

Chair  
Cabinet Economic Growth and Infrastructure Committee

## **Proposed New Animal Welfare Regulations**

### **Proposal**

1. This paper seeks policy approval for regulations relating to:
  - the care of and conduct towards animals;
  - carrying out surgical and painful procedures on animals; and
  - the way animals are accounted for in research, testing, and teaching.
2. This paper also seeks approval to commence drafting the regulations.

### **Executive Summary**

3. The Animal Welfare Act (the Act) was amended in May 2015 to enable directly enforceable regulations to be made. There is a gap for dealing with low to medium offending as the minimum standards in the codes of welfare are not directly enforceable. This undermines the credibility of New Zealand's animal welfare system.
4. New Zealand's animal welfare legislation is well regarded internationally. Directly enforceable regulations will also enhance our ability to trade as an ethical supplier of animals and animal products, worth \$19.4 billion to the New Zealand economy in the year ended June 2016.
5. The 46 proposals in this paper have been prioritised because they will deliver the most immediate animal welfare benefits. They contain proposals which cover Stock Transport, Farm Husbandry, Companion and Working Animals, Pigs and Layer Hens, Crustaceans, and Rodeos.
6. The Ministry for Primary Industries (MPI) consulted on a package of 91 regulatory proposals during April and May 2016. This paper is the second tranche of proposed regulations. In 2016 Cabinet approved the regulations for live animal exports and the welfare of young calves, often referred to as bobby calves (CAB16 Min-0358). A further tranche will be progressed for delivery in 2018 (appendix two).
7. There was strong support (between 82 to 99% of submissions) for 40 of the 46 proposals being progressed in this paper from industry, advocacy groups and the general public.

8. There are only six proposals where there are still divergent views:
  - The use of electric prodders;
  - Restrictions on the transportation of lame sheep;
  - Prohibiting docking of cows' tails;
  - Requiring use of pain relief during disbudding<sup>1</sup> and dehorning<sup>2</sup>;
  - Prohibiting docking of dogs' tails; and
  - Restriction on removing dogs' dew claws.
9. Advocacy groups will also be disappointed that there are no proposals to ban rodeos, the use of colony cages for layer hens or farrowing crates for pigs; and that the proposal to provide nesting material for farrowing sows will not be progressed at this time. MPI will continue to work with NAWAC and affected stakeholders to determine whether future regulation is required.
10. The overall cost impact of the regulations are minimal as they reflect existing minimum standards in the codes of welfare, and do not represent any change in practice for those who already care for their animals well. Only six proposals go beyond existing minimum standards to reflect updated good practice and scientific knowledge.
11. Where there are costs, these will fall unevenly on breeders of docked dogs, farmers who are not already using pain relief for disbudding and dehorning cattle, and farmers who are not complying with existing minimum standards for transport of lame sheep. The fiscal implications for Government of the new regulations are expected to be minimal and will be managed within existing baselines.
12. This paper is particularly long because of the number and complexity of proposals covered. I have also included an extended section on offences as I am seeking to establish a new framework for penalties under the Act.
13. I now seek Cabinet approval of the package of 2017 regulations. It is my intention that they will be drafted this year, and submitted to the Cabinet Legislation Committee at the end of 2017. The majority of new regulations will come into force on 1 October 2018.

## **Background**

14. In 2013 Cabinet approved the New Zealand Animal Welfare Strategy (CAB min (13) 1/13 refers). The Strategy has two objectives:
  - Care for our animals; and
  - Care for our reputation.

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<sup>1</sup> Disbudding is the removal of the free-floating horn tissue that develops when an animal is very young.

<sup>2</sup> Dehorning is the removal of a horn at any stage after it has become fixed to the animal's skull.

15. As a part of implementing the Strategy, the Act was reviewed. Difficulties were identified with the enforceability, clarity and transparency of the Act. Primarily, the Act relied on codes of welfare that set out minimum standards for the management of animals which were not directly enforceable.
16. Codes of Welfare are issued by the Minister for Primary Industries (the Minister) under the Act, on advice from the National Animal Welfare Advisory Committee (NAWAC). NAWAC is an independent ministerial advisory group set up under the Act to provide advice directly to the Minister.
17. MPI and the Society for the Prevention of Cruelty to Animals (SPCA) enforce the provisions of the Act. Over the past three years, a total of approximately 15,000 complaints were received per annum. Around 30 percent of complaints are not substantiated. Of the remaining 10,000 substantiated cases, less than 100 (or less than 1%) are prosecuted annually by both agencies and the balance are dealt with through education and/or warning letters.
18. While the tools exist to address cases of severe animal cruelty under the Act, the lack of direct enforceability in codes of welfare means that a significant volume of low to medium level offending cannot be effectively addressed.
19. As well as driving poor animal welfare outcomes, this also impacts the credibility of New Zealand's animal welfare regulatory system in a context where our ability to trade as an ethical supplier of animals and animal products is critical to maintaining our competitive edge in international markets.
20. In May 2015, the Act was amended to enable regulations to be made that would be directly enforceable through associated offences and penalties, and to provide clarity around specific surgical and painful procedures. It was primarily intended that minimum standards in the codes of welfare be lifted into regulations and that prosecutable offences and infringement offences be prescribed which carry lower penalties than the more serious offences under the Act. The regulations specifically target low to medium offending.

21. This paper includes the following appendices:
- Appendix One: Detailed information in relation to all regulatory proposals to be progressed in 2017, including each proposal and associated penalty plus a description of the rationale for, and impact of, each proposal;
  - Appendix Two: Information on regulatory proposals to be progressed in 2018;
  - Appendix Three: A table setting out all of the proposals consulted on in April/ May 2016 that will no longer be progressed at this time and reasons why;
  - Appendix Four: An A3 setting out the offences and penalties regime that will sit across all of the proposed regulations;
  - Appendix Five: The Regulatory Impact Statement prepared by MPI; and
  - Appendix Six: A Summary of Submissions on the proposals being progressed in this paper.

### **How the proposals were developed**

22. In order to develop the animal welfare regulatory proposals (including those covered in this paper) a working group consisting of MPI, the SPCA, the Veterinary Council of New Zealand (VCNZ) and NAWAC was convened in 2015 to identify which of the approximately 1,200 minimum standards across 18 different codes of welfare should be lifted into regulation.
23. In March 2016, Cabinet approved the release of a Consultation Document that sought submissions on 91 regulatory proposals related to the care of and conduct towards animals, surgical and painful procedures performed on animals, and live animal exports (EGI-16-Min-0048).
24. MPI undertook public consultation for a five week period during April and May 2016. The relatively short consultation period was driven by the need to deliver regulations for young calves before the bulk of the spring calving season in August 2016. Six public meetings were held across the country and over 1400 submissions received.
25. There was considerable comment, from both public meetings and written submissions, that the consultation period was too short and did not provide stakeholders enough time to adequately consider all of the proposals. Once the calves and live animal exports regulations were completed, MPI allowed affected parties an additional four to six weeks to provide supplementary information on any of the remaining proposals where they had felt disadvantaged by the initial timeframe.

