

Overview of the Animal Welfare Amendment Bill

Updated following the Select Committee Process

The Animal Welfare Act 1999

The Animal Welfare Act 1999 provides the framework for regulating the welfare of animals and preventing their ill-treatment. The Act:

- requires people who own or are in charge of animals to meet an animal's “**physical, health and behavioural needs**”, and to alleviate unreasonable or unnecessary pain or distress;
- prohibits certain types of conduct towards animals;
- establishes a framework for live animal exports;
- provides a process for approving the use of animals in research, testing, and teaching;
- establishes two national advisory committees on animal welfare;
- provides for the development and issue of codes of welfare.

“**Physical, health and behavioural needs**” is defined by what is referred to internationally as the **five freedoms**. These are:

- proper and sufficient food and water;
- adequate shelter;
- opportunity to display normal patterns of behaviour;
- appropriate physical handling;
- protection from, and rapid diagnosis of, injury and disease.

The Act does not expand on these obligations. The detailed standards of care are found in **codes of welfare**, which are developed by the National Animal Welfare Advisory Committee and issued by the Minister for Primary Industries under the Act. There are currently 16 codes of welfare in force.

The Ministry for Primary Industries works in partnership with the **Royal New Zealand Society for the Prevention of Cruelty to Animals** to enforce the Act. The **New Zealand Police** are also deemed to be animal welfare inspectors.

Strengths of the Act

- It is progressive – it goes further than just preventing cruelty and places an explicit obligation on all people in charge of animals to meet their animals' needs.
- It enshrines the internationally respected **five freedoms**.
- It is comprehensive – it covers animals in agriculture, in research testing and teaching, as pets, when animals are exported, and when they undergo surgical procedures.
- It provides for public participation in codes of welfare development.
- It establishes two independent Ministerial advisory committees that are respected by the sector:
 - **the National Animal Welfare Advisory Committee;**
 - **the National Animal Ethics Advisory Committee.**

Problems with the Act

Enforcement

- Codes of welfare are not directly enforceable.
- Enforcement tools are limited.

Clarity

- Lack of certainty around live animal exports.
- Surgical procedure provisions are unclear and limiting.
- Lack of clarity regarding ill-treatment of animals in the wild.

Transparency

- Lack of transparency in criteria for developing animal welfare standards.
- Lack of transparency in criteria for “exceptional circumstances”.
- No ethical oversight of:
 - animals killed so that their bodies or tissues can be used for research, testing and teaching;
 - research that may result in animals born with compromised welfare.

Enforcement

Current enforcement toolkit

Codes of welfare

Minimum standards are not directly enforceable

Section 130 notices

Directs a person to take steps, where an inspector believes an animal is suffering or is likely to suffer

Infringement notices

Very limited. Only available for failure to inspect traps, and failure to provide name/ address to inspector

Offences under the Act

Focused on serious offending

Animal welfare inspector powers

Search and Surveillance Act 2012 has changed general inspection and search powers

Animal seizure

Allows inspectors to seize animals that have been wilfully ill-treated, are not having their physical, health and behavioural needs met, or need veterinary treatment.

Court enforcement orders

Requires a person to comply with the Act or regulations

New enforcement toolkit

Codes of welfare +

New regulations that will complement codes of welfare by specifying mandatory and enforceable animal welfare standards

Section 130 notices +

Compliance notices that will require a person to stop or start doing something – not limited by inspector believing an animal is likely to suffer

Infringement notices

Will be available for a much wider range of offences under the Act and the **new regulations**, including failure to comply with a **compliance notice**.

Offences under the Act +

New lower-level offences under the **new regulations** with lower penalty levels to address medium and lower-level offending

Animal welfare inspector powers

Will be clarified to maintain inspectors' powers to take photos, video recordings etc, as well as samples from living and dead animals.

Animal seizure

Will also allow inspectors to seize an animal if it is at clear risk of imminent harm.

Court enforcement orders

No change

Clarity

Current state

Live Animal Exports

- The Act does not contain any mandatory standards for live animal exports, which provides insufficient certainty for exporters and overseas markets about the requirements they must meet.
- The Government's policy on exports for slaughter is implemented under the Customs and Excise Act 1996.

Surgical procedures

The Act currently regulates “**significant**” surgical procedures through a tiered classification system prescribed in the Act, which is difficult to understand and quite inflexible.

There is limited ability to provide clear and up-to-date mandatory standards for the performance of surgical procedures.

Ill-treatment of wild animals

It is not clear whether the Act's ill-treatment provisions apply to wilful and reckless ill-treatment of animals in the wild.

