



OIA17-0498

18 OCT 2017

9(2)(a)

Dear 9(2)(a)

OFFICIAL INFORMATION ACT REQUEST

I refer to your official information request on 17 August 2017 relating to your request for complaints data from the Ministry for Primary Industries (MPI). Please find responses to your requests as follows:

The following information is released to you under the Official Information Act 1982 (OIA):

MPI Animal Welfare Compliance System

1 Who Identifies Animal Welfare Issues?

1.1 The General Public

The Ministry for Primary Industries (MPI) and its predecessor, the Ministry for Agriculture and Forestry (MAF), has a 0800 number where members of the public can phone and make a complaint if they believe animals are being mistreated.

The 0800 complaint line is promoted through MPI's website. This number also appears in some MPI written publications and is often referred to in media releases.

In the winter of 2016 a promotion was run on radio, newspapers and some other rural publications promoting the 0800 number and encouraging members of the public to phone in their animal welfare concerns.

1.2 MPI Animal Welfare Inspectors

Animal Welfare Inspectors (AWI) and other employees of MPI, while going about their day-to-day duties, encourage the public and stakeholders to phone in and report animal welfare issues. Animal Welfare Inspectors spend a majority of their time reacting to these complaints. [*Please refer paragraph 7 relating to proactive inspections.*]

1.3 MPI Verification Services

MPI employs over 200 Verification Services (VS) veterinarians at all processing plants that produce food for human consumption, as a market access requirement. These veterinarians verify compliance with New Zealand animal products legislation, provide veterinary certification for each consignment exported, and are also cross-warranted to monitor the welfare of animals transported to slaughter domestically.

MPI also completes on-farm verification audits. The On-Farm Verification programme audits over 1,200 livestock production farms against the requirements under the Animal Products Act 1999, Biosecurity Act 1993, and Animal Welfare Act 1999.

MPI also assesses operator compliance with Overseas Market Access Requirements which outline standards that exporters need to meet in order to gain access to certain markets. Each country has different requirements depending on the product.

Verifiers inspecting premises for other purposes can also refer animal welfare concerns to MPI Compliance.

By providing verification and assurance on issues including animal welfare, MPI is able to enhance opportunities for international trade for New Zealand producers. This is especially important in growing New Zealand's reputation as an ethical supplier of animal products to premium overseas markets.

2 The Role of Stakeholders in Animal Welfare

2.1 MPI has broad involvement with industry organisations and animal welfare forums which enable the Minister, Ministry, and industry to work together on animal welfare issues from farm to slaughter. In particular, MPI's Safeguarding our Animals, Safeguarding our Reputation programme focuses on working in partnership with industry and others to encourage and improve voluntary compliance with animal welfare standards.

2.2 Safeguarding activities include developing resources such as workshops and conferences to support and educate farmers and veterinarians, as well as

working to improve awareness of the codes of welfare and regulations. Safeguarding held and attended various events in 2016 and 2017 to educate farmers on how to comply with new calf regulations, which were well attended.

- 2.3 Delivery of the animal welfare system requires high levels of collaboration with all affected stakeholders to deliver successful outcomes.
- 2.4 Some stakeholder organisations also conduct audits which include compliance with Codes of Welfare. NZ Pork's PigCare audit is an example. Non-compliance can be resolved by applying commercial pressure.
- 2.5 Dairy NZ has an early response service where it works with a farmer to resolve an animal welfare issue.

There are cases each year where a stakeholder organisation has attempted to resolve animal welfare issues by providing advice to farmers. If that advice is not followed and the animal welfare issue is not being resolved, then the stakeholder organisation advises MPI Compliance.

There is no Memorandum of Understanding (MOU) between stakeholder groups and MPI Compliance that documents when cases should be referred to MPI Compliance. Anecdotally, this has not been a concern and cases are referred at the appropriate time.

3 The Complaint Process to Allocation

3.1 Complaints From the Public

All animal welfare complaints during normal working hours are received by two Animal Welfare Coordinators (AWC). Complaints are mostly received by 0800 telephone calls and email. After normal working hours, evening and weekend calls are received by MPI's National Communications Centre.

Complaints received are logged into the MPI animal welfare database.

Exceptions are:

- Complaints that are best dealt with by the Royal New Zealand Society for the Prevention of Cruelty to Animals (SPCA) (for example, companion animals).
- Complaints that are not animal welfare issues, e.g. barking dogs, wandering stock. They are referred to Animal Control Officers.
- Complaints involving stock that are involved in civil law disputes, as long as their welfare is not compromised.

3.1.1 Priority to Respond to Complaints (Grading)

All complaints received are graded by the AWC reflecting the urgency or lack of urgency for any response required. The AWC will take into account when categorising a response, the urgency required to mitigate the animal's suffering, pain or distress based on the information on hand at the time.

