

**IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY
I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE**

CIV-

Under the **JUDICIAL REVIEW PROCEDURE ACT 2016**

In the matter of **THE CODE OF WELFARE: RODEOS 2018**

Between **THE NEW ZEALAND ANIMAL LAW ASSOCIATION**, a duly
incorporated society, having its registered office in
Wellington

First Applicant

And **SAVE ANIMALS FROM EXPLOITATION**, a duly
incorporated society, having its registered office in
Wellington

Second Applicant

And **THE ATTORNEY-GENERAL** sued for and on behalf of the
Minister of Agriculture being the Minister responsible for the
administration of the Animal Welfare Act 1999

First Respondent

[Continued Overleaf]

STATEMENT OF CLAIM (APPLICATION FOR REVIEW)

Dated: 19 July 2021

BUDDLE FINDLAY

Barristers and Solicitors
Wellington

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And

**THE NATIONAL ANIMAL WELFARE ADVISORY
COMMITTEE**, a ministerial advisory committee established
under the Animal Welfare Act 1999

Second Respondent

Released under the Official Information Act 1982

STATEMENT OF CLAIM (APPLICATION FOR REVIEW)

The applicants say:

PARTIES

1. The first applicant, The New Zealand Animal Law Association Incorporated, is an incorporated society registered under the Incorporated Societies Act 1908, and has its registered office at 7/101 Lambton Quay, Wellington. It is also a charitable entity registered under the Charities Act 2005.
2. The primary purposes of the first applicant are to improve the welfare and lives of animals through the legal system, advance animal law education, combat the prevalence of animal cruelty in New Zealand and uphold the rule of law through litigation.
3. The second applicant, Save Animals From Exploitation Incorporated, is an incorporated society registered under the Incorporated Societies Act 1908, and has its registered office at 32 Salamanca Road, Wellington. It is also a charitable entity registered under the Charities Act 2005.
4. The second applicant's purpose is to prevent the suffering, abuse and exploitation of animals by raising public awareness and promoting education.
5. The first respondent is the Attorney-General sued for and on behalf of the Minister of Agriculture (**Minister**) in respect of the Animal Welfare Act 1999 (**Act**). The Minister is responsible for the administration of the Act, including the issuance, revocation, amendment and review of Codes of Welfare under Part 5 of the Act.
6. The second respondent is the National Animal Welfare Advisory Committee, established under Part 4 of the Act (**NAWAC**). NAWAC's functions include making recommendations to the Minister concerning the issuance and review of codes of welfare under the Act.

RELEVANT STATUTORY FRAMEWORK

Purposes, policy and object of the Act

7. The purpose of the Act is to provide for the welfare of animals, in recognition that animals are sentient.
8. The Act contains a range of provisions which are intended to achieve that purpose, including:

- (a) imposing a mandatory obligation on owners and persons in charge of animals to ensure that the physical, health, and behavioural needs of those animals are met (**section 10 obligation**);
- (b) in Part 1:
- (i) regulating what surgical procedures may be performed on animals, and by whom; and
 - (ii) imposing certain obligations in relation to the transport of animals;
- (c) in Part 2, providing that it is an offence wilfully or recklessly to ill-treat animals with the result that:
- (i) the animal is permanently disabled; or
 - (ii) the animal dies; or
 - (iii) the pain or distress caused to the animal is so great that it necessary to destroy the animal to end its suffering; or
 - (iv) the animal is seriously injured or impaired;
- (d) in Part 3, mandating a regulatory regime for the regulation of animal exports;
- (e) in Part 5, establishing procedures for the development, issue, amendment, review and revocation of codes of welfare;
- (f) in Part 6, regulating the circumstances in which animals may be used in research, testing, and teaching and creating a penalty and offence regime for non-compliance with the requirements of the Act, including:
- (i) the section 10 obligation; and
 - (ii) the obligation to not ill-treat an animal (**the section 29 requirement**).
9. Part 9 provides that standards or requirements that do not fully meet the section 10 obligation or the section 29 requirement may only be made:
- (a) by the Governor-General acting on the advice of the Minister by Order in Council under section 183A(1);
 - (b) when the Minister is satisfied that either or both of the conditions in section 183A(3) are satisfied; and

- (c) under section 183A(5) for a period of time that is reasonably necessary to enable a transition from current practice to a practice that fully meets (inter alia) the section 10 obligation and the section 29 requirement, and that does not exceed 10 years, unless requiring the practice to meet those obligations would impose an unjustifiable limitation on a cultural or religious practice.
10. The overall purposes, policy and object of the Act, as reflected in these provisions, are to minimise the likelihood that animals are subject to unnecessary or unreasonable pain or distress, and to prevent the wilful or reckless ill-treatment of animals being treatment that causes pain or distress which is unreasonable or unnecessary.

Codes of welfare

11. The purposes of the codes of welfare are to:
- (a) establish minimum standards with regard to the way in which persons care for animals and/or conduct themselves towards animals; and
 - (b) provide recommendations on the best practice to be observed by persons caring for animals and/or conducting themselves towards animals.
12. Any minimum standards contained in a code of welfare must be the minimum necessary to ensure that the purposes of the Act are met. That is, the minimum standards must be such that if they are met, the relevant animals are not:
- (a) subject to unnecessary or unreasonable pain or distress; or
 - (b) wilfully or recklessly ill-treated.
13. A draft code of welfare may be prepared by the Minister, or NAWAC, or any other person.
14. Section 71 of the Act provides that NAWAC must publicly notify a draft code of welfare if the requirements of section 71(1) of the Act are met (including that the draft complies with the purposes of the Act). As part of public notification, NAWAC must provide an opportunity for submissions on the draft code of welfare, and under section 72 may consult with persons who make submissions.

15. Under section 73(1), NAWAC must, in considering the content of a draft code of welfare, and before deciding whether to recommend to the Minister the issue of that code:
- (a) be satisfied that the proposed standards are the minimum necessary to ensure that the purposes of the Act will be met; and
 - (b) be satisfied that the recommendations for best practice (if any) are appropriate.
16. In carrying out its functions under section 73(1), NAWAC must have regard to:
- (a) the submissions made as part of public notification and the consultation it has undertaken; and
 - (b) good practice and scientific knowledge in relation to the management of the animals to which the code relates.
17. Following public notification and any consultation, NAWAC must decide whether or not to recommend to the Minister that the Minister issue a code of welfare.
18. Any recommendation by NAWAC to the Minister must be accompanied by a report from NAWAC under section 74(2) of the Act. That report must set out, inter alia, the reasons for NAWAC's recommendation.
19. The Minister may, after considering NAWAC's recommendation, NAWAC's report, and after having regard to the matters specified in section 73, decide to issue the code of welfare under section 75 of the Act.
20. Section 76 of the Act provides that the Minister may:
- (a) revoke a code of welfare, or any part of a code of welfare; and/or
 - (b) make minor amendments to a code of welfare, provided those minor amendments do not materially affect the purposes of the code.

THE PRACTICE OF RODEO

21. The practice of rodeo comprises the following displays and contests with roping and riding involving humans, cattle and horses (collectively "**rodeo practices**").
22. Steer wrestling:

- (a) Steer wrestling is a rodeo event in which a horse-mounted rider chases a steer, drops from the horse to the steer, then wrestles the steer to the ground by grabbing its horns to pull it off balance and twisting its neck until it falls onto the ground.

23. Calf roping:

- (a) Calf roping, also known as tie-down roping, or rope and tie, is a rodeo event that features a calf and a rider mounted on a horse.
- (b) Calf roping is a timed event in which the rider must catch the calf by throwing a loop of rope from a lariat around its neck, dismount from the horse, run to the calf, and restrain it by tying three legs together in as short a time as possible. Stopping the animals short as they seek to escape is called "clotheslining."

24. Calf riding:

- (a) Calf riding is a children's rodeo event.
- (b) Calf riding involves a rider mounting a bucking calf and attempting to stay mounted while the animal tries to buck the rider. To receive a score, the rider must stay on top of the calf for eight seconds.

25. Bronc riding:

- (a) Bronc riding involves a rodeo participant riding a bucking horse that attempts to throw or buck off the rider.
- (b) The rider attempts to stay on the horse for eight seconds, without the rider's free hand touching the horse. Horses who buck in ways that cause a visual spectacle garner more points for competitors.
- (c) Flank straps are tied around the horse's flank, just in front of the back legs and are used to make bucking horses kick higher.
- (d) Riders must "mark the horse out". This is a stabbing motion requiring riders to have the heels of their boots in contact with the horse (an action calling "spurring") at a point above the animal's shoulders before the horse's front legs hit the ground. Then the spurs are 'raked' and on completion of the rake the horses are spurred again in a stabbing motion.

26. Bull/steer riding:

- (a) Bull/steer riding is a rodeo event that involves a rider mounting a bucking bull and attempting to stay mounted while the animal tries to buck the rider.
- (b) To receive a score, the rider must stay on top of the bull for eight seconds with the use of one hand gripped on a bull rope tied behind the bull's forelegs. Spurring a bull adds to the contestant's score.
- (c) Bulls are provoked into bucking by the tying of flank straps tightly around their hindquarters.
27. Team roping:
- (a) Team roping is a rodeo event which involves two riders (a header and a heeler) and a steer.
- (b) The header ropes the steer around the neck, head or horns before the heeler moves in to rope the hind legs. The rope is then dallied around the saddle horn. Once secured, time is recorded when both horses are facing each other with no slack in the rope.
28. Barrel racing:
- (a) Barrel racing is a rodeo event where the riders guide their horses around three barrels in a cloverleaf pattern in the shortest time possible.
- (b) Horses must move with speed and agility to enable riders to complete the event in the least amount of time.
29. The practice of rodeo is only undertaken for entertainment purposes.
30. The rodeo practices result in animals who participate experiencing unnecessary or unreasonable pain or distress and/or results in wilful or reckless ill-treatment of animals including as pleaded in the following paragraphs.
31. In steer wrestling, the steer experiences pain from the 'throwing' action when the neck twist is applied using the horns and chin as leverage. Bruising persists after the event.
32. In the case of calf-roping:

- (a) calves are frequently injured, including suffering broken legs, by being suddenly halted by the rope as they try and run away, as well as by being roughly thrown to the ground;
- (b) the ropes used can be jerked forcefully, resulting in the animals falling to the ground at high speed and injuring their necks and other body parts; and
- (c) physical and physiological stress is suffered by the animals involved.
33. In calf riding, a chest flank and chest rope may be used on the calf. The flank strap (if used) and chest rope cause discomfort or irritation to the calf. The rider may also inflict pain. Calves suffer musculoskeletal injuries if they stumble.
34. In the case of bronc riding:
- (a) bucking is an active coping strategy for horses in negative emotional situations, caused by anxiety, fear and/or pain;
- (b) improperly used bucking straps can cause open wounds and burns if hair is rubbed off and skin is chafed raw; and
- (c) spurring results in trauma to the shoulders causing pain, bruising and soft tissue damage.
35. In the case of bull/steer riding:
- (a) for anatomical reasons, flank straps have to be tightened across the urethra, which can add to the bull's pain;
- (b) bulls sometimes buck beyond their physical capacity, resulting in broken backs and legs;
- (c) bulls can suffer back injuries, fractures or luxations that require the bull to be euthanised; and
- (d) in the long term, bucking bulls are more likely to develop horn and sinus disorders, and musculoskeletal issues.
36. In the case of team roping the use of severe bits can cause significant levels of pain. The excessive use of spurs and whips can cause pain that may last after the event. Spurs are also likely to cause bruising that may not be visible superficially.

37. In barrel racing, the use of severe bits can cause significant levels of pain. The excessive use of spurs and whips can cause pain that may last after the event. Spurs are also likely to cause bruising that may not be visible superficially.
38. Other injuries animals suffer during rodeo events include unseen injuries to neck muscles, internal bruising or haemorrhaging, bruising of the cartilage on the larynx and trachea, spinal cord injuries from roping events, broken backs from bronc riding events, and tails being ripped off.

RODEO CODES OF WELFARE

39. On 30 October 2014, the Minister issued the Code of Welfare: Rodeo 2014 (**2014 Code**). The 2014 Code came into effect on 31 October 2014.
40. The issuing of the 2014 Code by the Minister was preceded by:
- (a) public notification by NAWAC of the draft code of welfare and the receipt of submissions;
 - (b) consultation by NAWAC with interested persons; and
 - (c) a report to the Minister under section 74 of the Act by NAWAC "Report to Accompany the Animal Welfare (Rodeos) Code of Welfare 2014".
41. In March 2018, the first applicant publicly released a report entitled "The Legal Status of Rodeo in New Zealand" (**NZALA Report**).
42. The NZALA Report:
- (a) provided a comprehensive review of the practice of rodeo in New Zealand; and
 - (b) set out the position in other jurisdictions, and the recent evidence of the impact of rodeo on animals.
43. In or around March 2018 the Minister sought advice from NAWAC regarding rodeo.
44. In or around May 2018, NAWAC commissioned a report entitled "Rodeo events – How do they impact the sentient animal?" (**NAWAC's Report**).
45. Although dated May 2018, NAWAC's Report was not publicly released until October 2018.

46. NAWAC's Report was produced by a panel of experts using a "Five Domains" model to assess the impact of individual rodeo events on the animals involved, based on scientific evidence and experience.
47. In relation to each of the rodeo practices listed at paragraphs 21 to 28 of this statement of claim, NAWAC's Report concluded that:
- (a) "steer wrestling" and "rope and tie" raise serious animal welfare concerns resulting in substantial negative impacts for the animals concerned;
 - (b) "calf riding", "bull/steer riding", "bronc riding", and "team roping" raised moderate animal welfare concerns; and
 - (c) "barrel racing" raised minor animal welfare concerns.
48. On a date unknown to the applicants but believed to be in or around October 2018, NAWAC recommended to the Minister that the 2014 Code be revoked and that the Minister issue what became the 2018 Code.
49. NAWAC:
- (a) did not publicly notify the 2018 Code; and
 - (b) did not provide the Minister with a report under section 74(2).
50. In October 2018, the 2014 Code was revoked under section 76(1)(a) and the Minister issued under section 75 the Code of Welfare: Rodeo 2018 (**2018 Code**). The 2018 Code was materially identical to the 2014 Code.
51. On 9 May 2021 the 2018 Code was amended under section 76 of the Act, as follows:
- (a) a new clause (h) was inserted in Minimum Standard No. 4 – Handling: *"Animals must be handled at all times in such a way as to minimise the risk of pain, injury or distress"*;
 - (b) the provisions relating to significant surgical procedures were amended (in particular, by introducing a new chapter 7.1 Significant Surgical Procedures);
 - (c) two new example indicators were included in Minimum Standard No. 7 – Saddle and Bareback Bronc Riding;

- (d) amendments to the definition of "electric prodder" clarifying that it does not include "*electric devices used on animals by the New Zealand Police*"; and
 - (e) other minor amendments.
52. Regulation 46 of the Animal Welfare (Care and Procedure) Regulations 2018 prohibits the use of fireworks at rodeo events and practice events. No other regulations have been made under section 183 in relation to rodeo.

STATUTORY POWERS OF DECISION

53. The making of a recommendation by NAWAC to the Minister under section 74 of the Act is the exercise of a statutory power of decision.
54. The issuing of a new code by the Minister under section 75 of the Act is the exercise of a statutory power of decision.

GROUNDS OF REVIEW

First Ground of Review: Failure to follow process

55. In exercising their statutory powers of decision the Minister and/or NAWAC were required to:
- (a) comply with the procedural requirements of the Act for the promulgation of new codes;
 - (b) be satisfied that the proposed standards are the minimum necessary to ensure that the purposes of the Act are met;
 - (c) be satisfied that the recommendations for best practice (if any) are appropriate; and
 - (d) have regard to good practice and scientific knowledge available at the relevant time in relation to the management of the animals to which the code relates.
56. In making a recommendation to the Minister under section 74, NAWAC acted unlawfully in failing to follow the procedural requirements of the Act. In particular, in:
- (a) failing to publicly notify the code of welfare as a draft;
 - (b) as a consequence, failing to consider whether to consult; and

- (c) failing to prepare and provide to the Minister a report as required under section 74 of the Act.
57. In making a recommendation to the Minister under section 74, NAWAC acted unlawfully in:
- (a) failing to have regard to available research regarding good practice together with scientific knowledge in relation to the management of rodeo animals available to it, including, but not limited to that contained in:
 - (i) NAWAC's Report;
 - (ii) the NZALA Report; and
 - (iii) the 2016 study by the University of Queensland "Behavioral and Physiological Responses of Calves to Marshalling and Roping in a Simulated Rodeo Event"; and
 - (b) by virtue of its failure to publicly notify and consult, failing to have regard to the views of interested persons and accordingly not acting on the basis of the best available information.
58. As a result of the matters pleaded above, NAWAC was not and/or was not in a position to be:
- (a) satisfied that the proposed standards in the 2018 Code were the minimum necessary to ensure that the purposes of the Act were met; or
 - (b) satisfied that the recommendations for best practice were appropriate.
59. As a result of NAWAC's failures as pleaded in paragraphs 56 to 58, the Minister acted unlawfully in failing to have regard to the matters in section 73, as required under section 75(1).
60. By virtue of the matters pleaded above the 2018 Code is unlawful.

Second ground of review – ultra vires or improper purpose

61. In exercising their statutory powers of decision as pleaded at paragraphs 53 and 54, the respondents must act so as to promote and not frustrate the purpose for which those statutory powers have been conferred.

62. In exercising their statutory powers of decision in relation to the 2018 Code the respondents failed to promote and/or frustrated the purpose for which those powers were conferred. In particular:
- (a) the practice of rodeo is undertaken for the purposes only of entertainment;
 - (b) the rodeo practices result in the animals concerned experiencing;
 - (i) unnecessary or unreasonable pain or distress; and
 - (ii) wilful or reckless ill-treatment;
 - (c) the minimum standards in the 2018 Code are not sufficient to prevent the animals concerned from experiencing unnecessary or unreasonable pain or distress, or ill-treatment; and
 - (d) the effect of the 2018 Code is to:
 - (i) permit conduct which does not fully meet the section 10 obligation or the section 29 requirement; and
 - (ii) provide a defence to conduct which, but for the 2018 Code, would be an offence under section 12(a) (failure to comply with section 10) and/or sections 28 to 29 (ill-treatment).
63. The issuing of the Code by the Minister was accordingly for an improper purpose and/or ultra vires the Act.

Relief

64. The applicants seek the following relief against the respondents:
- (a) a declaration that the 2018 Code in its entirety or as it relates to particular rodeo practices is unlawful;
 - (b) an order setting aside the 2018 Code in its entirety or as it relates to particular rodeo practices; and
 - (c) costs.

This document is filed by **Sebastian Bisley**, solicitor for the applicant, whose address for service is at the offices of Buddle Findlay, Level 17, Aon Centre, 1 Willis Street, Wellington 6011. Documents for service on the abovenamed may be left at that address or may be:

1. Posted to the solicitor at PO Box 2694, Wellington 6011; or
2. Left for the solicitor at a document exchange for direction DX SP20201, Wellington; or
3. Transmitted to the solicitor by facsimile to 64 4 499 4141; or
4. Emailed to the solicitor at sebastian.bisley@buddlefindlay.com with a copy to Victoria.heine@chambers.co.nz.

Released under the Official Information Act 1982

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE

CIV-2021-485-360

UNDER THE	Judicial Review Procedure Act 2016
IN THE MATTER OF	The Code of Welfare: Rodeos 2018
BETWEEN	THE NEW ZEALAND ANIMAL LAW ASSOCIATION
	First applicant
AND	SAVE ANIMALS FROM EXPLOITATION
	Second applicant
AND	THE ATTORNEY-GENERAL
	First respondent
AND	THE NATIONAL ANIMAL WELFARE ADVISORY COMMITTEE
	Second respondent

FIRST RESPONDENT'S STATEMENT OF DEFENCE

24 August 2021

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The first respondent by his solicitor says in response to the statement of claim dated 19 July 2021:

PARTIES

1. He admits paragraph [1].
2. He is not required to plead to paragraph [2].
3. He admits paragraph [3].
4. He is not required to plead to paragraph [4].
5. He admits paragraph [5].
6. He admits paragraph [6].

RELEVANT STATUTORY FRAMEWORK

7. In relation to paragraph [7], he says:
 - 7.1 The purposes of the Animal Welfare Act 1999 (**the Act**) are set out in Parts 1-7 of the Act, each of which Part has purpose statements;
 - 7.2 The long title of the Act is (among other matters) to “reform the law relating to the welfare of animals and the prevention of their ill-treatment; and, in particular, to recognise that animals are sentient...”
He relies on the long title as if set out in full; and
 - 7.3 He otherwise denies paragraph [7].
8. He denies paragraph [8] and relies on the relevant statutory provisions as if set out in full.

Regulations under s 183A

9. He denies paragraph [9] and says further:
 - 9.1 Section 183A allows the Governor-General, on the recommendation of the Minister, to make regulations relating to standards of care. This includes regulations under s 183A(2) and (3) that may prescribe

standards or requirements that do not fully meet the obligations of s 10, or s 29 (among others).

- 9.2 Unlike Codes of Welfare, Regulations are directly enforceable and breach of a regulation is an offence.
- 9.3 The Minister must consult with NAWAC when making regulations under s 183A(10), but the procedural requirements in ss 71-75 do not apply when making regulations which establish, amend, revoke or replace any minimum standard which is part of a Code of Welfare under Part 5.
- 9.4 The Minister must consult to the extent that is reasonably practicable, having regard to the circumstances of the particular case, the persons the Minister has reason to believe are representative of interests likely to be substantially affected by proposed regulations before deciding whether to recommend the making of regulations under s 183A.
10. He denies paragraph [10], repeats paragraphs [7] and [8] above, and relies on the relevant statutory provisions as if set out in full.

Codes of Welfare

11. He admits paragraph [11] and relies on s 68 as if set out in full. He further says:
- 11.1 The contents of Codes of Welfare is set out in s 69, which provides:

69 Contents

A code of welfare may relate to 1 or more of the following:

- (a) a species of animal:
- (b) animals used for purposes specified in the code:
- (c) animal establishments of a kind specified in the code:
- (d) types of entertainment specified in the code (being types of entertainment in which animals are used):
- (e) the transport of animals:
- (f) the procedures and equipment used in the management, care, or killing of animals or in the carrying out of surgical procedures on animals.

- 11.2 Codes of welfare elaborate on the general duty of care in the Act, and help people in charge of animals understand and meet their statutory obligations;
- 11.3 Codes of welfare contain useful information about how to care for animals, and explain both the minimum standards necessary to meet animals' needs as well as best practice guidance; and
- 11.4 Minimum standards in codes of welfare are not directly enforceable. However, breach of a minimum standard is prima facie evidence of an offence (under ss 13(1A) and 30(1A)), and compliance with a minimum standard is a defence to an alleged offence (under s 13(2)(c) and 30(2)(c)).
12. He denies paragraph [12], repeats paragraphs [7] and [11] above and relies on s 73 as if set out in full.
13. He admits paragraph [13] and relies on s 70 as if set out in full.
14. He denies paragraph [14] and relies on ss 71 and 76 as if set out in full.
15. He admits paragraph [15] and relies on s 73 as if set out in full.
16. He admits paragraph [16] and relies on s 73 as if set out in full.
17. He admits paragraph [17] and relies on s 74 as if set out in full.
18. He admits paragraph [18] and relies on s 74 as if set out in full.
19. He admits paragraph [19] and relies on s 75 as if set out in full.
20. He denies paragraph [20] and relies on s 76 as if set out in full.

THE PRACTICE OF RODEO

21. He denies paragraph [21] and relies on the descriptions of events as outlined in the 2018 Code in full.

Steer wrestling

22. He admits that steer wrestling is a rodeo event. Otherwise he denies paragraph [22], relies on paragraph [6.5] of the 2018 Code in full and further says that:

- 22.1 In the steer wrestling event a mounted rider chases a steer, drops from the horse to the steer and wrestles the steer to the ground. The time is flagged when the steer has all four hooves off the ground and legs pointing out straight;
- 22.2 The steer needs to be healthy and in good physical condition to withstand the physical stress during this event.

Rope and tie

23. He admits that rope and tie is a rodeo event. Otherwise he denies paragraph [23], relies on paragraph [6.3] of the 2018 Code in full and further says that:
- 23.1 Rope and tie is a time event that is performed at a fast pace over a set time period;
- 23.2 In the rope and tie event, a calf is released from the chute which then triggers the release of the horse and rider, who will rope the calf in the arena, dismount, put the roped calf on the ground and tie three of the calves' legs using a pigging string, while a well-trained horse will effectively maintain the tension on the rope. The calf needs to remain tied for six seconds for the tie to be considered successful. Calves used in these events can be subjected to physical stressors and need to be fit, healthy and without defects; and
- 23.3 Rope and tie was previously known as calf roping.

Calf riding

24. He admits that calf riding is a children's rodeo event. Otherwise he denies paragraph [24], relies on paragraph [6.6] of the 2018 Code in full and further says that:
- 24.1 The calf riding event is designed to enable younger and lighter competitors to participate in rodeo;
- 24.2 Minimum standard number 12 provides that calves must not be ridden more than once on any day; the rider's weight must be kept behind the shoulder of the calf; calves must not be ridden with the rider facing backwards; and calves must be habituated by being

walked or run through the arena from the release chute to the exhaust pen prior to the event.

Saddle and bareback bronc riding

25. He accepts that saddle and bareback bronc riding is a rodeo event. Otherwise he denies paragraph [25], relies on paragraph [6.1] of the 2018 Code in full and further says that:

- 25.1 Bronc riding involves releasing a horse from a chute into the arena, where it will buck in an attempt to dislodge the rider from its back;
- 25.2 There are two types of this event: saddle bronc riding where the horse is fitted with a saddle, and bareback bronc riding where the horse is fitted with bareback rigging only;
- 25.3 In both events the horse will be fitted with a flank strap which runs around the body of the horse just in front of the back legs, which will encourage the horse to buck;
- 25.4 Minimum standard number 7 provides that the flank strap must not be so tight as to restrict the movement of the horse, and must be removed from the horse as soon as it is practicable to do so once the rider is off the horse.

Bull and steer riding

26. He accepts that bull and steer riding is a rodeo event. Otherwise he denies paragraph [26], relies on paragraph [6.2] of the 2018 Code in full and further says that:

- 26.1 Bull and steer riding involves a bull or steer being released into the arena where it will buck to dislodge the rider from its back;
- 26.2 The animal is fitted with a front 'bull rope' which wraps around its body and which the rider holds onto to maintain his seating. This bull rope needs to be a quick release type of rope that will fall away from the animal as soon as the rider is displaced or dismounts;

- 26.3 The animal is also fitted with a flank strap to encourage bucking. Minimum standard number 8 requires that the flank strap must not be so tight as to restrict the movement of the animal.

Team roping

27. He accepts that team roping is a rodeo event. Otherwise he denies paragraph [27], relies on paragraph [6.4] of the 2018 Code in full and further says that:

27.1 Team roping involves two ropers, the header and the heeler, both on horseback;

27.2 The header will rope the steer around both horns, the head and one horn, or the neck, and the heeler then ropes the steer around the hind legs. The time recorded is that after the steer is stopped and there is no slack in both the header and heeler's ropes;

27.3 The rope is slackened immediately upon completion of the event when the clock is stopped. This again is a fast paced event and the steer needs to be in good physical condition with no defects.

Barrel racing

28. He accepts that barrel racing is a rodeo event. Otherwise he denies paragraph [28], relies on paragraph [6.7] of the 2018 Code in full and further says that:

28.1 Barrel racing is an event where the riders guide their horses around three barrels in a cloverleaf pattern in the least amount of time as possible.

28.2 Horses are required to move at speed and turn quickly during this event and it is important that they are fit, healthy and appropriately trained to perform this event.

29. He admits that rodeo is undertaken for entertainment purposes but otherwise denies paragraph [29] and further says:

29.1 Rodeo is also referred to as a sport;

- 29.2 NAWAC has set up a separate subcommittee to develop a set of principles to be considered when deciding if and how animals should be used in the “3Es” - exhibition, entertainment, and encounter.

Scrutiny of animal welfare and rodeo since 2013

30. He denies paragraph [30] and further says that the issue of pain and distress to animals under the *Code of Welfare: Rodeos* has been regularly reviewed and scrutinised since 2013:

30.1 In the 2013 report, NAWAC concluded that that there was not a high risk of injury to rodeo animals, and given the application of the minimum standards and recommended best practices under the Code, there were sufficient safeguards in place to protect animals used in rodeos. The defendant relies on the 2013 NAWAC report for its full effect;

30.2 In 2016 SAFE, Farmwatch and the Royal New Zealand Society for the Prevention of Cruelty to Animals (**RNZSPCA**) petitioned the Primary Production Select Committee, but the Committee was satisfied with the minimum standards set out in the 2014 Code and declined to recommend further regulation. The Committee encouraged NZRCA to work closely with MPI and NAWAC to work towards increasing compliance with the animal welfare code through self-monitoring. The defendant relies on the Committee’s report for its full effect;

30.3 In 2018 the Animal Welfare (Care and Procedures) Regulations 2018 created new offences for misuse of animals, including at rodeo events, as set out at paragraph [48.2] below;

30.4 In February 2018 the Minister asked NAWAC for advice on the welfare of animals in rodeos. NAWAC commissioned its own report *Rodeo events – How do they impact the sentient animal?* (**2018 NAWAC report**) and recommended a suite of non-regulatory actions including scientific research and more intensive monitoring of injuries. NAWAC did not recommend amending the Code at that time. The

defendant relies on the 2018 NAWAC report and advice for their full effect;

- 30.5 During its research in 2018, NAWAC considered the New Zealand Animal Law Association (**NZALA**) report;
- 30.6 In August 2019, the NZRCA established the Rodeo Animal Welfare Committee which is made up of representatives from the NZRCA, SPCA, NZVA and MPI Compliance. NAWAC sits on the Committee as an observer with no voting rights. NAWAC provides reports to the Minister on progress on NAWAC's recommendations;
- 30.7 Parts of the Animal Welfare (Care and Procedures) Amendment Regulations 2020 apply to animals at rodeo events, as set out in paragraph [51] below; and
- 30.8 In early 2021 NAWAC reprioritised the review of the Code. A subcommittee was formed, and pre-consultation with industry including the applicants and the NZRCA is about to commence.
31. He denies paragraph [31] relating to steer wrestling, repeats paragraphs [22] and [30] above and relies on the 2013 and 2018 NAWAC reports and advice for their full effect.
32. He denies paragraph [32] relating to rope and tie, repeats paragraphs [23] and [30] above and relies on the 2013 and 2018 NAWAC reports and advice for their full effect.
33. He denies paragraph [33] relating to calf riding, repeats paragraphs [24] and [30] above and relies on the 2013 and 2018 NAWAC reports and advice for their full effect.
34. He denies paragraph [34] relating to saddle and bareback bronc riding, repeats paragraphs [25] and [30] above and relies on the 2013 and 2018 NAWAC reports and advice for their full effect.
35. He denies paragraph [35] relating to bull and steer riding, repeats paragraphs [26] and [30] above and relies on the 2013 and 2018 NAWAC reports and advice for their full effect.

