



4 March 2022

Animal Welfare Policy
Ministry for Primary Industries
PO Box 2526
Wellington 6140

SENT BY EMAIL TO:

animal.consult@mpi.govt.nz

Tena kōe,

PROPOSED TRANSITION PERIOD FOR MINIMUM STANDARDS ADDRESSING THE LONG-TERM FARMING OF DAIRY CATTLE OFF-Paddock

1. The New Zealand Animal Law Association (**NZALA**) has been invited by Ministry for Primary Industries (**MPI**) to provide feedback on when the two minimum standards for dairy cattle managed in off-paddock facilities should come into effect.

Introduction

2. In 2019, the National Animal Welfare Advisory Committee (**NAWAC**) consulted on changes to Code of Welfare: Dairy Cattle (the **Code**). As a result of this consultation, it was recommended that a number of new minimum standards for managing dairy cattle in off-paddock facilities be introduced.
3. While most of the amendments were given legal effect in October 2019, via amendments to the Code, it was agreed that the two minimum standards set out below, and the subject of this consultation, required a transition period.
 - **Minimum Standard 9(c)(iii):** Where [dairy cattle are] held in any off-paddock facility for more than 150 days in a 365-day period...they must have daily or frequent access to pasture or a suitable outdoor area for the balance of that period; and
 - **Minimum Standard 9(c)(iv):** A suitable outdoor area must have a compressible soft surface and be of sufficient size to allow dairy cattle to express a wide range of normal patterns of behaviour, in particular greater freedom of movement and social interaction to ensure Minimum Standard 6 [providing for behavioural needs] is satisfied.
4. For these two standards, relating to outdoor access, NAWAC recommended a delayed commencement date and that the standards be implemented through regulations. This was in recognition that dairy farmers may need time to change current practices and facilities and, in order to implement the changes on-farm, infrastructure may need to be constructed and resource consents secured.

Behavioural needs of dairy cattle

5. The Code must seek to enable cattle to express their natural behaviours as much as possible, as that achieves the best wellbeing outcomes for the animals. Minimum Standard 6 provides that dairy cattle must be lie and rest comfortably; and be able to walk, turn around, and express normal feeding behaviour and appropriate social interactions.¹
6. NZALA submit that, to ensure the behavioural needs of dairy cattle are met in line with section 10 of the Animal Welfare Act 1999 (the **Act**), they must also have opportunities to display normal patterns of behaviour including grooming, exploration, moving freely, foraging and access to the outdoors.
7. Off-paddock facilities impose confinement restrictions on dairy cattle. Confinement increases the risk of greater exposure to social stress, increased risk of disease and restriction of cow's behavioural needs and repertoire if not designed appropriately.²
8. Frequent access to a suitable outdoor area is required to enable cattle to express a wide range of normal patterns of behaviour, including the ability to exercise on non-slip surfaces, freedom to choose where to lie down, space and soft surfaces for lying on a range of normal lying positions and space for grooming and for avoiding aggressive interactions.³
9. Frequent pasturing has also been suggested to be an important management tool for improving the movement of cattle. Exercise promotes good health by improving blood circulation and developing the muscular system.⁴ Walking is also an important behavioural requirement, with cows being motivated to walk.⁵
10. These are all important contributors to cow health and welfare, and indicate the importance of outdoor areas for the expression of behavioural needs. However, the standards still fall short of providing for normal patterns of behaviour. Access to pasture, not only an area with "a compressible soft surface" should be a mandatory requirement.
11. NAWAC has acknowledged "*cattle prefer pasture access under certain conditions and are motivated to access pasture.*"⁶ Cattle observed on pasture are generally perceived to live more naturally, and hence pasture is seen to better provide for their welfare.⁷

¹ Code of Welfare (Dairy Cattle) 2019, Minimum Standard 6

² National Animal Welfare Advisory Committee, 2019, *Report to accompany an amendment to the code of welfare for dairy cattle*, Ministry for Primary Industries, (**NAWAC Report**), 4

³ Code of Welfare (Dairy Cattle) 2019 at 16

⁴ NAWAC Report, 8

⁵ New Zealand Animal Law Association, 2021, *Farmed Animal Welfare Law in New Zealand: Investigating the gap between the Animal Welfare Act 1999 and its delegated legislation*, (**NZALA Report**) 91

