

New Zealand Animal Law Association



AND

Save Animals From Exploitation



Joint Submission on the Code of Welfare: Pigs and Regulations Recommendations

8 July 2022

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Ministry for Primary Industries
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Tēnā koe

Submissions regarding Draft Code of Welfare: Pigs

1. The New Zealand Animal Law Association (**NZALA**) and Save Animals From Exploitation (**SAFE**) provide this joint submission in relation to the consultation presently being performed by the Ministry for Primary Industries (**MPI**) and the National Animal Welfare Advisory Committee (**NAWAC**) in relation to the draft Code of Welfare: Pigs and associated regulations. Thank you for the opportunity to provide this submission.
2. Please direct any questions relating to this submission to secretary@nzala.org.

Introduction

3. NZALA is a registered charity with over 500 members. All of its members are lawyers, law graduates or law students with an interest in animal law and who use their skills to improve animals' lives and welfare.
4. SAFE is a registered charity whose key purpose is to prevent the suffering, abuse and exploitation of animals. SAFE has over 80,000 registered supporters and members, and over 189,000 social media followers.
5. In *New Zealand Animal Law Association v The Attorney-General* [2020] NZHC 3009, NZALA and SAFE were successful in their application for judicial review of the Code of Welfare: Pigs that is presently in force (**the current Code**). With this history, we welcome the development of the draft Code of Welfare for Pigs (**the draft Code**) and the opportunity to provide submissions on the draft Code. The primary focus of this submission is on the questions contained in the Proposed Code of Welfare for Pigs and Associated Regulations – MPI and NAWAC discussion paper (**the discussion document**).
6. At the outset, we wish to acknowledge the significant improvements for pig welfare contained in the draft Code, and thank those who have evidently taken a lot of care and devoted significant amounts of work in preparing the draft Code.

Executive Summary

7. Our primary submissions in relation to the draft Code and proposed regulations are as follows:
- a. The Act provides for minimum standards to be created via Codes of Welfare. These minimum standards must meet the requirements under the Act, irrespective of the economic impact on farmers of implementing those standards, and the international market for animal products.
 - b. While the prospect of cheap pork imports is of concern to New Zealand pig farmers, they are not a legitimate reason to reduce welfare standards in Aotearoa New Zealand. Such an approach is contrary to the Animal Welfare Act. International markets can be handled in other ways without enacting standards that do not comply with our domestic law.
 - c. We consider the future of Aotearoa New Zealand's pig farming to be free-range, outdoor systems.
 - d. We consider only a free-farrowing system, and not a temporary crating system, is consistent with the purposes of the Act.
 - e. We support the creation of regulations requiring at least a free-farrowing system for indoor pig farming systems.
 - f. We support a high k value in relation to the minimum space requirements for pigs and consider a low k value to be inconsistent with the Act.
 - g. We support the creation of regulations requiring minimum space requirements for pigs.
 - h. We have reservations that a 28 day weaning age is inconsistent with the requirements of the Act, and support a later weaning age. Given the inconsistency with the Act, we consider that a regulation with a transition period is necessary to permit the weaning of piglets at only 28 days.
 - i. We support limiting the use of mating stalls as far as possible, and envisage emerging scientific research will demonstrate stalls are inconsistent with the requirements of the Act justifying a total ban.
 - j. We consider pigs need to be provided with manipulable materials to meet their behavioural needs, and organic material should be prioritised for this purpose. We support a regulation requiring all farms to provide manipulable material to nesting pigs.
 - k. We consider tail docking to be inconsistent with the Act and encourage NAWAC to create minimum standards preventing anyone from docking pig tails except for veterinarians under anaesthesia if required. We support the promulgation of regulations to enforce this ban.
 - l. We consider the use of nose rings to be inconsistent with the Act, and support a total ban on their use, with a transition period to allow changes to resource consents

provided for by regulation, and an educative approach taken towards Regional Councils who still require the procedure.

Approach under the Animal Welfare Act 1999

8. The draft Code, as a Code of Welfare issued (as it will be) pursuant to Part 5 of the Animal Welfare Act 1999 (**the Act**), is required to set out the minimum standards necessary to ensure that the purposes of the Act are met.¹ To this end, in considering the content of the draft Code NAWAC must take into account submissions received during this consultation process, good practice and current scientific knowledge, available technology, and any other matters it considers relevant.² The practicality and economic impact of the draft Code may be considered if relevant.³
9. In light of the above legal position, the correct process in considering submissions, is that NAWAC must first consider if the draft Code sets out the minimum standards to ensure compliance with the Act, taking into account the most up to date animal welfare science available. **Only once satisfied that compliance with the Act is met, should NAWAC consider the economic impact of the draft Code.** Economic impact and practicality concerns are not factors that can be used to justify the reduction of welfare standards below the minimum standards required to comply with the Act. These factors may be relevant if there are two or more options available that are both consistent with the purposes of the Act, but the economic impact of a minimum standard is not sufficient reason to promulgate a standard that is not consistent with the purposes of the Act. In short, the focus of the Act (and therefore the Codes of Welfare) is on achieving the animal welfare purposes prescribed by Parliament; not the economic impact on a particular sector of an industry, which may inevitably incur some cost in a transition towards compliant practices.
10. This position was encapsulated by Cull J in *NZALA v AG* at [28], where her Honour stated:

The 2015 Amendment also introduced factors that NAWAC may take into account in making such a recommendation, namely practicality and economic impact, if relevant. However, those factors cannot override the welfare considerations under the Act.

