



## Code of Practice for the Management of Dogs and Cats in Shelters and Pounds (Revision 1)

### Submission of behalf of the Barristers Animal Welfare Panel

1. This Submission is made in response to the request for comment regarding the *Code of Practice for the Management of Dogs and Cats in Shelters and Pounds (Revision 1)* issued by the Minister for Agriculture and Food Security and the Department of Primary Industries on 1 April 2011.
2. The Barristers Animal Welfare Panel is a national unitary body comprising over 120 barristers, including some 25 silks. It has an adjunct panel of law firms which includes large national first tier firms. More information about the Panel is available at [www.bawp.org.au](http://www.bawp.org.au).
3. The current Code of Practice (**'current Code'**) has not been revised since it was first introduced 14 years ago.<sup>1</sup> The new Code of Practice (**'draft Code'**) attempts to rectify some of the shortcomings identified with the current Code.
4. The Barristers Animal Welfare Panel (**'Panel'**) welcomes the opportunity to reassess the current Code and, in particular, commends the removal of the controversial '28 day rule'.<sup>2</sup>
5. The Panel is, however, very concerned that the draft Code places greater emphasis on animal control rather than animal welfare and that it represents a significant distortion of the overarching purposes of the *Domestic Animals Act 1994* (Vic).<sup>3</sup>

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<sup>1</sup> P Walsh, 'Greater protection for cats and dogs in pounds', Media Release, 10 April 2011.

<sup>2</sup> Provision 2.3.7, 'Code of practice for the management of dogs and cats in shelters and pounds', Bureau of Animal Welfare, May 2002.

<sup>3</sup> Section 1 of the *Domestic Animals Act 1994* (Vic) specifies that 'the purpose of this Act is to promote animal welfare, the responsible ownership of dogs and cats and the protection of the environment'.

6. The draft Code contains several significant shortcomings. The Panel is particularly concerned with the:
  - a. impact on foster care; and
  - b. potential abuse of the provisions regarding 'humane' euthanasia.
7. This Submission argues that the draft Code fails to address community expectations regarding animal welfare, in particular, that the utmost priority of pounds and shelters should be the lives and wellbeing of cats and dogs in their care.
8. The majority of this Submission outlines the shortfalls of the draft Code. The final part of the Submission then makes recommendations for overcoming these shortfalls.

## **I POSITIVE DEVELOPMENTS IN THE DRAFT CODE**

9. The draft Code removes the controversial '28 day rule',<sup>4</sup> which imposed a maximum holding period of 28 days. Under the rule, an animal had to be euthanased or 'permanently removed' (such as to external foster care) on the 29<sup>th</sup> day after being admitted to the facility.
10. This inflexible time limit resulted in many otherwise adoptable animals being unnecessarily euthanised, as the arbitrary 28 day period failed to recognise that the rehabilitation and rehoming process may differ according to the individual circumstances of particular animals. In contrast, a report by the RSPCA ACT has shown that 93% of all dogs were able to be rehomed when the shelter imposed 'no time limit' on rehoming.<sup>5</sup>
11. The proposed abolition of the arbitrary 28 day period provides much needed flexibility for the pound and shelter system and greatly benefits the welfare of Victorian animals.

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<sup>4</sup> Provision 2.3.7, 'Code of practice for the management of dogs and cats in shelters and pounds', Bureau of Animal Welfare, May 2002.

<sup>5</sup> Michael Linke, 'Punching above your weight', RSPCA ACT, October 2009 (<http://www.ndn.org.au/files/SummitProceedings/NDN%20RSPCA%20ACT%202009.pdf>), p 16.

## II SHORTCOMINGS OF THE DRAFT CODE

### A Provisions Relating to Foster Care for Dogs and Cats

12. Statistics show that the majority of animals that come into shelters and pounds are healthy, adoptable pets.<sup>6</sup> Foster care affords long-term animals at a pound or shelter the chance to experience a less stressful lifestyle in a home environment while awaiting adoption. For instance, a report by the Animal Welfare League notes that its Queensland shelter relies heavily on its foster programs when there is no room in the shelter, with a peak of 350 pets in foster homes during a particular period.<sup>7</sup> Moreover, foster care programs allow pounds and shelters to ensure that kittens and puppies are the right age, size and weight before being vaccinated and desexed, and that cats and dogs are able to be treated for medical or behavioural problems.

