

Animal Welfare in New Zealand

Oversight, Compliance
and Enforcement

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A report prepared with the support of the
New Zealand Law Foundation



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Published 2019

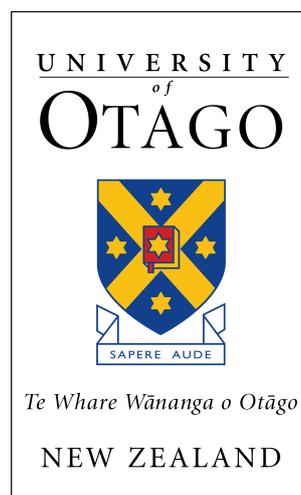


Marcelo Rodriguez Ferrere, Mike King, Levi Mros Larsen, 2019
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ISBN (Print) 978-0-473-48182-7

ISBN (PDF) 978-0-473-48106-3

Printed by Uniprint, University of Otago



Acknowledgments

We gratefully acknowledge the funding provided by the New Zealand Law Foundation, which supported this research, and the guidance and support of Lynda Hagen in particular. We acknowledge and thank Mark Fisher (MPI) for his peer review of our report and his detailed and thoughtful comments. We also additionally thank Mark and Arnja Dale (RNZSPCA), who have each been extremely helpful and generous in their provision of information and feedback throughout this research. Kate Littin (MPI) and Alan Wilson (RNZSPCA) have also been very helpful throughout and especially in preliminary discussion. We would like to thank Jonathon Yeldon for his patient, extensive and detailed editing assistance. Thanks also to the audiences of the Oxford Centre for Animal Ethics Summer School (2018) and the Bioethics Centre at the University of Otago for their helpful feedback on prior versions of this work.

Any mistakes in the finished work are the authors' alone.

Contents

EXECUTIVE SUMMARY	1
1. PRELIMINARIES	5
1.1 Rationale and Approach	5
1.2 Scope and Limitations	7
1.3 Structure	9
2. ISSUES IN NEW ZEALAND'S ANIMAL WELFARE ENFORCEMENT SYSTEM	10
2.1 Deficiencies	10
2.1.1 Under-Resourcing of the Sector	10
2.1.2 Reactive Enforcement	14
2.1.3 Oversight and Accountability	18
2.2 Our Recommendations	26
2.2.1 Conservative versus Radical Reform	27
2.2.2 Central Values	28
2.2.3 Recommendations	33
2.3 Conclusion	40
3. APPENDIX 1: THE LEGISLATIVE FRAMEWORK OF THE ANIMAL WELFARE ACT 1999	42
3.1 Introduction	42
3.2 The Administration and Purpose of the Animal Welfare Act 1999	42
3.3 Care of Animals	43
3.4 Conduct Towards Animals	44
3.5 Animal Exports	44
3.6 Advisory Committees	44
3.7 Codes of Welfare	45
3.8 Administration of the Act	46
3.8.1 Approved Organisations	47
3.8.2 Inspectors and Auxiliary Officers	47
3.8.3 Powers of Search and Entry	47
3.8.4 Powers in Relation to Injured or Sick Animals	48
3.8.5 Disposal of Animals in Custody of Approved Organisations	49
3.8.6 Enforcement Orders	50

3.8.7	Compliance Notices	50
3.8.8	Audits	51
3.9	Offences	52
3.9.1	Infringement Offences	52
3.9.2	Employer, Principal and Corporate Liability	53
3.9.3	Disqualification Order	54
3.9.4	Order for Forfeiture of Animals	55
3.10	Regulations	55
3.10.1	General	55
3.10.2	Regulations Relating to Standards of Care	56
3.10.3	Regulations Relating to Surgical and Painful Procedures	58
3.10.4	Regulations Relating to Exporting Animals	58
4.	APPENDIX 2: ENFORCEMENT OF THE ANIMAL WELFARE ACT 1999	60
4.1	Introduction	60
4.2	Enforcement of the Act in the Companion Animal Spheres	60
4.2.1	Introduction	60
4.2.2	Jurisdiction of the RNZSPCA and its Memorandum of Understanding with MPI	61
4.2.3	Performance and Technical Standards for Inspectors of the RNZSPCA	69
4.2.4	A System of Reporting; the RNZSPCA's Enforcement Operation Mechanisms	73
4.2.5	The Enforcement of the Act in the Breeding and Selling of Companion Animals	83
4.2.6	Prosecutions Involving Companion Animals	93
4.3	Enforcement of the Act in the Production Animal Sectors and in Export	96
4.3.1	Introduction	96
4.3.2	The Role of the RNZSPCA	97
4.3.3	MPI's Enforcement Strategy	98
4.3.4	Non-Prosecutorial Response Mechanisms to Combat Breaches of the Act	109
4.3.5	Prosecutions	114
4.3.6	Other Parties Involved in Enforcing the Act Within the Production Spheres	116
4.3.7	Enforcement of the Act in Overseas Export and Import	119
4.4	Enforcement of the Act in Industries that Use Animals for Entertainment	124
4.4.1	Introduction	124
4.4.2	The Enforcement of the Animal Welfare Act 1999 in the New Zealand Rodeo Industry	126
4.4.3	Enforcement of the Animal Welfare Act 1999 in the Racing Industries	157
4.5	Conclusion	188
	GLOSSARY	189

Executive Summary

Our research

- Our research focuses on answering the question of whether New Zealand's animal welfare system, which, in theory, is world-leading, is adequately and appropriately enforced in practice.
- Our research has adopted a legally conservative approach. We have accepted the validity of the Animal Welfare Act 1999 (the Act), its main surrounding policy and the role of the Ministry for Primary Industries (MPI) and the Royal Society for the Prevention of Cruelty to Animals (RNZSPCA) in the enforcement of the Act.
- This approach provides a broadly politically and legally acceptable foundation for the research, even if there is remaining disagreement about aspects of the substance of the Act and its enforcement.
- Our research has engaged in a high-level systemic analysis of animal welfare enforcement in New Zealand. It evaluates enforcement of the Act generally, but specifically the functioning of the MPI animal welfare compliance arm (which includes animal welfare inspectors (AWIs) and Crown prosecutors) and the RNZSPCA as an approved organisation under the Act.
- The research is also concerned with identifying whether there are any gaps in the compliance, enforcement and oversight of the Act, which could leave animals protected by the Act – and those in charge of them who are subject to the Act – in theory, outside its reach in practice.
- A limitation of the analysis is that it excludes Part 6 of the Act, which concerns use of animals in Research, Testing and Teaching, and wild animals. Each deserve separate substantive analysis and not necessarily involve the same issues that apply to production and companion animals.

The Animal Welfare Act 1999

- The Act designates a range of bodies that have responsibility for the operation and enforcement of the Act: MPI, the RNZSPCA and the Police all have that capacity and responsibility; whilst NAWAC, NAEAC, the Director-General of MPI and the Minister of Agriculture all have roles to play in the setting of codes, standards and regulations.
- The Act also creates a hierarchy of offences: those relating to ill-treatment of animals, the care of animals and finally, a new range of infringement offences.

Together, it provides a framework for the care and protection of animals in New Zealand.

The practical enforcement of the Act

- MPI and RNZSPCA are the primary enforcement agencies: both can enforce the Act. A memorandum of understanding (MOU) between the agencies facilitates the rough division of jurisdiction. MPI receives and acts upon complaints relating to production animals; RNZSPCA receives and acts upon complaints relating to companion animals.
- Supplementing the MOU is the Performance and Technical Standards (PTS) for RNZSPCA animal welfare inspectors (AWIs). Combined, the MOU and the PTS are valuable policy documents that ensure theoretical consistency in approaches by AWIs across the two agencies.
- The Act and MOU provide for the auditing of RNZSPCA by MPI to ensure compliance with the MOU and PTS; the effectiveness of those audits and the uptake of their recommendations is limited.
- The RNZSPCA has successfully engaged with a number of other community and government agencies to increase the effectiveness of its enforcement and protection function.
- There are a range of enforcement options available to both MPI and RNZSPCA. Those include verbal advice, warnings, enforcement orders, infringement notices and prosecution. The introduction of a new suite of regulatory offences for low-level offending under the Animal Welfare (Care and Procedures) Regulations 2018 has enhanced those options considerably, and MPI has issued a number of infringement notices since the introduction of those regulations.
- Prosecutions of animal welfare offences are rare. Less than 1 per cent of complaints received by either agency are prosecuted. While many complaints are not substantiated or lead to other enforcement action, this is still far lower than enforcement rates in other areas of the criminal law.
- Resource constraints prevent more prosecutions occurring. This means that only the most egregious breaches of the Act lead to prosecutorial action.
- Oversight and enforcement of the Act with regards to animals in entertainment industries is often conducted by the industries themselves. While each industry we have examined – rodeo and racing – has its own rules and disciplinary procedures, they often only deal with animal welfare indirectly and often without much cohesion with the Act.

Issues that arise in the enforcement of the Act

- In undertaking our research – largely based on requests under the Official Information Act 1982 – we saw no reason to conclude that MPI and RNZSPCA are not generally using the resources that they have effectively and efficiently for enforcement purposes.
- The level of response to complaints indicates that under-resourcing of the animal welfare enforcement system in New Zealand is a major constraint on realising the legal potential of the Act. Both MPI and RNZSPCA are insufficiently resourced, and this results in overly selective enforcement, under-prosecution, insufficient proactive enforcement and inadequate self-regulation.
- Significant reliance on reactive enforcement, triggered by public compliance monitoring is problematic, introducing error, inefficiency and under-reporting.
- Self-regulation, such as self-monitoring of compliance by rodeo and animal racing industries, appears to have filled the gap that under-resourcing has created. This is inadequate. It creates confusion with parallel enforcement systems and standards, and there is insufficient independent oversight.
- The relationship between MPI and RNZSPCA has improved, due to the agreement to the MOU, creation of robust policy relating to enforcement performance, and introduction of MPI auditing powers in the Act. Collectively, these promote higher standards of enforcement and create consistency across the many RNZSPCA centres.
- The effectiveness of MPI audits of RNZSPCA are hampered by their limited scope, and likely by insufficient resources in both organisations for this important oversight and quality improvement function. Increased funding for this purpose would improve both their effectiveness and efficiency by permitting a more “system-wide” view and response.
- Public inquiry into and oversight of RNZSPCA is possible through the Official Information Act 1982, but only indirectly via information held by MPI. Although the lack of state funding of RNZSPCA and its status as a charity provide some justification for this, it is inadequate.
- With respect to its enforcement role, which vests significant powers and duties in the RNZSPCA, there is currently insufficient oversight and accountability for the RNZSPCA.

The values informing our recommendations

- Central values underpinning our recommendations are uncontroversial and should be agreed to from a range of reasonable viewpoints. They are: animal welfare; political and distributive justice; and legal justice. These values and their associated principles are *pro tanto* – they count in favour of an action but are not absolute and may be outweighed.

- Animal welfare: we have reason to benefit animals and not to harm them.
 - Political representation: The welfare of animals deserves independent, dedicated representation.
 - Distributive justice: Animals have a claim to a fair share of state resources to support their welfare.
 - Legal justice: Animals are entitled to the welfare protections provided for in the Act.
- The recommendations of this report further these values and aim to address the issues identified in the report.

Our recommendations

- We recommend an increase in state resourcing for enforcement of the Act, specifically an increase in funding for both MPI and RNZSPCA.
- We recommend that the increase in funding for RNZSPCA be devoted solely to its enforcement functions and increased oversight and accountability for these functions.
- We recommend that there be a Public or Government Inquiry into the adequacy of animal welfare enforcement in New Zealand. Among other things, it should address the level of public funding provided to animal welfare enforcement.
- We recommend the establishment of an independent Office of the Commissioner for Animals in New Zealand.

1. Preliminaries

1.1 Rationale and Approach

The passing of the Animal Welfare Act in 1999 (the Act) was a historic achievement. It was a radical reform to the limited anti-cruelty protections that animals were entitled to under the Animal Protection Act 1960, instituting and enforcing responsibilities of those in charge of animals to care for their welfare. The many amendments made to the 1999 Act since have clarified, intensified and augmented these protections for animal welfare, reaffirming the core obligations contained in the Act.

The research in this report is legally conservative. It takes the Act and its amendments as settled law resulting from a robust democratic process. Taking law and democratic process seriously entails a commitment by the body politic to the full and robust implementation and enforcement of laws. It is reasonable for the polity to expect that this is done (even if those who disagree with settled law may regret that this commitment is fulfilled).

In the context of the Act, this implementation is a large and complex process, given the scale and diversity of animal use in New Zealand, the number and diversity of actors involved and the unique political, ethical and social standing of animals. It is important to take stock of the implementation across these to establish, in broad terms, how well New Zealand is giving effect to the values and legal commitments embodied in the Act. That is the main aim of this research.

To say that this research is legally conservative is to say that it accepts – does not seek to abolish or reform – the Act and associated policy, codes of welfare (COWs) or regulations under Act. Instead, the research focuses on how these codes, regulations and policies, where they are present, are used to protect animals through the enforcement mechanisms contained in the Act. That means that this research focuses on evaluating the functioning of the Ministry for Primary Industries' (MPI) animal welfare compliance arm (which includes animal welfare inspectors (AWIs) and Crown prosecutors) and the approved organisations (AOs) under the Act, the only current one being the Royal New Zealand Society for the Prevention of Cruelty to Animals (RNZSPCA). The research is also concerned with identifying whether there are any gaps in the compliance, enforcement and oversight functions of the Act, which could leave animals protected by the Act and those in charge of them subject to the Act outside the reach of compliance, enforcement and oversight functions.

Our methodology has been straightforward. We have used publicly accessible information – eg, legislation, case law, policy statements, annual reports and other public statements – and also documents and data requested from the core enforcement agencies: MPI and the RNZSPCA. In terms of MPI, those requests were under the Official Information Act 1982. The RNZSPCA is not bound by the Official Information Act, but still provided a significant amount of information to us. Information requested included enforcement statistics and the procedures that each agency uses to engage in animal welfare enforcement (and also communicate with each other).

It is important not only to explain but also to justify the approach taken in this research. Our conservative approach uses as foundation a democratically sound and procedurally legitimate piece of legislation, which has stood the test of time. Criticisms of the Act have had ample opportunity to be voiced, and some of these have been responded to in amendments to the Act. These amendments to the Act have largely had time to be implemented, and incorporation and implementation of the most recent amendments is underway. This is a broadly politically and legally acceptable foundation for the research, even if there is remaining disagreement about aspects of the substance of the Act. An analogy is that the passing of a law is like the playing of a game. Ideally, all the players are rational in that they agree to the rules at the start of the game, play by these rules and accept the outcome of the game, even if this means that some are disappointed they did not get their preferred result.

The Act is also not ethically loaded. It does not include any commitment to specific accounts of our ethical obligations to animals or their moral status. These are matters that there is significant disagreement about, both academically and in society. Our research does not affirm or endorse any particular ethical stance regarding animals and their relationship to humans. It is an ethically neutral analysis in that regard. Our reasoning and conclusions are therefore not conditional on the truth about these matters (ie, what is the right ethical account of our obligations to animals and their moral status?) Acceptance of our reasoning and conclusions is therefore not conditional on the acceptance of any particular ethical view and its imposition through law. This does not necessarily suffuse the analysis with moral agreement, although it does afford the opportunity for agreement with the analysis from different ethical stances. Often those who disagree about ethical orientations can nevertheless agree about policy matters, albeit for different ethical reasons.¹ And among reasonable comprehensive doctrines (ie, philosophical, religious, moral doctrines) held in society an overlapping consensus on political values and public policy is often possible.² Our method aims to preserve as much of this potential for agreement as possible and to

¹ Cass Sunstein terms this “incompletely theorised agreement” – see Cass R Sunstein “Incompletely Theorized Agreements” (1995) 108 (7) Harv L Rev 1733.

² John Rawls “The Idea of an Overlapping Consensus” (1987) 7(1) Oxford J Leg St 1.

minimise the moral disagreement that could otherwise undermine the analysis or the effectiveness of the resulting recommendations.

Collectively, this means that our approach seeks as close to a consensus about its central values as possible. Dissensus about our legal-political stance (acceptance of the Act and its main surrounding instruments), and about ethical obligations, is minimised where possible. Political philosopher Jonathan Wolff has argued that this type of approach is the most effective way to contribute to the advancement of social policy.³

Despite the advantages we argue our approach provides, it still faces reasonable objections. As a piece of conservative analysis, it can be objected that it conserves disvalue in the law. Perhaps there are parts of the law that do not reflect the values of society or ought to be improved for other reasons. Perhaps these flaws are so great that the law ought to be repealed and replaced with some other, better instrument(s). These may be perfectly reasonable positions to reach from a radical analysis, and such an analysis is valuable. It can help to clarify what is at stake, what values are operational in the domain of animal law and possible ways of pursuing those values.

In response to this, we accept that our approach can conserve some disvalue in the law. However, it does so in order to advance value elsewhere – specifically, in the application of the law. By examining this aspect of the Act, we seek to extract as much value from it as possible. Furthermore, it is arguably more likely that value can be advanced through this route than through a more radical one, hence our choice of this method. If the Act is bad through and through, then our approach would be pernicious; it would make a bad thing worse. Our view, however, is that the Act is not irredeemably bad, and so we do not face this problem.

1.2 Scope and Limitations

The Act is a complex piece of legislation, which establishes different systems of oversight and compliance for animals used in research, teaching and testing, compared to companion, production and other animals. To keep this project manageable, we have limited its scope by not addressing the implementation of the Act for animals' use in research, teaching and testing. That would amount to a major piece of research of equal scale to the present work, which could raise both similar and distinctly different issues. The research also does not include wild animals, which also raises different issues. We may extend this work to include both of these important areas in the future.

³ Jonathan Wolff *Ethics and Public Policy: A Philosophical Inquiry* (Routledge, Abingdon, 2011) at 5.

The nature of our methodology has necessarily limited the scope of our work. Since we worked from existing documentation (publicly accessible or otherwise), and not, for example, interviews with key personnel, we remain unaware of systemic or structural changes to the agencies that might affect our conclusions. We understand, for example, the MPI plans to undergo restructuring that will affect its animal welfare enforcement systems and RNZSPCA has undergone a national amalgamation that will have lasting effects on its enforcement functions. Nevertheless, we believe our research has credence. Our conclusions are based on a snapshot in time: it reveals the enforcement systems that were in place, and we do not believe that any changes that have occurred can completely respond to the systemic deficiencies we have outlined.

Our analysis and argument also focuses on the compliance and oversight functions contained in the Act, and how they are being fulfilled. This is to focus on the ways use of animals is controlled and adjudicated by those with these specific functions. This coercively influences the ways animals are treated, which is why it is a mechanism for protecting and improving their welfare. However, the ways animals are treated is not solely determined by the compliance and enforcement function.⁴ Another analysis could instead have focused primarily on how animals are treated, which would have raised different considerations, such as characterising this treatment, how those in charge of animals respond to compliance and enforcement activities, and what, besides regulation, affects how people treat animals they are in charge of. Although we agree this would be a valuable approach, we do not believe our analysis is limited significantly by not engaging with these considerations. The adequacy with which compliance and oversight functions contained in the Act are performed is a valuable focus in its own right.

On occasion our analysis makes use of examples of material from animal advocacy organisations. A concern that can arise from this is that our analysis may be biased by use of such examples. We approach this information, as we do all information, critically in an effort to reduce any bias that may be present. We also note that it is difficult to find a source of information that is immune to accusations of bias from any stakeholder in the topic we discuss, whether that be animal advocacy organisations, or those with compliance and oversight functions such as MPI, or the RNZSPCA – the latter being in the perhaps invidious situation of having both compliance and oversight functions. This supports a conclusion we reach in this report, which is that more independence is needed in our animal welfare protection system. One of the benefits of this would be the generation of information that is not readily accused of bias.

⁴ We thank Mark Fisher for suggesting this consideration.

1.3 Structure

In this part, we have outlined the preliminaries necessary for this report. We have outlined the scope of our research: taking a conservative approach and accepting the normative validity of legal framework for animal welfare, we have concentrated our analysis on the Act, to the extent that it applies to companion and production animals, deliberately excluding those animals involved in research, testing and teaching and those animals in the wild.

In Appendix 1, we have provided granular detail about how the Act regulates animal welfare in relation to production and companion animals. The Act designates a range of bodies that have responsibility for the operation and enforcement of the Act: MPI, the RNZSPCA and the Police all have a role to play in the enforcement of the Act; whilst NAWAC, NAEAC, the Director-General of MPI and the Minister of Agriculture all have roles to play in the setting of codes, standards and regulations. The Act also creates a hierarchy of offences: those relating to ill-treatment of animals, the care of animals and finally, a new range of infringement offences. Together, it provides a framework for the care and protection of animals in New Zealand.

It is, however, the enforcement by approved organisations – and the oversight of those organisations – that was the focus of our research. The practical implementation of the Act requires a range of policies and operational protocols. None of these policies and protocols have formal legal status, and yet all are absolutely crucial to the successful operation of both the Act and the authorities that have responsibility for its implementation. In Appendix 2, we detail those policies, providing a full picture of animal welfare enforcement systems in New Zealand.

In the next part of the report, we will move from a descriptive analysis of those systems to a normative, critical analysis. We will seek to highlight the three important issues we have identified in the systems described: a lack of resourcing, a lack of oversight and finally, gaps where self-regulation filling the void more properly the domain of public bodies. All of these issues combine to lead to an animal welfare enforcement system that is reactive rather than proactive and is in urgent need of reform.

2. Issues in New Zealand’s Animal Welfare Enforcement System

In the appendices to this report, we have outlined the various systems that exist to oversee and enforce New Zealand’s animal welfare legislation. The systems that exist are complex: there is a rough division between MPI and the RNZSPCA of enforcement responsibilities for production and companion animals respectively, and whilst the MOU between the agencies eases the tension between that division, it is clear that structural deficiencies remain. Moreover, beyond production and companion animals, systems for enforcement in industries that largely self-regulate – racing and rodeo – creates even further duplication. That core structural issue – different agencies having responsibility for the enforcement of animal welfare legislation – is exacerbated by systemic under-resourcing and accountability issues in the sector. In this part, we discuss those systemic resourcing and accountability deficits in the system and how they lead to a lack of oversight of animal welfare enforcement.

2.1 Deficiencies

2.1.1 Under-Resourcing of the Sector

In his review of New Zealand’s Animal Welfare Act 1999 in 2004, Sankoff observed:⁵

... a legal regime is only as effective as the resources put in place to enforce it; a fact at the heart of the [Animal Welfare Act 1999’s] failure to adequately police crimes ...

In his analysis of the animal welfare debate in 2008, Beatson made a similar comment:⁶

...even if this country’s animal welfare legislation and its associated regulatory framework may be one of the best in the world in principle, [a lack of resources means] it is manifestly unable to enforce compliance to its own enlightened spirit.

In our view, resourcing unfortunately remains the most significant deficiency in the animal welfare enforcement system.

⁵ Peter Sankoff “Five Years of the ‘New’ Animal Welfare Regime: Lessons Learned from New Zealand’s Decision to Modernize its Animal Welfare Legislation” (2005) 11 Animal L 7 at 25.

⁶ Peter Beatson “Falls the Shadow: The Animal Welfare Debate in New Zealand” (Paper presented to New Zealand Law Commission) 28 August 2008 at 16.

2.1.1.1 Resourcing of MPI

MPI is to receive total annual and permanent appropriations of \$660 million in its allocated budget for the 2018/19 financial year.⁷ Of this amount, \$10.8 million, or 1.6 per cent, has been allocated to all aspects of animal welfare enforcement, education and policy advice.⁸ To put this level of resourcing into context, New Zealand earns more than \$21 billion per annum from animal-based export products.⁹ As at October 2018, this allocation has funded a total of 22 dedicated MPI AWIs and around 200 veterinarians who provide verification services for market access requirements and who are also cross-warranted as AWIs to oversee welfare after transportation and at slaughter.¹⁰ With more than 150 million agricultural animals in New Zealand, this equates to over 575,000 animals per Inspector.¹¹ As we note below in Appendix 2, in 2018 those resources allowed MPI to recommend prosecution in 26 cases (or two per cent) of the 1,190 complaints it received.¹² Sankoff's observation in 2004 that "its charging rate is miniscule" remains relevant today, as does the observation that MPI "has also shown a conservative disposition and a reluctance to prosecute unless the facts of the case are truly egregious".¹³ Our analysis in Appendix 2 shows that prosecutions remain low and are only ever initiated where there is a particular degree of severity involved.¹⁴

2.1.1.2 Resourcing of RNZSPCA

In 2017–2018, the RNZSPCA inspectorate cost more than \$9 million to run¹⁵ and received \$400,000 from the government.¹⁶ Practically speaking, in 2017–2018, this

⁷ The Treasury *Budget 2018: The Estimates of Appropriations for the Government of New Zealand for the Year Ending 30 June 2019: Primary Sector* (B.5 vol 9, 17 May 2018) at 10.

⁸ At 10.

⁹ Catriona MacLennan "Animals need dedicated watchdog" *The New Zealand Herald* (online ed, Auckland, 10 July 2014).

¹⁰ Email from Samantha Rickard (Adviser, Official Information Act, Officer of the Director-General, Ministerial and Business Support, Ministry for Primary Industries) to Elisabeth Larsen (Assistant Research Fellow), regarding "Your Official Information Act Request - Reference OIA17-0498" (18 October 2017); and letter attached from Stephanie Rowe (Director, Compliance Services, Ministry for Primary Industries) to Elisabeth Larsen (Assistant Research Fellow), regarding "OFFICIAL INFORMATION ACT REQUEST" (18 October 2017) at 1.3 and 4.2.

¹¹ Animal Agenda Aotearoa "#9 Commissioner for Animals" (2017) Animal Agenda Aotearoa 2017 <www.animalagenda2017.org.nz>.

¹² Letter from Stephanie Rowe (Director, Compliance Services, Ministry for Primary Industries) to Marcelo Rodriguez Ferrere, regarding "OFFICIAL INFORMATION ACT REQUEST OIA18-880" (31 January 2019).

¹³ Sankoff, above n 5, at 27.

¹⁴ See Appendix 2 below at 4.3.5.

¹⁵ RNZSPCA *Annual Report 2017–2018* (October 2018) at 4.

¹⁶ At 4. This amount was received by the RNZSPCA overall; it is unclear how much is allocated to the inspectorate itself.

meant that the RNZSPCA had 76 AWIs,¹⁷ and as discussed in Appendix 2 below, it responded to 15,584 complaints in 2017–2018,¹⁸ which led to 62 formal prosecutions (0.4 per cent of complaints received) in the same period.¹⁹ These figures represent a slight increase from 2011 figures, when Duffield noted that “the SPCA received 13,089 complaints from the public about mistreated animals, yet only initiated 35 prosecutions ... less than 0.27 per cent of complaints led to prosecutions”.²⁰ They are also roughly in line with equivalent jurisdictions that take the same approach to enforcement of animal welfare. In Queensland, for example, which has a similar population to New Zealand, enforcement of its Animal Care and Protection Act 2001 is split between Biosecurity Queensland and the Royal Society for the Prevention of Cruelty to Animals Australia (RSPCA), once again with the former having jurisdiction over production animals and the latter over companion animals.²¹ In 2018, RSPCA Queensland had 20 full-time inspectors,²² received 17,929 complaints (107 of which led to prosecution, or 0.6 per cent),²³ and had a budget of 3.8 million AUD.²⁴ On a national level in Australia, as Walker-Munro notes from his analysis:²⁵

The RSPCA in every State is a non-government community-based charity that relies almost solely on fundraising and donations to fund its operations. This funding model seems prima facie inappropriate when the cost of funding a single RSPCA Inspector can be as much as \$100,000.

The complex mechanics, immense resources and skill of legal argument required for criminal prosecution where ‘... an accusatorial process in which the power of the State is deployed against an individual accused of crime’ is likewise ill-suited to the RSPCA. By way of demonstration, in 2013-14 RSPCA Australia reported investigating 58,591 complaints of animal cruelty nationwide but only 236 matters were prosecuted with 230 ultimately successful (in that the principal or head charges as alleged were admitted to or subsequently proven at trial). Although this prosecutorial success rate (nearly 97.5%) is certainly enviable, criminal prosecutions make up less than half of one percent of the RSPCA’s enforcement outcomes.

¹⁷ RNZSPCA “Prevent cruelty & educate” <www.spca.nz> at SPCA Inspectors, field officers and community vet nurses.

¹⁸ RNZSPCA “Let’s give them a better life” <www.spca.nz> at How we make a difference.

¹⁹ RNZSPCA *Annual Report 2016* at 2.

²⁰ Danielle Duffield “The enforcement of animal welfare offences and the viability of an infringement regime as a strategy for reform” (2013) NZULR 897 at 910.

²¹ Business Queensland “Enforcing the Animal Care and Protection Act” <www.business.qld.gov.au>.

²² RSPCA Queensland “Inspectorate” <www.rspcaqld.org.au>.

²³ RSPCA Queensland, above n 22.

²⁴ RSPCA Queensland *Annual Report 2017-2018* at 8.

²⁵ Brendan Walker-Munro “Cattle v The Crown: Is there a place for the Commonwealth as Animal Welfare Guardian?” (2015) 34 UQLJ 381.

Any slight differences over time or between jurisdictions are essentially insignificant: the proportions are all significantly lower than the usual prosecution rate for criminal offending,²⁶ and all reveal the same structural deficiency of under-resourcing.

2.1.1.3 The Impact of Infringement Offences

While under-resourcing has persisted as an issue throughout the existence of the Animal Welfare Act 1999, 2015 amending legislation – which allowed the introduction of infringement offences through Animal Welfare (Care and Control Regulations) 2018 – has had an impact.²⁷ Of the 1,190 complaints received by MPI in 2018, 245 led to infringement notices being issued, double that in 2017.²⁸ This is 20.5 per cent of all complaints received, significantly higher than the prosecution rate in the parent Act. In her 2013 article, Duffield argued for the introduction of such an infringement offence regime, noting that given their limited resources, an additional, inexpensive enforcement mechanism would allow for both MPI and SPCA to investigate and pursue more animal welfare offending, not only ensuring improved enforcement but also having a general deterrent effect.²⁹ As she identifies:³⁰

... in a charity-based enforcement model in which resources are so precious, even small savings are significant. In particular, by enabling the most minor forms of offending to be addressed by infringements, the SPCA would be able to focus its prosecutorial resources on the most serious forms of offending. This may make it more manageable to prosecute large-scale commercial neglect cases that are often resource-intensive and financially burdensome.

Whilst acknowledging that infringement offences cover low to medium level offending that would not likely lead to prosecution, it is unclear whether the introduction of infringement offences has freed resources for more large-scale or complex prosecutions, since RNZSPCA data is unavailable. Certainly, the static prosecution rate for MPI despite the significant increase in infringement notices would suggest that this effect is not occurring in that agency. The potential for such a shift in resources is further stymied by the fact that the revenue from fines for infringement offences do not go to the prosecuting agency and instead go into the government's

²⁶ Duffield, above n 20, at 911.

²⁷ The Animal Welfare Amendment Act (No. 2) 2015 created a new provision – s 183A of the Animal Welfare Act 1999 – to allow the promulgation of such regulations.

²⁸ Letter from Stephanie Rowe, above n 12. The Animal Welfare (Young Calves) Regulations 2016 completely came into force between 1 August 2016 and 1 August 2017 (reg 2). A smaller number of infringement offences existed before 2016 but were rarely, often never, enforced.

²⁹ Duffield, above n 20, at 920–923.

³⁰ At 924.

consolidated fund, meaning the increase in revenue for the RNZSPCA that Duffield predicted has not been forthcoming.³¹

Moreover, while the introduction of a new range of infringement offences is a welcome addition to the suite of enforcement mechanisms, there is a danger that the cost-effectiveness of their enforcement means they could act as a substitute for the more expensive process of charging an offender with a more serious offence under the principal Animal Welfare Act. Duffield notes that the risk of the substitution effect is that:³²

... by reducing the penalty level and the possibility of conviction, the deterrent force of the law may be reduced when a particular matter is addressed administratively rather than judicially. This may lead to lower levels of compliance with the law and to higher levels of re-offending than would otherwise be the case.

Accordingly, MPI's increased use of infringement notices – and the willingness to enforce the law this demonstrates – whilst prosecution rates remain essentially static, underlines the under-resourcing of the sector and shows its systemic deficiencies. Not only does animal welfare offending go undetected due to a lack of funding for AWIs, but the use of infringement notices potentially substituting prosecutions where the latter is more appropriate has the pernicious effect of diminishing the social opprobrium associated with animal welfare offending and thus undermines the general deterrent effect such infringement offences were intended to promote. It is for these reasons that our research shows such under-resourcing remains a persistent but significant issue for animal welfare enforcement in New Zealand.

2.1.2 Reactive Enforcement

The direct effect of the under-resourcing of the sector is that neither MPI nor the RNZSPCA have the capacity to engage in proactive enforcement. Instead, both agencies rely upon reactive enforcement through public compliance monitoring (ie, complaints and reporting of offending from the public) and industry self-regulation (ie industry monitoring its own compliance with the law). This reliance upon reactive enforcement has led to significant gaps in the oversight of animal welfare in New Zealand.

2.1.2.1 The Problem with Public Compliance Monitoring

³¹ At 924–925; Ministry for Primary Industries *Animal Welfare Regulations 2017: Regulatory Impact Statement* (July 2017) at 30; and Animal Welfare Act 1999, s 163.

³² Duffield, above n 20, at 926.

The increase in complaints to MPI and RNZSPCA detailed above indicates that public compliance monitoring of animal welfare offending has improved in recent years – a phenomenon that RNZSPCA CEO Andrea Midgen has noted is “a really positive thing because I think people are starting to understand what is OK and what’s not OK and so they’re reporting more, which is a good thing”.³³ However, while public compliance monitoring forms an integral part of any criminal justice system, it is insufficient as a sole source for the detection of offending. Nationally, Ministry of Justice data shows that 68 per cent of criminal offending goes unreported to Police.³⁴ Given the reasons for the lack of reporting were often victim-centric – ie, the victim thought the crime was not sufficiently serious or did not perceive the offending as criminal – and the data relied upon victims self-identifying that they had not reported criminal offending, the level of unreported offending against animals is likely to be significantly higher and near impossible to calculate.³⁵

Beyond the “sociology of denial” peculiar to animal welfare offending that allows the public to exhibit wilful blindness when confronted by it³⁶ and the fact that, especially in rural communities, it is easier for those in charge of animals to conceal offending, even when offending is detected, there are many reasons why the public – and even AWIs – may elect not to report animal welfare concerns. For example, a RNZSPCA AWI, in responding to a complaint from a woman that her dog had a very bad skin condition, found that both the dog and the woman were being abused. The inspector stated that ensuring the woman’s safety conflicted with her ability to document the condition of the dog, and she did not elect to take a photo to document the dog’s condition because she “didn’t want to run the risk [of the woman being beaten for reporting the dog’s skin condition]”.³⁷ Those involved in care of production animals include members of staff who may risk their livelihood in reporting their concerns, and whistleblowers “have received death threats from farmers as a result of contacting MPI”.³⁸ While there are examples of current staff members reporting their concerns about a pet shop,³⁹ it is typically volunteer or former staff who make complaints.⁴⁰ Furthermore, when animal wranglers employed on the set of films reported the deaths

³³ TVNZ “Increase in animal abuse complaints due to vigilant Kiwis reporting unacceptable behaviour – SPCA” (9 September 2018) One News Now <www.tvnz.co.nz/one-news/>.

³⁴ Ministry of Justice *2014 New Zealand Crime and Safety Survey: Main Findings* (2015) at 4.

³⁵ At 110.

³⁶ Diedre Wicks “Silence and Denial in Everyday Life—The Case of Animal Suffering” (2011) 1 *Animals* 186.

³⁷ Jasmine Gillespie-Grey “Women and their fur-babies: leaving family violence together” (MSc Thesis, Massey University, 2017) at 101.

³⁸ Esther Taunton “Call for action after animal abuse whistle-blowers report death threats” (16 August 2018) Stuff <www.stuff.co.nz>.

³⁹ Cecile Meier “Animal welfare probe into pet-store chain” *The Sunday Star Times* (online ed, Auckland, 2 November 2014).

⁴⁰ Libby Middlebrook “Concerns prompt SPCA probe into zoo” *Sunday Star Times* (Auckland, 29 August 2004) at A:4 as cited in Catherine Amey *Clean, green, and cruelty free: The true story of animals in New Zealand* (Rebel Press, Wellington, 2008) at 84.

of animals used in filming due to their maltreatment, they did so anonymously so as not to risk future employment in the industry. One member of staff was dismissed for arguing with their employer about the treatment of the animals.⁴¹ Improvements to increase detection of animal welfare offending in situations of domestic violence – such as those suggested by the “Pets as Pawns” study and the First Strike Working Group, detailed in Appendix 2 – or to allow for better protection for whistleblowers are laudable, but they do not address the core of the issue, namely that it still relies upon public compliance monitoring.

Compounding the issues associated with reactive enforcement is that members of the public are not well-placed to make expert assessments of the welfare of animals, let alone assess that welfare against standards established by NAWAC in COWs. In this respect, it is notable that the percentage of welfare breaches detected from public complaints received by the RNZSPCA varied from 30–54 per cent over the period of 2013–2016.⁴² In 2017–2018, only 35 per cent of complaints to MPI indicated an offence, with 25 per cent of complaints referring to treatment that was above minimum standards contained in a COW.⁴³ These odds reveal significant error, error that would not be present in a system of proactive enforcement. Moreover, there is a risk that a dismissal of complaints on this basis will discourage complainants from reacting to perceived animal welfare offending, only exacerbating the problem of under-reporting.

2.1.2.2 The Problem with Self-Regulation

Whilst the deficiencies of public compliance monitoring affect animal welfare offending against companion and production animals, an altogether different set of problems affect animals used for entertainment. Such unique problems are highlighted by the RNZSPCA’s position on rodeo:⁴⁴

The SPCA is opposed to any event which inflicts pain, distress, fear or suffering on any animal. Sometimes SPCA officers must be present at rodeos to monitor the event but the inspectors can only enforce the Animal Welfare Act 1999 and currently rodeo is legal. However, our organisation believes that rodeo is unacceptable cruelty and should not be legal so we are advocating for a total ban on animal events in rodeos.

⁴¹ Nick Perry “Hobbit animal welfare concerns ‘ignored’” *Waikato Times* (online ed, Waikato, 20 November 2012).

⁴² Email from Arnja Dale (Chief Scientific Officer, Animal Welfare Science and Education, Royal New Zealand Society for the Prevention of Cruelty to Animals) to Marcelo Rodriguez Ferrere, Mike King and Elisabeth Larsen (*Animal Welfare Law in New Zealand: Oversight, compliance, and enforcement*) regarding “Letter: Request for complaints data - Animal Welfare Law in New Zealand: oversight, compliance and enforcement research project” (13 November 2017).

⁴³ Letter from Stephanie Rowe, above n 12.

⁴⁴ RNZSPCA “The cruelty of rodeos” <www.sPCA.nz>.

Thus, the RNZSPCA is charged with enforcement of animal welfare legislation in events it is actively seeking to ban. As noted above, the NZVA strongly supports MPI investigating animal welfare complaints about rodeos and supports measures to support compliance with the Rodeo COW,⁴⁵ but MPI, for its part, has admitted that the current COWs were difficult to enforce, relying upon promulgation of the Animal Welfare (Care and Procedures) Regulations 2018 as a response to this concern.⁴⁶ However, the Regulations only contain one rodeo-specific provision – a prohibition on fireworks⁴⁷ – and thus while there have been no shortage of complaints against rodeo, the first prosecution for offending against the Act in over a decade was filed by the NZALA – a private organisation.⁴⁸

Different issues are present in the racing industries, all of which are almost entirely self-regulated, in that enforce their own animal welfare standards. Whereas rodeo receives significant public opprobrium and negative social attention, there has been less scrutiny from the public against the three forms of racing present in New Zealand. Our analysis in Appendix 2 shows instead that self-regulation has led to almost completely absent external oversight of animal welfare compliance. For example, GRNZ has acknowledged itself that the absence of any prosecutions may have a connection to a lack of formal minimum standards of welfare approved by any external welfare bodies and the consequent lack of enforcement – and awareness – of welfare standards.⁴⁹ There remains no formal agreements between greyhound racing industry bodies and the NZVA, RNZSPCA, MPI or NAWAC.⁵⁰ In contrast to its position on rodeo, the RNZSPCA has decided not to push for a ban on greyhound racing, meaning there is little external pressure from enforcement agencies to improve this position.⁵¹ Charged with the responsibility of enforcing the Act, it is arguably the enforcement agencies' responsibility to advocate for reform that better ensures compliance with the Act.

⁴⁵ New Zealand Veterinary Association “Rodeo” (1 June 2016) <www.nzva.org.nz>.

⁴⁶ Zac Fleming “MPI investigating claims of animal abuse at rodeo” (23 January 2017) Radio New Zealand <www.radionz.co.nz>.

⁴⁷ Animal Welfare (Care and Procedures) Regulations 2018, reg 46.

⁴⁸ See Appendix 2, 4.4.2.3.2.

⁴⁹ *Greyhound Racing New Zealand Annual Report 2013: Reflecting on a Great Year* (2013) at What the review said: Care and Welfare of Racing Greyhounds, 39.

⁵⁰ John Hellstrom *NAWAC report on New Zealand Greyhound Racing Association Incorporated's implementation of greyhound welfare reforms to date* (Ministry for Primary Industries, 30 August 2016) at Organisation and Strategy, 7–8.

⁵¹ Radio New Zealand “SPCA won't push for NZ greyhound racing ban” (8 July 2016) <www.radionz.co.nz/news/>.

In contrast, as noted in Appendix 2 below, the RNZSPCA does have an MOU with both NZTR and HRNZ⁵² and has stated its relative lack of concern regarding horse racing.⁵³

There was a time, some 30 or 40 years ago, when [the RNZSPCA] used to go to every horse race because the treatment was so poor. But we don't ever need to do that now as the industry looks after their horses so well.

However, there is also a lack of cohesion between NZTR and HRNZ's welfare guidelines and the relevant COWs for both horses and transport, and while, for example, HRNZ's policy refers to the consequences of breaching provisions of the Animal Welfare Act,⁵⁴ there is a risk that any disciplinary action that results acts as a substitute – rather than a complement – to enforcement of the Act by MPI or RNZSPCA. The lack of any prosecutions against the industry, despite a multitude of internal disciplinary proceedings, is evidence of this risk.

Thus, the gaps that result from a system of reactive enforcement become acute when animals are used in industries that self-regulate their welfare. In both the rodeo and racing industries above, in the absence of any complaints, and in the presence of a parallel system of enforcement, there is both unwillingness by and incapacity of MPI and RNZSPCA to appropriately enforce animal welfare standards in these sectors. These are simply symptoms of systemic problems that afflict the enforcement of companion and production animal welfare; and shows that a system of reactive enforcement due to under-resourcing of the sector is deeply problematic.

None of the foregoing should be read as criticising the performance of MPI and the RNZSPCA. Given the limited resources they receive, the work their inspectors do is remarkable. Our core conclusion, however, is that the system and its actors are not reaching their potential: with increased resources, and a focus on proactive enforcement, the agencies would have the ability to continue and further this good work and effectively discharge their responsibilities under the Act.

2.1.3 Oversight and Accountability

While the under-resourcing of the sector that was identified in 2.1.2 above causes reactive enforcement, it instead exacerbates the peculiar institutional and jurisdictional split in animal welfare enforcement in New Zealand. While the problems

⁵² *New Zealand Thoroughbred Racing Business Plan 2013–2015* at 14.

⁵³ Liam Hyslop "NZ racing industry not cruel to horses - SPCA" (5 November 2014) Stuff <www.stuff.co.nz>.

⁵⁴ *Harness Racing New Zealand (HRNZ) Animal Welfare Policy* (17 April 2013) at Application, 2.

caused by the division between MPI and RNZSPCA have improved significantly in recent years, systemic problems remain.

2.1.3.1 Improvements in the Relationship between MPI and RNZSPCA

Writing in 2005, Sankoff noted two systemic problems with the jurisdictional split between MPI (or MAF as it then was) and RNZSPCA:⁵⁵

First, the two sides do not share resources, legal knowledge, or any type of organizational structure. While there is certainly some informal contact between the two, no attempt appears to have been made by either side to pool knowledge to expand operations. For reasons that are not entirely clear, each side retains full organizational autonomy and jealously guards its information.

The problem is compounded by the loose internal structure of the SPCA. The national organization, the Royal New Zealand Society for the Prevention of Cruelty to Animals, theoretically controls the operations of the fifty-three branches of the SPCA, all of which are technically authorized to prosecute animal welfare offenses. This control, however, deals more with issues like funding and general operating practices than with animal welfare prosecutions. In reality, it appears that there is very little national control over the prosecutions themselves, or for that matter, whether prosecutions will be undertaken in any jurisdiction at all.

In the intervening years, reform has significantly alleviated both of these structural issues. As discussed in Appendix 2, the MOU between RNZSPCA and MPI significantly – but not necessarily completely – clarifies the respective roles the agencies involved in animal welfare enforcement. It does so through, amongst other things, outlining the responsibilities of the Minister, MPI and the RNZSPCA;⁵⁶ homogenising the training programmes for AWIs⁵⁷ and providing guidance for animal welfare investigations.⁵⁸ Further, its assistance and supersession policy does much to address the deficits that Sankoff identified relating to sharing knowledge between the agencies.⁵⁹ Perhaps most importantly, it mandates the RNZSPCA's PTS, which

⁵⁵ Sankoff, above n 5, at 27.

⁵⁶ *Memorandum of Understanding between the Royal New Zealand Society for the Prevention of Cruelty to Animals Incorporated (RNZSPCA) and Her Majesty the Queen in right of New Zealand acting by and through the Ministry of Agriculture and Forestry (MAF)* (22 December 2010) at 1 (Obtained under Official Information Act 1982 Request to Compliance Services, Ministry for Primary Industries); see Appendix 2, 4.2.1.

⁵⁷ *Memorandum of Understanding between the Royal New Zealand Society for the Prevention of Cruelty to Animals Incorporated (RNZSPCA) and Her Majesty the Queen in right of New Zealand acting by and through the Ministry of Agriculture and Forestry (MAF)*, above n 56, at 13. Training Programme.

⁵⁸ At Animal Welfare Complaint Investigations: Procedures for Animal Welfare Complaint Investigations, 62.

⁵⁹ Unless specified as an "MPI AWI", "AWI" refers to an AWI of the RNZSPCA

is approved by MPI and standardises the enforcement procedures within the RNZSPCA and across the agencies.⁶⁰ The PTS defines standards for AWIs, including their selection, training and appointment; the exercise of their enforcement powers; and their approach to prosecutions.⁶¹ In doing so, the PTS did much to ensure a consistency within the RNZSPCA and, at the time, across its 53 branches.

As also noted in Appendix 2, RNZSPCA's compliance with the MOU is monitored by way of audits by MPI, a power specifically incorporated into legislation by the Animal Welfare Amendment Act (No 2) 2015.⁶² MPI has regularly audited the RNZSPCA since 2012, and in addition to monitoring its compliance with the MOU,⁶³ auditors review the RNZSPCA's ability to meet the criteria for an approved organisation under the Act.⁶⁴

Historically, the MPI annual audit included three locations proposed by the RNZSPCA and agreed to by MPI and did not include the National Support Office. This audit structure was so that a larger sample of centres was included, as previous MPI audits raised the low sample number as a finding.⁶⁵ In February 2015, MPI's audit report noted that:⁶⁶

⁶⁰ *Memorandum of Understanding between the Royal New Zealand Society for the Prevention of Cruelty to Animals Incorporated (RNZSPCA) and Her Majesty the Queen in right of New Zealand acting by and through the Ministry of Agriculture and Forestry (MAF)*, above n 56, at General: Prosecution Policy, 77.

⁶¹ *Performance and Technical Standards for Inspectors of the RNZSPCA Including Selection, Training and Appointment 2012* (version 2.5, issue date 15 February 2013, review date 15 February 2015) at 3 (Obtained by request to Animal Welfare Science and Education, RNZSPCA National Office).

⁶² Animal Welfare Act 1999, s 123B(2).

⁶³ Section 123B(3)(c).

⁶⁴ Section 123B(3)(a). The criteria are specified in s 122(1):

The Minister must, before declaring an organisation to be an approved organisation for the purposes of this Act, be satisfied, by the production to the Minister of suitable evidence, that—

- (a) one of the purposes or roles of the organisation concerns the welfare of animals or a particular species of animal; and
- (b) the accountability arrangements, financial arrangements, and management of the organisation are such that, having regard to the interests of the public, the organisation is suitable to be declared to be an approved organisation; and
- (c) the functions and powers of the organisation are not such that the organisation could face a conflict of interest if it were to have both those functions and powers and the functions and powers of an approved organisation; and
- (d) the employment contracts or arrangements between the organisation and the organisation's inspectors and auxiliary officers are such that, having regard to the interests of the public, the organisation is suitable to be declared to be an approved organisation; and
- (e) the persons who may be recommended for appointment as inspectors or auxiliary officers—
 - (i) will have the relevant technical expertise and experience to be able to exercise competently the powers, duties, and functions conferred or imposed on inspectors and auxiliary officers under this Act; and
 - (ii) subject to section 126, will be properly answerable to the organisation.

⁶⁵ *Audit Summaries* (Ministry for Primary Industries) (Obtained under Official Information Act 1982 Request to Regulation and Assurance (Office of the Director-General) Ministerial and Business Support, the Ministry for Primary Industries) at 3.

⁶⁶ At 4.

... the scope of these MPI audits is too small. This was mooted last year and the outcome of the audit this year begs the same question. If the sample is seen to be unrepresentative of the whole, then the audit findings become too heavily discounted to be worthwhile. This raises the question of the point of the audit.

In 2014, it was recommended that the RNZSPCA perform its own internal audit, which was not implemented by the National Support Office due to a lack of resources. MPI's 2015 audit report suggested that the three regional officers should see such a function as a priority, as the local centres "need their help". It was stated that if an RNZSPCA internal audit is impossible, then the MPI audit must be increased in scope to include many more centres if a representative sample is to be provided.⁶⁷

In addition, it is clear that despite the issues identified in audit reports being likely systemic and not isolated to the sample of centres audited, the RNZSPCA's responses are not necessarily directed toward systemic improvement. For example, in its 2016 Audit, MPI reported that "issues noted in this report are likely to be systemic and not isolated in those centres audited".⁶⁸ It noted:⁶⁹

... the limited response of SPCA to the issues identified in the last two audits, where only the centres involved in the audit were monitored for corrective actions, suggests that the SPCA is missing the point of auditing a sample. The findings are meant to suggest the possibility of systemic failings and should be used as a catalyst for wider action. Instead, the same issues surface at each new centre visited, suggesting that the organisation as a whole has not benefitted from the audit findings.

Therefore, while MPI conducts regular audits, they are limited in number and do not appear to yield substantive changes in response to identified shortcomings.

2.1.3.2 The Impact of Amalgamation

The limited effect of such audits may change with the amalgamation of the RNZSPCA into one entity, which is expected to further streamline the agency's approach to enforcement. Independent, regional SPCA organisations federated in 1933 to become the RNZSPCA. However, as Sankoff noted above, while affiliated with the national organisation, each local branch/centre was a separate entity that operated at arm's length from the national organisation. For largely financial reasons, in June

⁶⁷ At 5.

⁶⁸ At 4.

⁶⁹ At 4–5.

2017 delegates to the RNZSPCA AGM voted to form one national organisation.⁷⁰ The new national structure means the previous 45 individual centres, each with its own chief executive and board, have been replaced by three regions, each with a general manager and regional advice committee, with the RNZSPCA having a single national board and CEO. Current CEO Andrea Midgen stated that one of the key reasons for the merger was sustainability for the future, with the centralised SPCA able to spread money across the regions.⁷¹ The restructuring was described as “to better meet the needs of the twenty-first century”.⁷² Midgen stated that “with consistency and collaboration we can ensure every animal will get the best care possible, no matter where they are in New Zealand”. She added that the move to one SPCA.⁷³

... is not about creating a centrally-controlled organisation or closing any SPCA centres; it is a genuine effort to bring a national organisation together to work as a team and get the right outcome for every animal in New Zealand.

2.1.3.3 Oversight and Accountability of RNZSPCA

Given the issues we have identified, the reforms to improve cohesion between MPI and RNZSPCA and within RNZSPCA itself are welcome. However, they do little to improve the accountability of the RNZSPCA to the public, which for the reasons we outline below, is concerning. Despite having many similar powers to Police, there is no counterpart complaint or oversight mechanism like the Independent Police Conduct Authority. Moreover, unlike the MPI welfare inspectorate, the RNZSPCA, as a private organisation, is not subject to the Official Information Act 1982 (OIA),⁷⁴ and this exemption from the OIA is expressly acknowledged in the PTS.⁷⁵

While it did not specifically identify the RNZSPCA, in its 2012 review of the OIA, the New Zealand Law Commission described some “anomalies, or apparent anomalies”, stating that “organisations which one might have thought should be there, sometimes are not, for no apparent reason”.⁷⁶ There are several reasons why the RNZSPCA might be expected to fall under the purview of the OIA: the public function of the

⁷⁰ Steve Glassey “One SPCA Information” (21 September 2017) Wellington SPCA <www.wellingtonspca.org.nz>.

⁷¹ Lucy Swinnen “Research beckons Wellington SPCA chief as new structure rolled out” *Dominion Post* (online ed, Wellington, 9 November 2017).

⁷² RNZSPCA “New structure proposed for the SPCA” (press release, 9 May 2011).

⁷³ RNZSPCA “SPCA votes to create new national organisation” (19 June 2017) <<https://web.archive.org/web/20180223183627/https://www.rnzspca.org.nz/news/465-sPCA-votes-to-create-new-national-organisation>>.

⁷⁴ Official Information Act 1982, sch 1.

⁷⁵ *Performance and Technical Standards for Inspectors of the RNZSPCA Including Selection, Training and Appointment 2012*, above n 61, at 299.

⁷⁶ Law Commission *The Public’s Right to Know: Review of the Official Information Legislation* (NZLC R125, 2012) at Summary, 43.

organisation as a delegated enforcement authority vested with legal powers under the Act; the fact that RNZSPCA inspectors are appointed by MPI (on recommendation by the approved organisation); the consultative relationship that exists under the MOU between MPI and the RNZSPCA and the public interest in information about enforcement activities that affect them and the welfare of animals. Any of these reasons provide justification for including the RNZSPCA within the ambit of the OIA. Indeed, in preparing this report, while we were able to access information through the OIA from MPI relating to its enforcement and oversight systems. Despite graciously doing so, RNZSPCA was under no obligation or mandated timeframe to provide us with similar information, demonstrating the issues that can arise without such oversight.

We acknowledge that the RNZSPCA is a private charity with limited resourcing from the State and that these attributes not only make it inappropriate for the OIA to apply but would also make it difficult for the RNZSPCA to comply with its requirements. However, this simply reiterates the problem of under-resourcing of the organisation described above and, more broadly, the inappropriateness of using a private charity to perform such important delegated statutory functions.

The issues that arise through using the RNZSPCA to perform the public enforcement function mandated by the Animal Welfare Act are a recurring concern. Sankoff notes that:⁷⁷

While it is hardly the fault of the SPCA for being willing to undertake a function that the government of New Zealand continues to identify as being of low priority, it is hardly surprising that prosecutions for animal cruelty offenses have been mostly ineffective. Unless a serious reassessment of priorities, organizational structure, and training needs occurs, the current situation is likely to continue indefinitely.

Duffield is stronger in her criticism. She notes that the New Zealand Law Commission's observations that "the operation of the criminal justice system is the responsibility of the State"⁷⁸ and that "there are no other instances of a charity being charged with enforcing a criminal statute – and rightfully so".⁷⁹ She makes the analogy to the role of Women's Refuge:⁸⁰

⁷⁷ Sankoff, above n 5, at 31.

⁷⁸ Law Commission *Delivering Justice For All: A Vision for New Zealand Courts and Tribunals* (NZLC R85, 2004) at [23], cited by Duffield, above n 20, at 907.

⁷⁹ Law Commission *Criminal Prosecution: A Discussion Paper* (NZLC PP28, 1997) at [78], cited by Duffield, above n 20, at 907.

⁸⁰ Duffield, above n 20, at 907.

Indeed, the enforcement role of the SPCA could be considered analogous to the executive delegating the enforcement of sexual violence offences to an organisation such as Women's Refuge, without providing any funding or support.

2.1.3.4 International Developments

The criticism above is a reflection on the history of the RNZSPCA, and focuses on the inequity of the State charging a private organisation with the public function of enforcing the criminal law, without providing that organisation with the resources to discharge that function. The more nuanced concern that we identify above – that by virtue of its private nature, it lacks the oversight appropriate for an enforcement agency – was echoed in early 2019 by the Ontario Superior Court of Justice in *Bogaerts v Attorney General of Ontario*. In that decision, the Court held that the legislative delegation to the Ontario SPCA (OPSCA) of animal welfare enforcement powers violated the Canadian Charter of Rights and Freedoms and was therefore unconstitutional.⁸¹

OSPCA officers have a slightly broader jurisdiction than their New Zealand counterparts. Whereas RNZSPCA AWIs have broad enforcement powers, they are not equivalent to those of the police. In contrast, the OSPCA's governing legislation states:⁸²

For the purposes of the enforcement of this Act or any other law in force in Ontario pertaining to the welfare of or the prevention of cruelty to animals, every inspector and agent of the Society has and may exercise any of the powers of a police officer.

However, beyond this difference, the RNZSPCA and OSPCA operate in very similar ways, and thus Minnema J's reasons in this decision provide valuable insight. He notes:⁸³

The OSPCA is a private organization. Private organizations by their nature are rarely transparent, and have limited public accountability. Prior to 2012, Newfoundland and Labrador had similar legislation to Ontario which delegated police and investigative powers, including search and seizure powers, to its own Society for the Prevention of Cruelty to Animals. Before that legislation was rescinded, two of that province's Provincial Court judges indicated in strong terms that a private organization having such powers was simply unacceptable: *R. v. Clarke*, [2001] N.J. No. 191 at paragraph

⁸¹ *Bogaerts v Attorney General of Ontario* 2019 ONSC 41; and Ontario Society for the Prevention of Cruelty to Animals Act RSO 1990 c O36.