36. He denies paragraph [36] relating to team roping, repeats paragraphs [27] and [30] above and relies on the 2013 and 2018 NAWAC reports and advice for their full effect.
37. He denies paragraph [37] relating to barrel racing, repeats paragraphs [28] and [30] above and relies on the 2013 and 2018 NAWAC reports and advice for their full effect.
38. He denies paragraph [38], repeats paragraph [30] above and relies on the 2013 and 2018 NAWAC reports and advice for their full effect.

RODEO CODES OF WELFARE

2014 Code

39. He admits paragraph [39] and further says that the previous Code for Rodeos was issued in December 2003.
40. He admits paragraph [40].

NZALA report

41. He admits paragraph [41].
42. In respect of paragraph [42], he admits the NZALA report provided a review of the practice of rodeo in New Zealand, and set out the position in some other jurisdictions. Further says the conclusion in the NZALA report is incorrect, and otherwise denies paragraph 42.

NAWAC 2018 report

43. He denies paragraph [43], repeats paragraph [30] above, and further says that the Minister discussed rodeos at the NAWAC quarterly meeting on 14 February 2018. NAWAC agreed to provide advice to the Minister after its May 2018 meeting, focusing on calf events, flank straps, electric prodders and the use/misuse of ropes.
44. He admits paragraph [44].
45. He admits that NAWAC's report is dated May 2018 and was published on the website in October 2018 but otherwise denies paragraph [45].
46. He admits paragraph [46].

47. He admits paragraph [47] but relies on the NAWAC Report for its full effect. He further says:

47.1 NAWAC recommended a suite of non-regulatory actions to the Minister, including establishment of a Rodeo Animal Welfare Committee, including MPI and SPCA Animal Welfare Inspectors; increased monitoring and record keeping; research to assess the physical impact of events on animals; that the industry consider reducing or replacing higher impact events.

47.2 NAWAC recommended that if these non-regulatory actions are not met with in a clear established time period, additional regulatory options could be undertaken.

2018 Code incorporating Animal Welfare (Care and Procedures) Regulations

48. In respect of paragraph [48], the respondent:

48.1 Admits that NAWAC was consulted on the revocation of the 2014 Code/issue of the 2018 Code as required under s 76(2). NAWAC informed the Minister on 16 August 2018 that it supported the revocation/issue of the 2018 Code.

48.2 Further says:

48.2.1 The 2018 Code contained only amendments of a minor nature, made under s 76(1)(b);

48.2.2 These amendments were primarily consequential amendments to incorporate the Animal Welfare (Care and Procedures) Regulations 2018 (**Regulations**), which came into force on 1 October 2018. The relevant Regulations were appended to the 2018 Code and referred to throughout.

48.2.3 The Regulations appended to the Code created several offences, such as:

(a) using equipment that may injure horses (r 19, carrying a fine of \$900);

- (b) a prohibition against striking a horse on its head (r 20, carrying fines between \$500-\$1,500);
- (c) restrictions on transporting animals (rr 30-45, carrying fines between \$500-\$7,500);
- (d) a prohibition on fireworks at rodeos (r 46, carrying fines between \$5,000-\$25,000);
- (e) misuse of collars and tethers (r 47, carrying fines between \$300-\$900); and
- (f) a prohibition on the misuse of electric prodders (rr 48 and 49, carrying fines between \$500-\$7,500).

48.2.4 NAWAC participated in the process for developing the Regulations including placing its members on a Regulations working group, providing comment on the policy intent of regulatory proposals and commenting on the draft regulations.

48.2.5 In developing the proposals, MPI drew on the knowledge and experience of the other members of this working group. As well as NAWAC and MPI, the working group consisted of representatives from the RNZSPCA and the Veterinary Council of New Zealand (VCNZ).

48.2.6 MPI consulted on the regulatory proposals during April and May 2016. The regulatory proposals were outlined in two Discussion Papers. Consultation included six public meetings throughout New Zealand and an invitation to all interested parties to provide written submissions on the discussion documents. MPI also undertook follow-up workshops and one-on-one meetings with affected industry and advocacy groups to understand the impacts of the regulations and further refine their development. MPI received over 1400 submissions on the proposals relating to Care and Conduct, Significant and Painful Surgical

Procedures and Live Animal Exports, including submissions from NZALA and SAFE. Approximately 1000 submissions were from individuals and 400 submissions were from organisations.

48.3 And otherwise denies paragraph [48].

49. He admits paragraph [49], repeats paragraph [48] above and further says:

49.1 As the 2018 Code contained only minor amendments under s 76(1)(b), there was no requirement for NAWAC to publicly notify the 2018 Code or produce a report under s 74(2); and

49.2 Even if any procedural error was made in issuing/reissuing the 2018 Code, there was extensive public notification and consultation during development of the Regulations, and therefore in respect of the substantive amendments to the 2018 Code.

50. He admits paragraph [50] and repeats paragraph [48]-[49] above.

2021 amendment incorporating Animal Welfare (Care and Procedures) Amendment Regulations

51. In respect of paragraph [51]:

51.1 He admits that by Notice in the Gazette on 5 May 2021, minor amendments were made to the Code under s 76(1)(b), with effect from 9 May 2021.

51.2 He admits paragraph (a) but says this requirement was already contained in the 2018 Code at Minimum Standard 4(a).

51.3 He admits that a new chapter 7.1 Significant Surgical Procedures was introduced but otherwise denies paragraph (b).

51.4 He denies paragraph (c) and further says that paragraph [6.1] (saddle and bareback bronc riding) of the 2018 Code was amended only to incorporate reference to the amendment to regulation 19 introduced by the Animal Welfare (Care and Procedures) Amendment Regulations 2020.

- 51.5 Admits paragraph (d).
- 51.6 Admits paragraph (e) and further says that these minor amendments incorporated relevant parts of the Animal Welfare (Care and Procedure) Amendment Regulations 2020 relating to surgical and painful procedures, the majority of which came into force on 9 May 2021.
- 51.7 He repeats paragraph [48.2.5] above and further says that MPI tested the regulatory proposals through two public consultation periods: April – May 2016 and June – July 2019. During the 2019 consultation, MPI received over 1300 submissions, including submissions from NZALA and SAFE. MPI developed the final regulatory proposals taking into account the public and stakeholder submissions, advice from NAWAC and the National Animal Ethics Advisory Committee, and available scientific, local and international research.

Current NAWAC review of the Code

- 51.8 He further says that in early 2021 NAWAC reprioritised the review of the Code. A subcommittee was formed, and pre-consultation with industry including the applicants and the NZRCA is about to commence. He otherwise denies paragraph [51].

52. He denies paragraph [52], repeats paragraphs [48.2] and [51] above.

STATUTORY POWERS OF DECISION

53. He admits paragraph [53].

54. He admits paragraph [54].

GROUND OF REVIEW

First ground of review - failure to follow due process

55. He denies paragraph [55] and refers to the relevant statutory requirements for each power of decision, for their full effect.

56. He denies paragraph [56] and repeats paragraphs [39]-[50] above.
57. He denies paragraph [57] and repeats paragraphs [39]-[50] above.
58. He denies paragraph [58] and repeats paragraphs [39]-[50] above.
59. He denies paragraph [59] and repeats paragraphs [39]-[50] above.
60. He denies paragraph [60] and repeats paragraphs [30] and [39]-[50] above.

Second ground of review – ultra vires or improper purpose

61. He is not required to plead to paragraph [61] as it contains matters of law.
62. He denies paragraph [62] and repeats paragraphs [30] and [39]-[51] above.
63. He denies paragraph [63] and repeats paragraphs [30] and [39]-[51] above.
64. He denies paragraph [64], repeats paragraph [30] above and further says that NAWAC is currently reviewing the 2018 Code, including consulting with the applicants and the NZRCA.

This document is filed by Jennifer Claire Catran, solicitor for the first respondent, of Crown Law.

The address for service of the first respondent is Crown Law, Level 3, Justice Centre, 19 Aitken Street, Wellington 6011. Documents for service on the first respondent may be left at this address for service or may be:

- (a) posted to the solicitor at PO Box 2858, Wellington 6140; or
- (b) left for the solicitor at a document exchange for direction to DX SP20208, Wellington Central; or
- (c) transmitted to the solicitor by facsimile to 04 473 3482; or
- (d) emailed to the solicitor at Jenny.Catran@crownlaw.govt.nz provided that the documents are also emailed to Rebecca.Elvin@crownlaw.govt.nz and Hannah.Bergin@crownlaw.govt.nz

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE

CIV-2021-485-360

UNDER THE	Judicial Review Procedure Act 2016
IN THE MATTER OF	The Code of Welfare: Rodeos 2018
BETWEEN	THE NEW ZEALAND ANIMAL LAW ASSOCIATION First applicant
AND	SAVE ANIMALS FROM EXPLOITATION Second applicant
AND	THE ATTORNEY-GENERAL First respondent
AND	THE NATIONAL ANIMAL WELFARE ADVISORY COMMITTEE Second respondent

SECOND RESPONDENT'S STATEMENT OF DEFENCE

24 August 2021

Counsel acting:

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The second respondent by its solicitor says in response to the statement of claim dated 19 July 2021:

PARTIES

1. Admits paragraph 1.
2. Apprehends paragraph 2 contains matters to which it is not required to plead.
3. Admits paragraph 3.
4. Apprehends paragraph 4 contains matters to which it is not required to plead.
5. Admits paragraph 5.
6. Admits paragraph 6.

RELEVANT STATUTORY FRAMEWORK

Purposes, policy and object of the Act

7. Apprehends paragraph 7 contains matters of law and/or submission to which it is not required to plead.
8. Apprehends paragraph 8 contains matters of law and/or submission to which it is not required to plead.
9. Apprehends paragraph 9 contains matters of law and/or submission to which it is not required to plead.
10. Apprehends paragraph 10 contains matters of law and/or submission to which it is not required to plead.

Codes of Welfare

11. In respect of paragraph 11:
 - 11.1 admits codes of welfare establish minimum standards with regard to the way in which persons care for animals and conduct themselves towards such animals; and

- 11.2 admits codes of welfare include recommendations on the best practice to be observed by persons in caring for such animals and in conducting themselves towards such animals; and
- 11.3 relies on sections 68 and 69 of the Act as if set out in full; and
- 11.4 further says minimum standards in codes of welfare are not directly enforceable; but
- 11.5 otherwise denies paragraph 11.
12. Denies paragraph 12 and further says:
- 12.1 before making its recommendation on minimum standards in a code of welfare, NAWAC must be satisfied the proposed standards are the minimum necessary to meet the purposes of the Act; and
- 12.2 relies on section 73 of the Act as if set out in full.
13. Admits paragraph 13 and relies on section 70 of the Act as if set out in full.
14. In respect of paragraph 14:
- 14.1 admits NAWAC must publicly notify a draft code of welfare if NAWAC is satisfied the requirements of section 71(1) of the Act are met; and
- 14.2 admits NAWAC may consult with those persons who, in response to a notice published or given under section 71(3) of the Act make draft submissions on the draft code of welfare; and
- 14.3 relies on sections 71, 72 and 76 of the Act as if set out in full; but
- 14.4 otherwise denies paragraph 14.
15. Admits paragraph 15 and relies on section 73 of the Act as if set out in full.
16. Admits paragraph 16 and further says:
- 16.1 in carrying out its functions under section 73(1) NAWAC must also have regard to:

- 16.1.1 available technology; and
- 16.1.2 any other matters considered relevant by NAWAC; and
- 16.2 relies on section 73 of the Act as if set out in full.
- 17. Admits paragraph 17 and relies on section 74 of the Act as if set out in full.
- 18. Admits paragraph 18 and relies on section 74 of the Act as if set out in full.
- 19. Admits paragraph 19 and relies on section 75 of the Act as if set out in full.
- 20. In respect of paragraph 20:
 - 20.1 admits section 76 of the Act provides that the Minister may:
 - 20.1.1 revoke a code of welfare or any part of a code of welfare; or
 - 20.1.2 make amendments of a minor nature to a code of welfare (being minor amendments that would not materially affect the purposes of the code); and
 - 20.2 relies on section 76 of the Act as if set out in full; but
 - 20.3 otherwise denies paragraph 20.

THE PRACTICE OF RODEO

- 21. Denies paragraph 21 and refers to the 2018 Code of Welfare: Rodeos (2018 Code) definition of “rodeo” at Appendix 1 of the 2018 Code, and the descriptions of rodeo events referred to therein.
- 22. In respect of paragraph 22:
 - 22.1 admits Steer Wrestling is a rodeo event; and
 - 22.2 admits a horse-mounted rider chases a steer, drops from the horse to the steer and wrestles the steer to the ground. The time is flagged when the steer has all four hooves off the ground and legs pointing out straight; and

- 22.3 relies on Part 6.5 and Appendix 1 of the 2018 Code as if set out in full; but
- 22.4 otherwise denies paragraph 22.
23. In respect of paragraph 23 says:
- 23.1 Calf Roping is a rodeo event now known as Rope and Tie; and
- 23.2 Rope and Tie is a timed rodeo event, where a calf is released from a chute which then triggers the release of the horse and rider, who will rope the calf in the area, dismount, put the roped calf on the ground and tie three of the calves' legs together using a pigging string, while a well-trained horse will effectively maintain the tension on the rope. The calf needs to remain tied for six seconds for the tie to be considered successful; and
- 23.3 relies on Part 6.3 and Appendix 1 of the 2018 Code as if set out in full; but
- 23.4 otherwise denies paragraph 23.
24. In respect of paragraph 24:
- 24.1 admits Calf Riding is a rodeo event; and further says:
- 24.1.1 Calf Riding is designed to enable younger and lighter competitors to participate in rodeo; and
- 24.1.2 weight restrictions that apply are designed to ensure that the animal involved in the event is not placed under undue stress; and
- 24.1.3 the voluntary increase by the New Zealand Rodeo Cowboys Association (NZRCA) in the liveweight of animals used in this event has led to the discontinuance of Calf Riding at NZRCA sanctioned rodeo events.
- 24.2 relies on Part 6.6 of the 2018 Code as if set out in full; but

- 24.3 otherwise denies paragraph 24.
25. In respect of paragraph 25:
- 25.1 admits that Bronc Riding is a rodeo event; and
- 25.2 admits that Bronc Riding involves a rodeo participant riding a bucking horse that attempts to throw or buck off the rider; and further says:
- 25.2.1 there are two types of Bronc Riding: saddle bronc riding where a horse is fitted with a saddle; and bareback bronc riding where the horse is fitted with bareback rigging only; and
- 25.2.2 in both events the horse is fitted with a flank strap which runs around the body of the horse just in front of the back legs, which will encourage the horse to buck; and
- 25.3 relies on Part 6.1 and Appendix 1 of the 2018 Code as if set out in full; but
- 25.4 otherwise denies paragraph 25.
26. In respect of paragraph 26:
- 26.1 admits that Bull or Steer Riding is a rodeo event; and further says:
- 26.1.1 Bull or Steer Riding involves a bull or a steer being released into the arena where it will buck to dislodge the rider from its back; and
- 26.1.2 the animal is fitted with a front “bull rope” which wraps around its body and which the rider holds onto to maintain his or her seating; and
- 26.1.3 the bull rope is a quick release type of rope that will fall away from the animal as soon as the rider is displaced or dismounts; and

- 26.1.4 the animal is also fitted with a flank strap to encourage bucking; and
- 26.2 relies on Part 6.2 and Appendix 1 of the 2018 Code as if set out in full; but
- 26.3 otherwise denies paragraph 26.
27. In respect of paragraph 27:
- 27.1 admits that Team Roping is a rodeo event; and
- 27.2 admits that Team Roping involves two riders a header and a heeler and a steer; and says further
- 27.2.1 the header will rope the steer around both horns, the head and one horn, or the neck, and the heeler then ropes the steer around the hind legs. The time recorded is that after the steer is stopped and there is no slack in both the header and heeler's ropes; and
- 27.2.2 the rope is slackened immediately upon completion of the event when the clock is stopped; and
- 27.3 relies on Part 6.4 and Appendix 1 of the 2018 Code as if set out in full; but
- 27.4 otherwise denies paragraph 27.
28. Admits paragraph 28 and relies on Part 6.7 and Appendix 1 of the 2018 Code as if set out in full.
29. In respect of paragraph 29:
- 29.1 admits the practice of rodeo is undertaken for entertainment purposes; and further says:
- 29.1.1 the practice of rodeo is also a recognised sport; and
- 29.1.2 NAWAC is developing a Guideline that will be applied by NAWAC in order understand why people engage with

activities using animals in exhibition, entertainment, and encounter (the 3Es). The Guideline and principles therein will guide NAWAC's decision making for these uses. It is anticipated that NAWAC will have finalised the Guideline by the end of September 2021; but

29.2 otherwise denies paragraph 29.

30. Denies paragraph 30; and further says:

30.1 Rodeo practices that comply with the minimum standards set out in the 2018 Code do not cause unnecessary or unreasonable pain or distress and/or result in the wilful or reckless ill-treatment of animals; and

30.2 The minimum standards set out in the 2018 Code are the minimum standards necessary to ensure the purposes of the Act are met.; and

30.3 At a meeting on 19 May 2021 NAWAC decided to:

30.3.1 reprioritise a statutory review of the 2018 Code; and

30.3.2 convene a NAWAC subcommittee (the Rodeo Code Review Subcommittee) to undertake the statutory review; and

30.4 The Rodeo Code Review Subcommittee's statutory review of the 2018 Code is currently at the pre-consultation stage. This will involve NAWAC consulting with representatives of the persons likely to be affected by the draft, including the applicants. NAWAC anticipates it will be in a position to recommend a draft Code to the Minister for public consultation by the end of February 2022.

31. In respect of paragraph 31:

31.1 repeats paragraphs 30.1 to 30.4 above; and

31.2 admits it is likely there is at least moderate pain experienced by the steer from the 'throwing' action imposed by the contestant when the

neck twist is applied using the horns and chin as leverage; and further says:

31.2.1 NAWAC assumes that some bruising would persist after the event; and

31.2.2 NAWAC recommended to the Associate Minister of Agriculture, the Hon Meka Whaitiri (the Minister) in May 2018, in relation to Steer Wrestling, the implementation of non-regulatory actions to encourage recommended best practice, gather information and monitor compliance with minimum standards. These included:

- (a) the commissioning of further research into the impact of experiences in the rodeo arena; and
- (b) increased monitoring and record keeping of the animals being trained and used over a season, including the number of animals involved, and any animal injuries sustained; and

31.3 otherwise, does not know and therefore denies paragraph 31.

32. In respect of paragraph 32:

32.1 repeats paragraph 23.1 to 23.3 above; and

32.2 repeats paragraph 30.1 to 30.4 above; and

32.3 admits that some physical and brief physiological stress may be suffered by some of the animals involved; and further says

32.3.1 NAWAC concluded in 2013, in relation to Rope and Tie, that in the absence of evidence that the event causes calves' significant pain and distress, the event should not be discontinued; and

32.3.2 NAWAC recommended to the Minister in 2018, in relation to Rope and Tie, the implementation of non-regulatory

actions to encourage recommended best practice, gather information and monitor compliance with minimum standards. These included:

- (a) the implementation of methods and instruments that may have less of a negative impact on calves e.g. bungee ropes/breakaway ropes; and
- (b) the commissioning of further research into investigating the type and severity of damage to the necks of calves arising from this event; and
- (c) discussing with the industry options to reduce the number of calves used at rodeos or alternatively, to implement a voluntary phase out and cessation of this calf event; and

32.4 otherwise, does not know and therefore denies paragraph 32.

33. In respect of paragraph 33:

33.1 repeats paragraph 30.1 to 30.4 above; and

33.2 admits there is likely to be discomfort or irritation caused to the calf from the flank strap (if used) and the chest rope; and further says:

33.2.1 NAWAC concluded in 2013, in relation to Calf Riding, that calves are of a sufficient weight and maturity that they will not be subjected to unreasonable pain or distress in this event;

33.2.2 NAWAC recommended to the Minister in 2018, in relation to Calf Riding, the implementation of non-regulatory actions to encourage recommended best practice, gather information, and monitor compliance with minimum standards. Being:

Released under the Official Information Act 1982

- (a) increased monitoring and record keeping of animals used, including reporting injury rates 48 hours post-event; and
- (b) ensuring children are weighed at each event before they ride calves to make sure that they comply with the maximum weight requirements; and
- (c) the voluntary increase by NZRCA in the liveweight of animals used in this event has led to the discontinuance of Calf Riding at NZRCA sanctioned rodeo events.

33.3 otherwise, does not know and therefore denies paragraph 33.

34. In respect of paragraph 34:

34.1 repeats paragraph 30.1 to 30.4 above; and further says:

34.1.1 NAWAC concluded in 2013, in relation to Bronc Riding, that the spurs used on animals in bucking events are adequately dulled and rotate sufficiently that they will not cause the animals undue pain or distress; and

34.1.2 NAWAC recommended to the Minister in 2018, in relation to Bronc Riding, the implementation of non-regulatory actions to encourage recommended best practice, gather information, and monitor compliance with minimum standards. Being:

- (a) increased monitoring and recording keeping of training of animals, including the number of animals involve, and injuries sustained; and
- (b) monitoring and reporting injury rates 48 hours post-event; and
- (c) discussing with the industry the necessity of spurs and whether alternative equipment can be used;

Released under the Official Information Act 1982

34.2 otherwise, does not know and therefore denies paragraph 34.

35. In respect of paragraph 35:

35.1 repeats paragraph 30.1 to 30.4 above;

35.2 admits that, very occasionally, bulls can suffer back injuries, fractures, or luxation's that require the bull to be euthanised; but says the frequency of these injuries is low; and

35.3 admits that a study in the USA in 2017 found that the bucking bulls studied in that country were more likely to develop horn and sinus disorders, and musculoskeletal issues; and

35.4 further says:

35.4.1 NAWAC recommended to the Minister in 2018, in relation to Bull or Steer Riding, the implementation of non-regulatory actions to encourage recommended best practice, gather information, and monitor compliance with minimum standards. Being:

(a) increased monitoring and record keeping of the animals being trained, including the number of animals involved, and any animal injuries sustained; and

(b) monitoring and reporting injury rates 48 hours post-event.

35.5 otherwise, does not know and therefore denies paragraph 35.

36. In respect of paragraph 36:

36.1 repeats paragraph 30.1 to 30.4 above; and further says:

36.1.1 NAWAC concluded in 2018 that the likelihood of pain and injury during Team Roping was minimal and it recommended to the Minister, in relation to Team Roping, the implementation of non-regulatory actions to encourage

recommended best practice, gather information, and monitor compliance with minimum standards. Being:

- (a) increased monitoring and record keeping of animals undergoing training for team roping; and
- (b) the commissioning of research into alternative equipment that would aim to reduce the impact that the event has on the animal; and

36.2 Otherwise, does not know and therefore denies paragraph 36.

37. In respect of paragraph 37:

37.1 repeats paragraph 30.1 to 30.4 above; and further says:

37.2 NAWAC concluded in 2018 that the risk of injury caused by Barrel Racing was low and it recommended to the Minister non-regulatory actions to encourage recommended best practice, gather information, and monitor compliance with minimum standards. Being:

37.2.1 discussing with the industry the necessity of using curb bits, spurs, and whips during this event, and to determine whether there are alternatives that could be used; and

37.2.2 increased monitoring and record keeping of horses undergoing training for Barrel Racing; and

37.2.3 the commissioning of research into injury rates in post-event period; and

37.3 otherwise, does not know and therefore denies paragraph 37.

38. Does not know and therefore denies paragraph 38, and further repeats paragraph 30.1 to 30.4 above.

RODEO CODE OF WELFARE

39. Admits paragraph 39.

40. Admits paragraph 40 and further says:

- 40.1 Consultation with representatives of the persons likely to be affected by the draft Code (pre-consultation) took place between 25 May and 29 June 2012 with Bull Riding NZ Inc, NZRCA, the NZ Veterinary Association and the Royal Society for the Prevention of Cruelty to Animals; and
- 40.2 Public consultation ran from 12 October to 26 November 2012, following notices in newspapers in Auckland, Wellington, Christchurch and Dunedin and direct contact with interest groups; and
- 40.3 30 written submissions on the draft Code were received, as well as 368 form letters from SAFE and 8 form letters from rodeo supporters; and
- 40.4 NAWAC convened a subcommittee to consider the submissions. The subcommittee consulted with Ministry for Primary Industries (MPI) Animal Welfare staff, visited rodeo events, and consulted with industry. The subcommittee contracted experts Bernie Rollin, philosopher and ethicist, and Professor Orivaldo Tenorio, a veterinarian and regulator of rodeo in Brazil; and
- 40.5 The draft Code was peer reviewed by Dr Cia Johnson of the American Veterinary Medical Association's Animal Welfare Division; and
- 40.6 NAWAC recommended the draft Code to the Minister for Primary Industries on 5 September 2013.

41. Admits paragraph 41.

42. In respect of paragraph 42:

- 42.1 admits the NZALA report provided a review of the practice of rodeo in New Zealand, and set out the position in other jurisdictions, and some evidence of the impact of rodeo on animals; but
- 42.2 otherwise denies paragraph 42 and denies that the NZALA report's conclusion is correct.

43. Denies paragraph 43 and further says:
- 43.1 the Minister sought advice from NAWAC on several aspects of rodeos, being the use of calves, tail twisting, rope burning, flank straps, and electric prodders when she attended a NAWAC meeting on 14 February 2018; and
 - 43.2 to address the matters raised by the Minister, NAWAC assembled an expert panel that utilised a Five Domains model approach to assess the impact of individual rodeo events on the welfare of the animals involved; and
 - 43.3 the expert panel did not consider ethical, social, or legal questions relating to rodeos, nor carry out a statutory review of the 2014 Code.
44. Admits paragraph 44.
45. In respect of paragraph 45:
- 45.1 admits the 2018 NAWAC report was dated May 2018; and further says:
 - 45.1.1 the NAWAC report was put on the NAWAC website in October 2018; but
 - 45.2 otherwise denies paragraph 45.
46. Admits paragraph 46.
47. Admits paragraph 47; and
- 47.1 relies on the 2018 NAWAC Report as if set out in full; and further says:
 - 47.1.1 NAWAC considered that the current minimum standards and the new Animal Welfare (Care and Procedures) Regulations 2018 that were being developed and were due to come into force on 1 October 2018 adequately managed the issues raised by the Minister; and

47.1.2 NAWAC recommended several non-regulatory actions to encourage recommended best practice, gather information, and monitor compliance with minimum standards. These included the establishment of a Rodeo Animal Welfare Committee, increased monitoring and record keeping; proposing the commissioning of research to assess the physical impact of events on animals; and discussions with the industry to explore and introduce alternative instruments and practices; and

47.1.3 Subsequently:

- (a) NZRCA has established the Rodeo Animal Welfare Committee (RAWC) in August 2019. The RAWC is made up of representatives from NZRCA, SPCA, New Zealand Veterinary Association and MPI Compliance. NAWAC sits on the RAWC as an observer; and
- (b) RAWC passed a motion for the NZRCA Board to consider ceasing the Rope and Tie event. This motion was rejected at the NZRCA's AGM in July 2021; and
- (c) RAWC passed a motion for the NZRCA Board to consider banning the use of whips/crops in Barrel Racing. This motion was rejected at the NZRCA's AGM in July 2021; and
- (d) More detailed record keeping systems are being established under the guidance of RAWC to provide meaningful statistics on welfare outcomes for all rodeo animals; and
- (e) NZRCA now requires weights to be provided for all animals used in Steer Wrestling events; and

- (f) NZRCA has voluntarily increased the liveweight of animals used in Calf Riding which has led to the discontinuance of Calf Riding at NZRCA sanctioned rodeo events. The event is now known as “junior steer riding”; and
- (g) On the advice of the RAWC, NZRCA is considering initiating a drug testing regime to screen for the use of pain relief in competitors’ horses in Barrel Racing; and
- (h) NAWAC provides the Minister with bi-annual updates on Rodeos.

48. In respect of paragraph 48:

48.1 admits that NAWAC was consulted on the revocation of the 2014 Code and the issue of the 2018 Code as required under section 76(2) of the Act; and further says:

48.1.1 NAWAC informed the Minister on 16 August 2018 that it supported the amendment and issue of 2018 Code; and

48.1.2 The 2018 Code contained only amendments of a minor nature, made under s 76(1)(b); and

48.1.3 These amendments were consequential and minor amendments to incorporate the Animal Welfare (Care and Procedures) Regulations 2018 (**Regulations**), which came into force on 1 October 2018; and

48.1.4 NAWAC participated in the process for developing the Regulations including placing its members on a Regulations working group, providing comment on the policy intent of regulatory proposals, and commenting on the draft regulations; and

48.1.5 The applicants and any affected party had an opportunity to be consulted and make submissions on the Regulations and

therefore to the amendments to the Code, because Part 2 of Schedule 2 of the Regulations set out the minor amendments that were to be made to the Code.

- 48.2 otherwise denies paragraph 48.
49. Admits paragraph 49, repeats paragraph 48 above and further says:
- 49.1 because the 2018 Code contained only minor amendments there was no requirement for NAWAC to publicly notify the 2018 Code or produce a report under s 74(2); but
- 49.2 there was, in any case, adequate consultation and notification in respect of the amendments that were made to the Code because the applicants and any affected party had the opportunity to be consulted and make submissions during the extensive public notification and consultation that took place for the Regulations.
50. Admits paragraph 50 and repeats paragraphs 48 and 49 above.
51. In respect of paragraph 51:
- 51.1 admits the 2018 Code was amended under s 76, with effect from 9 May 2021; and
- 51.2 admits paragraph 51(a); and
- 51.3 admits that a new chapter 7.1 Significant Surgical Procedures was introduced; but otherwise denies paragraph 51(b); and
- 51.4 denies paragraph 51(c); and
- 51.5 admits paragraph 51(d); and
- 51.6 admits paragraph 51(e); and
52. Denies paragraph 52.

STATUTORY POWERS OF DECISION

53. Admits paragraph 53.

54. Admits paragraph 54.

GROUND OF REVIEW**First Ground of Review**

55. Denies paragraph 55.

56. Denies paragraph 56.

57. Denies paragraph 57.

58. Denies paragraph 58.

59. Apprehends that it is not required to plead to paragraph 59, but if required to plead denies paragraph 59.

60. Apprehends that paragraph 60 contains matters of law to which it is not required to plead, but if required to plead denies paragraph 60.