Response to Discussion Document Questions

Q1 – Do you support Option A (free farrowing) or Option B (Temporary Crating)? Why or why not?

11. We strongly support Option A (free farrowing) being adopted as a minimum standard in the draft Code. This is the only option that is able to meet the purposes of this Act, and accordingly is the only option that is suitable for inclusion in a code of welfare pursuant to s 73(1) of the Act.

¹ Section 73(1) of the Animal Welfare Act.

² Section 73(2) of the Act.

³ Section 73(3) of the Act.

12. Any Code of Welfare must be consistent with the Act's purpose. Of relevance to the issue of setting a minimum standard of free farrowing systems or permitting temporary crating for farrowing, we consider the following purposes of the Act to be of significance:
- a. As set out in the Act's long title, pigs are sentient beings, and owners (and those in charge) of pigs are required to properly attend to their welfare.
 - b. As set out in section 9 of the Act, those caring for animals are required to take all reasonable steps in order to ensure the animals' physical, health and behavioural needs are met in accordance with both good practice and scientific knowledge.
13. Of particular importance to a farrowing system is the behavioural needs of both sows and piglets. Section 4 of the Act defines an animal's physical, health, and behavioural needs as including the opportunity to display normal patterns of behaviour, being a need which is appropriate to the species, environment, and circumstances of the animal.⁴ Current scientific knowledge of natural sow behaviour indicates that sows behave in the following ways during farrowing:
- a. Sows become increasingly active in the 2-3 days prior to farrowing. This includes seeking isolation from the herd, and wandering away in search of an appropriate nest site. Some reports of domesticated sows released into the wild indicate a sow may walk for 2.5 to 6.5km in search of a nest site and will build "mock nests" during this period. Research has shown a sow held in a 5m² pens can walk an average of 30km during this time.⁵
 - b. Chosen nest sites are typically isolated and at least partially enclosed. Sows actively seek out warmer areas and avoid metal flooring if possible. A sow will hollow out a nesting site, will gather branches to border the nest, and will use grass and leaves to line the nest.⁶
 - c. A nest will be relatively small, but big enough to allow the sow to lie down and expose her udders (i.e., to lie laterally), but not so big the piglets risk wandering off or becoming too cold.⁷
 - d. Sows will typically inspect their first born piglet, then lie down and remain passive while birthing the remainder of her litter. She will remain on her side with her udders exposed.⁸
 - e. In semi-natural conditions, domesticated sows have been known to get up during parturition to inspect her offspring and make nose to nose contact with them, before rooting the nest to move her piglet out of the way and to lie down again.⁹
 - f. For the first two days post-partum, the majority of sows spend 90% of their time in their nest, with the remaining 10% on brief foraging ventures outside. Passive maternal behaviour at this time is paramount for piglet survival, and good maternal

⁴ Section 4(c) of the Act.

⁵ Baxter affidavit, [49].

⁶ Baxter affidavit, [50].

⁷ Baxter affidavit, [51].

⁸ Baxter affidavit, [39].

⁹ Baxter affidavit, [53].

behaviour involves minimal posture changes, maximal udder exposure (by lying laterally), and carefulness displayed when posture changes do occur (by use of support, and slow descent into lying).¹⁰

The above list of behaviours and the welfare concerns associated with farrowing crates listed below are taken from the affidavit of the leading animal welfare scientist Dr Emma Baxter, which was filed in *NZALA v AG*. A copy of that affidavit is **attached** and the above information is found from paragraph 36.

14. Of the options set out in the discussion document, option A is the only option which allows a sow and her piglets to express these normal patterns of behaviour, as required by ss 4, 10 and 12 of the Act. Farrowing crates used during temporary crating do not permit such normal patterns of behaviour, for the following reasons:
 - a. Of particular importance, in a farrowing crate a sow is unable to lie laterally, exposing her udder and is unable to make nose to nose contact with her piglets.¹¹ A sow is also unable to leave her nest and forage during her period of containment, nor is she able to establish a separate dunging area separate from where she is held in a farrowing crate.
 - b. The level of restriction imposed by the farrowing crate, even if used for a short duration, is severe. This may negatively impact the physical needs of the sow, by restricting her access to food and water, and restricting her movement, increasing the risk of pressure sores, specifically shoulder sores. Further, a crated sow is unable to move sufficiently to appropriately regulate her body temperature.¹²
 - c. Studies have shown that the crating of sows increases pituitary-adrenal activity in a manner that indicates adverse physiological states.¹³ Sows confined in farrowing crates may also exhibit bar-biting behaviour, further demonstrating a worsened psychological state.¹⁴ Again, these factors favour the adoption of option A, being the only option that protects the sows' health needs.
15. Accordingly, Option B falls short of ensuring that the purposes of the Act are met, and cannot be included in a code of welfare.¹⁵ Implementation of Option B leaves open the draft Code (and any implemented regulations) to judicial review, particularly given NAWAC's acceptance that Option B does not comply with the purposes of the Act.
16. We also note that, in addition to the fundamental illegality problem, Option B would present significant difficulties relating to assessing compliance. An inspector who was to find a farrowing crate in use would be unable to discern how long the sow had been crated for, and in particular whether she had been crated for longer than permitted by the Code. This would make the assessment of any possible violation under the Animal Welfare Act 1999 almost impossible.

