



Briefing on Animal Welfare Secondary Legislation

Report of the Regulations Review Committee

July 2023

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Hon Judith Collins
Chairperson

Briefing on Animal Welfare Secondary Legislation

Recommendation

The Regulations Review Committee has considered a briefing about secondary legislation related to animal welfare and recommends that the Government conduct a prompt and substantive review of the process for developing secondary legislation under the Animal Welfare Act 1999; and whether all existing secondary legislation, particularly codes of welfare, are consistent with the objects and intentions of the Act.

About this briefing

On 21 September 2022 we held a hearing with the New Zealand Animal Law Association (NZALA) about its report, *Farmed Animal Welfare Law in New Zealand: Investigating the Gap between the Animal Welfare Act 1999 and its Delegated Legislation*.

The NZALA's report concluded that there is a gap between the standards of animal welfare envisioned by the Animal Welfare Act 1999 and the standards set in the codes of welfare and regulations made under the Act. The NZALA considers that this secondary legislation fails to ensure that the physical, health, and behavioural needs of animals are met, as required by section 10 of the Act.

After hearing from the NZALA we decided to prepare a report to the House. In this report we provide an overview of secondary legislation relating to animal welfare that we and previous iterations of the Regulations Review committee have considered.

Legislative scheme relating to animal welfare

Most secondary legislation relating to animal welfare is made under powers delegated by the Animal Welfare Act. The Act delegates to the Minister of Agriculture the powers to issue codes of welfare (following a recommendation from the National Animal Welfare Advisory Committee (NAWAC)) and to recommend regulations to the Governor-General.

NAWAC

The National Animal Welfare Advisory Committee is a statutory advisory committee established under the Animal Welfare Act. Its function is to advise the Minister on any matter relating to the welfare of animals in New Zealand. In particular, NAWAC provides advice to the Minister on legislation and codes of welfare relating to farmed, domestic, wild, and pest species.

NAWAC comprises of no more than 11 members appointed by the Minister—there are currently 10 members. Members serve in a personal capacity representing particular areas of expertise, and not as representatives of their employer or nominating body. Areas represented include veterinary, animal, agricultural, medical, and veterinary science; the commercial use of animals; ethics; conservation; animal welfare advocacy; companion

animals; education; and public interest. The Ministry for Primary Industries (MPI) provides scientific, policy, and legal advice as well as secretariat support.

The Animal Welfare Act 1999

The primary purpose of the Animal Welfare Act is to promote the welfare of animals and prevent their ill-treatment.

Part 1 of the Act sets out how animals must be cared for. Section 9 states that the purpose is to “ensure that owners of animals and persons in charge of animals attend properly to the welfare of those animals”. Section 10 requires the owner of an animal, and every person in charge of an animal, to ensure that the physical, health, and behavioural needs of the animal are met in a manner that is in accordance with both good practice and scientific knowledge.

The definition of “physical, health, and behavioural needs” is contained in section 4 of the Act. It states:

In this Act, unless the context otherwise requires, the term physical, health, and behavioural needs, in relation to an animal, includes—

- (a) proper and sufficient food:
- (ab) proper and sufficient water:
- (b) adequate shelter:
- (c) opportunity to display normal patterns of behaviour:
- (d) physical handling in a manner which minimises the likelihood of unreasonable or unnecessary pain or distress:
- (e) protection from, and rapid diagnosis of, any significant injury or disease,—
being a need which, in each case, is appropriate to the species, environment, and circumstances of the animal.

Codes of welfare

Codes of welfare are intended to provide detailed animal management practices and minimum standards of care for individual species.¹ Before 2015, codes of welfare were the only method of providing clarity about the obligations on owners and persons in charge of animals under sections 10 and 11 of the Act.²

The codes are issued by the Minister of Agriculture, after a recommendation by NAWAC (section 75). Section 73(1) of the Act requires NAWAC to be satisfied that the standards in the proposed code are the minimum necessary to ensure that the purposes of the Act are met, before it makes a recommendation to the Minister. Codes of welfare are secondary legislation.

The standards set by a code are not directly enforceable, but they have legal effect in two ways:

¹ A list of current codes of welfare [can be found on the MPI website](#).

