

GUIDELINE 01: Guidance for the development, review, and content of Codes of Welfare

1. Purpose of Codes of Welfare and their regulatory basis

Codes of Welfare are regulatory instruments under the Animal Welfare Act 1999 (the Act), and therefore their development and content must comply with what the Act specifies.

Key parts of the Act are:

- a) Section 4 defining physical, health and behavioural needs, as appropriate to the species, environment, and circumstances.
- b) Sections 9, 10 and 11 that establish the obligation for persons in charge of animals to attend to their physical, health and behavioural needs in accordance with good practice and scientific knowledge, and to ensure that ill or injured animals receive treatment that alleviates any unreasonable or unnecessary pain or distress.
- c) Section 13 which establishes compliance with minimum standards in a Code of Welfare as a defence from prosecution.
- d) Part 5, in particular:
 - o Section 68 which defines the purpose of Codes of Welfare as being to establish minimum standards and recommended best practices for care and conduct towards animals; and
 - o Sections 69 through 78, which describe the contents of and development process for Codes of Welfare.

2. Strategic context for NAWAC's role

NAWAC advises and makes recommendations to the Minister in accordance with its functions under section 57 in the Act. NAWAC provides independent and evidence-driven advice to the Minister.

In accordance with Schedule 1 clause 11 of the Act, MPI provides administrative assistance supporting NAWAC to carry out its functions. The technical and scientific expertise of MPI is also called upon by NAWAC during Codes of Welfare development and review. However, all NAWAC decisions and recommendations are made by NAWAC itself in accordance with criteria and procedures in the Act.

While maintaining independence in its advice to the Minister, NAWAC recognizes effective and efficient implementation of the New Zealand animal welfare regulatory system requires collaboration between public and private stakeholders with regulatory roles, obligations, and participatory rights. The regulatory system develops and implements New Zealand law, is subject to Government policy, and supports Government strategy.

NAWAC determines its work programme and priorities having regard to its members' views on the needs of the regulatory system and animal welfare in New Zealand. NAWAC considers Ministerial expectations and priorities in relation to its work programme and priorities and will also take direction from the Minister on what "fit for purpose" means in relation to Codes of Welfare during development and review processes. The Act affords the Minister the right to issue, decline or refer back any Code of Welfare that NAWAC has recommended. NAWAC seeks to ensure Codes of Welfare recommended to the Minister are clear and supported by evidence in accordance with the legislative process. Consultation on Codes of Welfare invariably surfaces a range of views, including differences in interpretation of evidence. NAWAC's recommendations reflect its independent advice.

Strategic guidance for NAWAC's role therefore includes:

- a) Expectations and priorities received from the Minister.
- b) Advice from Parliamentary Select Committees.
- c) Strategic statements from the Government and relevant Ministries.
- d) Judicial reviews or other case law relating to animal welfare standards.

NAWAC remains fully responsible for all decisions in the statutory process of recommending draft Codes of Welfare to the Minister for public consultation and to be issued, regardless of any Sub-Committees or Working Groups formulated to support such work.

3. Criteria in the Act

The matters to be considered by NAWAC when developing Codes of Welfare are detailed in section 73 of the Act. Without repeating in full the provisions outlined there, key considerations are:

- a) NAWAC must consider scientific knowledge, good practice, available technology, and anything else NAWAC considers relevant¹.
- b) NAWAC must consider the submissions made during consultation.
- c) NAWAC may take into account practicality and economic impact.

NAWAC uses the broad term "evidence-base" to summarise all these elements in relation to any Code of Welfare development and review process. NAWAC's summary of the

¹ NAWAC takes 'good practice' to mean a standard of care that has a general level of acceptance among knowledgeable practitioners and experts in the field; is based on good sense and sound judgement; is practical and thorough; has robust experiential or scientific foundations; and prevents unreasonable or unnecessary harm to, or promotes the interest of, the animals to which it is applied. 'Good practice' also takes account of the evolution of attitudes about animals and their care. 'Good practice' does not mean established or current practice. (Refer Primary Production Select Committee when considering the Animal Welfare Bill.)

evidence-base for Codes of Welfare is presented in reports that accompany them when notified for consultation and when recommended to the Minister.

