

# **Animal Welfare Amendment Bill**

Government Bill

## **Explanatory note**

### **General policy statement**

This Bill contains matters that are essentially technical in nature. No new policy is involved. The review of deemed codes of welfare and 2 other time-constrained matters in the Animal Welfare Act 1999 (the Act) has proven to be more complex than originally expected. The Bill extends the time allowed to complete those reviews. Other provisions relate to transitional provisions on methods of killing animals, clarify original drafting, improve flexibility, reduce costs, and generally improve the administration of the Act.

### **Codes of welfare**

*Clause 10* extends by 1 year (to 4 years) the current 3-year period during which the National Animal Welfare Advisory Committee (NAWAC) is to review deemed codes of welfare and recommend new codes to the Minister. Prior to the enactment of the Act, the former Animal Welfare Advisory Committee (now NAWAC) sought to enhance the welfare of animals through the publication of codes of recommended practice and minimum standards. Those codes were voluntary and were developed in conjunction with industries or interested organisations. Although not having legal status, they were very successful and widely adopted and implemented.

Because of their success, the Act retained and enhanced the codes concept. The Act enables the Minister to issue codes of welfare which have legal status - compliance with a relevant code constitutes a defence to any prosecution under the Act.

The Act recognises that the codes of welfare for pigs, poultry (broilers and layer hens), circuses, rodeos, and zoos might contain standards that were not likely to meet the standards of care required by the new legislation. Those codes are deemed to be codes of welfare under the Act until 31 December 2002. It was considered that this would provide adequate time to review the old codes and for NAWAC to review the proposed new codes, consult, and advise the Minister on whether to issue new codes.

The task of reviewing the codes has been more complex than originally expected, with the review process generating considerable public interest. The draft pig and broiler chicken codes generated hundreds of letters and substantive submissions and tens of thousands of postcards in the public consultation processes. The new codes of welfare are unlikely to be progressed to a situation where they can be issued by the Minister before 31 December 2002.

This Bill amends the Act by extending the time to review and issue new codes by 1 year (to 31 December 2003) to allow for the completion of review of the deemed codes and the issue of new codes. The period may be further extended but, recognising the high level of public interest in the process, any extension must be expressly confirmed by Act of Parliament.

### **Spring jaw and gin traps**

Section 200 of the Act saves local government bylaws governing the use of spring jaw and gin traps until 31 December 2002. Most territorial local authorities have trap-related bylaws. These tend to prohibit the use of spring jaw and gin traps (except in special circumstances) within a territorial local authority's boundaries, or within urban areas. The policy reasons behind these bylaws relate to animal welfare, bycatch of domestic animals, and human health and safety.

Again, it was expected that NAWAC would have issued guidelines on the use of these traps by 31 December 2002 and restrictions or prohibitions on the use of certain traps under section 32 of the Act would be in place. This has not eventuated, as NAWAC has had to give priority to reviewing the deemed codes of welfare.

Extending the time in which NAWAC can complete this task would enable a comprehensive framework for trapping generally to be put

in place, and allow for clarification of the roles of central government and local authorities with respect to animal welfare related issues.

### **Castration and dehorning**

Section 201 of the Act saved certain provisions of the Animals Protection Act 1960 as they relate to castration of cattle, sheep, pigs, or goats over the age of 9 months and dehorning of any animal over the age of 20 months. The provisions were saved until 31 December 2002. It was expected that these provisions would be replaced by codes of welfare.

Codes of welfare for cattle, sheep, goats, and pigs will not be in place by 31 December 2002. A 3-year extension is included in the Bill to avoid major impacts on everyday farming practices.

### **Disqualified persons; minimum standards**

The Statutes Amendment Bill (No 2) 2001, which has recently been reported back from the Government Administration select committee, contains 2 technical animal welfare related provisions. They are—

- to provide that all persons disqualified under the former Animals Protection Act 1960 are deemed to be disqualified persons for the purposes of the Animal Welfare Act; and
- to better clarify the relationship between minimum standards in codes of welfare and the offence provisions in the Act.

As this Bill deals specifically with animal welfare matters, the opportunity is being taken to duplicate the provisions in the Statutes Amendment Bill (*clauses 4, 5, 6, and 12* in this Bill) with the aim of removing them from that Bill at an appropriate stage. The object is to bring all animal welfare matters into the 1 statute.