26. In addition, MPI has also worked extensively with affected parties in targeted workshops<sup>3</sup>, one-on-one meetings, telephone calls and phone conferences to tease out the implications of the proposals and discuss how best to frame these to ensure they operate as efficiently and effectively as possible. Conversations in relation to some of the more complex proposals have been extensive and ongoing, and it is anticipated some of these may continue throughout the drafting process.
27. In July 2016, Cabinet approved regulations relating to live animal exports and the welfare of young calves, often referred to as bobby calves (CAB16 Min-0358). The Animal Welfare (Calves) Regulations 2016 contributed to a reduction of more than 50 percent in the mortality rates of young calves during 2016.
28. I am now progressing the remaining regulatory proposals. I have split these proposals into two groups – those for delivery in 2017, and those for delivery in 2018.

### **How the proposals have been prioritised**

29. My objective is to fill the regulatory gap that currently exists because the codes of welfare are not directly enforceable. I have prioritised the proposals in this paper to be progressed in 2017 because these will achieve the greatest immediate animal welfare benefits.
30. The proposals that I am progressing in 2018 relate primarily to the need to clarify rules around who may undertake surgical and painful procedures on animals and in what circumstances. The majority of these are a consequence of changes made to the Act clarifying what a significant surgical procedure is and clarifying that these procedures can only be undertaken by a veterinarian.
31. Currently a number of procedures that will clearly be significant surgical procedures are carried out by appropriately skilled non-vet technicians and/or stockmen. In order to enable these people to continue to undertake these activities, regulations are required clarifying who is able to do what and under what conditions. This is a matter of regulating para-professionals in the animal husbandry space, rather than responding to any immediate animal welfare concerns. Accordingly, I have decided to defer these proposals until 2018.

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<sup>3</sup> Participants at the targeted workshops included representatives from: Dairy NZ, Dairy Companies of New Zealand, Federated Farmers, NZ Road Transport Forum, Meat Industry Association, NZ Veterinarians Association (including Dairy Cattle, and Sheep and Beef Veterinarians), Beef + Lamb NZ, NZ Veterinary Council, SPCA, NAWAC, Dairy Goat Co-operative, NZ Pork, Landcorp, PGG Wrightson, Sheep Dairy NZ, Ultrascan, Petfood Manufactures Assn, Deer Industry NZ, Fonterra, NZ Merino, NZ Stock and Station Assn, Royal Agriculture Society,ASUREQuality, a number of individual farmers, processors and transporters, Save Animals from Exploitation (SAFE), the NZ Animal Law Association, Helping You Help Animals (HUHA). MPI also met separately with the global charity World Animal Protection as they were unable to attend the workshops.

## Proposals that reflect current practice to be progressed in 2017

32. This paper covers regulatory proposals relating to:
- Stock Transport;
  - Farm Husbandry;
  - Companion and Working Animals;
  - Pigs;
  - Layer Hens;
  - Crustaceans;
  - Rodeos; and
  - The way animals are accounted for in research, testing, and teaching.
33. The majority of the proposals reflect existing minimum standards and do not represent any change in practice for owners and people in charge of animals who already care for their animals well. The principal change is that Animal Welfare Inspectors will now be able to directly enforce these regulations without requiring an Act level prosecution to be taken.
34. Table One sets out proposals that reflect existing practice and the proposed associated offences and penalties. The specific details in relation to each of these proposals, including information relating to exceptions and defences are set out in Appendix One.

**Table One - Proposals to be progressed in 2017 that reflect current practice.**

\*Note: the numbers in the table refer to the correlating policy rationales set out in Appendix One.

Companion and Working Animals	Farm Husbandry
<p><b>\$300 infringement fee</b></p> <ol style="list-style-type: none"> <li>1. Collars and tethers attached to any animal must not cause injury or distress.</li> <li>2. Muzzles used on dogs must not cause injury or distress.</li> <li>3. Dogs must have access to water, dry and shaded shelter, and a toilet area.</li> <li>4. Dogs must not be left in hot vehicles.</li> <li>5. Dogs must be secured on moving vehicles.</li> <li>6. Tethered goats must have access to food, water, and dry and shaded shelter,</li> <li>7. Equipment used on horses and donkeys must not cause injuries or distress.</li> <li>8. Tethered horses and donkeys must have access to food, water, and protection from weather.</li> <li>9. Equipment used on llama and alpaca must not cause injuries or distress.</li> </ol>	<p><b>\$300 infringement fee</b></p> <ol style="list-style-type: none"> <li>11. Milk let-down in cows must not be stimulated by inserting anything into the cow's vagina</li> </ol> <p><b>Regulatory offence \$3,000 for individual, \$15,000 for body corporate</b></p> <ol style="list-style-type: none"> <li>28. Vehicular traction must not be used for the purposes of calving or lambing.</li> <li>29. Castration or cryptorchid<sup>4</sup> of cattle and sheep must only be done by an appropriately skilled person and:             <ol style="list-style-type: none"> <li>a. Pain relief must be used if the animal is over the age of 6 months; and</li> <li>b. Local anaesthetic must be used at any age if high tension bands are used.</li> </ol> </li> </ol>

<sup>4</sup> Cryptorchid is a procedure where males are rendered infertile by forcing the testes against the abdominal wall by removing the scrotum through the application of a rubber ring to the scrotum below the testes.

<p><b>\$500 infringement fee</b></p> <p>14. Horses and donkeys must not be struck on the head.</p>	<p><b>Regulatory offence \$5,000 for individual, \$25,000 for body corporate</b></p> <p>36. Prohibit mulesing<sup>5</sup> of sheep by any method.</p>
<p><b>Regulatory offence \$5,000 for individual, \$25,000 for body corporate</b></p> <p>37. Horse castration must be performed by a veterinarian with pain relief.</p>	
<b>Stock Transport</b>	<b>Pigs and Layer Hens</b>
<p><b>\$500 infringement fee</b></p> <p>13. Goats must not be used on sensitive areas.</p> <p>15. Cattle, sheep and goats must not have ingrown horns.</p> <p>16. Animals with ingrown horns must not be transported.</p> <p>17. Animals with bleeding horns or antlers must not be transported.</p> <p>18. Animals with horns or antlers must not be transported in a way that causes injury.</p> <p>19. Cattle, deer, sheep, goats, and pigs must not be transported in a way that causes back-rub abrasions.</p> <p>20. Cattle, deer, sheep, goats, and pigs must not be transported in a way that causes acute injuries.</p> <p>21. Moderately lame cattle, sheep, goats, pigs and deer must not be transported.</p> <p>22. Cows, ewes, nanny goats, and sows must not give birth during transport or within 24 hours of arrival at sale-yards or commercial slaughter premises. Hinds must not be transported within 21 days of their due date.</p> <p>23. Cattle, sheep and goats with injured or diseased udders must not be transported.</p> <p>24. Cattle, sheep and goats with advanced cancer eye must not be transported.</p>	<p><b>\$300 infringement fee</b></p> <p>10. Pigs must have access to a dry and sheltered lying area.</p> <p><b>\$500 infringement fee</b></p> <p>25. Docking of pigs' tails under 7 days must only be undertaken by an appropriately skilled person, and must create a clear cut and not tear tissue.</p> <p><b>Regulatory offence \$3,000 for individual, \$15,000 for body corporate</b></p> <p>26. A minimum lying space must be provided for grower pigs.</p> <p>27. A farrowing crate must be larger than the sow.</p> <p>32. Docking pigs' tails (over 7 days old) must be performed by a veterinarian with pain relief.</p> <p><b>Regulatory offence \$5,000 for individual, \$25,000 for body corporate</b></p> <p>38. Castration of pigs must be performed by a veterinarian with pain relief.</p> <p>39. Sows may only be confined in sow stalls for the purpose of mating and for no longer than one week.</p> <p>40. Conventional cage systems for layer hens are prohibited from 2022.</p> <p>41. Induced moulting of layer hens is prohibited.</p>
<b>Crustaceans</b>	<b>Rodeos</b>
<p><b>Regulatory offence \$5,000 for individual, \$25,000 for body corporate</b></p> <p>42. Crabs, rock lobster, crayfish and koura must be insensible before being killed for commercial purposes.</p>	<p><b>Regulatory offence \$5,000 for individual, \$25,000 for body corporate</b></p> <p>43. Prohibit using fireworks at rodeos.</p>

***Proposals that reflect a change from current practice***

35. Table Two sets out those proposals that represent a change from existing minimum standards or current practice, along with their associated offences and penalties. The specific details in relation to each of these proposals, including information relating to exceptions and defences are set out in Appendix One.

