



Department of
Primary Industries

NSW DPI Consultation Paper

Licensing and regulation of cat and dog breeders



Published by the NSW Department of Primary Industries

NSW DPI Consultation Paper: Licensing and regulation of cat and dog breeders

First published November 2021

More information

DPI Strategy & Policy

www.dpi.nsw.gov.au

RDOC21/56667

© State of New South Wales through Regional NSW 2021. The information contained in this publication is based on knowledge and understanding at the time of writing (November 2021). However, because of advances in knowledge, users are reminded of the need to ensure that the information upon which they rely is up to date and to check the currency of the information with the appropriate officer of the Department of Regional NSW or the user's independent adviser.

Contents

Introduction.....	4
Overview of the current regulatory framework	4
Recent community concerns	5
About this Consultation Paper.....	6
Have your say.....	6
Establishing a dog breeder licensing scheme.....	7
Background.....	7
Principles for designing a licensing scheme.....	7
Setting the licensing thresholds	9
Next Steps.....	12

Introduction

The NSW Government is committed to maintaining high standards of animal welfare and promoting responsible pet ownership in NSW.

As part of this commitment, the NSW Government released the first-ever NSW Animal Welfare Action Plan (**Action Plan**) in 2018, which sets the direction for the future of animal welfare policy in NSW. One of the goals of the Action Plan is to implement companion animal breeding practices reforms.

Overview of the current regulatory framework

Prevention of Cruelty to Animals Act 1979

All people breeding dogs and cats in NSW (**companion animals breeders**) must comply with the *Prevention of Cruelty to Animals Act 1979* (**POCTAA**). The aim of POCTAA is to prevent cruelty to animals and promote the welfare of animals.

POCTAA contains a range of provisions that are relevant to companion animals breeders – for example, it is an offence to fail to provide proper and sufficient food, drink, or shelter; to fail to provide necessary veterinary treatment; and to fail to exercise confined animals.

NSW Animal Welfare Code of Practice: Breeding Dogs and Cats

In addition to the requirements in POCTAA, the NSW Animal Welfare Code of Practice: Breeding Dogs and Cats (**Breeding Code**) sets out specific requirements relating to the welfare risks associated with breeding dogs and cats. Any breeder who operates a business in the course of which dogs or cats are bred for fee or reward is required to comply with the Breeding Code. For example, the Breeding Code sets out things like:

- the minimum age at which a dog can be used for breeding
- how frequently animals can be bred
- what vaccinations are required.

By adhering to the Breeding Code, people involved in companion animals breeding demonstrate to the general community their concern for the welfare of the animals in their care. Where a breeder is required to comply with the Breeding Code, they may be subject to proactive compliance checks by inspectors authorised under POCTAA.

The Breeding Code has been in place since 2009. In August 2021, the NSW Government released an updated version of the Breeding Code following consultation with key stakeholder groups. The update made common-sense changes to ensure that everyone covered by the Breeding Code can understand and follow the Breeding Code's requirements and guidance. The key updates related to requirements around enclosure fence heights, vaccination requirements and mating ages. Some terminology within the Breeding Code was also updated to make it easier to understand.

NSW Pet Registry and advertising identification requirements

The *Companion Animals Act 1998* (**CAA**) sets out a range of requirements for pet owners. These requirements also have implications for breeders. All dogs and cats (other than exempt dogs and cats)¹ are required to be microchipped and registered, either through local council or the NSW Pet Registry.

Microchips contain a unique identifying number that can be scanned and checked against the NSW Pet Registry to help return lost pets. Registration involves a once-off payment that applies for the life of the animal. Since 1 July 2020, annual permits are also required for owners of restricted breed dogs, declared dangerous dogs, and non-desexed cats. All registration fees are paid into the Companion Animals Fund (**CAF**), which is established under the CAA and used by local councils to fund companion animal management facilities and services. The CAF is also used by the NSW Government to operate the NSW Pet Registry and carry out responsible pet ownership initiatives.

The NSW Pet Registry also generates breeder identification numbers which can be used to easily register litters and transfer animals to their new owners. Breeder identification numbers are highly recommended but are not mandatory.

In 2018 the NSW Government amended POCTAA to require that people must include a microchip number, breeder identification number or rehoming organisation number when advertising a cat or dog for sale or to give away. Requiring these details in advertisements enables buyers to do further research to make informed purchasing decisions and allows enforcement agencies to use this information as part of their compliance intelligence.