⁶ NAWAC Report, 14

⁷ The studies reviewed by NZALA in its 2021 clearly demonstrate that dairy cattle do prefer pasture to alternative 'suitable outdoor areas'. For example, cattle given access to pasture to graze or a feedlot (with no shelter, shade or trees provided in either environment) spent 75% of their time at pasture, returning to the feedlot to meet their nutritional needs. [see NZALA Report at 93]

12. However, in its 2019 report NAWAC considers that the scientific understanding of what motivates dairy cattle to access pasture is limited, and uses this to justify its approach in not requiring such access.⁸
13. This reasoning is problematic, as even if our understanding of what motivates dairy cattle to access pasture is uncertain (because the science is limited), NAWAC should still take an approach that minimises harm and which is based on the purpose of the Act to meet the physical, health and behavioural needs of animals.⁹
14. The mere fact that dairy cattle have indicated a preference for pasture suggests that this could be associated with physical, health and/or behavioural need(s). At the very least, prolonged frustration of this preference can be expected to impede quality of life.¹⁰
15. NAWAC's determination that alternative outdoor environments will provide cattle with the same benefits as pasture-based systems so as to meet their physical, health and behavioural needs, including in relation to space, grazing and foraging is erroneous. Grazing is normal behaviour for cattle. By not requiring access to pasture, the Code does not provide for the full expression of cattle's behavioural needs, and will not meet the obligations in the Act.

Transitional timing

16. In its 2019 report on the Code, NAWAC acknowledged that for a small number of farms (less than 10) would not be compliant with the requirements for outdoor access. As the Code provides that failure to meet a minimum standard may be used as evidence to support a prosecution for an offence against the Act, providing for a transition period for existing farms is a pragmatic approach.
17. For new build systems, NZALA supports the requirement for standards to be mandatory, effective immediately. This approach recognises that farms that do not meet the requirements set out in the new standards do not adequately provide for the behavioural needs of cattle, and therefore do not meet the obligations in s 10 and 11 of the Act
18. Where industry practice (such as those for existing farms) does not fully meet the obligations in the Act, including the obligations in sections 10 and 11 relating to the physical, health and behavioural needs of animals, then the practice may only be permitted by regulations.
19. Section 183A of the Act sets out the requirements when making regulations. It is clear from the statutory wording that the pathway provided in s 183(2) was enacted to prescribe time limits on practices that are not compliant with the welfare obligations under the Act.¹¹
20. Welfare standards enacted under this pathway apply for a specific period, when the non-compliant practices are to be transitioned to practices that fully meet the Act's obligations.

⁸ NAWAC Report, 14

⁹ NZALA Report, 92

¹⁰ NZALA Report, 92

¹¹ *New Zealand Animal Law Association v The Attorney General* [2020] NZHC 3009 at [141]

Regulations can only be made for a specified period, being the period of time that is *“reasonably necessary to enable a transition from current practice to a practice that fully meets the obligations [in sections 10 or 11]”*.¹² [emphasis added].

21. Achieving the obligations in sections 10 or 11 of the Act is therefore the starting point for analysis. Considerations raised in the discussion document such as unreasonable impacts for farms, economic impacts on farms, and arbitrary transition periods are all irrelevant to the statutory test. The length of the transition period should not be dictated by economic concerns.
22. The issues of securing funding and consents, and developing/modifying infrastructure may be relevant to what is *“reasonably necessary”*, but the transition period should not be any longer than what is a reasonable amount of time to make farms compliant, taking into account the ongoing animal welfare impacts in the interim (i.e. a quick transition should be a very high priority, particularly given how long the industry has been on notice of these changes).
23. NZALA is seriously concerned that the financial burden on farmers is included in the criteria for evaluating the proposed regulations. As the regulations must achieve the purpose of the Act, the foremost consideration must be ensuring that the physical, health, and behavioural needs of the animals are met. Implementation of the standards is required to give effect to the purpose of the Act and suitable outdoor areas must be provided to enable dairy cattle to express their behavioural needs. This should be prioritised as soon as possible. Impacts on animal welfare should not be enabled in favour of reduced economic impacts for industry.

CONCLUSION

24. NZALA is grateful for the opportunity to be involved in this review, and we trust that our feedback is of assistance. We look forward to being further involved as this review, and the reviews of the other codes of welfare, progress.
25. Please do not hesitate to contact me if you have any queries regarding the above.

Nāku, nā / yours faithfully

The New Zealand Animal Law Association

¹² Animal Welfare Act 1999, s 183A(5)