

Animal Welfare Amendment Bill

Government Bill

As reported from the Primary Production
Committee

Commentary

Recommendation

The committee has examined the Animal Welfare Amendment Bill and recommends that it be passed with the amendments shown.

Introduction

The bill seeks to make changes to the Animal Welfare Act 1999, to improve the enforceability, clarity, and transparency of New Zealand's animal welfare system. The bill would implement the Government's decisions resulting from a 2011–2012 review of the Act, but does not seek to alter appropriate fundamental principles and policy settings.

The proposed amendments to the Act seek to provide for clear and enforceable standards of welfare for animals, including live animals for export; increase the range of enforcement tools for small to medium-scale offending; clarify the obligations of animal-owners; make decision-making under the Act more transparent; and allow welfare standards to evolve with societal expectations.

The bill also provides guidance to the courts for considering the imposition of court orders, ordering the forfeiture of animals, or disqualification from owning or being in charge of animals.

Our commentary covers the main amendments we recommend to the bill.

Animal sentience

Although the concept of animal sentience is commonly accepted in New Zealand, we recommend inserting new clause 3A to make it clear that animals are sentient beings.

Animal manipulation

We are aware of widespread concern about “manipulation” of animals; that is, the killing of animals for research, testing and teaching purposes. In particular, there is concern about oversight and transparency in this area. The bill seeks to address these concerns by amending the definition of “manipulation” and requiring the approval of an animal ethics committee to kill an animal for such purposes, or to breed an animal that may be at risk of increased suffering. We acknowledge however, that this requirement may cause unnecessary delay, if for example there is an urgent need for a national biosecurity response. To avoid this, we recommend inserting new clause 5(2A), which would insert new sub-sections 2(A), 2(B) and 2(C) in section 3 of the Act to provide for exemption from the requirement to seek approval in such circumstances.

Significant surgical procedures

Interest from our trading partners in the animal welfare aspects of on-farm animal management practices places New Zealand at some risk if these practices are not appropriately regulated. Clarifying the operation of the law as to what constitutes a “significant surgical procedure”, and therefore can only be carried out by a vet, will be an important component of any assurances sought in this area. However, we recognise concern that defining the term too narrowly could result in some procedures routinely carried out by farmers becoming unnecessarily restricted to vets. The bill as introduced gives no guidance on this matter. We recommend inserting new clause 13 Section

16 to clarify the definition of the term “significant surgical procedure” and to specify a set of criteria against which various procedures can be evaluated. We also recommend inserting new clause 56 183B(2) to enable the minister to make regulations as to how such procedures should be managed, or to decide whether or not certain procedures are to be treated as significant.

Export of live animals for slaughter

We acknowledge the widespread sentiment that the export of live animals for slaughter should be prohibited. We recognise that there are animal welfare, trade, and reputational risks associated with the export of live animals, if post-arrival conditions for the animals are inadequate, or animals are prevented from being unloaded. However, a ban on this trade would be inconsistent with New Zealand’s obligations to the World Trade Organisation and would risk being challenged.

While the existing regulatory framework allows these risks to be managed, we believe it important that it be strengthened. We recommend amending clause 21 by inserting new section 43(2), to enhance the Director General’s ability to take into consideration various relevant factors before issuing an export certificate. We also recommend amending clause 22 by replacing the amendment to section 45(1) with provisions to require an exporter to provide feedback to the Director General about the management and welfare of animals during the journey and for a specified period after their arrival.

Change or cancellation of compliance notice

The bill provides for applications to the Director General to change or cancel a compliance notice. The bill as introduced specifies no time limit for a response. We recommend amending clause 44, new section 156(E)(2)(a) to specify a time limit of 10 days for a response from the Director General to such an application.

Transitional provisions

The bill as introduced would allow the making of regulations to prescribe standards and requirements relating to animal care during transition periods, which might be up to 10 years. We are concerned that

this could allow a Minister to extend this period by further regulation, thus allowing non-compliant practices to continue for an unreasonably long time. We recommend inserting into clause 56 new section 183A(4C), limiting the ability to extend transitional regulations to once only, for up to an additional five years, and only if the industry as a whole has demonstrated commitment to the transition, and the Minister is satisfied that most producers have made significant progress towards becoming compliant, and will do so within the extended period.

Greyhound racing

We are aware of widespread concern about the transparency and accountability of the greyhound racing industry and the treatment of dogs. We note however that most of the issues raised relate to the ethics of the greyhound racing industry in general and are not limited to animal welfare. Cruelty and the welfare of the dogs are already addressed by the Act, and the existing Dogs' Code of Welfare also applies. We do not therefore recommend amending this bill to specifically address these concerns.

Cetaceans in captivity

We recognise the concern in the community about the plight of cetaceans in captivity. There are no cetaceans in captivity in New Zealand at present, and the issue is addressed in the Marine Mammals Protection Act 1978. We feel that any application to hold cetaceans in captivity in New Zealand, unless it was essential for the conservation management of the species, is unlikely to be granted, and therefore we do not recommend amending this bill to specifically address this concern.

Green Party minority view

The Green Party acknowledges that this bill contains some improvements to current animal welfare law. However we are extremely disappointed that animal testing has not been addressed at all by the Committee despite it being an area of significant public concern due to the extremely high levels of pain and suffering involved in these tests and despite thousands of submissions seeking amendments to this section of the Act.

The Green Party has put up two simple amendments to the animal testing provisions of the Act which we would like to see incorporated in order to support the bill. The first amends the Act to ban animal testing of cosmetics in New Zealand in line with recent developments overseas. The second requires alternatives to animal testing to be used where there are suitable alternatives.

There is extremely strong public support for a ban on any animal testing of cosmetics and a large number of submissions were received in favour of including this amendment. A recent Horizon poll has revealed that 89% of New Zealanders are against animal testing for cosmetics and 89.2% want to see it ruled out in this country.

Requiring animal ethics committees to only allow animal tests to be undertaken when there are no suitable alternatives available is essential if we are to reduce the number of animals being subject to painful experiments and testing. Currently, animal ethics committees are not even required to consider alternatives to animal tests. In our view, it is extremely disappointing that the Committee has not chosen to endorse either of these two proposals aimed at reducing the number of animals used in research and testing.

The Green Party is also concerned that this bill will not result in meaningful welfare improvements for animals used in intensive factory farming; especially for layer hens, meat chickens, and intensively farmed pigs. Colony cages have been deemed to be compliant with the welfare requirements of the Act despite the fact that most people do not see these as resulting in meaningful improvements in the quality of life experienced by hens in factory farms. Nothing in this bill addresses that situation. We are also concerned that 15 years is an extremely long time to phase out existing practices that are clearly not compliant with the requirements of the Act, such as farrowing crates.

Appendix

Committee process

The Animal Welfare Amendment Bill was referred to the committee on 29 August 2013. The closing date for submissions was 4 October 2013. We received and considered 4,136 submissions from interested groups and individuals. We heard 30 submissions in Wellington and 17 submissions in Auckland.

We received advice from the Ministry for Primary Industries. The Regulations Review Committee reported to us on the powers contained in clauses 2, 8, 10, 12–14 and 56 (new section 183B).

Committee membership

Shane Ardern (Chairperson)

Steffan Browning

Colin King

Ian McKelvie

Hon Damien O'Connor

Eric Roy

Meka Whaiteri

Mojo Mathers replaced Steffan Browning, and Hon Trevor Mallard replaced Hon Damien O'Connor for this item of business.

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Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

text deleted unanimously

Hon Nathan Guy

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Animal Welfare Amendment Act **2013**.

2 Commencement

- (1) **Sections 4(1), (4), and (5), 8, 10(2), 12(1), 13 to 16, 20 to 22, 22A, 25(1), 45, and 57(2)** come into force on the earlier of the following: 5
- (a) a date appointed by the Governor-General by Order in Council:
 - (b) 5 years after the date on which this Act receives the Royal assent. 10
- (2) **Sections 4(4), 41(3), and 45** come into force on the earlier of the following:
- (a) a date appointed by the Governor-General by Order in Council: 15
 - (b) 5 years after the date on which this Act receives the Royal assent.
- (3) **Sections 5, 7, and 35(1), (2), and (3)** come into force on 1 January following the second anniversary of the date on which this Act receives the Royal assent. 20
- (3A) **Section 35(2A)** comes into force on the day that is 6 months after the date on which this Act receives the Royal assent.
- (4) **Section 38(1)** comes into force on the day that is 3 months after the date on which this Act receives the Royal assent.
- (5) The rest of this Act comes into force on the day after the date on which it receives the Royal assent. 25
- (6) One or more Orders in Council may be made under **subsection (1) or (2)** appointing different dates for different provisions.

