

31st December 2021

Kim Filmer
Chief Animal Welfare Officer
NSW Department of Primary Industries.

Dear Kim,

RE: Discussion Paper for Licensing of Breeding Dogs and Cats in NSW

Animal Care Australia (ACA) would like to thank you for the opportunity to provide feedback on this Consultation Paper.

ACA questions what Minister Marshall’s intent could be by proposing a licensing system given the existence of a current regulatory framework?

ACA equally acknowledges the recent change of Minister however, this scheme was proposed by Minister Marshall, and to date we have not been advised that Minister Saunders is intending to cease the proposal, therefore we are responding to the proposal, under the belief the consultation and subsequent implementation will continue.

As stated in the Paper’s introduction, the primary objective of any regulatory framework must be the improvement of animal welfare. What additional welfare outcomes would a licensing system provide that are not already regulated?

Under what structure or framework does the Minister believe a licensing system will capture/encompass those who are currently not meeting their obligations?

ACA does not believe a licensing scheme/system will be of any benefit, however in response to the consultation paper, and the Minister’s intent to ONLY license large-scale-breeders ACA would like to make the following recommendations:

1. **ACA does not recommend any exemptions from a fit for purpose Code of Practice (COP).**
 - a. **A new ‘fit for purpose’ Code of Practice is required to ensure appropriate compliance requirements/standards are provided that are situation and breed specific. All dogs and cats are entitled to be bred under the same welfare standards.**
 - b. **ACA does not support the current exemptions for working dogs. Working dogs are being bred and sold as companion animals, therefore should not be exempt.**
2. **Should a licensing scheme be required, the existing Register of Companion Animals should be utilised as the licensing system. ACA sees no reason to duplicate what is predominantly already in existence.**

Or if,

 - a. **Should a licensing scheme ONLY be required for large-scale/commercial breeders, ACA recommends the following definition for determining who should be licensed:**
 - i. **commercial breeder means a breeder who derives the majority of their income from the breeding and sale of dogs and/or cats, and/or**
 - ii. **who holds 26 or more fertile dogs and/or cats. And,**
 - b. **Implement in Sch 1 of the Regs....**
<https://legislation.nsw.gov.au/view/whole/html/inforce/current/sl-2012-0408#sch.1>
Replace....
Animal breeding establishment (that is, a business in the course of which dogs or cats are bred for fee or reward)
With...
Animal breeding establishment (that is, where the owner derives the majority of their income or maintains 26 or more fertile dogs/cats)
3. **Pro-active Compliance Audits DO NOT include unannounced visits. Pro-active Compliance Audits are agreed to as part of a licensing agreement (such as the current Exhibitors Licenses) or made by mutual appointment with a breeder. ACA DOES NOT & WILL NOT SUPPORT random audits that are**

unannounced unless there is an immediate reported animal welfare concern or a warrant has been provided to access the property.

After all, doesn't every dog and cat deserve to be bred under high welfare standards?

It should be noted that not all dog breeders are members of breeding associations, in fact statistics show many dog owners generally own a couple of dogs who may breed on an irregular basis. This highlights the need to ensure a COP is suited and structured to cater for ALL dog owners and not just those of major breeding associations and why every breeder should be subject to and made comply with a COP.

ACA is working on a proposed COP that is fit for purpose encompassing the differences of how our dogs and cats are kept, housed and bred, such as inside a home, or roaming an enclosed yard, etc. This will be based on the model currently utilised in South Australia and modified to match the needs within NSW. ACA will forward our proposed COP early in January for your consideration.

If we are all serious about ensuring the welfare of dogs and cats, particularly during breeding, then our Recommendation 2a to utilise the current Pet Registry would be a viable one size fits all resolution. ACA is prepared to provide to both the DPI and Office of Local Government a detailed response outlining the necessary updates required to enable a viable and workable system.

ACA again highlights our Recommendation 2b & 3 relating to the RSPCA Inspectorate viewing all breeders as 'commercial-entities' and hence, under POCTAA s.24G, their homes are open to inspections without owner permission or notification. As per our meeting with the previous Minister Marshall, this MUST change.

