

Animal Welfare Amendment Bill

Government Bill

As reported from the Primary Production Committee

Commentary

Recommendation

The Primary Production Committee has examined the Animal Welfare Amendment Bill and recommends that it be passed with the amendments shown.

Introduction

The Animal Welfare Amendment Bill amends the Animal Welfare Act 1999. The Act reforms the law relating to the welfare of animals and the prevention of their ill-treatment. This commentary focuses on the major amendments we are recommending.

We only sought a submission from the National Animal Welfare Advisory Committee (NAWAC) because of time constraints in considering the bill. Four other submissions were received, however.¹ All support the bill and only one proposed amendments to it.

Definition of ‘trap’

Clause 3 amends the definition of ‘trap’ in the Act to allow that definition to be amended 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 facilities routinely used in farming or production (subclause (2)(c)(iii)).

¹ Royal New Zealand Society for the Prevention of Cruelty to Animals, New Zealand Pork Industry Board, Poultry Industry Association of New Zealand (Inc.), and Egg Producers Federation of New Zealand (Inc.).

We recommend the definition of a trap, in subclause (2)(c)(iii), be amended to read: 'any enclosure, such as a cage *that is being used* (emphasis added) for transporting an animal'. This would prevent the use of the provision to avoid prosecution where the enclosure was used as a trap and also used to transport the animal.

Strict liability/rebuttable evidence

Clauses 4 to 6 insert new provisions into the Act regarding strict liability and rebuttable evidence in relation to the prosecution of offences under the Act. Clause 4 proposes new section (1A) be inserted into section 13 so that evidence that a relevant minimum standard established by a relevant code of welfare was not complied with, amounts to rebuttable evidence for offences under section 12. Clause 5 similarly amends section 24 in relation to offences against sections 21 to 23 as does clause 6 for section 30 in relation to section 29.

The Royal New Zealand Society for the Prevention of Cruelty to Animals (RNZSPCA) sought amendments to the three clauses that would have the effect that it is not intended to leave open an argument as to whether breach of the minimum standard, if proved, constitutes the statutory offence.

We disagree. The objective of these amendments is to make it clear that evidence of a breach of a minimum standard in a code of welfare is evidence of a breach of the relevant obligation in the Act. A defendant would be able to rebut that presumption.

The submitter raises the possibility, however, of misinterpretation of the new provisions above. We recommend, therefore, that the provisions be amended to make it clear that evidence of breach of a minimum standard in a code of welfare is rebuttable evidence of a breach of the relevant obligation in the Act.

Codes of welfare

Prior to the passage of the principal Act, the then Animal Welfare Advisory Committee sought to enhance animal welfare through publication of codes of recommended practice and minimum standards. The codes were developed in conjunction with stakeholders and had no legal status. As the codes concept was very successful and widely implemented, it was enhanced by the Act.

The Act recognises that some codes may not meet the standards of care required by it. The task of reviewing was more complex than

originally expected, with the exercise attracting considerable public interest, particularly in the draft pig and broiler chicken codes.

Clause 14 amends section 191 of the Act to extend to four years the current three-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.

The RNZSPCA proposed a limit of one extension of one year for any extension to the present four-year limit to review a deemed code of welfare. We do not agree because the timelines in the Act require several stages of consultation and ministerial decision, are susceptible to unforeseen delays, and may not be completed within one year.

We recognise, however, that the process in clause 14(4) is open-ended, and we agree that a finite time be fixed. Consequently, to allow for the unforeseen, we recommend an extension of the four-year period by up to two years.

With regard to clause 9, which provides for extensions by Order in Council of the 10-year period for reviews of codes of welfare, the Green Party was of the view that the period of possible extension should be limited to one year.

Certain regulations to continue in force

Clause 15 provides for certain regulations and a circular made under the Meat Act 1981 to have effect as a deemed code of welfare. This is part of the transfer of coverage of animal welfare concerns on the killing of animals from the Meat Act to the Animal Welfare Act and the transition from the Meat Act to the Animal Products Act 1999.

