

# The Great Ape Project: Legislating for the Control of the Use of Non-human Hominids in Research, Testing and Teaching — *Animal Welfare Act 1999* (New Zealand)

Neil Wells

UNITEC Institute of Technology, Auckland, New Zealand  
E-mail: [nwells@unitec.ac.nz](mailto:nwells@unitec.ac.nz)

**Summary** — The *Animal Welfare Act 1999* (New Zealand), which commenced on January 1 2000, provides that the use of non-human hominids in research, testing or teaching is not permitted unless the Director-General of Agriculture approves the use, and then, only if the use is in the interests of the non-human hominid itself or its species. The *Animal Welfare Act 1999* originated with two parliamentary bills. The first, a private member's bill in the name of Pete Hodgson MP, was tabled in 1997, and the second, a Government measure, was tabled a year later. Neither bill made any reference to non-human hominids. The Great Ape Project made submissions that non-human hominids be afforded similar rights to humans, i.e. not to be deprived of life, not to be subjected to torture or cruel treatment and not to be subjected to medical or scientific experimentation. Proponents and opponents of the measure argued for and against the tenet of introducing "rights" issues into what was essentially "welfare" legislation. These arguments are analysed, and the legislative process that enabled this modification is examined.

**Key words:** *animal, apes, hominid, New Zealand, research, teaching, testing, welfare.*

## Introduction

On 1 January 2000, the *Animal Welfare Act 1999* (New Zealand) commenced. It is a comprehensive and innovative piece of legislation. Instead of providing punishment for those that are cruel to animals, this Act commenced with a positive duty of care "to require owners of animals, and persons in charge of animals, to attend properly to the welfare of those animals" (1). In particular:

*The owner of an animal, and every person in charge of an animal, must ensure that the physical health and behavioural needs of the animal are met in a manner that is in accordance with both:*

(a) *good practice; and*

(b) *scientific knowledge* (2).

The term "physical health and behavioural needs" is defined as:

(a) *proper and sufficient food and water;*

(b) *adequate shelter;*

(c) *opportunity to display normal patterns of behaviour;*

(d) *physical handling in a manner which minimises the likelihood of unreasonable or unnecessary pain and distress;*

(e) *protection from, and rapid diagnosis of, any significant injury or disease, being a need which, in each case, is appropriate to the species, environment, and circumstances of the animal* (3).

"Animal" includes all vertebrates: mammals, birds, reptiles, amphibians and fish; and extends to some invertebrates: octopus, squid, crab, lobster and crayfish (4). The extension of the definition of "animal" to include a mammalian fetus or pre-hatched young in the last half of its period of gestation is noteworthy. That extension was proposed by a significant sector of the scientific community that contended that research, testing and teaching on a fetus should be brought within the ambit of animal ethical committees.

Part 6 of the Act deals with the use of animals in research, testing and teaching.

Almost unnoticed in Part 6 is a provision that restricts the use of non-human hominids (5) in any research, testing or teaching (6). New Zealand is the first jurisdiction to enact such a restriction, although the United Kingdom and Austria have administrative restrictions in place.

The total non-human hominid population in New Zealand is only 36. Six are orangutans in one population held at the Auckland Zoo, and the rest are chimpanzees; two held in a circus and the remainder at two zoos (7). No great apes are held in any research institution, medical school or university in New Zealand. There is no record of any research, testing or teaching involving a great ape since codes

of ethical conduct were first established in 1983 (8). Why, then, should The Great Ape Project (GAP) describe this as “groundbreaking” (9)?

In 1997, Pete Hodgson MP introduced an *Animal Welfare Bill* as a private member’s measure (10). The Hodgson bill provided that the system of codes of ethical conduct and institutional animal ethics committees that commenced with the *Animals Protection Amendment Act 1984* would continue. There was no mention of any special consideration of great apes. In 1998, the National Government introduced a government measure — the *Animal Welfare Bill* (No. 2). That bill proposed a basic principle that research testing and teaching was to be permitted only if the person (11) carrying out the work held a code of ethical conduct or was employed by such a person. That bill, too, failed to make any reference to the great apes.

In 1997, written submissions were called for on the Hodgson Bill, and in 1998, similar submissions were called for on the Government bill. In 1999, the Parliamentary Primary Production Select Committee, chaired by Eric Roy MP, met to hear submissions on the two bills together.

