



Draft Determination

Application for authorisation AA1000442

lodged by

Australian National Kennel Council Limited

in respect of

a proposed arrangement to require members of ANKC Member Bodies
to register all dogs with ANKC-recognised registration bodies

Authorisation number: AA1000442

15 October 2019

Commissioners: Sims

Keogh

Cifuentes

Court

Ridgeway

Summary

The ACCC proposes to deny authorisation for a proposal by the Australian National Kennel Council Limited (ANKC) and its Member Bodies to insert a new provision into the ANKC's National Code of Ethics of Responsible Dog Ownership (Code) which requires members of ANKC Member Bodies to register dogs bred or owned by them with a canine registration body that is recognised by ANKC (the Proposed Conduct).

The Proposed Conduct means that in order to be a member of an ANKC Member Body, a person must register all dogs bred or owned by them with an ANKC-recognised registration body, not just the dogs in ANKC's main purebred categories.

ANKC submits the Proposed Conduct does not preclude members from registering dogs with competing registration bodies (not recognised by ANKC). However, the registration rules of ANKC and its Member Bodies generally prevent breeding of dogs that are not on ANKC's main purebred register. The ACCC considers that this means that the Proposed Conduct will result in members not being able to breed dogs that would otherwise be able to be bred under the rules of competing registration bodies.

The ACCC considers ANKC and its Member Bodies have significant market power in the supply of purebred dog registration services in Australia. In particular, ANKC's mutual agreements with many international canine registration bodies, its affiliation with local breed clubs and its long-standing branding and reputation mean that membership with ANKC Member Bodies is important for many breeders and owners.

Further, the Proposed Conduct will likely result in additional fees for members if they are required to register all their dogs with an ANKC recognised registration body, where no obligation previously exists. The ACCC considers the Proposed Conduct is likely to mean that some members of ANKC Member Bodies will cease obtaining registration services and/or membership with competing registration bodies to be exclusively with the ANKC Member Bodies. The ACCC is concerned that this will reduce the competitive constraint posed by other registration bodies, and restrict choice for members of ANKC Member Bodies.

ANKC submits that the Proposed Conduct is a key initiative to improve the health and welfare of dogs bred by members of ANKC Member Bodies. While the ACCC supports steps towards improving animal welfare, it considers that the Proposed Conduct is only likely to result in some small public benefits. In a limited set of circumstances, it will provide some additional protection for vulnerable breeding dogs and reduce the risk of misleading or deceptive conduct in relation to the registration status of dogs.

Overall, the ACCC is not satisfied that the Proposed Conduct is likely to result in a net public benefit.

The ACCC invites submissions in relation to this draft determination by 29 October 2019 before making its final decision.

1. The application for authorisation

- 1.1. On 28 May 2019, the Australian National Kennel Council Limited (**ANKC**) on behalf of itself and its member bodies in each State and Territory (**ANKC Member Bodies**)¹ lodged application for authorisation AA1000442 with the ACCC under subsection 88(1) of the *Competition and Consumer Act 2010* (Cth) (the **Act**).
- 1.2. The ACCC may grant authorisation, which provides businesses with legal protection for arrangements that may otherwise risk breaching the law but are not harmful to competition and/or are likely to result in overall public benefits.²

2. The Proposed Conduct

- 2.1. ANKC mandates a standard of conduct relating to dog ownership under its National Code of Ethics of Responsible Dog Ownership (**Code**). Each ANKC Member Body is required to implement the Code in their State or Territory. All individuals who are members of ANKC Member Bodies are required to comply with the Code.
- 2.2. ANKC seeks authorisation to insert a new provision in the Code to require ANKC Registered Breeders and Owners to register all dogs bred or owned by them with a registration body recognised by ANKC (the **Proposed Conduct**), as extracted below. The registration bodies currently recognised by ANKC are the ANKC Member Bodies and certain overseas canine organisations.³

Current provision: A member shall register all puppies bred by that member that are living at the date of registration...

*Proposed additional provision: A member must register dogs bred or owned by them with a registration body recognised by ANKC Ltd.*⁴

- 2.3. ANKC submits that the Proposed Conduct does not preclude ANKC-Registered Breeders and Owners from registering dogs with non-ANKC recognised registration bodies.
- 2.4. In this context, 'registration' refers to canine pedigree (or ancestry) registration services provided by private organisations, and is not a legal requirement. It is different to the government registration requirements for dog breeders and dogs (discussed at paragraph 5.20 below).
- 2.5. ANKC seeks authorisation because the Proposed Conduct may risk breaching provisions of the Act.⁵

¹ The ANKC Member Bodies are the following organisations: Australian Capital Territory Canine Association Inc (trading as Dogs A.C.T); The Royal New South Wales Canine Council Ltd (trading as Dogs NSW); The North Australian Canine Association Inc (trading as Dogs NT); Canine Control Council (Queensland) Ltd (trading as Dogs Queensland); The South Australian Canine Association Inc (trading as Dogs SA); The Tasmanian Canine Association Inc (trading as Dogs Tasmania); The Victorian Canine Association Inc (trading as Dogs Victoria); and The Canine Association of Western Australia Inc (trading as Dogs West).

² ACCC, Guidelines for Authorisation of conduct (non-merger), March 2019, <https://www.accc.gov.au/publications/guidelines-for-authorisation-of-conduct-non-merger>

³ As stated on page 6 of ANKC's submission dated 28 May 2019, the overseas canine organisations recognised by ANKC are: the American Kennel Club, the Kennel Club (UK), the Canadian Kennel Club, and all other full members, associate members and contract partners of Federation Cynologique Internationale (**FCI**).

⁴ While the proposed additional provision does not contain the word "all", ANKC has confirmed that the provision will make it mandatory that all dogs which are owned or bred by members be registered with an ANKC recognised registration body. See ANKC's letter to the ACCC dated 15 August 2019, page 5.

Rationale

2.6. ANKC submits the Proposed Conduct will address the following concerns.

- (a) It will improve the health and welfare of dogs by better ensuring compliance with ANKC's breeding requirements. In particular, it will give ANKC more visibility over members who may want to breed their dogs and register with competitors (without ANKC knowing) in order to circumvent ANKC's Code regarding frequency of breeding.⁶ For example, ANKC believes some of its breeder members who are also members of Master Dog Breeders and Associates (**MDBA**) are using their MDBA membership to circumvent the ANKC Code and causing their female dogs to breed in consecutive seasons.⁷
- (b) It will prevent breeders who are, or merely purport to be, members of ANKC Member Bodies from engaging in conduct that may mislead, deceive or at the very least confuse the public by marketing dogs as being 'registered' (giving an overall impression that they are registered with a body recognised by ANKC) or 'ANKC registered', when in fact they are registered with non-ANKC recognised registration bodies.⁸

3. Background

ANKC and its Member Bodies

- 3.1. ANKC is the peak body in Australia for promoting breeding, conformation showing, trialling, obedience, and other canine-related activities in relation to 209 types of purebred dogs.⁹ ANKC is a co-ordination body for its Member Bodies and does not register dogs itself.
- 3.2. An ANKC Member Body is the 'peak canine body in each State or Territory'.¹⁰ They operate independently of each other and ANKC on a range of matters.¹¹ They are required to implement ANKC regulations, but can also independently implement their own. This sometimes results in differences in the rules and regulations applied by the ANKC Member Bodies.¹²

⁵ ANKC's application seeks authorisation for conduct that would or might constitute a cartel provision within the meaning of Division 1 of Part IV of the Act; may constitute a contract, arrangement, or understanding within the meaning of section 45 of the Act; and may constitute exclusive dealing within the meaning of section 47 of the Act.

⁶ ANKC letter to the ACCC dated 15 August 2019, page 4; and letter to the ACCC dated 13 September 2019, page 2.

