

Animal Welfare Amendment Bill 2010

Regulatory Impact Statement

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Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by the Ministry of Agriculture and Forestry.

It provides an analysis of options to improve the way that offences and penalties relating to the ill-treatment and neglect of animals are defined in the Animal Welfare Act 1999 (the Act).

Development of the Animal Welfare Amendment Bill 2010 (the Bill) and associated policy analysis has taken place under an extremely constrained timeframe, following a Cabinet decision in February 2010 to urgently amend the Animal Welfare Act. Consequently, it has not been possible to go into the level of analysis normally associated with an amendment to a piece of primary legislation.

However, the majority of policy proposals relate to amending statutory offence and penalty provisions in the Act and are unlikely to have significant regulatory impacts.

Consultation has been limited to discussion with the RNZSPCA, which is an approved organisation under the Animal Welfare Act, and the Ministry of Justice in relation to Bill of Rights vetting and appropriate penalty setting. Treasury officials have been alerted to the existence of the Bill, but have not been closely involved in its development. Further consultation has not been possible due to the short timeframe imposed by Cabinet, however, it is expected that interested parties will be able to comment on the Animal Welfare Amendment Bill during the Select Committee process.

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Wednesday 10 February 2010

Status quo and problem definition

The Animal Welfare Act 1999 (the Act) sets out the fundamental obligations of people towards animals in New Zealand. It contains provisions that apply to owners or people in charge of animals, as well as provisions that apply to all New Zealanders, regardless of whether they own animals or not.

MAF and the RNZSPCA are the primary organisations responsible for enforcing the Act. Traditionally, MAF have focused on production animal issues, while the RNZSPCA have focused on companion (pet) animal issues. However, this distinction is arbitrary and there is a degree of crossover in each groups' activities. The NZFSA Verification Agency also plays an important role in monitoring animal welfare at meat processing plants.

Following a general rise in serious animal welfare complaints and a series of high profile animal cruelty incidents in late 2009/early 2010, Cabinet decided to adopt and prioritise a Private Members Bill seeking to increase the penalty for wilful ill-treatment of an animal.

The Minister of Agriculture subsequently invited officials to consider other matters that might be included in the amendment, to strengthen the provisions of the Act and enable offences to be dealt with more effectively.

In the absence of Government intervention, the number and severity of serious animal welfare incidents is likely to increase. There is also a growing body of evidence linking animal cruelty to aggression towards humans, so Government inaction on this issue may also result in an increase in violent offences against people.

Cruelty to animals has many causes, ranging from ignorance of an animal's needs at one end, to deliberate ill-treatment at the other. While educational and awareness activities may help reduce the level of unintentional offending, deliberate ill-treatment offending is more resilient to rehabilitation and requires a stronger set of tools to deter offenders.

Objectives

The purpose of the Bill is to improve the way offences relating to the ill-treatment and neglect of animals are handled by the Act and to increase the penalties for this type of offending.

The Bill also aims to improve animal welfare outcomes and reduce the compliance burden on enforcement agencies and the Courts, by improving the provisions around disqualification and forfeiture of animals.

The basis for the analysis stems from Cabinet's decision, in February 2010, to introduce an Animal Welfare Amendment Bill into the house as a matter of urgency.

The Bill is a government priority and must be enacted before the House rises in 2010.

Regulatory impact analysis

The majority of policy proposals in the Bill relate to amending statutory offence and penalty provisions in the Act. They cannot be implemented without amending the legislation; therefore the number of practical options for achieving the objectives is limited.

For the purposes of clarity, the proposed amendments to the Act are presented in the tables below and are briefly discussed in the following section.

Table 1: Penalty provisions

Offence	Maximum existing penalty		Maximum new penalty	
	<i>Individual</i>	<i>Body corporate</i>	<i>Individual</i>	<i>Body corporate</i>
Wilful ill-treatment of an animal (s28)	3 years in prison and/or \$50,000 fine	\$250,000 fine	5 years in prison and/or \$100,000 fine	\$500,000 fine
Reckless ill-treatment of an animal	New offence		3 years in prison and/or \$75,000 fine	\$350,000 fine
Ill-treatment of an animal (s29)	6 months in prison and/or \$25,000 fine	\$125,000	12 months in prison and/or \$50,000 fine	\$250,000
Care of animals (neglect) offences (s25)	6 months in prison and/or \$25,000 fine	\$125,000	12 months in prison and/or \$50,000 fine	\$250,000

