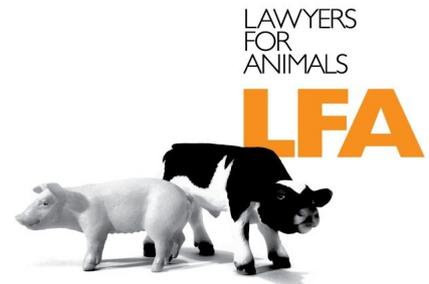


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The Code Review Project Officer
Bureau of Animal Welfare
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By email: animal.welfare@dpi.vic.gov.au

29 April 2011

Dear Sir/Madam,

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

Lawyers for Animals Inc. ("LFA") is a not-for-profit incorporated association run by a management committee of lawyers, based in Melbourne. 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 believes that the management of dogs and cats in Victoria's Shelters and Pounds is a significant animal welfare issue requiring urgent attention, in particular, to redress the extremely high kill rate of impounded animals and to optimise conditions for animals within Shelters and Pounds, which both, incidentally, improve conditions for staff. To this

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end, LFA commends the Bureau of Animal Welfare's for proposing a revised Code of Practice for the Management of Dogs and Cats in Shelters and Pounds and seeking public comment. LFA makes the following constructive suggestions as to how the Revised Code may best be improved¹:

Definitions

Foster carer

We have commented further on the regulation of 'foster care' in the proposed Code, below. This part of our submission relates to the definition of 'foster carer' and related terms.

The proposed definition of 'foster carer' is too narrow. Its effect is to exclude animals from foster care programs unless they require 'juvenile', 'behavioural' or 'veterinary rehabilitation' foster care. In other words, it would exclude from foster care any dog aged more than 16 weeks and any cat aged more than 12 weeks, unless the animal has either a behavioural problem requiring rectification or an illness or disease from which it is recovering.

To limit the definition of foster carer in this way is to ignore the fundamental purpose of foster care, namely: to provide temporary care for all animals likely to be suitable for adoption, until they can be appropriately rehomed, in order to reduce – and ultimately eliminate – the need for euthanasia of such animals. Such a definition flies in the face of established best practice, both here in Victoria, interstate and overseas. It would effectively prevent the wonderful work already being undertaken by a myriad of fostering schemes operating in Victoria, and is both entirely unjustified and regressive.

Therefore, as the Code provides for juvenile, behavioural and veterinary rehabilitation foster care – each of which is included in the present definition – we strongly recommend that a fourth category be included in the Code:

General foster care: temporary care for an animal, outside of the establishment, if it has not been rehomed within 14 days of its arrival; where juvenile, behavioural or veterinary rehabilitation foster care is not appropriate; and where reasonable efforts are undertaken by the establishment to rehome the animal during its period in care.

We note that the rehoming of animals during the period they are in foster care is not merely feasible, but standard practice among a range of fostering schemes operating successfully in Victoria.² Animals in care may have their photo(s), profile and basic history published online from the time they first arrive at a shelter or pound, until the time they

1 For ease of reference, titles and paragraph numbers match those in the Revised Code

2 For example: Australian Animal Protection Society; Australian Working Dog Rescue Inc; Save-A-Dog Scheme Inc.; Pets Haven Pro-Life Animal Shelter; Beagle Rescue Victoria; Melbourne Dog Rescue Inc; Victoria Dog Rescue and Resource Group; Rigby Rescue Inc.; Siberian Husky Club of Victoria; and Victorian Canine Rescue, to name but a few.

are permanently rehomed. Foster carers may be expected to bring animals to shelters or pounds for appointments with prospective new guardians who have undergone basic vetting to ensure they are suitable. Since the rehoming process may thus successfully occur in the context of a foster care placement, without the need for animals to be held overnight at establishments, and in view of the ill-effects of long-term confinement on animals in shelters and pounds, we recommend that foster care be permitted to commence within 14 days of an animal's arrival at a shelter or pound. This allows a further six days from the date of expiry of the statutory eight day holding period – during which a guardians may reclaim their lost dog or cat. Beyond the statutory eight day holding period, animals are deemed the 'property' of the pound or shelter in which they are held. Between the ninth and 14th day they should be vaccinated – to avoid unnecessary cost to the establishment and duplication of prior vaccination in the event that the animal is earlier reclaimed.

