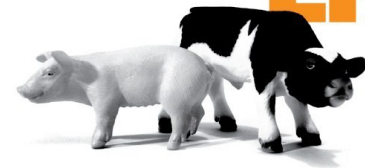


Breeding and Rearing Code Public Comment  
Bureau of Animal Welfare  
475 Mickleham Road  
ATTWOOD VIC 3049  
By email

LAWYERS  
FOR  
ANIMALS

**LFA**



13 August 2013

Lawyers for Animals Inc. ('LFA') is a not-for-profit incorporated association run by a management committee of lawyers. Its objectives include: alleviating the suffering of animals by engaging with those who create or administer laws in Australia to strengthen legal protection for animals; promoting better animal welfare practices amongst animal-related industries in Australia; and undertaking educational activities in an effort to dispel myths and increase awareness relating to animals and the law. LFA also collaborates with the Fitzroy Legal Service to run the Animal Law Clinic.

LFA made a submission dated 13 May 2013 in respect of the first consultation draft of the Code of Practice for the Operation of Breeding and Rearing Businesses ('Code'). LFA is disappointed that few if any of its earlier recommendations, many of which would have required only minor amendment and were arguably non-contentious, have been incorporated into the first revision of the Code. Moreover, this revision of the Code has removed many animal welfare protections included in the first consultation draft.

As stated in our earlier submission, LFA supports the Victorian Government's continued efforts to improve the minimum welfare standards in breeding and rearing premises. In particular, LFA recognises that the *Domestic Animals Amendment (Puppy Farm Enforcement and Other Matters) Act 2011* introduced stricter penalties for offences in respect of cat and dog breeding establishments. Section 63A of the *Domestic Animals Act 1994* now provides that a person or body must not conduct a domestic animal business that does not comply with a Code of Practice made under that Act. LFA welcomes this significant change, and submits that it greatly increases the importance of the Code, its content and terms.

LFA submits that animals used for breeding purposes, and sold from rearing businesses, are extremely vulnerable. They require the fullest protection of the law. This is also what our community demands. Those who operate breeding and rearing businesses, thereby profiting from the sale of these animals, should not be the most influential in determining the conditions in which these animals are kept. Their opinions are valuable, because they

are very experienced in working with animals, but they are the also people who stand to gain the most by keeping animal welfare obligations to a minimum. Market forces alone have been incapable of protecting animals in breeding and rearing establishments. This Government should not hesitate to promulgate a Code which dramatically changes the environment in which these dogs and cats live, even if compliance with the new minimum standards renders these businesses commercially unsustainable for some breeders.

LFA has reviewed the first revision of the Code dated July 2013 primarily from the point of view of how the Code will operate, and how the various provisions of the Code will interact. LFA's comments are provided below under the headings used in the Code. LFA does not purport to have expertise in the fields of animal husbandry, veterinary science or animal psychology. Where relevant, LFA has drawn on the draft submission to this consultation process prepared by the RSPCA. LFA has generally not addressed the typographical and grammatical errors in the revised draft Code.

## General comments

1. Defined terms used in the Code should be used consistently and, wherever appropriate, key terms should be included in the Definitions section. For example, the term 'working dog' is not consistently used or defined. All definitions used in the *Domestic Animals Act 1994*, such as 'fertile animals', should have the same meanings in the Code.
2. The Code could benefit from clearer sub-division and separation of topics. For example, topics such as euthanasia and health management plans ought to be moved from the 'Staffing' section.
3. It is unclear why cl 6(3) in 'Management of Cats' contains an introductory directive to breeders to prioritise 'animal welfare, maintaining genetic integrity and diversity of the species and preventing surplus animals,' when there is no equivalent directive in 'Management of Dogs'. LFA applauds the inclusion of this directive and submits that an equivalent statement should be included with respect to dog management. Alternatively, given the importance of this statement, it could be included in the 'Introduction' to the Code.
4. LFA queries why there are no maximum numbers of animals that can be held on any one premises. A maximum number of animals could go some way to addressing the fact that there is currently no definition of the term 'puppy farm' in the *Domestic Animals Act 1994*.
5. The Code in its proposed form is likely to generate a significant amount of work for veterinary practitioners, particularly in the preparation of health management plans. For this reason, LFA proposes that the Department of Primary Industries ('Department') prepare one or more model health management plans which could be adapted by veterinary practitioners in consultation with businesses. LFA also recommends that a model agreement be prepared by the Department for adaptation and execution by individual veterinary practitioners and businesses. Assisting businesses to comply with the Code in this way can only reduce the costs of enforcement in the longer term.