In its written submission (12), GAP proposed that a new section be inserted to provide for the rights of “the four non-human great apes (i.e. chimpanzees, bonobos, gorillas and orangutans)”. GAP contended that there was a strong case for granting non-human hominids three rights:

***Right not to be deprived of life*** — *no hominid (sic) shall be deprived of life except on such grounds as are established by law and are consistent with the principles of fundamental justice.*

***Right not to be subjected to torture or cruel treatment*** — *every hominid has the right not to be subjected to torture or to cruel, degrading, or disproportionately severe treatment or punishment.*

***Right not to be subjected to medical or scientific experimentation*** — *every hominid has the right not to be subjected to medical or scientific experimentation that is not in the best interests of that hominid* (13).

GAP accepted that it was inappropriate to extend other human rights such as those pertaining to economic behaviour and freedom of speech.

There were some fundamental legal and ethical problems that immediately arose from this approach. These rights are taken straight from the New Zealand *Bill of Rights Act 1990* by simply substituting “everyone” with “hominid”, with the exception of the third principle which, in the *Bill of Rights*, reads:

***Right to refuse to undergo medical treatment*** — *everyone has the right to refuse to undergo any medical treatment* (14).

Firstly, the right not to be killed contrasts greatly with the duty to kill any animal that is severely sick or injured where reasonable treatment will not be sufficient to make the animal respond so that it can live without unreasonable pain or distress (15). The *Bill of Rights* makes it clear that no one can be killed without due process, which implies that there must be a fair trial and sentence pronounced in accordance with law. To apply that to great apes would have been a travesty. Further, it would have required a judicial process that could have left a sick or injured ape in pain or distress.

GAP proposed to address that by recommending that the Courts be given the function of:

- appointing a welfare guardian;
- making orders that a hominid be provided with living arrangements, educational, rehabilitative, therapeutic, or other services; and
- ensuring that a hominid not leave New Zealand without the permission of the Court.

Secondly, the *Animal Welfare Bill* already provided for wilful ill-treatment of an animal to be punishable by three years imprisonment or a fine of \$50,000, so there was no need to protect great apes further from torture or ill-treatment.

Thirdly, by arguing that one range of species should be given special consideration under the Act, GAP was, wittingly or unwittingly, introducing a form of speciesism. Richard Ryder defined speciesism as “a prejudice or attitude of bias in favour of the interests of members of one’s own species and against those of a member of other species” (16). “Speciesism” has now made it to the *Oxford Dictionary*: “discrimination against or exploitation of certain animals species, based on an assumption of human superiority” (17). If speciesism is discrimination against certain animal species, it can also be discrimination in favour of a species. “Affirmative speciesism” can be defined as “affording to one species of animal special consideration not afforded to other species”. Why should apes have favoured treatment over say, cats, dogs or pigs?

The basis of GAP’s argument was that:

- scientists have reclassified apes as “belonging to our own biological family — the Hominidae”; and
- the case for extending basic rights was not based on their biological affinity to human beings, but on their possession of all the characteristics that are usually invoked to justify granting basic rights to human beings, including self-awareness, theory of mind, and empathy (18).

GAP accepted that the proposals would have little if any effect in New Zealand. There were then 30

chimpanzees and 6 orangutans in New Zealand, no non-human hominid was being held in any medical laboratory, and no medical research was currently being conducted on any non-human hominid (19). However, GAP argued, “not only is it the right time to begin granting basic rights to the non-human hominids, it is the right place. New Zealand could enhance its international reputation at no cost and with comparatively little effort” (20).

GAP correctly drew Parliament’s attention to other ground-breaking legislation enacted by the New Zealand Parliament — the *Marine Mammals Protection Act 1978* and the *New Zealand Nuclear Free, Disarmament and Arms Control Act 1987*. But it was clear that New Zealand was being used as a springboard for a wider international campaign.

Professor David Mellor (21) submitted that making hominid rights part of animal welfare legislation was not appropriate or necessary. Nevertheless, he accepted that, internationally, there was a clear trend toward greater restrictions in the way human beings interact with other hominids. Professor Mellor thought the GAP proposal was rushed and, as it had been made in the form of a submission on a proposal not contained in either bill, others had not been afforded the opportunity to comment on the GAP proposal. In this, he included owners of primates, commercial research companies, research funding bodies, the legal and medical professions and lobby groups (22).