We submit that it would also be wise to allow a reasonable period of, say, eight days between expiry of the statutory holding period and possible commencement of foster care, to allow suitable new guardians time to visit and adopt any animals in whom they have taken an interest within two weeks of the animals' profile being posted online. However this would require there to be both a duty on the facility to advertise the availability of the animal for adoption and a ready way for owners of 'lost' companion animals to identify their animals even after the expiry of the statutory holding period, such as an on-line photograph, as well as extended periods of time in which animals are readily available for inspection by prospective new guardians. Throughout that time we would expect the animal to be treated appropriately should it become ill, and not euthanased without good cause, as discussed below.

In reality, some prospective guardians regularly check shelter and pound websites, waiting for a dogs of a particular breed or mix or with other particular characteristics, to become available. We therefore consider it would be in the best interests of both the animals and their potential foster carers, to allow foster care to commence say 14 days from the animal's date of arrival at the shelter or pound.

It is envisaged that juvenile foster care would be limited to a period of 16 weeks for dogs and 12 weeks for cats, while behavioural foster care would be limited to a reasonable period, say 16 weeks, with the potential to extend for an unlimited period if positive progress is confirmed by a qualified animal behaviourist. However, we submit that it would be highly inappropriate to impose any time limit on general foster care, or on veterinary rehabilitation foster care. The reasons for this are discussed below, at paragraph 2.6, in the context of our recommendations regarding euthanasia.

Staff

- 1.1 Proprietor
- 1.2 Operations Manager
- 1.4 Veterinary Practitioner

The Revised Code does not require the Proprietor of an establishment to hold any minimum qualification nor have any

degree of experience in 'the husbandry of dogs and cats to meet their physical and behavioural requirements'. Rather, this is required of the Operations Manager [para 1.2]., though notably, no degree of experience is specified, leaving this phrase wide open to interpretation. Paragraph 1.2 also provides that:

If an operations manager is in training and has not yet attained qualifications or experience then the operations manager must be under the supervision of the proprietor or a veterinary practitioner

Veterinary practitioners rarely work full-time in pounds and shelters. Instead, they are contracted for their casual services, and more usually make their principal living from private practice. Thus, it would be possible under the Code for both the Proprietor and the Operations Manager of an establishment to have neither qualifications nor experience in 'the husbandry of dogs and cats to meet their physical and behavioural requirements', and for the establishment's contracted veterinarian to attend the establishment but rarely, and thus be unable to adequately supervise the work of the Operations Manager.

Further, since paragraph 1.1 provides that '[t]he proprietor may act as the operations manager', it becomes ever more important that the Proprietor, themselves, have attained qualifications or three years experience in cat and dog husbandry. The Proprietor and Operations Manager are expected to make very significant decisions concerning animals within an establishment, such when and how an animal should be euthanased, and whether or not an animal requires veterinary treatment.

In view of the critical importance of good animal husbandry to ensure the welfare of animals in pounds and shelters, LFA recommends that the Code require the Proprietor of any establishment to hold either hold a qualification or whilst in the process of obtaining such qualification, have a minimum of three years experience in 'the husbandry of dogs and cats to meet their physical and behavioural requirements'.

Among the Operations Manager's responsibilities and the protocols included in the establishment's Health Management Plan, the Revised Code lists: 'the removal of animals deemed not fit for a pound or shelter environment'. LFA recommends that this ambiguous phrase be clarified, specifically to differentiate between 'removal', meaning physical relocation of a living animal from a pound – for instance, via release into foster care – and euthanasia. We strongly suggest that all provisions applicable to decisions on euthanasia be confined to a single definitive paragraph – namely paragraph 2.6 – to avoid confusion or ambiguity.

Within the description of a Veterinary Practitioner's role in the Revised Code at paragraph 1.4, is written: '[w]here directed by a veterinary practitioner, unweaned, injured and diseased animals must be euthanased humanely.' We fear this phrase grants a veterinary practitioner an excess of discretion. We recommend that this sentence be amended to read:

Where it would be contrary to the best interests of an unweaned, injured and/or diseased animal to receive such treatment and care as would ensure its future wellbeing; or where the costs of such treatment and care cannot reasonably be borne by the establishment; then a Veterinary Practitioner may direct that the animal be euthanased and such action must then be performed swiftly and humanely.

