



## Wellington SPCA submission to the Ministerial Review: Better responses to natural disasters and other emergencies in New Zealand

*“Pet ownership is the single most common factor associated with human evacuation failure that can be positively affected when the threat of disaster is imminent”*  
(Heath & Linnabary 2015)

### Introduction

The current animal disaster legal framework in New Zealand is based primarily upon the Animal Welfare Act 1999 and Civil Defence Emergency Management Act 2002. Both of these were written prior to Hurricane Katrina (2005) which was the genesis for modern animal disaster law with legislation being swiftly passed due to lessons learned, such as the Pets Evacuation and Transportation Standards Act 2006. According to the Fritz Institute (2006) 44% of those who chose not to evacuate during this catastrophic event did so in part because they were unable to take their pets, as the federal policy was to leave pets behind at that time. Now in the USA, the PETS Act 2006 requires federal, state and local plans to include animal rescue, evacuation, sheltering and care. Closer to home, following the 2009 *Black Saturday* bushfires in Victoria the Royal Commission into this disaster found that human lives were lost as a direct result of animals not being able to be evacuated and pet owners returning prematurely to their properties to save their animals (World Society for the Protection of Animals 2014). By contrast, New Zealand’s efforts to improve animal disaster laws has been sub-optimal with no changes to legislation to enhance animal welfare during emergencies and therefore provide better protection for animals and their human counter-parts. The recent Kaikoura earthquake provides an opportunity to reflect on whether our current framework for animal disaster law is effective and if not, how we can strengthen arrangements for future events.

### Observations

#### Coordination and Planning

The Civil Defence and Emergency Management Act 2002 yielded a robust and forward thinking piece of legislation that has served the country well for most parts. A new National Civil Defence Emergency Management Plan, issued in 2003, included animal welfare, with local authorities in most cases being charged with this function for companion animals. However, 14 years on there still is no national animal emergency management plan and only a small handful of group level animal emergency management plans. The state of animal emergency management is under-focused, under-resourced and inconsistent. The NCDEM Plan Order 2015, is vague and places responsibility also for MPI to also regionally “coordinate” animal welfare for civil defence. Although the lead agency is compelled to have an emergency management plan for its responsibilities and take all necessary steps to ensure those functions are provided (s. 59, CDEM Act 2002), at a regional level they only need to “coordinate the plan”. In effect, no one person or organisation is directly responsible or accountable to develop the regional animal welfare emergency management plan – this is a major flaw in the framework. In contrast, the Victorian Government following the Royal Commission into the Black Saturday bushfires,

required the Department of Primary Industries to lead the preparation of a stand-alone animal welfare emergency management plan (White 2012) which was published in 2011, only two years after the disaster and recently relaunched. Six years after the Canterbury 2011 earthquake which experienced animal welfare related issues (Glassey & Wilson 2011; Potts & Gadenne 2014) and was the country's first declared state of national emergency, we have no such plan, still little progress, and the lessons learned are more lessons lost. Lessons lost being those learnings that have been identified but never acted upon (Glassey 2011). The total resource allocation for the Ministry for Primary Industries animal welfare emergency planning is 0.6 FTE which is completely underwhelming to meet the expectations placed upon the Ministry in the National CDEM Plan.

### Legal complexities of animal evacuation and disposal

It is important to first of all acknowledge that pursuant to section 6 of CDEM Act 2002, the Act does not affect the powers, duties or functions imposed on others. That is the powers of an Inspector under the Animal Welfare Act 2002 remain unaffected even during a declared state of emergency under the CDEM Act 2002, however common sense should always prevail. In the context of animal evacuation, the CDEM Act 2002 allows for persons during a declared state of emergency to be directed by a Constable or Controller to enter premises (s.87) including a dwelling (home) or Marae (sacred tribal meeting place registered with the government) using force if required; and to seize or destroy an animal (s.92) or other property.