<sup>5</sup> Mulesing is the removal of strips of wool-bearing skin from around the breech (buttocks) of a sheep to prevent flystrike.

**Table Two Proposals to be progressed in 2017 that reflect a change from current practice**

\*Note: the numbers in the table refer to the correlating policy rationales set out in Appendix One.

<b>Proposals</b>	<b>Change</b>	<b>Rationale</b>
<b>Stock Transport</b>		
<p><b>\$500 infringement</b> 12. Restrictions on the use of electric prodders</p>	<p>The regulations allow for a slightly wider use of electric prodders than is currently provided for by the codes; but for a narrower use than is currently employed in practice.</p>	<p>Limitations on the use of electric prodders are not consistent between codes, and the use of prodders, which is more widespread than initially thought, is often justified on the basis of protecting the safety of the animal's handler. The proposal allows for the use of electric prodders on cattle over 150kgs and on large pigs and deer over 150kgs for specific purposes. The weight limit means that in practice electric prodders will only be used on cattle, or on large boars, sows, or stags – all of which can be aggressive and dangerous animals to handle.</p>
<b>Farm Husbandry</b>		
<p><b>Regulatory offence \$3,000 for individual, \$15,000 for body corporate</b> 30. Prohibiting cattle tail docking except in an emergency</p>	<p>The Painful Husbandry Procedures Code 2005 currently provides for cows' tails to be shortened by the last 2 – 3 vertebrae. This proposal prohibits tail docking under all circumstances except in an emergency such as an urgent need to treat an acute injury.</p>	<p>The Painful Husbandry Procedures Code 2005 is 12 years old and in the interim tools for trimming tails have been improved and are more widely used to manage the difficulties for milking staff that cows' tails can present. Docking cows' tails is no longer necessary and industry associations advise that a prohibition on this practice is likely to become a condition of access to some global supply markets.</p>
<p><b>Regulatory offence \$3,000 for individual, \$15,000 for body corporate</b> 31. Mandatory use of pain relief when disbudding cattle.</p> <p><b>Regulatory offence \$5,000 for individual, \$25,000 for body corporate</b> 35. Mandatory use of pain relief when dehorning cattle.</p>	<p>The use of pain relief when undertaking these procedures is recommended by the Painful Husbandry Procedures Code 2005. The regulation will make this mandatory.</p>	<p>Disbudding and dehorning without pain relief has been shown to cause acute pain and distress. For over a decade NAWAC has signalled the importance of using pain relief for these types of procedures where accessible, practical, effective and affordable. The use of pain relief is also increasingly required by international buyers as a condition of trade.</p>
<b>Companion and Working Animals</b>		
<p><b>Regulatory offence \$3,000 for individual, \$15,000 for body corporate</b> 33. Restrictions on docking dogs' tails.</p>	<p>The Dogs' Code of Welfare 2010 allows for dogs' tails to be docked by accredited breeders. This proposal would prohibit the docking of dogs' tails except to treat injury or disease</p>	<p>This practice is being rejected internationally as scientific evidence makes it clear that dogs use their tails for communication, and that the routine amputation of dogs' tails provides no animal welfare benefit.</p>

<p><b>Regulatory offence \$3,000 for individual, \$15,000 for body corporate</b></p> <p>34. Restrictions on removing dogs' dew claws.</p>	<p>Currently dew claws can be removed by any lay person for any purpose. This proposal makes the removal of some dew claws a vet-only procedure.</p>	<p>Articulated dew claws are attached by bone and tendons to the dog's leg. Their removal is a significant surgical procedure with the potential to cause significant pain and distress to the dog if not done properly.</p>
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### **How the proposals were received**

36. MPI received 1,400 submissions of which 1,000 came from individuals and 400 came from organisations. There was strong support (between 82 to 99% of submissions supporting) for 40 of the 46 proposals being progressed in this paper from industry, advocacy groups and the general public (see Appendix Six).
37. There are only six proposals where there are still divergent views:
- The use of electric prodders;
  - Restrictions on the transportation of lame sheep;
  - Prohibiting docking of cows' tails;
  - Requiring use of pain relief during disbudding and dehorning;
  - Prohibiting docking of dogs' tails; and
  - Restriction on removing dogs' dew claws.
38. Advocacy groups will also be disappointed that there are no proposals to ban rodeos, the use of colony cages for layer hens or farrowing crates for pigs; and that the proposal to provide nesting material for farrowing sows has been deferred.

### ***The use of electric prodders***

39. Advocacy groups have called for a complete ban on the use of electric prodders. Although codes limit the use of prodders to certain animals, it is clear that the use of prodders is more widespread than previously understood and is often associated with the safety of the animal's handler. Inconsistencies within the codes have also made it difficult to come to a uniform view.
40. In recognising the importance of safety as a material issue for people who handle large animals, the proposed regulation now extends the lawful use of electric prodders slightly, to include large pigs and deer over 150 kilograms when loading and unloading animals onto transportation. The proposal also clarifies that electric prodders can be used on large cattle, deer and pigs when loading a stunning pen at a slaughter premises.

41. I consider that the solution proposed achieves the best pragmatic balance between the two competing perspectives. Although there may be some concern from advocacy groups on this issue I consider that the proposed use of electric prodders will not cause unreasonable or unnecessary pain or distress to the animals. I also consider that the position taken is responsive to the legitimate safety concerns of those who have to work with large animals.

### ***Restrictions on the transportation of lame sheep***

42. The proposed regulations will make existing restrictions on the transportation of lame animals, including sheep, enforceable. This proposal was supported by about 90% of submissions received on the issue following public consultation, however affected industry groups have raised concerns about the impacts of this proposal on sheep farmers.
43. It is likely that there is a significant level of under reporting in terms of non-compliance with existing minimum standards on the transportation of lame sheep. Research undertaken by MPI in 2013 found that approximately 1% of sheep that were transported for slaughter within the study displayed lameness at the level targeted by the proposed regulations<sup>6</sup>.
44. The restrictions proposed do not impose new obligations on sheep farmers, but are intended to address issues of non-compliance with existing standards. Higher than anticipated levels of non-compliance in this area provide a sound rationale for regulation. We anticipate that this will encourage improved management of lameness in sheep at an earlier stage, which is the behaviour change that the regulations are trying to achieve.
45. In the first instance, MPI will take an educative approach in order to assist affected farmers into voluntary compliance. This will include significant work with industry to ensure that farmers are aware of their obligations under the regulations.
46. The true costs associated with this regulation cannot be estimated at this stage<sup>7</sup>. MPI will monitor the impact of the regulation and continue to work with industry to lift compliance levels while also mitigating business impacts.

