

New Zealand Animal Law Association

Submission on the proposed Animal Welfare Regulations - Significant Surgical Procedures

24 July 2019

**Submission on the Proposed Animal Welfare Regulations – Significant Surgical
Procedures**

1. The New Zealand Animal Law Association submits the following comments on proposed regulations under section 183B of the Animal Welfare Act 1999 (**the Act**) that have been developed and published by the Ministry of Primary Industries (**MPI**).¹

About the New Zealand Animal Law Association

2. The New Zealand Animal Law Association (**NZALA**) is a registered charity working to improve the welfare of animals through the law and to advance animal law education. It currently comprises over 500 lawyers spanning various practice areas, including practitioners for large commercial law firms, criminal and civil litigators, in-house counsel, crown counsel, and lawyers working for the judiciary.
3. NZALA also has two honorary patrons, including Australia's longest-serving judge, the Honourable Michael Kirby AC CMG Australia. More information about the charity can be found at www.nzala.org.
4. Queries about this submission should be directed to:

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Section 4: The Compliance and Enforcement Regime

Question 3: Defences

5. In principle, NZALA is of the view that the defences suggested at paragraph 4.4.3 are appropriate.
6. A further defence should be that the act or omission constituting the offence took place in circumstances of stress or emergency and was necessary to prevent the death, or unreasonable pain or distress to an animal.

Section 8: The Regulatory Proposals

Question 16: Pain Relief

7. Pain relief as described in the proposed regulations is acceptable in principle. These standards are in relation to surgical and painful procedures. The defences at paragraph 4.4.3 of the proposal document would be available if an emergency required surgery.
8. The regulations should be worded in a way that ensures those responsible for animals understand that pain relief must be administered to prevent an animal suffering unreasonable pain or distress.

¹ www.mpi.govt.nz/news-and-resources/consultations/proposed-animal-welfare-regulations.

Questions 17 and 18: Administration of Pain Relief

9. It is submitted that while outside of the present regulatory framework, an appropriate way to regulate those who are not veterinarians, but who are providing pain relief to animals, is to have oversight by the Veterinary Council of those people. This could be similar to the regulation of professions such as dental hygienists or legal executives.
10. Farmers could also undertake a licensing course to ensure that medicines are used appropriately and those administering anaesthesia have a baseline level of understanding of the pain relief they are administering.
11. It is appropriate that the owner or person in charge of an animal be responsible for ensuring a person is qualified to administer any pain relief necessary on a strict liability basis. The person administering the pain relief may also have obligations pursuant to the Fair Trading Act and Veterinarians Act.

Section 8.5: New Regulatory Proposals

Proposal 1: Tissue removal for research, testing and teaching, or for functions under section 5(3) of the Act

12. It is appropriate that people carrying out functions under s5(3)(c) of the Animal Welfare Act be excluded from this proposed regulation, provided they are competent. There should be specific offences for those regulated under s5(3)(c) if they perform tissue removal and are not competent to do so, and the entity responsible should be vicariously liable. This is justified on the basis that those performing tissue removal while carrying out a s5(3)(c) activity are in a special place of trust, excluded from the usual requirement to be a veterinarian to perform the procedure, and there should be penalties should this privilege be abused.
13. It is appropriate that this is a Category C offence given the likelihood of harm and disability the activities regulated would cause the affected animal.

Proposal 2: Surgical tagging for research, testing and teaching, or for functions under section 5(3) of the Act

14. The proposal as drafted is appropriate and supported, with the additional comment that any person performing surgical tagging should be providing pain relief to the animal, not only veterinarians.

Proposal 3: Desexing and sterilising of animals used in research, testing and teaching

15. The proposal as drafted is appropriate and supported. The regulation should apply to surgical desexing and sterilisation, as it could apply to chemical or hormonal sterilisation as drafted.
16. NZALA submits that this is a Category D offence given the level of pain that would be caused to an animal undergoing significant surgery without pain relief.