The following is a minimum guide when assessing the appropriate response for an animal welfare complaint:

Grade 1 <i>(Response within 24 hours)</i>	<ul style="list-style-type: none">• Animal dying• Animal broken limb• Sign of severe injury• Comatose/recumbent• Aggravated/severe cruelty, abuse
Grade 2 <i>(Response within 7 days)</i>	<ul style="list-style-type: none">• Longstanding injury• Non-life threatening injury/disease requiring vet attention• Nutritional problems• Neglect/cruelty• Transport problem• Overstocking• Poultry overcrowding• Implications on trade/overseas markets, e.g. live sheep shipments
Grade 3 <i>(Response when possible, handled by telephone call or transferred to other agency)</i>	<ul style="list-style-type: none">• Access to water• Roadside goats (shelter/water)• Injuries/conditions requiring vet attention (non-urgent)• Conditions requiring drenching, dripping, shearing or crutching

MPI Animal Welfare Compliance has a specific performance measure that requires that 100% of Grade 1 complaints are attended to within 24 hours. This performance measure is reported on quarterly to the Director-General and Minister.

3.2 Complaints Received By MPI Veterinarians Detecting Animal Welfare Breaches

When a VS veterinarian detects a breach of a Code of Welfare or Animal Welfare Act offence, they may deal with the case according to a VS incident grading system from Grade 1 to Grade 3. There is not the same urgency for an inspection or investigation as the animal involved will have been euthanized under an instruction from the Veterinarian and therefore not suffering.

Grade 1 cases are the most severe and relate to acts of wilful ill-treatment and neglect. These include transport breaches, and result in the death of the animal or the animal being in such a condition that it must be destroyed. Also in this category are:

- keeping an animal in a state of severe pain without veterinary care or treatment, and
- contravention of dehorning, velvetting or castration provisions.

Grade 1 cases are referred to MPI Compliance for further investigation. If MPI Compliance finds a breach of legislation has occurred, the appropriate intervention is applied from prosecution to education following the Solicitor-General Guidelines.

Grade 2 cases are those where an animal has suffered significant unreasonable and unnecessary pain or distress due to an action or lack of action by the person in charge. The animal is not in danger of dying from the action. Examples are:

- horn related;
- advanced cancer eye;
- injury during transport;
- transport of unfit animals without an accompanying Fitness of Livestock for Transport – Veterinary Declaration.

Grade 2 incidents may also be referred to MPI Compliance. Many of these Grade 2 cases that related to the transportation of young calves were dealt with by Infringement Notices in 2016 and 2017.

From 1 October 2018, it is anticipated many more of these incidents will be dealt with by Infringement Notice after the introduction of further Animal Welfare Regulations.

Grade 3 cases are those where an animal has endured lesser suffering or distress. Examples include:

- less severe cases of in-growing horns;

- cancer eye;
- lameness; and
- animals giving birth in the yards.

Also included are incidents where a person has taken reasonable action but suffering and distress has still occurred. Grade 3 incidents are usually addressed by a written communication to the person in charge. These communications are largely educational, promoting awareness of the Animal Welfare Act 1999 and relevant Codes of Welfare.

3.2.1 Summary of Cases and Referrals from Verification Services to Compliance

Total Recorded Cases and Referred Cases by Species			
	2014	2015	2016
Cattle			
Cattle Processed	2,502,462	2,695,552	2,508,393
Dairy Cases	289	350	292
Dairy Referrals	27	21	28
Beef Cases	216	175	192
Beef Referrals	7	13	12
Bobby Calf			
Bobby Calves Processed	2,096,820	2,112,188	1,867,233
Bobby Calf Cases	62	180	264
Bobby Calf Referrals	6	4	18
Sheep			
Sheep Processed	24,912,034	26,071,827	23,309,641
Sheep Cases	128	127	154
Sheep Referrals	8	6	15
Deer			
Deer Processed	409,772	376,485	284,946
Deer Cases	54	46	68
Deer Referrals	10	4	2
Goats			
Goats Processed	117,260	124,056	120,547
Goat Cases	3	7	6
Goat Referrals	0	0	1
Pigs			
Pigs Processed	663,203	617,583	632,979
Pig Cases	4	17	2
Pig Referrals	1	2	1

Horses			
Horses Processed	1,528	1,210	611
Horse Cases	1	0	0
Horse Referrals	0	0	0
Chickens			
Chickens Processed	Number not collected		
Chicken Cases	1	0	0
Chicken Referrals	0	0	0
Total			
Total Cases	758	902	978
Total Referrals	59	50	77
Total Stock Processed	30,703,079	31,998,901	28,724,350

Each year prosecutions are taken for referrals from MPI veterinarians. Cases include transporting animals with broken limbs, severe lameness, in-grown horns or severely underweight.

4 Allocating Animal Welfare Complaints

Once a case has been logged and graded, it is then sent to an Animal Welfare Compliance Team Manager.

4.1 Team Managers

There are three defined regions: Upper North Island, Lower North Island and South Island. Each region has a Team Manager.

The Team Manager then allocates the matter to an Animal Welfare Inspector or Investigator.

4.2 Animal Welfare Inspectors

There are currently 22 Animal Welfare Inspectors based at various locations throughout New Zealand. They work full-time in the field of Animal Welfare Compliance.

4.3 MPI Investigators

Occasionally an animal welfare matter may be allocated to an Investigator. There are currently 35 Investigators working in MPI's Compliance branch; 15 of these Investigators hold an animal welfare appointment.

Compliance Investigators work across the various Acts MPI administers including the Fisheries Act 1996, the Biosecurity Act 1993, the Food Act 2014, the Animal Products Act 1999 and the Animal Welfare Act 1999.

The type of animal matter that is given to an Investigator is when it is anticipated the investigation will be complex and could include multiple offenders, multiple animals, unique and untested situations. Most cases that are allocated to an Investigator are assessed as having a high probability of a prosecution.