1.6 Foster Carer

LFA considers that the proposed Code presents, for no apparent reason, an extremely restrictive approach to foster care. In so doing, it effectively undermines the system of foster care currently either provided by pounds and shelters, themselves, or by those working within a network of foster and rescue groups within the community. This valuable voluntary service, it is noted, costs the State (and Councils) nothing.

There appears to be no reason for imposing a time limit of 12 weeks on the length of fostering arrangements and requiring animals to be returned to the facility from whence they came, other than to facilitate their destruction, which might otherwise be avoidable..

Rescue or foster groups could be required by the facility to provide regular reports as part of their s.84Y agreement, thus delegating responsibility for management of individual foster carers from the shelter or pound. In any event Councils and the Animals Inspectorates already regulate the individual foster carers through their rules governing the care of animals.

There could also be provision to enable an incorporated rescue or foster group to accept responsibility for these animals to the extent that they indemnify the pound or shelter against liability in the event that the animal requires veterinary treatment, rehabilitation or euthanasia; or in the event that the animal causes injury to persons, other animals or property.

While the animals remain in the ownership of the shelter/pound, they are entitled to conduct occasional inspections of foster care placements, to ensure they are complying with the law – and this would be consistent with our suggestion, below, that the Code express a Common Law duty of care toward animals.

2.3 Vaccination

We recommend that any dog or cat received by a shelter or pound should be immediately vaccinated against parvovirus, kennel cough, feline enteritis and other infectious diseases that frequently endanger the lives of animals in pounds or shelters. However, since the statutory holding period – during which guardians may reclaim their lost dogs or cats – is eight days, we recommend that other forms of vaccination described in the Revised Code only be required to occur between nine and 14 days after the date of first admission to the establishment.

2.4 Quarantine

We query both the efficacy and need for the proposed eight day prohibition on rehoming following the vaccination of an animal. We note that in the purchase of puppies and kittens from private sellers, such a quarantine period typically occurs while the animal is in the possession of its new guardian, who is strongly advised to keep it separated from others of its species until seven days after its principal vaccination booster. Such a booster is optimally given to puppies at the age of 10-12 weeks (with a further parvo booster at 16 weeks) and to kittens aged 14 weeks (their 3rd and final vaccination). That means puppies should be quarantined right up to 11-13 weeks of age, and kittens should be quarantined right up to the age of 15 weeks. This may be contrasted with the maximum period for juvenile foster care prescribed in the Code, which is up to 16 weeks for puppies, but only up to 12 weeks for kittens. Thus juvenile foster care is required to cease for kittens three weeks before their informal period of quarantine is recommended to cease by veterinarians.

The proposed eight day quarantine period will only commence to run from the date on which shelters and pounds invest in the vaccination of their animals, following the expiry of the statutory eight day reclaim period. We have earlier suggested that such vaccination be mandated for all animals found to be potentially suitable for rehoming, - whether or not they may first require a period of juvenile, behavioural or veterinary rehabilitation foster care – between nine and 14 days after their arrival at the establishment, to allow some flexibility in Veterinary attendance. While we applaud the continued requirement for animals to receive some part of their vaccination before they are rehomed, we doubt it is either necessary or efficacious to adoption processes, to impose an additional eight day preclusion on rehoming an animal following its initial vaccination. Rather, we recommend that strict instructions be provided to aspiring guardians concerning the potential risks of exposing an animal to others before it is fully vaccinated. We make this recommendation contingent there being no strong veterinary advice to the contrary, noting we have not been able to receive veterinary advice, for this purpose.

2.6 Euthanasia or removal of an animal from the establishment

LFA has given careful consideration to both the structure and content of this paragraph, and wishes to highlight its concern that the statutory period for reclaiming a lost animal is conflated with the circumstances in which euthanasia may occur. We find this mixing of what we conceive as two quite distinct and unrelated factual scenarios most uncondusive to clarity. Hence we strongly recommend that paragraph 2.6 be separated into two paragraphs, as follows:

2.6 Statutory period for reclaiming lost animal

A seized or surrendered animal must not be rehomed to a new owner until the expiry of the eight day statutory period for reclaim of such an animal, pursuant to the Domestic Animals Act 1994 (Vic), after which time they become the lawful property of the establishment, until such time as they are permanently rehomed.

