

ANIMAL WELFARE (ZOOS) CODE OF WELFARE 2004 REPORT

Summary

Introduction

1. The draft Animal Welfare (Zoos) Code of Welfare 2004 (the Code), has been developed by the National Animal Welfare Advisory Committee (NAWAC), pursuant to the Animal Welfare Act 1999 (the Act). This report accompanies the Code recommended by NAWAC to the Minister as required by section 74 of the Act. The report notes:
 - (a) the reasons for the Committee's recommendations;
 - (b) the nature of any significant differences of opinion about the Code, or any provision of it, that have been shown by the submissions; and
 - (c) the nature of any significant differences of opinion about the Code, or any provision of it, that have occurred within the Committee.

In providing this report, NAWAC notes that it fully considered all submissions it received, reviewed relevant scientific literature, and that there was lengthy debate among committee members on many points. This report is not required to, and does not attempt to, show every detail of the analysis and discussions that took place.

2. A zoo, for the purposes of the Code, is a site on which animals (including wild animals held for rehabilitation) are kept for public exhibition, education, conservation or entertainment and usually will hold a range of exotic (new organisms), domestic and native species. For the purposes of this code, a zoo also includes a containment facility approved under the Biosecurity Act 1993 for the purpose of holding exotic animals in containment, and animal parks and aquariums.
3. Zoos have several functions including those related to recreation, entertainment and education, business, wildlife conservation, and research.¹ The education and conservation functions are recognised as increasingly valued especially as natural habitats for wildlife decrease, and as the human population become more urban. Zoos also have a number of limitations, most notably it is difficult to provide the richness of experience, freedom of movement and quality of life that the animals would experience if left in natural populations in the wild.

Code preparation and public submissions

4. The Code was drafted on behalf of the Animal Welfare Group of the Ministry of Agriculture and Forestry (MAF). The draft Code addressed animal management; food and water; environments, facilities, equipment and housing; normal behaviour and stress; animal health and disease; transport; euthanasia; and quality management. Representatives of those likely to be affected by the Code were consulted during its preparation and before public notification.
5. NAWAC considered the Code to ensure that it complied with the purposes of the Act, was written clearly so as to be readily understood, and that representatives of those likely to be affected by it had been consulted. The Code was publicly notified on 25 February 2004 by notices in the major newspapers in Auckland, Wellington, Christchurch and Dunedin. In addition it was sent to all major libraries and to specific interested groups. NAWAC wishes to point out that at this stage NAWAC decided not to make any final decisions on the draft Code until it had received submissions. The Code is required to be publicly consulted and to make up its mind prior to this consultation would have meant that NAWAC was not following due process, by acting in a biased and predetermined manner.
6. A total of 26 submissions was received during the submission process. Submissions were of two forms. The first was a standard letter expressing opposition to the use of captive animals for entertainment since zoos fail to provide for the needs of their animals. The second group of submissions expressed opposition or support for the Code or specific parts of it. All submissions (including a late submission) have been read in their entirety and taken into account. Appendix 1 is a Summary of the Public Submissions.

Main issues raised by the submissions

7. Most submissions were opposed to the use of animals in zoos, believing the Code to be inadequate. Supporting arguments included: (1) Zoos cannot adequately provide for the physical, health and behavioural needs of the animals resulting in compromises to their health and welfare. (2) Animals and species that are known to be unable to adapt to a captive environment should not be held by zoos since it is impossible to ensure that their physical, health and behavioural needs are met.
8. The functions of zoos were seen as an issue. Firstly, the confinement of animals for human entertainment was considered unjustifiable and the use of exotic animals for this purpose should be phased out. Secondly, zoos have little or no educational value in teaching people about animals behaving in unnatural environments, reinforcing unacceptable attitudes to animals. Finally, while the conservation of wildlife, rare or endangered species was given some support, it was noted that this was minimal and effort and resources would be better focussed on wildlife and habitat preservation,

and on preventing poaching and smuggling. It was also noted that the conservation function negates the need for zoos to confine non-endangered species.