4. Steps in the Code of Welfare development and review process

Part 5 of the Act describes the process for development of draft Codes of Welfare, consultation with stakeholders, and recommendation to the Minister. These should always be understood and referred to by NAWAC and stakeholders for specific procedural elements of the Code of Welfare development and review process.

NAWAC has developed the following generic outline of its process for development and review that aligns with the procedure described in the Act. The 13 process steps, with a brief description of the purpose and activities, are outlined here and appended to the NAWAC work programme. Consistent application and description using these 13 process steps ensures clear communication on progress during any development and review process.

NAWAC applies these steps regardless of who has prepared a draft Code of Welfare. Section 70 of the Act allows any person to draft a Code of Welfare. A draft Code prepared by a person other than NAWAC may affect the activities required in the steps of the overall process but does not replace any of these steps².

1. Planning and prioritisation

- Inclusion of a Code of Welfare development or review process into the NAWAC work plan.
- Prioritisation of the Code of Welfare development or review within the NAWAC work programme, which considers the capacity to properly engage in the work of NAWAC, MPI, those stakeholders directly affected by Codes, and other stakeholders.
- The outcome is a NAWAC decision to initiate work on a Code of Welfare development and review process, and a high-level work plan. The high-level work plan should identify the existing Code to be reviewed or the class of animals to be covered by a new Code, the NAWAC chairperson and members of a Sub-Committee to oversee this work; the MPI secretariat's participation in the review; stakeholders directly affected by a Code who may be invited to participate in a Working Group³, if one is formed; and a list of other stakeholders to be proactively engaged in the process, for instance during the identification of key issues, and during consultation processes.

² The MPI document "Guidance for Writing Codes of Welfare", June 2009, requires updating and does not reflect more recent amendments to the Animal Welfare Act nor this NAWAC Guideline. It is recommended that persons considering drafting a Code of Welfare should contact MPI or NAWAC to enquire about current practices and processes.

³ NAWAC considers the stakeholders directly affected by a Code to be the representatives of the persons in charge of animals covered by the scope of the Code of Welfare. NAWAC will normally also engage compliance and enforcement parties in the animal welfare regulatory system in Working Groups.

2. *Scoping and analysis*

- Confirming the scope of the Code of Welfare with respect to classes of animals that will be considered, and any other relevant circumstances (e.g., farming systems or supply chain components covered).
- Identification of the key issues that should be addressed. This may result from experience during implementation of an earlier version or during application of the Act to classes of animals covered by the scope, or may reflect changes of knowledge, attitude or practices amongst the persons caring for animals or more generally amongst the public. The stakeholders identified in the high-level plan will usually be invited to contribute to the identification of key issues and provide supporting information.
- A review of evidence is undertaken calling for input by all stakeholders. This includes a literature review during the scoping and analysis stage. The scope of the literature review may be broad (e.g., publications in the scientific literature relevant to welfare of the species since the last substantive review) or specific (e.g., publications on a particular challenging or controversial topic relating to the welfare of the species). The purpose is to ensure the Code of Welfare review is undertaken with a good understanding of current scientific knowledge.
- The outcome is a report accompanied by the literature review for consideration by NAWAC and for use in guiding the further development and review process. The report will be discussed by NAWAC to allow for guidance and direction on important matters to be provided to the NAWAC Sub-Committee prior to it taking the lead in further drafting and development. The report will append any literature review requested by NAWAC and will confirm the scope of the review.

3. *Initial drafting*

- The NAWAC Sub-Committee is mandated by NAWAC in terms of reference (Appendix 1 provides a template) to lead the development or review of a Code, including drafting the Code to be recommended for consultation and the accompanying Evaluation Paper, with version control of these documents as they progress.
- The Sub-Committee reports progress to NAWAC at each meeting of the full Committee.
- NAWAC may provide direction on important matters in the terms of reference, or when receiving progress reports. This may include, for instance, the need for economic analysis.
- NAWAC remains fully responsible for all key decisions in the code development process, eventually recommending draft Codes of Welfare to the Minister for public consultation and to be issued.
- MPI appoints staff to support the Sub-Committee in its work.
- The full outcome of initial drafting is achieved through steps 4 and 5.

