

Guide to the Animal Welfare Act 1999

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1 Background

WHY NEW ANIMAL WELFARE LEGISLATION WAS NECESSARY

New Zealand has had balanced and comprehensive legislation covering the protection of animals since last century. Changes to this legislation have generally been incremental rather than revolutionary.

There is a wide spectrum of views in the community on utilisation of animals, from those opposed to any use of animals to those who oppose any restrictions. New Zealand has endeavoured to balance different perspectives, which is not an easy task. Unlike other countries, however, the debate on issues relating to animal welfare and ethics is usually measured, and the parties representing mainstream opinion are usually willing to find a consensus.

This debate recognises that, as an agricultural nation, New Zealand is dependent on the export of animal products, the export of animals and the use of animals in research, testing and teaching.

The Animals Protection Act 1960 was nearly 40 years old and no longer met the expectations of New Zealanders or international consumers. It was appropriate that the law be reviewed in response to changing practice, advances in scientific knowledge and shifts in societal values. For example, animal welfare is increasingly seen as an important facet of product quality with a direct influence on consumer purchasing preferences. In response to consumer demands, major overseas retailers are increasingly seeking assurances that animal welfare standards in New Zealand are high.

Our animal welfare laws, traditional farming practices ('natural care lambing' and other extensive practices as opposed to European intensive practices), large sheep shipments, procedures such as docking of tails of dairy cattle, deVelvetting of deer, and the use of traps have attracted some international attention. Consequently, New Zealand needs to continue to be active in animal welfare matters if risks to trade are to be managed.

NEW FOCUS

The Animal Welfare Act 1999 has a much wider definition of animal than the Animals Protection Act 1960. It includes most animals capable of feeling pain and applies to all such animals whether domesticated or in a wild state. It excludes animals such as shellfish and insects as there is insufficient evidence that they are capable of feeling pain.

While the Act carries over (in Part 2) many of the cruelty offences in the former legislation, the primary focus has moved from the 'ambulance at the bottom of the cliff' to prevention of ill-treatment and inadequate care. Part 1 sets out the obligations on people who own or are in charge of animals. These are to meet an animal's physical, health and behavioural needs and to alleviate pain or distress.

The Act does not expand on these obligations; for example, it does not detail what constitutes an appropriate amount of food or water for any particular species. To do so would result in lengthy and unwieldy legislation. It would also reduce the flexibility to make amendments as knowledge improves or society's expectations change. The detailed minimum standards of

care will, therefore, be found in codes of welfare. These standards will vary depending on the species, environment, and circumstances of the animal.

STRUCTURE OF THE ACT

The structure of the Act reflects a wider and stronger community interest in the welfare of animals than that which existed in 1960. Some policy areas, such as the use of animals in research, testing and teaching, the export of animals, and the relationship between Government and animal welfare organisations are new or have undergone significant amendment.

The Act adopts a three-tier approach:

- Core **obligations** of people are set out in Parts 1 and 2. Other parts of the Act have very specific purposes. For example, Part 6 establishes procedures to manage the use of animals in research, testing and teaching.
- **Codes of welfare** will be used to promote appropriate behaviour, establish minimum standards, and promote best practice.
- **Regulations** are generally confined to administrative details; for example, setting fees, prescribing forms and specifying the nature of statistical data required to monitor the use of animals in research, testing and teaching. Orders in Council cover various matters such as expanding the definition of “animal”, clarifying whether a procedure is a significant surgical procedure and declaring prohibited or restricted traps or devices.

The Animal Welfare Act creates a new framework and approach for animal welfare in New Zealand. It is a clear statement to New Zealanders and to the rest of the world that animals in New Zealand have a right to expect proper and sufficient care.

2 Care of & Conduct Towards Animals

PROVISIONS IN THE ACT

Parts 1 and 2 of the Act establish the obligations on those responsible for the care of animals and the standard of conduct expected towards animals generally. Part 1 (Care of animals) focuses on the owners and people in charge of animals. They are required to ensure that the physical, health, and behavioural needs of animals are met and that pain and distress of ill or injured animals is alleviated. Therefore, Part 1 takes an active approach to care and management of animals.

Part 2 prohibits certain types of conduct towards animals. It does not assume an ownership link; the relationship between a person and the animal may be transient.

CHANGE IN APPROACH

Parts 1 and 2 of the Act reflect a significant change in both structure and underlying philosophy from the former legislation. There is a greater focus on positive obligations towards animals.

The onus of care lies with the owner or person in charge of an animal. They have the responsibility to meet their animal's physical, health and behavioural needs in accordance with both good practice and scientific knowledge.

“Physical, health and behavioural” needs is defined in section 4 by reference to what is referred to internationally as the ‘five freedoms’. These are:

- Proper and sufficient food and water;
- adequate shelter;
- the opportunity to display normal patterns of behaviour;
- appropriate physical handling; and
- protection from, and rapid diagnosis of, injury and disease.

The Act does not expand on these obligations because to do so would result in lengthy and unwieldy legislation. It would also reduce flexibility to make amendments as knowledge improves or society's expectations change. The detailed minimum standards of care will, therefore, be found in codes of welfare (see section 7 of this Guide).

POISONS

Recent legislation covering agricultural compounds, veterinary medicines, and hazardous substances have made it inappropriate to retain the offences in the Animals Protection Act that related to the use of poisons, in the Animal Welfare Act. To do so would duplicate offences, create differing burdens of proof and inconsistent penalties.

HUMANE KILLING

The Animal Welfare Act consolidates the provisions relating to the humane slaughter of animals in one statute. It is an offence to kill an animal in a manner that causes unreasonable or unnecessary pain or distress (section 12(c)).

It is a defence in any prosecution for an offence against the humane killing provision that all reasonable steps were taken not to commit a breach of the obligation (section 13(2)(a)(iii)), or that the offence took place in an emergency situation (section 13(2)(b)) or that the minimum standards in a relevant code of welfare were equalled or exceeded (section 13(2)(c)).

Humane killing provisions do not apply to:

- research, testing or teaching (Part 6); or
- hunting or killing of animals in a wild state including pests, except where the animal (not caught by fishing) is in captivity (sections 175-177).

3 Surgical Provisions

PROVISIONS IN THE ACT

Two specific surgical procedures are prohibited (section 21(2)):

- cropping or causing to be cropped, the ears of a dog; and
- performing or causing to be performed, blistering, firing or nicking on a horse.

The performance of “significant” surgical procedures is limited in most cases to veterinarians and undergraduate veterinary students under direct supervision (section 15(1)).