Once an animal comes into the possession of the SPCA as an approved organisation under the Animal Welfare Act 1999, the SPCA can rehome the animal or otherwise dispose of it after 7 days pursuant to section 141(1A) if the owner does not claim the animal. The National CDEM Plan Order 2015, however places the local authority as the organisation responsible for accommodation of companion animals, yet they (and all other animal related organisations in New Zealand other than the SPCA) do not have the legal authority to rehome unclaimed animals other than dogs (as local authority powers for disposal only extend to stray dogs found at large under the Dog Control Act 1990) and they have no powers for holding or disposal of displaced companion animals such as cats, rabbits and birds. There is no provision in the CDEM Act 2002 that provides for the disposal of seized items except for destruction, which would have to be done while a state of emergency is still in effect. This leaves only the provisions of disposal under section 141(1A) to give effect to rehoming (or otherwise) of unclaimed animals and this power only extends currently to the SPCA which is not responsible for accommodation of disaster displaced animals.

Microchipping is a critical tool in the reunification of animals during and following an emergency (American Microchip Advisory Council for Animals 2007; Glassey & Wilson 2011) and could be interpreted that the CDEM Act 2002 allows for the "marking" of animals such as microchipping under section 91, under the direction of a constable or controller during a declared state of emergency. However, this assumption could be challenged and it is important during a mass evacuation of animals that microchipping can be applied without owner consent to ensure reunification.

Whether a declaration of emergency is in effect or not, the SPCA Animal Welfare Inspector also has the power to take animals into possession that are at risk of imminent harm under section 127(5)(a); and in doing so a notice of entry must be left at the property under (s. 129) which is not practical for mass evacuations across multiple properties; and dwellings cannot be entered unless a search warrant has been issued (s.131), again not practical in a disaster response context. The Animal Welfare Act 1999 also provides an Inspector the power to mitigate suffering and prevent likely harm from occurring to an animal under section 130(1)(a).

Where animals are taken in by the SPCA (as an Approved Organisation), the requirements under section 141(1A) of the Animal Welfare Act 1999 state the animal must be kept for seven days and has prescribed expectations around attempting to locate the owners and/or giving them notice of disposal if the animal is not claimed. From overseas experiences including Hurricane Katrina, the American Bar Association created a model act for states to adopt to address the ownership, temporary holding, transferring and disposal of animals during and following a disaster. Their recommendation was that during a declared disaster, that the holding period was set at 30 days to allow for displaced owners to claim their animals; and that animals could not be transferred out of state without approval of the State Veterinarian (American Bar Association 2010). Thousands of animals were evacuated and transported across the United States following Hurricane Katrina, never to be reunited with their original families again and this prompted legal reforms (McNabb 2007). The model act also ensured that animals that were unable to be reunited could be legally rehomed with ownership being transferred. The SPCA as an approved organisation can legally rehome such unclaimed disaster affected; however other organisations do not have this authority and post-disaster rehoming through other organisations may lead to animal custody disputes as experienced after Hurricane Katrina.

### Mass Destruction of Animals

The CDEM Act 2002 does provide the power for the controller or a constable to destroy animals (s.91). Understanding the intrinsic value that animals have to people (World Society for the Protection of Animals 2014) and their importance as being seen as members of the family (Irvine 2009; Glassey 2010) and a psychosocial coping mechanism (Hunt et al. 2008; Heath 1999; Glassey 2010), not to mention the negative psychological impacts following the loss of a pet (Edmonds & Cutter 2008; Gerwolls & Labott 1994; Hunt et al. 2008; Leonard & Scammon 2007); though legal, it would be immoral, socially unacceptable and potentially career and politically limiting to destroy companion animals in an emergency. The availability of such unbridled power may give the impression that mass animal destruction is an acceptable emergency management practice, where that is far from the truth.

