

Further to the NSW Animals (Regulation of Sale) Bill :

Some people are under the misconception that registered breeders will be exempt from the proposed restrictions on the advertising of purebred dogs for sale, which "prohibits the advertising of all dogs for sale in any media including the internet, by any person or organisation, for more than 6 days in any 12 month period unless they are a registered breeder, pound, shelter or vet."

If only this were true. In fact, clause 11 of the Bill prohibits the advertisement for sale of dogs by any person including recognised breeders, at any time, unless the dog that is for sale is being kept at an animal shelter, council pound, veterinary practice or **prescribed private home** and is to be sold direct by that place to another person.

In case anyone thinks that there may be some relief in the provision for prescribed private homes, be aware that they are very specifically defined. **A prescribed private home is defined (see Clause 4) as "a private dwelling at which a person looks after lost, stray, abandoned or surrendered mammals for the purposes of providing refuge until those mammals can be claimed or sold by:**

- **the Royal Society for the Protection of Animals (RSPCA) New South Wales, or**
- **the Animal Welfare League, or**
- **the Cat Protection Society, or**
- **a non-profit organisation that is approved by the Minister and that has among its objects both the promotion of the welfare of, or the prevention of cruelty to, mammals (or any class of mammals) and a charitable or benevolent purpose."**

There is no relief for recognised breeders of pure bred dogs in that clause. The Bill clearly bans all advertising of dogs for sale, by anybody, for anything other than rescue purposes. It does graciously allow that where a recognised breeder is advertising rescue dogs or puppies, they may also make, more or less as an aside, "a statement in general terms, about the recognised breeder's business." (Clause 11 (2)).

The business about "registered breeders" and "6 days in any 12 months" also offers absolutely no relief to the ban on advertising. It is simply an attempt to define what is meant by carrying on a business of selling or propagating dogs, so that the identification of illegal breeding and selling by non-recognised breeders can be done. The Bill states in Clause 13, "a person must not: carry on a business of selling dogs, or propagating dogs for sale, unless the person is a member of the Royal NSW Canine Council or any other body recognised by the Minister ..."

The question then arises - when is a person carrying on a business of selling dogs, or propagating dogs for sale? The answer is in Clause 20, which states that it is "a person who, on more than 6 days in any period of 12 months, offered for sale or sold any mammal of a particular species..." That is all the "6 days in 12 months" is about. It is not an allowance to recognised breeders. It is only a statement that allows for legal definition of carrying on a business. It helps to identify those commercial puppy sellers who are not members of the RNSWCC Inc. By the way, I am sure there is a lawyer's breakfast, lunch and dinner to be had in the arguments to be made about interstaters.

So under this Bill, which has not yet become an Act of Parliament, if you are a member of the RNSWCC Inc (DogsNSW?) you could breed and sell, but you absolutely could not advertise dogs or puppies for sale, anywhere, anytime. A question for members of RNSWCC Inc is this: will

you be satisfied with being able to advertise your prefix and your show achievements, but not your puppies? Because that's where this Bill will take us.

Your readers may also be interested in clauses 16 and 22 of this Bill. Clause 16 (2) states that the Minister "may withdraw the recognition of a recognised breeder if the Minister is satisfied that the recognised breeder has failed to comply with any of the standards prescribed by the regulations that apply to the breeder." Note - nothing about referring the matter to the relevant body, which is RNSWCC Inc. Once the Minister's recognition of the breeder has been withdrawn, the breeder can no longer breed or sell puppies legally.

Then, clause 22 is about penalty notices. Clause 22 (1) states "An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations as a penalty notice offence." This is potentially a main mechanism for activating the Minister's decision to withdraw recognition.

The combination of these two clauses in my view **places recognised breeders at risk of severe damage to their ability to continue with their business or hobby as a result of potentially arbitrary advice to the Minister from an authorised officer without any reference being made to RNSWCC Inc.** This problem gains a particular edge when you consider clause 22 (9), which sets who the authorised officers are who would be providing this information to the Minister. Clause 22 (9) states "In this section, authorised officer means:

- (a) a police officer, or
- (b) an officer of the RSPCA NSW who is authorised in writing by the Minister as an authorised officer for the purposes of this section, or
- (c) an officer of the Animal Welfare League who is etc etc, or
- (d) an officer of Animal Liberation NSW who is etc etc."