² Section 11 of the Act provides for the obligation to alleviate pain or distress of ill or injured animals.

- Inspectors can use evidence of someone failing to meet a minimum standard to support a prosecution under powers in the Act.
- A person who is charged with an offence against the Act can defend themselves by showing that they have met or exceeded the minimum standards set out in a code.

Regulations

Amendments to the Act in 2015 introduced new regulation-making powers for standards of care, surgical procedures, and the export of live animals (sections 183A, 183B, and 183C).³

The regulation-making power in section 183A enables mandatory animal welfare standards to be set through regulations. A penalty scheme is also established by the regulations for use when these standards are breached.

The regulation-making powers also allow for the making of regulations that provide for standards of care that do not fully meet the obligations set out in sections 10 and 11 of the Act. The Minister can only recommend these regulations if they are satisfied that:

- (a) any adverse effects of a change from current practices to new practices have been considered and there are no feasible or practical alternatives currently available:
- (b) not to do so would result in an unreasonable impact on a particular industry sector within New Zealand, a sector of the public, or New Zealand's wider economy.⁴

When making these regulations, the Minister must also set a time period for which the regulations will be in force not exceeding 10 years, to enable a transition from current practices to practices that fully meet the obligations of the Act.⁵

Regulations that relate to surgical procedures (made under section 183B) may prohibit any surgical or painful procedure. They can also set mandatory requirements for any surgical or painful procedure including:

- the skill level and experience required for the person carrying out the procedure
- whether pain relief must be used
- what kind of restraint must or must not be used
- whether the procedure must only be performed if it is in the best interests of the animal.

These regulations may also be used to bypass the Act's requirement that significant surgical procedures only be performed by a veterinarian or veterinary student (under supervision).

The Regulations Review Committee of the 51st Parliament considered the structure and design of the regulation-making powers inserted by the 2015 amendments to the Act as part of its routine scrutiny of regulation-making powers in bills before other committees. The

³ A list of current animal welfare regulations is [available on the New Zealand Legislation website](#).

⁴ [Section 183A\(3\), Animal Welfare Act 1999](#).

⁵ [Section 183A\(5\), Animal Welfare Act 1999](#).

committee raised concerns that the amendments enabled regulations to set lesser standards of animal care than those provided for in the Act.

The committee was also concerned about the scope of the regulation-making power in section 183B. It noted that it may be more appropriate for matters of policy about the appropriate use of surgical or painful procedures on animals to be dealt with in primary legislation than in regulation.

Regulations that are inconsistent with section 10 of the Act

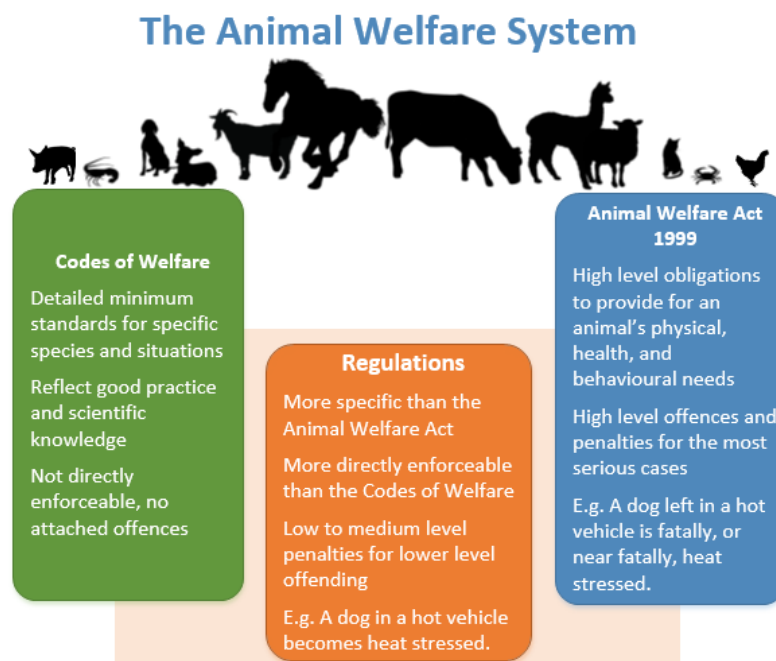
As noted above, section 183A(2) allows regulations to be made that are inconsistent with section 10.