9. The transfer of animals from a wild or free ranging environment to a captive one, the separation of social animals from their social groups and families, and the transfer of highly territorial animals from their home range into unfamiliar environments causes severe stress to animals. Such a transfer could constitute “ill-treatment” within the meaning of section 29(a) of the Act. The majority of the submissions suggested the Code should explicitly deny capturing animals from the wild for the purpose of being transferred to zoos, unless for the animal’s benefit. Any form of transfer of animals from zoos to circuses, laboratories or animal traders must be prohibited.
10. There were many suggestions for changes to the draft Code including those relating to the clarity of definitions used; the precision of terms such as “animal welfare” or “physical health and environmental needs”; the use of subjective or qualitative terminology within Minimum Standards; and Recommended Best Practices which address issues already dealt with under Minimum Standards thereby undermining the scope and application of several key standards.
11. Some submitters considered that the draft Code did not adequately address several issues including: over-population and over-breeding which can compromise welfare; routine tethering and pinioning which severely restrict the animal’s ability to display normal patterns of behaviour; performing animals and the use of animals in public displays; animals should not be able to be hired out for entertainment or promotional events likely to cause distress; euthanasia of non-human primates; and provisions relating to illness and disease primarily aimed at addressing and treating harm after it has occurred rather than at prevention.
12. Zoo operators should not have discretionary power to manage species. Unless the Code is capable of enforcement, it will be impossible to ensure compliance. The requirement for a natural environment should be regulated by a body constituted of veterinarians and animal welfare/animal rights organizations. The Code should be policed and enforced by independent inspectors who have no employment ties to the zoo industry.
13. A small number of submissions referred to the positive manner in which progress was being made. (1) The draft Code was seen as an improvement in the way animals are to be protected under law, especially since their behavioural needs are being taken into account. (2) Compared with other codes of welfare, this Code was clearly written with the intention of implementing the standards in the Act more directly. This was evident in the scope of the standards that have been set and by the frequency with which the Code referred to or discussed specific provisions in the Act. (3) MAF and NAWAC were commended on the quality of the Code believing it ensured zoo animal welfare would be adequately protected while at the same time allowing zoos and parks to continue to develop new and innovative exhibits.

Main issues considered by NAWAC

14. NAWAC believes the functions of zoos (recreation, entertainment and education, business, wildlife conservation, and research) represent valid uses of animals, provided the needs of animals are adequately addressed. The majority of public submissions expressed concern that recreation and entertainment did not justify the keeping of wild animals in captivity, and questioned the ability and effectiveness of zoos in promoting wildlife conservation. It is noted that the Act does not differentiate between uses of animals (farming, entertainment etc) but does allow for codes of welfare for animals in entertainment. Although the Act makes no explicit provision for valuing one use over another, NAWAC is of the opinion² that the use of an animal is acceptable, provided that any harm to an animal is justified by ensuring that the benefit from treating it in that way outweighs the harm; and that the harm is minimised and the benefit maximised from treating an animal in that way. Thus NAWAC is of the opinion that the use of wild animals for entertainment or recreation is in itself an acceptable use of animals. Similarly, NAWAC believes the keeping of animals for conservation purposes is also justified. It also wishes to point out that the zoo industry is committed to developing its conservation, education and recreational functions in a way which both increases the effectiveness of those roles and enhances the welfare of the animals.³

15. The Code applies to all persons responsible for the welfare of animals (including wild animals being rehabilitated) held by zoos (including animal parks and aquariums). Due to the wide range of species held in New Zealand in these facilities, the code does not attempt to cover individual species, rather it establishes minimum standards and recommended best practices which will apply to any species kept. It is for the zoo operator of those facilities to apply those minimum standards and recommended best practices to each individual species.