4. *Targeted stakeholder engagement*

- The Sub-Committee may establish a Working Group that includes non-NAWAC representatives of persons in charge of animals, regulatory partners, or experts with knowledge on current and good practices in New Zealand and internationally.
- The Sub-Committee may interact with members of the Working Group individually, in focus groups, or as a whole, as it considers necessary to efficiently expedite the drafting process and ensure access to knowledge and expertise on the matters under consideration at any time in the drafting process.
- If required, after the initial literature review, the Sub-Committee may develop for itself or commission (with approval of budget and scope by the NAWAC Chair and MPI budget-holder) summaries of science, good practice, and available technologies. This is done to better understand key information relevant to the review, in order to supplement knowledge and understanding achieved during the earlier scoping and analysis phase. Further scientific literature reviews, either broad or specific, or economic analysis may be undertaken or commissioned at this point in the process.
- The Sub-Committee may engage with stakeholders during the drafting process to consider any matters that the Sub-Committee would benefit from hearing broader views on, including science, good practices, and available technologies, but also practical and economic issues that may be relevant to the review. This broader engagement may occur with the support of the Working Group, or independently. It may also involve visits by the Sub-Committee to locations or events to provide the Sub-Committee with relevant information on matters under consideration.
- The outcomes are confirmation of Working Group members with an indication of the relevant representation or expertise that resulted in their inclusion (if a Working Group is formally established), brief summaries of meetings and visits undertaken, any summaries of relevant technical information developed or commissioned, including any additional literature reviews and economic analysis (if undertaken), and an evolving working draft Code of Welfare with appropriate version control.

5. *Finalise consultation drafts*

- The Sub-Committee works with the Secretariat to develop a draft Code of Welfare, Evaluation Paper, and other consultation documents.
- The Sub-Committee presents the draft Code of Welfare and Evaluation Paper to NAWAC when it is ready to recommend these as fit for purpose for progressing to public notification and consultation.
- NAWAC deliberates if the draft Code and Evaluation Paper are suitable for recommendation to the Minister for public consultation and records its deliberations and decisions in minutes.
- The outcomes are a draft Code of Welfare, Evaluation Paper, and NAWAC decision to proceed to the next step.

6. *Request Minister approval to consult*

- NAWAC recommends the draft Code of Welfare and Evaluation Paper to the Minister as fit for purpose for public notification and consultation.
- The outcome is the Minister's decision to proceed to public notification and consultation.

7. *Public consultation*

- NAWAC and MPI notify the draft Code of Welfare and Evaluation Paper as available for a period of public consultation, making the documents available and inviting written submissions for a clearly defined period.
- The outcomes are publication of the draft Code of Welfare and Evaluation Paper with a notice inviting review and written submissions, a register of submissions received, and an archive of those.
- Refer also to NAWAC Guideline 2 on consultation.

8. *Review submissions*

- The Sub-Committee reviews submissions received, and with the support of the Secretariat prepares a summary of the key issues raised.
- The Sub-Committee considers any changes to the consultation draft Code of Welfare that may be required to address issues raised during consultation. A draft Report is prepared that addresses matters requiring further explanation and justification over and above those already presented in the Evaluation Paper, with planning for how these could be further explored to arrive at a final recommendation.
- The outcomes are a list of key issues, if any, that should be further examined before finally settling on the recommend draft Code of Welfare and accompanying Report, and a summary of submissions, and a plan for addressing these, reported back by the Sub-Committee, and approved by NAWAC.

9. *Undertake further targeted consultation [Optional]*

- The Sub-Committee may engage in targeted consultations with the Working Group or any stakeholders that made submissions during the public consultation period as it further considers key issues that remain to be resolved, in accordance with the plan agreed with NAWAC.
- The outcomes are summary reports of any such meetings and the Sub-Committee deliberations regarding information received.

10. *Undertake further public consultation [Optional]*

- NAWAC may decide to recommend to additional public notification and consultation process on either a full updated version of the Code of Welfare and Evaluation Paper, or a specific part of it. In this instance the steps from 6-8 are repeated, starting with a recommendation to the Minister.