The bill provides that the slaughter regulations are to have effect as if they were codes of welfare under the Animal Welfare Act. Animal product businesses operating under the Animal Products Act will be subject to the deemed code of welfare along with those businesses that are still operating under the Meat Act. Therefore, regulation 12 needs to be revoked.

We recommend amending clause 15 to revoke Regulation 12 of the Animal Products (Ancillary and Transitional Provisions) Regulations 2000. Regulation 12 applies the Slaughter of Stock, Game and Poultry Regulations to animal product businesses, operating under a registered risk management programme, that slaughter farmed animals other than rabbits or possums. This addresses the gap in the law left when businesses moved from the Meat Act regime to the Animal Products Act.

Appendix

Committee process

The Animal Welfare Amendment Bill was referred to the committee on 14 November 2002 with the requirement to report by 2 December 2002. We received and considered five submissions from interested groups. Hearing of evidence took 24 minutes and consideration took 57 minutes.

We received advice from the Ministry of Agriculture and Forestry.

Committee membership

Hon David Carter, Chairperson

Janet Mackey, Deputy Chairperson

Dr Ashraf Choudhary

Clayton Cosgrove

Gerrard Eckhoff

Ian Ewen-Street

Phil Heatley

Hon Damien O'Connor

R Doug Woolerton

Animal Welfare Amendment

Key to symbols used in reprinted bill

As reported from a select committee

New (unanimous)

Subject to this Act,

Text inserted unanimously

Subject to this Act,

Words inserted unanimously

Hon Jim Sutton

Animal Welfare Amendment Bill

Government Bill

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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 1999¹ is called “the principal Act”.

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¹ 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

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- (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 Governor-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”.

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- (2) Section 2(1) of the principal Act is amended by repealing the definition of **trap**, and substituting the following definition:
- “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 5
- “(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 10
- “(c) does not include—
- “(i) any fenced area of land or other effective enclosure used for handling, herding, or mustering an animal; or 15
- “(ii) any animal housing system used routinely or commonly in farm or other animal production systems; or
- “(iii) any enclosure, such as a cage, that is being used for transporting an animal; or 20
- “(iv) a firearm”.
- 4 Strict liability**
- Section 13 of the principal Act is amended by inserting, after subsection (1), the following subsection: 25
- “(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 of this Act to which the offence relates.” 30
- 5 Defence**
- (1) The heading before section 24 of the principal Act is amended by adding the words “*and rebuttable evidence*”. 35
- (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 of this Act to which the offence relates.”
- 6 Strict liability**
- Section 30 of the principal Act is amended by inserting, after subsection (1), the following subsection:
- “(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).”
- 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:
- “(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—
- “(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.”
- 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”
- 9 Review of code of welfare** 5
- Section 78 of the principal Act is amended by adding the following subsections:
- “(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. 10
- “(5) Where the Governor-General does so, subsection (1) then applies to subsequent reviews on the basis of the extended date.”
- 10 New section 78A inserted** 15
- The principal Act is amended by inserting, after section 78, the following section:
- 78A Review date may be extended**
- “(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. 20
- “(2) In deciding whether to recommend the making of an order under **subsection (1)**, the Minister must—
- “(a) consult in accordance with section 184; and
- “(b) have regard to— 25
- “(i) the welfare of any affected animals; and
- “(ii) the interests of persons involved in the commercial use of any affected animals; and
- “(iii) any other relevant factor.”
- 11 Compliance with enforcement order** 30
- (1) Section 145(2)(c) of the principal Act is amended by inserting, after the words “money received under”, the words “paragraph (a) or”,
- (2) Section 145 of the principal Act is amended by adding the following subsection: 35
- “(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
- “(b) any remaining balance of the sale proceeds must be returned to the owner of the animal, if the owner can be found; and
- “(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** 10
- 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 15
- (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
- (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”. 20
- 13 Consultation**
- Section 184(1) of the principal Act is amended— 25
- (a) by omitting the words “definition of the term ‘animal’”, and substituting the words “definitions of the terms **animal, device, or trap**”.
- (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)**”. 30