⁷ ANKC considers that the Proposed Conduct will give it more oversight over the breeding of ANKC-registered dogs whose owners choose to use the registration services of other associations or registration bodies to circumvent ANKC's strict Code. See ANKC letter to the ACCC dated 15 August 2019, page 4, and letter to the ACCC dated 20 September 2019, page 2.

⁸ ANKC application for authorisation dated 28 May 2019, page 4.

⁹ A full list of purebred dogs recognised by ANKC, and the breed standards in relation to those dogs, are available on ANKC's website, <http://ankc.org.au/>.

¹⁰ ANKC's submission dated 28 May 2019, page 1. Under the ANKC Constitution, clause 10.1, a Member Body of ANKC is the "Canine Controlling Body which represents a State or Territory of Australia".

¹¹ ANKC Constitution, clause 4(b) states that ANKC Member Bodies have exclusive powers in relation to themselves and their activities with respect to matters including: membership criteria (approval, expulsion and discipline of members), State and Territory publications, affiliation and approval of Clubs and Exhibitions conducted at a State or Territory level, financial management and other matters.

¹² ANKC submits that in practice, rules and regulations made by ANKC Member Bodies are usually drafted in conjunction and consultation with ANKC. However, some submissions have referred to ANKC Member Bodies having inconsistent rules and regulations on certain issues and do not always follow the direction of ANKC.

- 3.3. A core function of an ANKC Member Body is to register purebred dogs bred by its members residing in the same State or Territory where it operates,¹³ and to issue a pedigree certificate to evidence the ancestry and current ownership of a Main or Limited Registered dog (see paragraph 3.10 for details of ANKC registers). Each also enforces the Code (as implemented by it) and takes disciplinary action against members for breaches of the Code/regulations.
- 3.4. ANKC has 31 registered National Breed Councils.¹⁴ At a local level, ANKC Member Bodies are affiliated with a large number of breed clubs and societies, and dog sporting and performance clubs in their States or Territories – a combined 1,139 clubs across Australia.¹⁵ These clubs abide by the rules and regulations of ANKC and the Member Bodies, promote purebred dogs, and hold ANKC-sanctioned conformation, sporting and performance events in relation to dogs registered with ANKC Member Bodies.¹⁶ Members of the public can become a member of these clubs to participate in general training/events, but they must be a financial member of an ANKC Member Body to participate and compete with their dog(s) in ANKC-sanctioned events¹⁷ which can provide social opportunities, confer certain prestige and/or prize money.
- 3.5. There are also some clubs in Australia that are not affiliated with ANKC Member Bodies, such as obedience and breed rescue clubs.¹⁸
- 3.6. Collectively, ANKC Member Bodies are the oldest and largest purebred canine pedigree registration providers in Australia, with a combined 32,270 financial members and an estimated total number of 1,078,543 dogs¹⁹ registered as at 2018 (69,336 of which were newly registered in 2018). Based on ANKC's 2016 statistics,²⁰ 20% of members of ANKC Member Bodies were active breeders. The remaining members are likely to be less active breeders, non-breeders, and/or participants/competitors in various events as dog owners, exhibitors, dog handlers, committee members of affiliated clubs and stewards.
- 3.7. ANKC has mutual recognition agreements with large, established canine registration bodies in the UK, USA and Canada. It is also mutually recognised by 98 other overseas canine registration organisations due to ANKC's 'Associate' membership

¹³ See, for instance, Dogs A.C.T Regulations, Part 3 Memberships, Clause 3.2(1); and Dogs NSW, Part 1 Register and Registration, clause 2.5(a). ANKC Member Bodies may also admit 'Associate Members' who reside in other states (see for instance, Dogs A.C.T Regulations, Part 3 Memberships, clause 3.8).

¹⁴ ANKC's website states, "Any organisation formed for the sole purpose of promoting an interest in, or the improvement and development of a specific breed of dog, and/or varieties of that breed, may apply for registration with the ANKC Ltd as a National Breed Council". <http://ankc.org.au/ContactUs/?id=1290>

¹⁵ There are 428 Affiliated Clubs, Associate Affiliate Clubs and Affiliated Breed Rescue Clubs with Dogs NSW, <https://www.dogsnsw.org.au/Clubs/find-a-club> and <https://www.dogsnsw.org.au/media/2724/breed-clubs-rescue-details-2019.pdf>; 271 Clubs affiliated with Dogs Victoria, https://dogsvictoria.org.au/uploads/affiliates_130819.pdf; 187 Clubs affiliated with Dogs Queensland, <https://www.dogsqueensland.org.au/Club/?id=1135>; 10 Clubs affiliated with Dogs NT, <https://www.dogsnt.com.au/clubs/affiliated-clubs/>; 73 Clubs affiliated with Dogs West, <https://www.dogswest.com/dogswest/Clubs.htm>; 85 Clubs affiliated with Dogs SA, http://www.dogssa.com.au/?page_id=2134; 45 Clubs affiliated with Dogs Tasmania, <http://tasdogs.com/about-tca/affiliates>; and 20 Clubs affiliated with Dogs A.C.T, <https://dogsact.org.au/act-dogs-clubs/>.

¹⁶ See, for instance, ANKC Regulations, Part 8, Member Bodies and Membership, clause 5.4; Dogs A.C.T, Constitution, and Part 2 Regulations, Affiliation and Clubs; Dogs NSW, Part 10, Affiliates, clause 1.3; Dogs NT, Section 2 Rules, Affiliated Clubs, clauses 2.3.1(d) and (f).

¹⁷ For instance, Dogs A.C.T Regulations, Part 3 Memberships, clause 3.4.

¹⁸ In the ACT, non-affiliated clubs may conduct a Dogs A.C.T approved event by paying a fee (see Dogs A.C.T Regulations – Part 2 – Affiliation and Clubs, clause 2.5).

¹⁹ As ANKC submits in its letters to the ACCC dated 15 August and 20 September 2019, this is the total number of dogs registered on ANKC's Main, Limited and Associate registers (all born on or after 1 July 2014, excluding dogs that have been confirmed to be deceased).

²⁰ ANKC, [A Forensic View of Puppy Breeding in Australia](#), 2017.

with Federation Cynologique Internationale (FCI),²¹ the largest canine organisation in the world. FCI recognises only one registration body per country.

3.8. Due to these mutual recognition arrangements, members of ANKC Member Bodies can:

- participate with their dogs in international conformation shows, events and competitions organised by or affiliated with a network of ANKC-recognised overseas registries (in addition to a range of local/national events organised by affiliated clubs);
- import dogs, or semen of dogs, registered with ANKC-recognised overseas registration bodies, which can be re-registered on ANKC's Main Register and be used for breeding; and
- export their ANKC-Main Registered dogs, or semen of those dogs, to members of ANKC-recognised overseas registration bodies, which will recognise and accept them for registration and breeding purposes.

3.9. The ACCC's market inquiries indicate that breeder members of ANKC Member Bodies generally sell ANKC-Main Registered dogs to other breeder members of ANKC Member Bodies or ANKC-recognised overseas registration bodies for the purpose of breeding and/or conformation shows; or to non-breeder members for the purpose of conformation shows. They also generally sell ANKC-Limited Registered dogs to the public as pet dogs. The price difference between a Main and a Limited Registered dog could, in some instances, range from several hundreds to thousands of dollars, reflecting the higher demand for and value of ANKC-Main Registered dogs.²²

Registrations offered by ANKC Member Bodies

3.10. ANKC submits that all dogs must be registered with ANKC Member Bodies in one of the following categories:²³

- (a) Registration on the Main Register²⁴ – for purebred dogs born from parents of the same breed, both of which are registered on ANKC's Main Register.²⁵ Only Main-Registered dogs can have offspring registered as purebred, be exported overseas, or be exhibited at conformation shows (i.e. 'show dogs').
- (b) Registration on the Limited Register²⁶ – for purebred dogs that would have been eligible for registration on ANKC's Main Register but for various reasons

²¹ A list of full members, associate members and contract partners of FCI is available at <http://www.fci.be/fr/members/>.