Proposal 4: Exclusion of research, testing and teaching procedures carried out as part of an Animal Ethics Committee approved project under Part 6 of the Act

17. It is submitted that this proposal should not be adopted, so that regulations relating to surgical and painful procedures continue to apply to research, testing and teaching (**RTT**).
18. NZALA's principle reason for this submission is that where MPI has determined that a procedure should be prohibited or have certain prescribed requirements, it should not be allowed to be carried out without adherence to prescribed requirements in the course of RTT without MPI first determining that this is appropriate for achieving the purposes of Part 6 of the Act, as set out in section 80.
19. NZALA understands that MPI considers that it is appropriate to leave individual animal ethics committees (**AECs**) to decide, in accordance with section 100 of the Act, when surgical and painful procedures should be approved.
20. By contrast, NZALA's position is that oversight of the decision-making of AECs, and the RTT approved by AECs, is not robust enough to justify confidence that AECs will prevent animals from being subjected to painful procedures as part of RTT where there is not good reason to believe that the RTT will benefits that outweigh the harm caused to animals.
21. NZALA understands that RTT facilities are subjected to limited, if any, oversight by animal welfare inspectors. In these circumstances, NZALA considers that allowing regulated procedures to occur in RTT facilities poses an unacceptable risk to animal welfare.
22. In terms of Question 5 in the discussion paper, NZALA considers that MPI (and, potentially, the SPCA) could go some way to addressing this issue by increasing the monitoring and review of RTT facilities by inspectors.
23. Given that regulated procedures are regulated by reason of their significance in terms of their nature, and/or their potential to cause pain, distress, harm and/or loss of function, it is appropriate, in NZALA's view, for them to be prima facie banned in RTT if carrying them out has not been recognised as having potential to generate worthwhile advances in RTT.
24. Specific regulations should instead be expressly excluded from applying to research, testing and/or teaching if this is appropriate for achieving the purposes of Part 6 of the Act, as set out in section 80.

Proposal 5: All animals – epidurals

25. It is submitted that this proposal should be amended to place a duty on any veterinarian providing anaesthetic for the purpose of an epidural to take reasonable steps to ensure the person who will use the anaesthetic is competent to do so.
26. This proposal should be amended to require anaesthetic to be administered in an appropriately sterile environment.
27. This proposal should be amended to reflect the fact that a person may be competent to administer an epidural but not carry out the related surgical procedure.

Proposal 6: Changes to the 2018 regulations (electric prodders)

28. This proposal is problematic as an infringement offence as it requires a difficult element of weight assessment. In particular, it is unlikely to be clear to an animal welfare inspector when a cow is over a certain weight, and it is unlikely that weighing facilities will be available in all circumstances where potential offending may be detected.
29. A more clear and precise regulatory proposal would be to prohibit the use of electric prodders, with the defence available where it is necessary for the protection, preservation or maintenance of human life. This defence would capture the intent behind the limited permitted use set out in parts b and c(i), whereby prodders may be used in circuses and commercial slaughter premises where the safety of the handler is at risk.
30. It appears that the reason for changing the weight restriction is because two slaughter premises have adopted systems which call for the use of now-prohibited electric prodders. Catering to companies which have implemented systems which prevent them from complying with the current law is an entirely inappropriate reason to change the regulations. This approach is solely for the commercial benefit of pig farmers. Any changes to the rules should be based on current scientific literature and for the benefit of animals the Act is designed to protect.
31. Consideration should be given to a maximum voltage and amplitude of any electric prodder that may be used on an animal.
32. NZALA does not consider the Police should be exempt from this proposal. If a life is at risk, they currently have a defence to any regulatory prosecution. If there is no risk to a human, they should not be using electric prodders, particularly when Police often carry tasers, which are of a harsher nature than most shockers used in agricultural settings.
33. Cases documented in the media of NZ Police using excessive force against animals demonstrate a need to be able to hold the Police to account for harming animals, rather than exempting them from animal welfare standards.