Table 2: Other amendments

Section(s)	Current situation	Proposed amendment
Wilful ill-treatment of an animal (s28) & reckless ill-treatment (new offence)	Threshold for the charge requires an animal to be permanently disabled, die, or have to be destroyed to prevent suffering.	Expand the threshold to include "serious injury or impairment".
Disqualification from animal ownership (s169)	People can apply to the Court for disqualification to be lifted after 12 months.	Enable the Court to set a minimum review period within which no application for removal of a disqualification order can be made. The default minimum review period, where no period is set by the Court, will be increased to two years.
Forfeiture of animals (s 172)	Only the animals relating to the charge can be forfeited.	Enable the Court to order forfeiture of any or all animals owned by a convicted person, where it is needed to protect animal welfare.

DISCUSSION OF OPTIONS

Potential for financial impacts

The proposed increases in penalties are unlikely to have a significant financial impact on the Crown. While the proposals include a new animal welfare offence with a maximum penalty of imprisonment, and increases in the maximum terms of imprisonment for other animal welfare offences, MAF does not expect this to result in large numbers of additional custodial sentences. The maximum penalties are rarely applied, and less than 10 people convicted of animal welfare offences have ever been sentenced to prison. The sentences for these people have been less than 12 months.

As an additional safeguard, the Sentencing Act 2002 provides a mechanism for ensuring that penalties are set at an appropriate level for each individual's circumstances.

New offence for "reckless ill-treatment of an animal"

The proposed creation of a new category of 'reckless ill-treatment' enables the appropriate allocation of cases that would struggle to meet the threshold for 'wilful ill-treatment', but are too serious to be considered as simple 'ill-treatment' (s29 of the Act). Until now, many such

cases have been forced to proceed under section 29 of the Act, because of the difficulties in establishing intent on the part of the accused. This has led to inappropriate sentencing and the wrong message being sent to offenders, i.e. that animal welfare offending is not serious.

An alternative option to that described above, would be to consider “reckless ill-treatment” alongside “wilful ill-treatment” in section 28 of the Act. However, enabling different standards of proof to apply to the same offence, without differentiating between them, could send mixed messages to the judiciary and result in lower than desired sentencing. This would undermine one of the central objectives of the Bill.

Offences where an animal is “seriously injured or impaired”

An amendment will be made to the criteria in the Act that govern when “wilful ill-treatment” and “reckless ill-treatment” offences may be applied. In addition to the ill-treatment having to result in permanent disability, death, or destruction of the animal, a new criterion will be added enabling prosecutions under this section if an animal is “seriously injured or impaired”.

Expanding the threshold to include serious injury or impairment of an animal enables appropriate handling of cases where suffering is extreme, but the existing criteria for a section 28 wilful ill-treatment offence cannot be met on technical grounds. An example might be deliberately cutting the ears off a cat. Although the injury is intentional and causes serious harm, because the animal can still hear the offence cannot be considered as wilful or reckless ill-treatment, i.e. the animal did not die, was not permanently disabled and did not need to be destroyed to mitigate suffering. At the moment, such cases have to be tried under section 29 of the Act, with the result that again, the wrong message is sent to offenders regarding cruelty to animals.

Disqualification from ownership of an animal

Section 169 of the Act deals with the disqualification of people from owning or exercising authority over animals. Under section 169, disqualified people may apply to the courts for removal of their disqualification order. They may do so twelve months after the date of the order and at twelve month intervals thereafter, if their initial appeal is unsuccessful. This is a particular problem in the companion (pet) animal area, where disqualified persons regularly re-apply to own animals. While MAF and RNZSPCA can oppose an application, this creates a significant compliance burden

One option for improving animal welfare outcomes and reducing compliance costs in regard to disqualification from animal ownership would be to remove the ability of disqualified people from appealing against their disqualification (s169 of the Act). While this is attractive on face value, it is inconsistent with usual sentencing practice and could infringe the rights and freedoms contained within the Bill of Rights.

The preferred option, that would satisfy both policy objectives described above, is to provide for a minimum review period to be set by the Court and in cases where no Court review period was set, to increase the minimum time before an appeal against disqualification could be heard to two years.