## Introduction

6. The Code should be expressed to be mandatory for all breeders 'with 3 or more fertile female dogs or cats that are not currently registered members of an Applicable Organisation' and (not 'or') 'all breeders who are registered with an Applicable Organisation and have 10 or more fertile female dogs or cats'.

## Definitions

7. LFA repeats its suggestion that the definition of 'Bed' be modified to include the defined term 'Washable'. For example: 'an impervious washable structure ...'.
8. LFA suggests that the definition of 'Business' be amended to read 'means a Domestic Animal Business (as defined in the Act) ...'.
9. For the reasons discussed below, LFA recommends that the term 'Business Day' be included in the Definitions section and defined to exclude Victorian public holidays.
10. LFA notes that there are references in the Code to the term 'breeding business', which is not defined in the Code. Similarly, there is no definition of 'breeding', which is somewhat incongruous given the Code does contain a definition of 'rearing'. If a breeding business and a 'business' are the same, LFA recommends removal of the word 'breeding' where it appears in the Code before the defined term 'business', to avoid confusion. It is also very unclear which aspects of the Code apply to 'rearing' as opposed to 'breeding' businesses.
11. The definition of 'Council' has superfluous words.
12. In the definition of 'Exercise', LFA suggests changing the phrase 'its physical needs' to 'their physical needs'.
13. LFA repeats its earlier submission that the definition of 'Enrichment' needs further work: it is not a complete sentence and is vague.
14. LFA strongly recommends that the definition of 'Euthanasia' be modified to give an exhaustive (not inclusive) list of methods of euthanasia that are 'humane'. LFA agrees with the RSPCA that the current drafting is completely unacceptable.
15. LFA welcomes the inclusion of a definition for the term 'Experience', however in its present form this definition is vague and it is difficult to see how it might be enforced. LFA is not aware that any training programs have yet been launched by the Department.
16. The definition of 'Monitoring' is highly confusing. It suggests that there is a difference between 'regular' and 'routine' monitoring.
17. The definition of 'pen' suggests that a pen may only be used to house one dog or one puppy at a time. LFA suggests this be reconsidered.
18. LFA welcomes the inclusion of the definition of 'Qualifications' but suggests that the Code requires more detail to inform those who must comply with the Code of what qualifications will meet the definition of a 'minimum formal qualification'. The Department could consider publishing a list of such qualifications in the *Victoria Government Gazette*.
19. The term 'Small Business' is now defined in the Definitions section by reference to the number of fertile animals over 12 months old for dogs and over 9 months old for cats. LFA recommends that this definition be modified to provide a maximum total number of animals, including animals under the specified ages, to ensure that the business ought properly to be considered 'small'.
20. The term 'health management plan' should be included in the Definitions section. This term should also be used consistently in the Code (it is often used interchangeably with terms such as 'animal health plan' or 'health plan').

## **Staffing**

### ***Proprietor***

21. LFA repeats its submission that a proprietor should be required to promote and support 'regular' as well as relevant training for staff. LFA submits that this could be defined by reference to time intervals, for example, a minimum of twice yearly training on topics relevant to the particular business.

### ***Operations Manager***

22. LFA submits that competence, with respect to a proprietor, operations manager or animal attendant, should be defined by reference to a list of specified approved training courses or programs, with mandatory assessment and certification processes. Admittance to many other professions and occupations requires completion of a specific approved program or course, and working with animals in breeding or rearing businesses should be no different.
23. LFA suggests that the Code should clarify how staff can 'renew their competency'. In particular, it is not clear how staff who are not undertaking the 'DPI Breeder Training Program' can renew their competency. LFA submits that the Code should contain a mandatory requirement for staff to renew their competency.
24. The bullet point under cl 2(2) 'Operations manager' should be changed from 'supervising' to 'supervision of' the movement of pregnant animals, in order to pick up the definition of 'Supervision'.

### ***Veterinary practitioners***

25. LFA proposes that the Department develop a model agreement for adaptation and execution by veterinary practitioners and businesses as required by cl 2(3) of the proposed Code. Development of a model agreement would reduce pressure on veterinary practitioners and proprietors, who are not necessarily trained or experienced in the development of such agreements.

### ***Animal attendants***

26. LFA submits that where animal attendants are not trained, experienced or competent, they should be required to 'work' under the direct supervision of the operations manager 'at all times'.