These types of investigations will often involve a team approach with Animal Welfare Inspectors providing advice and assistance on animal husbandry to the Investigator.

Animal Welfare Inspectors also take prosecutions but usually for less complex cases involving less preparation time.

4.4 **The Role of Experts for Advice And Assistance Responding To Complaints**

Experts such as veterinarians and farm consultants will be requested to assist in an investigation:

- 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
- to gather evidence and act as an expert witness.

[Please refer to paragraphs 12 and 13 for more detail].

5 **Animal Welfare Complaint Data**

There have been different databases used over the period 2006 to 2016. Three defined regions were not used to capture complaints until 2012.

In the latter years, 2012 to 2016, complaints could 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. At the time of responding to this OIA request, this work is still in progress and there is some difficulty extracting data for 2017. This is intended to be resolved by the end of the year.

5.1 Complaints by Region

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Central				159	82	132					
North				1	1	8	77	127	150	228	249
South				2		15	155	218	237	207	399
South				1	3	16	219	279	311	411	402
Grand Total	457	673	946	651	521	396	451	624	698	846	1050

5.2 Complaints by District



Figure 1: District Comparison of Cases for the 5 year period

5.3 Complaints by Month

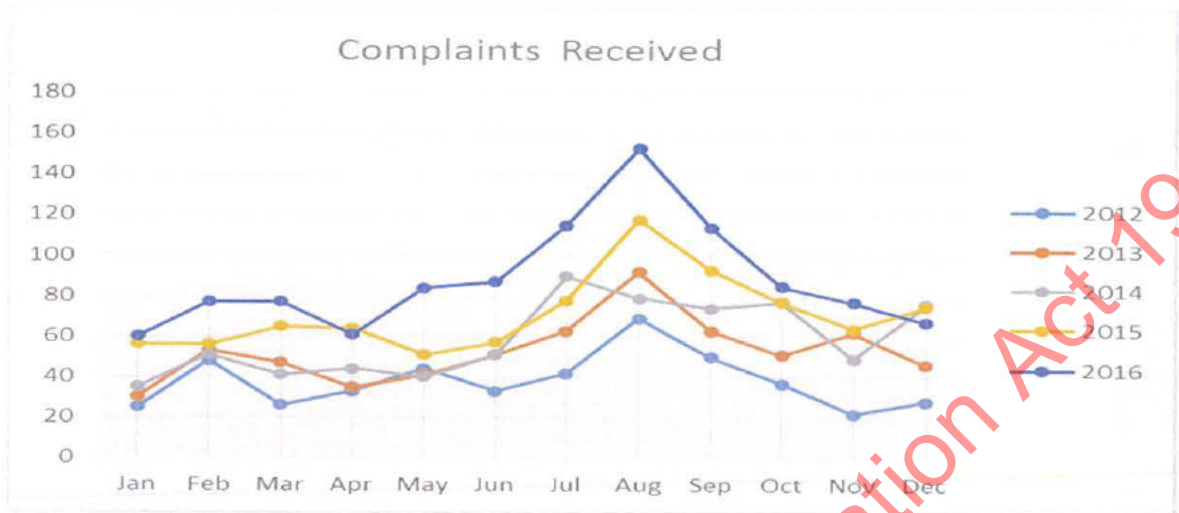


Figure 2: Complaints Received by Month for the 5 year period

5.4 Source of Complaints

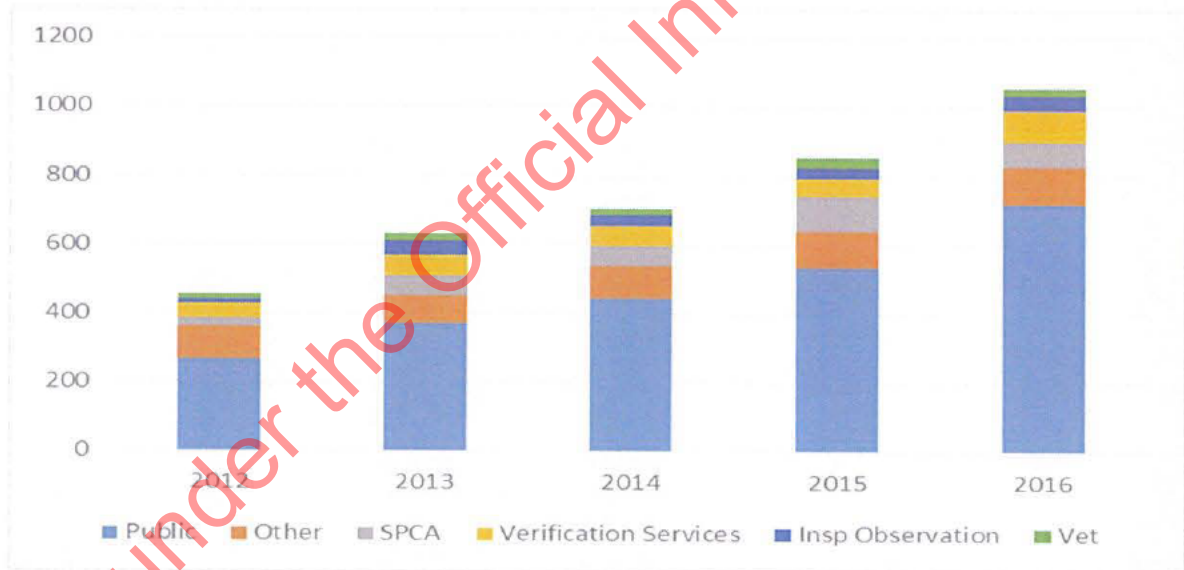


Figure 3: Source of Complaints for the 5 year period

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5.5 Complaints by Animal Type