- Repeating public notification and consultation is only envisaged if the version of the Code of Welfare NAWAC would seek to recommend to the Minister is so different from the earlier publicly notified version for consultation that the submissions received cannot be considered relevant to the recommendations made.
- Final recommendations to the Minister that differ from the minimum standards in consultation drafts do not automatically invoke re-consultation, if NAWAC can demonstrate that the evidence-base post-consultation supports a different minimum standard, and the views of the stakeholders on the matters under consideration can be reasonably interpreted from submissions received during the earlier public consultation. If the proposed change is large and cannot be clearly linked back to the evidence base or stakeholder views, NAWAC will consult with MPI on the need for re-consultation, before making any recommendation to the Minister.

11. Economic analysis [Optional]

- NAWAC may undertake or commission economic analysis to understand the economic impacts of draft Codes of Welfare or specific requirements.
- Economic analysis to quantify impacts is likely to be important if there are significant practical or economic challenges associated with recommended requirements and a scenario invoking section 183A (2) is being considered (i.e., regulations prescribing standards or requirements that do not fully meet obligations of the Act, as a transitional arrangement). This is because part of the consideration for the Minister and Cabinet's decision in such circumstances is the impact on a particular industry sector, public sector, or New Zealand's wider economy.
- Economic analysis may be identified during the scoping and analysis phase (step 2), included in the agreed terms of reference (step 3), be undertaken, or commissioned and form part of the evidence base considered during all subsequent steps. Alternatively, the importance of certain issues and the need for economic analysis may arise later in the process.
- Economic analysis should start with clear terms of reference that: state the relevant circumstances that are in and out of scope; identify counterfactual and alternative scenarios to be analysed; specify the analytical approach; and if modelling is undertaken, agree the time horizon, discount rates, and model outputs upon which comparisons between scenarios will be made.
- NAWAC may request the MPI Secretariat to facilitate the commissioning of economic analysis and may consult the Working Group or other stakeholders during drafting of terms of reference.
- The outcome is an economic analysis performed to an agreed scope, which is incorporated into the evidence base considered by NAWAC and summarised in the Evaluation Paper or Report (depending on the stage in the process when undertaken).

12. Finalise recommended drafts

- The Sub-Committee arranges for technical and, if considered necessary, independent legal peer review of the near final versions of the draft Code and Report and may either make further changes or undertake further work in response to these reviews.
- The Sub-Committee considers all information received during consultation, expert and legal review and its implications for the draft Code and Report to be recommended. When the Sub-Committee has agreed a final Code and Report to be recommended, it reports back to NAWAC.
- NAWAC agrees the final versions of the Code of Welfare and Report that will be recommended to the Minister.
- NAWAC agrees any recommendations relating to Regulations under section 183A (1) or for transitional arrangements under section 183A (2), documenting the rationale for such recommendations and providing its views on the period of time to enable transition from current practice to practice that fully meets the obligations of the Act. These recommendations and their associated rationale should be clearly laid out in the Report.
- NAWAC strives to achieve consensus in its recommendations of Codes of Welfare and Reports to the Minister. When consensus has not been achieved, and the Chair considers further analysis or discussion is deemed unlikely to achieve it, a decision is determined by majority vote, in line with Schedule 1 of the Act. Differences of opinion within NAWAC on recommendations must be clearly described to the Minister.
- The outcome is NAWAC's recommended Code of Welfare and Report.

13. Recommend to Minister

- NAWAC sends a letter to the Minister appending the recommended Code of Welfare and Report and ensuring clarity on all necessary matters in accordance with the Act, including differences of opinion.
- The Minister considers NAWAC's recommendations along with any other policy advice and decides on whether to issue the Code of Welfare as recommended, issue the Code of Welfare with amendments decided by the Minister, refer it back to NAWAC with further direction, or decline to issue it.

5. Guidance on Minimum Standards

In accordance with the Act, minimum standards must be the minimum necessary to achieve the purposes of the Act.

Minimum standards should clearly describe the outcome sought using plain language.

If a minimum standard is prescriptive, the evidence justifying why this is the minimum necessary to achieve the purpose of the Act must be clearly described in the Report.

Minimum standards should not repeat matters addressed by Regulation and cannot set a higher Minimum Standard than an existing Regulation. Such matters are dealt with by NAWAC submitting clear recommendations relating to Regulations to the Minister.