¹⁰ Baxter affidavit, [54].

¹¹ Baxter affidavit, [57] – [58].

¹² Baxter affidavit, [63] – [66].

¹³ Baxter affidavit, [67].

¹⁴ Baxter affidavit, [70].

¹⁵ Section 73(1) of the Act.

17. In 2018, SAFE handed in a petition to Parliament containing 112,844 signatures calling for a ban on farrowing crates. This was the largest petition handed into Parliament in the past five years and signals the lack of social licence for confinement systems for mother pigs and their piglets.
18. It is anticipated that MPI and NAWAC may receive submissions supporting Option B on the basis of piglet mortality concerns. In our submission, for the reasons set out above, Option B would not provide a minimum standard that meets the purposes of the Act, irrespective of piglet mortality.
19. Further, this alleged concern around piglet mortality is not made out in the science or in practice, given that 50% of New Zealand farmers use free farrowing systems without any significant piglet mortality concerns. There are many factors that contribute to piglet mortality from crushing, including litter size. As litter size increases, piglets are more likely to be crushed. While it is accepted that litter size is largely determined by breeding stock, and that stock comes from jurisdictions other than New Zealand, there is no reason why selective breeding practices in New Zealand could not influence litter size within a few generations of breeding sows. New stock lines could be sought from those countries which already prioritise free farrowing systems (or from the 50% of New Zealand farmers who do not presently use farrowing crates). It is also noted that the *Sustainable Outdoor Farrowing Systems for New Zealand* report¹⁶ found piglet mortality in some outdoor farms significantly lower than industry averages for pigs raised in farrowing crates. These litters were significantly smaller than industry standards in New Zealand. This is clear evidence that breeding lines are available in New Zealand that do not prioritise large litter sizes.
20. In addition to the significant literature review performed by NAWAC in developing this aspect of the draft Code, a report from the Conservative Animal Welfare Foundation in the UK was released this week and is worthy of review by NAWAC.¹⁷ At page 22, the report sets out a number of welfare concerns relating to farrowing crates, which are relevant to Option B in the draft Code and affirms our position that Option B is fundamentally inconsistent with both the Act and the needs of sows and their piglets. From page 55 of the report, a comprehensive review of pig mortality research is included, including the most recent 2022 data. That review echoes previous data that some free farrowing or outdoor systems have lower pig mortality rates than indoor systems that utilise farrowing crates, demonstrating the correlation between piglet mortality and free farrowing systems is not as clear as some have historically made out.

Q2. – Would Option B (Temporary Crating) meet the minimum animal welfare requirements of the Act? Why / why not?

21. For the reasons set out in Question 1, we do not consider Option B would meet the minimum animal welfare requirements of the Act.
22. For completeness, we note the use of the wording “farrowing crates” in Option B is confusing, as the system described to us when meeting with MPI and NAWAC (a type of cage that is placed over the sow after she has nested) is of a fundamentally different nature than the system currently used, also commonly described as farrowing crates. If Option B was

¹⁶ Sustainable Outdoor Farrowing Systems for New Zealand. MPI Technical Paper No: 2018/12.

<https://www.agriculture.govt.nz/dmsdocument/28017/direct>

¹⁷ <https://www.conservativeanimalwelfarefoundation.org/wp-content/uploads/2022/07/Banning-Farrowing-Crates-Report-Brochures-V6.pdf>

implemented (which we do not support or consider compliant with the Act), adequate descriptions would need to be included to avoid any confusion as to what is compliant with the new Code.

Q3. – Is there another option that could be considered? Please provide your reasoning and evidence that this alternative option would meet the minimum requirements of the Act.

23. We consider that the future of the New Zealand pig industry is best secured by a transition towards outdoor, free-range systems. As detailed below in relation to questions from section 4.3 of the discussion document, we support resourcing being allocated to support farmers to transition to outdoor, free-range systems. Despite this preference, on the basis of current scientific knowledge, we accept that Option A is the minimum standard necessary to ensure that the purposes of the Act are met.

Q4. – Do you support the proposal to limit the use of mating stalls? Why / why not?