Part 2

Amendments to transitional provisions

- 14 Deemed codes of welfare**
- (1) Section 191(1) of the principal Act is amended by omitting the words “3 years”, and substituting the words “4 years (or such longer period as may be specified by the Governor-General by Order in Council under **subsection (4)**)”. 35

- (2) Section 191 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 4 years specified in subsection (1) by a period not exceeding 2 years. 5
- “(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 the extent relevant, to— 10
- “(i) the welfare of any affected animals; and
- “(ii) the interests of persons involved in the commercial use of any affected animals; and
- “(iii) any other relevant factor.”
- “(6) An Order in Council made under **subsection (4)**,—
- “(a) if made on or before 30 June in any year, expires on the close of 31 December of that year, except so far as it is expressly confirmed by Act of Parliament passed during that year; and 15
- “(b) if made on or after 1 July in any year, expires on the close of 31 December in the following year, except so far as it is expressly confirmed by Act of Parliament passed before the end of that following year. 20
- “(7) The expiry of an Order in Council under **subsection (6)** does not affect the validity of any act done pursuant to or in accordance with the provisions of that Order in Council before the date on which the Order in Council expires in accordance with that subsection.” 25

15 **Certain regulations to continue in force**

- (1) Section 199 of the principal Act is amended by adding the following subsections: 30
- “(2) Subject to this section, the following regulations and circular are revoked:
- “(a) clauses 1(a) and 2, and the heading preceding clause 2, of Part VII of the First Schedule of the Fish Export Processing Regulations 1995 (SR 1995/54): 35
- “(b) regulation 80(1) of the Game Regulations 1975 (SR 1975/174):
- “(c) regulation 76 of the Meat Regulations 1969 (SR 1969/192):

- “(d) the Slaughter of Stock, Game, and Poultry Regulations 1969 (SR 1969/194):
- “(e) New Zealand Fishing Industry Agreed Implementation Standards 003.4 Live Eels and Rock Lobsters Circular 1995. 5
- “(3) Despite **subsection (2)**, the regulations and circular specified in that subsection, while ceasing to have effect as such, continue to have effect subject to the modifications listed in **subsection (4)** as if they were minimum standards of a code of welfare (to be known as the Animal Welfare (Commercial Slaughter) Code of Welfare 2002) issued under Part 5, and may be amended or revoked by the Minister under Part 5. 10
- “(4) The modifications referred to in **subsection (3)** are as follows:
- “(a) references in the Slaughter of Stock, Game, and Poultry Regulations 1969 (the **Slaughter Regulations**) to slaughtering places and to establishments include references to— 15
- “(i) premises and places used for primary processing within the meaning of the Animal Products Act 1999; and
- “(ii) permanent slaughterhouses operated by homekill or recreational catch service providers within the meaning of that Act: 20
- “(b) the requirements of the Slaughter Regulations, as well as applying to the animals specified in regulation 3(1) of those regulations, apply also to— 25
- “(i) farmed deer (except to the extent that any other method has been approved by the Director-General as a safe and humane means of slaughter of deer); and
- “(ii) stock as defined in clause 3 of the Meat (Game and Stock) Order 1998: 30
- “(c) regulation 9 of the Slaughter Regulations (which relates to poultry) is excluded from the deemed code, and regulation 8 of those regulations does not apply to poultry: 35
- “(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. 40

“(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.”

New (unanimous)

(2)	Regulation 12 of the Animal Products (Ancillary and Transitional Provisions) Regulations 2000 (SR 2000/208) is revoked.	5
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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))”.	10
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(2)	Section 200 of the principal Act is amended by adding the following subsections:	
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“(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) .	15
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“(5)	In deciding whether to recommend the making of an order under subsection (4) , the Minister must—	
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“(a)	consult in accordance with section 184; and	
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“(b)	have regard to—	20
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“(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	
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“(iii)	any other relevant factor.”	
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17 Expiry of section 201 25

(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”.	30
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(3)	Section 202 is amended by adding the following subsections:	
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- “(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.”

Legislative history

8 October 2002

Introduction (Bill 5-1)

14 November 2002

First reading and referral to Primary Production Committee