Figure 4: Trends by Common Animal Type for the 5 year period
"Bobby" refers to cases involving bobby calves sent to slaughter.
"Calves" refers to cases involving calves raised for beef or dairy replacements

6 How Animal Welfare Complaints Are Resolved

With some very minor exceptions, all cases that are logged and allocated will be followed up with an inspection of the animals and the farm subject to the complaint.

An exception is lifestyle blocks. Both the SPCA and MPI will respond to complaints on lifestyle blocks. Depending on workload at the time, MPI may ask the SPCA if they would attend a lifestyle block job and accept a transfer. The SPCA will do likewise and transfer jobs to MPI.

After receiving the complaint, an Animal Welfare Inspector will make an unannounced visit, then 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.

The following tables give an indication of the type of animal welfare complaints typically received and how they are dealt with by MPI Compliance.

6.1 Animal welfare complaint, no offence committed	Response
6.1.1 No animal welfare issue, no offence has been committed.	While well-meaning often what the complainant is observing is part of normal farming practice. We try and determine this at the time of taking a call and, if appropriate, advise the complainant. However, we still respond to many complaints with an inspection and it is found there is no animal welfare issue.
6.1.2 There is an animal welfare issue (within industry norms) which is being dealt with appropriately by the owner or person-in-charge. No offence has been committed.	<p>A typical example is someone who observes 12 lame cows at the back of a dairy herd walking to the dairy shed. An inspection could determine:</p> <ul style="list-style-type: none"> • 12 lame cows from a herd of 900 would be within industry norms. • The cows are under an active management plan. They are only being milked once a day and are being held in a paddock close to the milking shed to minimise walking distances. • The cows are being monitored and treated by a veterinarian. <p>In this scenario, no offence has been committed and it is unlikely any further follow-up action would be made by the inspector. [Also refer to paragraph 6.2.2]</p>

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<p>6.1.3 There is an animal welfare issue and best practice is <u>not</u> being adhered to, however there is <u>no</u> breach of a defined minimum standard, and therefore no prosecutable offence had been committed.</p>	<p>A typical example is a complaint of underweight animals. An inspection may find animals less than their optimal condition but not below a minimum standard, when a prosecution could be considered.</p> <p>The Animal Welfare Inspector will consider whether the situation may get worse. If, for example, there is little grass on the farm and no evidence of supplementary feed being available the inspector will issue a notice pursuant to section 130 of the Animal Welfare Act, and order the farmer to provide more feed. The condition of the animals is then monitored with follow-up inspections.</p>
<p>6.1.4 There is a breach of minimum standard but it is difficult to evidentially prove the breach has caused the animal unnecessary or unreasonable pain and distress. Elements required to be proven for a successful prosecution under the Animal Welfare Act 1999.</p>	<p>For example, using blunt force to euthanize a calf <u>was not</u> permitted under a Code of Welfare. However <u>if correctly performed</u> along with bleeding out, Veterinarians would state this does not cause the calves pain or distress. It was therefore difficult to prove a case pursuant to the Animal Welfare Act even though it was in breach of the code.</p> <p>This was effectively resolved by making it a regulatory offence to use blunt force to kill a calf in 2016.</p>
<p>6.1.5 The activity being observed is in compliance with a Code of Welfare, but to a significant proportion of the general public the activity appears to be causing pain or distress to an animal. This motivates them to make complaints.</p>	<p>Rodeo complaints is an example. A small number of people find it difficult to accept this activity complies with the Rodeo Code of Welfare.</p>

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6.2 Animal welfare complaint, offence committed	Response
6.2.1 There is clear evidence that an animal has suffered unnecessary or unreasonable pain or distress. And if one exists, a minimum standard has also been breached.	It is investigated as you would any other criminal activity, and evidence is gathered to prove the offence. Unique to Animal Welfare is often we have large numbers of live animals whose welfare is compromised. That situation must always be addressed and can take many months.
6.2.2 There is clear evidence that an animal is suffering pain or distress and steps are not being taken to mitigate that pain or distress. In other words, the pain or distress is unreasonable or unnecessary.	<p>Refer 6.1.2. If we have the same complaint of 12 lame cows at the back of a dairy herd walking to the dairy shed, an inspection could determine:</p> <ul style="list-style-type: none"> • There is no active Management Plan. The cows are walking long distances and are being milked twice a day. • The cows are not being treated by a veterinarian. • There is evidence that the cause of the lameness is the poor condition of the walking tracks. <p>In this situation an offence against the Animal Welfare Act has been committed and a warning or prosecution would result.</p> <p>A Notice pursuant to Section 130 would also be issued to provide treatment and improved management of the herd</p>