Recent community concerns

Puppy factory activity

In 2020, there were some community concerns that increased puppy factory activity was being driven by high demand for pets during the COVID-19 pandemic. In response, the NSW Government established the Puppy Factory Taskforce – a dedicated compliance unit within RSPCA NSW – and increased penalties for animal cruelty offences through the *Prevention of Cruelty to Animals Amendment Act 2021* (**POCTA Amendment Act**). These changes introduced new enforcement tools and increased penalties to enable effective compliance action to be taken against those companion animals breeders who were failing to care for their animals.

Following these changes, the Government has heard further stakeholder concerns about the current way companion animals breeding is regulated.

Some stakeholders have raised concerns that the current regulatory framework does not provide sufficient oversight of companion animals breeding, especially at a time where demand for pets is so strong. Some have called for the introduction of a dog breeder licensing

¹ Some examples of exempt dogs and cats include greyhounds already registered under the *Greyhound Racing Act 2017*; dogs that are ordinarily used on official duty by police officers, correctional officers or Commonwealth officers; and working dogs ordinarily kept on land categorised as farmland. The full list of exempt cats and dogs is contained at clause 17 of the Companion Animals Regulation 2018.

scheme, suggesting that NSW is at risk of being left behind as other jurisdictions reform their regulatory approaches to managing dog breeding.

Suitability of the Breeding Code

Some breeding groups have raised that some people who breed dogs and cats in NSW do so on a small scale, and that profit is a secondary consideration behind the love of the breed (**Hobby Breeders**).

Others have raised that some people are breeding dogs to sell as working dogs, not to sell as companion animals. These groups are of the view that these forms of breeding are significantly different in character to more commercial forms of breeding and have suggested that the current regulatory framework is not fit-for-purpose in these contexts.

For both sets of stakeholders, a central concern is that the powers for proactive compliance audit that are linked to the requirement to comply with the Breeding Code are inappropriate, particularly where the breeding occurs in a backyard and not a dedicated breeding facility. As a result, these stakeholders have suggested that Hobby Breeders and working dog breeders should be exempt from the Breeding Code, which would mean they are no longer required to comply with the Code requirements and are no longer subject to proactive compliance checks.

The NSW Government acknowledges that there are differences between small-scale hobby breeding and large-scale commercial breeding. However, the NSW Government also notes that the key finding of the Joint Select Committee on Companion Animal Breeding Practices in NSW, found that there is no evidence that the number of animals kept by companion animals breeders is in itself a factor which determines welfare outcomes of breeding animals.

About this Consultation Paper

This Consultation Paper builds on the NSW Government's significant work to improve welfare outcomes in companion animals breeding. The Consultation Paper sets out the proposed approach to address recent community and stakeholder concerns with the current framework and seeks feedback from the public about how best to regulate companion animals breeding into the future.

The NSW Government is proposing to introduce a licensing scheme for the breeding of dogs in NSW and is considering additional exemptions to the Breeding Code. The purpose of this Consultation Paper is to seek feedback on:

- which breeders should require a licence
- whether any additional dog and cat breeders should be exempt from the Breeding Code.

Have your say

To provide feedback on this Consultation Paper, [visit the NSW DPI website](#).

The feedback we receive on this Consultation Paper will inform changes to the regulation of companion animals breeding.

Establishing a dog breeder licensing scheme

Background

Licensing overview

A licence is an official approval to perform an activity, issued by the NSW Government. Requiring a person to obtain a licence makes sure that the NSW Government is aware of who is performing an activity and where they are performing it. Licensing provides an opportunity to engage with the licensee and provide educational material to ensure that the activity is performed safely. The requirements of specific licences can vary – but they can be used to ensure that only appropriate people perform the activity, to place conditions on how the activity must be carried out and to provide for licences to be suspended or cancelled if a licence holder does the wrong thing.

There are a number of licences used in NSW for different activities – ranging from drivers' licences to licenses for performing electrical work to licences to operate an exhibited animals establishment.

Benefits of licensing

Establishing a licensing scheme for larger-scale dog breeders would provide additional oversight of these breeders. This has a range of benefits.

Requiring larger-scale dog breeders to obtain a licence would give confidence to prospective pet purchasers and the broader community that there is appropriate oversight of these breeders to ensure they are complying with their legal obligations and providing a high standard of welfare for their animals.