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<sup>6</sup>*Lameness in sheep transported to slaughter in New Zealand* (Wild et al.) in publication. MPI veterinarians individually graded the lameness of 78,833 sheep sampled from 1682 consignments in 2013. Extrapolating the 1% to the 24 million sheep slaughtered each year indicates that approximately 240,000 sheep could have been transported in an infringeable condition, although 98.9% of the sheep transported did meet existing minimum standards. This research also confirmed earlier findings that indicate the problem is more significant, approximately double, in merino sheep.

<sup>7</sup>This is an existing minimum standard, and therefore compliance costs associated with meeting the minimum standard are not new. Those non-compliant farmers who face additional costs as a result of this regulation can mitigate those costs by choosing to manage issues of lameness earlier so that they do not progress to an infringeable level; treating their sheep before transporting them; or disposing of the sheep on farm. The true

## ***Cattle tail docking***

### *Responding to injury*

47. Stakeholders differ on whether a defence ought to be allowed for farmers to dock their cows' tails in an emergency, or where it is not practical to seek timely veterinary assistance. Advocacy groups argue that any defence makes the proposal too weak and difficult to enforce. Industry representatives argue that a legitimate excuse ought to be provided for farmers when the cow has sustained an acute injury on a remote farm or elsewhere where it would not be in the best interests of the animal to wait for a veterinarian.
48. Given that legitimate tail injuries do occur, a defence has been provided for tail docking to respond to acute accidental injuries. Under the defence the onus to prove that the tail was docked in response to an accidental injury rests with the person who docked the tail. Veterinary records will provide the best evidentiary proof for a defence to this proposal.

### *Farmer buy-in*

49. Industry groups support this proposal. The dairy industry in particular has actively promoted it for both welfare and trade reasons. It is estimated that around 20 to 30 percent of the current national dairy herd have shortened tails and a prohibition may not be supported by all individual farmers.
50. MPI and industry will work together to promote the new requirements and ensure that farmers have all of the information they need to be compliant by the time these come into force.

## ***The use of pain relief during disbudding and dehorning cattle***

51. Disbudding and dehorning are undertaken to reduce the risks of injuries to handlers and/or to other animals. Both procedures without pain relief cause acute pain and distress. The regulatory proposals therefore require that pain relief be administered, in the form of local anaesthetic.<sup>8</sup>
52. The pain relief requirements for disbudding and dehorning only apply to cattle. Further work is required to determine the most effective pain relief options for goats<sup>9</sup> and sheep<sup>10</sup>. These species will be considered as part of the 2018 regulatory package.

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costs incurred by non-compliant farmers will be affected by which of these strategies they use and in what combination.

<sup>8</sup> Local anaesthetics are registered medicines under the Agriculture Compound and Veterinary Medicine Act 1997 (ACVM Act), and as such must be authorised by a veterinarian. The ACVM Act allows veterinarians to authorise non-veterinarians to hold and use local anaesthetics.

<sup>9</sup> It is estimated that approximately 20,000 kids are disbudded annually.

<sup>10</sup> Disbudding in sheep is thought to be rare. The extent dehorning is unclear, however, it has not been identified as an issue with animals presented to slaughter premises.

53. Requiring local anaesthetic to be used for these procedures in cattle is a significant change from current requirements. The Animal Welfare (Painful Husbandry Procedures) Code of Welfare 2005 recommends but does not require pain relief to be used for these procedures. At the time that the code was developed, NAWAC signalled that they would consider making pain relief mandatory, within defined periods, for a wider range of procedures where pain relief was accessible, practical, effective and affordable.
54. Local anaesthetic is already being effectively used by approximately 40 to 50 percent of the bovine dairy sector when disbudding calves. NAWAC, the bovine dairy sector, veterinary community and advocacy groups were generally supportive of the proposals to use pain relief. The bovine dairy industry also advise that failure to make this a mandatory requirement is becoming a trade risk in terms of New Zealand's reputation as an ethical producer of animals and animal products.
55. However, other industry stakeholders have questioned whether local anaesthetic is necessary or the appropriate form of pain relief. Some stakeholders are also concerned about the costs and practicalities of accessing pain relief.
56. In order to make the use of pain relief mandatory, systems must be put in place so that competent non-veterinarians (e.g. trained farmers and contractors) undertaking the procedure can reasonably access the required drugs. The legislative framework to enable this to happen already exists. Veterinary Council of New Zealand (VCNZ) have indicated they will develop systems and procedures, including training and complaints procedures, which will support competent non-veterinarians accessing local anaesthetic for these specific procedures. At the same time the systems and procedures developed will also ensure that pain relief is used properly with the appropriate veterinary oversight.
57. Requiring pain relief for disbudding and dehorning will primarily affect the dairy and beef sectors. The extent of impact on the different sectors depends on their ability to adapt, but the common impacts will be associated with upskilling non-veterinarian practitioners on the use of local anaesthetic, the cost of local anaesthetic itself, and additional time required to administer the drug.
58. Based on information from industry, MPI has estimated that the cost of the drug itself is likely to be up to approximately \$1 per animal for disbudding and \$10 for dehorning. This equates to an additional cost of \$2.4 to \$3.8 million per annum - based on an assumption that between 1.6 and 2.2 million animals are disbudded and dehorned annually.

59. There will also be costs associated with training and potentially some additional time required when administering the pain relief. Training costs are likely to diminish over time as operators become more experienced.
60. I have proposed a deferred commencement date for these regulations of October 2019, to allow time for MPI to work with industry and the veterinary community to ensure systems for access to pain relief are in place<sup>11</sup>. Providing for a delayed commencement date will also ensure that by the time the new requirements take effect the industry will have already achieved high levels of voluntary compliance.

### ***Restrictions on docking dogs' tails***

61. Dogs' tails have a function in terms of balance and as a means of communication, and docking causes distress. The regulatory proposal therefore restricts docking dogs' tails for non-therapeutic reasons. This is one of the most contentious proposals.
62. The majority of people who oppose the proposal are dog breeders, or advocates of purebred dogs. They believe that docking is a preventative measure against the risk of tail injury and therefore performed in the best interests of the animal. They also strongly believe that tail docking is an essential part of the character of a given breed.
63. Submissions in favour of the proposal came from veterinarians and animal welfare advocates. They contend that tail injuries are relatively uncommon and therefore the procedure is unnecessary, particularly because tails have a function.
64. Given the polarised views on this proposal, MPI engaged an independent expert to conduct a review of all written submissions and relevant science. The expert, Dr Emily Patterson-Kane<sup>12</sup>, found that tail docking is a significant surgical procedure with the potential to cause considerable pain and distress to the animal and that it is not justified by any animal welfare benefit to the dog.
65. The routine docking of dogs' tails for non-therapeutic reasons is banned or restricted in around 30 countries or territories, including Australia (since 2004), the UK, parts of Canada and most of Europe.
66. After consideration of international practice, all submissions, the findings of the independent expert, and New Zealand's reputation for strong animal welfare regulation, I am of the view that it is time to prohibit non-therapeutic docking of dog tails.