3 Principal Act

This Act amends the Animal Welfare Act 1999 (the **principal Act**). 30

Part 1

Amendments to principal Act

3A Long Title amended

Replace paragraph (a)(i) of the Long Title with:

“(i) to recognise that animals are sentient: 5

“(ia) to require owners of animals, and persons in charge of animals, to attend properly to the welfare of those animals:”.

4 **Section 2 amended (Interpretation)**

(1) In section 2(1), repeal the definition of **controlled surgical procedure**. 10

(2) In section 2(1), definition of **device**, after “means any”, insert “explosive (not being a firearm as defined in section 2 of the Arms Act 1983), incendiary device, or”.

(3) In section 2(1), replace the definition of **infringement offence** with: 15

“**infringement offence** means—

“(a) an offence against **section 36(2)(3)**:

“(b) an offence against **section 157(4)**:

“(c) any other offence created by or under this Act that is declared by regulations made under this Act to be an infringement offence for the purposes of this Act”. 20

(4) In section 2(1), replace the definition of **infringement offence** with:

“**infringement offence** means— 25

“(a) an offence against **section 36(2)(3)**:

“(b) an offence against section 130(2):

“(c) an offence against **section 156(1)**:

“(d) an offence against **section 157(4)**:

“(e) any other offence created by or under this Act that is declared by regulations made under this Act to be an infringement offence for the purposes of this Act”. 30

(5) In section 2(1), repeal the definitions of **restricted surgical procedure** and **significant surgical procedure**.

5 Section 3 amended (Definition of manipulation)

(1) In section 3(1), replace “subsections (2) and (3)” with “subsections **(1A)** to (3)”.

(2) After section 3(1), insert:

“(1A) The term defined by subsection (1) includes the killing of an animal (other than an animal in a wild state) ~~by or on behalf of a code holder~~ for the purpose of interfering with the animal’s body or its tissues in a manner specified in that subsection. 5

“(1B) The term defined by subsection (1) also includes the breeding or production of an animal using any breeding technique (including genetic modification) that may result in the birth or production of an animal that is ~~susceptible to pain or distress during its life~~ more susceptible to, or at greater risk of, pain or distress during its life as a result of the breeding or production. 10 15

(2A) After section 3(2), insert:

“(2A) **Subsection (1A)** does not apply to any killing of an animal that is carried out by any person—

“(a) while exercising powers under the Biosecurity Act 1993 for the purposes specified in section 121(1A) of that Act; or 20

“(b) while exercising powers or performing functions for the purposes of a response activity carried out under the Biosecurity Act 1993, being an activity undertaken after any event described in **subsection (2B)** and for any purpose described in **subsection (2C).** 25

“(2B) The events concerned are—

“(a) the detection of an unwanted organism not previously known to be present in New Zealand;

“(b) the appearance of different effects of an unwanted organism known to be present in New Zealand and capable of being eradicated. 30

“(2C) The purposes concerned are—

“(a) to investigate the unwanted organism;

“(b) to minimise the impact of the unwanted organism on natural and physical resources, human health, and overseas market access for New Zealand products; 35

“(c) to control the spread of the unwanted organism;

- “(d) to reduce the geographical distribution of the unwanted organism:
“(e) to eradicate the unwanted organism.”
- (3) Repeal section 3(2)(c).
- 6 Section 4 amended (Definition of physical, health, and behavioural needs) 5**
Replace section 4(a) with:
“(a) proper and sufficient food:
“(ab) proper and sufficient water:”.
- 7 Section 5 amended (Definition of research, testing, and teaching) 10**
(1) In section 5(1), replace “subsections (2) to (4)” with “subsections **(1A)** to (4)”.
- (2) In section 5(1)(c), after “animal”, insert “; or”.
- (3) After section 5(1)(c), insert: 15
“(d) any routine breeding of animals that may result in the birth or production of an animal that is ~~susceptible to pain or distress during its life~~ more susceptible to, or at greater risk of, pain or distress during its life, being breeding for the purpose of carrying out any work or teaching of a type specified in paragraphs (a) to (c) on any offspring.” 20
- (4) After section 5(1), insert:
“(1A) The term defined by subsection (1) includes any work of a kind described in subsection (1)(a) or (b) carried out on the body or tissues of an animal after the animal was killed for the purpose, if the killing of the animal was a manipulation under **section 3(1A)**. 25
“(1B) A reference in subsection (1) to a manipulation of an animal includes a reference to the act of breeding or producing the animal in a way described in **section 3(1B)**. 30
“(1C) In applying subsection (1) in relation to a manipulation described in **section 3(1B)**, the reference in subsection (1) to work must be read as a reference to scientific work but does not include normal animal management or practice.” 35
- (5) After section 5(2), insert:

“(2A) Subsection (2)(a) does not apply in relation to a manipulation described in **section 3(1A)**.”

8 Sections 6 and 7 repealed

Repeal sections 6 and 7.

9 New section 8A inserted (Transitional and savings provisions relating to amendments to Act) 5

After section 8, insert:

“8A Transitional and savings provisions relating to amendments to Act

The transitional and savings provisions set out in **Schedule 4**, 10
which relate to amendments made to this Act by the **Animal Welfare Amendment Act 2013**, have effect for the purposes of this Act.”

10 Section 9 amended (Purpose)

(1) In section 9(2)(b), delete “, where practicable,”. 15

(2) Replace section 9(2)(d) and (e) with:

“(d) contemplates that regulations will prohibit or impose requirements on the surgical or painful procedures that may be performed on animals; and

“(e) contemplates that regulations will prescribe the persons or classes of persons who may perform surgical or painful procedures on animals; and”.

 20

11 Section 11 amended (Obligation to alleviate pain or distress of ill or injured animals)

In section 11(1), delete “, where practicable,”. 25

12 Section 15 amended (Restriction on performance of surgical procedures)

(1) In section 15(1), replace “section 18(1)” with “regulations made under **section 183B**”.

(2) ~~In section 15(1)(b), delete “at undergraduate level”.~~ 30

(2) Replace section 15(1)(b) with:

- “(b) a person who is acting under the direct supervision of a veterinarian and who is a student undergoing his or her training to become a veterinarian.”
- (3) In section 15(3), after “Parts 2 and 6”, insert “and to any regulations made under **section 183B**”. 5
- 13 Sections 16 to 20 repealed**
Repeal sections 16 to 20.
- 13 Section 16 replaced (Criteria to determine whether procedure is significant surgical procedure)**
Replace section 16 with: 10
- “16 Criteria to determine whether procedure is significant surgical procedure**
If any person has to determine whether a procedure carried out on an animal is a significant surgical procedure under this Act, the person must determine the question by considering the following criteria: 15
- “(a) whether the procedure has the potential to—
- “(i) cause significant pain or distress; or
- “(ii) cause serious or lasting harm, or loss of function, if not carried out by a veterinarian in accordance with recognised professional standards; and 20
- “(b) the nature of the procedure, including whether this involves—
- “(i) a surgical or operative procedure below the surface of the skin, mucous membranes, or teeth or below the gingival margin; or 25
- “(ii) physical interference with sensitive soft tissue or bone structure; or
- “(iii) significant loss of tissue or loss of significant tissue.” 30
- 13A Sections 17 to 20 repealed**
Repeal sections 17 to 20.
- 14 Section 21 replaced (Surgical procedure offences)**
Replace section 21 with:

“21 Surgical procedure offences

A person commits an offence who, without reasonable excuse, acts in contravention of or fails to comply with—

“(a) section 15(1) or (2); or

“(b) section 15(4).

5

“Compare: 1960 No 30 s 3(ma); 1971 No 48 s 3(3)(s)”.

14A Section 24 amended (Defence and rebuttable evidence)

In section 24, replace “section 21(1)(b)” with “section 21(b)” in each case.

15 Section 25 amended (Penalties)

10

In section 25, replace “section 21(1) or section 21(2)” with “**section 21**”.

16 Section 29 amended (Further offences)

Repeal section 29(b) and (f).

