NAWAC GUIDELINE 14:
Determining level of intervention

The Animal Welfare Act 1999 provides for the welfare of animals in New Zealand. It puts obligations on people who own or are in charge of animals to provide for the welfare of their animals. Under the Act, these people have an obligation to meet an animal's physical, health and behavioural needs and to alleviate unreasonable and unnecessary pain or distress.

NAWAC can recommend different types of regulatory and non-regulatory approaches to manage risks to animal welfare, including earlier responses to problems before they become severe.

Codes of welfare have a key role to play, both for guidance on acceptable practice and for setting out recommended best practices. Regulations and the offences under the Act complement Codes by providing alternative approaches.

Regulations are issued under the Animal Welfare Act 1999. They address low to medium breaches in the care of, and conduct towards, animals, provide clarity around the performance of painful and surgical procedures, specify outright prohibitions and indicate transition periods for actions that do not meet the purposes of the Act (such as sow stalls). NAWAC can recommend areas where regulations should be made, alongside recommendations for codes of welfare.

This guideline contains questions that are intended to help NAWAC to choose between the different regulatory and non-regulatory approaches.

What is the problem?

Welfare issues can come to the attention of NAWAC through a number of mechanisms, including: from the Minister for Primary Industries; from substantial public and media interest; or, from within the NAWAC committee and their current strategic plan. When the Committee has identified that there is a problem through its prioritisation framework (guideline 12) or an MCDA analysis (guideline 8), it can consider whether a code of welfare or regulations are necessary, or whether broader advice is necessary to better understand the problem, or non-regulatory support is necessary for compliance.

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What is the likely cause of the problem?

- Reasons for animal welfare offending can be considered in four broad categories, encompassing individuals who:

  - don't know they have a problem;
  - don't have the necessary experience to recognise a problem;
  - don't have the skills or resource to fix a problem; and,
  - don't consider animal welfare important).

Individuals may also have barriers to act because of other problems, for instance, financial or human welfare. Interventions to change behaviour need to target these causes. A standard approach to understand how behaviour could be changed to that is used for enforcing and encouraginge compliance with the Animal Welfare Act 1999 is the VADE model:

- (V) Voluntary compliance tools are best targeted at those willing to do the right thing and able to comply. They need to know what to do and how to do it. This is supported by providing them with high quality and timely information, supported by people to answer questions and give advice (e.g. farm advisory services, veterinarians). For example, NAWAC's 'dehorning: get it right' pamphlet.
- (A) Assistance to comply is necessary for those who want to comply but don't always succeed. They can be helped by increasing the benefits and decreasing the barriers to comply, making sure they know what needs to be done and how, and providing training, resources and support to do so. For example, *Safeguarding our Animals, Safeguarding our Reputation* ran a series of roadshows to support transport companies in making decisions around transporting unfit animals.
- (D) Directive compliance action is needed for those who do not want to comply and need to be compelled to do so. For example, inspectors issuing an AWS 130 Instruction to Prevent or Mitigate Suffering.
- (E) Enforcement action is needed for deliberate non-compliance and wilful inconsideration. For example, a prosecution under the Act.

When looking to address animal welfare breaches there are a number of tools available to drive behaviour change. When considering how to manage risk to animal welfare, it is important to consider both which tools are currently being used as the current status quo, and if those tools need supporting or replacing.

What tools are available to drive behaviour change?

Current tools for dealing with animal welfare breaches are summarised below, and their consequences presented in more detail in Appendix 1. When determining the right tools to address an issue, it is important to consider how all the tools will work together to get to the best result most effectively.

It may be advantageous to consider how to build compliance right from the start by working proactively to influence behaviour. Consider how to make it easier to comply, for example by involving stakeholders early, making educational material available at the right time and providing certainty when introducing new standards. NAWAC could also work to understand and influence social norms in order to change behaviour (for example so that the common perception becomes "people like me refuse to transport unfit animals", or "people like me read and comply with codes of welfare").

i. Non-regulatory options

It is not desirable to list all possible activities and procedures in regulation, and the risks posed to animal welfare from some activities and procedures may be adequately managed by the general requirements of the Act, veterinary professional standards, minimum standards in codes of welfare, or education.

Non-regulatory options include: advising the Minister for Primary Industries of the problem; developing a guideline, pamphlet or brochure; referring the issue to the *Safeguarding our Animals, Safeguarding our Reputation* programme; education and outreach; working with industry to help them create their own rules or framework; or developing a NAWAC opinion.

ii. Regulatory options

Codes of Welfare

Codes of welfare expand on the basic obligations of the Act by setting minimum standards and recommending best practice for the care and management of animals. Failure to meet a minimum standard in this code may be used as evidence to support a prosecution for an offence under the Act.

A person who is charged with an offence against the Act can defend him or herself by showing that he or she has equalled or exceeded the minimum standards in this code.

Recommendations of best practice set out standards of care and conduct over and above the minimum required to meet the obligation in the Act. They have no legal effect and are included to encourage higher standards of animal welfare.

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Regulations

Regulations establish requirements under the Animal Welfare Act. Developing regulations and any associated penalties need to be carefully thought out as they affect an individual's rights and freedoms and as such will be scrutinised by the Ministry of Justice.

