

Coming to Grips with Clause 89 – Inherited Diseases

Notes from the Seminar held 27 February 2008

CLAUSE 89 : THE PREVENTION OF CRUELTY TO ANIMALS ACT 1986

Towards an Understanding of the Legislation

Regulation of our activities as breeders presently includes the whole spectrum from self regulation, where there is no government involvement, to explicit government regulation such as that contained in the Prevention of Cruelty to Animals Act.

The threat of even greater government regulation and monitoring of our activities should be a powerful incentive for us to come together and develop our own solutions.

THE CONTEXT

The Working Party of DOGS Victoria began its involvement with the proposed revisions of the Prevention of Cruelty to Animals (POCTA) Act when the amendments were at the second reading stage in the Victorian Parliament.

Many meetings were held with our interest being represented by the President, Mr Doug Ford, and the CEO, Ms Elizabeth White.

To demonstrate our members' long-term responsible approach to breeding the Minister was given detailed information written by several of our Breed Clubs. This information outlined the Clubs' current breeding and educational programs, especially in relation to the hereditary diseases included in the Clause 89 Schedule.

The Minister was most impressed with the work that had been done and, I am confident, the actions of our members in regard to the control of specific hereditary diseases greatly increased our credibility with the Government.

Also, the efforts of individual members of our organisation, often working through their own parliamentary representative, were extraordinary.

However, despite our best efforts, the legislative amendments passed the final reading unchanged.

Following the passing of the legislation and, at the initiative of the Bureau of Animal Welfare, an advisory committee was set up to

develop a Code of Practice to “*provide standards and recommendations for the breeding of animals with heritable diseases prescribed in the Act*”.

THE DETAIL

It is important to remember that Clause 89 is contained in a statute concerning the prevention of cruelty to animals. A conviction under this Act not only results in the penalties described in the legislation but, also, under DOGS Victoria’s Rules and regulations....

"Membership of the VCA shall cease.... if a conviction is or has been recorded against the member on a charge of cruelty or neglect to an animal...."

★ Clause 89 has 3 Sections

Part 1 This relates to the **BREEDING** of animals with heritable defect.

*A person must not, **intentionally or recklessly**, allow an animal with a heritable defect to breed*

Part 2 This relates to the **DISCLOSURE** of information and **CONSUMER PROTECTION**.

*A person must not **sell or dispose** of an animal with a heritable defect, if the person knows or is reckless as to whether the animal has a heritable defect, unless the person who sells or disposes of the animal **advises** the person to whom the animal is sold or disposed of (**before** the sale or disposal) that the animal has a heritable defect"*

No money need be exchanged for this section of the Act to apply.

Part 3 This provides a **DEFINITION** of heritable defect.

*Heritable defect, in relation to a species of animal set out in Column 1 of the Table in the Schedule, means a heritable defect that is **known to cause the disease set out opposite the species of animal in Column 2 of the table in the Schedule***

This includes both animals affected by and carriers of the diseases listed in the Schedule.

The Schedule referred to is as follows :

TABLE OF DISEASES CAUSED BY HERITABLE DEFECTS	
Column 1	Column 2
Species	Disease
Dogs	Von Willebrand Disease (VWD) Progressive Retinal Atrophy (PRA) Neuronal Ceroid Lipofuscinosis (NCL) Collie Eye Anamoly (CEA/CH) Hereditary Cataract (HC)
Cats	Polycystic Kidney Disease (PKD) Mutations causing aplasia or hypoplasia of any long bone Folded ears due to osteochondrodysplasim

This Schedule **limits the scope** of the legislation by listing the species and diseases that currently fall under the terms of Clause 89; it is not breed specific. The Schedule is part of the legislation and, like the Act itself, can only be changed by due legislative process, that is, passed by both Houses of the Victorian Parliament.

Section 4 of the draft Code of Practice list recommendations that should be followed if this Schedule is to be amended. Diseases to be listed should :

- i) Be established, well-researched inherited diseases or defects known to be present in a local breed population (or likely to be imported from overseas).
- ii) Have sufficient researched information to allow the conditions to be correctly diagnosed and categorised, and be able to be tested cost effectively.

In making a recommendation to the Minister the following must be provided –

- i) The severity of the end disease
- ii) The mode of inheritance (dominant, simple recessive etc) and allocated to a Heritable Disease Group for the purposes of this code.
- iii) The proportion of >affected=, >carrier=, >clear= individuals within the breed.

- iv) The number of diseases being simultaneously tested/screened within a breed.
- v) Ease of access to a range of reliable and repeatable screening methods.
- vi) There should be a reliable test to diagnose the disease that is cost effective for an approved breeding program.

Also, Parts 1 and 2 indicate the penalties for non-compliance.

60 units for an individual
 300 units for a body corporate

Currently 1 unit = approximately \$114. So the penalty is:
 \$ 6,840 for an individual
 \$34,200 for a body corporate

★ Within DOGS Victoria's Code of Ethics (Practice) we have several clauses that are not dissimilar to those contained in Clause 89.

