

**Submission on the Draft Code of Welfare: Temporary
Housing of Companion Animals**

The New Zealand Animal Law Association

August 2014

1. *Do you consider a code of welfare for the temporary housing of companion animals to be necessary? Are there any alternatives which would achieve the same outcome as having a code of welfare? If so what are they?*
 - 1.1 A code to provide guidance to those who are temporarily housing companion animals is clearly necessary. Although the Animal Welfare Act 1999 ('the Act') establishes general obligations upon those in charge of animals, more specific recommendations are required in order to ensure that the welfare of animals being housed temporarily are met. Currently there is no law regulating this area of temporary housing and therefore a code setting standards in this area is extremely important.
 - 1.2 As set out in the purpose of the draft Code of Welfare: Temporary Housing of Companion Animals ('the Code'), given the stressful environments that are often involved, ensuring adequate living standards for companion animals can be difficult. For those in charge of animals in temporary housing situations, it is important that they are aware of the standards expected of them and are given appropriate guidance in this respect. A code will provide for this by establishing solid and identifiable standards that are accessible to all those temporarily housing companion animals.
 - 1.3 However, it is submitted that a more favourable alternative to setting out these standards in a code is to have them incorporated into regulations that are directly enforceable. In order for the standards to serve the purpose they are drafted for, and to ensure strict compliance, they need to be directly enforceable against those who choose to breach them. It is a concern that by only having the standards in a code that is not directly enforceable, the deterrent value of these standards is limited.
 - 1.4 Although the Animal Welfare Amendment Bill 2013 proposes to establish enforceable regulations, the Ministry for Primary Industries has stated that only an approximate 5% of the standards established in the codes of welfare will be incorporated into regulations. Unless all of the minimum standards established in the proposed Code are incorporated into these regulations, the value of these new standards is likely to remain more notional than real. As pointed out in the Code's purpose, and mentioned above, animals in temporary housing situations are often subject to a large amount of stress, unfamiliar, and often sub-standard conditions. This elevates the need to have the standards enacted as a regulation so that breaching the minimum standard is a *prima facie* offence under the Animal Welfare Act 1999.
2. *Do you agree that the minimum standards in this code are the minimum necessary to ensure that the physical, health, and behavioural needs of companion animals in*

temporary housing facilities will be met? For example, do the minimum standards reflect good practice (not just current practice), current scientific knowledge and available technology? If not, what alternatives do you suggest? Please state your reasons.

2.1 Overall, we consider most of the proposed minimum standards to be appropriate. However, we recommend the following amendments in order to ensure that the minimum standards meet the physical, health and behavioural needs of animals in temporary housing facilities.

2.2 Minimum Standard No. 3 – Food Preparation

We submit that the best practice recommendation 3(a), providing that ‘Water bowls or bottles should be washed daily’, be incorporated as a minimum standard.

2.3 Minimum Standard No. 5 – Assessment on Admittance

(a) We recommend that minimum standard 5(b):

‘Any incoming animal identified as requiring urgent veterinary treatment must be immediately referred back to the owner or receive prompt veterinary attention’

be amended to:

‘Any incoming animal identified as requiring urgent veterinary treatment must be immediately referred back to the owner or receive prompt veterinary attention. If the owner is unavailable, unable or unwilling to take the animal to veterinary clinic, the person, business or organisation receiving the animal must take reasonable steps to ensure that the animal receives prompt veterinary attention.’

(b) We recommend that minimum standard 5(c):

‘Any incoming animal suspected of having an infectious disease must be isolated on arrival’

be amended to:

‘Any incoming animal suspected of having an infectious disease must be isolated on arrival and receive prompt diagnosis. The animal must only be isolated for the time

reasonably necessary to diagnose its condition and to prevent the spread of any contagious diseases or infections.’

2.4 Minimum Standard No. 6 – General Health

- (a) We recommend that the following minimum standard, 6(a):

‘Animals in a temporary housing facility must be visually assessed for signs of ill health or injury at least once a day.’

be amended to:

‘Animals in a temporary housing facility must be visually assessed (*by suitably qualified or trained person for each species*) for signs of ill health or injury at least once a day.’

- (b) We recommend an amendment to minimum standard 6(b):

‘(b) Animals which are observed to be showing:

- (i) signs of pain, suffering or distress; or
- (ii) signs of continuous ill health; or
- (iii) signs of rapidly deteriorating health

must urgently receive veterinary attention or be brought to the attention of an animal welfare inspector under the Act (e.g. an SPCA inspector) or, if required, be humanely euthanased in accordance with the Act.’