In other words, an authorised officer, who is a member of Animal Liberation, could determine that you as a recognised breeder of pure bred dogs have committed some offence under this legislation, and impose a penalty. They could advise the Minister about this, and the Minister may determine in his/her wisdom, in part on the advice of that authorised officer from Animal Liberation, to withdraw your recognition as a recognised breeder. And then not only could you not advertise, but you would be committing a crime if you bred a litter of puppies, let alone (horror of horrors) if you sold them.

There is of course an argument that we should try to get the Bill rejected completely. It can be argued that the Bill is misdirected and a new Bill is required that would target and police the real offenders. These would be the abusive puppy farmers, unethical puppy sellers, and the abusive and irresponsible dog owners. However, that argument may not be successful. Allowing that some form of legislation is inevitable and even desirable to control the heinous activities of cruel and unscrupulous puppy farmers we may need to have some positive proposals to offer to amend this Bill. Here are four.

The first is to amend clause 11 so that recognised breeders are allowed to advertise dogs and puppies for sale at any time, in any media, as long as they are operating according to the code of ethics of their recognised body. Why? Because while the number of dogs in pounds has risen in recent years, the number of puppies being bred in many registered breeds has declined. We recognised breeders are not the

problem. We have shown, as a body through our organisations and our media, the capacity to deal with unethical behaviour. It is not just or equitable that we should have to pay for the crimes of others who are not recognised breeders and who do not subscribe to our code of ethics.

Second, clause 16 needs to be amended so that the Minister will withdraw the recognition of a recognised breeder only after taking into account the advice of the recognised body eg RNSWCC Inc. This idea needs careful consideration to explore any unintended consequences as it would give the RNSWCC Inc powers, or influence, under the law.

Third, clause 22 must be amended to remove Animal Liberation NSW from the list of organisations that can provide authorised officers who can impose penalty notices on recognised breeders. There are arguments up and down about the RSPCA and the Animal Welfare League, but Animal Liberation NSW has definitely and clearly demonstrated its hostility to recognised breeders.

Animal Liberation NSW demands as its central policy in regard to dog breeding that governments introduce an immediate 5 year moratorium on what they call the commercial breeding of dogs. Their aim, which seems well intentioned enough, is to clear out the pounds and shelters by transferring demand from pure bred dogs to rescue dogs, and to stop the flow of new dogs into the pounds and shelters. But as stated above, RNSWCC breeders are not the problem. The AL demand proposes an unreasonable restriction that would inflict major damage on breeding programs, especially where attempts are being made to ensure the genetic health of our breeds. It is simply not appropriate that a hostile agency like Animal Liberation should be given legislated powers to impose penalties on people who are responsibly practising a lawful activity to which Animal Liberation is inherently hostile. You might as well send in full-tilt prohibitionists to police the licensing laws.

Four, RNSWCC and other bodies recognised by the Minister must be given a full opportunity to participate in the development and review of regulations under clause 23 of the Act (currently the Bill). RNSWCC Inc and its members are part of the responsible section of the community that wants to see an end to the abuse of dogs through their indiscriminate propagation and sale (to use the terms of the Bill). We members of the RNSWCC Inc are not the problem. But we have a fundamental interest as parties critically affected by the Bill and by any of its regulations. We are key partners in any attempt to deal with this issue and it would be a positive move by the proponents of the Bill to include us in the discussions from go to whoa. And to do that in a way that allows our representatives to be fully accountable to us as members of RNSWCC Inc.

Fortunately the Bill does not seem to have progressed very far in the Parliament. It was introduced in June 2007. Its proponent, Ms Clover Moore MP (Ind), on 18 October made an Agreement in Principle speech to the Legislative Assembly. Further discussion was adjourned on a motion of Joe Tripodi MP (ALP) to a day to be fixed. There is a lot of procedure to be followed before it becomes the law and therefore, there are many opportunities for DogsNSW (RNSWCC Inc) to lobby on our behalf. In recent weeks that lobbying has been quite active. One can only hope that their efforts are effective.