20.1.9 **CRUELTY TO ANIMALS**

"A member shall not participate in nor support any activity in that involves cruelty or damage to animals, excluding legal hunting activities".

20.1.16 **HEREDITARY DISEASES**

"A member shall take responsible action to reduce the incidence of hereditary diseases in accordance with the ANKC Code of Practice for Hereditary Diseases".

20.1.25 **CONSUMER PROTECTION**

"A member shall ensure that all dogs sold or disposed of by that member are in the best possible state of health. Where a dog with a health issue or disability is disposed of the member must obtain from the recipient written and signed acknowledgement of the condition of the dog".

And our overriding responsibility:

20.1.11 "A member shall breed primarily for the purpose of improving the quality and/or working ability of the breed in accordance with the breed standard, and not specifically for the pet or commercial market".

THE CODE OF PRACTICE (CoP)

Development

This draft Code of Practice was developed by a government appointed Advisory Committee.

This committee was comprised of persons who have knowledge and expertise in animal welfare, veterinary science, the commercial use and breeding of animals and the testing, diagnosis and control of heritable diseases in animals@. (Section 1 CoP).

Our representatives were: Dr Bruce Robertson
Dr Karen Hedberg

Also in attendance were: Doug Ford, President DOGS Victoria
Elizabeth White, CEO DOGS Victoria

This is the 5th draft of the CoP and the first to be released by the Government for extensive consultations with all stake holders.

<p>YOUR TASK is to provide feedback on the appropriateness and effectiveness of the proposed CoP. You can ask for additions, deletions, clarification, expansion, reduction and definition. It is important that you provide validation and evidence where possible.</p>

The Purpose

The Code of Practice sets out *standards and recommendations for the breeding of animals with the heritable diseases contained in Schedule 2 of the Act "* (Section 2 CoP).

A Code of Practice tells you the details of your obligations under the legislation.

The Code of Practice sets out **minimum standards and recommendations** that must be met if you are to comply with Clause 89 of the POCTA Act. These minimum standards will form the basis for any approved breeding program. Your breeding programs will be BREED specific and will take into account any number of variables and needs but, all must be built on the foundation of the Code of Practice.

Your current task is to provide feedback on the appropriateness, effectiveness and practicalities of the suggested minimum standards.

The Code must be followed by *owners, carers and custodians of animals used for breeding that are affected by heritable disease or that carry heritable genetic defects that could cause heritable disease in progeny caused by inappropriate selection and mating of animals with these defects.* (Sect 2: CoP)

The Code of Practice *permits the use of valuable breeding stock while restricting the numbers of animals being sold or offered to the general public that are at risk of developing severely debilitating or crippling heritable disease.* (Sect 3: CoP)

Self Regulation

A person breeding animals in a program approved by the approved organisation for that species of animal is not considered to be breeding animals recklessly or intentionally as defined in Section 15C(1) of the Prevention of Cruelty to Animals Act 1986" (Section 2 CoP)

This means that a breeder, able to show reasonable compliance with an approved breeding program, should be immune from prosecution under Clause 89.

DOGS Victoria is an *approved organisation* under the Act.

Built on the foundation of the Code of Practice, you can develop an accredited breeding program that is highly breed specific. You will have the opportunity to take into account any number of needs and variables that are unique to your own breed.

Some considerations may be:

- the severity of the disease
- the clinical significance of the disease within the breed
- the genetic strength and diversity of the breed
- the proportion of >affected=, >carrier= and >clear= individuals within the breed.

You can also vary the requirements as circumstances change.

The accredited breeding program developed for a particular hereditary disease may vary from breed to breed. Each will develop their own breed specific strategy to reduce the incidence of the hereditary disease.

Your breeding programs can be more stringent than the Code of Practice, the CoP outlines the minimum criteria that must be met by any approved breeding program.

Structure

The Code is divided into the specific diseases listed in Schedule 2, according to *the severity of the condition they cause*". (Section 3 CoP)

There are no breed specific references or regulations in the code of practice. The Code is written in generalisations where your accredited breeding program will be very specific.

Most sections contain breeding recommendations, obligations for record keeping and consumer protection.

Some sections will not be important for your breed, others will be highly relevant. Always remember, these are minimum, broad guidelines in relation to a specific hereditary disease .

Within the various parts of Section 7 of the Code, a similar layout and wording is used. Be sure to read carefully, especially those sections referring to an *approved breeding program*.

Certain words indicate the level of compliance that will be required:

- prohibited
- prohibited unless....
- permitted
- permitted only
- must
- should
- recommended

Once the minimum standards have been agreed, breed specific breeding programs can be developed by breeders, breed clubs, state or national controlling bodies.

By following the approved breeding program a breeder will gain protection against the charge of *intentionally and recklessly* breeding an animal with a hereditary disease as outlined in Clause 89 of The Prevention of Cruelty to Animals Act 1986.

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