17 New sections 30A to 30E inserted

15

After section 30, insert:

*“Ill-treating, hunting, or killing wild animals
or animals in wild state*

“30A Wilful or reckless ill-treatment of wild animals or animals in wild state

20

“(1) A person commits an offence if the person wilfully ill-treats a wild animal or an animal in a wild state.

“(2) A person commits an offence if the person recklessly ill-treats a wild animal or an animal in a wild state.

“(3) A defendant has a defence to a prosecution for an offence against **subsection (1) or (2)** if the defendant satisfies the court that the conduct alleged to constitute an offence is or is part of a generally accepted practice in New Zealand for the hunting or killing of wild animals of that type or animals in a wild state of that type.

25
30

“(4) In determining whether wilful or reckless ill-treatment of an animal has occurred, a court may treat an act or omission as lawful (and not subject to **subsection (1) or (2)**) if satisfied that—

- “(a) the act or omission was done in the course of performing functions for the purposes of another Act; and
- “(b) not to treat the act or omission as lawful would be contrary to the purpose and principles of that Act.
- “(5) Nothing in **subsection (1) or (2)** applies to— 5
 - “(a) a wild animal in captivity (other than in captivity in a safari park); or
 - “(b) the accidental or inadvertent killing or harming of an animal; or
 - “(c) any act or omission necessary to protect a person’s life or safety. 10
- “(6) Nothing in **subsection (1) or (2)** affects section 179 or 181.
- “(7) A person who commits an offence against **subsection (1)** is liable on conviction,—
 - “(a) in the case of an individual, to imprisonment for a term not exceeding 5 years or to a fine not exceeding \$100,000, or to both: 15
 - “(b) in the case of a body corporate, to a fine not exceeding \$500,000.
- “(8) A person who commits an offence against **subsection (2)** is liable on conviction,— 20
 - “(a) in the case of an individual, to imprisonment for a term not exceeding 3 years or to a fine not exceeding \$75,000, or to both:
 - “(b) in the case of a body corporate, to a fine not exceeding \$350,000. 25
- “30B Hunting or killing**
- “(1) Nothing in this Act makes it unlawful to hunt or kill—
 - “(a) any animal in a wild state; or
 - “(b) any wild animal or pest in accordance with the provisions of— 30
 - “(i) the Wildlife Act 1953; or
 - “(ii) the Wild Animal Control Act 1977; or
 - “(iii) the Conservation Act 1987; or
 - “(iv) the Biosecurity Act 1993; or 35
 - “(v) any other Act; or
 - “(c) any other wild animal or pest; or

“(ca) any game animal in accordance with the provisions of the Game Animal Council Act 2013; or

“(d) any fish caught from a constructed pond.

“(2) **Subsection (1)** is subject to **sections 30A and 30C to 30E** and Part 6. 5

“Compare: 1960 No 30 s 19(1)(c), (2)

“30C Hunting in safari parks

“(1) Nothing in this Act makes it unlawful to hunt a wild animal that is available for hunting in a safari park.

“(2) **Subsection (1)** is subject to **subsection (3) and to sections 30A and 30E** and Part 6. 10

“(3) Despite **subsection (1) and section 30B**, if a person has hunted and captured a wild animal in a safari park (not being an animal that has been captured for the purpose of facilitating its imminent destruction), this Act applies in relation to that person as the person in charge of that animal. 15

“30D Captured animals

“(1) If a person has in captivity an animal captured in a wild state (not being an animal that has been captured for the purpose of facilitating its imminent destruction), this Act applies in relation to that person as the person in charge of that animal. 20

“(2) If a person has in captivity an animal captured in a wild state (not being an animal caught by fishing) for the purpose of facilitating its imminent destruction, section 12(c) applies in relation to the killing of that animal. 25

“(3) Nothing in **subsection (1) or (2)** applies in relation to a wild animal that is hunted and captured in a safari park.

“(4) Nothing in **section 30B** applies to any wild animal or pest that is farmed or kept as a pet (other than a pest fish that is caught from a freshwater fish farm by a recreational fisher). 30

“30E Certain provisions relating to traps and devices not excluded

Sections 30B and 30C do not restrict the application of sections 34 and 36.”

18 Section 36 amended (Obligation to inspect traps)

Replace section 36(2) with:

- “(2) A person commits an offence who fails, without reasonable excuse, to comply with any provision of subsection (1). 5
- “(3) A person who commits an offence against **subsection (2)** is liable on conviction,— 5
- “(a) in the case of an individual, to a fine not exceeding \$5,000; or
- “(b) in the case of a body corporate, to a fine not exceeding \$25,000. 10
- “(4) An offence against **subsection (2)** is also an infringement offence.”

18 Section 36 replaced (Obligations relating to traps)

Replace section 36 with:

- “36 Obligations relating to traps” 15**
- “(1) A person who, for the purpose of capturing alive a mammal, bird, reptile, or amphibian, sets a trap or causes a trap to be set must inspect that trap, or cause a competent person to inspect that trap, within 12 hours after sunrise on each day the trap remains set, beginning on the day immediately after the day on which the trap is set. 20
- “(2) A person who, for the purpose of capturing alive a mammal, bird, reptile, or amphibian, sets a trap or causes a trap to be set must— 25
- “(a) remove, or cause to be removed, any live animal found in that trap; or
- “(b) attend properly to the care of the animal or, without delay, kill the animal.
- “(3) A person who, without reasonable excuse, fails to comply with **subsection (1)** commits an infringement offence. 30
- “(4) A person who, without reasonable excuse, fails to comply with **subsection (2)** commits an offence and is liable on conviction,— 35
- “(a) in the case of an individual, to a fine not exceeding \$5,000; or
- “(b) in the case of a body corporate, to a fine not exceeding \$25,000.”

19 Section 38 replaced (Purpose)

Replace section 38 with:

“38 Purpose

The purpose of this Part is to protect the welfare of animals being exported from New Zealand and to protect New Zealand’s reputation as a responsible exporter of agricultural products animals and products made from animals.”

20 Section 41 repealed (Guidelines for issue of animal welfare export certificates)

Repeal section 41.

21 Section 43 amended (Consideration of application)

(1) After section 43(k), insert:

“(ka) any regulations made under **section 183C** relating to the export of animals:

“(kb) New Zealand’s reputation as a responsible exporter of agricultural products animals and products made from animals.”

(2) In section 43, insert as subsection (2):

“(2) The Director-General may, in considering any application under section 42, have regard to the following matters:

“(a) the post-arrival conditions for the management of the animals in the importing country:

“(b) the manner in which the welfare of any animals previously exported by the applicant was attended to during—

“(i) the 30-day period commencing on the date of their arrival in the importing country; or

“(ii) any lesser period after their arrival that the Director-General thinks fit.”

22 Section 45 amended (Conditions)

After section 45(1)(l), insert:

“(la) a condition that requires the exporter to manage specified post-arrival conditions in the importing country.”

After section 45(1)(l), insert:

“(la) a condition requiring an exporter to provide a report on the way in which the animals were managed during their journey and to provide any specified information that the Director-General considers relevant:

“(lb) a condition requiring an exporter to provide a report on the welfare of the animals and to provide any specified information that the Director-General considers relevant, for— 5

“(i) the 30-day period commencing on the date of their arrival in the importing country; or 10

“(ii) any lesser period after their arrival that the Director-General thinks fit.”.

22A Section 46 amended (Issue of animal welfare export certificate)

In section 46, insert as subsection (2): 15

“(2) The failure to comply with any relevant regulations made under this Act is a sufficient ground on which the Director-General may—

“(a) refuse to issue a certificate; or

“(b) revoke or amend any certificate that has already been issued.” 20

23 Section 54 amended (Offence)

In section 54(1), delete “refuses or”.

24 Section 55 amended (Purpose)

(1) In section 55(2)(b), after “welfare” insert “; and”. 25

(2) After section 55(2)(b), insert:

“(c) recommend to the Minister that regulations be made under **section 183A(1)(a)** prescribing animal welfare standards or requirements.”