Government advisers recommended “no change” on the basis that the arguments put forward by GAP were open to debate, that the inclusion of distinct legal rights for great apes would confuse the provision for the needs of other animals and that the public had not had a chance to comment on the issue (23).

In the end, non-human hominids were given limited status in the Act because of political pragmatism. The Primary Production Select Committee was made up of nominees from all political parties of the House — Labour, National, New Zealand First, ACT, and Alliance. The Alliance nominee was Jeanette Fitzsimons, co-leader of the Greens (24). Ms Fitzsimons is a committed opponent of intensive farming and active in other animal rights issues, and in the horse-trading that ensued, she succeeded in convincing the select committee to extend some recognition of GAP.

In its report to the House of Representatives, the Primary Production Select Committee said:

*The Great Ape Project New Zealand, supported by over 60 professionals from bioethics and law in New Zealand and overseas, said the bill should recognise the affinity of humans and great apes by providing for great apes the rights:*

- *not to be deprived of life;*
- *not to be subjected to torture or cruel or degrading treatment;*
- *not to be subjected to medical or scientific experimentation.*

*The submissions were based on scientific research showing that great apes share significant genetic and mental qualities with humans. These include the ability to communicate symbolically, the ability to solve problems through reasoning, self-awareness and emotional complexity.*

*. . . Professor D.J. Mellor considered the bill contains sufficient provisions to deal with great apes in New Zealand and any significant international developments. He noted there was a clear international trend towards greater restrictions on the use and interaction with great apes. He felt this issue, including New Zealand’s part, should be explored fully, but the bill was not the appropriate mechanism . . .*

*We do not agree with the proposed great apes rights amendment as it would change the intent and approach of the bill from welfare to rights. There also has not been opportunity for public consultation and wider debate on the proposal.*

*Parts 1 and 2 provide a general measure of protection for great apes, including not being subjected to torture or cruel treatment. In addition, the existing voluntary code covering zoos and circuses will be deemed to be a code of welfare under the Animal Welfare Act. This code will be reviewed within three years. We expect the code to move promptly to provide specifically for the social and mental well-being of great apes as well as their physical welfare. We hope that future codes will discourage the premature euthanasia of great apes.*

*However, we have concerns about great apes being subjected to medical or scientific experimentation. Even though none of the 28 chimpanzees and six orang-utans in New Zealand is currently used for research, testing or teaching, we believe additional protection should be provided for great apes. This can be achieved by requiring that research, testing or teaching involving the use of a great ape can only be done where it is in the best interest of the individual great ape or is in the interest of that great ape’s species and the benefits are not outweighed by the likely harm to that great ape.*

*We also believe that approval to use great apes should be given by the Director-General, who can impose any conditions after consultation with NAEAC [National Animal Ethics Advisory Committee]. The Director-General should also be able to revoke approval where the use of a great ape in research, testing, teaching is no longer in the best interest of the great ape’s species or where the benefits are outweighed by the harm to the great ape. We*

expect the Director-General to act in the best interests of the great apes. These provisions are not intended to provide a back-door method of approving experiments on great apes for the benefit of humans.

We recommend these provisions in new clauses (25).

Thus, non-human hominids were afforded special consideration. No non-human hominid may be used for the purposes of research, testing or teaching without the specific authority of the Director General of Agriculture. The Director General must not give such approval unless he or she is satisfied:

- that the use of the non-human hominid in the research, testing, or teaching is in the best interests of the non-human hominid; or
- that the use of the non-human hominid in the research, testing, or teaching is in the interests of the species to which the non-human hominid belongs and that the benefits to be derived from the use of the non-human hominid in the research, testing, or teaching are not outweighed by the likely harm to the non-human hominid (26).

While the argument that the bill was about “welfare” not “rights” held sway, neither the proponents nor the opponents debated the “ethics” of the issue. If “ethics” is “the study of morals in human conduct” (27), then this was very much an ethical issue. Although ethics *per se* is not referred to in the Act, animal ethics committees, by inference, are considering the ethics of the use of animals in research, testing and teaching. By including the limited provisions it did, Parliament acknowledged that this was more than an animal welfare issue — it was about the ethical treatment of animals.