Significant surgical procedures can be classified as restricted or controlled, by Order in Council, on the advice of the Minister after consultation with the National Animal Welfare Advisory Committee (NAWAC) (section 16).

Restricted and controlled surgical procedures are both “significant”, but dealt with in slightly different ways.

Restricted surgical procedures may be undertaken only by a veterinarian, or veterinary student under direct veterinary supervision, who must first satisfy themselves that the procedure is in the interests of the animal (section 17(2)). Therefore, this places a higher ethical test on the performance of the procedure. These procedures are: debarking a dog, declawing a cat, docking the tail of a horse or any procedure subsequently declared to a restricted surgical procedure.

Controlled surgical procedures may be performed only by a veterinarian, veterinary student or by a person with veterinary approval to undertake the procedure (section 18). Sections 19 and 20 provide for the issue, revocation and surrender of a certificate of veterinary approval. Only owners of the animal (or employee of the owner) may carry out controlled procedures. Therefore, this precludes contractors (who are not vets). Develvetting is the only procedure currently listed as “controlled”.

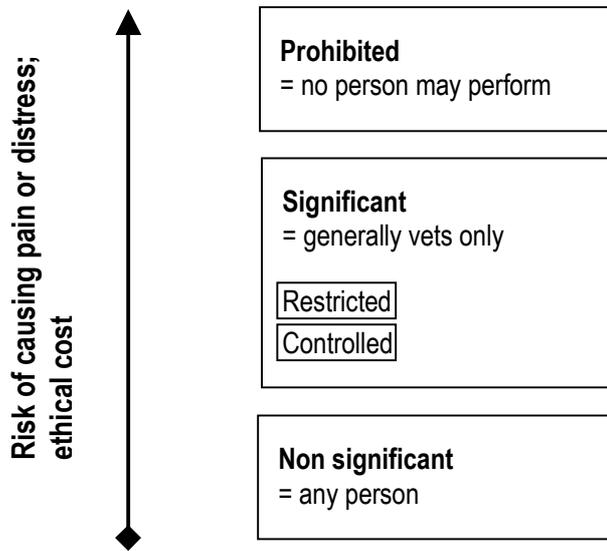
Any person, subject to Parts 2 and 6, may perform procedures that are not “significant” surgical procedures, although they may not be performed in such a manner that the animal suffers unreasonable or unnecessary pain or distress (section 15(3) and 15(4)).

WHAT IS A SIGNIFICANT SURGICAL PROCEDURE?

The Act does not attempt to define what constitutes significant surgery or to list all of the procedures that fall into the categories of significant and non-significant. In practice an informal consensus has developed on what procedures should be carried out only by veterinarians, but it is not based on a consistent rationale. This means it is difficult to develop unequivocal criteria on which to base these decisions.

This general understanding, and the application of common sense, will continue to provide guidance. However, to cover situations where there is a high degree of public concern or uncertainty about whether a procedure is “significant” or not, the Minister can recommend the making of an Order in Council to provide clarification. Such a decision must be consistent with specific criteria (section 6), including the effect that the performance of the procedure will or may have on an animal’s welfare.

SURGICAL PROCEDURES



Type of surgical procedure	Description of surgical procedure
Prohibited surgical procedures (section 21 (2))	It is an offence for any person to perform these procedures e.g. cropping the ears of a dog.
Significant surgical procedures (sections 6 and 15).	These procedures may generally be performed only by a vet. In cases of uncertainty, the Minister can recommend an order in council to clarify whether a procedure is significant.
Restricted surgical procedures (section 17).	These procedures may only be carried out by a vet, who must first satisfy himself or herself that the procedure is in the interests of the animal e.g., debarking a dog.
Controlled surgical procedures (section 18).	These procedures may be carried out by a vet or a person with veterinary approval only, e.g., develvetting.
Non significant surgical procedures.	These procedures (not specifically mentioned in the Act) can be carried out by any person, e.g., the clipping of a dog's nails.

4 Traps & Devices

PROVISIONS IN THE ACT

Part 2 of the Act contains specific provisions concerning the use and inspection of traps and devices. Through an Order in Council mechanism, traps and devices can be declared to be prohibited or restricted (section 32) after consideration of certain criteria (section 33). An order may contain provisions regulating the sale or use of a restricted trap or device (section 32(4)). The Act also spells out the obligation to inspect traps that are set for the purpose of capturing alive a mammal, bird, reptile or amphibian (section 36).

WHY PROHIBIT OR RESTRICT TRAPS & DEVICES?

The ability to prohibit or restrict traps and devices is needed to deal with traps and devices that pose a high animal welfare risk. Some traps, such as steel jawed leg hold traps, and some devices, such as electro-immobilisers, may cause an animal considerable suffering and intervention may be warranted.

FISHING DEVICES & TRAPS EXCLUDED

Section 32(2) excludes traps or devices used for fishing. This is for reasons related to a lack of alternative methods, social and economic implications, and difficulties with enforcement.

APPLICATION OF A RESTRICTION OR PROHIBITION

Section 32(5) specifically provides that an order restricting or prohibiting traps or devices may be general in its application, or it may relate to a particular trap or device or class of traps or devices, or use in relation to a particular species or type of animal, or a specified part of New Zealand. For example, it may be desirable to restrict the use of leg hold traps in urban areas only, or a specific part of the country may have a need for a restriction that is not warranted in other areas.

OBLIGATION TO INSPECT LIVE CAPTURE TRAPS

The Act includes an obligation to inspect traps where the purpose is to capture alive a mammal, bird, reptile or amphibian (section 36). Inspection of kill traps is not required as it can reasonably be expected that the animals trapped were killed instantly. Where there is a concern with the effectiveness of a “kill” trap in terms of welfare considerations, this can be addressed through the ability to prohibit or restrict the use of traps.

Section 36 requires that traps must be inspected within 12 hours after sunrise on the day after the day on which the trap was set. For example, if a trap is set on Tuesday and the sun rises at 6am on Wednesday morning, it must be inspected before 6pm on Wednesday. Any live animal found in the trap must be removed, properly attended to or, without delay, killed.

Failure to inspect a trap in accordance with this provision is an infringement offence and attracts a \$400 infringement fee (section 162 (4)(b)(i)). However, if a person chooses to contest the infringement notice served on them by an inspector, the offence may proceed through the court system and the maximum fine rises to \$1,200.

WHY DOES THE OBLIGATION TO INSPECT TRAPS APPLY TO CERTAIN ANIMALS ONLY?

