can cause immense suffering for the animals and are heartbreaking for the human carers. However, legal redress for the new carers is limited, expensive and intimidating.

Unreasonably high threshold for liability of breeder or pet shop

Animals are still classified as 'property' under Australian law, so the purchase of an animal from a breeder is considered a purchase of 'goods' under the *Australian Consumer Law* ("ACL").¹⁷ The ACL protects consumers by imposing a legislative guarantee on the supply, 'in trade or commerce', of goods to a consumer, 'that the goods are of acceptable quality'.¹⁸ Being of acceptable quality includes being 'fit for all the purposes for which goods of that kind are commonly supplied' and 'free from defects'.¹⁹ In the case of a puppy or kitten, it would be reasonable to expect this to mean that the puppy or kitten is healthy at the time of purchase, unless expressly informed otherwise. Beyond this, a uniform standard of 'acceptable quality' is difficult to attain in the case of 'goods' that are sentient animals. While there is some legal authority for what 'acceptable quality' means in this context,²⁰ it is far from conclusive or comprehensive, and provides little guidance to new keepers seeking relief through the ACL.

A breach of the acceptable quality guarantee has been found where the 'defect' in the animal is congenital or could have been prevented by the breeder.²¹ This would require significant veterinary intervention or treatment, burdensome veterinary evidence, and proof that the defect caused loss that was reasonably foreseeable. This does not account for scenarios where a puppy or kitten has been affected by the conditions in which the animal was exposed or kept prior to purchase, but which does not manifest as a congenital issue or a problem that is distinctly attributable to breeding practices – even though the condition may have been entirely preventable by higher breeding welfare standards. Distressingly for many consumers, early trauma suffered by an animal may take time to become apparent. However, there would be no breach of the acceptable quality guarantee if the 'defect' occurs after the animal has been purchased. If a pre-purchase defect cannot be proven on a balance of probabilities, purchasers will be thwarted in any attempt to seek redress from breeders or pet shops under the ACL.

Inadequate remedies

Even where consumers are able to pursue legal proceedings under the ACL, they are faced with insufficient remedies. A consumer who can prove a breach of the acceptable quality guarantee under the ACL may be entitled to compensation for loss or damage suffered as a result of the defect, or a refund of the purchase price of an animal.

¹⁷ See Schedule 2 to the *Competition and Consumer Act 2010* (Cth).

¹⁸ ACL s 54.

¹⁹ ACL s 54(2).

²⁰ For example, *Swiatek v Sanheaven Staffordshires* [2013] QCATA 300, *Allen and Bruce v O'Loughlin* [2014] NSWCATCD 21, *Javaherdoost v Yuan Hang Pty Ltd* (Civil Claims) [2018] VCAT 975.

²¹ *Swiatek v Sanheaven Staffordshires* [2013] QCATA 300.

If an order for compensation is made by a court or tribunal, it is often low and below the amount sought.²² In addition, the costs involved in preparing for litigation in this area can often exceed the amount of money recoverable from the breeder or pet shop for veterinary bills and other costs. Financial compensation also fails to compensate for the emotional and physical stress of introducing an unwell animal into a family, especially when the animal may have a reduced lifespan or suffer ongoing illness.

In many cases, a refund requires the animal to be returned to the breeder or pet shop. This remedy treats animals as though they were disposable objects and does not take into account the emotional, social and living reality of purchasing an animal. In dealing with these cases the ADO has found that humans bond incredibly quickly with their new animals. This can sometimes happen even before the new keeper takes delivery of the young animal, for example when the prospective purchaser has viewed the animal only by videos provided by the breeder as the animal grows from newborn to the age at which he or she can be delivered to the purchaser (as early as 8 weeks²³). No client of the ADO has considered returning their animal even when it is the only circumstance in which the breeder or pet shop would provide the refund.

For these reasons the ADO submits that the available remedies under consumer protection laws are inadequate for purchasers of sentient animals with highly complex physical and psychological needs and interests.