At present the Animal Welfare (Care and Procedures) Regulations 2018 are the only regulations in force made under this provision. These regulations establish procedures for the handling of a variety of different animal species.

It appears that currently two provisions within these regulations are made in specific reliance on section 183A(2): regulations 26 and 27. These regulations relate to the treatment of pigs, and both will be revoked on 18 December 2025.

The relationship between the Act, codes of welfare, and regulations

The diagram below, prepared by MPI, provides a high-level overview of the interaction between the Animal Welfare Act and the two types of secondary legislation that can be created from it.⁶ Essentially, the regulations appear to be a middle ground between the Act, which provides high-level requirements, and codes of welfare, which provide very detailed



⁶ <https://www.mpi.govt.nz/animals/animal-welfare/regulations/regulations-and-the-animal-welfare-system/>.

requirements. The regulations provide more detailed requirements, which can be directly enforced.

Previous consideration by the Regulations Review Committee

We and our predecessors have received and considered a number of complaints relating to both codes of welfare and regulations made under the Act.

When this committee receives a complaint it considers the secondary legislation against specific grounds set out in the Standing Orders. In the 53rd Parliament these grounds are set out in Standing Order 327(2). The grounds are that the secondary legislation:

- is not in accordance with the general objects and intentions of the enactment under which it is made
- trespasses unduly on personal rights and liberties
- appears to make some unusual or unexpected use of the powers conferred by the enactment under which it is made
- unduly makes the rights and liberties of persons dependent upon administrative decisions which are not subject to review on their merits by a judicial or other independent tribunal
- excludes the jurisdiction of the courts without explicit authorisation in the enactment under which it is made
- contains matters more appropriate for parliamentary enactment
- is retrospective where this is not expressly authorised by the enactment under which it is made
- was not made in compliance with particular notice and consultation procedures prescribed by applicable enactments
- for any other reason concerning its form or purport, calls for elucidation.⁷

The complaints that have come before the committee raise a number of different matters, but there are some common themes. The primary themes that arise are:

- concerns about the nature of consultation undertaken in the making of regulations and codes of practice
- disagreements between complainants and NAWAC about the requirements of good practice and scientific knowledge in relation to the management of the animals.

Some of the complaints considered by the Regulations Review Committee are summarised below.

Complaint about Animal Welfare (Layer Hens) Code of Welfare 2005

In the 47th Parliament, the committee received a complaint from the Animal Rights Legal Advocacy Network (ARLAN) about the operation of the Animal Welfare (Layer Hens) Code of Welfare 2005.

⁷ [Standing Order 327, Standing Orders of the House of Representatives 2020.](#)

The complaint related to the parts of the code about “cage systems”. The complainant was concerned about a provision setting the minimum size of cages for layer hens as 550cm² per bird. ARLAN argued that cages of this size did not allow hens the opportunity to display normal patterns of behaviour, as required by section 10 of the Act. It argued that this was contrary to the intention of Parliament.

NAWAC acknowledged that the 550cm² limit did not allow layer hens to display normal patterns of behaviour. It agreed that the code did not comply with section 10 of the Act. It noted, however, that under section 73(3) of the Act NAWAC could recommend a code that did not meet the requirements of section 10 in “exceptional circumstances”.

Under section 73(4), NAWAC had to take into account several factors in deciding whether exceptional circumstances existed. In recommending that the code be issued, NAWAC had stated that uncertainty about whether alternative layer systems (such as barn and free-range systems) would provide better welfare outcomes for hens led it to believe that exceptional circumstances existed.

Committee conclusion

The committee found the code to be in breach of Standing Order 327(2)(a). The committee acknowledged that it was for NAWAC and the Minister, not the committee, to determine what good practice was for the welfare of hens. However, the committee stated that in considering this Standing Order ground, it needed to be satisfied that there was a reasonable basis for NAWAC and the Minister to reach their conclusions about the issuing of a code.