6. Guidance on Regulations

Section 73 affords NAWAC the ability to recommend Regulations. NAWAC can exercise this ability when:

- Either In accordance with section 183A (1), NAWAC recommends that specific matters relating to care and conduct towards animals, including any prohibited activities, should be directly enforceable;

- Or In accordance with section 183A (2), NAWAC recommends standards or requirements that do not fully meet obligations of the Act be allowed during a transitional period, in view of feasible or practical alternatives not being currently available or as a result of unreasonable impacts.

The procedure for making Regulations under the Act in accordance with the Minister's decisions and directions is overseen by MPI. Animal Welfare Inspectors in MPI and RNZSPCA enforce Regulations. Consultation with these key partners should occur when NAWAC is considering recommending Regulations.

Further specific guidance when making recommendations relating to Regulations is found in NAWAC Guideline 3.

7. Guidance on Example Indicators

Example indicators provide non-exhaustive options for compliance, and in particular support interpretation of outcome-based Minimum Standards. They should assist persons in charge of animals to understand how they can comply with Minimum Standards but should always be understood as examples (as the term example indicators clearly indicates).

Example indicators should identify the Minimum Standard that they refer to. They cannot indicate a higher animal welfare requirement than the Minimum Standard they are intended to provide an example for.

8. Guidance on Recommended Best Practices

Recommended best practices encourage adoption of practices above the minimum necessary to achieve the purpose of the Act. They should be practically achievable in all the circumstances they purport to cover.

9. Guidance on consultation

NAWAC's commitment to Good Regulatory Practices includes fulfilling statutory obligations to publicly consult and consider any submissions made during development

of Codes of Welfare, as described in section 71, 72, and 73 of the Act. NAWAC is committed to ensuring strong engagement with experts and representatives of persons in charge of animals during the drafting of Codes of Welfare. This extends into the period after public consultation, when NAWAC uses its discretion to undertake additional consultation with persons who made submissions.

Further specific guidance on consultation is found in NAWAC Guideline 2.

The principles guiding NAWAC's Good Regulatory Practices are included as Appendix 2.

Appendix 1. Template for Terms of Reference for NAWAC Sub-Committee during a Code of Welfare Development or Review Process

The following terms of reference apply to any subcommittee appointed by NAWAC. The subcommittee will have the same powers to act as NAWAC, subject to ratification by NAWAC.

The membership of the Sub-Committee is decided by NAWAC. The Chair of a Sub-Committee is appointed by NAWAC and must be a NAWAC Member. There must be at least one other NAWAC Member on each Sub-Committee. NAWAC maintains a schedule of all Sub-Committees it has established, the appointed Chair, and membership.

Each NAWAC Sub-Committee will lead a Code of Welfare review process in accordance with NAWAC Guidelines or manage other specifically described responsibilities in accordance with the NAWAC Work Programme.

For Sub-Committees leading Code of Welfare review processes, they will:

- a) review outputs from the scoping and analysis phase;
- b) establish, if deemed appropriate, a Working Group to assist in gathering and considering the evidence base and drafting the Code and Evaluation Paper, including any recommendations regarding Regulations;
- c) recommend to NAWAC the draft Code and Evaluation Paper when it is considered to be fit for purpose and suitable to recommend to the Minister for public notification and consultation;
- d) formally consider the public submissions and the summary of them, engaging with persons making submissions if considered relevant, recording Sub-Committee recommendations in response and the reasons for them;
- e) formally consider any recommendations made by the Working Group during the drafting process, re-engaging with the Working Group if considered relevant, and recording Sub-Committee recommendations in response and reasons for them;
- f) identify major or complex issues arising during the Sub-Committee's development of the draft Code and Evaluation Paper. These issues will be identified from the public submissions, and any engagement with submitters, Working Group, and other experts after the public consultation; and
- g) prepare a Code of Welfare and Report for NAWAC to consider recommending to the Minister.

To facilitate its work, the Sub-Committee may:

- h) request a literature review with a specific or general scope or other report on science, good practices, and available technologies, in consultation with the Secretariat;
- i) engage with experts, industry representatives or persons making submissions to clarify any matters or to test scenarios; and
- j) undertake site visits and face-to-face meetings relevant to the draft code under

consideration. Other members of NAWAC may also attend.