⁸² Ontario Society for the Prevention of Cruelty to Animals Act RSO 1990 c O36, s 11(1).

⁸³ *Bogaerts*, above n 81, at [90].

6, and *Beazley (Re)*, [2007] N.J. No. 337, at paragraphs 3–6 and 22. Where reasonable transparency and accountability is lacking, I share that view.

In particular, Minnema J makes the same observation that we have made above:⁸⁴

OSPCA investigators and agents while having police powers, are not subject to the Police Services Act, R.S.O. 1990, c. P.15, which has a comprehensive system for oversight and accountability for police. Rather the OSPCA has a policy manual that it has created related to entering homes and seizures of property, and that manual is not a public document. Complaints and discipline are dealt with internally. The OSPCA is not subject to the Ombudsman Act, R.S.O. 1990, c. O.6, or similar legislation. Unlike virtually every public body in Ontario, the OPSCA is not subject to the Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. F.31. Indeed, the evidence establishes that the OSPCA has no formal access to information policy, and in practice does not provide access to information. Overall the OSPCA appears to be an organization that operates in a way that is shielded from public view while at the same time fulfilling clearly public functions.

We do not go so far as Minnema J when he states:⁸⁵

... although charged with law enforcement responsibilities, the OSPCA is opaque, insular, unaccountable, and potentially subject to external influence, and as such Ontarians cannot be confident that the laws it enforces will be fairly and impartially administered.

We do not question RNZSPCA's fairness and impartiality nor argue that it is opaque and insular. However, just as in the case of the OSPCA, the lack of oversight of the RNZSPCA's operations in addition to the limited accountability in the form of MPI audits means that there is an omnipresent risk that the RNZSPCA may become this way.

In *Bogaerts*, the Court held that the OSPCA Act was contrary to s 7 of the Canadian Charter of Rights and Freedoms, which states: "Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice." New Zealand does not have an identical provision; nor is there a risk that the enforcement provisions of the Animal Welfare Act 1999 could be deemed unconstitutional and therefore invalid.⁸⁶ That does

⁸⁴ At [91].

⁸⁵ At [91].

⁸⁶ The closest equivalent to s 7 of the Canadian Charter of Rights and Freedoms is s 8 of the New Zealand Bill of Rights Act 1990 ("No one shall be deprived of life except on such grounds as are established by law and are consistent with the principles of fundamental justice."), which has not

not mean, however, that the system is immune from this sort of constitutional criticism. Duffield notes that in *R v Balfour*, the New Zealand District Court held the RNZSPCA bound by the obligations of the New Zealand Bill of Rights Act 1990.⁸⁷ As she describes:⁸⁸

Judge Garland noted the relevance of the fact that the SPCA was effectively standing in the shoes of the government in exercising its enforcement function. Furthermore, he noted that coercive powers analogous to those of the state are conferred during the investigation process, and that the SPCA is exercising powers that affect the rights of other people. Finally, he noted the significance of the SPCA's ability to prosecute breaches, and the fact that every police officer has the same powers and duties as an inspector appointed under the Animal Welfare Act.

Indeed, Judge Garland went as far as saying:⁸⁹

... every police officer in New Zealand has the same powers and duties as an Inspector appointed under the AWA. Therefore, in the eyes of the AWA, a police officer and an Inspector are exactly the same.

Whilst this is inaccurate – Police have slightly wider powers than AWIs under the Act – it is noteworthy that it was this equivalence between AWIs and Police that was the basis of Minnema J's judgment in *Bogaerts*. Accordingly, it is not hyperbole to posit that the current level and mechanisms of oversight and accountability of the RNZSPCA is not only undesirable but constitutionally inappropriate.

2.2 Our Recommendations

The system of enforcement of animal welfare legislation in New Zealand is chronically underfunded: MPI receives insufficient public funding, and the RNZSPCA is almost totally reliant on private funding. There are thus three interrelated issues. First, this lack of funding limits the capacity of either agency to engage in proactive enforcement, and instead, both agencies are forced to rely upon a system of reactive enforcement. Secondly, that system has public compliance monitoring at its core, which is simply insufficient as a detection mechanism and leads to significant gaps in enforcement – especially in those industries that self-regulate. Finally, while there have been significant improvements in the communication and cohesion between MPI and RNZSPCA, this structural change has had limited impact in the absence of

received a similar broad interpretation as s 7 has in Canada, nor does it have the capacity to render inconsistent legislation invalid (New Zealand Bill of Rights Act 1990, s 4).

⁸⁷ *R v Balfour* (2009) 9 HRNZ 211 (DC) at [17]–[21].

⁸⁸ Duffield, above n 20, at 908.

⁸⁹ *Balfour*, above n 87, at [20].

any increased funding, and the persistence of the status of the RNZSPCA as a private enforcement agency will only receive greater scrutiny given developments in companion jurisdictions abroad. All three of these issues are symptomatic of broader structural deficiencies in the way the animal welfare enforcement system in New Zealand has developed.

It is important to acknowledge that the current means of enforcing the Act is valuable: MPI and the RNZSPCA in particular do an enormous amount of significant work to protect the welfare of animals in New Zealand. However, the structural deficiencies are such that the status quo is unacceptable: the system can and ought to be improved. Below, we recommend ways to improve the oversight, compliance and enforcement of animal welfare in New Zealand.

2.2.1 Conservative versus Radical Reform

Public policies and the means for implementing them are almost never created out of whole cloth. They comprise a mix of the new and the extant, and the result is shaped to some degree by history. The approach taken in this report is to accept this influence of the past and the present on the future. These recommendations are accepting of existing law and policy and to a large extent the means of implementation of law and policy, such as through MPI and RNZSPCA. The purpose of our research is, on the basis of this position, to seek ways to enable them to realise their potential to protect and improve the lives of animals in our care.

As such, our analysis and recommendations are not radical but rather conservative. It is crucial to note that this conservative stance seeks to conserve merely when doing so retains value and radicalism poses risks for this value. This research would not be successful if it risked making welfare protections for animals worse or sacrificing some other significant value for marginal gain. The work of MPI and RNZSPCA is valuable, as is the current Animal Welfare Act. Therefore, these recommendations do not seek to overturn or displace the crucial roles of the Ministry for Primary Industries or the RNZSPCA, the two main actors enforcing animal welfare law and policy in New Zealand.

More radical proposals which are also reasonable are possible. For example, it is reasonable to consider making animal welfare enforcement primarily the responsibility for New Zealand Police, reversing the current position that they are enforcers of last resort. Criminal mistreatment of animals and humans is, in general, different only due to the species of the victim, and, as discussed in Appendix 2, violence to humans and animals often co-occur.⁹⁰ Although specific expertise for

⁹⁰ Andrew Linzey *The Link Between Animal Abuse and Human Violence* (Sussex Academic Press, Brighton, 2009).

handling animal investigations and enforcement is necessary, much of the infrastructure necessary for criminal enforcement is common to both types of offences, and the resources and expertise at the Police's disposal makes this an attractive option. So, why not charge the Police with the enforcement work that is currently performed by the inspectorates of MPI and RNZSPCA? This is the approach taken in New York City Police Department, which has an Animal Cruelty Investigation Squad (ACIS). The enforcement functions of ACIS are supported by the American Society for the Prevention of Cruelty to Animals, who provide forensic, veterinary and animal behavioural expertise.⁹¹

Despite the existence of such a model, applying it in New Zealand would nevertheless amount to a radical solution. It is beyond the scope and methodology of this report to consider, much less advocate for, such reform in New Zealand, although we would welcome such consideration to determine whether it ought to be advocated. Where they are reasonable, radical proposals ought to be considered, in case they offer the best means to radical improvement. However, as noted, they can also run more risk than the conservative approach. Whether they are implemented or not, radical reform proposals can helpfully throw into sharp relief the central values that are at stake in law and public policy and that the ideals that reform can progress towards. Sometimes, perhaps often, laws and policies, and the entities that enforce them, insufficiently realise these values – it is rare to find perfection in such a complex area. So it is useful to briefly describe what we believe these values are.

2.2.2 Central Values

Anchoring our analysis are some central values that our recommendations seek to advance. We believe these are relatively uncontroversial, so we will not argue for them at length here.

2.2.2.1 Animal Welfare

Fundamentally, animal welfare is the good that animals enjoy: their well-being, their flourishing. Anything (internal or external condition or treatment) that contributes to the welfare of animals is a benefit for those animals: it is good for them. Anything that detracts from their welfare is a harm: it is bad for them. There are different accounts of what welfare for animals is and therefore which types of animals have the capacity for it.⁹² We do not defend a view on this here. Rather we accept the physical, health

⁹¹ “NYPD and ASPCA Announce New Animal Cruelty Investigation Squad Mobile Command Post” (27 August 2018) The Official Website of the City of New York <www1.nyc.gov>.

⁹² Christopher M Rice “Well-Being and Animals” in Guy Fletcher (ed) *The Routledge Handbook of Philosophy of Well-Being* (Routledge, London, 2016) 378 at 378–388; and Richard P Haynes *Animal Welfare: Competing Conceptions and Their Ethical Implications* (Springer, Dordrecht, 2008).

and behavioural needs stipulated in the Act as necessary for welfare,⁹³ and we also accept the further articulation provided by the NAWAC in its COWs.

The value of animal welfare can conflict with other values. Once it is accepted that the good that animals enjoys is valuable, that means we have reason to protect and promote it: to provide benefits to animals and not to harm them. Although sometimes this requires little more than us leaving animals alone, it often requires more. We can be morally obligated not only not to harm animals but to benefit them, and this can come at the expense of other things that we value and therefore also have reason to protect or promote: these values and associated moral demands are in tension or conflict. At a basic level, an obligation to care for an animal may conflict with an obligation to care for one's family.

Our analysis is silent on the ethics of how conflicts between the moral demands of animals and humans ought to be resolved. We do not use or endorse any particular account of our moral obligations to animals in this work, nor do we endorse a substantive account of the relative strength of these obligations compared to those owed to humans. It is sufficient for our argument that we claim there is moral, as well as legal, reason not to harm animals and also to benefit them.

2.2.2.2 Political Representation and Distributive Justice

The legal and ethical demands of animal welfare cause a problem for resource allocation. For example, promoting animal welfare may be costly for agriculture, and that extra cost may mean that less money is available for other purposes in the business or for profit. On a national level, resources of the State directed toward welfare protection come at the expense of other valuable uses of that money, such as in human health care or social services. Whether this allocation of scarce resources is done fairly is a question of distributive justice.

We do not argue for a particular account of distributive justice in relation to human and animal resource conflict. The recommendations of our report assume that this will be a matter of politics and will therefore be resolved by political parties and other political actors proposing different solutions, allocating more or less to animal and human needs, for which they will gain or lose public support through the electoral process or other means. This raises a deep issue about our politics, which is that the voting public represents only some of the beneficiaries of governmental power and activity. There are many, such as children and some of the disabled community, who are unable to represent their own interests politically or face significant impediments to doing so. In the case of the disabled community at least, this is recognised as

⁹³ Animal Welfare Act 1999, s 4.

wrong, and there are actions being taken to address it and improve their access in the electoral process.⁹⁴

That animals are beneficiaries of governmental power is uncontroversial. They have been protected by law and policy since the Cruelty to Animals Act was introduced in 1878.⁹⁵ This has been reinforced by subsequent legal protections, culminating in the most recent amendment of the Animal Welfare Act 1999.⁹⁶ That amendment made explicit what was arguably implicit in the Act, which is that animals are sentient. This expresses for the first time in our animal law the view that animals have feelings – positive and negative experiences, which therefore matter to them. This implies that the law is, in part, concerned with protecting animals for their own sake, not for that of their owners or those responsible for them or for the valuable uses to which they can be put.

Given that these interests of animals are codified in our law and animals are clear beneficiaries of that codification, it matters how animals' interests are represented politically. Animals are in a class of beneficiaries of our politics along with children: they are not permitted to vote and must therefore have their interests represented indirectly. One way this can occur is through the political action of those who care about children or animals. However, this leaves them entirely dependent on the value and regard that they are accorded by those who can act politically, such as voters, elected representatives, and government appointees.

Both children and animals are vulnerable to being overlooked or undervalued, especially relative to the other interests the voting public can have. This is true of the consideration given them by the voting public, as well as their elected representatives in politics. In the case of animals, this is especially problematic, since human and animal interests can conflict: we often use animals in ways that benefit us but harm them. This arises in a large scale in agriculture but can also arise with companion animals: the breeding of companion animals discussed in Appendix 2 being a prime example of this. This is not to say that these practices are overall not ethically justified but merely that they mean that there are times when a human interest can be advanced most expediently at the expense of an animal interest. That animals are dependent on people, who have many other and sometimes conflicting interests, leaves animals politically vulnerable, which means their welfare is vulnerable.

When this weighing of human and animal interests, especially when they directly conflict, is performed by government entities (eg, Ministries, Ministerial Advisory

⁹⁴ Electoral Commission *Access 2020: Disability Strategy*, available at Electoral Commission “Voters with a Disability” <www.elections.org.nz>.

⁹⁵ Cruelty to Animals Act 1878.

⁹⁶ Animal Welfare Amendment Act (No 2) 2015.

Committees, etc), it is important that there is independent and dedicated representation of animal interests. Someone with appropriate political status and independence must give these interests of animals' their due as a dedicated focus, and they can then be weighed, if needed, against competing values which have similarly been advanced.

In keeping with our method and rationale, the independence we are calling for is not grounded in a substantive philosophical account political justice. There are accounts, such as the liberal accounts of Siobhan O'Sullivan and Kimberly Smith, and the sentientist politics proposed by Alasdair Cochrane and Robert Garner, among others.⁹⁷ Our proposed independent representation for animals would be viewed as progress by the lights of most of these accounts, although they would have more to say substantively about the nature of this representation and what the ultimate goal of political and distributive justice ought to be. We are less philosophically committed and argue only that independent political representation for animals should seek the best outcome for animals from political decision-making, through informing about the effect of any decision on animals, and emphasising the importance of these effects for the animals themselves, and therefore the political outcome. The result of this will be better-informed political decision-making, and a process that is better responsive to the interests of all political beneficiaries, human, environmental and animal.

This problem of political representation shows that advancing distributive justice (in this case, a fair distribution of state resources among humans and animals) depends on advancing political justice (fair representation of animal interests politically). Calls for dedicated political representation of animals are not new, but there is an emerging recognition that it is an urgent and compelling issue that is supportable from a wide range of reasonable starting points in ethics and politics and which must be addressed.

2.2.2.3 Legal Justice

Animals are afforded protections under the Act. This Act and its subsequent amendments have been passed through the use of standard democratic processes in New Zealand. The resulting Act has earned New Zealand recognition and praise

⁹⁷ See, for example Alasdair Cochrane *Sentientist Politics: A Theory of Global Inter-Species Justice* (Oxford University Press, Oxford, 2018); Sue Donaldson and Will Kymlicka *Zoopolis: A Political Theory of Animal Rights* (Oxford University Press, Oxford, 2011); Robert Garner *A Theory of Justice for Animals: Animal Rights in a Nonideal World* (Oxford University Press, Oxford, 2013); Robert Garner and Siobhan O'Sullivan (eds) *The Political Turn in Animal Ethics* (Rowman & Littlefield International, Lanham, 2016); Robert Garner *Animals, Politics, and Morality* (Manchester University Press, Manchester, 1993); Kimberly K Smith *Governing Animals: Animal Welfare and the Liberal State* (Oxford University Press, Oxford, 2012).

for the high standard of its animal welfare legislation.⁹⁸ World Animal Protection gave New Zealand, along with the United Kingdom, Switzerland and Austria, the highest score – an “A” grade – in its inaugural Animal Protection Index rating of 50 countries in 2015.⁹⁹ In its Animal Cruelty Index, Voiceless ranked New Zealand’s regulatory framework as second-equal in the world.¹⁰⁰ This does not mean it is without fault, or cannot be improved, as some criticisms point out;¹⁰¹ but most criticism is that the Act does not go far enough: there are few – if any – critiques of the legislation that suggest it is overbroad or provides too many protections for animals. There is therefore no reason to believe that any treatment of animals that falls short of the requirements of the Act should be tolerated. This is not to say that all breaches of the requirements of the Act must be prosecuted using the greatest force of the Act. Rather it is to argue that, given that the law protects animals, it is an injustice if their treatment is not adequately monitored and any ill-treatment that falls short of legal requirements detected and dealt with using the procedures and policies that surround the Act.

That animals are protected by law yet lack effective protection through a lack of enforcement of that law is an injustice. This is a position that can be agreed with from a range of reasonable perspectives. The most obvious is that which holds that animals deserve effective protection because they have independent moral standing – if they are not effectively protected by law, this is an injustice *to them*. However, if the protections of law are not sufficiently provided to animals, this can also be an injustice to those who own animals, whose property is wrongly interfered with. New Zealand’s reputation for world-leading animal welfare legislation is unjustified if it is not effectively enforcing that legislation. Moreover, if the requirements of the Act are insufficiently enforced, those who trade animals or their produce as a commodity and meet the obligations of the Act are put at a competitive disadvantage to those who can effectively opt out of their legislative requirements:¹⁰² meeting such obligations is costly, and there is competitive advantage, as well as absolute savings, to be gained

⁹⁸ F Barbara Orlans “Ethical Themes of National Regulations Governing Animal Experiments: An International Perspective” in Susan J Armstrong and Richard G Botzler (eds) *The Animal Ethics Reader* (Routledge, London, 2003) 285; Neil Wells and Judith H Nicholson “Five plus three: legislating for the Five Freedoms and the Three Rs--Animal Welfare Act 1999 (New Zealand)” (2004) 32 Suppl 1B ATLA 417; and Marina A G von Keyserlingk and Maria José Hötzel “The Ticking Clock: Addressing Farm Animal Welfare in Emerging Countries” (2015) 28 J Agric Environ Ethics 179.

⁹⁹ World Animal Protection “New Zealand leads the way on our Animal Protection Index” (21 January 2015) <www.worldanimalprotection.org.nz>.

¹⁰⁰ Voiceless “New Zealand” The Voiceless Animal Cruelty Index <<https://vaci.voiceless.org.au>>. Note, however, that when production and consumption of animals are taken into account, New Zealand’s ranking decreases dramatically: “Despite New Zealand being the highest ranked country under the Animal Protection Index, it is only a *marginally adequate* performer under the VACI due to its high levels of animal production and consumption.”

¹⁰¹ Sankoff, above n 5.

¹⁰² Samantha Mortlock “Standing on New Ground: Underenforcement of Animal Protection Laws Causes Competitive Injury to Complying Entities” (2007) 32 Vt L Rev 273.

by not meeting these obligations if the risk of punishment is low enough. This, too, is an injustice.

For these reasons, the Act must be effectively enforced as a requirement of legal justice, and a failure to do so is arguably inconsistent with the rule of law. This concern was arguably at the forefront of the mind of Fraser CJ of the Alberta Court of Appeal in her dissenting judgment in *Reece v Edmonton (City)*.¹⁰³ In her judgment, she linked animal welfare legislation with the rule of law in a way never seen before in Canada or any other common law jurisdiction. As Maneesha Deckha has noted, in making that link, the dissent was an “unparalleled move in animal law jurisprudence in Canada”,¹⁰⁴ yet the proposition was simply that:¹⁰⁵

... once government has protected animals by law, the rule of law is engaged and the courts must work to see that those laws are respected and upheld, including by the government itself.

It is a proposition that is easily advanced in this jurisdiction: not only are there compelling normative reasons for upholding and enforcing the law; framed in this way, it is a constitutional obligation.

2.2.3 Recommendations

In keeping with both the conservative approach and the values we have outlined, having analysed New Zealand’s animal welfare enforcement system, we provide two recommendations. Both address the systemic issues we see as the most pressing: resourcing and independent oversight of the system.

2.2.3.1 Resourcing

Implementation of the Act requires resources: human, organisational, administrative and financial. Without these being adequately provided for, under-prosecution and gaps in enforcement and oversight will continue, and enforcement of the Act will continue to be predominantly reactive, with substantial self-regulation. All of this is, we argue, inadequate as a means for securing legal justice on behalf of multiple stakeholders, as outlined. At base, the main limiting factor is the level of funding provided to both MPI and RNZSPCA, upon whom the effectiveness of the Act as a legal instrument rests almost entirely at present. With more funding, the ratio of AWIs

¹⁰³ *Reece v Edmonton (City)* 2011 ABCA 238, 513 AR 199.

¹⁰⁴ Maneesha Deckha “Initiating a Non-Anthropocentric Jurisprudence: The Rule of Law and Animal Vulnerability under a Property Paradigm” (2013) 50 *Alta L Rev* 783 at 798.

¹⁰⁵ At 795, citing *Reece*, above n 103, at [89]–[91].

to animals can improve through the training of more Inspectors, and this will allow more proactive enforcement. It can also provide greater resources for prosecution of animal welfare offences under the Act, and more monitoring for assurance and accountability.

Greater resourcing can also allow RNZSPCA in particular to fulfil what we argue are duties of accountability and openness that they owe, given their extensive powers under the Act. Currently, although we have identified such oversight is justified, it is arguably unreasonable to currently expect the RNZSPCA to fulfil OIA requests, since these are burdensome and would use resources the vast majority of which arise through charitable donations. Aside from information obtained through OIA of MPI audits of RNZSPCA, we received substantial information for our analysis directly from the RNZSPCA about its operations. But we did so due entirely to the willingness of the organisation to provide this and at their expense.

Our aim in this work is to conduct independent research to illuminate animal law and its implementation in New Zealand, for the benefit of the animal and humans that have a stake in its operation. This should not be dependent on the willingness of a key organisation like the RNZSPCA to incur significant cost under conditions of scarce resources obtained through acts of public charity. To do so hampers research and progress and imposes burdens that should be borne by the State on behalf of the public in general, not a charitable organisation and its donors. Attendant on the greater funding we recommend for the RNZSPCA would be their inclusion as an organisation subject to the powers of the OIA.

The resourcing we call for should be for the specific purposes of the RNZSPCA as an approved organisation as detailed in pt 7 of the Act, which includes its enforcement and related activities.¹⁰⁶ The RNZSPCA performs a range of functions additional to this as an animal charity, including sheltering of animals, general animal welfare advocacy and animal welfare advocacy roles on national committees, such as the National Animal Ethics Advisory Committee (NAEAC) and NAWAC. These are not functions that the RNZSPCA is required to perform as an approved organisation under this part, and the greater resourcing we call for should not be allocated to them.

A question arising from this is what our argument for greater resourcing would mean for any other organisations that may be approved under the Act: would these have claim to state resources too?¹⁰⁷ The answer is 'yes'. Our argument is that the

¹⁰⁶ Animal Welfare Act 1999, pt 7. Note that approved organisations are also required to nominate members to sit on Animal Ethics Committees under the Act. This falls under pt 6 of the Act, which is beyond the scope of our analysis. Whether our argument entails that this also activity also receive state resourcing is therefore a question we leave open.

¹⁰⁷ We thank Mark Fisher for raising this question.

functions performed by approved organisations under the Act are under-resourced. It is a contingent fact that that, given the RNZSPCA is the only approved organisation currently, this logically means that the RNZSPCA is under-resourced. If other organisations received approved status, or the RNZSPCA was no longer approved, our argument would still apply. Given that our argument is based on achievement of adequate compliance and enforcement function, whether this is achieved by one, or several, approved organisations is not directly relevant to satisfying our recommendation. It would be indirectly relevant if some number of organisations was necessary for these resources to be used efficiently, as well as effectively; it is possible that a larger number may introduce inefficiencies, as well as complexities in achieving consistency and adequate performance in performing the compliance function.

The current funding of RNZSPCA is therefore undermining not only legal justice and animal welfare, accountability, openness and beneficial progress but also distributive justice – animals are entitled to a fair share of state resources to afford them effective protection by the Act. They are not currently receiving this. This raises the question of how much funding MPI and the RNZSPCA ought to receive; what is the fair share that the human and animals stakeholders in the Act are owed, and what would protect their interests sufficiently? Moreover, how much is fair given that state resources are finite and greater resourcing devoted to one demand may conflict with use of those funds for another (barring raising additional state funds through new or increased taxes or levies). It is beyond the scope of our inquiry to answer this difficult question. It is difficult because it depends significantly on ethical values as well as political and legal ones, and it is beyond our scope because the aim of our analysis is to avoid commitment to any particular ethical framework. We take the law and its embedded values as they are, collectively, as our north star. We avoid commitment to ethical theories or accounts that may or may not be true but also have no authoritative standing in themselves as a basis for acquiring and appropriating state resources, much less directing the State's coercive powers through enforcement.

On the basis of our analysis, it is quite reasonable to hold the position that funding must increase, without knowing precisely by how much. To paraphrase the economist Amartya Sen, if someone is locked in an overheated sauna and asks for the temperature to be decreased, it would be ridiculous not to do so simply because they did not, or could not, specify what the ideal temperature should be.¹⁰⁸ Funding for enforcement of the Act ought to increase, and the force of this claim does not depend on resolution of the question of what the ideal level of funding ought to be.

¹⁰⁸ Amartya Sen "Justice—and India" (Penguin Annual Lecture, 2009), cited in Ian Shapiro "Review of *The Idea of Justice* by Amartya Sen" (2011) 49(4) *Journal of Economic Literature* 1251.

Since we are not simply recommending greater resources per se but instead to achieve a specific end – a shift from more reactive enforcement to proactive enforcement, and greater use of warranted prosecution – this recommendation will have significant effects on those stakeholders to whom the Act applies. If enforcement systems change and expand, this will have significant flow-on effects to those who must find compliance with the Act coming under greater scrutiny.

However, even those stakeholders would likely agree that resourcing should increase; greater compliance with the law is prudent, aside from the other benefits we argue that it would provide. How then should this question of resourcing MPI and RNZSPCA be answered? It should be answered through politics. The interests of all stakeholders should be represented in a public political discussion about the funding of animal welfare protections in New Zealand. This should include representation of government, animal use industries, policy and advocacy groups, professional associations, the public (as broadly as possible) and, of course, the animals themselves, who have the most direct stake. In this discussion, ethical values can be weighed against each other and a political decision reached about how to allocate public funds through the actions and priorities of government. We call for a public discussion of this important matter in the form of a Public or Government Inquiry into animal welfare enforcement in New Zealand.¹⁰⁹

However, any public and political discussion about the interests of animals would be compromised and diminished without effective and dedicated political representation of the interests of animals, as we have discussed. This forms the basis of our second recommendation.

2.2.3.2 Political Representation – A Commissioner for Animals

Dedicated political representation of animals is necessary because animals are accepted as beneficiaries of legal protection in New Zealand by virtue of the interests they have, yet they cannot – because they lack the capacity – represent their own interests politically and defend their protection through the Act. A crucial means for ensuring that this protection is adequate is through independent oversight of animal welfare enforcement in New Zealand through MPI and RNZSPCA. This calls for an independent political office to be created, with a general purpose of providing political representation of animal interests with the aim of protecting animal welfare.

We believe the best solution to this is the establishment of an independent Office of the Commissioner for Animals. This is the model adopted in Malta, which has a

¹⁰⁹ As per the Inquiries Act 2013.

Commissioner for Animal Welfare.¹¹⁰ New Zealand already has a Parliamentary Commissioner for the Environment and a Commissioner for Children. Their role is to serve as Officers of Parliament, and they are independent of the government of the day, with broad powers to investigate concerns within their purposes. The Commissioner for the Environment’s work is directed towards the sole output of providing reports and advice on issues in order to maintain or improve the quality of the New Zealand environment.¹¹¹ The Children’s Commissioner is an independent Crown entity, with the goal of making New Zealand a place where all children thrive.¹¹² It has the following key functions to achieve this end: monitoring, assessing and reporting on services provided to children in care; advocating on issues that affect children and young people and raising awareness of and advancing the United Nations Convention on the Rights of the Child.¹¹³

Those lobbying for an independent Commissioner for Animals include the RNZSPCA,¹¹⁴ the Green Party¹¹⁵ and legal commentator Catriona MacLennan.¹¹⁶ MacLennan has stated that such a commissioner should carry out random farm checks to ensure abuse and neglect are detected.¹¹⁷ If an independent Commissioner for Animals were appointed with roles, functions and powers similar to those of the Commissioners for the Environment and for Children but suitably adapted for the focus on animals, this would add another entity along with RNZSPCA, and other animal advocacy organisations, playing an important role as an advocate for animal welfare and, crucially, one that is independent. This is especially important given our recommendation that greater state resources are provided to the RNZSPCA for its activities as an approved organisation under the Act. Receipt of greater resources from the government may augur a diminished status for RNZSPCA as independent of government. It would be unfortunate, both for the RNZSPCA and animals, if this potential reduction in independence was realised. One way for the RNZSPCA to defend against this would be to develop stricter and more extensive conflict of interest policies separating its advocacy, sheltering and other activities – which we have argued would not receive greater funding – from its enforcement functions, to maintain the independence of the former.

¹¹⁰ Secretariat for Agriculture, Fisheries and Animal Rights “Office of the Commissioner for Animal Welfare” <<https://agriculture.gov.mt/en/commissioneranimalwelfare/>>.

¹¹¹ Parliamentary Commissioner for the Environment “Our role” <www.pce.parliament.nz>.

¹¹² Office of the Children’s Commissioner “Our role and purpose” <www.occ.org.nz/about-us/>.

¹¹³ At Legislative framework.

¹¹⁴ 3 News “SPCA to lobby for animals commissioner” (17 November 2013) Newshub <www.newshub.co.nz>.

¹¹⁵ Green Party “Beatings show need to enforce our animal welfare laws” (press release, 28 June 2018).

¹¹⁶ Catriona MacLennan “Animal welfare commissioner needed” *The New Zealand Herald* (online ed, Auckland, 23 May 2016).

¹¹⁷ MacLennan, above n 9.

What other functions a Commissioner for Animals may perform would need to be worked out in detail. In the Maltese model, the Commissioner's office performs compliance and enforcement functions, similar to the office of the Health and Disability Commissioner in New Zealand, which holds health care practitioners to account for breaches of its Code.¹¹⁸ This function may not be practicable in New Zealand, given the large animal population and size of the country, especially relative to Malta. However, the Commissioner could audit and oversee the enforcement of the Act and the function of agencies and committees with functions relating to the Act, providing independent focus on animal welfare and independent advocacy on behalf of animals. It has been stated that creation of a Commissioner for Animals is being considered by Cabinet, as an independent voice for animal welfare.¹¹⁹ However, since this time, the Associate Minister for Agriculture with a portfolio dedicated to animal welfare, Meka Whaitiri, who was exploring this idea, has been removed as a Minister due to unrelated issues, and the animal welfare portfolio has been resumed by the Agriculture Minister, Damien O'Connor.¹²⁰ The Minister is awaiting advice from MPI about the matter.¹²¹

We have adapted the current general functions of the Children's Commissioner to provide a starting point for considering functions of the Commissioner for Animals that we propose, namely:¹²²

- (a) to investigate any decision or recommendation made or any act done or omitted under the Act in respect of any animal;
- (b) to promote the establishment of accessible and effective complaints mechanisms for those who witness potential breaches of the Act and to monitor the nature and level of complaints;
- (c) to monitor and oversee the enforcement of and compliance with the Act by departments of State, Ministerial Advisory Committees, and approved organisations under the Animal Welfare Act 1999;
- (d) encourage in MPI the development of policies and services that are designed to promote the welfare of animals;

¹¹⁸ "Health and Disability Commissioner "About us" <www.hdc.org.nz/about-us/>.

¹¹⁹ See One News Now "Government considering independent animal commissioner after recent footage of mistreatment" (4 July 2018) <www.tvnz.co.nz/one-news/>; (4 July 2018) 730 NZPD (Questions to Ministers – Response to Question No 10—Agriculture, Meka Whaitiri); New Zealand Parliament "10. Question No. 10—Agriculture" Hansard (Debates) <www.parliament.nz>; and Esther Taunton "Govt could appoint commissioner to improve animal welfare" (3 July 2018) Stuff <www.stuff.co.nz>.

¹²⁰ Henry Cooke "Prime Minister removes Meka Whaitiri as a Minister" (20 September 2018) Stuff <www.stuff.co.nz>.

¹²¹ (27 September 2018). 2018-22304 (Written Question – Hon Nathan Guy to the Agriculture (Minister - O'Connor)) <www.parliament.nz>;

¹²² Adapted from Children's Commissioner Act 2003, s 12.

- (e) to advise the Minister on any matter that relates to the administration of the Act;
- (f) to keep under review and make recommendations on the workings of the Act
- (g) to report, with or without request, to the Prime Minister on matters affecting the rights, interests or welfare of animals;
- (h) to act as an advocate for animal interests, rights and welfare generally (except before any court or tribunal);
- (i) if there are issues in proceedings before any court or tribunal that relate to the interests, rights, or welfare of children generally, to present reports on such issues to the court or tribunal, at the request of—
 - (i) the court or tribunal; or
 - (ii) counsel representing any party to the proceedings; or
 - (iii) counsel representing any animal who is the subject of the proceedings; or
 - (iv) counsel assisting the court or tribunal;
- (j) to promote the establishment of a means for monitoring the welfare of animals in New Zealand;
- (k) to raise awareness and understanding of animals' interests, rights and welfare;
- (l) to undertake and promote research into any matter that relates to the welfare of animals;
- (m) to receive and invite representations from members of the public on any matter that relates to the welfare of animals; and
- (n) to inquire generally into, and report on, any matter, including any enactment or law, or any practice or procedure, that relates to the welfare of animals.

The Commissioner for Animals would, following the current model of the Children's Commissioner, adopt a system-wide view of animal welfare protection and advancement, similar to the one we have adopted in this research.¹²³ This system is complex, extending from the animals themselves, through people in charge of them, to those groups and individuals with oversight of those in charge, and on to people with an interest in animals and ultimately all citizens.¹²⁴ Accordingly, there are a lot of functions outlined above. We are wary of ranking or prioritising these, as interrelations exist between them, which can make the effect of partial adoption difficult to predict. However, given our argument, we believe it is necessary for the Commissioner to have the all of the functions (a) to (i). Without these, the Commissioner would be significantly compromised and it is unlikely it would satisfy the values we advance in this report.

¹²³ Office of the Children's Commissioner *What should the Children's Commissioner look like in NZ now and in the future?* (Discussion Paper, 3 April 2018) at 3.

¹²⁴ Mark Fisher, Tamara Diesch, Matthew Orange "Scapegoats and tourists – science as the source of, and the answer to, ethical dilemmas" in G Sutherland and P Cragg (eds) *Proceedings of the ANZCCART Conference held in Queenstown, New Zealand 27 July – 29 July 2014* (ANZCCART NZ, Wellington, 2014) 1 at 2.

Whether these crucial functions would also prove sufficient for addressing our concerns is uncertain. Their efficacy may depend, for example, on the ability of the Office to conduct research, or to raise public awareness of an issue, or establishing a means for measuring animal welfare in New Zealand. Much may also depend on the powers of the Office, and how they are used by the Commissioner. The current Children's Commissioner has noted critically that while the Office has significant powers and independence, these are severely limited. For example, despite the investigatory powers of the Office, "there is no requirement for any agency or body to act on our findings or recommendations". The Commissioner has called for power such that:¹²⁵

... the Commissioner may from time to time make a report or recommendation to a government agency, and that agency is required to acknowledge the recommendations and any steps they will take to action them.

We agree with this position, and such powers would be necessary for the Commissioner for Animals that we propose to be effective at remedying the deficiencies we argue currently exist.

2.3 Conclusion

Our analysis and argument has not adopted radical or controversial foundations and has not sought to implement radical restructuring of the landscape of animal welfare enforcement in New Zealand. It has refrained from doing so in order to avoid risk and disagreement and instead capitalise on the benefits gained through many years of progress in animal welfare protection in New Zealand. Doing so tends to be less elegant than sweeping a broom across what came before and building anew, yet we believe this is an acceptable trade-off if we can make progress in what can be a controversial area of New Zealand law and politics.

While they are not radical, our recommendations are not modest. The call for greater resourcing of animal welfare enforcement in New Zealand is significant and is likely to require social and political pressure to be adopted. Our recommendation for a Commissioner for Animals will also need continued advocacy, as well as political support to draft and pass the bill that would create the Office. These are, we argue, essential, minimal steps that must be taken to continue the progressive role that New Zealand has in global animal welfare law and policy. They will improve the lives of

¹²⁵ At 9.

animals in New Zealand and thereby improve our standing as a nation at the forefront of animal welfare protection.

3. Appendix 1: The Legislative Framework of the Animal Welfare Act 1999

3.1 Introduction

It is important to establish a common understanding of the legislation at issue. This appendix briefly describes the Act, setting aside those parts or sections that are outside the scope of the research.

3.2 The Administration and Purpose of the Animal Welfare Act 1999

The Act is administered by MPI.¹²⁶ The Act's stated purpose is to reform the law relating to the welfare of animals and the prevention of their ill-treatment.¹²⁷ In particular, the Act purports to meet its purpose by the following means:

- to recognise that animals are sentient;
- to require owners of animals and persons in charge of animals to attend properly to the welfare of those animals;
- to specify conduct that is or is not permissible in relation to any animal or class of animals;
- to provide a process for approving the use of animals in research, testing and teaching;
- to establish a National Animal Welfare Advisory Committee and a National Animal Ethics Advisory Committee;
- and to provide for the development and issue of codes of welfare and the approval of codes of ethical conduct.¹²⁸

While the purpose of this appendix is to address the application, operation and parts of the Act, it does not purport to address every section of the Act owing to its

¹²⁶ Animal Welfare Act 1999, Title notes.

¹²⁷ Title para (a).

¹²⁸ Title para (a).

length.¹²⁹ As the purpose of this paper is to assess the enforcement, compliance and oversight of the Act, the focus of this paper is upon the provisions and parts of the Act that concern those aspects of the legislative framework.

3.3 Care of Animals

The purpose of pt 1 is to ensure that owners of animals and persons in charge of animals attend properly to the welfare of those animals.¹³⁰ Accordingly, pt 1 addresses the obligations upon those who assume responsibility for the care of animals and outlines the physical, health and behavioural needs of animals that must be met.¹³¹ “Physical, health and behavioural needs” are defined as follows:

- proper and sufficient food;
- proper and sufficient water;
- adequate shelter;
- opportunity to display normal patterns of behaviour;
- physical handling in a manner which minimises the likelihood of unreasonable or unnecessary pain or distress and protection from; and
- rapid diagnosis of, any significant injury or disease.¹³²

The owner of an animal and every person in charge of an animal is obliged to ensure that those needs are met in a manner that is in accordance with good practice and scientific knowledge.¹³³ Those parties are also obliged to alleviate the pain or distress of ill or injured animals in their care.¹³⁴ It is an offence not to meet these obligations.¹³⁵ These offences are of strict liability, meaning that an offence has been committed

¹²⁹ Comprehensive analysis of the Act in its entirety is found in Neil Wells and M B Rodriguez Ferrere *Wells on Animal Law* (2nd ed, Thomson Reuters, Wellington, 2018).

¹³⁰ Section 9(1).

¹³¹ Sections 10 and 11.

¹³² Section 4.

¹³³ Section 10.

¹³⁴ Section 11.

¹³⁵ Section 12. See also s 14:

14 Further animal welfare offences

(1) A person commits an offence who, being the owner of, or a person in charge of, an animal, without reasonable excuse,—

(a) keeps the animal alive when it is in such a condition that it is suffering unreasonable or unnecessary pain or distress; or

(b) sells, attempts to sell, or offers for sale, otherwise than for the express purpose of being killed, the animal when it is suffering unreasonable or unnecessary pain or distress.

(2) A person commits an offence who, being the owner of, or person in charge of, an animal, without reasonable excuse, deserts the animal in circumstances in which no provision is made to meet its physical, health, and behavioural needs.

even if the party did not intend to commit the offence and instead failed to take reasonable care to meet their legal obligations.¹³⁶ The obligations of pt 1 may therefore be broadly viewed as positive duties. Along with stipulating the penalties for breaching its provisions,¹³⁷ pt 1 also addresses the regulation of surgical procedures on animals¹³⁸ and the welfare obligations surrounding the transport of animals.¹³⁹

3.4 Conduct Towards Animals

The purpose of pt 2 of the Act is to state conduct that is or is not permissible in relation to a species of animal or animals used for certain purposes by prohibiting certain types of conduct.¹⁴⁰ This report addresses enforcement of the offences of wilful ill-treatment and reckless ill-treatment of animals and the further offences identified in pt 2.¹⁴¹ This research will address the enforcement of offences surrounding animal fighting ventures addressed by pt 2 of the Act¹⁴² but will not address the offences surrounding the treatment of animals in a wild state or the use of traps and devices, including their inspection.¹⁴³

3.5 Animal Exports

The purpose of pt 3 is to protect the welfare of animals being exported from New Zealand and to protect New Zealand's reputation as a responsible exporter of animals and products made from animals.¹⁴⁴ Animal exports from New Zealand are governed by the issuance of animal welfare export certificates, and pt 3 addresses the framework for considering applications for certification.¹⁴⁵

3.6 Advisory Committees

The purpose of this pt 4 is to establish a National Animal Welfare Advisory Committee (NAWAC) and a National Animal Ethics Advisory Committee (NAEAC).¹⁴⁶ The functions of the NAWAC include advising the Minister on issues relating to the welfare of animals, developing and advising the Minister on codes of welfare and recommending to the Minister that regulations be made under s 183A prescribing

¹³⁶ Section 13.

¹³⁷ Section 25.

¹³⁸ Sections 15–21.

¹³⁹ Sections 22 and 23.

¹⁴⁰ Section 27(a).

¹⁴¹ Sections 28–30.

¹⁴² Section 31.

¹⁴³ Sections 32–36 of the Act relate to traps and devices, and ss 30A–30E relate to ill-treating, hunting or killing wild animals or animals in a wild state.

¹⁴⁴ Section 38.

¹⁴⁵ Sections 40–54.

¹⁴⁶ Section 55(1).

animal welfare standards or requirements.¹⁴⁷ The functions of the NAEAC revolve around advising the Minister and the Director-General on ethical issues and animal welfare issues arising from research, testing and teaching,¹⁴⁸ which are not addressed by this research.

3.7 Codes of Welfare

The purpose of pt 5 is to establish procedures for the development, issue, amendment, review and revocation of codes of welfare (COWs).¹⁴⁹ COWs relate to animals that are owned by any person or are in the charge of any person. They establish minimum standards with regard to the way in which persons care for such animals and conduct themselves towards such animals and include recommendations on the best practice to be observed by persons in caring for such animals and in conducting themselves towards such animals.¹⁵⁰

A COW may relate to one or more of the following:

- a species of animal;
- animals used for purposes specified in the COW;
- animal establishments of a kind specified in the COW;
- types of entertainment (in which animals are used) specified in the COW;
- the transport of animals; and
- the procedures and equipment used in the management, care or killing of animals or in the carrying out of surgical procedures on animals.¹⁵¹

COWs are prepared by the Minister, NAWAC or any other person (in the latter case, the draft COW must be forwarded to NAWAC).¹⁵² Public notification and consultation must be undertaken,¹⁵³ and the Act prescribes a number of matters to be considered by NAWAC in its decision to recommend the content of a draft COW to the Minister.¹⁵⁴ The Minister may elect to issue the COWs¹⁵⁵ and may amend or revoke them.¹⁵⁶ Crucially, however, COWs are not enforceable in themselves and are instead better thought of as guidelines for best practice regarding the treatment of animals.

¹⁴⁷ Section 55(2).

¹⁴⁸ Section 55(3).

¹⁴⁹ Section 68.

¹⁵⁰ Section 68.

¹⁵¹ Section 69.

¹⁵² Section 70.

¹⁵³ Sections 71 and 72.

¹⁵⁴ Sections 73 and 74.

¹⁵⁵ Section 75.

¹⁵⁶ Section 76.

According to the MPI, they are enacted to encourage higher standards of animal welfare.¹⁵⁷

The MPI considers that COWs are “flexible enough to be modified and improved as community expectations, good practice, scientific knowledge and technical advances allow”.¹⁵⁸ While one may not be prosecuted for breaching a COW, evidence of failure to meet a relevant minimum standard in a code may be used to support a prosecution for an offence under the Act. Similarly, in rebuttal, the defence may include evidence that the minimum standards in a relevant code were equalled or excelled.¹⁵⁹ For example, in a prosecution for an offence against s 12 (which prohibits failure to meet the needs of an animal, failure to alleviate its pain or distress or killing an animal in an unnecessarily painful or distressing manner), evidence that a relevant COW was in existence at the time of the alleged offence and that a relevant minimum standard established by that code was not complied with is rebuttable evidence that the person charged with the offence failed to comply with or contravened the provision.¹⁶⁰ An equivalent provision exists for particular offences under pt 1 relating to surgical procedures on animals and transport of animals¹⁶¹ and for offences under pt 2 of the Act.¹⁶² At the time of writing, there are 18 codes in force, governing the treatment of a wide range of animals and purposes for using animals.¹⁶³ For example, different COWs exist for “layer hens” and “meat chickens”, and COWs enacted for the care of less common animal species in New Zealand include the COWs for llamas and alpacas and for ostriches and emus.¹⁶⁴

3.8 Administration of the Act

The purposes of pt 7 of the Act are as follows: to specify the criteria for an organisation to be declared as an approved organisation, to provide for the appointment of inspectors and auxiliary officers, to specify the powers and duties of approved organisations in relation to animals in their custody and to specify the powers of inspectors and auxiliary officers, including their powers of search and their powers in relation to animals.¹⁶⁵

¹⁵⁷ Ministry for Primary Industries “Codes of welfare” <www.mpi.govt.nz/protection-and-response/>.

¹⁵⁸ Ministry for Primary Industries, above n 157.

¹⁵⁹ Ministry for Primary Industries, above n 157.

¹⁶⁰ Section 13(1A).

¹⁶¹ Section 24.

¹⁶² Section 30.

¹⁶³ Ministry for Primary Industries, above n 157.

¹⁶⁴ Ministry for Primary Industries, above n 157.

¹⁶⁵ Section 120.

3.8.1 Approved Organisations

Approved organisations are declared to be so by the Minister.¹⁶⁶ To achieve this declaration, the organisation must meet the criteria specified in the Act, which includes a purpose or role of the organisation being the improvement of the welfare of animals or a particular species of animals.¹⁶⁷ The RNZSPCA is the only organisation approved by the Minister.¹⁶⁸ Accordingly, the MPI and the RNZSPCA jointly enforce the Act.¹⁶⁹ The Minister may revoke a declaration that an organisation is an approved organisation and may also revoke, replace or amend any of the conditions imposed on the organisation in the declaration.¹⁷⁰

3.8.2 Inspectors and Auxiliary Officers

Inspectors may be appointed either by the Director-General¹⁷¹ from those employed within the state sector¹⁷² or by the Minister on the recommendation of an approved organisation.¹⁷³ In the latter case, any person may be appointed as an inspector, rather than only those employed in the state sector.¹⁷⁴ Every police constable is automatically deemed to be an inspector appointed to act generally through New Zealand for the purposes of the Act.¹⁷⁵ Any person may be appointed as an auxiliary officer by the Director-General on the recommendation of an approved organisation.¹⁷⁶ Inspectors and auxiliary officers must act under the direction of the Director-General in the course of their duty.¹⁷⁷ It is an offence to wilfully obstruct or hinder an inspector or auxiliary officer in the exercise of their powers or in the performance of their duties under the Act.¹⁷⁸

3.8.3 Powers of Search and Entry

¹⁶⁶ Section 121. The Minister is defined in s 2(1) of the Act as “the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of [the] Act”. Typically, this is the Minister for Primary Industries, as this is the Ministry charged with administering the Act.

¹⁶⁷ Section 122(1)(a).

¹⁶⁸ Section 189. The only other approved organisation that has been Gazetted is the Animal Welfare Institute, whose approval was revoked in 2010. See Revocation of the Declaration of Approval of the Animal Welfare Institute of New Zealand as an Approved Organisation Under the Animal Welfare Act 1999 (16 Dec 2010) 173 *New Zealand Gazette* 4250.

¹⁶⁹ Ministry for Primary Industries “Animal welfare” <www.mpi.govt.nz/law-and-policy/>.

¹⁷⁰ Section 123.

¹⁷¹ The Director-General is defined in s 2(1) of the Act as being the Chief Executive of the Ministry for Primary Industries.

¹⁷² Section 124(1).

¹⁷³ Section 124(2).

¹⁷⁴ Section 124(2).

¹⁷⁵ Section 124(5).

¹⁷⁶ Section 125(1).

¹⁷⁷ Section 126(1).

¹⁷⁸ Section 159(1).

An inspector may at a reasonable time enter land, premises or a stationary vehicle (including aircraft or ship) without warrant for the purposes of inspecting an animal.¹⁷⁹ They are also entitled to take evidence such as photographs and video recordings¹⁸⁰ and evidence such as blood samples from dead or living animals.¹⁸¹ An inspector can also take possession of an animal that they have reasonable grounds to believe is at clear risk of imminent harm, has been wilfully treated, requires veterinary treatment or is owned by a person who has been disqualified from owning an animal under the Act.¹⁸² An inspector also has power to prevent or mitigate suffering of an animal by taking steps that can, if necessary, include destroying the animal.¹⁸³ The powers described do not give an inspector the right to enter a dwelling house or marae unless they are also authorised by a search warrant.¹⁸⁴ A search warrant must be obtained from an issuing officer authorised by the Search and Surveillance Act 2012, who is satisfied by the applying constable or inspector that an offence against the Act is being committed or that an animal is suffering.¹⁸⁵

An inspector may request that any person give their full name, address and date of birth if that person has been found offending against the Act or any regulations made under the Act or the inspector has reasonable grounds to believe that person has breached the Act or any regulations made under it. If the person persistently refuses to comply after being warned by the inspector about these provisions of the Act, the inspector may arrest that person without warrant. It is an offence to fail to comply with a request or to give an inspector particulars that are false in an important aspect.¹⁸⁶

A constable is entitled to stop any vehicle if they reasonably believe that there is an animal on or in that vehicle which is suffering or is likely to suffer unreasonable or unnecessary pain or distress. This power may be exercised for the purpose of exercising their powers or enabling an inspector to exercise their powers conferred by the Act.¹⁸⁷ If a constable utilises this power, they are further entitled to detain the vehicle and any animals in or on the vehicle to legally search the vehicle or animal or to provide humane treatment for any animal.¹⁸⁸

3.8.4 Powers in Relation to Injured or Sick Animals

¹⁷⁹ Section 127(1).

¹⁸⁰ Section 127(4A).

¹⁸¹ Section 127(4B).

¹⁸² Section 127(5).

¹⁸³ Section 130.

¹⁸⁴ Section 127(3).

¹⁸⁵ Section 131.

¹⁸⁶ Section 157.

¹⁸⁷ Section 127(2). This section also applies to any aircraft or ship.

¹⁸⁸ Section 137(1).

An inspector, auxiliary officer or veterinarian¹⁸⁹ has the power to have an injured or sick animal destroyed if they consider that reasonable treatment will not be sufficient to prevent the animal from suffering unreasonable or unnecessary pain or distress. While they must attempt to gain the permission of the owner of the animal, permission is not necessary if the owner cannot be found or will not agree to the animal being destroyed while also taking an unreasonable time to gain a second opinion from a veterinarian on whether the animal should be destroyed.¹⁹⁰

3.8.5 Disposal of Animals in Custody of Approved Organisations

When an approved organisation accepts custody of an animal, it must take reasonable steps to identify the owner of the animal and may take steps to prevent or mitigate any suffering of the animal.¹⁹¹ If the approved organisation cannot identify the owner of the animal or the owner does not return to reclaim custody of the animal as previously agreed by the parties, the approved organisation may then dispose of the animal in any manner that it sees fit (including by destruction) once it has given the owner written notice of intent and seven days from receipt of the notice to claim the animal. The appropriate manner in which to dispose of the animal is at the discretion of an inspector or auxiliary officer acting for the organisation.¹⁹²

If the approved organisation has not been able to identify the owner of the animal, it must keep the animal in its custody for at least seven days and may then dispose of the animal in any manner in which an inspector or auxiliary officer acting for the approved organisation sees fit. The seven day custody period does not apply if the animal is wild or unsocialised, severely distressed or in the opinion of a veterinarian distressed as a direct result of being contained to the extent that it would be unreasonable and unnecessary to continue containment. Nor does the seven day custody period apply if the animal is diseased or suspected of being so and it is reasonable for the inspector or auxiliary officer acting for the approved organisation to believe that the welfare of other animals in custody of the approved organisation would be compromised if the approved organisation continued to hold the animal in custody. The discretion of the best manner in which to dispose of the animal again rests with an inspector or auxiliary officer acting for the approved organisation.¹⁹³

In exercising these functions and powers, the approved organisation must keep a register of the numbers and types of animals disposed of, along with the dates of

¹⁸⁹ Section 2(1) provides that a person is a “veterinarian” under the Animal Welfare Act 1999 if they are either a “veterinarian” or a “specialist” under s 4 of the Veterinarians Act 2005. The Veterinarians Act provides that a veterinarian is a person who is a registered person and who holds a current practising certificate and that a specialist is a veterinarian who satisfies the requirements of s 7(2) of that Act.

¹⁹⁰ Section 138.

¹⁹¹ Section 141(1).

¹⁹² Section 141(1A)–(4).

¹⁹³ Section 142(2).

actions and the manner in which the animal was destroyed.¹⁹⁴ These records must be kept for at least one year after the date on which the approved organisation took custody of the animal.¹⁹⁵

3.8.6 Enforcement Orders

An enforcement order is an order made by the District Court on an originating application by an inspector and requires a person to comply with the provisions of the Act, any regulations made under it or a code of ethical conduct or conditions imposed by an animal ethics committee in giving its approval of a project.¹⁹⁶ On application, the District Court may only make an enforcement order if satisfied that the person against whom the order is sought has been acting in contravention of the Act, regulation or code of ethical conduct or is likely to do so.¹⁹⁷

Where an enforcement order is made against a person and served upon them, that person must comply with the order.¹⁹⁸ If they fail to comply with the order, any person may with the consent of the District Court comply with the order on behalf of the failing party. For that purpose, they may enter, without warrant but with a constable, a marae or dwellinghouse. If entering any other land or structure for the purposes of complying with the enforcement order, they do not require a warrant or an accompanying constable.¹⁹⁹ It is an offence to contravene an enforcement order.²⁰⁰

The District Court has jurisdiction to make a temporary enforcement order, which is an enforcement order made on application without notice, if the District Court is satisfied that the delay that would be caused by proceeding on notice would or might entail a risk of harm to any animal. A temporary enforcement order becomes final by operation of law three months after the date on which it is made, if it is not discharged before the lapse of three months. Where a temporary enforcement order is made, the respondent may notify the court that they wish to be heard or whether a final order should be substituted for the temporary order or apply for the enforcement order to be discharged.²⁰¹

3.8.7 Compliance Notices

An inspector may issue a compliance notice to a person. A compliance notice is issued for the purpose of preventing conduct that the inspector has good cause to

¹⁹⁴ Section 142(1).

¹⁹⁵ Section 142(2).

¹⁹⁶ Section 143.

¹⁹⁷ Section 144.

¹⁹⁸ Section 145(1).

¹⁹⁹ Section 145(2).

²⁰⁰ Section 152.

²⁰¹ Section 148.

suspect contravenes or is likely to contravene the Act or any regulations made under it. Accordingly, a compliance notice may: require the person to cease doing something, prevent the person from starting something or from doing something again, prohibit the person from having something done on the person's behalf (whether as a first or repeated action) or require the person to do something.²⁰²

A compliance notice must state the following: the name of the person to whom it is issued; the reasons why the inspector issued it, the requirement or prohibition imposed by the inspector, the time frame in which that requirement must be achieved or the time and date if any from which the prohibition is to take effect (as applicable), any conditions imposed by the inspector, the consequences of not complying with the notice, the rights of appeal in the Act and the name and address of the agency whose inspector issued the notice.²⁰³ The inspector who issues a compliance notice must ensure that it is served on the person to whom it is issued.²⁰⁴ It is an offence against the Act to fail to comply with a compliance notice.²⁰⁵

3.8.8 Audits

There is jurisdiction to carry out audits of approved organisations for the purposes of the Act.²⁰⁶ Audits include examinations, investigations and reviews.²⁰⁷ The auditors conduct audits as to the previous and current positions and as to the likely future position of the following matters: an organisation's ability to meet the criteria in the Act by which it is assessed whether that organisation ought to be declared an approved organisation,²⁰⁸ the compliance of an organisation and its inspectors and

²⁰² Section 156A.

²⁰³ Section 156B.

²⁰⁴ Section 156C.

²⁰⁵ Section 156I.

²⁰⁶ Section 123A.

²⁰⁷ Section 123B(2).

