

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

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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 supports the Victorian Government's continued work to improve the minimum welfare standards of dogs and cats 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 dog and cat 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 very important change, and submits that it greatly increases the importance of Codes of Practice, their content and terms.

LFA has reviewed the consultation draft of the Code of Practice for the Operation of Breeding and Rearing Businesses ('Code') from the point of view of how the Code is likely to operate, and how the various provisions of the Code will interact. LFA's comments are provided below under the titles 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 reports and papers prepared by the RSPCA. LFA has not addressed the typographical and grammatical errors in the Code.

General comments

1. Defined terms used in the Code should be used consistently and all key terms should be included in the Definitions section.
2. The Code could benefit from clearer sub-division and separation of topics. The inclusion of requirements regarding health management plans under the heading 'Proprietor' is an example of this.
3. It is unclear why section 6(3) under '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 under 'Management of Dogs'. LFA applauds the inclusion of this directive and submits that an equivalent statement ought to 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 Business 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. This is likely to create practical difficulties given that the relevant offence provisions under the *Domestic Animals Act 1994* apply to those who conduct a domestic animal business, and not to veterinary practitioners. The Code purports to require Proprietors to take steps under the Code, in consultation with veterinary practitioners, who are not themselves bound to comply with the Code. 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 Businesses in consultation with veterinary practitioners. LFA also recommends that a model agreement be prepared by the Department for adaptation and execution by individual veterinary practitioners and Businesses.

Introduction

Definitions

6. LFA suggests that the definition of 'Bed' be modified to include the defined term 'Washable'. For example: 'an impervious washable structure'.
7. In the definition of 'Exercise', LFA suggests changing the phrase 'its physical needs' to 'their physical needs'.
8. The definition of 'Enrichment' needs further work; it is not a complete sentence, and is vague.
9. LFA suggests that the terms 'dam' and 'sire' be included in the Definitions section of the Code. These terms are no doubt familiar to breeders but not necessarily to the wider public.

10. The term 'Small Business' is included in the Definitions section. LFA submits that the term 'Large Business' should also be included in that section. The term 'Large Business' is later defined in s 5(5)(e) of the Code.
11. 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

12. LFA proposes that a model health management plan be developed by the Department in consultation with veterinary practitioners. The Code could then require each Proprietor to adapt the model health management plan to their Business, in consultation with their regular veterinary practitioner. Since compliance with the Code is not mandatory for veterinary practitioners, actual compliance by Proprietors will be more likely if the burden on veterinary practitioners is minimised. The process of adapting a model health management plan would be less arduous for individual Proprietors and veterinary practitioners than developing a plan 'from scratch'. The use of a model plan would also promote broad consistency throughout Victoria. If necessary, two model health management plans could be produced by the Department, one developed for Small Businesses, and the other for Large Businesses.
13. Given the staff to animal ratios proposed in the Code, LFA submits that any health management plan should provide for appropriate standby or on-call arrangements. This should be included in the protocols which the health management plan must cover.
14. The paragraphs that deal with the health management plan should be placed under a separate heading, and not grouped under 'Proprietor'.
15. LFA strongly objects to the euthanasia of retired breeding animals on any other than medical grounds, and only when this is in the best interests of the animal. Animals used for breeding purposes are animals that 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 in the best interests of the animal.
16. LFA submits that the s 2(1) of the Code should be amended to make clear that the only 'approved method' of euthanasia is that described in s 2(10) of the Code. The current wording implies that a Proprietor and a veterinary practitioner could independently propose and agree to alternative methods of euthanasia for a given Business.
17. LFA submits 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.

Operations Manager

18. The references to 'experience', 'training' and 'competence' in the management of dogs or cats in a breeding Business should be more clearly defined. LFA submits that training and 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. Admittance to many other professions and occupations requires completion of a specific approved program or course, and working with animals should be no different.
19. 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.
20. The bullet point under s 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

21. LFA proposes that the Department develop a model agreement for adaptation and execution by veterinary practitioners and Businesses as required by s 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.

Staff ratios

22. LFA has concerns regarding the proposed staff to animal ratios. LFA submits that all animals kept on the Business premises should be included in the total number of animals, not just fertile animals or litters. All animals, whether or not fertile, 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. The same applies to a Business with the equivalent of 49 fertile animals overnight. Treating 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 animals at the Business premises.
23. 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.
24. If no full-time staff member is required, it is highly likely that animals will go into labour when no staff member is present, and will therefore deliver a litter with no supervision or care. This poses a great risk to the mother and litter.