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<sup>11</sup> I also intend to progress a proposal related to deer de velvetting that will make pain relief mandatory. Currently there are no welfare concerns with the management of velvet antler removal but this proposal will be included in the 2018 package for the reasons set out in paragraph 31.

<sup>12</sup> Dr Patterson-Kane is an animal welfare specialist. She is currently the Animal Welfare Scientist for the American Veterinary Medical Association.

67. This proposal will affect the livelihood of some breeders of traditionally docked breeds, including those who export docked dogs to Australia. Tail docking for non-therapeutic reasons has been banned in Australia since 2004 and if docking is banned in New Zealand these exports may diminish or cease.
68. MPI has been unable to ascertain how many breeders would be affected by the proposed regulation. However, based on limited information provided by breeders, the total value of docked puppies exported to other countries (including Australia) is estimated at around \$750,000 per annum.
69. The proposal is likely to meet with very significant resistance from some breeders who have a strongly held conviction that docking is the right and proper thing to do. Consequently this regulation may be challenged in court.
70. MPI has undertaken a thorough process with multiple opportunities for breeders to provide advice. MPI also commissioned a report on dog tail docking from an independent expert. I am satisfied that the process MPI followed is robust.

### ***Restricting the removal of dogs' dew claws***

71. Dew claws<sup>13</sup> are frequently removed when dogs are new-born puppies, both for the avoidance of injury and for cosmetic reasons. As with tail docking of dogs, welfare groups and veterinarians are generally opposed to routine dew claw removal, while breeders are generally in favour of it. Many breeders regard dew claw removal as a minor procedure, and dislike having to pay veterinarians to carry it out. Veterinarians argue that the consequences of incorrect removal can be severe, and that many dew claws are removed unnecessarily.
72. Given the welfare risks to the dog if the procedure is performed badly, I consider that the proposal strikes an appropriate balance between these competing perspectives. The proposal continues to allow dew claws to be removed for any purpose and for lay people to remove the non-articulated hind leg dew claws of puppies up to the age of four days. However, removal of all articulated dew claws and hind dew claws on dogs' over 4 days old must be carried out by a veterinarian.
73. The regulatory changes proposed will impose additional veterinary costs on some breeders.

### ***Proposals relating to layer hens***

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<sup>13</sup> Dew claws are digits, analogous to the human thumb, that grow above the paw on the inside of dogs' legs. They do not make contact with the ground when the dog is standing or walking normally. Almost all front leg dew claws are attached to the leg by bone and tendon ('articulated'). Hind leg dew claws are not usually attached to bone or tendon ('non-articulated') but removal of these claws becomes more painful as the dog gets older.

74. The majority of submissions on this proposal were standard form submissions forwarded from the website for the animal rights group Save Animals From Exploitation. These expressed general opposition to the use of colony cages for layer hens ('factory farming'), however there was less comment on the specific wording and intent of the regulatory proposals.
75. Following feedback from both industry and advocacy groups, two proposals relating to stocking densities and housing and equipment design have been deferred.
76. NAWAC has advised that they wish to re-consider the minimum standards in both the Layer Hens Code of Welfare and the Meat Chickens Code of Welfare to determine whether the correct minimum standards from both codes have been identified for regulation, and whether any of these standards need to be revised before being prescribed in regulation. NAWAC will undertake this work in collaboration with MPI, the SPCA, and industry groups during 2018 and will report back to me.
77. I am progressing two proposals at this time. These are:
- A requirement that egg producers move their stock out of conventional cages in accordance with the transitional dates set down in the Animal Welfare (Layer Hens) Code of Welfare 2012. This will enable MPI to directly enforce the prohibition on the use of battery cages in 2022 when this takes effect; and
  - A prohibition on induced moulting which has met with uniform support from all submitters.
78. I anticipate ongoing public opposition to the use of colony cages. However, I also expect that the further work being done by NAWAC will provide a forum for both industry and advocacy groups to engage on the welfare of layer hens.

### ***Proposals relating to pigs***

79. The majority of submissions received on this proposal were form submissions from the Save Animals From Exploitation website that expressed general opposition to factory farming. However, those submitters who commented on the specific detail of the proposals were generally supportive.
80. The pork industry is supportive of all the proposals relating to pigs with the exception of the proposal to require nesting material to be provided for farrowing sows. They strongly oppose this proposal on the basis that there is no clear understanding of what nesting material is most appropriate for farrowing sows in indoor systems. They advise that most conventional materials would block existing drainage systems posing a threat both to sow/piglet health and the viability of the indoor system overall.

81. After extensive engagement with both industry and advocacy groups, I have decided to defer the proposal to require nesting material because:
- The proposal consulted on was drawn directly from the Pigs Code of Welfare 2010, and it was limited to farming systems built after 2010. Anecdotally four such farming systems are currently operating out of a total of number of approximately 100 commercial pig farms. To make the requirement applicable to all indoor farming systems I would need to re-consult; and
  - There is insufficient clear science available to articulate specifically in regulation what farmers would be expected to provide by way of nesting material. I note extensive material on this topic was provided to MPI by the SPCA, however it was not sufficiently conclusive to form the basis of regulation.
82. I anticipate significant opposition from advocacy groups when they learn that this proposal has been deferred.
83. I am advised MPI will continue to work with the industry to progress implementation of a requirement to provide suitable nesting material for farrowing sows. I intend to make it clear to industry that the matter is not closed from my perspective and that I expect to see significant advances in this area over the next two years.

### **Rodeos**

84. One proposal in the current suite of regulations specifically targets rodeos, the proposal to ban fireworks at rodeos. This received overwhelming public support, although many people argued that it should be extended to all events involving animals. The prohibition applies only to rodeos, as the Rodeos Code of Welfare is the only code that covers fireworks at entertainment events involving animals.
85. There is considerable public opposition to rodeos, and there may be some reaction to the fact that the current regulations do not do more in relation to rodeos. However, public opposition to rodeos centres on whether they are an ethical means of using animals at all – rather than whether there are difficulties with the enforceability of the existing minimum standards in the Rodeos Code of Welfare issued 31 October 2014.
86. In 2016 the Primary Production Select Committee considered a petition of over 60,000 signatures calling for rodeos to be banned. By majority the select committee determined that the existing rules and requirements set out in the Act and the Code were sufficient to manage welfare issues at rodeos and made no further recommendations to Government. Instead, the Committee

noted that NAWAC is undertaking work to consider the use of animals in exhibition, entertainment and encounter. It was agreed that any further regulation of rodeos would be better considered once that work is complete.