25 Section 57 amended (Functions) 30

(1) Replace section 57(b) with:

“(b) to make recommendations to the Minister—

“(i) under section 3(3) (which relates to manipulation); and

- “(ii) relating to the making of regulations under **section 183B** (which relates to surgical and painful procedures):”.
- (2) In section 57(f), replace “to promote, and” with “to develop and promote, and”. 5
- 26 Section 71 amended (Public notification)**
Replace section 71(1) and (2) with:
- “(1) The National Animal Welfare Advisory Committee must publicly notify a draft code of welfare if the Committee is satisfied that— 10
- “(a) the draft should proceed; and
- “(b) the draft complies with the purposes of this Act; and
- “(c) the draft is so clearly written as to be readily understood; and
- “(d) the draft indicates any matters that the Committee considers should be dealt with by regulations under this Act; and 15
- “(e) representatives of the persons likely to be affected by the draft have been consulted about it; and
- “(f) the Minister has approved the notification of the draft. 20
- “(2) If the Committee decides not to proceed with a draft code prepared by any person other than the Committee, it must—
- “(a) give the person its reasons in writing for not proceeding; and
- “(b) notify the Minister of its decision.” 25
- 27 Section 73 amended (Matters to be considered)**
Replace section 73(3) and (4) with:
- “(3) In carrying out its functions under subsection (1), the National Animal Welfare Advisory Committee may take into account practicality and economic impact, if relevant. 30
- “(4) The National Animal Welfare Advisory Committee may recommend to the Minister that regulations be made under **section 183A(1)(a)** (which relates to standards or requirements for the purposes of giving effect to Parts 1 and 2).
- “(5) The National Animal Welfare Advisory Committee may recommend to the Minister the making of regulations under **sec-** 35

tion 183A(2) (which relates to prescribing standards or requirements that do not fully meet specified obligations).

- “(6) Before making a recommendation under **subsection (4) or (5)**, the National Animal Welfare Advisory Committee must be satisfied about or consider (as the case requires) the matters in **section 183A(4) and (5)** consider the relevant provisions of section 183A.” 5

28 Section 74 amended (Recommendation to Minister)

- (1) In section 74(2)(c), after “Committee”, insert “; and”.
 (2) After section 74(2)(c), insert: 10
 “(d) if applicable, those matters contained in, or related to, the code that the Committee considers should be dealt with by regulations under this Act.”

29 Section 76 amended (Amendment or revocation of code of welfare) 15

In section 76(1)(a), after “welfare”, insert “or any part of a code of welfare”.

30 Section 78 amended (Review of code of welfare)

- (1) Replace section 78(1) with:
 “(1) The National Animal Welfare Advisory Committee may at any time review the whole or any part of any code of welfare for the time being in force.” 20
 (2) In section 78(3), after “code of welfare”, insert “or part of the code”.
 (3) Repeal section 78(4) and (5). 25

31 Section 78A repealed (Review date may be extended)

Repeal section 78A.

31A Section 81 amended (Effect of this Part)

After section 81(2), insert:

- “(3) To avoid doubt, nothing in this Part applies in relation to the use of animals for any purpose that does not involve research, testing, or teaching.” 30

32 Section 87 replaced (Codes of ethical conduct)

Replace section 87 with:

“87 Codes of ethical conduct

“(1) Any person referred to in **subsection (2)** may apply to the Director-General for approval of a code of ethical conduct in relation to the use of animals. 5

“(2) The persons are—

“(a) any person who—

“(i) is engaged in, or wishes to be engaged in, research, testing, or teaching; and 10

“(ii) wishes to use animals in that research, testing, or teaching:

“(b) any person who—

“(i) is not directly engaged in research, testing, or teaching; but 15

“(ii) wishes to enable a teaching organisation to use animals in research, testing, or teaching.”

33 Section 89 amended (Application for approval)

In section 89(1)(a), replace “in which the applicant is engaged or proposes to be engaged” with “to which the application relates”. 20

34 Section 96 (Amendment, suspension, or revocation)

(1) In section 96(2)(a), after “teaching”, insert “or no longer wishes to enable research, testing, or teaching to be carried out by another person”. 25

(2) In section 96(2)(c), after “teaching”, insert “or to enable research, testing, or teaching to be carried out by another person”.

35 Section 100 amended (Criteria)

(1) In section 100(a), after “this Part”, insert “, but the committee need not have regard to the purpose stated in section 80(1)(b) for any part of the project that involves manipulation to which **section 3(1A)** applies”. 30

(2) In section 100(d), after “of animals)”, insert “, but this paragraph does not apply to the killing of animals for the purpose 35

of any project where research, testing, and teaching are to be performed on their bodies or tissues”.

(2A) After section 100(f), insert:

“(fa) the extent to which there has been—

“(i) assessment of the suitability of using non-sentient or non-living alternatives in the project; and 5

“(ii) replacement of animals as subjects with suitable non-sentient or non-living alternatives; and”.

(3) In section 100, insert as subsection (2):

“(2) When an animal ethics committee considers approving a research, testing, and teaching project that involves manipulation to which **section 3(1A)** applies, the committee must be satisfied that every animal that will be subject to that manipulation will be killed in such a manner that the animal does not suffer unreasonable or unnecessary pain or distress.” 10 15

36 Section 122 amended (Criteria)

(1) Replace section 122(1)(a) with:

“(a) one of the purposes or roles of the organisation concerns the welfare of animals or a particular species of animal; and” 20

(2) After section 122(2), insert:

“(3) The Minister may, in making a declaration under section 121 relating to an organisation that has an animal welfare role only in respect of 1 or more species (but not animals generally), specify that the approval is given in respect of— 25

“(a) only the species specified in the declaration; or

“(b) all animals.

“(4) Nothing in this section obliges the Minister to make a declaration under section 121.

“(5) The Minister may, in making a declaration under section 121, impose, as conditions of the Minister’s approval, any other conditions or requirements that relate to the organisation’s performance of its functions and powers that he or she considers necessary or desirable.” 30

36A Section 123 amended (Amendment or revocation of declaration)

(1) Replace section 123(1) with:

“(1) The Minister may from time to time, by notice in the *Gazette*,
revoke any declaration made under section 121 if the Minister
is satisfied that— 5

“(a) the organisation no longer meets any 1 or more of the
criteria set out in section 122; or

“(b) the organisation has failed to comply with any condition
imposed under section 122(2); or 10

“(c) the organisation has failed to comply with any condition
imposed under **section 122(5)**. ”

(2) In section 123(2)(a), (b), and (c), after “section 122(2)”, insert
“or **(5)**”.

37 New sections 123A to 123D inserted

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After section 123, insert:

“123A Appointment of auditors

“(1) The Director-General may appoint auditors to carry out audits
of approved organisations for the purposes of this Act.

“(2) The Director-General may appoint as auditors only those per-
sons who have appropriate experience, technical competence,
and qualifications relevant to the audits. 20

“(3) Auditors may, but need not, be persons who are employed
under the State Sector Act 1988.

“123B Audits

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“(1) The Director-General must set terms of reference for audits of
approved organisations.

“(2) Audits include examinations, investigations, and reviews.

“(3) Auditors conduct audits as to the previous and current pos-
itions, and as to the likely future position, of— 30

“(a) an organisation’s ability to meet the criteria set out in
section 122(1):

“(b) compliance by an organisation and its inspectors and
auxiliary officers with any relevant performance and
technical standards for inspectors and auxiliary officers: 35

- “(c) an organisation’s compliance with any memorandum of understanding established between the organisation and the Ministry:
- “(d) the exercise of any power, and the carrying out of any functions or duties, by any inspector or auxiliary officer of an organisation: 5
- “(e) an organisation’s compliance with animal welfare law:
- “(f) compliance by an organisation and its inspectors and auxiliary officers with any direction issued by the Director-General under section 126: 10
- “(g) any other class or description of audit necessary to audit an organisation’s work or status as an approved organisation under this Act.
- “(4) Any inspector, auxiliary officer, or employee of an organisation, and any other inspector or auxiliary officer, may be the subject of an audit. 15

“123C Auditors’ general duties

- “(1) An auditor must use his or her best endeavours to comply with and give effect to relevant performance or technical standards when exercising powers or carrying out functions or duties for the purposes of this Act. 20
- “(2) An auditor must give the approved organisation that is to be audited a written notice of the audit and the terms of reference a reasonable time before the audit starts, unless giving notice would defeat the purpose of the audit. 25
- “(3) The auditor must conduct the audit within the terms of reference.