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<p>6.2.3 There is a breach of an Animal Welfare Regulation. More simple to take a regulatory prosecution. The elements of pain or distress are not required to be proven. Some regulation offences are able to be dealt with by infringement notice.</p>	<p>Relatively new for animal welfare. The Animal Welfare (Calves) Regulation 2016 were the first to be enacted. One regulation (R(6)) makes it an offence to transport an unfit calf. In 2017, 140 infringement notices, \$500 fine have been issued for transporting unfit calves. These regulations have had a significant positive impact for the welfare of calves. Further details can be provided. In October 2018 a further 40 Animal Welfare Regulations will be enacted, many of which infringements will be able to be issued. It is estimated this could add a further 400 Infringements per year.</p>
<p>6.2.4 Complaints of animal neglect against people incapable of looking after animals. Elderly farmers or farmers with mental health issues.</p>	<p>Enforcement orders (refer paragraph 14) are occasionally used to mitigate these types of issues. 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. Stakeholders will often be involved in these types of cases. To encourage non-performing farmers to exit the industry.</p>

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6.3 The outcome of complaints was captured with greater accuracy from 2012.

The 2017 database now captures the outcome of complaints in greater detail.

	2012	2013	2014	2015	2016
No Breach	207	284	317	403	524
Prosecution	17	28	28	19	34
Education	73	86	71	101	106
Warning	23	50	74	72	97
Verbal Advice	131	176	208	251	289
Grand Total	451	624	698	846	1050

7 Proactive inspections

The majority of complaints received and referred to Animal Welfare Inspectors are reactive. Occasionally, an Inspector will conduct a proactive inspection. In 2016 pig farms and rodeos were targeted for proactive inspections. It is a strategic goal of MPI Compliance to increase the quantity of targeted proactive inspections.

Animal / Activity	Number of Proactive Inspections 2016
Pig farms	39
Rodeos	15
Sheep / beef farms	12
Dairy	9
Sales yards	5
Shipping vessels	2

8. Initial Response to Animal Welfare Complaint (Extract from Animal Welfare Training Material)

This information is released to you in Appendix One

I trust this information satisfies your request.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'S. Rowe', written in a cursive style.

Stephanie Rowe
Director, Compliance Services

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Appendix One:

Introduction

You must have as priority at all times, the alleviation of any unreasonable or unnecessary pain or distress suffered by the animal.

You may take action to both prevent and/or mitigate the suffering of the animal and to assemble evidence in accordance with the Animal Welfare Act 1999, where in your opinion, based on the facts as presented, any breaches of the Act have occurred.

Powers

Section 127 – Power to Inspect

Under s.127 of the Animal Welfare Act you may enter any land, premises or place at any reasonable time for the purposes of inspecting an animal that is there.

You do not need any particular reason for believing that the animal(s) you want to inspect may already be suffering (or be likely to suffer) pain or distress.

Section 128 – Production of Warrant

You cannot exercise any power of entry of inspection unless you take and produce both:

- Proof of your identity, and
- Evidence of your appointment as an AWI.

Section 129 – Notice of Entry

If the person in charge of the land, premises, vehicle, and so forth is not present when you enter and inspect the animal(s) you find there, you must leave behind a notice of entry in accordance with s.129.

Formal notices under s.129 have been drafted and must be used at all times.

Note that you are required to fill in specific details as to the:

- Date and time of entry.
- Purpose of entry.
- Condition of the animal(s) inspected.

- Any animal(s) that have been removed under s.127(5).
- Your name as an inspector.
- The address to which enquiries can be made.

Section 129 notices of entry must be left in a prominent place so that they can easily be seen. You must also ensure that the person who finds the s.129 notice is able to contact you easily.

1.1 Initial Inspection

The Scene – describe the general scene in detail, in particular:

- The number and type of animals involved.
- How you found them. (Where were they? Were they tied up or loose?)
- What sort of physical space/environment were they in? Was there water and/or food? Was there shelter? Was it adequate?
- The surrounding environment, state of the farm as a whole and whether or not you have discovered anything else that warrants your attention (in which case, take full details of this as well).

The specific condition of the animals in question – describe the state of the animals as you found them in detail. In particular:

- Their physical condition (including details of any particular injury, illness or emaciation. Were they strong enough to stand and move on their own, etc?).
- Their behavioural condition. (Were they manifesting signs of behavioural disturbance? And if so, what (exactly) were they doing?)
- Any other relevant information, such as the presence of specific evidence that would go to supporting or refuting any particular charges under the AW Act.
- Any acts or omissions that you have been able to identify as leading to the situation that you have found.
- Note that if the facts are such that you consider you need advice from an expert to help you assess the situation properly, you are expected to arrange for someone appropriate to assist you. This person may be

The people involved – describe who you spoke to:

- Identify names and contact details of all witnesses.
- Describe precisely what they have each told you.
- Identify all relevant histories, justifications or excuses that you have been told by each person.

Evidence

- Take plenty of photographs to verify and illustrate the notes that you have taken.

Notebook entries must be made. From these notebook entries, job sheets can be formulated if required.

- What needs to be done in the short term to prevent or mitigate further suffering?
 - *Inform and education.*
 - *Issue instructions (s.130).*
 - *Remove (s.127(5)).*

In any instance where the requirements of the AW Act are not being met, you must ensure that the owner or person in charge is made aware of their legal obligations to care for the animal(s). You must identify for them where and to what extent they have failed to meet these obligations.

