

NAWAC GUIDELINE 02:

Dealing with practices which might be inconsistent with the spirit of the Animal Welfare Act

1. Introduction

The Animal Welfare Act places the obligation or onus of a duty of care on owners and persons in charge of animals. Duty of care is defined by a number of positive core obligations whereby an owner or a person in charge is required to meet an animal's physical, health and behavioural needs as specified in section 4. However, section 4(d) requires "Physical handling in a manner which minimises the likelihood of unreasonable or unnecessary pain or distress" which implies there are some situations where Parliament accepted it may be reasonable or necessary to cause pain or distress .

Examples of practices that may not fully meet all of the obligations of the Act and would have to be considered under this section include some sporting activities, practices to minimise harm from aggression or dominance behaviours and some confinement systems.

There is therefore a tension between some of the objectives of the Act. This reflects the different values in society. For example some people value animals having the freedom to behave normally, while others value husbandry systems that constrain the behaviours of those animals to allow more efficient production.

2. How NAWAC might address this situation

NAWAC must first consider whether the pain or distress is necessary. This is a challenging test. To be necessary implies there are no other options and this is seldom the case, so the concept of necessary harm tends to reflect society's ethical positions. For example society as a whole does not want to ban rodeos or zoos so some harm to animals is inevitable. Similarly the production of layer hens inevitably leads to the destruction of millions of male day old chicks.

When NAWAC concludes that the harm is necessary the second test is to determine whether it is being minimised in a way that is reasonable. Thus rodeos and zoos are required to manage their animals in a way that minimises distress, day old chicks are required to be destroyed quickly and humanely, beak trimming of layer chicks must be done by infrared treatment rather than less humane alternatives and farrowing crates are permitted to prevent sows overlaying very young piglets. While all of these procedures are contentious for some people they are generally accepted as reasonable measures by society as a whole so again the test for reasonableness is whether it reflects society's ethical position.

However, NAWAC also has an important role in:

- (a) assisting others (for example, consumers, farmers, industries) to determine the appropriate action; and
- (b) working to change specific practices or systems that cause necessary harm over an appropriate time frame.

3. Considerations in making balanced assessments of welfare

- (a) acknowledging that under New Zealand law animal use is acceptable, provided that:
 - harms of a certain degree and kind are under no circumstances to be inflicted upon an animal;
 - any harm to an animal that is expected by society is justified by ensuring that the benefit obtained by society from treating it in that way is not unreasonable; and
 - there is an effective programme to identify ways to further reduce or eliminate any harm being caused;
- (b) acknowledging society's differing values and considering these when developing regulations, minimum standards and recommendations (or even codes) for different activities or systems (for example, indoor and outdoor broiler chicken management);
- (c) accepting that dispensations to standards may be acceptable in some circumstances. Under section 183A(2) of the Act, NAWAC may propose regulations that do not fully meet the obligations of the Act. In doing so, it must be satisfied that: any adverse effects of a change from current practices to new practices have been considered and there are no feasible or practical alternatives available; and / or, that not doing so would result in an unreasonable impact on a particular industry sector, the public, or New Zealand's wider economy. Regulations made in accordance with 183A(2) are time-limited exemptions and must provide for a transitional period that does not exceed 10 years (which may, however, be extended once under subsection 183A(6));
- (d) making decisions in accordance with section 73(2) and 73(3) of the Act which requires consideration of public submissions, good practice and scientific knowledge, available technology and any other matters NAWAC considers relevant, such as practicality and economic impact;
- (e) deciding how and if NAWAC should be proactive on particular issues, and, if so, write into the codes the future requirements and implementation time frames; and
- (f) having regard to feasibility, adverse effects and economic, religious and cultural issues when deciding on time frames for change.

4. Other important considerations

In making these decisions, NAWAC will also have regard to a number of other important matters, including:

- (a) any change must represent an improvement in animal welfare;
- (b) any economic analysis must include the consumer as well as the producer;
- (c) along with economics, factors such as food safety, the environment and aesthetics must be considered;
- (d) consideration of all five components of section 4 equally while recognizing that they cannot all be maximised at the same time;
- (e) acknowledgement of the importance of the skill of animal handlers and farm managers;
- (f) acknowledgement of the evolving demands of society on animals, be they for food, companionship, sport, entertainment, medicines, etc;
- (g) continual monitoring of the developing trends in agriculture, the food supply chain, food safety and consumer demands for high-quality products; and

- (h) acknowledgement of changing public perceptions and attitudes towards animals and the environment.

This guideline was originally approved by NAWAC on 15 May 2002, and has since been updated. This guideline is not a legal interpretation of the Animal Welfare Act 1999. It is anticipated that this guideline will be updated from time to time in light of experience gained by NAWAC during its deliberations.