### **Offences, penalties and defences**

87. I propose that all of the offences created by these regulations should be subject to strict liability. This would mean that the prohibited conduct alone is sufficient for an offence to be committed and it would not be necessary for the enforcement agency to prove intent as well.
88. This approach is in keeping with existing provisions in the Act which create strict liability offences for owners and people in charge of animals who:
- fail to ensure that the physical, health and behavioural needs of an animal are met;
  - fail to ensure that an ill or injured animal receives treatment; and
  - ill-treat animals.
89. The table below sets out the proposed levels of harm or distress and penalty for infringement offences and prosecutable regulation offences:

<b>Infringement offences</b> <i>Two levels of penalty are proposed for infringement offences</i>		<b>Prosecutable regulation offences</b> <i>Two levels of penalty are proposed for regulatory prosecutable offences</i>	
\$300 flat fee	\$500 flat fee	\$3,000 maximum fine for an individual \$15,000 maximum fine for a body corporate	\$5,000 maximum fine for an individual \$25,000 maximum fine for a body corporate
All revenues collected from fees and fines go to the Government's Consolidated Fund.			
Offence <u>may</u> cause mild short-term harm to the animal <sup>14</sup>	Offence <u>may</u> cause mild to moderate short-term harm to the animal <sup>15</sup>	Offence <u>has</u> caused mild to moderate and possible long-term harm to the animal <sup>16</sup>	Offence <u>has</u> caused moderate and likely long term harm to the animal <sup>17</sup>
<ul style="list-style-type: none"> <li>Enforcement agencies issue an infringement notice requiring the recipient to pay a specified fee.</li> <li>Do not result in any criminal conviction, and an infringement fee will not appear on the formal criminal record of the recipient.</li> </ul>		<ul style="list-style-type: none"> <li>Prosecution offences must be proven in court, but are specified in regulations in a way that is easier to prove than offences under the Act.<sup>18</sup></li> <li>Will carry heavier financial penalties than the proposed infringement offences, and result in criminal convictions.</li> <li>Do not extend to sentences of imprisonment, forfeiture of animals, or the significant fines provided for by the Act.</li> </ul>	
<p><i>When is an offence appropriate for an infringement?</i></p> <ul style="list-style-type: none"> <li>The nature of the offending is minor</li> <li>The potential impact on the animal is low</li> <li>A criminal conviction would be disproportionate to the level of offending</li> <li>A low-level financial penalty is sufficient to drive behaviour change</li> <li>A breach of the regulations is straightforward and easy to determine on the facts</li> </ul>		<p><i>When is an offence appropriate for a prosecution?</i></p> <ul style="list-style-type: none"> <li>The offending has caused a moderate level of harm to the animal</li> <li>The offending may involve many animals</li> <li>A criminal conviction is appropriate given the conduct and/or impact involved</li> <li>The offending is more likely to occur in a commercial context where higher financial penalties may be needed to drive behaviour change</li> <li>The offending involves actions or omissions that are not straight forward enough matters of fact to suit an infringement offence</li> </ul>	
<p><b>More serious offending causing significant pain or distress can still be prosecuted under the Act</b></p> <p>Prosecution under the Act enables the court to impose significant penalties in cases of serious animal cruelty. These penalties include:</p> <ul style="list-style-type: none"> <li>Up to 5 years imprisonment;</li> <li>Up to \$100,000 fine for an individual, or \$500,000 for a body corporate;</li> <li>Forfeiture of the animals involved, and/or any other animals owned by the offender; and</li> </ul>			

<sup>14</sup> For example, the proposal that collars and tethers must not cause injury or distress to any animal.

<sup>15</sup> For example, the proposal that horses and donkeys must not be struck in the head.

<sup>16</sup> For example, the proposal that a minimum lying space must be provided for grower pigs.

<sup>17</sup> For example, the proposal to prohibit mulesing of sheep by any method.

<sup>18</sup> For example, ill treatment offences under the Act require the enforcement agency to prove that the ill treatment occurred, and that it caused the animal to suffer unreasonable or unnecessary pain or distress. Prosecution offences in regulation simply require that the prosecutor prove the defendant did the relevant action (for example: docked their dog's tail; failed to provide adequate lying space for their pigs or used a moving vehicle for traction in calving). It is not necessary to also prove that the action or omission caused the animal pain or distress, or that the pain or distress involved was unreasonable or unnecessary.

- Disqualification orders prohibiting the offender from owning an animal for a specified period of time.

90. In some cases MPI may file a charging document with the court for an infringement offence. For example, where the offending involves a recidivist or in the case of multiple offending. This allows the court to impose a penalty as it sees appropriate within the maximum allowed under regulation. I propose a regulation be made prescribing the maximum penalty allowed as \$5,000 for an individual or \$25,000 for a body corporate.
91. None of the offences included in this paper are intended to prevent either MPI or the SPCA from taking a prosecution under the Act for offending that caused significant pain or distress for the animal involved.<sup>19</sup> This ability to seek recourse to the Act for high end offending remains an important component of the overall regulatory framework that is complemented by introduction of the proposed regulations.

## **Defences**

### *Infringement offences*

92. No defences are available for infringement offences. Any person wishing to challenge an infringement offence may write a letter to the issuing authority setting out the grounds for why they think the infringement notice should be set aside. The issuing authority is then obliged to review the infringement notice and decide whether to revoke or amend the notice.
93. A number of submitters have asked for defences or exemptions to be built into infringement offences to cater for events outside the defendant's control, such as natural disasters or other scenarios where the defendant has taken all reasonable steps to comply. Providing defences to infringement offences is not common practice in any regulatory system because it undermines the simplicity of the offence and the ease with which it can be used.
94. My expectation is that infringement notices would not be issued in the circumstances outlined in paragraph 93 above in the first place. However, should the recipient still feel aggrieved, they are entitled to ask the issuing authority to re-consider the context of the offending and this will be done by an independent reviewing officer.

### *Prosecution offences*

95. Because the prosecution offences created by these proposals are all strict liability offences, I propose that all defendants under the new regulations should have the defence that they took all reasonable steps to comply with the relevant provisions. Some specific defences are also provided for individual

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<sup>19</sup> For example, if a dog that is unsecured on the back of a vehicle is driven on a public road, an infringement could be issued. If a dog fell off the vehicle and suffered serious harm (including permanent injury or death) the enforcement agency could take a full prosecution under the Act.

proposals, for example a defence to respond to accidental injuries is provided to the prohibition on cattle tail docking.

96. As with the defences provided for in the Act, the onus would be on the defendant to prove the defence.
97. The A3 attached as Appendix Four provides an overview of all proposed offences, penalties and defences for easy reference and comparison. In addition to the infringement and prosecution options the existing options to issue verbal advice, warning letters and compliance notices will remain.

### **Two additional non-contentious matters for regulation**

98. Two further matters for regulation are included in the current suite of regulations for administrative efficiency. These are:
  - an amendment to the Animal Welfare (Records and Statistics) Regulations 1999; and
  - a proposal to set an infringement fee relating to failure to check traps.

### ***An amendment to the Animal Welfare (Records and Statistics) Regulations 1999***

99. Prior to performing research, testing, and teaching (RTT) involving animals, a person or institution must hold a code of ethical conduct approved by the Director-General of MPI (code holders). Each year code holders are required to report to MPI on the numbers of animals used and 'manipulated' in their projects. Returns are published as a means to increase public oversight and transparency around the use of animals in RTT.
100. However, to address a lack of oversight of what happens to 'surplus animals' in RTT projects, the Animal Welfare Amendment Act (No 2) 2015 created a new power to make a regulation requiring code holders to report on the killing of animals bred, but not used, for the purposes of RTT.
101. I propose to amend the Animal Welfare (Records and Statistics) Regulations 1999 to prescribe this regulation. The National Animal Ethics Advisory Committee (NAEAC), advocacy groups and code holders have expressed general support for this proposal. This requirement would take effect on 1 January 2018.
102. The new regulation will result in an increase in the numbers of animals being reported to MPI in 2019 statistical returns. MPI and NAEAC will publish information when the new statistics are released to explain that the increase in numbers is caused by counting, for the first time, a new category of animals previously not reported to MPI – thereby making the system overall more transparent.

