

Barristers Animal Welfare Panel

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Submission to the Select Committee on Dogs and Cats as Companion Animals

1. According to the Select Committee's Terms of Reference, the goals of the inquiry are the elimination of cruelty and the reduction of the numbers of unwanted animals being euthanased. If those goals are to be realised, it is respectfully submitted that the Committee will need to undertake a fundamental rethink of existing approaches to regulation and consider measures which go to effective law enforcement.

2. Existing challenges:

The existing challenges are:

- no regulation of the breeding and trade of companion animals in South Australia;
 - no mandatory requirement for registration of domestic breeding establishments as there is, for example, in Victoria;
 - an increase in the surrender rate of stray and unwanted animals;
 - increased and unjustifiably high euthanasia rates of cats and dogs by shelters: this poses a moral challenge requiring the Committee to examine society's priorities in the short to medium term between notions of purported consumer choice on the one hand and the cessation of killing of high numbers perfectly good companion animals on the other;
 - the existence of puppy or kitten 'farms' or 'mills' as a source of animals for sale, and the use of such 'farms' by pet shops as a source of supply: the RSPCA has identified unsatisfactory conditions in the breeding of cats and dogs for commercial sale as an animal welfare issue. In January 2012, the RSPCA published *Legislating to End Puppy Farming – The Way Forward* which identified a number of areas of South Australia's legislation requiring reform. These included the lack of registration of breeders, the lack of compulsory micro-chipping, and the lack of compulsory breeder standards; and
 - a lack of regulation of welfare standards for private or 'backyard' breeders of cats and dogs.
3. As part of this fundamental rethink, the Panel urges the Committee to recommend in its report appropriate legislative enactments with an allocation of resources for a proper enforcement and audit of compliance rather than the window dressing of yet another voluntary code of practice. The Panel notes that the regime of voluntary codes of practice in animal welfare exists to create exemptions or immunity from the application of animal protection statutes around Australia. However, in the case of companion

animals, there should be no perceived conflict between producer practice on the one hand and the public interest in proper welfare on the other.

Options for the regulation of welfare standards for breeding companion dogs and cats.

4. **First**, there is no mandatory requirement for dog-breeding establishments to be registered. **Second**, in Victoria for example, the numbers of animals licensed to be bred are commonly honoured by licenceholders in the breach rather than observance. This goes to a question of random audit and proper licence and law enforcement. **Third**, there needs to be a maximum limit imposed on the number of dogs and cats which may be bred in aggregate annually, with a system for licensing of breeders each subject to a quota maximum which enables that aggregate maximum limit not to be exceeded. The means by which the annual aggregate limit is established will need to be a matter for the Committee to consider, with all the statistics to hand. However, a fundamental rethink in this area would require the Committee to consider recommending an annual maximum which is sufficiently low that people will begin to adopt animals from shelters rather than acquire new dogs or cats. It is conceded that this will challenge existing notions of consumer choice. But such consumer choice should not outweigh the killing of large numbers of perfectly good companion animals each year in South Australia. It is shameful that our society (whether in South Australia or anywhere else in Australia) should permit the large- scale killing of perfectly fine companion animals. In summary, this means that the numbers which animal breeders may be permitted to breed will be significantly reduced. It is respectfully submitted that it should not matter whether this may result in some substantial curtailment of profit for the private breeder. The public interest requires the cessation of killing of perfectly fine animals, whether in such large numbers or at all.
5. **Fourth**, in the case of kitten or puppy ‘farms’, there needs to be microchipping of the animal by the breeder to enable the origin of the animal to be traced back to the particular breeder. Further, the breeder and the pet shop or other outlet should be required to digitally notify a central registry of the microchip details of their animals. In this way the central registry can audit by comparison the accuracy of numbers notified by different pet shops or outlets against the numbers notified by a breeder. For example, a breeder may notify the central registry of the microchip details of say ten dogs, but pet shops may notify the registry of microchip details of say twenty dogs in respect of that breeder. It will become known among breeding establishments that the risk of detection is very real. Accordingly, compliance will be encouraged. Apart from random unannounced inspections of breeding establishments, there should be provision for random unannounced inspections of pet shops or other outlets to identify whether all animals for sale are microchipped in a manner which denotes their breeder origin.