#### *Grounds on Which Animals May Be Released into Foster Care*

13. The draft Code fails to provide an opportunity for healthy animals to go out into foster care. It states that there are only three grounds on which foster care is permitted, namely:
- a. Juvenile foster care (2.8.1) – allows for a puppy or kitten to be cared for off-site, allowing it to grow to the requisite age, size and weight before desexing and vaccinations;
  - b. Veterinary rehabilitation foster care (2.8.2) – allows for animals with recoverable injuries or non-infectious illnesses to be treated prior to being rehomed; and
  - c. Behavioural rehabilitation foster care (2.8.3) – allows for animals to be retrained so as to rectify a behavioural issue prior to being rehomed.
14. By failing to allow healthy animals to be placed in foster homes, the draft Code is condemning healthy pets to be confined to their pens while in care or, worse still, to

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<sup>6</sup> For instance, 89% of dogs and 91% of cats were found to be healthy, or have treatable conditions: see J Verrinder, 'Getting to Zero', Animal Welfare League Queensland, (<http://www.ndn.org.au/files/SummitProceedings/JoyCombo.pdf>), pp 6-7.

<sup>7</sup> J Verrinder, 'Getting to Zero', Animal Welfare League Queensland, (<http://www.ndn.org.au/files/SummitProceedings/JoyCombo.pdf>), p 7.

death should space at the shelter become limited. Even with the removal of the 28 day rule, many animals are likely to be killed at the expiration of their statutory holding period, and only allowing for foster care on three prescribed grounds fails to acknowledge the important role that foster care plays in reducing capacity pressure and costs at pounds and shelters.

15. Moreover, in accordance with the aims of the *Domestic Animals Act 1994* (Vic), allowing for foster care on a broader basis would improve animal welfare as long-term residents of the pound and shelter system would be allowed to go out into foster care and experience a less stressful home environment.

### ***Mandatory Veterinary Approval for Foster Care***

16. Section 2.8 of the draft Code states that foster care can only be undertaken with signed approval from a veterinary practitioner. It requires the veterinarian to assess if the animal is suitable for foster care on any of the three grounds outlined above. This would have two undesirable outcomes.
17. Firstly, it would be inappropriate to require a veterinarian to sign off on an animal being placed into behavioural foster care. Although a veterinary practitioner is able to assess an animal's health, the assessment of an animal's behaviour should only be carried out by those trained in the area of animal behaviour.
18. Secondly, requiring a veterinarian to approve *each* foster care placement would place too high an administrative and financial burden on shelters and pounds. Many shelters and pounds do not have a resident vet permanently on staff and simply do not have the financial and human resources to implement such an assessment regime.
19. To address these concerns, the draft Code should provide that only veterinary behaviourists, animal behaviourists, or establishment staff with behavioural training should be able to assess an animal's behaviour. Establishment staff could either already have the appropriate training upon recruitment, or establishments could be required to put a certain number of their staff through an accredited training program. Having the option for staff to carry out the role of a veterinarian in this context will

reduce the financial and administrative burden on establishments as the behavioural assessments can be done internally.

20. Flexibility in the persons who can assess animal behaviour is crucial given that behavioural assessments by unqualified persons would significantly undermine the animal welfare objective of the *Domestic Animals Act 1994* (Vic) and given that the assessment of an animal can have life or death consequences.

#### ***Recommendation by an Animal Behavioural Specialist***

21. Section 2.8.3 states that animals who fail temperament testing can only be placed in behavioural rehabilitation foster care under recommendation from an animal behavioural specialist.
22. In the current system, the majority of temperament testing is performed by general staff members, largely because many pounds and shelters have limited or no access to an animal behavioural specialist. It is unlikely that these establishments could afford to hire a behaviourist, and requiring them to do so would be both impractical and unnecessary. Mandating behaviourist assessment is likely to result in fewer assessments being performed and greater numbers of animals being euthanased for remediable behavioural issues.
23. As such, identical to the proposal above, the draft Code should provide shelters and pounds with the option of having behavioural assessments carried out by veterinary behaviourists, animal behaviourists, or establishment staff with appropriate and adequate behavioural training.

#### ***Infectious Diseases Provisions***

24. Sections 2.8.2 and 2.8.3 further stipulate that animals with infectious diseases must not be placed in veterinary or behavioural rehabilitation foster care.
25. While the Panel acknowledges the importance of controlling outbreaks of disease, the fact remains that many animals in a shelter or pound environment either have or

contract relatively minor and easily treatable ailments. For instance, calicivirus (or cat flu) is a condition with relatively mild symptoms and is eminently treatable, with most cats having good prospects of making a full recovery. The virus is not transmissible to dogs or humans, and therefore a cat with calicivirus should not be precluded from foster care should suitable quarantine be provided. Other examples of infectious but treatable diseases include kennel cough and ringworm.