### ***Inspection of traps***

103. Traps are a common method for capturing animals for pest management and hunting. Section 36 of the Animal Welfare Act 1999, sets obligations on a person who uses a trap to capture live animals. Failure to inspect a set trap within a specified timeframe<sup>20</sup>, to ensure captured animals are attended to in a timely manner, is an infringement offence.
104. Currently no infringement fee has been set for this offence under section 36(3). Following public consultation, I now propose under section 183(1)(h) to prescribe the infringement fee for this offence at \$300.

### **Enforcement**

#### ***The SPCA - MPI's enforcement partner under the Act***

105. The SPCA is an authorised agency under the Act, with responsibility for enforcing the provisions of the Act and regulations in partnership with MPI. Both agencies employ fully warranted animal welfare inspectors appointed by the Director-General of MPI under the Act. SPCA inspectors operate under a Memorandum of Understanding negotiated with MPI, and the SPCA is subject to an annual audit undertaken by MPI.
106. At the SPCA Annual General Meeting on 17 June 2017, SPCA delegates from around the country voted to form one organisation. This decision will lead to the creation of one future-focused national body which will bring together all 46 Centres plus the SPCA National Office into one single SPCA entity. As part of this project an inspectorate strategy has been developed that will move the SPCA inspectorate to a more cohesive, better supported, consistent and professionalised inspectorate function with a clear governance model and systems for managerial oversight and accountability.
107. SPCA have been working in a law enforcement capacity under the Act for many years and has a long standing record of successful prosecutions, some of which have recently secured substantial fines and/or sentences of imprisonment.
108. In general, MPI tends to operate within the context of production animals on large-scale commercial farms, and SPCA operates in relation to wild animals or animals in an urban setting – most often companion animals, including horses. There is a cross-over in relation to small scale farms, often called “lifestyle” farms; and incidents involving smaller numbers of animals. From time to time either agency will assist the other as required by the circumstances of any specific case.

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<sup>20</sup> Traps must be inspected within 12 hours after sunrise on each day the trap remains set, beginning on the day immediately after the day on which the trap remains set.

109. MPI provides a small amount of funding to assist SPCA with training of inspectors and other operational costs (approximately \$450,000 per annum); but SPCA is largely self-funded in carrying out its enforcement function. The SPCA estimates this costs approximately \$8m to \$9m per year.

### ***Managing oversight and consistency between both agencies***

110. The provisions of the Act and regulations will be enforced by both MPI and the SPCA. Animal Welfare Inspectors (whether acting for SPCA or MPI) will not issue infringement notices themselves. All infringements will be issued either through the SPCA National Inspectorate or by one of MPI's three Regional Animal Welfare Compliance Managers, on recommendation by animal welfare inspectors in the field. That means that only a small number of people across both agencies will issue infringements or lay charges under the regulations.
111. A national set of guidelines will be developed for MPI and SPCA staff that will show how the new regulations will be followed across New Zealand, and the process to be followed when there are any appeals. These guidelines will be consistent with the Solicitor-General's Prosecution Guidelines that outline when it is appropriate to undertake a prosecution.
112. The SPCA National Inspectorate will meet regularly with MPI's three Regional Animal Welfare Compliance Managers to calibrate decisions around infringements and prosecutions against both organisations' written guidelines. MPI will provide a database that records all infringements issued or prosecutions taken by either MPI or SPCA. This will be used to monitor consistency and quality assurance.

### ***Opportunity to collect and share intelligence***

113. The database noted above may also provide valuable intelligence on recidivist offenders who may move around the country. MPI is discussing information and privacy protocols with the SPCA. New Zealand Police have indicated an interest in this information.

### **Regulatory Impact Analysis**

114. A Regulatory Impact Statement (RIS) has been completed and is attached as Appendix Five.
115. The MPI Regulatory Impact Analysis Panel has reviewed the RIS prepared by MPI and considers that the information and analysis summarised in the RIS meets the quality assurance criteria.

### **Alternate commencement dates**

116. I propose that the new regulations, with the exception of pain relief for disbudding, dehorning, and the minor amendment to reporting requirements in RTT, take effect from 1 October 2018.

117. Delaying commencement until 1 October 2018 allows time for enforcement agencies to work with affected parties to ensure they are in a position to comply with the new regulations before they take effect. It also provides time for those farmers, businesses and individuals that may need to adjust their practices.
118. I propose to set an earlier commencement date for the new 'surplus offspring' reporting requirement under the Animal Welfare (Records & Statistics) Regulations 1999 for 1 January 2018. This aligns with the timing for other incoming changes to RTT brought in by the Animal Welfare Amendment Act 2015.
119. I propose deferring the commencement date for pain relief for disbudding and dehorning for one additional year to allow time for affected parties to build the required business processes, raise awareness of the regulations and to provide training for the administration of the pain relief. I anticipate that this delay will enable industry to achieve high levels of voluntary compliance before the new regulations take effect. I propose bringing these provisions into effect on 1 October 2019.

### **Financial Implications**

120. The implementation of the proposed regulations will put pressure on MPI baselines to fund activities to raise awareness of the new regulations and to fund enforcement activities within MPI and the SPCA.
121. To address these funding pressures, the Government provided additional funding of \$10m over four years in Budget 2015 for animal welfare. This funding has been used to develop new regulations, improve compliance and enforcement activity, and to help manage the welfare of animals during civil defence emergencies. It included an allocation of \$2.317m in out-years beyond June 2019 and this money will be used to meet ongoing commitments such as permanent staff salaries arising out of the original Budget 2015 allocation.
122. Public awareness of animal welfare issues is growing and this is leading to an escalation in the number of complaints received year by year. This is driving an increase in enforcement costs. The additional costs associated with the new regulations are primarily driven by the need to set up a new infringements system; and to increase MPI's on-farm verification activity. Since 2015 MPI has increased the number of animal welfare inspectors from 11 to 22, and salaries and operational costs associated with this enhanced enforcement function will be met from the ongoing budget allocation of \$2.73m.
123. At this stage it is proposed to manage the additional costs within baseline.

## Consultation

124. Section 184(1) of the Act requires that I must consult those persons that I have reason to believe are representative of interests likely to be substantially affected by the proposed regulations. To that end, the proposals that are set out in this paper have been developed following extensive consultation with industry groups, advocacy groups and individuals representative of those likely to be affected by the new regulations (as set out in paragraphs 22 to 26 above).
125. In preparing this paper MPI has also consulted with WorkSafe New Zealand, New Zealand Defence Force, Ministry of Business, Innovation and Employment, New Zealand Police, Corrections Department New Zealand, The Treasury, The Department of Internal Affairs, Ministry of Transport, Environmental Protection Authority, The Department of Conservation, New Zealand Customs Service, Te Puni Kokiri, Ministry for the Environment, The Ministry of Foreign Affairs and Trade.
126. The Department of Prime Minister and Cabinet have been informed.
127. In addition, MPI officials have discussed the costs, benefits and financial implications set out in the Regulatory Impact Statement with the Treasury.
128. MPI officials have also discussed the proposed offences for these regulations and their potential impact on the wider justice sector with the Ministry of Justice (MoJ). The MoJ provided the following comment:
- The purpose of infringement offences is to address minor breaches of the law without the need to involve the district courts, they should always involve straightforward issues of fact. This is recognised in both the current LAC guidelines<sup>21</sup> (Chapter 22) and the Ministry's own guidelines for the development of infringement offences.
  - The Ministry of Justice (MoJ) have identified a handful of proposed infringement offences that may involve complex factual scenarios. The MoJ intend to continue working with MPI as these regulations are drafted to ensure that these issues are addressed.