16. The Code marks a move away from the prescriptive minimum standards characteristic of some of the other recent codes of welfare, to more outcome focused standards. This was necessitated by several factors. Firstly, the sheer impracticality of writing a code which covers the hundreds of species of mammals, reptiles, birds, amphibians and fish currently held in New Zealand zoos and aquariums, as well as those species which could potentially be held in the future. NAWAC was mindful of the need to consider species as varied as tuatara, octopus, piranha, flamingo, kiwi, panda and tiger. Furthermore, for many species, there are no clear standards or guidelines for factors such as space requirements, and even closely related species can vary widely in their responses to captivity.⁴ Nor can behaviours in the wild always be taken as an absolute standard for welfare in captivity.⁵ Secondly, NAWAC is mindful that individual standards have to be seen within the context of the whole environment the animal is kept in, and its individual preferences and experiences. Though precise and objective standards are helpful, especially when much is known of the animal (as with domestic or farm animals) NAWAC also acknowledges the elements of subjectivity in the assessment of animal welfare (see below). Thirdly, by focusing on outcomes – good health and welfare – the Code allows zoos to be innovative in how they achieve them. NAWAC believes that the commercial future of zoos will demand and see the

continuing development of innovative, enriching environments which will provide an environment to which the animal has adapted, thereby enhancing animal welfare and retaining a large amount of public acceptance.

17. In taking this stance, NAWAC wishes to point out that the concept of animal welfare has both objective and qualitative elements. While objective insights (science typically provides more objective measures of the state of an animal's well-being) can be used to determine how animals are faring, and what environments and management practices are most suited to them, the point at which welfare is deemed acceptable or not is ultimately a value-based decision. As such it reflects the political and ethical views of society. One of the public submissions suggested that broad terms such as "animal welfare" and "physical, health and behavioural needs" should not be used in Minimum Standards without specifying clear examples of what those terms mean in practice. Where possible this has been addressed, but NAWAC is of the opinion that such measures should not obscure the important subjective or value-based nature of some aspects of animal welfare decision making.
18. Though there are no species-specific standards, such as space allowances and social groupings, NAWAC has made it a Recommended Best Practice that zoo operators demonstrate how they are catering for the specific needs of their animals. This will be undertaken by adopting a zoographic* policy that documents features of the animal and its species in unrestricted natural, wild or feral populations, and how the operator meets those needs of that animal in the establishment. This is especially with respect to those aspects of an animal's biology and behaviour that are compromised by virtue of it being held in captivity. It will also describe how the exhibit is managed to maintain appropriate social group structure through disposals, acquisitions and breeding programmes. It is envisioned that zoos will increasingly act to create environments functionally equivalent to those in which the animals have evolved. These will allow animals to express their natures and keep them from suffering especially through alleviating boredom and frustration. For instance, the keeping of South African servals, a cat species which preys on low-flying birds, has been facilitated by using compressed air to deliver meat across the enclosure replicating the prey the animals evolved to capture.⁶ NAWAC acknowledges that captivity may compromise some features of the animal in natural populations in different ways. For example, migration, large territories or home ranges, complex social groupings, feeding on live prey, being predated upon, or high neonatal mortality. Nevertheless, a zoographic policy urges zoo operators to address the conditions in which the animal has evolved to live, and provide an environment which permits the animals to overcome the compromises to their biology and behaviour that are specifically imposed by virtue of being held in captivity. The zoographic policy thus encapsulates a philosophy or intent that zoo operators should have to provide a "natural" physical and social environment for animals held in captivity. The aim is to encourage zoos to be innovative in how they meet the needs of animals in containmentment.

* Zoography is descriptive zoology.

19. Is it appropriate to hold some species, as well as individuals in zoos, i.e. those unable to adapt? NAWAC noted the development of arguments suggesting some species may in fact require huge home ranges and therefore perhaps will have difficulty adapting to captivity⁷, or at least require innovative enrichment programmes. NAWAC considered the possibility of excluding certain species from being kept in zoos, but such an approach would prevent zoos having the opportunity to develop innovative means of holding such animals. This is especially so since shrinking natural habitats may well place more importance on zoos conservation functions, not only for the reintroduction to the wild but in keeping populations of animals intact. NAWAC further recognises that the conservation role of zoos is complex, difficult and debatable. Animals bred for captivity may not always be of suitable genotypes for reintroduction into the wild, and the success of such reintroductions can be low. Similarly, there is difficulty in the balancing the conservation needs of species with the welfare needs of individuals.