²⁰⁸ The criteria are specified in s 122(1):

The Minister must, before declaring an organisation to be an approved organisation for the purposes of this Act, be satisfied, by the production to the Minister of suitable evidence, that—

- (a) one of the purposes or roles of the organisation concerns the welfare of animals or a particular species of animal; and
- (b) the accountability arrangements, financial arrangements, and management of the organisation are such that, having regard to the interests of the public, the organisation is suitable to be declared to be an approved organisation; and
- (c) the functions and powers of the organisation are not such that the organisation could face a conflict of interest if it were to have both those functions and powers and the functions and powers of an approved organisation; and
- (d) the employment contracts or arrangements between the organisation and the organisation's inspectors and auxiliary officers are such that, having regard to the interests of the public, the organisation is suitable to be declared to be an approved organisation; and
- (e) the persons who may be recommended for appointment as inspectors or auxiliary officers—
 - (i) will have the relevant technical expertise and experience to be able to exercise competently the powers, duties, and functions conferred or imposed on inspectors and auxiliary officers under this Act; and
 - (ii) subject to section 126, will be properly answerable to the organisation.

auxiliary officers with the relevant performance and technical standards for inspectors and auxiliary officers, an organisation's compliance with any memorandum of understanding between the organisation and the Ministry, any power exercised or function or duty carried out by any inspector or auxiliary officer of an organisation, an organisation's compliance with animal welfare law, compliance by an organisation and its inspectors and auxiliary officers with any direction issued by the Director-General under s 126 of the Act²⁰⁹ and any other class or description of audit necessary to audit an organisation's work or status as an approved organisation under the Act.²¹⁰ An audit may examine any inspector, auxiliary officer, or employee of an organisation, and any other inspector or auxiliary officer.²¹¹

An auditor may examine the systems, processes and records of the approved organisation.²¹² The approved organisation must ensure the following:²¹³ that the auditor has full access to all books and records in the possession or under the control of the organisation and to any place where those are kept, that the auditor is able to examine or audit any books or records and take copies or extracts from them, that the auditor has full access to facilities (such as animal shelters) that are maintained so that the organisation can fulfil its duties under the Act, that the auditor is able to take samples and records from facilities and animals kept there as provided in s 127 of the Act²¹⁴ and that the auditor has full access to any other thing that relates to the organisation's performance of duties under the Act and the organisations ability to meet the criteria by which an organisation is assessed to be satisfactorily declarable as an approved organisation.²¹⁵

3.9 Offences

3.9.1 Infringement Offences

Upon the commencement of the Act, there were a small number of infringement offences relating to very specific conduct. Those offences included:

²⁰⁹ Section 126 states:

Section 126 Inspectors and auxiliary officers to act under direction of Director-General

(1) All inspectors and auxiliary officers must act under the direction of the Director-General in the exercise and performance of the powers, duties, and functions conferred or imposed on them under this Act.

(2) In the event of any conflict arising between the powers, duties, and functions conferred or imposed on an inspector or auxiliary officer, as the case may be, as an employee or member of an approved organisation and the powers, duties, and functions conferred or imposed on that inspector or auxiliary officer under this Act, the powers, duties, and functions conferred or imposed on that inspector or auxiliary officer under this Act prevail.

²¹⁰ Section 123B(3).

²¹¹ Section 123B(4).

²¹² Section 123D(4).

²¹³ Section 123D(5).

²¹⁴ Section 127 describes an inspector's power to inspect land, premises and places and stationary vehicles, aircraft and ships.

²¹⁵ The criteria are specified in s 122(1).

- failing to remove and attend to a live animal caught in a trap;²¹⁶
- failing to comply with the instructions of an inspector relating to the export of animals;²¹⁷
- failing to comply with the instructions of an inspector to prevent or mitigate suffering;²¹⁸
- failing to comply with the requirements of a compliance notice;²¹⁹ and
- failing to give name and address to an inspector.²²⁰

However, as discussed below, the passage of the Animal Welfare Amendment Act (No 2) 2015 introduced a new provision allowing for the promulgation of a suite of regulatory offences. In October 2018, the majority of the provisions in the Animal Welfare (Care and Procedures) Regulations 2018 came into force.²²¹ Those Regulations provide 54 different offences, the vast majority infringement offences.²²² They are equivalent to – or replace – a range of minimum standards found in COWs and refer to specific conduct: from restricting the use of equipment that may injure llama or alpaca to a prohibition on fireworks at rodeo events.²²³

When a person is alleged to have committed an infringement offence, they may either be served with an infringement notice or charged and have court proceedings brought against them under the Criminal Procedure Act 2011.²²⁴ An infringement notice is issued by an inspector who has reasonable cause to believe that a person has committed an infringement offence.²²⁵ All infringement fees are payable to the Director-General, who must pay all infringement fees received into a Crown Bank Account: approved organisations do not receive the revenue from issuing infringement fees.²²⁶

3.9.2 Employer, Principal and Corporate Liability

Where an offence is committed against the Act by a person acting as the employee or another person, the offence is treated as committed by the employer as well as by the employee. The employer does not have to have had knowledge of the offence

²¹⁶ Animal Welfare Act 1999, s 36(4).

²¹⁷ Section 54(2).

²¹⁸ Section 130.

²¹⁹ Section 156l.

²²⁰ Section 157.

²²¹ Animal Welfare (Care and Procedures) Regulations 2018, reg 2.

²²² Regulations 5–59. See also Wells and Rodriguez Ferrere, above n 129, at ch 12; and Marcelo B Rodriguez Ferrere “Codes vs regulations: How best to enforce animal welfare in New Zealand?” (2018) 43 Alt LJ 250.

²²³ Animal Welfare (Care and Procedures) Regulations 2018, regs 23 and 46.

²²⁴ Animal Welfare Act 1999, s 161.

²²⁵ Animal Welfare Act 1999, s 162(1).

²²⁶ Animal Welfare Act 1999, s 163; Ministry for Primary Industries, above n 31, at 30.

being committed or to have approved of the offence.²²⁷ Conversely, if a person commits an offence while acting as the agent of another person, the principal needs to have given their express or implied authority for the agent to commit the offence in order for the principal to be liable for the offence as well as the agent.²²⁸ However, there are defences available to an employer charged under the Act that are not available to a principal. In the case of an employer that is a natural person, it is a defence to show that they did not know nor could reasonably be expected to have known that the offence was to be or was being committed and that they took such steps as were reasonable in all the circumstances to mitigate or remedy the effects of the action or event after it occurred.²²⁹

Alternatively, it is a defence for an employer to show that they took such steps as were reasonably practicable to prevent the commission of the offence and that they then took such steps as were reasonable in all the circumstances to mitigate or remedy the effects of the action or event after it occurred. If the employer is a body corporate, it is a defence to prove that neither the directors nor any person involved in the management of the body corporate knew or could reasonably be expected to have known that the offence was to be or was being committed and that the body corporate took such steps as were reasonable in all the circumstances to investigate or remedy the effects of the action or event after it occurred.²³⁰ Where any body corporate is convicted of an offence against the Act, every director and every person concerned in the management of the body corporate is also guilty of the offence if it is proved that the act that constituted the offence took place with their authority, permission or consent. Alternatively, they will be guilty if it is proved that they knew or should have known that the offence was to be or was being committed and failed to take all reasonable steps to prevent or stop it.²³¹

3.9.3 Disqualification Order

If a person is convicted of an offence against any section in pts 1 or 2 or of contravening an enforcement order or a disqualification order made under the Act,²³² the Court may disqualify them from owning or exercising authority in respect of animals, whether an animal or animals of a particular kind or description or animals generally.²³³ The court may also make such an order if a person is charged with an applicable offence and is found unfit to stand trial under the Criminal Procedure

²²⁷ Section 164(1).

²²⁸ Section 164(2).

²²⁹ Section 164(3)(a)(i).

²³⁰ Section 164(3)(a)(ii).

²³¹ Section 165.

²³² Section 169(1).

²³³ Section 169(3).

(Mentally Impaired Persons) Act 2003.²³⁴ A disqualification order may be made in addition to or in substitution for any other penalty or order imposed by the court. In considering whether to make a disqualification order, the court must have regard to the following factors:

- the purposes of pts 1 and 2;²³⁵
- the maximum penalty specified for the charge from which the conviction arose;
- the seriousness of the offending, including (without limitation) the nature and gravity of the harm;
- the number of animals involved and the frequency of the offending;
- the character of the person;
- the previous offending history (if any) of the person; and
- any other circumstances of the case.²³⁶

In making a disqualification order, the court may also specify a minimum disqualification period.²³⁷ It is an offence to contravene a disqualification order.²³⁸

3.9.4 Order for Forfeiture of Animals

The Court has jurisdiction to order that certain animals be forfeited to the Crown or approved organisation.²³⁹ This jurisdiction applies in the event that the court is convicting a person (the offender) of an offence against the Act in respect of an animal or animals and the court thinks it desirable for the protection of the animal or animals in question that are owned by the offender and any other animals at the date of conviction owned by the offender to make an order for their forfeiture.²⁴⁰ If a court finds that a person is unfit to stand trial for an offence against the Act in respect of an animal or animals, the court may make any order for their forfeiture as if it had convicted the person of the offence.²⁴¹

3.10 Regulations

3.10.1 General

²³⁴ Section 169(2).

²³⁵ Section 9(1) provides that the purpose of pt 1 “is to ensure that owners of animals and persons in charge of animals attend properly to the welfare of those animals”. Section 27 provides that the purpose of pt 2 “is to state conduct that is or is not permissible in relation to a species of animal or animals used for certain purposes”.

²³⁶ Section 169(4).

²³⁷ Section 169(5).

²³⁸ Section 169B.

²³⁹ Section 172.

²⁴⁰ Section 172(1).

²⁴¹ Section 172(2).

The Governor-General has jurisdiction under the Act to make regulations by Order in Council.²⁴² Regulations may be for all or any of the following purposes:

- prescribing the forms of search warrants, infringement notices and other documents required the Act;²⁴³
- prescribing matters in respect of which costs are recoverable under the Act and the administration of those costs;²⁴⁴
- prescribing how fees may be recovered for the purposes of proceedings in relation to enforcement orders;²⁴⁵
- prescribing offences in respect of the contravention of or non-compliance with any regulations made under the Act;²⁴⁶
- prescribing infringement offences and corresponding infringement fees;²⁴⁷
- prescribing penal fines for offences against regulations made under the Act;²⁴⁸ and
- providing for such other matters as are contemplated by or necessary for giving full effect to the Act and for its due administration.²⁴⁹

While regulations may also address matters relating to codes of ethical conduct, animal ethics committees, the definition of “cosmetic” and the collection of information by code holders,²⁵⁰ this research does not address pt 6 of the Act, which these provisions address.

3.10.2 Regulations Relating to Standards of Care

As referred to above, the Animal Welfare Amendment Act (No. 2) 2015 inserted s 183A into the Act, which allowed for the promulgation of regulations relating to standards of care.²⁵¹ Such regulations may prescribe animal welfare standards or requirements for owners or persons in charge of animals and are enacted for the purpose of giving effect to pts 1 and 2 of the Act. They may relate to the care of animals, relate to conduct towards them or prohibit specified things or activities.²⁵² Before recommending a regulation to the Governor-General, the Minister must consult with NAWAC.²⁵³

²⁴² Section 183(1).

²⁴³ Section 183(1)(a).

²⁴⁴ Section 183(1)(e).

²⁴⁵ Section 183(1)(f).

²⁴⁶ Section 183(1)(g).

²⁴⁷ Section 183(1)(h). This may include different fees for different infringement offences, including different fees for a first or second or third offence.

²⁴⁸ Section 183(1)(i).

²⁴⁹ Section 183(1)(j).

²⁵⁰ Section 183(1)(b)–(da).

²⁵¹ Section 183A.

²⁵² Section 183A(1)(a).

²⁵³ Section 183A(10).

Regulations may establish any minimum standard that could be established as a COW or operate to amend, revoke or replace any minimum standard or part of a minimum standard within a COW established under pt 5 of the Act.²⁵⁴ However the statutory obligations that apply to NAWAC in enacting COWs do not apply.²⁵⁵ There is therefore no obligation to undertake public notification and consultation regarding the proposed regulation.²⁵⁶ Nor does NAWAC have to consider the matters prescribed under the Act that it would in enacting a COW²⁵⁷ or create a report for the Minister to accompany its recommendations as to whether or not the regulation ought to be enacted as it would with a COW.²⁵⁸ The processes that the Minister is obligated to follow in regard to enacting a COW under s 75 do not apply to enacting a regulation that operates in the same manner of a COW.

Two sets of regulations have so far been promulgated under this power: the Animal Welfare (Calves) Regulations 2016 and the Animal Welfare (Care and Procedures) Regulations 2018. The Calves Regulations have since been revoked and absorbed by the Animal Welfare (Care and Procedures) Regulations 2018,²⁵⁹ which are much more extensive. Both made use of the power under s 183 of the Act to prescribe infringement offences of a breach of the stipulated standards of care, and the new regulations create directly enforceable standards, in contrast to minimum standards in COWs.²⁶⁰ The impact of these regulations are discussed in Part 2 and Appendix 2 of this Report.

Like COWs, under s 183A(2) of the Act, regulations may be made that prescribe standards or requirements that do not fully meet the obligations of ss 10 or 11.²⁶¹ These sections prescribe the obligations of owners and of persons in charge of animals, specifically their obligations to meet the needs of animals and to alleviate the suffering of ill or injured animals. Ordinarily, it is an offence to fail to comply with these obligations,²⁶² as detailed in this paper's discussion of pt 1 of the Act.

Regulations may also be made under s 183A(2) that prescribe standards or requirements that do not fully meet the obligations that a person would need to observe in the treatment, transport or killing of animals if that person were to avoid committing an offence against ss 12(c), 21(1)(b), 22(2), 23(1), 23(2) or 29(a) of the

²⁵⁴ Section 183A(1)(b).

²⁵⁵ Section 183A(10).

²⁵⁶ Sections 71 and 72.

²⁵⁷ Section 73.

²⁵⁸ Section 74.

²⁵⁹ Animal Welfare (Care and Procedures) Regulations 2018, reg 64(1).

²⁶⁰ See 3.7 above and Rodriguez Ferrere, above n 222.

²⁶¹ Section 183A(2)(a).

²⁶² Section 12.

Act.²⁶³ In a prosecution for an offence against any of the provisions prescribed by s 183A(2), a person has a defence if the court is satisfied that the act or omission was authorised by the regulations and that the person acted in reliance of the regulations.²⁶⁴

3.10.3 Regulations Relating to Surgical and Painful Procedures

On the recommendation of the Minister and by Order in Council, the Governor-General may make regulations prohibiting specified surgical procedures or painful procedures from being performed on animals²⁶⁵ or declaring that any specified surgical procedure is not a significant surgical procedure for the purposes of the Act.²⁶⁶ Note, however, that the definitions of “restricted surgical procedure” and “significant surgical procedure” have been repealed by the Animal Welfare Amendment Act (No 2) 2015²⁶⁷ and that this amendment will enter into force either by 9 May 2020 (being five years from the date of Royal Assent on 9 May 2015)²⁶⁸ or on an earlier date if one is appointed by the Governor-General by Order in Council.²⁶⁹ At the time of writing, MPI was still in the process of progressing regulations under this power.²⁷⁰

3.10.4 Regulations Relating to Exporting Animals

By Order in Council and on the recommendation of the Minister, the Governor-General may make regulations prescribing requirements and other matters relating to the exportation of animals.²⁷¹ Such matters may (without limitation) include the species, age, number and fitness of animals,²⁷² the purpose of the exportation²⁷³ and reporting and independent monitoring.²⁷⁴ Any such regulations made may prohibit, either absolutely or conditionally, any specified type of exportation of animals.²⁷⁵ Such conditions may require the prior approval of the Director-General be obtained before exportation, authorise the Director-General to impose conditions on any exportation, and set out criteria applying to the granting of approval and describe the types of conditions that may be imposed.²⁷⁶

²⁶³ Section 183A(2)(b).

²⁶⁴ Animal Welfare Act 1999, s 183A(11).

²⁶⁵ Section 183B(1)(a).

²⁶⁶ Section 183B(1)(c).

²⁶⁷ Animal Welfare Amendment Act (No 2) 2015, s 5(6).

²⁶⁸ New Zealand Parliament “Animal Welfare Amendment Bill” <www.parliament.nz>.

²⁶⁹ Animal Welfare Amendment Act (No 2) 2015, s 2(1).

²⁷⁰ Ministry for Primary Industries “Animal Welfare Regulations” <www.mpi.govt.nz/law-and-policy/>.

²⁷¹ Section 183C(1).

²⁷² Section 183C(1)(a).

²⁷³ Section 183C(1)(d).

²⁷⁴ Section 183C(1)(h).

²⁷⁵ Section 183C(2).

²⁷⁶ Section 183C(3).

One set of regulations has been promulgated under this power. The Animal Welfare (Export of Livestock for Slaughter) Regulations 2016 came into force on 21 December 2016 and prohibits the export of livestock for slaughter without approval from the Director-General.²⁷⁷ This replaced the de facto prohibition of livestock for slaughter under the Customs and Excise Act 1996 that was renewed periodically.²⁷⁸

²⁷⁷ Animal Welfare (Export of Livestock for Slaughter) Regulations 2016, regs 2 and 5.

²⁷⁸ The last iteration being the Customs Export Prohibition (Livestock for Slaughter) Order 2013.

4. Appendix 2: Enforcement of the Animal Welfare Act 1999

4.1 Introduction

This appendix provides a comprehensive account of the practical mechanisms for enforcement of the Act: the actors, institutions, practices, procedures and mutual understandings engaged to implement the legislative framework. It begins by detailing the enforcement of the Act with regard to companion animals, including the welfare issues presented by pet shops and other sellers of companion animals. It then looks to enforcement of the Act within the production animal spheres, including the export of animals to other jurisdictions. Finally, it will outline the grey area of animals used in entertainment, highlighting gaps in the enforcement infrastructure.

Enforcement is the predominant role of the Ministry for Primary Industries (MPI), the Royal New Zealand Society for the Prevention of Cruelty to Animals (RNZSPCA) and police officers. Certain recurring themes across these areas of animal welfare law enforcement in New Zealand become evident in the analysis that follows, most notably through an emphasis upon reactive rather than proactive investigations by the entities tasked with the enforcement of the Act, and those themes are the focus of Part 2 of the report.

4.2 Enforcement of the Act in the Companion Animal Spheres

4.2.1 Introduction

This part will begin by addressing the jurisdiction of the RNZSPCA under the Act as an Approved Organisation under the Act. It will examine its Memorandum of Understanding with MPI, which addresses matters such as the training of inspectors and policies of assistance and supersession between MPI and the RNZSPCA. It will then examine the Performance and Technical Standards that the RNZSPCA's AWIs must follow, covering matters including the selection, training and appointment of AWIs and the conduct of AWIs in exercising their powers, duties and functions under the enforcement of the provisions of the Act. It will then move into outlining the RNZSPCA's enforcement procedures, which are primarily based on a reactive system of responding to complaints made typically by the public and how these are responded to. It will discuss the agreements and understandings that the RNZSPCA has with other organisations such as Women's Refuges and Oranga Tamariki and the role of the First Strike Working Group at the beginning of the 21st century. It will

discuss the role of the Pro Bono Panel of Prosecutors that formed to aid the RNZSPCA in bringing offenders to court, a result of the lack of funding provided to the RNZSPCA for such matters. Issues relating to the RNZSPCA's lack of funding by the government are further developed in Part 2 of this report.

The discussion of the Act's enforcement in regard to companion animals will then move into the practices surrounding their sale. Pet shops are inspected unregularly by the RNZSPCA and in response to complaints made typically by the public or by employees who generally cannot be relied upon to report animal welfare concerns as they put their livelihood at risk in doing so. However, a greater animal welfare concern is in the diminishing in recent years of traditional retailing physical pet shops and the corresponding increase in unregulated sales of animals who are covertly bred in high scale intensive breeding conditions that are frequently poor for the welfare of the animals. While such practices have been successfully prosecuted in recent years, the RNZSPCA's overall lack of funding renders prosecutions infrequent. Instead, education measures and "buyer beware" means of enforcement are utilised, along with optional welfare declarations on sale platforms such as TradeMe and the self-regulation and voluntary reporting of groups such as the Pet Industry Association and Dogs New Zealand. The role of undercover investigations in oversight will be examined and is a recurring theme across other areas of the Act's enforcement such as production and rodeo. This part of the paper will also explore greater issues of how the welfare of those animals may be monitored after they are sold and the contributions of pet shops and unregulated breeding and selling of companion animals to larger animal welfare problems such as overpopulation, poor health and high mortality rates.

4.2.2 Jurisdiction of the RNZSPCA and its Memorandum of Understanding with MPI

Under pt 7 of the Act, the RNZSPCA is an organisation approved by MPI to enforce the Act.²⁷⁹ At the time of writing, they are the only organisation with such standing.²⁸⁰ MPI appoints inspectors under the Act, who are then trained through Unitec School of Animal Health and Welfare. Their training includes the following: planning, preparation and conducting investigations, observation, first aid to both large and small animals, emergency euthanasia, animal behaviour and transportation of small and large animals. Notably, despite the considerable powers of AWIs and AOs outlined in Appendix 1 of this report, they do not have the power of arrest unless they

²⁷⁹ Animal Welfare Act 1999, s 121.

²⁸⁰ Neil Wells "Submission on the Animal Welfare Amendment Bill 2013, Supplementary Order Paper 341 (Hon Trevor Mallard), Supplementary Order Paper 355 (Mojo Mathers), Supplementary Order Paper 356 (Mojo Mathers)" at 17.

are also members of the New Zealand Police.²⁸¹ Along with responding to complaints, RNZSPCA AWIs perform a property inspection prior to the adoption of animals such as dogs, rabbits and guinea pigs.²⁸² The most common complaints the RNZSPCA AWIs investigate are in relation to the failure to provide adequate food, water, veterinary treatment or shelter.²⁸³

The Memorandum of Understanding between the RNZSPCA and MPI (or MAF, as it then was) (the MOU) has been in force since 22 December 2010.²⁸⁴ Its provisions are not to be altered in any way without the written agreement of both parties,²⁸⁵ and it is reviewed every second year.²⁸⁶ Except for a single provision detailed below, it is not intended to be legally binding on the parties.²⁸⁷ The MOU defines the requirements for MPI and the RNZSPCA in the following aspects of their operations: the selection and appointment and other matters relating both to inspectors appointed by the Minister and auxiliary officers appointed by the Director-General under the Act on the recommendation of the RNZSPCA; the enforcement of the provisions of the Act and expectations around the accountability arrangements, financial arrangements and management of the RNZSPCA as an approved organisation under the Act.²⁸⁸

The MOU sets out the role of the Minister and the Director-General for Primary Industries and of the RNZSPCA.²⁸⁹ As noted previously, MPI administers the Act and the Minister is the person accountable for the Act's administration.²⁹⁰ The Minister may, on the recommendation of the RNZSPCA as an approved organisation, appoint AWIs under the Act for the purposes of enforcing its provisions. The Minister may also remove an AWI from office.²⁹¹ The Minister has delegated the powers of appointment of and removal of AWIs from office to the Director-General, who has sub-delegated these powers to the Deputy Director-General,²⁹² who has further sub-

²⁸¹ Ministry of Agriculture and Forestry *Guide to the Animal Welfare Act 1999*, (MAF Policy Information Paper No 27, December 1999) at 19.

²⁸² Gisborne Society for the Prevention of Cruelty to Animals "Inspectors" <https://web.archive.org/web/20180128102857/www.gisbornespca.co.nz/index.php?route=product/category&path=33_67>.

²⁸³ RNZSPCA "Animal Welfare Act" <www.rnzspca.org.nz>.

²⁸⁴ *Memorandum of Understanding between the Royal New Zealand Society for the Prevention of Cruelty to Animals Incorporated (RNZSPCA) and Her Majesty the Queen in right of New Zealand acting by and through the Ministry of Agriculture and Forestry (MAF)*, above n 56, at 17.

²⁸⁵ At 100.

²⁸⁶ At 102.

²⁸⁷ At 103.

²⁸⁸ At 1.

²⁸⁹ At 3–4.

²⁹⁰ At 1.

²⁹¹ At 2.

²⁹² "Deputy Director-General (Biosecurity)" means the Deputy Director-General who is responsible for overall management of MAF Biosecurity New Zealand: *Memorandum of Understanding between the Royal New Zealand Society for the Prevention of Cruelty to Animals Incorporated (RNZSPCA) and Her Majesty the Queen in right of New Zealand acting by and through the Ministry of Agriculture and Forestry (MAF)*, above n 56, at 1.

delegated these powers to the Director Animal Welfare.²⁹³ The Director-General may, on the recommendation of the RNZSPCA, appoint persons to be AOs for the purposes of enforcing the Act and may also remove them from office.²⁹⁴ The Director-General has delegated the powers of appointment and removal of AOs to the Deputy Director-General who has sub-delegated these powers to the Director Animal Welfare.²⁹⁵ The Director-General is accountable to the Minister for the effective delivery of animal welfare enforcement services.²⁹⁶

The RNZSPCA National Council has established a set of Performance and Technical Standards for its inspectors (PTS) that are consistent with the performance and technical standards for MPI AWIs. The PTS have been approved by the Deputy Director-General,²⁹⁷ and their provisions are detailed later in this paper. The RNZSPCA National Council, through its National Chief Inspector, is responsible for maintaining and ensuring that all Branches, Member Society, Inspectors and Auxiliary Officers comply with the provisions of the Act, the MOU and the PTS governing the following matters: selection of candidates to become AWIs or AOs and their training and appointment; procedures relating to animal welfare complaints; allocation of animal welfare complaints between the RNZSPCA and the MPI Enforcement Directorate; records; policies; procedures relating to complaints against AWIs and AOs; and MPI/RNZSPCA liaison. All Branches, Member Societies, AWIs and AOs shall be accountable to the RNZSPCA for such compliance.²⁹⁸ The RNZSPCA must maintain adequate and effective governance arrangements, financial management arrangements and management accountabilities in terms of the criteria under s 122

²⁹³ At 3.

²⁹⁴ At 4.

²⁹⁵ At 5.

²⁹⁶ At 6.

²⁹⁷ At 8.

²⁹⁸ At 9.

of the Act.²⁹⁹ Modifications to the PTS must first be approved by both the RNZSPCA National Council and the Deputy Director-General before they are implemented.³⁰⁰

The MOU makes provision for the agreement that is required between the RNZSPCA and its AWIs and AOs before they are appointed to the relevant position.³⁰¹ This is the only clause in the MOU that is intended to be legally binding on the parties.³⁰² The agreement must have the following provisions. Every person so appointed:

- shall comply with all of the obligations of their position set out in the MOU;
- acknowledges that the RNZSPCA intends to fulfil the requirements of the MOU;
- is accountable to the RNZSPCA for their compliance with all the requirements of the PTS, including their performance standards and procedural correctness; and
- authorises the RNZSPCA, MPI and all other relevant persons to collect, use and disclose relevant personal information about them in accordance with the MOU for any purpose set out in the Act or the PTS and that person shall take

²⁹⁹ At 10. Also see Animal Welfare Act 1999, s 122:

Criteria

(1) The Minister must, before declaring an organisation to be an approved organisation for the purposes of this Act, be satisfied, by the production to the Minister of suitable evidence, that—

(a) one of the purposes or roles of the organisation concerns the welfare of animals or a particular species of animal; and

(b) the accountability arrangements, financial arrangements, and management of the organisation are such that, having regard to the interests of the public, the organisation is suitable to be declared to be an approved organisation; and

(c) the functions and powers of the organisation are not such that the organisation could face a conflict of interest if it were to have both those functions and powers and the functions and powers of an approved organisation; and

(d) the employment contracts or arrangements between the organisation and the organisation's inspectors and auxiliary officers are such that, having regard to the interests of the public, the organisation is suitable to be declared to be an approved organisation; and

(e) the persons who may be recommended for appointment as inspectors or auxiliary officers—

(i) will have the relevant technical expertise and experience to be able to exercise competently the powers, duties, and functions conferred or imposed on inspectors and auxiliary officers under this Act; and

(ii) subject to section 126, will be properly answerable to the organisation.

(2) The Minister may, in making a declaration under section 121, impose, as conditions of the Minister's approval, conditions relating to the establishment by the organisation of performance standards and technical standards for inspectors and auxiliary officers.

(3) The Minister may, in making a declaration under section 121, specify that the approval is given in respect of—

(a) only the species specified in the declaration; or

(b) all animals.

(4) Nothing in this section obliges the Minister to make a declaration under section 121.

(5) The Minister may, in making a declaration under section 121, impose, as conditions of the Minister's approval, any other conditions or requirements that relate to the organisation's performance of its functions and powers that he or she considers necessary or desirable.

³⁰⁰ *Memorandum of Understanding between the Royal New Zealand Society for the Prevention of Cruelty to Animals Incorporated (RNZSPCA) and Her Majesty the Queen in right of New Zealand acting by and through the Ministry of Agriculture and Forestry (MAF)*, above n 56, at 11.

³⁰¹ At 4.

³⁰² At 103.

all such steps as the RNZSPCA reasonably considers necessary and requires of them in order for the RNZSPCA to fulfil the requirements.³⁰³

The MOU details the manner of Training Programme that is to be undertaken by prospective AWIs and AOs. An Inspector Training Programme is to be approved by the Deputy Director-General and an Auxiliary Officer Training Programme must be approved by the Director Animal Welfare. Training Programmes submitted by the RNZSPCA for such approval must have first been endorsed by the RNZSPCA National Council. MPI is responsible for funding the training of AWIs and AOs, the latter being trained via compact disc and practical assessments run by the RNZSPCA. MPI funding for refresher training of AWIs and AOs is to be provided via a separate funding agreement. The RNZSPCA is to provide the Director Animal Welfare with evidence that training has been completed to an acceptable standard prior to appointment as an AWI or AO.³⁰⁴

The MOU makes provision for the manner in which animal welfare complaint investigations are to be conducted. The procedures outlined in the PTS must be followed in all animal welfare complaints investigated by the RNZSPCA and its Branches or Member Societies. The RNZSPCA National Chief Inspector (NCI) is to provide to MPI, on a written request with stipulated reasons as to why the information is required, details of any animal welfare complaint investigation carried out by the RNZSPCA or its Branches or Member Societies. When information is provided to it in this manner, MPI is to report to the NCI on the outcomes of any actions it takes arising from the information within five working days. Notification of the outcomes to a Branch or Member Society shall be the responsibility of the NCI.³⁰⁵

The MOU provides an Assistance Policy and a Supersession Policy between the parties. The Assistance Policy provides that when the assistance of a MPI AWI³⁰⁶ is requested by an (RNZSPCA) AWI in an investigation or vice versa, the party who initiates the request must use their best endeavours to advise their counterpart of the exact nature of the assistance required at the time of the request.³⁰⁷ Full responsibility for any investigation in which assistance of another agency has been requested remains with the agency that was first dealing with that complaint unless the parties agree otherwise.³⁰⁸ The agency that was first dealing with the complaint also has the

³⁰³ At 12.

³⁰⁴ At 13.

³⁰⁵ At 62.

³⁰⁶ Unless specified as an "MPI AWI", "AWI" refers to an AWI of the RNZSPCA.

³⁰⁷ *Memorandum of Understanding between the Royal New Zealand Society for the Prevention of Cruelty to Animals Incorporated (RNZSPCA) and Her Majesty the Queen in right of New Zealand acting by and through the Ministry of Agriculture and Forestry (MAF)*, above n 56, at 65.

³⁰⁸ At 66.

right to have any decisions made about the investigation respected by the party whose assistance they require.³⁰⁹

The Supersession Policy provides that where an MPI AWI or AWI believes that a member of the other agency may already have received or be working on a complaint, they contact that person or agency to avoid duplication or interference.³¹⁰ When the MPI Enforcement Directorate and the RNZSPCA have each been separately advised of the same animal welfare complaint, the procedure outlined in the supersession policies of the PTS and the Performance and Technical Standards for MPI AWIs respectively will be followed. This procedure provides that in such circumstances, there should be liaison between the RNZSPCA and MPI to avoid a duplication of effort.³¹¹ Notably, this is worded differently in the MOU, which provides that contact with that person or agency *must* be made to avoid duplication or interference.³¹² This is despite the MOU providing that the process outlined by the PTS is to be followed in such circumstances.³¹³

The MOU then states that it is usually the agency that was first notified of the complaint that ought to investigate it. However, there is jurisdiction to transfer the complaint officially to the other agency,³¹⁴ while the PTS provide that generally the agency that should investigate the complaint is the agency that was first notified of the complaint or the most appropriate agency to deal with that complaint.³¹⁵

This distinction is not of particular significance, though it is notable that the PTS do not make specific provision for transferring of the complaint while the MOU does. However, the MOU provides the following: if both agencies wish to pursue the same complaint, the matter is to be advised as soon as possible to the NCI in the case of the RNZSPCA and to the Director of the MPI Enforcement Directorate in the case of MPI for resolution by the Director Animal Welfare in consultation with the RNZSPCA National President (or their nominee/s), the relevant Branch or Member Society and local MPI staff.³¹⁶ The PTS, however, provide the following: if both agencies wish to pursue the same complaint, the matter is to be advised as soon as possible to the

³⁰⁹ At 67.

³¹⁰ At 68.

³¹¹ *Performance and Technical Standards for Inspectors of the RNZSPCA Including Selection, Training and Appointment 2012*, above n 61, at 253.

³¹² *Memorandum of Understanding between the Royal New Zealand Society for the Prevention of Cruelty to Animals Incorporated (RNZSPCA) and Her Majesty the Queen in right of New Zealand acting by and through the Ministry of Agriculture and Forestry (MAF)*, above n 56, at 68 (emphasis added).

³¹³ At 69.

³¹⁴ At 69.

³¹⁵ *Performance and Technical Standards for Inspectors of the RNZSPCA Including Selection, Training and Appointment 2012*, above n 61, at 254.

³¹⁶ *Memorandum of Understanding between the Royal New Zealand Society for the Prevention of Cruelty to Animals Incorporated (RNZSPCA) and Her Majesty the Queen in right of New Zealand acting by and through the Ministry of Agriculture and Forestry (MAF)*, above n 56, at 70.

SPCA National Support Office in the case of the SPCA and to MPI Compliance Directorate in the case of MPI for resolution by the Manager Animal Welfare Standards in consultation with the RNZSPCA National President or their nominee, the relevant SPCA Centre and local MPI staff.³¹⁷

It is of concern that the lack of consistency across the PTS and the MOU may foreseeably lead to uncertainty in what process is to be followed. It is unclear whether in this situation one is to advise the NCI or Director of the MPI Enforcement Directorate (as applicable) as stipulated by the MOU³¹⁸ or the SPCA National Support Office or MPI Compliance Directorate (as applicable) as stipulated by the PTS.³¹⁹ While the PTS and the MOU both state that resolution will involve consultation with the RNZSPCA National President or their nominee, the relevant SPCA Centre (or Branch or Member Society as applicable – the MOU provides for “the relevant Branch or Member Society” and the PTS provide for “the relevant SPCA Centre”).³²⁰ The new national structure of the RNZSPCA will hopefully address this inconsistency.

Subject to the RNZSPCA’s consent, MPI may contract AWIs on a casual basis.³²¹ If the RNZSPCA consents, the procedures and guidelines of the organisation for which the AWI is operating (either MPI or the RNZSPCA) will apply at all times during which they are carrying out duties as an Inspector.³²² Matters relating to the provision of annual government funding to support the RNZSPCA in its animal welfare activities are covered not by the MOU but by the terms of the relevant funding agreements.³²³

The MOU states that the RNZSPCA, its Branches and Members Societies and their AWIs are to adhere to the RNZSPCA’s prosecution procedure, which is specified in the PTS as the following:³²⁴ where an Inspector believes that criminal liability has been established and a prosecution should be initiated in accordance with the Crown Law Prosecution Guidelines (ie, there is evidential sufficiency and a prosecution is

³¹⁷ *Performance and Technical Standards for Inspectors of the RNZSPCA Including Selection, Training and Appointment 2012*, above n 61, at 255.

³¹⁸ *Memorandum of Understanding between the Royal New Zealand Society for the Prevention of Cruelty to Animals Incorporated (RNZSPCA) and Her Majesty the Queen in right of New Zealand acting by and through the Ministry of Agriculture and Forestry (MAF)*, above n 56, at 70.

³¹⁹ *Performance and Technical Standards for Inspectors of the RNZSPCA Including Selection, Training and Appointment 2012*, above n 61, at 255.

³²⁰ See respectively *Memorandum of Understanding between the Royal New Zealand Society for the Prevention of Cruelty to Animals Incorporated (RNZSPCA) and Her Majesty the Queen in right of New Zealand acting by and through the Ministry of Agriculture and Forestry (MAF)*, above n 56, at 70; and *Performance and Technical Standards for Inspectors of the RNZSPCA Including Selection, Training and Appointment 2012*, above n 61, at 255.

³²¹ *Memorandum of Understanding between the Royal New Zealand Society for the Prevention of Cruelty to Animals Incorporated (RNZSPCA) and Her Majesty the Queen in right of New Zealand acting by and through the Ministry of Agriculture and Forestry (MAF)*, above n 56, at 73.

³²² At 75.

³²³ At 76.

³²⁴ At 77.

required in the public interest), the Inspector should seek a further assessment from a suitably qualified person or from a member of the RNZSPCA National Inspectorate and Centre.³²⁵ After completion of the further assessment, the AWI may recommend to their RNZSPCA Centre Committee that information be laid.³²⁶ If the RNZSPCA Centre Committee declines approval to proceed with the prosecution, the AWI is to advise the RNZSPCA National Support Office (NSO) of the decision.³²⁷ Where an AWI believes that criminal liability has been established but believes that a formal warning rather than prosecution is appropriate, the Inspector may deal with the matter by way of a written warning on the appropriate form, which can be accessed through the NSO.³²⁸

Any prosecution or legal proceedings affecting any issue where a question of law of first instance, government policy or a government department is involved shall not be instituted by a Branch or Member Society without the prior approval of the RNZSPCA National Council and advice to MPI.³²⁹ While AWIs possess the power to act on any welfare complaint, they are required to contact the RNZSPCA's National Office for guidance before commencing any investigation or inspection where the complaint concerns an animal being exported from New Zealand or the use of animals in research, testing or teaching. This is to ensure compliance with the agreed RNZSPCA/MPI policy. The RNZSPCA's National Office, through the NCI, will notify MPI's Director Animal Welfare before any such investigation or inspection is commenced and ensure that the agreed RNZSPCA/MPI policy is followed in respect of it.³³⁰

The MOU provides for MPI's jurisdiction to conduct annual audits of RNZSPCA activities.³³¹ This has since been incorporated into the Act.³³² MPI is to conduct annual audits of Branches or Member Societies selected by agreement with the RNZSPCA's National Council and/or the RNZSPCA's National Office. The audit may relate to the following matters: selection and training of AWIs and AOs; the recommendation process for appointment of, or renewal of the appointment of, AWIs and AOs; compliance with the Act and the MOU; the RNZSPCA's National Office accountability arrangements, financial arrangements and management (the RNZSPCA National Office is to be responsible for auditing the performance of Branches and Member

³²⁵ *Performance and Technical Standards for Inspectors of the RNZSPCA Including Selection, Training and Appointment 2012*, above n 61, at 248.

³²⁶ At 250.

³²⁷ At 251.

³²⁸ At 252.

³²⁹ *Memorandum of Understanding between the Royal New Zealand Society for the Prevention of Cruelty to Animals Incorporated (RNZSPCA) and Her Majesty the Queen in right of New Zealand acting by and through the Ministry of Agriculture and Forestry (MAF)*, above n 56, at 78.

³³⁰ At 79.

³³¹ At 93–99.

³³² Animal Welfare Act 1999, ss 123A–123D.

Societies in this regard); and documentation relating to animal welfare complaint investigations.³³³ MPI is to give reasonable notice of its intent to audit selected Branches or Member Societies and/or the RNZSPCA National Office³³⁴ and shall provide the opportunity for the RNZSPCA and the Branches or Member Societies concerned and/or the RNZSPCA National Office to respond to the initial audit findings and comment on a draft audit report.³³⁵ The RNZSPCA shall be responsible for ensuring that any major non-compliances in the final audit report are addressed.³³⁶ MPI is to supply the RNZSPCA's National Office with written audit reports for each audit within two months of the audit being carried out.³³⁷ The RNZSPCA National Office is to pass copies of the audit reports onto the Branches or Member Societies involved.³³⁸ The RNZSPCA is to provide MPI with a progress report on resolving any major non-compliances in the audit findings within four months of the final audit report being supplied. The report shall be directed to the Director Animal Welfare and may take the form of a letter from the National Chief Executive of the RNZSPCA.³³⁹ At its cost, the RNZSPCA is to make available staff to provide reasonable assistance with the audit. All other costs and expenses of auditors engaged by MPI will be the responsibility of MPI.³⁴⁰ The PTS add that each RNZSPCA Centre involved in the audit will provide the National Support Office with a report on progress resolving any major non-compliance in the audit report within three months of the final audit report being supplied,³⁴¹ and the RNZSPCA Inspectorate and Centre Support Team are to report in writing within four months to the Manager Animal Welfare Standards on progress in resolving the key issues addressed in the audit report.³⁴²

4.2.3 Performance and Technical Standards for Inspectors of the RNZSPCA

The PTS define the standards for AWIs and cover the following matters: the selection, training and appointment of AWIs; the conduct of AWIs in exercising their powers, duties and functions under the enforcement of the provisions of the Act and expectations around accountability arrangements between the SPCA, the AWI and the SPCA Centre.³⁴³ The provisions of the PTS are not to be altered or modified in

³³³ *Memorandum of Understanding between the Royal New Zealand Society for the Prevention of Cruelty to Animals Incorporated (RNZSPCA) and Her Majesty the Queen in right of New Zealand acting by and through the Ministry of Agriculture and Forestry (MAF)*, above n 56, at 93.

³³⁴ At 94.

³³⁵ At 95.

³³⁶ At 96.

³³⁷ At 97.

³³⁸ At 97.

³³⁹ At 98.

³⁴⁰ At 99.

³⁴¹ *Performance and Technical Standards for Inspectors of the RNZSPCA Including Selection, Training and Appointment 2012*, above n 61, at 307.

³⁴² At 308.

³⁴³ At 3.

any way without the written agreement of the RNZSPCA and MPI (the Parties).³⁴⁴ The RNZSPCA National Council, through the SPCA National Inspectorate and Centre Support Team, is charged with ensuring that all RNZSPCA Centres, AWIs and AOs comply with the provisions of the Act, the MOU and the PTS³⁴⁵ and that all SPCA Centres, AWIs and AOs are accountable to the RNZSPCA for such compliance.³⁴⁶

Like paid AWIs, voluntary AWIs who have agreed to donate their services without tangible remuneration must have a written agreement with the RNZSPCA and are expected to comply with the policies and procedures under which the RNZSPCA Centre operates and with RNZSPCA National Support Office requirements in relation to their appointment as an AWI.³⁴⁷

The following special conditions apply for an applicant to be selected to train as an inspector: they must be of sound mind, they must have no affiliations or involvement which may adversely affect the RNZSPCA “brand” or compromise the welfare of animals and they must have a clear criminal record.³⁴⁸ However, the latter condition is subject to the Criminal Convictions clauses of the PTS. These provide that while the general policy of the RNZSPCA is that applicants with a criminal history are unsuitable for appointment as AWIs, the NSO, in consultation with MPI, may give consideration, on a case by case basis, to applicants who have convictions that are for aged and/or minor matters. These considerations should not be thought of as precedent-setting. When an Inspector receives any criminal conviction during the term of their appointment they must disclose these to the NSO immediately and upon receipt of such disclosure the NSO and the RNZSPCA Centre shall notify MPI. MPI and the RNZSPCA are then to review the continuance of the AWI’s appointment.³⁴⁹

The NSO recommends that applicants new to the industry who do not have any previous experience in animal husbandry and welfare or investigations first satisfactorily complete the AO training as this will enable them to gain experience in this field before committing to Inspector Training (AWI Training).³⁵⁰ Before an applicant is nominated by an RNZSPCA Centre for training, they must be made aware that the following requirements will apply to them once they are appointed as an Inspector: they will be required to comply with all obligations pertaining to the appointment of Inspector as set out in the Act, any MOU and the PTS; they must acknowledge that the RNZSPCA intends to fulfil the requirements of any MOU and PTS; they will be accountable to the RNZSPCA for their compliance with all

³⁴⁴ At 4–5.

³⁴⁵ At 16.

³⁴⁶ At 17.

³⁴⁷ At 25.

³⁴⁸ At 31.

³⁴⁹ At 50–54.

³⁵⁰ At 34.

requirements of the PTS, including their performance standards and procedural correctness; they authorise the RNZSPCA, MPI and all other relevant parties to collect, use and disclose relevant personal information about themselves in accordance with the MOU and PTS and they must take all such steps as the RNZSPCA reasonably considers necessary and requires of them in order for the RNZSPCA to fulfil these requirements.³⁵¹ MPI is the Appointing Officer of Inspectors under the Act.³⁵² The general policy of MPI and the RNZSPCA is that a first appointment is for a period of one year and any renewal for a period of three years.³⁵³ However, this is subject to suitability of the AWI appointed,³⁵⁴ and MPI retains the right to place conditions on the appointment of any AWI which may include but are not limited to reduced appointment periods from the general policy and/or conditions for supervision or ongoing training. Inspectors are to be made aware of these provisions.³⁵⁵ In addition to these provisions, AWIs must complete ongoing training and professional development opportunities and be subject to evaluation of the continued suitability of their appointment.³⁵⁶

The RNZSPCA Centre Secretary or Manager or a person delegated by the RNZSPCA Centre Committee for any task is responsible for controlling the general daily supervision of AWIs.³⁵⁷ Any problems encountered are to be dealt with on a local basis as far as possible, including compliance with the AWI's Terms of Appointment or with policies and procedures that have been agreed between the AWI and RNZSPCA Centre.³⁵⁸ If the AWI fails to comply with the employment agreement, Terms of Appointment, PTS or RNZSPCA policies and procedures, the RNZSPCA Centre must follow the advice outlined in the "Removal from Office" provisions of the PTS³⁵⁹ and provide written notification detailing the breach of compliance and action taken to the NSO.³⁶⁰ Where cases are serious in nature or are not resolved at the local

³⁵¹ At 36.

³⁵² At 116.

³⁵³ At 117.

³⁵⁴ At 117.

³⁵⁵ At 118.

³⁵⁶ At 119–121.

³⁵⁷ At 137.

³⁵⁸ At 139.

³⁵⁹ *Performance and Technical Standards for Inspectors of the RNZSPCA Including Selection, Training and Appointment 2012*, above n 61, provide as follows:

170. The removal of Inspectors from office by reason of incapacity, neglect of duty or misconduct may be undertaken by the Minister in accordance with section 124 (6) (b) of the Act.

171. In the event that the employee's performance as an Inspector is demonstrably unsatisfactory and cannot be improved, or the employee elects not to continue with the RNZSPCA Centre, or the employee does not complete the prescribed training in a timely fashion, it is recommended that advice be sought from the SPCA Centre legal adviser, or from the RNZSPCA National Support Office, as to the correct process that the RNZSPCA Centre must follow in order to terminate the Inspector relationship lawfully and in accordance with due process.

172. The RNZSPCA National Executive Committee (or person/s delegated by the RNZSPCA National Executive Committee) may recommend to the Manager Animal Welfare Standards that an Inspector be removed from office by reason of incapacity, neglect of duty, or misconduct.

³⁶⁰ At 140.

level, RNZSPCA Centres are to escalate the concern to the NSO.³⁶¹ The NSO is to communicate any problem or complaint received to the relevant RNZSPCA Centre.³⁶²

The PTS specify the Welfare Priorities which AWIs are to adhere to.³⁶³ They provide that an inspector must have as a priority at all times the alleviation of any unreasonable or unnecessary pain or distress being suffered by an animal³⁶⁴ and that an AWI may take action to prevent and/or mitigate the suffering of an animal and to assemble evidence in accordance with the Act where, in the opinion of the AWI based on the facts as presented, any breach of the Act has or may have occurred.³⁶⁵ In the instance that the requirements of the Act are not being met, an attending AWI must ensure that the owner or person in charge of the animal is made aware of their obligations of care for the animal and, where necessary, identify where and to what extent that owner or person in charge of the animal has failed to meet the legal requirements.³⁶⁶ When an AWI elects to issue sustainable and enforceable instructions to the owner or person in charge of an animal to prevent or mitigate the suffering the animal,³⁶⁷ the AWI must have reasonable grounds to believe that the animal is suffering or is likely to suffer unreasonable or unnecessary pain or distress.³⁶⁸ Instructions must be by notice in writing and signed as an Inspector under the Act. The notice must set out clearly what is required and the time frame within which those requirements must be met.³⁶⁹ It is the responsibility of the Inspector who has issued a written instruction for remedial action to be taken to ensure, within a reasonable time frame, that the remedial action has been taken in compliance with the written notice.³⁷⁰ Inspectors should, but are seemingly not required to by the optional wording, also seek to ascertain whether there might be any other related or potential animal welfare problems concerning other animals and/or properties under the control of the owner or person in charge of the animal to which a complaint relates.³⁷¹

The requirements for keeping and caring for seized animals are also set out in the PTS. Where an AWI seizes an animal, the animal will be kept at a place chosen by the AWI in the following manner: if the AWI suspects that unauthorised information regarding the location of the seized animal has placed the animal's safety in jeopardy, the AWI has the right to remove that animal to another place of safety. If that place is

³⁶¹ At 141.

³⁶² At 142.

³⁶³ At 203–212.

³⁶⁴ At 203.

³⁶⁵ At 204.

³⁶⁶ At 205.

³⁶⁷ At 206.

³⁶⁸ At 207.

³⁶⁹ At 206.

³⁷⁰ At 208.

³⁷¹ At 209.

in the district of another RNZSPCA Centre, that Centre and the New Zealand Police are to be informed as soon as possible and given contact details of the AWI involved.³⁷² While the animal must be cared for in accordance with any relevant COW or in accordance with any applicable Code of Recommendations and Minimum Standards if no such COW exists, there is no expectation that seized production animals will continue to be managed in line with commercial imperatives.³⁷³ Overall, the investigating or prosecuting AWI retains responsibility for the welfare of the animal.³⁷⁴

Provision for liaison between MPI and National and SPCA Centre level is made in the PTS. They provide that formal discussions between the SPCA National Executive Committee (or person/s delegated by the RNZSPCA National Executive Committee) and MPI will be held on a regular basis³⁷⁵ and that liaison between individual SPCA Centre representatives and local AWIs should be held as and when required.³⁷⁶ Unresolved issues are to be passed on without delay to a more senior level of each respective organisation.³⁷⁷ The RNZSPCA and MPI agree to exchange, where practical, advance copies of draft press releases relating to the enforcement provisions of the Act in order to allow appropriate comment from either organisation before publication.³⁷⁸

4.2.4 A System of Reporting; the RNZSPCA's Enforcement Operation Mechanisms

4.2.4.1 Receipt of Complaints and Measures for Addressing Breaches

The RNZSPCA receives animal welfare complaints from the public, the number of which received has steadily increased per annum since the Act came into force at the beginning of 2000. This has increased from a little over 11,000 in 2000 to a little under 15,000 in 2016.³⁷⁹

As at November 2017, the RNZSPCA had not issued any infringements to date. This will have increased after the Animal Welfare (Care and Procedures Regulations) came into force on October 2018; we were unable to retrieve data from the RNZSPCA as to the number of infringements they have issued since these new regulations were promulgated. The RNZSPCA informed us that it has considered how to represent a

³⁷² At 210.

³⁷³ At 211.

³⁷⁴ At 212.

³⁷⁵ At 295.

³⁷⁶ At 296.

³⁷⁷ At 297.

³⁷⁸ At 298.

³⁷⁹ Email from Arnja Dale, above n 42, at 1.

breach of compliance and determined that any investigation outcomes that resulted in verbal advice, an education handout/letter, a written or formal warning, a court order or prosecution equates to a “breach” of the Act being detected.³⁸⁰

There are a number of different ways that the RNZSPCA may respond to an investigation. These are as follows:

- *Verbal Advice* – The owner or person in charge of the animal is given verbal advice by the animal welfare inspector as to their obligations under the Act;
- *Education Handout* – The owner or person in charge of the animal receives a standard RNZSPCA education handout informing them of the possible offences that may have been committed under the Act and advises of the penalties they may face under the Act;
- *Education Letter* – The owner or person in charge of the animal has received a personalised RNZSPCA education letter that informs them of the welfare issues found and identifies possible offences that have been committed under the Act and advises of the penalties they may face under the Act;
- *Written Warning* – the RNZSPCA has grounds to believe an offence has been committed for which a written warning is issued and a repeat will likely result in a prosecution in the future if a similar incident occurs again, however the owner or person in charge of the animal does not formally acknowledge an offence has been committed;
- *Formal Warning* – the owner or person in charge of the animal has formally acknowledged that they committed an offence under the Act and that a repeat will likely result in a prosecution in the future if a similar incident occurs again – a Formal Warning is issued by the RNZSPCA national office;
- *Court Order* – where an investigation resulted in a Court Order;³⁸¹
- *Enforcement Order*³⁸² – an order made by the District Court when satisfied that the party that is subject to it has breached the Act or its regulations;³⁸³

³⁸⁰ At 4.

³⁸¹ At 4.

³⁸² At 4.

³⁸³ Animal Welfare Act 1999, s 144; see also ss 145–152.

- *Temporary Enforcement Order*³⁸⁴ – an enforcement order obtained from the District Court on application without notice because the District Court was satisfied that proceeding on notice might entail a risk of harm to any animal, that becomes binding in law three months after its issue;³⁸⁵
- *Court Order to Comply* (for non-compliance of an Enforcement Order or Temporary Enforcement Order) or a *Disposal/Disqualification/Forfeiture Order* being issued (such orders are made by the Court under the Act – see ss 136–136A, 141, 169 and 172) and *Prosecution* – where an investigation is recommended for prosecution by the animal welfare inspector.³⁸⁶

The following table represents the aggregate data of compliance detection, infringements and breaches of compliance detected from 2013–2016 (RNZSPCA centres did not provide outcome breakdown prior to 2013, and we were unable to retrieve data since 2016). It shows the total number of RNZSPCA investigation outcomes where a breach was detected, and led to action – from verbal advice to prosecution – compared to the total number of animal welfare complaints received by the SPCA nationally, giving the resulting percentage of breaches detected for each year 2013–2016:³⁸⁷

	Investigation Outcome			
	2013	2014	2015	2016
Investigation outcome Sub Total	6,365	7,234	7,136	4,438
Complaints received	11,838	13,577	15,219	14,809
% Breaches detected	54	53	47	30

4.2.4.2 Details Taken During Investigation Dispatch in Response to Animal Welfare Complaint

On receipt of an animal welfare complaint and corresponding request for the dispatch of an investigator, the RNZSPCA fills out a Dispatch Request Form, a copy of which

³⁸⁴ Email from Arnja Dale, above n 42, at 4.

³⁸⁵ Animal Welfare Act 1999, s 148.

³⁸⁶ Email from Arnja Dale, above n 42, at 4.

³⁸⁷ At Table 2.

was provided to us by the RNZSPCA.³⁸⁸ The Dispatch Request is classified by the following types: Cruelty Complaint; Ambulance Request; General or Home Check. The following general details are taken: the SPCA Centre, the recipient of the complaint, the assignee of the complaint, the designated complaint or job identification number, the date/Time the complaint was received and the Date/time the complaint was Actioned. The name and contact information of the complainant/caller is taken, along with the name and contact information of the dispatch address/person in charge.³⁸⁹

The type/species of animal is specified. This accounts for both the species and typically the use. For example, “poultry” is listed as “eggs” or “meat”, “calves” by “bobby” or “other” and “cattle” by “beef” or “dairy”. Similarly, “bird” is listed as “caged” or “other”. This list is not exhaustive, given that there is also a small space labelled “Other animal” beneath the list. The number of animals involved is also taken.³⁹⁰

The “Establishment” or property type is listed. These are as follows: animal breeder, animal control facility, animal day care, boarding facility, commercial farm, lifestyle block, residential/urban, pet shop, retail shop riding establishment, saleyard, social media, vehicle, zoo/exhibit and “other”.³⁹¹

For complaints, the welfare issue is identified. The options listed on the Form are as follows: animal export, animal fighting, deserts animal, ill treatment, reckless/wilful, pain/distress/ill/injured, physical/health/behaviour, research/testing/teaching, surgical procedure, wilful/reckless (wild), sale, transport and traps.³⁹²

The Outcome is listed and may be given as follows: no welfare concern, closed, other agency transfer, verbal advice, education handout, education letter, written warning, formal warning, infringement notice, court order or prosecution. There is also space to detail the outcome and provide its date.³⁹³

A checklist is provided for AWIs which lists the investigation tools they are to bring with them on the dispatch. The tools are listed as follows: AWS129 Notice,³⁹⁴ AWS130

³⁸⁸ RNZSPCA *Dispatch Request* (Action Request Form 6.4.3, version 1, March 2016) (obtained by request to Animal Welfare Science and Education, Royal New Zealand Society for the Prevention of Cruelty to Animals National Office).

³⁸⁹ RNZSPCA, above n 388.

³⁹⁰ RNZSPCA, above n 388.

³⁹¹ RNZSPCA, above n 388.

³⁹² RNZSPCA, above n 388.

³⁹³ RNZSPCA, above n 388.

³⁹⁴ This refers to notice issued under s 129 of the Animal Welfare Act 1999, which provides the following:

129 Notice of entry

Notice,³⁹⁵ compliance notice, temporary enforcement order, enforcement order, court order to comply, disposal order, disqualification order, forfeiture order and search warrant.³⁹⁶

The AWI is also listed along with the date of the review of the file, the date of the closing of the file, the date of the reviewer of the file and the position of the reviewer – exhaustively, this may be the chief inspector, senior inspector or manager.³⁹⁷

There is a section for specifying whether an “Other Agency” was contacted and whether there exists any “Previous History” with that agency. While no examples of such possible agencies are listed on the Form, they are specified in the Workflow Diagram as follows: MPI (farm livestock), Animal Control, DairyNZ, Oranga Tamariki and Police.³⁹⁸

The animal welfare complaints received by the RNZSPCA are graded by severity and the corresponding urgency of the response that is required. The PTS provide the Complaint Response required as follows: An Inspector must grade all animal welfare complaints received into a response category reflecting the level of urgency required for any response. The Inspector should consider, when categorising a response, the urgency required to mitigate the animal’s pain or distress based on the information

If the person in charge of the land, premises, or place or the vehicle, aircraft, or ship, as the case may be, is not present at the time at which a power of entry is exercised, without warrant, under section 127, the inspector must leave in a prominent place on the land, premises, or place or in or on the vehicle, aircraft, or ship a written statement of—

- (a) the time and date of the entry; and
- (b) the purpose of the entry; and
- (c) the condition of any animals inspected; and
- (d) the animals (if any) that have been removed from the premises in accordance with section 127(5); and
- (e) the name of that inspector; and
- (f) the address of the Police station or other office to which inquiries should be made.

