



OIA16-0696  
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9 DEC 2016

T Benseman  
c/- FYI Website

Dear T Benseman

### OFFICIAL INFORMATION ACT REQUEST

I refer to your official information requests on 20 November 2016 relating to:

1. "the origins and all costs of blood used as deer repellent in all 1080 poison operations;"
2. "what legal opinion has [the Ministry for Primary Industry] MPI had relating to the animal cruelty aspect of 1080 poison;" and
3. "what strategy has MPI put in place to defend our farmers reputations."

#### Question One:

Deer repellents are exempt from registration under schedule 2 section 4, of the Agricultural Compounds and Veterinary Medicines (Exemptions and Prohibited Substances) Regulations 2011. The information you have requested on the origin and costs associated with its use is not collected or held by MPI. In addition, MPI does not believe it is held by any other department or Minister of the Crown. For this reason your request for this information is refused under section 18(g) of the Official Information Act 1982 (OIA).

#### Question Two:

Legal advice was prepared for MPI in April 2010 in relation to *Off-label or "misuse" of [Vertebrate Toxic Agents] VTAs* and the relationship with the Animal Welfare Act 1999 (AWA). This advice is withheld under section 9(2)(h) of the OIA to maintain legal professional privilege. However, to meet the public interest, a summary of MPI's position regarding use of 1080 and the relationship to AWA is provided below. Extracts from the AWA can be found in Appendix One of this letter.

1. Central or local government and their contractors are subject to the AWA.
2. The AWA states that pests (defined as feral rabbits and wild animals that are stated as pests in regional or national pest management plans) can be lawfully hunted and killed (section 30B).
3. It is an offence under the AWA to wilfully or recklessly ill-treat wild animals or animals in wild state (refer section 30A). However, this provision does not affect section 181 which allows the use of any hazardous substance approved under the Hazardous Substances and New Organisms Act 1996 that is used in accordance with the approvals (refer section 30A(6)). 1080 is approved under the HSNO Act.
4. If a non-target animal is killed despite using 1080 in accordance with the approved controls, then there is no offence committed under AWA (section 30A(5)).

5. If the approved controls for 1080 are not complied with and a non-target animal is killed, the protection in section 30A (6) would not apply and the user of 1080 could be liable for an offence under AWA.

*Question Three:*

In relation to 1080, MPI is a regulator and administrator of, but not limited to, the Agricultural Compounds and Veterinary Medicines (ACVM) Act 1997, the Animal Welfare Act 1999, the Food Act 2014; and the Biosecurity Act 1993. MPI's duties and strategies are aimed toward the registration of products, animal welfare, and food safety. Your request for MPI strategies to defend farmer reputations is refused under section 18(e) of the OIA as the information does not exist.

MPI is satisfied that in the circumstances of this case, the withholding of the information is not outweighed by other considerations which render it desirable in the public interest to make the information available. You have the right under section 28(3) of the OIA to seek an investigation and review by the Ombudsman of our decision.

Yours sincerely



Glen Bradbury  
Acting Director Systems Audit, Assurance and Monitoring

## Extracts from Animal Welfare Act 1999

**30A Wilful or reckless ill-treatment of wild animals or animals in wild state**

- (1) *A person commits an offence if the person wilfully ill-treats a wild animal or an animal in a wild state.*
- (2) *A person commits an offence if the person recklessly ill-treats a wild animal or an animal in a wild state.*
- (3) *A defendant has a defence to a prosecution for an offence against subsection (1) or (2) if the defendant satisfies the court that the conduct alleged to constitute an offence is or is part of a generally accepted practice in New Zealand for the hunting or killing of wild animals of that type or animals in a wild state of that type.*
- (4) *In determining whether wilful or reckless ill-treatment of an animal has occurred, a court may treat an act or omission as lawful (and not subject to subsection (1) or (2)) if satisfied that—*
- (a) the act or omission was done in the course of performing functions for the purposes of another Act;*
  - and*
  - (b) not to treat the act or omission as lawful would be contrary to the purpose and principles of that Act.*
- (5) *Nothing in subsection (1) or (2) applies to—*
- (a) a wild animal in captivity (other than in captivity in a safari park); or*
  - (b) the accidental or inadvertent killing or harming of an animal; or*
  - (c) any act or omission necessary to protect a person's life or safety.*
- (6) *Nothing in subsection (1) or (2) affects section 179 or 181.*
- (7) *A person who commits an offence against subsection (1) is liable on conviction,—*
- (a) in the case of an individual, to imprisonment for a term not exceeding 5 years or to a fine not exceeding \$100,000, or to both;*
  - (b) in the case of a body corporate, to a fine not exceeding \$500,000.*
- (8) *A person who commits an offence against subsection (2) is liable on conviction,—*
- (a) in the case of an individual, to imprisonment for a term not exceeding 3 years or to a fine not exceeding \$75,000, or to both;*
  - (b) in the case of a body corporate, to a fine not exceeding \$350,000.*

**30B Hunting or killing**

- (1) *Nothing in this Act makes it unlawful to hunt or kill—*
- (a) any animal in a wild state; or*
  - (b) any wild animal or pest in accordance with the provisions of—*
    - (i) the Wildlife Act 1953; or*
    - (ii) the Wild Animal Control Act 1977; or*
    - (iii) the Conservation Act 1987; or*
    - (iv) the Biosecurity Act 1993; or*
    - (v) any other Act; or*
  - (c) any other wild animal or pest; or*
  - (d) any game animal in accordance with the provisions of the Game Animal Council Act 2013; or*
  - (e) any fish caught from a constructed pond.*
- (2) *Subsection (1) is subject to sections 30A and 30C to 30E and Part 6.*

## 181 Agricultural compounds and hazardous substances

*Nothing in this Act applies in relation to the use of—*

*(a) any agricultural compound that—*

*(i) is registered under the Agricultural Compounds and Veterinary Medicines Act 1997; and*

*(ii) is used in accordance with the conditions subject to which it is registered; or*

*(b) any hazardous substance that—*

*(i) is approved under the Hazardous Substances and New Organisms Act 1996; and*

*(ii) is used in accordance with the controls that attach to the substance by virtue of its hazard classification under that Act.*