Having identified what action needs to be taken immediately and in the short term to prevent or mitigate suffering, you must decide who should be responsible for taking it. This will depend on the type of action that has been identified, but as a general rule it is describable to make the owner or person in charge take responsibility for remedying the situation. The role of the AWI should be in follow up to make sure that the owner/person in charge has carried out the instructions given via s.130 notice.

1.2 Outside Training / Expertise

Where you believe that you are operating in an area of animal husbandry that is outside your training or expertise to make an objective assessment of the animal(s) and its condition, you must obtain the opinion of a person with recognised expertise in the area. This may include another AWI, a veterinarian or a person with appropriate experience in the particular area of animal husbandry.

1.3 Documentation

Notebook Entries

Initially the notes you take should be taken in your notebook. It is extremely important to take full notes of everything that you see, hear and are told. Document your notes fully and carefully. These notes can then be transferred to a job sheet if necessary.

FO1 Form

The FO1 form should be filled in with all necessary details and returned to the AWC by email as soon as possible after the file is closed.

If the file involves issuing of a s.130 notice and further visit(s) to the property, the FO1 form should be filled in with all relevant details, and should be returned to the AWC noting this fact and giving the date of the expected return visit, eg, B/Up 15/1/17). The closed FO1 form should then be emailed to the AWC as soon as the file is closed.

Education Letter

A copy of any education letter issued should be emailed to the AWC with the closed file.

S.130 Notices

A copy of any s.130 notice issued should be forwarded to the AWC when the file is closed.

1.4 Equipment

You must ensure when you are responding to an animal welfare complaint that, where practicable, you are in possession of equipment that is appropriate to resolve the complaint.

Essential Equipment

The following minimum equipment requirements are:

- Proof of Authority.
- Copy of the Animal Act 1999 and its amendments.
- Notebook suitable for recording actions taken, and pens.
- AWS129/130 Notices.
- Appropriate clothing to deal with the complaint.
- Animal care equipment with ability to euthanize animal(s) if necessary.
- Camera and film.
- Video camera.
- Mobile telephone.
- Warrants to enter dwelling house or marae (if required).
- First aid kit.
- Relevant Codes of Welfare.
- EPIRB.

Desirable Equipment (optional extras)

- Ropes.
- Torch and spare batteries.
- Detailed maps of the area.
- Protective clothing (waterproofs, sunhat, sunscreen).

2 Instruction to Mitigate Pain / Suffering – Section 130

2.1 Introduction

The steps you require someone else to take under s.130(1)(b) of the Animal Welfare Act must be formally recorded by notice in writing. There are specific s.130 notices that have been drawn up for this purpose and you are required to use them for issuing instructions under s.130(1)(b) at all times.

2.2 The Bill of Rights

Your power to require others to act under s.130 has the potential to impact on that person's rights, obligations or interests. That means that s.27 of the Bill of Rights Act is relevant. There is a common law duty to act fairly and reasonably.

Both the Animal Welfare Act and the Bill of Rights require an inspector to discuss the actions you plan to require with the owner or person in charge and take their concerns into account.

In coming to a plan of action that is reasonable in the circumstances, you will need to talk this through with the person concerned to find out what is practicable and reasonable for them.

2.3 Specialist Advice

If you believe that the complaint in question is outside your area of training or experience, and therefore you are not able to make a proper objective assessment of the animal or its condition, you must get the opinion of someone who is a recognised expert in the area.

That person may be a different AWI, a veterinarian or someone with some specific and relevant expertise in animal husbandry.

2.4 Disagreement

If the owner or person in charge disagrees with the assessment you have made of the situation, and in particular disagrees with the remedial steps that you have

proposed, then you should obtain advice from an experienced third party (such as a veterinarian) where it is practicable to do so.

Although you have the authority to overrule any objections in this respect, bear in mind that you are required to exercise that authority reasonably. Therefore, where you propose to issue instructions contrary to the objections of the owner or person in charge, make sure that the instructions issued are:

- necessary in the circumstances to prevent or mitigate actual or likely suffering; and
- reasonably practicable to implement.

Make sure that notes are taken to record the fact of the disagreement and the basis for it, what was done as a result (eg, called the veterinarian) and why.

2.5 The Section 130 Notice

The structure, nature and content of the s.130 notice must remain that of an instruction or act or cease to act, and must set out clearly what is required and within what timeframe those requirements must be undertaken.

The s.130 notice must in every instance contain sufficient specific information to enable the owner or PIC to:

- fully comprehend the actions required of him/her; and
- enable you to evaluate compliance with the instructions during follow up visits.

The original of the notice should be given to the owner/person in charge of the animal(s). The duplicate copy should be retained with the file and should be forwarded to the AWC when the file is closed.

If the notice cannot be given personally to the owner/person in charge it should 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.

2.6 Follow Up

It is your responsibility to follow up on the s.130 notice that you have issued within a reasonable timeframe.

You must make sure that the person concerned understands that you will be returning to do so, knows when you will be returning, and knows quite clearly what is expected of them and by when.

2.7 Non-Compliance

In the event that the owner or person in charge fails to comply with the provisions of a s.130 notice, they can be prosecuted for an offence against s.130(2), and/or you can apply for a temporary or full enforcement order.

3 Euthanasia of Animals – Section 138

3.1 Criteria for Euthanasia

You may only exercise the power to euthanize 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 it respond, and
- it will suffer unreasonable or unnecessary pain or distress if it continues to live.