“123D Auditors’ powers

- “(1) An auditor may exercise the powers in this section for the purposes of an audit. 30
- “(2) The Director-General may give the approved organisation that is to be audited a written notice to appear before an auditor at a time and place specified in the notice.
- “(3) If the Director-General acts under **subsection (2)**, the auditor may require the approved organisation to answer all questions relating to the audit put to the organisation. 35

- “(4) An auditor may examine the systems, processes, and records of the approved organisation.
- “(5) The approved organisation must ensure that the auditor—
- “(a) has full access to all books and records in the possession or under the control of the organisation and to any place 5 where any such books or records are kept; and
 - “(b) is able to examine or audit any books or records, and take copies or extracts from them; and
 - “(c) has full access to facilities (for example, animal shelters) that are maintained so that the organisation can 10 fulfil its duties under this Act, and is able to take samples and records from facilities and animals kept there as provided in section 127; and
 - “(d) has full access to any other thing that relates to the organisation’s performance of duties under this Act and 15 the organisation’s ability to meet the criteria set out in section 122(1).”

38 Section 124 amended (Appointment of inspectors)

- (1) Replace section 124(1) with:
- “(1) The Director-General may from time to time appoint persons 20 employed in the State sector to be inspectors for the purposes of this Act.”
- (2) Replace section 124(3)(a) with:
- “(a) must be appointed either—
 - “(i) for particular purposes of this Act specified in 25 the inspector’s instrument of appointment, which may include the exercise of particular powers of inspectors under this Act or relate to a particular species; or
 - “(ii) for the general purposes of this Act; and”. 30
- (3) After section 124(6)(a), insert:
- “(aa) may at any time be suspended from office by the Minister if he or she considers it desirable to do so pending the investigation of a complaint relating to—
 - “(i) the inspector’s performance of his or her func- 35 tions or duties; or

“(ii) any suspected neglect of duty or misconduct of the inspector.”.

(4) After section 124(6), insert:

“(6A) If the Minister suspends an inspector under **subsection (6)(aa)**, the Minister must give the inspector a written notice 5 stating—

“(a) that the inspector’s appointment is suspended; and

“(b) either—

“(i) the period of the suspension; or

“(ii) that suspension is for an indefinite period; and 10

“(c) the reasons for the suspension.”

39 Section 125 amended (Appointment of auxiliary officers)

After section 125(2), insert:

“(2A) The Director-General may at any time suspend a person’s appointment as an auxiliary officer.” 15

40 Section 127 amended (Power to inspect land, premises, and places and stationary vehicles, aircraft, and ships)

(1) After section 127(4), insert:

“(4A) If an inspector exercises a power of entry under subsection (1), the inspector may take any photographs, sound or video 20 recordings, drawings, or other records (whether paper-based or electronic) of anything relevant to, and observed during, an inspection.

“(4B) If an inspector exercises a power of entry under subsection (1), the inspector may take— 25

“(a) the carcass of or tissue or other bodily samples (for example, blood samples) from any dead animal found during an inspection:

“(b) tissue or other bodily samples (for example, blood samples) from any live animal found during the inspection.” 30

(2) After section 127(5)(a), insert:

“(aa) the owner of the animal is already disqualified from owning an animal under this Act; or”.

(3) In section 127(5)(b), replace “ship,—” with “ship; or”.

(4) After section 127(5)(b), insert: 35

“(c) the animal is at clear risk of imminent harm,—”.

41 Section 130 amended (Power to prevent or mitigate suffering)

(1) After section 130(1), insert:

“(1A) If an inspector proposes to destroy, or require the destruction of, an animal under subsection (1), the inspector must ensure that the process in section 138 is followed before the animal is destroyed (as if that section applied).” 5

“(1B) Without limiting section 185, a notice under subsection (1)(b) may be served on a person by—

“(a) delivering it personally to the person: 10

“(b) delivering it to the person at the person’s usual or last-known place of residence or business:

“(c) sending it by fax or email to the person’s fax number or email address:

“(d) posting it in a letter addressed to the person at the person’s usual or last-known place of residence or business. 15

“(1C) The following provisions apply to service as described in **subsection (1B)**:

“(a) service on an officer of a body, or on the body’s registered office, is deemed to be service on the body: 20

“(b) service on any of the partners in a partnership is deemed to be service on the partnership:

“(c) service by post is deemed to occur at the time at which the notice would have been delivered in the ordinary course of the post.” 25

(2) In section 130(2), delete “refuses or”.

(3) After section 130(3), insert:

“(4) An offence against **subsection (2)** is also an infringement offence.”

42 Section 133 amended (Powers conferred by search warrant) 30

After section 133(4), insert:

“(4A) If an inspector proposes to destroy, or require the destruction of, an animal under subsection (4), the inspector must ensure that the process in section 138 is followed before the animal is destroyed (as if that section applied).” 35

42A Section 136 amended (Disposal of things seized)

In section 136(1)(b), replace “section 127(5)” with “section 127”.

42B Section 136A amended (Disposal of animals seized or taken into custody prior to commencement or determination of proceedings)

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In section 136A(1)(a), replace “section 127(5)” with “section 127”.

43 Section 138 amended (Destruction of injured or sick animals (other than marine mammals))

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In section 138(4), replace “other veterinarian” with “veterinarian giving that opinion”.

43A Section 141 amended (Duties of approved organisation)

(1) After section 141(1), insert:

“(1A) **Subsection (1B)** applies if—

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“(a) an owner of an animal, or a person acting as the agent of an owner of an animal, gives the animal into the temporary custody of an approved organisation; and

“(b) an arrangement exists for the return of the animal to the owner or the owner’s agent; and

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“(c) the owner or the owner’s agent does not return to reclaim custody of that animal as agreed.

“(1B) If this subsection applies, the approved organisation may sell, re-home, or dispose of (including destroy) the animal in any manner that an inspector or auxiliary officer acting for the organisation thinks fit if—

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“(a) the approved organisation has taken reasonable steps to locate and contact the owner; and

“(b) either—

“(i) the approved organisation has been unable to locate or contact the owner; or

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“(ii) the approved organisation has located and attempted to contact the owner, but the owner will not respond; and

“(c) the approved organisation has given the owner written notice of its intention to sell, re-home, or otherwise dis-

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- pose of (including destroy) the animal in accordance with the provisions of **subsection (3)**; and
- “(d) the owner has not, within the period specified in the notice, reclaimed the animal and paid any costs incurred by the organisation and specified in the notice.” 5
- (2) After section 141(2)(a), insert:
- “(aa) at any time, sell, re-home, or otherwise dispose of the animal in any manner that the inspector or auxiliary officer thinks fit if—
- “(i) the animal is wild or unsocialised; and 10
- “(ii) the animal is severely distressed; and
- “(iii) in the opinion of a veterinarian, the animal’s distress is a direct result of being contained to the extent that it would be unreasonable and unnecessary to continue to contain the animal.”. 15
- (3) In section 141(5), replace “subsection (2) or subsection (4)” with “subsection **(1B)**, (2), or (4)”.
- 44 New sections 156A to 156I and cross-heading inserted**
- After section 156, insert:
- “*Compliance ~~orders~~ notices* 20
- “156A Scope**
- “(1) An inspector may ~~make a compliance order against a person~~ issue a compliance notice to a person.
- “(2) A compliance ~~order~~ notice may—
- “(a) require the person to cease doing something that ; ~~in the opinion of the inspector;~~ the inspector has good cause to suspect ~~contravenes or is likely to contravene animal welfare law~~ this Act or any regulations made under it; or 25
- “(b) prohibit the person from starting something that; ~~in the opinion of the inspector;~~ the inspector has good cause to suspect ~~contravenes or is likely to contravene animal welfare law~~ this Act or any regulations made under it; or 30
- “(c) prohibit the person from doing something again that; ~~in the opinion of the inspector;~~ the inspector has good cause to suspect ~~contravenes or is likely to contravene animal welfare law~~ this Act or any regulations made under it; or 35

- “(d) prohibit the person from having something done on the person’s behalf that; ~~in the opinion of the inspector, the inspector has good cause to suspect~~ contravenes or is likely to contravene ~~animal welfare law~~ this Act or any regulations made under it; or 5
- “(e) prohibit the person from having something done on the person’s behalf again that; ~~in the opinion of the inspector, the inspector has good cause to suspect~~ contravenes or is likely to contravene ~~animal welfare law~~ this Act or any regulations made under it; or 10
- “(f) require the person to do something that; ~~in the opinion of the inspector, the inspector reasonably believes~~ is necessary to ensure that the person complies with ~~animal welfare law~~ this Act or any regulations made under it. 15
- “Compare: 1993 No 95 s 154 15

“156B Content

A compliance ~~order~~ notice must state—

- “(a) the name of the person ~~against whom it is made~~ to whom it is issued; and
- “(b) the reasons why the inspector ~~made~~ issued it; and 20
- “(c) the requirement or prohibition in **section 156A(2)** ~~ordered~~ imposed by the inspector; and
- “(d) one of the following:
- “(i) for a requirement, the period, if any, within which the requirement must be achieved, which 25 must start on the day on which the ~~order~~ notice is served and end after a time that is reasonable for the achievement of the requirement; or
- “(ii) for a prohibition, the time and date, if any, from which the prohibition is to take effect; and 30
- “(e) the conditions, if any, imposed by the inspector; and
- “(f) the consequences of not complying with the ~~order~~ notice; and
- “(g) the rights of appeal in **section 156F**; and
- “(h) the name and address of the agency whose inspector 35 ~~made the order~~ issued the notice.