### **Other matters**

The Bill also—

- allows the existing 10-year period for reviews of codes of welfare to be extended by Order in Council following appropriate consultation;
- provides that certain regulations and a circular made under the Meat Act 1981, that relate to methods of killing animals, are to have effect as a code of welfare. This requirement has

arisen as part of the transfer of coverage of animal welfare concerns on the killing of animals, from the Meat Act 1981 to the Animal Welfare Act 1999 and the transition from the Meat Act 1981 to the Animal Products Act 1999:

- enables the definitions of **trap** and **device** to be amended by Order in Council. The definitions in the Act are not sufficiently flexible to cover new forms of animal traps or devices. The Act has already had to be amended to include adhesive forms of traps. The provision to amend the definition of **trap** and **device** is similar to that already in the Act for amending the definition of **animal**:
- amends the definition of **trap** to make it clear that it does not include animal housing systems used in routine farm/production systems:
- improves the flexibility of the criteria to be applied when assessing whether a trap or device should be prohibited or restricted:
- improves the structure of the provisions relating to determining whether to declare a trap or device to be a prohibited or restricted trap or device:
- streamlines the processes involved in obtaining and implementing an enforcement order.

### Clause by clause analysis

*Clause 1* is the Title clause. The Bill amends the Animal Welfare Act 1999.

*Clause 2* provides for the Bill to come into force on day after the date of Royal assent.

*Clause 3* amends the definitions of **trap** and **device** in the principal Act to allow those definitions to be extended by Order in Council after appropriate consultation. The definition of **trap** is also amended to make it clear that it does not include animal housing systems routinely used in farming or production.

*Clause 4* inserts a *new section (1A)* into section 13 of the principal Act, which relates to the prosecution of offences against section 12. The effect of the new subsection is that evidence that a relevant minimum standard established by a relevant code of welfare was not complied with amounts to rebuttable evidence that the person

charged with an offence failed to comply, or contravened, the provision to which the offence relates.

*Clause 5* inserts a new subsection (1) into section 24 of the principal Act. The new subsection provides, in relation to offences against section 21(1)(b), section 22(2), section 23(1), or section 23(2), for rebuttable evidence as is provided for by *clause 4* in relation to offences against section 12.

*Clause 6* inserts a new subsection (1A) into section 30 of the principal Act. The new subsection provides, in relation to an offence against section 29(a), for rebuttable evidence as is provided for by *clauses 4 and 5*.

*Clause 7* amends section 32 of the principal Act to remove some confusion between the treatment of restricted traps and prohibited traps.

*Clause 8* amends section 33 of the principal Act to ensure that, when determining to declare a trap or device to be a prohibited or restricted trap or device, the Minister may have regard to other means of achieving the purpose of the trap or device (whether or not those other means are themselves also a trap or device).

*Clauses 9 and 10* amend section 78 of the Act, and insert a new section 78A, to allow the existing 10-year time period for reviews of codes of welfare to be extended by Order in Council following appropriate consultation.

*Clause 11* amends section 145 of the Act to make it clear that, where an animal is sold following a person's non-compliance with an enforcement order, the proceeds of the sale will go to reimburse the costs of the person who remedied the non-compliance.

*Clause 12* amends section 169 of the principal Act. The effect of the amendments is to confirm that persons disqualified from having custody or control of, or exercising authority over, animals under the Animals Protection Act 1960 (now repealed) must be treated as disqualified under the principal Act.

*Clause 13* amends section 184 of the Act to insert cross-references to new provisions that require consultation.

*Clause 14* amends section 191 of the Act to extend to 4 years the current 3-year period during which deemed codes of welfare continue in force, and also to allow for a further extension of that period by Order in Council after appropriate consultation. An Order in

Council made under the section must be expressly confirmed by Act of Parliament.

*Clause 15* provides for certain regulations and a circular made under the Meat Act 1981 to have effect as a deemed code of welfare. Without this, processors who now operate under risk management programmes under the Animal Products Act 1999 (and are thus no longer subject to the Meat Act regime) would not be subject to the animal welfare requirements of the listed provisions.

*Clause 16* extends to 6 years the current 3-year period during which certain bylaws are continued in force under section 200 of the Act, and also makes provision for a further extension of that period by Order in Council after appropriate consultation.

*Clause 17* similarly extends to 6 years the 3-year period specified in section 202 of the Act for the expiry of the savings provision in section 201, with provision for further extension by Order in Council.