²² The price difference between an ANKC Main and Limited Registered dog of the same breed may be attributed to the apparent low supply of Main Registered dogs relative to demand. Some submissions indicate that some breeders may not want to sell their champion dogs to others who could go on to breed dogs to compete with their own dogs at conformation shows. Other possible factors influencing the price difference include whether the dogs are from an imported bloodline (and global pricing), the breeding method, the number of puppies in a litter, the ease of producing the litter, and supply and demand.

²³ There may be minor variations in the requirements for these registrations between ANKC Member Bodies. See paragraph 3.2.

²⁴ ANKC Regulations Part 6, Register and Registrations, clause 6.6.1.

²⁵ This includes dogs registered with ANKC-recognised overseas bodies and are imported into Australia. These dogs must be re-registered on ANKC Main Register within 3 months of importation. See ANKC Regulations Part 6, Register and Registrations, clause 3.8.

²⁶ The ANKC's submission dated 28 May 2019 refers to the relevant registers as "the Limited/Associate Register". A submission received by the ACCC notes the ANKC's description of these registers were confusing. Given these are different registers with different registration requirements, they are discussed separately in this draft determination.

(such as having colours or patterns contrary to ANKC's Breed Standard).²⁷ These dogs can remain entire (not desexed), but cannot be bred or exported.²⁸

- (c) Registration on the Associate Register – for dogs not eligible for registration on ANKC's Main or Limited Register (i.e. not recognised by ANKC). These include: purebred dogs without pedigree papers, purebred dogs with pedigree papers issued by non-ANKC recognised registration bodies, crossbred dogs, working dogs,²⁹ or newer 'breeds in development' not yet recognised by ANKC. These dogs must be sterilised before registration, and will have some details (but not pedigree) recorded on the register.³⁰

3.11. Currently, the Code requires members to register dogs bred by them, without specifying the registration body.³¹

3.12. Under the Proposed Conduct, a member of an ANKC Member Body would have to register all dogs they breed or own on the appropriate Register (above) and abide by the requirements of that Register. ANKC submits that this does not preclude members of ANKC Member Bodies from registering dogs with non-ANKC recognised registration bodies.

3.13. In effect, the Proposed Conduct means that an ANKC member who is:

- a dual-registered breeder could only breed ANKC-Main Registered dogs (i.e. purebreds recognised by ANKC³²), when previously they could have chosen to simultaneously breed purebreds with pedigree papers issued by a competing registry, purebreds without pedigree, crossbreds or 'breeds in development' with a competing registry;
- a dual-registered breeder would have to pay to register all puppies on an ANKC Member Body's Register (in addition to any registration with a competing registry), when previously they could have chosen to solely register them with a competing (potentially cheaper) registry; and
- a dual-registered or ANKC-only breeder or owner must register any dogs they own as pets with an ANKC Member Body (and either not breed them, if on the Limited Register; or pay to sterilise them, if on the Associate Register), when previously they had no obligation to register.

3.14. The ACCC notes that ANKC Member Body membership is required for any breeder or owner seeking to breed purebred dogs that can participate in international conformation shows and breed-specific events and competitions, held by or affiliated with the overseas registration bodies recognised by ANKC; and to export purebred dogs that are recognised and can be registered by those registration bodies. Registration of dogs with ANKC Member Bodies on any of the above Registers

²⁷ See ANKC Regulations Part 6, Register and Registrations, clause 6.6.1. These dogs are not eligible to participate in conformation shows, not to be used for breeding and/or export, or not entire or has been desexed (ANKC Regulations Part 6, Register and Registrations, clause 6.6.2).

²⁸ ANKC Regulations Part 6, Register and Registrations, clause 1.2.1; Dogs Victoria, [FAQ – Pedigrees & Registrations](#), accessed 4 October 2019; Dogs NSW, [FAQ](#), accessed 4 October 2019; Dogs A.C.T., Code of Ethics, clause 4.4; Dogs SA, [Main & Limited Register](#), accessed 4 October 2019; Dogs Queensland, Rules 2017, clause 19.2; Dogs West, Regulations: Section A General, clause 5.6.3; Dogs Tasmania, Regulations: 1 July 2019, clause 20D. Dogs NT does not appear to prohibit breeding of Limited Register dogs, but any progeny is ineligible to be registered: NACA Rules and Codes of Conduct, Section 7 – Registration, clause 7.5.

²⁹ See ANKC's letter to the ACCC dated 13 September 2019, page 1.

³⁰ ANKC Regulations Part 6, Register and Registrations, clause 6.7.

³¹ Clause 23 of ANKC's Code.

³² See also paragraph 3.10(a), which refers to the eligibility for ANKC Main Registration.

generally entitles the dogs to participate in various sporting and performance events held by clubs affiliated with ANKC Member Bodies (as mentioned in paragraph 3.4 above).

Competing registration bodies

- 3.15. ANKC submits it is prepared to recognise other registration organisations in Australia as its members (in addition to its existing Member Bodies)³³ if their practices materially meet the Code and other ANKC regulations/rules. However, to date ANKC has not recognised any other organisation in addition to the one Member Body in each State and Territory and specific overseas bodies. An interested party submits there is no clear objective criteria for a registration body to apply for ANKC recognition and doubts whether ANKC will recognise other registration bodies who are competitors.³⁴
- 3.16. The ACCC considers the non-ANKC recognised organisations in Australia are likely to be competitors of ANKC and/or its Member Bodies to varying degrees.

MDBA

- 3.17. The ACCC considers the closest competitor to ANKC and its Member Bodies is MDBA, which was established in 2004.
- 3.18. MDBA registers the same varieties of purebred dogs as ANKC as well as some 'breeds in development' not recognised by ANKC. It promotes itself as an alternative to ANKC, allowing breeders to record more than pedigree information on the pedigree certificate (such as health, temperament and working abilities). It considers this enables breeders to track genetic information and breed healthier dogs, which could be sold to people looking for working dogs and good pet dogs as opposed to 'show dogs'.
- 3.19. MDBA has approximately 14,500 members (of which approximately 2,380 are paying members) and 32,000 registered dogs. The paying members consist of approximately 2,200 breeder members and 180 'Pet Owner' members.³⁵ MDBA estimates 60% to 80% of its breeder members may also be registered breeders with ANKC Member Bodies³⁶ and 50% of its Pet Owner members may be members of ANKC Member Bodies.
- 3.20. MDBA allows breeders to bring dogs with ANKC Main or Limited pedigree registration for registration with MDBA, and to mate those dogs to other dogs of the same breed to produce puppies. MDBA also accepts a range of other pedigree registrations from all over the world, and MDBA members have successfully imported dog semen from overseas registries.
- 3.21. MDBA pedigree registration is not recognised by ANKC or any overseas canine registration organisations. Therefore, MDBA members have fewer exporting opportunities because dogs with MDBA pedigree cannot be registered with any

³³ These are outlined on pages 7 to 9 of ANKC's submission dated 28 May 2019.

³⁴ Submission from an interested party to the ACCC dated 28 May 2019. Another submission dated 29 August 2019 also raised similar issues. In response to the ACCC's information request, ANKC states in its letter to the ACCC dated 15 August 2019 that it will recognise other registries if they conform to the ANKC Code, regulation and other rules and is prepared to document the requirement for recognition.