26. The inflexible approach of the draft Code does not allow for distinction between different forms of infectious diseases and overly restricts treatment options. In many instances, external treatment greatly benefits both the animal and the establishment as removal of the animal from the shelter/pound environment improves the animal's welfare and reduces the workload for the pound or shelter.

#### ***Time Limits on Foster Care***

27. Sections 1.6, 2.8.1, 2.8.2 and 2.8.3 limit any foster care period to a maximum of three months.
28. Without further information as to how the three month maximum term was decided, it appears to be both an arbitrary period of time as well as severely curtailing the potential rehabilitative effects of foster care.
29. Moreover, many behavioural problems in impounded animals are likely to be caused, or contributed to, by the stress of the pound environment. As such, the Code should not require that animals in foster care be returned to the establishments from which they came as any rehabilitative effect from foster care may be undone or undermined if the animal is required to be returned to the pound environment that gave rise to the environmental stress in the first place.
30. In any case, it is difficult to see why any time limit or the requirement to return the animal to the establishment would be imposed if there are competent and willing foster carers available who are able to successfully rehome the animals.

### *Powers of Authorised Officers to Audit Residences of Foster Carers*

31. Section 1.6 provides that foster carers 'must ... permit their premises to be audited for compliance with the Act and Code by an authorised officer.'
32. Under the *Domestic Animals Act 1994* (Vic), an 'authorised officer' can be any person appointed by the Minister<sup>8</sup> or a Council,<sup>9</sup> and is assigned sweeping powers under the Act to 'take any reasonable action'<sup>10</sup> to investigate issues of compliance with the relevant provisions.
33. This provision unfairly targets foster carers who volunteer their time and offer their homes as a temporary refuge for animals in need. Shelters generally already conduct 'home checks' to ensure that private premises are suitable for the foster animal prior to entering into any foster care agreement, and more broadly most shelters run responsible and well-regulated foster care systems to ensure that a high level of animal welfare is maintained.
34. Given this existing system of checks and regulation, the requirement for volunteer foster carers to submit their homes for inspection or 'audit' by authorised officers with broad powers is an unnecessarily invasive burden. It is very likely that proposed section 1.6 will reduce the likelihood of foster carers volunteering their time, effort and homes to participate in valuable animal welfare programs.
35. It is also noteworthy that under the *Domestic Animals Act 1994* (Vic), authorised officers do not have powers to enter residential premises.<sup>11</sup> The draft Code is actually asking foster carers to permit authorised officers to go above and beyond their powers as outlined under the Act.

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<sup>8</sup> *Domestic Animals Act 1994* (Vic) s 71.

<sup>9</sup> *Domestic Animals Act 1994* (Vic) ss 72, 72A.

<sup>10</sup> *Domestic Animals Act 1994* (Vic) s 74.

<sup>11</sup> *Domestic Animals Act 1994* (Vic) s 74(2)(a).

## ***The Governance of Community Foster Care Groups***

36. Thus far, this submission has discussed only the provisions of the draft Code governing “foster carers”.
37. The draft Code defines a “foster carer” as a person who fosters an animal outside the shelter or pound under the three prescribed grounds, and then returns the animal to the shelter or pound for rehoming. Furthermore, sections 1.6 and 2.8 of the draft Code expressly state that the draft Code’s provisions apply only to foster care programs that are conducted as part of a shelter or pound’s operations.
38. These foster care programs governed by the draft Code must be distinguished from community foster groups (“CFGs”) and individual volunteer foster carers who, described broadly, operate independently from shelters and pounds. CFGs and individual foster carers play a crucial role in preventing the euthanasia of many adoptable cats and dogs, often taking from shelters or pounds animals that have reached the end of the (currently enforceable) 28 day holding period or who are deemed unsuitable for rehoming for a variety of reasons. Importantly, CFGs and individual foster carers manage the animal until the time of rehoming, and do not return the animal to the shelter or pound from where they came. For these reasons, CFGs and individual foster carers do not fall under the definition of “foster carer” under the draft Code.
39. Currently, the only reference to CFGs and individual foster carers in the draft Code is in section 2.6, which allows shelters and pounds, by way of written agreement, to release seized or surrendered animals to a person or body which operates in accordance with the *Domestic Animals Act 1994* (Vic).
40. Presumably, these “written agreements” refer to agreements under section 84Y of the Act, under which a Council may enter into agreements with CFGs or individuals such that those CFGs or individuals may then care for and rehome animals. These section 84Y agreements are crucial to reducing the euthanasia rates of impounded animals. The draft Code should expressly endorse these section 84Y agreements and state that groups and individuals party to these agreements, though not governed by



the provisions of the Code, are a crucial link in the Victorian foster care regime and in the promotion of animal welfare.