According to Irvine (2009), during Hurricane Katrina, Sherriff's Deputies were managing evacuees with their pets at the P. G. T. Beauregard Middle School. The Deputies assured the families they would take their pets to an animal shelter while families moved to the local high school. Some thirty-three dogs and cats were shot, execution style. A later forensic investigation found the animals had not been killed humanely and been left to bleed to death. To mitigate this lesson from repeating itself, it would be prudent to provide a safeguard that any destruction of animals only be undertaken after consultation with an Inspector appointed under the Animal Welfare Act 1999, not being a constable.

### Rescue Powers

#### **Civil Defence Emergency Management Act 2002**

#### **85. Emergency powers of Civil Defence Emergency Management Groups**

- (1) While a state of emergency is in force in its area, a Civil Defence Emergency Management Group may—
- (b) provide for the rescue of endangered persons and their removal to areas of safety:

The rescue of animals is important to human safety. The academic consensus that in an emergency, saving animals in effect saves human lives is a fundamental philosophy to contemporary emergency management doctrine. The inclusion of animals in section 85(1)(b) would help strengthen animal welfare emergency management arrangements to ensuring not just Animal Welfare Inspectors and Constables, had the emergency power to conduct rescues in a declared state of emergency. Even

recently in New Zealand, there have been frequent examples of people losing their lives in an attempt to rescue their companion animals (Barlow & Shadwell 2016; McBride 2016).

## Evacuation Powers

### **Civil Defence Emergency Management Act 2002**

#### **86. Evacuation of premises and places**

If a state of emergency is in force and, in the opinion of a Controller or any constable, the action authorised by this section is necessary for the preservation of human life, that person or a person authorised by him or her may require, within the area or district in which the emergency is in force,—

- (a) the evacuation of any premises or place, including any public place; or
- (b) the exclusion of persons or vehicles from any premises or place, including any public place.

The inconsistent use of life and human life within the CDEM Act 2002 creates challenges as the interpretation of “life” may extend to animals, whereas “human life” is very specific. Requisitioning powers (section 90) under the CDEM Act 2002 is specific to “human life”, whereas evacuation provisions (section 89) uses “life” creating greater flexibility in interpretation. These discrepancies were raised as issues to government in 2010 and despite recent amendments to the CDEM Act in 2016, these and other animal emergency management issues continue to be ignored.

The refusal of public safety officials to allow companion animals to be evacuated alongside their human families is a leading cause of evacuation failure (Irvine 2009; Heath 2001; Glassey 2010; Fritz Institute 2006). The omission of animals in this section may also imply that animals cannot be excluded from a premise or place. This section should be for the preservation of human and animal life and that animals, persons or vehicles can be excluded for any premises or place.

## Entry Powers

### **Civil Defence Emergency Management Act 2002**

#### **87. Entry onto premises**

If a state of emergency is in force in any area, a Controller or a constable, or any person acting under the authority of a Controller or constable, may enter on, and if necessary break into, any premises or place within the area or district in respect of which the state of emergency is in force if he or she believes on reasonable grounds that the action is necessary for—

(a)

saving life, preventing injury, or rescuing and removing injured or endangered persons; or

(b)

permitting or facilitating the carrying out of any urgent measure for the relief of suffering or distress.

The current section that provides access onto properties and premises, including that of dwellings, refers to “life”, “persons” and “suffering or distress”. Without these terms being defined in the Act’s interpretation (section 2), and without case law, the act is silent in regards to its application to animals. To avoid ambiguity and to ensure the needs of animal welfare are assured, animals should be specified with animals being defined in the Act’s interpretation as the same as in the Animal Welfare Act 1999.



## Requisition Powers

### **Civil Defence Emergency Management Act 2002**

#### **90. Requisitioning powers**

- (1) This section applies if a state of emergency is in force and, in the opinion of a Controller or a constable, the action authorised by this section is necessary for the preservation of human life.