Management of zoo animals

20. There are several ways of containing animals in zoos ranging from moats and fences around enclosures to cages and individual tethering. While not specifying minimum enclosure sizes (see above) NAWAC believes that routine tethering is unnecessary and has moved to prohibit the practice except for safety or demonstration reasons, in emergencies, or to facilitate management practices directly benefiting the animal. In addition, the tether must not cause physical or prolonged psychological harm. Another method of containing zoo animals is the practice of pinioning, the alteration of the pinion (the outer part of the bird's wing including the flight feathers) to prevent flight. It is undertaken by clipping the feathers (e.g. waterfowl) or by either nipping the muscle, or removing bone from the wing tip (e.g. flamingos). Birds are able to fully extend and flap their wings but they lack the necessary balance to take off. While accepting that the practice prevents the animals from performing a natural behaviour (flying), NAWAC considered whether the welfare of the birds was significantly compromised after pinioning. It was concluded that as long as pinioning is undertaken humanely it is necessary to keep some species in environments with greater freedom of movement, albeit terrestrial, than would otherwise be available in an aviary. NAWAC has made it a Minimum Standard that where pinioning involves significant damage to wing muscle, tendon, and/or bone, it must be undertaken by a veterinarian using appropriate pain relief.

21. While one of the objectives of having animals in zoos is to encourage breeding, in some species it can sometimes lead to overpopulation and crowding, social stress and unnecessary euthanasia of healthy animals. As this may compromise the physical, health and behavioural needs of animals, the Code requires that breeding of animals is managed to reduce the risk of overcrowding where it might contribute to compromised welfare. NAWAC recognises that managing breeding may be difficult in some species and that breeding and raising young is natural behaviour and forms part of environmental enrichment, but nevertheless considers it prudent to control breeding in circumstances where breeding is expected to reduce animal welfare.

22. The frequency with which animals are to be regularly inspected was raised in several submissions. While there was some demand for a minimum standard of a daily inspection, the difficulties this imposed on some species was noted. For example cryptic species, those living in a dark place such as a hole, cave, under stones or in a tree trunk, and those with colouration giving them camouflage or protective resemblance to some part of the environment, can make them difficult to inspect and potentially be disturbing to the animals. Furthermore, some animals prefer to give birth in isolation, often in dens, and supervision or disturbance can lead to infant mortality. Consequently, the standard for inspections requires a minimum of a daily check except where inspection may significantly adversely affect the animal's welfare. It is also recommended that where inspection is difficult less disturbing or invasive means of inspection (e.g. close-circuit television) should be implemented.

Acquisition and disposal of animals

23. There was some opposition in the public submissions to the capture of animals from the wild. However, it is noted that all animals are ultimately derived from "wild" populations, thus it would appear illogical to prevent animals being taken from the wild, providing their welfare can be satisfactorily addressed. Furthermore, any limit on the acquisition of wild animals may compromise zoos' conservation roles. NAWAC also notes that the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), an international agreement between Governments, aims to ensure that international trade in wild animals does not threaten their survival.

24. The issue of the disposal of surplus zoo animals was also noted. There are several options, such as reintroduction to the wild, transfer to other zoos and circuses and possibly laboratory use.⁸ NAWAC is of the opinion that provided the needs of the animals are met, any transfer is acceptable, especially if the alternative is euthanasia. It is noted that industry groups such as the Australasian Regional Association of Zoological Parks and Aquaria and the New Zealand Conservation Management Group have a role in managing the exchange and transfer of animals between zoos. Finally, any disposal to research establishments for the purpose of experimentation would fall within the jurisdiction of the institution's animal ethics committee (under Part 6, Research, Testing and Teaching, of the Act).

25. The issue of euthanasia of the great apes or non-human hominids was also considered – should some animals be treated differently to other animals? One of the public submissions requested that these animals should be respected as individuals and not euthanased unless it is in their best interests. NAWAC notes the increasing interest in the philosophical stance based on the advanced cognition and emotional capacity of the gorilla, chimpanzee, bonobo and orang-utan, as reflected in Part 6 (Research, Testing and Teaching) of the Act. However, NAWAC believes such a distinction in the context of euthanasia is currently beyond the ambit of a welfare code, and to take account of it would require a change to the Act.