³⁹⁵ This refers to notice issued under s 130(1) of the Animal Welfare Act 1999, which provides the following:

130 Power to prevent or mitigate suffering

(1) Where an inspector, either in the course of the exercise of a power of entry under section 127 or at any other time, has reasonable grounds to believe that an animal is suffering or is likely to suffer unreasonable or unnecessary pain or distress, the inspector—

- (a) may take all such steps as the inspector considers are necessary or desirable to prevent or mitigate the suffering of the animal (including, if necessary, destroying or arranging for the destruction of the animal); and
- (b) may, by notice in writing given by the inspector to the owner or the person in charge of the animal or any person appearing to be in charge of the animal, require the person to whom the notice is given to take all such steps as the inspector considers are necessary or desirable to prevent or mitigate the suffering of the animal (including, if necessary, destroying or arranging for the destruction of the animal).

³⁹⁶ RNZSPCA, above n 388.

³⁹⁷ RNZSPCA, above n 388.

³⁹⁸ *SPCA Animal Welfare Complaint Investigation Process Workflow* (obtained by request to Animal Welfare Science and Education, Royal New Zealand Society for the Prevention of Cruelty to Animals National Office).

on hand at the time.³⁹⁹ An Inspector must use a specified system of grading as a minimum guide when assessing the appropriate response for an animal welfare complaint. Under this system, complaints are graded from Grade One to Grade Three. Grade One complaints require an immediate response. Examples include a dog beating in progress, a dog in a hot car, the risk posed of serious harm to an animal and situations where police assistance is required. Grade Two complaints are “priority”, with an urgent response required but less urgent than Grade One’s required immediacy. Grade Two complaints are to be responded to as soon as possible, and within 24 hours. Examples include a serious complaint allegation of acute risk of harm and a large-scale serious allegation. Finally, Grade Three complaints are routine. A response is required as soon as possible but may be up to within seven days from the receipt of the complaint. Examples include unshorn sheep and dogs who are receiving no exercise.⁴⁰⁰

4.2.4.3 RNZSPCA Animal Welfare Complaint Investigation Process Workflow

The SPCA Animal Welfare Complaint Investigation Process Workflow document specifies how incoming calls to the RNZSPCA are responded to.⁴⁰¹ On receipt of an incoming call to the RNZSPCA with an animal welfare complaint, the complaint is assessed and graded. It may be referred to one of the following other agencies: MPI (for farm/livestock), Animal Control, DairyNZ (dairy cattle), Oranga Tamariki or the Police. Alternatively, it may be classified as “no attendance – intel only”. This is assigned in cases of historic allegations or where there are no actionable or current welfare issues. While not acted upon, such complaints are recorded in case of future complaints. Alternatively, it may be designated to an AWI as a dispatch job.⁴⁰²

In such cases, the AWI is to “visit property/perform an initial assessment”. If there is no welfare concern, the complaint is closed.⁴⁰³ If there is a welfare concern, the AWI is to revisit the property and perform compliance rechecks as required. They may issue a compliance notice or a s 130 notice under the Act, both of which are classified by the RNZSPCA as investigation tools and which lead to “revisit[ing] the property/compliance monitoring”. Revisiting/compliance monitoring are classified by the RNZSPCA as “investigation pathways”.⁴⁰⁴

If there is a welfare concern of “less seriousness”, the AWI may issue verbal advice or an education letter and close the file. In some cases, ongoing compliance

³⁹⁹ *Performance and Technical Standards for Inspectors of the RNZSPCA Including Selection, Training and Appointment 2012*, above n 61, at 196.

⁴⁰⁰ At 197.

⁴⁰¹ *SPCA Animal Welfare Complaint Investigation Process Workflow*, above n 398.

⁴⁰² *SPCA Animal Welfare Complaint Investigation Process Workflow*, above n 398.

⁴⁰³ *SPCA Animal Welfare Complaint Investigation Process Workflow*, above n 398.

⁴⁰⁴ *SPCA Animal Welfare Complaint Investigation Process Workflow*, above n 398.

monitoring may necessitate a full investigation to be undertaken. Such an investigation may necessitate the issuance of a search warrant, which also may be obtained in response to a welfare concern from the outset depending on the circumstances of the case. A search warrant is classified by the RNZSPCA as an investigation tool.⁴⁰⁵

When a full investigation is undertaken and it is found that there has been a breach of the Act or a regulation issued under it, in the event that the offending does not meet the prosecution threshold, the file may be resolved by a written/formal warning, at which point the case may be closed. A written/formal warning is classified by the RNZSPA as an “investigation outcome”.⁴⁰⁶

In the event that the Act or a regulation has been breached and the severity of the offending means that it cannot be resolved by a simple warning, any of the following may be issued as an alternative to prosecution: an infringement notice or a court order, whether that be a temporary enforcement order, an enforcement order, a court order to comply or a disposal order. An infringement notice or court order may also be accompanied by a warning. All of the options preceding in this paragraph are classified by the RNZSPCA as “investigation outcomes”.⁴⁰⁷

In the event that the offending meets the prosecution threshold, it will be prosecuted under the Act. The investigation outcome of prosecution may also lead to the issuance by the court of a forfeiture order or a disqualification order. The prosecution threshold is discussed in Part 2 of this paper. On the successful application of an investigation outcome, the case may be closed.⁴⁰⁸

4.2.4.4 MOU with Women’s Refuge, “Pets as Pawns” and Similar Understandings Between Organisations

The RNZSPCA has since 2012 retained a Memorandum of Understanding with Women’s Refuge, reflecting their mutual understanding to ensure communication and cooperation.⁴⁰⁹ The memorandum outlines the ways in which Women’s Refuges and SPCA Centres can work together. These include the following: improving communication between them; always checking if everyone in the family, including animals, is safe when a centre from either organisation is approached about a violence issue and agreeing to keep interactions confidential.⁴¹⁰

⁴⁰⁵ *SPCA Animal Welfare Complaint Investigation Process Workflow*, above n 398.

⁴⁰⁶ *SPCA Animal Welfare Complaint Investigation Process Workflow*, above n 398.

⁴⁰⁷ *SPCA Animal Welfare Complaint Investigation Process Workflow*, above n 398.

⁴⁰⁸ *SPCA Animal Welfare Complaint Investigation Process Workflow*, above n 398.

⁴⁰⁹ Voxy “Pets used as pawns in domestic violence - survey” (27 March 2012) <www.voxy.co.nz>.

⁴¹⁰ 3 News “SPCA, Women’s Refuge work together on fighting abuse” (2 December 2012) Newshub <www.newshub.co.nz>.

The 2012 study that the Memorandum of Understanding was enacted in partial response to was titled “Pets as Pawns” and was commissioned by the RNZSPCA in partnership with Women’s Refuge.⁴¹¹ Historically, some of the regional RNZSPCA offices had informal arrangements with the local Women’s Refuge, leading to the commission of this research. It found that one in three women reported delaying leaving violent relationships because they feared their pets and other animals would be killed or tortured. It underlines the strong link between animal cruelty and domestic and family violence in New Zealand. The research also showed that 50 per cent of women interviewed had witnessed animal cruelty as part of their experience of domestic violence.⁴¹² It included direct interviews with 30 Refuge clients who had witnessed or were forced to take part in animal cruelty as part of family violence. The latter part of the study consisted of a survey across 203 Women’s Refuge clients. This aspect of the study found the following: 111 of the respondents (55 per cent) stated that animal cruelty was part of their experience of family violence as, at some point, either a family member or their partner had threatened to kill one of their pets, animals and/or farm animals. One third of the respondents also reported actual injury or death of the animal. Twenty-eight per cent of women reported they would have left their abusive relationship earlier if they had not had a pet or animal and the length of time they stayed ranged from one week to 22 years, with an average of two years. Of the 159 research participants with children, 25 per cent reported that their children had witnessed someone in their family injure or kill a pet or animal.⁴¹³ It was also found that RNZSPCA staff and staff of the New Zealand Police needed to better understand the link between animal cruelty and domestic violence.⁴¹⁴ Heather Henare, then-Chief Executive of Women’s Refuge, stated:⁴¹⁵

Disturbingly, many of the women reported that partners who had warnings or convictions around physical violence, would deliberately threaten or hurt pets as a way of controlling their family and make it easier to avoid reconviction ...

The research is available from the websites of the RNZSPCA and Women’s Refuge.⁴¹⁶

In 2008, the SPCA and Child, Youth and Family Services (CYFS) (as they then were; they are now the RNZSPCA and Oranga Tamariki respectively) signed a formal working protocol that established a formal working relationship whereby the entities agreed to inform each other if they suspected animal or child abuse in the course of

⁴¹¹ Women’s Refuge “Pets used as Pawns in Domestic Violence” (press release, 27 March 2012).

⁴¹² Women’s Refuge, above n 411.

⁴¹³ Women’s Refuge, above n 411.

⁴¹⁴ Women’s Refuge, above n 411.

⁴¹⁵ Women’s Refuge, above n 411.

⁴¹⁶ Women’s Refuge, above n 411.

their work.⁴¹⁷ A Veterinary Council working party has also issued a document providing guidance for veterinarians in dealing with cases of suspected or actual animal abuse and family violence in collaboration with external members from MPI, NZVA, Rural Women, the RNZSPCA, International Animal Law and the Ministry of Social Development.⁴¹⁸ The document recommends the reporting of suspected animal abuse to an AWI, MPI, the RNZSPCA or the Police⁴¹⁹ and of suspected family violence to the Police, CYFS (as it then was) or Crimestoppers.⁴²⁰ It states, “Don’t forget that it is not up to you to establish an offence, but to report to those who can investigate.”⁴²¹ The Veterinary Council of New Zealand’s (VCNZ’s) Code of Professional Conduct sets the following standards:⁴²²

- In the course of their work veterinarians must not ignore circumstances where they have reasonable grounds to suspect non compliance with the requirements of the [Act] and [COWs] ... ; and
- Veterinarians must act immediately to remedy situations where they have cause to suspect unreasonable or unnecessary pain or distress in an animal(s), or possible breaches of animal welfare legislation ...

As of September 2008, a Memorandum of Understanding has existed between Te Whare Pounamu Dunedin Women’s Refuge (Te Whare Pounamu) and the Otago SPCA to provide financial assistance for relocating at risk pets to abused women wanting to escape violent partners. The Memorandum of Understanding provides that pets will be housed by the Otago SPCA free of charge for one week, followed by a subsidised rate for three additional weeks if required. The arrangements would be made on a case-by-case basis and facilitated by Te Whare Pounamu staff. Otago SPCA executive officer Phil Soper stated that the agreement would formalise a relationship that already existed as his staff would report concerns to Te Whare Pounamu if they spotted something “that’s not right”.⁴²³

At the same time CYFS and the SPCA signed a national agreement that would see CYFS workers looking for signs of animal neglect and SPCA workers for signs of child

⁴¹⁷ “Kiwis lead the way in helping reduce child and animal abuse” *The Animals’ Advocate: Newsletter of the Royal New Zealand Society for the Prevention of Cruelty to Animals* (Waitakere, December 2008) at 1.

⁴¹⁸ Veterinary Council of New Zealand *Guidance for veterinarians: Dealing with cases of suspected or actual animal abuse and family violence* (June 2013).

⁴¹⁹ At 2.

⁴²⁰ At 3.

⁴²¹ At 3.

⁴²² At 5.

⁴²³ Chris Morris “Move to resolve abuse victims’ pet predicament” *The Otago Daily Times* (online ed, Dunedin, 18 September 2008).

abuse.⁴²⁴ CYFS, which was administered by the Ministry of Social Development, has since been superseded by Oranga Tamariki (Ministry for Children).⁴²⁵

4.2.4.5 New Zealand First Strike Working Group

At the end of 2002, the New Zealand First Strike Working Group held its initial meeting in Auckland, comprising of the following attendants: representatives from the Auckland SPCA and RNZSPCA, women’s refuges, CYFS, the New Zealand Veterinary Association, the New Zealand Police Family Violence Unit, family lawyers and city councils. It was agreed that the group would function as an umbrella organisation with the purposes of promoting inter-agency co-operation, and spreading the message about the links between different types of abuse. Since then, social workers have been trained about animal abuse, while police now recognise ill-treatment of pets as a risk factor for domestic violence.⁴²⁶ The group contributed to the development of a memorandum of understanding between New Zealand Police, women’s refuges and SPCAs that highlighted the need for pets to be taken into account when assessing and intervening in domestic violence situations.⁴²⁷

4.2.4.6 The Pro Bono Panel of Prosecutors

In 2009, Auckland Barrister Anika Killeen established the Pro Bono Panel of Prosecutors for SPCA Auckland (the Panel).⁴²⁸ It boasts 40 litigation experts⁴²⁹ and has the purpose of helping SPCA Auckland combat the high incidence of abuse against animals in New Zealand. Each Panel member takes prosecution cases at no charge for SPCA Auckland.⁴³⁰ Killeen made the following statement:⁴³¹

One of the SPCA’s primary objectives is for greater deterrence and denunciation for offenders who offend against animals, and the organisation is tasked with the law enforcement and prosecution function for offences under the Animal Welfare Act. The government does not provide any money for these offences to be prosecuted in Court by the SPCA.

⁴²⁴ Morris, above n 423.

⁴²⁵ Ministry of Social Development “Oranga Tamariki—Ministry for Children - Key statistics and information for media” <www.msd.govt.nz>.

⁴²⁶ Catriona MacLennan “Violence is always serious: Making the links between different types of abuse” (2005) 17 SWR 42 at 43.

⁴²⁷ Nancy Swarbrick “Animal welfare and rights: New organisations” (1 July 2017) Te Ara: The Encyclopaedia of New Zealand <<https://teara.govt.nz>>.

⁴²⁸ “People in the Law” *LawTalk* (Wellington, August 2014) at 16.

⁴²⁹ “Anita Killeen: SPCA Auckland Pro Bono Panel of Prosecutors” *LawTalk* (Wellington, March 2017) at 63.

⁴³⁰ Above n 428.

⁴³¹ Above n 429, at 62–63.

The SPCA's operating funds come almost exclusively from public donations and the cost of prosecutions is financially challenging.

... I was horrified to learn that some offenders were not able to be brought to justice as there was no money to fund the prosecution. I established the Pro Bono Panel of Prosecutors to ensure that such cases be brought to court.

It is estimated that this initiative has saved the SPCA Auckland hundreds of thousands of dollars of donor funds per annum and therefore enabled those funds to be used for the SPCA's animal welfare activities instead of for fulfilling its law enforcement function.⁴³² Killeen stated that the establishment of the Panel has ensured that all cases that SPCA Auckland believe ought to be prosecuted have been. It has been involved with the "full spectrum" of animal welfare cases, which has included neglect, cruelty, torture, malnourishment and hoarding cases as well as "test cases" on new points of law. Due to the seniority and experience of the lawyers involved, as well as the administrative systems in place, there is now greater consistency of SPCA Auckland's prosecution files. Killeen also considers that the prosecution files being placed before the courts are of a higher quality. In addition to the defended hearings and jury trials conducted by Panel members, its prosecutions cases attract appellate activity. Appeals in the High Court and Court of Appeal have been conducted, and leave to appeal to the Supreme Court has been granted. Killeen considers that this has led to a greater development of animal law in New Zealand and a greater public awareness of animal welfare and animal law issues.⁴³³

4.2.5 The Enforcement of the Act in the Breeding and Selling of Companion Animals

4.2.5.1 Pet Shops: A System of Reactive RNZSPCA Inspections

RNZSPCA Inspectors conduct checks on pet shops⁴³⁴ but do not conduct regular inspections, and there is no proactive system of licencing with required criteria that permits the opening or maintenance of a pet shop, such as knowledge of basic animal care.⁴³⁵ As with its other activities, the RNZSPCA responds to complaints about animal welfare in a reactive system. One such example occurred in Auckland in 2014, whereby the SPCA (as it then was) issued a formal warning to "PetStop", a chain of Auckland pet stores, following an investigation into the welfare of their animals that was conducted in response to complaints citing dirty enclosures and animals covered

⁴³² At 64.

⁴³³ At 64.

⁴³⁴ SPCA Wairarapa "Inspectorate"

<<https://web.archive.org/web/20180127210931/http://wairarapaspc.org.nz/inspectorate/>>.

⁴³⁵ Sally Hibbard "Talk to the Animals: The problem with pet shops" *The New Zealand Herald* (online ed, Auckland, 8 July 2014).

in faeces. These complaints were made both by a former member of PetStop staff and by members of the public. Christine Kalin, the then-chief executive of SPCA Auckland, stated that PetStop had “been on [the SPCA’s] radar for a while”. Inspectors had investigated the shops over the preceding five months following complaints and had found that shop staff were insufficiently trained and did not adequately clean animals and their cages. The formal warning required the owners of PetStop branches to carry out daily health checks on their animals and to give buyers more information, and the SPCA provided PetStop staff with information on correct protocols for the health and safety of animals. Inspectors continued to monitor the shop, and Ms Kalin stated that PetStop could face prosecution if it did not comply with the formal warning.⁴³⁶ Another such example is the inspection by the RNZSPCA of a pet shop in response to photos emerging online that depicted a severely overcrowded turtle tank. Professor Andrew Knight of Save Animals from Exploitation (SAFE) stated that this instance was an example that depicted a wider problem of New Zealand pet stores, with a high death rate of about 75 per cent in the first year.⁴³⁷ A further animal welfare problem that stems from the practices of pet shops is that of un-desexed cats being sold, with RNZSPCA CEO Andrea Midgen stating:⁴³⁸

... desexing is the single best thing we can do for animal welfare in this country ... But all our efforts are pointless if pet shops continue to sell large numbers of un-desexed animals. They are flooding areas with unwanted pets that are ending up in our Centres ... We’re asking all pet shops to work with us on this, rather than contributing to the problem.

4.2.5.2 The Pet Industry Association

Around 50 per cent of New Zealand’s retailers belong to the Pet Industry Association (PIA), of which membership is voluntary.⁴³⁹ While the PIA has a code of conduct, that code may only be imposed upon its members, and retailers who elect not to join cannot be forced to.⁴⁴⁰ Instead, the PIA appears to rely on a system of voluntary reporting and self-regulation, along with commercial incentives of retailers, to enforce animal welfare laws. For example, Tony Fraser of the PIA Board stated that he “doesn’t think” that pet shops should sell dogs from puppy farms as it is “not good business to sell bad puppies”. He added that pet shops rely on keeping customers

⁴³⁶ Meier, above n 39.

⁴³⁷ “One News “‘It’s really quite immoral’ – outrage over tank of turtles at Auckland pet shop spurs debate on selling exotic animals” (27 July 2017) <www.tvnz.co.nz/one-news/>.

⁴³⁸ RNZSPCA “SPCA calls for pet shops to stop selling un-dexed cats and kittens” (31 January 2017) <<https://web.archive.org/web/20180223183545/https://www.rnzspca.org.nz/news/438-sPCA-calls-for-pet-shops-to-stop-selling-un-desexed-cats-and-kittens>>.

⁴³⁹ Radio New Zealand “Pet shops speak out on puppy mills” (Podcast, 1 April 2015) <www.radionz.co.nz>.

⁴⁴⁰ Radio New Zealand, above n 439.

forever and tell other members of the industry when they have found a breeder selling “rubbish puppies”.⁴⁴¹

4.2.5.3 The Sources of Companion Animals in New Zealand

The Companion Animals in New Zealand 2016 Report conducted a survey that found people are most likely to get a cat from the RNZSPCA or an animal shelter, with this occurring in 22 per cent of cases, or from a breeder or a pet shop at a statistic of nine per cent each.⁴⁴² Conversely, 39 per cent of pet dogs are adopted from breeders, with 12 per cent from the RNZSPCA or an animal shelter and nine per cent from a pet shop.⁴⁴³ The welfare of dogs produced by breeders will be examined in detail.

In this survey, people with companion animals were also asked what they consider to be the best sources of information for companion animal related issues. Veterinarians were overall regarded as the best source of information, with 72 per cent of respondents stating that they considered them to be a good source of information. The RNZSPCA was very slightly more trusted than pet shops with figures of 32 and 31 per cent of respondents respectively stating that they considered them to be good sources of information. In comparing these findings to those of its last report in 2011, the 2016 report stated that the RNZSPCA is now considered a better source of information than pet shops.⁴⁴⁴ However, reasons for this change were not explored.

When the Act was reviewed in 2014, SPCA Auckland made a submission on the changes it wished to see. One of these was to make desexing and microchipping mandatory for companion animals obtained from pounds, shelters and retailers, including electronic media (such as the electronic media trading source TradeMe), prior to sale or adoption. It also wished to make it mandatory that these parties ensure the animals are registered on an appropriate animal register, a practice of SPCA Auckland itself. It added that “[e]ntire animals [sic]” should only be sold by those who either hold breeders’ permits or are registered breeders. Its reasons for this are the

⁴⁴¹ Radio New Zealand, above n 439.

⁴⁴² New Zealand Companion Animal Council *Companion Animals in New Zealand 2016* (June 2016) at [4.3]. Note that obtaining a cat from a friend accounts for 15 per cent, adopting a found or stray cat 14 per cent and obtaining a cat from a family member for 13 per cent.

⁴⁴³ At [4.3]. Note that obtaining a dog from a friend accounts for 12 per cent and that obtaining a dog from a family member accounts for eight per cent. This Report gave the following statistics in regard to the sources for acquiring other companion animals in New Zealand: *Fish*: 74 per cent are acquired for a pet shop, 13 per cent from a breeder and 11 per cent each for from a family member or a friend. *Birds*: 36 per cent from a breeder, 37 per cent from a pet shop, 12 per cent from a hobbyist or enthusiast, 10 per cent from a friend, nine per cent from a family member and eight per cent from the RNZSPCA or an animal shelter. *Ponies and horses*: 44 per cent from a breeder, 22 per cent from a hobbyist or enthusiast and 19 per cent from a friend. *Rabbit*: 38 per cent from a breeder, 26 per cent from a pet shop and 16 per cent from a friend.

⁴⁴⁴ At [4.4].

animal welfare problems that are often a result of excess animals brought about by irresponsible indiscriminate breeding, stating that “stronger measures are required to make an impact on this problem; requiring mandatory desexing by pounds, shelters, retailers, and electronic retailing outlets will help to address this issue”.⁴⁴⁵

It is concerning that the dominant pet shop market has changed from physical stores to electronic media trading sources and electronic retailing outlets. This is evidenced by the closure of a pet shop in Timaru, the owners of which stated by way of explanation that the growth of online pet and pet product markets had been a major reason for the closure and that prices for pets on the internet were impossible to match for storefront pet retailers. They added that adding to the difficulty was the fact entire litters of puppies were often advertised free of charge on social media websites such as Facebook.⁴⁴⁶ This is very concerning as it is practically much more difficult for the RNZSPCA to monitor online activities than physical retail pet shops. For example, it may be more difficult to obtain a physical address that may be inspected from an electronic retailer. Carolyn Press-McKenzie, founder of activist group Helping You Help Animals (HUHANZ), stated that lack of regulation of electronic retailer websites such as TradeMe “makes for a lack of accountability and the ability for bad breeders to do underhanded sales”.⁴⁴⁷ She added that dogs from unregistered and unregulated breeders – the puppy milling industry, the “backyard breeders” and those who use unregistered purebreds for breeding – are often sold for a higher price in pet shops and on the internet than that of a registered New Zealand Kennel Club dog. She stated that these are the dogs that are more likely to inherit congenital issues that affect their overall health, movement and breathing, owing to a lack of oversight and regulation of breeding practices.⁴⁴⁸

4.2.5.4 Covert Breeders and the Example of Puppy Mills

“Puppy farms” or “puppy mills” take dogs from desirable breeds and breed them as frequently as possible, often in unsanitary and cramped conditions.⁴⁴⁹ Conditions are often very poor, particularly for the animals kept for breeding. They are often deprived of proper exercise, bedding and socialisation.⁴⁵⁰ Puppies produced by these mills frequently have health issues due to intensive breeding that leads to congenital

⁴⁴⁵ SPCA Auckland “Animal Welfare Act Review”

<<https://web.archive.org/web/20180202163945/www.spcaauckland.org.nz/animal-welfare/animal-welfare-act-review/>> at Animal Welfare Recommendations 9.

⁴⁴⁶ Lewis Taylor “Timaru pet shop owners close doors in face of stiff online competition” *The Timaru Herald* (online ed, Timaru, 20 June 2017).

⁴⁴⁷ Radio New Zealand “Trade Me considering Code of Conduct on animal sales” (Podcast, 31 March 2015) <www.radionz.co.nz>.

⁴⁴⁸ Fiona Tomlinson (ed) “Newsletter Tuesday March 14 2013” (14 March 2013) Paw Justice <<http://pawjustice.co.nz/newsletters/>>.

⁴⁴⁹ Radio Live “Should pet stores only sell shelter dogs?” (19 October 2017) <www.radiolive.co.nz>.

⁴⁵⁰ SAFE “Puppy Mills” <www.safe.org.nz>.

abnormalities and are often taken away from their mothers at too young an age.⁴⁵¹ Just one such example is Oscar, a puppy who had to be euthanised at seven months old due to severe genetic defects from inbreeding. At Oscar's first visit to a vet, it was apparent that he was unable to urinate and his bones were already beginning to crack.⁴⁵² In 2010, an investigation conducted by television news show *60 Minutes* obtained footage that showed dogs living in mud and filth and without bedding as well as sick puppies in need of urgent veterinary attention. One dog was dragging around a tyre attached to his collar by a chain to prevent escape and another had an anti-barking device attached to her neck that emitted an electric shock when she barked. *60 Minutes* linked "at least" one farm in Gisborne to supplying young dogs to Animates, the largest pet store chain in the country.⁴⁵³ As noted above, most dogs in New Zealand are obtained from breeders rather than pet shops. This may be attributable at least in part to the 2013 case of 11 puppies at The Pet Centre branches in the Wellington Region who died due to illnesses brought on from being too young to be taken away from their mothers. They had been supplied to the stores by a large-scale breeder who had bred them in a 200 km² barn. Since that incident, breeders have been more likely to sell dogs directly on websites such as TradeMe rather than through pet shops.⁴⁵⁴

The extent of the puppy mill industry is hard to determine in New Zealand as most are unregulated and operate covertly.⁴⁵⁵ Lesley Butler of the PAWS Animal Shelter in Feilding reports having attended such farms, where 70 to 80 female dogs are raised in kennels or cages and bred every six months. When they have reached the end of their fertility at between six to eight years of age, they are often given to another puppy farmer who may attempt to gain another litter from them. NZVA Companion Animal Veterinary Operators Manager Rochelle Ferguson noted that the multiple pregnancies take a physical toll on them, stating the following:

... if they are not well cared for and they are not in good body condition, that extra stress does compromise their health. It draws on their reserve, their muscles, the minerals in their bones and reduces their immunity, so they are susceptible to infection.

The puppies are advertised as "family-bred" and are often photographed with children. However, they also have physical and psychological problems as a result of the way in which they are produced. Ferguson described the puppies bred by a central North Island breeder who was selling around 100 litters a year that were thin,

⁴⁵¹ Ella Prendergast "Outrage as puppy mill dog sold in pet shop" (16 September 2017) Newshub <www.newshub.co.nz>.

⁴⁵² Paw Justice "Campaign to Stop Puppy Milling in New Zealand" (press release, 30 March 2015).

⁴⁵³ SAFE "Designer Dogs?" <www.safe.org.nz/designer-dogs>.

⁴⁵⁴ Elly Strang "How much is that doggie in the window?" (31 March 2015) The Register: Retail Intelligence <<http://theregister.co.nz>>.

⁴⁵⁵ Radio Live, above n 449.

were infested with worms and had dull coats – “everything she would have expected from dogs kept in large numbers in one understaffed facility”. The puppies are also unsocialised and struggle to cope in their new homes when adopted.⁴⁵⁶

A Shih Tzu named Ted was given to the Otago SPCA who were told that he had “become surplus to a breeder’s requirements”. While the Otago SPCA staff suspected he may have come from a puppy mill, there had only been social media reports of puppy mills in South Otago and therefore the SPCA had not investigated as there had not been any “legitimate complaints”.⁴⁵⁷ As is the case with pet shops, there is no system of auditing without a substantiated complaint first being received, and the example of Ted shows how difficult it can be to receive a substantiated complaint when these operations are run covertly. The NZVA has issued a set of guidelines that one ought to follow in electing whether to adopt a dog and which include the following:⁴⁵⁸

- Don’t support puppy farms. Even if you feel sorry for the puppy (and you will), supporting unethical breeders will only encourage more.
- Visit the breeding facility. It should be clean, and the puppy should have the opportunity to mix with animals and people and be fed adequate amounts of nutritious food.

However, the guidelines do not specifically encourage reporting to the RNZSPCA. Jon Duffy, TradeMe head of trust and safety, has stated that TradeMe is “happy” to take information from sources that suggest animals being sold are being maltreated. Duffy made the following statement:⁴⁵⁹

We regularly work with the SPCA on animal welfare issues ... However, both the SPCA and TradeMe can only act on solid evidence and unfortunately, as this is an emotive issue we regularly see members jumping to conclusions and providing information about alleged maltreatment that turns out to be inaccurate when investigated by the SPCA.

Another issue that confronts the RNZSPCA is that it has few options to intervene because of a lack of regulations controlling puppy farming. As noted by Danny Auger, Manawatu SPCA General Manager, unless the Act is breached, the RNZSPCA cannot intervene. On more than one occasion, he had inspected the premises of a known

⁴⁵⁶ Sally Blundell “Puppy farming: New Zealand’s secret dog-breeding shame” *The Listener* (online ed, Auckland, 13 January 2018).

⁴⁵⁷ Shawn McAvinue “Abandoned dog may be from ‘puppy mill’” *The Otago Daily Times* (online ed, Dunedin, 22 April 2014).

⁴⁵⁸ Sally Blundell “A puppy-buyer’s guide to getting a new dog” *The Listener* (online ed, Auckland, 13 January 2018).

⁴⁵⁹ Strang, above n 454.

intensive dog breeder who would not let customers see her large-scale commercial operation, which raised questions about the dogs' welfare and care. Auger stated that the operator covered the minimum standards in providing the dogs with shelter, exercise yards and covered individual kennels. However, Auger stated that some of the minimum standards are difficult to enforce, such as the amount of exercise a dog receives. He considered that the rules should be tighter and advocated for the RNZPCA having the jurisdiction to conduct "blind inspections" and for an overall tightening of rules around inspection. The RNZSPCA opposes "breeding just for the sake of breeding and making money out of it".⁴⁶⁰ HUHANZ stated that the "overall welfare" of the dogs is the concern, with Press-McKenzie stating that they are concerned that the animals are not getting enough exercise or "living a normal life".⁴⁶¹ For the most part, the RNZSPCA is unable to take legal enforcement action and instead must rely on education and moral encouragement.⁴⁶²

4.2.5.5 The Role of Covert Filming and Undercover Investigations in Oversight of Puppy Mills

It is the fact that most puppy mills operate in secret that makes it so difficult to detect them and to enforce animal welfare laws. Many kennels operate in sparsely populated rural areas, and accordingly it is difficult for them to be detected and reported. Furthermore, while dog welfare organisations and veterinary staff will talk "off the record" about inhumane treatment, they do not elect to report the activities as they want to keep "onside" with breeders in order to ensure they will be called on when needed in order to help the dogs.⁴⁶³ Carolyn Press-McKenzie of HUHANZ describes the practice of unsafe and irresponsible puppy breeding in New Zealand as an "epidemic". She stated that "backyard operators" are selling dogs to their friends with no understanding of proper healthcare or desexing responsibilities.⁴⁶⁴ Dr Arnja Dale, Chief Scientific Officer of the RNZSPCA, stated that dog-breeding in New Zealand is essentially an unregulated industry:⁴⁶⁵

There is no law to protect the welfare of these vulnerable dogs: they can literally be bred until they drop dead. The public don't know what they are getting themselves into and our shelters are the ones that end up with all these unwanted animals.

As with other areas of animal welfare law oversight, compliance and enforcement detailed in this paper, covert filming and undercover investigation by NGOs has

⁴⁶⁰ Susan Teodoro "Puppy mills 'rife' in Horowhenua and Manawatu" *The Manawatu Standard* (online ed, Manawatu, 9 May 2015).

⁴⁶¹ Teodoro, above n 460.

⁴⁶² Radio New Zealand, above n 447.

⁴⁶³ Blundell, above n 456.

⁴⁶⁴ Blundell, above n 456.

⁴⁶⁵ Blundell, above n 456.

played a role in exposing animal welfare issues. Press-McKenzie has stated that HUHANZ knows from “undercover investigations” that puppy mills supply pet stores. One mill came to the attention of HUHANZ when they were given a bag of dead puppies by a pet store that had received them from a breeder who also sells puppies online. They had died due to being taken away from their mother at too young an age and therefore being weak and becoming dehydrated, malnourished and/or sick. Press-McKenzie described the mortality rate of puppies produced by mills as “very high”.⁴⁶⁶

4.2.5.6 Insufficient Regulation and Voluntary Welfare Assurance Systems of TradeMe and Dogs New Zealand

When selling a dog on Trade Me, one may declare that they meet the website’s own code of welfare. TradeMe’s code of welfare requires all dogs to be raised according to the Animal Welfare (Dogs) Code of Welfare 2010 and stipulates that breeders must disclose if a puppy or its parents have had any surgery to correct inheritable problems, if they have any known breed-specific potential hereditary problems or if the puppy is the result of a mating of two individuals related within two generations.⁴⁶⁷ Other conditions of the voluntary TradeMe code of welfare include the following: both the puppy and mother have been cared for in accordance with legal requirements; that at the time of conception, the mother was in good health; that the puppy has been examined by a vet and has had the required vaccinations and worm and flea treatments and that the puppy will not be released to a buyer before they are eight weeks old.⁴⁶⁸ However, there is no ability to enforce the code,⁴⁶⁹ and there is no auditing process.⁴⁷⁰ Paw Justice is an activist group that launched a campaign called “Don’t Trade Me” with the purpose of bringing light to the issue of puppy milling. It stated that trading sites for online animal sales (such as TradeMe) have enabled “rogue” breeders and puppy mills to thrive in New Zealand because they have no regulations around dog auctions and sales.⁴⁷¹ It pointed out that “puppies” is one of the most popular search terms used on TradeMe and that in 2014 over 35,000 cats and dogs were sold on TradeMe. Its Don’t Trade Me campaign video added the following:⁴⁷²

⁴⁶⁶ Radio New Zealand, above n 447.

⁴⁶⁷ New Zealand Veterinary Association “Every puppy owner’s worst nightmare” (28 February 2018) <www.nzva.org.nz/news/>.

⁴⁶⁸ Blundell, above n 456.

⁴⁶⁹ New Zealand Veterinary Association, above n 467.

⁴⁷⁰ Blundell, above n 456.

⁴⁷¹ “Animal welfare group targets ‘puppy mills’” *The New Zealand Herald* (online ed, Auckland, 30 March 2015).

⁴⁷² Strang, above n 454.

... there are no rules about how puppies sold online are bred; sellers don't need permits, vet checks and site visits, and they can overbreed their dogs without public knowledge or consequence.

Another issue was identified by Press-McKenzie, who pointed out that breeders often use several different trading names and accounts on the website to conceal how many puppies they are selling.⁴⁷³ Ric Odom, who was then CEO of the RNZSPCA, stated that TradeMe had been “really responsive” to the RNZSPCA’s concerns, TradeMe’s mechanisms of enforcement are largely based in education and encouragement. For example, there is a “pop up” on TradeMe which educates potential buyers about animal welfare. Duffy cited the “Community Watch Button” on TradeMe sale listings and the “Buyer Checklist” on animal listings as further mechanisms and described the inability to auction a companion animal on TradeMe as “a mechanism for self-regulation” in that a buyer may cancel the deal if concerned and may then elect to report the matter.⁴⁷⁴ While he stated that TradeMe was working with the RNZSPCA on a code of conduct for sellers,⁴⁷⁵ Duffy admitted that it would be voluntary and that it would “probably be responsible breeders who sign up” and that they were looking at an “opt in system” of enforcement in which sellers could elect to acknowledge that they met the standards. He stated that the best way to “catch the bad ones” and to find out if those who had claimed to meet the standards had in fact complied is to hear from members of TradeMe.⁴⁷⁶ Duffy reiterated that TradeMe is “open to help from members” and wants to know if people have evidence that there are puppy mills that breach animal welfare standards.⁴⁷⁷ Odom stated that if TradeMe suspects there is an “issue in a trader”, then they will contact the RNZSPCA to investigate yet noted the “lack of controls associated” with electronic retailing. He added that the SPCA will “always follow up on complaints” and that “the best way to address bad practice is to be told what’s going on”. While he acknowledged that HUHANS reports to the RNZSPCA, he stated that “by far the most important source of information is the public; here the buyers”.⁴⁷⁸ The party interviewing Odom and Duffy for Radio New Zealand confirmed that the “onus [is] on the buyer to follow up and report [animal welfare concerns]”.⁴⁷⁹ The focus on “buyer beware” mechanisms to prevent maltreatment of animals and on the responsibility imposed upon the public to report animal welfare law breaches in order for offenders to be subject to recourse is, as with other areas of animal welfare law enforcement in New Zealand, deeply problematic.

⁴⁷³ Radio New Zealand, above n 447.

⁴⁷⁴ Radio New Zealand, above n 447.

⁴⁷⁵ Annabel Reid “Trade Me cracks down on puppy mills” (31 March 2015) NewstalkZB <www.newstalkzb.co.nz/news/>.

⁴⁷⁶ Radio New Zealand, above n 447.

⁴⁷⁷ Reid, above n 475.

⁴⁷⁸ Radio New Zealand, above n 447.

⁴⁷⁹ Radio New Zealand, above n 447.

Membership of Dogs New Zealand (Dogs NZ) is in itself voluntary.⁴⁸⁰ The Dogs NZ (formerly New Zealand Kennel Club) Code of Ethics is mandatory for dog breeders who are part of its voluntary Accredited Breeders Scheme⁴⁸¹ contains provisions such as the following:⁴⁸²

Dogs NZ Accredited Breeders will at all times ensure that all dogs under their care are properly housed, fed, watered and exercised and arrange for appropriate veterinary attention if and when required.

...

Dogs NZ Accredited Breeders will take care to ensure that when selling dogs there is a reasonable expectation of a happy and healthy life and will assist with re-homing of a dog if the circumstances change.

...

Dogs NZ Accredited Breeders must make official copies of the results of mandatory parental health tests pertaining to the breed available to New Zealand Kennel Club and the purchaser.

However, it is unclear how these standards are enforced. Director/Secretary Peter Dunne stated that the organisation's members monitor other members and report welfare concerns to Dunne. This statement was made in response to being asked whether Dogs NZ conduct pet checks or audits of the kennels of members. Dunne emphasised the focus of Dogs NZ on addressing misconduct through education and assistance rather than strict punitive measures. While Dunne stated in April 2015 that Dogs NZ was considering whether to employ a dog welfare officer who would likely be a veterinary surgeon, it does not appear that such a party was ever employed.⁴⁸³ Furthermore, while Dogs NZ states that their breeders are "bound by rules, regulations and codes of ethics", these breeders account for only around 13 per cent of all dogs bred in New Zealand.⁴⁸⁴ Accordingly, animal advocates are now calling for the licensing of all dog breeders on the basis that would reduce the inhumane treatment of dogs and puppies through stricter regulations and regular checks.⁴⁸⁵ Puppies registered with Dogs NZ are sold on TradeMe, but there are many more puppies, crosses and purebreds that are advertised on the website without even the reassurance that the conditions of Dogs NZ have been met and often at a similar or

⁴⁸⁰ Dogs New Zealand "Membership of Dogs New Zealand" <www.dogsnz.org.nz>.

⁴⁸¹ New Zealand Veterinary Association, above n 467.

⁴⁸² Dogs New Zealand "New Zealand Kennel Club Accredited Breeders Scheme Code of Ethics" <<http://ab.dogsnz.org.nz>>.

⁴⁸³ Radio New Zealand, above n 439.

⁴⁸⁴ Dogs New Zealand "Trade Me ban on Pugs, British Bulldogs and French Bulldogs" (17 January 2017) <www.dogsnz.org.nz>.

⁴⁸⁵ Blundell, above n 456.

even higher price. Finally, as Sally Blundell notes, “Dogs NZ is the first to admit not all its breeders are squeaky clean.”⁴⁸⁶

4.2.5.7 Other Identified Issues in the Sale of Companion Animals

As noted by SAFE, a pet shop is a commercial business where making money is their first and foremost concern.⁴⁸⁷ It describes the breeding industry of pet shops and commercial breeders as “unscrupulous”, the support of which results in large numbers of animals being needlessly killed.⁴⁸⁸ The RNZSPCA and SAFE are critical of pet shops that do not evaluate potential buyers, which can lead to animals later being left at animal shelters.⁴⁸⁹ Breeding also leads to the euthanising of “thousands of unwanted dogs annually in New Zealand because of an overpopulation problem”. SAFE states that “[d]og rescue centres and council-run dog pounds are overflowing with adoptable dogs while puppy mills continue to breed thousands of new dogs for profit”.⁴⁹⁰

4.2.6 Prosecutions Involving Companion Animals

As noted above, the PTS simply provides that where an AWI believes that criminal liability has been established, after completion of a further expert assessment, the AWI may recommend to their RNZSPCA Centre Committee that information be laid.⁴⁹¹ Evidently, however, the simplicity of the process in theory does not, however, yield high numbers of prosecutions. The RNZSPCA investigated 15,584 complaints in 2017.⁴⁹² In the same year, 62 prosecutions were filed by AWIs, roughly 0.4 per cent.⁴⁹³ This compares with 219,368 prosecutions filed overall in New Zealand courts in 2017.⁴⁹⁴

The enforcement procedures detailed above can partially explain the gap between investigations and prosecutions. The suite of enforcement mechanisms available to AWIs and the RNZSPCA means that in the vast majority of instances, prosecution of animal welfare offending would be an inappropriate response. Nevertheless, the predominant explanation for the discrepancy between investigation and prosecution of animal welfare offending is the scarcity of resources for such prosecutions. In one

⁴⁸⁶ Blundell, above n 456.

⁴⁸⁷ SAFE “The Problem with Pet Shops” <www.safe.org.nz>.

⁴⁸⁸ SAFE, above n 487.

⁴⁸⁹ SAFE, above n 487.

⁴⁹⁰ SAFE, above n 487.

⁴⁹¹ *Performance and Technical Standards for Inspectors of the RNZSPCA Including Selection, Training and Appointment 2012*, above n 61, at 250.

⁴⁹² RNZSPCA, above n 15, at 6.

⁴⁹³ At 6.

⁴⁹⁴ Statistics New Zealand “Charges prosecuted against adults by offence type calendar year” (data extracted 11 February 2019) <stats.govt.nz>.

recent instance, Andrea Midgen estimated that the cost of a single prosecution “would be well over \$200,000”,⁴⁹⁵ and whilst the complexity of that case – involving “dozens of charges” – might provide some explanation for the high cost, it also illustrates the necessity of the RNZSPCA with limited resources, having to pick and choose which cases to prosecute. This is an issue explored further in Part 2.

Accordingly, if it is not possible or appropriate to prosecute every instance of animal welfare offending, it follows that there are particular features of those cases that are prosecuted that justifies the use of scarce resources. We have sought to review animal welfare prosecutions brought by the RNZSPCA involving companion animals in order to determine those particular features. We have looked at 36 different prosecutions taken since the enactment of the Animal Welfare Act 1999 in order to discern those features. Whilst the RNZSPCA will have engaged in far more prosecutions during this period, many will not have reached trial, where a judgment of the Court is publicly available. It is nevertheless a sufficient number in order to determine some of the core features of animal welfare offending that justify prosecution.

The two key aspects of animal welfare offending that appear to justify prosecution by the RNZSPCA are the severity of offending and the importance of denouncing the offending in question. Looking to the first aspect, “severity” encompasses both the vulnerability of the animals involved and the violence used in the offending. This does not necessarily indicate that charges involved in these prosecutions arose from offending against pt 2, namely conduct toward animals that amounts to ill-treatment; many involved offending pt 1 of the Act, namely a failure of those who own or are in charge of animals to properly provide for their care and protection. The common denominator is instead particularly egregious examples of offending under both parts.

Examples where the severity of offending has justified prosecution include:

- knowingly starving dogs to death,⁴⁹⁶
- taping the mouth of a dog shut and proceeding to beat it;⁴⁹⁷
- 21 cats and 23 dogs living in filthy conditions;⁴⁹⁸
- torturing a puppy to death;⁴⁹⁹ and
- beating a four-month-old puppy with significant force.⁵⁰⁰

⁴⁹⁵ Stuff “SPCA faces bills over \$200,000 to investigate, prosecute breeder” (11 October 2018) <www.stuff.co.nz>.

⁴⁹⁶ *SPCA v Howard* DC Kaikohe CRN-4027008913-4, 11 August 2004; *SPCA v Beckham* DC Kaikohe CRN-05027006701-06, 27 April 2006; *SPCA v Tosala* DC Manukau CRI-2008-092-000372, 7 March 2012; and *SPCA v Griffiths* DC Auckland CRI-2011-004-22794, 2 February 2012.

⁴⁹⁷ *Ford v Royal Society for the Prevention of Cruelty to Animals* HC Christchurch CRI-2004-409-149, 9 September 2004.

⁴⁹⁸ *Green v SPCA* HC New Plymouth CRI-2006-443-12, 18 October 2006.

⁴⁹⁹ *Hurring v SPCA* HC Dunedin CRI-2009-412-19, 8 September 2009.

⁵⁰⁰ *Waikato SPCA v Wilson* [2017] NZDC 9722.

These examples of egregious breaches indicate that severe offending will justify prosecution. Relatedly – and yet nevertheless distinctly – some offending will demand denunciation through prosecution. This second aspect of offending that justifies prosecution does not necessarily require particularly severe breaches of the Act; instead, there is a public interest in seeing court action against the offenders. Examples include:

- denouncing organised cruelty in the form of dog-fighting;⁵⁰¹
- denouncing persistent failures to comply with directions and warnings of SPCA inspectors;⁵⁰²
- denouncing repeat offending;⁵⁰³ and
- responding to the public outcry over particular offending.⁵⁰⁴

The breeding and selling of companion animals provides an apt example of both aspects that justify prosecution. The RNZSPCA has prosecuted “several” breeders for running puppy mills,⁵⁰⁵ the most prominent case being that of *R v Balfour*⁵⁰⁶ in which a married couple who were running a high intensity commercial breeding operation were convicted for failing to ensure that the physical, health and behavioural needs of 87 dogs and 161 cats were met and of ill-treating the cats.⁵⁰⁷

In 2017 SPCA Auckland successfully prosecuted a man for failing to ensure that the health and welfare needs of animals were met, with the defendant pleading guilty to six charges of recklessly ill-treating an animal pursuant to s 28A(1)(b) of the Act and one representative charge of selling two puppies in unreasonable pain or distress pursuant to s 14(1)(b) of the Act.⁵⁰⁸ The Judge imposed a 10 year prohibition on him owning or exercising authority over animals. The offender, Xiang Max Bai, was accused of selling ill puppies without disclosing that they were suffering from the canine parvovirus,⁵⁰⁹ which causes vomiting, diarrhoea and dehydration and can result in death if untreated.⁵¹⁰ Seven Dalmatian puppies and their mother died. Bai had been advised of the severity of the treatment management prognosis, the nature of the disease and the need for treatment.

⁵⁰¹ *RSPCA v Berryman* DC Kaikohe CRN-1027009866-871, 5 May 2003.

⁵⁰² *Royal Society for the Prevention of Cruelty to Animals (RSPCA) v Wilson* DC Dunedin CRI-2012-012-938, 1 June 2012; *Royal Society for the Prevention of Cruelty to Animals v Bramley* DC Wellington CRI-2009-078-542, 28 July 2009; and *Society for Prevention of Cruelty to Animals v De Vere* [2016] NZDC 9158.

⁵⁰³ *SPCA v Howarth* DC Kaikohe CRI-2007-027-1993, 17 October 2008.

⁵⁰⁴ *RSPCA v Gilbertson* [2002] DCR 617.

⁵⁰⁵ Radio New Zealand, above n 447.

⁵⁰⁶ *Balfour*, above n 87.

⁵⁰⁷ *Balfour v R* [2013] NZCA 429 at [1].

⁵⁰⁸ *SPCA Auckland v Xiang Max Bai* [2017] NZDC 5204 as cited in Anita Killeen “Knowingly or recklessly selling sick or diseased animals” *LawTalk* (Wellington, July 2017) at 23.

⁵⁰⁹ Killeen, above n 508.

⁵¹⁰ At 24.

Both the cases of *Balfour* and *Bai* indicate that severity and the necessity of denunciation will justify prosecution by the RNZSPCA. Indeed, the New Zealand Law Society stated that the District Court decision in *Bai* was.⁵¹¹

... significant both for its denunciation and deterrence of this kind of treatment to animals and for the fact that it is the first tariff judgment for this particular type of offending.

Andrea Midgen stated:⁵¹²

It again highlights the reasons people should adopt from animal shelters or reputable breeders so they can be sure the animals have been treated well and received appropriate vaccinations and vet care. We are sincerely grateful for our pro-bono lawyers in helping seek justice for these innocent animals.

They are also examples, however, of the necessity of those aspects before prosecution is justified given the scarce resources of the RNZSPCA. This is demonstrated not only by Ms Midgen's expressed gratitude to the RNZSPCA's pro bono lawyers but also by the call made for donations in May 2018 whereby the RNZSPCA explained that it had rescued German Shepherd dogs from a puppy farm in a case that had by then already cost it over \$158,000 owing in part to it having over 30 of the seized dogs in its care and it needing money to bring a prosecution.⁵¹³ In the next part, we discuss the desirability and appropriateness of requiring particular aspects – severity offending or the necessity of denunciation – to justify the commencement of prosecution. In the next section, we look to the enforcement of the Act in relation to production animals.

4.3 Enforcement of the Act in the Production Animal Sectors and in Export

4.3.1 Introduction

This section will first outline the role the RNZSPCA plays in enforcing the Act in the production animal sectors and then outline the process by which the RNZSPCA may transfer such a complaint to MPI. It will then move into an overview of MPI's enforcement strategy, which like the RNZSPCA's is largely based on a reactive system of responding to complaints. Other organisations that play a practical role in enforcement are then identified and their contribution explored, including NGOs and

⁵¹¹ Killeen, above n 508.

⁵¹² At 25.

⁵¹³ SPCA "SPCA takes action against puppy farm" (2 May 2018) <www.sPCA.nz/news-and-events/>.

the Commerce Commission. As with other areas of animal welfare law enforcement examined in this paper, the role of covert and unauthorised filming by NGO actors is an important aspect of oversight.

The welfare management of animals who are to be exported or otherwise transported overseas is then examined. The welfare of animals who are to be exported overseas is largely governed by MPI, which issues Animal Welfare Export Certificates (AWECs) under the Act that, barring certain exemptions, must be obtained before an animal may be shipped overseas. MPI VS veterinarians inspect animals who are being transported within New Zealand. These veterinarians also verify compliance with AWECs at the time of loading, and the animals may be removed if the conditions are not met. The paper then moves into the other parties tasked with verifying compliance and their respective functions, using the example of transporting cattle by sea. Finally, it moves into the role of the New Zealand Customs Service, which has considerable powers of enforcement and cites the Act as a piece of principal legislation used by it, playing a de facto animal welfare enforcement role in the realm of authorised and unauthorised live export and import. It notes some of the animal welfare concerns raised in response to the jurisdictional issues of exporting animals to other states.

4.3.2 The Role of the RNZSPCA

4.3.2.1 Government Funding of RNZSPCA Investigation of Production Animal Welfare Complaints

While the majority of oversight is undertaken by MPI, On-Farm Inspections are conducted by the RNZSPCA. These are provided for in the RNZSPCA PTS, where the Protocols are prescribed as follows: relevant funding agreements are to cover matters relating to the provision of government funding to support the RNZSPCA in its animal welfare activities,⁵¹⁴ and the RNZSPCA National Support Office has enacted Protocols to align with the terms of these agreements in order to assist with production animal welfare complaints received by the RNZSPCA.⁵¹⁵ The RNZSPCA National Support Office has appointed a RNZSPCA National Inspectorate and Centre Support Team to assist RNZSPCA Centres with production animal welfare complaints.⁵¹⁶ The RNZSPCA Centre forwards initial reports directly to the RNZSPCA National Inspectorate and Centre Support Team, and the PTS state that RNZSPCA Centres should record any production animal welfare complaints on the forms supplied by RNZSPCA National Support Office for entry onto the national database

⁵¹⁴ *Performance and Technical Standards for Inspectors of the RNZSPCA Including Selection, Training and Appointment 2012*, above n 61, at 272.

⁵¹⁵ At 273.

⁵¹⁶ At 274.

in order to access funding,⁵¹⁷ the accounting of which the RNZSPCA National Support Office is responsible for.⁵¹⁸ They are to receive all relevant documentation and a report from RNZSPCA Centres in order to enable that Centre's reimbursement of expense claims related to production animal welfare inspections and investigations.⁵¹⁹ Government funding of the RNZSPCA's activities, and of animal welfare enforcement funding in general, is explored in depth in Part 2 of this paper.

4.3.2.2 RNZSPCA Inspections and Transfer of Complaints to MPI

The RNZSPCA Centre that received the production animal welfare complaint is to handle the situation in the event that it can be adequately dealt with by the AWI in initial attendance.⁵²⁰ However, in the event that the situation is serious or cannot be adequately dealt with by the initial attending Inspector, that Inspector must take whatever emergency action is considered necessary and then contact the RNZSPCA National Inspectorate and Centre Support Team to fully report the situation.⁵²¹ Complaints may be transferred to MPI, and this is to be done through the SPCA National Inspectorate and Centre Support Team. Every RNZSPCA Centre must keep a record of all complaints transferred to MPI.⁵²²

4.3.3 MPI's Enforcement Strategy

4.3.3.1 Overview

In response to the our query as to whom identifies animal welfare issues, MPI referred to its promoted 0800 phone number, which encourages members of the public to phone MPI and make a complaint if they believe animals are being mistreated.⁵²³ Stakeholders, along with the public, are encouraged by MPI to report animal welfare issues,⁵²⁴ and parties inspecting animal production premises for other purposes can also refer animal welfare concerns to MPI concerns.⁵²⁵ Stakeholders, however, may not necessarily be relied upon to report such issues as they risk punitive measures and other economic losses when the issues relate to production animals under their own dominion. MPI stated that its MPI AWIs spend "a majority" of their time responding to such complaints,⁵²⁶ suggesting that proactive rather than reactive inspections are rare.

⁵¹⁷ At 275.

⁵¹⁸ At 276.

⁵¹⁹ At 277.

⁵²⁰ At 278.

⁵²¹ At 279.

⁵²² At 281.

⁵²³ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at 1.

⁵²⁴ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at 1.

⁵²⁵ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at 1.

⁵²⁶ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at 1.

As of 2018, more than 200 Verification Services (VS) veterinarians were employed by MPI as a market access requirement at all processing plants that produce food for human consumption. Their role is to verify compliance with New Zealand animal products legislation and to provide veterinary certification for every consignment exported, and they are also cross-warranted to monitor the welfare of animals transported to slaughter domestically.⁵²⁷

MPI administers the On-Farm Verification programme, which audits over 1,200 livestock production farms for compliance with the Animal Products Act 1999, Biosecurity Act 1993 and Animal Welfare Act 1999 (the order in which the statutes are listed by MPI).⁵²⁸

MPI identified its *Safeguarding Our Animals, Safeguarding Our Reputation* programme (SOASOR), enacted in 2010, as particular to the role of stakeholders in animal welfare.⁵²⁹ Notably, this programme focuses on working in partnership with industry and others in order to encourage and improve voluntary compliance,⁵³⁰ essentially relying on good faith. MPI noted that certain stakeholder organisations conduct audits in order to ensure compliance with Codes of Welfare, giving the example of New Zealand Pork’s PigCare audit and also noting that non-compliance can be resolved by applying commercial pressure.⁵³¹ It is unclear exactly how commercial pressure works in practice. MPI also noted that DairyNZ has an “early response service”, the details of which were not given, in which it works with a farmer to resolve an animal welfare issue. While MPI noted that where animal welfare issues cannot be resolved by providing advice to farmers, then the stakeholder organisation advises MPI Compliance, there exist no MOUs between stakeholder groups and MPI Compliance that specify when cases should be referred to MPI Compliance. While MPI claims that “anecdotally, this has not been a concern and cases are referred at the appropriate time”,⁵³² it is unclear how MPI considers itself to be aware of how effective the system is in practice.

In SOASOR, MPI (as it was then MAF) expressed its intention to continue shifting from a prosecution-led approach to one of encouraging voluntary compliance.⁵³³ MPI stated that its analysis had revealed two gaps in the suite of tools available within the “compliance triangle”: at the lower levels of the compliance triangle, there is no way

⁵²⁷ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at 1

⁵²⁸ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at 1.

⁵²⁹ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at 2.

⁵³⁰ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at 2.1.

⁵³¹ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at 2.4.

⁵³² Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at 2.5.

⁵³³ Ministry of Agriculture and Forestry *Safeguarding our Animals, Safeguarding our Reputation: Improving Animal Welfare Compliance in New Zealand* (July 2010) at 18.

of systematically monitoring whether standards are being met; and at the upper levels of the compliance triangle, there is no statutory mechanism to compel immediate action or impose immediate sanction when a breach of the Act is detected.⁵³⁴ It also stated that it was:⁵³⁵

... receiving an increasing number of complaints about alleged breaches of the Act, and the seriousness and complexity of those complaints are also increasing. MAF received 677 complaints during 2007. In 2008, it received 948 complaints, of which 208 were designated “High” or “Very High” risk.