GAP applauded the amended bill, although it acknowledged that it was a small step.

Professor Mellor proposed that there should be a continuing review of greater protection for hominids. Such a review is yet to be initiated, because the National Animal Welfare Advisory Committee has given priority to the writing of codes of welfare.

GAP has drafted a private member’s bill, the *Non-Human Hominid Protection Bill*, but it has not yet been tabled in Parliament.

The practical effect of this provision is that firstly, the few great apes that currently reside in New Zealand will not be able to be used for human research projects, or even for teaching, and secondly, multi-national research organisations will be prevented from using New Zealand as an off-shore research facility if it involves great apes.

The political impact of this legislative protection for non-human hominids is that other jurisdictions will no doubt be lobbied by GAP to follow New Zealand’s lead by including special consideration for non-human hominids in animal protection law.

Could this happen, one might ask. In 1985, Prime Minister David Lange declared New Zealand a nuclear free zone, and this became law in 1987 (29). The USA reacted with uncharacteristic retaliation against an ally. But before the millennium was over other, nuclear-free countries were accepted by the USA without a murmur.

Whether great ape protection law is extended to other jurisdictions remains to be seen.

## References and Notes

1. *Animal Welfare Act 1999* (New Zealand) 1999 No. 42, long title.
2. *Animal Welfare Act 1999*, section 10.
3. *Animal Welfare Act 1999*, section 4.
4. *Animal Welfare Act 1999*, section 2.
5. “Non-human hominid” means any non-human member of the family Hominidae, being a gorilla, chimpanzee, bonobo, or orangutan — section 2 of the Act.
6. *Animal Welfare Act 1999*, sections 85 & 86.
7. Auckland Zoo holds eight orangutans and eight chimpanzees; Wellington Zoo holds 16 chimpanzees; and Ridgeways Circus has two chimpanzees.
8. *Animals Protection Amendment Act 1983*, section 6.
9. The Great Ape Project, New Zealand (2002). <http://www.greatapeproject.org/newzealand.htm>.
10. *Animal Welfare Bill 1997* No. 43 — 1 (Pete Hodgson MP).
11. “Person” includes corporate bodies as well as a natural person — section 2.
12. Penny, D. and 37 co-authors (1998). Submission to the *Parliamentary Select Committee on Primary Production, Wellington, New Zealand concerning the Animal Welfare Bill No 2*, p. 2.
13. Penny *et al.*, p. 2.
14. *New Zealand Bill of Rights Act 1990*, section 11.
15. *Animal Welfare Act 1999*, section 138.
16. Singer, P. (1990). *Animal Liberation*, second edition, p. 6. London, UK: Jonathon Cape.
17. Pearsall, J. & Trumble, B., eds (1996). *The Oxford English Reference Dictionary*, p. 1391. Oxford, UK: Oxford University Press.
18. Penny *et al.*, p. 3.
19. No hominid has been used in any research, testing or teaching in New Zealand since animal ethics committees were introduced in 1987, and probably for longer than that.
20. Penny *et al.*, p. 12.
21. Director, Animal Welfare Science and Bioethics Centre, Massey University, Palmeston North, New Zealand, and now chairman of the National Animal Welfare Advisory Committee.
22. Mellor, D.J. (1999). *Further Comments on Hominid Rights to the House of Representatives Primary Production Select Committee on the Government Animal Welfare Bill 1998*. Palmeston North, New Zealand: Welfare Science and Bio-

- ethics Centre, Massey University.
23. MAF Policy (1999). *Proposed Legal Rights for Great Apes*, select committee paper. Wellington, New Zealand: MAF.
  24. The Greens left the Alliance at the end of 1999 and campaigned in their own right. In the General Election held on 27 July 2002, the Greens took 8 seats on the basis of proportional representation. Ms Fitzsimons is still co-leader.
  25. Primary Production Select Committee (1999). *Report to the House of Representatives on the Animal Welfare Bill*.
  26. *Animal Welfare Act 1999*, section 88 (5).
  27. *The Oxford English Reference Dictionary* (17), p. 481.
  28. Great Ape Project, New Zealand (2002). <http://www.greatapeproject.org/nzdraftprop.htm>.
  29. *New Zealand Nuclear Free Zone, Disarmament and Arms Control Act 1987*.