

Five Plus Three: Legislating for the Five Freedoms and the Three Rs — *Animal Welfare Act 1999* (New Zealand)

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Summary — The *Animal Welfare Act 1999* (New Zealand) commenced on 1 January 2000. Rather than focusing on punishing cruelty, the Act establishes a positive duty of care that every owner or person in charge of an animal must provide for its physical, health and behavioural needs. The Five Freedoms, which were initiated by the Farm Animal Welfare Council (UK), were modified as the five basic needs of animals, relating to proper and sufficient food and water, adequate shelter, the ability to display normal patterns of behaviour, physical handling that minimises distress and protection from and rapid diagnosis of injury or disease. Minimum standards are provided in a series of codes of welfare, which is tertiary legislation under the Act. Promotion of the Three Rs — *reduction, refinement and replacement* — first championed by Russell & Burch, have been incorporated as a purpose of Part 6 of the Act, which restricts projects that use animals, and establishes codes of ethical conduct and animal ethics committees. The legislative process that enabled this to be realised is examined and analysed, and the process by which other Commonwealth countries have emulated this legislation is considered.

Key words: *animal, freedoms, legislation, New Zealand, reduction, refinement, replacement, Three Rs, welfare.*

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Legislating for the Five Freedoms

On 1 January 2000, the *Animal Welfare Act 1999* (New Zealand) (the Act) commenced. It is a comprehensive and innovative piece of legislation. Instead of providing punishment for those who are cruel to animals, the Act stated 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).

In August 1997, Pete Hodgson MP introduced the *Animal Welfare Bill* as a private member’s measure (4). That bill provided as a basic principle:

Duty of care to animals:

1. *Every owner and person in charge of an animal has a duty to care for that animal.*

2. *The owner or person in charge of any animal shall ensure that the animal:*

(a) *is free from thirst, hunger and malnutrition;*

(b) *is provided with appropriate comfort and shelter;*

(c) *is protected from, or receives rapid diagnosis and treatment of, any injury, disease or infestation with parasites;*

(d) *is free from distress; and*

(e) *has the ability to display normal patterns of behaviour.*

This was adapted from the original statement of five freedoms of farm animals, initiated by the Farm Animal Welfare Council of the UK (5). The Five Freedoms can be summarised as:

1. *Freedom from thirst* — by ready access to fresh water and a diet to maintain full health and vigour.
2. *Freedom from discomfort* — by providing a suitable environment including shelter and a comfortable resting area.
3. *Freedom from pain, injury and disease* — by prevention or rapid diagnosis and treatment.
4. *Freedom to express normal behaviour* — by providing sufficient space, proper facilities and company of the animal's own kind.
5. *Freedom from fear and distress* — by ensuring conditions which avoid mental suffering.

Justification for the Five Freedoms can be found in the Farm Animal Welfare Council's statement (6):

We believe that an animal's welfare, whether on farm, in transit, at market or at a place of slaughter should be considered in terms of 'five freedoms'. These freedoms define ideal states rather than standards for acceptable welfare. They form a logical and comprehensive framework for analysis of welfare within any system together with the steps and compromises necessary to safeguard and improve welfare within the proper constraints of an effective livestock industry.

In 1998, the National Government introduced a government measure — the *Animal Welfare Bill* (No. 2). That bill also introduced the concept of a duty of care, which was subsequently enacted in the Act (7).

In 1997, written submissions were called for on the Hodgson Bill, and in 1998, 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.

The legislation had a long gestation period. In 1989, the Minister of Agriculture acceded to a submission from the animal welfare lobby that he should form an animal welfare advisory committee. This proposal had been active since 1987, when the first shipments of live sheep were permitted to go from New Zealand to Mexico, with disastrous results. The farming lobby opposed the notion of an advisory committee on the grounds that such a committee would be urban-based and would interfere in the rights of farmers to carry out normal farm practices. The Deputy Director General of Agriculture, Royce Elliott, and the Chief Veterinary Officer, Peter O'Hara, actively supported the proposal. Eventually, the Minister accepted that such a committee had advantages in seeking consensus on animal welfare issues, and

the first Animal Welfare Advisory Committee (AWAC) was appointed in 1989.