The major voices of the dog world need to ensure that they speak for us strongly, and in a well-informed, strategic and judicious way.

Tom Mangan

"It is a sad day when all the politicians have got to occupy their time is to pass laws on the length of a puppy's tail and why it was debarked.

The saddest part is that the puppy farmers who breed for the money will not be effected by this nor will the designer dog breeders as they are not registered and therefore the law cannot catch them out so easily.

The dog world has a lot to think about and hopefully they will now stick together and fight before any more of these draconian laws come into place - believe me they will....."

The Victorian Animals Legislation Amendment (Animal Care) Bill 2007

All purebred owners and breeder in Australia MUST make themselves familiar with the wording of this bill, especially:

Clause 80 amends section 9(1) of the POCTA Act to make it an offence to carry out a prohibited procedure on an animal and to increase the maximum penalty for cruelty offences from 60 penalty units or 6 months imprisonment to 120 penalty units or 12 months imprisonment for a natural person and 600 penalty units for a body corporate. The new definition of prohibited procedure includes cropping the ears of a dog, **debarking a dog**, docking the tail of a dog or horse

Clause 82 inserts new section 11A into the POCTA Act to make it an offence for a person in charge of an animal to **allow a prohibited procedure to be carried out on the animal or to show or exhibit or allow another person to show or exhibit an animal on which a prohibited procedure has been carried out.**

Clause 83 amends section 12 of the POCTA Act to—

- increase the maximum period for which a court may by order disqualify a person from being in charge of an animal of a kind or class of animal from 5 years to 10 years if a person has been convicted of an offence against the POCTA Act considered by the court to be of a serious nature;
- make the disqualification apply to a person in charge of an animal instead of a person having custody of an animal;
- allow the court, at the same time as making an order disqualifying a person from being in charge of an animal, to make an order allowing a POCTA inspector to enter premises of the person to search for, seize and dispose of an animal the holding of which would be in contravention of an order under this section, if satisfied that there are reasonable grounds that

the person is holding such an animal on the premises;

- clarify that it is an offence for a person, who is subject to an order made under this section, to not comply with it;
- increase the maximum penalty for contravention of an order under section 12(1) from 60 penalty units or 6 months imprisonment to 240 penalty units or 2 years imprisonment.

Clause 89 inserts new sections 15B and 15C into the POCTA Act.

(ND Editor's note: 15b relates to making it an offence for driving a motor vehicle with an unsecured dog on a tray or trailer which is fair enough in city traffic, but ridiculous if applied to farmers in country areas. However suddenly we find the following totally unacceptable proposal "tacked into" Clause 89. Maybe the people who drafted the wording thought we would not notice it here! It denies responsible breeders the right to continue their carefully controlled programmes aimed at eliminating genetic defects from their stock/breed).

Proposed new section 15C makes it an offence to intentionally or recklessly allow an animal with a heritable defect listed in Schedule 2 to the Bill to breed. A person who sells or disposes of an animal with a heritable defect must advise the person receiving the animal that the animal has a heritable defect before the sale or disposal.

When you read the bill please also pay attention to Clauses 28, Clause 29 New Part 7A consolidates the powers of authorised officers to seize and dispose of dogs and cats. It re-enacts the provisions in Division 2 of Part 7 and adds some additional provisions as well.

New section 77 defines an authorised officer to mean an authorised officer who is appointed by and is an employee of a Council.

New section 78 sets out the circumstances in which an authorised officer may seize dangerous dogs under new Part 7A. This seizure power is currently set out in sections 77(1)(b)(i), 77(1)(c)(i) and 77(1)(c)(ii) of the DFNA Act.

New section 79 sets out the circumstances in which an authorised officer may seize restricted breed dogs under new Part 7A. This seizure power is currently set out in sections 77(1)(b)(i), 77(1)(b)(ii), 77(1)(ca)(i) and 77(1)(ca)(ii) of the DFNA Act.