24. We support the intention to limit the use of mating stalls. The evidence provided in NAWAC's Evaluation of the Code of Welfare Pigs contains sufficient justification for both limiting the use of the stalls at present, and limiting the time spent in them.
25. We are concerned the sub-paragraphs provided in sub-paragraph (a) of Minimum Standard 11 may be seen as a list of priorities, or that 3 hours may be seen as an acceptable time for a sow to remain in a mating stall rather than an absolute maximum. For this reason, we propose that sub-paragraphs (ii) and (iii) be combined to read:

the confinement is for the shortest time possible to allow the sow to settle into the mating stall and be inseminated, but for no more than three hours at a time, for a maximum of three times per oestrus cycle;

Q5. – Is there a different approach to managing mating that could be considered? Please provide your reasoning and evidence that this different approach would meet the minimum requirements of the Act.

26. We would welcome a strategy encouraging the elimination of the use of mating stalls in Aotearoa New Zealand in the future, in line with the wider global movement away from cages. We consider the stalls to be a welfare compromise based on economic efficiencies, rather than a practice that is consistent with the needs of pigs. We anticipate a future Code of Welfare will eliminate the use of these stalls as the scientific knowledge of their welfare impacts develop.

Q6. – Do you support the proposal to provide access to materials that can be manipulated? Why / why not?

27. We strongly support this proposal. Pigs are naturally inquisitive animals, with strong foraging instincts. Any change that permits pigs to be kept indoors to exhibit these natural behaviours should be encouraged, and is consistent with the Act's purpose. We would support a minimum standard that requires some form of organic matter to be provided, as this would best meet the behavioural need of pigs to forage.

Q7. – Is there a different approach to providing for the expression of normal behaviours that could be considered? Please provide your reasoning and evidence that this different approach would meet the minimum requirements of the Act.

28. Consideration should be given to a requirement that an indoor farming system have some space allocated for the purpose of allowing the pigs to root around in organic matter (i.e., sawdust, hay or dirt), which would allow the pigs to express their natural rooting behaviours, and ideally encourage wallowing behaviour also. The minimum standard as presently drafted favours providing objects which can be manipulated, which meets the mental stimulation needs of the pigs, but would not necessarily allow the expression of the pigs' rooting and foraging instincts.

Q8. – Do you support Option A (k value of 0.047) or Option B (k value of 0.072)? Why / why not?

29. We concur with NAWAC's assessment that the current code does not provide for adequate space to comply with the Act. Specifically, the pigs have insufficient space to adequately socialise and perform natural behaviours such as foraging and rooting. The limited space also results in stress on the pigs, which means their health needs are not being met, contrary to the requirements of the Act.
30. Our preference is for Option B to be adopted. A larger space allowance better permits these natural behaviours to occur. We also note that limited space is a significant contributor toward negative behaviours such as tail biting. As discussed later in these submissions, we consider the Act requires minimum standards that eliminate the need to perform tail docking. A higher k value goes some way to assisting this position and is therefore consistent with the purpose of the Act.
31. Further, we support the band approach set out in the draft Code, as this assists with compliance with the Act. We consider a better approach is space by age of pig as this would further reduce any issues of miscalculated weights and further assist with assessing whether there is compliance with the draft Code.

Q9. – Do these two options (around spacing for grower and weaner pigs) meet the minimum requirements of the Act? Why / why not?

32. We consider that only Option B meets the minimum requirements of the Act. As noted in the Evaluation of the Code of Welfare Pigs, at a k value of 0.047, not all pigs in a shared space are able to lie laterally without overlying. The Evaluation Report also refers to NZPork's position that any crowding in the last few weeks of a pig's life is made up for by the large spaces provided in their earlier lives. With respect, such an approach is inconsistent with the Act, and judicial authority. In *Erickson v Ministry for Primary Industries* [2017] NZCA 271, Kós P observed:¹⁸

For completeness, we state that we do not regard the imminent fate of farm herd animals destined for slaughter in the ordinary course of events as a mitigating consideration, other than in terms of the actual extent of pain and distress suffered by the animal. Community expectations do not accord with a diminished expectation of humanity in the treatment of such animals.

¹⁸ At [57].

We submit that if the imminent fate of an animal does not influence its proper treatment, it must follow that previous good treatment cannot justify the future compromise of welfare outcomes. The Act does not permit the effective averaging of welfare across a period. Welfare standards are required to be met for each animal at all times, in all circumstances.

Q10. – Is there another option (around spacing for grower and weaner pigs) that could be considered? Please provide your reasoning and evidence that this alternative option would meet the minimum requirements of the Act.

33. As discussed above, we consider that outdoor, free-range systems are likely the future of Aotearoa New Zealand's Pork industry, and these systems best meet the animal welfare requirements of pigs and the objectives of the Act.

Q11. – Do you support this proposal (weaning at 28 days)? Why / why not?

34. We strongly support an increase in weaning age from 21 days after birth. While the draft Code proposes a minimum weaning age of 28 days, we would prefer to see a later weaning age. Ultimately, the welfare needs of both pigs and sows are best met by delaying weaning to as close to when the animals would wean naturally. While a 28-day weaning age is consistent with the position in the European Union, Sweden and Norway wean at 33 days, indicating such an age can be commercially feasible.