As per our other recommendations, if all breeders are subject to a COP – with no exceptions, and that COP is structured in a manner that is easily complied with by all breeders, then the excuse/purpose of the need to be able to inspect for compliance is met without the need for the compliance agencies to utilise that loophole. The claim that compliance agencies should be able to just attend a property unannounced without good cause, a reported welfare concern or a warrant is questionable at best.

We thank you again for the opportunity to provide feedback and look forward to further consultation. Should you have any questions please do not hesitate to contact us.

Kind regards,



Michael Donnelly
President, Animal Care Australia.
0400 323 843

**NSW DPI Consultation
Paper - Licensing of cat
and dog breeders.
2021**



DECEMBER 31 2021

**ANIMAL CARE AUSTRALIA
STAKEHOLDER SUBMISSION**



NSW Licensing of cat & dog breeders 2021

Introduction:

Animal Care Australia (ACA) would like to thank you for the opportunity to provide feedback on this Consultation Paper.

ACA acknowledges the Paper's introductory points highlighting the existence of a current regulatory framework - that being - the Prevention Of Cruelty to Animals Act 1979 (POCTAA), the Companion Animals Act 1998 (CAA) including the Pet Registry, and the more recently revised NSW Breeding of Dogs & Cats Code of Practice 2021 (COP).

In light of these, ACA questions what Minister Marshall's intent could be by proposing a licensing system?

ACA equally acknowledges the recent change of Minister however, this scheme was proposed by Minister Marshall, and to date we have not been advised that Minister Saunders is intending to cease the proposal, therefore we are responding to the proposal, under the belief the consultation and subsequent implementation will continue.

As stated in the Paper's introduction, the primary objective of any regulatory framework must be the improvement of animal welfare. **What additional welfare outcomes would a licensing system provide that are not already regulated?**

Under what structure or framework does the Minister believe a licensing system will capture/encompass those who are currently not meeting their obligations?

Recommendations:

Firstly, ACA does not believe a licensing scheme/system will be of any benefit, however in response to the consultation paper, ACA would like to make the following recommendations:

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1. **ACA does not recommend any exemptions from a fit for purpose Code of Practice (COP).**
 - a. **A new 'fit for purpose' Code of Practice is required to ensure appropriate compliance requirements/standards are provided that are situation and breed specific. All dogs and cats are entitled to be bred under the same welfare standards.**
 - b. **ACA does not support the current exemptions for working dogs. Working dogs are being bred and sold as companion animals, therefore should not be exempt.**
 2. **Should a licensing scheme be required, the existing Register of Companion Animals should be utilised as the licensing system. ACA sees no reason to duplicate what is predominantly already in existence. And,**
 - a. **Should a licensing scheme ONLY be required for large-scale/commercial breeders, ACA recommends the following definition for determining who should be licensed:**
 - i. **commercial breeder means a breeder who derives the majority of their income from the breeding and sale of dogs and/or cats, and/or**
 - ii. **who holds 26 or more fertile dogs and/or cats. And,**
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After all, doesn't every dog and cat deserve to be bred under high welfare standards?

For further explanation of the above recommendations, please see the remaining submission.

Contradictions:

During the ongoing consultation process for the Animal Welfare Action Plan Review the Minister, the Department of Primary Industries (DPI) and many stakeholders have agreed welfare is not about numbers, and yet now we find the Minister appears to be contradicting that agreement.

The outcome of the NSW Joint Select Committee on Companion Animal Breeding Practices in NSW, found that there is no evidence that the number of animals kept by companion animals breeders is in itself a factor which determines welfare outcomes of breeding animals.

In Minister Marshall's media release he states:

“We currently don't licence large-scale commercial dog breeders in NSW, which has made it more difficult for enforcement agencies and local councils to do their important work and allowed illegal operators to escape scrutiny.”

“The NSW Government is proposing to introduce a commercial dog breeder licensing scheme that would provide additional oversight of larger-scale breeders to give the community confidence breeders are providing a high standard of welfare for their animals.”

The Minister goes on to add:

“There are absolutely no plans to burden primary producers or hobby breeders, these proposed changes are aimed squarely at large-scale commercial breeders, as that is where the concerns and problems are,”

If welfare is not about numbers, then why:

- is the Minister stating the licensing system will not affect hobby breeders and is being aimed at large-scale breeders?
- did the Minister and/or the DPI not clearly define a commercial or large-scale-breeder, or for that matter his understanding of a hobby breeder? Particularly when seeking public feedback?