“Compare: 1993 No 95 s 154A

“156C Service

- “(1) An inspector who ~~makes a compliance order~~ issues a compliance notice must ensure that it is served on the person ~~against whom it is made~~ to whom it is issued.
- “(2) Without limiting section 185, a compliance ~~order~~ notice may 5
be served by—
- “(a) delivering it personally to the person:
 - “(b) delivering it to the person at the person’s usual or last-known place of residence or business:
 - “(c) sending it by fax or email to the person’s fax number or 10
email address:
 - “(d) posting it in a letter addressed to the person at the person’s usual or last-known place of residence or business.
- “(3) The following provisions apply to service as described in **sub-section (2)**: 15
- “(a) service on an officer of a body, or on the body’s registered office, is deemed to be service on the body:
 - “(b) service on any of the partners in a partnership is deemed to be service on the partnership:
 - “(c) service by post is deemed to occur at the time at which 20
the order notice would have been delivered in the ordinary course of the post.

“Compare: 1993 No 95 s 154B

“156D Compliance

- The person ~~against whom a compliance order is made~~ to whom a compliance notice is issued must— 25
- “(a) comply with the order notice; and
 - “(b) do so within the period stated in the order notice, if a period is stated; and
 - “(c) pay all the costs and expenses of complying with the 30
order notice, unless the order states otherwise.

“Compare: 1993 No 95 s 154C

“156E Change or cancellation

- “(1) A compliance order notice may be changed or cancelled under **subsection (2)** or cancelled under **subsection (3)** by the 35
Director-General.

- “(2) If the Director-General receives a written application from the person ~~against whom the order was made~~ to whom the notice was issued to change or cancel the ~~order~~ notice, the Director-General—
- “(a) must consider the application as soon as practicable and in any event within 10 working days after the date on which the application is received, having regard to—
- “(i) the purpose for which the ~~order was made~~ notice was issued; and
- “(ii) the effect of a change or cancellation on the purpose; and
- “(iii) any other matter he or she thinks fit:
- “(b) may confirm, change, or cancel the ~~order~~ notice;
- “(c) must give the person ~~against whom the order was made~~ to whom the notice was issued written notice of the confirmation, change, or cancellation.
- “(3) The Director-General—
- “(a) may cancel the ~~order~~ notice if he or she considers that the ~~order~~ notice is no longer required; and
- “(b) must give the person ~~against whom the order was made~~ to whom the notice was issued written notice of the cancellation.
- “(4) An application to change or cancel a compliance notice does not operate as a stay of the notice.
- “Compare: 1993 No 95 s 154D

“156F Appeal to District Court

- “(1) The following persons may appeal to a District Court:
- “(a) the person ~~against whom a compliance order is made~~ to whom a compliance notice was issued under **section 156A**:
- “(b) a person whose application under **section 156E(2)** did not succeed.
- “(2) The appeal does not operate as a stay of the compliance ~~order~~ notice.
- “(3) The person may apply to the court for a stay of the compliance ~~order~~ notice pending the court’s decision on the appeal.

- “(4) The court must consider the application for a stay as soon as practicable after the application for it is lodged.
- “(5) The court must consider—
- “(a) whether to hear—
 - “(i) the person: 5
 - “(ii) the Director-General; and
 - “(b) the likely effect on animal welfare of granting a stay; and
 - “(c) whether it is unreasonable for the person to comply with the compliance ~~order~~notice pending the decision on the 10 appeal; and
 - “(d) any other matters that the court thinks fit.
- “(6) The court may grant or refuse a stay and may impose any terms or conditions that the court thinks fit.
- “(7) The stay has legal effect once a copy of it is served on the 15 Director-General.
- “(8) The stay remains in force until the District Court orders it lifted.
- “(9) The rules of procedure under the District Courts Act 1947 apply to the making of an appeal and an application for a stay. 20
- “(10) The District Court may confirm, change, or cancel the compliance ~~order~~notice appealed against.
- “Compare: 1993 No 95 s 154E

“156G Appeal to High Court, Court of Appeal, or Supreme Court

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- “(1) A party to an appeal under **section 156F** may appeal to the High Court on a question of law.
- “(2) The High Court Rules and sections 74 to 78 of the District Courts Act 1947 apply to an appeal under **subsection (1)**—
- “(a) as if it were an appeal under section 72 of the District 30 Courts Act 1947; and
 - “(b) with all necessary modifications.
- “(3) A party to an appeal under **subsection (1)** may appeal to the Court of Appeal or the Supreme Court against a determination of the High Court on a question of law, with the leave of the 35 court appealed to, and subject to section 14 of the Supreme Court Act 2003.

- “(4) The Court of Appeal or the Supreme Court hearing an appeal under this section has the same power to adjudicate on the appeal as the High Court had.

“Compare: 1993 No 95 s 154F

“156H Effect of appeal

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An appeal under **section 156F or 156G** has the following effects:

- “(a) the Director-General whose compliance ~~order~~notice is appealed against must not cancel the ~~order~~notice while the ~~order~~notice is the subject of an appeal or while the time for the person’s appeal rights is running; and
- “(b) the person who appeals must comply with the ~~order~~notice if compliance is required as the result of the person exercising the person’s appeal rights.

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“Compare: 1993 No 95 s 154G

“156I Penalties for non-compliance with compliance ~~order~~notice

- “(1) A person commits an offence who, without reasonable excuse, fails to comply with any requirement made or prohibition imposed under **section 156A**.
- “(2) A person who commits an offence against this section is liable on conviction,—
- “(a) in the case of an individual, to a fine not exceeding \$5,000; or
- “(b) in the case of a body corporate, to a fine not exceeding \$25,000.”

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45 Section 156I amended (Penalties for non-compliance with compliance ~~order~~notice)

After **section 156I(2)**, insert:

- “(3) An offence against this section is also an infringement of- fence.”

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46 Section 157 amended (Offenders to give name and address)

Replace section 157(4) with:

- “(4) A person commits an offence who, without reasonable excuse,—
- “(a) fails to comply with a request made under subsection (1) or (2); or
 - “(b) gives to an inspector, in response to a request made under subsection (1) or (2), particulars that are false in a material respect. 5
- “(5) A person who commits an offence against **subsection (4)** is liable on conviction,—
- “(a) in the case of an individual, to a fine not exceeding \$5,000; or 10
 - “(b) in the case of a body corporate, to a fine not exceeding \$25,000.
- “(6) ~~An offence against **subsection (4)** is also an infringement offence.~~” 15

47 Section 161 amended (Infringement offences)

In section 161, insert as subsection (2):

- “(2) Despite section 21(1) of the Summary Proceedings Act 1957, leave under that provision is not required in order to file a charging document in respect of an infringement offence under this Act.” 20

48 Section 162 amended (Infringement notices)

Replace section 162(4)(b) with:

- “(b) the amount of the infringement fee (being an amount not exceeding \$1,000 prescribed by regulations made under this Act); and”. 25

49 Section 169 replaced (Court may disqualify person from owning or exercising authority in respect of animals)

Replace section 169 with:

- “169 Court may disqualify person from owning or exercising authority in respect of animals” 30**
- “(1) This section applies if a person is convicted of an offence against—
- “(a) any section in Part 1 or 2; or
 - “(b) section 152(1); or 35