Unfortunately for consumers who unwittingly purchase ill or diseased animals from puppy and kitten farms or unscrupulous breeders, there are few other areas of civil law that offer relief or compensation. The consumer may be able to lodge a cruelty complaint under POCTA legislation with an authorised charitable organisation such as the RSPCA NSW. While this may result in a criminal investigation and prosecution, it does not provide direct relief to the new keeper of the animal. As such, it is inappropriate to rely on consumer protection remedies in individual civil matters as a solution to the problems caused by puppy and kitten farming. Instead, rigorous measures must be adopted – such as those proposed in the Bill – to reduce the prevalence of ill and diseased puppies and kittens being bred. The ADO therefore submits that the Bill should be passed, as its proposed measures are what is required to put a stop to the breeding and sale of animals with preventable defects that cause so much harm to the animal and their keepers.

Term of reference 1(d): the adequacy of the current legislative and enforcement framework, including the Animal Welfare Code of Practice - Breeding of Dogs and Cats

Obstacles to enforcement – lack of access or transparency

Like most, if not all, intensive animal industries, puppy and kitten farms operate far from the public gaze, behind closed doors and often in remote areas. This aspect of puppy and kitten farms can make enforcement action difficult. These enterprises also present further difficulties when it comes to enforcement because they can operate from within or adjacent to people's homes, blurring the line between residential and commercial premises. The power to enter residential premises under animal welfare laws in NSW is much more limited compared to public or even commercial land.²⁴

²² See for example *Dodge v Rockey* 2005 NSWCTTT 440, where the Tribunal held that only veterinary costs incurred up until the time the breeder offered to take the dog back were recoverable. The plaintiffs had not accepted the breeder's offer and had continued to incur veterinary costs after that point.

²³ NSW DPI, *Animal Welfare Code of Practice Breeding Dogs and Cats* (2021), Standard 9.1.1.1.

²⁴ Under POCTAA s24E(2), residential premises (dwellings) can be entered unannounced in urgent circumstances (ie an animal at imminent risk of death). Otherwise the occupier's consent or a search warrant

Enforcement agencies do not report on how often they exercise their entry powers to carry out routine inspections of these types of premises or breeding businesses in general.²⁵ In October 2020 the NSW Government announced a Puppy Factory Taskforce within the RSPCA.²⁶ According to the announcement, since '1 July 2020, there have been 22 puppy factory raids in NSW.' No further details are provided (such as the outcomes of the 'raids'). The Government's webpage has not been updated since the announcement. On 12 November 2020 the then Minister for Agriculture and Western NSW, Adam Marshall, issued a media statement which reported that 'Just two weeks after creating a specialised hit squad to take down rouge [*sic*] operators, the NSW Government's Puppy Factory Taskforce has conducted its first simultaneous raids on suspect facilities in southern NSW...'²⁷ Again, no further information or updates are provided.

Puppy and kitten farms usually operate under the radar. They are unlikely to be publicly listed or professionally audited. This makes it difficult even knowing how many puppy or kitten farms operate in NSW. RSPCA NSW has, however, identified almost 900 establishments that could count as an intensive breeding facility. In light of the comparatively small number of reported site inspections discussed earlier (approximately 20),²⁸ the ADO submits that the current enforcement framework is failing.

Given the lack of enforcement action and pro-active inspections by enforcement agencies under the current legislative framework, it can fall to whistleblowers (ie former or current employees) to alert authorities about non-compliant operations. This is unsatisfactory and unfair, as whistleblowers risk not only their livelihood (for current employees), but also their reputation amongst their peers and community²⁹ and even their personal safety (or 'payback' from 'scarey people' as one individual put it to the ADO).

Enforcing requirements re sale of dogs and cats

POCTAA requires any advertisement for a dog or cat to include a microchip identification number, a breeder identification number, or a rehoming organisation number.³⁰ However, the ADO receives complaints from members of the public about the lack of enforcement of such rules, especially in rural and regional locations ('Who is supposed to regulate these new laws???' as one client from a small remote NSW town put it). According to information from members of the public who contact the ADO, there seems to be confusion about who is responsible for enforcing the laws. Councils claim it is 'government' and yet only non-government agencies (the RSPCA, Animal Welfare League, and the NSW Police), are authorised enforcement agencies under POCTAA.

is required. By contrast land, which can include commercial premises, can be entered at any time by an inspector exercising functions under the Act (s24E(1)).