³⁵ These are people who have purchased a dog from an MDBA breeder and/or would like to access MDBA advice and study its courses, and have paid a fee and agreed to rules, regulations and codes to upgrade their membership

³⁶ MDBA indicates that initially all of MDBA members were ANKC members, however some members gradually ceased membership with ANKC. These 'dual members' may not register all their dogs with both registries.

overseas registration body. Despite this, MDBA members have exported two newer breeds of dogs (only available through MDBA breeders at this time) to individual buyers in 27 countries, who in turn became individual members of MDBA and bred dogs subsequently registered with MDBA.³⁷

- 3.22. MDBA submits that its members have fewer (or no) opportunities to access international conformation shows and other events compared to members of ANKC Member Bodies. MDBA has been establishing its Breed Advisory Committees, but has not held any dog-related events. It intends to launch its own events in the future.

Other registration bodies in Australia

- 3.23. Based on information gathered, the ACCC considers there are likely 6-7 other registration bodies operating in Australia for registering purebreds, crossbreds or developing breeds. Each of these bodies has limited membership numbers (approximately 160 members or fewer). Two of these appear to be operating with difficulties, while others appear to be more established. Some are single-breed registries,³⁸ with some operating independently while others are working towards achieving ANKC 'recognition' for their breed (meaning the breed would be recognised by ANKC as a purebred and be accepted into ANKC's Main Register).³⁹ One of the established registration body registers breeders (who appear to primarily breed crossbred dogs for the pet market), rather than registering dogs.⁴⁰
- 3.24. Based on information gathered about the scale and operation of these organisations, the ACCC considers they are unlikely to be operate in close competition with ANKC, or be able to exert strong competitive pressure on ANKC at this time.
- 3.25. There are other organisations offering registration services for dogs bred for other specific purposes, such as for managing livestock.⁴¹ The ACCC does not consider there is any significant overlap between these other registration bodies and the ANKC Member Bodies, though some breeders may utilise the services of them as well as the ANKC Member Bodies. The possible impact of the Proposed Conduct on breeders is discussed at paragraphs 5.43 to 5.53 below.
- 3.26. A large number of puppies are born in Australia each year without any pedigree registration papers. These puppies are from various sources including commercial breeders,⁴² private breeders or 'backyard breeders', or pounds and shelters.

4. Consultation

- 4.1. A public consultation process informs the ACCC's assessment of the likely public benefits and detriments from the Proposed Conduct.
- 4.2. The ACCC invited submissions from a range of potentially interested parties and received 16 responses.⁴³

³⁷ MDBA's submission to the ACCC dated 4 September 2019.

³⁸ For instance, the Mini Foxie Club of Australia and the Australian Bulldog Association.

³⁹ The most recent breed that was accepted into ANKC's Main Register appears to be the 'Tenterfield Terrier'.

⁴⁰ The Australian Association of Pet Dog Breeders.

⁴¹ For instance, the Working Kelpie Council of Australia.

⁴² However, some commercial breeders may also utilise registration services offered by private canine registration organisations.

⁴³ A list of the parties consulted and the public submissions received is available from the ACCC's public register www.accc.gov.au/authorisationsregister.

- 4.3. Five submissions (from three ANKC Member Bodies and two ANKC National Breed Councils) support the application.
- 4.4. There were 10 opposing submissions⁴⁴ from MDBA, Australian Federation for Livestock Working Dogs and other working dog organisations, ANKC-registered breeders and dog owners. One submission was a response to an ACCC information request.⁴⁵
- 4.5. The ACCC also sought additional information from ANKC during the process. Public submissions and responses from ANKC, and submissions from interested parties are available on the Public Register for this matter.⁴⁶

5. ACCC assessment

- 5.1. The ACCC's assessment of the Proposed Conduct is carried out in accordance with the relevant authorisation test contained in the Act.
- 5.2. ANKC's application seeks authorisation for conduct that would or might:
 - (a) constitute a cartel provision within the meaning of Division 1 of Part IV of the Act;
 - (b) constitute a contract, arrangement, or understanding within the meaning of section 45 of the Act; and
 - (c) constitute exclusive dealing within the meaning of section 47 of the Act.⁴⁷
- 5.3. Consistent with subsections 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied in all the circumstances that the conduct would result, or be likely to result, in a benefit to the public, and that benefit would outweigh the detriment to the public that would result, or be likely to result (the **authorisation test**).⁴⁸

Relevant area of competition

- 5.4. To assess the likely effect of the Proposed Conduct, the ACCC identifies the relevant areas of competition likely to be impacted.
- 5.5. ANKC submits the relevant area of competition is the Australian market for dog registration services in Australia.

⁴⁴ Two interested parties respectively provided two sets of submissions to the ACCC.

⁴⁵ Submission from the Working Kelpie Council of Australia dated 21 August 2019. The submission did not express a view about the application; however the ACCC notes that the Working Kelpie Council of Australia is a member of the Australian Federation for Livestock Working Dogs, which made a submission to the ACCC on 27 June 2019 on behalf of its members opposing the application for authorisation.

⁴⁶ <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/australian-national-kennel-council-limited>

⁴⁷ To the extent the Proposed Conduct constitutes exclusive dealing within the meaning of section 47 of the Act, the anti-overlap provisions of Part IV may apply.

⁴⁸ In circumstances in which the ACCC is not satisfied that the conduct the subject of the application is likely to result in a net public benefit, the ACCC will consider whether there are parts of the conduct which might breach only the non-per se provisions of the Act, and do not raise concerns under the per se provisions of the Act. If the ACCC determines that certain parts of the conduct that might breach only the non-per se provisions of the Act can be segregated from the conduct that might breach the per se provisions, the ACCC may authorise those 'non-per se' parts of the conduct if it is satisfied in all the circumstances that they would not have the effect, or would not be likely to have the effect, of substantially lessening competition.

5.6. MDBA submits the relevant area of competition is the Australian purebred dog registry market.

5.7. The ACCC notes that:

- the Proposed Conduct relates primarily to the registration of purebred dogs;
- there is very limited movement between the ANKC registers (for example, a purebred dog would not normally be registered on the Main Register and then moved onto the Associate Register) which suggests that there is limited overlap between the registration for purebred and non-purebred dogs; and
- a core function of ANKC Member Bodies is to register purebred dogs, and National Breed Councils are typically purebred associations.

5.8. Taking these factors into account, the ACCC considers the relevant area of competition is the supply of purebred dog registration services in Australia (but recognises that members of ANKC Member Bodies may also breed or own other types of dogs, and therefore could be affected by the Proposed Conduct).

Future without the Proposed Conduct

5.9. In applying the authorisation test, the ACCC compares the likely future with the Proposed Conduct that is the subject of the authorisation to the likely future in which the Proposed Conduct does not occur.

5.10. ANKC submits that without the Proposed Conduct, breeders who split their breeding activities across multiple registries will be able to:

- continue to bypass the Code, as ANKC would continue to have limited oversight over the breeding of ANKC-registered dogs whose owners choose to use the registration services of other associations or registration bodies to circumvent ANKC's strict Code; and
- continue to mislead the public as to whether dogs bred by those breeders are in fact registered with ANKC Member Bodies or not.

5.11. The ACCC considers that in the likely future without the Proposed Conduct, the ANKC would not insert the new provision into its Code and Member Bodies would therefore not be required to implement it. This means that without the Proposed Conduct, a breeder or owner who wishes to be a member of an ANKC Member Body could also:

- breed dogs registered solely with another registration body, including purebreds, crossbreds and breeds not recognised by ANKC;⁴⁹ and
- own dogs without having to register them with ANKC (and sterilise them, if not a purebred)

without having to cease their ANKC membership (or risk breaching the Code).

5.12. In the likely future without the Proposed Conduct, breeders and owners would still have to abide by State and Territory registration schemes (outlined in paragraph 5.20), including any breeding requirements.

