

NAWAC GUIDELINE 04:

Process for the development of codes of welfare

Introduction

This guideline is a procedural guide for those involved in the development of codes of welfare, and for members of the public intending to comment on such codes. It describes the procedures and processes that support the development of draft codes of welfare that meet the requirements of the Animal Welfare Act 1999 (the Act) including the requirements for consultation.

NAWAC emphasises that this is a guideline only and that it may be varied from time to time, depending on the circumstances surrounding a particular code.

Code requirements

The requirements of a code of welfare are set out in Part 5 of the Act.

Process for developing draft codes of welfare

The steps in the development of codes of welfare are illustrated in the flowchart (Figure 1). The actual process for each code may differ from the flowchart, but the key steps are:

- (a) NAWAC's determination of development priorities for codes of welfare. These are agreed on an annual basis.
- (b) The agreement between the code writing group and the NAWAC Secretariat on the terms of reference for the writing group, timetable, progress reporting and identification of the representatives of affected persons (including organisations) who should be consulted. Any person or organisation may draft a code of welfare and submit it to NAWAC for consideration, or NAWAC may appoint a writer or writing group to prepare a draft code.
- (c) Submission of the draft code to NAWAC. NAWAC will usually appoint a subcommittee and chairperson to undertake the detailed analysis of the draft code, of public submissions and of any submissions from the code writing group.
- (d) NAWAC's determination that the draft code complies with the purposes of the Act, is clearly written, affected persons have been consulted, and any matters that should be dealt with by regulations have been indicated. When NAWAC is satisfied that all these criteria have been met, and the Minister has approved the notification of the draft of the code, it will be released for public consultation. If NAWAC decides not to proceed with a draft code that it did not write, it must notify drafters and the Minister of this decision.
- (e) Public consultation, the analysis of submissions and NAWAC's consideration of the submissions. Public consultation on codes ensures that the range of views held within the community is taken into account.
- (f) Submission of the draft code and report on the code to the Minister. As required by the Act, NAWAC will take into account good practice and scientific knowledge, available technology, public submissions and any other matters considered relevant, such as practicality and economics, before recommending the code to the Minister. NAWAC may also recommend that regulations be made, including under sections 183(A1)(a), relating to standards or requirements for the purposes of giving effects to Part 1 and 2 of the Act, and 183A(2), relating to prescribing standards or requirements that do not fully meet specified obligations.

NAWAC's role

In respect of a draft code of welfare, NAWAC:

- (a) will determine the priority for considering the draft code based on the resources it has available at the time, the importance of the welfare issues being addressed by the draft code and any other factors that it considers relevant (see Guideline 12);
- (b) will receive reports from the NAWAC Secretariat on the progress of the code-writing group;
- (c) will receive the draft code from a member of the code-writing group, in person if possible;
- (d) will consider the draft code from the code-writing group, modify it as necessary to meet the requirements of the Act and approve it for public release for submissions;
- (e) will, in order to follow due process, and so as not to act in a biased or predetermined manner, not make any final decisions on the draft code until it has received and considered the public submissions;
- (f) will receive and consider, in consultation with any appointed subcommittee and/or facilitator, the public submissions and the summary of them;
- (g) will receive regular progress reports from any appointed subcommittee chairperson;
- (h) will determine, in consultation with any appointed subcommittee and/or facilitator, appropriate courses of action for major or complex issues arising from the consideration of the draft code, the public submissions and any submissions from the code-writing group;
- (i) will consider and approve, for forwarding to the Minister and the code-writing group, the final version of the draft code, and an accompanying report as required by section 74(2) of the Act.

In order to expedite the production of a code, NAWAC:

- (a) may, depending on the nature of the draft code, appoint a subcommittee and a chairperson to undertake the detailed analysis of the draft code, of the public submissions and of any submissions from the code-writing group. The membership of the subcommittee is to reflect the full range of NAWAC's expertise appropriate to the draft code (see "5. Terms of reference for a code of welfare subcommittee");
- (b) may appoint a facilitator to assist NAWAC and any subcommittee (see "6. Responsibilities of the code of welfare facilitator");
- (c) may provide for, if it deems necessary (for example, due to substantial modification of a draft code as a result of the consideration of the public submissions), a second round of public or targeted consultation before making its recommendation to the Minister;
- (d) may, after the completion and gazetting of a code of welfare, seek comment from the code-writing group and other relevant parties on the code development process that took place, in order to review and improve its performance.

Terms of reference for a code of welfare subcommittee

The following terms of reference apply to any subcommittee appointed by NAWAC. The subcommittee will have the same powers to act as NAWAC, subject to ratification by NAWAC.

The subcommittee will:

- (a) establish, in consultation with the NAWAC Secretariat, a project schedule to be agreed by NAWAC;

- (b) consider the draft code from the code-writing group, indicate whether any matters should be dealt with by regulations, and make a recommendation to NAWAC on its suitability for public release for submissions;
- (c) formally consider the public submissions and the summary of them, record its recommendations and note the reasons for them;
- (d) formally consider any original submission and any subsequent submissions from the code-writing group, record its recommendations and note the reasons for them; and
- (e) identify major or complex issues arising from its consideration of the draft code, the public submissions and any submissions from the code-writing group, and prepare a report for NAWAC to consider when determining appropriate courses of action.