3.2 Consultation With Owner

Before you can act, you must consult with the owner of the animal(s) (if they can be found within a reasonable time), and if they ask for a second opinion from a vet then you must allow them to arrange for this 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.
- He or she must then be given a reasonable opportunity to discuss the reasons for their destruction, and the possibility of pursuing some alternative action.
- He or she must also be given a reasonable opportunity to get a second opinion if required.

Note that if you either cannot find the owner within a reasonable time, or if they fail to obtain a second opinion from a vet within a reasonable time, then you must nonetheless destroy the animal(s) without delay.

3.3 Case History

In the case of *R v Summers* (CA 356/04; 8/12/04, paragraph 48) the Court of Appeal recently considered the application of s.138 and outlined the process to be followed in those situations where the owner of the animal(s) is present.

- 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.
- He or she must then be given a reasonable opportunity to discuss the reasons for their destruction, and the possibility of pursuing some alternative action.
- He or she must also be given a reasonable opportunity to get a second opinion if required.

Bear in mind that these situations are by their nature urgent, so that urgent action will be required to alleviate the animal's suffering. What constitutes a reasonable timeframe (for looking for the owner and/or allowing them to arrange for a second opinion from a vet) must therefore be assessed within this context of urgency and having due regard to the imperatives of the animal's condition.

In dealing with difficult or obstructive owners, the Court of Appeal in *Summers* went on to say this:

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." R v *Summers* (CA356/04; 8/12/04, paragraph 29).

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

3.4 Other Requirements

Other Legislation

You must meet any and all statutory requirements of other Acts, Regulations and By-laws (eg, use of firearm complies with conditions of Arms Act 1966 and complies with local by-laws governing use of firearm in that area).

General

- Low grain cartridges must be used for small animals (sheep) and higher grain ammunition for larger animals (cattle) to limit the risk of bullets exiting the animal fired upon.

- The target must be identified and care 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.
- Target animals are to be destroyed by the appropriate method as defined for each species in the Code of Recommendations and Minimum Standards for the Emergency Slaughter of Farm Livestock.

Training

All members of the CEG involved in the euthanasia of animals must have received training to the accepted standard in the method of euthanasia for the species, sex, age, type, ie,

- destruction with firearm/captive bolt;
- destruction with knife;
- destruction with stunning implement.

Documentation

In every case where you decide to destroy an animal, make sure that you have clearly recorded:

- What steps you have taken to find the owner, and whether or not you were successful.
- Whether the owner asked for a second opinion.
- And if so, what steps were taken to obtain one and within what timeframe.
- What that second opinion actually was (if it was obtained).
- Why you have decided to euthanize the animal.
- Who carried out the euthanasia and by what method.

Obviously, it will not be practicable to write all of this down at the time. But it is important to remember that destroying an animal is a final and irreversible action. The animal is considered by the Courts as the property of the owner, and his property rights must be taken into account.

If the owner subsequently takes issue with your action or your process, then you will need to be able to demonstrate that you acted properly within the law, and reasonably in the circumstances.

Because it may be some months before you are even aware that you will have to defend the legality of your decision, you have no better protection than your written record of what happened and why. The more full and accurate this is, the better it will serve you. And the more proximate it is written to the events in question occurring, the more accurate it will be.

4 Seizure of Animals – Section 127(5) Animal Welfare Act

4.1 Introduction

An animal may be seized under s.127 of the Animal Welfare Act 1999 under the following circumstances:

- an animal has been wilfully mistreated; or
- its physical, behavioural or health needs make it necessary or desirable to do so; or
- its need for treatment is such that it is necessary or desirable to do so.

Once you have seized an animal under s.127, then MPI is responsible for its welfare until it has been:

- forfeited to the Crown or an approved organisation under s.172, or
- returned to the owner or person in charge under Court order.

Note that you may transfer the animal to the care of an appropriate organisation during this time.

4.2 Practical Application

Approval must be sought from the Team Manager before any animal is seized by an AWI.

If you are considering removing an animal, you must ensure that this is actually a practicable option for you in the circumstances, bearing in mind the logistics of transport of the animal(s) and ongoing care. Other options to consider are:

- Can the situation 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.
- Should the animal be destroyed instead?

In every case where you decide to remove an animal, make sure that you clearly record:

- who you have spoken to about the animal,
- what was discussed, and
- why you have decided to remove it.

5 Engaging Services of Veterinarian

5.1 Introduction

The services of a veterinarian should be engaged by you, and the costs paid by MPI, when in your opinion:

- expert opinion is required to establish an offence;
- the condition of the animal(s) is beyond your knowledge;
- the services of a veterinarian are required to mitigate pain/suffering; and
- the owner is unable to be found within a reasonable time.

If you are of the opinion that the services of a veterinarian are required on the property for animal health purposes, you should give the owner or person in charge a written instruction to obtain such services, and include on the instruction that you are to be provided with a copy of the veterinarian's report on the animal(s).

5.2 The Vet Is Working For and Paid by MPI

Brief the veterinarian with your requirements and check that he/she clearly understands what you expect of them, i.e. that they are working for MPI and not the farmer. Give the veterinarian a copy of Role of Veterinarian on AW Investigations document.

You must follow up verbal instructions to the veterinarian with written confirmation.