⁴⁹ ANKC members are currently prohibited from breeding ANKC Main Register dogs with non-ANKC Main Register dogs and this would remain the case with the Proposed Conduct.

5.13. However, without the Proposed Conduct, each Member Body could still choose to implement codes and/or regulations governing registration independently of the ANKC. In this regard, the ACCC notes interested party submissions that state that three of the eight ANKC Member Bodies currently have rules stating members 'shall not register a dog with a Registry Body not recognised by ANKC Ltd',⁵⁰ while a fourth Member Body previously had a similar rule;⁵¹ and a fifth Member Body currently requires members not to breed non-ANKC recognised breeds of dogs (with exceptions).⁵²

Public benefits

5.14. The Act does not define what constitutes a public benefit. The ACCC adopts a broad approach. This is consistent with the Australian Competition Tribunal (the **Tribunal**) which has stated that the term should be given its widest possible meaning, and includes:

*...anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements ... the achievement of the economic goals of efficiency and progress.*⁵³

5.15. The ACCC has considered the following public benefits:

- protecting vulnerable breeding dogs; and
- preventing misleading or deceptive conduct in relation to the registration status of dogs.

Protecting vulnerable breeding dogs

5.16. ANKC submits that the Proposed Conduct seeks to improve the health and welfare of dogs by better ensuring compliance with ANKC's breeding requirements. In particular, ANKC submits that the Proposed Conduct will prevent unscrupulous breeders from bypassing the ANKC Code by splitting their breeding activities between multiple registries, and overbreeding their female dogs to the dogs' detriment.⁵⁴ It states that it has unsuccessfully sought the co-operation of MDBA breeders to prevent overbreeding.

5.17. ANKC considers that, with the Proposed Conduct, it would be able to more directly and effectively protect the integrity of its canine ancestry database through disciplinary actions against members who breach its Code.⁵⁵ Dogs West similarly submits the Proposed Conduct will stop breaches of ANKC breeding regulations.⁵⁶

5.18. MDBA submits it has a searchable and efficient database, which it uses to identify any breaches by its members of the MDBA Codes of Ethics. MDBA also submits all breeders must abide by State and local laws in relation to breeding practices. It submits these laws are enforced by several bodies including the RSPCA, and ANKC

⁵⁰ Dogs NSW, Regulations Part XIII Code of Ethics, clause 29; Dogs Victoria, Regulations, Codes, Policies & Procedures, Part 4 Regulations – Registers and Registrations, clause 4.1.2.1; Dogs Queensland, Rules 2017, Code of Ethics, clause 2.1(23).

⁵¹ Dogs West, Regulations, Section H Code of Ethics (last amended 1 November 2017), clause 2.1.2.

⁵² Dogs Tasmania, Code of Behaviour and Ethics, clause 15(2).

⁵³ Queensland Co-operative Milling Association Ltd (1976) ATPR 40-012 at 17,242; cited with approval in Re 7-Eleven Stores (1994) ATPR 41-357 at 42,677.

⁵⁴ ANKC letters to the ACCC dated 19 August 2019, 13 September 2019 and 20 September 2019.

⁵⁵ ANKC letters to the ACCC dated 13 September and 20 September 2019.

⁵⁶ Dogs West's submission to the ACCC dated 28 June 2019.

and MDBA could undertake their own investigations.⁵⁷ It further submits ANKC's frequency of breeding requirement is less stringent than NSW State law.

- 5.19. The ACCC is not convinced about the extent to which the Proposed Conduct is likely to result in this claimed public benefit, for the reasons outlined below.
- 5.20. First, the ACCC notes many States and Territories Governments have introduced registration schemes for dog breeders and dogs to improve animal welfare.⁵⁸ These schemes apply to all breeders, regardless of whether they are also members of any private canine registration body.⁵⁹ Absent the Proposed Conduct, these schemes will continue to regulate the conduct of breeders; and local Councils, RSPCA inspectors, Animal Welfare League and the police (as applicable in each jurisdiction) will continue to enforce the laws. Therefore, the Proposed Conduct is only likely to result in this claimed public benefit where an ANKC Member Body's breeding requirements are *more* stringent than those required by the State or Territory laws that breeders must already comply with (which, at least in relation to ANKC's stated protections for overbreeding of female dogs, is generally not the case).⁶⁰
- 5.21. Second, the ACCC understands that most members of ANKC Member Bodies are not active breeders. Therefore, this claimed public benefit extends only to the minority of ANKC Member Body members, and only then to those members who may be breeding 'irresponsibly'.
- 5.22. Third, the ACCC considers that requiring members of ANKC Member Bodies to register their dogs which are not eligible for the Main Register with ANKC-recognised bodies will not achieve the claimed public benefit of protecting *breeding* dogs. This is because after registration, such dogs would be prohibited from being used for breeding (as they would be either prohibited from breeding if on the Limited Register; or require sterilisation if on the Associate Register).
- 5.23. Accordingly, the ACCC considers that the Proposed Conduct is likely to result in a small public benefit in the form of protecting vulnerable breeding dogs. However, this

⁵⁷ MDBA's submissions to the ACCC dated 22 June 2019 and 4 September 2019.

⁵⁸ Australia Capital Territory, *Animal Welfare (Breeding Standard) Determination 2015 (No 1)* and *Domestic Animal Act 2000*, ss 14 and 72(1). Queensland, *Queensland Animal Welfare Standards and Guidelines for the Breeding of Dogs and their Progeny and Animal Management (Cats and Dogs) Act 2008*, ss 43 and 44. New South Wales, *Animal Welfare Code of Practice – Breeding Dogs and Cats, Companion Animals Act 1998*, s 6, and breeders of NSW Government recognised organisations may obtain a discount for registering non-desexed dogs, <https://www.olg.nsw.gov.au/public/dogs-and-cats/information-for-professionals/breeders-and-pet-shops>. South Australia, *Standards and Guidelines for Breeding and Trading Companion and Dog & Cat Management Act 1995*, Part 7. Western Australia, *Draft Standards and Guidelines for the Health and Welfare of Dogs in WA* (currently being developed), and *Dog Act 1976*. In the Northern Territory, local councils have responsibility for managing dogs, see e.g. *Darwin City Council By-laws 1994*, Part 3, Subdivisions 2 and 3. Victoria, *The Code of Practice for the Operation of Breeding and Rearing Businesses 2014* and *Domestic Animal Act 1994*. Tasmania, *The Animal Welfare (Dogs) Regulations 2016* and *Dog Control Act 2000*.

⁵⁹ Although all breeders who are members of ANKC Member Bodies must comply with these local laws, in some states such breeders may be exempt from having to officially register as a domestic animal business. For example, in Victoria breeders must only register if they keep more than 10 fertile females and no more than 2 are not registered with Dogs Victoria: Dogs Victoria, [The Law & You](#), accessed 30 September 2019; Victorian State Government: Jobs, Precincts and Regions, [Domestic animal businesses](#), 16 May 2019; in Queensland, breeders do not need to register if they are a member of Dogs Queensland: Queensland Government: Business Queensland, [Dog breeding animal welfare standards and registration](#), 30 September 2018.