SOASOR notes that animal welfare inspections are carried out only on those farms about which a complaint is received, which at the time of writing (July 2010) was around 2.5 per cent of total farms. In SOASAR, MPI admitted that they had limited or no information available about animal welfare compliance on the 97.5 per cent of farms for which no complaint is received. They added that while they expected that the vast majority of these farms will be maintaining adequate animal welfare standards, this cannot be verified.⁵³⁶

As noted in Vetpak, a document developed and published as part of the SOASOR programme, AWIs have a range of tools which they can use based on an escalating approach. Informal discussions and agreements and referral to industry-based programmes (such as PigCare) may be used when the situation is minor and easy to resolve. In other cases, the severity, scale and motivation of the farmer to resolve the issue may require the use of regulatory tools such as notices and enforcement orders under s 130.⁵³⁷ It is concerning that even for such cases, no reference is made to prosecutions or more punitive measures than simply requiring the farmers to comply.

4.3.3.2 The Complaint Process to Allocation

During ordinary working hours, all animal welfare complaints (mostly received by 0800 telephone calls and emails) are received by two Animal Welfare Coordinators (AWC), and evening and weekend calls are received by MPI’s National Communications Centre. Complaints received are logged into the MPI animal welfare database.⁵³⁸ Like the RNZSPCA, MPI then grades complaints as Grade One, Two or Three by the severity of complaint and the corresponding urgency of response required. When categorising a response, the AWC take into account the urgency

⁵³⁴ At 18.

⁵³⁵ At 6.

⁵³⁶ At 6.

⁵³⁷ Ministry for Primary Industries *VetPak: Information pack for veterinarians involved in an animal welfare investigation* (October 2012) at 1, 2, 6–7.

⁵³⁸ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at 3.

required to mitigate the animal's suffering, pain or distress based on the information on hand at the time. A minimum guide is used when assessing how to Grade the complaint. A Grade One complaint requires a response within 24 hours and applies in situations such as the following: an animal dying; an animal with a broken limb; sign of an animal having severe injury, being comatose or recumbent or an animal having suffered aggravated or severe cruelty or abuse. A Grade Two complaint requires a response within seven days, examples of which are as follows: an animal with a longstanding injury or an injury or disease that while not life-threatening requires veterinary attention, an animal with nutritional problems, an animal being subjected to neglect or cruelty, a transport problem, overstocking, poultry overcrowding and complaints of matters with implications on trade or overseas markets, for example live sheep shipments. Grade Three complaints require a response "when possible" and may be handled by making a telephone call or may be transferred to another agency. Such complaints may involve the following: access to water, roadside goats' shelter or water, injuries or conditions requiring vet attention that are not urgent or conditions requiring drenching, dripping, shearing or crutching. MPI Animal Welfare Compliance retains a specific performance measure that requires 100 per cent of Grade One complaints to be attended to within 24 hours, and this performance measure is reported on quarterly to the Director-General and Minister.⁵³⁹ However, it is of concern that a simple phone call is sufficient to deal with issues such as access to water or shelter or veterinary attention, given that failure to provide these to an animal constitutes an offence against the Act.⁵⁴⁰

A similar yet distinct system of grading for complaints is used by MPI Veterinarians in detecting animal welfare breaches. MPI notes that there is not the same urgency for an inspection or investigation as the complaints made to the AWC given that the animal involved will have been euthanised under an instruction from the Veterinarian if necessary and therefore not suffering. Grade One cases are the most severe, relating to acts of wilful ill-treatment or neglect. Such cases include transport breaches and connote that the animal is in such a condition that it must be euthanised. Keeping an animal in a state of severe pain without veterinary care of treatment and contravention of dehorning, velveting or castration provisions are also Grade One cases. Grade One cases are referred to MPI Compliance for further investigation, and if MPI Compliance finds a breach of legislation, it will follow the Solicitor-General Guidelines to determine the appropriate manner of intervention, ranging between education and prosecution.⁵⁴¹ Grade Two cases involve an animal

⁵³⁹ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at 3.

⁵⁴⁰ Animal Welfare Act 1999, s 12(a).

⁵⁴¹ Crown Law *Solicitor-General's Prosecution Guidelines* (1 July 2013). These may be accessed at Crown Law "Prosecution Guidelines" <www.crownlaw.govt.nz/publications/>. Of particular relevance are the following provisions:

5. THE DECISION TO PROSECUTE
The Test for Prosecution

who has suffered significant unreasonable and unnecessary pain or distress but is not in danger of dying from the action. Examples include the following: horn related, advanced cancer eye, injury during transport and transport of unfit animals without an accompanying Fitness of Livestock for Transport Veterinary Declaration. MPI notes that many such cases are best dealt with by the issuance of an infringement notice and anticipates that from October 2018 many more such incidents will be addressed by infringement notice after the introduction of further regulations. Grade Two complaints “may” be referred to MPI Compliance, but MPI’s wording hence suggests that it is not mandatory as it is for Grade One complaints. Grade Three cases occur when an animal has endured “lesser” suffering or distress, such as the following examples: less severe cases of ingrowing horns, cancer eye, lameness and animals giving birth in the yards. Grade Three cases also include incidents where one has taken reasonable action, yet suffering and distress has still occurred. Grade Three incidents are typically addressed by a written communication to the person in charge, such communications being largely educational and to promote awareness of the relevant COWs under the Act.⁵⁴² Each year, prosecutions are taken for referrals from MPI veterinarians, including cases such as the following: transporting animals with broken limbs; animals with severe lameness; animals with ingrown horns; or who are severely underweight.⁵⁴³

Once a case has been logged and graded, it is then sent to an Animal Welfare Compliance Team Manager.⁵⁴⁴ Each of the three defined regions (Upper North Island, Lower North Island and South Island) has a Team Manager, who on receiving a logged and graded case then allocates the matter to an Animal Welfare Inspector.⁵⁴⁵ In October 2017, there were 22 Animal Welfare Inspectors based at various locations around the country and working full time in the field of Animal Welfare Compliance.⁵⁴⁶

MPI also employs Investigators in its Compliance branch who work across the statutes administered by MPI (Compliance Investigator). In October 2017, there were 35 Compliance Investigators employed by MPI, 15 of whom held an animal welfare

5.1 Prosecutions ought to be initiated or continued only where the prosecutor is satisfied that the Test for Prosecution is met.

The Test for Prosecution is met if:

5.1.1 The evidence which can be adduced in Court is sufficient to provide a reasonable prospect of conviction – the Evidential Test; and

5.1.2 Prosecution is required in the public interest – the Public Interest Test.

5.2 Each aspect of the test must be separately considered and satisfied before a decision to prosecute can be taken. The Evidential Test must be satisfied before the Public Interest Test is considered. The prosecutor must analyse and evaluate all of the evidence and information in a thorough and critical manner.

⁵⁴² Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at 3.

⁵⁴³ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at 3.

⁵⁴⁴ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at 4.

⁵⁴⁵ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at 4.1.

⁵⁴⁶ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at 4.2.

appointment.⁵⁴⁷ On occasion, an animal welfare matter may be allocated to a Compliance Investigator. Such cases are those anticipated to require a complex investigation and which could include multiple offenders, multiple animals, unique situations and untested situations: most cases that are allocated to a Compliance Investigator are assessed as having a high probability of a prosecution. Such investigations will often involve a team approach with Inspectors providing advice and assistance on animal husbandry to the Compliance Investigator. While Animal Welfare Inspectors also take prosecutions, usually these are for less complex cases that involve less preparation time.⁵⁴⁸

Experts such as veterinarians and farm consultants may be requested to assist in an investigation in the following manners: to provide treatment, to make recommendations on how to mitigate the animal welfare issues, to make recommendations on how best to manage the farm going forward and to gather evidence and act as an expert witness.⁵⁴⁹

From 2006–2016, MPI used a number of different databases, and the three defined regions of New Zealand (North, Central and South) were not used until 2012. From 2012, complaints could also be broken down to the District where the complaint originated and the animal type. In 2017, the database was significantly updated to record more detail, a work in progress at the time of the authors' OIA request.⁵⁵⁰

MPI states that but for “some very minor exceptions”, all cases that are logged and allocated are followed up with an inspection of the animals and of the farm subject to the complaint. It gives one of the exceptions as lifestyle blocks, which are responded to by both the RNZSPCA and MPI. MPI may ask the RNZSPCA to attend a lifestyle block job and attend a transfer, and the RNZSPCA will do likewise. On receiving the complaint, an AWI will make an unannounced visit to the property and conduct an inspection of the animals and the farm. The first priority is to ensure any animal found suffering pain or distress is dealt with, and steps are taken to mitigate the pain and distress as soon as possible. The second priority is to gather evidence of potential offending.⁵⁵¹

MPI provided us with a set of tables that give an indication of the type of animal welfare complaints typically received and how they are dealt with by MPI Compliance.

⁵⁴⁷ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at 4.3.

⁵⁴⁸ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at 4.3.

⁵⁴⁹ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at 4.4
The Role of Experts for Advice and Assistance Responding to Complaints.

⁵⁵⁰ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at 5:
Animal Welfare Complaint Data.

⁵⁵¹ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at 6.
How Animal Welfare Complaints Are Resolved.

They noted that many animal welfare complaints regard a situation where no offence has been committed.⁵⁵² In the event that there is no animal welfare issue and no offence has been committed, for example in the event that “a well-meaning complainant has observed normal farming practice”, MPI try to determine this at the time of the call and advise the complainant accordingly if appropriate. MPI still respond to many such complaints with an inspection and find that there is no animal welfare issue.⁵⁵³ In the event that the complaint identifies an animal welfare issue that is within industry norms and is being dealt with appropriately by the owner or person in charge, it is held that no offence has been committed and it is unlikely that the inspector would then take any further follow up action.

A given example is that 12 lame cows are observed at the back of a dairy herd walking to the dairy shed. In such circumstances, an inspection could determine the following: 12 lame cows from a herd of 900 would be within industry norms; the cows are under an active management plan, only being milked once a day and being held in a paddock close to the milking shed to minimise walking distances; and the cows are being monitored and treated by a veterinarian.⁵⁵⁴ A complaint may identify an animal welfare issue where best practice is not being adhered to, but there is no breach of a defined minimum standard and therefore no prosecutable offence has been committed. A typical example of such a complaint concerns underweight animals, where an inspection may find animals less than their optimal condition but not below a minimum standard. In such cases, the AWI will consider whether the situation may get worse. For example, if there is little grass on the farm and no evidence of supplementary feed being available, the inspector will issue a s 130 notice and order the farmer to provide more feed. Follow up inspections will then be completed to monitor the condition of the animals.⁵⁵⁵ Another manner of complaint described by MPI occurs when there is a breach of a minimum standard, but it is difficult to evidentially prove the breach has caused the animal unnecessary or unreasonable pain and distress, as is required to be proven for a successful prosecution. This was effectively resolved by making it a regulatory offence to use blunt force to kill a calf in 2016.⁵⁵⁶ This was not permitted under a COW. However, if correctly performed along with the calf bleeding out, veterinarians would state that this practice does not cause the calves pain or distress. Hence, it was difficult to prove a case pursuant to the Act even though it was in breach of the COW.⁵⁵⁷ MPI identifies rodeo complaints as an example of the activity being in compliance with a COW, but:⁵⁵⁸

⁵⁵² Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at 6.1 Animal welfare complaint, no offence committed.

⁵⁵³ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at 6.1.1.

⁵⁵⁴ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at 6.1.2.

⁵⁵⁵ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at 6.1.3.

⁵⁵⁶ Animal Welfare (Care and Procedures) Regulations 2018, reg 8.

⁵⁵⁷ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at 6.1.4.

⁵⁵⁸ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at 6.1.5.

... to a significant proportion of the general public the activity appears to be causing pain or distress to an animal; a small number of people find it difficult to accept [rodeo] complies with the Rodeo Code of Welfare ...

MPI also provided examples of the types of animal welfare complaints that are taken when it is then found that an offence has been committed.⁵⁵⁹ Such cases are investigated as any other criminal activity would be, and evidence is gathered to prove the offence. Unique to animal welfare prosecutions is that there often are large numbers of live animals whose welfare is compromised. MPI states that such a situation must always be addressed, which can take many months.⁵⁶⁰ Another such situation occurs when there is clear evidence that an animal is suffering pain or distress, steps are not being taken to mitigate that pain or distress and the pain or distress is unreasonable or unnecessary.

In the event that there is a breach of a regulation made under the Act, it is according to MPI “simpler” to take a regulatory prosecution than a statutory one, as the elements of pain or distress are not required to be proven. Some regulatory offences may be dealt with by infringement notice. As at October 2017, 140 infringement notices with a \$500 fine were issued for transporting unfit calves in contravention of reg 6 of the Animal Welfare (Calves) Regulation 2016. In October 2018, a further 40 regulations were enacted, many of which will provide an option of issuing an infringement notice for their contravention. MPI estimates that this could add a further 400 infringements per year.⁵⁶¹ It is concerning that the comparative simplicity of bringing a regulatory prosecution rather than a statutory one is suggested by MPI to be significant in electing how to address offending.

MPI receives complaints of animal neglect that identify perpetrators who are incapable of looking after animals, such as elderly farmers or farmers with mental health issues. In such cases, enforcement orders are occasionally issued to mitigate the issues created. The Public Interest test is then considered as to whether or not a prosecution should be taken against someone who is effectively removed from the industry, and stakeholders will often be involved in these types of cases to encourage non-performing farmers to exit the industry.⁵⁶² It may be viewed as problematic if the addressing of offending is dealt with by merely taking stakeholder input and encouraging offending parties to leave the industry, as it may not adequately address

⁵⁵⁹ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at 6.2: Animal welfare complaint, offence committed.

⁵⁶⁰ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at 6.2.1.

⁵⁶¹ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at 6.2.3.

⁵⁶² Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at 6.2.4.

the offending. MPI provided us with a table showing how complaints had been dealt with from 2012–2018, which is reproduced here.⁵⁶³

	Investigation Outcome						
	2012	2013	2014	2015	2016	2017 ⁵⁶⁴	2018 ⁵⁶⁵
Complaints received	451	624	698	846	1050	1052	1190
Prosecution	17	28	28	19	34	30	26
Infringement	-	-	-	-	-	115	245
Education	73	86	71	101	106	52	53
Warning	23	50	74	72	97	118	113
Verbal Advice	131	176	208	251	289	-	-
Breaches detected (%)	54	54	55	52	50	30	37

This table shows that from 2012–18, the total of complaints more than doubled. Until 2017, around half of the complaints taken each year were deemed “no breach”, and by far the most common way of addressing breaches was the provision of verbal advice. Since 2017 and the promulgation of the Animal Welfare (Calves) Regulations 2016 and then the Animal Welfare (Care and Procedures) Regulations 2018, which introduced a range of infringement offences, there has been an apparent shift from verbal advice (now categorised with education) to the issuing of infringement notices, which is a positive sign that the new regulatory system is working as intended. Moreover, it is positive that the number of prosecutions has doubled in tandem with the increase in complaints. However, prosecution is still by far the least common method of addressing offending.⁵⁶⁶

⁵⁶³ Email from Samantha Rickard, above n 10; letter from Stephanie Rowe, above n 10, at 6.3; and Letter from Stephanie Rowe, above n 12.

⁵⁶⁴ Based on a different data set which introduced ‘Infringements’ as a category and combined ‘verbal advice/education’: Letter from Stephanie Rowe, above n 12.

⁵⁶⁵ Based on a different data set which introduced ‘Infringements’ as a category and combined ‘verbal advice/education’: Letter from Stephanie Rowe, above n 12.

⁵⁶⁶ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at 6.3.

While MPI Compliance conducts proactive inspections in addition to its mostly reactive inspections, they are not commonplace. In 2016, MPI targeted pig farms and rodeos for proactive inspections, with Compliance Inspectors conducting 39 proactive inspections within pig farms and 15 within rodeos. Compliance Inspectors also conducted 12 proactive inspections into sheep/beef farms, nine into dairy, five into sales yards, and two into shipping vessels. It is a strategic goal of MPI Compliance to increase the overall quantity of targeted proactive inspections.⁵⁶⁷

4.3.3.3 MPI's Initial Response to Animal Welfare Complaint: An Extract from MPI's Animal Welfare Training Manual

MPI's Animal Welfare Training Manual (MPI Training Manual) states that at all times staff responding to the complaint must have the priority of alleviating any unreasonable or unnecessary pain or distress suffered by the animal. They may take action to prevent and/or mitigate the animal's suffering and to assemble evidence in accordance with the Act, where they hold the opinion that based on the facts as presented, a breach of the Act has occurred.⁵⁶⁸

An initial inspection is to begin with a detailed description of the general scene, with the following factors in particular being taken into account: the number of animals involved; how they were found, such as whereabouts they were and whether they were tied up or loose; the type of physical space/environment they were in, such as whether there was water and/or food and whether there was shelter and whether these were adequate; the surrounding environment; the state of the farm as a whole and whether anything else was discovered that warrants attention (in which case, full details of this are to be taken). A detailed description of the specific condition of the animals in question is to be taken. In particular, the following aspects of the animals' condition are to be described: their physical condition, including details of any particular injury, illness or emaciation – for example whether they were strong enough to stand and move on their own; their behavioural condition, such as whether they were manifesting signs of behavioural disturbance and if so exactly what they were doing; any other relevant information, such as the presence of specific evidence that would go to supporting or refuting any particular charges under the Act and any acts or omissions that the attending party has been able to identify as leading to the situation that they have found. The attender is also to take details of the people involved and describe whom they spoke to. This connotes the following: identifying names and contact details of all witness, describing precisely what they each have said and identifying all relevant histories, justifications or excuses that the attender

⁵⁶⁷ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at 7 Proactive inspections.

⁵⁶⁸ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at Appendix One: at Introduction, 18.

has been told by each person. The attender is to take evidence, including “plenty of” photographs to verify and illustrate the notes taken. These notes must be entries made in a notebook, from which job sheets can be formulated if required.⁵⁶⁹ Further documentation required includes a “FO1 Form”, which ought to be filled in with all necessary details and returned to the AWC by email as soon as possible after the file has been closed. The closed FO1 ought to then be emailed to the AWC as soon as the file is closed. Where an education letter is issued, it ought to be emailed to the AWC with the closed file, along with a copy of any s 130 notice issued where applicable.⁵⁷⁰

The attender is to assess what needs to be done in the short term to prevent or mitigate further suffering, such as whether they need to inform and educate the owner or person in charge of the animal, issue instructions to them under s 130 of the Act or remove the animal or animals under s 127(5). The MPI Training Manual notes that in any instance where the requirements of the Act are not being met, the attender must ensure that the owner or person in charge of the animal is made aware of their legal obligations to care for them and must also identify where and to what extent they have failed to meet these obligations. On identifying what immediate and short-term action needs to be taken to prevent or mitigate suffering, the attender must decide who should be responsible for taking it. While this depends on the type of action that has been identified, as a general rule, it is desirable to make the owner or person in charge of the animal take responsibility for remedying the situation. The role of the AWI should be to follow up to make sure that the owner or person in charge has carried out the instructions given by a s 130 notice.⁵⁷¹ In the event that the AWI considers that they are operating in an area of animal husbandry that is outside of their training or expertise to make an objective assessment of the animal/s and their condition, the AWI is to obtain the opinion of a person with recognised expertise in the area. Inexhaustively, this may be another AWI, a veterinarian or a person with appropriate experience in the particular area of animal husbandry.⁵⁷² If the owner or person in charge disagrees with the assessment made by the AWI of the situation, and in particular disagrees with the remedial steps that the AWI has proposed, then the AWI ought to obtain advice from an experienced third party such as a veterinarian (where it is practicable to do so). While AWIs have the authority to overrule any objections, they are required to exercise that authority reasonably. Hence, where the AWI proposes to issue instructions that are contrary to the objections of the owner

⁵⁶⁹ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at Appendix One at 1.1 Initial Inspection.

⁵⁷⁰ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at Appendix One at 1.3 Documentation.

⁵⁷¹ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at Appendix One: 1.1 Initial Inspection.

⁵⁷² Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at Appendix One: 1.2 Outside Training/Expertise.

or person in charge of the animal, the AWI must make sure that the instructions used are necessary in the circumstances to prevent or mitigate actual or likely suffering and are reasonably practicable to implement. The AWI must also take notes to record the fact of the disagreement and the basis for it, what was done as a result (such as contact being made with the veterinarian) and why that decision was made.⁵⁷³

4.3.4 Non-Prosecutorial Response Mechanisms to Combat Breaches of the Act

4.3.4.1 Section 130 Notice – Instruction to Mitigate Pain or Suffering

When an AWI issues a s 130 notice, the structure, nature and content of it must remain that of an instruction to act or to cease to act. It must clearly set out what is required and within what timeframe those requirements are to be undertaken. Every s 130 notice must contain sufficiently specific information to enable the owner or person in charge to fully comprehend the actions required of them and to enable the AWI to evaluate compliance with the instructions during follow up visits. The original notice ought to be given to the owner or person in charge of the animal/s, and in the event that the notice cannot be given personally, it ought to be left at that person's usual or last known place of abode or business or posted in a letter addressed to that person by name at that place of abode or business. The duplicate copy of the notice should be retained with the file and forwarded to the AWC when the file is closed.⁵⁷⁴ It is the AWI's responsibility to follow up on the notice that they have issued within a reasonable timeframe. They must make sure that the person to whom it is issued understands that the AWI will be returning to do so, knows when they will be returning and knows quite clearly what is expected of them and within what timeframe.⁵⁷⁵ In the event that the owner or person in charge fails to comply with the provisions of the notice, they can be prosecuted for an offence against s 130(2), and the AWI can apply for a temporary or full enforcement order.⁵⁷⁶

4.3.4.2 Euthanasia

Euthanasia of animals is governed by s 138 of the Act.⁵⁷⁷ AWIs may only exercise the power to euthanise if all of the following criteria are met: the animal must be *severely* injured or sick to the extent that reasonable treatment would not be sufficient to make

⁵⁷³ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at Appendix One: 2.4 Disagreement.

⁵⁷⁴ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at Appendix One: 2.5 The Section 130 Notice.

⁵⁷⁵ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at Appendix One: 2.6.

⁵⁷⁶ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at Appendix One: 2.7 Non-Compliance.

⁵⁷⁷ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at Appendix One: 3 Euthanasia of Animals – Section 138.

it respond, and it will suffer unreasonable or unnecessary pain or distress if it continue to live.⁵⁷⁸ Before organising the euthanasia of an animal, the AWI must consult with its owner if they can be found within a reasonable time. If the owner asks for a second opinion from a veterinarian, the AWI must allow them a reasonable opportunity to arrange for it to be obtained. The owner must be told which animals are to be destroyed, either by identifying them individually or by grouping them together in a separate place. They must then be given a reasonable opportunity to discuss the reasons for their destruction and the possibility of pursuing some alternative action.⁵⁷⁹ These requirements were stated by the New Zealand Court of Appeal in the case of *R v Summers* when it considered the application of s 138 of the Act and outlined the process to be followed in situations where the owner of the animal/s is present.⁵⁸⁰ However, situations where the animal must be euthanised are by their nature urgent, and therefore urgent action is required to alleviate suffering. A reasonable timeframe (for locating the owner and/or allowing them to obtain a second opinion from a veterinarian) is therefore to be assessed within the context of urgency, and the AWI must have due regard for the imperatives of the animals' condition.⁵⁸¹ If the AWI cannot find the owner of the animal, or they fail to obtain a second opinion from a veterinarian within a reasonable time, then the AWI must nonetheless euthanise the animal without delay.⁵⁸² The Court of Appeal in *Summers* also addressed situations where AWIs must deal with difficult or obstructive owners, and stated the following:⁵⁸³

The nature and scope of any consultation will depend on the circumstances including the exigencies of the situation and the animal welfare consideration. The conduct of the owner may also have a bearing on the issue. If the owner adopts an uncooperative or even belligerent attitude, the extent and nature of the obligation to consult may be viewed in a different light. An owner's conduct may make consultation impossible to achieve or at least limit the steps required by the officials to meet the obligation.

MPI stated.⁵⁸⁴

... the net effect of this statement is to recognise that in some situations where an owner's attitude or conduct makes reasonable dealings difficult or impossible, it is

⁵⁷⁸ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at Appendix One: 3.1 Criteria for Euthanasia.

⁵⁷⁹ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at Appendix One: 3.2 Consultation with Owner.

⁵⁸⁰ *R v Summers* CA356/04, 8 December 2004 at [48].

⁵⁸¹ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at Appendix One: 3.3 Case History.

⁵⁸² Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at Appendix One: 3.2 Consultation With Owner.

⁵⁸³ *R v Summers*, above n 580, at [29].

⁵⁸⁴ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at Appendix One: 3.3 Case History.

acceptable to limit or dispense with the requirement to consult in deference to the clear need to end the animal's immediate suffering.

Further requirements for euthanasia include the identification of the target and care being taken to ensure the shot has the best chance of an effective kill. If an effective kill cannot be achieved with a degree of certainty, then an immobilising shot in the chest cavity followed by an immediate kill shot to the head should be employed. The Code of Recommendations and Minimum Standards for the Emergency Slaughter of Farm Livestock are to be complied with, including the appropriate method as defined for each species of target animal.⁵⁸⁵ MPI's Compliance Enforcement Group (CEG) investigates breaches of the legislation under its jurisdiction (including the Act) and is described by MPI as its "eyes and ears" of food safety. It carries out compliance audits in the export sector and the domestic food area and assists with overseas audits of New Zealand's food production systems.⁵⁸⁶ Training is to be provided to all members of the CEG involved in the euthanasia of animals to the accepted standard in the method of euthanasia for matters such as species, sex, age and type of the animal. This includes destruction with firearm/captive bolt, knife and stunning implement.⁵⁸⁷

4.3.4.3 Seizure of Animals

There is jurisdiction to seize an animal under the Act under any of the following circumstances: the animal has been wilfully mistreated; or its physical, behavioural or health needs make its seizure necessary or desirable; or its need for treatment is such that it is necessary or desirable to seize it. On seizure of an animal, MPI is responsible for its welfare until it has been forfeited to the Crown or an approved organisation or returned to the owner or person in charge of the animal under a Court order. MPI may transfer the animal to the care of an appropriate organisation during this time.⁵⁸⁸ Before an AWI seizes an animal they must seek approval from the Team Manager. The AWI must consider whether seizure of an animal is a practicable option in the circumstances, while bearing in mind the logistics of transport of the animal/s and their ongoing care. They are also to consider whether the situation can be alleviated sufficiently by leaving the animal where it is but imposing rigorous requirements for its welfare and any necessary treatment in terms of a s 130 notice or an enforcement order or by destroying the animal instead. In every case where an AWI decides to

⁵⁸⁵ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at Appendix One: 3.4 Other Requirements; General.

⁵⁸⁶ Ministry for Primary Industries "Regulation of monitoring programmes" New Zealand Food Safety <www.mpi.govt.nz/food-safety/>.

⁵⁸⁷ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at Appendix One: 3.4 Other Requirements; Training.

⁵⁸⁸ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at Appendix One: 4 Seizure of Animals – Section 127 (5) Animal Welfare Act: 4.1 Introduction.

seize an animal, they are to clearly record whom they have spoken to about the animal, what was discussed and why the AWI elected to seize the animal.⁵⁸⁹

4.3.4.4 Engaging the Services of a Veterinarian

An AWI ought to engage the services of a veterinarian (the costs of which is paid by MPI) when the AWI considers that the following factors apply: expert opinion is required to establish an offence; the condition of the animal/s is beyond the knowledge of the AWI; the services of a veterinarian are required to mitigate pain or suffering; and the owner is unable to be found within a reasonable time. When the AWI is of the opinion that the services of a veterinarian are required on the property for animal health purposes, they ought to give the owner or person in charge of the animal a written instruction to obtain such services and include on the instruction that the AWI is to be provided with a copy of the veterinarian's report on the animal/s.⁵⁹⁰ The veterinarian is working for MPI rather than the farmer, and the AWI is to make this very clear when they make sure that the veterinarian clearly understands what is expected of them. The veterinarian is to be given a copy of the document "Role of Veterinarian on Animal Welfare Investigations". The AWI is to follow up verbal instructions to the veterinarian with written confirmation. They are to seek an approximate cost of the veterinarian's services, and where the cost is likely to exceed \$500 they must obtain the approval of the Team Manager before proceeding. Where the cost is likely to exceed \$500 and the involvement of the veterinarian will be for more than one visit, the AWI is to use the Contract for Services Form.⁵⁹¹ These provisions also apply to the engagement of the services of a farm consultant,⁵⁹² who may be engaged in the circumstances as specified above but where the services of a veterinarian are not required to mitigate the pain or suffering of the animal.⁵⁹³ When requesting a written report from the farm consultant, the AWI is also to seek an estimate of the amount of time it will take to produce the report and the cost involved.⁵⁹⁴

4.3.4.5 Obtaining an Enforcement Order (including Temporary and Final)

⁵⁸⁹ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at Appendix One: 4.2 Practical Application.

⁵⁹⁰ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at Appendix One: 5 Engaging Services of Veterinarian: 5.1 Introduction.

⁵⁹¹ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at Appendix One: 5.2 The Vet Is Working For and Paid by MPI.

⁵⁹² Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at Appendix One: 6 Engaging Services of Farm Consultant.

⁵⁹³ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at Appendix One: 6.1 Introduction.

⁵⁹⁴ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at Appendix One: 6.2 The Farm Consultant Is Working For and Paid by MPI.

As noted in Appendix 1 of this paper, an Enforcement Order (EO) is an instrument obtained under the Act and issued by the District Court. The District Court may make an EO where it is satisfied that the person to whom it is addressed has breached the Act or any relevant regulation made under the Act. In seeking an EO, an AWI therefore must produce evidence of a relevant breach on the part of the person or organisation named and (where applicable) must specifically be able to provide an accurate description of the person who is in breach, the details of their actions and the specific provisions that their actions are said to be in breach of. The AWI must be able to provide further information about relevant dates and places of the alleged offending.⁵⁹⁵ The AWI must prepare a file that relates to the case and may only apply for an EO after the file has been forwarded to the Prosecution Team Manager and discussed with them. The file must contain the following: a report covering the history of the complaint and relevant details relating to the animal/s involved; a veterinary report covering the nominated animal/s; notebook entries; job sheets; photographs and/or video evidence and a copy of the written instructions issued to the owner of the animal under s 130. Once approval has been received from the Prosecutions Team Manager, the file is then forwarded to the relevant Crown Solicitor's Office for the drafting of affidavits for it and to the AWI and the veterinarian involved, and the Crown Solicitor will then present the case to the Court.⁵⁹⁶ Notably, the onus of proof required by the Court to grant an enforcement order is considerably less than the beyond reasonable doubt standard required for a criminal conviction – the Court must only be *satisfied* of the relevant breach on the balance of probabilities.⁵⁹⁷

MPI notes that a temporary enforcement order (TEO), which can be applied for without giving notice to the other party, requires a “low threshold” of evidence with the court needing to be satisfied that the delay caused by proceeding on notice would or might entail the risk of harm to any animal. Notably, the word “might” means that there does not have to be any particular probability that anything will happen. “Entail the risk” connotes that there does not even have to be a possibility of actual harm and that all that is needed is that delay might entail the risk of harm. Harm is not limited to physical injury or violence – it covers ongoing neglect and other passive harm as well. The wording covers a situation where an animal might be at risk of ongoing neglect as well as covering a situation where an animal might be at risk of harm because of retributive violence. A TEO comes into legal force once it is served or at a later date if one is specified within the order itself. The person subject to the

⁵⁹⁵ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at Appendix One: 7 Enforcement Order – Sections 143 – 156: 7.1 Animal Welfare Act.

⁵⁹⁶ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at Appendix One: 7.5 How to Apply For an Enforcement Order.

⁵⁹⁷ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at Appendix One: 7 Enforcement Order – Sections 143 – 156: 7.1 Animal Welfare Act.

TEO has the right to apply to the court for it to be varied or discharged, but if a TEO has not been discharged within three months, it will become final.⁵⁹⁸

Any enforcement order granted after an application has been made on notice is a final enforcement order (FEO). Where an application is made on notice, MPI must serve a copy of the application within seven days, or any different timeframe specified by the court, upon every person who is directly affected by it. FEOs come into effect when they are served upon the respondent or at a later date if that is specified within the FEO itself.⁵⁹⁹ The overall effect of an EO is to force the person concerned to meet their obligations under the Act and to meet the costs of doing so (unless it is specified in the EO that they do not have to).⁶⁰⁰

4.3.5 Prosecutions

The trends that apply to prosecutions involving companion animals appear to apply to those involving production animals. Certainly, the disparity between complaints received by MPI and those leading to prosecution is equivalent to complaint-prosecution ratio of the RNZSPCA. In the period 2012–2016, of the complaints received and processed by MPI, no greater than four per cent of complaints led to prosecutions.⁶⁰¹ While that is significantly higher than the 0.4 per cent rate of prosecutions by the RNZSPCA, the number of complaints received by MPI – no more than 1,050 per annum in that period – is 15 times less than the RNZSPCA in 2017; the raw number of prosecutions by MPI in 2016 was 34, nearly half of that engaged by the RNZSPCA in 2017.⁶⁰²

The reasons for the disparity are similarly explained by equivalent resourcing constraints. As discussed in Part 2, MPI is to receive total annual and permanent appropriations of \$660 million in its allocation for the 2018/19 financial year.⁶⁰³ Of this quantum, \$10.8 million, or 1.6 per cent, has been allocated to all aspects of animal welfare enforcement, education and policy advice.⁶⁰⁴ This funds a total of 22 MPI AWIs⁶⁰⁵ for more than 150 million agricultural animals.⁶⁰⁶

⁵⁹⁸ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at Appendix One: 7.2 Types of Enforcement Order – Temporary – s. 148 AW Act.

⁵⁹⁹ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at Appendix One: 7.2 Types of Enforcement Order – Final Enforcement Order – s. 143 AW Act.

⁶⁰⁰ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at Appendix One: 7.3 Effect of an Enforcement Order.

⁶⁰¹ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at 6.3.

⁶⁰² RNZSPCA, above n 15, at 6; email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at 6.3.

⁶⁰³ The Treasury, above n 7, at 10.

⁶⁰⁴ At 5, 6 and 10.

⁶⁰⁵ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at 4.2.

⁶⁰⁶ Animal Agenda Aotearoa, above n 11.

The same issue that applies to the RNZSPCA – limited resources necessarily meaning breaches of the Act must contain particular aspects that justify prosecution – applies to MPI. There is, however, a difference behind the reason for the presence of that issue. Limited resources in MPI do not necessarily prevent prosecution. Instead, the relatively low number of AWIs (compared to that employed by of RNZSPCA) leads to less proactive enforcement and thus less detection of offending, an effect compounded by the relatively hidden nature of any offending in largely rural settings. This leads to a lower number of complaints compared to those received by RNZSPCA and thus the higher prosecution rate detailed above. Whereas the number of prosecutions taken by the RNZSPCA is low because it cannot afford to prosecute all the offending it detects, the number of prosecutions taken by MPI is low primarily because it is not detecting much offending.

Our review of prosecutions shows that whereas severity of offending and the necessity of denunciation appear to justify prosecutions by RNZSPCA, it is the quantity of offending that justifies prosecution by MPI. Examples of offending include:

- failing to meet the needs of 463 lambs and 44 cattle;⁶⁰⁷
- failing to meet the needs of 800 pigs;⁶⁰⁸
- in three different cases, the ill-treatment of over 100 cattle through breaking their tails;⁶⁰⁹
- failure to meet the needs of 397 sheep;⁶¹⁰
- failing to meet the needs of 148 cattle, leading to their deaths;⁶¹¹ and
- pregnant cows starving to death in cold, rainy conditions.⁶¹²

Occasionally, denunciation in response to public demand also appears to justify MPI prosecution, but this does not appear to be a consistent trend. After ill-treatment of 100 calves was discovered by Farmwatch New Zealand after its covert surveillance, the significant public outcry in response perhaps compelled prosecution of this offending.⁶¹³ Public demand for prosecution action has not occurred in other instances.⁶¹⁴

⁶⁰⁷ *Barnes v Ministry of Primary Industries* [2015] NZHC 534.

⁶⁰⁸ *Ministry of Primary Industries v Kaimai Pork Ltd* [2016] NZDC 21380.

⁶⁰⁹ *Ministry for Primary Industries v Erasmus* [2013] NZHC 281; *Ministry for Primary Industries v McNabb* [2016] NZDC 24925, [2017] DCR 701; and *Ministry for Primary Industries v Smith DC Ashburton CRI-2013-003-388*, 14 October 2013.

⁶¹⁰ *Ministry of Agriculture & Forestry v Walker DC Dunedin CRI-2006-012-5463*, 28 September, 2007.

⁶¹¹ *Lauren v Attorney-General* [2012] NZHC 459, [2012] NZAR 249.

⁶¹² *George v Ministry of Agriculture & Forestry HC Whangarei AP61/02*, 20 February 2003.

⁶¹³ *Erickson v MPI* [2017] NZCA 271, [2017] NZAR 1015; and Natalie Akoorie “Home detention for Noel Erickson over cruelty to bobby calves” *The New Zealand Herald* (online ed, Auckland, 28 July 2016).

⁶¹⁴ In three recent instances, release of hidden camera footage failed to lead to prosecution action: Newsroom “Hidden cameras reveal milking shed beatings” (28 June 2018) <www.newsroom.co.nz>; Radio New Zealand “Video inside Tegel chicken farm a ‘shock and horror’ – opponent” (30 July

Accordingly, when combined with the aspects that justify prosecution by RNZSPCA, it is clear that offending against the Act must become egregious – either in its severity and quantity – before it justifies prosecution, a phenomenon we discuss and critique in the next part.

4.3.6 Other Parties Involved in Enforcing the Act Within the Production Spheres

Industry practices, such as selective breeding, are monitored and reviewed and critiqued by NAWAC, which publishes reports on them.⁶¹⁵ In the New Zealand Animal Welfare Strategy,⁶¹⁶ MPI stated:⁶¹⁷

One of the strengths of New Zealand’s animal welfare system is that the main players – Government, industry, professionals, scientists, and non-government organisations – all work together. The strategy encourages continuing collaboration in setting standards, measuring performance, co-investing in research, contingency planning for adverse events, and the existing Government/industry initiative to improve animal welfare compliance.

The following entities tasked with enforcing the Act were amongst those identified by MPI (or MAF as it then was) as “Key contributors”.⁶¹⁸

The New Zealand Food Safety Authority boasts a Verification Agency that provides assurance to importing countries that animal welfare requirements have been met when animals are slaughtered. It assesses the welfare of production animals prior to processing and provides “some” on-farm assessment of animal welfare conditions. It refers situations of concern to the MAF Enforcement Directorate for further investigation.⁶¹⁹

As noted in Appendix 1, all officers of the New Zealand Police are appointed inspectors under the Act. While they will prosecute gross breaches of the Act and

2018) <www.radionz.co.nz>; and New Zealand Herald “SAFE release hidden camera footage inside NZ pig farm” (26 July 2017) <www.nzherald.co.nz>.

⁶¹⁵ *NAWAC Opinion on animal welfare issues associated with selective breeding* (Ministry for Primary Industries, March 2017).

⁶¹⁶ Ministry for Primary Industries *Animal welfare matters: New Zealand Animal Welfare Strategy* (May 2013).

⁶¹⁷ At 8.

⁶¹⁸ Ministry for Agriculture and Forestry, above n 533, at 9–10.

⁶¹⁹ At 9.

provide support and/or personal security to MPI and RNZSPCA inspectors if needed, they do not generally become involved in day-to-day animal welfare enforcement.⁶²⁰

MPI has a formal Memorandum of Understanding with the national office of Federated Farmers (FF) that covers FF's animal welfare role, and this is complemented by understandings with regional offices. On occasion, MPI will refer situations to FF where some local community assistance is needed, for example helping with clean-up operations and linking farmers into rural support networks.⁶²¹

Without naming any, MPI noted that industry groups have the potential to be active partners with MPI in the promotion of animal welfare and that some were already doing so. Such groups can influence farmers and encourage compliance through their own education efforts, although they have no formal enforcement role. MPI stated it to be likely that increasing pressure from international markets would influence industry groups' willingness to be more actively involved with animal welfare compliance.⁶²²

The New Zealand Veterinary Association (NZVA) was identified, with MPI noting that the veterinary profession has the knowledge, expertise and opportunity to make a major contribution to animal welfare compliance. Veterinarians have a specific professional responsibility to promote a standard of care that ensures the needs of animals are met by the vets themselves and by those in charge of the care in animals in accordance with the Act. The NZVA has drafted an animal welfare strategy that encourages a stronger animal welfare stance by the profession and provides guidance to vets. SOASAR states that in order to avoid conflicts of interest, vets in clinical practice will most likely take a role of education rather than enforcement.⁶²³ It is not entirely clear why veterinarians playing a role of enforcement is expected to lead to conflicts of interest, but it may be due to their financial interest in providing treatment services and the disincentive to penalise clients who present them with maltreated animals as the veterinary service profession is a competitive market and clients are likely to seek services elsewhere if presented with penalisation.

While their role in animal management is largely focused on matters such as dog control and public nuisance, local government councils can play an important communication role in animal welfare by informing communities of their responsibilities. Council environment health officers may be the first on the scene of

⁶²⁰ At 10.

⁶²¹ At 10.

⁶²² At 10.

⁶²³ At 10.

an animal welfare incident, such as the investigation of a waterway contaminated by a dead animal.⁶²⁴

Again, without specifying any, MPI noted that non-government organisations (NGOs) have interests in animal welfare, as they advocate on behalf of animals and can play a valuable role in raising awareness about animal welfare matters and educating the public on them.⁶²⁵

Farmwatch is a NGO that investigates “tip offs” and provides for people to make monetary donations and/or confidential complaints on their website.⁶²⁶ Saving Animals From Exploitation (SAFE) operates similarly, a NGO that investigates and invites the public to make complaints and donations on its website.⁶²⁷ After SAFE and Farmwatch exposed animal abuse in the dairy industry, MPI investigated Down Cow Slaughterhouse and gave directions to the owners to improve conditions. The owners pleaded guilty to offences under the Act and subsequently closed the slaughterhouse.⁶²⁸ Similarly, MPI responded to SAFE and Farmwatch complaints about pig welfare with inspections on pig farms.⁶²⁹

4.3.6.1 Commerce Commission Role

While it may be in the context of its task of enforcing consumer protection legislation, the Commerce Commission has also conducted investigations that have been linked to animal welfare, such as its 2016 finding that the “Pigcare” label stamped on local pork products risked breaching the Fair Trading Act and misleading consumers about the animals’ welfare. The investigation was conducted in response to complaints from SAFE.⁶³⁰ The other main logos that shoppers can find on local pork products are the RNZSPCA’s Blue Tick and Freedom Farms’ “Independently Audited” logo.⁶³¹ Freedom Farms is a company based in Auckland⁶³² that is audited by state-owned enterprise AsureQuality.⁶³³

⁶²⁴ At 10.

⁶²⁵ At 10.

⁶²⁶ Farmwatch “help farmwatch” <www.farmwatch.org.nz>.

⁶²⁷ SAFE For Animals “Horroric NZ pig cruelty exposed again” (27 February 2018) <<https://web.archive.org/web/20180216135305/http://safe.org.nz/articles/010714/horrific-nz-pig-cruelty-exposed-again>>.

⁶²⁸ SAFE For Animals “Down Cow Slaughterhouse Closes” (22 June 2016) <<https://web.archive.org/web/20170508182403/https://safe.org.nz/articles/210616/down-cow-slaughterhouse-closes>>.

⁶²⁹ SAFE For Animals, above n 627.

⁶³⁰ Consumer “Pigcare label risked misleading consumers” (27 June 2017) <www.consumer.org.nz>.

⁶³¹ Consumer, above n 630.

⁶³² Freedom Farms “Get in Contact” <www.freedomfarms.co.nz>.

⁶³³ Freedom Farms “The Auditors” <www.freedomfarms.co.nz>.

4.3.7 Enforcement of the Act in Overseas Export and Import

4.3.7.1 Export

New Zealand exports a high number of live animals, including livestock, pets and zoo animals.⁶³⁴ In 2015, over five million live animals were exported overseas (excluding insects), at a total value of \$363 million. Ninety-eight per cent of these animals were day-old chicks and fertilised eggs.⁶³⁵ MPI states that its role is “to help exporters meet the requirements of overseas markets and to ensure the welfare of the animals exported”.⁶³⁶ The transport of animals by air to other countries is covered by the International Air Transport Association regulations. The export of cattle, sheep, deer and horses by sea is covered by MPI guidelines.⁶³⁷ Livestock may only be exported for overseas slaughter in cases where an exemption has been granted by the MPI Director-General.⁶³⁸

4.3.7.2 Animal Welfare Export Certificates

It is an offence to export animals from New Zealand other than under the authority and in accordance with the conditions of an AWEC.⁶³⁹ An AWEC is obtained from MPI’s animal exports team⁶⁴⁰ and aims to minimise any welfare risks faced by animals during their journey and to protect New Zealand’s reputation as a responsible exporter of live animals.⁶⁴¹ It must be obtained for exporting non-exempt cattle, deer, sheep, goats,⁶⁴² horses, day-old poultry and other companion animals, such as rabbits, rodents, guinea pigs and water dragons.⁶⁴³ While most animals exported legally require an AWEC, there are exemptions. These are fully detailed on MPI’s website, and include the following: cats and dogs exported to Australia, pet animals departing on any ship and poultry hatching eggs (being avian pre-hatched young in the last half period of development). A considerable number of animal species do not require an AWEC if they are travelling for less than six hours, and this list includes cats, cattle, dogs, horses and sheep.⁶⁴⁴ These animals must, however, be transported

⁶³⁴ Ministry for Primary Industries “Live animals” <www.mpi.govt.nz>.

⁶³⁵ Sam Boyer “Millions of live animals exported from NZ” (26 July 2015) Stuff <www.stuff.co.nz>.

⁶³⁶ Ministry for Primary industries, above n 634.

⁶³⁷ Code of Welfare: Transport within New Zealand, 1.1 Application.

⁶³⁸ Ministry for Primary Industries “AWEC process for livestock” <www.mpi.govt.nz>.

⁶³⁹ Animal Welfare Act 1999, s 40.

⁶⁴⁰ Ministry for Primary Industries, above n 638

⁶⁴¹ Ministry for Primary Industries “Animal Welfare Export Certificates” <www.mpi.govt.nz>.

⁶⁴² Ministry for Primary Industries, above n 638.

⁶⁴³ Ministry for Primary Industries “AWEC process for live animals other than livestock” <www.mpi.govt.nz>.

⁶⁴⁴ Ministry for Primary Industries “Animal Welfare Export Certification exemptions” <www.mpi.govt.nz>.

in conditions consistent with the International Air Transport Associations regulations, of which airlines operating out of New Zealand are aware.⁶⁴⁵

On the day of export, a veterinarian from MPI VS will verify at the port of departure that all conditions of the AWEC have been met. The final AWEC will then be issued by the veterinarian and the animals may be exported.⁶⁴⁶ In the event that an animal is found loaded, being loaded or being prepared for loading onto a ship or aircraft other than under the authority and in accordance with the terms of an AWEC, an inspector or authorised person has jurisdiction to respond with the following actions: seize the animal/s and convey them to another place, take any other steps that they consider necessary or desirable to prevent or mitigate any suffering of the animal and direct the owner or person in charge to take steps to prevent or mitigate any suffering of the animal. The inspector or authorised person may keep the animal at a place chosen by them until the animal is forfeited to the Crown or to an approved organisation by court order or a District Court Judge orders that the animal be delivered to the owner of the animal or to the person charged with the offence against the Act.⁶⁴⁷ MPI requires that a voyage report is completed for all shipments of livestock by sea that require an AWEC. MPI assesses past voyage reports when considering any future applications for an AWEC.⁶⁴⁸

The Animal Welfare Amendment Act (No 2) 2015 amended the provisions for consideration of an application for an AWEC to provide that the Director-General may have regard to the following matters in considering such an application: the post-arrival conditions of the management of the animals in the importing country and the manner in which the welfare of any animals previously exported by the applicant was attended to during the 30-day period commencing on the date of their arrival in the importing country or any lesser period after their arrival that the Director-General thinks fit.⁶⁴⁹ While this is a positive development, it is still optional for the Director-General to have regard to these matters, and merely having regard to such matters does not in itself guarantee the welfare of exported animals.

However, the Animal Welfare Amendment Act (No 2) 2015 also made provision for the Director-General to impose either of the following conditions: a condition requiring an exporter to provide a report on the way in which the animals were managed during their journey and to provide any specified information that the Director-General considers relevant or a condition requiring an exporter to provide a report on the welfare of the animals and to provide any specified information that the

⁶⁴⁵ Ministry for Primary Industries, above n 644.

⁶⁴⁶ Ministry for Primary Industries, above n 638.

⁶⁴⁷ Animal Welfare Act 1999, s 53.

⁶⁴⁸ Ministry for Primary Industries “Live sheep & cattle export voyage reports” <www.mpi.govt.nz>.

⁶⁴⁹ Animal Welfare Amendment Act (No 2) 2015, s 24.

Director-General considers relevant for the 30-day period commencing on the date of their arrival in the importing country or any lesser period after their arrival that the Director-General thinks fit.⁶⁵⁰ While the addition of the jurisdiction to request such reports is positive, it is unclear how the information given in such a report is to be verified when the animals are overseas and cannot therefore be readily examined by a delegate of the Director-General. These provisions will come into force either on 9 May 2020, being five years from the date of Royal Assent,⁶⁵¹ or on an earlier date if one is appointed by the Governor-General by Order in Council.⁶⁵² Note that the two provisions will not necessarily come into force on the same date.⁶⁵³ SAFE opposes live exports, citing the example of 2012 footage gained in Indonesia of a cow seemingly being poked in the eyes with a metal stick. It is legal in Indonesia to kill animals without the use of a stun gun and to cut the throats of animals while they are fully conscious. SAFE executive director Hans Kriek stated:⁶⁵⁴

Our government keeps pretending that sending animals overseas for breeding is somehow different than sending them for slaughter, which is illegal ... but the reality is that these 'breeding' animals will be slaughtered after a few years in a manner deemed cruel and illegal in New Zealand.

Other parties are also involved within the process. The document "Guidance Material For the Transport of Cattle by Sea" describes the parties involved in the process of shipping cattle by sea. As noted, a veterinarian has delegated authority under the Act to sign AWECs.⁶⁵⁵ Prior to loading, the MPI VS Veterinarian and an Approved Surveyor from Maritime New Zealand (MNZ) must be satisfied that the requirements of Maritime New Zealand and the conditions of the AWEC have been met. The MNZ Approved Surveyor will then issue a Permit for the Carriage of Livestock to the Master of the Ship (the Master). After the cattle have been loaded, the Approved Surveyor and veterinarian will undertake a final inspection of the ship, and the Approved Surveyor will notify the Master in writing that the cattle have been satisfactorily loaded if they are satisfied that the requirements of the AWEC, MNZ and the Permit for the Carriage of Livestock have been met. The Director MNZ or MPI Director-General may, on the advice of an MNZ Approved Surveyor or the veterinarian, require the Master to take additional precautions to ensure the safety of the cattle.⁶⁵⁶

⁶⁵⁰ Animal Welfare Amendment Act (No 2) 2015, s 25.

⁶⁵¹ New Zealand Parliament, above n 268.

⁶⁵² Animal Welfare Amendment Act (No 2) 2015, s 2(1).

⁶⁵³ Animal Welfare Amendment Act (No 2) 2015, s 2(6).

⁶⁵⁴ Katarina Williams "Animal rights group has big beef with NZ live cattle exports" (20 July 2016) Stuff <www.stuff.co.nz>.

⁶⁵⁵ Ministry for Primary Industries *Guidance Material For the Transport of Cattle by Sea* (Version 1, 26 June 2013) at [4].

⁶⁵⁶ At [9.1].

MPI approves stockpersons who are documented as part of the conditions of the AWEC for the particular voyage. The veterinarian(s) and/or stockperson(s) accompanying the shipment are responsible for the health and welfare of the cattle throughout the voyage, including unloading.⁶⁵⁷ It is at the discretion of the veterinarian that a post-mortem be required in the event that an animal dies, and no carcass may be disposed of unless the animal has been confirmed as dead by the stockperson or a veterinarian.⁶⁵⁸ MNZ is responsible for inspecting ships to monitor their compliance with safety and environmental protection standards, including the safe carriage of cattle as cargo. The vessel owner is responsible for ensuring that the vessel is appropriately designed, constructed, equipped, maintained and certified to carry cattle as cargo. The Master is responsible for the following: the vessel's loading configuration; ensuring the safety of the vessel, crew and cargo during loading; the tending, feeding and watering of the cattle during the ship's voyage; ensuring the crew of the vessel is sufficiently numbered, skilled, and experienced to be able to assist the stockperson(s) and/or veterinarian(s) during the voyage as required and ensuring contingency plans are in place. The exporter of the cattle is responsible for ensuring the Master is fully aware of their responsibility for animal welfare during the voyage.⁶⁵⁹ The Master assumes responsibility for the management and care of the cattle upon completion of their loading, and this ceases on completion of the cattle's disembarkation at the port of the importing country.⁶⁶⁰

4.3.7.3 Import

The New Zealand Customs Service (Customs) plays a role in monitoring animal welfare during import into New Zealand, citing the Act as a piece of principal legislation used by Customs to take actions for border management and protection purposes.⁶⁶¹ Customs employs Customs officers, along with further authorised persons with the same functions and powers,⁶⁶² under the Customs and Excise Act 1996. Goods arriving in New Zealand are subject to the control of Customs,⁶⁶³ and Customs are to be advised of incoming crafts.⁶⁶⁴ An inward cargo report must be provided to Customs,⁶⁶⁵ and importers are obliged to answer questions from Customs⁶⁶⁶ and to let Customs examine a ship brought in.⁶⁶⁷ Except when it is

⁶⁵⁷ At [4].

⁶⁵⁸ At [13.1].

⁶⁵⁹ At [4].

⁶⁶⁰ At [4.1].

⁶⁶¹ New Zealand Customs Service "Legislation used by Customs" <www.customs.govt.nz>.

⁶⁶² Customs and Excise Act 1996, s 6.

⁶⁶³ Section 20.

⁶⁶⁴ Section 21.

⁶⁶⁵ Section 21A.

⁶⁶⁶ Section 22.

⁶⁶⁷ Section 23.

necessary, or with Customs authorisation,⁶⁶⁸ a craft may only arrive at a place nominated at Customs.⁶⁶⁹ Persons are to present baggage (whether they be entering or leaving the country) to Customs officers and to comply with all directions given by them in regard to movement of the baggage within the Customs place or Customs controlled area or from a Customs controlled area to any craft.⁶⁷⁰ When a Customs officer has reasonable cause to suspect that a person is liable to be prosecuted for an offence punishable by imprisonment,⁶⁷¹ Customs officers can question persons, ascertain status, detain and arrest the person.⁶⁷²

MPI is the designated Ministry tasked with working with Customs within the Joint Border Management System (JBMS).⁶⁷³ JBMS is an integrated border management computer system that is designed for the collection, storage and use of border information by MPI and Customs. It enables entities to transmit and receive information through systems that include (or may include) a system called Trade Single Window.⁶⁷⁴

A Customs officer may seize and detain goods, without a warrant, if they have good cause to suspect that the goods are an instrument of crime or tainted property as defined in the Criminal Proceeds (Recovery) Act 2009.⁶⁷⁵ For the Criminal Proceeds (Recovery) Act 2009, restrained property can include animals such as race horses and stock.⁶⁷⁶ Despite the jurisdiction of Customs Officers to seize and detain goods without a warrant, where the goods are an animal, they also may leave those goods in the custody of either the person from whom the goods have been seized or any other person authorised by the Customs officer and who consents to having such custody⁶⁷⁷ during criminal investigations.⁶⁷⁸ Where a living creature has been seized as forfeited, the chief executive of Customs may sell the living creature before its condemnation.⁶⁷⁹ Practically speaking, therefore, given its role and powers, it would be Customs that would discover unauthorised animals that people had attempted to ship overseas or to covertly bring into New Zealand in an unauthorised manner that would compromise their welfare. Overall, therefore, while not specifically charged with it, Customs plays a de facto animal welfare enforcement role. Of concern is that

⁶⁶⁸ Section 25.

⁶⁶⁹ Section 24.

⁶⁷⁰ Sections 29 and 32.

⁶⁷¹ Section 32C(1)(d).

⁶⁷² Section 32C(2).

⁶⁷³ Section 282D.

⁶⁷⁴ Section 131A.

⁶⁷⁵ Customs and Excise Act 1996, s 166A.

⁶⁷⁶ New Zealand Insolvency and Trustee Service “Criminal Proceeds Management” <www.insolvency.govt.nz>.

⁶⁷⁷ Customs and Excise Act 1996, s 166F.

⁶⁷⁸ Section 166D.

⁶⁷⁹ Section 230(1)(a). Section 2(1) provides that the chief executive is “the person holding office under the State Sector Act 1988 as the chief executive of the New Zealand Customs Service”.

it is permissible for a cat or dog to be kept on board a moored yacht for six months or less without being subjected to biosecurity clearance requirements.⁶⁸⁰ However, it is unclear how their welfare is to be externally monitored during this time.

4.4 Enforcement of the Act in Industries that Use Animals for Entertainment

4.4.1 Introduction

This part of the paper will examine the enforcement of the Act in the rodeo and racing industries. We have decided to focus on these industries because they are largely self-regulated and oversight of animal welfare law adherence tends to fall upon employees within those industries who risk their livelihood if they elect to report issues to MPI or the RNZSPCA. In this way, as we will explain in the next part, in our view, they represent “gaps” in animal welfare enforcement and are indicative of what can arise in a system that encourages and relies upon reactive (rather than proactive) enforcement.