- “(c) section 169B(1).
- “(2) This section also applies if a person is charged with an offence against any enactment specified in **subsection (1)** and is found unfit to stand trial (under the Criminal Procedure (Mentally Impaired Persons) Act 2003). 5
- “(3) If this section applies in relation to a person, the court may (in addition to or in substitution for any other penalty or order) make an order disqualifying that person for any period that it thinks fit from being the owner of, or exercising authority over, or being the person in charge of,— 10
- “(a) an animal or animals of a particular kind or description; or
- “(b) animals generally.
- “(4) In considering whether to make an order under **subsection (3)**, the court must have regard to— 15
- “(a) the purposes of Parts 1 and 2; and
- “(b) the maximum penalty specified for the charge from which the conviction arose; and
- “(c) the seriousness of the offending, including (without limitation) the nature and gravity of the harm, the number of animals involved, and the frequency of the offending; and 20
- “(d) the character of the person; and
- “(e) the previous offending history (if any) of the person; and 25
- “(f) any other circumstances of the case.
- “(5) In making an order under **subsection (3)**, the court may also specify a minimum disqualification period.”
- 50 Section 169A amended (Disqualified person may apply to court for removal or variation of disqualification) 30**
- Replace section 169A(4) with:
- “(4) In deciding an application under this section, the court may have regard to—
- “(a) the matters specified in **section 169(4)**; and
- “(b) the applicant’s conduct since the disqualification order was made.” 35

51 Section 169B amended (Offence of contravening disqualification order)

Replace section 169B(1) with:

- “(1) A person commits an offence if the person contravenes a disqualification order made under **section 169(3)** (under which provision a court can make an order relating to an animal or animals of a particular kind or description or to animals generally).” 5

52 Section 172 amended (Power of court to order that certain animals be forfeited to the Crown or approved organisation) 10

Replace section 172(2) with:

- “(2) If a court finds that a person is unfit to stand trial for an offence against this Act in respect of an animal or animals, the court may make any order provided for in subsection (1) as if it had convicted the person of the offence. 15
- “(3) If an animal is forfeited to the Crown or an approved organisation under this section,—
- “(a) in the case of a person found unfit to stand trial, the proceeds of sale (if any) must be held by the Ministry or an approved organisation (after deducting (in order) the costs of sale, any sums required to be paid to a security holder or any other person under a condition of the order for sale, and any costs incurred by the Crown or approved organisation in caring for the animal or animals or providing veterinary treatment to that animal or those animals), and the Ministry or approved organisation, as the case may be, must pay the proceeds of sale to the owner as soon as practicable: 20 25
- “(b) in any other case, the animal may be sold or otherwise disposed of as the Minister or the approved organisation, as the case may be, thinks fit.” 30

53 Sections 175 to 178 and cross-heading above section 175 repealed

Repeal sections 175 to 178 and the cross-heading above section 175. 35

54 Section 182 amended (Criteria in relation to recovery of costs)

In section 182, replace “section 183(e)” with “section 183(1)(e)” in each place.

55 Section 183 amended (Regulations)

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(1) After section 183(1)(c)(iii), insert:

“(iiia) the killing of animals that were bred, but not used, for the purposes of research, testing, and teaching.”.

(2) Replace section 183(1)(h) with:

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“(h) prescribing the offences created by or under this Act that constitute infringement offences for the purposes of this Act, and prescribing infringement fees not exceeding \$1,000 for each infringement offence, which may be different fees for different offences (including different fees for a first or second or third offence):”.

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56 New sections 183A to 183C inserted

After section 183, insert:

“183A Regulations relating to standards of care

“(1) The Governor-General may, on the recommendation of the Minister, by Order in Council, make regulations for all or any of the following purposes:

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“(a) prescribing standards or requirements for the purposes of giving effect to Parts 1 and 2 (other than **sections 30A to 30E**), including—

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“(i) animal welfare standards or requirements relating to the care of animals by owners or persons in charge of animals:

“(ii) animal welfare standards or requirements relating to the conduct of those persons towards animals owned by them or in their charge:

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“(iii) the prohibition of specified things or activities:

“(b) establishing any minimum standard that could be established under Part 5, or amending, revoking, or replacing any minimum standard or any part of a minimum standard established under Part 5.

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- “(2) ~~Regulations made under this section may (without limitation)~~ Without limiting the generality of **subsection (1)**, regulations made under this section may prescribe standards or requirements that do not fully meet—
- “(a) the obligations of section 10 or 11; or 5
 - “(b) the obligations that a person would need to observe in the treatment, transport, or killing of animals if that person were to avoid committing an offence against section 12(c), **21(b)**, 22(2), 23(1), 23(2), or 29(a).
- “(3) ~~Regulations made in reliance on **subsection (2)** may only be made for any specified period, or series of specified periods, that is necessary to enable a transition from current practice to new practice.~~ 10
- “(4) The Minister must not recommend the making of regulations in reliance on **subsection (2)** unless he or she is satisfied that ~~all or any~~ either or both of the following apply: 15
- “(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 religious or cultural practices:~~ 20
 - “(c) 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.
- “(4A) In deciding whether any impact on a particular sector is unreasonable under **subsection (4)(c)**, the Minister must have regard to the welfare of any affected animals. 25
- “(4B) Any regulations made in reliance on **subsection (2)** in accordance with the considerations in **subsection (4)** must provide for the regulations to be in force for a period of time specified in the regulations (the **specified period**) that— 30
- “(a) is reasonably necessary to enable a transition from current practice to a practice that fully meets the obligations specified in **subsection (2)(a) and (b)**; and
 - “(b) does not exceed 10 years (which period may, however, be extended once under **subsection (4C)**). 35
- “(4C) The specified period may be extended once only by up to 5 years by regulations made under this subsection on the recom-

mendation of the Minister if he or she is satisfied that the majority of participants in the sector concerned—

“(a) have made significant progress towards implementing compliant practice; and

“(b) cannot reasonably be expected to become compliant before the close of the specified period, taking into account the steps that still need to be completed for implementation of compliant practice; and

“(c) will become compliant within the extended period.

- “(5) If, after considering **subsections (3) and (4)**, the Minister considers that a transition to a new practice is not feasible, the Minister may (despite **subsection (3)**) Despite **subsections (4) to (4C)**, if the Minister considers that requiring a practice to fully meet the obligations specified in **subsection (2)(a) and (b)** would impose an unjustifiable limitation on the requirements of a religious or cultural practice, the Minister may recommend the making of regulations in reliance on **subsection (2)** for an indefinite period subject to review at 10-yearly intervals or shorter intervals specified in the regulations.
- “(6) In considering whether reaching a decision not to recommend the making of regulations in reliance on **subsection (2)**, the Minister may have regard to whether the regulations would be in consider any factors that the Minister thinks would make such regulations contrary to New Zealand’s overall interests (including, without limitation, health, social, economic, international, or environmental interests).
- “(7) Nothing in this section obliges the Minister to recommend the making of regulations in reliance on **subsection (2)**.
- “(8) The Minister must consult the National Animal Welfare Advisory Committee before recommending the making of any regulations under this section (other than regulations already proposed by the Committee), but nothing in sections 71 to 75 applies in relation to the making of regulations under **subsection (1)(b)**.
- “(9) If a person does or omits to do anything in reliance on regulations made under **subsection (2)** that would otherwise be a contravention of, or failure to comply with, any provision of Part 1 or 2, the person has a defence to a prosecution for an offence under this Act in respect of the act or omission if the

court is satisfied that the act or omission was authorised by the regulations.