41. Furthermore, under the draft Code animals can only be released to CFGs and individual foster carers “at the conclusion of the statutory period” specified in the Act. This provision should be amended such that shelters and pounds may release animals to CFGs or individual foster carers at any time (subject to statutory quarantine periods) and, as per paragraphs 12 to 13 of this submission, without the need for the foster care to fall within the three categories currently defined in the draft Code. This will increase the number of treatable and/or adoptable animals that can exit the establishment system and be cared for by a foster carer until rehoming.

42. The cost savings to councils and pounds from the operation of CFGs is significant and further adds to the importance and need for recognition of CFGs in the draft Code. For example, caring for impounded animals costs Melton Council Pound \$220,000 per year, or about \$100 per animal.<sup>12</sup> Across the border in NSW, councils commonly enter into contracts costing hundreds of thousands of dollars to manage their impounded pets. Sydney City Council, for example, pays the Sutherland Shire Pound over \$300,000 annually to process and manage their impounded pets. These are the direct costs incurred by ratepayers and taxpayers in the management of pound and shelter animals.

## **B ‘Humane’ Euthanasia**

43. Section 2.6 states that euthanasia must be carried out humanely, and that barbiturate overdose by a veterinary practitioner is the accepted method of humane euthanasia.

44. The Panel accepts that the administration of barbiturates is the most humane method of euthanasia, but is very concerned that the draft Code provides little or no guidance on the issue of when and in what manner other methods of euthanasia can be used.

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<sup>12</sup>Meg Sobey, ‘Pound’s Euthanasia on the Rise’, *Melton Weekly* (10 August 2010) available at <http://www.meltonweekly.com.au/news/local/news/general/pounds-euthanasia-on-the-rise/1908838.aspx>; The RSPCA estimates the financial cost of managing the cat over-population issue in Victoria at \$5 million per annum - RSPCA Victoria, ‘Cat Welfare’ (2006) at [http://www.rspcavic.org/campaigns\\_news/campaigns\\_cat\\_welfare.htm](http://www.rspcavic.org/campaigns_news/campaigns_cat_welfare.htm).

45. In particular, it is evident that regional pounds often use firearms as a means of euthanasia.<sup>13</sup> While gunshot as a means of euthanasia is permitted if a proprietor decides that it is 'the only practical method of euthanasia', the draft Code offers no definition or guideline as to the meaning of 'practical' in this context. The Panel is very concerned that the provision therefore poses no real limitation on shooting animals even where access to veterinary-administered barbiturate euthanasia is available.
46. Also of concern is that, whilst under the draft Code only veterinary practitioners may administer a lethal dose of barbiturate, euthanasia may be performed by gunshot as long as the firearm operator is merely 'experienced'. This may lead to euthanasia by gunshot being carried out by persons who do not have the welfare of the animals as their first concern.

### **C Release of Animals for Research or Teaching**

47. Sections 2.14 and 2.15 allow for the release of animals to research or teaching institutions and for research or teaching within a pound of shelter, respectively. The use of shelter or pound animals in research creates a dependence on pet overpopulation and is taking advantage of the surrender of unwanted animals to pounds and shelters due to human irresponsibility. It does little to support responsible pet ownership, but rather, creates a market or need for it.
48. Further, as long as such animals are regarded as a resource for research and teaching institutions and the like, the problem of pet overpopulation will not be effectively and seriously resolved. The emphasis should be on reducing pet overpopulation and kill rates, and not creating or supporting a market or use from the issue.

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<sup>13</sup> See, for instance, 'Cat anger', Sunraysia Daily (<http://www.sunrasiadaily.com.au/news/local/news/general/cat-anger/1685439.aspx>); Kae Norman, 'News from Victoria - Mildura council – they shoot cats don't they?' (<http://deathrowpets.wordpress.com/2009/11/28/news-from-victoria-%E2%80%93-mildura-council-puppy-mills/>); 'RSPCA unable to prove cat shooting cruelty', ABC News (<http://www.abc.net.au/news/stories/2010/03/01/2832796.htm?site=milduraswanhill>).

