

NAWAC GUIDELINE 13:

Recommending regulations where section 183A(2) applies

Introduction

Section 183A(2) of the Act provides that NAWAC may, in exceptional circumstances, propose regulations that do not fully meet the obligations of the Act, including the obligation to ensure that the physical, health and behavioural needs of the animal are met or that unreasonable or unnecessary pain or distress may occur. In doing so, NAWAC must be satisfied that there are no feasible or practical alternatives available and / or that not doing so would result in an unreasonable impact on a particular industry sector, the public, or New Zealand's wider economy. NAWAC may also consider any other matter that it considers relevant in making the recommendation.

Regulations made in accordance with 183A(2) are time-limited exemptions; the regulation must provide for a transitional period that does not exceed ten years. Section 183A(6) does allow for one extension of up to five years, only when the Minister for Primary Industries is satisfied that the majority of the participants in the sector concerned: have made significant progress towards implementing compliant practice; cannot reasonably be expected to become compliant before the close of the ten year period; and, will become compliant within the extended period.

Difficulties of forecasting beyond ten years

In applying section 183A(2) of the Act, NAWAC notes the difficulties in forecasting beyond a ten-year time frame with regard to:

- what scientific research may establish during the intervening years in relation to the issue being considered;
- the new practices/technologies that may be developed during the intervening years in relation to the issue being considered; future external influences, both national and international, which might impede, or accelerate, a change; likely economic trends and what impact they might have on the ability for change to occur with regard to the issue being considered; and changes in society's ethical values.

Notwithstanding the above, the relevance of the code will be reassessed every 10 years.

Framework for considering whether section 183A(2) applies

NAWAC has endorsed the following framework as a guide to how it will handle the process:

- (a) NAWAC will reserve any decision on whether regulations or minimum standards do not fully meet the obligations of the Act until it has considered:
 - the public submissions
 - the writing group's submissions (including those from affected parties)
 - current New Zealand and international research
 - current good practice
 - available technology

- society's ethical views
- international practices and trends
- the feasibility, practicality and economic effects of any change
- any other relevant matters.

NAWAC will then consider those matters as set out in its decision-making guideline (NAWAC Guideline 10)

In considering whether to invoke section 183A(2) NAWAC will carefully consider the requirements of section 183A(3), that the regulations must not be recommended unless either or both of the following apply:

- any adverse effects of a change from current practices to new practices have been considered and there are no feasible or practical alternatives currently available;
- not to do so would result in an unreasonable impact on a particular industry sector within New Zealand, a sector of the public, or New Zealand's wider economy.

NAWAC recognises that the provisions detailed in section 183A(3) impose an onerous test, and therefore place on the Committee a heavy responsibility and a need for caution. NAWAC also recognizes that these factors must be of a very significant magnitude and degree, and must clearly outweigh the adverse welfare effects of non-compliance with the requirements of the Act. It is not enough for the Committee merely to show, for example, that there may be difficulties in effecting a transition from current practices to new practices; or that there may be adverse effects resulting from such a transition; or that there may be adverse economic effects. Whenever a new standard is introduced that restricts or prohibits an existing farm practice or system, some practical difficulties, adverse effects, or economic effects will ordinarily occur. This alone is not an 'unreasonable' impact. NAWAC will therefore fully document its reasoning for recommending a section 183A(2) exemption.

Framework for handling the process

NAWAC may decide that a regulation or minimum standard, as originally drafted by the writing group, does not fully meet the obligations of the Act. When that occurs, based on NAWAC's analysis of the information before it, four courses of action would be available to NAWAC:

(a)

NAWAC may not write a minimum standard that does not fully meet the obligations of the Act, i.e. Section 183A(2) does not apply to minimum standards. If NAWAC finds that such a standard has been drafted, it must be rewritten.

(b) When it comes to regulations, if NAWAC considers that it is reasonable to require an immediate change to fully meet the obligations of the Act, NAWAC will rewrite the regulation. It would then come into force on the date it is issued.

(c) Section 183A(2) applies

When NAWAC considers that it is reasonable to require a change to fully meet the obligations of the Act at some stage during the ten years before the code is subject to

review, NAWAC will rewrite the corresponding regulation, which would come into force on a specified date during the ten years from when the code is issued. NAWAC may also set interim steps to be achieved towards meeting those obligations on specified dates before the final date for a change.

(d) When NAWAC considers that it is not reasonable to require a change to fully meet the obligations of the Act within a ten year deadline, NAWAC will:

- i. signal the future direction towards which NAWAC would like to see progression, based on current knowledge, and subject to welfare standards being met in the future to allow the progression to be made;
- ii. note that any firm decisions on that progression will be made by NAWAC when it next reviews the code;
- iii. for the particular issue, note the matters which will require specific consideration as set out in the Act, including current research, good practice and available technology, alternative systems, society's ethical values, international practice and trends, religious/cultural practices, and the feasibility, practicality and economic effects of any change;
- iv. specify research NAWAC would like to see undertaken before the next review of the code, if it considers that to be appropriate; and
indicate an earlier date when NAWAC hopes to review the code based on research being available, if it considers that to be appropriate.

Notwithstanding the above, NAWAC may choose to review a code at any time within its ten-year life.

<p>This guideline was originally approved by NAWAC on 17 February 2016. This guideline is not a legal interpretation of the Animal Welfare Act 1999. It is anticipated that this guideline will be updated from time to time in light of experience gained by NAWAC during its deliberations.</p>