ACA's only logical conclusion is that the Minister and the DPI do not want to take ownership of the responsibility of providing definitions and would rather leave the option open for any 'blame game' to be laid solely back on the key stakeholders.

ACA believes the Minister's first statement above is comprised of a major contradiction. If enforcement agencies and Local Councils are aware of these large-scale breeders and they are being deemed as illegal operators then isn't that reflective of the agencies' ability to investigate these breeders and/or of the current regulatory framework failing AND NOT something that would be remedied by a licensing system that would be ignored by an operator who is operating illegally?

A further contradiction lies within the statistics from the **Puppy Farm Taskforce** which commenced in August 2020 and has continued to run through until at least the end of November 2021. The Minister announced the target of this taskforce to be puppy farms, while RSPCA NSW determined it should be all breeders of dogs, renaming it to the '**Breeders Compliance Unit**' (BCU) which is definitely not large-scale/commercial exclusive (where the problems are claimed to be).

As you would know, 4823 animals were inspected, from 209 first-time inspections (with 139 revisits). These inspections resulted in 122 24N Notices that resulted in only 47 penalty infringements and the commencement of only 3 prosecutions. The data¹ also indicates most of the 47 were for minor infringements to do with bedding and vaccinations which are breaches of the COP.

It is clear these statistics do not highlight a major welfare issue – 3 potential prosecutions from over 4800 animals and 209 breeders.

ACA notes the **Puppy Farm Taskforce** – renamed **Breeders Compliance Unit**, has now again been renamed the '**Intensive Breeding Taskforce**' – perhaps due to the backlash of hobby breeders being targeted instead of the intended (almost non-existent) puppy factories?

ACA believes the Minister is bowing to the pressure from the animal rights movement and the proposed licensing scheme is not to the benefit of improved animal welfare but rather political point scoring.

Regardless, ACA does not agree with or support a licensing system as it has no added animal welfare benefit, however, we do concede the intention of the Minister is to

¹ Data from Budget Estimates – NSW Parliament Monday 1st November 2021 – hansard transcript and QON transcript.

introduce a breeders licensing system (regardless of feedback) and accordingly we provide the following feedback on the consultation paper.

Discussion Q 1: Do you have comments on the principles for developing a licensing scheme?

On the whole animal licensing/registration schemes have a high failure rate, and are rarely able to be policed/audited. In NSW native bird and reptile licensing has a reported 70% non-compliance resulting in a review (carried out 2016-2019) and a proposal that will see most bird owners and their birds removed from the requirement of holding a licence to reduce the number of license holders and reduce the departmental workload.

Dog & cat microchipping (NSW Pet Registry) has Local Councils failing to keep up with the work load and as such many animals go unchecked and unregistered. The public in general, does not recognise or in some cases are not even aware of the requirements to register their dogs & cats and the subsequent microchips. It begs the question how another licensing scheme is going to behave any differently?

In 2017 the Victorian Government introduced changes to the Domestic Animals Act which essentially required a breeder with more than 10 fertile females to be registered and licensed as a commercial entity – a Domestic Animal Business (DAB) - a breeders licensing scheme that in all intents and purposes has failed to prevent the unethical breeders from breeding and has resulted in a decrease of responsible breeders.

It should be noted, in spite of the DAB and legislative changes of regulation of breeders in Victoria, RSPCA Vic is still discovering unlicensed, unregulated large-scale breeders (puppy farms) in that state.

Those that were doing the wrong thing in regards to the care and welfare of their dogs are still doing so, the DAB system has done nothing to 'stop puppy farming' or to regulate off-the-book large-scale breeders. Those that were breeding in poor conditions are still doing so. All the legislation has done is target those breeders that were already transparent and traceable, and made those breeders more accountable to local councils who have their own agendas, adding additional fees, ridiculous DA requirements and regulations, because suddenly the breeders were deemed to be a business/commercial entity. Those that wanted to breed for profit are still doing so, they are just advertising in other places or using fraudulent source numbers, they

register with fake addresses etc., as no one is actually monitoring them. It is only those that are bound by a breeding organisation's COE and that this legislation has impacted.

