



Response to the *Animal Management (Protecting Puppies) and Other Legislation Amendment Bill 2016*

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9 March 2016

Agriculture and Environment Committee
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To Whom It May Concern,

Thank you for the opportunity to provide a response to the *Animal Management (Protecting Puppies) and Other Legislation Amendment Bill 2016* ('the Bill'). By way of introduction, PLACE Advocacy is a multi-faceted consultancy and advocacy service speaking for those who cannot speak for themselves.

PLACE Advocacy welcomes the Governments reform process and its desire to take a strong position on poor animal welfare practices, particularly in the area of puppy farming. The RSPCA defines puppy farming as an 'intensive dog breeding facility that is operated under inadequate conditions that fail to meet the dogs' behavioural, social and/or physiological needs'.¹ Puppy farms often exhibit the following characteristics:

- Overcrowding,
- Confined cages,
- Poor sanitation, with dogs being left to breed, wean, eat and toilet in the same small space,
- Insufficient food and water,
- Female dogs being bred continuously without respite
- Lack of veterinary care²

The explanatory notes to the Bill detail the alleged number of puppy farms in Queensland, putting the figure at 100. It also highlights a core issue, that puppy farms are often located in remote and regional locations which are difficult to find, investigate and shut down.³

While we welcome the Government's commitment to taking a tougher stance on the operation of puppy farms, it is our view that this Bill falls far short of its intended goal, that is - to put an end to the practice of puppy farming in the State.

The lack of regulation in the area of companion animal welfare has allowed a sector to proliferate based on a business model of animal cruelty. Like many organisations and individuals, we support the idea of a compulsory

¹ RSPCA, 'What is a puppy farm?' www.rspca.org.au/what-is-a-puppy-farm_322.html

² RSPCA Discussion Paper 2010 'Puppy Farms' <http://kb.rspca.org.au/afile/322/55/>

³ Animal Management (Protecting Puppies) and Other Legislation Amendment Bill 2016 Explanatory Notes, p 1



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breeder registration system and believe it to be an admirable first step in the reform of the State based framework. Compulsory breeder registration will enable better compliance and enforcement of those who have registered as breeders. It will also allow a better process for enforcement of those who have chosen not to register. However, we do not see it as a solution to the issue of puppy farming as a whole – for those people and organisations that have not been found to date, there are still a number of avenues remaining for them. The Bill doesn't address the breeding of dogs for export⁴, nor does it address how the movement of dogs into other States and Territories will be addressed. As such, while this is an admirable first step for State based reform, it would be of greater benefit if the breeder registration system was coming from a joint approach of all States and Territories i.e. national based reform.

The following submission goes into our concerns in further detail.

1. Exempting particular groups and classes of persons from the registration process

While we understand the practicalities of the use of exemption clauses, we wish to raise concern over the use of exemptions to the compulsory registration process, as outlined in the Bill. It is often the case during the drafting process that exemptions will be inserted to ensure people are not being unduly affected by a proposed policy change. However, we also note that over time these clauses begin to be used by the very people and industries we are seeking to regulate. We put to the Committee that extreme caution must be applied to exceptions, and they should not be inserted when they can (and one could say, will) be used to subvert the proposed framework.

Of critical concern to PLACE Advocacy is the insertion of s 43E(3)(c), relating to registration obligations, which states:

- (3) *However, a person does not commit an offence against subsection (2) if the person is –*
 - (a) *an accredited breeder of an approved entity; or*
 - (b) *a primary producer who has bred the dog from a working dog –*
 - (i) *to use as a working dog; or*
 - (ii) *to supply the dog to another primary producer to use as a working dog; or*
 - (c) *a member of a class of persons prescribed by regulation*

We will briefly consider each of these in turn.

a. An accredited breeder of an approved entity

The process for determining whether an entity becomes an approved entity is detailed in the new section 43W 'Approved entity may be prescribed'. This provision allows for an approved entity to be prescribed in regulation.⁵ However, due to the nature of prescribing information to regulation, very little information is forthcoming regarding the nature of an approved entity. For example, there is insufficient information regarding the nature of the organisation to be approved, its longevity and respect within the animal welfare community and the extent to which the organisation aims to safeguard and regulate the welfare of the animals within the possession of its members. While we are sure the majority of potential approved entity organisations would place the welfare of the animals as paramount, there are no checks and balances within the Bill to have animal welfare concerns at the centre of the decision making process. Reasonably speaking, any entity could become an approved entity and thus allow its members to by-pass the registration process by forming bodies and applying for this exemption to compulsory breeder registration.

