

TRANSCRIPT

STANDING COMMITTEE ON THE ECONOMY AND INFRASTRUCTURE

Inquiry into the Domestic Animals Amendment (Puppy Farms and Pet Shops) Bill 2016

Melbourne — 9 November 2016

Members

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Mr Jeff Bourman

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Mr Bernie Finn

Ms Colleen Hartland

Mr Shaun Leane

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Witnesses

Mr Rob Spence, chief executive officer,

Ms Claire Dunn, manager, environment and regulatory services, Municipal Association of Victoria.

The CHAIR — I declare open this Standing Committee on the Economy and Infrastructure public hearing. I welcome all those present here this evening. Today our committee is hearing evidence in relation to our inquiry into the Domestic Animals Amendment (Puppy Farms and Pet Shops) Bill 2016. The evidence today is being recorded. All evidence taken today is protected by parliamentary privilege, therefore you are protected for what you say here today, but if you go outside and repeat those same things, those comments may not be protected by that same privilege.

Welcome, Mr Spence and Ms Dunn. Thank you for agreeing to provide evidence to our committee. At this juncture I might hand over to your good selves for any preliminary comments, and then we will move on to some questions from the committee. Over to you.

Mr SPENCE — Thanks for the invitation to come along and speak tonight. Our position is that in a policy sense we support the view that we need to be ensuring that animals are properly protected, safe and in an appropriate environment. Our issues are primarily about the administration issues that rest with this legislation. My starting point is to say that there was no consultation with our sector as a whole. There was consultation at an officer level with three councils, we understand, but not with the sector, which is in breach of the state-local government agreement, which was put in place a number of years ago, which requires consultation on issues that affect the sector, and so our sector has really been in catch-up since the legislation landed in Parliament.

This is very different from the normal way we would operate. We would normally be in discussion with government in the lead-up to the development of legislation and the consideration of the policy, particularly when our sector is effectively the regulator responsible for registration; it has the most onerous tasks in delivering this legislation, apart from the dog breeders and so on, who under this legislation have significant obligations too. I would say that it is a great disappointment to us that there was no consultation. We think that as a result of that failure to properly consult on this, we have ended up with — I should not say a dog's breakfast — I think really cumbersome legislation, which is administratively burdensome, and I would say that for the person in the street, it is almost impossible to dismantle and to determine what their obligations are. I have been around the system for 50 years, and this one sits at the top of my tree of cumbersome, poorly-put-together legislation.

Mr ONDARCHIE — Messy.

Mr SPENCE — Messy. Here we have got experienced policy people considering the legislation, its flow and how it works, and we are struggling to interpret it and understand what the obligations are, so for the person in the street, we think it is really difficult for anybody to really wrap their head around it. Our view is that we need to go back and look at this from the start. We support the intent of where we are trying to get to, but it needs to be administratively simple. It should not be adding layers and layers and layers of regulation and red tape. It should be administratively simple.

I will give you a couple of examples of how we work through issues to successfully deliver sensible outcomes for the citizens of Victoria. Tobacco legislation — we have worked through that from the start when John Thwaites brought it in in the early 2000s. It was done in a staged process, with proper communication and consultation, and it was stepped out so that everyone knew what their responsibilities were and understood how it worked. We worked through it, and we are still working through issues with smoking in restaurants, smoking on beaches and so on. That is a demonstration I think of what is a smart process and simple and straightforward, where you deal with an issue in bite-sized chunks and there is proper consultation with the parties who are going to be impacted by it — those who have to regulate and those who are impacted by the regulation. With other areas like food safety, exactly the same approach.

It is hard to understand how from our viewpoint this can be moved forward effectively I think because of the cumbersome nature of it, and we have turned our mind to potential options. Without the proper analysis of how many entities are going to have to be regulated under this — and we think it is potentially tens of thousands; certainly thousands but potentially tens of thousands — and without having that sort of sense at the start, it is hard to understand what the resourcing and administrative implications are for councils.

When you have got some rural councils with one officer responsible for this area as well as being responsible for a whole lot of other areas, maybe in 7000 square kilometres of area with dispersed population, it is going to mean significant up-resourcing for these organisations. When I look at the regulations and I look at the resourcing issues and you think about the consequences in terms of fees for those people or organisations that

are regulated, you could only get the sense that the fees are going to go through the roof, because we do not expect that the ratepayer will be the ones who are subsidising this. The system should be self-sustaining.

As an opening I have not discussed any of the nuts and bolts of it. We could talk about the registration process and how onerous it is. We could talk about the issues around sales and how they work and the regulation right around it. Is there anything you want to add, Claire?

Ms C. DUNN — No, it is fine.

The CHAIR — Very good, fabulous. Thank you very much for those comments. You said that there was not consultation with yourselves prior to this bill being released. Are you aware as to why there was not consultation?