The committee accepted that both NAWAC and the Minister made their decisions based on the evidence they had at the time. However, the committee considered that NAWAC’s intention not to review the use of the cage system until 2009 stretched the meaning of “exceptional circumstances” too far.

The committee recommended that NAWAC review the code with a view to inserting a date specifying when a review would take place and providing for the transition to an alternative cage system.

Complaint about Animal Welfare (Layer Hens) Code of Welfare 2012

In the 51st Parliament, the committee received a complaint from Save Animals From Exploitation (SAFE) about the Animal Welfare (Layer Hen) Code of Welfare 2012.

This complaint related to the fact that the code allowed the use of colony cages, which SAFE considered was not justified under the Act.

The committee considered whether NAWAC was distinguishing between patterns of behaviour that are considered “essential to welfare” and those that are not. The committee also considered whether NAWAC had misinterpreted section 4 of the Act as allowing “trade-offs” between different types of needs and behaviours.

Committee conclusion

The committee concluded that the Act was not clear about whether it was possible to distinguish between essential and non-essential patterns of behaviour. However, it accepted

that the Act did not specifically require all normal patterns of behaviour to be able to be displayed.

The committee also noted that a lack of detail in NAWAC's reports (which support the making of a code) made it difficult to determine whether the code it had created reflected expert judgement about the needs of layer hens or an impermissible interpretation of the Act, where certain aspects of animal welfare could be sacrificed in favour of others.

The committee recommended that the Government consider improving the clarity of the Act when it was next reviewed. It also recommended that NAWAC ensure that future reports provide more detail about how a particular decision meets the requirements of the Act.

Complaint about various Animal Welfare Codes 2018

The Regulations Review Committee of the 52nd Parliament received a complaint from World Animal Protection about 19 codes of welfare issued by the Minister of Agriculture in September 2018.

The complaint raised a large number of grounds, but the committee chose to confine its investigation to the following general question:

Are the Codes of Welfare (either as they were originally made or as they have subsequently been amended) within the objects and intentions of Parliament as expressed in the Animal Welfare Act 1999?

The committee invited the parties to present evidence on the following specific questions:

- what are the objects and intentions of the Act?
- what are the policy settings implicit in the Act?
- are the codes of welfare complained about consistent with those objects, intentions, and policy settings?

The complainant made the following main points about how specific codes are inconsistent with the objects and intentions of Parliament:

- circuses deprive animals of the opportunity to display normal patterns of behaviour, and subject them to physical handling which fails to minimise the likelihood of unreasonable or unnecessary pain or distress
- the code of welfare for goats permits tethering, which deprives goats of the opportunity to display normal patterns of behaviour
- the code of welfare for layer hens draws a distinction between essential and non-essential behaviours that is not contained in the Act and that narrows the policy settings in the Act
- a report about animal welfare relating to rodeos, presented to the former Associate Minister of Agriculture, found that all of the rodeo activities examined presented at least some level of concern
- the code of welfare for zoos established minimum standards and best practices applicable to all species rather than being specific to each species, and that approach is inconsistent with section 4 of the Act.

Committee conclusion

The committee concluded that the complaint had not established that the codes of welfare were outside the objects and intentions of the Act.

Complaint about Animal Welfare (Care and Procedures) Regulations 2018 (Tail Docking)

Also in the 52nd Parliament, the committee received a complaint from the New Zealand Council of Docked Breeds about regulation 51 of the Animal Welfare (Care and Procedures) Regulations 2018 (Tail Docking). Regulation 51 prohibits the routine non-therapeutic tail-docking of dogs. It allows the exception of veterinarians performing the procedure with pain relief for therapeutic reasons.

The complaint was brought under two Standing Order grounds. First, the complainant argued that the consultation process followed by MPI was not in compliance with the consultation requirements in the Act. The complainant also argued that the Minister did not properly consider whether tail docking causes significant pain or distress to dogs, which is a mandatory requirement under the Act. The complainant argued that this meant the regulation was an unusual or unexpected use of the regulation-making powers in the Act.