⁶⁰ When compared to ANKC's Code of Ethics s 13, 14 and 15 (as outlined in its letter of 15 August 2019), State or Territory laws appear to be the same or more stringent than the ANKC Code in (at least) 12 out of 21 instances. In the remaining instances, there did not appear to be an equivalent to the ANKC's clauses. The ACCC notes, however, that Member Bodies may be able to impose stricter requirements. See Victoria, *The Code of Practice for the Operation of Breeding and Rearing Businesses 2014*, s 6(3)(c); New South Wales, *Animal Welfare Code of Practice – Breeding Dogs and Cats, Companion Animals Act 1998*, s 10.1.1.9; Queensland, *Queensland Animal Welfare Standards and Guidelines for the Breeding of Dogs and their Progeny and Animal Management (Cats and Dogs) Act 2008*, ss G.12 and G.11; South Australia, *Standards and Guidelines for Breeding and Trading Companion and Dog & Cat Management Act 1995*, s 10.1.1.1; Tasmania, *Animal Welfare (Dogs) Regulations 2016*, s. 19(2); Western Australia, *Draft Standards and Guidelines for the Health and Welfare of Dogs in WA* (currently being developed), s 15.3; Australia Capital Territory, *Animal Welfare (Breeding Standard) Determination 2015 (No 1)*, ss 2-4.

benefit is only likely to arise in a limited set of circumstances because ANKC breeding requirements are generally the same or less stringent than State and Territory laws and the issue appears to only arise in respect of a small number of members of ANKC Member Bodies who may be breeding 'irresponsibly'.

Preventing misleading or deceptive conduct in relation to the registration status of dogs

- 5.24. ANKC submits that the Proposed Conduct is intended to minimise conduct that may mislead, deceive or, at the very least, confuse the public and ensure certainty in respect of the registration status of dogs.⁶¹ In particular, ANKC has expressed concern about instances where breeders (whether members of ANKC Member Bodies or not) have marketed their dogs as 'registered' or 'ANKC registered' when they are registered with non-ANKC recognised entities. It submits that the Proposed Conduct will result in a public benefit by addressing this issue.
- 5.25. MDBA submits the Proposed Conduct would not stop someone claiming to be a registered member of an ANKC Member Body, MDBA or any other registration body.⁶² An interested party submits if someone advertised a dog as 'ANKC Registered' but sold an MDBA Registered dog instead, the purchaser could pursue this as a civil matter.⁶³
- 5.26. The ACCC notes that many States and Territories regulate the sale or giving away of dogs, including mandating microchipping of dogs by a certain age or before sale,⁶⁴ and requiring the inclusion of the microchip number (or some other breeder identification number) in the advertisement.⁶⁵ Some States and Territories also have searchable databases for breeders and dogs registered with local Councils.⁶⁶ ANKC requires all dogs to be microchipped before registration on the ANKC registers,⁶⁷ and the microchip number is printed on the ANKC pedigree certificates. These arrangements already promote traceability of dogs and accountability of breeders.
- 5.27. The ACCC also notes that this claimed public benefit appears to cover a range of different circumstances.
- 5.28. In relation to breeders who are not members of ANKC Member Bodies and sell dogs as 'registered' or 'ANKC registered', the ACCC considers the Proposed Conduct would not address these concerns because such breeders are not subject to the Code. Market inquiries undertaken by the ACCC confirm many other registration bodies have also encountered similar issues of puppy sellers falsely claiming to be registered members of these bodies.
- 5.29. In relation to breeders who are members of ANKC Member Bodies but are marketing dogs that are registered with competing registration bodies as 'ANKC registered', this

⁶¹ ANKC submission to the ACCC dated 28 May 2019; and ANKC letter to the ACCC dated 15 August 2019.

⁶² MDBA submissions to the ACCC dated 22 June 2019.

⁶³ Submission from an interested party dated 29 August 2019.

⁶⁴ Australia Capital Territory, *Domestic Animal Act 2000*, s 84(1). Queensland, *Animal Management (Cats and Dogs) Act 2008*, s 14. New South Wales, *Companion Animals Act 1998*, s 8. South Australia, *Dog & Cat Management Act 1995*, 42A. Western Australia, *Dog Act 1976*, s 21. In the Northern Territory, local councils have responsibility for managing dogs, see e.g. *Darwin City Council By-laws 1994*, Part 3, subdivisions 2, s 56. Victoria, *Domestic Animal Act 1994*, s 10C. Tasmania, *Dog Control Act 2000*, s 15A.

⁶⁵ Australia Capital Territory, *Domestic Animal Act 2000*, s 72K(2); Queensland, *Animal Management (Cats and Dogs) Act 2008*, s 43ZC and 43ZF. New South Wales, *Prevention of Cruelty to Animals Act 1979*, s 23A. South Australia, *Dog & Cat Management Act 1995*, s 71(2). Victoria, *Domestic Animal Act 1994*, 12C.

⁶⁶ For instance, NSW Government's [Pet Registry](#), South Australian Government's [Dog and Cats Online System](#), and Victorian Government's [Pet Exchange Register](#), and Queensland Government's [Dog Breeder Register](#).

⁶⁷ ANKC Regulations, Part 6, Register and Registration, clause 5.3.

is currently an objectively false claim and would remain so with or without the Proposed Conduct.

- 5.30. In relation to breeders who are members of ANKC Member Bodies but are marketing dogs that are registered with competing registration bodies as 'registered', such individuals are currently not breaching the Code. However, they may be implying to the consumer that the fact a breeder is a member of an ANKC Member Body necessarily means all their dogs are registered with the ANKC, when this does not need to be the case. To the extent that such conduct is occurring, the ACCC considers that the Proposed Conduct is likely to result in some public benefit because *all* breeders who are members of ANKC Member Bodies would now only be permitted to breed or own *ANKC registered* dogs (i.e. in theory, each of an ANKC member's dogs would be ANKC-registered). However, the ACCC has not been provided with evidence about the prevalence of such representations among breeders who are members of ANKC Member Bodies.
- 5.31. The ACCC considers that the Proposed Conduct is likely to result in a small public benefit in the form of preventing misleading or deceptive conduct in relation to the registration status of dogs. However, this is only likely to arise where a member of an ANKC Member Body markets dogs as 'registered' when they are registered with competing entities. For instance, if a breeder is a dual member of an ANKC Member Body and an MDBA member, and they market their dog as 'registered', that dog *will* now be 'ANKC Registered' (even if also registered with that other registry).

ACCC conclusion on public benefits

- 5.32. Overall, the ACCC considers that the Proposed Conduct is only likely to result in some small public benefits. In a limited set of circumstances, it will provide some additional protection for vulnerable breeding dogs and reduce the risk of misleading or deceptive conduct in relation to the registration status of dogs.

Public detriments

- 5.33. The Act does not define what constitutes a public detriment. The ACCC adopts a broad approach. This is consistent with the Tribunal which has defined it as:

*...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.*⁶⁸

- 5.34. The ACCC has considered the following public detriments:

- reducing competition in the supply of purebred dog registration services in Australia; and
- restricting choice for members of ANKC Member Bodies.

Reducing competition in the supply of purebred dog registration services

- 5.35. Several members of ANKC Member Bodies submit the Proposed Conduct is aimed at removing competition from MDBA, or will limit the ability of breeders to seek competitive registration options.⁶⁹

⁶⁸ Re 7-Eleven Stores (1994) ATPR 41-357 at 42,683.

⁶⁹ Interested parties' submission to the ACCC dated 20 June, 22 June, 28 June and 29 August 2019.