Rodeos have recently been the subject of much scrutiny, owing largely to the role of NGOs in covert filming to report these issues to MPI and to report these issues publicly. The regulation of events is mostly the role of the New Zealand Rodeo Cowboys Association (NZRCA) with a notable lack of regular independent oversight. Concerningly, the NZRCA appears to use a self-administered system of failing to enforce the Act and instead imposes penalties such as disqualification from competing in an event. There are other systemic problems posed by this structure of compliance, including the conflict of interest that arises from permitting animal welfare officers to also have an interest in the outcome of the rodeo by competing in it. Also problematic is NZRCA’s system of voluntary self-reporting of animal welfare concerns, similar to the systems used by the racing codes, and that overall the structures for enforcing animal welfare laws within the New Zealand rodeo industry are insufficient and problematic and largely limited to self-regulation by parties with conflicted interests. Prescribed reporting of animal welfare is limited to public reporting to MPI or voluntary reporting to the NZRCA by its members, and accordingly activist organisations are operating to fill the oversight gap through covert filming that breaches the rules of the NZRCA. Similarly to the racing codes, the NZRCA appears to use a self-administered system of failing to enforce the Act and instead imposes penalties such as disqualification from competing in an event. While it is a positive development that MPI has conducted proactive inspections into rodeos and intends to continue these, overall there is a concerning lack of legitimate independent oversight. It is largely limited to appointed veterinarians at rodeo events

⁶⁸⁰ Ministry for Primary Industries *Guidance Document: Cats and Dogs* (6 November 2018) at [5.19.2].

who are part of a Veterinary Association that has concerns for the welfare of animals used in rodeo events

Overall, however, the role of prosecutions under the Act in holding those who breach animal welfare laws in the New Zealand rodeo industry is an extremely limited one. This account of the enforcement of animal welfare law in New Zealand's rodeo industry will begin with a discussion of the operation and application of the Rodeo COW and of the parties appointed to enforce it: the rodeo organisers, animal welfare officers and independent appointed veterinarians. It will identify a number of problems posed by this structure of compliance, including the conflict of interest that arises from permitting animal welfare officers to also have an interest in the outcome of the rodeo by competing in it. It will then move into an outline of the NZRCA and its Rule Book. It will examine its problematic system of voluntary self-reporting of animal welfare concerns, similar to the systems used by the racing codes. It will then examine the role of MPI: the receipt of and response to animal welfare complaints made by the public, the conducting of proactive inspections and an integrated discussion of the limited role of prosecutions in holding those who breach animal welfare law within the rodeo industry to account. Finally, it will examine the role of activist non-government organisations and independent members of the public in oversight and the similarities between this problematic structure within the rodeo industry and within other areas of the enforcement of animal protection laws in New Zealand.

Our analysis of the racing industries will begin by describing the racing codes, the Racing Act, and the parties generally tasked with administering these industries and their functions. A thorough examination of the rules used by each of the Codes reveals that very few of them address animal welfare protection. Overall, the racing codes are largely internally managed by appointed executives and the New Zealand Racing Board. The Racing Integrity Unit (RIU) and Judicial Control Authority investigate and rule upon animal welfare concerns respectively, the latter dealing with a greyhound being administered methamphetamine and amphetamine by disqualification and costs. While the self-enacted Rules and Constitution of each Code prescribe internal investigator powers that can be used to protect animal welfare, the seeming purpose is primarily to protect racing. Furthermore, while the RNZSPCA performs an oversight function over other entertainment industries that involve the use of the animals, such as zoos, circuses and television productions using animals, it does not appear to investigate animal welfare within the racing codes, despite its verbal understanding with the RIU that they will work together and share information where appropriate. Nor does MPI, despite its recent proactive inspections of rodeos. This paper provides a particular analysis of greyhound racing and then of the harness and thoroughbred racing codes. Problematically, these industries are largely self-regulated and have little emphasis upon animal welfare and

few systems for monitoring it. While the greyhound racing industry has been subject to an independent audit that examined the welfare of its animals and concerns relating to this, along with a responding report from NAWAC, the codes that use horses have not been subject to anything of this calibre. This paper examines each racing code and its mechanisms for compliance in turn. It also identifies issues in compliance. The account of greyhound racing discusses the issues raised by the audit and how these have been addressed in the five years since. New Zealand racing codes that use horses, being those of New Zealand Thoroughbred Racing (NZTR) and Harness Racing New Zealand (HRNZ), have lacked the same degree of oversight that the greyhound industry has. While NZTR and HRNZ have a MOU with the RNZSPCA and issues are reported to the RNZSPCA, it is of concern that there is seemingly a practice of addressing and punishing perpetrators of animal welfare issues internally rather than reporting conduct that may amount to a breach of the Act to the appropriate authority.

4.4.2 The Enforcement of the Animal Welfare Act 1999 in the New Zealand Rodeo Industry

A rodeo is defined in the Code of Welfare: Rodeos (Rodeo COW)⁶⁸¹ as any public event which involves any of the following activities: bareback bronc riding, barrel racing, bull or steer riding, calf riding, rope and tie, saddle bronc riding, steer wrestling, team roping or any event which calls itself a rodeo.⁶⁸² The lattermost provision accordingly makes the definition of “rodeo” remarkably broad. In New Zealand, the majority of rodeos are run under the auspices of the NZRCA. NAWAC notes that a small, undetermined number of steer riding events are run at country shows but has stated that it believes these events to be “very much of a minor nature”.⁶⁸³ Bull Riding New Zealand Inc (BRNZ) runs bull riding competitions.⁶⁸⁴

4.4.2.1 The Code of Welfare: A System of Internalised Compliance

4.4.2.1.1 Overview

The Rodeo COW applies to all persons responsible for the welfare of all animals being used in rodeos (only cows and horses may be used), which includes animals used in rodeo training and animals used in rodeo schools.⁶⁸⁵ NAWAC considers that the Rodeo COW constitutes the Government’s statement of policy in regard to rodeos

⁶⁸¹ Code of Welfare: Rodeos.

⁶⁸² At Appendix I – Interpretation and definitions: Rodeo, 26.

⁶⁸³ John Hellstrom *Report to Accompany the Code of Welfare: Rodeos* (National Animal Welfare Advisory Committee, Ministry for Primary Industries, 5 September 2013) at 6.

⁶⁸⁴ At 6.

⁶⁸⁵ Code of Welfare: Rodeos, pt 1: General Requirements – 1.1 Application.

and the animal welfare requirements that are to be upheld.⁶⁸⁶ Despite this, in her comprehensive report *The Legal Status of Rodeo in New Zealand: A Paper for the New Zealand Animal Law Association* (the Rodeo Report), Catriona MacLennan states that she has seen nothing “to indicate that practices or training schools are monitored by MPI or attended by veterinarians”.⁶⁸⁷ The Green Party has stated that it is “of major concern” that MPI do not monitor practice rodeo events.⁶⁸⁸

4.4.2.1.2 *The Rodeo Organiser*

Under the Rodeo COW, the rodeo organiser (the Organiser) is an official of the organising association of the rodeo⁶⁸⁹ and is responsible for the running of the rodeo. Accordingly, they are responsible for the following matters: meeting minimum standards relating to the provision, design, and maintenance of facilities and equipment; the allocation of operational responsibilities and the competence and supervision of employee performance. In practice, this entails that while not all duties are necessarily performed directly by the Organiser, they must ensure that the rodeo staff and stock handlers are adequately performing their responsibilities. While the Rodeo COW states that each rodeo contestant is personally responsible for the animals they use during an event and is the person in charge of it during that period, it also states that the Organiser has overall responsibility for the welfare of the animals.⁶⁹⁰ It is the role of the Organiser to ensure that contestants are conversant with the Rodeo COW.⁶⁹¹ More broadly, however, at an operational level, it is those responsible for carrying out tasks during the rodeo event that are “likely to” be considered the person/s in charge of the animal for the purposes of the Act and who are therefore responsible for ensuring that the requirements of the Rodeo COW are met.⁶⁹² This is also a problematic structure that creates a conflict of interest, given that the Organiser will also be responsible for running the rodeo events that benefit from maltreating animals and maintaining a positive public image of rodeos.

4.4.2.1.3 *Animal Welfare Officers*

⁶⁸⁶ Hellstrom, above n 683, at 8.

⁶⁸⁷ Catriona MacLennan *The Legal Status of Rodeo in New Zealand: A Paper for the New Zealand Animal Law Association* (New Zealand Animal Law Association, March 2018) at 56.

⁶⁸⁸ *Petition 2014/53 of Shanti Ahluwalia on behalf of SAFE, SPCA and Farmwatch: Report of the Primary Production Committee* (7 November 2016) at 5 as cited in MacLennan, above n 687, at 64–65.

⁶⁸⁹ Code of Welfare: Rodeos at 26.

⁶⁹⁰ At 2.1: Responsibilities.

⁶⁹¹ Hellstrom, above n 683, at 18. Stockmanship (b) *How is animal welfare monitored and assessed at rodeos?*

⁶⁹² Code of Welfare: Rodeos, 2.1: Responsibilities.

An animal welfare officer is an official appointed by the Organiser to be responsible for overseeing animal welfare at a rodeo in conjunction with the appointed veterinarian⁶⁹³ (Officer). Under the Rodeo COW, an Officer must be appointed to each rodeo and have their responsibilities specified in writing. The Officer has direct responsibility for the welfare of the animals and is to work in liaison with the rodeo organiser and the appointed veterinarian.⁶⁹⁴ The Officer's role is to liaise with the following parties to co-ordinate and evaluate all steps taken to ensure the welfare of the animals: clubs, promoters, stock contractors, contestants and the appointed veterinarian.⁶⁹⁵ NAWAC's view is that the Officer's role in identifying issues such as injury, body condition score or activities that could harm animals at the event is "a sound one" that highlights and reinforces that animals have to be treated appropriately and with due care.⁶⁹⁶ Despite this, a notable conflict of interest appears in the "General Information" provisions of pt 2: Responsibilities and Stockmanship: "more than one Officer can be appointed at each rodeo event, thus allowing Officers to also compete if they should wish to do so".⁶⁹⁷ This is problematic as those charged with ensuring the welfare of the animals ought not to also be able to compete and therefore undermine their own impartiality.

4.4.2.1.4 Veterinarians

A veterinarian is to be appointed under the Rodeo COW to be responsible for providing expert advice on the health, injury or disease status of an animal and the animal's suitability for competition at each rodeo (Appointed Veterinarian). Accordingly, each Appointed Veterinarian needs to be familiar with working cattle and horses so that they may deal effectively with and provide expert advice on the health and injury status of any animal used in the rodeo and any issues that may arise during the rodeo.⁶⁹⁸ NAWAC's stance is that an Appointed Veterinarian should be present at a rodeo to provide an independent professional opinion, and as rodeos provide entertainment, there is a greater responsibility to ensure welfare support.⁶⁹⁹ Notably, the Officer at a rodeo may prevent an animal from competing if they consider that that animal is not fit to compete in a rodeo event. While the Officer cannot override the decision of an Appointed Veterinarian to keep an animal out of an event, the Officer may override the Appointed Veterinarian's decision to permit the animal to

⁶⁹³ At Appendix I – Interpretation and definitions: animal welfare officer, 23.

⁶⁹⁴ At 2.1: Responsibilities.

⁶⁹⁵ At 2.1: Responsibilities.

⁶⁹⁶ Hellstrom, above n 683, at 18. Stockmanship (b) *How is animal welfare monitored and assessed at rodeos?*

⁶⁹⁷ Code of Welfare: Rodeo, pt 2: Responsibility and Stockmanship; 2.2 Stockmanship, General Information.

⁶⁹⁸ At 2.1: Responsibilities.

⁶⁹⁹ Hellstrom, above n 683, at 18. Stockmanship (b) *How is animal welfare monitored and assessed at rodeos?*

compete, if necessary.⁷⁰⁰ Overall, according to NAWAC's *Report to Accompany the Code of Welfare: Rodeos*, the Officer works in conjunction with the Appointed Veterinarian, and both parties ought to agree that an animal is fit to compete before that animal is used in competition. If either considers the animal unfit to compete, the animal is retracted.⁷⁰¹ This assertion fits uncertainly with the Officer's jurisdiction to override the Appointed Veterinarian described above. Another problem is identified by the Rodeo Report, which states that "it is uncertain whether there is any monitoring by independent persons or organisations of the [preceding] Stockmanship provisions of the [Rodeo COW]".⁷⁰²

4.4.2.1.5 *Welfare Assurance Systems*

While support for utilisation of "a welfare assurance system that is easily accessible to all personnel" is made in the Rodeo COW⁷⁰³ (WAS), it is not mandatory for a rodeo to enact or maintain one because, as detailed in Appendix 1 of this paper, a COW is not legally binding. The provision for a WAS is detailed further in pt 9 of the Rodeo COW and states that the adoption of a generic WAS, such as the one used by the NZRCA (the example given by the Rodeo COW), will meet the recommendation in the Rodeo COW that the organiser of each rodeo should implement a WAS that provides for written procedures in order to ensure that standards of animal welfare and husbandry are maintained.⁷⁰⁴ This is problematic because the enactment and maintenance of a WAS is optional, and in charging the NZRCA with protecting animal welfare without adequate provision for involvement of other actors, a largely self-regulating structure of animal welfare law enforcement is made. The WAS presently used by the NZRCA was provided to us on request and constitutes one page in total.⁷⁰⁵ It provides that the Rodeo COW is "the basis for the NZRCA animal welfare system" and that the NZRCA Rule Book reflects the relevant minimum standards in the Rodeo COW. Under the WAS, all members of the NZRCA are issued with a copy of the Rodeo COW and new members are given an "initial briefing on the Code". The WAS states that it "is to be read and re-read by all members". The WAS references the AWO regime, "whereby suitable people are officially accredited as AWOs by the NZRCA Board and AWO convener". It states that the list of accredited AWOs is reviewed annually and that changes are made if required. An AWO convener is

⁷⁰⁰ Code of Welfare: Rodeos, pt 7: Health, Injury and Disease: General Information, 19.

⁷⁰¹ Hellstrom, above n 683, at 18. Stockmanship (b) *How is animal welfare monitored and assessed at rodeos?*

⁷⁰² MacLennan, above n 687, at 56.

⁷⁰³ Code of Welfare: Rodeos, 2.2 Stockmanship: Introduction, 6–7.

⁷⁰⁴ At pt 9: Welfare Assurance System: Introduction, 22.

⁷⁰⁵ New Zealand Rodeo Cowboys Association *Welfare Assurance System* (obtained by email from Dianna Bradshaw (Secretary of the New Zealand Rodeo Cowboys Association) to Levi Larsen (Assistant Research Fellow, Faculty of Law, University of Otago) regarding "Welfare Assurance System" (12 June 2018)).

appointed by the NZRCA Board, and that person reports directly to the President of the NZRCA. The WAS provides that an AWO is appointed to every rodeo event and is responsible for ensuring that the minimum standards of the Rodeo COW are being met and that all parties involved in conducting the rodeo are adhering to it. It states that this will include checking the following matters: that the organisers have provided a safe venue; that the stock contractors are providing suitable animals; that animals have adequate water, food and shelter and that animals are being handled correctly and any incidents of significance are reported to the AWO convenor.⁷⁰⁶ It is unclear what “incidents of significance” entails. The WAS provides that a veterinarian who is experienced in treating horses and cattle must be present for the duration of all rodeos and that the rodeo cannot commence until all animals that will be competing have been checked by the veterinarian and AWO. The stock contractors are to provide the weight of all timed event stock to the veterinarian, who after each event checks the animals and at the end of the rodeo submits a report which identifies any injuries to animals. The reports are forwarded to the NZRCA Board for “scrutiny and any necessary action”, and the data in the reports is compiled for statistical evidence.⁷⁰⁷ The WAS notes that MPI and/or RNZSPCA Inspectors randomly attend rodeos and check/monitor the animal welfare procedures and practices, and provide verbal reports/comments to the AWO and the President of the Club running the rodeo.⁷⁰⁸ It is of note that the WAS makes no reference to assisting the Inspectors. The WAS states that the Judges are required to immediately disqualify any competitor for rough treatment of an animal, and the disqualifications are recorded on the Judges Sheets which are sent to the NZRCA Board for review. Competitors who are disqualified for rough treatment of animals will be assessed for further action, such as suspension. The WAS provides that the Judges panel is reviewed annually by the NZRCA Board, and training/guidance is provided. It states:⁷⁰⁹

... based on the information, reports, and recommendations, the NZRCA Board has and will make changes to rules and proceeds where necessary to further reduce any risk to the welfare of the animals ...

All officials and workers are briefed by the Club President and/or AWO if asked prior to the start of the rodeo, and “Animal Welfare procedures [are] a key part of this briefing”. The Rodeo COW minimum standards are individually published in the NZRCA E News on a regular basis to refresh members’ awareness of the standards to be met.⁷¹⁰

⁷⁰⁶ New Zealand Rodeo Cowboys Association, above n 705.

⁷⁰⁷ New Zealand Rodeo Cowboys Association, above n 705.

⁷⁰⁸ New Zealand Rodeo Cowboys Association, above n 705.

⁷⁰⁹ New Zealand Rodeo Cowboys Association, above n 705.

⁷¹⁰ New Zealand Rodeo Cowboys Association, above n 705.

4.4.2.1.6 *Identified Shortcomings*

While the Rodeo COW states that “it is important that the judges and the Officer are empowered to disqualify any official or contestant who compromises the welfare of an animal”,⁷¹¹ similarly to the racing codes, this appears to be another means of failing to properly enforce the Act in the entertainment industries with much more lenient penalties, such as the removal of competition privileges. Notably, while “ill-treat” is defined in the Rodeo COW Appendix with the definition prescribed by the Act,⁷¹² the term does not appear otherwise in the current or 2003 Rodeo COW. Reference is made in pt 3 of the Rodeo COW to “the stress [for animals] associated with rodeo events”.⁷¹³ This part is concerned with the provision of food and water, and the Rodeo Report notes that it is unknown what monitoring of pt 3 is carried out. The Rodeo Report adds that rodeos are carried out in the summer months and that the prescribed provision of water only every eight to 12 hours in “very stressful situations” hence appears inadequate to protect the welfare of animals and comply with the basic requirements of the Act.⁷¹⁴ It is stated in the Rodeo COW that NAWAC continues to hold welfare concerns for the use of animals in rodeos, particularly the use of calves.⁷¹⁵ NAWAC acknowledged in the Rodeo COW that rodeos using calves have been banned in a number of countries, owing to “the perceived physical and psychological stresses that they place on the animals”.⁷¹⁶ It issued a report to accompany the Rodeo COW,⁷¹⁷ which stated that a number of public submissions noted that the industry plays a role in self-regulating animal welfare standards at rodeos and questioned if this was an appropriate method of ensuring that standards were maintained.⁷¹⁸

4.4.2.2 **The New Zealand Rodeo Cowboys Association – A System of Voluntary Reporting**

4.4.2.2.1 *Overview*

The NZRCA was formed around 60 years ago and oversees 35 rodeos annually. It has around 800 members. In addition to overseeing rodeos, the NZRCA runs training

⁷¹¹ Code of Welfare: Rodeos, 2.2 Stockmanship: Introduction, 6–7.

⁷¹² At Appendix I – Interpretation and definitions: ill-treat, 24; and Animal Welfare Act 1999, s 2(1): In this Act, unless the context otherwise requires, — ill-treat, in relation to an animal, means causing the animal to suffer, by any act or omission, pain or distress that in its kind or degree, or in its object, or in the circumstances in which it is inflicted, is unreasonable or unnecessary.

⁷¹³ Code of Welfare: Rodeos, pt 3: Food and Water – Introduction, 8.

⁷¹⁴ MacLennan, above n 687, at 57.

⁷¹⁵ Code of Welfare: Rodeos, pt 6: Specific Events, 14.

⁷¹⁶ At pt 6: Specific Events, 14.

⁷¹⁷ Hellstrom, above n 683.

⁷¹⁸ At 18. Stockmanship (b) *How is animal welfare monitored and assessed at rodeos?*

schools to teach rodeo contestants the skills required to compete in rodeo events.⁷¹⁹ As noted above, the author of the Rodeo Report states that she has seen nothing to indicate that practice rodeos or training schools are monitored by MPI or attended by veterinarians.⁷²⁰ The NZRCA website lists the Rodeo COW and accompanying NAWAC report on its website, claiming that the welfare of animals is of “paramount importance to ... its membership in order to ensure the wellbeing of all livestock and to protect and enhance the integrity of rodeo as a sport”.⁷²¹ It states that “every effort is made” to ensure the standards required by the Rodeo COW are upheld or exceeded and that the practices and policies in the NZRCA’s Rulebook are consistently reviewed and updated by the NZRCA with other qualified persons to improve the safety of animals and to reduce any actual or perceived harm to the animal participants of sport of rodeo.⁷²² However, despite these expressions of sentiment, in a similar manner to that of the racing codes, the NZRCA appears to rely on a problematic system of encouraged yet voluntary reporting that suggests a considerable conflict of interest, with its website stating the following.⁷²³

If at any time you witness an incident at any Rodeo event that you believe goes against the Code of Welfare of animals the NZRCA encourages you to, without delay, contact NZRCA Animal Welfare Convenor Laurie Latta [contact information omitted] and/or report it directly to the Animal Welfare Officers or Veterinarian in attendance at the event. The NZRCA takes animal welfare seriously and will investigate fully any infringements of the Code that are reported to it.

This is an inherently problematic structure, given that in most cases it will be those who are mistreating the animals used in rodeos that are the only ones who will know about it and will therefore be very unlikely to report themselves to the NZRCA.

4.4.2.2 *The NZRCA Constitution*

The provisions of the NZRCA Constitution (Constitution)⁷²⁴ are largely concerned with administrative and financial matters. Nine factors are specified in the “aim and

⁷¹⁹ At Why do we need a code of welfare for rodeos? 6.

⁷²⁰ MacLennan, above n 687, at 56.

⁷²¹ New Zealand Rodeo Cowboys Association “Animal Welfare” <www.rodeonz.co.nz>.

⁷²² New Zealand Rodeo Cowboys Association, above n 721.

⁷²³ New Zealand Rodeo Cowboys Association, above n 721.

⁷²⁴ *The New Zealand Rodeo Cowboys Association Incorporated Constitution and Rule Book Year 2015* (obtained by email from Dianna Bradshaw (Secretary of the New Zealand Rodeo Cowboys Association) to Levi Larsen (Assistant Research Fellow, Faculty of Law, University of Otago) regarding “Letter: Request for PDF of 2015 NZRCA Rule Book and Welfare Assurance System” (28 March 2018). Ms Bradshaw also provided the authors with the “Stickys” updating the Rules for 2016 and 2017).

objects” section of the Constitution,⁷²⁵ including to purchase or hire any equipment necessary to conduct a rodeo⁷²⁶ and to provide a Provident Fund to assist injured members.⁷²⁷ However, animal welfare, or even any provision relating to the animals used in rodeos, does not appear at all. The nearest purpose to protection of animal welfare or enforcement of animal welfare laws appears in cl 2.8: “to work for the betterment of conditions and of the rules governing rodeo events in which the members of the Association participate”.⁷²⁸

The members of the NZRCA who attend its annual general meetings (AGMs) may change or revoke any by-law or regulation of the NZRCA.⁷²⁹ Rules passed at the AGMs become a provisional rule for 12 months before being reviewed at the following AGM, and if then accepted, they are to be included in the rule book on a permanent basis.⁷³⁰ The rules may only be altered by way of recommendation to the NZRCA Board of Executives (NZRCA Board)⁷³¹ at the AGM of the NZRCA or by way of a Special General Meeting.⁷³² Any question of construction of the rules is to be decided by the NZRCA Board and its decision shall be final.⁷³³

The NZRCA maintains a calf appeal account,⁷³⁴ the definition of which is unclear and does not seem to be publicly accessible. The account is to be capped at \$50,000, and capital contributions to the appeal shall continue above the \$50,000 threshold, allowing for interest above this level to be transferred to the NZRCA General Account, which is administered by the NZRCA Board of the day.⁷³⁵

The role of a Patron of the NZRCA is provided for by the Constitution. The role of a Patron is generally associated with non-profit organisations:⁷³⁶

⁷²⁵ At pt 1: Constitution – 2 Aim and Objects: 2.1–2.9.

⁷²⁶ At pt 1: Constitution - 2.7.

⁷²⁷ At pt 1: Constitution - 2.9.

⁷²⁸ At pt 1: Constitution - 2.8.

⁷²⁹ At pt 1: Constitution: 15: Powers to Make By-Laws Regulations and General Riding Conditions [sic] at 15.1.

⁷³⁰ At pt 1: Constitution: 15.3.

⁷³¹ The composition of the New Zealand Board of Directors of the NZRCA is described in r 3 of the NZRCA Constitution (pt 1 of *The New Zealand Rodeo Cowboys Association Incorporated Constitution and Rule Book Year 2015*) as follows:

3. NZ Board of Directors

3.1 The Board of Directors of NZRCA shall consist of six Directors as follows: President; Administration Director; One North Island Club Director; One South Island Club Director; One Time Event Director; One Riding Event Director

⁷³² New Zealand Rodeo Cowboys Association, above n 724, at pt 1: Constitution: Alterations to the Rules: 24–24.2.

⁷³³ At pt 1: 26: Interpretation.

⁷³⁴ At pt 1: Constitution 19.3 Calf Appeal Account.

⁷³⁵ At pt 1: Constitution 19.3.1.

⁷³⁶ At pt 1: Constitution: at 26.1.

... that often seek an influential figurehead to undertake the role; the relationship to a patron will confer credibility to the organisation and provide advice and guidance to the NZRCA Board and members – they don't need to be a member but it would be fair to say that if they are then they would usually be long serving experienced members of Life Members; these people will use their skills and knowledge to assist and guide the NZRCA to ensure its aims and objectives are put first ...

It is unclear what manner of non-profit organisations may provide such a service, and the drafting of this provision is remarkably informal.

4.4.2.2.3 *The NZRCA By-Laws and Regulations*

4.4.2.2.3.1 *Overview*

In art 4 of the NZRCA By-Laws and Regulations (the Rules),⁷³⁷ the Rodeo Club, Promoter, and Organiser is deemed responsible for ensuring that their complex and facilities comply with NZRCA minimum standards and recommendations stipulated by the article.⁷³⁸ These include matters such as the size of the permanent arena⁷³⁹ and of the portable arena.⁷⁴⁰ Article 5 addresses approval to run rodeo/rodeo events,⁷⁴¹ with the provision that the NZRCA Board shall approve all rodeo facilities with art 4 before the rodeo or rodeo event may be run.⁷⁴² It is concerning that there appears to be little independent input at this stage, and it is more concerning that there is discretionary jurisdiction for the NZRCA Board to exempt a rodeo/rodeo event from the standards imposed by the Rule Book.⁷⁴³ At the 2016 AGM, the provision related to the Arena Director was amended from simply “every rodeo must have an Arena Director with a vest that can be seen by everyone” to add the following:⁷⁴⁴

... the Arena Director is the adjudicator of the production and coordinator of the rodeo. They have the power to enforce the NZRCA Rule Book and Code of Welfare Rodeo [sic]. The Arena Director must be a member of the NZRCA or a member of an Affiliated or Associated Club in good standing.

⁷³⁷ At pt 2: By-Laws and Regulations.

⁷³⁸ At pt 2: By-Laws and Regulations at art 4: Rodeo Facilities – Standards & Conditions: 4.0: Compliance: 4.0.1.

⁷³⁹ At pt 2: By-Laws and Regulations: 4.1. Permanent Arena.

⁷⁴⁰ At pt 2: By-Laws and Regulations 4.2 Portable Arena.

⁷⁴¹ At pt 2: By-Laws and Regulations, art 5: Approval to Run Rodeo/Rodeo Events.

⁷⁴² At pt 2: By-Laws and Regulations 5.4: Facilities Inspection and Certification: 5.4.1.

⁷⁴³ At pt 2: By-Laws and Regulations 5.3 Exemptions.

⁷⁴⁴ Constitution Rules Ratified at 2016 AGM: New Rules – By-Laws And Regulations Ratified at 2016 AGM, at 5.1.8: at 19.2 in New Zealand Rodeo Cowboys Association, above n 724.

Despite this, there is very little mention of the Arena Director throughout the Rules. It is unclear what standards and accountability mechanisms they are subject to and in what manner, if any, they are held to them.

4.4.2.2.3.2 *Article 12: Code of Practice for the Welfare of Animals Used in Rodeo Events*

Article 12 of the Rules addresses the Code of Practice for the Welfare of Animals Used in Rodeo Events (Code of Practice).⁷⁴⁵ While it appears that the remainder of the provisions enacted under that part of the Rule Book constitute such a Code, this is not readily clear. The Rules state as a General Principle that “this Code of Practice is for people involved with and participating in rodeo events”.⁷⁴⁶ Problematically, it then elaborates on this principle with the following statement.⁷⁴⁷

The welfare of animals used in rodeo must be safeguarded. It is essential that there is a clear understanding and acceptance of responsibilities by the; owner/agent, rodeo personnel and competitors. Any acts that would be prosecutable offences under ‘The Animals Welfare Act’ [sic] would be the responsibility of the person/s committing the offence.

While this appears to be a statement of intention to enforce the Act, the inaccurate citation of it as “The Animals Welfare Act” is cause for concern, as is the theoretical tone of the drafting. The Rules make further provision for animal welfare. They state that the use of animals in rodeo events requires careful planning to reduce any adverse effects on them and adds that the preparation of animals for use in rodeo events should be undertaken by competent stockpersons.⁷⁴⁸ They add that animals used for rodeo events must be handled by competent, experienced personnel at all times and that, in particular, pick-up men must be experienced and competent.⁷⁴⁹ Under the Rules, animals used for “all events” must be inspected on site on the day of the rodeo by a veterinarian, and no animal which is sore, lame, sick or injured shall be permitted in the draw at any time.⁷⁵⁰ It is unclear whether this provision applies

⁷⁴⁵ At pt 2: By-Laws and Regulations art 12: Code of Practice for the Welfare of Animals Used in Rodeo Events.

⁷⁴⁶ At pt 2: By-Laws and Regulations art 12: Code of Practice for the Welfare of Animals Used in Rodeo Events; 12.1 General Principles; 12.1.1.

⁷⁴⁷ At pt 2: By-Laws and Regulations art 12: Code of Practice for the Welfare of Animals Used in Rodeo Events; 12.1.2.

⁷⁴⁸ At pt 2: By-Laws and Regulations art 12: Code of Practice for the Welfare of Animals Used in Rodeo Events; 12.1.3.

⁷⁴⁹ At pt 2: By-Laws and Regulations art 12: Code of Practice for the Welfare of Animals Used in Rodeo Events; 12.1.5.

⁷⁵⁰ At pt 2: By-Laws and Regulations art 12: Code of Practice for the Welfare of Animals Used in Rodeo Events; 12.2.2.

only to animals used in each rodeo event or applies to animals used in any rodeo event without the requirement of them being used in every rodeo event held on that particular day. The Rules add that should an animal become sick or injured between the time of being drawn and the time they are scheduled to complete, that animal shall not be used in the competition and another animal is to be drawn for the contestant.⁷⁵¹

The animals used in rodeo are provided by stock contractors, and the provisions for this are set out in the Rules.⁷⁵² These animals are referred to as “contract stock” and are provided by an individual, a partnership, rodeo clubs or such person who supplies livestock for rodeo purposes (“Stock Contractor”).⁷⁵³ A Stock Contractor becomes an “approved stock contractor” when it has proved to the NZRCA Board that its proceedings, activities and stock involved are “satisfactory”.⁷⁵⁴ All contract stock are to be supplied by an approved stock contractor “where possible”.⁷⁵⁵ It is unclear how the activities of Stock Contractors are monitored, if at all, for animal welfare standards and commitment to complying with the Act and the instruments issued under it. Provisions in the Rules prescribe the required condition and age of used horses⁷⁵⁶ and the minimum weights for cattle being used in different rodeo events⁷⁵⁷ along with a prohibition against using “over-fat or obviously pregnant or lactating animals”.⁷⁵⁸ It is required that cattle with excessive horn growth likely to cause injury to themselves or others have their horns tipped by an experienced stockperson.⁷⁵⁹

The Rules provide for the transport, yarding and handling of animals.⁷⁶⁰ These impose a responsibility on “the rodeo organiser/s or an approved stock contractor” to select only fit and healthy animals for transport, and they also add that animals that are either ill or injured “may” be transported to and from a place for proper veterinary treatment. Transportation of a critically injured animal to a processing works or other

⁷⁵¹ At pt 2: By-Laws and Regulations art 12: Code of Practice for the Welfare of Animals Used in Rodeo Events; 12.2.3.

⁷⁵² At pt 2: By-Laws and Regulations art 12: Code of Practice for the Welfare of Animals Used in Rodeo Events; 12.2.4.

⁷⁵³ At pt 2: By-Laws and Regulations art 12: Code of Practice for the Welfare of Animals Used in Rodeo Events; 12.2.4.2.

⁷⁵⁴ At pt 2: By-Laws and Regulations art 12: Code of Practice for the Welfare of Animals Used in Rodeo Events; 12.2.4.3.

⁷⁵⁵ At pt 2: By-Laws and Regulations art 12: Code of Practice for the Welfare of Animals Used in Rodeo Events; 12.2.4.

⁷⁵⁶ At pt 2: By-Laws and Regulations art 12: Code of Practice for the Welfare of Animals Used in Rodeo Events; 12.2.5.

⁷⁵⁷ At pt 2: By-Laws and Regulations art 12: Code of Practice for the Welfare of Animals Used in Rodeo Events; 12.2.6.

⁷⁵⁸ At pt 2: By-Laws and Regulations art 12: Code of Practice for the Welfare of Animals Used in Rodeo Events; 12.2.8.

⁷⁵⁹ At pt 2: By-Laws and Regulations art 12: Code of Practice for the Welfare of Animals Used in Rodeo Events; 12.2.7.

⁷⁶⁰ At pt 2: By-Laws and Regulations art 12: Code of Practice for the Welfare of Animals Used in Rodeo Events; 12.3: Transport, Yarding and Handling of Animals.

place away from the rodeo site for destruction is not deemed acceptable, and such an animal “should” be humanely destroyed on site.⁷⁶¹ The optional language in this provision is very problematic given the clear obligations prescribed by the Act to provide an ill or injured animal with veterinary treatment⁷⁶² and to humanely end an animal’s suffering if required.⁷⁶³ A number of other provisions address the transport, yarding and handling of animals and include the following: “animals *should* not be lifted off the ground by head, horns or legs during loading, unloading, or handling in yards or chutes”.⁷⁶⁴ It is concerning that such conduct is not prohibited despite the fact that it could amount to ill-treatment under the Act.⁷⁶⁵ Stock is to be examined by a veterinarian to assess their suitability for travelling prior to loading for transport,⁷⁶⁶ and requirements for feeding and watering that are more specific than those of the Code of Welfare: Transport⁷⁶⁷ are imposed. These include the requirement that mature cattle are fed and watered at least every 12 hours, and horses and immature

⁷⁶¹ At pt 2: By-Laws and Regulations art 12: Code of Practice for the Welfare of Animals Used in Rodeo Events; 12.3.1.

⁷⁶² Protection from, and rapid diagnosis of, any significant injury or disease is one of the physical, health, and behavioural needs prescribed by s 4 of the Animal Welfare Act 1999 – specifically, by s 4(1)(e). The owner of an animal, and every person in charge of an animal, must ensure that those needs are met in a manner that is in accordance with both good practice and scientific knowledge, under s 10 of the Animal Welfare Act 1999.

⁷⁶³ Animal Welfare Act 1999, s 11(1):

The owner of an animal that is ill or injured, and every person in charge of such an animal, must ensure that the animal receives treatment that alleviates any unreasonable or unnecessary pain or distress being suffered by the animal.

⁷⁶⁴ New Zealand Rodeo Cowboys Association, above n 724, at pt 2: By-Laws and Regulations: 12.3.14 (emphasis added).

⁷⁶⁵ Animal Welfare Act 1999, s 2(1) provides:

ill-treat, in relation to an animal, means causing the animal to suffer, by any act or omission, pain or distress that in its kind or degree, or in its object, or in the circumstances in which it is inflicted, is unreasonable or unnecessary.

Also see s 28:

28 Wilful ill-treatment of animals

(1) A person commits an offence if that person wilfully ill-treats an animal with the result that—

- (a) the animal is permanently disabled; or
- (b) the animal dies; or
- (c) the pain or distress caused to the animal is so great that it is necessary to destroy the animal in order to end its suffering; or
- (d) the animal is seriously injured or impaired.

(2) For the purposes of subsection (1)(d), an animal is seriously injured or impaired if the injury or impairment—

- (a) involves—
 - (i) prolonged pain and suffering; or
 - (ii) a substantial risk of death; or
 - (iii) loss of a body part; or
 - (iv) permanent or prolonged loss of a bodily function; and
- (b) requires treatment by or under the supervision of a veterinarian.

Under s 28A of the Animal Welfare Act 1999, a person is liable for the offence of reckless ill-treatment if their conduct meets the elements of s 28 but the person acted recklessly rather than wilfully.

⁷⁶⁶ New Zealand Rodeo Cowboys Association, above n 724, at pt 2: By-Laws and Regulations: 12.3.14.

⁷⁶⁷ Code of Welfare: Transport within New Zealand.

cattle are fed and watered at least every eight hours.⁷⁶⁸ Minimum Standard Number 10 of the Code of Welfare: Transport simply states:⁷⁶⁹

... the provision of food and water must be appropriate to the species, age, physical state and condition of the animals to allow them to regulate body temperature and meet their health needs.

The Rules state that in general, the transport, handling and use of animals shall be in accordance with the Animal Welfare (Transport Within NZ) Code of Welfare and with the provisions of the Rodeo COW.⁷⁷⁰ While it is encouraging that the Rules make clear provision for how much food is to be administered to animals during transport, it is unclear how this is practically enforced. It does not appear that the Animal Welfare (Calves) Regulations 2016 are applicable, given that the definition of “young calf” to which the Regulations apply is up to 14 days of age.⁷⁷¹ The minimum weight of calves used in rodeo events is 150 kg⁷⁷² and calves do not typically reach this weight until they are around five months old.⁷⁷³

The Rules make provision for the Care and Treatment of Rodeo Animals. These cover matters such as the attendance of veterinarians, regulation of the use of chutes and other tools, and the handling of breaches of animal welfare obligations.⁷⁷⁴ As stated in the Rodeo COW and examined above, an Appointed Veterinarian who is experienced in treating horses and cattle is to attend each rodeo and to inspect each rodeo animal prior to the start of the rodeo (the role of the Appointed Veterinarian). Where the animal is used in multiple events, the veterinarian is to inspect them at the end of each day to ensure that they are fit to compete on ensuing days.⁷⁷⁵ On examination, the veterinarian is the sole arbiter of whether an animal is fit for use in an event.⁷⁷⁶ They are to supervise and take responsibility for emergency human

⁷⁶⁸ New Zealand Rodeo Cowboys Association, above n 724, at pt 2: By-Laws and Regulations; 12.3.4.

⁷⁶⁹ Code of Welfare: Transport within New Zealand, Minimum Standard No. 10 – Food, Water and Rest; (a) (in force since 1 February 2017)

⁷⁷⁰ New Zealand Rodeo Cowboys Association, above n 724, at pt 2: By-Laws and Regulations; 12.1.4.

⁷⁷¹ Animal Welfare (Calves) Regulations 2016, reg 3.

⁷⁷² As prescribed by New Zealand Rodeo Cowboys Association, above n 724, at pt 2: By-Laws and Regulations; 12.2.6.

⁷⁷³ DeLaval “What’s on the menu for your calves from 3-6 months?” (11 December 2014) Farmish: A farm management blog by DeLaval <<https://web.archive.org/web/20180701110525/http://blog.delaval.com/dairy-farm-feeding/whats-menu-calves-3-6-months/>>.

⁷⁷⁴ New Zealand Rodeo Cowboys Association, above n 724, at pt 2: By-Laws and Regulations: 12.4 Care and Treatment of Rodeo Animals.

⁷⁷⁵ At pt 2: By-Laws and Regulations: 12.4 Care and Treatment of Rodeo Animals; 12.4.1.

⁷⁷⁶ At pt 2: By-Laws and Regulations: 12.4 Care and Treatment of Rodeo Animals; 12.4.2.

destruction for an animal where they deem it necessary.⁷⁷⁷ The Rules state that an animal is to be immediately released if they become excessively excited and appear in any way in danger of injuring themselves⁷⁷⁸ or if they “go down” in the chutes or attempt to jump out of the chutes in a manner which may cause them to injure themselves.⁷⁷⁹ When an animal is immediately released in one of these situations, they are to be examined by the Appointed Veterinarian. If found unfit due to injury, overexcitement or distress, they may not be used in any further events on that day.⁷⁸⁰ When the Appointed Veterinarian considers that that animal is not suitable for any rodeo events in the future, they are to make a written report to the relevant Rodeo Association recommending that its executive elect to ban the animal from participating in all rodeos under its control.⁷⁸¹ It is concerning that an independent expert opinion may here be effectively ignored by those who may have an interest in having an animal continue to be used in rodeo events. It is also unclear whether this provision refers to the NZRCA Board. However, the use of the word “relevant” suggests that NZRCA executives are also maintained at a club or regional level. “Rodeo Association” does not appear in the Rules or Constitution, including the 2016 and 2017 amendments, apart from in this particular instance.

Generally speaking, a vehicle must be available to be used to remove any injured animals from the chute or arena, and injured animals must be attended to as soon as possible.⁷⁸² Animals are to be removed from the arena after completion of entry in a contest,⁷⁸³ and no small animals or pets are to be allowed in the arena whilst events are in progress.⁷⁸⁴

The Rules prohibit animals from being given any stimulant, sedative or hypnotic drugs prior to use for contest purposes,⁷⁸⁵ and no person may take part in a rodeo while under the influence of alcohol or drugs.⁷⁸⁶ The Rules incorporate the Rodeo COW ban⁷⁸⁷ on the use of fireworks, pyrotechnics and gas fired explosions of any type⁷⁸⁸ and provide that the arena must be free of holes, rocks, obstacles and any other hazards which may injure animals.⁷⁸⁹ The Rules regulate the use of tools such as

⁷⁷⁷ At pt 2: By-Laws and Regulations: 12.4 Care and Treatment of Rodeo Animals; 12.4.3.

⁷⁷⁸ At pt 2: By-Laws and Regulations: 12.4 Care and Treatment of Rodeo Animals; 12.4.4.

⁷⁷⁹ At pt 2: By-Laws and Regulations: 12.4 Care and Treatment of Rodeo Animals; 12.4.5–12.4.6.

⁷⁸⁰ At pt 2: By-Laws and Regulations: 12.4 Care and Treatment of Rodeo Animals; 12.4.7.

⁷⁸¹ At pt 2: By-Laws and Regulations: 12.4 Care and Treatment of Rodeo Animals; 12.4.8.

⁷⁸² At pt 2: By-Laws and Regulations: 12.4 Care and Treatment of Rodeo Animals; 12.4.9.

⁷⁸³ At pt 2: By-Laws and Regulations: 12.4 Care and Treatment of Rodeo Animals; 12.4.10.

⁷⁸⁴ At pt 2: By-Laws and Regulations: 12.4 Care and Treatment of Rodeo Animals; 12.4.11.

⁷⁸⁵ At pt 2: By-Laws and Regulations: 12.4 Care and Treatment of Rodeo Animals; 12.4.12.

⁷⁸⁶ At pt 2: By-Laws and Regulations: 12.4 Care and Treatment of Rodeo Animals; 12.4.13.

⁷⁸⁷ Code of Welfare: Rodeos, pt 5: Equipment: 5.1 Arena; Introduction; Minimum Standard No. 5 – Arena (e) Fireworks, pyrotechnics and gas fired explosions of any type must not be used at rodeos

⁷⁸⁸ New Zealand Rodeo Cowboys Association, above n 724, at pt 2: By-Laws and Regulations: 12.4 Care and Treatment of Rodeo Animals; 12.4.14.

⁷⁸⁹ At pt 2: By-Laws and Regulations: 12.4 Care and Treatment of Rodeo Animals; 12.4.15.

rowels and electrical prods.⁷⁹⁰ They also regulate the use of animals in rodeo, providing limits on how much each animal may be used.⁷⁹¹ For example, contract cattle used for steer wrestling, rope and tie events and team roping events may be used on no more than three occasions on each day.⁷⁹² Accordingly, all rodeo animals in open events (other than riding horses used by contestants, Pick-up men and Rodeo Officials) are to be numbered and drawn for to ensure that no unfit animal is included in the draw and that no animal is used more frequently than permitted by the Rule Book.⁷⁹³

The Rules prescribe that perceived mistreatment of animals will lead to disqualification, by the Judges, from any event. Mistreatment of animals or failure to comply with the Code of Practice “will” also lead to disciplinary action against a contestant by the NZRCA, as deemed under art 13 of the official NZRCA Rules. It is stated that these provisions do not preclude the prosecution of offenders.⁷⁹⁴ It is deeply concerning that the Animals Protection Act 1960, which was repealed by the enactment of the present Animal Welfare Act almost two decades ago, is cited by the 2015 Rule Book, which was revised as recently as 2017 and accordingly references the “regulations”. Additionally, it is further incorrectly cited as the “Animal Protection Act”.⁷⁹⁵ This error undermines the provision of the Rules that follows:⁷⁹⁶

All Rodeo Personnel are advised that they should be conversant with the relevant legislation, for the welfare of stock. They are further advised that the rules for individual rodeo events must not be inconsistent with the provisions of the Code of Practise [sic], or relevant legislation.

The Rules provide several more animal welfare provisions. They state that all individuals, partnerships, rodeo clubs “or such” who supply livestock for rodeo purposes shall comply with the rules and regulations of the NZRCA.⁷⁹⁷ However, it is unclear how this provision is enforced or indeed if it is enforced at all. Another provision states that “when there [are] conflicting calls made by Animal Welfare Officers the harshest call must count”⁷⁹⁸ and another that:⁷⁹⁹

⁷⁹⁰ At pt 2: By-Laws and Regulations: 12.4 Care and Treatment of Rodeo Animals; at 12.4.16–12.4.21.

⁷⁹¹ At pt 2: By-Laws and Regulations: 12.4 Care and Treatment of Rodeo Animals; at 12.4.22–12.4.24.

⁷⁹² At pt 2: By-Laws and Regulations: 12.4 Care and Treatment of Rodeo Animals; at 12.4.22.

⁷⁹³ At pt 2: By-Laws and Regulations: 12.4 Care and Treatment of Rodeo Animals; at 12.4.24.

⁷⁹⁴ At pt 2: By-Laws and Regulations: 12.4 Care and Treatment of Rodeo Animals; at 12.4.25.

⁷⁹⁵ At pt 2: By-Laws and Regulations: 12.4 Care and Treatment of Rodeo Animals; at 12.4.25.

⁷⁹⁶ At pt 2: By-Laws and Regulations: 12.4 Care and Treatment of Rodeo Animals; at 12.4.26.

⁷⁹⁷ At pt 2: By-Laws and Regulations: 12.4 Care and Treatment of Rodeo Animals; at 12.4.27.

⁷⁹⁸ At pt 2: By-Laws and Regulations: 12.4 Care and Treatment of Rodeo Animals; at 12.4.28.

⁷⁹⁹ At pt 2: By-Laws and Regulations: 12.4 Care and Treatment of Rodeo Animals; at 12.4.29.

... in the case of insufficient stock after some stock ruled unsuitable, that event does not run. Rodeo continues as point's award [sic], but no points go to that event of All-Round Titles.

The prevalence of drafting mistakes in the Rules, particularly notable in the provisions related to animal welfare, is of concern as some of them are unclear to the extent that they may prove unworkable. The final provision of the "Care and Treatment of Rodeo Animals" section provides the following:⁸⁰⁰

... if any Club, promoter, contractor, or contestant disregards a directive from an animal welfare officer appointed by the NZRCA, they may be given an instant fine or suspension. If it is a contestant they may receive a suspension of no more than three point awarded rodeos per offence. If it is a club/promoter/contractor the fine will be a maximum of \$500.00 per offence. In any case further disciplinary action can be taken by the NZRCA Board.

This appears to be a concerning opt out of the provisions of the Act in situations where liability may well exist. Another shortcoming related to the enforcement of the Code of Practice is identified in the Rodeo Report. This is that despite the considerable stipulated role of veterinarians in New Zealand rodeos, MacLennan notes that in practice, animals used in rodeos do not receive protection from and rapid diagnosis of significant injuries because injuries suffered during rodeos may not be noticed and may never be diagnosed. She adds that as rodeo organisers and veterinarian do not include psychological trauma and distress in their definition of "injury", the emotional and psychological injuries suffered by animals are neither recognised nor reported.⁸⁰¹

4.4.2.2.3.3 Article 13: Conduct Restrictions and Disciplinary Action

As detailed above, the Rules prescribe a number of provisions related to animal welfare. It appears that these are enforced and discretionarily penalised under the general protocols set out at art. 13.⁸⁰² The Rules make provision for the enactment of a Disciplinary Committee: a delegee of the NZRCA Board with the power to act in the name of the Board in dealing with matters relating to disciplinary issues.⁸⁰³ The Disciplinary Committee shall determine the gravity of any disciplinary issue and is

⁸⁰⁰ At pt 2: By-Laws and Regulations: 12.4 Care and Treatment of Rodeo Animals; at 12.4.32.

⁸⁰¹ MacLennan, above n 687, at 55; and Animal Welfare (Rodeos) Code of Welfare 2014, Analysis of the Code.

⁸⁰² New Zealand Rodeo Cowboys Association, above n 724, at pt 2: By-Laws and Regulations: art 13: Conduct Restrictions and Disciplinary Action: 13.1 General Misconduct and Disciplinary Action.

⁸⁰³ At pt 2: By-Laws and Regulations: art 13: Conduct Restrictions and Disciplinary Action: 13.1 General Misconduct and Disciplinary Action; at 13.1.12.

entitled to instantly deal with infringements that it considers to be a minor disciplinary issue. Where it determines that the infringement is of a “more serious nature”, it is to refer the matter to a formal Defended Hearing.⁸⁰⁴ It is unclear what manner of infringements would be likely considered minor or serious, and it appears to be a largely discretionary system. The Rules make detailed provision for the process of hearings.⁸⁰⁵ In addition to this, the Rules state the following.⁸⁰⁶

Any member may be disciplined, fined, suspended or expelled from the NZRCA and may be denied any or all privileges of the Association whenever it shall have been established by satisfactory evidence to the NZRCA Board that such member has knowingly and wilfully violated any pertinent rule of the NZRCA. All contestants and members are required to read the rules carefully. Failure to understand will not be accepted as an excuse.

While this provision appears to be a reasonably robust statement of penalty for breaching the Rule Book, including the provisions protecting animal welfare, it is problematic. The words “knowingly and wilfully violated” impose requirements of knowledge and wilfulness to breach a provision of the Rules, many of which incorporate the Act. Many offences under the Act are prescribed by the legislature as being of strict liability.⁸⁰⁷ Furthermore, the provision is self-contradictory in requiring knowledge and intent to breach the rule and then stating that “failure to understand will not be accepted as an excuse”.⁸⁰⁸

Another problematic provision reads as follows:⁸⁰⁹

⁸⁰⁴ At pt 2: By-Laws and Regulations: art 13: Conduct Restrictions and Disciplinary Action: 13.1 General Misconduct and Disciplinary Action; at 13.1.13.

⁸⁰⁵ At pt 2: By-Laws and Regulations: art 13: Conduct Restrictions and Disciplinary Action: 13.1 General Misconduct and Disciplinary Action.

⁸⁰⁶ At pt 2: By-Laws and Regulations: art 13: Conduct Restrictions and Disciplinary Action: 13.1 General Misconduct and Disciplinary Action; 13.1.1 Disciplinary Costs Recovery; 13.1.1.1.

⁸⁰⁷ For example, s 13(1) of the Animal Welfare Act 1999 states: “In a prosecution for an offence against section 12, it is not necessary for the prosecution to prove that the defendant intended to commit an offence.” A defendant commits an offence against s 12 if they fail to meet the needs of the animal, fail to alleviate the pain or distress of an ill or injured animal or kill the animal in such a manner that the animal suffers unreasonable or unnecessary pain or distress. Further, s 30(1) of the Animal Welfare Act 1999 states: “In a prosecution for an offence against section 29(a) [where a person has ill-treated an animal], it is not necessary for the prosecution to prove that the defendant intended to commit an offence.”

⁸⁰⁸ New Zealand Rodeo Cowboys Association, above n 724, at pt 2: By-Laws and Regulations: art 13: Conduct Restrictions and Disciplinary Action: 13.1 General Misconduct and Disciplinary Action; 13.1.1 Disciplinary Costs Recovery; 13.1.1.1.

⁸⁰⁹ At pt 2: By-Laws and Regulations: art 13: Conduct Restrictions and Disciplinary Action: 13.1 General Misconduct and Disciplinary Action; 13.1.5.

Any NZRCA member will be fined, suspended or both from the Association for any of the following offences: Attempting to fix, threaten, bribe, influence, or harass the Judges and Animal Welfare Officers at any time between the opening and closing dates of a rodeo, in or out of the arena, or of talking with a Judge at any time while an event is in progress. Violators of this rule shall be reported to the NZRCA Board by the Judges and Animal Welfare Officers involved or by the Arena Director or a Committee Member of the Rodeo where violation occurred.

In 2017, this rule was amended to include the possibility of a \$50 fine or reporting to the NZRCA Board.⁸¹⁰ This is a very small penalty given that it is a criminal offence under the Act to obstruct an animal welfare inspector or auxiliary officer.⁸¹¹ The maximum penalty for breaching this is three months imprisonment and/or a \$5,000 fine in the case of an individual and a fine of \$25,000 in the case of a body corporate.⁸¹²

Overall, it is of concern that the NZRCA appears to be using a largely self-regulated system of investigation and discipline, with penalties appearing to consist of fines and disqualification, to hold conduct to account that often may well constitute a breach of the Act. While the Rules appear to incorporate the Act, regulations and the Rodeo COW, there is no mention of reporting offences to the proper authorities of MPI and the RNZSPCA. There is also a notable conflict of interest that could be expected to prevent the NZRCA from reporting such misconduct; particularly given the scrutiny of rodeos in New Zealand in recent years, it is understandable that the NZRCA would wish to avoid such negative publicity, as they have an interest in being permitted to continue their activities.

4.4.2.2.3.4 Other Identified Shortcomings of the Rules

Another shortcoming of the systems of animal welfare enforcement in rodeos may be observed in the NZRCA's policy on drug usage, particularly when compared with that of the racing codes. The Declaration of the NZRCA's Position on the use of drugs in its sport is extensive and drafted as follows:⁸¹³

⁸¹⁰ "New Rules-By-Laws & Regulations Ratified 2017 AGM" – 2017 Stickys for Rule Book – Rules Ratified 2017 of *The New Zealand Rodeo Cowboys Association Incorporated Constitution and Rule Book Year 2015*: New Zealand Rodeo Cowboys Association, above n 724, at pt 2: By-Laws and Regulations: art 13: Conduct Restrictions and Disciplinary Action: 13.1 General Misconduct and Disciplinary Action; 13.1.5.6 *Amendment to rule*.

⁸¹¹ Animal Welfare Act 1999, s 159(1):

A person commits an offence who wilfully obstructs or hinders an inspector or auxiliary officer in the exercise of the inspector's or auxiliary officer's powers or in the performance of the inspector's or auxiliary officer's duties under this Act.

⁸¹² Section 159(2).

⁸¹³ New Zealand Rodeo Cowboys Association, above n 724, at pt 2: By-Laws and Regulations: 13.0.1 NZRCA Position; 13.0.1.1 Declaration.

NZRCA condemns the use of; alcohol, drugs, illegal substances, or performance enhancing substances in rodeo. The use of alcohol, drugs, illegal substances or performance enhancing substances is contrary to the ethics of sport and potentially harmful to the health and safety of competitors, works, officials, and the public, and is contrary to the spirit of sports and competition.

It is notable that this statement does not address the drugging of animals used in rodeo events, as is provided for by the Racing Codes. It also appears that NZRCA is less concerned with the health and safety of animals that may be compromised by the use of substances by competitors, as compared to the competitive advantage competitors may gain from the use of such substances. While the policies of the Racing Codes are problematic, rodeo does not incorporate any provision to prevent the drugging of animals.

In 2016, the Rules were amended from “Stock may only be culled by the Event Director and Stock Contractor in conjunction with a Member elected by the Local Committee” to “Stock may only be culled by the Event Director, Stock Contractor, Judge, Animal Welfare Officer or Veterinarian in conjunction with a Member elected by the Local Committee”.⁸¹⁴ At the same AGM, r 12.4.2 was amended from “the Veterinarian in attendance shall be sole arbiter, following an examination, of whether an animal is fit for use in an event” to “the Veterinarian or Animal Welfare shall be the arbiter, following an examination, of whether an animal is fit for use in an event”.⁸¹⁵ While these amendments may be viewed as a stricter application of obligations to end suffering under the Act, it is also unclear how the accountability arrangements operate within a wider range of empowered parties to ensure that the requirements of the Act are complied with.⁸¹⁶

In 2017, the provisions in the 2015 Rules that address the use of rowels in rodeos were amended. While they originally stated simply that no locked rowels or rowels that will lock on spurs or sharpened spurs may be used on bareback horses or saddle horses⁸¹⁷ at the 2017 AGM, this rule was amended to permit the use of partially locked

⁸¹⁴ At pt 2: By-Laws and Regulations: at 10.1.10; amended at 2016 AGM – By-Laws and Regulations Ratified at 2016 AGM.

⁸¹⁵ At pt 2: By-Laws and Regulations: at 12.4.2 amended at 2016 AGM; By-Laws and Regulations Ratified at 2016 AGM.

⁸¹⁶ For example, s 12(c) of the Animal Welfare Act 1999 provides that a person commit an offence if they are the owner or person in charge of an animal and they “kill[] the animal in such a manner that the animal suffers unreasonable or unnecessary pain or distress”.