You must seek an approximate cost of the veterinarian's services. Where the cost is likely to be over \$500, you must obtain the approval of the Team Manager before proceeding. Where the cost is likely to be over \$500 and the involvement of the veterinarian will be for more than one visit – use the Contract for Services form.

6 Engaging Services of Farm Consultant

6.1 Introduction

The services of a farm consultant should be engaged by you, and the costs paid by MPI, when in your opinion:

- expert opinion is required to establish an offence;
- the condition of the animal(s) is beyond your knowledge;
- the owner is unable to be found within a reasonable time.

If you are of the opinion that the services of a farm consultant are required on the property for farm management purposes, you should give the owner or person in charge a written instruction to obtain such services, and include on the instruction that you are to be provided with a copy of the farm consultant's report on the animal(s).

6.2 The Farm Consultant Is Working For and Paid by MPI

Brief the farm consultant with your requirements and check that he/she clearly understands what you expect of them, ie, that they are working for MPI and not the farmer. Give the farm consultant a copy of Role of Farm Consultant on AW Investigations document.

You must follow up verbal instructions to the farm consultant with written confirmation.

You must seek an approximate cost of the farm consultant's services. Where the cost is likely to be over \$500, you must obtain the approval of the Team Manager before proceeding. Where the cost is likely to be over \$500 and the involvement of the consultant will be for more than one visit – use the Contract for Services form.

When requesting a written report, seek an estimate of the amount of time it will take to produce the report and the cost involved.

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7 Enforcement Order – Sections 143 – 156

7.1 Animal Welfare Act

An enforcement order is an order made by the District Court where it is satisfied that the person to whom it is addressed has breached:

- the Animal Welfare Act, or
- any relevant regulations made under the AW Act, or
- any relevant Code of Ethical Conduct, or
- the conditions imposed by any Animal Ethics Committee in giving its approval to

any particular project.

You will therefore have to produce evidence of a relevant breach on the part of the person or organisation named in the order. You must be able to tell the Court specifically:

- who is in breach;
- of what;
- on what occasions;
- when;
- where; and
- how.

You will need to provide an accurate description of the person concerned, the detail of their actions, and the specific provisions that those actions are said to be in breach of, along with information about relevant dates and places. You will also need to provide the court with evidence to support every allegation and statement that you make.

The burden of proof required by the Court to grant an enforcement order is substantially less than that required to support a criminal conviction. The District Court must be *satisfied* of the relevant breach. This is a standard that falls short of the standard required for criminal prosecution. What you will therefore need to provide to the Court is that it is more likely than not:

- **relevant provisions**
(*identify the provisions specifically*)
- **were breached**
(*describe as precisely as you can, how, when and where*)

- **by the person concerned**
(make sure you can link the person or organisation directly to the breaches you have identified).

7.2 Types of Enforcement Order

Temporary – s.148 AW Act

Temporary enforcement orders can be applied for without notice and will be granted if the District Court is satisfied that the delay caused by proceeding on notice would or might entail the risk of harm to any animal.

This is a low threshold to meet. The Court must be satisfied that the delay:

- **would or might**
(Note the use of might, as opposed to the more often used “is likely to”. Anything might happen – there does not have to be any particular probability that it will happen.)
- **entail the risk**
(There does not even have to be a possibility of actual harm. All that is needed is that delay might entail the risk of harm.)
- **of harm**
(Harm is not limited to physical injury or violence. It covers ongoing neglect and other passive harm as well. The wording here covers a situation where an animal might be at risk of ongoing neglect just as equally as it covers a situation where an animal might be at risk of harm because of retributive violence.)

A temporary enforcement order only comes into effect once it has been served on the respondent or at some later date if one is specified within the order itself. Once the order has been served the respondent has the right to apply to the Court for the order to be varied or discharged. If a temporary enforcement order has not been discharged within three months, it will become final.

Final Enforcement Order – s.143 AW Act

All enforcement orders granted after an application has been made on notice are final enforcement orders. Where an application for an enforcement order is made on notice, MPI is required to serve a copy of the application within 7 days (or any different timeframe specified by the Court) upon every person who is directly affected by it.

Final enforcement orders come into effect when they are served upon the respondent, or at a later date if that is specified within the order itself.

7.3 **Effect of an Enforcement Order**

The effect of an enforcement order is to force the person concerned to meet their relevant obligations. Unless the order specifies otherwise, they are also responsible for meeting all the costs of doing so.

7.4 **Contravening an Enforcement Order – section 152**

Any individual convicted of contravening an enforcement order is liable to a maximum of 6 months imprisonment and/or a fine of up to \$25,000. Any corporate body convicted of contravening an enforcement order is liable to a fine of up to \$125,000.

7.5 **How to Apply For an Enforcement Order**

You must prepare a file relating to the case, and may only apply for an Enforcement Order after this file has been forwarded to the Prosecution Team Manager and discussed. This file must contain the following:

- A report covering the history of the complaint and relevant details relating to the animal(s) involved.
- Veterinary report covering the nominated animal(s).
- Notebook entries.
- Job sheets.
- Photographs/video evidence.
- Copy of written instructions (s.130 notice) that have been issued to owner.

On receiving approval from the Prosecutions Team Manager, the file is then forwarded to the relevant Crown Solicitor's Office for the drafting of affidavits for yourself and the veterinarian involved. The Crown Solicitor will then present the case before the Court.

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