Proposals 7 and 10: Cattle and sheep – vaginal prolapse

34. It is submitted that this proposal should be adopted.
35. However, NZALA is of the view that it is desirable to prescribe a method (or methods) of treating a prolapse which reflects standard industry and veterinarian-approved practice. This should be possible, given that prolapses are widely treated by non-veterinarians in the industry. This method(s) may be included as a minimum standard in a code of welfare, to help support a prosecution if there is evidence a person has ill-treated an animal by treating a prolapse incorrectly. Regulating prolapse treatment methods reflects the importance of the procedure being carried out safely and effectively.
36. NZALA submits that it is prudent not to extend this proposal to other species at this time. The proposal is appropriate in the context of cattle and sheep because it reflects a widespread, generally unproblematic industry practice. In the rare instance that vaginal prolapse occurs in an animal of another species, the person in charge of an animal should endeavour to enlist a veterinarian in short enough time to treat the prolapse.

37. It is submitted that non-veterinarians should not be allowed to treat uterine and rectal prolapses in cattle and sheep. Standard industry practice is for veterinarians to treat these prolapses, and accordingly there is no standard practice for non-veterinarians to rely on.

Proposal 8: Equid castration

38. It is submitted that this proposal should be adopted. It is appropriate for castration of all equids to be treated consistently in light of their anatomical similarities. The requirement of pain relief is consistent with surgical castration of other animals.
39. The consultation document compares the positions of equids with llamas and alpacas. It is unclear why there is no existing or proposed regulation which requires pain relief to be applied in llama and alpaca castration, as is proposed for equid castration. While there may not be a need to regulate to allow non-veterinarians to carry out llama and alpaca castrations, there should be an express requirement to administer pain relief. Such a requirement was considered and generally approved when consulting on the 2018 Regulations.

Proposal 9: Sheep – restrictions on teat removal

40. NZALA supports the proposal in principle, provided that it does not lower the standard of current practice.
41. However, the basis on which non-veterinarian removal of supernumerary teats is restricted to sheep under 12 weeks of age is unclear. It may be that general industry practice mirrors the practice for teat removal from cattle, where feedback indicates that the procedure is usually performed between 8 and 10 weeks of age.
42. NZALA considers that MPI should gather further information about common industry practice and veterinarian opinions relating to removal of supernumerary teats (and whether or not there it is necessary to mitigate any welfare concerns). It should then consider that information in deciding whether non-veterinarians should be allowed to remove supernumerary teats from sheep below a certain age, and if so, which age that should be.
43. It is also submitted that a person who is competent to remove a supernumerary teat must be competent to identify the teat as supernumerary. If the teat cannot be clearly identified as supernumerary without veterinarian expertise, a veterinarian should be enlisted to identify and remove it.
44. To clarify this point, NZALA recommends that the regulation be amended to read:
- “A person who removes a supernumerary teat from a sheep that is under 12 weeks of age must be competent to both clearly identify the teat as supernumerary and to remove it...”*
45. It is submitted that the following wording be added to the first part of the proposal, relating solely to supernumerary teat removal:

“Pain relief must be used at the time of the procedure.”

46. Due to compliance concerns with the removal of teats on cattle by inappropriate methods (e.g. rubber rings), it is submitted that such methods should be expressly prohibited.

Proposal 11: Pigs – rectal prolapses

47. It is appropriate for non-veterinarians to perform this procedure in order to alleviate any unnecessary pain, suffering or potential fatalities, consistent with section 4 of the Act. Delayed treatment could result in the prolapsed tissue drying out, and potentially becoming necrotic. If this occurs, the pig may need to be euthanised.
48. Minimum Standard 18 of the Code of Welfare for Pigs requires the owner of person in charge to monitor the pigs at least once a day. It is submitted that the proposal is amended to explicitly include this requirement. This is consistent with section 4 of the Act.
49. NZALA submits that breach of this proposal should be a Category D offence, due to the seriousness of this procedure and the need to be performed to the highest standard.
50. A veterinarian should be consulted before euthanasia occurs.