To facilitate its work, the subcommittee may:

- (a) clarify points of uncertainty with the code-writing group (for example, scenario testing) as and when required;
- (b) access relevant expert advice, at its discretion, on issues under consideration in the draft code;
- (c) undertake site visits and face-to-face meetings relevant to the draft code under consideration. Other members of NAWAC, as appropriate, may also attend.

The subcommittee chairperson is to:

- (a) work closely with the NAWAC Secretariat throughout the consideration of the draft code;
- (b) provide regular progress reports to NAWAC;
- (c) present the subcommittee's final draft of the code, and an accompanying draft report as required by section 74(2) of the Act, to NAWAC for discussion and approval.

Responsibilities of the code of welfare facilitator

On the recommendation of NAWAC, MPI may appoint a facilitator to assist NAWAC, or a subcommittee of NAWAC, in the development of a draft code. This may occur at the time of establishment of the code-writing group or at the time NAWAC receives the draft code from the writing group. The facilitator may be a NAWAC member, the NAWAC Secretariat, another MPI employee, or an external contractor to the MPI Animal Welfare team. External facilitators will be required to sign a confidentiality agreement.

The facilitator should declare any potential conflicts of interest and have the relevance of these adjudged by the NAWAC chairperson.

The facilitator:

- (a) has, as his or her primary function, the support of NAWAC in its preparation of a particular draft code;
- (b) reports to, and receives operating instructions from, the NAWAC Secretariat and liaises with any subcommittee chairperson; and is to:
 - have an understanding of the subject matter of the draft code;
 - have analytical, writing and editing skills;
 - have code-writing experience or familiarity with codes of welfare structure and format.

The facilitator:

- (a) may, depending on the number and complexity of the public submissions on the draft code, be asked to prepare the summary of those submissions;
- (b) may be asked to attend NAWAC meetings and teleconferences for any period when the draft code is being discussed;

- (c) will attend any subcommittee meetings and teleconferences;
- (d) will assist the NAWAC Secretariat to review and supply relevant technical information to NAWAC and any subcommittee;
- (e) may be responsible for editorial changes to the draft code, as directed by NAWAC or any subcommittee;
- (f) will assist with the preparation of the draft report required by section 74(2) of the Act. This may include the preparation of draft material to highlight points to be included in the report, and the drafting of NAWAC's responses to the public submissions;
- (g) must clearly "flag" his or her own comments in the preparation of any analysis or report in relation to the draft code.

Duties and responsibilities of the Manager

The NAWAC Secretariat is responsible for supervising the process for the development of codes of welfare. Their responsibilities will include:

- (a) preparing, in concert with NAWAC, a 3-5 year priority schedule of code development to be considered in each calendar year;
- (b) providing regular updates to NAWAC on progress towards completing the priority schedule;
- (c) liaising with, and providing information to, potential code-writing groups;
- (d) establishing, in consultation with the code-writing group and NAWAC (or any subcommittee), a project plan and schedule, including indicative dates for reporting progress to NAWAC;
- (e) maintaining regular contact with the code-writing group;
- (f) coordinating the organisation and management of seminars for code-writing groups;
- (g) supervising and liaising closely with any facilitator

NAWAC interaction with the code-writing group

NAWAC views positive interaction with the code-writing group to be essential to the successful consideration of any draft code. NAWAC will therefore:

- (a) ensure that appropriate advice is provided to the convenor of the code-writing group on the structure and format of codes of welfare;
- (b) supply to the code-writing group a protocol detailing the nature and sequence of steps in the process of considering the draft code and the points at which contact is expected with the code-writing group. This will be updated as required;
- (c) provide the code-writing group with the names and contact details of the NAWAC Secretariat and any other persons who have been designated to have contact with the group concerning the progress of the draft code;
- (d) clarify points of uncertainty with the code-writing group (for example, scenario testing);
- (e) if required, seek clarification from the code-writing group on any matters arising from submissions;
- (f) provide the code-writing group with a copy of the final version of the draft code and the accompanying report at the same time as NAWAC's recommendation is made to the Minister.

Processing of submissions on draft codes of welfare

In respect of submissions made on draft codes, NAWAC:

- (a) will consider all the submissions received during the public submission period before considering any further submissions that might be received;

- (b) will work with the NAWAC Secretariat to prepare a summary of public submissions to assist NAWAC members to focus on the major points raised in each submission;
- (c) will consider only new information on any further submissions received;
- (d) may seek to clarify points made in submissions, by way of correspondence, teleconferences, face-to-face meetings, etc but will not enter into negotiation with submitters.