6. **Fifth**, it is necessary to enable a random inspection by a designated inspectorate of breeding establishments to ensure that breeding conditions are satisfactory and proper. Such breeding conditions should not be judged solely by reference to whether cruelty as such exists or not, but rather by whether the welfare of the animals is properly provided for. There is a range of conditions which impeach or put at risk an animal's welfare short of actual cruelty. Cruelty is but an end-point. This is why tackling the source is so fundamental. Good public policy must establish a regime and instruments which intervene to secure an animal's ongoing welfare.
7. In addition, the inspection should identify whether the permissible numbers under the licence have been observed. In the event the numbers have not been complied with, it should give rise to a strict liability offence. Given the scale of the welfare problem posed by the conditions and overstocking in kitten or puppy 'farms' around Australia, a policy of 'zero tolerance' should be adopted to stop these abuses *at their source*.
8. In Victoria, for example, there was the comparatively recent amendment of the *Domestic Animals Act* 1994 to provide for, amongst other things, amplified powers of inspection of breeding establishment by inspectors and the registration of the premises with the local council. Each have failed in their object, and do not go, without more, to tackling the problem at its source. Amplified powers of inspection are certainly required and self-evidently necessary (so far as they go), but only if they are exercised and are supportive of other laws which go to and regulate the source. In Victoria, the powers are largely left for exercise by a private charity with limited resources, namely, the RSPCA. A minor role is discharged by the department of primary industries. But sadly it is a department which has a 'tin ear' for welfare in any event as the 'friend of industry'. Certainly, it can be said it is insufficient to rely upon the hope of later (read usually "too late") proper law enforcement alone. Further, local councils view animals as principally a question of animal 'management' rather than one of animal 'welfare'. In rural or regional shires, the Victorian experience shows that this can lead to a 'hands off' approach. This constitutes a significant cultural obstacle to proper scrutiny of whether registration should be granted, renewed, suspended or denied. Simply put, the Victorian solution fails to tackle the problem at its source. And it only legislated to leave it largely to others without the resources necessary (eg the private charity RSPCA) or without the necessary welfare culture (eg local councils). No real resources were allocated. A statute unenforced stands to be a statute unobserved.
9. Further, the Victorian regime enables a 'hands off' system of regulation and enforcement. The minister may grant to a breeder group (such as Dogs Victoria) the

status of ‘applicable organisation’. The conferral of such status exempts the organisation from mandatory compliance with the relevant code of practice. Members of the organisation need only then comply with the code of ethics of the applicable organisation. And enforcement of member compliance by that applicable organisation may be tenuous or, at worst, non-existent. This is an unsatisfactory way in which to address the public interest in proper animal welfare and should not be followed in South Australia. It is a system adopted to save money and give the appearance of a nod to the public interest, whereas in fact it is all but cosmetic.

10. It is recommended that breeding establishments with more than three fertile cats and dogs be required to be registered with a government department equipped with the resources and welfare culture to administer the legal regime with rigour. The Committee should recommend a means whereby a maximum number of dogs or cats may be bred in each year, with a quota maximum for registered breeders.
11. Minimum breeder standards that have been proposed by the RSPCA include those of exercise and socialization; a staff to animal ratio; ‘competency of staff’; housing and living conditions; the retirement and re-homing of breeding animals; and the transfer/transport of animals.¹
12. The Panel believes that mandatory standards for the care and welfare of the animals involved should address not only the basic requirements of food, shelter and the provision of treatment for disease or injury, but also the psychological, behavioural, social and physiological needs of the breeding animals and progeny.
13. South Australian legislation is silent on the welfare and regulation of dogs and cats) that are kept for breeding purposes.²

Gold Coast City Council

14. In 2009 the Gold Coast City Council established a ‘*Code of Practice for the keeping and Breeding of Entire Cats and Dogs*’.³

¹ Ibid 3-5.

² The *Animal Welfare Act 1985 (AWA)*, Animal Welfare Regulations, and its accompanying prescribed *South Australian Code of Practice for the Care and Management of Animals in the Pet Trade* (1999) and the Dog and Cat Management Act 1995.