Committee conclusion

After receiving written evidence from MPI, the committee was satisfied that the regulation did not make unusual or unexpected use of the powers under which it was made. The committee also considered that the consultation process for the regulation was appropriate. It unanimously agreed not to bring the amendment to the special attention of the House.

Complaint about the Code of Welfare: Commercial Slaughter

The Regulations Review Committee of the 52nd Parliament also received a complaint from the New Zealand Animal Law Association about the Code of Welfare: Commercial Slaughter. We readopted this complaint at the start of the 53rd Parliament.

The Animal Welfare (Care and Procedures) Regulations 2018 prohibit the killing for commercial purposes of any crab, rock lobster, crayfish, or kōura unless the animal is insensible before it is killed. The Code of Welfare: Commercial Slaughter then specifies the minimum welfare standards for rendering crabs, lobsters, and crayfish “insensible”. These minimum standards included requiring that crustaceans be chilled to 4°C or less at the time they are killed.

There was concern that this wording allowed for chilling to temperatures lower than 4 degrees, and possibly to temperatures that could result in some freezing. There was agreement that freezing a crustacean is a distressing and painful method of making it insensible. MPI agreed to work with NAWAC to amend the code, with a view to clarifying that chilling a crustacean to a temperature low enough to result in full or partial freezing is not an acceptable method of achieving insensibility.

The committee also learnt that NAWAC is planning a full review of the code in the next three to five years, with an intended review start date of 2023.

Committee conclusion

We were pleased that the code would be updated to clarify that freezing was not an acceptable method of making a crustacean insensible. We supported a full review of the code within the next three to five years but acknowledge that NAWAC has a number of codes due for review, which is stretching its resources. We hope that NAWAC stays aware of scientific developments and incorporates them into new codes.

Complaint about Animal Welfare (Care and Procedures) Regulations 2018 (Teeth cleaning)

In the 53rd Parliament, we received a complaint from the New Zealand Veterinary Association about the Animal Welfare (Care and Procedure) Regulations 2018. We are still considering this complaint as of July 2023.

This complaint relates to a failure to regulate to allow veterinary nurses to perform sub-gingival scaling in a veterinary clinic setting.⁸

The complainant argues that not allowing this means that the regulations do not meet the general objectives of the Act. The essence of this complaint is that, due to the increased workload and a shortage of vets in the industry, there are insufficient people able to carry out this procedure, with consequent negative effects on animal welfare.

The complainant also raised concerns about the nature of consultation undertaken by MPI.

Committee conclusion

We are yet to report on this complaint. We heard oral evidence from the complainant and MPI on 31 August 2022. We will report to the House on this complaint at the conclusion of our consideration.

Reply from the Associate Minister of Agriculture

We wrote to the Associate Minister of Agriculture, who has delegated authority for animal welfare issues, about this briefing. The Minister told us that she considered it important to ensure that the processes for developing secondary legislation are robust and transparent. She told us that she was supportive of a review of the process for developing secondary legislation under the Animal Welfare Act. She told us that a review could take between 9 and 12 months depending on its scale and scope.

Conclusion

Over the course of several Parliaments the Regulations Review Committee has considered many complaints relating to secondary legislation made under the Animal Welfare Act. We believe that the volume of complaints received highlights issues with the process for developing secondary legislation under the Animal Welfare Act.

We recommend that the Government conduct a prompt and substantive review of the process for developing secondary legislation under the Animal Welfare Act and whether all existing secondary legislation, particularly codes of welfare, are consistent with the objects

⁸ Sub-gingival scaling involves the removal of sub-gingival calculus from the tooth surface.

and intentions of the Act. It would be desirable if the review includes public consultation about inconsistencies between the regulations and the Act. The review should also take account of the matters raised by complainants to the Regulations Review Committee and the committee's consideration of complaints about animal welfare secondary legislation.

Appendix

Committee procedure

We met between 26 October 2022 and 26 July 2023 to consider this briefing.

Committee members

Hon Judith Collins (Chairperson)
Camilla Belich (until 8 February 2023)
Hon Rachel Brooking (until 8 February 2023)
Steph Lewis (from 8 February 2023)
Hon Eugenie Sage
Toni Severin
Sam Uffindell
Vanushi Walters
Helen White (from 8 February 2023)