⁴ Oscars Law – The Puppy Trade <http://www.oscarslaw.org/export-puppies>

⁵ S43W(1) Animal Management (Protecting Puppies) and Other Legislation Amendment Bill 2016.



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b. Primary producers

An assumption could be made that the vast majority of known (and unknown) puppy farms are located in remote and regional Queensland. While we will not hypothesise the reasons as to why primary producers are excluded from many of the general animal management provisions, such as micro chipping, we do put forward our concern that any person in a remote or regional environment could advance themselves as primary producers for the purposes of this Bill. This is largely due to the lack of information, restriction and regulation surrounding this exemption clause – its blanket and all-encompassing approach raises concerns about its potential use should the legislation come into effect.

c. Members of a class of persons

However, it is subsection (c) where we have the gravest concern, allowing a ‘class of persons’ prescribed in regulation to be exempted from the registration process. This exemption provides no details as to what would constitute a ‘class of persons’ and will be decided at a later date through reform of the regulations.

It could reasonably be expected that a number of the organisations and industries the Government is seeking to regulate through this Bill could be excluded from the breeder registration process through an application to become a member of a ‘class of persons’ for the purposes of the Bill. In fact, it was noted in the Agriculture and Environment Committee meeting on the 24 February 2016 that the Greyhound Industry have indicated they will be seeking an exemption through this provision.⁶ Given the grave animal welfare concerns evidenced in this industry, the Bill is already showing its lack of efficacy by allowing provisions to be inserted to further exempt individuals and industries. This watered down approach to a compulsory breeder registration scheme, renders the policy void before it begins.

We propose this provision should be removed, and all individuals and organisations who are seeking to breed dogs in any way should fall under the umbrella of a compulsory breeder registration system. To do anything else would indicate a failure of the regulatory reform and a failure to consider and promote only the highest animal welfare standards.

2. The registration process

PLACE Advocacy expresses its grave concern about the registration process set out in the Bill, as follows:

43F *Applying for registration*

(1) A person, other than an ineligible person, **may**⁷ apply to the chief executive to be registered as a registered breeder.

43G *Registration of a person as registered breeder*

(1) The chief executive must, as soon as practicable after receiving an application under s 43F –
(a) Register the person as a registered breeder by recording the person’s designated details in the breeder register....

We turn first to s 43F, where by a person may apply to be a registered breeder. PLACE Advocacy queries the use of the word ‘may’. Statutory interpretation techniques imply that where a Must is used in legislative drafting the statement directly following is a mandatory requirement. Where the word May is used, it implies the

⁶ Queensland Parliament, Agricultural and Environment Committee 2016. ‘Public Briefing – Inquiry into the animal management (protecting puppies) and other legislation amendment bill 2016’. Transcript of proceedings, Brisbane 24 February 2016

⁷ Emphasis added by PLACE Advocacy to denote the importance of this word



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statement directly following is not of a mandatory nature. For further clarification, I refer the Committee to s 32CA of the *Acts Interpretation Act 1954* (Qld), which states:

32CA *Meaning of may and must etc.*

- (1) *In an Act, the word may, or a similar word or expression, used in relation to a power indicates that the power may be exercised or not exercised, at discretion.*
- (2) *In an Act, the word must, or a similar word or expression, used in relation to a power indicates that the power is required to be exercised.*
- (3) *To remove any doubt, it is declared that this section applies to an Act passed after 1 January 1992 despite any presumption or rule of interpretation*

As noted on Page 1 of the explanatory notes, a core purpose of this legislation is to provide the head of power to establish a compulsory breeder licencing framework in Queensland (among other reforms). The wording of the Bill confirms that the very centre of the reform process is the development of the breeder licencing framework. We therefore move to query why a person 'May' only apply to be registered breeder and ask this provision is reworded for clarity and consistency. For example, 'any person who wishes to breed dogs **must** apply to the Government to become a registered breeder'.

We turn now to s 43G which details the process of applying for registration. This process consists of completing an application form (preferably online). Within a set period of time the Department will then issue the relevant paperwork. S 43G does not provide for any assessment process by the Department, thus allowing anyone who is eligible (as differentiated from the ineligible persons defined in s 43D) to register and be automatically approved.