One of the first tasks the new committee undertook was to review the animal welfare legislation. In December 1989, an initiative of AWAC was reflected in the first of two public discussion papers, *A Review of the Animals Protection Act 1960* (8).

In the foreword to the discussion paper, the Minister of Agriculture, the Hon. John Falloon, wrote (9):

This review is timely and in compiling it I am appreciative of the advice of the Animal Welfare Advisory Committee and the particular contribution of Neil Wells.

The need for legislation to protect animals from uncaring people is undisputed. Instances of cruelty to animals arouse considerable depths of public feeling which cross political boundaries. These sentiments are held as strongly by people whose working or recreational lives are closely associated with animals as by anyone else.

Rather the debate is about how far controls should extend. Animal management practices and public attitudes both change with time and so this debate needs revisiting regularly.

Since 1960 when the fundamental philosophy of the present Act was laid down, there has been a considerable change in the public's attitude towards the duties of animal owners to their animals. Concerns about acceptable practices have extended from simple prevention of irresponsible uncaring behaviour, to the appropriateness of animal management practices in general.

Animal welfare has become an increasingly significant issue, not only within New Zealand, but also in our major markets as consumers have become more sensitive to the origins and background of products.

Although New Zealand's dependence on animal product exports has reduced slightly, animals remain by far the largest single source of the gross domestic product and of export returns. Its central economic reality will not change in the foreseeable future.

I suggest therefore that the key question for us all is: Where should the balance be placed in the 1990s between care for animals and the realities of being a country heavily dependent for its standard of living on exports of pastoral products?

The purpose of the legislation was reviewed in the discussion paper. Because all animals capable of feeling pain, suffering and distress should have protection under the law, and all persons who commit an act of cruelty should stand equal before the law, AWAC considered that the objective of new legislation should be:

To make provision for the protection of animals from ill-treatment and neglect, and the prevention of suffering of animals.

The document further discussed broadening the objective to encompass all human behaviours capable of causing unreasonable or unnecessary animal suffering.

The paper discussed problems with some of the current definitions in the *Animals Protection Act 1960*, in particular, that of “animal”, which was a major determinant of the scope of the legislation.

AWAC recommended a wider definition of “Animal”, which was subsequently enacted (10) as meaning:

- (a) *any live member of the animal kingdom that is:*
 - (i) *a mammal; or*
 - (ii) *a bird; or*
 - (iii) *a reptile; or*
 - (iv) *an amphibian; or*
 - (v) *a fish (bony or cartilaginous); or*
 - (vi) *any octopus, squid, crab, lobster, or crayfish (including freshwater crayfish); or*
 - (vii) *any other member of the animal kingdom which is declared from time to time by the Governor-General, by Order in Council, to be an animal for the purposes of this Act; and*
- (b) *includes any mammalian foetus [sic], or any avian or reptilian pre-hatched young, that is in the last half of its period of gestation or development; and*
- (c) *includes any marsupial pouch young; but*
- (d) *does not include:*
 - (i) *a human being; or*
 - (ii) *except as provided in paragraph (b) or paragraph (c) of this definition, any animal in the pre-natal, pre-hatched, larval, or other such developmental stage.*

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 jurisdiction of animal ethical committees.

An unprecedented number of submissions were received on the first discussion paper, and as a result, a further discussion paper, the *Tentative Proposals for an Animal Welfare Bill* (11), was released.

The purpose of the second discussion paper was to enable the Ministry of Agriculture and Forestry to further gauge the response of the public and interest groups to the tentative policies.

The timetable predicted that a bill would be introduced in 1992. While work continued on

drafting, and Cabinet approved the policy of the new bill, the bill did not gain the necessary legislative priority for it to be introduced — not until Pete Hodgson MP introduced his private member’s bill in 1997.

In 1997, the Animal Behaviour and Welfare Consultative Committee (12) wrote to all members of parliament, seeking support for the early introduction of the bill. Pete Hodgson, Labour member for Dunedin North, responded positively by offering to introduce a private member’s bill. The bill was introduced in August 1997.

This bill was designed to give effect to the public consultation and policy development process undertaken by the Government in 1990/92. It sought to reflect accurately the outcome of that process, from which no legislation had hitherto eventuated.