Future state

Live Animal Exports

- **New regulations** containing mandatory standards for live animal exports will be developed that provide certainty for exporters and enable the Government to enforce requirements more easily. There will be offences and penalties for non-compliance.
- The Government's policy on prohibiting exports for slaughter unless specifically exempted will be implemented via **new regulations** under the Animal Welfare Act, rather than the Customs and Excise Act.

Surgical and painful procedures

New regulations will be developed that will clarify and improve the flexibility of the requirements for surgical and painful procedures.

- Unless regulations prescribe otherwise, significant surgical procedures may only be performed by veterinarians or veterinary students under supervision.
- **New regulations** could vary this by:
 - prohibiting any surgical or painful procedure;
 - providing mandatory standards for any surgical or painful procedure;
 - declaring a surgical procedure to not be a significant surgical procedure, meaning that the general obligations in the Act would apply.

The Bill will also incorporate criteria that could be used to determine whether a procedure is or is not significant.

Ill-treatment of wild animals

The Bill makes it clear that conduct that goes beyond generally-accepted hunting, fishing, and pest management practice can be prosecuted as a wilful or reckless ill-treatment offence.

Transparency

Current state

Criteria for developing minimum standards

There is no express provision in the Act enabling the **National Animal Welfare Advisory Committee** (NAWAC) to consider “practicality” and “economic impact”, when developing minimum standards in codes of welfare (although in practice this does form part of NAWAC’s process).

Exceptional circumstances

Minimum standards that do not fully meet the obligations of the Act may be recommended by NAWAC in exceptional circumstances.

These provisions in the Act have been used infrequently, but the resulting standards are controversial and may apply to large numbers of animals (e.g. sow stalls and battery cages).

Research, testing and teaching (RTT)

- The killing of an animal so that its body or tissues can be used for research, testing, or teaching is not subject to animal ethics committee approval. This means that these animals are not included in the “**animal use in research**” statistics, which is misleading.
- Breeding animals with known or potentially compromised welfare to create models for studying diseases or to explore certain characteristics or understand gene function does not require animal ethics committee approval.

There is a risk that animals may be bred with severely compromised welfare where this is not justified by the benefits of the research.

Future state

Criteria for developing minimum standards

The Bill will make it explicit that NAWAC may consider “**practicality**” and “**economic impact**” where relevant, but that this cannot override animal welfare considerations. Minimum standards would still have to be consistent with the purposes of the Act.

Transitions and exemptions

When justified, regulations could permit practices that do not fully meet the general obligations of the Act.

Transitional regulations can be made for a maximum of 10 years, with a limited ability to extend this, once only, for an additional 5 years. These regulations can be extended 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.

Indefinite exemptions will only be available for ‘religious and cultural practices’, to ensure consistency with the New Zealand Bill of Rights Act. These regulations would have to be reviewed after a period not longer than 10 years, with an option to set a shorter review period.

Research, testing and teaching

Animal ethics committee approval will be needed to:

- kill an animal to carry out research, testing or teaching on its body or tissues, and these animals will be included in animal use statistics;
- breed animals with known or potentially compromised welfare for research, which will bring New Zealand into line with other comparable countries.

Minor and technical amendments

In addition, the Bill makes some minor and technical amendments to the Act. The Bill will:

- explicitly recognise that animals are sentient;
- provide guidance for the court when considering whether to impose an order disqualifying a convicted offender from owning or being in charge of animals;
- enable the court to order forfeiture of animals and disqualification from owning or being in charge of animals for people who have been found unfit to stand trial on animal welfare charges;
- clarify the definition of “device” to include explosives and incendiary devices, so that these could be prohibited or restricted in regulations if required;
- create an obligation that the killing of any wild animal or pest that is farmed or kept as a pet must be done humanely, in line with the requirements for other animals that are in someone’s care;
- expressly require animal ethics committees to assess whether non-sentient or non-living alternatives to the use of animals in research, testing or teaching have been considered;
- clarify the process to be followed before an animal is destroyed to prevent unreasonable or unnecessary pain or distress;
- allow the SPCA to dispose of animals abandoned in its care, and dispose of an animal immediately if it is wild or unsocialised and severely distressed by the fact of its containment;
- enable a wider range of organisations to become approved organisations under the Act;
- create an express ability for the Ministry for Primary Industries to audit approved organisations;
- remove the State Sector Act 1988 from the process for appointing Ministry for Primary Industries animal welfare inspectors;
- enable the Ministry for Primary Industries to suspend animal welfare inspectors who work for approved organisations, pending the outcome of an investigation into their conduct;
- clarify the search powers of animal welfare inspectors;
- allow groups not directly involved in research, testing, and teaching using animals to become code of ethical conduct holders on behalf of teaching organisations; and
- make other technical changes to the Act.