Second Ground of Review

61. Apprehends that paragraph 61 contains matters of law and/or legal submission to which it is not required to plead.

62. Apprehends that paragraph 62 contains matters of law and particulars to which it is not required to plead, but if required to plead denies paragraph 62.

63. Apprehends that it is not required to plead to paragraph 63, but if required denies paragraph 63.

Relief

64. Apprehends paragraph 64 contains matters to which it is not required to plead.

This document is filed by Michelle Stapleton, solicitor for the second respondent, of Wakefields Lawyers Ltd.

The address for service of the second respondent is Wakefields Lawyers Ltd, Level 2, Zephyr House, 82 Willis Street, Wellington 6011. Documents for service on the second respondent may be left at this address for service or may be:

- (a) posted to the solicitor at PO Box 8091, Wellington 6140; or
- (b) emailed to the solicitor at michelle@wakefieldslaw.com provided the documents are also emailed to rachel.roff@cliftonchambers.co.nz

Released under the Official Information Act 1982

Initial Disclosure Documents

No.	Date	Description
1	Undated	Letter from Minister of Agriculture to NAWAC
2	25/05/2012	NAWAC invitation Rodeo Code
3	05/09/2013	Letter from NAWAC to Minister for Primary Industries
4	2013	2014 Code Report
5	2014	Code of Welfare Rodeos
6	2017	Scientific article
7	2018	Code of Welfare Rodeos
8	14/02/2018	Minutes
9	15/02/2018	Letter from NAWAC to Assoc Minister of Agriculture
10	01/03/2018	Press Release
11	31/05/2018	Letter from NAWAC to Assoc Minister of Agriculture
12	16/08/2018	Letter from NAWAC to Assoc Minister of Agriculture
13	15/04/2019	Letter from NAWAC to Minister of Agriculture
14	19/09/2019	Letter from NAWAC to Minister of Agriculture
15	05/08/2020	Letter from NAWAC to Minister of Agriculture
16	05/08/2021	Letter from NAWAC to Assoc Minister of Agriculture

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY
I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE

CIV-2021-485-000360

Under the **JUDICIAL REVIEW PROCEDURE ACT 2016**

In the matter of **THE CODE OF WELFARE: RODEOS 2018**

Between **THE NEW ZEALAND ANIMAL LAW ASSOCIATION**
First Applicant

And **SAVE ANIMALS FROM EXPLOITATION**
Second Applicant

And **THE ATTORNEY-GENERAL**
First Respondent

[Continued Overleaf]

**APPLICANTS' STATEMENT OF REPLY TO FIRST RESPONDENT'S
STATEMENT OF DEFENCE**

Dated: 9 September 2021

BUDDLE FINDLAY

Barristers and Solicitors
Wellington

Solicitor Acting: **Sebastian Bisley**
Email: sebastian.bisley@buddlefindlay.com
Tel 64 4 462 0839 Fax 64 4 499 4141 PO Box 2694 DX SP20201 Wellington 6011

Counsel Acting: **Victoria Heine**
Tel 64 460 0638 PO Box PO Box 1530 Wellington 6140 Wellington 6140

And

**THE NATIONAL ANIMAL WELFARE ADVISORY
COMMITTEE**

Second Respondent

Released under the Official Information Act 1982

STATEMENT OF REPLY:

The first and second applicants ("**the applicants**") by their solicitors say, in reply to the first respondent's statement of defence dated 24 August 2021:

1. They admit paragraphs 11.1 and 11.4 of the statement of defence, but deny paragraphs 11.2 and 11.3 and refer to the Act as a whole.
2. In relation to paragraphs 21 to 28 of the statement of defence they:
 - (a) admit that the 2018 Code contains a general description of rodeo and rodeo events, some of which are set out in the statement of defence;
 - (b) say that The New Zealand Rodeo Cowboys Association Inc Constitution and Rulebook contains further rules of the conduct of rodeo;
 - (c) otherwise deny paragraphs 21 to 28.
3. They have no knowledge of and accordingly deny paragraph 29.2.
4. They either have no knowledge and so deny, or deny, paragraph 30.
5. To the extent that paragraph 42 contains a positive pleading as to the correctness of the NZALA Report they seek further particulars and otherwise deny paragraph 42.
6. They have no knowledge of and accordingly deny paragraph 43.
7. They have no knowledge of and accordingly deny paragraphs 47.1 and 47.2.
8. In relation to paragraph 48:
 - (a) to the extent that paragraph 48 contains matters of law relating to the 2018 Code, they do not plead;
 - (b) they otherwise deny paragraph 48.
9. In relation to paragraph 49:
 - (a) to the extent that paragraph 49 contains matters of law relating to the 2018 Code, they do not plead;
 - (b) they say that consultation on the Regulations is not consultation on the Code of Welfare;
 - (c) they otherwise deny paragraph 49.

10. In relation to paragraph 50:
- (a) to the extent that paragraph 50 contains matters of law, they do not plead;
 - (b) they otherwise have no knowledge of and accordingly deny paragraph 50.
11. In relation to paragraph 51:
- (a) to the extent that paragraph 51 contains matters of law, they do not plead;
 - (b) they admit MPI ran public consultation:
 - (i) in 2016 on proposed animal welfare regulations and say that the applicants both submitted on those regulations;
 - (ii) in 2019 on proposed animal welfare regulations on significant surgical procedures, on which the applicants submitted;
 - (iii) but say that consultation on the Regulations is not consultation on the Code of Welfare;
 - (c) they otherwise have no knowledge of and accordingly deny paragraph 51.

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY
I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE

CIV-2021-485-000360

Under the **JUDICIAL REVIEW PROCEDURE ACT 2016**

In the matter of **THE CODE OF WELFARE: RODEOS 2018**

Between **THE NEW ZEALAND ANIMAL LAW ASSOCIATION**
First Applicant

And **SAVE ANIMALS FROM EXPLOITATION**
Second Applicant

And **THE ATTORNEY-GENERAL**
First Respondent

[Continued Overleaf]

**APPLICANTS' STATEMENT OF REPLY TO SECOND RESPONDENT'S
STATEMENT OF DEFENCE**

Dated: 9 September 2021

BUDDLE FINDLAY

Barristers and Solicitors
Wellington

Solicitor Acting: **Sebastian Bisley**
Email: sebastian.bisley@buddlefindlay.com
Tel 64 4 462 0839 Fax 64 4 499 4141 PO Box 2694 DX SP20201 Wellington 6011

Counsel Acting: **Victoria Heine**
Tel 64 460 0638 PO Box PO Box 1530 Wellington 6140 Wellington 6140

And

**THE NATIONAL ANIMAL WELFARE ADVISORY
COMMITTEE**

Second Respondent

Released under the Official Information Act 1982

STATEMENT OF REPLY:

The first and second applicants ("**the applicants**") by their solicitors say, in reply to the second respondent's statement of defence dated 24 August 2021:

1. In relation to paragraphs 21 to 28 of the statement of defence they:
 - (a) admit that the 2018 Code contains a general description of rodeo and rodeo events, some of which are set out in the statement of defence;
 - (b) say that The New Zealand Rodeo Cowboys Association Inc Constitution and Rulebook contains further rules of the conduct of rodeo;
 - (c) have no knowledge of and accordingly deny paragraph 24.1.3;
 - (d) otherwise deny paragraphs 21 to 28.
2. In relation to paragraph 29 they:
 - (a) deny paragraph 29.1.1;
 - (b) have no knowledge of and accordingly deny paragraph 29.1.2.
3. They either have no knowledge and so deny, or deny, paragraph 30.
4. They have no knowledge of and accordingly deny paragraphs 31.2.1 to the extent that it records NAWAC's assumptions or state of knowledge, and 31.2.2.
5. They have no knowledge of and accordingly deny paragraphs 32.3.1 and 32.3.2.
6. They have no knowledge of and accordingly deny paragraphs 33.2.1 and 33.2.2.
7. They have no knowledge of and accordingly deny paragraph 34.1.
8. They have no knowledge of and accordingly deny paragraph 35.4.
9. They have no knowledge of and accordingly deny paragraph 36.1.
10. They have no knowledge of and accordingly deny paragraph 37.2.
11. They have no knowledge of and accordingly deny paragraph 40.

12. To the extent that paragraph 42 contains a positive pleading as to the correctness of the NZALA Report they seek further particulars and otherwise deny paragraph 42.
13. They have no knowledge of and accordingly deny paragraph 43.
14. They have no knowledge of and accordingly deny paragraph 47.
15. In relation to paragraph 48:
 - (a) to the extent that paragraph 48 contains matters of law relating to the 2018 Code, they do not plead;
 - (b) they otherwise deny paragraph 48.
16. In relation to paragraph 49:
 - (a) to the extent that paragraph 49 contains matters of law relating to the 2018 Code, they do not plead;
 - (b) they say that consultation on the Regulations is not consultation on the Code of Welfare;
 - (c) they otherwise deny paragraph 49.

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY
I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA TOHE

CIV-2021-485-360

UNDER THE **Judicial Review Procedure Act 2016**

IN THE MATTER OF **the Code of Welfare: Rodeos 2018**

BETWEEN **The New Zealand Animal Law Association**
First Applicant

AND **Save Animals From Exploitation**
Second Applicant

AND **The Attorney-General**
First Respondent

AND **The National Animal Welfare Advisory Committee**
Second Respondent

**APPLICATION BY THE NEW ZEALAND RODEO COWBOYS ASSOCIATION INCORPORATED TO
BE JOINED AS A PARTY**

13 September 2021

Next Event Date

Judicial Officer

Tavendale and Partners
Lawyers
Level 3, Tavendale and Partners Centre
329 Durham Street North
P O Box 442
Christchurch 8140
Tel: (03) 374 9999
Fax: (03) 374 6888
Solicitor acting: **S J Jamieson**
Email: sara.jamieson@tp.co.nz

Counsel: J V Ormsby
Plymouth Chambers
Level 2, 112 Cashel Street
P O Box 363
Christchurch 8140
Tel: (03) 365 1192
Email: jared@jaredormsby.co.nz

To: The Registrar of the High Court at Wellington

And To: The New Zealand Animal Law Association

And To: Save Animals From Exploitation

And To: The Attorney-General

And To: National Animal Welfare Advisory Committee

This document notifies you that:

1. The applicant, the New Zealand Rodeo Cowboys Association Incorporated (**NZRCA**) will on 13 September 2021 apply to the Court for an order granting it leave to be joined as a party to this proceeding, and if not as a party then as an intervener or an interested non-party.
2. The grounds on which NZRCA seeks leave to be a party are that:
 - a. NZRCA is the representative body for rodeo in New Zealand;
 - b. NZRCA is the administering body for affiliated rodeo clubs in New Zealand tasked with setting rules by which rodeos are conducted;
 - c. One of the NZRCA's main constitutional purposes is:

To promote the sport of Rodeo so it may rank among the foremost New Zealand sports.
 - d. The grounds of review posed and relief sought are likely to result in the development of the law around animal welfare and rodeo in New Zealand;
 - e. The presence of NZRCA will improve the quality of information before the Court;
 - f. The interests of NZRCA are not able to be adequately represented by any other party to the proceeding;
 - g. The future of rodeo could be affected by the outcome of this proceeding;
 - h. It would be unjust to determine the issues in this proceeding in the absence of NZRCA; and

- i. Given NZRCA's involvement is unlikely to be opposed with appropriate directions,¹ its involvement will not unduly add to the inconvenience, delay and expense of the proceedings.
3. In the time available, NZRCA has not provided any affidavit evidence in support of this application. It understands that it is unlikely that any party will oppose this application. If the application is to be opposed, then NZRCA will file affidavit evidence in support of its application.
4. The application is made in reliance on:
- a. Section 14 of the Judicial Review Procedure Act 2014;
 - b. Rules 4.56 and 7.43A of the High Court Rules;
 - c. The Court's inherent jurisdiction;
 - d. *Westhaven Shellfish Ltd v Chief Executive of Ministry of Fisheries* (2002) 16 PRNZ 501;
 - e. *Independent Fisheries Ltd v Minister for Canterbury Earthquake Recovery* [2014] NZHC 959;
 - f. *Royal Forest and Bird Protection Society v Minister of Fisheries* [2020] NZHC 741; and
 - g. *Bleakley & Ors v The Registrar of Friendly Societies and Credit Unions* [2017] NZHC 471.

Dated 13 September 2021

(9)(2)(a)



J V Ormsby

Counsel for the New Zealand Rodeo Cowboys Association
Incorporated

¹ *New Zealand Animal Law Association v Attorney General* Minute 6 September 2021 at [4]

This Document is filed by **SARA JOY JAMIESON** solicitor for the Applicant, of the firm Tavendale and Partners. The address for service of the Applicant is at the offices of Tavendale and Partners, Level 3, 329 Durham Street, Christchurch.

Documents for service on the Applicant may be delivered to that address or may be:

- (a) posted to the solicitor at PO Box 442, Christchurch 8140.
- (b) left for the solicitor at a document exchange for direction to DX WX11145, Christchurch
- (c) Emailed to the solicitor for the Applicant at sara.jamieson@tp.co.nz.

Released under the Official Information Act 1982

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE

CIV-2021-485-360

UNDER THE	Judicial Review Procedure Act 2016
IN THE MATTER OF	The Code of Welfare: Rodeos 2018
BETWEEN	THE NEW ZEALAND ANIMAL LAW ASSOCIATION First applicant
AND	SAVE ANIMALS FROM EXPLOITATION Second applicant
AND	THE ATTORNEY-GENERAL First respondent
AND	THE NATIONAL ANIMAL WELFARE ADVISORY COMMITTEE Second respondent

APPLICATION BY THE FIRST AND SECOND RESPONDENTS SEEKING
ADJOURNMENT

23 September 2021

CROWN LAW
TE TARI TURE O TE KARAUNA
PO Box 2858
WELLINGTON 6140
Tel: 04 472 1719
Fax: 04 473 3482

Contact Person:

Jenny Catran / Rebecca Elvin / Hannah Bergin
Jenny.Catran@crownlaw.govt.nz / Rebecca.Elvin@crownlaw.govt.nz /
Hannah.Bergin@crownlaw.govt.nz

To the Registrar of the High Court at Wellington

and

To the first applicant

and

To the second applicant

and

To the New Zealand Rodeo Cowboys Association Incorporated

This document notifies you that

1. The first respondent, the Attorney-General, and the second respondent, National Animal Welfare Advisory Committee (**NAWAC**), will on 23 September 2021 jointly apply to the Court for an order adjourning this proceeding until 1 April 2022.

2. The grounds on which this order is sought are as follows:

2.1 The second respondent in this proceeding, NAWAC, is currently preparing a new draft Code of Welfare for Rodeos (**Draft Code**) (in accordance with the procedure set out in ss 70 and 71 of the Animal Welfare Act (the **Act**). NAWAC intends to provide a draft Code to the Minister for her approval by 28 March 2022, for public notification by 20 May 2022. The applicants in this proceeding and the New Zealand Rodeo Cowboy's Association Inc (**NZRCA**) will be involved in the preparation of the Draft Code through the pre-consultation process with affected parties provided for under the Act.

2.2 Once the Draft Code has been completed following pre-consultation with affected parties, to the point of seeking approval from the Minister for public notification, it is likely the parties will need to amend their pleadings to reflect any changes proposed in the Draft Code. It may be that several of the issues between the parties will become moot. Accordingly, it is premature to progress the matter at this stage, including by timetabling steps through to a hearing. It

would be more efficient, both for the parties and the Court, to allow the review and pre-consultation process to proceed up until the point of seeking approval from the Minister for public notification, in order to narrow and finalise the relevant issues between the parties before taking further steps in the litigation.

2.3 Further, it is an inefficient use of both the parties' time and the court's time to have the same parties discussing the same issues in parallel in different forums. It would be pre-emptive for the court to intervene when a review of the 2018 code by NAWAC is presently underway, in accordance with the provisions of the Animal Welfare Act 1999. This process provides the most appropriate and immediate means for concerns related to rodeo practices to be ventilated and addressed and for any change to the existing code to be progressed. The process of pre-consultation and preparation of the Draft Code will consider the most up-to-date scientific research and compliance information, and may mean the parties are able to address or resolve some of the concerns that have been raised in the Statement of Claim and narrow the issues before the Court. This would allow a more efficient use of judicial resources, avoid duplication, and properly encourage the resolution of issues outside the courtroom. An adjournment (as opposed to a stay) will not deny the applicants access to the courts, or prevent appropriate judicial oversight, but rather ensure that relevant issues are placed before the court whilst upholding the principle of comity.

2.4 It is also beneficial for the Court to have the most up to date information before it. The process of preparing a Draft Code involves a review of relevant research and literature, including consideration of the latest scientific knowledge, as well as pre-consultation with affected parties. This information is relevant to several of the key issues in dispute, such as the practice of rodeo (including the description of particular rodeo events) and the effect of this on animals, and will assist the Court in making its determination. Adjourning the proceeding will provide the Court with the opportunity to avail itself of the most recent and accurate evidence.

- 2.5 As no hearing date has yet been set down, an adjournment will not lead to wasted court time (due to a vacated fixture that cannot be filled at short notice) or cause unfairness to other litigants 'waiting in the queue' who would have been ready to proceed to hearing. To the contrary, the applicants are seeking to avoid such a scenario in the future on the basis that it is already apparent the proceedings will not be ready for hearing until after the Draft Code is completed to the point of recommendation to the Minister for public notification.
- 2.6 Finally, an adjournment at this stage will cause minimal (if any) prejudice to the applicants. It is very unlikely a hearing would be scheduled before March 2021 in any event, particularly given the recent Covid-19 lockdown and the implications for court timetables. Given the matter is at an early stage, it is unlikely the respondents will have undertaken any preparatory work that would be 'wasted' if the matter is briefly adjourned. The applicants will also have the opportunity to bring their concerns to NAWAC during pre-consultation.
3. Overall, balancing the above factors, the interests of justice weigh in favour of granting an adjournment until 1 April 2022.
4. The first and second respondents provide affidavit evidence of Gwyneth Ann Verkerk in support of this application.
5. This application is made in reliance on:
- 5.1 Rule 10.2 of the High Court Rules;
 - 5.2 The Court's inherent jurisdiction;
 - 5.3 *Cygnets Farms Ltd v ANZ Bank New Zealand Ltd* [2016] NZHC 1945;
 - 5.4 *McKay Builders Ltd (in liq) v McKay* [2017] NZHC 934;
 - 5.5 *Napier City Council v Local Government Mutual Funds Trustee Ltd* [2019] NZHC 2643;
 - 5.6 *Claims Resolution Service Ltd v Roberts* [2020] NZHC 2605; and

5.7 *Te Ohi Kai Moana Trustee Ltd v Attorney-General* [2016] NZHC 1798.

23 September 2021

(9)(2)(a)



J Catran / R Elvin / H Bergin
Counsel for the first respondent applicant

(9)(2)(a)



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IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

CIV-2021-485-360

I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA TOHE

UNDER THE **Judicial Review Procedure Act 2016**

IN THE MATTER OF **The Code of Welfare: Rodeos 2018**

BETWEEN **The New Zealand Animal Law Association**
First Applicant

AND **Save Animals From Exploitation**
Second Applicant

AND **The Attorney-General**
First Respondent

AND **The National Animal Welfare Advisory
Committee**
Second Respondent

AND **New Zealand Rodeo Cowboys Association
Incorporated**
Third Respondent

STATEMENT OF DEFENCE OF THE THIRD RESPONDENT

11 November 2021

Next Event Date 15 November 2021 at 10:00am
Judicial Officer

Tavendale and Partners
Lawyers
Level 3, Tavendale and Partners
Centre 329 Durham Street North
P O Box 442
Christchurch 8140
Tel: (03) 374 9999
Fax: (03) 374 6888
Solicitor acting: **S J Jamieson**
Email: sara.jamieson@tp.co.nz

Counsel: J V Ormsby
Plymouth Chambers
Level 2, 112 Cashel Street
P O Box 363
Christchurch 8140
Tel: (03) 365 1192
Email: jared@jaredormsby.co.nz

STATEMENT OF DEFENCE OF THE THIRD RESPONDENT

The Third Respondent says in answer to the Statement of Claim dated 19 July 2021:

Parties

1. It admits paragraph 1.
2. It admits that the Rules of the First Applicant contain similar purposes but otherwise denies paragraph 2.
3. It admits paragraph 3.
4. It denies paragraph 4 and says further that the Second Applicant's objectives, as contained in its Rules, are to raise public awareness of the suffering, abuse and exploitation of animals and promote education on human-animal relations.
5. It admits paragraph 5.
6. It admits paragraph 6.

Relevant Statutory Framework

7. It denies paragraph 7 and says that the purposes of the Animal Welfare Act 1999 (**Act**) are set out in Parts 1-7 of the Act, with each Part having a purpose statement.
8. It denies paragraph 8 and says further that it relies on the Act as if set out in full.
9. It denies paragraph 9 and says further that:
 - a. section 183A empowers the Governor-General, on the recommendation of the Minister, to make regulations relating to standards of care, including regulations that do not fully meet the obligations of sections 10 and 11 or the obligations that a person would need to observe in the treatment, transport, or killing of animals if that person were to avoid an offence under other sections including section 29.
 - b. Unlike Codes of Welfare, regulations are directly enforceable, and breach of a regulation is an offence.
 - c. Section 183A(10) provides that the Minister must consult with NAWAC before recommending the making of any regulations but

nothing in sections 71 to 75 applies in relation to the making of such regulations.

- d. Section 184 imposes further consultation requirements to the extent reasonably practicable in relation to proposed regulations.
10. It denies paragraph 10 and repeats paragraphs 7 and 8.
 11. It admits paragraph 11 save to clarify that minimum standards in codes of welfare are not directly enforceable and relies on section 68 of the Act as if set out in full. It says further that section 69 provides that codes of conduct may relate to a range of purposes and activities and relies on section 69 as if set out in full.
 12. It denies paragraph 12 and says further that:
 - a. In considering the content of a draft code of welfare and before deciding to recommend to the Minister the issue of the code, NAWAC must be satisfied the proposed standards are the minimum necessary to meet the purposes of the Act and that the recommendations for best practice (if any) are appropriate; and
 - b. Relies on section 73 of the Act as if set out in full.
 13. It admits paragraph 13 and relies on section 70 of the Act as if set out in full.
 14. It denies paragraph 14 and relies on sections 71 and 76 as if set out in full.
 15. It admits paragraph 15 and relies on section 73 as if set out in full.
 16. It admits paragraph 16 and relies on section 73 as if set out in full.
 17. It admits paragraph 17 and relies on section 74 as if set out in full.
 18. It admits paragraph 18 and relies on section 74 as if set out in full.
 19. It admits paragraph 19 and relies on section 75 as if set out in full.
 20. In respect of paragraph 20:
 - a. It admits that section 76 of the Act provides that the Minister may from time to time revoke a code of welfare or any part of a code of welfare; or make amendments of a minor nature to a code of welfare (being minor amendments that would not materially affect the purposes of the code).

- b. relies on section 76 of the Act as if set out in full; and
- c. otherwise denies paragraph 20.

The Practice of Rodeo

21. It denies paragraph 21 and relies on the descriptions of the rodeo events defined in the Code of Welfare: Rodeos 2018 (the “**2018 Code**”) as if set out in full.

Steer wrestling

22. It admits steer wrestling is a rodeo event, where a horse-mounted rider chases a steer, drops from the horse to the steer and wrestles it to the ground, it otherwise denies paragraph 22 and says further:
- a. it relies on paragraph 6.5 of the 2018 Code as if pleaded in full; and
 - b. says that in the steer wrestling event a mounted rider chases a steer, drops from a horse to the steer and wrestles the steer to the ground. The time is flagged when the steer has all four hooves off the ground and legs pointing out straight.

Calf roping

23. It denies paragraph 23 and says further:
- a. calf roping is now known as rope and tie;
 - b. it relies on paragraph 6.3 of the 2018 Code as if pleaded in full; and
 - c. says in the rope and tie event, a calf is released from the chute which then triggers the release of the horse and rider, who will rope the calf in the arena, dismount, put the roped calf on the ground and tie three of the calf's legs using a pegging string, while a well-trained horse will effectively maintain the tension on the rope. The calf needs to remain tied to the judge's satisfaction for the tie to be considered successful. Calves used in these events can be subjected to physical stressors and need to be fit, healthy and without defects.

Calf riding

24. It admits calf riding is a children's rodeo event, otherwise denies paragraph 24 and says further:

- a. it relies on paragraph 6.6 of the 2018 Code as if pleaded in full; and
- b. calf riding is designed to enable younger and lighter competitors to participate in rodeo; and
- c. its voluntary increase in the liveweight of animals used in this event has led to the discontinuance of calf riding at rodeo events sanctioned by it.

Bronc riding

25. It admits bronc riding is a rodeo event that involves a rodeo participant riding a bucking horse that attempts to throw or buck off the rider, otherwise denies paragraph 25 and says further:

- a. it relies on paragraph 6.1 of the 2018 Code as if pleaded in full;
- b. there are two types of this event, saddle bronc riding, where the horse is fitted with a saddle, and bareback bronc riding, where the horse is fitted with bareback rigging only;
- c. in both events the horse will be fitted with a flank strap which runs around the body of the horse just in front of the back legs, which will encourage the horse to buck; and
- d. Minimum standard number 7 provides that the flank strap must not be so tight as to restrict the movement of the horse and must be removed from the horse as soon as it is practicable to do so.

Bull and steer riding

26. It admits bull and steer riding is a rodeo event that involves a rider mounting a bucking bull/steer and attempting to stay mounted while the animal tries to buck and dislodge the rider, otherwise denies paragraph 26 and says further:

- a. it relies on paragraph 6.2 of the 2018 Code as if pleaded in full;
- b. that the bull or steer is fitted with a front 'bull rope' which wraps arounds its body and which the rider holds on top to maintain their seating. This bull rope is required to fall away from the animal as soon as the rider is displaced or dismounts; and
- c. that the animal is also fitted with a flank strap to encourage bucking. Minimum standard number 8 requires that the flank trap must not be so tight as to restrict the movement of the animal.

Team roping

27. It admits team roping is a rodeo event which involves two riders (a header and a heeler) and a steer, otherwise denies paragraph 27 and says further;
- a. it relies on paragraph 6.4 of the 2018 Code as if pleaded full;
 - b. that the header will rope the steer around both horns, the head and one horn, or the neck, and the heeler then ropes the steer around the hind legs. The time recorded is the time at which the steer is stopped and there is no slack in both the header and heeler's ropes; and
 - c. the rope is slackened immediately upon completion of the event when the clock is stopped. The animals involved in this event need to be in good physical condition with no defects.

Barrel racing

28. It admits barrel racing is a rodeo event where riders guide their horses around three barrels in a cloverleaf pattern in the shortest time possible, otherwise denies paragraph 28 and says further:
- a. it relies on paragraph 6.7 of the 2018 Code as if pleaded in full; and
 - b. that given the requirements for this event, the animals participating need to be well trained and in good physical condition.
29. It denies paragraph 29 and says that rodeo is a well-established sport in New Zealand and also serves an educational function.
30. It denies paragraph 30 and further says that:
- a. The issue of pain and distress to animals in rodeo has been regularly reviewed and scrutinised under the Act and in the development of the 2014 and 2018 Codes of Welfare: Rodeo. Such scrutiny has included a full review of the most up to date scientific research and evidence, independent expert input, and submissions and information provided by third parties including the Third Respondent as well as the allegations now made by the Applicants in their pleadings and contained in the First Applicant's earlier report by Catriona MacLennan.

- b. The Third Respondent has developed rules to ensure that rodeo practices comply with the minimum standards set out in the 2018 Code.
- c. Rodeo practices that comply with the current Code of Welfare: Rodeo and the Rules of the Third Respondent do not cause unnecessary or unreasonable pain or distress and/or result in the wilful or reckless ill-treatment of animals and there are substantial safeguards in place to provide for the welfare of the animals involved in rodeo.
- d. The Animal Welfare (Care and Procedure) Regulations 2018 created new offences for the misuse of animals including at rodeo events.
- e. In 2019, the NZRCA established the Rodeo Animal Welfare Committee to review, assess and make recommendations on animal welfare issues to the NZRCA Board. Membership of the Committee is limited to a minimum of six representatives and consists of an independent chairperson, the NZRCA Animal Welfare Convenor (or nominated delegate), the NZRCA President (or nominated delegate), a Ministry of Primary Industries Compliance representative, the Royal New Zealand Society for Prevention of Cruelty to Animals Chief Scientific Officer (or nominated delegate), and the New Zealand Veterinarian Association's Chief Veterinarian Officer (or nominated delegate). A NAWAC observer must be present at each meeting.
- f. Every rodeo in New Zealand requires an animal welfare officer and a veterinarian experienced in treating horses and cattle. The officer and veterinarian must inspect and approve each animal prior to participation and monitor the event.
- g. Parts of the Animal Welfare (Care and Procedures) Amendment Regulations 2020 apply to animals at rodeo events.

31. It denies paragraph 31 and repeats paragraphs 22 and 30.

32. It denies paragraph 32 and repeats paragraphs 23 and 30.

33. It denies paragraph 33 and repeats paragraphs 24 and 30.

34. It denies paragraph 34 and repeats paragraphs 25 and 30.

35. It denies paragraph 35 and repeats paragraphs 26 and 30.

36. It denies paragraph 36 and repeats paragraphs 27 and 30.

37. It denies paragraph 37 and repeats paragraphs 28 and 30

38. It denies paragraph 38 and repeats paragraph 30.

Rodeo Codes of Welfare

39. It admits paragraph 39

40. It admits paragraph 40.

41. It admits paragraph 41.

42. It admits the text of the NZALA report and otherwise denies paragraph 42.

43. It has insufficient knowledge and therefore denies paragraph 43.

44. It admits paragraph 44.

45. It admits the NAWAC's report is dated May 2018 and that it was published on NAWAC's website in October 2018, and otherwise has insufficient knowledge and denies paragraph 45.

46. It admits paragraph 46.

47. It denies paragraph 47 and relies on the NAWAC report in full.

48. It apprehends that the matters pleaded at paragraph 48 relate to the conduct and interests of the First and Second Respondents and that it is not required to plead to the allegations therein.

49. It apprehends that the matters pleaded at paragraph 49 relate to the conduct and interests of the First and Second Respondents and that it is not required to plead to the allegations therein.

50. It admits paragraph 50.

51. It respect of paragraph 51:

- a. It admits that it is aware the Code was amended under section 76 of the Act.
- b. It admits paragraph (a) but says that this requirement was already contained in the 2018 Code at Minimum Standard 4(a).
- c. It admits that a new chapter 7.1 Significant Surgical Procedures was introduced but otherwise denies paragraph (b).

