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Legally Talking



Animal Welfare Act 1999

A shifting landscape

In November 2020, the Wellington High Court singled out the National Animal Welfare Advisory Committee (NAWAC) for severe criticism in failing to phase out the farming practice of farrowing crates for mother pigs.

Their decision indicated NAWAC failed to perform its statutory duties on an effective basis and signaled that NAWAC's processes, guidelines and codes were well overdue for a review.

The Animal Welfare Act 1999 ("the Act") (in Section 10) places on the owner of an animal and every person in charge of an animal, an obligation in relation to the physical, health and wellbeing of animals.

These actions must be taken in accordance with both good practice and scientific knowledge. Furthermore, Section 11 of the Act places an additional burden on the owner of an animal that is ill or injured and every person in charge of such an animal with an obligation to alleviate pain, distress of ill or injured animals.

Section 12 of the Act records animal welfare offences where there is a failure to comply with Sections 10 and 11 of the Act. For successful prosecution under Section 12, it is not necessary to prove the defendant intended to commit an offence. This form of "strict liability" and its implications are often overlooked by farmers.

By and large, farmers take enormous pride in the welfare of their animals but after having dealt with the Ministry for Primary Industries in respect of an investigation in-



to lumpy jaw lesions (actinomycosis), it highlighted once again that owners, stock agents and animal logistics enterprises need to be vigilant to ensure that sick animals receive, where practical, treatment to alleviate unreasonable or unnecessary pain or distress and certainly, to avoid transportation of the beast in such state.

It is highly recommended in these instances for parties involved in this process to solicit the input of veterinary services to as-

sess, in person, the animal's state of health and wellbeing.

A certificate from a vet often provides the last barrier of protection against any investigation alleging a failure by the farmer (or third parties) to discharge their obligations under the Act in a meaningful manner. Due to the strict liability benchmark under the Act, this is a necessary precaution.

The High Court decision likely her-

alds a new era of vigilance in this area and one would assume that the overhaul of processes, guidelines and codes from NAWAC will in turn place a heightened level of scrutiny on farmers operations in this regard.

The balancing act of course will be to consider the costs of securing these veterinary services (particularly when dealing with low stock numbers in the high country) against a failure to comply with the requirements of the Act and possible penalties that may follow in the event of non-compliance.

From an MPI perspective, farmers will need to be cautious in handling of stock to protect themselves from any liability under the Act.

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