35. As noted by Dr Baxter in her previously mentioned affidavit, weaning in natural circumstance can occur at 17 weeks.¹⁹ So while the proposed expansion of the weaning age is supported, there is an argument that even 28 days does not allow the animals to express their natural behaviour, and the early weaning will be traumatic for both the mother pig and piglets. Naturally, pigs will gradually wean, rather than undergo a separation at a certain time. Given the natural weaning age of pigs, we have significant reservations as to whether a 28 day minimum weaning age is consistent with the purposes of the Act.

Q12. – Is there a different approach to weaning age that could be considered? Please provide your reasoning and evidence that this different approach would meet the minimum requirements of the Act

36. Given the natural weaning age previously observed by researchers, we anticipate the emergence of a scientific consensus supporting a later weaning age. In the interests of future proofing the draft code, we support the best practice guideline of a longer weaning period of 35 days being adopted as a minimum standard.

Q13. – Do you support this proposal (on stockpersonship)? Why / why not?

37. We support any measure directed at ensuring those who are handling and responsible for pigs are competent and cognisant of the issues that may arise. We have been very concerned by media comments from pig farmers that there are no welfare issues with farrowing crates. This serves to emphasise the point that experience may not necessarily indicate a farmer is up to date with current welfare science.

38. We are concerned that the requirement for training is only classified as recommended best practice, meaning it is not a minimum standard in order to meet the requirements of the Act. We consider any person in charge of an animal should be required to complete training that

¹⁹ At [56].

includes an update on animal welfare science (particularly given the number of changes within the draft Code), with recommended best practice being training for all those working with pigs. This is particularly important as pigs do not express discomfort and stress in ways that are necessarily intuitive.

Q14. – Is there a different approach to stockpersonship that could be considered? Please provide your reasoning and evidence that this different approach would meet the minimum requirements of the Act.

39. It would be our expectation that once the draft Code is finalised there will be a period of education targeting pig farmers, which explains both the science and rationale behind the changes being made, and ensures that all farmers are aware of the new minimum standards. Such an approach is vital in ensuring both understanding of, and compliance with the draft Code.

Q15. – Do you support this proposal on feed? Why / why not?

40. We strongly support this proposal. No animal should feel hungry in the name of production efficiencies. Restrictive diets are contrary to s 4 of the Act, which require that animals be provided with proper and sufficient food. Further, hunger can result in aggressive behaviours, further limiting the pig's natural behaviours and harming their physical health. We welcome the elevation of the provision of bulky and/or high fibre food from a recommended best practice to a minimum standard, which will help ensure that pigs are satiated throughout the day in accordance with the requirements of the Act.

Q16. – Is there a different approach to feed that could be considered? Please provide your reasoning and evidence that this different approach would meet the minimum requirements of the Act.

41. We have no further submissions on this aspect of the draft Code.

Q17. – Do you support this proposal on air quality? Why / why not?

42. We support a limit on air ammonia to concentrations of 10ppm. We note that some research indicates better health outcomes for both humans and pigs at this level or below, and that pigs will avoid areas of over 10ppm.

43. We are concerned about the maximum allowable ammonia levels being 25ppm. Weaner pigs have been shown to be significantly averse to areas where concentrations of ammonia exceed 20ppm.²⁰ We support lowering the maximum levels to 20ppm, (even noting oral advice from NAWAC that ammonia levels are not generally an issue in New Zealand).

44. We also support the elevation of the availability of ammonia testing kits or meters to a minimum standard. A farm must be able to demonstrate compliance with the minimum standards, and this would be impossible without such a resource being available.

²⁰ Baxter affidavit, page 10, footnote 4.

Q18. – Is there a different approach to air quality that could be considered? Please provide your reasoning and evidence that this different approach would meet the minimum requirements of the Act.

45. We are concerned about the mass fatality events that have resulted from ventilation shutdowns, reported in pig farms in North America, as well as in intensive chicken farms in Aotearoa New Zealand. We recommend a minimum standard requiring either reliable backup generators to ensure that the failure of primary ventilation systems does not result in such events, or (at the very least), the ability to open indoor systems to the open air to ensure adequate ventilation. While a ventilation shutdown could constitute an offence under section 12 of the Act, a minimum standard in a Code of Welfare would highlight this specific, catastrophic risk for those responsible for pig welfare.

Q19. – Do you support this proposal on mixing pigs? Why / why not?

46. We strongly support this proposal. The proposal allows pigs to exhibit their natural behaviours, particularly their social behaviours and the establishment of hierarchy, in a manner that minimises other welfare issues, specifically aggression tendencies. Ensuring pigs have sufficient room to exhibit these behaviours is vital to ensuring compliance with the purposes of the Act.

Q20. – Is there a different approach to mixing pigs that could be considered? Please provide your reasoning and evidence that this different approach would meet the minimum requirements of the Act.

47. This is another area where the outdoor, free-range farms have significant advantages over indoor systems. The welfare of pigs will always be compromised as long as pigs are in confinement together. This proposed minimum standard is also further reason for the k value for space to be set at a high level.

Q21. – Do you support this proposal on tail docking? Why / why not?

