

Animal Care and Protection (Code of Practice for Breeding of Dogs) and Other Legislation Amendment Regulation 2017

Explanatory notes for SL 2017 No. 208

made under the

Animal Care and Protection Act 2001

Animal Management (Cats and Dogs) Act 2008

General Outline

Short title

Animal Care and Protection (Code of Practice for Breeding of Dogs) and Other Legislation Amendment Regulation 2017

Authorising law

Sections 13, 15 and 217 of the *Animal Care and Protection Act 2001*

Sections 43W and 210 of the *Animal Management (Cats and Dogs) Act 2008*

Policy objectives and the reasons for them

The purpose of the subordinate legislation is to improve the care provided to breeding dogs and their progeny in Queensland.

The subordinate legislation is in response to animal welfare issues related to breeding dogs, especially in 'puppy farms'. These issues have arisen when breeding dogs and their progeny are housed and/or managed in conditions that fail to meet the dogs' behavioural, social, psychological and/or physiological needs.

A related objective of the subordinate legislation is to complete implementation of the Government's election commitment of shutting down cruel puppy farms. During the 2015 election, the Queensland Labor Party committed to the introduction of mandatory standards for breeding dogs as part of a range of measures to regulate the breeding of dogs in Queensland.

A further objective of the subordinate legislation is to reduce the regulatory burden of dog breeder registration in Queensland.

Achievement of policy objectives

The subordinate legislation achieves its objective by amending the *Animal Care and Protection Regulation 2012* to establish a compulsory code of practice, which applies principally to all persons responsible for the breeding of dogs in Queensland. These requirements, each a compulsory code requirement, have been adapted from draft animal welfare standards developed by the Department of Agriculture and Fisheries and key stakeholders.

The code of practice promotes the welfare of breeding dogs by clearly defining acceptable breeding practices. It augments the duty of care which breeders already owe to animals they own or have custody of under the *Animal Care and Protection Act 2001*. It assists breeders by providing a practical measure by which they can determine if they are meeting their duty of care.

The making of the code of practice also expands compliance monitoring options that may be available under the *Animal Care and Protection Act 2001* by allowing the chief executive to make a program about the monitoring of a code requirement. In practice, a monitoring program provides for the use of monitoring powers by authorised officers. Their powers include the ability to enter a place without consent, provided the occupier has been provided 48 hours' notice of the proposed entry.

The code of practice complements the requirements for dog breeder registration under the *Animal Management (Cats and Dogs) Act 2008*. However, unlike the Dog Breeder Register, the compulsory code requirements apply to all dog breeders in Queensland, including the breeders of working dogs.

The code of practice will commence on 1 October 2018 to allow time for breeders to become aware of and meet the new requirements.

The subordinate legislation achieves its further objective by amending the *Animal Management (Cats and Dogs) Regulation 2009* to prescribe 'Queensland Racing Integrity Commission' (QRIC) as an approved entity. This reduces the regulatory burden associated with dog breeder registration by recognising an accreditation scheme QRIC already conduct for their licensed greyhound breeders. These breeders will not be required to register on the state database, but QRIC must be able and willing to give the chief executive information about its accredited breeders.

The amendments to the *Animal Management (Cats and Dogs) Regulation 2009* will commence on notification.

Consistency with policy objectives of authorising law

The subordinate legislation is consistent with the objectives of the *Animal Care and Protection Act 2001* and the *Animal Management (Cats and Dogs) Act 2008*.

Inconsistency with policy objectives of other legislation

The subordinate legislation is consistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

Implementing a compulsory code of practice for dog breeders provides the most feasible and targeted approach to regulating the care and management of breeding dogs and their progeny.

A possible alternative to the implementation of the code, is to rely on what currently exists in the *Animal Care and Protection Act 2001*. The Act provides that any person in charge of an animal owes a duty of care to it, which can be breached if basic animal welfare requirements, including to provide appropriate food and accommodation, are not met.