49. Accordingly, no animal from a pound or shelter should be released for the purposes of research or teaching at institutions or otherwise at any time or for any reason.

#### **D General Comments**

50. Table 1 in section 2.2 contains a collection of undefined terms. This has the potential to permit arbitrary application. For example, what is an “unidentified” cat or a “wild” cat or an “uncontrollable” cat or a “diseased” cat? A person may take the view that a cat is “uncontrollable” whereas a different person may take the view that the same cat is distressed and is acting defensively only on response to threat. In the first instance the cat can be destroyed whereas in the second the cat is not to be destroyed. More precision of drafting is required here.
51. Section 2.7.1 speaks of the number of times an animal must be fed but not the quantity or contents of the meal. More details are required here.
52. Table 2 in section 2.7.4 is problematic because for a large dog which may be present during the quarantine period for up to eight days, for example, exercise in its own cage is obviously not sufficient. Accordingly, exercise for dogs should be mandatory and not optional.

### **III RECOMMENDATIONS**

53. The draft Code should be reworded to emphasise one of the overarching purposes of the *Domestic Animals Act 1994* (Vic), namely, that of promoting animal welfare.
54. The Panel commends the removal of the ‘28 day rule’ and regards its abolition as an important step forward for animal welfare. The removal of this rule provides much-needed flexibility for the pound and shelter system, and ensures that cats and dogs will not be euthanased merely because they have reached the end of the 28 day holding period.

## **A Recommendations for Foster Care**

55. The draft Code should provide an opportunity for healthy dogs and cats to be placed into foster care. This opportunity to place animals into foster care should also extend to the context of animals being received by CFGs and individual foster carers who enter into section 84Y agreements. The Code should acknowledge the crucial role of these CFGs and individual foster carers by endorsing section 84Y agreements.
56. For both foster care provided by “foster carers” (as defined in the draft Code) and by CFGs and individual foster carers, the draft Code should provide that animals can be released to foster care at any time for care and/or rehoming, without the need for the foster care to fall within the three categories currently defined in the draft Code.
57. The provision stipulating veterinary approval for all foster care placements should be removed. Instead, shelters and pounds should have the option to get behavioural assessments done by veterinary behaviourists, animal behaviourists, or establishment staff with appropriate and adequate behavioural training.
58. The provision stipulating that an animal behaviourist make a further assessment in relation to rehabilitation foster care should be removed. Instead, shelters and pounds should have the option to get behavioural assessments done by veterinary behaviourists, animal behaviourists, or establishment staff with appropriate and adequate behavioural training.
59. The requirement prohibiting animals with infectious diseases from going into foster care should be modified to take into account the severity, treatability and prognosis for recovery. The likelihood of transmission should also be considered and balanced with the possibility of a foster carer providing a quarantine location.
60. The arbitrary three month time limit on foster care should be removed as specifying a maximum time limit curtails the potential rehabilitative effects of foster care. Time limits should not be placed on foster care as long as foster homes continue to be available. Nor should animals placed in foster care be required to be returned to the establishment from which they came. Return of an animal to an establishment should

only occur if appropriate, such as where the chances of the animal being rehomed is higher if the animal is returned.

61. The provision requiring foster carers to consent to home audits by authorised officers should be removed. Such a provision represents an unacceptable invasion of privacy, and unfairly targets foster carers who volunteer their time, effort and homes to support animal welfare.

## **B Recommendations for Euthanasia Provisions**

62. Similar to the handling of animals in section 2.1 of the draft Code, there should be a further requirement that euthanasia be 'as humane as possible'. Under this requirement, administration of barbiturate should be the primary method, and other methods should only be permissible in cases where veterinary access is impracticable.<sup>14</sup>
63. More generally, the draft Code should include stronger guidelines on euthanasia, particularly in relation to what constitutes 'humane' euthanasia, accepted methods of euthanasia and under what circumstances certain euthanasia methods may be carried out. 'Humane' euthanasia should involve instant death, and cause minimal pain and suffering to the animal.

**End of submission**

**Contact details available at [www.bawp.org.au](http://www.bawp.org.au)**

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<sup>14</sup> The Macquarie Dictionary defines 'impracticable' as 'not practicable; that cannot be put into practice with the available means': *Macquarie Dictionary* (online ed, 2007).