²⁵ RSPCA NSW's [Annual Report for 2020-21](#) as published on its website states that the charity aims to investigate 900 dog breeding facilities across NSW (p8). RSPCA Australia reports in its [annual statistics for 2020-21](#) that 201 'routine inspections' were conducted in NSW in that financial year, but does not specify what types of premises were inspected. The [Intensive Breeding Taskforce page](#) on RSPCA NSW's website talks about the charity's plans to investigate 'nearly 900' breeding facilities. No further details are provided.

²⁶ NSW Government, 'Statewide crackdown on illegal puppy factories', 23 Oct 2020, <https://www.nsw.gov.au/news/statewide-crackdown-on-illegal-puppy-factories>.

²⁷ Minister for Agriculture and Western NSW, 'Crackdown begins: puppy factory taskforce launches first raids', Media Release 12 Nov 2020, <https://www.dpi.nsw.gov.au/about-us/media-centre/releases/2020/ministerial/crackdown-begins-puppy-factory-taskforce-launches-first-raids>.

²⁸ NSW Government, 'Statewide crackdown on illegal puppy factories', 23 Oct 2020, <https://www.nsw.gov.au/news/statewide-crackdown-on-illegal-puppy-factories>.

²⁹ Often puppy or kitten farms operate in small rural towns or communities.

³⁰ Section 23A, *Prevention of Cruelty to Animals Act 1979* (NSW).

Advertising and selling an animal from a puppy or kitten farm or backyard breeder are the points at which these enterprises interface with the public, thereby potentially subjecting themselves to external scrutiny. These enterprises depend on frequent and quick sales to profit from their business. A lack of enforcement of the regulatory requirements applying to advertisements and sales therefore enable puppy and kitten farms and other rogue breeders to thrive. The ADO submits that enforcement of sale and advertising requirements should be a priority when it comes to cracking down on puppy and kitten farms and rogue breeders. The ADO also submits that the NSW Government must allocate further resources to enforcing the current requirements and must pass the Bill so that further scrutiny and accountability measures can be implemented.

Lack of information about enforcement action

As discussed earlier, there is a lack of information about enforcement action taken against intensive animal breeding establishments. This includes action taken under the *Prevention of Cruelty to Animals Regulation 2012* (NSW) (“POCTAR”) for breaches of the *Animal Welfare Code of Practice – Breeding of Dogs and Cats* (“the Code”). The ‘Standards’ specified in the Code are legally enforceable.³¹ If detected, noncompliance with an enforceable Standard may result in a Penalty Infringement Notice or a prosecution under clause 26 of POCTAR (‘Conduct of animal trades’). The current penalty for breaching a penalty notice offence is \$500 for an individual or \$1,500 for a corporation.³² The maximum penalty prescribed under clause 26 is 50 penalty units (\$5,500) for an individual or 200 penalty units (\$22,000) for a corporation.³³

This raises two issues. Firstly, it is difficult to evaluate the effectiveness of the legislative framework underpinning the Code when there is so little information about enforcement action, including the number of penalty infringement notices issued and/or prosecutions under clause 26 for breaches of the Code. Secondly, the low financial penalties are arguably not sufficiently disincentivising, given the rarity of enforcement action in combination with a lucrative trade.³⁴

For the reasons outlined in this submission, the ADO supports the measures proposed in the Bill that would make ‘companion animal breeding businesses’ more transparent and accountable and would strengthen the enforcement powers of authorised and enforcement officers. Provided the enforcement of the new measures is adequately funded by the NSW Government, by implementing the Bill NSW could finally have an enforcement regime that could take effective action against puppy and kitten farms and other unscrupulous breeders.

Thank you for taking the ADO’s submissions into consideration.

Sarah Margo and Tara Ward
Solicitors
Animal Defenders Office

6 March 2022

³¹ POCTAR clause 26 and Schedule 1.

³² POCTAR Schedule 2.

³³ Given the nature of the operations, puppy and kitten farms are often run by an individual rather than a corporation.

³⁴ For example, in 2015 a puppy farm in Victoria was reported to have ‘netted more than \$250,000 over two and a half years by selling puppies to pet shops’:

<https://www.choice.com.au/outdoor/pets/products/articles/puppy-farms-and-buying-a-dog-ethically>