48. We do not support this proposal. We consider that tail docking should be banned in all circumstances, unless recommended by a veterinarian.
49. Tail biting in pigs is a symptom of an inadequate environment.²¹ It occurs when pigs are distressed, aggressive or stressed. This is typically due to over-crowding, a failure of those in charge of the pigs to respect the social hierarchy within a group of pigs (particularly when introducing them to each other), or a failure to provide sufficient mental stimulation. Ultimately, it results from failure by those with responsibility for the pigs to suitably manage their environment.
50. Tail docking is not performed because the piglets are having their tails bitten. Instead, it is done due to the risk that their tails *may* be bitten at a later date. Farms where tail docking is necessary are either being mismanaged, or they are breeding particularly aggressive pigs. All these factors are controllable environmental and genetic factors, making tail docking a matter of convenience for a farmer; not a necessity.
51. There is also a growing body of evidence in number of species that tails are communicative tools for an animal, and that the docking of tails compromises the animals' ability to

²¹ Evaluation of the Code of Welfare, page 41.

communicate effectively with others of its species. As it has been traditional to dock pigs' tails, there is limited research into this area for pigs, but it is likely that as with other animals, tails are important for pigs to communicate with each other. Tail docking prevents this.

52. The draft Code would permit tail docking at under 7 days of age, without anaesthetic. NAWAC has reviewed the literature and concluded that the pain caused by the use of a hot iron cauteriser is comparable in outcome to performing the docking under anaesthetic, particularly as analgesic (beyond the use of very strong opiates) is not particularly effective. Where there are non-surgical approaches that sufficiently mitigate the risk of tail biting, we consider tail docking to be a painful procedure which is both unnecessary and unreasonable, and inconsistent with the affected pigs' physical health needs.
53. For pigs aged more than 7 days, tail docking would be permitted under the draft Code provided a veterinarian performs the procedure and administers pain relief. This still causes the pig pain and distress, particularly as the analgesic wears off.
54. On the above basis, we consider that by permitting tail docking, the draft Code would be inconsistent with the Act and amenable to judicial review.

Q22. Is there a different approach to tail docking that could be considered? Please provide your reasoning and evidence that this different approach would meet the minimum requirements of the Act.

55. We are concerned that the proposed wording of the draft Code will prove ineffective. There is a real risk that those responsible for pigs will consider that they still need to tail dock, and continue to do so. The risk is farmers will not allow sufficient time to adjust to the updated minimum standards, before concluding they need to dock tails. This has been the international experience. Despite a similar ban on tail docking (unless necessary) in the EU, up to 99% of tails are still docked within some jurisdictions.²² We are concerned that the suggested settings in the draft Code will be insufficient to stop those farmers who consider they "need" to tail dock to prevent tail biting.
56. For this reason, we favour a total ban on tail docking, unless it is recommended and performed by a veterinarian. This approach would provide a clean break, where farmers are required to not tail dock. This would oblige them to observe their pigs in order to assess, on a case-by-case basis, if tail docking is actually necessary.

Q23. – Do you support this proposal on a Welfare Assurance System for pigs? Why / why not?

57. We support the implementation of a Welfare Assurance System. A robust compliance system is essential for ensuring the welfare of pigs. It is also of value for enforcement purposes.
58. Such an approach is consistent with the law in other highly regulated areas of business in Aotearoa New Zealand, notably health and safety law, and minimum employment standards.
59. The Welfare Assurance System described in the draft Code essentially requires a set of policies to be in place with at least annual performance-based audits. We are concerned however that it does not include the requirement to maintain records to demonstrate compliance with the minimum standards. We would support a more robust record keeping requirement being

²² Nannoni E, Valsami T, Sardi L: **Tail docking in pigs: a review on its short- and long-term consequences and effectiveness in preventing tail biting.** *Ital J Anim Sci* 2014, 13:98–106.

introduced. Such a system would need to include records of compliance with such standards as the measurement of ammonia levels, times spent by sows in mating stalls, confirmation of dunging areas and organic material being provided to pigs etc.

Q24. – Is there a different approach to welfare assurance for pigs that could be considered? Please provide your reasoning and evidence that this different approach would meet the minimum requirements of the Act.

60. We consider that an independent accreditation process being adopted is appropriate to ensure welfare assurance systems are robust and protect the welfare of pigs fully. Such a compliance process should not be administered by industry bodies. Alternatively, we would support specific record keeping requirements in connection with a system of regular audits being elevated to regulations, to establish a compliance “trail” and to allow regulatory prosecutions if minimum standards (including the maintenance of proper records) were breached.

Q25 – Q28

61. We would prefer to see the recommended best practice at clause 6.1 of the draft Code to be elevated to a minimum standard, which would be broadly consistent with the minimum standards regarding the breeding of companion animals.

62. Minimum standard 14 is confusingly worded, in that no pig may be picked up by any leg, but the example indicator allows a piglet to be picked up briefly by the leg. We prefer the wording in the minimum standard, and would recommend deletion of the confusing example indicator.