Specifically, the words “or be brought to the attention of an animal welfare inspector under the Act (e.g. an SPCA inspector)” must be removed. This phrase is problematic as it shifts the burden of care from the person in charge to an inspector. Alternatively, if this phrase remains included, we recommend that the wording be reconsidered so that “bringing the animal to the attention” of an animal welfare inspector does not absolve the person in charge’s responsibilities to mitigate any suffering. For instance, it could be stated that if an animal is brought before an inspector and the inspector issues instructions, these must be followed.

- (c) In relation to this minimum standard, we further recommend that the word ‘continuous’ be removed from minimum standard 6(b)(ii) below:

‘(b) Animals which are observed to be showing:

(i) signs of pain, suffering or distress; or

(ii) signs of *continuous* ill health;

(iii) signs of rapidly deteriorating health.’

(d) We further submit that the following recommendation for best practice, 6(c):

‘Each temporary housing facility should have an arrangement with a veterinarian or veterinary clinic whereby a veterinarian is available on an emergency response 24-hour basis. An animal with a problem of a non-urgent nature should be seen by a veterinarian within 12 - 24 hours of it being noticed.’

be amended in the following manner and incorporated as a minimum standard:

‘Each temporary housing facility should have an arrangement with a veterinarian or veterinary clinic whereby a veterinarian is available on an emergency response 24-hour basis. An animal with a problem of a non-urgent nature should be seen by a veterinarian *as soon as reasonably practicable* and no later than 12 - 24 hours of it being noticed.’

(e) We further recommend that the following example indicators be incorporated as minimum standards:

‘[There is evidence that] staff are trained and possess the knowledge and competence to recognise ill-health and injury in the relevant species and to undertake prompt action and treatment as necessary.’

‘No sick or injured animals are left untreated.’

2.5 Minimum Standard No. 7 – Contagious Diseases

(a) We note that minimum standard 7(b) appears highly difficult to meet given the number of abandoned and stray animals that enter temporary housing facilities such as pounds or animal shelters. In light of this, we recommend adding the words ‘if available’ to the beginning of the standard so that it reads:

'If available, vaccination certificates must accompany each relevant animal entering a temporary housing facility stating clearly the full details of the veterinarian and the veterinary clinic including the veterinarian's signature.'

2.6 Minimum Standard No. 8 – Providing for Behavioural Needs

(a) We recommend that the following minimum standard 8(a):

'Animals in temporary housing facilities must have sufficient space to socialise, rest, sleep, stand, stretch, swim, fly or move freely about (as appropriate to the species)'

be amended to incorporate reference to normal patterns of behaviour as a minimum standard (in accordance with section four of the Act) rather than as an example indicator as follows:

'Animals in temporary housing facilities *must be able to express normal patterns of behaviour*, including having sufficient space to socialise, rest, sleep, stand, stretch, swim, fly or move freely about (as appropriate to the species).'

(b) We recommend that the following minimum standard 8(c):

'Housing must provide the means for animals to shelter and sleep'.

be amended to:

'Housing must provide the means for animals to shelter from the weather and prevailing stressful conditions, and to sleep'.

(c) We also recommend that the following example indicators be incorporated as minimum standards:

- 'Normal free movement and access to and water is not impeded by space restrictions or excessive competition.'

- 'All animals are provided with a bedding or nesting area for shelter and/or sleeping.'

- 'Animals kept in shop windows at night must be able to hide from public view.'

- 'Animal enclosures must be protected from excessive light at night, even if it is generated from outside the premises.'

2.7 Minimum Standard No. 9 – Housing Design and Construction

- (a) We submit that the best practice recommendation (b) be incorporated as a minimum standard:

‘Adequate dry, clean bedding (preferably raised off the ground) should be used at all times’.

- (b) We support the intention behind minimum standard 9(a). However, we note that at present, minimum standard 9(a) lacks any hard criteria, and only goes as far as requiring that housing systems and equipment be designed and built with the objective of creating an environment that does not injure the animals in question. A safe environment free from hazards should be a requirement, not a goal.

We therefore recommend that the following example indicator be incorporated into minimum standard 9(a) as an element of that standard:

- ‘The design and construction of facilities allows animals to move around comfortably, without risk of injury.’

We also recommend minimum standard 9(a) be amended to establish a clear process for eliminating hazards that may cause injury to animals. We therefore recommend this standard be re-drafted as follows:

‘Housing systems should be designed to ensure that there are no hazards and no equipment upon which animals may injure themselves in areas to which they have access, and daily checks should occur to ensure that any new hazards are identified and eliminated and/or mitigated.’