Preparation of the report to accompany the code

When recommending a code to the minister to be issued, NAWAC also provides a report with the code which outlines:

- (a) the reasons for the recommendations NAWAC has made in the code;
- (b) the nature of any significant differences of opinion about the code that was evident in the public submissions;
- (c) the nature of any significant differences of opinion within the NAWAC committee that became apparent during development of the code; and,
- (d) if applicable, those matters contained in, or related to, the code that the NAWAC committee considers should be dealt with by regulations under the Act.

NAWAC also provides a copy of the report to the person who prepared the draft code.

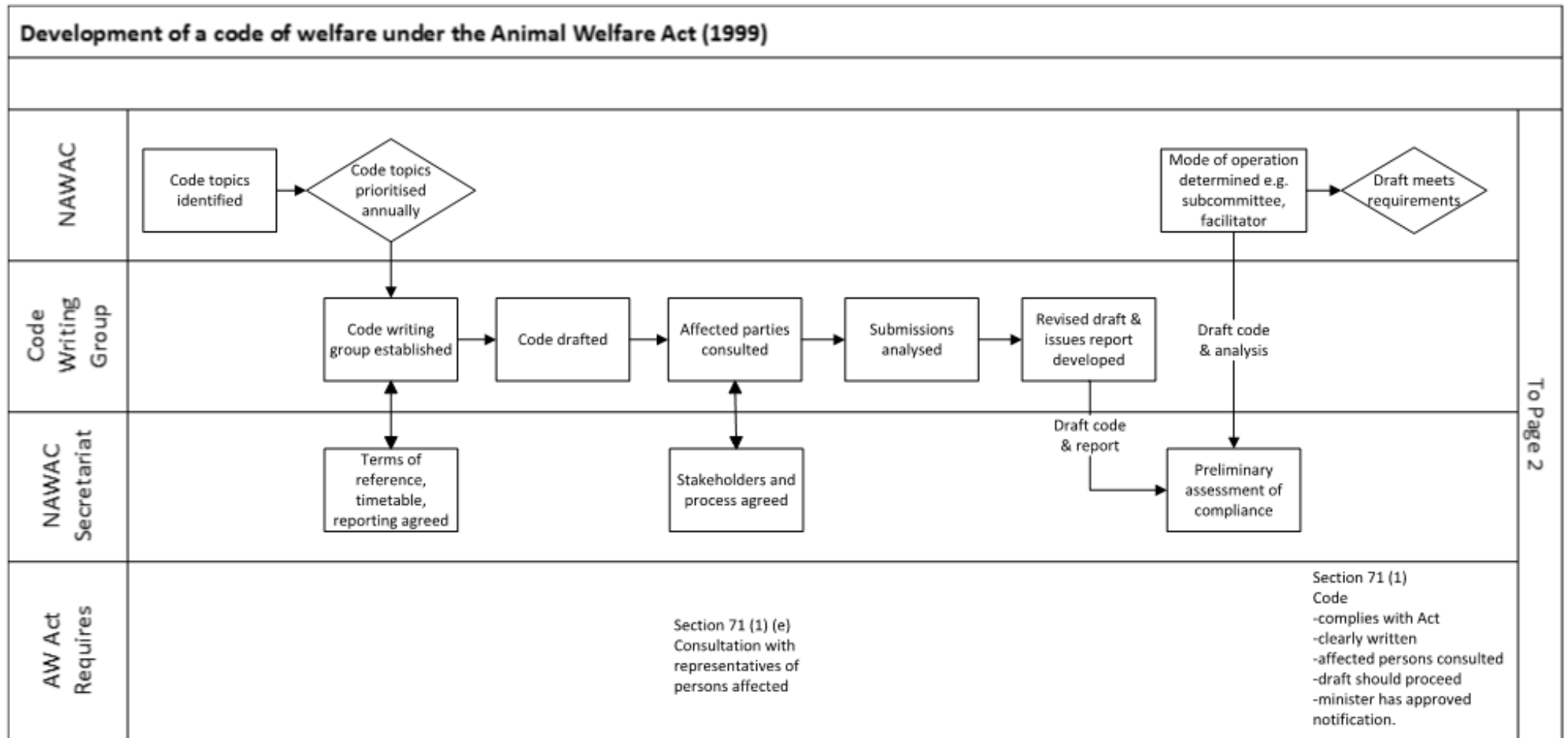
Peer review of code and report

To maintain good process, prior to the code being recommended to the minister, NAWAC:

- (a) agrees with the NAWAC Secretariat on a suitable independent peer reviewer for the code report;
- (b) ensures that the reviewer is provided with the Terms of Reference for assessing the code report so that the reviewer is aware of his/her obligations to assess the report for the appropriateness of the standards and recommendations in terms of good practice, scientific knowledge and available technology;
- (c) ensures that the reviewer is given anonymity until the publication of the report to ensure that his/her views and feedback regarding the report cannot be swayed by external influences;
- (d) will take account of any comments and feedback provided by the reviewer regarding the content of the report.

This guideline was originally approved by NAWAC on 11 February 2004, and has since been updated. This guideline is not a legal interpretation of the Animal Welfare Act 1999. It is anticipated that this guideline will be updated from time to time in light of experience gained by NAWAC during its deliberations.

Figure 1.



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