⁸¹⁷ New Zealand Rodeo Cowboys Association, above n 724, at pt 2: By-Laws and Regulations: at 12.4.16.

rowels in Bull riding.⁸¹⁸ Rowels are small spiked wheels that may be placed on spurs.⁸¹⁹ It is also of note that this provision goes on to state that:⁸²⁰

... any abuse of this rule will leave the contestant liable to a fine and/or disqualification, at the discretion of the Event Director, after consultation with the Judges. The fine being a minimum of \$200.00.

It is concerning that the fine is significantly lower than the potential penalty under the Act: wilful ill-treatment under s 29(a) of the Act attracts a potential penalty of 12 months' imprisonment or a \$50,000 fine.

BRNZ runs bull riding competitions.⁸²¹ However, there is no publicly available information about BRNZ, and it is unclear whether they are subject to the same animal welfare enforcement mechanisms as the NZRCA and if so how compliance is monitored. A description of bull riding is given on the NZRCA website. It is described as the most dangerous event to be held at a rodeo, typically to be conducted as the final event. Like bareback and saddle Bronc riding, the rider can only hold onto the animal with one hand. Bull riders are not required to "mark out" a bull, and spurring a bull is not required but will add to the competitor's score.⁸²²

4.4.2.3 MPI: Receipt of Complaints, Conducting of Proactive Inspections, and the Limited Role of Prosecutions

4.4.2.3.1 Overview

In March 2018, then Associate Minister of Agriculture Meka Whitiri stated that MPI "continues to enforce current animal welfare requirements and investigates any complaints against rodeos".⁸²³ As detailed earlier in this paper, MPI receives animal welfare complaints from the public. In its classifying system of such complaints (also detailed earlier in this paper), it identifies rodeo complaints as an example of activity that is in compliance with a COW, but:⁸²⁴

⁸¹⁸ At New Rules By-Laws & Regulations Ratified at 2017 AGM, at 12.4.16.

⁸¹⁹ "Rowel" English Oxford Living Dictionaries <<https://en.oxforddictionaries.com/definition/rowel>>.

⁸²⁰ New Zealand Rodeo Cowboys Association, above n 724, at pt 2: By-Laws and Regulations, at 12.4.16.

⁸²¹ Hellstrom, above n 683, at Why do we need a code of welfare for rodeos? 6.

⁸²² New Zealand Rodeo Cowboys Association "Bull Riding" <www.rodeonz.co.nz>.

⁸²³ Tess Nichol "Government won't ban rodeo, animal welfare Minister says" *The New Zealand Herald* (online ed, Auckland, 1 March 2018).

⁸²⁴ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at 6.1.5.

... to a significant proportion of the general public the activity appears to be causing pain or distress to an animal; a small number of people find it difficult to accept [rodeo] complies with the Rodeo Code of Welfare ...

In 2016, MPI Compliance Inspectors conducted 15 proactive inspections within rodeos, and it is a strategic goal of MPI Compliance to increase the overall quantity of targeted proactive inspections.⁸²⁵ An unidentified MPI spokesperson stated to the *New Zealand Herald* that there have been no prosecutions for rodeo offences since 2014.⁸²⁶ This conflicts with the statement from the NZALA that MPI has not brought a single prosecution under the Act for breaches in rodeo activities.⁸²⁷ MPI has stated that prosecutions are appropriate for “serious breaches” of the Act, and it was stated that where a breach has been committed, the “most appropriate action is taken to achieve a change in behaviour”. The identified lower-end responses within the range of actions that may be taken were education and warnings. The spokesperson stated that any alleged breaches of the Rodeo COW need to be raised on the day with the Officer or the Veterinarian. They added that MPI has had a regular presence at most rodeo events for the last two years (as at February 2018) and that while there have been some minor breaches of the Rodeo COW that were dealt with through education, most rodeos were compliant with the law and the rodeo industry has been “very proactive” regarding their obligations under the Act.⁸²⁸ In 2016 MPI and NAWAC rejected a petition with 60,000 signatures asking for a ban on rodeos and stated that they were satisfied the Rodeo COW was sufficient and being complied with. However, in January 2017 MPI’s head of Animal Welfare Compliance admitted that the current COWs were difficult to enforce and cited the enactment of regulations under the Act as a response to this concern.⁸²⁹

4.4.2.3.2 *Prosecutions*

In an animal maltreatment case that was unrelated to rodeo, a different case was cited in which Judge Everitt imposed a \$10,000 fine on the Northern Rodeo Society in respect to maltreating one animal. However, the details of the offending that led to the prosecution were unclear, as is the manner in which the offending was brought to the attention of the prosecuting party.⁸³⁰ In 2002, the Kaitaia Rodeo Association was prosecuted by the RNZSPCA for ill-treating a mare used by the Association for

⁸²⁵ Email from Samantha Rickard, above n 10; and letter from Stephanie Rowe, above n 10, at 7 Proactive inspections.

⁸²⁶ Victoria White “Rodeo animals protected by welfare code - MPI” *Hawke’s Bay Today* (online ed, Hawke’s Bay, 17 February 2018).

⁸²⁷ MacLennan, above n 687, at 56.

⁸²⁸ White, above n 826.

⁸²⁹ Fleming, above n 46.

⁸³⁰ *R v Albert* DC Auckland T020314, 12 March 2003 per Judge JP Gittos at [20].

breeding horses with the result that the mare was starved over a substantial period of time and had to be put down to end her suffering. The mare was found by the Kaitaia Rodeo Association Chairman, who commenced making arrangements for her return to her owner but took no steps to call in a veterinarian or to relieve her suffering. Subsequently, a veterinarian found the mare to be suffering and put her down. RNZSPCA Inspector James Boyd brought the prosecution in the Kaitaia District Court.⁸³¹ It is, however, unclear how the offending came to the attention of the RNZSPCA, given that the rodeo industry is largely self-regulated and appears to rely on a system of internal voluntary reporting in its animal welfare enforcement, with the additional jurisdiction for the public to make complaints to MPI. It is possible that the independent veterinarian reported the incident to the RNZSPCA. Relatedly, the New Zealand Veterinary Association (NZVA) rodeo position statement reveals that the NZVA is concerned about the use of animals in events where the animal may be subjected to pain, suffering, fear or distress. Its veterinarians believe that some rodeo events may not be in the best interests of the animals' wellbeing and may fail to meet the high standards of animal welfare that are prescribed under the Act. NZVA is concerned about rodeo events that involve the use of young animals or involve forcible physical restraint of mature animals that may result in musculoskeletal injuries and pain. It believes that the continued practice of rodeo events in New Zealand and the justification for the use of animals in this way must be re-evaluated to ensure that the sentience of animals is acknowledged and that animal welfare is protected. The following (inexhaustive) points are also made by NZVA in its rodeo position statement: the NZVA strongly supports MPI investigating animal welfare complaints about rodeos, and supports measures to ensure compliance with the Rodeo COW; it recognises rodeos are contentious and that there are a range of views among the public, including a range of views amongst its own member veterinarians and it recognises that veterinarians play an essential role in continuing to oversee and ensure the welfare of animals involved in rodeo events.⁸³²

On 8 November 2018, the New Zealand Animal Law Association filed proceedings against a rodeo participant for using an electric prod on calves and cattle at a Northland rodeo. It stated that:⁸³³

This private prosecution is against an individual breaching rodeo's own rules. It is not an anti-rodeo prosecution. The investigation showed that the defendant was the only person using an electric shocker at the events. He was asked several times to stop by

⁸³¹ *SPCA v Kaitaia Rodeo Association* DC Kaitaia [file number unknown], 17 May 2002 – the details of the case were accessed from the following source: RNZSPCA “Rodeo Operators Fined \$10,000 For Ill-Treating Horse” (press release, 17 May 2002).

⁸³² New Zealand Veterinary Association, above n 45.

⁸³³ New Zealand Law Society “Animal Law Association files charges against rodeo cowboy” (8 November 2018) <lawsociety.org.nz>.

other rodeo cowboys who saw him shocking the calves unnecessarily. NZALA believes disciplinary action should have been taken by the Rodeo Cowboys Association against the defendant.

While the proceedings amount to an important step in the enforcement of animal welfare in rodeo, it highlights systemic shortcomings in that a private organisation had to take private proceedings in the public good.

4.4.2.3.3 *Examples of Rodeo Misconduct Identified by the Rodeo Report*

In October 2014, a complaint was lodged with MPI after a schoolboy was witnessed kicking a collapsed bull in the neck. MPI considered that the persons in charge of animal had failed to ensure that they met their legal obligations adequately and told the complainant that three people had been issued with warnings for breaching the Act. This included the boy, who received only a formal warning with his age being one of the reasons why MPI elected not to prosecute. It was reported that the people looking after the cattle and a palomino horse at the rodeo had failed to handle the animals in a way which minimised their exposure to unnecessary pain or distress. The son of the President of that Rodeo made the following statement:⁸³⁴

In spite of our best endeavours, we've been found guilty of breaching the welfare act. When you rely on other people and they let you down, well, there's not much you can do ... Even if we contract the animals out and the contract says we are not liable, MPI will still go after us. When you're always trying to stay above the bar and you have one hundred and sixty riders and three hundred contestants within five hours, it makes that difficult.

The Rodeo Report states that these words appear to be a tacit admission that rodeo organisers are unable to ensure compliance with the law.⁸³⁵

Another example given by the Rodeo Report is of an instance in May 2017 whereby a rodeo cowboy shown on film shocking calves with an electric prodder was given a formal warning. MPI's head of Animal Welfare Compliance, Chris Rodwell, stated that the offending was at the low end given that the man was an elderly person with no criminal history, and shocking young calves in itself was a "low level of offending". Mr Rodwell stated that "he goes on notice that he's an offender, and usually that's

⁸³⁴ Donna-Lee Biddle "Gate closes on Huntly Rodeo" (27 October 2014) Stuff <www.stuff.co.nz> as cited in MacLennan, above n 687, at 62.

⁸³⁵ MacLennan, above n 687, at 62.

enough to do what you're trying to achieve, which is for him not to do it again".⁸³⁶ This is a problematic assertion given that if the man were prosecuted under the Act, the principles and purposes of sentencing used in criminal law would be applicable. For example, while to deter the offender from committing the same offence is a purpose of sentencing or otherwise dealing with offenders under the Sentencing Act 2002,⁸³⁷ it is only one such purpose of rectifying breaches of criminal law. Other purposes include holding the offender accountable for harm done to the victim and the community by the offending;⁸³⁸ promoting in the offender a sense of responsibility for, and an acknowledgement of, that harm;⁸³⁹ providing for the interests of the victim of the offence;⁸⁴⁰ denouncing the conduct in which the offender was involved;⁸⁴¹ general deterrence (for example, deterring others from committing the same or a similar offence);⁸⁴² protecting the community from the offender⁸⁴³ and/or assisting in the offender's rehabilitation and reintegration.⁸⁴⁴ A combination of two or more of these purposes may make up the purpose for which a court may sentence or otherwise deal with an offender.⁸⁴⁵ If addressing such conduct in the manner and with the sole aim detailed above is prevailing within the rodeo industry, this is accordingly problematic as it fails to meet the range of purposes which it ought to. Furthermore, it is unclear why Mr Rodwell viewed shocking calves as low level offending, and it is in conflict with the aggravating factors of offending of the Sentencing Act 2002. One such factor is that the offence involved actual (or threatened) violence or the actual (or threatened) use of a weapon.⁸⁴⁶ Here, the offending involved actual violence as well as the actual use of a weapon. The mere threat of one of those aspects constitutes an aggravating factor in itself. Another aggravating factor is that the victim was particularly vulnerable because of their age,⁸⁴⁷ here being a young calf. Michael Laws, spokesperson for the NZRCA, stated that the man did not realise what he was doing was against the law as he believed the calves were older than 12 months and therefore of age.⁸⁴⁸ This is of questionable accuracy given that the man had been competing in rodeos for 35 years, and therefore some knowledge of the development of calves could be reasonably expected of him.⁸⁴⁹ However, whether the man was aware he was breaking the law would not be relevant to his liability if he were

⁸³⁶ Zac Fleming "Warning for rodeo cowboy caught electric shocking calves" (31 May 2017) Radio New Zealand <www.radionz.co.nz> as cited in MacLennan, above n 687, at 68.

⁸³⁷ Sentencing Act 2002, s 7(1)(f).

⁸³⁸ Section 7(1)(a).

⁸³⁹ Section 7(1)(b).

⁸⁴⁰ Section 7(1)(c).

⁸⁴¹ Section 7(1)(e).

⁸⁴² Section 7(1)(f).

⁸⁴³ Section 7(1)(g).

⁸⁴⁴ Section 7(1)(h).

⁸⁴⁵ Section 7(1)(i).

⁸⁴⁶ Section 9(1)(a).

⁸⁴⁷ Section 9(1)(g).

⁸⁴⁸ Fleming, above n 836, as cited in MacLennan, above n 687, at 68.

⁸⁴⁹ Fleming, above n 836, as cited in MacLennan, above n 687, at 68.

prosecuted for ill-treating the calves under the Act, as this is a strict liability offence.⁸⁵⁰ It is a serious concern that this is treated as absolving liability under the current system of animal welfare law enforcement within the rodeo industry.

Another example given by the Rodeo Report concerns an instance in 2015 whereby MPI's District Compliance Manager, Mike Simmons, wrote a letter to a complainant who had complained about a rodeo, stating that complaints made by several complainants had been compiled and investigated jointly. Mr Simmons stated that MPI had carried out an "in-depth" review of the material provided to identify possible breaches of the Act and the Rodeo COW. He revealed that following MPI's investigation and the subsequent peer review by a veterinarian, MPI had concluded that there may be some instances which constitute minor breaches of the Rodeos Code of Welfare. He added that the RNZSPCA (through the National Inspectors and its individuals RSPC Inspectorates) attended the Warkworth, Taupo and Waimarino (Raetihi) Rodeos and had not advised MPI of any animal welfare issues arising from those rodeos. MPI was revealed to have spoken to the NZRCA as a result of the investigation and had made a number of points about the proper treatment of animals used in rodeos.⁸⁵¹ This was an "education outcome", so described by MPI's Director Compliance in a letter to the complainant, along with a statement that "[c]ompliance will continue to work with the Rodeo Association and interested parties to ensure regulatory responsibilities are met".⁸⁵² However, no further action was to be taken in respect of the complaints made.⁸⁵³

Another complaint received by MPI in 2015 included an accompanying report from a veterinarian who had reviewed footage and provided an expert opinion on it, expressing the view that the behaviour witnessed demonstrated a lack of consideration for the welfare of animals.⁸⁵⁴ In February 2017, it was reported by Radio New Zealand (RNZ) that almost 30 complaints have been made to MPI in the past five years.⁸⁵⁵ It was reported that in a recently-completed investigation of the preceding year's rodeo season, MPI had studied 60 hours of video footage out of approximately 300 hours submitted and had concluded that some minimum

⁸⁵⁰ Animal Welfare Act 1999, ss 29(a) and 30(1). Section 29(a) states that person commits an offence if they ill-treat an animal, and s 30(1) states that "it is not necessary for the prosecution to prove that the defendant intended to commit an offence".

⁸⁵¹ Letter from M Simmons (District Compliance Manager, Ministry for Primary Industries) (30 July 2015) as cited in MacLennan, above n 687, at 62–63.

⁸⁵² Letter from D Baigent (Director Compliance, Ministry for Primary Industries) regarding "MPI Investigation into Warkworth Rodeo" (4 September 2015) as cited in MacLennan, above n 687, at 63.

⁸⁵³ Letter from M Simmons (District Compliance Manager, Ministry for Primary Industries) (30 July 2015) as cited in MacLennan, above n 687, at 63.

⁸⁵⁴ Elsa Flint "Rodeo Footage" (3 April 2015) as cited in MacLennan, above n 687, at 63.

⁸⁵⁵ Paloma Migone "No rodeo prosecution in five years of investigation" (3 February 2017) Radio New Zealand <www.radionz.co.nz/news/> as cited in MacLennan, above n 687, at 66.

standards for the treatment of animals at the events were not met.⁸⁵⁶ In the Rodeo Report, this information was responded to with the following statement:⁸⁵⁷

... it is unclear what is meant by the statement that the Ministry had 'studied' sixty hours of footage. If 'studied' means 'viewed', this would mean that only twenty per cent of the film provided had been looked at, which would be a concern.

Chris Rodwell stated that the footage had been viewed with animal welfare inspectors and a private independent veterinarian. He was quoted as saying that MPI took complaints seriously, and here a number of instances of non-compliance with the Rodeo COW had been found. However, Mr Rodwell stated that "evidential sufficiency" was required to bring a prosecution. There were no prosecutions in response to this investigation, with MPI instead electing to speak to the NZRCA and remove the requirement that calves be tied for six seconds for the Rope and Tie event.⁸⁵⁸ RNZ also reported that documents released under the OIA showed that MPI animal welfare inspectors had found breaches of the Rodeo COW, including 13 breaches at one rodeo in Outram near Dunedin in 2016. No prosecutions were undertaken, with MPI merely stating that there was "room for improvement".⁸⁵⁹

In response to a complaint made by SAFE in 2015, it was stated by the District Compliance Manager (Commercial) for Auckland that the preliminary review conducted revealed "some matters which constitute minor or technical breaches of the Rodeo Code". However, those matters should be "sensibly" dealt with by way of an "informal educational advice" to each of the specified provincial Rodeo Organisations or provided to them via the New Zealand Rodeos Association national body. This decision was made because of the position taken that "minor errors of judgment", "minor technical breaches" of the Rodeo Cow or "incidents which purely related to the quality of care, handling or control of Rodeo animals" do not in themselves constitute criminal offending.⁸⁶⁰ The writer of the Memorandum stated that, in order for MPI to successfully prosecute an owner or person in charge of any animal for having committed a criminal offence against the Act by breaching a Minimum Standard in the Rodeo Code, it must prove both a breach of the Minimum Standard *and* additionally prove the specific offence elements in the offence. Both of these are to be proven according to the criminal standard of beyond reasonable

⁸⁵⁶ Migone, above n 855, as cited in MacLennan, above n 687, at 67.

⁸⁵⁷ MacLennan, above n 687, at 67.

⁸⁵⁸ Migone, above n 855, as cited in MacLennan, above n 687, at 67.

⁸⁵⁹ Max Towle "Calf-roping at rodeos criticised by govt officials" (23 February 2017) Radio New Zealand <www.radionz.co.nz/news/> as cited in MacLennan, above n 687, at 67.

⁸⁶⁰ District Compliance Manager (Commercial) Auckland *Memorandum – SAFE Complaint – Alleged Animal Welfare Offences, Ministry for Primary Industries* (25 June 2012) at 2 as cited in MacLennan, above n 687, at 69.

doubt.⁸⁶¹ The document then went on to list eight specific matters identified as a result of the reviews carried out in response to the SAFE complaint and which MPI considered should be satisfactorily dealt with by way of education or clarification. Those matters are the following: discouraging the use of the coil or twist method of moving a bull or steer forward in a race into a chute or otherwise; clarifying the use of the up and down (alleged sawing motion) of using a loosely held rope to lift or raise the head of a bull in a chute pending release; clarifying the use of a head or other rope loosely draped and secured over the head or neck of an animal to restrict upwards lunging or climbing in a chute whilst the animal is being held in the chute pending release to prevent injury; encouraging a greater focus on an earlier rather than later chute release where initial attempts to raise, release, control or ride an animal have been unsuccessful over an extended period; requiring the removal of any noise-making equipment from front “bull ropes”; clarifying the duration of the calf-roping event and the time for release of the calf after the tie is complete (the document said that a 30 second maximum duration from the release of the calf from the chute appeared to have been adopted by rodeos as the standard event time, rather than a shorter time dependent on the expiration of the rope and tie); clarifying the relationship and judgement call release requirements imposed on a chute controller by Minimum Standard Number 4(f)⁸⁶² and providing education as to the appropriate or measured use of an electric goad in a cattle handling situation in a race which required the movement of an animal where a hands-on or other approach had failed.⁸⁶³

In October 2014, an attending club veterinarian at the annual Methven Rodeo was approached, at the time of carrying out the final examination of stock, by a member of the public. The member of the public approached the Appointed Veterinarian to inform them about a horse that had sustained an injury to the left side of their neck. On examining the horse, the Appointed Veterinarian found two skin penetrations consistent with spur marks. The Appointed Veterinarian asked to speak to the Officer for the day and to another person but was informed that both had left the grounds. Despite being requested to attend the chutes, another person involved in the rodeo had also left. The following day, the Appointed Veterinarian contacted an unnamed person to voice concern at the injury to the horse and the manner in which the horse had been dealt with, particularly the delay in seeking treatment. The Appointed Veterinarian was also informed that a horse ridden at the Winchester rodeo on the previous day had also been marked, and that had resulted in the rowel used by an

⁸⁶¹ District Compliance Manager (Commercial) Auckland, above n 860, at 4 as cited in MacLennan, above n 687, at 70.

⁸⁶² Code of Welfare: Rodeos, Minimum Standard No 4 – Handling, para (f):

Any animal that becomes excessively excited, goes down in a chute, or attempts to jump out of the chute in a manner that may cause it to injure itself must be released.

⁸⁶³ District Compliance Manager (Commercial) Auckland, above n 860, at 5 as cited in MacLennan, above n 687, at 70.

unnamed person being examined before he competed. The Appointed Veterinarian stated that discussions had then been held with the veterinarian appointed the Winchester rodeo. That veterinarian initially told the Appointed Veterinarian that no horse had been marked or injured in any way. However, it was indicated on further investigation that a horse had been injured or marked, but no veterinary treatment had been sought. The Appointed Veterinarian made the following statement:⁸⁶⁴

... this action in itself is a very serious matter. In addition, I was extremely disappointed at not being called to the injured horse at the Methven rodeo immediately. To find that this behaviour had also been carried out the previous day at Winchester, is a serious indictment with regard to the level of compliance shown to the Welfare Code. That Rodeo is allowed to continue in New Zealand is about the perception that a rigorous Code of Welfare exists and that this Code is closely adhered to or exceeded by those undertaking this Competitive Sport. The participation of Animals [sic] used in this way is a privilege extended to Rodeo by the wider Society [sic] ... Mere lip service to the Animal Welfare Code is totally unacceptable. In the case of the Methven Rodeo a unique opportunity to show Rodeo in a positive light was lost through inaction. Given the circumstances of that Rodeo being under the magnifying lens that day, I cannot but shake my head in disbelief that so much that was positive about the day could be overshadowed by inaction.

It is problematic that the reporting of breaches falls onto the public, and it is also problematic that even where such breaches are brought to the attention of veterinarians or other attending staff, there are demonstrable instances of inaction, even if it is unknown how common such inaction is.

Following the euthanasia of two animals at rodeo events in January 2016, a petition that called for the House of Representatives to ban rodeos was presented to Parliament and considered by the Primary Production Committee (PPC),⁸⁶⁵ which produced a report in response to its deliberations (the PPC Report).⁸⁶⁶ The PPC invited MPI and NAWAC to respond to the petition. MPI stated that its inspectors had visited 12 rodeos and the SPCA had inspected 13, with a degree of overlap. The PPC Report made the following statement:⁸⁶⁷

The general consensus is that compliance under the code was sufficient. However, two incidents involved the euthanasia of two animals. Both incidents were investigated for

⁸⁶⁴ Club Veterinarian – Additional certification to the Official NZRCA Veterinary Report, 25 November 2014 at 2 as cited in MacLennan, above n 687, at 70–71.

⁸⁶⁵ Shanti Ahluwalia and 62,940 others “Petition of behalf of SAFE, SPCA and Farmwatch” (30 March 2016) New Zealand Parliament <www.parliament.nz> as cited in MacLennan, above n 687, at 64.

⁸⁶⁶ Primary Production Committee, above n 688, as cited in MacLennan, above n 687, at 64.

⁸⁶⁷ Primary Production Committee, above n 688, as cited in MacLennan, above n 687, at 64.

compliance issues under the code, and no breach was found. The ministry [sic] also works with the New Zealand Rodeo Cowboys Association in an information-sharing capacity to ensure that the association understands the code ... the ministry and NAWAC believe that, currently, compliance with the animal welfare code under the Act is good and improving.

The PPC Report notably added:⁸⁶⁸

... we wish to encourage the Rodeo Association to work more closely with the ministry and NAWAC and to continue to work towards increasing compliance with the animal welfare code by self-monitoring both sanctioned and non-sanctioned rodeo events.

This is notable, as it reveals the existence, the prevalence of which is unknown, of “non-sanctioned” rodeo events. It is unclear exactly what these entail and how, if at all, they are monitored for animal welfare law compliance. Overall, the emphasis upon self-monitoring rather than independent monitoring is also problematic.

4.4.2.4 The Role of Activists and Covert Filming in Monitoring Animal Welfare at Rodeos

4.4.2.4.1 Overview

In our oversight of animal welfare law compliance in the production spheres, we have stated that MPI had conducted investigations into a pig farm in response to footage obtained by Farmwatch. We have also noted the role of undercover investigations in bringing puppy mills to light. Similarly, in January 2017, MPI conducted investigations into an alleged breach of the Rodeo COW at a Northland rodeo after footage of calves being electric shocked was filmed by a member of Anti Rodeo Action New Zealand (ARANZ),⁸⁶⁹ an animal advocacy group.⁸⁷⁰ The NZRCA President denied that the electric prod was used on calves at the rodeo. Other footage obtained by Anti Rodeo Action included the following: a calf being violently somersaulted during a roping tournament, a calf limping after being ridden, a horse’s mane being yanked to stop it bucking and a cow crawling on their knees trying to escape being ridden.⁸⁷¹ As in other areas of animal welfare law compliance oversight, the role of activism in monitoring rodeo events has revealed itself to be an important one, indicative of a larger systemic problem of a lack of effective oversight and ensuing accountability.

⁸⁶⁸ Primary Production Committee, above n 688, as cited in MacLennan, above n 687, at 64.

⁸⁶⁹ Fleming, above n 829.

⁸⁷⁰ Anti Rodeo Action “Report on the legality of rodeo in New Zealand” (press release, 22 March 2018).

⁸⁷¹ Fleming, above n 829.

The NZRCA Rules appear to strictly regulate the recording of rodeo events. The use of “video tapes, movies, etc” is banned in the use of judging NZRCA approved rodeos.⁸⁷² If an Associate Member Club or Affiliated Member Club wishes to allow the filming, videoing, taping or broadcasting in any form of any rodeo or part of any rodeo, it must first obtain the written consent of the NZRCA Board 30 “clear” days before the rodeo in question is due to take place. If this is breached, the offending Associate Member Club or Affiliated Member Club may be dealt with pursuant to art 13, which is detailed above. Such consent is not required by “legitimate radio television news coverage”, and “non-commercial” videoing is “exempt” (presumably from the preceding disciplinary provision).⁸⁷³ However, as noted in the Rodeo Report, it is primarily as a result of covert filming and subsequent widespread publicity about the treatment of animals at rodeos that there appears to have been a significant change in public attitudes to rodeo in New Zealand over the past five years.⁸⁷⁴ This covert filming is undertaken by the New Zealand Anti-Rodeo Coalition (NZARC) and, as noted above, by ARANZ. The footage is then viewed and shared widely. One such example is that of a television news story based on one group’s filming at a rodeo which had 455,838 views at the time the Rodeo Report was published in March 2018.⁸⁷⁵ In February 2017, Radio New Zealand broadcast a detailed *Insight* investigation into rodeos that was titled *Rodeos – Should They Stay or Go?* It reported that SAFE and ARANZ had released videos of rodeos throughout New Zealand and said that calves and other animals in rodeo were placed under stress.⁸⁷⁶

4.4.2.4.2 *The New Zealand Anti-Rodeo Coalition*

The NZARC is a group that maintains a page on the website Facebook.⁸⁷⁷ It formed in 2015; the “Anti Rodeo movement” became particularly prominent, and unprecedented media coverage ensued. NZARC has had its items featured on *TVNZ 1*, *TVNZ 2*, *Newshub*, *Checkpoint*, *Radio Live* and newspaper items, and its videos have been viewed internationally with many going viral.⁸⁷⁸ It claims that its involvement with MPI and the RNZSPCA has resulted in higher levels of rodeo

⁸⁷² New Zealand Rodeo Cowboys Association, above n 724, at pt 2: By-Laws and Regulations at 7.13 Timekeeping: 7.13.3.

⁸⁷³ At pt 2: By-Laws and Regulations at Article 16: Sponsorship, Rights, Remedies; 16.2.

⁸⁷⁴ MacLennan, above n 687, at 7. Executive Summary.

⁸⁷⁵ At 28. Public Attitudes to Rodeo in New Zealand.

⁸⁷⁶ Paloma Migone “Rodeos – Should They Stay or Go?” (5 February 2017) Radio New Zealand <www.radionz.co.nz> as cited in MacLennan, above n 687, at 29. Public Attitudes to Rodeo in New Zealand.

⁸⁷⁷ It is cited as such in MacLennan, above n 687, at 28. Public Attitudes to Rodeo in New Zealand; New Zealand Anti-Rodeo Coalition “Home” Facebook <www.facebook.com/NZAntiRodeoCoalition/>.

⁸⁷⁸ New Zealand Anti-Rodeo Coalition “Public Statement: Rodeo is a Dead Cowboy Walking” (14 December 2017) Facebook <www.facebook.com/NZAntiRodeoCoalition>.

scrutiny and that its involvement in Parliament has resulted in “a quantum shift” which has led to a significantly diminished number of rodeo attendances and an increase in entrance fees for competitors.⁸⁷⁹ Members of the NZARC include farmers, former farmers, engineers, company directors, veterinarians, lawyers and scientists.⁸⁸⁰ In a public statement published in December 2017, NZARC claimed:⁸⁸¹

NZARC has had a profound effect on NZ rodeo. Our videos have reached hundreds of thousands if not millions of people. In what has been a clear admission of wrong doing NZ cowboys have now enforced camera bans at rodeos to stem the damage from our videos.

It added that it has recorded many breaches of the Act and the Rodeo COW and that its videos have resulted in members of the NZRCA receiving formal warnings from MPI.⁸⁸²

4.4.2.4.3 *Anti Rodeo Action New Zealand*

The ARANZ is also a group that maintains a page on Facebook⁸⁸³ and was formed in 2015.⁸⁸⁴ Its members began investigating rodeos in 2012 and exposing findings to the public in 2013. Since then, it has laid complaints that have initiated investigations by the MPI in 2014, 2015, 2016 and 2017.⁸⁸⁵ Its purpose is “working towards ending rodeo in NZ by investigating and exposing the brutality and abuse of rodeo animals”.⁸⁸⁶ Like Farmwatch and SAFE, it seeks donations to fund investigations.⁸⁸⁷ Its team of volunteers are “all members of the public” and include a retired nurse, a former dairy farmer, veterinarians, a prosecutor, media staff, office manager, students and a psychotherapist.⁸⁸⁸ ARANZ describes one of its successes as the “vastly increased” involvement in rodeo from MPI, which has put huge pressure on clubs to comply with the Rodeo COW and has resulted in “many meetings and paper work”. ARANZ states that this has resulted in some improvements for animals, such as fewer

⁸⁷⁹ New Zealand Anti-Rodeo Coalition, above n 878.

⁸⁸⁰ New Zealand Anti-Rodeo Coalition, above n 878.

⁸⁸¹ New Zealand Anti-Rodeo Coalition, above n 878.

⁸⁸² New Zealand Anti-Rodeo Coalition, above n 878.

⁸⁸³ Anti Rodeo Action NZ “Home” Facebook <www.facebook.com/AntiRodeoActionNZ/>.

⁸⁸⁴ “Anti Rodeo Action NZ (ARANZ)” Give a Little <<https://givealittle.co.nz/cause/antirodeoactionnz>>.

⁸⁸⁵ “Anti Rodeo Action NZ (ARANZ)” Give a Little <<https://givealittle.co.nz/cause/antirodeoactionnz>>.

⁸⁸⁶ Anti Rodeo Action NZ “About” Facebook <www.facebook.com/AntiRodeoActionNZ/>.

⁸⁸⁷ Anti Rodeo Action NZ “About” Facebook <www.facebook.com/AntiRodeoActionNZ/>.

⁸⁸⁸ Anti Rodeo Action NZ “Our Story” (13 January 2018) Facebook <www.facebook.com/AntiRodeoActionNZ/>.

having their tails twisted, fewer receiving punches or slaps to the head or body and fewer receiving electric shocks in the chutes.⁸⁸⁹

4.4.3 Enforcement of the Animal Welfare Act 1999 in the Racing Industries

4.4.3.1 The structure of industry regulation

In New Zealand, the commercial racing of animals for entertainment and betting falls into the following three codes: thoroughbred horse racing (New Zealand Thoroughbred Racing – NZTR) the harness racing of horses (Harness Racing New Zealand – HRNZ) and greyhound racing (Racing New Zealand – GRNZ) (the Codes).⁸⁹⁰

The Codes are primarily regulated by the Racing Act 2003, of which animal welfare does not appear in the purpose section. The purposes of the Racing Act are listed as follows: to provide effective governance arrangements for the racing industry; to facilitate betting on (thoroughbred) galloping, harness and greyhound races and other sporting events; and under the Racing Act primarily perform a role ensuring compliance with the rules of licensing and betting, rather than the laws of animal welfare protection.⁸⁹¹

4.4.3.2 The New Zealand Racing Board

The New Zealand Racing Board (NZRB) governs the Codes in accordance with the Racing Act. The NZRB is empowered with overall responsibility under the legislation to administer the industry⁸⁹² and liaises between the Minister for Racing and the three racing codes. It approves annual statements of intent and business plans within the industry.⁸⁹³ In theory, a clear separation of powers is established between the agencies responsible for rule making (the Codes), policing (the Racing Integrity Unit) and the judiciary for integrity issues (the Judicial Control Authority of Racing).⁸⁹⁴

4.4.3.3 The Racing Integrity Unit

⁸⁸⁹ Anti Rodeo Action NZ “Our Story” (13 January 2018) Facebook

<www.facebook.com/AntiRodeoActionNZ/>.

⁸⁹⁰ Rick Quirk “Racing Integrity Unit – News” (11 February 2018) Racing Integrity Unit

<www.riu.org.nz/announcements>.

⁸⁹¹ Racing Act 2003, ss 47–49.

⁸⁹² *Harness Racing New Zealand Annual Report 2015–2016* (2016) at 16. Governance Statement: Governance; Harness Racing NZ Inc; Overview.

⁸⁹³ Hellstrom, above n 50, at Background, 1.

⁸⁹⁴ Bill Colgan, Craig Neil and Les Foy *New Zealand Greyhound Racing Association: Independent Welfare Review* (WHK, 25 June 2013) at 7.

The Racing Integrity Unit (RIU) is a self-described independent organisation that is charged with managing the integrity of the three New Zealand racing codes by investigating and prosecuting breaches of the Rules of Racing maintained by each code. It has been in operation since February 2011 and comprises the Stipendiary Steward and Racecourse Investigator functions for each New Zealand racing code.⁸⁹⁵ For example, the RIU monitors greyhound racing by undertaking kennel inspections, drug testing, race day attendance and performing investigations.⁸⁹⁶ It also controls race day swabbing procedures, processes and staffing as well as the contracting of race day veterinary services.⁸⁹⁷ The RIU boasts an anonymous hotline for reporting of integrity issues.⁸⁹⁸ In its 2011–2012 annual report, it claimed to have worked closely establishing relationships with government agencies (MPI and the New Zealand Police) as well as overseas integrity organizations.⁸⁹⁹ While the RIU has a separate constitution and Board, each of the Codes and the NZRB have a 25 per cent shareholding in the RIU,⁹⁰⁰ and accordingly it is entirely funded by the New Zealand Racing Industry.⁹⁰¹ An Integrity Services Agreement exists between the racing codes and the RIU.⁹⁰²

The RIU publishes regular updates of racing news on its website. Such news includes updates on the condition of horses and dogs that have been injured during racing or other actions such as alleged and investigated breaches of the applicable rules.⁹⁰³ This webpage indicates that in certain cases, veterinary clearance of the animal's condition is required by the RIU, indicated by the example listing: *Rube Bridges – Waikato, 6 February; cardiac arrhythmia; veterinary clearance required.*⁹⁰⁴

Requiring veterinary attention in such cases provides an element of animal welfare protection and other cases reported by the RIU are also linked to animal welfare protection, for example the imposition of fines for excessive use of a whip,⁹⁰⁵ which is a breach of the NZTR Rules.⁹⁰⁶ Overall, however, the RIU is primarily concerned

⁸⁹⁵ Racing Integrity Unit “Welcome to the Racing Integrity Unit” <www.riu.org.nz>.

⁸⁹⁶ Sophie Lowery “NZ Greyhounds Not Mistreated Like Banned NSW Industry” (7 July 2016) NewsHub <www.newshub.co.nz>.

⁸⁹⁷ Racing Integrity Unit “About Us” <www.riu.org.nz>.

⁸⁹⁸ Racing Integrity Unit “Contact Us” <www.riu.org.nz>.

⁸⁹⁹ Karin Attwood “The NZ Racing Integrity Unit’s annual report” (16 November 2012) HarnessLink <www.harnesslink.com/news/>.

⁹⁰⁰ Racing Integrity Unit, above n 897.

⁹⁰¹ Colgan, Neil and Foy, above n 894, at 7–8.

⁹⁰² At 8.

⁹⁰³ Quirk, above n 890.

⁹⁰⁴ Quirk, above n 890.

⁹⁰⁵ Rick Quirk “News in Brief – 14 August 2017” (12 August 2017) Racing Integrity Unit <www.riu.org.nz/announcements/>.

⁹⁰⁶ New Zealand Thoroughbred Racing Incorporated Amended Rules of Racing, r 638(3) provides:
A Rider shall not:

...

- (b) strike a horse with a whip in a manner or to an extent which is
 - (i) unnecessary

with upholding the rules of racing such as correct racing attire⁹⁰⁷ and failing to scratch thereby undermining the integrity of the betting provisions.⁹⁰⁸ A thorough examination of the rules used by each of the Codes reveals that very few of them address animal welfare protection. Furthermore, the example of David Scott (GRNZ Board Member and greyhound owner) indicates how the provisions operate in practice. When Scott asked a trainer to drug a dog, he was charged not with offending against the Animal Welfare Act 1999 but with corrupt/improper conduct and with obtaining a prohibited substance, with a third charge of threatening the trainer being withdrawn.⁹⁰⁹

4.4.3.4 The Contracting by the RIU of New Zealand Racing Laboratory Services Limited

The RIU contracts New Zealand Racing Laboratory Services Ltd (NZRLS) to test horses for TC02, which is the total carbon dioxide level found when equine plasma is tested. This test is administered to detect the administration of alkalinizing agents to horses, as sodium bicarbonate and other alkalinizing agents have been administered to horses with the goal of buffering the decrease in pH or acidosis that occurs with high-intensity exercise. Increased levels of TCO2 affect the pH level of blood, turning it more acidic. This can lead to faltering functions of the heart, damage to the central nervous system and temporary or permanent nerve damage. Therefore, HRNZ and NZTR have prescribed limits for the TC02 levels.⁹¹⁰

The Rules of Greyhound Racing require all animals to be presented drug free for racing. The RIU is responsible for the enforcement of a drug free regime for racing animals, and the judicial process followed for any positive tests must be independent of the NZGRA Board. The prescribed testing process involves the swabbing of urine samples by veterinarians that follow nationally agreed protocols and the anonymous testing of the urine by NZRLS. NZRLS is subject to and passes annual proficiency tests and successfully participates in negative sample reanalysis with peer laboratories overseas. It also holds an International Accreditation New Zealand (IANZ) accreditation (ISO: 17025).⁹¹¹

4.4.3.5 The Judicial Control Authority for Racing

(ii) or excessive
(iii) or improper

This rule was amended on 1 May 2015.

⁹⁰⁷ Quirk, above n 905.

⁹⁰⁸ Quirk, above n 905.

⁹⁰⁹ Liam Hyslop “Greyhound Racing NZ board member David Scott asked trainer to drug dog” (18 April 2016) Stuff <www.stuff.co.nz>.

⁹¹⁰ Racing Integrity Unit “TC02 Results” <www.riu.org.nz>.

⁹¹¹ Colgan, Neil and Foy, above n 894, at 10–11.

The Judicial Control Authority for Racing (JCA) is a self-declaredly independent statutory public authority constituted under the Racing Act. Its self-stated function is to ensure that judicial and appeal proceedings in thoroughbred, harness and greyhound racing are heard and decided fairly, professionally, efficiently and in a consistent and cost effective manner. The JCA does not play any role in the investigation and prosecution of breaches of the Rules of Racing. Those tasks are undertaken by the Racing Integrity Unit.⁹¹² The JCA operates and decides the outcome, including penalties, if applicable, of Raceday Judicial Hearings of alleged breaches of the Rules.⁹¹³ However, as noted above, few of the rules for each Code are at all concerned with animal welfare. The JCA receives its funding by the NZRB and, indirectly, the Codes. However, the JCA claims to be an operationally independent statutory body which maintains an appropriate level of separation from the industry. The role of the NZRB and the Codes, and their interface with the JCA, is governed by the Racing Act.⁹¹⁴

The functions of the JCA are as follows: to initiate, develop and recommend to the NZRB and the Boards of each Code measures that the JCA considers will be conducive to the efficient judicial control of racing in New Zealand; to select and appoint panels of suitable persons from which members of a judicial committee or members of an Appeals Tribunal may be appointed; to appoint the members of judicial committees; to appoint the members of Appeals Tribunals and to recommend to a racing Code any changes to the Code's racing rules that the JCA considers desirable in relation to matters of a judicial nature.⁹¹⁵ The JCA runs the following: Non Raceday Inquiry (NRI) hearings, Raceday Steward Rulings and Minor Infringement Notices (MINs).⁹¹⁶

The JCA meets every six weeks and retains an Audit and Risk Management Committee, which meets immediately prior to each Authority meeting and provides its reports and papers to all JCA members. Ad hoc committees are also established to review decisions and liaise with regional representatives of the panellists. The JCA reports on an annual basis to the Minister of Racing and the NZRB.⁹¹⁷ During the 2014–2015 financial year, the first Statement of Service Performance reporting (“SSP”) for the JCA was conducted: a modern performance tool intended to promote good reporting practices by not-for-profit organisations by the identification of performance measures and formal reporting against those measures.⁹¹⁸ However,

⁹¹² Judicial Control Authority for Racing “Welcome” <www.jca.org.nz>.

⁹¹³ Judicial Control Authority for Racing “JCA Judicial System” <www.jca.org.nz>.

⁹¹⁴ *Judicial Control Authority for Racing Annual Report 2015* (2 September 2016).

⁹¹⁵ At 19.

⁹¹⁶ At 6.

⁹¹⁷ At 19.

⁹¹⁸ At 2.

SSPs operate on a basis of self-reporting,⁹¹⁹ and there is no evidence of an independent review of the JCA's operations having been conducted.

In May 2018, it was reported that a dog was found to have traces of methamphetamine and amphetamine in their system after winning a race, and that the owner of the dog was given a two year ban and would hand ownership of his 40 dogs to his wife,⁹²⁰ of whom he had 40.⁹²¹ It also ordered that the \$1,322 winnings of the race be repaid and that costs of \$1,035 to be paid.⁹²² The owner, Denis Schofield, was described as a "leading greyhound trainer" and considered he had been "discriminated" against given that his son had had his Dog Handler's License revoked and thought that the two year ban was excessive, immediately appealing the decision despite the fact that the RIU had sought a tougher penalty in order to deter other trainers. Veterinarian Megan Alderson stated that the effects of the methamphetamine and amphetamine may cause the dog to suffer renal failure.⁹²³ In humans, methamphetamine can also cause blurred vision, chest discomfort or pain, difficulty breathing, fever, headache, muscular pain and spasms and unusual weakness.⁹²⁴ Given the physical effects of methamphetamine, if the dog suffered renal failure amounting to permanent or prolonged loss of a bodily function that required treatment under the supervision of a veterinarian, administering methamphetamine to a dog would make one liable for wilful ill-treatment of an animal.⁹²⁵

4.4.3.6 The Enforcement of the Act in Greyhound Racing

4.4.3.6.1 *The Role of MPI and the RNZSPCA*

In 2013, MPI advised NAWAC that it had received no complaints other than general concerns raised by Aaron Cross of the Greyhound Protection League, which did not provide the basis for investigation. MPI had not carried out any monitoring of compliance with the greyhound racing industry, as they regarded it as a low priority. The RNZSPCA advised NAWAC that it had not had any prosecutions "in recent times" in relation to Greyhounds, although it had investigated complaints, at least one of

⁹¹⁹ Julia Fletcher "What is a Statement of Service Performance (SSP)?" (10 August 2016) Charities Services <www.charities.govt.nz>.

⁹²⁰ Gareth Hughes "Greyhound on meth a wakeup call for racing industry" (2 May 2018) Green Party of Aotearoa New Zealand <www.greens.org.nz>.

⁹²¹ Stephen Stuart "Veteran trainer appeals two-year ban after winning greyhound found with traces of P in its system (watch end of race)" (2 May 2018) One News <www.tvnz.co.nz/one-news/>.

⁹²² Radio New Zealand "Greyhound meth scandal: 'simply shocking'" (2 May 2018) <www.radionz.co.nz/news/>.

⁹²³ One News "Leading greyhound trainer disqualified after dog's positive methamphetamine test" (Podcast, 2 May 2018) <www.tvnz.co.nz/one-news/>.

⁹²⁴ Drugs.com "Methamphetamine Side Effects" (7 June 2018) <www.drugs.com/sfx/>.

⁹²⁵ Animal Welfare Act 1999, s 28.

which industry were helpful in resolving.⁹²⁶ In September 2017, the RNZSPCA was conducting an animal welfare based investigation into GRNZ, which the RIU was providing support with and which GRNZ stated it had provided “full support” in relation to. GRNZ stated:⁹²⁷

... once the SPCA [sic] investigation is complete and any action taken by the SPCA implemented, the RIU will then be in a position to investigate whether there has been a breach of the Rules of Racing for greyhound racing, and advise GRNZ of any action that should be taken.

It appears therefore that investigation and enforcement of the Act, the Animal Welfare (Dogs) Code of Welfare 2010 and the Rules of Racing operate in tandem. However, intervention by the RNZSPCA or other external governing bodies is subject to those issues being reported as MPI does not appear to carry out monitoring or compliance beyond responding to complaints which provide the basis for investigation.

4.4.3.6.2 *Internal Actors*

4.4.3.6.2.1 *The New Zealand Greyhound Racing Association*

The New Zealand Greyhound Racing Association administers the Rules of Racing for greyhound racing and also issues and implements a number of regulations and policies.⁹²⁸ The New Zealand Greyhound Racing Association (NZGRA) is an incorporated society consisting of the 10 registered member greyhound racing clubs in New Zealand. It was established to promote and advance greyhound racing, registration, breeding, safety and welfare in New Zealand and to formulate and administer rules and regulations that govern these aspects. The NZGRA Board is responsible for setting the strategic direction of NZGRA in accordance with its self-proclaimed ultimate responsibility being to promote and advance greyhound racing, registration, breeding, safety and welfare in New Zealand.⁹²⁹ It is of note that welfare is listed last. All individuals training greyhounds in New Zealand must be registered as a member of NZGRA and must be a licensed person.⁹³⁰

⁹²⁶ Letter from John Hellström (Chairperson, National Animal Welfare Advisory Committee) to Ruth Dyson (Chairperson, Government Administration Committee) cc Nathan Guy (Minister for Primary Industries) regarding “Petition 2011/49 of Aaron Cross on behalf of the Greyhound Protection League of New Zealand” (2 May 2013).

⁹²⁷ Greyhound Racing New Zealand “Investigation Update” (28 September 2017) <www.grnz.co.nz>.

⁹²⁸ Hellstrom, above n 50, at 1.

⁹²⁹ Colgan, Neil and Foy, above n 894, at 7.

⁹³⁰ Hellstrom, above n 50, at 1.

4.4.3.6.2.2 *Greyhound Racing New Zealand*

Greyhound Racing New Zealand (GRNZ) is responsible for the effective conduct of greyhound races or “race meetings”.⁹³¹ Since 2012, an Animal Welfare Committee has existed, which retains the responsibility of ensuring that “all greyhounds in New Zealand are protected and promoted by the adoption and development of sound animal welfare standards and practices”. This Committee reviews matters relating to animal welfare across all aspects of the industry and meets on a quarterly basis.⁹³²

4.4.3.6.2.3 *The Role of the RIU in Greyhound Racing*

According to NAWAC, the RIU performs kennel and racing facility inspections over a revolving two year cycle and measures these against “specific codes” (while these are not specified it is likely to refer to the Animal Welfare (Dogs) Code of Welfare) and the Animal Welfare Act 1999. Larger-scale trainers and “risk kennels” where an issue has been reported are inspected more regularly. The RIU does not complete a full audit against every detail of the code each time, instead performing inspections of licensing, facility checks and specific items of interest. However, any points of concern trigger a complete audit. A key focus has been to look for signs of live baiting, of which no issues have been raised to date. While no formal agreements with the RNZSPCA and RIU have been established, the parties hold a verbal understanding that they will work together and share information where appropriate.⁹³³ RIU Stipendiary Stewards operate “to maintain and ensure the integrity of the sport”, and “winners, beaten favourites, and runners” of racing greyhounds are selected at random to be tested. Over 2014–2015, 3,116 greyhounds were tested, of which 17 returned positive results for various substances.⁹³⁴

The RIU reports on all injury data at every greyhound meeting and inputs this data into the NZGRA database. Information is collated on the following matters: the position of the box, the age of the dog, the area that the injury happened, the distance involved, the race number in the race card, the track surface readings, the type of injury, the affected area on the body and the outcomes. Information is collected by individual animal and by specific track. NAWAC has been informed that the NZGRA has been collecting self-reported training injury data (both minor and severe) from all trainers since 2014 and that it can now separate pre-race injury or “stand-downs” out by a report; if a Veterinarian elects to stand down a dog that would be bringing an injury to the track, the day is “scratched” and recorded as such. NAWAC has stated that it is content that the correct data is now being collected on track. However, it

⁹³¹ Colgan, Neil and Foy, above n 894, at 7–8.

⁹³² At 7–8.

⁹³³ Hellstrom, at 6.

⁹³⁴ *Greyhound Racing New Zealand Annual Report 2015* (2015) at 13.

notes that post-race injury reporting from trainers is still voluntary. This is problematic as the injury rates of greyhounds in races cannot be viewed as reliably reported and known if it is not mandatory for trainers to report them, especially given that it may reflect poorly upon them if they admit an animal under their dominion was injured. The NZGRA has reported to NAWAC that the monitoring of aversive training techniques has been very informal to date. Injury data by trainer is used as the indicator; if the NZGRA suspects that there might be an issue in the trainer's training methods that is leading to a high instance of greyhound injury, the NZGRA sends a veterinarian to that trainer's facility in order to observe their methods. As at August 2016, that method had been utilised once, and the trainer was not found by the veterinarian to be of fault.⁹³⁵

4.4.3.6.3 *Governing Instruments of the Greyhound Racing Code*

4.4.3.6.3.1 *The Racing Act and the Rules of Racing*

The NZGRA is governed by the Racing Act and the Rules of Racing. The Rules of Racing are determined by the clubs and are subject to annual amendment at the Annual General Meeting. The Rules cover the constitutional rules of the NZGRA and its clubs, regulations for the conduct of greyhound race meetings and breeding regulations.⁹³⁶ The NZGRA's Rules and Constitution, effective as of 1 February 2016,⁹³⁷ are binding upon the following parties: clubs and their committees; their officers, officials and employees; any person required to be licensed or registered with the Association under the Rules; Association officers, Stewards, Officials, all Judicial Committees and Appeals Tribunals and every person who so acts to bring themselves within the scope of the Rules.⁹³⁸ Notably, those to whom the Rules apply are to first have recourse under the Rules and may not seek any other remedies available to them in law in regard to anything addressed by the Rules until they have first exhausted all remedies provided for in the Rules.⁹³⁹ GRNZ is also governed by the Rules of Racing, which are determined by the Rules of Racing Committee and approved by JCA, RIU and NZRB in accordance with the GRNZ Constitution and the Racing Act 2003 and are then authorised by the GRNZ Board. These Rules are then administered by the NZGRA through its Chief Executive, Racing Department and the RIU. To complement the Rules, GRNZ also issues and implements regulations and policies.⁹⁴⁰

⁹³⁵ Hellstrom, above n 50, at 6–7.

⁹³⁶ Colgan, Neil and Foy, above n 894, at 2.1.3.

⁹³⁷ Rules and Constitution of New Zealand Greyhound Racing Association (Incorporated), r 5.1.

⁹³⁸ Rule 6. Application.

⁹³⁹ Rule 7. First to Have Recourse Under These Rules.

⁹⁴⁰ Greyhound Racing New Zealand "Rules and Policies" (23 June 2017) <www.grnz.co.nz>.

Similarly to MPI and the RNZSPCA, GRNZ also runs a system of partially reporting-style enforcement in providing forms on its website for people to make animal welfare complaints to the Animal Welfare Manager.⁹⁴¹ Of the stated purposes of the NZGRA, those that relate to animal welfare are as follows:

- to promote and advance greyhound racing, registration, breeding, safety and welfare in New Zealand;⁹⁴²
- instigating research into greyhound safety and welfare (including diseases and/or illnesses of greyhounds) or other matters affecting greyhound racing or breeding;⁹⁴³ and
- co-operating with other organisations, whether inside or outside New Zealand, that are concerned with greyhound racing, registration or breeding or the objects of which are in whole or in part similar to those of the Association.⁹⁴⁴

The Board may amend or revoke the Rules or Regulations of greyhound racing by unanimous resolution once it has notified every club, the JCA, the Integrity Services Provider and the NZRB of the proposed amendment or revocation.⁹⁴⁵ Under the Rules, the Board has the “Overall Power” to be responsible for managing the business and affairs of all aspects of the greyhound racing and breeding industry in New Zealand in accordance with these Rules.⁹⁴⁶ It has the following “General Powers”:⁹⁴⁷ to control, in accordance with these Rules, all greyhound racing conducted in New Zealand; to ensure that all the requirements of these Rules are duly observed by all persons and bodies to whom they apply; to suspend, deregister, disqualify or give a warning as it deems necessary in the best interests of greyhound racing or its related activities in New Zealand;⁹⁴⁸ to hold or direct any person to hold any inquiry or investigation into any matter affecting the management or good governance of greyhound racing; to require any club, licensed person or other person or body to whom the Rules apply to produce any books, papers or documents for inspection (including for the purposes of any investigation); to promulgate, implement and uphold a Code of Practice relating to the safety and welfare of greyhounds and to employ or engage the services of such personnel and pay such salaries or wages as it determines.⁹⁴⁹

⁹⁴¹ Greyhound Racing New Zealand *Welfare Complaint Form*, accessed from Greyhound Racing New Zealand “Documents” <www.grnz.co.nz>.

⁹⁴² Greyhound Racing New Zealand, above n 937, r 2.1(a).

⁹⁴³ Rule 2.1(a)(i).

⁹⁴⁴ Rule 2.1(a)(iii).

⁹⁴⁵ Rule 8. Amendments to These Rules or Regulations.

⁹⁴⁶ Rule 21. Powers and Duties of the Board; 21.1 Overall Power.

⁹⁴⁷ Rule 21. Powers and Duties of the Board; 21.2 General Powers.

⁹⁴⁸ Subject to rr 91–97, which address the following matters: Filing of Informations; Rules of Practice and Procedure for the Judicial Committee and Appeals Tribunal; Appeals; Time for Filing of Appeal; Transmission of Notice of Appeal to a Steward; Setting Down Appeal for Hearing; Procedure on Appeal; Powers of Appeals Tribunal on Appeal.

⁹⁴⁹ Greyhound Racing New Zealand, above n 937, r 21. Powers and Duties of the Board.

The Board has the following specific powers and duties⁹⁵⁰ to appoint a chief executive, Stewards,⁹⁵¹ Assistant Stewards⁹⁵² and Racecourse Investigators; to adopt clearly defined delegations of authority from the Board to the Chief Executive or to any other person the Board deems appropriate; and to make, alter or rescind regulations that are inconsistent with the Rules.⁹⁵³ Such regulations may apply to a number of matters, however do not seem to concern the welfare of greyhounds.

4.4.3.6.3.2 *Animal Welfare Enforcement under the Rules and Constitution of the NZGRA*

Under the Rules, Racecourse Investigators are given powers such as the right to enter land and inspect kennels in order to enforce the Rules⁹⁵⁴ and are admitted free to all racecourses in New Zealand and to every part thereof.⁹⁵⁵ Race Investigators work under the supervision and control of the Board and are to obey all orders and instructions given by the Board. Where the Board has appointed an Integrity Services Provider, every Racecourse Investigator shall be under the supervision and control of the Integrity Services Provider.⁹⁵⁶

Racecourse Stewards also have powers under the Rules,⁹⁵⁷ including the ability to order the withdrawal of a greyhound on the advice of a Veterinarian that the greyhound is unfit to run.⁹⁵⁸ Stewards may also enter onto any land occupied by any Licensed Person for the purpose of conducting a kennel inspection or the examination of any Greyhound in respect of which there is cause to suspect an Offence has been or is being committed.⁹⁵⁹ There is also a requirement for the Owner or Trainer of an injured greyhound who has been stood down to produce a Veterinarian's Certificate to the Club to the satisfaction of the Steward before that greyhound may race again.⁹⁶⁰ An ill greyhound is to be removed from the kennels immediately.⁹⁶¹ While a greyhound with a suspected contagious skin infection or parasite is to be removed from the kennels,⁹⁶² they may be returned if a Veterinarian

⁹⁵⁰ Rule 21. Powers and Duties of the Board 21.3 Specific Powers.

⁹⁵¹ Under r 21.3.d, the Board may not appoint fewer than two Stewards at any time, and (except where the Board has appointed an Integrity Services Provider) to pay such salary or other remuneration for services as it determines.

⁹⁵² Under r 21.3.e, such Assistant Stewards have the same duties, rights and obligations as Stewards, except to the extent that these Rules otherwise provide.