- (c) We also submit that the recommended best practice 9(e) be incorporated as a minimum standard:

‘Emergency warning devices (including smoke alarms, fire detectors, fire extinguishers, emergency telephone numbers and exits) should be clearly marked and maintained.’

2.8 Minimum Standard No. 11 – Lighting

- (a) We recommend that the following minimum standard 11(a):

'Animals must be provided with natural or artificial light of appropriate intensity for a duration appropriate for their species'

be amended to incorporate the recommended best practice (a) so that it reads:

'Animals must be provided with natural or artificial light of appropriate intensity for a duration appropriate for their species. *The duration and intensity of internal lighting should be as close as possible to natural conditions.*'

2.9 Minimum Standard No. 14 – Quarantine/Isolation Management

- (a) We recommend that in addition to having appropriate facilities available in the event of suspected contagious diseases, facilities should also have a recognised procedure in place to deal with these incidents, and that this requirement should be included in the minimum standards.

A contagious diseases procedure should go as far as detailing a protocol for controlling significant outbreaks of diseases or where there is an epidemic, and the facility should anticipate how they will accommodate for such events in terms of resources. Procedures detailing this could be included as a best practice recommendation or as an example indicator.

2.10 Minimum Standard No. 15 – Sale or Rehoming

- (a) We submit that the best practice recommendation 15(a) be incorporated into a minimum standard in order to promote a culture of responsible and informed pet ownership:

'New owners should be given appropriate literature on the care of the animal for example on feeding, desexing, parasite control, health (including procedures for emergency treatment), housing, and responsible companion animal ownership including current legislation covering the registration of companion animals.'

- (b) We do not support the inclusion of minimum standard 15 (f), requiring that 'Animals for which vaccination is possible must be partially or fully vaccinated prior to sale or rehoming, with appropriate certification provided'. This standard is likely to be very burdensome on animal shelters and re-homing organisations with fewer resources. For instance, adult dog full vaccinations usually cost over \$200 per animal. It may therefore discourage individuals from housing stray animals, for instance, as they will be required to vaccinate the animal before handing it over to a new owner. It is unlikely that this negative impact would be outweighed by the benefits of the animal

being immune to certain diseases. We therefore submit that this standard be incorporated as a recommended best practice, and incorporated into quality assurance regimes for larger animal establishments such as pet shops, rather than as a minimum standard for all organisations and individuals falling within the jurisdiction of the Code.

- (c) We submit that the recommended best practice 15(d) be included as a minimum standard:

‘Animals should not be released for sale or rehoming if there is any doubt about the ability of the potential owner to care for them appropriately.’

2.11 Minimum Standard No. 16 – Euthanasia

- (a) We recommend that the following example indicators are incorporated as minimum standards:

‘A documented protocol is in place that ensures:

– Animals are euthanased by methods prescribed in relevant codes of welfare or in relevant, accepted guidelines.

– Persons undertaking humane killing or euthanasia are appropriately trained, and where possible, should be euthanised by a veterinarian.

- Death is confirmed following the procedure in a manner appropriate to the species.’

2.12 Minimum Standard No. 17 – Quality Management

- (a) We support the inclusion of a Quality Assurance scheme. However, we note that that if the Royal New Zealand Society for the Prevention of Cruelty to Animals (SPCA) is charged with reviewing and enforcing this scheme to ensure compliance with the Code, then difficulties are likely to arise given the very limited resources and lack of funding available to the SPCA. For this scheme to be meaningful, there would need to be adequate funding and/or resources allocated from other entities such as the Ministry for Primary Industries.

3. *Do you agree the example indicators given are appropriate to describe how to measure or assess the achievement of the intended outcome of the minimum standards? If not, what alternative(s) do you suggest? Please state your reasons.*

3.1 Overall, we consider the example indicators provided for to be appropriate. However, we recommend the following amendments in order to ensure that the proposed minimum standards are suitably measured.

3.2 Example indicators for Minimum Standard No. 4 - Water

We recommend adding the following example indicators:

- 'Evidence that animals are actually drinking the water supplied in normal quantities'.
- 'Nothing is obstructing the water supply.'

3.3 Example indicators for Minimum Standard No. 10 – Temperature

We recommend that a process of performing visual checks several times throughout the day during seasons of extreme temperatures (Winter and Summer season) be included as an example indicator. This would not require an overly comprehensive examination, but rather several quick visual inspections of the animals throughout the day depending on how extreme the temperatures are, if there is no temperature regulation inside the facility.