Section 36 does not use the Act’s definition of “animal”, which is wider than the species expressly mentioned in the section. It applies to traps set for the purpose of capturing alive a mammal, bird, reptile or amphibian (newts, frogs and toads) only. The main reason is to

ensure that the capture of live rock lobster/crayfish is not subject to this obligation, as this would be inappropriate and unenforceable in that particular industry.

INTERFACE WITH THE LOCAL GOVERNMENT ACT

The Local Government Act 1974 (section 684(1)(37)) allows bylaws to be made prohibiting or regulating the setting or placing of spring-jaw or gin-traps. These bylaws are currently in place in most urban areas in New Zealand.

To avoid any inconsistencies and/or duplication between bylaws and any future restrictions or prohibitions on traps and devices made under the Animal Welfare Act, the bylaws, and the bylaw making provision, are to be repealed on 1 January 2003. The Act prevails over the bylaws during the transitional period prior to this date. This means that if a bylaw conflicts with conditions on the use of a trap imposed under the Animal Welfare Act, the Act takes precedence.

It is anticipated that, within the transitional period, serrated steel jawed gin traps (the focus of many of the bylaws) are likely to become prohibited or restricted traps under the Animal Welfare Act.

5 Animal Exports

PROVISIONS IN THE ACT

Part 3 covers the export of animals.

It is an offence for a person (the consignor) to export an animal without an animal welfare export certificate except where exempted by Gazette notice, or where the animal is exported under Department of Conservation (DOC) legislation (section 40).

Sections 38-54 provide the process by which applications for animal welfare export certificates are made, considered and issued. The Director-General of the Ministry of Agriculture and Forestry (MAF) may impose conditions on the approval of an animal welfare export certificate. Multiple consignment animal welfare export certificates may be issued in certain circumstances.

WHY IS A CERTIFICATION SYSTEM NEEDED?

Certification is intended to ensure that animal welfare associated with the export of animals is effectively managed for two key reasons:

- to minimise the higher than usual risk to animals during export transportation; and
- to minimise risks of adverse reactions, whether domestic or international, that could affect trade in New Zealand agricultural products.

The treatment of animals during export has a high profile with the public and the media as large export shipments are a feature of the New Zealand live animal trade. While legislative arrangements have been in place for some years to monitor and control exports of animals, they have not been applied to all species and modes of transport, they have been spread between a number of statutes and some provisions have been ambiguous.

EXEMPTIONS TO REQUIREMENT FOR EXPORT CERTIFICATE

Section 48 provides for the Director-General of MAF to issue exemptions, by notice in the Gazette, for certain species or types of animal for certification where export would not significantly compromise the welfare of the animal(s). An exemption would mean the export of specific animals in low risk situations (such as short flights) would not need an animal welfare export certificate.

INTERFACE WITH DEPARTMENT OF CONSERVATION LEGISLATION

Section 52 of the Animal Welfare Act clarifies the link with animals being exported in accordance with conservation legislation. It requires exporters covered by conservation legislation to meet animal welfare requirements, in addition to meeting the specialist requirements of the Department of Conservation (such as the Trade in Endangered Species Act 1989). An animal welfare export certificate is not required in these circumstances.

COST RECOVERY OF EXPORT CERTIFICATION SYSTEM

The cost recovery provisions of the Act enable the Director-General of MAF to set a fee that must accompany an application for an animal welfare export certificate. The fee level is set by the Animal Welfare (Export Certificate) Regulations 1999.

TRANSITIONAL PROVISIONS

The Customs Export Prohibition Order 1996 is amended to remove provisions regulating the export of specific animals and to retain only the prohibition on live merino and booroola-merino sheep exported for breeding purposes and any reproductive material from these animals. This covers a 1949 arrangement with Australia whereby New Zealand agreed to maintain similar restrictions to those imposed by Australia in relation to the trade in merinos to third countries.

6 Advisory Committees

PROVISIONS IN THE ACT

Part 4 establishes two Ministerial advisory committees:

- National Animal Welfare Advisory Committee (NAWAC); and
- National Animal Ethics Advisory Committee (NAEAC).

Further administrative and procedural details concerning the two Committees, such as teleconference meetings, are found in Schedule 1 of the Act.

NAWAC'S FUNCTIONS

Section 57 details NAWAC's functions, which are, in summary, to provide advice on matters relating to the welfare of animals in New Zealand, including research needs, legislative proposals, codes of welfare and traps and devices.

NAEAC'S FUNCTIONS

NAEAC's functions are detailed in section 63. Broadly, they are associated with the provision of advice and recommendations on ethical and welfare issues arising from the use of animals in research, testing and teaching.

MEMBERSHIP

When making appointments, the Minister must have regard to the need for the Committees to possess knowledge and experience in a range of areas (sections 58 and 64). Rather than specific organisations nominating representatives, the legislation recognises that the Committees have an advisory role and seeks to take advantage of the expertise of individuals. Links between the two committees are maintained and duplication of effort and conflicts minimised, with the chairperson of NAEAC also being a member of NAWAC.

TERM OF OFFICE

The Minister can appoint Committee members to a term not exceeding three years. Members can be reappointed.

ANNUAL REPORT

The calendar year (to 31 December) is specified as the reporting date rather than the more conventional financial reporting date of 30 June, as this reflects current administrative practice (sections 60 and 66).

LOCAL GOVERNMENT OFFICIAL INFORMATION & MEETINGS ACT 1987

Both Committees are to be subject to this Act (except the requirement to publicly advertise each meeting), in the interests of accountability and transparency. This is considered appropriate as they are publicly funded and provide advice to the Minister (section 196).

OMBUDSMEN ACT 1975

The Committees are also subject to the Ombudsmen Act 1975. This means that acts, decisions and recommendations can be investigated, either as a result of a complaint or at the Ombudsmen's own motion. This increases the accountability, transparency and robustness of the Committee's decision making (section 195).

7 Codes of Welfare

PROVISIONS IN THE ACT

Codes of welfare are an integral part of the framework and philosophy of the Act. It is expected that they may be quite detailed as they will be used to promote appropriate behaviour, establish minimum standards and promote best practice in relation to animals owned or in a person's charge. Codes of welfare will be issued by the Minister following advice from NAWAC after a public consultation process.

The process for the development, issue, amendment and review of codes of welfare is detailed in sections 68-79.

WHY HAVE CODES?

Codes of welfare can contain details, including explanatory information that would not be appropriate in a primary piece of legislation. Codes have an important role in facilitating overseas market access and achieving success in those markets.