Mr SPENCE — No. I hear from others that exactly the same thing has happened.

The CHAIR — So you do not think they consulted with anyone?

Mr SPENCE — They consulted with some. I do not think they have consulted widely. I know that they have consulted with some officers in our sector, but the officers were under confidentiality agreements so they could not talk to others about it. So they drew a view, but — —

Ms C. DUNN — Two of those were metro councils, so none of those consulted were what you would consider particularly low-resourced rural councils.

Mr SPENCE — It is hard to understand why, because proper consultation ultimately leads to good policy outcomes when you know all the issues when you are considering legislation, and what we would say is that looking at this legislation all the issues I do not think are on the table.

The CHAIR — Any legislation is going to have some flaws. No legislation is absolutely perfect, and we have seen new legislation introduced to strengthen the current legislation; however, some say that this legislation has gone too far. What are the failings of the current legislation that need to be amended in your view?

Mr SPENCE — I actually think it fails at the start, because there has not been a proper analysis of what the issue is we are dealing with and the consequential impacts of the various paths that are being considered. We have not got a VCEC-type model where you can give it to someone external to do a review of it and say, ‘Really, what are the impacts? Is this going to drive the industry and the market underground? What impact is it going to have on the price of animals in the marketplace? Are we going to see a shift in the market across the border and a flow back?’. The appropriate process would be to consider all of those issues, I think, in the development of legislation. There is a proper path to follow, and I feel with this one that that has not happened, because we do not get clear advice on how many people or organisations are going to be caught by these new rules. We expect that it is going to be thousands, and we do not understand what is going to happen at what we describe as swap meets — the Casterton kelpie event and so on — and what consequences it will have. There needs to be proper testing of it. As I said, I would just emphasise that we are not saying that getting the legislation right is not important, but there needs to be a proper process to get to that, and we do not think the government is there.

Mr ELASMAR — Thank you, Mr Spence, for those opening remarks, but my understanding is that the department consulted directly with councils and that those councils have a lot of experience dealing with domestic animals in their business as well. Does the MAV have any concerns about the proposed legislation that have not been taken into account?

Mr SPENCE — We do, but I will just go back to that first point. My read of the way the consultation has worked is that it is as if the federal government came in and met with fourth-level people in the state bureaucracy, picked particular people and said, ‘This is our consultation, federal government and state government’. If you look at it from the local government sector, I would argue that that is an offensive process. The elected representatives were not engaged in it. I do not think senior management was engaged in it.

Proper process is to work through the processes that we have in our agreement between the state and local governments. They are a given. We know that there is a requirement for a local government impact statement in

the cabinet submissions. We never get to see the cabinet submissions, but it is hard to see on what we have seen today how anyone could properly articulate the impacts on the local government sector, for example, on what we know at the moment. That is the first point.

I would just go to the administrative burden question in this and whether this is efficient legislation. I am no expert in the animal industries and so on, but I have been around the public sector for a long time and I have seen good legislation and bad legislation. When we have got the state coming to us as a sector and saying, 'Strip back red tape. You guys, cut red tape', and then it is being laid on with a trowel by the state in legislation like this that is administratively onerous, I seriously have a problem with that. As I said, and I will just keep repeating it, proper consultation will overcome those issues in my view.

Ms HARTLAND — Can we go back a couple of steps? You talked about there being a standard agreement about consultation between state government, MAV, councils and the VLGA. Can you describe how that works?

Mr SPENCE — It comes off a national agreement established by the Howard government. Sitting under it was an agreement between the federal government and the states. Then sitting underneath that is an agreement between the states and the state associations, being the MAV in Victoria, WALGA in Western Australia and so on. That sets up the basis for consultation. Then sitting under that is the impact statement that goes in the cabinet submissions about the impact on local government of regulation.

Ms HARTLAND — How is that normally triggered?

Mr SPENCE — What would normally happen is that we would get a call saying, 'The government is considering policy about this area. We would like to have a discussion with you about the issues we are trying to deal with and where our thinking is at the moment'. We would normally then set up some discussion groups with the sector to form views in the sector, without getting into the detail of the legislation, so we are bringing the sector with us. As I say, in tobacco it worked perfectly. In food safety it works perfectly. Sometimes we have some glitches, but rarely would we be in a situation like this where three council officers are consulted and the rest of the sector is left out.

Ms HARTLAND — I am just trying to make sure I understand this. The trigger would be because you or councils have to administer it.

Ms C. DUNN — New or revised legislation or regulation that councils have to administer is essentially the trigger.

Ms HARTLAND — Okay. Do you think then that the government needs to put a halt on this and start the consultation again? I understand you support the intent. What would they need to do to consult with the MAV properly? Set up a task force and do the things you have been talking about is basically what you are saying?