### **Regulatory impact and compliance cost statement**

The proposals in the Bill retain the status quo and do not impose any costs on the relevant industries or activities.

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*Hon Jim Sutton*

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**The Parliament of New Zealand enacts as follows:**

### **1 Title**

- (1) This Act is the Animal Welfare Amendment Act **2002**.
- (2) In this Act, the Animal Welfare Act 1999<sup>1</sup> is called “the principal Act”.

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<sup>1</sup> 1999 No 142

### **2 Commencement**

This Act comes into force on the day after the date on which it receives the Royal assent.

## **Part 1**

### **Amendments to substantive provisions**

#### **3 Interpretation**

- (1) Section 2(1) of the principal Act is amended by adding to the definition of **device** the words “; and includes any contraption, process, or thing that is declared by the Govern-

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General by Order in Council, made on the recommendation of the Minister after consultation in accordance with section 184, to be a device for the purposes of this Act”.

- (2) Section 2(1) of the principal Act is amended by repealing the definition of **trap**, and substituting the following definition: 5
- “**trap**—
- “(a) means a net, cage, snare, pen, pitfall, or mechanical or adhesive thing used for the purpose of killing, entrapping, capturing, entangling, restraining, or immobilising an animal; and 10
- “(b) includes any contraption, process, or thing that is declared by the Governor-General by Order in Council, made on the recommendation of the Minister after consultation in accordance with section 184, to be a trap for the purposes of this Act; but 15
- “(c) does not include—
- “(i) any fenced area of land or other effective enclosure used for handling, herding, or mustering an animal; or
- “(ii) any animal housing system used routinely or commonly in farm or other animal production systems; or 20
- “(iii) any enclosure, such as a cage, used for transporting an animal; or
- “(iv) a firearm”. 25

#### 4 **Strict liability**

Section 13 of the principal Act is amended by inserting, after subsection (1), the following subsection:

- “(1A) In a prosecution for an offence against section 12 committed after the commencement of this subsection, evidence that a relevant code of welfare was in existence at the time of the alleged offence and that a relevant minimum standard established by that code was not complied with is rebuttable evidence that the person charged with the offence failed to comply with, or contravened, the provision to which the offence relates.” 30 35

#### 5 **Defence**

- (1) The heading before section 24 of the principal Act is amended by adding the words “*and rebuttable evidence*”.



- (2) The heading to section 24 of the principal Act is amended by adding the words “**and rebuttable evidence**”.
- (3) Section 24 of the principal Act is amended by inserting, as subsection (1), the following subsection:
- “(1) In a prosecution for an offence against section 21(1)(b) or section 22(2) or section 23 committed after the commencement of this subsection, evidence that a relevant code of welfare was in existence at the time of the alleged offence and that a relevant minimum standard established by that code was not complied with is rebuttable evidence that the person charged with the offence failed to comply with, or contravened, the provision to which the offence relates.” 5 10
- 6 Strict liability**
- Section 30 of the principal Act is amended by inserting, after subsection (1), the following subsection: 15
- “(1A) In a prosecution for an offence against section 29(a) committed after the commencement of this subsection, evidence that a relevant code of welfare was in existence at the time of the alleged offence and that a relevant minimum standard established by that code was not complied with is rebuttable evidence that the person charged with the offence contravened section 29(a).” 20
- 7 Power to declare traps or devices to be prohibited or restricted traps or devices**
- Section 32 of the principal Act is amended by repealing subsection (5), and substituting the following subsections: 25
- “(5) An order may be general in its application or may relate to a particular trap or class of traps or a particular device or class of devices.
- “(5A) An order relating to a restricted trap or class of traps, or a restricted device or class of devices, may relate to— 30
- “(a) the use of a particular trap or class of traps, or a particular device or class of devices, in relation to a particular species or type of animal:
- “(b) a specified district or subdivision of a district of a territorial authority, or any specified part of New Zealand.” 35

**8 Criteria**

Section 33 of the principal Act is amended by repealing paragraph (e), and substituting the following paragraph:

“(e) the availability and cost-effectiveness of, and the feasibility of a transition to, other means of achieving the purpose of the trap or device (whether by means of another trap or device or by different means); and”

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**9 Review of code of welfare**

Section 78 of the principal Act is amended by adding the following subsections:

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“(4) Despite subsection (1), the Governor-General may, by Order in Council made in accordance with **section 78A**, extend the date at or by which any particular review must be carried out.