The bill was designed to achieve two distinct outcomes. The first was to provide for a duty of care to animals and to outlaw specific acts of ill-treatment, neglect and use of animals, along with provisions for compliance, fines and proceedings. The second was to provide a framework, within which codes of animal welfare could be attached and codes of ethical conduct could be developed.

The bill received all party support and was referred to the Primary Production Committee for consideration.

In January 1998, the Government took further advice and decided to prepare its own Animal Welfare Bill, as there were some policy issues not provided for in the Hodgson Bill.

The *Animal Welfare Bill* (No. 2) was introduced and referred to the Primary Production Committee on 29 September 1998. The two bills were considered together.

Submissions represented a wide spectrum of views on animal utilisation from those who opposed any restriction on the use of animals to those who believed that any form of animal utilisation was unacceptable exploitation. The policy agreed upon by Government in 1992 (with some modifications in 1995) attempted to steer a middle course.

The select committee reported that a key feature of the Act was to move away from providing detailed minimum standards in the Act or in regulations and, instead, to enable minimum standards in codes of welfare. The select committee reported that codes could be amended more easily and quickly in response to changing practice, scientific knowledge or public attitudes. They could also provide information of an educational or explanatory nature that would be inappropriate in legislation.

Part 5 of the Act deals with the making of codes of welfare, and in this regard, clause 65 specified the matters that must be considered by the National Animal Welfare Advisory Committee

(NAWAC)¹ in the course of its consideration of a draft code of welfare, following the consideration phase, and before deciding whether or not to recommend to the Minister the issue of the code.

The select committee was concerned that this clause may not provide NAWAC and the Minister with adequate guidance as to the circumstances in which minimum standards can be set that depart from the obligations in Part 1. The committee thought it was desirable to clarify the intent to avoid clause 65 being used routinely as an “opt-out” clause to justify the continuation of current practices that do not meet the obligations in the *Animal Welfare Act 1999*. The select committee expected that this provision would be used rarely and that, in most cases, would relate to production animals that were unable to display normal patterns of behaviour (but had all other physical needs met). The committee recommended that clause 65(3) be amended to make it clear that this power should be used only in exceptional circumstances. This recommendation was accepted by Parliament (13).

Legislating for the Three Rs

Part 6 of the Act provides for the use of animals in research, testing and teaching.

In 1959, Russell & Burch first published *The Principles of Humane Experimental Technique* (14). The authors considered three “ways in which inhumanity can be and is being diminished or removed” in experimental technique:

Replacement — the substitution for conscious living higher animals of insentient material;

Reduction — reduction in the numbers of animals being used to obtain information of a given amount and precision;

Refinement — any decrease in the incidence or severity of inhumane procedures applied to those animals which still have to be used (15).

Part 6 of the *Animal Welfare Act 1999* (16) provides that one of the purposes of that part is:

(b) to promote efforts:

- (i) to reduce the number of animals used in research, testing, and teaching to the minimum necessary;
- (ii) to refine techniques used in any research, testing, and teaching so that the harm

caused to the animals is minimised and the benefits are maximised;

- (iii) *to replace animals as subjects for research, and testing by substituting, where appropriate, non-sentient or non-living alternatives; and*
- (iv) *to replace the use of animals in teaching by substituting for animals, where appropriate, non-sentient or non-living alternatives or by imparting the information in another way.*

No research, testing or teaching may be carried out unless the person² carrying out the work is the holder of a code of ethical conduct (17). A code of ethical conduct must contain provisions that *inter alia* “enable the purposes of this Part to be met”, which includes consideration of the Three Rs. The Act goes further (18) in requiring that:

In considering any application for the approval of a project and in setting, varying, or revoking conditions of the approval of a project, every Animal Ethics Committee must have regard to such of the following matters as are relevant:

- (a) *the purposes of this Part; and*
- (b) *any matters that the Committee is required to consider by regulations made under this Act; and*
- (c) *the scientific or educational objectives of the project; and*
- (d) *the harm to, or the distress felt by, the animals as a result of the manipulation, and the extent to which that harm or distress can be alleviated by any means (including, where the pain or distress cannot be held within reasonable levels, the abandonment of the manipulation or the humane destruction of animals); and*
- (e) *whether the design of the experiment or demonstration is such that it is reasonable to expect that the objectives of the experiment or demonstration will be met; and*
- (f) *the factors that have been taken into account in the choice of animal species; and*
- (g) *whether the number of animals to be used is the minimum necessary to ensure a meaningful interpretation of the findings and the statistical validity of the findings; and*

¹The National Animal Welfare Advisory Committee is a statutory committee — not to be confused with the Animal Behaviour and Welfare Consultative Committee, which is a non-government organisation.

