

## **GUIDELINE 03: Recommending regulations for the care and conduct towards animals**

### **1. Introduction**

The Animal Welfare Act 1999 (the Act) provides for offences and penalties for serious animal abuse or neglect. Regulations fill the gap between the Act and codes of welfare and are a key tool to ensure that the animal welfare system works well. They:

- are more specific than the Act;
- are directly enforceable – unlike codes of welfare;
- have appropriate penalties for low to medium offending; and
- are easier to implement and administer than prosecutions under the Act.

NAWAC may decide to recommend regulations to:

- aid the enforcement of animal welfare standards, and set penalties for non-compliance (section 183A(1));
- prescribe requirements for the performance of specified surgical and painful procedures (section 183B(1)); and
- create transition periods for non-compliant practices, where there is no viable alternative (section 183A(2)).

Where NAWAC recommends regulations, it will seek to ensure they are:

- specific;
- effective;
- efficient;
- equitable;
- observable;
- enforceable; and
- clear.

MPI leads the process to develop any proposed new regulations or changes to regulations.

### **2. NAWAC process to recommend regulations**

When considering whether to recommend the adoption of regulations, NAWAC will:

- Identify the problem, the cause, and the desired outcome;
- Identify the evidence to be considered when determining if regulation is required;
- Clearly articulate the problem to be solved - and link it clearly to either section

- 10 or 11 of the Act;
- Consider regulatory and non-regulatory options that could achieve the outcome that has been identified;
  - Clearly state why a regulation is needed;
  - Identify why status quo is not sufficient;
  - Highlight other non-regulatory options that have been considered and why these are not suitable; and
  - Ensure consultation processes during reviews of Codes of Welfare are clear about recommended Regulations and the supporting rationale, and that consultation feedback has been carefully considered.

Where NAWAC has publicly consulted on a regulatory proposal as part of its review of a Code of Welfare, section 184(2) of the Act allows the Minister to progress this proposal through the normal policy development process without additional consultation if the Code has not been issued.

NAWAC should clearly indicate any recommendations for Regulations that have arisen after consultation, meaning consultation outside of the Code of Welfare development and review process will be necessary, and likely led by MPI.

### **3. Regulations and minimum standards**

When setting minimum standards for Codes of Welfare, NAWAC will ensure that they:

- do not repeat current regulations.
- do not set a higher standard of compliance than that required by current regulations.
- Meet the purposes of the Act.

When recommending a draft code to the Minister for approval, NAWAC may choose to additionally recommend that a particular minimum standard is enforced through regulation. If this is the case, the proposed standard will subsequently be removed from the Code once the regulation is passed and comes into force. Should the regulation not proceed for any reason, the minimum standard will remain in force unless the Minister determines that the minimum standard is not suitable either.

### **4. Regulations to transition non-compliant practices**

When recommending regulations, NAWAC may consider that it is reasonable to recommend that specific matters relating to the care and conduct towards animals, including any prohibited activities, should be directly enforceable. In this case, NAWAC recommends a Regulation under 183A(1) that would then come into force 28 days after it is issued (noting there may be exceptions to this).

Where it is identified that a practice does not comply with the obligations in sections 10 and 11 of the Act, and must be transitioned out, NAWAC may recommend a regulation under section 183A(2). In this case, a Code of Welfare with two versions of a Minimum Standard is presented to the Minister:

- a version of the Minimum Standard that is recognised as non-compliant with the Act that will remain in force for a transition period to be legally established using Regulations under section 183A(2); and
- a Minimum Standard that comprises the recommendation for requirements that are considered by NAWAC to be fully compliant with the Act, which will come into force after the transition period is completed.

The proposed compliant Minimum Standard may also be recommended by NAWAC to become an enforceable Regulation under section 183A(1), after the transition period established by Regulation under section 183A(2) is completed.

Whenever a Regulation under 183A(1) or (2) is promulgated, and a Minimum Standard duplicates the regulation in the Code of Welfare, the Code should be amended by deletion of the duplicating Minimum Standard so that it is clear that the legality of a requirement derives from the Regulation, rather than the Minimum Standard. This amendment occurs through the process described as per the Act.

When recommending a regulation under section 183A(2), NAWAC may include a recommended transition period of no more than ten years completion.

In making a recommendation for Regulations under section 183(2), NAWAC 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 (section 183A(3)(a)); 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 (section 183A(3)(b)).

In addition, NAWAC will also consider:

- public submissions
- current New Zealand and international research
- current good practice
- available technology
- society's views
- international practices and trends
- prior NAWAC or subcommittee considerations during the development or review of a Code of Welfare
- any other relevant matters.

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.