The benefits of codes include:

- a manageable main body of legislation with the codes providing further detail and base lines for animal management and care;
- flexibility in modifying and improving animal welfare standards in line with changing community expectations, scientific knowledge and technological change;
- balanced representation of community expectations and views through community involvement in the development of codes; and
- high educational value through an ability to use them to improve community awareness of animal needs.

LEGAL STATUS OF CODES OF WELFARE

Breach of the provisions in a code of welfare will not be an offence under the Animal Welfare Act. Rather, any prosecutions will be for failure to meet the obligations in the Act relating to the care of an animal or for ill-treatment of an animal. Failure to adhere to the minimum standards set out in a code will, however, be able to be used as evidence to support a prosecution under Parts 1 and 2 of the Act.

Compliance with a relevant code of welfare, where one exists, will be a defence where a person is charged with an offence under Part 1 or 2. Where a person is charged with an offence under Parts 1 or 2, they have the opportunity to argue and present evidence that their standard of care or conduct equalled or exceeded that specified in a relevant minimum standard in a code of welfare.

THE PREPARATION & ISSUE OF CODES OF WELFARE

The Act allows any person or organisation to prepare a draft code of welfare and submit it to NAWAC for consideration. This will ensure that the codes are practical and that stakeholder (industry, animal owners, transporters etc) ownership and "buy-in" continues.

The cost of developing codes drafted by NAWAC or MAF will be met from public funds. If, however, a specific industry or stakeholder feels that a specific code is desirable then it will, itself, have to invest resources to develop a code to the draft stage before sending it to NAWAC.

NAWAC is not obliged to publish a draft code if it is satisfied that it does not comply with the purposes of the Act, it is not clearly written, or that the person/organisation who prepared the draft code did not consult with representatives of persons likely to be affected (section 71). This is a safeguard against the possibility of persons or organisations promoting codes, without adequate consultation, that may affect the rights of others.

Before making a recommendation to the Minister, NAWAC must take into account all submissions, good practice and scientific knowledge, available technology and any other relevant matters (section 73).

CONSULTATION PROCESS

A public consultation process (undertaken by NAWAC), including notification, is required to ensure that the range of views held within the community is taken into account when standards are being determined for the care of animals. Such consultation is important given that failure to meet the standards could lead to legal action, albeit for breaches of the Act itself rather than breaches of the code. Wide consultation will be particularly important for contentious issues, such as killing in accordance with religious requirements, on which there is a range of community views.

DEPARTURES FROM THE ACT'S OBLIGATIONS

NAWAC may, in exceptional circumstances, propose minimum standards and recommendations for best practice that do not fully meet the obligations of the Act. In doing so, it must have regard to the feasibility and practicality of effecting a transition from current practices to new practices and any adverse effects that may result, the economic effects of any transition and effects, and the requirements of religious or cultural practices or both (section 73).

8 Use of Animals in Research, Testing & Teaching (RTT)

PROVISIONS IN THE ACT

Part 6 guides the use of animals in research, testing and teaching (RTT). It “stands alone”, which means that Parts 1 and 2 do not apply to RTT when carried out according to the provisions in Part 6. Significant aspects of Part 6 are:

- A purpose provision (section 72) provides guidance on the outcomes to be met and criteria to be taken into account when decisions are made on the use of animals in RTT. There is an explicit reference to promoting efforts to reduce the number of animals used, refine techniques, and where possible replace animals with non-sentient or non-living alternatives (“the 3 Rs”) (section 80(2)(b)).
- It is an offence to use live animals in RTT unless:
 - a person (including an organisation) has an approved code of ethical conduct (CEC) or works for a person who holds an approved CEC (section 82); and
 - individual projects are approved by an Animal Ethics Committee (AEC) and carried out in accordance with any conditions imposed (section 83).
- The term “research, testing and teaching” is defined in section 5. It covers any research, testing or teaching that involves the “manipulation” of any animal. Certain exemptions are provided for in relation to veterinarians and the Department of Conservation.
- The term “manipulation” is defined in section 3. It does not include any therapy or prophylaxis necessary for an animal’s welfare, the humane killing of an animal as the end point of RTT or in order to carry out RTT on the tissue, and any activity which the Minister declares not to be a manipulation having regard to certain matters.
- A regulation making power provides for the setting of standards and policies to be included in every CEC (section 183(1)(b)).

PARENTING ARRANGEMENTS

- A person may make arrangements to use another person’s AEC provided the policy and procedures for such arrangements are set out in the other person’s CEC, the arrangements are mutually acceptable, and the code holder, informs the Director-General of MAF (DG) in writing before the RTT commences (section 84).

CODES OF ETHICAL CONDUCT

- Each CEC must set out the policies to be adopted and the procedures to be followed by the code holder and its CEC. Section 88 contains a list of the particular matters that must be addressed by the CEC.
- CECs are approved by the DG. Sections 89 – 97 set out the process for approval, amendment, suspension or revocation of a CEC.

ANIMAL ETHICS COMMITTEES

- Every code holder must establish an AEC, the primary function of which is to consider applications for approval of projects and set and monitor compliance with conditions approval (section 99).

- In considering any applications for project approval, AECs must have regard to a list of matters in section 100.
- Each AEC must consist of at least 4 members. One member must be the code holder (or a staff member employed by the code holder). The remaining are appointed by the code holder on the nomination of the NZ Veterinary Association, an approved organisation (e.g., RNZSPCA), and a local authority (section 101).
- Any member of an AEC who believes that the AEC or the code holder is failing to comply in a material respect with the legislation or CEC may report the non-compliance to the DG (section 103).
- An independent review must be undertaken of each code holder and its AEC within the time period specified in section 105. The purpose is to review compliance with the legislation and CEC. Reviews are to be conducted by an accredited reviewer appointed by the code holder.
- The Minister may approve research or testing in the national interest without AEC consideration (section 118).

TRANSITIONAL PROVISIONS

- Transitional provisions carry over those parts of existing CECs that fall within the scope of CECs under the new Act (section 88) and provide continuing authority to carry out RTT until they expire. Expiry dates are to be staggered over 3-5 years after commencement of the Act (section 192).
- Transitional provisions provide for an AEC in existence at the commencement of the Act to continue for the period of the CEC (section 193).

THE NEED FOR LEGISLATION

There is considerable public and political interest in the use of animals in RTT. Some animal rights groups oppose any use of animals in RTT. They argue that sentient animals (those capable of perception or feeling sensation) are likely to experience the same levels of pain as humans and that equal weight should be given to their interests as would be given to humans. There is also concern that scientific advances in areas such as genetic research challenge current ethical norms, and the implications should be carefully considered before such work is approved. There is a trend towards the use of alternatives to live animals, but, in many cases, alternatives are not available.