²“person” includes a natural person and also a body of persons whether corporate or unincorporated — Animal Welfare Act 1999, section 2.

- (h) *whether adequate measures will be taken to ensure the general health and welfare of animals before, during, and after manipulation; and*
- (i) *whether suitably qualified persons will be engaged in supervising and undertaking the research, testing, or teaching; and*
- (j) *whether any duplication of an experiment is proposed and, if so, whether any such duplication will be undertaken only if the original experiment:*
- (i) *is flawed in a way that was not able to be predicted; or*
- (ii) *needs to be duplicated for the purpose of confirming a result that was unexpected or has far-reaching implications; and*
- (k) *whether the same animals are to be used repeatedly in successive projects, and, if so, the cumulative effect of the successive projects on the welfare of the animals; and*
- (l) *whether there is a commitment to ensuring that findings of any experiment will be adequately used, promoted, or published; and*
- (m) *any other matters that the Committee considers relevant.*

Section 105 provides for independent reviews of animal ethics committees. Reviewers are required to assess the extent to which the code holder and its animal ethics committee are implementing the policies, procedures and requirements of the Act and the code of ethical conduct, and whether they are complying with the Act and their code of ethical conduct. It follows that compliance with the principles of the Three Rs would be included in such a review (19).

Emulation by Other Jurisdictions

Animal welfare law, like much other law that has an ethical or moral component, tends to be emulated in Commonwealth countries as were the original nineteenth-century animal welfare laws of the UK.

On 17 May 1821, Richard Martin introduced a bill “to prevent the cruel and improper treatment of cattle” (20). The bill proposed that “if any person or persons having the charge, care or custody of any horse, cow, ox, heifer, steer, sheep or other cattle,

the property of any other person or persons, shall wantonly beat, abuse or ill-treat any such animal such individuals shall be brought before a justice of the peace or other magistrate” (21). That wording formed part of animal protection legislation in the British Empire right through to the 20th Century.

The New Zealand legislation is groundbreaking in the way it converts moral concepts such as the Five Freedoms and the Three Rs into legislative requirements. The State Government of Queensland has recently enacted new animal welfare legislation that borrowed heavily on the principles of the New Zealand Act. The UK Government is currently reviewing its animal welfare legislation. It, too, is critically analysing New Zealand animal welfare legislation. It remains to be seen how much will make it into law in the UK.

References and Notes

1. *Animal Welfare Act 1999*, long title.
2. *Animal Welfare Act 1999*, section 10.
3. *Animal Welfare Act 1999*, section 4.
4. *Animal Welfare Bill 1997*, clause 6.
5. Webster, A.J.F. (2001). Farm animal welfare: The Five Freedoms and the free market. *The Veterinary Journal* **161**, 229–237.
6. Farm Animal Welfare Council. <http://www.fawc.org.uk/freedoms.htm>, 15 July 2002.
7. *Animal Welfare Act 1999*, sections 4 and 10.
8. *MAF Policy Paper 103*, December 1990.
9. *Ibid*, foreword.
10. *Animal Welfare Act 1999*, section 2.
11. *MAF Policy Paper 112*, October 1991.
12. This committee is an informal forum with representatives from producer boards, farming groups, universities, government departments, research institutes, animal welfare lobby, veterinary groups etc. and meets biannually as a means of technology transfer and to exchange information on animal welfare issues.
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16. *Animal Welfare Act 1999*, section 81 (2) b).
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19. *Animal Welfare Act 1999*, sections, pp. 105–118.
20. Moss, V. (1961). *Valiant Crusade*, p. 15. London, UK: Cassell.
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