Forfeiture of animals to the Crown or an approved organisation

Under section 172, the Court may require a person convicted of an offence against an animal to forfeit that animal to the Crown or approved organisation. Only the animals to which a

charge applies can be forfeited, meaning that serious offenders may still have access to animals after conviction. This is a particular problem in animal hoarding situations, or on farms, where many animals may be at risk but for the purposes of the prosecution charges are laid only in respect of those worst affected.

The option identified for reducing compliance costs and improving animal welfare in relation to the forfeiture of animals involves broadening the scope of the provision to enable any or all animals owned by the offender to be forfeited to the Crown or approved organisation, where the Court considers this necessary to protect animal welfare.

Summary comment

In terms of the full range of impacts that are required to be considered as part of this analysis; with the exception of the economic and compliance impacts discussed above, none of the options identified are believed to have significant fiscal, social, environmental or cultural impacts on New Zealanders or the Government.

Consultation

The urgent nature of the Bill has severely restricted the amount of consultation that has been possible.

Consultation has been limited to a teleconference discussion with the RNZSPCA, who are an approved organisation under the Animal Welfare Act, and consultation with the Ministry of Justice in relation to Bill of Rights vetting and appropriate penalty setting. Treasury officials have been alerted to the existence of the Bill, but have not been closely involved in its development.

The RNZSPCA is very supportive of the proposed amendments to the Act. The Ministry of Justice does not have concerns with the Bill as it is currently proposed.

Conclusions and recommendations

The analysis has identified a number of options that could be used to achieve the objectives of the Bill. The majority involve amendment to statutory offence and penalty provisions in the Act and require legislative amendment in order to implement.

The following represents the preferred option, which in our opinion represents the most effective way of meeting the objectives in the available timeframe. MAF recommends that the Animal Welfare Act 1999 be amended so that:

1. the penalties for wilful ill-treatment of animals (s28) are increased to a maximum of five years imprisonment and/or a fine not exceeding \$100,000 for an individual and a fine not exceeding \$500,000 for a body corporate;
2. a new offence is created for “reckless ill-treatment of animals”, with penalties set at a maximum of three years imprisonment and/or a fine not exceeding \$75,000 for an individual, and a fine not exceeding \$350,000 for a body corporate
3. the penalties for other ill-treatment and neglect offences (s25 and 37) are increased to a maximum of twelve months imprisonment and/or a fine not exceeding \$50,000 for an individual and fine not exceeding \$250,000 for a body corporate, which is in proportion to the proposed increases for wilful ill-treatment penalties;

4. the offences of wilful ill-treatment and reckless ill-treatment are triggered if an action results in “serious injury or impairment” of an animal;
5. an animal will be considered to be “seriously injured or impaired” if its injury involves prolonged pain and suffering, a substantial risk of death, loss of a body part, or permanent or prolonged loss of a bodily function, such that it requires treatment by or under the supervision of a veterinarian;
6. the Court may set a minimum review period within which no application for removal of an order disqualifying that person from having custody of an animal can be made, and the default minimum review period, where no period is set by the Court, is increased from 12 months to two years; and
7. animals other than those forming part of a specific charge may be forfeited to the Crown or an approved organisation on conviction of the owner for a serious animal welfare offence, where the Court believes this is necessary to protect animal welfare.

Implementation

Once the Bill has been enacted, MAF and the RNZSPCA will implement the provisions as part of their ongoing enforcement activities, to ensure that the preferred policy objectives are met.

Given the short timeframe permitted for the analysis, it is not possible to anticipate how the preferred option might interact with, or impact on, existing regulation. However, the proposed penalty changes in the Bill are consistent with other property/cruelty offences currently on the statute book, particularly once amendments to Part 8 of the Crimes Act are enacted (expected to be introduced in March 2010).

Monitoring, evaluation and review

Monitoring and evaluation of the preferred option will be conducted as part of the ongoing activities of MAF and the RNZSPCA. The number and nature of animal welfare complaints and prosecutions, as well as the sentences handed down by the judiciary, will be recorded as they are now. The data generated will be used to track the success, or otherwise, of the preferred option. If necessary, further amendments to the Act can be made in the future.