Establishing a licensing scheme would also provide a means of considering whether an applicant is fit to breed before they commence breeding and allows for conditions to be placed on how breeders can operate on a case-by-case basis. For example, a licence could place caps on the numbers of animals that a breeder can keep based on the nature of their facilities.

A licensing scheme would also enable enforcement agencies to better target their compliance resources and efforts – both in terms of education and enforcement – towards larger-scale breeders.

Principles for designing a licensing scheme

Licensing schemes need to be carefully designed to ensure they achieve the best outcomes for the animals used in the licenced activity, the licence holders, and the community. The design of a breeder licensing scheme will be based on the following principles:

- **Easy to understand** – the design of the scheme should make it as easy as possible for individual dog breeders to understand what requirements apply to them, for prospective purchasers to understand what it means to purchase from a licenced dog breeder, and for enforcement agencies to make accurate decisions when providing compliance services

- **Proportionate costs** – the design of a licensing scheme should ensure that costs placed on dog breeders are proportionate to their size and scale (i.e. smaller costs for smaller breeders)
- **Minimises unintended consequences** – the design of a licensing scheme should ensure that the risk of unintended consequences or undesirable forms of adaptation are reduced (for example, minimising the risk of dog breeders increasing the size of their operations to offset the costs of being licenced, or developing new operating models to circumvent the new regulations).

Based on the feedback received on this Consultation Paper, the NSW Government will work with relevant stakeholder groups to develop the detail of a licensing scheme consistent with these principles.

Discussion Question

1. Do you have any comments on the principles for designing a licensing scheme?

Setting the licensing thresholds

Under the existing framework, any breeder who operates a business in the course of which dogs or cats are bred for fee or reward is required to comply with the Breeding Code and is subject to associated proactive compliance checks.² Anyone who does not meet this test is not required to comply with the Breeding Code – for example, owners of dogs that have once-off accidental litters. This is the current approach to defining an **Exempt Breeder**.

The current framework does not include licensing and does not distinguish between large and smaller breeders.

A licensing framework needs to be a clear distinction establishing which breeders are subject to each requirement of the framework. This requires both a definition of an **Exempt Breeder** (i.e. small breeders who are not subject to the breeding regulatory framework) and a definition of a **Large Breeder** (i.e. breeders that must obtain a licence) – see Figure 1 below.

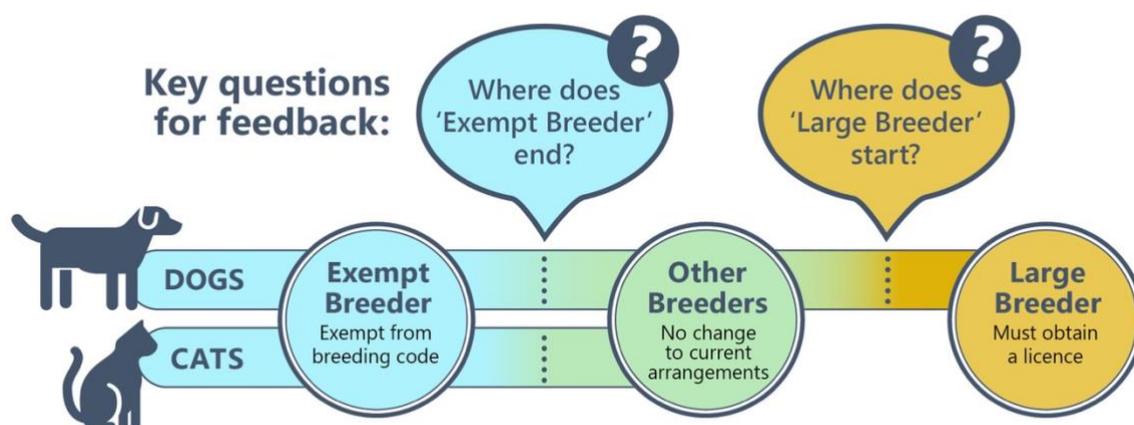


Figure 1: Defining Exempt Breeder and Large Breeder

Large Breeders

Under a dog breeder licensing scheme, Large Breeders would be required to both comply with the Breeding Code and obtain a licence – and would be subject to proactive compliance. This is additional to the baseline requirements to comply with the general welfare requirements under POCTAA and microchipping and registration requirements under the CAA.