³ <http://www.goldcoast.qld.gov.au/documents/bf/breeder-code-practice.pdf>

15. Run in conjunction with the *Animal Management (Cats and Dogs) Act* 2008, the Gold Coast Code establishes a breeder permit scheme as well as compulsory microchipping for cat and dog owners.
16. The Gold Coast Code sets Standards (which are enforceable) and guidelines (suggested preferred methods of practice) in a range of areas including:
 - *Animal enclosure and housing;*
 - *Sourcing of animals;*
 - *Food and water;*
 - *Hygiene;*
 - *Socialisation, exercise and enrichment;*
 - *Training;*
 - *Health care;*
 - *Breeding and rearing young animal;*
 - *Transfer of ownership (identification, desexing, adoption)*
 - *Information and transportation; and*
 - *Record keeping*
17. The Panel urges the adoption of an enforceable standard for the welfare of all companion animals, including for their feeding, shelter, and access to veterinary treatment.
18. The Panel recommends that the welfare-related categories in the Gold Coast Code be considered by the Committee.

The adequacy of regulation of the source of companion dogs and cats for sale;

19. The lack of regulation of the source of companion dogs and cats in South Australia means that the current system fails to address key problems in this area, namely:
 - poor welfare conditions for breeding dogs, breeding cats and their progeny;
 - over-breeding and thus unacceptable euthanasia rates; and

- lack of identification of abandoned or lost dogs and cats.
20. The over-breeding and lack of adequate identification of companion animals in South Australia leads direct to the killing (euthanasia) of high numbers of healthy dogs and cats each year. The key recommendation in the broad of the Panel is that the Committee rethinks the legislative approach in South Australia by tackling the problems *at the source*.

Animal Welfare Act 1985 (SA)

21. It will be appreciated that the *Animal Welfare Act 1985* (SA), its subordinate legislation and prescribed codes of practice provide the main source of regulation of animal welfare in South Australia. The Act's central protection, section 13, makes it an offence for a person to "ill treat" an animal.⁴ Under this section, an owner of an animal is taken to have ill treated it if they, among other things, fail to provide the animal with appropriate and adequate food, water, living conditions or exercise,⁵ or neglecting the animal so as to cause it harm.⁶ "Harm" is defined to mean "any form of damage, pain, suffering or distress (including unconsciousness), whether arising from injury, disease or any other condition".⁷ It is a patent weakness in the legislation that the definition of "harm" does not include "death".
22. The prohibition against ill treatment applies to all animals except human beings and fish.⁸ It thus would, for example, be an offence for a companion animal breeder to fail to provide adequate living conditions for, or cause harm by neglecting, dogs or cats they own.
23. Section 43 of the Act exempts anything done *in accordance with* a prescribed code of practice relating to animals from being unlawful under the Act.

⁴ The "aggravated offence" is of intentional or reckless ill treatment of an animal resulting in serious harm or death and is punishable by imprisonment for up to 4 years or a maximum fine of \$50,000 (subsection 13(1)). The "lesser offence" is simply of ill treatment of an animal and is punishable by imprisonment for up to 2 years or a maximum fine of \$20,000 (subsection 13(1)).

⁵ *Animal Welfare Act 1985* (SA) s 13(3)(b)(i).

⁶ *Animal Welfare Act 1985* (SA) s 13(3)(b)(iv).

⁷ *Animal Welfare Act 1985* (SA) s 3.

⁸ *Animal Welfare Act 1985* (SA) s 3.

24. Notwithstanding the above, the “ill treatment” offences contained in the Act are unable to provide sufficient practical regulation at the source for companion dogs and cats. There are evidentiary hurdles in proving elements such as “neglect” or the lack of “adequacy”, and the provisions are, by their nature, proscriptive rather than prescriptive. There is thus a compelling need for legislation which sets ongoing high welfare and enforceable standards and a duty of care specific to the peculiarities of dog and cat breeding. The mere existence of a *Dog and Cat Management Act 1995* (SA) points up this is so. See further paragraph 29 below.
25. Aside from section 13, the Act contains no legal protections for cats and dogs in breeding establishments.

Animal Welfare Regulations 2012 (SA) and codes of conduct

26. Regulation 5(1) of the *Animal Welfare Regulations 2012* (SA) provides that compliance with prescribed codes of conduct (i.e. those specified in schedule 2 of these Regulations⁹) is mandatory and contravention can lead to a maximum penalty of \$2,500.
27. The *Code of Practice for the Care and Management of Animals in the Pet Trade* is included as item 1 of Schedule 2 of the Regulations and lists basic minimum standards “to cater for welfare of those animals held in the short term prior to sale”. The stated objects of this code and its definition of “trading in pets” indicate that its application is limited to the *post*-breeding sale of pets in wholesale or retail establishments (e.g. pet shops).¹⁰ This is unacceptable as a matter of the public interest.
28. Though the RSPCA is able to enforce the standards contained in this code, they do not apply to shelters, pounds and breeders.