Environmental enrichment

26. One of the most distinctive features for any animal in captive or confined areas is the fact that its environment can be predictable, barren, and/or small. Consequently, in order to overcome an impoverished environment, enrichment programmes are usually necessary and the Code requires that they be developed and implemented for each species of animal held. NAWAC notes that there are many ways of enriching animals' environments from artificial swing branches to automated prey, to letting primates run their own houses and choose their own environments. Environmental enrichment need also not be limited by the precedents of animals in wild or natural populations. Zoos may even evolve towards not just creating the captive descendants of wild populations, but populations of animals in environments or habitats where animals and humans can more freely interact in each others' lives.
27. Significant consideration was given to the feeding of live prey species to zoo animals. The practice can be a valuable part of animals' enrichment programmes allowing them to mimic the hunting and foraging opportunities they have in nature. For example, in some overseas zoos birds have access to insects and penguins to trout. Most New Zealand zoos do not routinely feed live animal prey to their exhibits for reasons related to both the welfare of the prey animal and the negative public response it is likely to generate. However, there are circumstances when live prey is deemed necessary – for example birds of prey being rehabilitated and species of fish which eat only live prey. The live prey animal may also be subject to the Act, but NAWAC notes that the practice is necessary in a small number of exceptional and rare circumstances, and that the death of the prey animal is relatively swift. After careful consideration NAWAC has therefore opted to prohibit the feeding of live prey to zoo animals, unless there is no suitable alternative to meet the nutritional needs of the predator and where the benefits significantly outweigh the harm to the prey animal.
28. NAWAC notes that zoo animals may also be trained to perform, and has added an appropriate standard. Training and performing must be based on positive reinforcement, and the methods must not cause injury, distress or undue pain. In addition, the duration of sessions, and the techniques used, must be determined by the animal's reaction and condition without overworking the animal.

Other issues considered by NAWAC

29. NAWAC's response to submissions pertaining to specific parts of the Code is summarized in Appendix 2.

The nature of any significant differences

30. All significant differences of opinion about the Code, or any of its provisions, have been set out above or in the NAWAC's Response to the Public Submissions.

31. No significant differences of opinion about the Code, or any provision of it, were recorded within the Committee.

Material sourced

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- ¹ Kiley-Worthington, M. (1990) *Animals in Circuses and Zoos. Chiron's World?* Little Eco-Farms Publishing, Basildon; Hutchins, M. (2003) In defense of zoos and aquariums: the ethical basis for keeping wild animals in captivity. *Journal of the American Veterinary Medicine Association* 223, 958-966.
- ² NAWAC Guideline 1/02 Dealing with practices which might be inconsistent with the spirit of the Animal Welfare Act.
- ³ Hutchins, M. (2003) In defence of zoos and aquariums: the ethical basis for keeping wild animals in captivity. *Journal of the American Veterinary Medicine Association* 223, 958-966; Maple, T.L. (2003) Strategic collection planning and individual animal welfare. *Journal of the American Veterinary Medicine Association* 223, 966-969.
- ⁴ Clubb, R. & Mason, G. (2004) Pacing polar bears and stoical sheep: testing ecological and evolutionary hypotheses about animal welfare. *Animal Welfare* 13, S33-40.
- ⁵ Veasy, J.S., Waran, N.K. & Young, R.J. (1996) On comparing the behaviour of zoo housed animals with wild conspecifics as a welfare indicator. *Animal Welfare* 5, 13-24.
- ⁶ See Rollin, B.E. (1995) *Farm Animal Welfare. Social, Bioethical, and Research Issues*. Iowa State University Press, Ames.
- ⁷ Clubb R. & Mason, G. (2003) Captivity effects on wide-ranging carnivores. *Nature* 425, 473-474.
- ⁸ Lewandowski, A.H. (2003) Surplus animals: the price of success. *Journal of the American Veterinary Medicine Association* 223, 981-983.