The Sub-Committee Chairperson is to:

- k) work closely with the NAWAC Secretariat throughout the consideration of the draft Code;
- l) establish, in consultation with the Secretariat, a project schedule to be agreed by NAWAC, and report to NAWAC progress and updates to this schedule at each NAWAC meeting; and
- m) present the subcommittee's final draft of the code, and an accompanying draft report as required by section 74(2) of the Act, to NAWAC for discussion and approval.

Appendix 2. NAWAC’s summarised view on Good Regulatory Practices

1. Statutory clarity regarding our role and process

NAWAC is clear about its role and understands that while it underpins the advice to Minister, and contributes to the regulatory system, NAWAC itself is not the regulator. NAWAC will therefore work with MPI as the regulator, as well as with other regulatory and non-regulatory stakeholders.

2. Strategic connection with Minister and Cabinet as decision-maker

NAWAC remains in contact and available to the Minister to ensure opportunity for alignment on strategic issues and priorities. NAWAC remains informed of Government Strategy, and any advice from Parliamentary Committees.

3. Evidence review and synthesis practices, including identifying gaps

NAWAC aims for broad understanding of all evidence relevant to a Code of Welfare under development or review and uses this evidence in forming and justifying decisions. Where important gaps in evidence are identified, NAWAC recommends these as research priorities but will not necessarily delay decision-making while awaiting research results and will make decisions on the evidence currently available.

4. Stakeholder engagement and consultation processes throughout review

NAWAC identifies the regulatory partners, people in charge of animals, their sector representatives and recognised experts during Code of Welfare development and review processes and invites their engagement during the drafting process.

NAWAC ensures broad awareness and enables engagement from the wider stakeholders of the Animal Welfare System during public notification and consultation, including civil society groups, consumers, and the general public.

NAWAC is clear about the purpose of every engagement and consultation process, that the people and groups engaged understand the purpose and have an opportunity to state their views, and ensures a summary is documented.

5. “Plain English” Codes of Welfare with Persons In Charge of Animals (PICA) as target audience

NAWAC will ensure Codes of Welfare are written in language that owners and persons in charge of animals can readily understand regarding their obligations.

6. Understanding and communicating the role and reason for Regulation, Minimum standards, Example Indicators, Recommended Best Practice

NAWAC will ensure that its recommendations on regulations and Codes of Welfare respect the definitions and criteria in legislation, in NAWAC’s Guidelines, and in other relevant government guidance regarding Good Regulatory Practices.

7. Preference for outcome focussed Minimum Standards

NAWAC will ensure that each Minimum Standard clearly describes the intended animal welfare outcomes.

8. Justification with evidence for prescriptive Regulation and Minimum Standards

NAWAC will ensure recommendations on Regulations are clear about the problem to be addressed and the intention of the proposed measure. NAWAC acknowledges that the drafting process for Regulations, if recommendations are accepted, must ensure sufficient clarity for compliance and enforcement.

NAWAC will only prescribe requirements in relation to physiological parameters, system inputs (including nutrition), facility design, or management procedures when the evidence is clear that such requirements are the minimum necessary to achieve the purpose of the Act.

Whenever prescriptive recommendations are made, the evidence-base supporting them will be clearly laid out in the Evaluation Paper and Report accompanying draft or recommended Codes of Welfare, respectively.

9. Partnerships to achieve effective implementation

NAWAC recognises that good outcomes across the Animal Welfare System require partnership during development and implementation. Partners will be more likely to commit to implementation when they have been engaged during the development, are supported during implementation with information and evidence, and have the necessary resources and capability. NAWAC will work with the regulators and with representatives of persons in charge of animals to formally or informally monitor progress and challenges during implementation, providing additional support where it can. This includes identifying gaps in resources or capability and advocating to address any such gaps.

10. Collective intelligence informing the review cycle

NAWAC will use information from regulatory partners in relation to compliance challenges and feedback from persons in charge of animals and their sector representatives to inform reviews.

NAWAC will monitor developments in science, good practices, and available technologies in order to understand whether existing Codes of Welfare remain fit for purpose.

NAWAC will maintain broad relationships and invite dialogue with representatives of stakeholders and members of the public in order understand their broader perspective on animal welfare topics and issues and may use this to prioritise within the Work Programme.

This guideline was approved by NAWAC on 4 July 2024. 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.