3.4 Example indicators for Minimum Standard No. 15 – Sale or rehoming of sick, injured or diseased animals

(a) We support the inclusion of a facility policy as an example indicator that outlines criteria against which the suitability of new owners is assessed. Affording discretion to the caregivers of a facility is sensible, as assessments should be made holistically on a case-by-case basis. We further support the inclusion of a minimum age within this policy, as caring for an animal requires a mature person who has sufficient resources to care for them.

(b) We also recommend the inclusion of a declaration to be signed by new owners acknowledging their decision to take ownership of a new animal, and that also familiarises them with their responsibilities under the Act. This requirement could be incorporated as an example indicator or a best practice recommendation.

4. *Do you agree that the recommendations for best practice in this code are appropriate? If not, what alternatives do you suggest? Please state your reasons.*

4.1 Overall, we consider most of the recommendations for best practice to be sound. However, as noted in question number two above, there are certain

recommendations for best practice that would be much more appropriate for inclusion as minimum standards.

4.2 Example indicators for Minimum Standard No. 8 – Providing for Behavioural Needs

- (a) We submit in relation to recommended best practice 8(a) that the words 'stereotypic behaviour' be removed. Adopting an ordinary interpretation of the phrase 'stereotypic behaviour', this is not a negative attribute that needs to be 'reduced'.

5. *Do you think this code would change existing arrangements for the management of companion animals in temporary housing facilities? If so, how, and to what extent?*

5.1 At present, there is a lack of any direct standards drafted for the purpose of persons housing animals temporarily in their care. This means that animals in temporary housing are only protected by general anti-cruelty provisions set out in the Animal Welfare Act 1999. Although there are a few relevant codes for the more common companion animals, such as the Animal Welfare (Companion Cats) Code of Welfare 2007, these are by no means adequate to address the vast range and large numbers of companion animals housed temporarily.

5.2 The enactment of this Code will change existing arrangements for the management of companion animals in temporary housing by imposing more specific legal obligations upon owners and persons in charge of animals. However, as stated above at question one, this Code must be incorporated into directly enforceable regulations (or made directly enforceable in itself) if it is to achieve the purpose for which it is drafted. Without directly enforceable regulations, the Code is unlikely to significantly change existing arrangements, or to have a real and recognisable impact on the welfare of animals housed temporarily.

6. *Will complying with this code involve costs for you or your business? For example, costs may include converting existing animal facilities or employing new staff.*

6.1 As we are a legal organisation and do not house companion animals, this Code will not involve additional costs for us. However, once issued, we may provide charitable animal organisations with *pro bono* advice on the implementation of the Code.

7. *What barriers do you see to the implementation of the proposed code and how might they be resolved?*

- 7.1 One major barrier to the effective implementation of the proposed code lies with enforcement. Due to enforcement difficulties, establishments and individuals falling within its jurisdiction are unlikely to be deterred from breaching the proposed minimum standards.
- 7.2 The Code's lack of deterrent power relates to enforcement difficulties that are two-fold. Firstly, the minimum standards stipulated for in the Code are not directly enforceable but mere evidence that can be used in support of a prosecution under the Act. Although the Animal Welfare Amendment Bill 2013 proposes to establish enforceable regulations, as stated at question one above, the Ministry for Primary Industries has stated that only approximately 5% of the standards established in codes of welfare are likely to be incorporated into regulations. Unless all of the minimum standards established in the proposed Code are incorporated into these regulations, the deterrent effect of these standards will remain limited.
- 7.3 Secondly, even in the event that these standards are made directly enforceable, the implementation of the Code is likely to be further hindered by the defective nature of the Act's enforcement regime. Currently, the enforcement of the Act with respect to companion animal welfare is left almost entirely to a private, underfunded charity, the SPCA.¹
- 7.4 Delegating the enforcement of a criminal statute to a private charity that receives extremely limited government funding and support strongly undermines the likelihood that breaches of the Code will be detected and/or enforced. Currently, the ratio of inspectors to animals remains extremely low, at approximately one inspector per 50,000 companion animals.² As pointed out in a recent New Zealand Universities Law Review article, this problem is exacerbated by the fact that many inspectors must work across a wide geographical region.³ This limits the inspection time in each locality, and constrains the ability of inspectors to respond to emergency situations.