Proposal 12: Pigs and cattle – application of nose rings, clips and wires

51. NZALA is of the view that the use of wires on any animal is unjustified, and should be banned in these regulations. Rings and clips are far preferable and readily available, and it is hard to imagine a reason why a person would be competent to insert a wire but not a ring or clip.
52. This regulation should be amended to require pain relief to be administered when nose rings, clips or wires are inserted. This supports the need to reduce unreasonable or unnecessary pain and distress to animals, pursuant to s 4 of the Act.
53. Minimum Standard 16 of the Code of Welfare for Pigs should be elevated to a regulation.

Proposal 13: Goats – Castration

54. Minimum Standard 3 of the Code of Welfare for Painful Husbandry Procedures requires pain-relief to be administered when high-tension bands are used to perform the castration. Additionally, recommended best practice involves the use of pain-relief when performing castrations. It is submitted that the proposal is amended to state:

“Pain-relief must be used on goats of any age when performing castrations.”

55. Minimum standard 3 also requires monitoring of the animal for joint abnormalities and arthritis, and it is submitted that the proposal is amended to state:

“If the procedure is performed before the animal reaches puberty, the animal will be monitored regularly for any signs of joint abnormalities or arthritis. If signs of such abnormalities occur, the owner or person in charge of the animal will engage a veterinarian to assess the animal and advise the next steps to be taken.”

56. It is submitted the offences be amended to also apply to any person who performs castration who is not competent to do so.

Proposal 14: Goats – Restrictions on teat removal

57. NZALA supports the proposal in principle, provided that it does not lower the standard of current practice.
58. However, the basis on which non-veterinarian removal of supernumerary teats is restricted to sheep under 12 weeks of age is unclear. It may be that general industry practice mirrors the practice for teat removal from cattle, where feedback indicates that the procedure is usually performed between 8 and 10 weeks of age.
59. NZALA considers that MPI should gather further information about common industry practice and veterinarian opinions relating to removal of supernumerary teats (and whether or not there it is necessary to mitigate any welfare concerns). It should then consider that information in deciding whether non-veterinarians should be allowed to remove supernumerary teats from sheep below a certain age, and if so, which age that should be.
60. To clarify this point, NZALA recommends that the regulation be amended to read:

“A person who removes a supernumerary teat from a sheep that is under 12 weeks of age must be competent to both clearly identify the teat as supernumerary and to remove it...”

61. It is submitted that the following wording be added to the first part of the proposal, relating solely to supernumerary teat removal:

“Pain relief must be used at the time of the procedure.”

62. Due to compliance concerns with the removal of teats on cattle by inappropriate methods (e.g. rubber rings), it is submitted that such methods should be expressly prohibited.
63. It is submitted that this proposal is amended, so that supernumerary teat removal is treated in the same manner as main teat removal. It is submitted that only veterinarians can perform such a procedure in line with section 15 of the Act because the procedure is unlikely to be performed regularly, and because of the pain it is likely to cause the animal.

Proposal 15: Poultry – beak tipping

64. This proposal is problematic in the way it treats breeder birds differently from layer hens. Minimum standard 16 of the Code of Welfare for Layer Hens provides that beak tipping must be done using infrared beam beak treatment (IRBT) within 3 days hatching. The proposed regulation requires no such use of an IRBT machine, suggesting that the traditional method of a hot blade is still acceptable, despite research showing that this method causes the animal neurophysiological consequences and chronic pain. It is therefore submitted that the proposal be amended to read:

“Beak tipping of poultry may only be performed:

- (a) by a competent person;*
- (b) using an infrared beam;*
- (c) within 3 days of hatching; and*

(d) *by removing no more than one quarter of the upper or lower beak. This means for:*