### ***Consultation with the National Animal Welfare Advisory Committee (NAWAC)***

129. I am also required to formally consult with NAWAC before recommending that regulations be issued, and MPI has done so on my behalf during June 2017. By formal letter of response NAWAC advises that they are broadly supportive of the proposals and agree that introducing directly enforceable regulations will improve the enforceability of those standards previously found in codes of welfare.

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<sup>21</sup> Legislation Design and Advisory Committee is responsible for the [LAC Guidelines on Process and Content of Legislation \(2014 edition\)](#) which are a guide to making good legislation

130. NAWAC also provided specific comment on a number of proposals that MPI has taken into account in developing the proposals.

### ***Amendment to the Animal Welfare (Records and Statistics) Regulations 1999***

131. In December 2016, MPI undertook a short targeted consultation with impacted stakeholders, including code of ethical conduct holders and animal ethics committees. There was general support for the intent and rationale of the proposal. Advocacy groups RNZSPCA, SAFE and the NZ Anti-Vivisection Society were notified of the proposal.
132. The National Animal Ethics Advisory Committee were closely engaged in this process, and are supportive of progressing this proposal to regulation.

### **Publicity**

133. MPI has worked closely with my office to develop an overarching Communications Strategy to accompany Cabinet decisions on the proposals included in this paper. This includes the announcement of Government decisions and associated key media statements, as well as proactive release of all of the following documents via the MPI website:
- The Summary Report prepared by MPI on the 1,400 submissions received;
  - This Cabinet paper and all appendices; and
  - The associated briefing from MPI to me covering in more depth the matters outlined in this paper.
134. MPI will provide embargoed copies of all of the documents to key industry stakeholders 24 hours prior to media announcements to enable those organisations to prepare their own key messages in response.
135. Given the nature of the proposals covered in this Cabinet paper it is likely public interest will be high and all documents will be sought under the Official Information Act if not released proactively. It is my view that releasing this information proactively demonstrates that the process has been robust and transparent.

### **Next Steps**

136. If the recommendations in this paper receive Cabinet approval the next steps will be:
- Drafting instructions issued to Parliamentary Counsel Office in early August 2017; and
  - Paper to Cabinet Legislation Committee seeking approval to make new regulations in early December 2017.

## Recommendations

137. I recommend that the Cabinet Economic Growth and Infrastructure Committee (EGI):

### **Background**

1. **Note** that the minimum standards in codes of welfare are not directly enforceable and that this creates a regulatory gap in the enforcement framework set up under the Animal Welfare Act.
2. **Note** that the existing regulatory gap limits our ability to respond appropriately to poor animal welfare outcomes and risks undermining the credibility of New Zealand's animal welfare regulatory system.
3. **Note** that the regulatory proposals put forward for approval in this paper cover:
  - Stock Transport;
  - Farm Husbandry;
  - Companion and Working Animals;
  - Pigs;
  - Layer Hens;
  - Crustaceans;
  - Rodeos;
  - The way animals are accounted for in research, testing, and teaching; and
  - Setting an infringement fee for failure to check a trap.
4. **Note** that these proposals have been prioritised for progress in 2017 because they will deliver the greatest animal welfare benefits, and that an additional suite of regulations primarily relating to carrying out surgical and painful procedures on animals will be progressed in 2018.
5. **Note** that the Ministry for Primary Industries has undertaken an extensive consultation process in developing these proposals, including public consultation and targeted engagement with affected stakeholders.
6. **Note** that the majority of proposals reflect current practice and therefore represent no change for the majority of New Zealanders who already care well for their animals.

7. **Note** the following proposals may be contentious:
  - 7.1. The use of electric prodders;
  - 7.2. Restrictions relating to the transportation of lame sheep;
  - 7.3. Prohibiting docking of cows' tails;
  - 7.4. The use of pain relief during disbudding and dehorning;
  - 7.5. Prohibiting docking of dogs' tails;
  - 7.6. Restriction on removing dogs' dew claws;
  - 7.7. Proposals relating to layer hens because they do not ban the use of colony cages;
  - 7.8. Proposals relating to pigs because they do not ban the use of farrowing crates.

### ***Policy approval***

8. **Agree** to the proposals and associated offences and penalties set out in Table One of this paper.
9. **Agree** to the proposals and associated offences and penalties set out in Table Two of this paper.
10. **Note** Appendix One sets out further detail in relation to the proposals in tables one and two and will inform Parliamentary Counsel Office during drafting.
11. **Agree** to amend the Animal Welfare (Records and Statistics) Regulations 1999 to include a regulation requiring code holders to report on the killing of animals bred, but not used, for the purposes of research, testing, and teaching.
12. **Agree** to set an infringement fee of \$300 for failure to inspect a set trap within 12 hours after sunrise on each day the trap remains set, beginning on the day immediately after the day on which the trap is set.
13. **Agree** to set a maximum penalty of \$5,000 for an individual or \$25,000 for a body corporate where a charging document is lodged with the Courts in respect of an infringement offence.

### ***Commencement dates***

14. **Agree** to the following commencement dates:
  - 14.1. The regulation requiring recording of the number of animals killed that were bred but not used for the purposes of research, testing, or teaching, to commence on 1 January 2018;
  - 14.2. Proposals requiring the mandatory use of pain relief when disbudding and dehorning cattle to commence on 1 October 2019;
  - 14.3. All other regulations to commence on 1 October 2018.

### ***Legislative requirements and Consequential Amendments to Codes of Welfare***

15. **Authorise** the Minister for Primary Industries to issue instructions to the Parliamentary Council Office to prepare draft regulations to give effect to the proposals in this paper.
16. **Authorise** the Minister to make decisions on any subsequent minor issues arising from legislative drafting that align with the overall policy intent.
17. **Agree** to invite the Minister for Primary Industries to also instruct PCO to make any amendments to Codes of Welfare necessary as a consequence of any provisions made in the regulations.
18. **Note** that the Ministry for Primary Industries will continue to work with the Ministry of Justice on the drafting of offences to ensure they are effective and appropriate.
19. **Note** that the Ministry for Primary Industries may approach the Attorney-General to seek approval to release an exposure draft of the proposed regulations on the Ministry's website.

### ***Publicity***

20. **Note** that the Ministry for Primary Industries will work with my office to ensure that all affected stakeholders are aware of the policy decisions agreed to.
21. **Note** that the Ministry for Primary Industries will work with my office to manage announcements arising out of decisions made in relation to the proposals listed above, and any media interest arising.
22. **Agree** to the proactive release of this Cabinet paper together with the related Minutes, on the Ministry for Primary Industries' website.

Authorised for lodgement

Hon Nathan Guy

Minister for Primary Industries