However, while this duty of care extends to breeding dogs and their progeny, the duty of care does not capture or clarify the unique requirements of breeding dogs and their progeny. The current provisions also do not allow for the establishment of a monitoring program.

A further possible alternative is to implement voluntary guidelines for breeding dogs and their progeny. However, these guidelines would not provide the certainty of legally enforceable code requirements and would be inconsistent with the election commitment.

An alternative to prescribing QRIC as an approved entity, is to continue to require breeders who are accredited by QRIC to apply to the chief executive to be registered as a registered breeder. However, this would involve an additional unnecessary regulatory burden for licensed greyhound breeders of QRIC because the *Animal Management (Cats and Dogs) Act 2008* specifically contemplates the prescription of approved entities.

Benefits and costs of implementation

The code of practice will help improve the standard of care provided to breeding dogs and their progeny in Queensland. This will help reduce animal welfare issues relating to breeding dogs, particularly those associated with puppy farms, which should help improve the reputation of Queensland dog breeding.

Overall there will be minimal impact on dog breeders, as it is likely that most responsible breeders already adhere to the code requirements and will not need to change their practices. The code requirements may adversely impact non-compliant breeders, but these impacts will likely not be significant as the requirements are not particularly burdensome.

Prescribing QRIC as an approved entity will help reduce the regulatory burden associated with dog breeder registration in Queensland. The subordinate legislation will allow the breeders accredited by QRIC, to comply with the legislation through their accreditation by QRIC rather than by having to register again on the state database.

The subordinate legislation will result in additional obligations for QRIC, which will need to administer the accreditation scheme for breeders. However, the decision to become an approved entity is discretionary and its application indicates a willingness to accept the additional regulatory burden.

Consistency with fundamental legislative principles

The subordinate legislation could be seen to interfere in or restrict the ordinary activity of persons breeding dogs and, to this extent, it could be argued that it does not have sufficient regard to persons' rights and liberties. This is a potential breach of section 4(2)(a) of the *Legislative Standards Act 1992*.

The potential infringement on the rights and liberties of breeders is justified, however, to address community concerns about the welfare of dogs in their care. The purposes of the *Animal Care and Protection Act 2001* specifically contemplate (at section 3(b)(i)) that the Act is intended to "provide standards for the care and use of animals that achieve a reasonable balance between the welfare of animals and the interests of persons whose livelihood is dependent on animals". The code requirements are not considered to be onerous and are largely outcome-based. They simply augment the requirements on dog breeders under the generalised duty of care provisions currently in the Act.

The amendment to the *Animal Management (Cats and Dogs) Regulation 2009* is consistent with fundamental legislative principles.

Consultation

Public consultation was held by the Department of Agriculture and Fisheries in September 2015 in relation to shutting down cruel puppy farms and regulating dog breeding in Queensland. Ninety-three per cent of respondents (7 743 out of 8 318) agreed or strongly agreed with the need to set minimum standards for breeding dogs.

The draft breeder standards were developed in collaboration with representatives from Dogs Queensland, RSPCA and QRIC. All parties agreed with the proposed draft standards and guidelines, which formed the basis of the code of practice.

The Department of Agriculture and Fisheries has consulted the Office of Best Practice Regulation (OBPR) within the Queensland Productivity Commission on a Preliminary Impact Assessment. The OBPR provided advice that no further assessment is required under the *Queensland Government Guide to Better Regulation* (the Guide). The OBPR noted that although the proposal may result in adverse impacts to some breeders, these impacts do not appear to be significant.

In accordance with the Guide, the OBPR was not consulted in relation to prescribing QRIC as an approved entity. The Department of Agriculture and Fisheries applied a self-assessable exclusion from undertaking further regulatory impact analysis (Category (g) – Regulatory proposals that are of a machinery nature).

The Department of Agriculture and Fisheries met with QRIC to discuss the requirements of becoming an approved entity.