“183B Regulations relating to surgical and painful procedures

- “(1) The Governor-General may, on the recommendation of the Minister, by Order in Council, make regulations for all or any of the following purposes:
- “(a) prohibiting specified surgical procedures or painful procedures from being performed on animals:
 - “(b) prescribing requirements in relation to the performance of specified surgical or painful procedures on animals, including (without limitation) regulations that prescribe—
 - “(i) the classes of persons who may carry out a specified procedure:
 - “(ii) any skills, qualifications, approval, or experience that must be held by a person before he or she is authorised to carry out specified procedures:
 - “(iii) the types of pain relief or medication to be used for specified procedures:
 - “(iv) the forms of restraint and equipment to be used for specified procedures:
 - “(v) the procedures that may be performed only if in the best interests of the animal:
 - “(vi) any other standards or restrictions necessary to ensure the welfare of animals during the procedures:
 - “(c) declaring that any specified surgical procedure is not a significant surgical procedure for the purposes of this Act.
- “(2) Before recommending the making of regulations under this section, the Minister must have regard to the following matters:
- “(a) the nature of the procedure; and
 - “(b) the effect that the performance of the procedure will or may have on an animal’s welfare; and
 - “(c) the purpose of the procedure; and

- “(d) the extent (if any) to which the procedure is established in New Zealand in relation to the production of animals or commercial products; and
 - “(e) the likelihood of the procedure being managed adequately by the use of codes of welfare or other instruments under this Act; and 5
 - “(f) any other matter considered relevant by the Minister.
- “(2) Before recommending the making of regulations under this section, the Minister must have regard to—
- “(a) whether the procedure has the potential to— 10
 - “(i) cause significant pain or distress; or
 - “(ii) cause serious or lasting harm, or loss of function, if not carried out by a veterinarian in accordance with recognised professional standards; and
 - “(b) the nature of the procedure, including whether this involves— 15
 - “(i) a surgical or operative procedure below the surface of the skin, mucous membranes, or teeth or below the gingival margin; or
 - “(ii) physical interference with sensitive soft tissue or bone structure; or 20
 - “(iii) significant loss of tissue or loss of significant tissue; and
 - “(c) the purpose of the procedure; and
 - “(d) the extent (if any) to which the procedure is established in New Zealand; and 25
 - “(e) good practice in relation to the use of the procedure for animal management purposes or in relation to the production of animal products or commercial products; and 30
 - “(f) the likelihood of the procedure being managed adequately by codes of welfare or other instruments under this Act; and
 - “(g) any other matter the Minister considers relevant.
- “(3) The Minister must consult the National Animal Welfare Advisory Committee before recommending the making of regulations under this section (other than regulations proposed by the Committee). 35

- “(4) In the absence of evidence to the contrary, a particular procedure is presumed to be a surgical procedure or a painful procedure if regulations are made in respect of the procedure under this section.

“183C Regulations relating to exporting animals 5

- “(1) The Governor-General may, on the recommendation of the Minister, by Order in Council, make regulations prescribing requirements and other matters relating to the exportation of animals, including (without limitation) requirements or matters relating to— 10
- “(a) the species, age, number, and fitness of animals:
 - “(b) the duration and date of journeys:
 - “(c) the transport vehicles and associated facilities (such as loading and unloading equipment):
 - “(d) the purpose of the exportation: 15
 - “(e) pre-conditions required to be satisfied before travel:
 - “(f) the people accompanying the animals:
 - “(g) pre-loading facilities:
 - “(h) reporting and independent monitoring.
- “(2) Any regulations made under **subsection (1)** may prohibit, 20 either absolutely or conditionally, any specified type of exportation of animals.
- “(3) Any regulations imposing any conditional prohibition on a specified type of exportation of animals may—
- “(a) require that the prior approval of the Director-General 25 be obtained before exportation:
 - “(b) authorise him or her to impose conditions on any exportation:
 - “(c) set out criteria applying to the granting of approval and describe the types of conditions that may be imposed.” 30

57 Section 184 amended (Consultation)

- (1) Replace section 184(1) and (2) with:
- “(1) The Minister must consult, to the extent that is reasonably practicable, having regard to the circumstances of the particular case, the persons the Minister has reason to believe are representative of interests likely to be substantially affected by a 35

- proposed Order in Council or proposed regulations before deciding whether to recommend—
- “(a) the making of an Order in Council under—
- “(i) section 2(1) (in relation to the definitions of **animal, device, or trap**); or 5
- “(ii) section 6; or
- “(iii) section 16(1) or (2); or
- “(iv) section 32(1) or (6); or
- “(v) section 200(4); or
- “(vi) section 202(5); or 10
- “(b) the making of regulations under—
- “(i) section 183(1)(b), (d), or (e); or
- “(ii) **section 183A**; or
- “(iii) **section 183B**; or
- “(iv) **section 183C**. 15
- “(2) **Subsection (1)** does not apply in respect of an Order in Council or regulations if—
- “(a) the Minister considers it desirable in the public interest that the Order in Council or regulations be made urgently; or 20
- “(b) the National Animal Welfare Advisory Committee has consulted on the subject matter of the Order in Council or regulations as part of its consultation on a draft code of welfare under sections 71 or 72.
- “(b) in the case of regulations recommended by the National 25
Animal Welfare Advisory Committee under **section 74(2)(d)**,—
- “(i) the Committee has consulted on the subject matter of the proposed regulations under section 71(1); and 30
- “(ii) the Minister has not yet issued the relevant draft code of welfare.”
- (2) Repeal **section 184(1)(a)(ii) and (iii)**.
- 58 Section 191 repealed (Deemed codes of welfare)**
- Repeal section 191. 35

59 Schedule 1 amended

In Schedule 1, clause 6, replace “all the members of an advisory committee who are for the time being in New Zealand” with “at least 6 members”.

60 Schedule 4 replaced

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Replace Schedule 4 with the **Schedule 4** set out in the **Schedule** of this Act.

Part 2**Amendment to related Customs enactment**

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61 Amendment to Customs Export Prohibition (Livestock for Slaughter) Order 2010

(1) This ~~clause~~section amends the Customs Export Prohibition (Livestock for Slaughter) Order 2010.

(2) After clause 2, insert:

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“2A Revocation

Despite section 56(5)(b) of the Customs and Excise Act 1996, this order is revoked on the commencement of the first regulations that relate to the export of live animals for slaughter and are made under section 183C of the Animal Welfare Act 1999.”

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Schedule

s 60

Schedule 4 replaced

Schedule 4

s 8A

Transitional and savings provisions
relating to amendments to Act

- 1 Interpretation 5
In **this schedule**, amendment Act means the **Animal Welfare Amendment Act 2013**.
- 2 Codes of welfare
- (1) Every code of welfare in force at the commencement of this schedule continues in force and, after that commencement, may be amended, reviewed, revoked, or replaced under this Act. 10
- (2) The defences available under sections 13(2), 24(2), and 30(2) in relation to a code continued by **subclause (1)** that (in reliance on **section 73(3)**) does not fully meet any obligations described in **subclause (3)** continue to apply to the acts and omissions of any person charged with committing a relevant offence at any time while the code remains in force. 15
- (3) The obligations concerned are— 20
- (a) the obligations of section 10 or 11; or
- (b) the obligations that a person would need to observe in the treatment, transport, or killing of animals if that person were to avoid committing an offence against section 12(c), **21(1)(b)**, 22(2), 23(1), 23(2), or 29(a).
- (4) The references in **subclauses (2) and (3)** to sections of this Act must be read as references to those sections as they read when the code concerned was issued. 25
- (5) If the National Animal Welfare Advisory Committee has publicly notified a draft code of welfare under section 71 before the commencement of this schedule and the code has not been issued before that commencement, the Committee need not include in the draft any recommendation for the making of regulations under this Act. 30

3 Certain research, testing, and teaching projects

- (1) **Subclause (2)** applies to research, testing, and teaching projects approved by an animal ethics committee before the commencement of this schedule that relate to—
- (a) the killing of animals for the purpose of carrying out research, testing, and teaching on their bodies or tissues; or
 - (b) the breeding of animals with characteristics making them susceptible to increased pain and suffering during their life.
- (2) Approvals of projects to which this subclause applies that are in force on the commencement of this schedule continue in force according to their terms and do not require re-approval because of the operation of any provisions of the amendment Act (such as **section 5** of that Act).
- (3) Any projects being carried out lawfully without the approval of an animal ethics committee before the commencement of this schedule do not require approval because of the operation of any provisions of the amendment Act.

4 Power of inspector to issue infringement notice for breach of compliance notice

- (1) This clause applies to persons who, immediately before the commencement of **section 45 of the Animal Welfare Amendment Act 2014**, hold an appointment under this Act as an inspector.
- (2) The terms of appointment of inspectors to whom this clause applies may be amended to specifically authorise them to issue any person with an infringement notice under this Act for breach of a compliance notice.
- (3) An inspector to whom this clause applies may not issue an infringement notice for breach of a compliance notice unless the terms of his or her appointment have been amended to authorise him or her to issue such infringement notices.

Animal Welfare Amendment Bill

Legislative history

8 May 2013
27 August 2013

Introduction (Bill 107–1)
First reading and referral to Primary Production
Committee