⁹⁵³ Under r 21.3.g.

⁹⁵⁴ Rules 33.1(a)–(g).

⁹⁵⁵ Rule 35: Admittance to Racecourses.

⁹⁵⁶ Rule 34. Racecourse Investigators Responsible to Board: r 34.2.

⁹⁵⁷ Rule 38. Powers of the Stewards.

⁹⁵⁸ Rule 38.3(k).

⁹⁵⁹ Rule 38.3(y).

⁹⁶⁰ Rule 64.2.

⁹⁶¹ Rule 68.22.

⁹⁶² Rule 68.24.

certifies that the skin complaint is not transmittable to another greyhound⁹⁶³ rather than the health and wellness of the animal being a necessity. Furthermore, while such provisions may ostensibly seem to be ensuring obligations to be met under pt 1 of the Animal Welfare Act 1999, it is of note that they appear under the Rule heading “Presentation for Racing”.⁹⁶⁴

It is a requirement under the Rules that every Licensed Person always comply with the Welfare Code. They are required to provide proper care and accommodation for the greyhounds under his/her control and such accommodation shall be subject to the approval of the Association and be open to inspection by Officials, Stewards or Racecourse Investigators at any time.⁹⁶⁵ The Rules further prescribe duties owed by Licensed Persons to greyhounds in their care or custody, which are in accordance with the provisions of the Welfare Code and specified as the following: proper and sufficient food, drink and protective apparel/clothing; proper exercise; properly constructed kennels which are adequate in size and which are kept in a clean and sanitary condition; and veterinary attention when necessary.⁹⁶⁶ They almost must exercise such reasonable care and supervision as may be necessary to prevent greyhounds under the Licensed Person’s care or custody from being subjected to unnecessary pain or suffering.⁹⁶⁷

It is prohibited under the Rules that any person knowingly participate in causing the unnatural death of any greyhound, other than by accepted euthanasia by a veterinarian or in a medical emergency.⁹⁶⁸ The NZGRA or its appointed agent have the right to order an autopsy to confirm cause of death.⁹⁶⁹

Provision is made under the Rules for the options regarding a greyhound that may be undertaken to deregister them.⁹⁷⁰ The registered owner is deemed responsible for the welfare of every greyhound of which they are the registered owner. A greyhound may be de-registered provided that the last registered owner makes acceptable arrangements for the retired greyhound as follows:⁹⁷¹ the greyhound is retained as a pet; the greyhound is boarded at a licenced kennel; the greyhound is boarded at a kennel licenced by the local territorial authority; the greyhound is found a home through GAP; the greyhound is sold or found a home by the owner or if necessary the greyhound is euthanized in accordance with the manner specified in the

⁹⁶³ Rule 68.24(a).

⁹⁶⁴ Rule 68. Presentation for Racing.

⁹⁶⁵ Rule 108. Comply with Welfare Code.

⁹⁶⁶ Rule 109. Duties of Persons Keeping Greyhounds; r 109.1.

⁹⁶⁷ Rule 109. Duties of Persons Keeping Greyhounds; r 109.2.

⁹⁶⁸ Rule 131. Notification of Death; r 131.1.

⁹⁶⁹ Rule 131. Notification of Death; r 131.4.

⁹⁷⁰ Rule 132. De-Registration of Greyhound.

⁹⁷¹ Rules 132.1(a)–(f).

preceding paragraph. The owner must advise the NZGRA of the arrangements made in relation to that greyhound, and the NZGRA or its agent have the right at any time to demand the greyhound be presented for inspection to confirm its wellbeing.⁹⁷²

4.4.3.6.3.3 *Animal Welfare: The Policy, Programme, and Committee*

In 2008, the NZGRA published an Animal Welfare Policy, updated in 2012. Its claimed purpose is “to formalise and express the greyhound racing industry’s commitment to its animal welfare obligations with a view to achieving consistency and improvement in current practices”.⁹⁷³

In its 2015/2016 season report, GRNZ claimed to have “once again seen significant changes embracing the Welfare Programme”, citing:⁹⁷⁴

... improved reporting, robust data, racetrack surface perpetration, more capacity and increased rehoming opportunities, strengthened integrity, and support from Government and key influential stakeholders ... such as the RNZSPCA, MPI, the New Zealand Veterinary Association, and NAWAC ...

GRNZ stated that it had observed 100 per cent compliance with the Greyhound Code of Welfare and the Animal Welfare Act 1999.⁹⁷⁵

The Racing Dog Welfare Programme (Programme) continues to receive widespread support from the Government and organisations such as the RNZSPCA, MPI, NZVA and Massey University. GRNZ continues to collaborate with NAWAC and the Animal Behaviour Welfare Consultative Committee⁹⁷⁶ (which exists to provide a forum for the exchange of information amongst representatives of New Zealand animal industry sectors, government departments and researchers on issues such as animal behaviour and welfare and is also a forum for feedback from other relevant national entities, such as the NZVA and the RNZSPCA).⁹⁷⁷ The Programme is a set of rules, guidelines and funding arrangements that purportedly aims to ensure greyhounds are raced humanely. It was enacted by GRNZ in response to the findings of an independent review conducted by WHK that stated GRNZ needed to significantly improve at guarding welfare using rules rather than its previous practice of relying only on the good intentions of people in the industry. The Programme consists of 11

⁹⁷² Rule 132. De-Registration Of Greyhound: r 132.3.

⁹⁷³ Colgan, Neil and Foy, above n 894, at 2.1.3.

⁹⁷⁴ *Greyhound Racing New Zealand Annual Report 2016* (2016) at 10.

⁹⁷⁵ At 13.

⁹⁷⁶ *Greyhound Racing New Zealand*, above n 49, at 36.

⁹⁷⁷ Virginia Williams “Animal welfare in New Zealand - the important role of non-governmental organisations” (2005) 32(1) *Surveillance* 7 at 9.

components that improve monitoring and tracking of all dogs from birth and enforce and clarify rules about dog welfare. GRNZ claimed that the Programme will clarify how GRNZ claim they will reduce the number of dogs that need to be euthanised.⁹⁷⁸

GRNZ has an Animal Welfare Committee that is charged with ensuring that “all greyhounds in New Zealand are protected and promoted by the adoption and development of sound animal welfare standards and practices” by ensuring that the recommendations from GRNZ’s welfare review are implemented.⁹⁷⁹ It is unclear whether this is the same entity as the Independent Welfare Committee, which was established as a result of the independent review and intended to guide and maintain independent oversight of greyhound racing’s animal welfare obligations.⁹⁸⁰ It is tasked with the following: developing and implementing an overarching animal welfare strategy for the sport, developing nationally consistent greyhound welfare protocols, ensuring that the GRNZ industry welfare practices are of a world best standard and coordinating policy between the sport and GAP.⁹⁸¹ GRNZ noted that the Board’s Welfare Committee deals with practical matters as they arise, such as regular kennel checks, race day checks by vets and GRNZ’s growing sponsorship of the GAP rehoming project.⁹⁸²

4.4.3.6.4 *Problems Identified by the WHK Independent Review and Subsequent Responses*

4.4.3.6.4.1 *Prior to the Review*

While GRNZ stated in its 2012–2013 Annual Report that there had at that point been no prosecutions of GRNZ members for mistreatment of racing greyhounds⁹⁸³ or a conviction of a Licenced Person under the Act, it also acknowledged that there were at the time no formal minimum standards of welfare in place that have been approved by any external welfare bodies, and accordingly there was both a lack of enforcement and a lack of awareness of welfare standards.⁹⁸⁴ GRNZ claimed that while a number of welfare actions had been initiated by GRNZ, the GRNZ Board had not prioritised actions or commitment to the goal to have “world class” welfare. GRNZ claimed that the creation of the Animal Welfare Committee and the instigation of the WHK review reflected an increased awareness and commitment by the GRNZ Board to address

⁹⁷⁸ Greyhound Racing New Zealand, above n 49, at 36.

⁹⁷⁹ Greyhound Racing New Zealand, above n 974, at 16.

⁹⁸⁰ Hellstrom, above n 50, at 8.

⁹⁸¹ Greyhound Racing New Zealand, above n 974, at 17.

⁹⁸² Greyhound Racing New Zealand, above n 49, at 36.

⁹⁸³ At 36.

⁹⁸⁴ At 39.

the “gaps”. GRNZ also acknowledged its culture of non-enforcement and non-compliance of welfare rules and stated that GRNZ should lead a cultural change within the industry to ensure welfare considerations outweigh any competitive or commercial consequences.⁹⁸⁵

4.4.3.6.4.2 *Animal Welfare Problems in Greyhound Racing Identified by WHK and NAWAC*

In 2013, auditing company WHK⁹⁸⁶ completed an independent review into the welfare of greyhounds in the industry. This review covered the following issues: standards, enforcement, breeding industry regulations, database management and greyhound tracking, industry awareness and options for education. WHK put forward 36 recommendations for improvement. Its key findings included the following: a lack of enforcement and of awareness of welfare standards that leads to a culture of noncompliance, inadequate tracking and reporting of the lifecycle of greyhounds, the issue of the euthanasia of healthy greyhounds and the transparency surrounding this, and track safety and injuries.⁹⁸⁷ It is notable that no formal agreements have been established between the NZGRA or GRNZ or with the New Zealand Veterinary Association, RNZSPCA, MPI or NAWAC.⁹⁸⁸ Shortly before the conclusion of the NAWAC report detailed above, the RNZSPCA’s Chief Executive, Ric Odom, was reported to have stated that New Zealand’s greyhound welfare standards were higher than Australia’s and that the RNZSPCA were maintaining a watchful eye on the industry.⁹⁸⁹

Crucially, whilst the WHK independent review found little evidence of issues relating to the care of greyhounds during their racing careers, there are no formal minimum standards of welfare in place that have been approved by any external welfare bodies, and WHK found that there is both a lack of enforcement and awareness of welfare standards. Forty per cent of trainers interviewed were found to be unaware of the NZGRA’s Animal Welfare Policy.⁹⁹⁰

WHK found that the greyhound racing industry’s culture, systems and processes for tracking the lifecycle of the registered greyhound are inadequate, with focus placed only on the racing career of the greyhound. WHK reported that their analyses suggest approximately 35 per cent of greyhounds whelped never make it to the track. Furthermore, due to a lack of effective reporting, WHK was unable to establish what

⁹⁸⁵ At 39.

⁹⁸⁶ Bloomberg “WHK NZ Ltd” (2019) <www.bloomberg.com>.

⁹⁸⁷ Hellstrom, above n 50, at 1.

⁹⁸⁸ At 7–8.

⁹⁸⁹ Radio New Zealand, above n 51.

⁹⁹⁰ Colgan, Neil and Foy, above n 894, at 4.

happens to these greyhounds. There is also a lack of effective reporting and tracking of greyhounds at the end of their racing careers, and as a result, WHK encountered significant difficulty in identifying the outcome for greyhounds when they finish racing. Thirty per cent of the 2,305 greyhounds leaving racing between 2009 and 2012 are recorded as deceased by NZGRA, and there is potential for that number to be significantly higher in reality, due to the lack of effective tracking of retired greyhounds.⁹⁹¹

4.4.3.6.4.3 NZRB's Response to the WHK Independent Review

In June 2014, the NZRB completed the first of their reports, reviewing the NZGRA's implementation of the 36 recommendations of WHKS's independent welfare review. NAWAC provided comments to the Minister of Racing on NZRB's report. It concluded that there were no significant concerns and that the efforts of the NZGRA to improve the welfare of greyhounds were commended. The issue of greatest remaining concern was noted to be the number of dogs that are disposed of. NAWAC also noted that the Code of Welfare for Greyhound Racing provided little guidance for appropriate training procedures.⁹⁹²

Every greyhound produced for, and used in racing, is identified on a national database held by the NZGRA and can now be tracked from birth. Registration of whelping is undertaken, and each individual puppy is allocated their own identification and litter number. When dogs are named, this replaces their litter number.⁹⁹³ NZGRA imports a maximum of 20 greyhounds into the country per month. Notably, MPI has noted that this importation system does not interact with their own import requirements, which are addressed in Appendix 2 of this paper.⁹⁹⁴ This suggests a possible lack of animal welfare enforcement surrounding the import of greyhounds for racing.

As of 1 February 2014, a rule has been in place requiring that the NZGRA be notified within seven days when a dog has ceased racing. It was noted by NAWAC in August 2016 that to date the Animal Welfare Officer (AWO) and Racing Integrity Unit (RIU) had not had to follow up on any reports of dogs being deregistered in contrary to this rule.⁹⁹⁵ However, that this seemingly must be reported rather than any apparent oversight being undertaken is concerning.

⁹⁹¹ At 4.

⁹⁹² Hellstrom, above n 50, at 1.

⁹⁹³ At 2.

⁹⁹⁴ At 2.

⁹⁹⁵ At 3.

Euthanasia and mortality data is compiled from the NZGRA database and reported to the NZGRA Board on a monthly basis. It was noted by NAWAC that although the database system itself appears to be robust, the manner that figures are reported appears “clumsy” and “does not enable NAWAC to confirm total numbers of animals being euthanised or rehomed, nor at which point in their lives this is occurring”. NAWAC recommended that the NZGRA move to cohort identification for reporting all euthanasia statistics, for example by using a system by age group to facilitate life cycle tracking of individual greyhounds if required. NAWAC contended that the NZGRA should be providing annual summaries of these statistics and ought to be proactive in making this information available to the public. NAWAC reviewed samples of the information reported from the NZGRA database and noted that it remained uncertain about the number of dogs which are being produced or imported each year. NAWAC noted that it was also unclear as to where the greyhounds are to end up at the conclusion of their racing career, particularly as even the most successful greyhounds dogs typically only have a racing life of one to four years. Although re-homing through the Greyhounds as Pets Trust (GAP) is offering an avenue for these dogs, NAWAC noted the risk of that avenue reaching saturation point given the length of a dog’s lifespan and their racing life duration.⁹⁹⁶

4.4.3.6.4 BoardWorks International Review

In October 2014, board effectiveness consultancy BoardWorks International (BoardWorks)⁹⁹⁷ completed a review of GRNZ and found a number of notable shortcomings in the governance of the greyhound racing Code. BoardWorks stated that “the constitutional status quo is not an option”, contending that the present constitution has a number of shortcomings that prevent GRNZ from functioning effectively and that prevent the industry from advancing in a successful and sustainable manner.⁹⁹⁸ Identified shortcomings included the inappropriate limitations placed on the GRNZ board’s ability to govern the organisation and the corresponding extent of influence of the clubs in the decision making process and the reliance on clubs of greatly varying size and capability to conduct the racing activities of the industry.⁹⁹⁹ BoardWorks recommended the following measures to combat these issues: the removal of regional and sector representation as the basis for the election of board members, the retention of the category of “independent” board members and strengthening the process of selecting these, the increasing the options for dealing with industry participants (including Board members) who bring the industry

⁹⁹⁶ At 3–4.

⁹⁹⁷ Boardworks International “About Us” <www.boardworksinternational.com>.

⁹⁹⁸ BoardWorks International *A Review of the Governance Structure of Greyhound Racing New Zealand* (10 October 2014) at 4.

⁹⁹⁹ At 4.

into disrepute and the implementation of improved measures to manage conflicts of interest.¹⁰⁰⁰

Significantly, BoardWorks identified animal welfare as one of the greatest challenges facing the greyhound racing industry in New Zealand, noting that it was recognised at every meeting as possibly the greatest threat in terms of forming a negative image that could potentially cripple the industry. BoardWorks reported that while this is accepted as being an international issue, in New Zealand the challenge is exacerbated by an overpopulation of dogs and that while many people feel a double or unbalanced standard is being applied (for example in relation to the horse codes and to working dogs in general), it was acknowledged that this is something the industry still has to “deal with”.¹⁰⁰¹

BoardWorks also reported a lack of integrity within the industry, noting that there was concern with the perception that there have been failures to apply the Rules consistently and correctly and that Rules breaches are not dealt with, for example that licence holders are allowed to “flaunt the rules” relating to matters such as the dress code. “Stipes” (a term presumably used to refer to Stipendiary Stewards) are not standing up to “rule breakers”. BoardWorks also noted that there is concern that the RIU is under-resourced and concentrates on the horse codes. However, BoardWorks disappointingly added that this puts greyhound racing at risk in terms of being “an attractive betting product”.¹⁰⁰² While not specifically acknowledged by BoardWorks, it is more likely, given these findings, that the few Rules and Regulations relating to greyhound welfare are under-enforced as well as the Rules regarding other matters.

BoardWorks noted that the different components of GRNZ comprise the following Committees: Racing, Dates, Finance and Audit, Personnel and Remuneration, and Integrity.¹⁰⁰³ However, it was noted that despite their enactment, the potential to have a disciplined and well-coordinated industry is unfulfilled:¹⁰⁰⁴

... by custom and practice (and possibly as a consequence of political reality) these powers are only applied with a light touch. Clubs seem to operate with a great deal more autonomy than is inherent in the current constitution and is good for the wellbeing of the industry and its participants.

¹⁰⁰⁰ At 4.

¹⁰⁰¹ At 2 and 6.

¹⁰⁰² At 7–8.

¹⁰⁰³ At 15.

¹⁰⁰⁴ At 5, 17–18.

BoardWorks added that there is “widespread and justified” concern that by encouraging “parochialism and petty politics” and by “constricting the Board’s ability to govern”, the industry is being held back in a range of ways.¹⁰⁰⁵

Further, BoardWorks noted that the Rules and Constitution of GRNZ are notably different from the equivalent documents of the other Codes: NZTR and HRNZ. This is most obvious in the manner which the GRNZ constitutional provisions are combined with matters that relate to the day-to-day functioning of the industry and the organisation. Ergo, important matters such as racing and breeding regulations that ought to be subject to continuous adaptation and improvement must be referred to a General Meeting and treated as constitutional changes. BoardWorks contended that such matters ought to fall within the ambit of a governing board’s policy making authority.¹⁰⁰⁶

The Board uses a Governance Charter that describes its governance principles, governance roles, key board functions, board processes, Committee Terms of Reference and other relevant content. However, BoardWorks noted that the Charter is a “secret document”. It recommended that the Charter be reviewed and affirmed by the Board as reflecting their commitment to the highest standards of governance and posted on the GRNZ website as is common practice with companies and organisations as an expression of accountability and of the Board’s acceptance of its leadership responsibilities.¹⁰⁰⁷ However, this does not appear to have been done to date, as the Charter is still not available on the GRNZ website.¹⁰⁰⁸

4.4.3.6.4.5 *The 2017 Review and GRNZ’s Enacted Welfare Instruments*

Rodney Hansen QC conducted a second external review of animal welfare in the greyhound racing code, released in October 2017 and examining progress on welfare over the four years since the WHK report in 2013.¹⁰⁰⁹ Hansen reported that a full-time Animal Welfare Manager was appointed on 1 October 2013 and described the Manager as apparently well qualified and committed to improving welfare standards and practice in the industry.¹⁰¹⁰ As of March 2015, the Welfare Committee has had an independent chairman¹⁰¹¹ and includes a member of the RNZSPCA who attended their first meeting on 5 May 2016. Since 13 October 2016, the NZGRA Board has had

¹⁰⁰⁵ At 6, 19–20.

¹⁰⁰⁶ At 6 and 19.

¹⁰⁰⁷ At 9 and 37.

¹⁰⁰⁸ As at 16 July 2018.

¹⁰⁰⁹ Greyhound Racing New Zealand “Media statement: Greyhound Racing Board welcomes report” (20 December 2017) <www.grnz.co.nz>.

¹⁰¹⁰ Rodney Hansen *Report to New Zealand Racing Board on Welfare Issues Affecting Greyhound Racing in New Zealand* (New Zealand Racing Board, 11 October 2017) at [3.5].

¹⁰¹¹ At [3.6].

attendance at its meetings by representatives of MPI (on half of NAWAC) and the NZVA.¹⁰¹² Hansen stated that steps have been taken by the Board to achieve the goals identified in the WHK report (and subsequently by NAWAC). For example, in 2014, it set a target of reducing by 20 per cent over three years the number of dogs introduced to the industry and resolved to increase the number of racing opportunities. Hansen added that welfare expenditure has been increased from \$219,000 in 2011/2012 to \$671,000 in 2016/17, with expenditure of \$926,600 budgeted for 2017/18. Finally, a number of initiatives have been taken to reduce track-related injuries and to increase rehoming options.¹⁰¹³

Since the WHK Review, the GRNZ has enacted its own Animal Welfare (Racing Industry Greyhounds) Code of Welfare 2013.¹⁰¹⁴ While seemingly an internal instrument of GRNZ rather than a COW enacted and administered by MPI (it does not appear on MPI's webpage, which lists the current COWs),¹⁰¹⁵ it is positive that it is extensive and states that failure to meet its minimum standards may be used as evidence to support a prosecution for an offence under the Act.¹⁰¹⁶ This COW covers matters such as food and water;¹⁰¹⁷ containment and tethering;¹⁰¹⁸ kennelling, shelter and ventilation;¹⁰¹⁹ breeding¹⁰²⁰ and health.¹⁰²¹ As of 1 August 2018, the NZGRA's new Health and Welfare Standards will come into force,¹⁰²² which are also extensive and state that failure to meet the Standards may be used as evidence to support a charge for an offence under the Act and its associated regulations.¹⁰²³

4.4.3.7 The Welfare of Horses Used in the Thoroughbred and Harness Racing Codes

4.4.3.7.1 Introduction

Welfare concerns relating to horses used by the Codes are reported to the RNZSPCA, which has a Memorandum of Understanding with NZTR and HRNZ. HRNZ and NZTR

¹⁰¹² At [3.7].

¹⁰¹³ At [3.11].

¹⁰¹⁴ Animal Welfare (Racing Industry Greyhounds) Code of Welfare 2013. The Code may be accessed through the following hyperlink:

<www.grnz.co.nz/Files/Documents/Code%20of%20Welfare%20updated%20March%202016.pdf>.

¹⁰¹⁵ See Ministry for Primary Industries "Codes of Welfare" (11 July 2018) <www.mpi.govt.nz>.

¹⁰¹⁶ Animal Welfare (Racing Industry Greyhounds) Code of Welfare 2013 at 1.4.

¹⁰¹⁷ At 3.

¹⁰¹⁸ At 4.

¹⁰¹⁹ At 5.

¹⁰²⁰ At 9.

¹⁰²¹ At 10.

¹⁰²² *New Zealand Greyhound Racing Association Incorporated Health & Welfare Standards* (1 August 2018). The Standards may be accessed at Greyhound Racing New Zealand "Rules and Policies"

<www.grnz.co.nz>.

¹⁰²³ At 5.

do not appear to have the same welfare concerns of the animals used in racing, or the same concerns regarding the effective management of the industry, that the greyhound racing code has. However, while they use similar structures of management to greyhound racing, including self-enacted Rules¹⁰²⁴ that are sent to the NZRB,¹⁰²⁵ the provisions protecting animal welfare are few. It is also of note that unlike the greyhound racing code, there is no evidence of independent reviews being conducted into the racing codes that use horses. It is problematic that a number of the rules and guidelines enacted and used by the NZTR appear to treat stipulated offences under the Act as conduct which may be adequately dealt with by remarkably lenient alternative means. For example, the Course Manager of a Racing Club may make an order that a person cease ill-treatment of a racehorse, and the Manager retains the discretion to not take measures to address the conduct beyond this. There is no evidence of any kind of independent review such as the audits that NZGRA were subjected to; the thoroughbred racing and harness racing industries instead appear to be largely controlled internally.

4.4.3.7.2 *The Role of the RNZSPCA*

NZTR, NZHR and the RNZSPCA maintain a Memorandum of Understanding. It sets out how the parties will act (as individual entities and as a collective) in reporting and handling instances of animal neglect and promotes early intervention to alleviate horse suffering as quickly as possible.¹⁰²⁶ NZTR has stated that the maltreatment of horses is most frequently identified and reported to the RNZSPCA by members of the public, veterinarians or members of the police. As noted, the RIU is developing its relationship with the RNZSPCA. This includes the enactment for liaison protocols in addressing matters of animal maltreatment where they involve licensed persons or registered horses. NZTR has stated that it too is developing its relationship with the RNZSPCA in order to ensure “prompt and open lines of communication” where neglect or cruelty cases involve thoroughbreds.¹⁰²⁷ However, it is positive that the RNZSPCA expressed in 2014 its view that the New Zealand racing industries that use horses take sufficient care of the animals, with then-RNZSPCA Auckland executive director Bob Kerridge stating that the Codes go to “great lengths” to ensure the safety of horses. Kerridge noted that in the 1970s and 1980s the RNZSPCA “used to go to every horse race because the treatment was so poor”, but that the welfare of horses has greatly improved in recent decades.¹⁰²⁸

¹⁰²⁴ Racing Act 2003, s 29(1).

¹⁰²⁵ Section 29(3).

¹⁰²⁶ New Zealand Thoroughbred Racing, above n 52, at 14.

¹⁰²⁷ LoveRacingNZ “Neglect of Thoroughbreds” <www.nzracing.co.nz>.

¹⁰²⁸ Hyslop, above n 53.

4.4.3.7.3 *The New Zealand Thoroughbred Racing Code*

4.4.3.7.3.1 *Constitution of New Zealand Thoroughbred Racing Incorporated: Powers and Duties of the Board*

The Constitution of NZTR¹⁰²⁹ provides the Board of Directors of Thoroughbred Racing, established under the Constitution to carry out the management of the business and affairs of Thoroughbred Racing,¹⁰³⁰ with broad powers.¹⁰³¹ Overall, the Board is responsible for managing the business and affairs of all aspects of the thoroughbred racing industry in New Zealand.¹⁰³² The Board's general powers and duties¹⁰³³ include the following: to ensure the control, in accordance with the Rules and with the provisions of the Racing Act 2003, of all thoroughbred racing conducted in New Zealand;¹⁰³⁴ to ensure the appropriate enforcement of the Rules;¹⁰³⁵ to maintain and strive to improve the integrity of the thoroughbred racing industry;¹⁰³⁶ to adopt and regularly review a strategic plan for thoroughbred racing, which shall include goals and objectives and an appropriate structure to allow for the planning process and subsequent decision making and monitoring to be effectively measured;¹⁰³⁷ and all other powers, duties and obligations contained in the Rules.¹⁰³⁸ It is notable that powers and duties are listed in a manner that suggests they are synonymous, and it is problematic that they are not further specified as being one or the other.

4.4.3.7.3.2 *Staff Charged with Internal Enforcement of the Rules*

Similarly to the greyhound racing Code, the Thoroughbred Racing Code appoints staff to enforce their Rules and gives them considerable powers for achieving this. NZTR has jurisdiction to appoint Stipendiary Stewards and Investigators.¹⁰³⁹ These appointees have the right of free entry to Racecourses and Training Centres and to all other buildings if such entry reasonably relates to their function.¹⁰⁴⁰ Their functions surround upholding the Rules and include investigation of potential breaches of the

¹⁰²⁹ Constitution of New Zealand Thoroughbred Racing Incorporated.

¹⁰³⁰ Constitution of New Zealand Thoroughbred Racing Incorporated at 5.

¹⁰³¹ Article 14 Powers and Duties of the Board.

¹⁰³² Article 14.1 Overall Power.

¹⁰³³ Article 14.2 General Powers and Duties.

¹⁰³⁴ Article 14.2(a).

¹⁰³⁵ Article 14.2(b).

¹⁰³⁶ Article 14.2(d).

¹⁰³⁷ Article 14.2(f).

¹⁰³⁸ Article 14.2(l).

¹⁰³⁹ New Zealand Thoroughbred Racing Incorporated Amended Rules of Racing, r 201(1).

¹⁰⁴⁰ Rule 203.

Rules.¹⁰⁴¹ Notably, it is only during a Race Meeting that Stipendiary Stewards and Investigators have the additional and seemingly broad power of take such steps as they consider necessary for the purpose of horse and rider welfare.¹⁰⁴²

4.4.3.7.3.3 *Welfare Provisions of the Rules: Obligations of Those in Charge of Horses*

Since the Rules were amended on 1 August 2017, the NZTR Rules of Racing have included specific provisions for protecting the welfare of horses.¹⁰⁴³ Under these provisions, the trainer or any other person in charge of a horse that is to be brought to the Racecourse or is at the Racecourse to start in a Race must ensure that the horse is fit and properly conditioned for the Race in which it is entered.¹⁰⁴⁴ They are to report to the Stipendiary Stewards as soon as possible any occurrence, condition or treatment that may affect or impact on the horse's performance in the Race.¹⁰⁴⁵ This is to be done by acceptance time, where the occurrence takes place, the condition is present or the treatment is administered before acceptance time;¹⁰⁴⁶ or as soon as practicable, where the occurrence takes place, the condition is present or the treatment is administered after acceptance time.¹⁰⁴⁷ The Trainer, Owner/lessee, or Rider (as applicable) are obliged to the Stipendiary Stewards as soon as possible anything which might have affected the running of their horse in a Race.¹⁰⁴⁸ In the event that a matter comes to the notice of the Trainer, Owner/lessee or Rider (as applicable), which might have any bearing on the past or the future running of the horse, after the horse has left the Racecourse, it must be reported as soon as possible to the Stipendiary Stewards.¹⁰⁴⁹

Where a horse could potentially be engaged in a race or trial, the Trainer, Owner, lessee or any other person in charge of the horse must, as soon as practicable, report to the Stipendiary Stewards any major surgeries or significant treatments that have been conducted upon the horse and not previously notified. Such surgeries and treatments are prescribed by the NZTR and published.¹⁰⁵⁰ As evidenced by the amended Rules' publication in the *Gazette*, this provision is a new one as of the

¹⁰⁴¹ Rule 204.

¹⁰⁴² Rule 207(1)(f).

¹⁰⁴³ Rules 650–655.

¹⁰⁴⁴ Rule 650(1)(a).

¹⁰⁴⁵ Rule 650(1)(b).

¹⁰⁴⁶ Rule 650(1)(b)(i).

¹⁰⁴⁷ Rule 650(1)(b)(ii).

¹⁰⁴⁸ Rule 650(2).

¹⁰⁴⁹ Rule 650(3).

¹⁰⁵⁰ Rule 650(4).

August 2017 Amendments.¹⁰⁵¹ To date, no kinds of major surgeries and significant treatments appear to have been prescribed by NZTR and published.¹⁰⁵²

4.4.3.7.3.4 *Provision for Certain Veterinarian Treatments and Euthanasia*

The Rules provide that a horse that has been subjected to any form of shock wave therapy shall be ineligible to race or participate in any trial (including a jump-out or test for certification purposes) in the seven days immediately following such treatment.¹⁰⁵³ The Rules also provide that a horse which has a tracheostomy is ineligible to Race or participate in trials (including jump-outs or tests for certification purposes) or trackwork.¹⁰⁵⁴ A tracheostomy is a permanent hole in the windpipe, administered as treatment for specific diseases of the upper respiratory tract.¹⁰⁵⁵

A Stipendiary Steward may order a horse to be euthanised by a person that the Stipendiary Steward considers suitable if that horse is injured on a Racecourse during a Race Meeting, and in the opinion of the Stipendiary Steward, the destruction of such horse is advisable to save them unnecessary suffering. The Stipendiary Steward must first seek the recommendation of a Veterinarian if there is a Veterinarian appointed for the Race Meeting where the injury happens. The Stipendiary Steward is not required to first seek the Owner or their Agent or the Racing Manager. Here, the term “Owner” includes any person with a legal or beneficial interest in that horse or a Legal Ownership Entity that owns the horse.¹⁰⁵⁶ In such an instance of euthanasia, those parties have no liability for any loss suffered by any person as a result of or in connection with the destruction of such horse, or any such order or recommendation to destroy the horse.¹⁰⁵⁷ It is unclear whether this is limited to financial loss or whether it may extend to emotional harm or punitive damages if anybody had an emotional connection with the horse. This is likely to remain unclear without any case law. The Stipendiary Steward may order that a post-mortem examination be carried out in respect of any horse which dies or is killed on a Racecourse.¹⁰⁵⁸ Such a post-mortem could expose offending under the Act.

The Rules make provision for addressing nasal bleeding in the animals. An attack of nasal bleeding is defined as the appearance of blood at one or both nostrils,

¹⁰⁵¹ “Amendments to the New Zealand Rules of Racing” (8 June 2017) 60 *New Zealand Gazette* 1 at 1–2; 1.3 Amendments to Rule 650.

¹⁰⁵² As at 18 July 2018.

¹⁰⁵³ New Zealand Thoroughbred Racing Incorporated Amended Rules of Racing, r 653.

¹⁰⁵⁴ Rule 654.

¹⁰⁵⁵ Stacey Oke “Permanent Tracheostomy Safe and Effective in Select Horses” *The Horse* <<https://thehorse.com>>.

¹⁰⁵⁶ New Zealand Thoroughbred Racing Incorporated Amended Rules of Racing, r 655(1).

¹⁰⁵⁷ Rule 655(2).

¹⁰⁵⁸ Rule 655(2).

irrespective of quantity, unless, in the opinion of the Stipendiary Stewards, such bleeding was caused by external trauma.¹⁰⁵⁹ Where a horse suffers an attack of nasal bleeding, the Trainer of the horse is obliged to report the bleeding to a Stipendiary Steward without delay. They are to then subsequently supply that Stipendiary Steward with any further information in relation to such attack which they may require.¹⁰⁶⁰ Where a horse has, in the opinion of a Stipendiary Steward (and following consultation with a Veterinarian, as applicable), suffered an attack of nasal bleeding, they are not to perform the following without the permission of a Stipendiary Steward:¹⁰⁶¹ be trained, exercised or galloped on any Training Facility or Racecourse for a period of two months from the date of the attack;¹⁰⁶² or start in any Race or trial for a period of three months and then only after a satisfactory gallop of at least one km in the presence of a Stipendiary Steward or a Veterinarian.¹⁰⁶³ If a horse suffers more than one attack of nasal bleeding, the horse is ineligible to start in any Race.¹⁰⁶⁴

4.4.3.7.3.5 *Serious Racing Offences*

The Rules make provision for “Serious Racing Offences”, which include the infliction of undue suffering on a horse by any means.¹⁰⁶⁵ On committing a Serious Racing Offence, a person shall be liable to disqualification from racing for any period or for life, and/or be suspended from holding a Licence for a period not exceeding 12 months, and/or receive a fine not exceeding \$50,000.¹⁰⁶⁶ It is unclear how these provisions operate with the Animal Welfare Act 1999, and if this is treated as a way of “contracting out” by the Code, then this is extremely problematic.

4.4.3.7.3.6 *NZTR Horse Welfare Guidelines*

While the NZTR has enacted a set of guidelines relating to horse welfare,¹⁰⁶⁷ these are a somewhat incoherent combination of apparent hard law responsibilities and unenforceable recommendations. It is also unclear how they are to be enforced. The Horse Welfare Guidelines consist of provisions that are typically a statement of

¹⁰⁵⁹ Rule 651(1).

¹⁰⁶⁰ Rule 651(2).

¹⁰⁶¹ Rule 651(3).

¹⁰⁶² Rule 651(3)(a).

¹⁰⁶³ Rule 651(3)(b).

¹⁰⁶⁴ Rule 651(4).

¹⁰⁶⁵ Rule 801(1)(p).

¹⁰⁶⁶ Rule 801(2)(a)–(c).

¹⁰⁶⁷ New Zealand Thoroughbred Racing Horse Welfare Guidelines. Note that these Guidelines have been adapted by New Zealand Thoroughbred Racing Inc from the International Group of Specialist Racing Veterinarians’ Welfare Guidelines for Horseracing.

principle followed by specifications as to how this may be achieved, such as the following example:¹⁰⁶⁸

1. AT ALL STAGES DURING THE PREPARATION AND PRESENTATION OF HORSES FOR RACING THEIR WELFARE SHOULD BE A PRIMARY CONSIDERATION

(a) Good Horsemanship

The housing, feeding and training of racehorses should be consistent with good horsemanship and must not compromise their welfare. Any practices whether in stables, training or racing which are inconsistent with legislative requirements must not be tolerated. Industry training programmes should contain components on animal welfare relevant to the role performed by the person receiving the training. Audits of thoroughbred horses under the control of licensed trainers should be undertaken by racing authority officials.

Despite the specific reference to compliance with legislative requirements and expression of the desirability of audits, these audits are to be undertaken by officials within the industry rather than independent contractors, such as the ones employed to review the Greyhound Racing code. It also does not appear that any kind of independent audit has been performed to date, and it is unclear whether and if so how frequently and in what manner audits of thoroughbred horses under the control of licensed trainers are undertaken by racing authority officials.

A provision of the Welfare Guidelines reads as follows:¹⁰⁶⁹

Rest Periods

Long journeys must be planned carefully and horses should be allowed regular rest periods and access to water. Respiratory problems can often be reduced if horses are able to lower their heads to ground level during rest periods.

It is notable that this aspect does not reference the relevant sections of the Animal Welfare Act 1999 or the Code of Welfare: Transport within New Zealand. Similarly, the provision under the Welfare Guidelines that addresses surgical procedures states that any surgical procedure which compromises the welfare or safety of any horse or rider must not be allowed in racing.¹⁰⁷⁰ However, it makes no reference to the *Surgical procedures* provisions under pt 1 of the Animal Welfare Act 1999.

¹⁰⁶⁸ New Zealand Thoroughbred Racing Horse Welfare Guidelines, Guideline 1(a).

¹⁰⁶⁹ Guideline 1(e).

¹⁰⁷⁰ Guideline 2(c).

The Welfare Guidelines address the misuse of the whip and spurs, underneath the heading “Conditions of racing should not prejudice horse welfare”.¹⁰⁷¹ The provisions state that excessive, unnecessary or improper use of whips and spurs must not be condoned, for example, on a beaten horse, a horse unable to respond or a horse clearly winning.¹⁰⁷² However, there also exists a set of “guidelines with respect to acceptable use of the whip” enacted and issued by New Zealand Racing at the same time that the Rules were last amended: 1 August 2017.¹⁰⁷³ These provide that a rider shall not strike a horse with a whip in a manner or to an extent which is unnecessary, or excessive or improper.¹⁰⁷⁴ Without affecting the generality of the preceding provision, a rider may also be penalised if their whip use is outside of the following guidelines: inside the final 600 m of a Race, official trial or jump-out, a horse may be struck with the drawn whip up to five times after which the rider must cease their use of the whip for a minimum of five strides before striking the horse again with the drawn whip, with this restriction to apply prior to the final 100 m. The whip may then be used at the rider’s discretion until the winning post is reached. Prior to the final 600 m of a race, official trial or jump-out the use of the drawn whip is acceptable if used in moderation and not continually. Notwithstanding the above, it will also be deemed to be unacceptable where a rider uses the drawn whip in the following situations: when a horse is out of contention, when a horse is showing no response, when a horse has no reasonable prospect of improving or losing its position, after its chance of winning or being placed is clearly gone, when a horse is clearly winning, after passing the winning post or using the whip with the arm above shoulder height. A rider may at their discretion use the whip with a slapping motion down the shoulder, with the whip hand remaining on the reins, at any time.¹⁰⁷⁵ This is consistent with the Minimum Standard addressing the use of a whip in the Horse COW, though the Horse COW is not mentioned. The Horse COW provides that horses must not be struck around the head or genitals with a whip, lead or any other object and that the whip, lead or object must only be used for safety, correction and encouragement and must not be used in an unnecessary, excessive or improper manner.¹⁰⁷⁶ Then-RNZSPCA Auckland executive director Bob Kerridge stated that race officials are very strict on the use of the whip or excessive force on a horse.¹⁰⁷⁷

¹⁰⁷¹ Guideline 3.

¹⁰⁷² Guideline 3(d).

¹⁰⁷³ Guidelines with Respect to Acceptable Use of the Whip; enacted as an Appendix to the New Zealand Thoroughbred Racing Incorporated Amended Rules of Racing; r 683(3)(b)(i)–(iii).

¹⁰⁷⁴ Guidelines with Respect to Acceptable Use of the Whip; enacted as an Appendix to the New Zealand Thoroughbred Racing Incorporated Amended Rules of Racing; r 683(3)(b)(i)–(iii).

¹⁰⁷⁵ Guidelines with Respect to Acceptable Use of the Whip; enacted as an Appendix to the New Zealand Thoroughbred Racing Incorporated Amended Rules of Racing; r 683(3)(b)(i)–(iii).

¹⁰⁷⁶ Code of Welfare: Horses and Donkeys, Minimum Standard No 8.

¹⁰⁷⁷ Hyslop, above n 53.

4.4.3.7.3.7 NZTR Training Track Bylaws

NZTR maintains a set of Training Track Bylaws¹⁰⁷⁸ that are binding on all people who enter, or use or attempt to use Racing Club facilities.¹⁰⁷⁹ The Bylaws define “Misconduct” as having a general meaning and also including ill-treatment or cruelty to a horse.¹⁰⁸⁰ The Bylaws provide for a Hearings Committee, the functions of which include hearing and determining any allegation or complaint referred to it by the Secretary which is made by the Course Manager or acting Course Manager for any breach or non-compliance of these Bylaws, which therefore may include the ill-treatment or cruelty to a horse.¹⁰⁸¹ It is unclear how an instance of breaching the Bylaws, such as by inflicting ill-treatment or cruelty upon a horse, is to be dealt with – for example, whether any punitive measures are imposed. It does not appear that there are any. Notably, in addition to these provisions, the Bylaws also provide for dealing with the Ill Treatment of a Horse in the following manner:¹⁰⁸²

Any person who ill-treats a horse in any manner on the Racing Club facilities, may be directed to desist from their action by the Course Manager or other Racing Club official. Such Racing Club officials may also refer the ill-treatment by way of complaint or allegation to the Secretary of the Club for determination by the Hearings Committee.

It is unclear how the provisions operate together, it is and very concerning that there may be the accepted option in practice for ill-treatment to be dealt with in a self-regulating direction to desist or referral for hearing, rather than by treating it as a potential offence against the Animal Welfare Act 1999 in extreme instances. Generally, the Racing Club facilities are to be controlled and supervised by the Course Manager.¹⁰⁸³ The Course Manager is also the first party to be contacted with any requests, queries, concerns or complaints. If the problem remains unresolved, it may then be directed to the appointed trainers’ representative. If the complainant remains unsatisfied, then a written statement detailing the problem should be forwarded to the Secretary of the Racing Club.¹⁰⁸⁴

4.4.3.7.3.8 The NZTR Starter’s Manual

¹⁰⁷⁸ New Zealand Thoroughbred Racing Training Track Bylaws.

¹⁰⁷⁹ Bylaw 2 Application of Bylaws.

¹⁰⁸⁰ Bylaw New Zealand Thoroughbred Racing Training Track Bylaws, r 3 Definitions; 3(d).

¹⁰⁸¹ Bylaw 4(b).

¹⁰⁸² Bylaw 17: Ill Treatment of a Horse.

¹⁰⁸³ Bylaw 12.

¹⁰⁸⁴ Bylaw 13.

The NZTR Starter's Manual, issued in July 2009,¹⁰⁸⁵ includes several provisions that may promote animal welfare. The Manual requires a Veterinarian to be present behind the starting gates for all races and heats to assist in the safety, health and welfare of horse and rider.¹⁰⁸⁶ A Farrier is also required to be present behind the starting gates for all races and heats and must be available to reshoe horses as required.¹⁰⁸⁷ The following gear is banned from use on a horse: Stockwhips, Twitches, any electronic device or an Oogly Boogly stick.¹⁰⁸⁸ Barrier Attendants must help the Veterinarian or other staff in attending to injured or fallen horses during a race or heat.¹⁰⁸⁹ A specific requirement of starting staff is compliance with law, rules, and policies, stating:¹⁰⁹⁰

... all staff at the start shall ensure their duties are carried out in accordance with any relevant statutory law of New Zealand, the NZ Rules of Racing, Health and Safety Policies, their individual employment contracts and all other official instructions and directives.

While it is acknowledged that the Act falls under the umbrella of “any relevant statutory law of New Zealand”, it is notable that it is not specifically included, and no mention is made of reporting breaches of legislation to the appropriate external authority. In a similar vein, the stated purpose of the NZTR Directive Cardiac Arrhythmia is to protect the health and safety of industry participants,¹⁰⁹¹ suggesting concern for people rather than horses.

4.4.3.7.4 *Harness Racing*

4.4.3.7.4.1 *Overview*

The governance of harness racing in New Zealand more resembles that of thoroughbred racing than greyhound racing, and like NZTR, HRNZ has not been subject to independent review for matters including animal welfare. Similarly to the other New Zealand racing industries that use animals and have previously been detailed in this paper, most charges of harness racing participants are related to

¹⁰⁸⁵ New Zealand Thoroughbred Racing *Starter's Manual: Manual for the Management of Starting Barriers and the Responsibilities of Staff Employed at the Start at New Zealand Thoroughbred Race Meetings* (version 1.0, 14 July 2009). Note that this document has been compiled in consultation with NZTR Management and staff, Stipendiary Stewards, Starters and other Starting Gate staff, Racing Club Managers, the New Zealand Jockeys Association and the New Zealand Trainers' Association.

¹⁰⁸⁶ New Zealand Thoroughbred Racing, above n 1085, at [4.10].

¹⁰⁸⁷ At [4.11].

¹⁰⁸⁸ At [5.2].

¹⁰⁸⁹ At [7.3].

¹⁰⁹⁰ At [8.2].

¹⁰⁹¹ New Zealand Thoroughbred Racing Directive Cardiac Arrhythmia.

breaking the rules of the sport rather than protecting animal welfare, for example there is jurisdiction to impose race fixing charges,¹⁰⁹² even when the provisions in question might appear to be animal welfare purported. Such an example is the prohibition of excessive cobalt levels in horse blood on testing, which might appear to be a welfare concern, but is in reality a prohibition for the purpose of preventing unfair performance enhancement.¹⁰⁹³

4.4.3.7.4.2 *Constitution of Harness Racing New Zealand*

HRNZ's Constitution has been in force since 2001¹⁰⁹⁴ and was last reviewed and published in 2010.¹⁰⁹⁵ HRNZ is specified as the governing body for harness racing in New Zealand.¹⁰⁹⁶ The stipulated objects of HRNZ include the following:¹⁰⁹⁷ to control all harness racing conducted in New Zealand in accordance with this Constitution and the Rules¹⁰⁹⁸ and to promote and advance harness racing in New Zealand.¹⁰⁹⁹ It is notable that the protection of animal welfare or the assurance of compliance with the Act is not a purpose, despite the claim that "Animal Welfare remains a key driver in many of the Board's decisions and planning".¹¹⁰⁰

4.4.3.7.4.3 *Animal Welfare Policy*

The stated purpose of the HRNZ Animal Welfare Policy (the Policy) is to ensure that the safety and welfare of all registered harness racing horses is maintained while they are involved in racing, training and other activities associated with Racing and Training. The Policy "relates" to the Animal Welfare Act 1999. In its policy statement, HRNZ claimed to be "committed to the welfare of horses involved in the wide range of harness racing related activities in New Zealand". It noted:

... the maintenance of the animal welfare of these registered horses ensures the best interests of all industry participants are served; the protection of the industry's reputation is paramount and animal welfare is a critical factor in ensuring this is done.

¹⁰⁹² Martin Van Beynen "Police and racing integrity unit investigating allegations of race fixing" (14 February 2017) Stuff <www.stuff.co.nz>.

¹⁰⁹³ Mat Kermeen "Racing Integrity Unit defends consistency around presenting cobalt charges" (19 May 2017) Stuff <www.stuff.co.nz>.

¹⁰⁹⁴ Constitution of Harness Racing New Zealand Incorporated, art 1(b).

¹⁰⁹⁵ Constitution of Harness Racing New Zealand Incorporated.

¹⁰⁹⁶ Article 1(a).

¹⁰⁹⁷ Article 4.

¹⁰⁹⁸ Article 4(a).

¹⁰⁹⁹ Article 4(b).

¹¹⁰⁰ Harness Racing New Zealand, above n 892, at Chairman's Report.

HRNZ claimed that it would “regularly review established legal and scientific information relevant to animal welfare to make or amend standards, regulations and rules as necessary” and that it would also act on breaches to the Animal Welfare Act 1999 where applicable.¹¹⁰¹

HRNZ stated that as part of its duty it would, as necessary, make standards, procedures or rules regarding animal welfare in a range of areas such as, but not limited to, the following: nasal bleeds and other health related issues, euthanasia, use of a whip and veterinary inspections. The Policy states that HRNZ will investigate allegations of animal welfare breaches to registered horses and will inform the applicable officers responsible under the Animal Welfare Act 1999. The Policy states that HRNZ may also instigate disciplinary action against persons found to be breaching conditions within the Act.¹¹⁰² It is of note and of concern that HRNZ states it “may” instigate disciplinary action against persons found to be breaching conditions within the Act, rather than an undertaking to report it to the appropriate enforcement bodies.

While the Policy has the potential to adequately protect animal welfare and appears enthusiastic and robust; like the instruments used by NZTR, it does not discuss independent welfare audits such as those conducted regarding NZGRA. The engagement of auditors in a professional capacity or their work as an independent contractor, instead of a paid official of HRNZ, is referenced in the HRNZ Rules of Racing.¹¹⁰³

4.4.3.7.4 HRNZ Rules of Racing

Like the other codes, HRNZ’s Rules of Racing permit the Board to appoint Racecourse Inspectors with considerable powers for the purpose of them enforcing the Rules.¹¹⁰⁴ For example, it is provided that Racecourse Inspectors shall have such powers and functions as provided by these Rules and such further powers as may be reasonably necessary to enable them to carry out their functions under these Rules and to give effect to and implement these Rules.¹¹⁰⁵ Racecourse Inspectors must ensure a report is provided to the HRNZ Executive advising the result of every investigation, proceeding or hearing and (if applicable) the penalty imposed for a breach of the Rules.¹¹⁰⁶ From time to time, they also must ensure the Chief Executive

¹¹⁰¹ Harness Racing New Zealand (HRNZ) at 1.

¹¹⁰² At 2.

¹¹⁰³ Harness Racing New Zealand *New Zealand Rules of Harness Racing*, r 105(1).

¹¹⁰⁴ Part 2 – Stipendiary Stewards, Racecourse Inspectors, and Handicappers: Appointments, Functions and Duties of Racecourse Inspectors; in particular rr 218, 223, 225 and 226.

¹¹⁰⁵ Rule 224.

¹¹⁰⁶ Rule 228(1)(a).

receives a report relating to the following matters: any improper conduct of persons licensed, registered or holding a permit under these Rules; and any matter which might influence the Board in granting or refusing or suspending or withdrawing, any licence, permit or registration.¹¹⁰⁷ The Board itself has considerable powers of enforcement itself, including the power to at any time, and by its officers and agents, call for the owner, studmaster or person having charge, care or control of any horse to produce for inspection any such horse and may inspect such horse.¹¹⁰⁸ The Rules also oblige any owner, studmaster or person having charge, care or control of any horse to, when called upon as aforesaid, produce the horse for inspection.¹¹⁰⁹

Part 10 of the Rules prescribes serious racing offences, which includes the infliction of undue suffering upon a horse by any means.¹¹¹⁰ The penalties for committing a serious racing offence are: a fine not exceeding \$30,000; suspension from holding or obtaining a licence for any specific period or for life; and/or disqualification for a specific period or for life.¹¹¹¹ Notably, the Rules prescribe jurisdiction to declare a serious racing offence has been committed in relation to conduct committed in a country other than New Zealand.¹¹¹² It is unclear how the Rules operate in tandem with the Act. While this provision may be viewed as protecting the welfare of animals used by HRNZ even when they are overseas, it is also possible to view this system of regulating animal welfare in harness racing as the equivalent of failing to enforce the Act. The effect is the imposing smaller penalties with no possibility of prison sentences and those who breach the Act not appropriately dealt with either by the RNZSPCA or MPI.

Similarly to the Thoroughbred Racing Code, HRNZ has enacted guidelines for use of whips in its regulations.¹¹¹³ These prescribe that no horseperson shall during any race use their whip in an unnecessary, excessive or improper manner¹¹¹⁴ or use their whip in such a way that it baulks, inconveniences, impedes or strikes another horse or horseperson.¹¹¹⁵ Unnecessary use of the whip is defined as including the striking of a horse that is not responding or cannot maintain its position in the race. While it is prescribed that it is deemed excessive use to use the whip more than 10 times in the last 400 m of a race and that at no stage of a race will Stewards permit continuous use of the whip, it is stated that excessive use of the whip “simply means ‘too much’” and relates to the number of times and/or the force with which the whip is used.¹¹¹⁶

¹¹⁰⁷ Rule 228(1)(b)(i) and (ii).

¹¹⁰⁸ Rule 1,610(1).

¹¹⁰⁹ Rule 1,610(2).

¹¹¹⁰ Rule 1,001(1)(r)(i).

¹¹¹¹ Rule 1,001(2)(a)–(c).

¹¹¹² Rule 1,001(1)(r)(i).

¹¹¹³ Harness Racing New Zealand Regulations - Use of the Whip Guidelines.

¹¹¹⁴ Rule 869(2)(a).

¹¹¹⁵ Rule 869(2)(b).

¹¹¹⁶ At Rule 869(2)(A).

Such a provision is extremely uncertain and discretionary to the extent that it may prove unworkable in practice. This is of particular concern given that the guidelines were set in consultation with the RIU¹¹¹⁷ and that the Minimum Standard addressing the use of a whip in the Horse COW, as noted above, clearly provides that horses must not be struck around the head or genitals with a whip, lead or any other object and that the whip, lead or any other similar object must only be used for safety, correction and encouragement and not used in an unnecessary, excessive or improper manner.¹¹¹⁸ Prior to the issue of these Guidelines, in HRNZ's 2015–2016 Annual Report, it was stated:¹¹¹⁹

... the Board is currently consulting with the Trainers & Drivers' Association around proposed changes to the use of the whip rule and will continue to monitor these rules, with a view to diminishing the role of the whip in our industry.

4.5 Conclusion

In this appendix, we have sought to outline the various aspects of the animal welfare enforcement system in New Zealand. In doing so, we have focused on the different uses of animals because depending upon that use, a different system of regulation applies. Roughly, the enforcement of the Animal Welfare Act for offending against companion animals is undertaken by the RNZSPCA, offending against production animals is undertaken by MPI and offending against animals involved in rodeo and racing is regulated by those industries themselves.

Each sector has a significant degree of complexity in the systems it uses to undertake that enforcement. Our research has shown that there is no lack of detail when it comes to how the various actors ought to act when receiving and responding to complaints about potential breaches against the Animal Welfare Act's provisions. However, for all that complexity – rules, procedures and protocols – it is also clear that while such systems ought to yield effective enforcement in theory, in practice, much of that potential is not realised.

¹¹¹⁷ Harness Racing New Zealand Regulations - Use of the Whip Guidelines.

¹¹¹⁸ Code of Welfare: Horses and Donkeys, Minimum Standard No 8.

¹¹¹⁹ Harness Racing New Zealand, above n 892, at Chairman's Report.

Glossary

Act, the: The Animal Welfare Act 1999.

Animal Control: Animal control services in local government.

ARANZ: Anti Rodeo Action New Zealand.

AO(s): Approved organisation(s) under the Act.

AWEC: Animal Welfare Export Certificate.

AWC(s): Animal Welfare Coordinator(s).

AWI(s): Animal Welfare Inspector(s).

AWO: Animal Welfare Officer.

BRNZ: Bull Riding New Zealand Inc.

CEG: MPI Compliance Enforcement Group.

COW(s): Code(s) of welfare.

CYFS: Child, Youth and Family Services.

DairyNZ: New Zealand dairy farming industry organisation.

Director-General: Director-General of MPI (unless stated otherwise).

DogsNZ: Dogs New Zealand, (formerly the New Zealand Kennel Club).

EO: Enforcement Order, a compliance instrument obtained under the Act and issued by the District Court.

Farmwatch New Zealand.

FF: Federated Farmers.

FEO: Final Enforcement Order, a compliance instrument obtained under the Act and issued by the District Court.

GAP: Greyhounds as Pets Trust.

GRNZ: Greyhound Racing New Zealand.

HRNZ: Harness Racing New Zealand.

HUHANZ: Helping You Help Animals.

JCA: Judicial Control Authority for Racing.

MNZ: Maritime NZ.

MOU: Memorandum of understanding.

MPI: Ministry for Primary Industries (formerly Ministry of Agriculture and Fisheries; MAF).

NAEAC: National Animal Ethics Advisory Committee.

NAWAC: National Animal Welfare Advisory Committee.

NCI: RNZSPCA National Chief Inspector.

NSO: RNZSPCA National Support Office.

NZALA: New Zealand Animal Law Association.

NZARC: New Zealand Anti-Rodeo Coalition.

New Zealand Pork: NZ pig industry organisation.

NZRB: The New Zealand Racing Board.

NZRCA: New Zealand Rodeo Cowboys Association.

NZGRA: The New Zealand Greyhound Racing Association.

NZRLS: New Zealand Racing Laboratory Services Ltd.
NZTR: New Zealand Thoroughbred Racing.
NZVA: New Zealand Veterinary Association.
OIA: Official Information Act 1982, under which official information can be requested.
PIA: Pet Industry Association.
Police: New Zealand Police.
PTS: Performance and Technical Standards.
RIU: The Racing Integrity Unit.
RSPCA: Royal Society for the Prevention of Cruelty to Animals (Australia).
SAFE: Save Animals From Exploitation.
SOASOR: Safeguarding Our Animals, Safeguarding Our Reputation programme of MPI, enacted in 2010.
SPCA: Regional organisation of the RNZSPCA.
Stipendiary Steward: Compliance role within the Racing Integrity Unit.
TradeMe: NZ online auction and classified advertising site.
TEO: temporary enforcement order, a compliance instrument obtained under the Act and issued by the District Court.
RNZSPCA: Royal New Zealand Society for the Prevention of Cruelty to Animals.
VS: Verification Services.
WAS: Welfare assurance system.
WHK: WHK NZ Ltd, company offering accounting, bookkeeping, and related auditing services.
Women's Refuge: Collective of organisations providing social support and advocacy for victims of domestic violence and abuse.