- d. It denies paragraph (c).
- e. It admits paragraph (d).
- f. It admits paragraph (e)

52. It denies paragraph 52.

Statutory powers of decision

53. It apprehends that the matters pleaded at paragraph 53 relate to the conduct and interests of the First and Second Respondents and that it is not required to plead to the allegations therein.

54. It apprehends that the matters pleaded at paragraph 54 relate to the conduct and interests of the First and Second Respondents and that it is not required to plead to the allegations therein.

First ground of review – Failure to follow process

55. It apprehends that the matters pleaded at paragraph 55 relate to the conduct and interests of the First and Second Respondents and that it is not required to plead to the allegations therein.

56. It apprehends that the matters pleaded at paragraph 56 relate to the conduct and interests of the First and Second Respondents and that it is not required to plead to the allegations therein.

57. It apprehends that it is not required to plead in respect of the process followed by the Second Respondent but says further that to the extent paragraph 57 seeks to allege or intimate that NAWAC had inadequate information, research, and scientific knowledge such that conduct consistent with the 2018 Code may result in rodeo practices that contravene the Act then it denies the allegations pleaded therein.

58. It apprehends that it is not required to plead in respect of the process followed by the Second Respondent but says further that to the extent paragraph 58 seeks to allege or intimate that NAWAC had inadequate information, research, and scientific knowledge such that conduct consistent with the 2018 Code may result in rodeo practices that contravene the Act then it denies the allegations pleaded therein.

59. It apprehends that it is not required to plead in respect of the processes followed by the Minister or Second Respondent but says further that to the extent

paragraph 59 seeks to allege or intimate that NAWAC had inadequate information, research, and scientific knowledge such that conduct consistent with the 2018 Code may result in rodeo practices that contravene the Act then it denies the allegations pleaded therein.

60. It apprehends that it is not required to plead in respect of the processes followed by the Minister or Second Respondent but says further that to the extent paragraph 60 seeks to allege or intimate that rodeo practices are unlawful under the Act itself then it denies the allegations pleaded therein.

Second ground of review – ultra vires or improper purpose

61. It denies paragraph 61.

62. It denies paragraph 62.

63. It denies paragraph 63.

Relief

64. It is not required to plead to paragraph 64.

This Document is filed by **SARA JOY JAMIESON** solicitor for the Third Respondent, of the firm Tavendale and Partners. The address for service of the Third Respondent is at the offices of Tavendale and Partners, Level 3, 329 Durham Street, Christchurch.

Documents for service on the Third Respondent may be delivered to that address or may be:

- (a) posted to the solicitor at PO Box 442, Christchurch 8140.
- (b) left for the solicitor at a document exchange for direction to DX WX11145, Christchurch
- (c) Emailed to the solicitor for the Third Respondent at sara.jamieson@tp.co.nz / jared.higby@tp.co.nz and to jared@jaredormsby.co.nz.

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE

CIV-2021-485-360

UNDER THE	Judicial Review Procedure Act 2016
IN THE MATTER OF	The Code of Welfare: Rodeos 2018
BETWEEN	THE NEW ZEALAND ANIMAL LAW ASSOCIATION
	First applicant
AND	SAVE ANIMALS FROM EXPLOITATION
	Second applicant
AND	THE ATTORNEY-GENERAL
	First respondent
AND	THE NATIONAL ANIMAL WELFARE ADVISORY COMMITTEE
	Second respondent

SECOND RESPONDENT'S AMENDED STATEMENT OF DEFENCE

3 December 2021

Counsel acting:

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The second respondent by its solicitor says in response to the statement of claim dated 19 July 2021:

PARTIES

1. Admits paragraph 1.
2. Apprehends paragraph 2 contains matters to which it is not required to plead.
3. Admits paragraph 3.
4. Apprehends paragraph 4 contains matters to which it is not required to plead.
5. Admits paragraph 5.
6. Admits paragraph 6.

RELEVANT STATUTORY FRAMEWORK

Purposes, policy and object of the Act

7. Apprehends paragraph 7 contains matters of law and/or submission to which it is not required to plead.
8. Apprehends paragraph 8 contains matters of law and/or submission to which it is not required to plead.
9. Apprehends paragraph 9 contains matters of law and/or submission to which it is not required to plead.
10. Apprehends paragraph 10 contains matters of law and/or submission to which it is not required to plead.

Codes of Welfare

11. In respect of paragraph 11:
 - 11.1 admits codes of welfare establish minimum standards with regard to the way in which persons care for animals and conduct themselves towards such animals; and

- 11.2 admits codes of welfare include recommendations on the best practice to be observed by persons in caring for such animals and in conducting themselves towards such animals; and
- 11.3 relies on sections 68 and 69 of the Act as if set out in full; and
- 11.4 further says minimum standards in codes of welfare are not directly enforceable; but
- 11.5 otherwise denies paragraph 11.
12. Denies paragraph 12 and further says:
- 12.1 before making its recommendation on minimum standards in a code of welfare, NAWAC must be satisfied the proposed standards are the minimum necessary to meet the purposes of the Act; and
- 12.2 relies on section 73 of the Act as if set out in full.
13. Admits paragraph 13 and relies on section 70 of the Act as if set out in full.
14. In respect of paragraph 14:
- 14.1 admits NAWAC must publicly notify a draft code of welfare if NAWAC is satisfied the requirements of section 71(1) of the Act are met; and
- 14.2 admits NAWAC may consult with those persons who, in response to a notice published or given under section 71(3) of the Act make draft submissions on the draft code of welfare; and
- 14.3 relies on sections 71, 72 and 76 of the Act as if set out in full; but
- 14.4 otherwise denies paragraph 14.
15. Admits paragraph 15 and relies on section 73 of the Act as if set out in full.
16. Admits paragraph 16 and further says:
- 16.1 in carrying out its functions under section 73(1) NAWAC must also have regard to:

- 16.1.1 available technology; and
- 16.1.2 any other matters considered relevant by NAWAC; and
- 16.2 relies on section 73 of the Act as if set out in full.
- 17. Admits paragraph 17 and relies on section 74 of the Act as if set out in full.
- 18. Admits paragraph 18 and relies on section 74 of the Act as if set out in full.
- 19. Admits paragraph 19 and relies on section 75 of the Act as if set out in full.
- 20. In respect of paragraph 20:
 - 20.1 admits section 76 of the Act provides that the Minister may:
 - 20.1.1 revoke a code of welfare or any part of a code of welfare; or
 - 20.1.2 make amendments of a minor nature to a code of welfare (being minor amendments that would not materially affect the purposes of the code); and
 - 20.2 relies on section 76 of the Act as if set out in full; but
 - 20.3 otherwise denies paragraph 20.

THE PRACTICE OF RODEO

- 21. Denies paragraph 21 and refers to the 2018 Code of Welfare: Rodeos (2018 Code) definition of “rodeo” at Appendix 1 of the 2018 Code, and the descriptions of rodeo events referred to therein.
- 22. In respect of paragraph 22:
 - 22.1 admits Steer Wrestling is a rodeo event; and
 - 22.2 admits a horse-mounted rider chases a steer, drops from the horse to the steer and wrestles the steer to the ground. The time is flagged when the steer has all four hooves off the ground and legs pointing out straight; and

- 22.3 relies on Part 6.5 and Appendix 1 of the 2018 Code as if set out in full; but
- 22.4 otherwise denies paragraph 22.
23. In respect of paragraph 23 says:
- 23.1 Calf Roping is a rodeo event now known as Rope and Tie; and
- 23.2 Rope and Tie is a timed rodeo event, where a calf is released from a chute which then triggers the release of the horse and rider, who will rope the calf in the area, dismount, put the roped calf on the ground and tie three of the calves' legs together using a pigging string, while a well-trained horse will effectively maintain the tension on the rope. The calf needs to remain tied for six seconds for the tie to be considered successful; and
- 23.3 relies on Part 6.3 and Appendix 1 of the 2018 Code as if set out in full; but
- 23.4 otherwise denies paragraph 23.
24. In respect of paragraph 24:
- 24.1 admits Calf Riding is a rodeo event; and further says:
- 24.1.1 Calf Riding is designed to enable younger and lighter competitors to participate in rodeo; and
- 24.1.2 weight restrictions that apply are designed to ensure that the animal involved in the event is not placed under undue stress; and
- 24.1.3 the voluntary increase by the New Zealand Rodeo Cowboys Association (NZRCA) in the liveweight of animals used in this event has led to the discontinuance of Calf Riding at NZRCA sanctioned rodeo events.
- 24.2 relies on Part 6.6 of the 2018 Code as if set out in full; but

- 24.3 otherwise denies paragraph 24.
25. In respect of paragraph 25:
- 25.1 admits that Bronc Riding is a rodeo event; and
- 25.2 admits that Bronc Riding involves a rodeo participant riding a bucking horse that attempts to throw or buck off the rider; and further says:
- 25.2.1 there are two types of Bronc Riding: saddle bronc riding where a horse is fitted with a saddle; and bareback bronc riding where the horse is fitted with bareback rigging only; and
- 25.2.2 in both events the horse is fitted with a flank strap which runs around the body of the horse just in front of the back legs, which will encourage the horse to buck; and
- 25.3 relies on Part 6.1 and Appendix 1 of the 2018 Code as if set out in full; but
- 25.4 otherwise denies paragraph 25.
26. In respect of paragraph 26:
- 26.1 admits that Bull or Steer Riding is a rodeo event; and further says:
- 26.1.1 Bull or Steer Riding involves a bull or a steer being released into the arena where it will buck to dislodge the rider from its back; and
- 26.1.2 the animal is fitted with a front “bull rope” which wraps around its body and which the rider holds onto to maintain his or her seating; and
- 26.1.3 the bull rope is a quick release type of rope that will fall away from the animal as soon as the rider is displaced or dismounts; and

- 26.1.4 the animal is also fitted with a flank strap to encourage bucking; and
- 26.2 relies on Part 6.2 and Appendix 1 of the 2018 Code as if set out in full; but
- 26.3 otherwise denies paragraph 26.
27. In respect of paragraph 27:
- 27.1 admits that Team Roping is a rodeo event; and
- 27.2 admits that Team Roping involves two riders a header and a heeler and a steer; and says further
- 27.2.1 the header will rope the steer around both horns, the head and one horn, or the neck, and the heeler then ropes the steer around the hind legs. The time recorded is that after the steer is stopped and there is no slack in both the header and heeler's ropes; and
- 27.2.2 the rope is slackened immediately upon completion of the event when the clock is stopped; and
- 27.3 relies on Part 6.4 and Appendix 1 of the 2018 Code as if set out in full; but
- 27.4 otherwise denies paragraph 27.
28. Admits paragraph 28 and relies on Part 6.7 and Appendix 1 of the 2018 Code as if set out in full.
29. In respect of paragraph 29:
- 29.1 admits the practice of rodeo is undertaken for entertainment purposes; and further says:
- 29.1.1 the practice of rodeo is also a recognised sport; and
- 29.1.2 NAWAC is developing a Guideline that will be applied by NAWAC in order understand why people engage with

activities using animals in exhibition, entertainment, and encounter (the 3Es). The Guideline and principles therein will guide NAWAC's decision making for these uses. It is anticipated that NAWAC will have finalised the Guideline by the end of 2021; but

29.2 otherwise denies paragraph 29.

30. Denies paragraph 30; and further says:

30.1 Rodeo practices that comply with the minimum standards set out in the 2018 Code do not cause unnecessary or unreasonable pain or distress and/or result in the wilful or reckless ill-treatment of animals; and

30.2 The minimum standards set out in the 2018 Code are the minimum standards necessary to ensure the purposes of the Act are met.; and

30.3 At a meeting on 19 May 2021 NAWAC decided to:

30.3.1 reprioritise a statutory review of the 2018 Code; and

30.3.2 convene a NAWAC subcommittee (the Rodeo Code Review Subcommittee) to undertake the statutory review; and

30.4 The Rodeo Code Review Subcommittee's statutory review of the 2018 Code is currently at the pre-consultation stage. This will involve NAWAC consulting with representatives of the persons likely to be affected by the draft, including the applicants.

31. In respect of paragraph 31:

31.1 repeats paragraphs 30.1 to 30.4 above; and

31.2 admits it is likely there is at least moderate pain experienced by the steer from the 'throwing' action imposed by the contestant when the neck twist is applied using the horns and chin as leverage; and further says:

Released under the Official Information Act 1982

31.2.1 NAWAC assumes that some bruising would persist after the event; and

31.2.2 NAWAC recommended to the Associate Minister of Agriculture, the Hon Meka Whaitiri (the Minister) in May 2018, in relation to Steer Wrestling, the implementation of non-regulatory actions to encourage recommended best practice, gather information and monitor compliance with minimum standards. These included:

- (a) the commissioning of further research into the impact of experiences in the rodeo arena; and
- (b) increased monitoring and record keeping of the animals being trained and used over a season, including the number of animals involved, and any animal injuries sustained; and

31.3 otherwise, does not know and therefore denies paragraph 31.

32. In respect of paragraph 32:

32.1 repeats paragraph 23.1 to 23.3 above; and

32.2 repeats paragraph 30.1 to 30.4 above; and

32.3 admits that some physical and brief physiological stress may be suffered by some of the animals involved; and further says

32.3.1 NAWAC concluded in 2013, in relation to Rope and Tie, that in the absence of evidence that the event causes calves' significant pain and distress, the event should not be discontinued; and

32.3.2 NAWAC recommended to the Minister in 2018, in relation to Rope and Tie, the implementation of non-regulatory actions to encourage recommended best practice, gather information and monitor compliance with minimum standards. These included:

Released under the Official Information Act 1982

- (a) the implementation of methods and instruments that may have less of a negative impact on calves e.g. bungee ropes/breakaway ropes; and
- (b) the commissioning of further research into investigating the type and severity of damage to the necks of calves arising from this event; and
- (c) discussing with the industry options to reduce the number of calves used at rodeos or alternatively, to implement a voluntary phase out and cessation of this calf event; and

32.4 otherwise, does not know and therefore denies paragraph 32.

33. In respect of paragraph 33:

33.1 repeats paragraph 30.1 to 30.4 above; and

33.2 admits there is likely to be discomfort or irritation caused to the calf from the flank strap (if used) and the chest rope; and further says:

33.2.1 NAWAC concluded in 2013, in relation to Calf Riding, that calves are of a sufficient weight and maturity that they will not be subjected to unreasonable pain or distress in this event;

33.2.2 NAWAC recommended to the Minister in 2018, in relation to Calf Riding, the implementation of non-regulatory actions to encourage recommended best practice, gather information, and monitor compliance with minimum standards. Being:

- (a) increased monitoring and record keeping of animals used, including reporting injury rates 48 hours post-event; and

Released under the Official Information Act 1982

- (b) ensuring children are weighed at each event before they ride calves to make sure that they comply with the maximum weight requirements; and
- (c) the voluntary increase by NZRCA in the liveweight of animals used in this event has led to the discontinuance of Calf Riding at NZRCA sanctioned rodeo events.

33.3 otherwise, does not know and therefore denies paragraph 33.

34. In respect of paragraph 34:

34.1 repeats paragraph 30.1 to 30.4 above; and further says:

34.1.1 NAWAC concluded in 2013, in relation to Bronc Riding, that the spurs used on animals in bucking events are adequately dulled and rotate sufficiently that they will not cause the animals undue pain or distress; and

34.1.2 NAWAC recommended to the Minister in 2018, in relation to Bronc Riding, the implementation of non-regulatory actions to encourage recommended best practice, gather information, and monitor compliance with minimum standards. Being:

- (a) increased monitoring and recording keeping of training of animals, including the number of animals involved, and injuries sustained; and
- (b) monitoring and reporting injury rates 48 hours post-event; and
- (c) discussing with the industry the necessity of spurs and whether alternative equipment can be used;

34.2 otherwise, does not know and therefore denies paragraph 34.

35. In respect of paragraph 35:

- 35.1 repeats paragraph 30.1 to 30.4 above;
- 35.2 admits that, very occasionally, bulls can suffer back injuries, fractures, or luxation's that require the bull to be euthanised; but says NAWAC concluded in 2018 that the frequency of these injuries was low; and relies on the NAWAC commissioned Report entitled "Rodeo events – how do they impact the sentient animal" dated May 2018 (2018 NAWAC report), veterinary report statistics supplied by NZRCA for the 2017/2018 rodeo season, and an analysis of the 2017/2018 veterinary report statistics prepared by the Chairperson of NAWAC for the purpose of the 2018 NAWAC report, as if pleaded in full; and
- 35.3 admits that a study in the USA in 2017 found that the bucking bulls studied in that country were more likely to develop horn and sinus disorders, and musculoskeletal issues; and
- 35.4 further says:
- 35.4.1 NAWAC recommended to the Minister in 2018, in relation to Bull or Steer Riding, the implementation of non-regulatory actions to encourage recommended best practice, gather information, and monitor compliance with minimum standards. Being:
- (a) increased monitoring and record keeping of the animals being trained, including the number of animals involved, and any animal injuries sustained; and
 - (b) monitoring and reporting injury rates 48 hours post-event.
- 35.5 otherwise, does not know and therefore denies paragraph 35.
36. In respect of paragraph 36:
- 36.1 repeats paragraph 30.1 to 30.4 above; and further says:

36.1.1 NAWAC concluded in 2018 that the likelihood of pain and injury during Team Roping was minimal and it recommended to the Minister, in relation to Team Roping, the implementation of non-regulatory actions to encourage recommended best practice, gather information, and monitor compliance with minimum standards. Being:

- (a) increased monitoring and record keeping of animals undergoing training for team roping; and
- (b) the commissioning of research into alternative equipment that would aim to reduce the impact that the event has on the animal; and

36.2 Otherwise, does not know and therefore denies paragraph 36.

37. In respect of paragraph 37:

37.1 repeats paragraph 30.1 to 30.4 above; and further says:

37.2 NAWAC concluded in 2018 that the risk of injury caused by Barrel Racing was low and it recommended to the Minister non-regulatory actions to encourage recommended best practice, gather information, and monitor compliance with minimum standards. Being:

37.2.1 discussing with the industry the necessity of using curb bits, spurs, and whips during this event, and to determine whether there are alternatives that could be used; and

37.2.2 increased monitoring and record keeping of horses undergoing training for Barrel Racing; and

37.2.3 the commissioning of research into injury rates in post-event period; and

37.3 otherwise, does not know and therefore denies paragraph 37.

38. Does not know and therefore denies paragraph 38, and further repeats paragraph 30.1 to 30.4 above.

RODEO CODE OF WELFARE

39. Admits paragraph 39.
40. Admits paragraph 40 and further says:
- 40.1 Consultation with representatives of the persons likely to be affected by the draft Code (pre-consultation) took place between 25 May and 29 June 2012 with Bull Riding NZ Inc, NZRCA, the NZ Veterinary Association and the Royal Society for the Prevention of Cruelty to Animals ; and
- 40.2 Public consultation ran from 12 October to 26 November 2012, following notices in newspapers in Auckland, Wellington, Christchurch and Dunedin and direct contact with interest groups; and
- 40.3 30 written submissions on the draft Code were received, as well as 368 form letters from SAFE and 8 form letters from rodeo supporters; and
- 40.4 NAWAC convened a subcommittee to consider the submissions. The subcommittee consulted with Ministry for Primary Industries (MPI) Animal Welfare staff, visited rodeo events, and consulted with industry. The subcommittee contracted experts Bernie Rollin, philosopher and ethicist, and Professor Orivaldo Tenorio, a veterinarian and regulator of rodeo in Brazil; and
- 40.5 The draft Code was peer reviewed by Dr Cia Johnson of the American Veterinary Medical Association's Animal Welfare Division; and
- 40.6 NAWAC recommended the draft Code to the Minister for Primary Industries on 5 September 2013.
41. Admits paragraph 41.
42. In respect of paragraph 42:

- 42.1 admits the NZALA report provided a review of the practice of rodeo in New Zealand, and set out the position in other jurisdictions, and some evidence of the impact of rodeo on animals; but
- 42.2 otherwise denies paragraph 42 and denies that the NZALA report's conclusion is correct.
43. Denies paragraph 43 and further says:
- 43.1 the Minister sought advice from NAWAC on several aspects of rodeos, being the use of calves, tail twisting, rope burning, flank straps, and electric prodders when she attended a NAWAC meeting on 14 February 2018; and
- 43.2 to address the matters raised by the Minister, NAWAC assembled an expert panel that utilised a Five Domains model approach to assess the impact of individual rodeo events on the welfare of the animals involved; and
- 43.3 the expert panel did not consider ethical, social, or legal questions relating to rodeos, nor carry out a statutory review of the 2014 Code.
44. Admits paragraph 44.
45. In respect of paragraph 45:
- 45.1 admits the 2018 NAWAC report was dated May 2018; and further says:
- 45.1.1 the NAWAC report was put on the NAWAC website in October 2018; but
- 45.2 otherwise denies paragraph 45.
46. Admits paragraph 46.
47. Admits paragraph 47; and
- 47.1 relies on the 2018 NAWAC Report as if set out in full; and further says:

- 47.1.1 NAWAC considered that the current minimum standards and the new Animal Welfare (Care and Procedures) Regulations 2018 that were being developed and were due to come into force on 1 October 2018 adequately managed the issues raised by the Minister; and
- 47.1.2 NAWAC recommended several non-regulatory actions to encourage recommended best practice, gather information, and monitor compliance with minimum standards. These included the establishment of a Rodeo Animal Welfare Committee, increased monitoring and record keeping; proposing the commissioning of research to assess the physical impact of events on animals; and discussions with the industry to explore and introduce alternative instruments and practices; and
- 47.1.3 Subsequently:
- (a) NZRCA has established the Rodeo Animal Welfare Committee (RAWC) in August 2019. The RAWC is made up of representatives from NZRCA, SPCA, New Zealand Veterinary Association and MPI Compliance. NAWAC sits on the RAWC as an observer; and
 - (b) RAWC passed a motion for the NZRCA Board to consider ceasing the Rope and Tie event. This motion was rejected at the NZRCA's AGM in July 2021; and
 - (c) RAWC passed a motion for the NZRCA Board to consider banning the use of whips/crops in Barrel Racing. This motion was rejected at the NZRCA's AGM in July 2021; and
 - (d) A more detailed record keeping system has been established by NZRCA, under the guidance of

RAWC, in the form of updated veterinarian report templates being completed by the on-site veterinarian attending the rodeo on the day of the rodeo; and

- (e) NZRCA now requires weights to be provided for all animals used in Steer Wrestling events; and
- (f) NZRCA has voluntarily increased the liveweight of animals used in Calf Riding which has led to the discontinuance of Calf Riding at NZRCA sanctioned rodeo events. The event is now known as “junior steer riding”; and
- (g) NAWAC understands, NZRCA is, on the advice of RAWC, considering initiating a drug testing regime to screen for the use of pain relief in competitors’ horses in Barrel Racing; and
- (h) NAWAC provides the Minister with bi-annual updates on Rodeos.

48. In respect of paragraph 48:

48.1 admits that NAWAC was consulted on the revocation of the 2014 Code and the issue of the 2018 Code as required under section 76(2) of the Act; and further says:

48.1.1 NAWAC informed the Minister on 16 August 2018 that it supported the amendment and issue of 2018 Code; and

48.1.2 The 2018 Code contained only amendments of a minor nature, made under s 76(1)(b); and

48.1.3 These amendments were consequential and minor amendments to incorporate the Animal Welfare (Care and Procedures) Regulations 2018 (**Regulations**), which came into force on 1 October 2018; and

48.1.4 NAWAC participated in the process for developing the Regulations including placing its members on a Regulations working group, providing comment on the policy intent of regulatory proposals, and commenting on the draft regulations; and

48.1.5 The applicants and any affected party had an opportunity to be consulted and make submissions on the Regulations and therefore to the amendments to the Code, because Part 2 of Schedule 2 of the Regulations set out the minor amendments that were to be made to the Code.

48.2 otherwise denies paragraph 48.

49. Admits paragraph 49, repeats paragraph 48 above and further says:

49.1 because the 2018 Code contained only minor amendments there was no requirement for NAWAC to publicly notify the 2018 Code or produce a report under s 74(2); but

49.2 there was, in any case, adequate consultation and notification in respect of the amendments that were made to the Code because the applicants and any affected party had the opportunity to be consulted and make submissions during the extensive public notification and consultation that took place for the Regulations.

50. Admits paragraph 50 and repeats paragraphs 48 and 49 above.

51. In respect of paragraph 51:

51.1 admits the 2018 Code was amended under s 76, with effect from 9 May 2021; and

51.2 admits paragraph 51(a); and

51.3 admits that a new chapter 7.1 Significant Surgical Procedures was introduced; but otherwise denies paragraph 51(b); and

51.4 denies paragraph 51(c); and

51.5 admits paragraph 51(d); and

51.6 admits paragraph 51(e); and

52. Denies paragraph 52.

STATUTORY POWERS OF DECISION

53. Admits paragraph 53.

54. Admits paragraph 54.

GROUNDINGS OF REVIEW

First Ground of Review

55. Denies paragraph 55.

56. Denies paragraph 56.

57. Denies paragraph 57.

58. Denies paragraph 58.

59. Apprehends that it is not required to plead to paragraph 59, but if required to plead denies paragraph 59.

60. Apprehends that paragraph 60 contains matters of law to which it is not required to plead, but if required to plead denies paragraph 60.

Second Ground of Review

61. Apprehends that paragraph 61 contains matters of law and/or legal submission to which it is not required to plead.

62. Apprehends that paragraph 62 contains matters of law and particulars to which it is not required to plead, but if required to plead denies paragraph 62.

63. Apprehends that it is not required to plead to paragraph 63, but if required denies paragraph 63.

Relief

64. Apprehends paragraph 64 contains matters to which it is not required to plead.

This document is filed by Michelle Stapleton, solicitor for the second respondent, of Wakefields Lawyers Ltd.

The address for service of the second respondent is Wakefields Lawyers Ltd, Level 2, Zephyr House, 82 Willis Street, Wellington 6011. Documents for service on the second respondent may be left at this address for service or may be:

- (a) posted to the solicitor at PO Box 8091, Wellington 6140; or
- (b) emailed to the solicitor at michelle@wakefieldslaw.com provided the documents are also emailed to rachel.roff@cliftonchambers.co.nz

Released under the Official Information Act 1982

Initial Disclosure Documents

No.	Date	Description
1	Undated	Letter from Minister of Agriculture to NAWAC
2	25/05/2012	NAWAC invitation Rodeo Code
3	05/09/2013	Letter from NAWAC to Minister for Primary Industries
4	2013	2014 Code Report
5	2014	Code of Welfare Rodeos
6	2017	Scientific article
7	2018	Code of Welfare Rodeos
8	14/02/2018	Minutes
9	15/02/2018	Letter from NAWAC to Assoc Minister of Agriculture
10	01/03/2018	Press Release
11	31/05/2018	Letter from NAWAC to Assoc Minister of Agriculture
12	16/08/2018	Letter from NAWAC to Assoc Minister of Agriculture
13	15/04/2019	Letter from NAWAC to Minister of Agriculture
14	19/09/2019	Letter from NAWAC to Minister of Agriculture
15	05/08/2020	Letter from NAWAC to Minister of Agriculture
16	05/08/2021	Letter from NAWAC to Assoc Minister of Agriculture
17	May 2018	Rodeo Events – How do they impact on the sentient animal?
18	2018	Summary and Analysis of Data from NZRCA for 2017/2018 rodeo season
19	September 2021	Rodeo Code Review Subcommittee Minutes

20	October 2021	Rodeo Code Review Subcommittee Minutes
21	March 2013	Rodeo Code Review Subcommittee Minutes
22	May 2018	NAWAC General Meeting Minutes
23	August 2018	NAWAC General Meeting Minutes
24	2017/2018	Veterinary report statistics
25	2016/2017	Veterinary report statistics

Released under the Official Information Act 1982

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY
I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE

CIV-2021-485-000360

Under the **JUDICIAL REVIEW PROCEDURE ACT 2016**

In the matter of **THE CODE OF WELFARE: RODEOS 2018**

Between **THE NEW ZEALAND ANIMAL LAW ASSOCIATION**, a duly
incorporated society, having its registered office in
Wellington

First Applicant

And **SAVE ANIMALS FROM EXPLOITATION**, a duly
incorporated society, having its registered office in
Wellington

Second Applicant

And **THE ATTORNEY-GENERAL** sued for and on behalf of the
Minister for Agriculture being the Minister responsible for the
administration of the Animal Welfare Act 1999

First Respondent

[Continued Overleaf]

AMENDED STATEMENT OF CLAIM (APPLICATION FOR REVIEW)

Dated : 19 April 2022

BUDDLE FINDLAY

Barristers and Solicitors
Wellington

Solicitor Acting: **Sebastian Bisley**
Email: sebastian.bisley@buddlefindlay.com
Tel 64 4 462 0839 Fax 64 4 499 4141 PO Box 2694 DX SP20201 Wellington 6011

Counsel Acting: **Victoria Heine QC**
Tel 64 460 0638 PO Box PO Box 1530 Wellington 6140

And

THE NATIONAL ANIMAL WELFARE ADVISORY COMMITTEE, a ministerial advisory committee established under the Animal Welfare Act 1999

Second Respondent

And

THE NEW ZEALAND RODEO COWBOYS ASSOCIATION INCORPORATED, a duly incorporated society having its registered office in Dunedin

Third Respondent

Released under the Official Information Act 1982

AMENDED STATEMENT OF CLAIM (APPLICATION FOR REVIEW)

The applicants say:

PARTIES

1. The first applicant, The New Zealand Animal Law Association Incorporated, is an incorporated society registered under the Incorporated Societies Act 1908, and has its registered office at 7/101 Lambton Quay, Wellington. It is also a charitable entity registered under the Charities Act 2005.
2. The primary purposes of the first applicant are to improve the welfare and lives of animals through the legal system, advance animal law education, combat the prevalence of animal cruelty in New Zealand and uphold the rule of law through litigation.
3. The second applicant, Save Animals From Exploitation Incorporated, is an incorporated society registered under the Incorporated Societies Act 1908, and has its registered office at 32 Salamanca Road, Wellington. It is also a charitable entity registered under the Charities Act 2005.
4. The second applicant's purpose is to prevent the suffering, abuse and exploitation of animals by raising public awareness and promoting education.
5. The first respondent is the Attorney-General sued for and on behalf of the Minister for Agriculture (**Minister**) in respect of the Animal Welfare Act 1999 (**Act**). The Minister is responsible for the administration of the Act, including the issuance, revocation, amendment and review of Codes of Welfare under Part 5 of the Act.
6. The second respondent is the National Animal Welfare Advisory Committee, established under Part 4 of the Act (**NAWAC**). NAWAC's functions include making recommendations to the Minister concerning the issuance and review of codes of welfare under the Act.
7. The third respondent is the New Zealand Rodeo Cowboys Association Incorporated (**NZRCA**), an incorporated society that has as its purpose (inter alia) to administer rodeo fixtures and to promote the practice of rodeo activities.