Exempt Breeders

A dog breeder licensing scheme would not apply to Exempt Breeders.

While Exempt Breeders would still be required to comply with the general welfare requirements under POCTAA and microchipping and registration requirements under the CAA, they would not be required to comply with the Breeding Code, would not be subject to the associated proactive compliance checks and would not be required to obtain a licence.

² Prevention of Cruelty to Animals Regulation 2012, clause 26 and Schedule 1

Even though Exempt Breeders are not required to comply with the Breeding Code and would not be required to obtain a licence, they can still be subject to normal compliance powers under POCTAA where there is suspicion of an offence.³ They continue to be required to comply with all welfare requirements outlined in POCTAA – for example, Exempt Breeders must not commit acts of cruelty; must not fail to provide proper and sufficient food, drink, and shelter; must not fail to provide necessary veterinary treatment; and must not fail to provide confined animals with exercise.⁴

Currently, a person is an Exempt Breeder if they are **not** operating a business in the course of which dogs or cats are bred for fee or reward. Some stakeholders have indicated that the current approach is confusing and hard to define – meaning that many breeders are unsure whether they are operating a business in the course of which dogs or cats are bred for fee or reward, and therefore do not know whether they are required to comply with the Breeding Code.

Some stakeholders have highlighted that they consider Hobby Breeders to be significantly different in character to larger-scale or more commercial forms of breeding. These stakeholders consider that the powers enabling proactive compliance are not fit-for-purpose in these contexts. As a result, these stakeholders have suggested that the current approach to defining an Exempt Breeder should be revisited, with a new approach developed to exclude Hobby Breeders.

Other Breeders

Depending on how Large Breeder and Exempt Breeder are defined, there will be a set of breeders that do not fall into either category – that is, breeders that are neither required to obtain a licence nor are they exempt from the Breeding Code. There would be no change to the current arrangements for these breeders.

³ Prevention of Cruelty to Animals Act 1979, sections 24E and 24I

⁴ Prevention of Cruelty to Animals Act 1979, examples from sections 5, 8 and 9.

Potential approaches

An analysis of regulations in other jurisdictions has identified some of the more common approaches taken to delineating between companion animals breeders of different scales. These could be used to define Exempt Breeder and Large Breeder:

Method	Overview
Number of entire female adult animals ⁵ held by the breeding operation	Provides the easiest means of distinguishing between scales of breeders – both for the breeder and for the enforcement agency – but does not consider the frequency of the breeding.
Number of litters produced / number of animals sold by the breeder each year	Would be complex to apply and enforce. A breeder may find it confusing to understand which requirements apply to them if they do not produce the same number of litters or sell the same number of animals every year. The number of litters produced or animals sold in the past year cannot be easily verified during an audit or inspection – making compliance activities more difficult for enforcement agencies.
Level of income or other reward received from breeding dogs and cats	Would be complex to apply and enforce. A breeder may find it confusing to understand which requirements apply to them if their income levels vary from year to year. This method also does not necessarily reflect the frequency or scale of breeding activity. Also, enforcement agencies would be unable to ascertain the level of income or other reward that a breeder receives, making it harder to undertake compliance activity.

Discussion Questions

2. At what threshold (e.g. fewer than a certain number of breeding animals), should a cat or dog breeder be considered an **Exempt Breeder**, meaning they are not required to hold a licence or comply with the Breeding Code?
3. At what threshold (e.g. more than a certain number of breeding animals) should a dog breeder be considered a **Large Breeder**, meaning they must hold a licence and comply with the Breeding Code?

⁵ That is, non-desexed female dogs greater than six months of age.

Working dogs

Breeders of working dogs have raised that this form of dog breeding is significantly different in character to breeding dogs as companion animals. These stakeholders have suggested that both the powers enabling proactive compliance and the content of the Breeding Code are not fit-for-purpose in this context. As a result, these stakeholders have suggested that the current approach to defining an Exempt Breeder should be revisited, with a new approach developed to exclude breeders of livestock working dogs from the requirements of the Breeding Code.

Discussion Questions

4. Do you think that working dog breeders should also be considered Exempt Breeders, meaning they are not required to hold a licence or comply with the Breeding Code?

Next Steps

To provide feedback on this Discussion Paper, [visit the NSW DPI website](#).

The feedback we receive on this Consultation Paper will inform changes to the regulation of companion animals breeding.