The ethical position, reflected in the Act, is that society has a moral duty to allow such research when the benefits to other animals, people or ecosystem management are disproportionately large compared to the pain or suffering imposed on the animals used to achieve those benefits. However, there is an expectation in the science community and society generally that such use should occur within a framework of legislative controls that minimises the impact on the animals involved.

PURPOSE

Section 72 contains criteria for guiding AEC consideration of project applications; it is an important provision. There are three main components. The section:

- requires decision-makers to explicitly consider whether the anticipated benefits of the research, testing or teaching outweigh the likely harm to the animals;

- imposes the general ‘duty of care’ obligations found in Part 1 of the Act (to meet the physical, health and behavioural needs of animals and alleviate pain). However, it also provides that where this is not possible because of the nature of the work, any pain or distress is to be minimised; and
- requires the promotion of the 3Rs (reduce, refine and replace).

The use of AECs, made up of scientific, veterinary and community representatives, has proved an effective means of making decisions on the use of animals and is continued in the Act.

CLARIFICATION OF CODES OF ETHICAL CONDUCT

The Act provides greater clarity on the nature and content of CECs. A number of the provisions that tended to be found in CECs made under the Animals Protection (CEC) Regulations 1987 are now prescribed in the Act. This includes the requirement to appoint an AEC, its membership and functions and the matters that each committee must consider when assessing applications for project approval.

A CEC must set out the policies to be adopted and the procedures to be followed by the code holder and its AEC. The Act provides a list of outcomes that these policies and procedures must meet. For example, each code must set out policies and procedures that will enable the AEC to function effectively, ensure adequate monitoring of compliance with the conditions of project approvals, and ensure complaints are dealt with fairly and promptly. The policies and procedures to allow an AEC to function effectively might cover prior circulation of agendas, the quorum, minute taking, and procedures for making project applications to the Committee.

In recognition of the more limited scope of CECs under the Animal Welfare Act, the expertise of NAEAC and the approach being taken in other MAF legislation, the Act provides for the DG to approve each CEC (rather than the Minister, as occurred under the Animals Protection (Codes of Ethical Conduct) Regulations 1987). The DG must refer every application to NAEAC for its comment prior to granting an approval.

SAFEGUARDS TO ENSURE DECISION MAKING IS NOT ‘CAPTURED’

Unlike a number of overseas systems, the Act does not require AECs to have a majority of members from outside the organisation. The reason was that many organisations carry out many different types of research and need to have a broad range of expertise on their AEC. If there were a requirement for a majority of community members, it would make the size of AECs unwieldy. Instead, the Act contains a number of safeguards to ensure that those who advocate the use of animals in an organisation do not unduly influence decision making:

- Any AEC member who believes that the Committee or code holder is failing to comply with the legislation or with the CEC may report non-compliance, in confidence, to the DG (section 103). This is regarded as a last resort option after a member has raised complaints internally and possibly, in the case of outside members, with their ‘parent’ organisations;
- CECs are required to provide procedures for ensuring any complaints from AEC members are dealt with fairly and promptly;
- The DG may revoke a CEC if the code holder has failed, in a material way, to comply with the legislation or the CEC; and
- The independent 5 yearly reviews enable any difficulties experienced by individual AEC members to be raised.

While the emphasis is on ensuring the views of the community are not overridden by the code holder or his or her staff, capture by community members is also conceivable, e.g., undue

influence exerted by a member with inflexible views. The above provisions would also protect against this situation.

APPLICATION OF THE PROVISIONS TO DOC ACTIVITIES

In order to meet their statutory management responsibilities, DOC (including the NZ Fish and Game Council), regional councils and the Ministry of Fisheries have a significant amount of routine interaction with animals. This includes pest management work and activities such as the capture and identification of animals. The Act makes it clear that certain activities will not come within the definition of RTT and, therefore, not be subject to the requirement for AEC approval. This will reduce compliance costs for such organisations. This exemption covers two categories of activity:

- manipulation of animals that constitutes routine management rather than “research” (e.g., banding of birds for population monitoring); and
- manipulations that form part of a research project but which are performed routinely (e.g., use of surrogate parents for a research project on threatened species management).

Such manipulations must be carried out routinely and they must be undertaken to fulfil a responsibility or function under an Act administered by DOC or under the Fisheries Act. The rationale is that DOC and other staff undertake such manipulations regularly and there are formal institutional mechanisms for ensuring that any impact on the animals is minimised (staff training, corporate practice guidelines etc). Such mechanisms would not necessarily be available in other research institutions such as universities that do not have statutory animal management responsibilities.

COMPLIANCE MONITORING

Monitoring for compliance will be achieved through the following means:

- AECs are required to monitor compliance with conditions of project approvals (section 99(1)(d)) and CECs are required to set out policies and procedures that will enable such monitoring to be carried out (section 88(2)(c));
- AEC members are authorised to report non-compliance (section 103);
- Code holders are required to commission an independent review within 2 years of their code first being approved, again prior to the expiry of 5 years of the code first being approved and thereafter at 5 yearly intervals (to be carried out prior to applications being made for CEC re-approval). This requirement is similar to a voluntary independent review system recently developed by the Australian and New Zealand Council for the Care of Animals in Research and Teaching (ANZCCART);
- Code holders are required to maintain statistics on animal usage, including information on the severity of impacts on animals and powers for the DG or an inspector to request such information be provided within 7 days. This is covered by the Animal Welfare (Records and Statistics) Regulations 1999.
- MAF retains the ability to investigate complaints and take enforcement action when necessary.

NATIONAL INTEREST

Section 118 provides for the Minister to approve a project without the need for AEC approval when manipulation of animals is considered necessary in the national interest.

This provision will not allow the Minister to step in and override an AEC's decision simply on the basis that it is not palatable. The Minister will need to be satisfied that the "national interest" test is met. The matters that the Minister must have regard to are: whether the RTT is needed to protect New Zealand's biosecurity interests, fulfil international obligations or protect human or animal health. An example of the latter would be the need to carry out urgent tests on animals to confirm a diagnosis of a disease that posed significant risks to New Zealand's biosecurity.

Section 183(1)(b) contains a regulation making power enabling national standards or policies to be set that must be included in every CEC. An example might be standards relating to certain genetic research.