2.7 Euthanasia of animals belonging to the establishment

Animals deemed the lawful property of the establishment may only be euthanased :

- (a) if both the Veterinary Practitioner and either the Proprietor or the Operations Manager believe on reasonable grounds that:*
- (i) the animal has a disease or injury causing significant suffering that is unable to be effectively alleviated; or*
 - (ii) the behaviour displayed by the animal presents a significant risk to the physical safety of people or other animals; or*
 - (iii) the animal has spent a total of 90 days confined within the establishment and despite reasonable efforts being made by the establishment during that period – and any intervening period(s) – to rehome the animal or to locate a suitable foster care placement, neither a home nor a suitable foster care placement has been found; and*
- (b) the act of euthanasia is carried out by means of a barbiturate overdose administered by a veterinary practitioner in an area of the establishment separated from animal accommodation and outside the view of other animals or members of the public.*

We note that the effect of these substitute paragraphs is to truly make euthanasia a last resort for animals in pounds and shelters, and to allow greater time for foster care and/or rehoming of animals to occur. We further note that it is the intention of this revision to remove, once and for all, any limit on the time that an animal may spend in general foster care or in veterinary rehabilitation foster care, at least while there is a suitable placement available. Should an animal be voluntarily returned to an establishment by its foster carer, the clock will continue to run, and the number of days that the animal has been confined within the establishment will be calculated to exclude any period that it spent in foster care. The maximum period of 90 days should provide ample opportunity for foster care placement, if not permanent rehoming, to be secured. It is expected that such a period in confinement will be an exception, rather than the rule, and will help motivate shelters and pounds to dedicate and share resources with successful rehoming groups and programs, developing the networks that will ultimately allow Victoria to operate as a 'no-kill' state.

We do not support the explicit entitlement to kill animals 'by gunshot'. We are aware that this cheap method of killing animals is adopted in certain country pounds for reason of economy when a veterinary service is readily available. We recommend amendments to the euthanasia provisions in the Code to make it absolutely clear that the killing of a companion animal by gunshot is never to be carried out in a pound or shelter; never in the presence of other animals, and only as a last resort when the suffering of the animal is so severe, and the difficulty of obtaining veterinary assistance so significant, that gunshot is the only euthanasia option reasonably available and in the best interests of the animal.

2.7.5 Exercise/socialisation areas for dogs

In order to enable dogs and cats – but particularly dogs – to remain sane during a period of up to 90 days confined

within an establishment, regular exercise will be essential. As the Revised Code refers to the size of exercise spaces but not the time allowed to each individual dog to alleviate its boredom and frustration through physical exercise, we suggest strengthening these provisions through the addition of the following:

Exercise is vital for the mental and physical wellbeing of dogs. Unless it is impractical, a pound or shelter must provide daily exercise to each dog within its care, comprising (at least) two ten minute sessions.

2.8 Foster care

Our concerns about foster care have been mentioned above.

We suggest that, to be effective in reducing the amount of unnecessary euthanasia, the Code should impose a duty of care on shelters and pounds to seek alternatives to the destruction of companion animals which have been surrendered, or found and remain unclaimed in their facilities through (a) fostering schemes run by responsible providers and (b) obliging pounds and shelters to publicise the availability of animals for 'adoption'.

Our current concerns about the foster care arrangements provided in the Revised Code can be summarised as:

- Potentially expensive and unnecessary rules for voluntary foster carers
- Unnecessary time limit for foster caring by a shelter or pound for a maximum of three months
- No provision for temporary fostering of companion animals for whom a 'home' may not be found in such a limited time, and who have no juvenile, rehabilitation or medical problems (but may, for example, be considered 'older' than the optimum age for adoption)

2.10 Rehoming

Our major recommendation pertaining to this paragraph of the Revised Code is linguistic, as we find the term 'vice' to be anthropomorphic, and thus inappropriate in the context of dogs and cats. We therefore suggest the following line to replace that containing the phrase 'known vices':

Animals that are aggressive, anti-social or demonstrate negative behaviours such as excessive barking or habitual escape must not be made available for sale.