RELEVANT STATUTORY FRAMEWORK

Purposes, policy and object of the Act

8. The purpose of the Act is to provide for the welfare of animals, in recognition that animals are sentient.
9. The Act contains a range of provisions which are intended to achieve that purpose, including:
 - (a) imposing a mandatory obligation on owners and persons in charge of animals to ensure that the physical, health, and behavioural needs of those animals are met (**section 10 obligation**);
 - (b) in section 4:
 - (i) defining the term "physical, health, and behavioural needs" as including *"opportunity to display normal patterns of behaviour", "physical handling in a manner which minimises the likelihood of unreasonable or unnecessary pain or distress" and "protection from, and rapid diagnosis of, any significant injury or disease (...)* being a need which, in each case, is appropriate to the species, environment, and circumstances of the animal";
 - (ii) defining the term *"ill-treat"* as *"causing the animal to suffer, by any act or omission, pain or distress that in its kind or degree, or in its object, or in the circumstances in which it is inflicted, is unreasonable or unnecessary"*
 - (c) in Part 1:
 - (i) regulating what surgical procedures may be performed on animals, and by whom; and
 - (ii) imposing certain obligations in relation to the transport of animals;
 - (d) in Part 2, providing that it is an offence:
 - (i) under section 28, wilfully or recklessly to ill-treat animals with the result that:
 - (1) the animal is permanently disabled; or
 - (2) the animal dies; or

- (3) the pain or distress caused to the animal is so great that it is necessary to destroy the animal to end its suffering; or
- (4) the animal is seriously injured or impaired;
- (ii) under section 29(a), to ill-treat an animal;
- (e) in Part 3, mandating a regulatory regime for the regulation of animal exports;
- (f) in Part 5, establishing procedures for the development, issue, amendment, review and revocation of codes of welfare;
- (g) in Part 6, regulating the circumstances in which animals may be used in research, testing, and teaching and creating a penalty and offence regime for non-compliance with the requirements of the Act, including:
- (i) the section 10 obligation; and
- (ii) the obligation to not ill-treat an animal (**the section 29 requirement**).
10. Part 9 provides that standards or requirements that do not fully meet the section 10 obligation or the section 29 requirement may only be made:
- (a) by the Governor-General acting on the advice of the Minister by Order in Council under section 183A(1);
- (b) when the Minister is satisfied that either or both of the conditions in section 183A(3) are satisfied; and
- (c) under section 183A(5) for a period of time that is reasonably necessary to enable a transition from current practice to a practice that fully meets (inter alia) the section 10 obligation and the section 29 requirement, and that does not exceed 10 years, unless requiring the practice to meet those obligations would impose an unjustifiable limitation on a cultural or religious practice.
11. The overall purposes, policy and object of the Act, as reflected in these provisions, are to ensure that the physical, health and behavioural needs of animals are met, to minimise the likelihood that animals are subject to unnecessary or unreasonable pain or distress, and to prevent the wilful or reckless ill-treatment of animals, ill-treatment being treatment that causes pain or distress which is unreasonable or unnecessary.

Codes of welfare

12. The purposes of the codes of welfare are to:
 - (a) establish minimum standards with regard to the way in which persons care for animals and/or conduct themselves towards animals; and
 - (b) provide recommendations on the best practice to be observed by persons caring for animals and/or conducting themselves towards animals.
13. Any minimum standards contained in a code of welfare must be the minimum necessary to ensure that the purposes of the Act are met. That is, the minimum standards must be such that if they are met:
 - (a) the relevant animals are not:
 - (i) subject to unnecessary or unreasonable pain or distress; or
 - (ii) wilfully or recklessly ill-treated;
 - (b) the physical, health, and behavioural needs of the relevant animals are met in a manner that is in accordance with both good practice and scientific knowledge.
14. A draft code of welfare may be prepared by the Minister, or NAWAC, or any other person.
15. Section 71 of the Act provides that NAWAC must publicly notify a draft code of welfare if the requirements of section 71(1) of the Act are met (including that the draft complies with the purposes of the Act). As part of public notification, NAWAC must provide an opportunity for submissions on the draft code of welfare, and under section 72 may consult with persons who make submissions.
16. Under section 73(1), NAWAC must, in considering the content of a draft code of welfare, and before deciding whether to recommend to the Minister the issue of that code:
 - (a) be satisfied that the proposed standards are the minimum necessary to ensure that the purposes of the Act will be met; and
 - (b) be satisfied that the recommendations for best practice (if any) are appropriate.

17. In carrying out its functions under section 73(1), NAWAC must have regard to:
- (a) the submissions made as part of public notification and the consultation it has undertaken; and
 - (b) good practice and scientific knowledge in relation to the management of the animals to which the code relates.
18. Following public notification and any consultation, NAWAC must decide whether or not to recommend to the Minister that the Minister issue a code of welfare.
19. Any recommendation by NAWAC to the Minister must be accompanied by a report from NAWAC under section 74(2) of the Act. That report must set out, inter alia, the reasons for NAWAC's recommendation.
20. The Minister may, after considering NAWAC's recommendation, NAWAC's report, and after having regard to the matters specified in section 73, decide to issue the code of welfare under section 75 of the Act.
21. Section 76 of the Act provides that the Minister may:
- (a) revoke a code of welfare, or any part of a code of welfare; and/or
 - (b) make minor amendments to a code of welfare, provided those minor amendments do not materially affect the purposes of the code.
22. A code of welfare may be used as rebuttable evidence, or as a defence, in prosecutions involving offences against sections 21(b), 22(2) or 23 of the Act.

THE PRACTICE OF RODEO

23. The event known as "rodeo":
- (a) is undertaken in accordance with certain specific rules which competitors are required to follow; and
 - (b) comprises any or all of the following displays and contests of roping and riding involving humans, cattle and horses (individually and collectively referred to in this amended statement of claim as "**rodeo practices**").
24. Steer wrestling:

- (a) Steer wrestling is a rodeo event in which a horse-mounted rider chases a steer, drops from the horse to the steer, then wrestles the steer to the ground by grabbing its horns to pull it off balance and twisting its neck until it falls onto the ground.

25. Calf roping:

- (a) Calf roping, also known as tie-down roping, or rope and tie, is a rodeo event that features a calf and a rider mounted on a horse.
- (b) Calf roping is a timed event in which the rider must catch the calf by throwing a loop of rope from a lariat around its neck, dismount from the horse, run to the calf, and restrain it by tying three legs together in as short a time as possible. Stopping the animals short as they seek to escape is called "clotheslining."

26. Calf riding:

- (a) Calf riding is a children's rodeo event.
- (b) Calf riding involves a rider mounting a bucking calf and attempting to stay mounted while the animal tries to buck the rider. To receive a score, the rider must stay on top of the calf for eight seconds.

27. Bronc riding:

- (a) Bronc riding involves a rodeo participant riding a bucking horse that attempts to throw or buck off the rider.
- (b) The rider attempts to stay on the horse for eight seconds, without the rider's free hand touching the horse. Horses who buck in ways that cause a visual spectacle garner more points for competitors.
- (c) Flank straps are tied around the horse's flank, just in front of the back legs and are used to make bucking horses kick higher.
- (d) Riders must "mark the horse out". This is a stabbing motion requiring riders to have the heels of their boots in contact with the horse (an action called "spurring") at a point above the animal's shoulders before the horse's front legs hit the ground. Then the spurs are 'raked' and on completion of the rake the horses are spurred again in a stabbing motion.

28. Bull/steer riding:

- (a) Bull/steer riding is a rodeo event that involves a rider mounting a bucking bull and attempting to stay mounted while the animal tries to buck the rider.
- (b) To receive a score, the rider must stay on top of the bull for eight seconds with the use of one hand gripped on a bull rope tied behind the bull's forelegs. Spurring a bull adds to the contestant's score.
- (c) Bulls are provoked into bucking by the tying of flank straps tightly around their hindquarters.
29. Team roping:
- (a) Team roping is a rodeo event which involves two riders (a header and a heeler) and a steer.
- (b) The header ropes the steer around the neck, head or horns before the heeler moves in to rope the hind legs. The rope is then dallied around the saddle horn. Once secured, time is recorded when both horses are facing each other with no slack in the rope.
30. Barrel racing:
- (a) Barrel racing is a rodeo event where the riders guide their horses around three barrels in a cloverleaf pattern in the shortest time possible.
- (b) Horses must move with speed and agility to enable riders to complete the event in the least amount of time.
31. The practice of rodeo is undertaken for entertainment purposes only.
32. The rodeo practices result in animals who participate failing to have their physical, health and behavioural needs met and/or experiencing unnecessary or unreasonable pain or distress, and/or results in wilful or reckless ill-treatment of animals, including as pleaded in the following paragraphs.
33. In steer wrestling, the steer experiences pain from the 'throwing' action when the neck twist is applied using the horns and chin as leverage. Bruising persists after the event.
34. In the case of calf-roping:

- (a) calves are frequently injured, including suffering broken legs, by being suddenly halted by the rope as they try and run away, as well as by being roughly thrown to the ground;
- (b) the ropes used can be jerked forcefully, resulting in the animals falling to the ground at high speed and injuring their necks and other body parts; and
- (c) physical and physiological distress is suffered by the animals involved.
35. Calf riding involves interaction between the rider and the calf that is both highly distressing for the calf and potentially harmful to the calf and the rider. In calf riding, a chest flank and chest rope may be used on the calf. The flank strap (if used) and chest rope cause discomfort or irritation to the calf. The rider may also inflict pain. Calves suffer musculoskeletal injuries if they stumble.
36. In the case of bronc riding:
- (a) bucking is an active coping strategy for horses in negative emotional situations, caused by anxiety, distress, fear and/or pain;
- (b) improperly used bucking straps can cause open wounds and burns if hair is rubbed off and skin is chafed raw; and
- (c) spurring results in trauma to the shoulders causing pain, bruising and soft tissue damage.
37. In the case of bull/steer riding:
- (a) for anatomical reasons, flank straps have to be tightened across the urethra, which can add to the bull's pain;
- (b) bulls sometimes buck beyond their physical capacity, resulting in broken backs and legs;
- (c) bucking indicates that the bull/steer is in pain and distress and is trying to escape from the environment causing that pain and distress;
- (d) bulls can suffer back injuries, fractures or luxations that require the bull to be euthanised; and
- (e) in the long term, bucking bulls are more likely to develop horn and sinus disorders, and musculoskeletal issues.

38. In the case of team roping the use of severe bits can cause significant levels of pain. The excessive use of spurs and whips can cause pain that may last after the event. Spurs are also likely to cause bruising that may not be visible superficially.
39. In barrel racing, the use of severe bits can cause significant levels of pain. The excessive use of spurs and whips can cause pain that may last after the event. Spurs are also likely to cause bruising that may not be visible superficially.
40. Other injuries animals suffer during rodeo events include unseen injuries to neck muscles, internal bruising or haemorrhaging, bruising of the cartilage on the larynx and trachea, spinal cord injuries from roping events, broken backs from bronc riding events, and tails being ripped off.

RODEO CODES OF WELFARE

41. On 30 October 2014, the Minister issued the Code of Welfare: Rodeo 2014 (**2014 Code**). The 2014 Code came into effect on 31 October 2014.
42. The issuing of the 2014 Code by the Minister was preceded by:
- (a) public notification by NAWAC of the draft code of welfare and the receipt of submissions;
 - (b) consultation by NAWAC with interested persons; and
 - (c) a report to the Minister under section 74 of the Act by NAWAC "Report to Accompany the Animal Welfare (Rodeos) Code of Welfare 2014".
43. In March 2018, the first applicant publicly released a report entitled "The Legal Status of Rodeo in New Zealand" (**NZALA Report**).
44. The NZALA Report:
- (a) provided a comprehensive review of rodeo in New Zealand; and
 - (b) set out the position in other jurisdictions, and the recent evidence of the impact of rodeo practices on animals.
45. In or around March 2018 the Minister sought advice from NAWAC regarding rodeo.
46. In or around May 2018, NAWAC commissioned a report entitled "How Rodeo Impacts the Sentient Animal" (**NAWAC's Report**).

47. Although dated May 2018, NAWAC's Report was not publicly released until October 2018.
48. NAWAC's Report was produced by a panel of experts using a "Five Domains" model to assess the impact of individual rodeo practices on the animals involved, based on scientific evidence and experience.
49. In relation to each of the rodeo practices listed at paragraphs 23 to 30 of this amended statement of claim, NAWAC's Report concluded that:
- (a) "steer wrestling" and "rope and tie" (calf roping) raise serious animal welfare concerns resulting in substantial negative impacts for the animals concerned;
 - (b) "calf riding", "bull/steer riding", "bronc riding", and "team roping" raised moderate animal welfare concerns; and
 - (c) "barrel racing" raised minor animal welfare concerns.
50. On a date unknown to the applicants but believed to be in or around August 2018, NAWAC recommended to the Minister that the 2014 Code be revoked and that the Minister issue what became the 2018 Code.
51. NAWAC:
- (a) did not publicly notify the 2018 Code; and
 - (b) did not provide the Minister with a report under section 74(2).
52. In a briefing paper dated 15 August 2018, the Ministry for Primary Industries sought the Minister's approval to "re-issue" 17 codes of welfare, including the 2018 Code. Materially, the briefing paper:
- (a) provided, at paragraph 10, that:

MPI is satisfied that the minor and technical amendments proposed to the Codes will not materially affect the purposes of the Codes and that therefore [sic] fall within the scope of an amendment under section 76 of the Act. Section 76 allows you to make amendments of a minor nature.
 - (b) recorded that NAWAC had been consulted and recommended that the Minister "reissue" the Codes.
 - (c) did not refer the Minister to the NZALA Report, or to NAWAC's Report.

- (d) did not advise the Minister of the animal welfare concerns with six of the seven rodeo practices identified in those reports, or direct the Minister to the section 10 obligation or the section 29 requirements.
53. In October 2018, the 2014 Code was revoked under section 76(1)(a) and the Minister issued under section 75 the Code of Welfare: Rodeo 2018 (**2018 Code**). When the Minister issued the 2018 Code, he:
- (a) did not consider whether the 2018 Code met the requirements of the Act, as pleaded at paragraph 13 above.
 - (b) did not make inquiries about the effects of each rodeo practice on the animals involved in that practice, including the effects on their physical, health, and behavioural needs as pleaded above at paragraph 9.
 - (c) did not make inquiries about the value or benefit, if any, of those practices.
 - (d) proceeded on the basis that, as a matter of law, the Act permitted people to cause moderate or serious pain and distress to animals in the interests of entertainment.
 - (e) proceeded on the basis that, as a matter of law, if rodeo practices required rodeo participants to cause moderate or serious pain and distress to animals, it necessarily followed that:
 - (i) that pain and distress was reasonable and necessary.
 - (ii) a standard in a code of welfare permitting that level of pain and distress to be caused to an animal is the minimum necessary to allow the purposes of the Act to be achieved.

Particulars

Letter from Peter McCarthy to Saar Cohen-Ronen dated 13 July 2021

54. The 2018 Code is materially identical to the 2014 Code.
55. On 9 May 2021 the 2018 Code was amended under section 76 of the Act, as follows:
- (a) a new clause (h) was inserted in Minimum Standard No. 4 – Handling: *"Animals must be handled at all times in such a way as to minimise the risk of pain, injury or distress"*;

- (b) the provisions relating to significant surgical procedures were amended (in particular, by introducing a new chapter 7.1 Significant Surgical Procedures);
 - (c) two new example indicators were included in Minimum Standard No. 7 – Saddle and Bareback Bronc Riding;
 - (d) amendments to the definition of "electric prodder" clarifying that it does not include "*electric devices used on animals by the New Zealand Police*"; and
 - (e) other minor amendments.
56. Regulation 46 of the Animal Welfare (Care and Procedure) Regulations 2018 prohibits the use of fireworks at rodeo events and practice events. No other regulations have been made under section 183 in relation to rodeo.

STATUTORY POWERS OF DECISION

57. The making of a recommendation by NAWAC to the Minister under section 74 of the Act is the exercise of a statutory power of decision.
58. The issuing of a new code by the Minister under section 75 of the Act is the exercise of a statutory power of decision.

GROUNDS OF REVIEW

First Ground of Review: Failure to follow process

59. In exercising their statutory powers of decision the Minister and/or NAWAC were required to:
- (a) comply with the procedural requirements of the Act for the promulgation of new codes;
 - (b) make appropriate and sufficient inquiry to inform themselves of the effect of each rodeo practice on the animals involved in that practice, and the value or benefit of the rodeo practice (if any);
 - (c) in the event that they considered that a rodeo practice caused pain and distress to animals, consider whether that pain and distress was reasonable or necessary, by reference to the value or benefit of the practice;

- (d) in relation to each rodeo practice, consider whether the minimum standards in the 2018 Code were such that, if they were met:
- (i) the animals involved in that rodeo practice would not be:
 - (1) subject to unnecessary or unreasonable pain and distress; and/or
 - (2) wilfully or recklessly mistreated;
 - (ii) the physical, health, and behavioural needs of the relevant animals would be met in a manner that is in accordance with both good practice and scientific knowledge;
- (e) be satisfied that the proposed standards are the minimum necessary to ensure that the purposes of the Act are met;
- (f) be satisfied that the recommendations for best practice (if any) are appropriate; and
- (g) have regard to good practice and scientific knowledge available at the relevant time in relation to the management of the animals to which the code relates, and in particular to:
- (i) the NZALA Report.
 - (ii) NAWAC's Report, and in particular its conclusion that six of the seven rodeo activities practised in New Zealand give rise to serious or moderate animal welfare concerns.
 - (iii) other evidence relating to the legal requirements pleaded above.

60. In making a recommendation to the Minister under section 74, NAWAC acted unlawfully in failing to follow the procedural requirements of the Act. In particular, by:

- (a) failing to publicly notify the code of welfare as a draft;
- (b) as a consequence, failing to consider whether to consult; and
- (c) failing to prepare and provide to the Minister a report as required under section 74 of the Act.

61. In making a recommendation to the Minister under section 74, NAWAC acted unlawfully by:

- (a) failing to have regard to available research regarding good practice together with scientific knowledge in relation to the management of rodeo animals available to it, including, but not limited to that contained in:
- (i) NAWAC's Report;
 - (ii) the NZALA Report; and
 - (iii) the 2016 study by the University of Queensland "Behavioral and Physiological Responses of Calves to Marshalling and Roping in a Simulated Rodeo Event"; and
- (b) by virtue of its failure to publicly notify and consult, failing to have regard to the views of interested persons and accordingly not acting on the basis of the best available information.
62. As a result of the matters pleaded above, NAWAC was not and/or was not in a position to be:
- (a) satisfied that the proposed standards in the 2018 Code were the minimum necessary to ensure that the purposes of the Act were met; or
 - (b) satisfied that the recommendations for best practice were appropriate.
63. As a result of NAWAC's failures as pleaded in paragraphs 60 to 62, the Minister acted unlawfully in failing to have regard to the matters in section 73, as required under section 75(1).
64. By virtue of the matters pleaded above the 2018 Code is unlawful.

Second ground of review – error of law

65. The Minister and NAWAC failed to consider whether the minimum standards in the 2018 Code met the requirements of the Act pleaded in paragraph 59 above, because they erroneously believed that they were not obliged to do so when 're-issuing' a code of welfare.
66. The Minister and NAWAC failed to make proper or sufficient inquiries as to the effect of rodeo practices on the animals involved in those activities, or to have regard to the NZALA Report, NAWAC's Report, or any other relevant evidence relating to the requirements of the Act pleaded in paragraph 59 above.

67. The Minister made an error of law, because he:
- (a) misunderstood and therefore misapplied the legal test for issuing a code of welfare.
 - (b) started from the position that the event of rodeo should continue and that it therefore justified participants causing pain and distress to the animals involved.
 - (c) did not inquire into or consider information about the value of rodeo activities.
 - (d) did not inquire into or consider information about the effect of each rodeo activity on the welfare of the animals involved in that rodeo activity.
 - (e) proceeded on the basis that, as a matter of law, the Act permitted people to cause moderate or serious pain and distress to animals in the interests of entertainment.
 - (f) proceeded on the basis that if rodeo practices required rodeo participants to cause moderate or serious pain and distress to animals, it necessarily followed that:
 - (i) that pain and distress was reasonable and necessary.
 - (ii) a standard in a code of welfare permitting that level of pain and distress to be caused to an animal is the minimum necessary to allow the purposes of the Act to be achieved.
68. By virtue of the matters pleaded above the 2018 Code is unlawful.

Third ground of review – ultra vires or improper purpose

69. In exercising their statutory powers of decision as pleaded at paragraphs 57 and 58, the respondents must act so as to promote and not frustrate the purpose for which those statutory powers have been conferred.
70. In exercising their statutory powers of decision in relation to the 2018 Code the respondents failed to promote and/or frustrated the purpose for which those powers were conferred. In particular:
- (a) the practice of rodeo is undertaken for the purposes only of entertainment;

- (b) the rodeo practices result in the animals concerned experiencing;
 - (i) unnecessary or unreasonable pain or distress; and
 - (ii) wilful or reckless ill-treatment;
- (c) the minimum standards in the 2018 Code are not sufficient to prevent the animals concerned from experiencing unnecessary or unreasonable pain or distress, or ill-treatment; and
- (d) the effect of the 2018 Code is to:
 - (i) permit conduct which does not fully meet the section 10 obligation or the section 29 requirement; and
 - (ii) provide a defence to conduct which, but for the 2018 Code, would be an offence under section 12(a) (failure to comply with section 10) and/or sections 28 to 29 (ill-treatment).

71. The issuing of the Code by the Minister was accordingly for an improper purpose and/or ultra vires the Act.

Relief

72. The applicants seek the following relief against the respondents:
- (a) a declaration that the 2018 Code in its entirety or as it relates to particular rodeo practices is unlawful;
 - (b) an order setting aside the 2018 Code in its entirety or as it relates to particular rodeo practices; and
 - (c) costs.

This document is filed by **Sebastian Bisley**, solicitor for the applicant, whose address for service is at the offices of Buddle Findlay, Level 17, Aon Centre, 1 Willis Street, Wellington 6011. Documents for service on the abovenamed may be left at that address or may be:

1. Posted to the solicitor at PO Box 2694, Wellington 6011; or
2. Left for the solicitor at a document exchange for direction DX SP20201, Wellington; or
3. Transmitted to the solicitor by facsimile to 64 4 499 4141; or

4. Emailed to the solicitor at sebastian.bisley@buddlefindlay.com with a copy to Victoria.heine@chambers.co.nz.

Released under the Official Information Act 1982

**IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE**

CIV-2021-485-360

UNDER THE	Judicial Review Procedure Act 2016
IN THE MATTER OF	The Code of Welfare: Rodeos 2018
BETWEEN	THE NEW ZEALAND ANIMAL LAW ASSOCIATION
	First applicant
AND	SAVE ANIMALS FROM EXPLOITATION
	Second applicant
AND	THE ATTORNEY-GENERAL
	First respondent
AND	THE NATIONAL ANIMAL WELFARE ADVISORY COMMITTEE
	Second respondent

FIRST RESPONDENT'S SECOND AMENDED STATEMENT OF DEFENCE

4 May 2022

CROWN LAW
TE TARI TURE O TE KARAUNA
PO Box 2858
WELLINGTON 6140
Tel: 04 472 1719
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Contact Person:
Ken Stephen / Rebecca Elvin / Hannah Bergin
Ken.Stephen@crownlaw.govt.nz/ Rebecca.Elvin@crownlaw.govt.nz /
Hannah.Bergin@crownlaw.govt.nz

The first respondent by his solicitor says in response to the amended statement of claim dated 19 April 2022:

PARTIES

1. He admits paragraph [1].
2. He is not required to plead to paragraph [2].
3. He admits paragraph [3].
4. He is not required to plead to paragraph [4].
5. He admits paragraph [5].
6. He admits paragraph [6].
7. He denies paragraph 7 and says the “Aims and Objects” of the third respondent are set out in its Constitution.

RELEVANT STATUTORY FRAMEWORK

8. In relation to paragraph [8], he says:
 - 8.1 The purposes of the Animal Welfare Act 1999 (**the Act**) are set out in Parts 1-7 of the Act, each of which Part has purpose statements;
 - 8.2 The long title of the Act is (among other matters) to “reform the law relating to the welfare of animals and the prevention of their ill-treatment; and, in particular, to recognise that animals are sentient....” He relies on the long title as if set out in full; and
 - 8.3 He otherwise denies paragraph [8].
9. He denies paragraph [9] and relies on the relevant statutory provisions as if set out in full.

Regulations under s 183A

10. He denies paragraph [10] and says further:

- 10.1 Section 183A allows the Governor-General, on the recommendation of the Minister, to make regulations relating to standards of care. This includes regulations under s 183A(2) and (3) that may prescribe standards or requirements that do not fully meet the obligations of s 10, or s 29 (among others).
- 10.2 Unlike Codes of Welfare, Regulations are directly enforceable and breach of a regulation is an offence.
- 10.3 The Minister must consult with NAWAC when making regulations under s 183A(10), but the procedural requirements in ss 71-75 do not apply when making regulations which establish, amend, revoke or replace any minimum standard which is part of a Code of Welfare under Part 5.
- 10.4 The Minister must consult to the extent that is reasonably practicable, having regard to the circumstances of the particular case, the persons the Minister has reason to believe are representative of interests likely to be substantially affected by proposed regulations before deciding whether to recommend the making of regulations under s 183A.

11. He denies paragraph [11], repeats paragraphs [8] and [9] above, and relies on the relevant statutory provisions as if set out in full.

Codes of Welfare

12. He admits paragraph [12] and relies on s 68 as if set out in full. He further says:

- 12.1 The contents of Codes of Welfare is set out in s 69, which provides:

69 Contents

A code of welfare may relate to 1 or more of the following:

- (a) a species of animal:
- (b) animals used for purposes specified in the code:

- (c) animal establishments of a kind specified in the code:
- (d) types of entertainment specified in the code (being types of entertainment in which animals are used):
- (e) the transport of animals:
- (f) the procedures and equipment used in the management, care, or killing of animals or in the carrying out of surgical procedures on animals.

12.2 Codes of welfare elaborate on the general duty of care in the Act, and help people in charge of animals understand and meet their statutory obligations;

12.3 Codes of welfare contain useful information about how to care for animals, and explain both the minimum standards necessary to meet animals' needs as well as best practice guidance; and

12.4 Minimum standards in codes of welfare are not directly enforceable. However, breach of a minimum standard is prima facie evidence of an offence (under ss 13(1A) and 30(1A)), and compliance with a minimum standard is a defence to an alleged offence (under s 13(2)(c) and 30(2)(c)).

13. He denies paragraph [13], repeats paragraphs [8] and [12] above and relies on s 73 as if set out in full.

14. He admits paragraph [14] and relies on s 70 as if set out in full.

15. He denies paragraph [15] and relies on ss 71, 72 and 76 as if set out in full.

16. He admits paragraph [16] and relies on s 73 as if set out in full.

17. He admits paragraph [17] and relies on s 73 as if set out in full.

18. He admits paragraph [18] and relies on s 74 as if set out in full.

19. He admits paragraph [19] and relies on s 74 as if set out in full.

20. He admits paragraph [20] and relies on s 75 as if set out in full.

21. He denies paragraph [21] and relies on s 76 as if set out in full.

22. He repeats paragraph [12.4] above, relies on s 24 as if set out in full, and otherwise denies paragraph [22].

THE PRACTICE OF RODEO

23. He denies paragraph [23] and relies on the descriptions of events as outlined in the 2018 Code in full and the third respondent's Rule Book.

Steer wrestling

24. He admits that steer wrestling is a rodeo event. Otherwise he denies paragraph [24], relies on paragraph [6.5] of the 2018 Code in full and further says that:

24.1 In the steer wrestling event a mounted rider chases a steer, drops from the horse to the steer and wrestles the steer to the ground. The time is flagged when the steer has all four hooves off the ground and legs pointing out straight;

24.2 The steer needs to be healthy and in good physical condition to withstand the physical stress during this event.

Rope and tie

25. He admits that rope and tie is a rodeo event. Otherwise he denies paragraph [25], relies on paragraph [6.3] of the 2018 Code in full and further says that:

25.1 Rope and tie is a time event that is performed at a fast pace over a set time period;

25.2 In the rope and tie event, a calf is released from the chute which then triggers the release of the horse and rider, who will rope the calf in the arena, dismount, put the roped calf on the ground and tie three of the calves' legs using a pigging string, while a well-trained horse will effectively maintain the tension on the rope. The calf needs to remain tied for six seconds for the tie to be considered successful. Calves used in these events can be

subjected to physical stressors and need to be fit, healthy and without defects; and

25.3 Rope and tie was previously known as calf roping.

Calf riding

26. He admits that calf riding is a children's rodeo event. Otherwise he denies paragraph [26], relies on paragraph [6.6] of the 2018 Code in full and further says that:

26.1 The calf riding event is designed to enable younger and lighter competitors to participate in rodeo;

26.2 Minimum standard number 12 provides that calves must not be ridden more than once on any day; the rider's weight must be kept behind the shoulder of the calf; calves must not be ridden with the rider facing backwards; and calves must be habituated by being walked or run through the arena from the release chute to the exhaust pen prior to the event.

Saddle and bareback bronc riding

27. He accepts that saddle and bareback bronc riding is a rodeo event. Otherwise he denies paragraph [27], relies on paragraph [6.1] of the 2018 Code in full and further says that:

27.1 Bronc riding involves releasing a horse from a chute into the arena, where it will buck in an attempt to dislodge the rider from its back;

27.2 There are two types of this event: saddle bronc riding where the horse is fitted with a saddle, and bareback bronc riding where the horse is fitted with bareback rigging only;

27.3 In both events the horse will be fitted with a flank strap which runs around the body of the horse just in front of the back legs, which will encourage the horse to buck;

- 27.4 Minimum standard number 7 provides that the flank strap must not be so tight as to restrict the movement of the horse, and must be removed from the horse as soon as it is practicable to do so once the rider is off the horse.