5.36. Some interested parties consider some ANKC Member Bodies are already engaging in conduct that potentially raises competition concerns, including:

- having rules prohibiting members from registering dogs with competing registries (as mentioned in paragraph 5.13), suspending and fining members for registering dogs with MDBA;⁷⁰
- requiring members to only mate their ANKC-Main Registered purebred dog to another ANKC-Main Registered purebred dog, and prohibiting members from mating their ANKC Main-Registered purebred dogs to other types of dogs in many situations, including dogs that are not registered on ANKC's Main Register but are instead registered with competitors;⁷¹ and
- prohibiting members from exhibiting dogs at 'unrecognised' dog shows.⁷²

5.37. MDBA states that many of its members wish to register some of their dogs with the MDBA but need to remain members of the ANKC due to the ANKC being the only FCI (International Kennel Club)-recognised registry in Australia. This gives the ANKC a monopoly on FCI-recognised canine sports and conformation activities in Australia and internationally. If breeders wish to participate in ANKC/FCI-approved events and/or sell dogs and semen to ANKC/FCI-affiliated registries, they must be members of an ANKC Member Body. MDBA considers the Proposed Conduct will extend ANKC and its Member Bodies' current monopoly on pedigree registration of purebred dogs and related canine activities, and will substantially lessen competition in the market.⁷³

5.38. ANKC submits the Proposed Conduct is likely to result in minimal detriment in the Australian market for registration services. It estimated its share of the market for the supply of all puppies in Australia is 15%; but it is not able to estimate its share of the market for registration services. ANKC has submitted that it is aware of only a very small number of breeder members of ANKC Member Bodies who currently obtain registration services from non-ANKC recognised registration bodies. However, it has also submitted it is not able to estimate the number of these breeders, given other registration bodies such as MDBA do not publish statistics.

5.39. The ACCC notes ANKC's submission that the Proposed Conduct does not preclude members from registering dogs with non-ANKC recognised registration bodies.

5.40. However, the ACCC considers ANKC and its Member Bodies have significant market power in the supply of purebred dog registration services in Australia, arising from their

⁷⁰ MDBA's submission to the ACCC dated 21 June 2019, at page 4. The ACCC is also aware that Dogs NSW has procedures dealing with complaints regarding its members advertising "unregistered dogs, cross breeds, unrecognised breeds, dog sold without papers" (see Annexure B of ANKC's submission dated 28 May 2019). In addition, Dogs NSW may delay processing of transactions in respect of a member if that member is being investigated (DOGS NSW Regulations, Part I, Clause 2.15), including for breaching Dogs NSW's rule regarding non-registration of dogs with a registration bodies not recognised by ANKC. During the suspension period, the member would not be able to register puppies with Dogs NSW, and late registration would attract a much higher fee than earlier registration. The fee charged by Dogs NSW for registering dogs on the ANKC Main or Limited Register increases from \$37 within 6 months of age of the dog to \$884 for over 36 months. See <https://www.dogsnsw.org.au/media/2469/scale-of-charges-members-2019-2020.pdf>.

⁷¹ An interested party's submission to the ACCC dated 29 August 2019, which refers to Dogs Queensland Code of Ethics, clause 2.1(12). See also ANKC Code, clause 16; Dogs A.C.T Regulations, Part 16 Code of Ethics, clause 16.1(6); Dogs NSW, Part XIII Code of Ethics, clause 14 (however, the clause also states the prohibition against crossbreeding does not apply to guide and working dogs); Dogs NT, Section 10 Code of Ethics and Practices, clause 10.3(f); Dogs SA, Part XV Codes of Ethics of Members, clause 6; Dogs Tasmania, Code of Ethics and Behaviour, clause 15(1); Dogs Victoria, Part 20 Code of Practice, clause 20.1.15; Dogs West, Code of Ethics, clause 2.22.

⁷² An interested party submission to the ACCC dated 20 June 2019. See also, Dogs A.C.T, Regulations, Part 3, Memberships, clauses 3.31 (b) and (c); Dogs NSW, Regulations, Part II Shows, clauses 14.9 and 15.2; Dogs Queensland, Rules, clause 78.4; Dogs West, Regulations, Section A General, clause A46; Dogs Victoria, Rules, clause 2.18; Dogs NT, Section 1 Membership, clause 1.5.8; Dogs Tasmania, Regulations, clauses 65 and 69.

⁷³ MDBA's submission to the ACCC dated 21 June 2019, at pages 3-5; and submission dated 4 September 2019.

mutual agreements with FCI and other overseas registries; their long-standing branding and reputation as purebred canine pedigree registration providers; and affiliation with a large network of clubs which hold various ANKC-sanctioned events.

- 5.41. The ACCC also notes that a membership with an ANKC Member Body may come with other advantages currently not available to members of competing registration bodies, such as exemptions from certain government registration requirements for dog breeders in Queensland⁷⁴ and Victoria,⁷⁵ and access to services provided by certain vets and pet food suppliers⁷⁶ and online advertising forums⁷⁷.
- 5.42. In this context, the ACCC considers that the Proposed Conduct is likely to mean that members of ANKC Member Bodies will cease obtaining registration services and/or membership with competing registration bodies to be exclusively with the ANKC Member Bodies. This may potentially foreclose or reduce the commercial viability of a competitor.
- 5.43. In particular, the ACCC considers breeder members who currently have a breeding program with both ANKC and with a competing registration body⁷⁸ are likely to be incentivised to register their dogs exclusively with the ANKC Member Bodies. In this situation, breeder members of ANKC Member Bodies are likely to sell their non-ANKC recognised dogs to avoid registration on the Associate Register and their subsequent sterilisation, and could potentially suffer a capital loss (due to not being able to recoup their costs), and/or future income loss from not being able to breed these dogs.
- 5.44. The ACCC notes that these breeder members could choose not to be members of ANKC Member Bodies and register some or all of their currently ANKC-registered dogs with a competing registration body. However, it is likely they would suffer a capital loss and/or future income loss due to the reduced demand and lower prices for these dogs and their puppies, given these puppies will not be able to be registered on ANKC's Main Register. This is because selling a Main Registered dog is akin to selling a right to access conformation shows affiliated with ANKC or its recognised overseas registration bodies; and purebred dogs could be sold to other members of ANKC Member Bodies or recognised overseas registration bodies.⁷⁹
- 5.45. The ACCC considers that breeder members of ANKC Member Bodies who are contemplating starting a breeding program with a competing registration body (whether by using their ANKC purebred dog as one of the parents or using parent dogs registered only with a competing registration body) are less likely to do so under the Proposed Conduct, as all resulting puppies would have to be registered with ANKC in addition to their registration with the other body.⁸⁰ Such dual registration of dogs could be costly; and puppies would not be recognised by ANKC, and thus would only be

⁷⁴ <https://www.business.qld.gov.au/industries/farms-fishing-forestry/agriculture/livestock/animal-welfare/dog-breeder-registration>.

⁷⁵ <http://agriculture.vic.gov.au/pets/domestic-animal-businesses/breeding-and-rearing-businesses/regulations-for-dog-breeders>.

⁷⁶ MDBA's submission to the ACCC dated 4 September 2019.

⁷⁷ For instance, DogzOnline only provides advertising services to registered members of ANKC Member Bodies. See DogzOnline membership terms and conditions, <https://www.dogzonline.com.au/members/terms.asp>.

⁷⁸ The ACCC understands that these breeders would have invested money to purchase, feed, care for and health-test the breeding stock, which could cost upwards of \$24,000, depending on the demand for the breed and/or whether the dogs are imported.

⁷⁹ ANKC submits that Australian dogs registered with ANKC Member Bodies, and dogs registered with other ANKC-recognised registration organisations, typically command higher prices: Submission dated 28 May 2019.

⁸⁰ The ACCC notes that breeder members who wish to start a breeding program with other non-ANKC recognised registration bodies may already be prevented from doing so. A number of ANKC Member Bodies already have rules prohibiting members from registering dogs with a competing registration body, and that is unlikely to change with the Proposed Conduct.

registrable on ANKC's Associate Register and must be sterilised. This is likely to further weaken the competitive constraint by other registration bodies.

- 5.46. Given that MDBA currently has 60%-80% of breeder members who are also members of ANKC Member Bodies, the ACCC considers that the Proposed Conduct is likely to significantly weaken the competitive constraint posed by MDBA and other small competing registration bodies in the supply of purebred dog registration services in Australia. The ACCC considers that this is likely to constitute a material public detriment.