### ***Staff ratios***

27. LFA has increased concerns regarding the proposed staff to animal ratios. All animals require care and attention, and all have the potential to require additional treatment or attention at very short notice. The proposal in the current draft of the Code would apparently allow a business to have the 'equivalent' of 24 fertile animals, with no requirement for a full-time staff member during business hours. The same applies to a business with the 'equivalent' of up to 99 fertile animals overnight. Treating a mother and litter, or a litter, as the equivalent of *one* fertile animal means that the number of 'fertile animals' could represent only a fraction of the total number of *real* animals at the business premises. LFA strongly opposes the release of a Code that would allow hundreds of animals to be left unattended overnight.

28. LFA welcomes the inclusion in the Code of arrangements for 'on call' staff, who are able to travel to the business within 30 minutes of contact.
29. However, the suggestion that 'on call' staff must be available should 'the need arise' is only useful if this need can be communicated to those staff. This communication can clearly not occur under the current revision of the Code, since the animals may be left unattended for significant periods of time (up to 16 hours per day).
30. LFA notes in particular that a stock take is only required to be undertaken by the business monthly, whereas animal numbers may change on a daily or weekly basis, depending on the business. It is entirely likely that the number of staff required at any given time under the proposed Code could change more often than once a month.
31. If no full-time staff member is required for businesses with fewer than 25 'fertile animal equivalents', it is highly likely that animals will go into labour and deliver a litter with no supervision or care. This poses great risk to the mother and litter. Compliance with the whelping and queening requirements in cl 5(3)(f) and 6(3)(f) respectively would often be impossible if these proposed staffing ratios are observed.

### **Security**

32. LFA submits that businesses *must* be protected from entry of 'unwanted' animals, to minimise stress and risk of disease and attacks for animals in the business.

### **Euthanasia**

33. LFA recommends that the section on euthanasia be moved from the 'Staffing' section of the Code.
34. LFA strongly objects to the drafting of cl 2(10), as it implies that 'any' method of deliberately killing an animal can be 'humane'. The Code should specify exhaustively the legal methods by which an animal may be deliberately killed. As noted below, it should also specify exhaustively the circumstances in which this may occur, which must be restricted to situations in which euthanasia is in the animal's best interests for health reasons.
35. LFA supports the RSPCA's submission that the only humane methods of euthanasia are those carried out by, and on the advice of, a veterinarian. Euthanasia must not be carried out simply because an animal has a behavioural problem, or a suitable home cannot be found in which to rehome the animal.

### **Health management plan**

36. LFA repeats its proposal that a model health management plan be developed by the Department in consultation with veterinarians. The Code could then require each proprietor to adapt the model health management plan to their business, in consultation with their own veterinary practitioner. The process of adapting a model health management plan would be less arduous for individual proprietors and veterinarians than developing a plan for every business 'from scratch'. The use of a model plan would also promote broad consistency throughout Victoria, and would reduce the risk of important aspects of health management being overlooked. If necessary, two model plans could be produced, one developed for small businesses, and the other for large businesses.
37. LFA strongly objects to the euthanasia of retired breeding animals on any other than medical grounds. Animals used for breeding purposes are animals which are

exploited for commercial gain. Such animals ought to have a safe and peaceful retirement. No health management plan should provide for euthanasia of any animal, whether fertile or retired, except where a veterinarian has determined that this is medically necessary.

38. LFA submits that the cl 2(11) of the Code should be amended to make clear that the only 'approved method' of euthanasia is that described in cl 2(10) of the Code. The current wording implies that a proprietor and a veterinarian could independently propose alternative methods of euthanasia for a given business.

## **Records**

39. The Code should provide guidance to businesses about the format in which records of the business should or can be kept. It is likely that many businesses now keep some or all records in electronic format.
40. The requirement in the earlier version of the draft Code, that on closure of a business, all records be delivered to the local Council, ought to be reinstated. This would assist to ensure that the records are available for access by purchasers of animals from the business.
41. If the Code is adhered to, birth dates of animals born at the business will always be known. There should be no reason to provide an exception for cases where the birth date is not known.
42. LFA submits that records should be kept for at least six years to ensure that records will be maintained for the duration of relevant limitation of actions periods.
43. The term 'animal health plan' as listed in cl 3(1) 'Business Records', should be changed to the term 'health management plan' for consistency with the rest of the Code, if this is what is intended.
44. The Code should specify the details which need to be included on 'records related to selling of animals, hire out of and/or giving away of animals to and from the Business'. These records could include details such as the name and address of the new owner, the microchip number, copies of transfer of ownership papers, health record and vaccination status at time of exit from the business.
45. LFA also submits that the requirement in the previous version of the draft Code, that animal inventory records be maintained daily, ought to be reinstated. Monthly animal inventories are insufficient to provide accurate records of animals kept at the business.