Bull and steer riding

28. He accepts that bull and steer riding is a rodeo event. Otherwise he denies paragraph [28], relies on paragraph [6.2] of the 2018 Code in full and further says that:

28.1 Bull and steer riding involves a bull or steer being released into the arena where it will buck to dislodge the rider from its back;

28.2 The animal is fitted with a front 'bull rope' which wraps around its body and which the rider holds onto to maintain his seating. This bull rope needs to be a quick release type of rope that will fall away from the animal as soon as the rider is displaced or dismounts;

28.3 The animal is also fitted with a flank strap to encourage bucking. Minimum standard number 8 requires that the flank strap must not be so tight as to restrict the movement of the animal.

Team roping

29. He accepts that team roping is a rodeo event. Otherwise he denies paragraph [29], relies on paragraph [6.4] of the 2018 Code in full and further says that:

29.1 Team roping involves two ropers, the header and the heeler, both on horseback;

29.2 The header will rope the steer around both horns, the head and one horn, or the neck, and the heeler then ropes the steer around the hind legs. The time recorded is that after the steer is stopped and there is no slack in both the header and heeler's ropes;

- 29.3 The rope is slackened immediately upon completion of the event when the clock is stopped. This again is a fast paced event and the steer needs to be in good physical condition with no defects.

Barrel racing

30. He accepts that barrel racing is a rodeo event. Otherwise he denies paragraph [30], relies on paragraph [6.7] of the 2018 Code in full and further says that:

30.1 Barrel racing is an event where the riders guide their horses around three barrels in a cloverleaf pattern in the least amount of time as possible.

30.2 Horses are required to move at speed and turn quickly during this event and it is important that they are fit, healthy and appropriately trained to perform this event.

31. He admits that rodeo is undertaken for entertainment purposes but otherwise denies paragraph [31] and further says:

31.1 Rodeo is also referred to as a sport;

31.2 NAWAC has set up a separate subcommittee to develop a set of principles to be considered when deciding if and how animals should be used in the "3Es" - exhibition, entertainment, and encounter, and has recently developed and published a Guideline on this issue.

Scrutiny of animal welfare and rodeo since 2013

32. He denies paragraph [32] and further says that the issue of pain and distress to animals under the *Code of Welfare: Rodeos* has been regularly reviewed and scrutinised since 2013:

32.1 In the 2013 report, NAWAC concluded that that there was not a high risk of injury to rodeo animals, and given the application of the minimum standards and recommended best practices under

the Code, there were sufficient safeguards in place to protect animals used in rodeos. The defendant relies on the 2013 NAWAC report for its full effect;

32.2 In 2016 SAFE, Farmwatch and the Royal New Zealand Society for the Prevention of Cruelty to Animals (**RNZSPCA**) petitioned the Primary Production Select Committee, but the Committee was satisfied with the minimum standards set out in the 2014 Code and declined to recommend further regulation. The Committee encouraged NZRCA to work closely with MPI and NAWAC to work towards increasing compliance with the animal welfare code through self-monitoring. The defendant relies on the Committee's report for its full effect;

32.3 In 2018 the Animal Welfare (Care and Procedures) Regulations 2018 created new offences for misuse of animals, including at rodeo events, as set out at paragraph [50.2] below;

32.4 In February 2018 the Minister asked NAWAC for advice on the welfare of animals in rodeos. NAWAC commissioned its own report *Rodeo events – How do they impact the sentient animal?* (**2018 NAWAC report**) and recommended a suite of non-regulatory actions including scientific research and more intensive monitoring of injuries. NAWAC did not recommend amending the Code at that time. The defendant relies on the 2018 NAWAC report and advice for their full effect;

32.5 During its research in 2018, NAWAC considered the New Zealand Animal Law Association (**NZALA**) report;

32.6 In August 2019, the NZRCA established the Rodeo Animal Welfare Committee which is made up of representatives from the NZRCA, SPCA, NZVA and MPI Compliance. NAWAC sits on the Committee

as an observer with no voting rights. NAWAC provides reports to the Minister on progress on NAWAC's recommendations;

32.7 Parts of the Animal Welfare (Care and Procedures) Amendment Regulations 2020 apply to animals at rodeo events, as set out in paragraph [55] below; and

32.8 In early 2021 NAWAC reprioritised the review of the Code. A subcommittee was formed, and is engaging with industry including the applicants and the NZRCA

33. He denies paragraph [33] relating to steer wrestling, repeats paragraphs [24] and [32] above and relies on the 2013 and 2018 NAWAC reports and advice for their full effect.

34. He denies paragraph [34] relating to rope and tie, repeats paragraphs [25] and [32] above and relies on the 2013 and 2018 NAWAC reports and advice for their full effect.

35. He denies paragraph [35] relating to calf riding, repeats paragraphs [26] and [32] above and relies on the 2013 and 2018 NAWAC reports and advice for their full effect.

36. He denies paragraph [36] relating to saddle and bareback bronc riding, repeats paragraphs [27] and [32] above and relies on the 2013 and 2018 NAWAC reports and advice for their full effect.

37. He denies paragraph [37] relating to bull and steer riding, repeats paragraphs [28] and [32] above and relies on the 2013 and 2018 NAWAC reports and advice for their full effect.

38. He denies paragraph [38] relating to team roping, repeats paragraphs [29] and [32] above and relies on the 2013 and 2018 NAWAC reports and advice for their full effect.

39. He denies paragraph [39] relating to barrel racing, repeats paragraphs [30] and [32] above and relies on the 2013 and 2018 NAWAC reports and advice for their full effect.
40. He denies paragraph [40], repeats paragraph [32] above and relies on the 2013 and 2018 NAWAC reports and advice for their full effect.

RODEO CODES OF WELFARE

2014 Code

41. He admits paragraph [41] and further says that the previous Code for Rodeos was issued in December 2003.
42. He admits paragraph [42].

NZALA report

43. He admits paragraph [43].
44. In respect of paragraph [44], he admits the NZALA report provided a review of the practice of rodeo in New Zealand, and set out the position in some other jurisdictions. Further says the conclusion in the NZALA report is incorrect, and otherwise denies paragraph 44.

NAWAC 2018 report

45. He denies paragraph [45], repeats paragraph [32] above, and further says that the Minister discussed rodeos at the NAWAC quarterly meeting on 14 February 2018. NAWAC agreed to provide advice to the Minister after its May 2018 meeting, focusing on calf events, flank straps, electric prodders and the use/misuse of ropes.
46. He admits paragraph [46].
47. He admits that NAWAC's report is dated May 2018 and was published on the website in October 2018 but otherwise denies paragraph [47].
48. He admits paragraph [48].

49. He admits paragraph [49] but relies on the NAWAC Report for its full effect.

He further says:

49.1 NAWAC recommended a suite of non-regulatory actions to the Minister, including establishment of a Rodeo Animal Welfare Committee, including MPI and SPCA Animal Welfare Inspectors; increased monitoring and record keeping; research to assess the physical impact of events on animals; and that the industry consider reducing or replacing higher impact events.

49.2 NAWAC recommended that if these non-regulatory actions are not met within a clear established time period, additional regulatory options could be undertaken.

2018 Code incorporating Animal Welfare (Care and Procedures) Regulations

50. In respect of paragraph [50], the respondent:

50.1 Admits that NAWAC was consulted on the amendment and reissue of seventeen codes of welfare, including the code of welfare for rodeo, as required under s 76(2). NAWAC informed the Minister on 16 August 2018 that it supported the amendment and issue of the codes of welfare.

50.2 Further says:

50.2.1 The 2018 Code contained only amendments of a minor nature, made under s 76(1)(b);

50.2.2 These amendments were primarily consequential amendments to incorporate the Animal Welfare (Care and Procedures) Regulations 2018 (**Regulations**), which came into force on 1 October 2018. The relevant Regulations were appended to the 2018 Code and referred to throughout.

50.2.3 The Regulations appended to the Code created several offences, such as:

- (a) using equipment that may injure horses (r 19, carrying a fine of \$900);
- (b) a prohibition against striking a horse on its head (r 20, carrying fines between \$500-\$1,500);
- (c) restrictions on transporting animals (rr 30-45, carrying fines between \$500-\$7,500);
- (d) a prohibition on fireworks at rodeos (r 46, carrying fines between \$5,000-\$25,000);
- (e) misuse of collars and tethers (r 47, carrying fines between \$300-\$900); and
- (f) a prohibition on the misuse of electric prodders (rr 48 and 49, carrying fines between \$500-\$7,500).

50.2.4 NAWAC participated in the process for developing the Regulations including placing its members on a Regulations working group, providing comment on the policy intent of regulatory proposals and commenting on the draft regulations.

50.2.5 In developing the proposals, MPI drew on the knowledge and experience of the other members of this working group. As well as NAWAC and MPI, the working group consisted of representatives from the RNZSPCA and the Veterinary Council of New Zealand (VCNZ).

50.2.6 MPI consulted on the regulatory proposals during 2015 to 2017, including public consultation in April and May 2016.

The regulatory proposals were outlined in two Discussion Papers. Consultation included six public meetings throughout New Zealand and an invitation to all interested parties to provide written submissions on the discussion documents. MPI also undertook follow-up workshops and one-on-one meetings with affected industry and advocacy groups to understand the impacts of the regulations and further refine their development. MPI received over 1400 submissions on the proposals relating to Care and Conduct, Significant and Painful Surgical Procedures and Live Animal Exports, including submissions from NZALA and SAFE. Approximately 1000 submissions were from individuals and 400 submissions were from organisations.

50.3 And otherwise denies paragraph [50].

51. He admits paragraph [51], repeats paragraph [50] above and further says:

51.1 As the 2018 Code contained only minor amendments under s 76(1)(b), there was no requirement for NAWAC to publicly notify the 2018 Code or produce a report under s 74(2); and

51.2 Even if any procedural error was made in issuing/reissuing the 2018 Code, there was extensive public notification and consultation during development of the Regulations, and therefore in respect of the substantive amendments to the 2018 Code.

52. He admits that the Ministry for Primary Industries prepared a briefing paper for the Minister dated 15 August 2018 about reissuing existing codes of welfare, relies on that paper in full, and otherwise denies paragraph 52.

53. He admits that in October 2018, the 2014 Code was revoked under s 76(1)(a) and the Minister issued the 2018 Code under s 75, repeats paragraphs [50]-[51] above, and otherwise denies paragraph [53].
54. He admits paragraph [54].

2021 amendment incorporating Animal Welfare (Care and Procedures) Amendment Regulations

55. In respect of paragraph [55]:
- 55.1 He admits that by Notice in the Gazette on 5 May 2021, minor amendments were made to the Code under s 76(1)(b), with effect from 9 May 2021. These amendments incorporated relevant parts of the Animal Welfare (Care and Procedures) Amendment Regulations 2020 relating to surgical and painful procedures, the majority of which came into force on 9 May 2021.
- 55.2 He admits paragraph (a) but says this requirement was already contained in the 2018 Code at Minimum Standard 4(a).
- 55.3 He admits that a new chapter 7.1 Significant Surgical Procedures was introduced but otherwise denies paragraph (b).
- 55.4 He denies paragraph (c) and further says that paragraph [6.1] (saddle and bareback bronc riding) of the 2018 Code was amended only to incorporate the amendment to regulation 19 (change from 'horses' to 'horses and other equids') introduced by the Animal Welfare (Care and Procedures) Amendment Regulations 2020.
- 55.5 Admits paragraph (d).
- 55.6 Admits paragraph (e) and further says that these minor amendments incorporated relevant parts of the Animal Welfare (Care and Procedure) Amendment Regulations 2020 relating to

surgical and painful procedures, the majority of which came into force on 9 May 2021.

- 55.7 He repeats paragraph [50.2.5] above and further says that MPI tested the regulatory proposals through two public consultation periods: April – May 2016 and June – July 2019.

Current NAWAC review of the Code

- 55.8 He further says that in early 2021 NAWAC reprioritised the review of the Code. A subcommittee was formed, and pre-consultation with industry including the applicants and the NZRCAs is underway. He otherwise denies paragraph [55].

56. He denies paragraph [56], repeats paragraphs [50.2] and [55] above.

STATUTORY POWERS OF DECISION

57. He admits paragraph [57].

58. He admits paragraph [58].

GROUNDINGS OF REVIEW

First ground of review - failure to follow due process

59. He denies paragraph [59] and refers to the relevant statutory requirements for each power of decision, for their full effect.
60. He denies paragraph [60] and repeats paragraphs [41]-[54] above.
61. He denies paragraph [61] and repeats paragraphs [41]-[54] above.
62. He denies paragraph [62] and repeats paragraphs [41]-[54] above.
63. He denies paragraph [63] and repeats paragraphs [41]-[54] above.
64. He denies paragraph [64] and repeats paragraphs [32] and [41]-[54] above.

Second ground of review – error of law

65. He denies paragraph 65 and repeats paragraphs [50]-[53] above.
66. He denies paragraph 66 and repeats paragraphs [50]-[53] above.
67. He denies paragraph 67 and repeats paragraphs [50]-[53] above.
68. He denies paragraph 68 and repeats paragraphs [32] and [50]-[53] above.

Third ground of review – ultra vires or improper purpose

69. He is not required to plead to paragraph [69] as it contains matters of law.
70. He denies paragraph [70] and repeats paragraphs [32] and [41]-[54] above.
71. He denies paragraph [71] and repeats paragraphs [32] and [41]-[54] above.
72. He is not required to plead to paragraph [72].

This document is filed by Kenneth Graham Stephen, solicitor for the first respondent, of Crown Law.

The address for service of the first respondent is Crown Law, Level 3, Justice Centre, 19 Aitken Street, Wellington 6011. Documents for service on the first respondent may be left at this address for service or may be:

- (a) posted to the solicitor at PO Box 2858, Wellington 6140; or
- (b) left for the solicitor at a document exchange for direction to DX SP20208, Wellington Central; or
- (d) emailed to the solicitor at Ken.Stephen@crownlaw.govt.nz provided that the documents are also emailed to Rebecca.Elvin@crownlaw.govt.nz and Hannah.Bergin@crownlaw.govt.nz

AND

**THE NATIONAL ANIMAL WELFARE
ADVISORY COMMITTEE**

Second Respondent

AND

**THE NEW ZEALAND RODEO
COWBOYS ASSOCIATION
INCORPORATED**

Third Respondent

Released under the Official Information Act 1982

The second respondent by its solicitor says in response to the amended statement of claim (application for review) dated 19 April 2022:

PARTIES

1. Admits paragraph 1.
2. Apprehends paragraph 2 contains matters to which it is not required to plead.
3. Admits paragraph 3.
4. Apprehends paragraph 4 contains matters to which it is not required to plead.
5. Admits paragraph 5.
6. Admits paragraph 6.
7. Admits paragraph 7.

RELEVANT STATUTORY FRAMEWORK

Purposes, policy and object of the Act

8. Apprehends paragraph 8 contains matters of law and/or submission to which it is not required to plead.
9. Apprehends paragraph 9 contains matters of law and/or submission to which it is not required to plead.
10. Apprehends paragraph 10 contains matters of law and/or submission to which it is not required to plead.
11. Apprehends paragraph 11 contains matters of law and/or submission to which it is not required to plead.

Codes of Welfare

12. In respect of paragraph 12:
 - 12.1 admits codes of welfare establish minimum standards with regard to the way in which persons care for animals and conduct themselves towards such animals; and

- 12.2 admits codes of welfare include recommendations on the best practice to be observed by persons in caring for such animals and in conducting themselves towards such animals; and
- 12.3 relies on sections 68 and 69 of the Act as if set out in full; and
- 12.4 further says minimum standards in codes of welfare are not directly enforceable; but
- 12.5 otherwise denies paragraph 12.
13. Denies paragraph 13 and further says:
- 13.1 before making its recommendation on minimum standards in a code of welfare, NAWAC must be satisfied the proposed standards are the minimum necessary to meet the purposes of the Act; and
- 13.2 relies on section 73 of the Act as if set out in full.
14. Admits paragraph 14 and relies on section 70 of the Act as if set out in full.
15. In respect of paragraph 15:
- 15.1 admits NAWAC must publicly notify a draft code of welfare if NAWAC is satisfied the requirements of section 71(1) of the Act are met; and
- 15.2 admits NAWAC may consult with those persons who, in response to a notice published or given under section 71(3) of the Act make draft submissions on the draft code of welfare; and
- 15.3 relies on sections 71, 72 and 76 of the Act as if set out in full; but
- 15.4 otherwise denies paragraph 15.
16. Admits paragraph 16 and relies on section 73 of the Act as if set out in full.
17. Admits paragraph 17 and further says:
- 17.1 in carrying out its functions under section 73(1) NAWAC must also have regard to:

- 17.1.1 available technology; and
- 17.1.2 any other matters considered relevant by NAWAC; and
- 17.2 relies on section 73 of the Act as if set out in full.
- 18. Admits paragraph 18 and relies on section 74 of the Act as if set out in full.
- 19. Admits paragraph 19 and relies on section 74 of the Act as if set out in full.
- 20. Admits paragraph 20 and relies on section 75 of the Act as if set out in full.
- 21. In respect of paragraph 21:
 - 21.1 admits section 76 of the Act provides that the Minister may:
 - 21.1.1 revoke a code of welfare or any part of a code of welfare; or
 - 21.1.2 make amendments of a minor nature to a code of welfare (being minor amendments that would not materially affect the purposes of the code); and
 - 21.2 relies on section 76 of the Act as if set out in full; and
 - 21.3 otherwise denies paragraph 21.
- 22. In respect of paragraph 22;
 - 22.1 repeats paragraph 12.4 above;
 - 22.2 relies on s 24 as if set out in full;
 - 22.3 otherwise denies paragraph 22.

THE PRACTICE OF RODEO

- 23. Denies paragraph 23 and refers to the 2018 Code of Welfare: Rodeos (2018 Code) definition of “rodeo” at Appendix 1 of the 2018 Code, and the descriptions of rodeo events referred to therein.
- 24. In respect of paragraph 24:
 - 24.1 admits Steer Wrestling is a rodeo event; and

- 24.2 admits a horse-mounted rider chases a steer, drops from the horse to the steer and wrestles the steer to the ground. The time is flagged when the steer has all four hooves off the ground and legs pointing out straight; and
- 24.3 relies on Part 6.5 and Appendix 1 of the 2018 Code as if set out in full; but
- 24.4 otherwise denies paragraph 24.
25. In respect of paragraph 25 says:
- 25.1 Calf Roping is a rodeo event now known as Rope and Tie; and
- 25.2 Rope and Tie is a timed rodeo event, where a calf is released from a chute which then triggers the release of the horse and rider, who will rope the calf in the area, dismount, put the roped calf on the ground and tie three of the calves' legs together using a pigging string, while a well-trained horse will effectively maintain the tension on the rope. The calf needs to remain tied for six seconds for the tie to be considered successful; and
- 25.3 relies on Part 6.3 and Appendix 1 of the 2018 Code as if set out in full; but
- 25.4 otherwise denies paragraph 25.
26. In respect of paragraph 26:
- 26.1 admits Calf Riding is a rodeo event; and further says:
- 26.1.1 Calf Riding is designed to enable younger and lighter competitors to participate in rodeo; and
- 26.1.2 weight restrictions that apply are designed to ensure that the animal involved in the event is not placed under undue stress; and
- 26.1.3 the voluntary increase by the New Zealand Rodeo Cowboys Association (NZRCA) in the liveweight of animals used in

this event has led to the discontinuance of Calf Riding at NZRCA sanctioned rodeo events.

- 26.2 relies on Part 6.6 of the 2018 Code as if set out in full; but
- 26.3 otherwise denies paragraph 26.
27. In respect of paragraph 27:
- 27.1 admits that Bronc Riding is a rodeo event; and
- 27.2 admits that Bronc Riding involves a rodeo participant riding a bucking horse that attempts to throw or buck off the rider; and further says:
- 27.2.1 there are two types of Bronc Riding: saddle bronc riding where a horse is fitted with a saddle; and bareback bronc riding where the horse is fitted with bareback rigging only; and
- 27.2.2 in both events the horse is fitted with a flank strap which runs around the body of the horse just in front of the back legs, which will encourage the horse to buck; and
- 27.3 relies on Part 6.1 and Appendix 1 of the 2018 Code as if set out in full; but
- 27.4 otherwise denies paragraph 27.
28. In respect of paragraph 28:
- 28.1 admits that Bull or Steer Riding is a rodeo event; and further says:
- 28.1.1 Bull or Steer Riding involves a bull or a steer being released into the arena where it will buck to dislodge the rider from its back; and
- 28.1.2 the animal is fitted with a front "bull rope" which wraps around its body and which the rider holds onto to maintain his or her seating; and

- 28.1.3 the bull rope is a quick release type of rope that will fall away from the animal as soon as the rider is displaced or dismounts; and
- 28.1.4 the animal is also fitted with a flank strap to encourage bucking; and
- 28.2 relies on Part 6.2 and Appendix 1 of the 2018 Code as if set out in full; but
- 28.3 otherwise denies paragraph 28.
29. In respect of paragraph 29:
- 29.1 admits that Team Roping is a rodeo event; and
- 29.2 admits that Team Roping involves two riders a header and a heeler and a steer; and says further
- 29.2.1 the header will rope the steer around both horns, the head and one horn, or the neck, and the heeler then ropes the steer around the hind legs. The time recorded is that after the steer is stopped and there is no slack in both the header and heeler's ropes; and
- 29.2.2 the rope is slackened immediately upon completion of the event when the clock is stopped; and
- 29.3 relies on Part 6.4 and Appendix 1 of the 2018 Code as if set out in full; but
- 29.4 otherwise denies paragraph 29.
30. Admits paragraph 30 and relies on Part 6.7 and Appendix 1 of the 2018 Code as if set out in full.
31. In respect of paragraph 31:
- 31.1 admits the practice of rodeo is undertaken for entertainment purposes; and further says:

31.1.1 the practice of rodeo is also a recognised sport; and

31.1.2 NAWAC has recently developed and published a Guideline that will be applied by NAWAC in order understand why people engage with activities using animals in exhibition, entertainment, and encounter (the 3Es). It is anticipated that the Guideline and principles therein will guide NAWAC's decision making for these uses.; but

31.2 otherwise denies paragraph 31.

32. Denies paragraph 32; and further says:

32.1 Rodeo practices that comply with the minimum standards set out in the 2018 Code do not cause unnecessary or unreasonable pain or distress and/or result in the wilful or reckless ill-treatment of animals; and

32.2 The minimum standards set out in the 2018 Code are the minimum standards necessary to ensure the purposes of the Act are met.; and

32.3 At a meeting on 19 May 2021 NAWAC decided to:

32.3.1 reprioritise a statutory review of the 2018 Code; and

32.3.2 convene a NAWAC subcommittee (the Rodeo Code Review Subcommittee) to undertake the statutory review; and

32.4 The Rodeo Code Review Subcommittee's statutory review of the 2018 Code has recently completed the pre-consultation stage of the review, which has involved the Rodeo Code Review Subcommittee consulting, or attempting to consult, with representatives of the persons likely to be affected by the draft, including the applicants, in accordance with section 71(1)(e) of the Act.

33. In respect of paragraph 33:

33.1 repeats paragraphs 32.1 to 32.4 above; and

33.2 admits it is likely there is at least moderate pain experienced by the steer from the 'throwing' action imposed by the contestant when the neck twist is applied using the horns and chin as leverage; and further says:

33.2.1 NAWAC assumes that some bruising would persist after the event; and

33.2.2 NAWAC recommended to the Associate Minister of Agriculture, the Hon Meka Whaitiri (the Minister) in May 2018, in relation to Steer Wrestling, the implementation of non-regulatory actions to encourage recommended best practice, gather information and monitor compliance with minimum standards. These included:

(a) the commissioning of further research into the impact of experiences in the rodeo arena; and

(b) increased monitoring and record keeping of the animals being trained and used over a season, including the number of animals involved, and any animal injuries sustained; and

33.3 otherwise, does not know and therefore denies paragraph 33.

34. In respect of paragraph 33:

34.1 repeats paragraph 25.1 to 25.3 above; and

34.2 repeats paragraph 32.1 to 32.4 above; and

34.3 admits that some physical and brief physiological stress may be suffered by some of the animals involved; and further says

34.3.1 NAWAC concluded in 2013, in relation to Rope and Tie, that in the absence of evidence that the event causes calves' significant pain and distress, the event should not be discontinued; and

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34.3.2 NAWAC recommended to the Minister in 2018, in relation to Rope and Tie, the implementation of non-regulatory actions to encourage recommended best practice, gather information and monitor compliance with minimum standards. These included:

- (a) the implementation of methods and instruments that may have less of a negative impact on calves e.g. bungee ropes/breakaway ropes; and
- (b) the commissioning of further research into investigating the type and severity of damage to the necks of calves arising from this event; and
- (c) discussing with the industry options to reduce the number of calves used at rodeos or alternatively, to implement a voluntary phase out and cessation of this calf event; and

34.4 otherwise, does not know and therefore denies paragraph 34.

35. In respect of paragraph 35:

35.1 repeats paragraph 32.1 to 32.4 above; and

35.2 admits there is likely to be discomfort or irritation caused to the calf from the flank strap (if used) and the chest rope;

35.3 admits the presence of the rider may inflict some discomfort to the calf, and there may be potential for musculoskeletal injuries if the calf stumbles;

35.4 admits the calf may experience moderate pain, but that it is not expected to persist after the event; and further says:

35.4.1 there are no scientific studies that examine the effects of Calf Riding as it is practiced in New Zealand;

35.4.2 NAWAC concluded in 2013, in relation to Calf Riding, that calves are of a sufficient weight and maturity that they will not be subjected to unreasonable pain or distress in this event;

35.4.3 NAWAC recommended to the Minister in 2018, in relation to Calf Riding, the implementation of non-regulatory actions to encourage recommended best practice, gather information, and monitor compliance with minimum standards. Being:

- (a) increased monitoring and record keeping of animals used, including reporting injury rates 48 hours post-event; and
- (b) ensuring children are weighed at each event before they ride calves to make sure that they comply with the maximum weight requirements; and
- (c) the voluntary increase by NZRCA in the liveweight of animals used in this event has led to the discontinuance of Calf Riding at NZRCA sanctioned rodeo events.

35.5 otherwise, does not know and therefore denies paragraph 35.

36. In respect of paragraph 36:

36.1 repeats paragraph 32.1 to 32.4 above; and further says:

36.1.1 NAWAC concluded in 2013, in relation to Bronc Riding, that the spurs used on animals in bucking events are adequately dulled and rotate sufficiently that they will not cause the animals undue pain or distress; and

36.1.2 NAWAC recommended to the Minister in 2018, in relation to Bronc Riding, the implementation of non-regulatory actions to encourage recommended best practice, gather information, and monitor compliance with minimum standards. Being:

- (a) increased monitoring and recording keeping of training of animals, including the number of animals involve, and injuries sustained; and
- (b) monitoring and reporting injury rates 48 hours post-event; and
- (c) discussing with the industry the necessity of spurs and whether alternative equipment can be used;

36.2 otherwise, does not know and therefore denies paragraph 36.

37. In respect of paragraph 37:

37.1 repeats paragraph 32.1 to 32.4 above;

37.2 admits that, very occasionally, bulls can suffer back injuries, fractures, or luxation's that require the bull to be euthanised; but says NAWAC concluded in 2018 that the frequency of these injuries was low; and relies on the NAWAC commissioned Report entitled "Rodeo events – how do they impact the sentient animal" dated May 2018 (2018 NAWAC report), veterinary report statistics supplied by NZRCA for the 2017/2018 rodeo season, and an analysis of the 2017/2018 veterinary report statistics prepared by the Chairperson of NAWAC for the purpose of the 2018 NAWAC report; and

37.3 admits that a study in the USA in 2017 found that the bucking bulls studied in that country were more likely to develop horn and sinus disorders, and musculoskeletal issues; and further says:

37.3.1 NAWAC recommended to the Minister in 2018, in relation to Bull or Steer Riding, the implementation of non-regulatory actions to encourage recommended best practice, gather information, and monitor compliance with minimum standards. Being:

- (a) increased monitoring and record keeping of the animals being trained, including the number of

animals involved, and any animal injuries sustained;
and

- (b) monitoring and reporting injury rates 48 hours post-event.

37.4 otherwise, does not know and therefore denies paragraph 37.

38. In respect of paragraph 38:

38.1 repeats paragraph 32.1 to 32.4 above; and further says:

38.1.1 NAWAC concluded in 2018 that the likelihood of pain and injury during Team Roping was minimal and it recommended to the Minister, in relation to Team Roping, the implementation of non-regulatory actions to encourage recommended best practice, gather information, and monitor compliance with minimum standards. Being:

- (a) increased monitoring and record keeping of animals undergoing training for team roping; and
- (b) the commissioning of research into alternative equipment that would aim to reduce the impact that the event has on the animal; and

38.2 Otherwise, does not know and therefore denies paragraph 38.

39. In respect of paragraph 39:

39.1 repeats paragraph 32.1 to 32.4 above; and further says:

39.2 NAWAC concluded in 2018 that the risk of injury caused by Barrel Racing was low and it recommended to the Minister non-regulatory actions to encourage recommended best practice, gather information, and monitor compliance with minimum standards. Being:

39.2.1 discussing with the industry the necessity of using curb bits, spurs, and whips during this event, and to determine whether there are alternatives that could be used; and

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39.2.2 increased monitoring and record keeping of horses undergoing training for Barrel Racing; and

39.2.3 the commissioning of research into injury rates in post-event period; and

39.3 otherwise, does not know and therefore denies paragraph 39.