(i) *one to three day old chicks, no more than 2 mm of the beak; and*

(ii) *adult hens, no more than the blunting of the upper and lower tips.”*

65. It is further suggested that the use of a hot blade causes the animal unnecessary pain and distress (when alternative methods are available), and that it should be expressly prohibited by the proposal.
66. It should be a Category D offence for an infrared beam not to be used, and also when more than a quarter of the bird’s beak is found to have been removed.
67. The Minimum Standards provided by the Code of Welfare for Layer Hens should be extended via this regulation to apply to all forms of poultry, including both breeder birds and turkeys.
68. It is desirable that this be a prosecutable regulatory offence due to the commercial context in which the offending is likely to occur.

Proposal 16: Poultry – spur removal

69. It is submitted that there is an age restriction on this procedure. NZALA submits that the following wording is added to this regulation:

“This procedure must occur within the first day of hatching. Pain relief must be used at all times during this procedure.”

70. This appears to be an appropriate procedure for non-veterinarians to perform.

Proposal 17: Poultry – toe trimming

71. It is submitted that this procedure is not necessary and that an alternative method should be sought.

72. As this procedure occurs to help identify genetic lines of primary breeders, it exists solely for the benefit of farmers and therefore is causing the breeder bird unnecessary pain and suffering, in breach of section 4 of the Act.

73. In the event that this procedure is considered necessary, the following wording should be added to the proposal:

“This procedure must occur within the first day of hatching. Pain relief must be used at all times during this procedure.”

74. Further consultation may be required to find an alternative to this method.

Proposal 18: All animals – freeze branding

75. The proposal should be amended to require appropriate pain relief to be administered to an animal prior to being freeze branded, and during the recovery period. While the

proposal document states that pain relief is not always readily available, freeze branding is not an emergency procedure, so branding can be delayed until pain relief is obtained. This is better in accordance with s 29(f) of the Act.

76. The freeze branding of dogs should be banned, given there are other methods of identification such as microchipping so readily available. If it is not banned, it is likely contrary to the Act to freeze brand a dog without pain relief and the regulations should reflect that.

Proposal 19: All animals – dentistry (cutting teeth)

77. In the future, consideration should be given to regulating more animal dentistry issues. In particular, NZALA submits that maintaining teeth extraction as a veterinarian only activity is important.
78. The cited references to the codes of welfare for pigs, llama and alpaca, and horses and donkeys should be elevated to regulation status.
79. The regulation should be amended to make clear that the grinding down of teeth is not permitted.

Proposal 20: All animals – surgical reproductive procedures

80. Given the nature of surgical reproductive procedures, NZALA submits that this is a category D offence, not category C as drafted. This reflects the significant pain that would be caused to an animal if pain relief is not administered.
81. It should also be a regulatory offence for a non-competent person to perform a surgical reproductive procedure.

Proposal 21: Cattle – restrictions on teat removal

82. NZALA's submission above that a person ought to be competent both to identify a sheep's teat as supernumerary and to remove it (at our comment on Proposal 9, above), applies equally to cattle.
83. As submitted in relation to sheep, above, before setting an age limit on non-veterinarian of supernumerary teats, MPI should confirm standard industry practice and whether that practice is appropriate from a veterinary perspective.

Proposal 22: Horses and other equids – prohibition on blistering, firing, mechanical soring and nicking

84. NZALA strongly supports this proposal. The proposed definitions of blistering and firing, mechanical soring, and nicking are clear and appropriate.
85. The consultation document notes that if there is little chance of these practices being re-established in New Zealand, it is possible that no regulation will be made. It is submitted that the regulations should be made, however unlikely re-establishment may be. Even though these practices would most likely be captured by one or more of the ill-treatment provisions in the Act, MPI should continue to send a clear message that these specific practices are unacceptable.