## ***Animals under three months of age***

46. Clause 3(3)(a) of the Code should be clarified to explain the difference (if any) between the name and address of the 'new owner' for the purpose of disposal records, and the name and address of the 'purchaser'.
47. If the Code is adhered to, birth dates of animals born at the business will always be known. There should be no reason to provide an exception for cases where the birth date is not known. For some reason, birth date is also included in a subsequent bullet point (together with 'dam breed and sire breed') without the 'where known' exception.

## ***Animals over three months of age***

48. LFA submits that this clause is unnecessarily repetitive. Rather than repeating the requirements for animals under three months, the Code could include requirements

which apply to 'all' animals, with some additional requirements for those aged over three months.

49. Again, there should be no reason to provide an exception for cases where the birth date is not known. As suggested by the RSPCA, an approximate age can be provided.
50. With respect to cl 3(3)(b) of the Code, LFA submits that 'disposal records' should include the name, contact number and address of the new owner of animals aged over three months, in accordance with the details required for animals aged under three months.

### ***Individual animal identification***

51. LFA submits that the Code should require all pens to display identification cards for all animals contained within them. This requirement should not apply only to the pens containing females with litters. All animals ought to be clearly identifiable. Satisfaction of many of the Code's requirements would be impossible without the clear and obvious identification of every animal in the business.

### **Sale of Animals**

52. LFA submits that the requirement proposed in the first draft of the Code, that animals be sold with a copy of a health guarantee signed by a veterinarian, be reinstated. Empowering breeders to declare an animal fit for sale poses obvious risks to the welfare of the animal and the interests of the prospective purchasers.
53. LFA strongly recommends that the guarantee in cl 4(1) of the Code be revised to allow for return of an animal without a statement from a veterinarian within '3 business days' of sale. The term 'business day' should be defined in the Definitions clause to exclude Victorian public holidays. It is well known that animals are frequently bought as presents at Christmas time and other holiday periods. In the interests of the animals, purchasers should be given time to consider their position and whether they can properly care for an animal which may have been acquired without sufficient forethought. It may often be difficult to return an animal during a holiday period, particularly if the seller is not available.
54. Further, the previous iteration of the draft Code allowed for return of an animal within 21 days if a veterinarian had deemed the animal unacceptable for health, behaviour or other reasons. By restricting this guarantee to health reasons alone, businesses will be entitled to refuse to accept dogs that were improperly socialised or exercised during the early stages of their lives, reinforcing poor socialisation and exercise practices.

### **Management of dogs**

#### ***Nutrition***

55. The requirement to hold a five day supply of food should be expressed to apply 'at all times' rather than at 'any time', and should refer to 'emergency event' not 'even'.
56. The term 'food receptacle' should be used consistently and should not be interchanged with the term 'container', eg, 'food receptacles must not cause injury to the animals.'

## **Water**

57. LFA agrees with the RSPCA that the requirement that drinking water be 'potable' must be reinstated.

## **Vaccination and parasite prevention for dogs under 3 months of age**

58. LFA submits that the requirement that a general health check be undertaken by a veterinarian prior to sale ought to be reinstated in the current draft.

## **Vaccination and parasite prevention for dogs over 3 months of age**

59. LFA submits that the requirement that a complete health check be undertaken by a veterinarian prior to sale ought to be reinstated in the current draft.