NSW SHOULD NOT look to follow this path.

The NSW proposal:

Licensing overview

“... a licence makes sure that the NSW Government is aware of who is performing an activity and where they are performing it ... provides an opportunity to engage with the licensee and provide educational material to ensure that the activity is performed safely...”

The CAA requires all dogs & cats to be microchipped and all microchipped dogs & cats to be registered in the Pet Registry – providing the NSW Government AND Local Council AND the compliance agencies with information of their whereabouts and the opportunity to educate. Therefore by this definition any proposed DPI license would in fact be duplicating what already exists.

This system is failing because of its poor structure and the failure of the Office of Local Government to adequately educate the public of its existence and their legal obligations. Perhaps the funding that will be required to develop a second registration scheme could be used to finalise the review of the current registration scheme and implement it?

ACA has consulted with the Office of Local Government during the review of the Pet Registry and everything they are proposing to implement with the revised Pet Registry would serve the same outcome as what is being proposed now.

“... ensure that only appropriate people perform the activity, to place conditions on how the activity must be carried out and to provide for licences to be suspended or cancelled if a licence holder does the wrong thing...”

ACA must question what additional conditions a license would add that are not already required by POCTAA or the COP? If this is referring to a condition of Pro-active

Compliance Auditing² – how is that any different to the current capacity of the compliance organisations to carry out pro-active auditing?

ACA is aware of cases within the Shoalhaven area in September/October 2021 that were subject to RSPCA NSW pro-active compliance audits – despite the pandemic. Arrangements were made with the breeders to return as soon as the lockdowns and restrictions were lifted in November 2021, therefore these are already being enacted.

The current review of POCTAA also has proposals that would allow ‘the Courts’ to place restrictions on people who are found to be guilty of animal cruelty. Surely this would be the same provision as to removing one’s license to breed? Person found guilty of breaches to the COP would have certain restrictions placed on being able to breed animals in the future!

Pro-active Compliance Audits DO NOT include unannounced visits. Pro-active Compliance Audits are agreed to as part of a licensing agreement (such as the current Exhibitors Licenses) or made by mutual appointment with a breeder.

ACA DOES NOT & WILL NOT SUPPORT random audits that are unannounced unless there is an immediate reported animal welfare concern or a warrant has been provided to access the property.

Benefits of licensing

“... Establishing a licensing scheme for larger-scale dog breeders would provide additional oversight of these breeders. This has a range of benefits. Requiring larger-scale dog breeders to obtain a licence would give confidence to prospective pet purchasers and the broader community that there is appropriate oversight of these breeders to ensure they are complying with their legal obligations and providing a high standard of welfare for their animals.”

A few points of concern:

- again, what is a large-scale-breeder? If numbers of animals is not be used, and the existence of an ABN is not applicable?

² Pro-active Compliance Audit: carried out by mutual appointment with a breeder.

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- The additional oversight of breeders can occur right now. Large-scale breeders (operating openly) are subject to DA approvals by Councils, and are therefore known about and can therefore be inspected by the compliance agencies at any point in time.
 - prospective pet purchasers and the broader community are constantly being told by the media, the animal rights movement and even by some ‘recognised breeding organisations’ that large-scale breeders are puppy farms and yet they continue to purchase their pets from these breeders. What level of additional confidence are we seeking? On this point – would the goal not be better achieved by the Government actively taking its own pro-active stance and educate the public on:
 - responsible buying,
 - how to recognise an unethical breeder,
 - responsibility of registering their animals,
 - responsible breeding,
 - how to report suspected unethical breeders, and,
 - legal responsibilities of a pet owner

to ensure that same stated confidence and high standard of welfare was being met?

After all, doesn't every dog and cat deserve to be bred under high standards?

“... Establishing a licensing scheme would also provide a means of considering whether an applicant is fit to breed before they commence breeding and allows for conditions to be placed on how breeders can operate on a case-by-case basis. For example, a licence could place caps on the numbers of animals that a breeder can keep based on the nature of their facilities...”

Isn't this simply playing the numbers again? Doesn't the COP and POCTAA already place restrictions on the size of enclosures (kennels, catteries etc) that technically restrict the numbers of animals that are able to be legally kept in each said enclosure, thereby allowing that assessment to be made at each specific, case-by-case facility?