“(5) Where the Governor-General does so, subsection (1) then applies to subsequent reviews on the basis of the extended date.”

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**10 New section 78A inserted**

The principal Act is amended by inserting, after section 78, the following section:

**“78A Review date may be extended**

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“(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, extend the date at or by which any particular review under section 78 must be carried out.

“(2) In deciding whether to recommend the making of an order under **subsection (1)**, the Minister must—

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“(a) consult in accordance with section 184; and

“(b) have regard to—

“(i) the welfare of any affected animals; and

“(ii) the interests of persons involved in the commercial use of any affected animals; and

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“(iii) any other relevant factor.”

**11 Compliance with enforcement order**

(1) Section 145(2)(c) of the principal Act is amended by inserting, after the words “money received under”, the words “paragraph (a) or”,

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- (2) Section 145 of the principal Act is amended by adding the following subsection:
- “(3) If the animal is sold under the powers given by subsection (2),—
- “(a) the person exercising those powers may retain the proceeds of the sale to the extent necessary to offset the costs and expenses to the person of complying with the order and of selling the animal; and 5
- “(b) any remaining balance of the sale proceeds must be returned to the owner of the animal, if the owner can be found; and 10
- “(c) if the owner cannot be found, the remaining balance must be paid into the Crown Bank Account.”
- 12 Power to disqualify person from having custody of animals 15**
- Section 169 of the principal Act is amended—
- (a) by inserting in subsection (2), after the expression “subsection (1)”, the words “or under section 16(1) of the Animals Protection Act 1960”; and
- (b) by inserting in subsection (5)(a), after the expression “subsection (1)”, the words “or under section 16(1) of the Animals Protection Act 1960”; and 20
- (c) by inserting in subsection 5(b), after the expression “subsection (3)”, the words “or an order made under section 16(1) of the Animal Protection Act 1960 and varied under subsection (2) of that section or subsection (3) of this section or both”. 25
- 13 Consultation**
- Section 184(1) of the principal Act is amended—
- (a) by omitting the words “definition of the term ‘animal’”, and substituting the words “definitions of the terms **animal, device, or trap**”. 30
- (b) by inserting, after the words “or section 32(6)”, the words “or **section 78A or section 191(4) or section 200(4) or section 202(5)**”. 35

regulation 8 of those regulations does not apply to poultry:

“(d) the circular specified in **subsection (2)(e)** applies only to primary processors of eels or rock lobsters who are required to operate under either a registered risk management programme or a regulated control scheme under the Animal Products Act 1999.

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“(5) **Subsections (2) to (4)** apply according to their tenor despite anything in section 13 or any other provision of the Animal Products (Ancillary and Transitional Provisions) Act 1999.”

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## 16 Certain bylaws to continue in force

(1) Section 200(1) of the principal Act is amended by omitting the words “3 years”, and substituting the words “6 years (or such longer period as may be specified by the Governor-General by Order in Council under **subsection (4)**)”.

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(2) Section 200 of the principal Act is amended by adding the following subsections:

“(4) The Governor-General may, by Order in Council made on the recommendation of the Minister, extend the period of 6 years specified in **subsection (1)**.

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“(5) In deciding whether to recommend the making of an order under **subsection (4)**, the Minister must—

“(a) consult in accordance with section 184; and

“(b) have regard to—

“(i) the welfare of any affected animals; and

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“(ii) the interests of persons involved in the commercial use of any affected animals; and

“(iii) any other relevant factor.”

## 17 Expiry of section 201

(1) Section 202(1) of the principal Act is amended by omitting the words “3 years”, and substituting the words “6 years (or such longer period as may be specified by the Governor-General by Order in Council under **subsection (5)**)”.

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(2) Section 202(2) of the principal Act is amended by omitting the words “period of 3 years specified”, and substituting the words “period referred to”.

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(3) Section 202 is amended by adding the following subsections:

- “(5) The Governor-General may, by Order in Council made on the recommendation of the Minister, extend the period of 6 years specified in subsection (1).
- “(6) In deciding whether to recommend the making of an order under **subsection (5)**, the Minister must— 5
- “(a) consult in accordance with section 184; and
- “(b) have regard to—
- “(i) the welfare of any affected animals; and
- “(ii) the interests of persons involved in the commercial use of any affected animals; and 10
- “(iii) any other relevant factor.”