40. Does not know and therefore denies paragraph 40, and further repeats paragraph 32.1 to 32.4 above.

RODEO CODE OF WELFARE

41. Admits paragraph 41.

42. Admits paragraph 42 and further says:

42.1 Consultation with representatives of the persons likely to be affected by the draft Code (pre-consultation) took place between 25 May and 29 June 2012 with Bull Riding NZ Inc, NZRCA, the NZ Veterinary Association and the Royal Society for the Prevention of Cruelty to Animals ; and

42.2 Public consultation ran from 12 October to 26 November 2012, following notices in newspapers in Auckland, Wellington, Christchurch and Dunedin and direct contact with interest groups; and

42.3 30 written submissions on the draft Code were received, as well as 368 form letters from SAFE and 8 form letters from rodeo supporters; and

42.4 NAWAC convened a subcommittee to consider the submissions. The subcommittee consulted with Ministry for Primary Industries (MPI) Animal Welfare staff, visited rodeo events, and consulted with industry. The subcommittee contracted experts Bernie Rollin, philosopher and ethicist, and Professor Orivaldo Tenorio, a veterinarian and regulator of rodeo in Brazil; and

42.5 The draft Code was peer reviewed by Dr Cia Johnson of the American Veterinary Medical Association's Animal Welfare Division; and

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- 42.6 NAWAC recommended the draft Code to the Minister for Primary Industries on 5 September 2013.
43. Admits paragraph 43.
44. In respect of paragraph 44:
- 44.1 admits the NZALA report provided a review of the practice of rodeo in New Zealand, and set out the position in other jurisdictions, and some evidence of the impact of rodeo on animals; but
- 44.2 otherwise denies paragraph 44 and denies that the NZALA report's conclusion is correct.
45. Denies paragraph 45 and further says:
- 45.1 the Minister sought advice from NAWAC on several aspects of rodeos, being the use of calves, tail twisting, rope burning, flank straps, and electric prodders when she attended a NAWAC meeting on 14 February 2018; and
- 45.2 to address the matters raised by the Minister, NAWAC assembled an expert panel that utilised a Five Domains model approach to assess the impact of individual rodeo events on the welfare of the animals involved;
- 45.3 the report produced by the expert panel was entitled "Rodeo events – how do they impact the sentient animal?" (NAWAC's Report); and
- 45.4 the expert panel did not consider ethical, social, or legal questions relating to rodeos, nor carry out a statutory review of the 2014 Code.
46. Admits paragraph 46.
47. In respect of paragraph 47:
- 47.1 admits NAWAC's Report was dated May 2018; and further says:
- 47.1.1 NAWAC's Report was put on the NAWAC website in October 2018; but

- 47.2 otherwise denies paragraph 47.
48. Admits paragraph 48.
49. Admits paragraph 49; and
- 49.1 relies on NAWAC's Report as if set out in full; and further says:
- 49.1.1 NAWAC considered that the current minimum standards and the new Animal Welfare (Care and Procedures) Regulations 2018 that were being developed and were due to come into force on 1 October 2018 adequately managed the issues raised by the Minister; and
- 49.1.2 NAWAC recommended several non-regulatory actions to encourage recommended best practice, gather information, and monitor compliance with minimum standards. These included the establishment of a Rodeo Animal Welfare Committee, increased monitoring and record keeping; proposing the commissioning of research to assess the physical impact of events on animals; and discussions with the industry to explore and introduce alternative instruments and practices; and
- 49.1.3 Subsequently:
- (a) NZRCA has established the Rodeo Animal Welfare Committee (RAWC) in August 2019. The RAWC is made up of representatives from NZRCA, SPCA, New Zealand Veterinary Association and MPI Compliance. NAWAC sits on the RAWC as an observer; and
- (b) RAWC passed a motion for the NZRCA Board to consider ceasing the Rope and Tie event. This motion was rejected at the NZRCA's AGM in July 2021; and

- (c) RAWC passed a motion for the NZRCA Board to consider banning the use of whips/crops in Barrel Racing. This motion was rejected at the NZRCA's AGM in July 2021; and
- (d) A more detailed record keeping system has been established by NZRCA, under the guidance of RAWC, in the form of updated veterinarian report templates being completed by the on-site veterinarian attending the rodeo on the day of the rodeo; and
- (e) NZRCA now requires weights to be provided for all animals used in Steer Wrestling events; and
- (f) NZRCA has voluntarily increased the liveweight of animals used in Calf Riding which has led to the discontinuance of Calf Riding at NZRCA sanctioned rodeo events. The event is now known as "junior steer riding"; and
- (g) NAWAC understands, NZRCA is, on the advice of RAWC, considering initiating a drug testing regime to screen for the use of pain relief in competitors' horses in Barrel Racing; and
- (h) NAWAC provides the Minister with bi-annual updates on Rodeos.

50. In respect of paragraph 50:

50.1 Denies paragraph 50, and further says:

50.2 NAWAC was consulted about the proposed minor amendments and reissue of the 2018 Code as required under section 76(2) of the Act; and

50.2.1 NAWAC informed the Minister on 16 August 2018 that it agreed the proposed amendments to a number of codes of

welfare, including the 2014 Code, were minor and technical in nature, and that it supported the amendment and reissue of all the codes; and

50.2.2 The 2018 Code contained amendments of a minor and technical nature relating to formatting and to ensure consistency with regulations, that were enacted by section 76(1)(b); and

50.2.3 The 2018 Code also contained consequential and minor amendments to minimum standards 4 and 5 and the definitions section at Appendix 1 to incorporate the Animal Welfare (Care and Procedures) Regulations 2018 (**Regulations**), which came into force on 1 October 2018, that were enacted by Part 2 of Schedule 2 of the Regulations, through section 183A(1)(b) of the Act; and

50.2.4 NAWAC participated in the process for developing the Regulations including placing its members on a Regulations working group, providing comment on the policy intent of regulatory proposals, and commenting on the draft regulations; and

50.2.5 The applicants and any affected party had an opportunity to be consulted and make submissions on the Regulations and therefore to the amendments to the Code, because Part 2 of Schedule 2 of the Regulations set out the consequential and minor amendments that were to be made to the Code.

50.3 otherwise denies paragraph 50.

51. Admits paragraph 51, repeats paragraph 50 above and further says:

51.1 There is no requirement for NAWAC to publicly notify a code of welfare or produce a report under s 74(2) where amendments to a code are enacted by section 76(1)(b) or by regulation through section 183A(1)(b) of the Act; and

51.2 any procedural error made in issuing or reissuing the 2018 Code was a minor defect or technical irregularity only that is not reviewable and does not warrant any relief being granted to the applicants as there was adequate consultation and notification in respect of the amendments that were made to the 2018 Code due to the extensive public notification and consultation that took place for the Regulations.

52. In respect of paragraph 52:

52.1 admits that in a briefing paper dated 15 August 2018, the Ministry for Primary Industries sought the Minister's approval to reissue 17 Codes of Welfare, including the 2018 Code;

52.2 admits paragraph 52(a), but says the correct reference to the extract provided paper is paragraph 14 of the briefing paper, not paragraph 10;

52.3 admits paragraph 52(b) to the extent that the briefing paper says NAWAC had been consulted and recommended that the Minister reissue the Codes; and further says:

52.3.1 NAWAC did not make a recommendation to the Minister under section 75 of the Act to reissue the Codes;

52.4 admits paragraph 52(c); and further says:

52.4.1 the Ministry for Primary Industries briefed the Minister on the NZALA Report and NAWAC's Report in a briefing paper dated 19 June 2018;

52.5 admits paragraph 52(d); and

52.6 relies on the 15 August 2018 briefing paper as if set out in full;

52.7 otherwise denies paragraph 52.

53. In respect of paragraph 53:

- 53.1 admits that in October 2018, the 2014 Code was revoked under section 76(1)(a) and the Minister issued under section 75 the Code of Welfare: Rodeo 2018 (2018 Code);
- 53.2 repeats paragraphs 50 and 51 above; and
- 53.3 otherwise denies paragraph 53.
54. Admits paragraph 54.
55. In respect of paragraph 55:
- 55.1 admits the 2018 Code was amended under s 76, with effect from 9 May 2021; and
- 55.2 admits paragraph 55(a); and
- 55.3 admits that a new chapter 7.1 Significant Surgical Procedures was introduced; but otherwise denies paragraph 55(b); and
- 55.4 denies paragraph 55(c); and
- 55.5 admits paragraph 55(d); and
- 55.6 admits paragraph 55(e); and
56. Denies paragraph 56.

STATUTORY POWERS OF DECISION

57. Admits paragraph 57.
58. Admits paragraph 58.

GROUNDS OF REVIEW

First Ground of Review

59. Denies paragraph 59.
60. Denies paragraph 60.
61. Denies paragraph 61.

62. Denies paragraph 62.
63. Apprehends that it is not required to plead to paragraph 59, but if required to plead denies paragraph 63.
64. Apprehends that paragraph 64 contains matters of law to which it is not required to plead, but if required to plead denies paragraph 64.

Second Ground of Review

65. Denies paragraph 65 and repeats paragraphs 50 and 51 above.
66. Denies paragraph 66.
67. Apprehends that it is not required to plead to paragraph 67, but if required to plead denies paragraph 67.
68. Denies paragraph 68.

Third Ground of Review

69. Apprehends that paragraph 69 contains matters of law and/or legal submission to which it is not required to plead, but if required to plead denies paragraph 69.
70. Apprehends that paragraph 70 contains matters of law and particulars to which it is not required to plead, but if required to plead denies paragraph 70.
71. Apprehends that it is not required to plead to paragraph 71, but if required to plead denies paragraph 71.

Relief

72. The second respondent denies the applicants are entitled to the relief sought at paragraph 72.

This document is filed by Michelle Stapleton, solicitor for the second respondent, of Wakefields Lawyers Ltd.

The address for service of the second respondent is Wakefields Lawyers Ltd, Level 2, Zephyr House, 82 Willis Street, Wellington 6011. Documents for service on the second respondent may be left at this address for service or may be:

- (a) posted to the solicitor at PO Box 8091, Wellington 6140; or
- (b) emailed to the solicitor at michelle@wakefieldslaw.com provided the documents are also emailed to rachel.roff@cliftonchambers.co.nz

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Initial Disclosure Documents

No.	Date	Description
1	Undated	Letter from Minister of Agriculture to NAWAC
2	25/05/2012	NAWAC invitation Rodeo Code
3	05/09/2013	Letter from NAWAC to Minister for Primary Industries
4	2013	2014 Code Report
5	2014	Code of Welfare Rodeos
6	2017	Scientific article
7	2018	Code of Welfare Rodeos
8	14/02/2018	Minutes
9	15/02/2018	Letter from NAWAC to Assoc Minister of Agriculture
10	01/03/2018	Press Release
11	31/05/2018	Letter from NAWAC to Assoc Minister of Agriculture
12	16/08/2018	Letter from NAWAC to Assoc Minister of Agriculture
13	15/04/2019	Letter from NAWAC to Minister of Agriculture
14	19/09/2019	Letter from NAWAC to Minister of Agriculture
15	05/08/2020	Letter from NAWAC to Minister of Agriculture
16	05/08/2021	Letter from NAWAC to Assoc Minister of Agriculture
17	May 2018	Rodeo Events – How do they impact on the sentient animal?
18	2018	Summary and Analysis of Data from NZRCA for 2017/2018 rodeo season
19	September 2021	Rodeo Code Review Subcommittee Minutes

20	October 2021	Rodeo Code Review Subcommittee Minutes
21	March 2013	Rodeo Code Review Subcommittee Minutes
22	May 2018	NAWAC General Meeting Minutes
23	August 2018	NAWAC General Meeting Minutes
24	2017/2018	Veterinary report statistics
25	2016/2017	Veterinary report statistics
26	12/2021	NAWAC Guideline #15
27	15 August 2018	NAWAC Memorandum 59/18

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IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

CIV-2021-485-360

I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA TOHE

UNDER THE Judicial Review Procedure Act 2016

IN THE MATTER OF The Code of Welfare: Rodeos 2018

BETWEEN **THE NEW ZEALAND ANIMAL LAW
ASSOCIATION**
First Applicant

AND **SAVE ANIMALS FROM EXPLOITATION**
Second Applicant

AND **THE ATTORNEY-GENERAL**
First Respondent

AND **THE NATIONAL ANIMAL WELFARE
ADVISORY COMMITTEE**
Second Respondent

AND **NEW ZEALAND RODEO COWBOYS
ASSOCIATION INCORPORATED**
Third Respondent

**STATEMENT OF DEFENCE OF THE THIRD RESPONDENT TO AMENDED
STATEMENT OF CLAIM (APPLICATION FOR REVIEW)**

4 May 2022

Next Event Date: Hearing 11 July and 12 July 2022
Judicial Officer:

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**STATEMENT OF DEFENCE OF THE THIRD RESPONDENT TO AMENDED
STATEMENT OF CLAIM (APPLICATION FOR REVIEW)**

**The Third Respondent says in answer to the Amended Statement of Claim dated
19 April 2022:**

Parties

- 1 It admits paragraph 1.
- 2 It admits that the Rules of the First Applicant contain similar purposes but otherwise denies paragraph 2.
- 3 It admits paragraph 3.
- 4 It denies paragraph 4 and says further that the Second Applicant's objectives, as contained in its Rules, are to raise public awareness of the suffering, abuse and exploitation of animals and promote education on human-animal relations.
- 5 It admits paragraph 5.
- 6 It admits paragraph 6.
- 7 It admits paragraph 7.

Relevant Statutory Framework

- 8 It denies paragraph 8 and says that the purposes of the Animal Welfare Act 1999 (**Act**) are set out in Parts 1-7 of the Act, with each Part having a purpose statement.
- 9 It denies paragraph 9 and says further that it relies on the Act as if set out in full.
- 10 It denies paragraph 10 and says further that:
 - (a) section 183A empowers the Governor-General, on the recommendation of the Minister, to make regulations relating to standards of care, including regulations that do not fully meet the obligations of sections 10 and 11 or the obligations that a person would need to observe in the treatment, transport, or killing of animals if that person were to avoid an offence under other sections including section 29.

- (b) Unlike Codes of Welfare, regulations are directly enforceable, and breach of a regulation is an offence.
- (c) Section 183A(1)(b) provides for the establishment, amendment, revocation, or replacement of minimum standards.
- (d) Section 183A(10) provides that the Minister must consult with NAWAC before recommending the making of any regulations under section 183A(1)(b) but nothing in sections 71 to 75 applies in relation to the making of such regulations under subsection (1)(b).
- (e) Section 184 imposes further consultation requirements to the extent reasonably practicable in relation to proposed regulations.

11 It denies paragraph 11 and repeats paragraphs 8 and 9.

Codes of Welfare

12 It admits paragraph 12 save to clarify that minimum standards in codes of welfare are not directly enforceable and relies on section 68 of the Act as if set out in full. It says further that section 69 provides that codes of conduct may relate to a range of purposes and activities and relies on section 69 as if set out in full.

13 It denies paragraph 13 and says further that:

- (a) in considering the content of a draft code of welfare and before deciding to recommend to the Minister the issue of the code, NAWAC must be satisfied the proposed standards are the minimum necessary to meet the purposes of the Act and that the recommendations for best practice (if any) are appropriate; and
- (b) it relies on section 73 of the Act as if set out in full.

14 It admits paragraph 14 and relies on sections 70 of the Act as if set out in full.

15 It denies paragraph 15 and relies on sections 71 and 76 as if set out in full.

16 It admits paragraph 16 and relies on section 73 as if set out in full.

17 It admits paragraph 17 and relies on section 73 as if set out in full.

18 It admits paragraph 18 and relies on section 74 as if set out in full.

19 It admits paragraph 19 and relies on section 74 as if set out in full.

- 20 It admits paragraph 20 and relies on section 75 as if set out in full.
- 21 In respect of paragraph 21:
- (a) it admits that section 76 of the Act provides that the Minister may from time to time revoke a code of welfare or any part of a code of welfare; or make amendments of a minor nature to a code of welfare (being minor amendments that would not materially affect the purposes of the code);
 - (b) relies on section 76 of the Act as if set out in full; and
 - (c) otherwise denies paragraph 21.
- 22 It admits paragraph 22 and says further that section 13(2)(c) provides that if a defendant equals or exceeds minimum standards contained in a code of welfare, together with other requirements, then the defendant may have a defence to any prosecution brought under section 12 (for breach of sections 10 and 11). Conversely, if a minimum standard contained in a code of welfare was breached by a defendant then there is rebuttable evidence under 13(1A) that the person failed to comply with the provisions of the Act.

The Practice of Rodeo

- 23 It denies paragraph 23 and relies on the descriptions of the rodeo events defined in the Code of Welfare: Rodeos 2018 (the "**2018 Code**") as if set out in full.

Steer wrestling

- 24 It admits steer wrestling is a rodeo event, where a horse-mounted rider chases a steer, drops from the horse to the steer and wrestles it to the ground, it otherwise denies paragraph 24 and says further:
- (a) it relies on paragraph 6.5 of the 2018 Code as if pleaded in full; and
 - (b) says that in the steer wrestling event a mounted rider chases a steer, drops from a horse to the steer and wrestles the steer to the ground. The time is flagged when the steer has all four hooves off the ground and legs pointing out straight. The animals involved in this event are often bred specifically for this event and need to be in good physical condition with no defects and must be trained and familiarised with the arena before competing.

Calf roping

25 It denies paragraph 25 and says further:

- (a) calf roping is now known as rope and tie;
- (b) it relies on paragraph 6.3 of the 2018 Code as if pleaded in full; and
- (c) says in the rope and tie event, an animal is released from the chute which then triggers the release of the horse and rider, who will seek to rope the animal in the arena, dismount, put the roped animal on the ground and tie three of the animal's legs using a pegging string, while a well-trained horse will effectively maintain the tension on the rope. The animal needs to remain tied to the judge's satisfaction for the tie to be considered successful. Animals used in these events can be subjected to physical stressors and need to be fit, healthy and without defects, and must be trained and familiarised with the arena before competing.

Calf riding

26 It admits calf riding is a children's rodeo event, otherwise denies paragraph 26 and says further:

- (a) it relies on paragraph 6.6 of the 2018 Code as if pleaded in full;
- (b) calf riding is designed to enable younger and lighter competitors to participate in rodeo; and
- (c) its voluntary increase in the liveweight of animals used in this event has led to the discontinuance of calf riding at rodeo events sanctioned by it.

Bronc riding

27 It admits bronc riding is a rodeo event that involves a rodeo participant riding a bucking horse that attempts to throw or buck off the rider, otherwise denies paragraph 27 and says further:

- (a) it relies on paragraph 6.1 of the 2018 Code as if pleaded in full;
- (b) there are two types of this event, saddle bronc riding, where the horse is fitted with a saddle, and bareback bronc riding, where the horse is fitted with bareback rigging only;

- (c) in both events the horse will be fitted with a flank strap which runs around the body of the horse just in front of the back legs, which is a que for the horse to buck and promotes consistent and safe bucking rather than wild and uncontrolled bucking; and
- (d) minimum standard number 7 provides that the flank strap must not be so tight as to restrict the movement of the horse and must be removed from the horse as soon as it is practicable to do so.

Bull and steer riding

28 It admits bull and steer riding is a rodeo event that involves a rider mounting a bucking bull/steer and attempting to stay mounted while the animal tries to buck and dislodge the rider, otherwise denies paragraph 28 and says further:

- (a) it relies on paragraph 6.2 of the 2018 Code as if pleaded in full;
- (b) that the bull or steer is fitted with a front 'bull rope' which wraps arounds its body and which the rider holds on top to maintain their seating. This bull rope is required to fall away from the animal as soon as the rider is displaced or dismounts; and
- (c) that the animal is also fitted with a flank strap which is a que for the bull to buck and promotes consistent and safe bucking. Minimum standard number 8 requires that the flank trap must not be so tight as to restrict the movement of the animal.

Team roping

29 It admits team roping is a rodeo event which involves two riders (a header and a heeler) and a steer, otherwise denies paragraph 29 and says further;

- (a) it relies on paragraph 6.4 of the 2018 Code as if pleaded full;
- (b) that the header will rope the steer around both horns, the head and one horn, or the neck, and the heeler then ropes the steer around the hind legs. The time recorded is the time at which the steer is stopped and there is no slack in both the header and heeler's ropes; and
- (c) the rope is slackened immediately upon completion of the event when the clock is stopped. The animals involved in this event are often bred specifically for this event and need to be in good physical condition with no defects and must be trained and familiarised with the arena before competing

Barrel racing

30 It admits barrel racing is a rodeo event where riders guide their horses around three barrels in a cloverleaf pattern in the shortest time possible, otherwise denies paragraph 30 and says further:

- (a) it relies on paragraph 6.7 of the 2018 Code as if pleaded in full; and
- (b) that given the requirements for this event, the animals participating need to be well trained and in good physical condition.

31 It denies paragraph 31 and says that rodeo is a well-established sport in New Zealand and also serves an educational function.

32 It denies paragraph 32 and further says that:

- (a) the issue of pain and distress to animals in rodeo has been regularly reviewed and scrutinised under the Act and in the development of the 2014 and 2018 Codes of Welfare: Rodeo. Such scrutiny has included a full review of the most up to date scientific research and evidence, independent expert input, and submissions and information provided by third parties including the Third Respondent as well as the allegations now made by the Applicants in their pleadings and contained in the First Applicant's earlier report by Catriona MacLennan.
- (b) the Third Respondent has developed rules to ensure that rodeo practices comply with the minimum standards set out in the 2018 Code.
- (c) Rodeo practices that comply with the current Code of Welfare: Rodeo and the Rules of the Third Respondent do not cause unnecessary or unreasonable pain or distress and/or result in the wilful or reckless ill-treatment of animals and there are substantial safeguards in place to provide for the welfare of the animals involved in rodeo.
- (d) the Animal Welfare (Care and Procedure) Regulations 2018 created new offences for the misuse of animals including at rodeo events.
- (e) in 2019, the NZRCA established the Rodeo Animal Welfare Committee to review, assess and make recommendations on animal welfare issues to the NZRCA Board. Membership of the Committee is limited to a minimum of six representatives and consists of an independent

chairperson, a senior member of the NZRCA who has knowledge of the Animal Welfare policies and their administration, a senior member of the NZRCA who has knowledge of the Association's rules and policies and their administration, a person nominated by and representing the Ministry of Primary Industries with responsibility for Animal Welfare (MPI) who has knowledge of regulations and compliance, a person nominated by and representing the Royal New Zealand Society for Prevention of Cruelty to Animals who has knowledge of the science of Animal Welfare, and a veterinarian nominated by and representing the New Zealand Veterinarian Association who has knowledge of the veterinary care of rodeo animals and of the science of Animal Welfare. A NAWAC observer must be present at each meeting.

- (f) every rodeo in New Zealand requires an Animal Welfare Officer and a veterinarian experienced in treating horses and cattle. The officer and veterinarian must inspect and approve each animal prior to participation and monitor the event.
- (g) parts of the Animal Welfare (Care and Procedures) Amendment Regulations 2020 apply to animals at rodeo events.

- 33 It denies paragraph 33 and repeats paragraphs 24 and 32.
- 34 It denies paragraph 34 and repeats paragraphs 25 and 32.
- 35 It denies paragraph 35 and repeats paragraphs 26 and 32.
- 36 It denies paragraph 36 and repeats paragraphs 27 and 32.
- 37 It denies paragraph 37 and repeats paragraphs 28 and 32.
- 38 It denies paragraph 38 and repeats paragraphs 29 and 32.
- 39 It denies paragraph 39 and repeats paragraphs 30 and 32.
- 40 It denies paragraph 40 and repeats paragraph 32.

Rodeo Codes of Welfare

- 41 It admits paragraph 41.
- 42 It admits paragraph 42.
- 43 It admits paragraph 43.
- 44 It admits the text of the NZALA report and otherwise denies paragraph 44.

- 45 It has insufficient knowledge and therefore denies paragraph 45.
- 46 It admits paragraph 46.
- 47 It admits the NAWAC's report is dated May 2018 and that it was published on NAWAC's website in October 2018, and otherwise has insufficient knowledge and denies paragraph 47.
- 48 It admits paragraph 48.
- 49 It denies paragraph 49 and relies on the NAWAC report in full.
- 50 It apprehends that the matters pleaded at paragraph 50 relate to the conduct and interests of the First and Second Respondents and that it is not required to plead to the allegations therein.
- 51 It apprehends that the matters pleaded at paragraph 51 relate to the conduct and interests of the First and Second Respondents and that it is not required to plead to the allegations therein.
- 52 It apprehends that the matters pleaded at paragraph 52 relate to the conduct and interests of the First and Second Respondents and that it is not required to plead to the allegations therein.
- 53 In respect of paragraph 53 it:
- (a) admits that in October 2018, the 2014 Code was revoked under section 76(1)(a) and the Minister issued the Code of Welfare: Rodeo 2018 under section 75 of the Act; and
 - (b) otherwise apprehends that the matters pleaded at paragraph 53 relate to the conduct and interests of the First and Second Respondents and that it is not required to plead to the allegations therein.
- 54 It admits paragraph 54.
- 55 In respect of paragraph 55:
- (a) it admits that it is aware the Code was amended under section 76 of the Act.
 - (b) it admits paragraph (a) but says that this requirement was already contained in the 2018 Code at Minimum Standard 4(a).

- (c) it admits that a new chapter 7.1 Significant Surgical Procedures was introduced but otherwise denies paragraph (b).
- (d) it denies paragraph (c).
- (e) it admits paragraph (d).
- (f) it admits paragraph (e)

56 It denies paragraph 56.

Statutory powers of decision

57 It apprehends that the matters pleaded at paragraph 57 relate to the conduct and interests of the First and Second Respondents and that it is not required to plead to the allegations therein.

58 It apprehends that the matters pleaded at paragraph 58 relate to the conduct and interests of the First and Second Respondents and that it is not required to plead to the allegations therein.

First ground of review – Failure to follow process

59 It apprehends that the matters pleaded at paragraph 59 relate to the conduct and interests of the First and Second Respondents and that it is not required to plead to the allegations therein.

60 It apprehends that the matters pleaded at paragraph 60 relate to the conduct and interests of the First and Second Respondents and that it is not required to plead to the allegations therein.

61 It apprehends that it is not required to plead in respect of the process followed by the Second Respondent but says further that to the extent paragraph 61 seeks to allege or intimate that NAWAC had inadequate information, research, and scientific knowledge such that conduct consistent with the 2018 Code may result in rodeo practices that contravene the Act then it denies the allegations pleaded therein.

62 It apprehends that it is not required to plead in respect of the process followed by the Second Respondent but says further that to the extent paragraph 62 seeks to allege or intimate that NAWAC had inadequate information, research, and scientific knowledge such that conduct consistent with the 2018 Code may result in rodeo practices that contravene the Act then it denies the allegations pleaded therein.

63 It apprehends that it is not required to plead in respect of the processes followed by the Minister or Second Respondent but says further that to the extent paragraph 63 seeks to allege or intimate that NAWAC had inadequate information, research, and scientific knowledge such that conduct consistent with the 2018 Code may result in rodeo practices that contravene the Act then it denies the allegations pleaded therein.

64 It apprehends that it is not required to plead in respect of the processes followed by the Minister or Second Respondent but says further that to the extent paragraph 64 seeks to allege or intimate that rodeo practices are unlawful under the Act itself then it denies the allegations pleaded therein.

Second Ground of Review – error of law

65 It apprehends that the matters pleaded at paragraph 65 relate to the conduct and interests of the First and Second Respondents and that it is not required to plead to the allegations therein.

66 It apprehends that it is not required to plead in respect of the processes followed by the Minister or Second Respondent but says further that to the extent paragraph 66 seeks to allege or intimate that NAWAC had inadequate information, research, and scientific knowledge such that conduct consistent with the 2018 Code may result in rodeo practices that contravene the Act then it denies the allegations pleaded therein.

67 It apprehends that it is not required to plead in respect of the processes followed by the Minister but says further that to the extent paragraph 67 seeks to allege or intimate that rodeo practices breach provisions within the Act or are otherwise unlawful under the Act itself then it denies the allegations pleaded therein.

68 It denies paragraph 68.

Third ground of review – ultra vires or improper purpose

69 It denies paragraph 69.

70 It denies paragraph 70.

71 It denies paragraph 71.

Relief

72 It is not required to plead to paragraph 72.

This Document is filed by **SARA JOY JAMIESON** solicitor for the Third Respondent, of the firm Tavendale and Partners. The address for service of the Third Respondent is at the offices of Tavendale and Partners, Level 3, 329 Durham Street, Christchurch.

Documents for service on the Third Respondent may be delivered to that address or may be:

- (a) posted to the solicitor at PO Box 442, Christchurch 8140.
- (b) left for the solicitor at a document exchange for direction to DX WX11145, Christchurch
- (c) Emailed to the solicitor for the Third Respondent at sara.jamieson@tp.co.nz / jared.higby@tp.co.nz and to jared@jaredormsby.co.nz.

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AND

THE NATIONAL ANIMAL WELFARE
ADVISORY COMMITTEE

Second Respondent

AND

THE NEW ZEALAND RODEO
COWBOYS ASSOCIATION
INCORPORATED

Third Respondent

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The second respondent by its solicitor says in response to the amended statement of claim (application for review) dated 19 April 2022:

PARTIES

1. Admits paragraph 1.
2. Apprehends paragraph 2 contains matters to which it is not required to plead.
3. Admits paragraph 3.
4. Apprehends paragraph 4 contains matters to which it is not required to plead.
5. Admits paragraph 5.
6. Admits paragraph 6.
7. Admits paragraph 7.

RELEVANT STATUTORY FRAMEWORK

Purposes, policy and object of the Act

8. Apprehends paragraph 8 contains matters of law and/or submission to which it is not required to plead.
9. Apprehends paragraph 9 contains matters of law and/or submission to which it is not required to plead.
10. Apprehends paragraph 10 contains matters of law and/or submission to which it is not required to plead.
11. Apprehends paragraph 11 contains matters of law and/or submission to which it is not required to plead.

Codes of Welfare

12. In respect of paragraph 12:
 - 12.1 admits codes of welfare establish minimum standards with regard to the way in which persons care for animals and conduct themselves towards such animals; and

- 12.2 admits codes of welfare include recommendations on the best practice to be observed by persons in caring for such animals and in conducting themselves towards such animals; and
- 12.3 relies on sections 68 and 69 of the Act as if set out in full; and
- 12.4 further says minimum standards in codes of welfare are not directly enforceable; but
- 12.5 otherwise denies paragraph 12.
13. Denies paragraph 13 and further says:
- 13.1 before making its recommendation on minimum standards in a code of welfare, NAWAC must be satisfied the proposed standards are the minimum necessary to meet the purposes of the Act; and
- 13.2 relies on section 73 of the Act as if set out in full.
14. Admits paragraph 14 and relies on section 70 of the Act as if set out in full.
15. In respect of paragraph 15:
- 15.1 admits NAWAC must publicly notify a draft code of welfare if NAWAC is satisfied the requirements of section 71(1) of the Act are met; and
- 15.2 admits NAWAC may consult with those persons who, in response to a notice published or given under section 71(3) of the Act make draft submissions on the draft code of welfare; and
- 15.3 relies on sections 71, 72 and 76 of the Act as if set out in full; but
- 15.4 otherwise denies paragraph 15.
16. Admits paragraph 16 and relies on section 73 of the Act as if set out in full.
17. Admits paragraph 17 and further says:
- 17.1 in carrying out its functions under section 73(1) NAWAC must also have regard to:

- 17.1.1 available technology; and
- 17.1.2 any other matters considered relevant by NAWAC; and
- 17.2 relies on section 73 of the Act as if set out in full.
- 18. Admits paragraph 18 and relies on section 74 of the Act as if set out in full.
- 19. Admits paragraph 19 and relies on section 74 of the Act as if set out in full.
- 20. Admits paragraph 20 and relies on section 75 of the Act as if set out in full.
- 21. In respect of paragraph 21:
 - 21.1 admits section 76 of the Act provides that the Minister may:
 - 21.1.1 revoke a code of welfare or any part of a code of welfare; or
 - 21.1.2 make amendments of a minor nature to a code of welfare (being minor amendments that would not materially affect the purposes of the code); and
 - 21.2 relies on section 76 of the Act as if set out in full; and
 - 21.3 otherwise denies paragraph 21.
- 22. In respect of paragraph 22;
 - 22.1 repeats paragraph 12.4 above;
 - 22.2 relies on s 24 as if set out in full;
 - 22.3 otherwise denies paragraph 22.