***Dog and Cat Management Act 1995* (SA)**

29. The *Dog and Cat Management Act 1995* (SA) provides for the registration of dogs; offences relating to attacks by dogs or dogs wandering at large; the establishment and

⁹Animal Welfare Regulations 2012 (SA) r 5(2).

¹⁰Government of South Australia, South Australian Code of Practice for the Care and Management of Animals in the Pet Trade, Department of Environment, Water and Natural Resources
<http://www.environment.sa.gov.au/files/d66b4fbc-75db-4cbb-b0d8-9e6100c27bbc/COP_pettrade.pdf> clauses 1 & 2.

operation of the Dog and Cat Management Board and Fund; the management of cats; and the imposition of ‘keeper’s’ liability for civil actions relating to dogs.¹¹ Local Councils are responsible for administering and enforcing the provisions of this Act relating to dogs within their respective areas.¹²

30. The *Dog and Cat Management Act 1995* (SA) requires that dogs over the age of 3 months be registered by the person who is in control of the dog at the time.¹³ There is, however, no requirement that cats be registered under this Act. Councils are responsible for setting requirements for their registration. This has resulted in there being a distinct lack of consistency across South Australia (for example, the Barossa Council does not require registration of cats but the City of Mitcham Council requires all cats to be registered).
31. It is recommended that the registration of cats be provided for by the *Dog and Cat Management Act 1995* (SA) so as to ensure consistency across the state.
32. The *Dog and Cat Management Act 1995* (SA) does not provide for the welfare of dogs and cats. Nor does it provide for the regulation of breeders.

Non-government breed associations, ‘registration’ and voluntary codes of conduct

33. Some of these South Australian industry breed associations publish codes to which breeders of cats and dogs can voluntarily subscribe by becoming members. This is an echo of the unsatisfactory Victorian experience: see above.
34. For example, members of the South Australian Canine Association t/a Dogs SA are required to comply with SACA’s Code of Ethics for Members or will be “guilty of an offence” against the rules. Similarly, the Australian Association of Pet Breeders has a Code of Ethics and the Feline Association of South Australia has a Code of Conduct for Breeders. Members of these organisations must agree to comply. Other similar bodies also exist.

¹¹*Dog and Cat Management Act 1995* (SA).

¹²*Dog and Cat Management Act 1995* (SA) s 26.

¹³*Dog and Cat Management Act 1995* (SA) s 33.

35. These codes are insufficient to protect cats and dogs in breeding establishments. First, membership of these organisations is voluntary. Second, the codes are not legally enforceable. Third, these organisations likely lack the necessary resources to inspect members' breeding premises and ensure compliance. Furthermore, there is no requirement the codes be produced in consultation with relevant stakeholders (e.g. animal welfare organisations). As a result, they are likely to favour the economic interests of breeders where these conflict with welfare.
36. Such codes are an inadequate public policy measure. It is recommended that any such option cease.
37. Some such industry breeder associations may also maintain registers. For example, SACA lists "registered breeders". It allows breeders to register puppies on their "Main" or "Limited" registers. "Limited" registers identify dogs intended for prospective owners, (but who may not, for example, export them or breed from them).
38. In the absence of a legislative registration or licensing scheme with enforceable welfare standards, consumers are likely to be misled by terms such as "registered breeder". This is especially so where an association may lack adequate resources to enforce the conditions of a breeder's registration.

Need for regulation at the source

39. Given the lack of regulation of the source of companion cats and dogs for sale, the Panel recommends that strong regulation be introduced to protect animals sold by breeders, shelters and pounds, regardless of whether animals are sold direct to the public, retailers or other entities.

Microchipping

40. South Australian law does not require the microchipping of companion dogs and cats for sale.
41. If companion dogs and cats are lost or abandoned and are unidentifiable, they are unlikely to be returned to their owners. Microchipping and registration of animals should begin at the source, that is to say, with breeders. Plainly, such measures will assist

in reducing the number of lost or abandoned animals.¹⁴ Moreover, it will allow animals to be traced to their source, and any welfare or other issues to be addressed accordingly. The number of puppies or kittens linked to a particular breeder or breeding bitch, for example, could also be monitored, thereby offering an additional way to manage populations.¹⁵

The feasibility of a mandatory cooling off period between registering intent to purchase a companion dog or cat and taking possession of the animal:

42. A cooling off period would allow prospective owners to carefully consider their present lifestyle,¹⁶ family composition¹⁷, and whether they have the facilities, time, financial means, and level of interest necessary to ensure a satisfactory standard of care for their animal.¹⁸ This level of interest should extend to learning the specific needs of the species or breed being required,¹⁹ and whether the chosen breed is really suitable for them and their lifestyle.²⁰ Impulse purchases are all too common.