Though empirical evidence would suggest that the preservation of animal life during an emergency will positively influence the preservation of human life as earlier discussed, to avoid ambiguity the section should be amended to reflect a contemporary approach to emergency management law. During a declared state of emergency, this provides flexibility to the Controller and any constable, to effect requisitions to protect animals. For mass animal rescues during disasters such as those from intensive farming facilities and laboratories, specialist equipment and heavy machinery may be needed. The inability for public safety officials to be able to carry out specialist or logistically complex animal rescue operations may force animal activists through to pet owners to defy official advice and put themselves at harm's way as seen in numerous events such as the Buckeye Farm disaster in 2000 (Irvine 2009, p.48). It is in the interest of disaster response officials and politicians to mitigate this significant risk by ensuring animal disaster response is enabled with the same powers as those given for human disaster response.

As with the other emergency powers within the CDEM Act 2002, any constable may exercise such powers (except for those contained in section 85 which are exclusively conferred upon the Controller). SPCA and MPI Inspectors appointed under the Animal Welfare Act 1999 are already provided with the same powers as a constable under the act, except for the power of arrest or stopping a vehicle. The government already entrusts these officers with significant legal powers and it makes sense that during a time when police are going to be overwhelmed, the same powers are conferred upon them for animal welfare matters during a state of declared emergency.

## Codes of Welfare

The Animal Welfare Act 1999 makes provisions for Codes of Welfare to be established for species, industries or activities to ensure minimum animal welfare standards are set. Under the Act, they can be used as evidence of non-compliance with the Act, and they can also be used by the defence to prove they met minimum requirements and therefore were not in breach. Certain offences under the Act have a strict liability, meaning the prosecution needs only to prove the act of the offence (*actus rea*), not the guilty knowledge or intent (*means rea*). Codes of Welfare often support the enforcement of strict liability offences, however they have also a defence caveat to applying these in circumstances of emergency, namely:

### **Animal Welfare Act 1999**

#### **13. Strict liability**

- 2 (c) that the act or omission constituting the offence took place in circumstances of stress or emergency, and was necessary for the preservation, protection, or maintenance of human life;

What countless examples of recent disasters have proven, is that the saving of animals, in particular companion animals strongly correlates to increased evacuation compliance and subsequent increase in the protection of human life. The relationship between saving people and companion animals in an

emergency is intrinsically linked, and therefore the omission to save such animals indirectly places the human population in particular their owners and public safety responders at risk. The old attitude of “human lives before pets” is draconian and reflects a lack of understanding between the evidence that saving pets will actually save more human lives. Therefore, any omission to save companion animals in an emergency, is empirically contrary to the preservation, protection, or maintenance of human life. The defence clause under section 13(2)(c), should not be seen as an excuse for public safety officials, especially when emergency management purports to take an evidence based approach to its activities. Further effort is required to enhance animal emergency management within Codes of Welfare.

### Zoological vulnerability

Companion animals are the ones that are given the most attention in emergency management, given their strong bond to their human guardians and the paternalistic protective behaviours displayed by their guardians also. But companion animals are generally the least zoologically vulnerable when compared to intensively farmed animals reliant on automated feeding and environmental systems (Irvine 2009). There numbers may be so large that their rescue during emergencies may be logistically impossible, or it may simply be more cost effective for the producer to discard them as waste, rather considering these animals as sentient beings. It is important that legislative frameworks afford protection to these animals across the spectrum of comprehensive emergency management.

Following the 2016 Kaikoura earthquake, GNS Scientist Kevin Berryman observed the seabed was vertically displaced some 6 metres along the coastline, rendering crabs, fish and Paua trapped unable to return to the water (Clayton 2016). Other media reports corroborated these observations with crayfish and lobster also being observed stranded by the uplift and despite public officials warnings not to, community members returned to relocate the sea life back into water (Lewis 2016). There was significant backlash by the public to the government direction to stop the sea life rescue attempts with even a Ministry for Primary Industries fisheries officer threatening to arrest the Paua rescue volunteers (Gates 2016). With hundreds if not thousands of crabs, lobsters, fish and crayfish stranded and dying, no government agency took responsibility for the welfare of these animals, despite them being afforded the same protections under the Animal Welfare Act 1999 as companion animals (acknowledging that Paua however are not classified as animals and therefore not protected under the Animal Welfare Act 1999). Simplistically, the government sets the maximum number of fish that can be legally taken from the sea through a quota system or *allowable catch*. The efforts by the public to rescue the fish were treated as breaches of fishing quota by officials, whereas they in many cases were acting in the interests of animal welfare. It is unclear whether the provisions of section 16 (emergency measures) would be effective in enabling rescue of fish, those protected under the Animal Welfare Act 1999 or otherwise. In effect, there is no agency or body responsible for the welfare of these animals during an emergency and this gap needs to be addressed.