PROVISION FOR MINISTER TO DECLARE PROCEDURES NOT COVERED BY RTT PROVISIONS

The intent of the RTT provisions is to regulate the use of animals where manipulations are carried out that result in physiological, behavioural or anatomical changes that would not occur under "normal management or practice".

Section 3(3) allows the Minister to declare any procedure, by notice in the *Gazette*, not to be a manipulation for the purposes of the Act (and therefore not covered by the RTT provisions). The principal reason is to accommodate changes in society's views over time about whether a manipulation lies outside of "normal management or practice". For example, 25 years ago deer farming was in its infancy and as such, de velvetting was not regarded as a "normal" farming practice. With deer farming now well established, de velvetting is viewed as a standard procedure (although one requiring veterinary supervision).

This provision thus allows certain procedures to move from being covered under the highly regulated RTT provisions to being covered by other provisions in the Act, including codes of welfare, where appropriate.

RESTRICTIONS ON USE OF NON-HUMAN HOMINIDS

Section 85 provides that any RTT involving the use of a non-human hominid (gorilla, chimpanzee, bonobo, or orangutan) must have first been approved by the DG and must be carried out in accordance with any conditions imposed by the DG. Before giving approval the DG must be satisfied that the RTT is in the best interests of the animal, or the RTT is in the interests of the species and the benefits are not outweighed by the likely harm to the individual animal.

9 Appointment of Approved Organisations, Inspectors & Auxiliary Officers

PROVISIONS IN THE ACT

The Minister may declare, by notice in the Gazette, any organisation to be an approved organisation for the purposes of the Act. Apart from inspectors appointed under the State Sector Act and police officers, only approved organisations can recommend persons for appointment as inspectors or auxiliary officers (sections 124(2) and 125(1)). Revocation of approval is also by notice in the Gazette (section 123);

In deciding whether to approve an organisation the Minister must be satisfied that it meets specific criteria, to ensure that the organisation is able to provide proper training and control of inspectors and auxiliary officers (section 122).

WHAT ARE APPROVED ORGANISATIONS?

Although the Animals Protection Act did not exclude people from organisations other than the RNZSPCA applying to be inspectors, in practice non-MAF inspectors have been employed only by the RNZSPCA. The Animal Welfare Act makes quite explicit that any organisation can apply for approval providing it meets certain criteria. Its primary purpose must be to promote animal welfare, and it must have a robust structure and appropriate accountability, management and employment arrangements. It must also be able to support its inspectors with appropriate technical knowledge and training. MAF has prepared separate guidelines to assist organisations that might wish to consider becoming an approved organisation under this Act.

The criteria set a high threshold but are essential as inspectors (in particular), and auxiliary officers, have considerable powers under the Act. For example, inspectors may search premises or seize or destroy an animal. They do not, however, have the power of arrest unless they are members of the police. It is expected, therefore, that these persons have the necessary training and skills to carry out their duties fairly.

The Minister must be of the opinion that a person has the experience, technical competence and qualifications to undertake the duties of an inspector. To this end, the Minister can require that an approved organisation establish performance standards and technical standards for inspectors and auxiliary officers. Inspectors are required to use their best endeavours to comply with, and give effect to, relevant performance and technical standards.

MAF undertakes regular audits of the branches and member societies of the RNZSPCA to ensure that they adhere to approved standards and procedures. This process also includes the work of inspectors and auxiliary officers.

WHO ARE INSPECTORS?

Inspectors may be either:

- persons employed under the State Sector Act (generally staff of MAF), who are appointed by the Director-General; or
- persons nominated by an approved organisation (section 124), who are appointed by the Minister.

Police officers are also inspectors.

There are specific criteria governing the conditions of appointment and for the revocation of appointment (section 124). Inspectors may be appointed for general or particular purposes of the Act, and to act generally throughout the country or for a particular district or parts of the country (section 124(3)).

All inspectors are required to complete the National Certificate in Compliance and Regulatory Control (Animal Welfare), with credit for work experience and prior training. The syllabus will be adopted as the national animal welfare training standard after an appropriate transitional period.

WHO ARE AUXILIARY OFFICERS?

Auxiliary officers are appointed by the Director-General, on the recommendation of approved organisations (section 125) and have more limited powers than inspectors. They will generally be people who work in animal shelters and who require powers to destroy animals or place animals in new homes.

DIRECTIONS TO INSPECTORS & AUXILIARY OFFICERS

Where inspectors (who are not public service employees) are employees of an approved organisation there is potential for a conflict of interest to arise between their obligations to their employer and their obligations under the Act. To avoid this conflict the Act provides that inspectors and auxiliary officers must follow the directions of the Director-General “in the exercise and performance of the powers, duties, and functions conferred or imposed” on them under the Act (section 126). An example where this situation might arise is the case of a major disease alert where the skills of animal welfare inspectors are needed by the Director-General.

POSITION OF RNZSPCA

To ensure a seamless transition, the Act deems the RNZSPCA (and its branches and member societies) to be an approved organisation at the time the Act comes into force (sections 189 and 190). Member societies are deemed organisations only while they remain affiliated to the RNZSPCA. The Minister may impose performance and technical standards as a condition of this approval (section 189(2)).

10 Enforcement Powers

PROVISIONS IN THE ACT

The Act gives certain legal powers to animal welfare inspectors, auxiliary officers and veterinarians.

INSPECTORS' POWERS

- the power to enter land, premises, places (not dwellings or marae), stationary vehicles, aircraft, ships without search warrant to inspect animals (section 127);
- after such entry, the inspector can seize any animals (by force if necessary) where there are reasonable grounds to believe that the animal has been wilfully ill-treated or the physical, health and behavioural needs require removal of the animal (section 127);
- a police officer who has reasonable grounds to believe that an animal on or in a vehicle is suffering or likely to suffer unreasonable pain or distress, may stop any vehicle (section 127(2));
- with a search warrant, the power to search land, premises, place, vehicle, aircraft or ship and seize evidence of breach of the Act (section 133); and
- after entry in either of the above mentioned cases, or at any other time, the inspector can (without seizing any animals) also take steps to prevent or mitigate any suffering of animals and can direct the owner or person in charge of the animals to take steps to prevent or mitigate suffering (section 130 and 133(4)). Section 130(1) covers the situation where an inspector may need to break a window in a locked car to rescue an animal which is clearly in distress (e.g., from heat) and the owner of the car cannot be located quickly.

INSPECTORS' & AUXILIARY OFFICERS' POWERS & DUTIES

- the power to destroy severely injured or sick animals (section 138);
- the power to certify animals in pounds to be so diseased, injured or sick that they are in a continual state of suffering, so that if the owner cannot be found, the local authority must destroy the animals (section 139); and
- a duty to report to Marine Mammals Officers any severely injured or sick marine mammal found (section 140).