¹ A Memorandum of Understanding was signed between the SPCA and the MPI on 12 August 2004 to the effect that the SPCA focus on enforcing companion animal welfare (of which there are an estimated 5 million), and small-scale livestock operations, whereas the MPI focus on enforcing large-scale livestock operations. See Ministry of Agriculture and Forestry *Animal Welfare Amendment Bill: Regulatory Impact Statement* (978-0-478-35784-4, February 2010), at 6.

² There are 96 inspectors for approximately five million companion animals. See Danielle Duffield "The enforcement of animal welfare offences and the viability of an infringement regime as a strategy for reform" (2013) 25 NZULR 897 at 909.

³ *Ibid.*

- 7.5 This charity-based enforcement regime inevitably limits the detection and prosecution of animal abuse. For instance, in 2011, the SPCA received 13,089 complaints from the public about mistreated animals, yet only initiated 35 prosecutions.⁴ Accordingly, less than 0.27% of complaints led to prosecutions. Furthermore, this low prosecution rate is not an anomaly but rather has continued over recent years.⁵
- 7.6 Consequently, in the absence of adequate enforcement, the minimum standards established under this Code are unlikely to have the legal effect intended. Rather, the defective enforcement regime will render the minimum standards analogous to the recommendations for best practice in providing mere guidance as opposed to creating effective legal standards.
- 7.7 Resolving this major barrier to the effective implementation of the Code will require the Ministry of Primary Industries to allocate significantly more resources to the enforcement of the Act and the codes of welfare administered under it. Specifically, it must administer greater funding to the SPCA so that breaches of the minimum standards established in this Code can be investigated and addressed. This funding ought to be sufficient to facilitate routine inspections of establishments falling within the ambit of the Code to ensure compliance with the minimum standards, as well as to provide for the investigation of reported breaches.
8. *What benefits do you see from having this code? Benefits may include, for example, increased certainty about animal welfare requirements or market gains.*
- 8.1 The Code sets minimum standards for the care of companion animals kept in temporary housing situations. As noted above, these standards are not provided for in detail in either the Act or in any other relevant code. Accordingly, the Code provides greater clarity for both owners of animals and persons in charge in relation to their obligations under the Animal Welfare Act.
- 8.2 Promoting and maintaining minimum standards will have a positive effect for many animal charities performing rehoming services, such as local animal shelters who will now have greater guidance in respect to the day-to-day operations of their organisations. Providing greater clarity for these organisations by virtue of the Code will promote the effective functioning of these organisations, which perform valuable

⁴ Ibid at 911.

⁵ Arnja Dale “Animal Welfare Prosecutions - what is the Judiciary Saying?” (University of Auckland, May 2014).

charitable work for society. Charitable organisations may also find an increase in their credibility and ability to source donations.

8.3 The Code also encourages a 'species specific' focus, such as in the construction of premises, food, water and shelter, etc. It places the onus on such organisations to ensure that their staff have 'species-specific' training/expertise and are competent. The Code promotes high standards of hygiene and health which are incredibly important as crowded holding facilities present as 'high risk' for the spread of disease. Thus, it would provide owners with some degree of reassurance of what to expect when they hand their animals over to the temporary care of others.

8.4 Setting minimum standards also provides a framework for the effective auditing of establishments for compliance with the Act. For instance, the Code holds the potential to enable SPCA inspectors to identify breaches of the Act more readily and with much greater certainty than previously. However, the practical benefit of this feature of the Code is likely to be significantly undermined by the current under-resourcing of enforcement.

9. *What other impacts would this code have on New Zealand society, the economy, or the environment?*

9.1 The Code gives greater effect to the Act and ensures that animals held in such temporary places are provided with 'species-specific' standard of welfare. Companion animals, including strays, are likely to have their welfare needs better met as the Code ensures consistency across the varied forms of temporary accommodations that have them in their care.

9.2 With the information contained within the Code, owners, consumers and the organisations themselves can advocate, demand and strive for best practice. This is likely to have several positive flow-on effects for society. For instance, animals that have had adequate physical and psychological care will be passed on or back to content owners. This may result in a decrease in veterinary and hospital fees, abandonment of pets, prosecutions relating to management of companion animals or injury to companion animals, etc. It may in turn reduce the burden on animal rescue organisations and the court system.

9.3 However, as emphasised throughout this submission, from a legal perspective these benefits are unlikely to come into full fruition unless the standards are given "teeth" by virtue of being made directly enforceable. This lack of enforceability of the Code is a

fundamental flaw of what is an otherwise favourable development for animal welfare in New Zealand.