63. We consider minimum standard 17 relating to the use of nose rings to be inconsistent with the purposes of the Act. This is because nose rings prevent pigs from expressing natural rooting behaviours, and are painful to insert. The rings are not for the benefit of the pigs. Rather they are used to preserve the ground from foraging and rooting behaviours. We understand these are required mainly as a condition of resource consents. While we do not consider that a resource consent is a legal justification for minimum standards that do not meet the requirements of the Act, we appreciate this issue poses a unique problem for farmers. We consider the best way to deal with this would be through a regulation banning nose rings including a transitional period for those with resource consent issues. This would allow time to educate City and Regional Councils as to the inappropriateness of requiring nose rings, and allow amendments to be obtained to pre-existing resource consents. If this approach is not adopted, we consider the use of nose rings should be limited only to when required under a resource consent, though we have reservations if this is compliant with the requirements of the Act.

64. We have no further submissions to make on the draft Code.

Q29. – Do you agree with MPI’s choice of criteria for whether a regulation is needed (practicality, efficiency and economic impact)? Why or why not?

65. We consider that practicality, efficiency, and economic impact are relevant in considering whether a transitional regulation is required. However, we are concerned that these are the criteria when considering whether or not any other regulation under the Act should be promulgated. Regulations create regulatory offences, which are punishable by infringement fines and/or regulatory prosecutions. The most important factor when considering whether

a matter should be in a regulation is whether the regulated behaviour is of sufficient seriousness (usually due to the pain and distress such behaviour would cause an animal) to justify a regulatory offence being created, but not so serious as to always justify prosecution under section 12 of the Act.

Q30. – Has MPI missed any other criteria that could help meet the overall objectives?

66. Please see our comments in relation to question 29.

Q31. – Do you agree with NAWAC that a regulation is needed to implement either Option A or Option B? Why / why not?

67. We agree that a regulation is needed to implement Option A or Option B (dependent upon which option is adopted from the draft Code). Given our position that Option B is inconsistent with the requirements of the Act, it follows that a regulation is legally required if Option B were adopted.²³ However, it is important that any serious breach be prosecuted under the provisions of the Act.

Q32. – Do you agree with MPI’s initial analysis on farrowing stalls in Appendix Three? Why / why not?

68. Noting the above position regarding the criteria used in this assessment, in addition we do not agree with the analysis in relation to no regulation being created. In the absence of a regulation, farmers would still have guidance under the draft Code as to what is expected of them, and would be required to make these changes. It is not correct that farmers would be left in a knowledge vacuum.

69. We also do not agree that Option B could arguably meet the requirements of the Act, as stated on page 44 of the discussion document, for the reasons set out above in relation to the draft Code.

Q33. – Do you agree with NAWAC, that a regulation is needed to implement this proposed change to the Code? Why / why not?

70. Yes, for the same reasons we agree with the need for a regulation regarding farrowing crates.

Q34. – Do you agree with MPI’s initial analysis on mating stalls in Appendix Three? Why / why not?

71. As with the farrowing crates, we do not agree with MPI’s analysis that without a regulation, farmers will have no guidance as to how to meet the requirements of the Act, as the draft Code adequately informs them. For the reasons set out above in relation to the draft Code, we consider the use of mating stalls to be a welfare compromise, and we do not support their use.

Q35. – Do you agree with NAWAC, that a regulation is needed to implement this proposed change to the Code? Why / why not?

72. We support extending the regulation to all farms, irrespective of build date. This complies with the requirements of the Act, and reinforces the importance of nest-building behaviour for a farrowing sow.

²³ Section 183A(5) of the Act.

Q36. – Do you agree with MPI’s initial analysis on nesting material in Appendix Three? Why/why not?

73. We take no issue with the analysis relating to this proposed regulation, and support MPI’s statement that farmers would best comply with the requirements under the Act if the regulation was promulgated.

Q37. – How long a transition period would you need to implement this proposed change to the Code? Please provide the reasons for your answer.

74. We consider this regulation should come into force at the same time as the regulations relating to farrowing pens. Both regulations require redesign of various aspects of a farm’s layout, and it is reasonable to expect farmers to make these changes in one redesign.

Q38. – Do you agree with NAWAC, that a regulation is needed to implement either Option A or Option B? Why / why not?

75. Yes, because it provides a simple mechanism to commence a regulatory prosecution. As with the previously discussed regulations, a serious breach of the Act should (and can) still be pursued through a prosecution under the Act.

76. Given our position that Option A is inconsistent with the requirements of the Act, it follows that a regulation is legally required if Option A were adopted.²⁴

Q39. – Do you agree with MPI’s initial analysis on minimum space for weaner and grower pigs in Appendix Three? Why / why not?

77. Again, this analysis fails to recognise that the draft Code provides adequate guidance as to what farmers need to do to comply with the requirements of the Act. An improvement on the status quo is not sufficient here, only the higher k value complies with the requirements of the Act.

Q40. – How long a transition period would you need to implement Option A and Option B? Please provide the reasons for your answer.