## **Breeding**

60. LFA agrees with the RSPCA's submission that all dogs should undergo a veterinary health check prior to the first mating, as well as between each mating.
61. LFA strongly objects to the euthanasia of an animal with a heritable defect unless this is advised by a veterinary practitioner on medical grounds. LFA firmly believes that no animal should be euthanised unless the animal has ceased to have quality of life and has no reasonable prospects of regaining that quality of life.
62. LFA repeats and supports the RSPCA's statement that six litters in a lifetime is excessive for any one breeding bitch. LFA also supports the RSPCA's submission that the prohibition on breeding during the first oestrus must be reinstated from the first consultation draft of the Code. Minimum and maximum breeding ages, specified by reference to dog type, should also be reinstated.
63. LFA strongly objects to the euthanasia of a retired animal, merely because the Business has not been able to find a suitable home. In particular, LFA submits that businesses should not be empowered to decide whether or not a dog is 'suitable for rehoming'. This assessment must be performed by a veterinarian, and start from the assumption that all animals are 'suitable' for rehoming unless a veterinarian decides otherwise. LFA submits that euthanasia should not be an option simply because 'an acceptable home is unable to be found.' Euthanasia in such circumstances has nothing to do with an animal's suitability for rehoming, and everything to do with a business's efforts to rehome the animal. Allowing businesses to euthanise animals for behavioural reasons perpetuates a cycle in which businesses neglect the health and socialisation requirements of the animals during their breeding lives.
64. LFA strongly believes that all animals (with the exception of those which must be euthanised for purely medical reasons, on the advice of a veterinarian) are suitable for rehoming and should be rehomed. 'Behaviour' alone should never provide a reason for euthanasia. If a business cannot rehome retired animals, it should not be producing additional animals. This practice can only contribute to the existing 'surplus' of companion animals in Victoria and the stress on animal shelters, pounds and foster groups. If a business cannot find a suitable alternative home for a retired animal, it should be required to house the animal comfortably at its premises or an alternative location in accordance with the animal's welfare needs.
65. LFA notes that with respect to cl 5(3)(g), the accepted meaning of the word 'visualisation' is 'the formation of mental visual images' and suggests that an alternative word be chosen.



## **Housing**

66. LFA submits that the requirements included in the first draft of the Code in cl 5(5)(d)(i) (regarding heat source and temperature control in small businesses) and 5(5)(e)(vi) (regarding heat source and temperature control for whelping and lactating pens in large businesses) should be reinstated.
67. The paragraph concerning use of traps should mirror the wording in the equivalent section in 'Management of Cats'. In its present form it is meaningless.
68. LFA considers the time that dogs may spend in pens under the proposed Code to be excessive. LFA agrees with the RSPCA that the requirement in the first draft of the Code should be reinstated such that all dogs over the age of four months receive exercise sessions outside a pen, at least twice per week.
69. Dogs housed indoors should not be exercised subject to the clemency of the weather. On days when the temperature is expected to be high, there is no reason why such dogs could not be exercised early in the day. In the Victorian setting, days of continuous rain are extremely rare.
70. LFA submits that dogs kept in pens, no matter the size of the pen, should be exercised outside the pen. LFA supports the RSPCA's submission that dogs should be exercised in areas separate from their housing areas.
71. There is no mention of noise management in the Code. LFA submits that there should be noise level restrictions in place at every business.

## **Working dogs**

72. LFA agrees with the RSPCA that the components of the Code which apply to working and guardian dogs appear highly inconsistent with those which apply to 'non-working' dogs. These discrepancies pose real challenges for enforcement.
73. A definition of 'working dog breeding businesses' should be included in the Definitions section of the Code and applied consistently throughout.
74. In particular, LFA shares the RSPCA's concerns about the smaller pen sizes permitted for working dogs. LFA supports the submission of the RSPCA that pens for working and guardian dogs must not include any wire flooring, and that whelping and lactating areas for working dogs should mirror the requirements for non-working dogs.

## **Management of cats**

### **Nutrition**

75. As with dogs, the requirement to hold a five day supply of food should be expressed to apply 'at all times' rather than at 'any time'.
76. Again, the term 'food receptacle' should be used consistently and should not be interchanged with the term 'container', eg, 'food receptacles must not cause injury to the animals.'

### **Water**

77. LFA agrees with the RSPCA that the requirement that drinking water must be 'potable' must be reinstated.

## **Breeding**

78. LFA agrees with the RSPCA's submission that all cats must undergo a veterinary health check prior to mating, as well as between each mating.
79. As with the management of dogs, LFA strongly objects to the euthanasia of an animal with a heritable defect unless this is advised by a veterinary practitioner on medical grounds. LFA firmly believes that no animal should be euthanised unless the animal has ceased to have quality of life and has no reasonable prospects of regaining that quality of life.
80. LFA supports and repeats the RSPCA's statement that a breeding queen should have no more than five litters in a lifetime.
81. As noted above in respect of retired dogs, LFA strongly objects to the euthanasia of a retired cat, merely because the business has not been able to find a suitable home. LFA considers that its submissions made above in respect of retired breeding dogs apply with equal force to the euthanasia of retired breeding cats.

Thank you for your consideration of our submission. If you would like to discuss any of our comments or proposals, please do not hesitate to contact our organisation via our Treasurer, whose contact details are recorded below.

Yours faithfully,

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