86. It is noted that the penalty under the proposed category is Category D, prescribing a maximum fine of \$5,000 for an individual or \$25,000 for a body corporate. NZALA notes that there will very often be concurrent liability under the Act, where the maximum fine is much higher (\$50,000 fine for an individual or 12 months imprisonment, or \$250,000 for a body corporate). While Category D is the strongest penalty which the Act allows to be imposed in regulations, the regulations should continue to send a clear message, through education and guidance, that these specific practices are unacceptable and will usually amount to ill-treatment.

Proposal 23: Horses and other equids – dentistry (teeth extraction)

87. It is submitted that Option 2 should be adopted in relation to this proposal.
88. While it may be seen as more practical to allow non-veterinarians to remove a tooth with only a minor attachment, it is unclear whether a non-veterinarian would have the appropriate expertise to decide if it is safe to remove a tooth in individual cases. This issue should be treated with care, given the potential harm that premature removal may cause.
89. In NZALA's view, Option 2 provides certainty in terms of when non-veterinarians may remove a tooth and when they may not, while not unduly restricting the situations in which non-veterinarians may do so.
90. NZALA agrees that non-veterinarians should not be allowed to remove wolf teeth or any other non-deciduous teeth, given veterinarian consensus that these teeth should be removed only by veterinarians.
91. NZALA agrees that it is appropriate to require pain relief in all veterinarian extractions. This range of extractions can be broad. As such, NZALA submits that rather than attempting to delineate situations when pain relief should be required, the more prudent approach is to establish a blanket requirement for pain relief.
92. It is unclear why "therapeutic purpose" is defined in the proposal but then not referred to anywhere else.
93. NZALA submits that the extraction of teeth from animals of other species should be left to the Act. However, in many tooth extractions across species, pain relief will be appropriate. Further regulation of dentistry procedures, which includes minimum standards for pain relief in tooth extraction, may be an appropriate way of reinforcing this point.

Regulation 24: Horses – Caslick's procedure

94. NZALA submits that this proposal should be adopted. Allowing a competent person to open an existing seam when a mare is served or foaling, but only when the horse is given pain relief authorised by a veterinarian for the purpose of the procedure, strikes a suitable balance between veterinarian involvement and practicality. It also appears to generally reflect industry practice.
95. It is important that seams be opened at the right time when a mare is foaling, as failing to do so may result in harmful vulval tears. A non-veterinarian should be free to carry out this procedure to protect the mare's welfare, particularly if a veterinarian is unavailable in the appropriate timeframe.

Proposal 25: Disbudding/dehorning

96. It is submitted that this regulation should be amended to include that:

“Pain relief will be given at all times during the procedure and as for as long after the procedure as is considered reasonably necessary.”

97. Minimum standard no. 5 of the Code of Welfare for Painful Husbandry Procedures requires minimising pain and distress and other negative health consequences (e.g. infection) for the animal. It is therefore submitted that the proposal is widened to include the monitoring of the animal for infection for a reasonable timeframe following the procedure.

98. Further, the Minimum standards specific to thermal cauterising equipment and caustic and chemical techniques of disbudding should also be included in this regulation.

99. To be consistent with the recommended best practice, the regulation should state that disbudding should occur instead of dehorning unless unreasonable in the circumstances.

100. Due to the seriousness of this procedure, it is likely that the animal will experience pain throughout if appropriate pain relief is not administered, the offence categorisation is appropriate.

Regulation 26: Game fowl – dubbing

101. It is submitted that option 2 be adopted in this proposed regulation. Only veterinarians should perform procedures such as this, and as there are approximately only 250 male fowls dubbed annually, the numbers do not justify non-veterinarians performing this procedure.

102. It is likely that this procedure will cause the fowls pain and suffering if the proposal is not complied with, and the procedure is not performed for welfare purpose, so the Category C offence categorisation is appropriate.

103. In the event that this procedure is necessary, Xylocaine jelly should be mandated to be used as pain-relief, consistent with the recommended best practice.