If that is not the case, on what legal grounds do the compliance agencies seize dogs/cats due to overcrowding? ACA is very much aware of perfectly healthy animals having been seized, and it was clear the health of the animals was not the concern, rather it was the number of animals involved and how they were being housed.

“... A licensing scheme would also enable enforcement agencies to better target their compliance resources and efforts – both in terms of education and enforcement – towards larger-scale breeders..”

HOW? How would this targeting be any different to what is already occurring? Remember, those large-scale-breeders whose existence is not openly known are not going to suddenly ‘out themselves’ by joining a licensing scheme. They are going to be found out by people reporting them, upon which the agencies should and would investigate. So how?

In a State currently revising the animal welfare legislation with a goal of improving animal welfare why is this government even considering creating a system that would focus education and enforcement away from smaller scale breeders, particularly when evidence provided at previous Joint Select Committees in NSW and South Australia stated pet owners with only a few animals are just as likely if not more likely to be the one’s not complying with the COP and are not understanding their legal obligations.

Where is their education and their requirement to comply?

Principles for designing a licensing scheme

In response to this entire section ACA sees no reason to develop a separate licensing scheme when the existing Pet Registry could so easily be transformed into a licensing system.

Particularly given it is currently being re-developed to correct its existing flaws.

In relation to proportionate costs – ACA supports the concept, however, without seeing what/who will end up being subject to a licence it is difficult to suggest an appropriate scale of fees.

ACA supports breeders who are members of a recognised organisation (RO) under the CAA receiving a fee waiver or discount.

Any form of proportionate ruling has its flaws.

A fee per fertile bitch/queen would be unfair due to the amount of litters and young per litter the varying breeds can have. For example, a Great Dane vs a Chihuahua. One produces more puppies than the other, and the selling costs of each puppy vary drastically. Therefore one breeder would benefit significantly more than the other.

When looking at the amount of fees already charged under the obligations of the CAA, then perhaps that should be considered to be the fees that apply, with those slightly adjusted, particularly for non-desexed animals, so as to encourage membership of an RO?

ACA notes the current varying levels of fees, and would recommend a simplification.

ACA also acknowledges the new system would require greater administrative functionality and workload and therefore has no objection to a small/nominal administrative fee rise to the current CAA fees in order to fund the new system. Again, members of RO's should only be required to pay this fee if receiving a waiver from the remainder of the CAA fees.

Members of RO's are subject to requirements to follow the organisations' Codes of Ethics (COE) and in most cases, the NSW Breeding Code of Practice – therefore providing greater incentives for dog & cat breeders to join an RO should be provided under any registration/licensing scheme.

Discussion Q2: At what threshold (e.g. fewer than a certain number of breeding animals), should a cat or dog breeder be considered an Exempt Breeder, meaning they are not required to hold a licence or comply with the Breeding Code?

Setting License Thresholds

ACA does not support any exemptions from the Code of Practice.

ACA does not support the segregation of breeders based purely on the numbers they keep and breed – a license for all, or a license for no-one is our preferred option.

However, ACA has no primary objection to a licensing exemption for members of RO's on the condition that exemption DOES NOT exclude them from complying with a legislated fit for purpose Code of Practice. This DOES NOT include a COE adopted or governed by any single RO, and must be authorised and legislated under POCTAA.

In Victoria, exemptions were provided to breeders with one or two breeding dogs. This essentially gave underground breeders the opportunity to flourish and supply puppies and kittens without any requirement of abiding by a COP.

Fit for purpose Code of Practice

The discussion paper refers to 'confusion among breeders as to whether they are a business or not'. The paper is misinterpreting the intent of previous comments relating to a hobbyist vs a commercial breeder.

The confusion predominantly sits with the RSPCA NSW statement that ALL breeders are commercial breeders – due to the fact any sale or transfer of an animal IS for a fee or reward.

In fairness to the RSPCA NSW, this interpretation stems from the fact the COP is listed in Schedule 1 of the POCTAA Regulations 2012 alongside other more acknowledgeable commercial entities. In addition the preface for the COP clearly includes any person breeding dogs or cats is subject to compliance with that COP. Those two points combined is interpreted as 'every breeder is a commercial breeder.'