The power of inspectors and auxiliary officers to dispose of animals in the custody of an approved organisation is covered in section 11 of this Guide.

DISPOSAL OF THINGS SEIZED

Where an animal or other “thing” has been seized:

- the Court can order the items or animals seized to be returned to the person entitled to them or can order that they be sold (section 136). Section 199 of the Summary Proceedings Act 1957 applies, particularly where a prosecution is taken or, without taking a prosecution, on the application of an inspector; and
- if the Court orders a sale, the proceeds of sale are to be used to pay for the expenses of the sale, and then the expenses of caring for the animal prior to sale and of caring for any other animals seized at the same time which belong to the same person.

ENFORCEMENT ORDERS (SECTIONS 143-156)

This new mechanism will enable an inspector to take quick action against persons who breach the Act and cause suffering to animals. It is expected to be a faster process than a prosecution because a full trial is not involved and the standard of proof is lower than the criminal standard.

Inspectors can apply to the District Court for an enforcement order to require compliance with the Act, Regulations, a Code of Ethical Conduct, or conditions imposed by an Animal Ethics Committee. It is an offence not to comply with an enforcement order. The standard of proof for the inspector is the civil standard, i.e. on the balance of probabilities.

Applications for enforcement orders normally have to be served on the respondent, but in urgent situations, temporary orders can be applied for which do not have to be served (section 148). Enforcement orders stay in force until revoked or amended, however, the respondent can appeal to the High Court against the making of the order. There can be a further appeal on a question of law to the Court of Appeal with the leave of that Court.

11 Disposal of Animals in Custody of Approved Organisations

PROVISIONS IN THE ACT

Part 7 of the Act includes provisions (section 141-142) that enable approved organisations to dispose of animals in their custody. The sections provide conditions within which this power can be exercised:

- Approved organisations must take reasonable steps to try to identify the owner of an animal they take into custody (where a person other than the owner gives the animal into their custody).
- The approved organisation must notify the owner, where identified, that the animal is in its custody, and the owner has 7 days to claim it.
- If, after 7 days, the owner cannot be found or does not claim the animal (and pay any costs incurred by the approved organisation), an inspector or auxiliary officer may sell, find a home for, destroy or otherwise dispose of the animal.
- The 7 day period is waived where the animal is diseased or suspected of being diseased and there are reasonable grounds to believe that the welfare of other animals in the custody of the approved organisation would be compromised if the animal were to continue to be held in custody.
- The provisions do not apply to native animals or stock.

REASON FOR THE PROVISIONS

The RNZSPCA cares for a large number of injured, abandoned, elderly or sick animals, and destroys or finds a new home for them. Previous legislation did not give them the legal authority to take this action. The Animal Welfare Act provides a remedy that acknowledges the rights of the owner, balanced by the needs of the animal and the work of the RNZSPCA.

NOT APPLICABLE TO NATIVE ANIMALS OR STOCK

In order to avoid any conflict with the provisions of the Impounding Act 1955, these provisions do not extend to stock. Because there is specific conservation legislation covering the treatment of protected wildlife, native animals are also not covered.

APPROVED ORGANISATIONS - INSPECTORS & AUXILIARY OFFICERS

The powers are conferred on approved organisations, which, initially, cover only the RNZSPCA. In many RNZSPCA branches or member societies, an inspector is not always available to carry out the activities covered by sections 141-142 and this work may largely fall to other staff and volunteers. It is appropriate for such people to be appointed as auxiliary officers who will be able to dispose of animals, provided they have the appropriate experience and training.

OBLIGATION TO TAKE REASONABLE STEPS TO IDENTIFY & NOTIFY THE OWNER

Approved organisations are required to take reasonable steps to identify and notify the original owner of the animal in their custody. “Reasonable steps” includes maintaining a register of animals held in the organisation’s custody and matching this with any reports received of missing animals.

WHEN THE OWNER IS IDENTIFIED

In situations where the owner of the animal is identified, the organisation holding it has a duty to notify the owner (in writing) that the animal is in its custody with the onus on the owner to claim the animal. If the animal is not claimed within seven days of receipt of the notice, the organisation can dispose of the animal.

SEVEN-DAY PERIOD

After seven days, provided that reasonable steps have been taken to identify and inform the owner, the approved organisation can dispose of the animal. The original owner would have no grounds for legal action against the organisation or any subsequent owner. Seven days is considered to be an adequate period for an owner to realise that an animal is missing and to begin a process for locating it, without placing too great a burden on the approved organisation to hold the animal in custody.

DISEASED ANIMALS

Where an animal is obviously diseased or suspected of being diseased and the welfare of other animals would be compromised if it were taken into custody, the animal can be disposed of without the requirement to wait seven days. This provision formalises the reality of dealing with a large number of unclaimed/abandoned animals. In the majority of cases, the prospects for re-homing stray animals that carry, or are likely to carry, disease is small, and having to hold them for seven days before they could be destroyed could jeopardise the welfare of all other animals held by the organisation.

RECORDS

Approved organisations will be required to maintain a register of the numbers, type of animals, and method of disposal (for example euthanasia or re-homing) for a period of one year from the date the approved organisation obtained custody of the animal. This is to ensure there is a clear trail to check, if necessary, that the approved organisation has acted in accordance with the provisions of the Act.

12 Defences

The Animal Welfare Act provides for the following defences to prosecutions:

- A defence is built into the formulation of **the obligation** itself. For example, section 9 requires the physical, health and behavioural needs of an animal to be met “in accordance with good practice and scientific knowledge”. Therefore, the first line of defence is to assert that there is no breach of the basic obligation because the person has acted in accordance with good practice and scientific knowledge.
- The prosecution would first have to establish a *prima facie* case, so the defendant does not have to prove that he/she has acted in accordance with good practice and scientific knowledge. However, prior to the prosecution being laid, and in the course of investigations, the defendant could raise matters demonstrating that there is no breach of the obligation.
- The “**mental**” element included in the offence provision: some of the offences, including sections 14 and 21, state that an offence is committed if something is one “without reasonable excuse”. In this case, the prosecution has to establish a *prima facie* case that the obligation has been breached. The defendant then can prove that he/she had a reasonable excuse in the circumstances.
- The Act also expressly provides for the following defences:
 - Sections 13(2)(a) and (b) and 30(2)(a) and (b) provide that a defendant could prove that he/she took all reasonable steps to comply with his/her obligations or that there was an emergency situation with the proviso that the action was necessary for the preservation, protection or maintenance of human life).
 - Sections 13(2)(c), 24 and 30(2)(c) state a defence of having complied with (“equalled or exceeded”) a relevant code of welfare.