78. A period of 5 years is reasonable to allow farmers to adequately increase space for the purpose of this regulation. Given the importance to the affected pigs of the increased space, we submit that such a transition process is appropriate. The more time provided for transition, the more pigs who are forced to live in conditions that do not comply with the Act.

Q41. – Do you agree with NAWAC, that a regulation is needed to implement this proposed change to the Code? Why / why not?

79. Yes, a regulation is needed to best enforce this aspect of the draft code. Weaning age is an important welfare issue for pigs, ensuring they can express their natural behaviours and also to preserve their physical health, but is not of such a serious nature as to justify a prosecutable offence. This is coupled with the difficulty in showing that an individual pig or pigs have suffered unnecessary or unreasonable pain or distress from breach of the weaning age requirements, which would make prosecutions without a regulation difficult (and prohibitively expensive for enforcement agencies).

²⁴ Section 183A(5) of the Act.

80. While we support a later weaning age, given our position that a weaning age of 28 days is inconsistent with the requirements of the Act, it follows that a regulation is legally required if Option B were adopted.²⁵

Q42. – Do you agree with MPI’s initial analysis on weaning at 28 days in Appendix Three? Why / why not?

81. We take no issue with this analysis, beyond the implication that a lack of regulation would be a neutral outcome as the status quo does not comply with the requirements of the Act.

Q43. – How long a transition period would you need to implement this proposed change to the Code? Please provide the reasons for your answer.

82. Unlike the previously considered proposed regulations, this regulation does not require physical changes to farms to implement. If a weaning age consistent with the behavioural needs of pigs is adopted, we consider a maximum of 3 years transition period sufficient for farmers to adapt to the changes. However, if a 28 day weaning age is adopted, the inconsistency with the Act means a regulation with a transition period is required to be promulgated, as a 28 day weaning age is inconsistent with the requirements of the Act.

Q44. – 46

83. We have no further submissions beyond the specific submissions made above.

Q47. – Do you consider that any of the other minimum standards require regulations? Please provide reasons for any proposals. If possible, please also include a comparison of your proposals against the practicality, efficiency and economic criteria outlined in section 4.4.3.

84. We consider regulations should be created in relation to tail docking (noting our submissions above in favour of a total ban on docking, with the exception of when a veterinarian recommends the procedure), and the use of nose rings (again, noting our submission in favour of banning the use of nose rings).
85. Both these procedures cause pigs significant pain, and limit their natural behaviours, without adequate justification or benefit to the pigs. As such, a regulatory offence would be a proportionate response to these breaches of the draft Code. A regulation would further reinforce the unacceptability of the practices, without imposing significant burdens on farmers who comply with the regulations.
86. In relation to our proposed regulation banning nose rings, a 5-10 year transition period is appropriate. While we do not consider that the practice of using nose rings is consistent with the requirements of the Act, or the best interests of the affected pigs, a relatively long transition period is required to allow amendments to resource consents.
87. If the minimum standards contained in the current draft Code relating to tail docking and nose rings were kept, we consider both these practices require a regulation to be promulgated in accordance with s183A(5), as the practices are inconsistent with the requirements under the Act.

²⁵ Ibid.

Q49. – Q55.

88. We have no submissions on this aspect of the discussion document.

Q56. – Q59.

89. Generally, we support farmers being adequately supported in making this transition, but reiterate our position above that animal welfare should not suffer due to the economic cost of these changes. If the pork industry wishes to be profitable, they could quite legitimately encourage the Government to hold up Aotearoa New Zealand's pork industry as a world leader in animal welfare, and to market its pork products as a premium product. It is perhaps a lost opportunity that most of the New Zealand meat industry tries to compete with the larger, low welfare producers of meat, rather than market their meat as a high welfare, premium product.
90. The benefits of the draft Code extend beyond animal welfare issues. For instance, less dense indoor pig farms will have more favourable environmental footprints.
91. In addition to financial support for farmers, we consider law changes around food labelling and an advertising campaign could educate New Zealand consumers as to the differences between New Zealand grown and internationally sourced pork. Further, we consider there should be better support of the Aotearoa New Zealand pork industry through international trade agreements with likeminded trade partners. We disagree with advice discussed in the media that World Trade Organisation rules limit the government's ability to place tariffs or ban imports from countries with lower welfare standards, and believe that there are international trade options that should be explored. However, whatever the international legal position, this is not justification to lower Aotearoa New Zealand's welfare standards and such an approach is fundamentally inconsistent with our Animal Welfare Act.
92. It is also noted that there are international movements focussing on pig welfare. It is expected that farrowing crates will soon be outlawed in all 27 member countries of the EU through the End the Cage Act, and the UK are presently considering a similar ban. Similarly, some states in the USA including California to ban the sale of all meat and animal products from animals raised in cages. This ban applies to meat and animal products produced out of state and follows a public vote of almost 63% in favour of the ban. A shift in consumer expectations in Aotearoa New Zealand's target trade markets is inevitable with time.

Nā mātou noa, nā / yours faithfully

**The New Zealand Animal Law Association (NZALA)
Save Animals From Exploitation (SAFE)**