The previous COP was also predominantly structured for commercial breeders and while the recent revision has revised the vast majority of misleading and unnecessary Standards it still does not sit as a fit for purpose COP.

ACA strongly recommends the COP must be revised to meet a format similar to that of the current South Australian model which provides for a 'tiering' of Standards (and Guidelines) commencing at the minimum standards for an indoor dog/cat, then a yard dog/cat, a kenneled dog and additionally ACA would recommend a 4th tier for large-scale/commercial breeders. This tiering of Standards sees the level of additional Standards increasing where Standards, such as physical records, enhanced biosecurity and staffing ratios is ONLY applied to the necessary breeders.

The tiered COP would still apply to everyone who keeps and breeds dogs and cats and each tier would include enclosure (or no enclosure) sizes that are situation based – for example, an indoor dog would have no actual minimum height sizes for an enclosure as the house itself is deemed to be the enclosure. Whelping animals would be able to utilise a bedroom (designated room – one whelping female & litter) without the need to have a whelping box Standard, and so on.

This would remove the monetary value of a fee or reward as being the focus of compliance and place the focus on a situational and species specific basis.

This will make it easier for a breeder and the compliance organisations to quickly assess what aspects of the COP are relevant and removes the current confusion and inappropriate Standards for ALL breeders.

Discussion Q3: At what threshold (e.g. more than a certain number of breeding animals) should a dog breeder be considered a Large Breeder, meaning they must hold a licence and comply with the Breeding Code?

Again, ACA does not agree with defining a large breeder for the purpose of licensing or having to comply with a COP.

However, given the Minister's intention is to license commercial breeders, ACA proposes the following definition:

i: commercial breeder means a breeder who derives the majority of their income from the breeding and sale of dogs and/or cats, and/or

ii: who holds more than 26 fertile dogs and/or cats

This definition has been determined by a range of factors, including recognised numbers in other states and countries, staff to animal ratios, as well as ensuring the suitability for responsible breeding by non-commercial breeders and preservation breeding.

A predominant factor for responsible breeding is allowing sufficient fertile females to cycle through a three-tier responsible breeding cycle. That is:

- Tier one: fertile females currently pregnant or ready to be pregnant
- Tier two: females with litters and/or in the process of weaning
- Tier three: females being rested as per requirements within the COP.

Discussion Q4: Do you think that working dog breeders should also be considered Exempt Breeders, meaning they are not required to hold a licence or comply with the Breeding Code?

Firstly no one seems to be able to define what a Working Dog Breeder actually is.

A breeder of Working Dogs can and does include people who are breeding working dog breeds for the sole purpose of sale as companion animals. The discussion paper mentions 'breeders of livestock working dogs' and accordingly ACA must presume that is intended to mean dogs actively worked and bred on a farming/agricultural property.

ACA finds it difficult to understand why the livestock dog would need to be exempt from a fit for purpose COP when the livestock its working are not exempt from various codes of practice?

Under ACA's proposed fit for purpose COP these dogs would be considered as yard dogs and would have the necessary housing and breeding Standards that should apply to any dog in the best interest of animal welfare.

It is beyond understanding why any person keeping dogs would seek exemption from worming, vaccinating, or microchipping their prized workers? Surely given their value on the land, these requirements would be welcomed and not disregarded?

Additionally, there are many working dog breeds now finding their way into homes as companion animals, being sold without microchips and unvaccinated and introduced into the community populations creating a greater problem, contributing to the spread of viruses as well as adding to the numbers in shelters when new companion owners fail to cope with the higher energy requirements of the dogs.

Let's face it farmers who breed their working dogs aren't keeping every pup in the litter – they are only keeping what they need. Those puppies being sold MUST be sold under the same legal requirements as any other dog in NSW.

Should a licensing system be introduced, ACA does not have an objection to a proven livestock working dog breeder/owner being exempt from licensing as long as that DOES NOT include being exempt from complying with a fit for purpose COP.

ACA does not support the current exemptions for working dogs. Working dogs are being bred and sold as companion animals.

We thank you again for the opportunity to provide feedback and look forward to further consultation. Should you have any questions please do not hesitate to contact us.

Kind regards,



Michael Donnelly
President, Animal Care Australia.
0400 323 843