The Act does not make it an offence to breach a code of welfare. A person would be prosecuted under one of the Act’s offence provisions, but could raise compliance with a code of welfare as a defence.

13 Hunting, Fishing, & Pest Control

THE COVERAGE OF HUNTING, FISHING & PEST CONTROL

The Act does not apply to the hunting or killing of animals in a wild state. This includes wild animals, pest control and safari park hunting (sections 175-176). The exclusion does not apply to the duty to care for animals in captivity, the humane killing of wild animals when in captivity or derogate from the traps and devices provisions.

Unusual and cruel acts and practices towards wild animals, for example, pouring petrol over a possum and setting it alight, are covered by the Act as they are acts that occur outside of hunting or killing.

Evidence of growing community expectations for the humane treatment of wild animals has been reflected in, for example, the cull of Canada Geese on Lake Ellesmere and the management of Kaimanawa wild horses. These issues showed that, in addition to concerns over the control of these animals, there was an expectation that regard should be had for their welfare, although the legal requirements to do so are limited.

PROVISIONS RELATING TO CARE OF A WILD ANIMAL

Where hunting or fishing or pest control results in animals being caught alive and contained (for example, in a cage or trap) and not immediately killed or removed, the obligations in the Act relating to animals in people's care or charge apply (for example, food and water appropriate to the circumstances).

THE CROWN AS THE OWNER OF CERTAIN WILD ANIMALS

Under the Wild Animal Control Act 1977 and the Wildlife Act 1953, the Crown owns those animals defined in those statutes as "wild animals" and "wildlife" respectively, until they are lawfully taken or held. However, it would be inappropriate for practical reasons for the Crown to be subject to an obligation to meet the physical, health and behavioural needs (as required by section 10) of these animals, except when such animals are held in captivity by the Crown and are dependent on people for their sustenance.

SAFARI PARKS

"Safari parks" are hunting operations on private land. Most hunting is for deer, chamois and thar. Safari parks, as defined in the Wild Animal Control Act 1977, are areas of private land where wild animals (as defined in that Act) are released into, or contained in, an area with perimeter fencing. Such animals are subject to Part 1 of the Animal Welfare Act because the animals are contained within a fenced area, owned, and in a person's charge (section 26).

The obligation to meet these needs is qualified - they are needs that are appropriate to the species, environment, and circumstances of the animal (section 4). Therefore, where the animals roam over a wide area of land with natural sources of food and water, the obligation to meet those needs will be minimal.

The act of hunting on safari parks is not substantially different from hunting on other land: the animal welfare outcome involves many factors including the skill of the hunter. Consequently, hunting on safari parks is excluded from the Act's obligations (section 176).

14 Exemption Relating to Use of Animals Where Human Health or Safety is at Risk

PROVISIONS IN THE ACT

The Act exempts listed agencies from offence provisions where animals are used (other than for research, testing or teaching) in the course of carrying out statutory functions or duties, or exercising statutory powers for the purposes of protecting human health, or safety or enforcing the law (section 179). The exempt agencies are listed in Schedule 3: the New Zealand Defence Force and the New Zealand Police. Other agencies may be added from time to time by Order in Council (section 180).

REASON FOR THE EXEMPTION

At times, animals are used by agencies in the course of meeting their statutory obligations where there is a greater than normal risk to the health or safety of those animals. Such use of animals could be in breach of obligations in the Act. For example, police dogs are used to apprehend suspects in situations where there is a risk that the dogs will be injured. The use of animals in such situations could potentially constitute a breach of the obligation to ensure “physical handling in a manner which minimises the likelihood of unreasonable or unnecessary pain or distress” (section 4(d)).

The exemption for persons belonging to, or acting on behalf of, the agencies listed in Schedule 3 will ensure that they will not be at risk of breaching the Act while performing statutory tasks required to protect human health or safety.

LIMITED APPLICATION OF THE EXEMPTION

The exemption will apply only during the specific periods of time that the animal is exposed to the risk, and expressly excludes research, testing or teaching. At all other times the provisions of the Act apply to the person in charge of the animal.

The exemption does not apply to those situations where animals are used in the course of carrying out statutory duties because of their particular abilities rather than in dangerous situations in place of humans. For example, Customs, MAF and the Department of Corrections use dogs for their sensory abilities, to detect illicit drugs and other substances. Generally, such dogs are not at a significantly greater risk than other working animals (such as dogs used for mustering) and their agencies do not require exemption from the Act’s offence provisions.

15 Regulations

SCOPE OF POWERS

The use of regulations is generally limited to administrative issues, such as prescribing forms, that may require changes from time to time but would not warrant an amendment to the Act.

The Act includes a consultation requirement (section 184) prior to the Minister recommending the making of a regulation under sections:

- 183(b): standards and policies to be included in every code of ethical conduct;
- 183(d): matters to which AECs must have regard in considering applications for approval of projects; and
- 183(e): cost recovery.

This consultation requirement also applies prior to the making of Orders in Council under the following sections:

- 2(1): definition of “animal”;
- 6: definition of “significant surgical procedure”;
- 16(1): classification of a surgical procedure;
- 16(2): amending or revoking an order made under section 16(1);
- 32(1): declaring a prohibited / restricted trap or prohibited / restricted device; and
- 32(6): amending or revoking an order made under section 32(1).

REGULATIONS (DISALLOWANCE) ACT 1989

The following provisions are subject to the Regulations (Disallowance) Act 1989:

- Regulations (section 183);
- Orders in Council defining what is or is not a significant surgical procedure (section 6);
- Orders in Council classifying restricted or controlled surgical procedures (section 16);
- Orders in Council declaring traps or devices to be restricted or prohibited (section 32);
- Codes of welfare (section 79).

Deeming the above Orders in Council and codes of welfare to be regulations for the purpose of the Regulations (Disallowance) Act 1989 is an accountability mechanism. It inserts further safeguards or checks and balances on these processes.

Regulations and those instruments deemed to be regulations must go before the House of Representatives no later than 16 sitting days after they are made. This gives Members of Parliament an opportunity to scrutinise them on behalf of the public (in practice by the Regulations Review Committee). The House, by resolution, may vote to disallow or amend the regulations, or substitute them for another. Disallowance has the same effect as revocation of the regulations.