Euthanasia

25. LFA submits that s 2(10), titled 'Euthanasia' should be divided into two sections. The first should be titled 'Rehoming', which should consist of the last paragraph of s 2(10). This could then be followed by the balance of the current s 2(10). LFA also recommends the deletion of the phrase 'and the animal is suitable for rehoming'. All animals, with the exception of those which must be euthanised on the advice of a veterinary practitioner for purely medical reasons, are suitable for rehoming and should be rehomed. 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. An animal for which a suitable home cannot be found, should be kept and maintained by the Business, and should be entitled to the same standard of care as any other adult animal housed by the Business.

Records

26. 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.
27. If the Code is adhered to, birth dates of animals will always be known. There should be no reason to provide an exception for cases where the birth date is not known.
28. 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.
29. The term 'animal health plan' as listed in the Business Records, should be changed to the term 'health management plan' if this is what is intended.
30. The Code should specify in this section 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'.

Animals under three months of age

31. Section 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'.

Animals over three months of age

32. With respect to s 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.

Sale of Animals

33. LFA suggests that the first paragraph of s 4 of the Code be amended to read 'how that abnormality is likely to affect' the animal. It is presumably difficult for a veterinary practitioner to predict with certainty how an animal may be affected by any abnormality.
34. LFA strongly recommends that the guarantee in s 4(1) of the Code be revised to allow for return of an animal within '3 business days' of sale. The term 'business day' should be defined 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.

Management of dogs

Nutrition

35. The requirement to hold a five day supply of food should be expressed to apply 'at all times' rather than at 'any time'.
36. The term 'food receptacle' should be used consistently and should not be interchanged with the term 'container'.

Breeding

37. LFA strongly objects to the euthanasia of an animal with a heritable defect unless this is advised by a veterinary practitioner on medical grounds, in the best interests of the animal.
38. As noted above, LFA strongly objects to the euthanasia of a retired animal, merely because the Business has not been able to find a suitable home. Such animals should be retained and cared for by the Business, and entitled to the same standard of care as any other adult animal kept by the Business.
39. LFA repeats and supports the RSPCA's statement that five litters in a lifetime is excessive for any one breeding bitch and that four litters should be the maximum.¹
40. LFA submits that the Code should prescribe a fixed minimum interval between litters to allow the animal sufficient time to rest and recover.

Housing

41. The paragraph concerning use of traps should mirror the wording in the equivalent section under 'Management of Cats'. In its present form it is meaningless.

¹ RSPCA, 'Code Review' <<http://www.rspcavic.org/issues-take-action/code-review>> (accessed 8 May 2013).

42. LFA notes that minimum pen sizes remain unchanged since the last iteration of the Code. Given the substantial revisions to other aspects of the Code, this is incongruous. The RSPCA has expressed its view, with which LFA agrees, that the minimum pen sizes are inadequate.²
43. LFA considers the time that dogs may spend in pens under the proposed Code to be excessive. Twice weekly exercise sessions outside a pen could not be sufficient for dogs over four months of age.³
44. 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 and it is unlikely that dogs could not be exercised at any point during the day. As such, there is no need for a vague reference to 'weather permitting', which is open to abuse.
45. LFA submits that dogs kept in pens, no matter the size of the pen, should be exercised outside the pen on a daily basis. LFA supports the RSPCA's position that dogs should be exercised in areas separate from their housing areas.⁴
46. There is no mention of noise management in the Code. LFA agrees with the RSPCA that there should be noise level restrictions in place at every Business.⁵

Management of cats

Nutrition

47. 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'.
48. Again, the term 'food receptacle' should be used consistently and should not be interchanged with the term 'container'.

Breeding

49. 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, in the best interests of the animal.
50. The Code contains no proposed maximum number of litters in a breeding queen's lifetime. LFA submits that a maximum number of litters should be specified for breeding queens as well as bitches.
51. LFA submits that there should be a minimum interval between each breeding cycle, to allow the queen to rest and recover.

² Ibid.

³ RSPCA, 'Legislating to End Puppy Farming – The Way Forward' (2012) 3.

⁴ Ibid.

⁵ Ibid.

Housing

52. As with dogs, LFA submits that there should be noise level restrictions in place at every Business.

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

Katherine Cooke
Treasurer
LAWYERS FOR ANIMALS INC.
Level 1 (Mailbox 18)
Kindness House
288 Brunswick Street
Fitzroy Victoria 3065
www.lawyersforanimals.org.au

Nick Moodie
Volunteer
LAWYERS FOR ANIMALS INC.

e: katherine@lawyersforanimals.org.au