Research undertaken by Potts and Gadenne (2014) also noted that other animal groups such as hedgehogs, sea birds and turtles were negatively affected as a result of the Christchurch earthquakes and current animal emergency planning efforts struggle to cater for companion animals let alone other animal groups such as wildlife. Further research is needed around non-companion animal vulnerability to disasters in New Zealand and how these animals can be better protected in the future.

## Recommendations

To strengthen the existing animal disaster legislative framework in New Zealand, there are several improvements that could be made including:

1. Mandating the development and maintenance of animal welfare emergency management plans, both at the national and regional level; and ensure MPI is sufficiently resourced to do so.
2. Amending the Civil Defence Emergency Management Act 2002 to ensure animal protection measures are included in rescue, entry, evacuation, requisitioning and other relevant sections; and ensuring that Inspectors under the Animal Welfare Act 1999 can respond appropriately.
3. That microchipping of animals is specifically added as a power during an emergency and the recovery transition period
4. Limiting the power of animal destruction in recognition of international experiences
5. Educating public safety agencies (including government departments and military) around the importance of taking an inclusive approach to animals in emergency planning and evacuations
6. Revising and developing Codes of Welfare to incorporate animal welfare emergency management principles and developing a new *Code of Welfare for Animals in Emergencies*
7. Defining emergency welfare responsibility for unowned sentient animals (whether protected under the Animal Welfare Act 1999 or not), in particular those who are highly vulnerable to natural hazards.
8. As like in the US, ensuring response costs for animal emergency management are eligible under central government funding/reimbursement claims.

For the purposes of consolidation, consideration should be given to a specific regulation made under the Civil Defence Emergency Management Act 2002 or Animal Welfare Act 1999, like that of the Pet Evacuation and & Transportation Standards Act 2006 set in the United States. For further information, the following websites are provided:

<https://www.avma.org/KB/Resources/Reference/disaster/Pages/PETS-Act-FAQ.aspx>

[http://www.wagnpetsafety.com/pdf/Pet Parents and PETS ACT of 2006.pdf](http://www.wagnpetsafety.com/pdf/Pet%20Parents%20and%20PETS%20ACT%20of%202006.pdf)

## Conclusion

There is considerable evidence that substantiates the protective nature of humans towards animals, in particular companion animals. Well respected disaster management scholar Erik Auf der Heide (1989) stated that emergency planning should be based on “normal behaviour” not “correct behaviour”, in effect we should plan on the basis on how humans will likely react, not how we want them to react. On this basis, emergency managers need to place greater focus on ensuring that animals, companion animals are acknowledged as intrinsically linked to people. To achieve improved evacuation compliance and public confidence in response coordination, the welfare of animals during emergencies needs to be a core function and a priority of the response. To enable this change and designate accountability, New Zealand needs to heed the lessons of Hurricane Katrina and the Black Saturday Victorian bush fires and give urgency to strengthening the animal emergency management laws with amendments to the relevant acts or the passage of specific regulations to reflect international best practice and meet the expectations of its citizens.