Mr SPENCE — That is right. To me legislation needs to come off a properly researched base, and so that would be the starting point I think. I do not know whether legislation can go backwards from where we are, but in the ideal world you would have the concepts and you would work through a consultation process. You would form a view about the policy. In a lot of cases we see the legislation before it goes in. It is all held in confidence, but the idea is to test issues so that when the legislation gets into the house and into the public arena there is strong support because those impacted have been part of the agreed solution.

Ms HARTLAND — I have got one more question and then I will come back. I totally agree. I think that is how you get good legislation. One of the tenets of the legislation, though, is to have a central register. Do you think that takes a burden off council or is it an added burden if there is a central register rather than all councils having to deal with the register around microchipping et cetera?

Ms C. DUNN — My view, and I have not tested this with councils, is that it is probably a step in the right direction. It makes sense to have a central database. It is still reliant on councils entering that information into the register. I do not know that it necessarily reduces councils' burden. It is still dependent on councils providing the information, but in terms of improved animal welfare outcomes I would have thought it was a step in the right direction.

Ms HARTLAND — In terms of cost and in terms of staff hours, is there a difference between what happens now and what will be required with the central register?

Ms C. DUNN — I would need to take that on notice and check that with councils.

Ms HARTLAND — That would be really good if you could. Thank you.

Mr SPENCE — Yes, we will have a look at it.

Mr BOURMAN — Thanks for your presentation. Has anyone done a bit of an estimate on what the extra financial burden, if this legislation were to go through unchanged, would add to a council?

Mr SPENCE — We have been giving consideration to the collection of the data on this. We have not done it yet, but we could for you if you are interested.

Mr BOURMAN — It will be quite interesting actually.

The CHAIR — It would be very helpful.

Mr SPENCE — We could pull it in and just identify what the impacts are going to be. There has been a lot of material flowing backwards and forwards. There is a lot of angst in our sector. Some councils are saying that basically they are not going to participate at this stage. If this legislation goes through, they have got an obligation to do it, so I do not think they have got much choice, but we could do a quick piece of work and just nut out what it is going to look like.

We have been having a discussion with a couple of council officers this afternoon just to understand the scene in their municipalities, and they are saying that the burden is going to be influenced a lot by whether they have a requirement to desex dogs before they are registered or not. Some councils do; some councils do not.

So we can do it. I suppose a point that follows on from that is that proper analysis of those issues, like the desexing of animals, at the front end assists us in developing a sensible policy outcome, I suppose. I am saying those issues do not seem to have been serviced.

Mr BOURMAN — Just quickly, in the context of rate capping and things like that, has the government given any indication that they are willing to assist with the enforcement of all the new provisions?

Mr SPENCE — We have had, just in the last couple of days, the comment made to us that we will be able to set the fees at full cost recovery. Who knows what that means? We have not had that in writing.

Mr ONDARCHIE — Somebody has to pay for that.

Mr SPENCE — That is right. Absolutely. That is why, again, it is important that you get the model right, because you do not want to overburden the administrative process.

Mr ONDARCHIE — Thank you, Rob and Claire, for coming in. It seems to me that this is badly thought out legislation, without due consultation, that ultimately makes councils the bad guy in all this. We all want to get rid of those bad puppy factories that we have seen on TV — I think we all want to do that — but councils are going to be forced to determine whether what I call ‘hobby breeders’ — people who are at home; good, caring people that breed puppies once or twice a year — are a business or not. My view is they are not necessarily a business. It is the same as having a garage sale. There is a guy up the road from me who sells pot plants twice a year. That hardly makes him a business. It seems to me this legislation is going to force councils to determine who is a business and who is not and probably discriminate against those wonderful people who just live at home and breed puppies once or twice a year. What is your view about that?

Mr SPENCE — It is clear that this is going to catch a lot of people who have been operating in a relatively small way, I think. The obligation is going to sit with the council, so the council becomes the bogeyman. Whether that ultimately benefits the animals is a questionable outcome, but my understanding is that the obligations about registration but then about inspection and regular inspections and so on really adds to the burden. The structure and arrangements that you have got on the property and so on all come into it. It becomes very complex.

We know the experience with restricted breed dogs and how challenging that was for the councils, and this, because of its size — its potential size, because I do not think anyone really knows how big it is — becomes again a really testing issue, I think, for councils.

Mr ONDARCHIE — It seems to me the government is abrogating its responsibilities in shifting the burden to councils, because it is going to change the dynamic and the relationship between councils and their residents as a result of this.