The adequacy of the regulation of non-retail-shop trade in companion dogs and cats;

43. According to a report by ABC News²¹ the Pet Industry Association estimates that up to 450,000 dogs are sold in Australia each year, with 15% of those sales coming from pet shops. That means that the remaining animals are most likely sold by breeders or private sales of individual pets.

14 Ibid 2-3.

15 RSPCA, *Legislating to End Puppy Farming – The Way Forward* (January 2012)
<<http://www.rspca.org.au/assets/files/Campaigns/LegislatingtoEndPuppyFarming-TheWayForward-Jan2012.pdf>> 2.

16 <http://www.petpalspetcare.com.au/Purchaseadvice.aspx>

17 Ibid

18 RSPCA Policy A02 Acquiring a companion animal, 2.1

19 Ibid. 2.2.

20 <http://rhiannoncavaliers.com/articles/56-rescue-dogs-an-alternative-to-buying-a-dog>

21 <http://www.abc.net.au/news/2012-03-06/pet-association-cracks-own-on-dodgy-breeders/3871936>

Mandatory desexing and microchipping of all animals sold from a breeder

44. Breeders should be required to desex and microchip the animal prior to sale. This has already been provided for in legislation in other Australian states²².

Mandatory inspection

45. The Victorian legislation provides for each breeding establishment to be inspected by the relevant council. In practice, because councils view this as a matter of animal ‘management’ rather than animal ‘welfare’, it is viewed by the Panel as unsatisfactory: see above. Apart from the RSPCA and the police, inspection and enforcement should be enabled by a well-resourced department or central bureau committed to securing ongoing and proper (high) welfare standards.

How the registration, microchipping and desexing of companion dogs and cats might address these goals

46. Local Councils are responsible for management of dogs and cats

Dogs

47. The current legislative requirement is for registration of dogs annually with the owners’ local Council²³. Failure to register a dog over three months of age is an offence. All Councils are required by the *Dog and Cat Management Act* (s.26) to provide discounts on annual dog registration fees for dogs which are a) desexed b) micro-chipped and c) trained. These discounts are cumulative and vary in dollar value and percentage of full fee between Councils.
48. There is no legislative requirement for any of these things save for registration. There is a small financial incentive for owners to have dogs desexed and/or micro-chipped and/or trained.
49. Section 33 (2), *Dog & Cat Management Act* enables the fine to be levied on the person who owns or is responsible for the control of an unregistered dog.

²² Section 15(1) of the *Cat Management Act* (TAS) 2009, See also Section 74, *Domestic Animals Act* 2000 (ACT), and Standard 38 of the Gold Coast Standard.

²³ s.33 *Dog & Cat Management Act*

50. None of these measures go in any way to address the failure of an owner to micro-chip, desex or train a dog
51. Compulsory micro-chipping of all dogs in infancy would address this problem. An impounded dog should always be able to be traced back to its owner, assuming the appropriate mechanism is in place to ensure that any change of ownership is recorded in the micro-chip Registry records, and those records are accessible.

Cats

52. Compulsory registration and microchipping of pet cats together with compulsory desexing would also address wandering, and an unwanted kitten problem.
53. The Panel believes that the introduction of mandatory microchipping for all dogs and cats prior to first sale or upon transfer is the best approach to these animal welfare and management issues.
54. Furthermore, the Panel believes that there should be a National Registry of ownership details for all micro-chipped dogs and cats.

Desexing

55. Some of the dogs and cats euthanased are the product of unwanted litters produced as a result of the failure of the owners to desex the parent animals.
56. Mandatory desexing by a specified age of a dog or cat (except breeding animals) would address this problem.
57. It has been argued by pet owners in the past that they cannot afford desexing (especially where a female animal is more expensive to desex than a male animal). In light of the public interest questions at stake, this type of argument should not be entertained. Put simply, if an intending animal owner cannot afford to desex the animal, the intending owner cannot afford to maintain the animal at all, and should not be permitted to take ownership.