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## Annex A: Model Amendments to Legislation

1. That the Civil Defence Emergency Management Act 2002 be amended as follows:

### 2. Interpretation

**Auxiliary Officer** means an auxiliary officer within the meaning of the Animal Welfare Act 1999

**Director-General** means the Director-General within the meaning of the Animal Welfare Act 1999

**Inspector** means an inspector within the meaning of the Animal Welfare Act 1999.

### 85. Emergency powers of Civil Defence Emergency Management Groups

(1) While a state of emergency is in force in its area, a Civil Defence Emergency Management Group may—

(b) provide for the rescue of endangered persons or animals and their removal to areas of safety:

### 86. Evacuation of premises and places

If a state of emergency is in force and, in the opinion of a Controller or any constable, the action authorised by this section is necessary for the preservation of human or animal life, that person or a person authorised by him or her may require, within the area or district in which the emergency is in force,—

(c) the evacuation of any premises or place, including any public place; or

(d) the exclusion of persons, animals or vehicles from any premises or place, including any public place.

### 87. Entry onto premises

If a state of emergency is in force in any area, a Controller, constable or an inspector, or any person acting under the authority of a Controller, constable or inspector, may enter on, and if necessary break into, any premises or place within the area or district in respect of which the state of emergency is in force if he or she believes on reasonable grounds that the action is necessary for—

(a) saving animal or human life, preventing injury, or rescuing and removing injured or endangered persons or animals; or

### 90. Requisitioning powers

(2) This section applies if a state of emergency is in force and, in the opinion of a Controller or a constable, the action authorised by this section is necessary for the preservation of human or animal life.

### **91. Power to give directions**

While a state of emergency is in force, a Controller, constable or an inspector, or any person acting under the authority of a Controller or constable, may—

- (a) direct any person to stop any activity that may cause or substantially contribute to an emergency;
- (b) request any person, either verbally or in writing, to take any action to prevent or limit the extent of the emergency.

### **92. Power to carry out inspections, etc**

1. While a state of emergency is in force-

- (a) A Controller, constable or an inspector, or any person acting under the authority of a Controller or constable, may examine, mark, seize, sample, secure, disinfect, or destroy any property, animal, or any other thing in order to prevent or limit the extent of the emergency.
- (b) An inspector, auxiliary officer or any person acting under the authority of an inspector or auxiliary officer, may microchip or otherwise mark any animal.
- (c) A Controller or any constable destroying any animal must consult with an inspector from an approved organisation before such destruction is undertaken, and only in such circumstances where it is reasonable to do so.

2. That the Animal Welfare Act 1999 be amended as follows:

#### **2. Interpretation**

**State of emergency** has the same meaning as in section 2 of the Civil Defence Emergency Management Act 2002.

#### **141. Duties of Approved Organisations**

(7) While a state of emergency is in force, the Director-General may instruct approved organisations to extend the 7 day period under subsections (2) and (3) up to 30 days.

3. That the National Civil Defence Emergency Management Plan Order 2015 be amended as follows:

#### **75. Animal welfare**

(1) All animal owners, or persons in charge of animals, should develop their own plans to care for their animals during emergencies.

(2) At the national and CDEM Group levels, the Ministry for Primary Industries is the agency responsible for—

- (a) co-ordinating the provision of the animal welfare services sub-function (including animal rescue, animal shelter, food, water, husbandry, reunification, and veterinary care and other essentials) for all animals, including companion animals, production animals, animals in research, testing, and teaching facilities, zoo and circus animals, wildlife, and any other animal as defined in section 2 of the Animal Welfare Act 1999; and
- (b) developing and maintaining the national animal welfare emergency plan; and
- (bb) developing and maintaining a regional animal welfare emergency plan for each CDEM Group; and
- (c) maintaining the Government's reporting and advisory capability on animal welfare in an emergency.

**162. Government financial support to local authorities during response**

Government financial support for response activities focuses on costs incurred by local authorities to—

- (a) care for directly affected people and companion animals, including the costs of accommodating, transporting, feeding, and clothing people and companion animals as a result of an emergency; and
- (b) take the necessary precautions or preventive actions (whether by construction, demolition, or any other means) to reduce the immediate danger to human or animal life, where those precautions or actions were begun during the response period; and
- (c) take precautions or preventive actions aimed at reducing the potential consequences of an emergency, where those precautions or actions were begun in the period immediately before the emergency.