Ms C. DUNN — It already has. Councils are already fielding lots of calls. Keep in mind that the vast majority of councils were not even aware that the bill was coming until it was introduced into Parliament, and already they are fielding a lot of calls. It will be entirely dependent on very good communication and education campaigns, and again to date there has been no consultation from the state with the sector about what that might look like. You are talking about essentially backyard breeders being required to comply with the code — and perhaps that is a good thing — but if they are registered as a domestic animal business, it creates a community expectation that they are complying with the code and that councils are ensuring they are doing so. We are talking about potentially tens of thousands of new businesses.

Mr ONDARCHIE — They are generally good people breeding puppies.

Ms C. DUNN — It certainly creates community expectations — quite rightly so — that we fear councils simply will not be able to meet.

Mr ONDARCHIE — Okay, thank you.

Mr FINN — I have a very simple and direct question: should the government scrap this legislation and start again?

Mr SPENCE — To me, it is the obvious solution to go back, start again and run the proper process.

Mr ONDARCHIE — Maybe ask some people.

Mr SPENCE — Well, talk to people, I think, and make sure there is a proper consultation with the affected parties, and let us get a really workable, sensible piece of legislation. I am not saying to not have the legislation but make sure it is sensible and workable.

The CHAIR — I believe the Wellington shire is a shire that has a lot of dog breeders. Was that one of the shires that was consulted?

Ms C. DUNN — At the officer level, yes.

Mr SPENCE — Yes, with a confidentiality agreement, as we understand it.

The CHAIR — Is that right? That is fascinating, is it not?

I believe our colleagues to the north, in New South Wales, conducted quite a similar inquiry to this one that we are doing. It was the inquiry into companion animal breeds. I understand that one of the findings was:

The committee finds no evidence that the number of animals kept by breeders is in itself a factor which determines welfare outcomes of breeding animals.

Obviously part of this legislation is banning any breeder from having more than 10 breeding females. I am just wondering whether or not the MAV has a view on that?

Ms C. DUNN — We certainly have not done any research into that. I would say it is common sense that you could have terrible animal welfare outcomes with just one or two backyard breeders or when it is scaled up. I suppose in theory if it is scaled up, it should be easier to identify it, to detect those operations. But obviously if you are talking about enterprises with hundreds of animals and things are going wrong, then it is hundreds of animals that are being harmed at once. The 10-head limit seems arbitrary to me, but again we have not tested that with the sector as to what their view is.

Ms HARTLAND — I have actually got quite technical questions, but considering what you have already said about the lack of consultation, if I just read these out and do not speak to them, I might just be getting you to take them on notice, because we really did think that you had been consulted. I think the whole committee is a bit surprised by this, because that is how you make good legislation — you talk to people. So I am just going to presume that we will go with questions on notice.

Are you satisfied with the arrangements under the bill for the registration of domestic animal businesses? I can email all of this to you, but I will read them out for Hansard and then I will email them to you. Are you satisfied with the arrangements under the bill for a register for domestic animal businesses to be kept by the department — for example, with the information to be kept on register and have access by councils to the information? Are you satisfied with the powers under the bill for councils regarding the seizure of animals from domestic animal businesses? Do you have any comments about the council management plans that are due by 2017? I will just email them to you. I will do that either tonight or tomorrow.

Just one last question: because this is such an important piece of legislation and so many people have worked for it for such a long time and clearly you are saying the intent is good and it needs to happen, I am really surprised that the government has not consulted. So it feels a lot like the bill is undermined by this lack of consultation. Am I being reasonable about your position?

Mr SPENCE — We are disappointed that there has not been consultation, as I emphasised before, because we think consultation will deliver a much better outcome — smoother administratively and legislation that people can easily understand. I know I get a bit carried away at times, but I reckon a council officer would just about have to have a QC with them to run this — honestly.

Ms HARTLAND — So we do not want to make the same mistakes that were made with the original dangerous dogs.

Mr SPENCE — That is right. There were circumstances that delivered that outcome, but it has not worked effectively.

Ms C. DUNN — And the feedback we are getting from councils is the same with both legislation, which is that it is unworkable in practice for councils. The restricted breed dog legislation was the same. It was unenforceable in practice.

Ms HARTLAND — Because councils are going to be the ones who are going to be required to do the inspections, to do the enforcement, to do the registration — do all of those things.

Mr SPENCE — Yes.

Ms HARTLAND — The average shire — I am thinking more about what you were saying about shires — how many more staff do you think they would need, or is that another question on notice?

Mr SPENCE — That is another question. I think that is why we need to do the piece of research and come back to you with an estimate of the numbers. We think about 70 per cent of dogs are registered, so understanding what is out there is a really critical start to it.

The CHAIR — At that point I will thank you both very much for your contribution to our inquiry. I will just remind you that you will receive a copy of the transcript of your evidence for proofreading that we would be keen for you to return with any amendments, and that will ultimately be made available on the committee's website. Once again, thank you both very much for your attendance here this evening.

Mr SPENCE — Thanks for the opportunity.

Witnesses withdrew.