If the Government is serious about wanting to reform the puppy farming industry, and as such the companion animal welfare sector they need to adequately provide an assessment framework for approving or declining the registration of individuals and organisations as registered breeders. Otherwise, there is nothing to stop a puppy farm from registering and continuing their practices. Further, if there is insufficient compliance activity to monitor and manage this process they may continue their operations indefinitely.

We also pose a practical question to the Committee in regards to the registration process. What is to stop an individual, business entity, their friends or family from registering multiple times using different addresses and obtaining multiple identification numbers for what ends up being the same facility? As there is no assessment process within the application provisions, it could well be that the Department responsible for administering this framework fails to notice the error. While the extrinsic materials indicate the authorities will be able to determine puppy farms by the number of registrations to a single identification number, using the given scenario this would not be detected. PLACE Advocacy would welcome further clarification on this matter.

3. The process for suspension

While there are a number of provisions which deal with the suspension process, we turn to s 43U which details how the chief executive can immediately suspend a person's registration. An example from this section includes where there is an immediate and serious risk to the welfare of the dogs. While PLACE Advocacy welcomes the insertion of this provision, we put to the Committee a question in regard to the welfare of the dogs. If there is an event (ongoing or sudden) deemed by the chief executive to constitute a sufficient reason to invoke the immediate suspension powers under this section, what happens to the dogs during the information notice period? Are they to remain on the property, at risk from continued or exacerbated mis-treatment? The suspension period could be up to 28 days in duration⁸, a sizeable time to allow animals to continue in the conditions that have deemed the suspension to be necessary.

⁸ s 43U(3) *Animal Management (Protecting Puppies) and Other Legislation Amendment Bill 2016*.



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As such we propose an amendment to this section which, where necessary, provides for the immediate removal of any animals in the property until the matter has been determined.

4. Registered interstate breeder

The Bill defines a recognised interstate breeder to be a person registered, however described, under a corresponding law in another State or Territory to breed dogs. We submit a number of questions to this attempt to control cross-border movements of illegal puppies, including

- who will have the onus of providing the dog has crossed into Queensland from a recognised interstate breeder?
- who will be responsible for monitoring and ensuring other States are up to date on the register of breeders (if they have them)?
- will this provide an out clause for puppy farmers in Queensland to say they have bred the dog in NSW and have come from a recognised interstate breeder?
- what happens in the instances where there is no corresponding regulation or licencing system?

Again, we reiterate our concern at the number of clauses within this Bill that represent ways to remove an organisation or person from the legislative framework. In practicality, these 'out-clauses' could see no change to the current, pre-reform situation.

5. Compliance and enforcement

A number of provisions in the Bill prescribe authorised officers of the RSPCA, the police and Local Governments as the entities who will be enforcing the legislation should it pass. We note there has been little discussion during the Bills development phase about the allocation of additional funding to these agencies in order to appropriately enforce the proposed changes. Without appropriate compensation we predict the measures will largely lay dormant, as these entities lack the capacity and resources to take on extra enforcement activities.

6. Sanctions and penalties for puppy farmers

Our final point centres around a core missed opportunity, and that is the opportunity to create a new offence – one directly relating to the practice of puppy farming. This reform process presented a unique opportunity to actually outlaw puppy farms – making the process of intensive breeding of dogs a standalone criminal offence. Instead the Bill is prescribing a breeder registration system and an education campaign, while enabling provisions which could lead to the exclusion of the very industries and organisations it is seeking to regulate.

As such, we put forward to the committee the lost opportunity - the opportunity to place animal welfare at the centre of this law reform process. We acknowledge the existing animal cruelty provisions and penalties in the *Criminal Code Act 1899* (Qld) and the *Animal Care and Protection Act 2001* (Qld), PLACE Advocacy firmly believes this reform was a unique opportunity to create a new, standalone, criminal offence to make puppy farms illegal.

By not taking this opportunity, we believe the Bill falls far short of the promises and expectations of the community.



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Thank you for the opportunity to provide a submission to the *Animal Management (Protecting Puppies) and other Legislation Amendment Bill 2016*. Please do not hesitate to contact the writer should you have any queries.

Kind Regards

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