THE PRACTICE OF RODEO

- 23. Denies paragraph 23 and refers to the 2018 Code of Welfare: Rodeos (2018 Code) definition of “rodeo” at Appendix 1 of the 2018 Code, and the descriptions of rodeo events referred to therein.
- 24. In respect of paragraph 24:
 - 24.1 admits Steer Wrestling is a rodeo event; and

- 24.2 admits a horse-mounted rider chases a steer, drops from the horse to the steer and wrestles the steer to the ground. The time is flagged when the steer has all four hooves off the ground and legs pointing out straight; and
- 24.3 relies on Part 6.5 and Appendix 1 of the 2018 Code as if set out in full; but
- 24.4 otherwise denies paragraph 24.
25. In respect of paragraph 25 says:
- 25.1 Calf Roping is a rodeo event now known as Rope and Tie; and
- 25.2 Rope and Tie is a timed rodeo event, where a calf is released from a chute which then triggers the release of the horse and rider, who will rope the calf in the area, dismount, put the roped calf on the ground and tie three of the calves' legs together using a pigging string, while a well-trained horse will effectively maintain the tension on the rope. The calf needs to remain tied for six seconds for the tie to be considered successful; and
- 25.3 relies on Part 6.3 and Appendix 1 of the 2018 Code as if set out in full; but
- 25.4 otherwise denies paragraph 25.
26. In respect of paragraph 26:
- 26.1 admits Calf Riding is a rodeo event; and further says:
- 26.1.1 Calf Riding is designed to enable younger and lighter competitors to participate in rodeo; and
- 26.1.2 weight restrictions that apply are designed to ensure that the animal involved in the event is not placed under undue stress; and
- 26.1.3 the voluntary increase by the New Zealand Rodeo Cowboys Association (NZRCA) in the liveweight of animals used in

this event has led to the discontinuance of Calf Riding at NZRCA sanctioned rodeo events.

- 26.2 relies on Part 6.6 of the 2018 Code as if set out in full; but
- 26.3 otherwise denies paragraph 26.
27. In respect of paragraph 27:
- 27.1 admits that Bronc Riding is a rodeo event; and
- 27.2 admits that Bronc Riding involves a rodeo participant riding a bucking horse that attempts to throw or buck off the rider; and further says:
- 27.2.1 there are two types of Bronc Riding: saddle bronc riding where a horse is fitted with a saddle; and bareback bronc riding where the horse is fitted with bareback rigging only; and
- 27.2.2 in both events the horse is fitted with a flank strap which runs around the body of the horse just in front of the back legs, which will encourage the horse to buck; and
- 27.3 relies on Part 6.1 and Appendix 1 of the 2018 Code as if set out in full; but
- 27.4 otherwise denies paragraph 27.
28. In respect of paragraph 28:
- 28.1 admits that Bull or Steer Riding is a rodeo event; and further says:
- 28.1.1 Bull or Steer Riding involves a bull or a steer being released into the arena where it will buck to dislodge the rider from its back; and
- 28.1.2 the animal is fitted with a front "bull rope" which wraps around its body and which the rider holds onto to maintain his or her seating; and

- 28.1.3 the bull rope is a quick release type of rope that will fall away from the animal as soon as the rider is displaced or dismounts; and
- 28.1.4 the animal is also fitted with a flank strap to encourage bucking; and
- 28.2 relies on Part 6.2 and Appendix 1 of the 2018 Code as if set out in full; but
- 28.3 otherwise denies paragraph 28.
29. In respect of paragraph 29:
- 29.1 admits that Team Roping is a rodeo event; and
- 29.2 admits that Team Roping involves two riders a header and a heeler and a steer; and says further
- 29.2.1 the header will rope the steer around both horns, the head and one horn, or the neck, and the heeler then ropes the steer around the hind legs. The time recorded is that after the steer is stopped and there is no slack in both the header and heeler's ropes; and
- 29.2.2 the rope is slackened immediately upon completion of the event when the clock is stopped; and
- 29.3 relies on Part 6.4 and Appendix 1 of the 2018 Code as if set out in full; but
- 29.4 otherwise denies paragraph 29.
30. Admits paragraph 30 and relies on Part 6.7 and Appendix 1 of the 2018 Code as if set out in full.
31. In respect of paragraph 31:
- 31.1 admits the practice of rodeo is undertaken for entertainment purposes; and further says:

31.1.1 the practice of rodeo is also a recognised sport; and

31.1.2 NAWAC has recently developed and published a Guideline that will be applied by NAWAC in order understand why people engage with activities using animals in exhibition, entertainment, and encounter (the 3Es). It is anticipated that the Guideline and principles therein will guide NAWAC's decision making for these uses.; but

31.2 otherwise denies paragraph 31.

32. Denies paragraph 32; and further says:

32.1 Rodeo practices that comply with the minimum standards set out in the 2018 Code do not cause unnecessary or unreasonable pain or distress and/or result in the wilful or reckless ill-treatment of animals; and

32.2 The minimum standards set out in the 2018 Code are the minimum standards necessary to ensure the purposes of the Act are met.; and

32.3 At a meeting on 19 May 2021 NAWAC decided to:

32.3.1 reprioritise a statutory review of the 2018 Code; and

32.3.2 convene a NAWAC subcommittee (the Rodeo Code Review Subcommittee) to undertake the statutory review; and

32.4 The Rodeo Code Review Subcommittee's statutory review of the 2018 Code has recently completed the pre-consultation stage of the review, which has involved the Rodeo Code Review Subcommittee consulting, or attempting to consult, with representatives of the persons likely to be affected by the draft, including the applicants, in accordance with section 71(1)(e) of the Act.

33. In respect of paragraph 33:

33.1 repeats paragraphs 32.1 to 32.4 above; and

33.2 admits it is likely there is at least moderate pain experienced by the steer from the 'throwing' action imposed by the contestant when the neck twist is applied using the horns and chin as leverage; and further says:

33.2.1 NAWAC assumes that some bruising would persist after the event; and

33.2.2 NAWAC recommended to the Associate Minister of Agriculture, the Hon Meka Whaitiri (the Minister) in May 2018, in relation to Steer Wrestling, the implementation of non-regulatory actions to encourage recommended best practice, gather information and monitor compliance with minimum standards. These included:

(a) the commissioning of further research into the impact of experiences in the rodeo arena; and

(b) increased monitoring and record keeping of the animals being trained and used over a season, including the number of animals involved, and any animal injuries sustained; and

33.3 otherwise, does not know and therefore denies paragraph 33.

34. In respect of paragraph 33:

34.1 repeats paragraph 25.1 to 25.3 above; and

34.2 repeats paragraph 32.1 to 32.4 above; and

34.3 admits that some physical and brief physiological stress may be suffered by some of the animals involved; and further says

34.3.1 NAWAC concluded in 2013, in relation to Rope and Tie, that in the absence of evidence that the event causes calves' significant pain and distress, the event should not be discontinued; and

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34.3.2 NAWAC recommended to the Minister in 2018, in relation to Rope and Tie, the implementation of non-regulatory actions to encourage recommended best practice, gather information and monitor compliance with minimum standards. These included:

- (a) the implementation of methods and instruments that may have less of a negative impact on calves e.g. bungee ropes/breakaway ropes; and
- (b) the commissioning of further research into investigating the type and severity of damage to the necks of calves arising from this event; and
- (c) discussing with the industry options to reduce the number of calves used at rodeos or alternatively, to implement a voluntary phase out and cessation of this calf event; and

34.4 otherwise, does not know and therefore denies paragraph 34.

35. In respect of paragraph 35:

35.1 repeats paragraph 32.1 to 32.4 above; and

35.2 admits there is likely to be discomfort or irritation caused to the calf from the flank strap (if used) and the chest rope;

35.3 admits the presence of the rider may inflict some discomfort to the calf, and there may be potential for musculoskeletal injuries if the calf stumbles;

35.4 admits the calf may experience moderate pain, but that it is not expected to persist after the event; and further says:

35.4.1 there are no scientific studies that examine the effects of Calf Riding as it is practiced in New Zealand;

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35.4.2 NAWAC concluded in 2013, in relation to Calf Riding, that calves are of a sufficient weight and maturity that they will not be subjected to unreasonable pain or distress in this event;

35.4.3 NAWAC recommended to the Minister in 2018, in relation to Calf Riding, the implementation of non-regulatory actions to encourage recommended best practice, gather information, and monitor compliance with minimum standards. Being:

- (a) increased monitoring and record keeping of animals used, including reporting injury rates 48 hours post-event; and
- (b) ensuring children are weighed at each event before they ride calves to make sure that they comply with the maximum weight requirements; and
- (c) the voluntary increase by NZRCA in the liveweight of animals used in this event has led to the discontinuance of Calf Riding at NZRCA sanctioned rodeo events.

35.5 otherwise, does not know and therefore denies paragraph 35.

36. In respect of paragraph 36:

36.1 repeats paragraph 32.1 to 32.4 above; and further says:

36.1.1 NAWAC concluded in 2013, in relation to Bronc Riding, that the spurs used on animals in bucking events are adequately dulled and rotate sufficiently that they will not cause the animals undue pain or distress; and

36.1.2 NAWAC recommended to the Minister in 2018, in relation to Bronc Riding, the implementation of non-regulatory actions to encourage recommended best practice, gather information, and monitor compliance with minimum standards. Being:

- (a) increased monitoring and recording keeping of training of animals, including the number of animals involve, and injuries sustained; and
- (b) monitoring and reporting injury rates 48 hours post-event; and
- (c) discussing with the industry the necessity of spurs and whether alternative equipment can be used;

36.2 otherwise, does not know and therefore denies paragraph 36.

37. In respect of paragraph 37:

37.1 repeats paragraph 32.1 to 32.4 above;

37.2 admits that, very occasionally, bulls can suffer back injuries, fractures, or luxation's that require the bull to be euthanised; but says NAWAC concluded in 2018 that the frequency of these injuries was low; and relies on the NAWAC commissioned Report entitled "Rodeo events – how do they impact the sentient animal" dated May 2018 (2018 NAWAC report), veterinary report statistics supplied by NZRCA for the 2017/2018 rodeo season, and an analysis of the 2017/2018 veterinary report statistics prepared by the Chairperson of NAWAC for the purpose of the 2018 NAWAC report; and

37.3 admits that a study in the USA in 2017 found that the bucking bulls studied in that country were more likely to develop horn and sinus disorders, and musculoskeletal issues; and further says:

37.3.1 NAWAC recommended to the Minister in 2018, in relation to Bull or Steer Riding, the implementation of non-regulatory actions to encourage recommended best practice, gather information, and monitor compliance with minimum standards. Being:

- (a) increased monitoring and record keeping of the animals being trained, including the number of

animals involved, and any animal injuries sustained;
and

- (b) monitoring and reporting injury rates 48 hours post-event.

37.4 otherwise, does not know and therefore denies paragraph 37.

38. In respect of paragraph 38:

38.1 repeats paragraph 32.1 to 32.4 above; and further says:

38.1.1 NAWAC concluded in 2018 that the likelihood of pain and injury during Team Roping was minimal and it recommended to the Minister, in relation to Team Roping, the implementation of non-regulatory actions to encourage recommended best practice, gather information, and monitor compliance with minimum standards. Being:

- (a) increased monitoring and record keeping of animals undergoing training for team roping; and
- (b) the commissioning of research into alternative equipment that would aim to reduce the impact that the event has on the animal; and

38.2 Otherwise, does not know and therefore denies paragraph 38.

39. In respect of paragraph 39:

39.1 repeats paragraph 32.1 to 32.4 above; and further says:

39.2 NAWAC concluded in 2018 that the risk of injury caused by Barrel Racing was low and it recommended to the Minister non-regulatory actions to encourage recommended best practice, gather information, and monitor compliance with minimum standards. Being:

39.2.1 discussing with the industry the necessity of using curb bits, spurs, and whips during this event, and to determine whether there are alternatives that could be used; and

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39.2.2 increased monitoring and record keeping of horses undergoing training for Barrel Racing; and

39.2.3 the commissioning of research into injury rates in post-event period; and

39.3 otherwise, does not know and therefore denies paragraph 39.

40. Does not know and therefore denies paragraph 40, and further repeats paragraph 32.1 to 32.4 above.

RODEO CODE OF WELFARE

41. Admits paragraph 41.

42. Admits paragraph 42 and further says:

42.1 Consultation with representatives of the persons likely to be affected by the draft Code (pre-consultation) took place between 25 May and 29 June 2012 with Bull Riding NZ Inc, NZRCA, the NZ Veterinary Association and the Royal Society for the Prevention of Cruelty to Animals ; and

42.2 Public consultation ran from 12 October to 26 November 2012, following notices in newspapers in Auckland, Wellington, Christchurch and Dunedin and direct contact with interest groups; and

42.3 30 written submissions on the draft Code were received, as well as 368 form letters from SAFE and 8 form letters from rodeo supporters; and

42.4 NAWAC convened a subcommittee to consider the submissions. The subcommittee consulted with Ministry for Primary Industries (MPI) Animal Welfare staff, visited rodeo events, and consulted with industry. The subcommittee contracted experts Bernie Rollin, philosopher and ethicist, and Professor Orivaldo Tenorio, a veterinarian and regulator of rodeo in Brazil; and

42.5 The draft Code was peer reviewed by Dr Cia Johnson of the American Veterinary Medical Association's Animal Welfare Division; and

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- 42.6 NAWAC recommended the draft Code to the Minister for Primary Industries on 5 September 2013.
43. Admits paragraph 43.
44. In respect of paragraph 44:
- 44.1 admits the NZALA report provided a review of the practice of rodeo in New Zealand, and set out the position in other jurisdictions, and some evidence of the impact of rodeo on animals; but
- 44.2 otherwise denies paragraph 44 and denies that the NZALA report's conclusion is correct.
45. Denies paragraph 45 and further says:
- 45.1 the Minister sought advice from NAWAC on several aspects of rodeos, being the use of calves, tail twisting, rope burning, flank straps, and electric prodders when she attended a NAWAC meeting on 14 February 2018; and
- 45.2 to address the matters raised by the Minister, NAWAC assembled an expert panel that utilised a Five Domains model approach to assess the impact of individual rodeo events on the welfare of the animals involved;
- 45.3 the report produced by the expert panel was entitled "Rodeo events – how do they impact the sentient animal?" (NAWAC's Report); and
- 45.4 the expert panel did not consider ethical, social, or legal questions relating to rodeos, nor carry out a statutory review of the 2014 Code.
46. Admits paragraph 46.
47. In respect of paragraph 47:
- 47.1 admits NAWAC's Report was dated May 2018; and further says:
- 47.1.1 NAWAC's Report was put on the NAWAC website in October 2018; but

- 47.2 otherwise denies paragraph 47.
48. Admits paragraph 48.
49. Admits paragraph 49; and
- 49.1 relies on NAWAC's Report as if set out in full; and further says:
- 49.1.1 NAWAC considered that the current minimum standards and the new Animal Welfare (Care and Procedures) Regulations 2018 that were being developed and were due to come into force on 1 October 2018 adequately managed the issues raised by the Minister; and
- 49.1.2 NAWAC recommended several non-regulatory actions to encourage recommended best practice, gather information, and monitor compliance with minimum standards. These included the establishment of a Rodeo Animal Welfare Committee, increased monitoring and record keeping; proposing the commissioning of research to assess the physical impact of events on animals; and discussions with the industry to explore and introduce alternative instruments and practices; and
- 49.1.3 Subsequently:
- (a) NZRCA has established the Rodeo Animal Welfare Committee (RAWC) in August 2019. The RAWC is made up of representatives from NZRCA, SPCA, New Zealand Veterinary Association and MPI Compliance. NAWAC sits on the RAWC as an observer; and
- (b) RAWC passed a motion for the NZRCA Board to consider ceasing the Rope and Tie event. This motion was rejected at the NZRCA's AGM in July 2021; and

- (c) RAWC passed a motion for the NZRCA Board to consider banning the use of whips/crops in Barrel Racing. This motion was rejected at the NZRCA's AGM in July 2021; and
- (d) A more detailed record keeping system has been established by NZRCA, under the guidance of RAWC, in the form of updated veterinarian report templates being completed by the on-site veterinarian attending the rodeo on the day of the rodeo; and
- (e) NZRCA now requires weights to be provided for all animals used in Steer Wrestling events; and
- (f) NZRCA has voluntarily increased the liveweight of animals used in Calf Riding which has led to the discontinuance of Calf Riding at NZRCA sanctioned rodeo events. The event is now known as "junior steer riding"; and
- (g) NAWAC understands, NZRCA is, on the advice of RAWC, considering initiating a drug testing regime to screen for the use of pain relief in competitors' horses in Barrel Racing; and
- (h) NAWAC provides the Minister with bi-annual updates on Rodeos.

50. In respect of paragraph 50:

50.1 Denies paragraph 50, and further says:

50.2 NAWAC was consulted about the proposed minor amendments and reissue of the 2018 Code as required under section 76(2) of the Act; and

50.2.1 NAWAC informed the Minister on 16 August 2018 that it agreed the proposed amendments to a number of codes of

welfare, including the 2014 Code, were minor and technical in nature, and that it supported the amendment and reissue of all the codes; and

50.2.2 The 2018 Code contained amendments of a minor and technical nature relating to formatting and to ensure consistency with regulations, that were enacted by section 76(1)(b); and

50.2.3 The 2018 Code also contained consequential and minor amendments to minimum standards 4 and 5 and the definitions section at Appendix 1 to incorporate the Animal Welfare (Care and Procedures) Regulations 2018 (**Regulations**), which came into force on 1 October 2018, that were enacted by Part 2 of Schedule 2 of the Regulations, through section 183A(1)(b) of the Act; and

50.2.4 NAWAC participated in the process for developing the Regulations including placing its members on a Regulations working group, providing comment on the policy intent of regulatory proposals, and commenting on the draft regulations; and

50.2.5 The applicants and any affected party had an opportunity to be consulted and make submissions on the Regulations and therefore to the amendments to the Code, because Part 2 of Schedule 2 of the Regulations set out the consequential and minor amendments that were to be made to the Code.

50.3 otherwise denies paragraph 50.

51. Admits paragraph 51, repeats paragraph 50 above and further says:

51.1 There is no requirement for NAWAC to publicly notify a code of welfare or produce a report under s 74(2) where amendments to a code are enacted by section 76(1)(b) or by regulation through section 183A(1)(b) of the Act; and

51.2 any procedural error made in issuing or reissuing the 2018 Code was a minor defect or technical irregularity only that is not reviewable and does not warrant any relief being granted to the applicants as there was adequate consultation and notification in respect of the amendments that were made to the 2018 Code due to the extensive public notification and consultation that took place for the Regulations.

52. In respect of paragraph 52:

52.1 admits that in a briefing paper dated 15 August 2018, the Ministry for Primary Industries sought the Minister's approval to reissue 17 Codes of Welfare, including the 2018 Code;

52.2 admits paragraph 52(a), but says the correct reference to the extract provided paper is paragraph 14 of the briefing paper, not paragraph 10;

52.3 admits paragraph 52(b) to the extent that the briefing paper says NAWAC had been consulted and recommended that the Minister reissue the Codes; and further says:

52.3.1 NAWAC did not make a recommendation to the Minister under section 74 of the Act to reissue the Codes;

52.4 admits paragraph 52(c); and further says:

52.4.1 the Ministry for Primary Industries briefed the Minister on the NZALA Report and NAWAC's Report in a briefing paper dated 19 June 2018;

52.5 admits paragraph 52(d); and

52.6 relies on the 15 August 2018 briefing paper as if set out in full;

52.7 otherwise denies paragraph 52.

53. In respect of paragraph 53:

53.1 admits that in October 2018, the 2014 Code was revoked under section 76(1)(a) and the Minister issued under section 75 the Code of Welfare: Rodeo 2018 (2018 Code);

- 53.2 repeats paragraphs 50 and 51 above; and
- 53.3 otherwise denies paragraph 53.
54. Admits paragraph 54.
55. In respect of paragraph 55:
- 55.1 admits the 2018 Code was amended under s 76, with effect from 9 May 2021; and
- 55.2 admits paragraph 55(a); and
- 55.3 admits that a new chapter 7.1 Significant Surgical Procedures was introduced; but otherwise denies paragraph 55(b); and
- 55.4 denies paragraph 55(c); and
- 55.5 admits paragraph 55(d); and
- 55.6 admits paragraph 5(e); and
56. Denies paragraph 56.

STATUTORY POWERS OF DECISION

57. Admits paragraph 57.
58. Admits paragraph 58.

GROUNDS OF REVIEW

First Ground of Review

59. Denies paragraph 59.
60. Denies paragraph 60.
61. Denies paragraph 61.
62. Denies paragraph 62.
63. Apprehends that it is not required to plead to paragraph 59, but if required to plead denies paragraph 63.

64. Apprehends that paragraph 64 contains matters of law to which it is not required to plead, but if required to plead denies paragraph 64.

Second Ground of Review

65. Denies paragraph 65 and repeats paragraphs 50 and 51 above.
66. Denies paragraph 66.
67. Apprehends that it is not required to plead to paragraph 67, but if required to plead denies paragraph 67.
68. Denies paragraph 68.

Third Ground of Review

69. Apprehends that paragraph 69 contains matters of law and/or legal submission to which it is not required to plead, but if required to plead denies paragraph 69.
70. Apprehends that paragraph 70 contains matters of law and particulars to which it is not required to plead, but if required to plead denies paragraph 70.
71. Apprehends that it is not required to plead to paragraph 71, but if required to plead denies paragraph 71.

Relief

72. The second respondent denies the applicants are entitled to the relief sought at paragraph 72.

This document is filed by Michelle Stapleton, solicitor for the second respondent, of Wakefields Lawyers Ltd.

The address for service of the second respondent is Wakefields Lawyers Ltd, Level 2, Zephyr House, 82 Willis Street, Wellington 6011. Documents for service on the second respondent may be left at this address for service or may be:

- (a) posted to the solicitor at PO Box 8091, Wellington 6140; or
- (b) emailed to the solicitor at michelle@wakefieldslaw.com provided the documents are also emailed to rachel.roff@cliftonchambers.co.nz

Initial Disclosure Documents

No.	Date	Description
1	Undated	Letter from Minister of Agriculture to NAWAC
2	25/05/2012	NAWAC invitation Rodeo Code
3	05/09/2013	Letter from NAWAC to Minister for Primary Industries
4	2013	2014 Code Report
5	2014	Code of Welfare Rodeos
6	2017	Scientific article
7	2018	Code of Welfare Rodeos
8	14/02/2018	Minutes
9	15/02/2018	Letter from NAWAC to Assoc Minister of Agriculture
10	01/03/2018	Press Release
11	31/05/2018	Letter from NAWAC to Assoc Minister of Agriculture
12	16/08/2018	Letter from NAWAC to Assoc Minister of Agriculture
13	15/04/2019	Letter from NAWAC to Minister of Agriculture
14	19/09/2019	Letter from NAWAC to Minister of Agriculture
15	05/08/2020	Letter from NAWAC to Minister of Agriculture
16	05/08/2021	Letter from NAWAC to Assoc Minister of Agriculture
17	May 2018	Rodeo Events – How do they impact on the sentient animal?
18	2018	Summary and Analysis of Data from NZRCA for 2017/2018 rodeo season
19	September 2021	Rodeo Code Review Subcommittee Minutes

20	October 2021	Rodeo Code Review Subcommittee Minutes
21	March 2013	Rodeo Code Review Subcommittee Minutes
22	May 2018	NAWAC General Meeting Minutes
23	August 2018	NAWAC General Meeting Minutes
24	2017/2018	Veterinary report statistics
25	2016/2017	Veterinary report statistics
26	12/2021	NAWAC Guideline #15
27	15 August 2018	NAWAC Memorandum 59/18

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Application for in-court media coverage



When to use this form

Fill in this form if you want permission to film, record sound or take photos in a New Zealand court. You must be a member of the media as defined by the In-Court Media Coverage Guidelines.

Sending in your application

This form should be sent in at least 10 working days before you want access to the court (or 3 working days in the District Court). You can email, post or hand it in to the court where you want to record or take photos. (If you're emailing it, you will need to print out page 5, sign it and then scan it.)

Contact details for courts are on our website at justice.govt.nz/contact-us/find-us

Getting more information

Contact the court you have sent your application to by calling 0800 268 787 (if you're in New Zealand) or +64 9 583 1900 (if you're not in New Zealand).

The *In-court media coverage guidelines* can be viewed on our website at justice.govt.nz/about/news-and-media/media-centre/media-information/media-guide-for-reporting-the-courts-and-tribunals-edition-4-1/

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Step 1. Write down your details

Media organisation RNZ

Responsible person

Name Soumya Bhamidipati

Business address
Radio New Zealand House, Level 2, 155 The Terrace, Wellington, 6011

Postal address, if different from business address

Email XXXXXXXXXXXXXXXXXXXX@XXX.XX.XX

Contact phone numbers business 04 474 1758 mobile (9)(2)(a)

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Step 2. Write down what you want to record

Case name NZALA, SAFE v Agriculture Minister, National Animal Welfare Advisory Co

Case number (if known) _____

Scheduled start date 11 and 12 July 2022

Court (such as Wellington District Court) Wellington High Court

We want to cover:

- the trial
- sentencing (if the defendant is convicted)
- the appeal
- other (please give details)
Any other related hearings

Expected dates of coverage 11 and 12 July 2022

We ask permission to:

- film
- take photos
- record sound

Conditions

The following conditions of coverage should apply:

- standard conditions
- standard conditions as modified (please specify)

Step 3. Where may the recordings or photos be used?

Name of the tv or radio programmes on which the recordings or photos may be used:
Morning Report, Midday, hourly bulletins, Checkpoint, First Up

Name of the publications in which the photos may be used:

Name and address (url) of the website on which the recordings or photos may be used:
RNZ website - rnz.co.nz

Write down the details of any syndication arrangements:
Please see next page(s) for a list of RNZ's syndication partners

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Step 4. Sign and date the form and send it in

This form should be sent in at least 10 working days (or 3 working days in the District Court) before you want access, unless it is for a first appearance on a criminal matter

- This application has been sent in at least 10 working days in advance (or 3 working days in the District Court)
- This application has **not** been sent in 10 working days in advance (or 3 working days in the District Court)

because:

Apologies, RNZ has just realised this case was being heard on this date.

Although this application has **not** been sent in 10 working days in advance (or 3 working days in the District Court), it should be approved because:

This case is in the public interest and we intend to report on the outcome of the hearing. It is in the interests of the general public for people to have access to information about the judicial process and for justice to be seen to be done.

- (Please tick) Our organisation and our staff have been trained in our obligations under the *In-court media coverage guidelines* and will abide by them.

(9)(2)(a)

Responsible person's signature

7/7/22

Date

(If you're emailing this form, you will need to print out the page, sign it and then scan it.)

Send in this form

This form should be sent in at least 10 working days before you want access to the court (or 3 working days in the District Court). You can email, post or hand it in to the court where you want to record or take photos.

Contact details for courts are on our website at justice.govt.nz/contact-us/find-us

What happens next?

A judge at the relevant court will review your application and decide if your request will be approved and if any conditions will be applied. You will be contacted as soon as possible with their decision.

Court use only

Received by
NAME & POSITION

COURT NAME

Date
DATE FORM RECEIVED

Forwarded to for action.
JUDGE

Date
DATE FORM FORWARDED

Note: when forwarding the application to the parties, provide a copy of this application and the guidelines.

Judge use only

Approved Declined

Date

Signed

Name

Notes

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Application for in-court media coverage

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Step 1 Write down your details

Media organisation TELEVISION NEW ZEALAND

Responsible person

Name JESSICA SWAN

Business address

LEVEL 5, 86 LAMBTON QUAY, WELLINGTON

Postal address, if different from business address

Email XXXXXXXX.XXXX@XXXX.XX.XX

Contact phone numbers business 04 914 5095

mobile _____

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Step 2 Write down what you want to record

Case name The New Zealand Animal Law Association & Anor v The Attorney-General & A

Case number (if known) CIV-2021-485-360

Scheduled start date 11 July

Court (such as Wellington District Court) Wellington High Court

We want to cover:

- the trial
- sentencing (if the defendant is convicted)
- the appeal
- other (please give details)

Expected dates of coverage 11 July onwards

We ask permission to:

- film
- take photos
- record sound

Conditions

The following conditions of coverage should apply:

- standard conditions
- standard conditions as modified (please specify)

Step 3 **Where may the recordings or photos be used?**

Name of the tv or radio programmes on which the recordings or photos may be used:

ALL TVNZ PROGRAMMING incl BREAKFAST, MIDDAY, 1NEWS AT 6, 1NEWS
TONIGHT, SUNDAY, KE KARERE, SEVEN SHARP, ONLINE & SOCIAL MEDIA

Name of the publications in which the photos may be used:

Name and address (url) of the website on which the recordings or photos may be used:

1NEWS.CO.NZ, STUFF.CO.NZ

Write down the details of any syndication arrangements:

FAIRFAX MEDIA

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Step 4 Sign and date the form and send it in

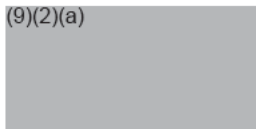
This form should be sent in at least 10 working days (or 3 working days in the District Court) before you want access, unless it is for a first appearance on a criminal matter

- This application has been sent in at least 10 working days in advance (or 3 working days in the District Court)
- This application has **not** been sent in 10 working days in advance (or 3 working days in the District Court) because:

Although this application has **not** been sent in 10 working days in advance (or 3 working days in the District Court), it should be approved because:

- (Please tick) Our organisation and our staff have been trained in our obligations under the *In-court media coverage guidelines* and will abide by them.

(9)(2)(a)



Responsible person's signature

27/06/22

Date

(If you're emailing this form, you will need to print out the page, sign it and then scan it.)

Send in this form

This form should be sent in at least 10 working days before you want access to the court (or 3 working days in the District Court). You can email, post or hand it in to the court where you want to record or take photos.

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Court use only

Received by
NAME & POSITION

COURT NAME

Date
DATE FORM RECEIVED

Forwarded to for action.
JUDGE

Date
DATE FORM FORWARDED

Note: when forwarding the application to the parties, provide a copy of this application and the guidelines.

Judge use only

Approved Declined

Date

Signed

Name

Notes

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