Regulations specify certain actions or outcomes and an associated penalty. Failure to meet a regulation can result in an immediate penalty (ie an infringement notice) or prosecution under the regulations. Offences under regulation are similar to offences under the Act in that a prosecution needs to be taken for the penalties to be imposed.

Offence under the Act

The Animal Welfare Act contains offences for which a breach can result in a fine and a criminal conviction. For these offences to be proven a prosecution through the courts would need to be taken.
Penalties available under the Act are outlined in Appendix 1.

Which type of intervention should I use?

In choosing which tool (or tools) to use, you should consider how best to reach and change the behaviour of the audience being targeted, the seriousness of the breach and the impact of the penalty. The NAWAC secretariat are available to assist NAWAC at any stage as needed during this process.

i. **Describe the status quo**

- Describe key features of the current situation, including the behaviours being targeted and available tools.
- Identify existing legislation or regulations.
- Describe other existing interventions or programmes, including industry.
- Describe any recent government decisions made.

ii. **Identify the nature and scale of the problem**

- Assess the risk to animal welfare - See NAWAC Guideline 12.
- Assess the outcomes if there is no further government intervention.
- Identify the root cause of the problem (not just the symptoms).
- Identify who is likely to be affected by the problem.
- Why has the problem not been addressed by non-regulatory means?

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iii. What are you trying to achieve?

- What is the end-point that is being sought in relation to the problem identified?
- The Animal Welfare Act 1999 requires NAWAC to take various matters into account, including: good practice; scientific knowledge; and, available technology.
- Consider best practice requirements.
- Is the end-point subject to constraints (e.g., timing or resource)?
- There may be more than one end-point, or a conflict between two end-points or one could be weighted more heavily than others – if so, spell these issues out. NAWAC Guideline 8 can help to ensure that within the available options the physical, health and behavioural needs of the animals involved will be met.

iv. Identify feasible options

- Identify the range of tools or approaches available to achieve the end-point and address the problem (both regulatory and non-regulatory).
- Consider if a combination of options might have greater effect? An industry body may require higher level advice and direction on large systemic or ethical problems. In comparison, people in charge might be better reached with 'education and outreach'. A combined approach could include a scientific opinion piece for industry / the Minister followed up with a safeguarding work stream and accompanying brochures / posters for farmers.
- Is a prohibition or transitional period being proposed? NAWAC can no longer recommend minimum standards that fall below the Act. Instead, such matters must be dealt with in regulations and restricted to a transition of no more than ten years (with some provisos – see Guideline 13). Prohibitions can be dealt with in regulations or via prosecution under the Act. If there have been past prosecutions under the Act, it may not be necessary to have a prohibition written into a regulation.
- Is the issue already being worked on by other individuals, e.g. industry, Safeguarding. In some cases it may be that NAWAC needs to take a more supportive role and respond to the needs of those currently working on an issue, or design an intervention to compliment the work already being undertaken.

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v.   Analyse the options

- Analyse the costs, benefits, and risks of each option. If leaning towards regulation, NAWAC should consult with the secretariat early, see Guideline 04.
- How would each option alter the status quo? For example, would regulating inadvertently reduce the severity of the offence / penalty?
- Are the options enforceable / practical? What is the act/omission that will constitute the breach? Can it be proven when a breach has occurred? How will the offence, or outcome of the offence, be observed? If a regulation, will there be enough evidence to go beyond reasonable doubt?
- Identify the full range of impacts and risks for each option. This will include potential economic, health and social, compliance, environmental, cultural, and regulatory impacts. There will be direct and indirect impacts. Who bears the costs and benefits? Are there disproportionate impacts and how do these fall?

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Appendix 1:

Tools	Advantages	Disadvantages	Sanctions
Information	Quick to develop and share	Doesn't ensure behaviour change	None
Education	Can apply to issues with shades of grey	Doesn't ensure behaviour change	None
Codes of Welfare: Minimum Standards	Good when high levels of certainty are held	Difficult to enforce. Still need to prove offence under the Act.	Encourage voluntary compliance Provide minimum standards Education, verbal advice, warning letters Breach of a code may be used as evidence of a likely breach of the Animal Welfare Act 1999 (links to last box below).
Codes of welfare: Recommended Best Practice	Signal direction of travel	Not compulsory	Encourage voluntary compliance Provide best practice guidelines Education
Infringement under regulation	Clear and certain requirement	Quick sanction (fine) Hard to apply to issues with shades of grey	A fine may be set at a level up to $1,000 No criminal conviction
Offence under regulation	Clear and certain requirement	Longer sanction (court) Hard to apply to issues with shades of grey	Prosecution through the courts Can be sentenced up to $5,000 for an individual, or up to $25,000 for body corporates Criminal conviction
Offence under the Act	Clear and certain requirement Can address very serious / recidivist offences	Longer sanction (court)	Penalties range depending on the offence. The majority of offences have a penalty of up to: $50,000 individual; $250,000 body corporate. The most serious wilful ill-treatment offence is up to: $100,000 individual; $500,000 body corporate; Criminal conviction. Depending on the offence potentially imprisonment, disqualification, destruction or forfeiture of animals.

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