Restricting choice for members of ANKC Member Bodies

- 5.47. MDBA submits many breeder members of ANKC Member Bodies wish to breed dogs which are not able to be registered with the ANKC Member Bodies. They breed purebred dogs and would like to provide a pedigree document for their dogs and puppies and the MDBA can provide them with this service. It considers consumers should have the ability to access the most appropriate service suitable to their needs without restrictions.⁸¹
- 5.48. Interested parties submit the Proposed Conduct will restrict members' right to free trade and take away their choices (noting some ANKC Member Bodies already prohibit members for registering dogs with competitors via exclusive registration clauses).⁸²
- 5.49. In response, ANKC submits the objections are concerned more with protecting commercial dealings than supporting protection for vulnerable breeding female dogs.⁸³ It submits the proposed mandatory registration requirement would only affect current members of ANKC Member Bodies, and they could sidestep compliance by forgoing their individual membership with ANKC Member Bodies. It considers dog breeders do not have to use any registration services to breed, own or sell dogs; and most commercial breeders and private breeders do not use registration services at all.⁸⁴
- 5.50. As discussed above, the ACCC considers that the practical effect of the Proposed Conduct is likely to be to encourage exclusive registration with the ANKC Member Bodies, which is likely to restrict choice for members of ANKC Member Bodies in the following ways.
- 5.51. First, as noted above, breeder members of ANKC Member Bodies who currently have a breeding program with both ANKC and with a competing registration body are likely to be incentivised to cease obtaining registration services and/or membership with those other registration bodies to be exclusively with the ANKC Member Bodies.
- 5.52. Second, as also discussed above, breeder members of ANKC Member Bodies who wish to start a breeding program separate to their ANKC breeding program may be discouraged from doing so because of the costs associated with dual registration, or unable to do so if ANKC rules do not allow breeding of those dogs, the breed is not recognised by ANKC and/or the puppies can only be registered on ANKC's Associate Register under the ANKC rules and therefore be sterilised.
- 5.53. Third, the Proposed Conduct would restrict members' freedom to breed or own non-ANKC recognised dogs for non-commercial reasons. For instance, a dog owner who is a member of an ANKC Member Body may have imported Tamaskan or Eurohound

⁸¹ MDBA's submission to the ACCC dated 22 June 2019.

⁸² Interested parties' submissions to the ACCC dated 20 June, 22 June, 28 June and 29 August 2019.

⁸³ ANKC letter to the ACCC dated 15 August 2019.

⁸⁴ ANKC letters to the ACCC dated 13 September and 20 September 2019.

dogs, and bred them to produce puppies to be trained to participate in sled dog sports not affiliated with ANKC Member Bodies. These breeds are not currently recognised by ANKC,⁸⁵ and registering these dogs and puppies on the Associate Register would require sterilisation (and payment of a registration fee).⁸⁶ In this regard, the ACCC notes an interested party submission which raises a concern that the Proposed Conduct will limit the gene pool of available breeding dogs and the ability of breeders to breed for type and temperament outside of the ANKC's adopted international breed standards, amongst other things.⁸⁷ This may adversely affect the future viability of these new breeds in Australia, including diminishing their population.

- 5.54. Fourth, the Proposed Conduct would apply to all members of ANKC Member Bodies at all levels of membership.⁸⁸
- 5.55. MDBA submits that this means 32,270 current members⁸⁹ of ANKC Member Bodies would not be allowed to own a dog registered with it, any other registration body, any other breeder or rescue organisation.
- 5.56. Given ANKC submits its rationale for the Proposed Conduct relates to (a very small number of) breeders members of ANKC Member Bodies, it is not clear to the ACCC why all members of ANKC Member Bodies should be subject to the Proposed Conduct. Moreover, the ACCC notes the majority members of ANKC Member Bodies are not active breeders, and some are not dog breeders and/or are not entitled to breed ANKC-registered dogs at all.⁹⁰
- 5.57. While (contrary to MDBA's submission) the Proposed Conduct does not prevent members from owning dogs not recognised by ANKC,⁹¹ it appears that members would be required to sterilise them⁹² and pay a fee to register them on the ANKC's Associate Register⁹³ in addition to paying to register them with local Councils. The ACCC considers that the Proposed Conduct is likely to result in additional, unnecessary costs to be paid by members to ANKC Member Bodies for each dog they acquire and own, whether for companionship, rescue or other purposes.
- 5.58. The ACCC considers that these restrictions on the choices of members of ANKC Member Bodies are likely to constitute a material public detriment.

ACCC conclusion on public detriments

- 5.59. The ACCC considers that the Proposed Conduct is likely to result in material public detriments by reducing competition in the supply of purebred registration services in Australia and restricting choice for members of ANKC Member Bodies.

⁸⁵ The ACCC has been advised that these breeds originate from Europe, and that for them to be recognised by ANKC as an emerging breed in development, an ANKC-recognised overseas registry would have to apply for recognition of breed status with ANKC.

⁸⁶ A member may also wish to keep a pet dog as entire for reasons relating to the health of the dog (though certain Council requirements may also make it more difficult to do so, including via higher registration fees for undesexed dogs).

⁸⁷ Submission to the ACCC dated 28 June 2019.

⁸⁸ ANKC's submission to the ACCC dated 28 May 2019, and letters to the ACCC dated 13 September 2019.

⁸⁹ MDBA's submission dated 22 June 2019 refers to 34,000 members of ANKC Member Bodies. This number has been corrected to 32,270, which is the membership number for 2018 published on ANKC's [website](#).

⁹⁰ For instance, members that have "Junior", "Handler", "Associate" or "Companion" memberships with their ANKC Member Bodies.

⁹¹ Such as dogs without pedigree papers, dogs with pedigree papers issued by competitors, and dogs adopted from pounds and animal rescue organisations that are not eligible for ANKC Main or Limited Registration.

⁹² See also footnote 86.

⁹³ Using the available fee schedules published on the websites of six ANKC Member Bodies, the average fee for registering a dog on the ANKC Associate Register is calculated to be \$40.50.

Balance of public benefits and detriments

- 5.60. For the reasons outlined in this draft determination, the ACCC is not satisfied that the Proposed Conduct is likely to result in a net public benefit.

Applications involving both per se and non per se conduct

- 5.61. The ACCC also considers that the Proposed Conduct cannot be segregated, such that parts of the conduct that might breach only the non-per se provisions of the Act and could be assessed separately to determine if they have the effect, or would have the likely effect, of substantially lessening competition.

6. Draft determination

The application

- 6.1. On 28 May 2019, ANKC lodged application AA1000442 with the ACCC seeking authorisation under subsection 88(1) of the Act in respect of its Proposed Conduct outlined in paragraph 2.2 above.
- 6.2. Subsection 90A(1) of the Act requires that before determining an application for authorisation, the ACCC shall prepare a draft determination.

The authorisation test

- 6.3. Under subsections 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied in all the circumstances that the conduct would result, or be likely to result, in a benefit to the public, and that benefit would outweigh the detriment to the public that would result, or be likely to result from the conduct.⁹⁴
- 6.4. For the reasons outlined in this draft determination, the ACCC is **not** satisfied, in all of the circumstances, that the Proposed Conduct would be likely to result in a benefit to the public and the benefit to the public would outweigh the detriment to the public that would result or be likely to result from the Proposed Conduct, including any lessening of competition.
- 6.5. Accordingly, the ACCC **proposes to deny** authorisation to application AA1000442.

7. Next steps

- 7.1. The ACCC now invites submissions in response to this draft determination by 29 October 2019. In addition, consistent with section 90A of the Act, the applicant or an interested party may request that the ACCC hold a conference to discuss the draft determination.

⁹⁴ <https://www.accc.gov.au/system/files/Guidelines%20for%20Authorisation%20of%20conduct%20%28non-merger%29.pdf>