Many dogs, in particular, who may appear to be 'aggressive', are merely frightened because they have been lost and kept in a strange and disturbing environment. This insecurity, expressed as aggression, is one of the very traits that a foster group may be able to cure, in preparation for rehoming at a later date. We recommend that such animals be made available to appropriately resourced foster or rescue groups possessing access to animal behaviourist advice.

2.14 Release of animals to research or teaching institutions

Following on from a recent campaign which resulted in Logan City Pound suspending its provision of animals to the

University of Queensland for veterinary student training, backed by the State Government's Animal Welfare Advisory Committee; LFA is encouraged to believe that the age of pointless and cruel experimentation on animals is drawing to an end in Australia.³ So it is very disappointing to find this paragraph within the Revised Code. To explain the barbarism of utilising pound animals for research, teaching or scientific procedures, I invoke the analogy of a blogger known as 'Sue', who wrote concerning the use of Logan City Animals for veterinary training: 'humans doctors learn on patients not by killing homeless people.'

However, Sue overlooked the fact that some medical schools continue the traditions of using cadavers in their anatomy classes. LFA has no objection to Victorian pounds and shelters offering the unclaimed corpses of deceased animals to research or teaching institutions, provided that they do so without charge. Only in this way will any conflict of interest of a financial nature be eliminated.

LFA maintains a strong objection to the use of live animals in scientific and medical experiments – particularly dogs and cats, whose physiological difference to humans renders the research conducted on them, purportedly for human gain, highly dubious if not wasteful of precious research funds. The availability of non-animal testing methods, would further appear to negate any claimed need for dogs or cats from Victorian establishments. Further we note that any behavioural experiments ought only be conducted with the informed consent of genuine animal guardians, under the direct purview of Animals Ethics Committees, to ensure that these experiments do not cause any suffering to the animals concerned.

We seek the negation of paragraph 2.14, rather than its removal, in order to make clear to establishments their duty to ensure that the animals in their care are not to be 'rehomed' in such circumstances as they become subject to animal experimentation. In view of rumours circulating about the use of animals obtained from pounds in Victoria by one particular University, we seek the Bureau's assurance that they, and the establishments under their licencing authority, will undertake to end this inhumane practice, once and for all.

2.15 Use of animals for research or teaching within a pound or shelter

We strongly recommend that such use of animals in pounds and shelters only be allowed where an ethics committee comprising members of staff, foster carers and animal welfare groups decide that it is in the best interests of the animals, involved.

3.2 Animal housing

LFA recommends that these provisions within the Code be strengthened to ensure that:

- temperature, humidity and ventilation be adequate to maintain the wellbeing of each animal in care;
- natural light be available to all animals – not merely lighting that duplicates the characteristics of natural light including a simulated day/night period; and

3 See: <http://www.couriermail.com.au/news/vet-students-banned-from-inhumane-operations-on-dogs/story-e6freon6-1225981328936>

- ventilation be sufficient to keep animal housing areas free of dampness and noxious odours without exposing animals to draughts which detract from their wellbeing.

Additional recommendations

In addition to the above, LFA suggests:

1. That it would be appropriate for the Parliament of Victoria, at the behest of the Bureau of Animal Welfare, to establish an explicit legal duty on pounds and shelters to protect the welfare of animals, and in particular, to emphasise that this duty is breached when a healthy or curable animal is killed without significant efforts having been made to rehome the animal or find appropriate foster care for it. New emphasis should be placed on the rehoming of 'lost' companion animals, and the fostering and 'adoption' of all animals in care, with the explicit aim of one day rehoming all animals. Killing must become an option of absolute last resort, if we are to promote the wellbeing of domestic animals.
2. We suggest that the Code provide, and ultimately the Domestic Animals Act enshrine, a duty of care on persons in charge of an animal to take all reasonable measures to ensure its welfare.⁴

Members of our LFA Executive Committee would be pleased to discuss this letter, and associated issues - please contact the authors below should you have any queries. LFA wishes to be kept informed of progress in relation to the Revision of this Code, which is a process we support.

Yours sincerely

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⁴ For example see: sections 17(1) & (2) of the Animal Care and Protection Act 2001 (Qld); and Section 6 of the Animal Welfare Act 1993 (Tas) which stipulates that a person who has the care or charge of an animal has a duty to take all reasonable measures to ensure the welfare of the animal. We wish to particularly acknowledge the contribution of LFA member, Anne Greenaway, in relation to this point in our submission.