Ministry for Primary Industries
Manatū Ahu Matua

Animal welfare matters

Proposals for a New Zealand Animal Welfare Strategy and amendments to the Animal Welfare Act 1999

MPI Discussion Paper No: 2012/07

SBN No: 978-0-478-38879-4 (online)
ISBN No: 978-0-478-40013-7 (print)
ISSN No: 2253-3907 (online)
ISSN No: 2253-3893 (print)

August 2012

New Zealand Government

Growing and Protecting New Zealand

Disclaimer

The Ministry for Primary Industries does not accept any responsibility or liability for error or fact omission, interpretation or opinion which may be present, nor for the consequences of any decisions based on this information.

Requests for further copies should be directed to:

Publications Logistics Officer
Ministry for Primary Industries
PO Box 2526
WELLINGTON 6140

Email: brand@mpi.govt.nz
Telephone: 0800 00 83 33
Facsimile: 04-894 0300

This publication is also available on the Ministry for Primary Industries website at
http://www.mpi.govt.nz/news-resources/publications.aspx

© Crown Copyright, August 2012 - Ministry for Primary Industries

1 Foreword

Animals are a fundamental part of our lives, and New Zealand is acknowledged internationally for having a world class animal welfare system. We can be proud of our achievements – New Zealand has a strong animal welfare tradition supported by progressive legislation, high standards of welfare and excellent animal welfare science. But we cannot be complacent.

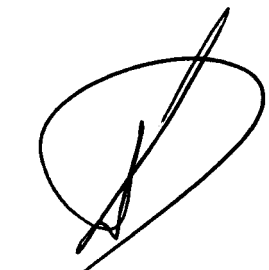
Attitudes to animals and the way we use them are changing rapidly, and practices from even the recent past are no longer acceptable today. Most New Zealanders expect animals to be healthy, comfortable and properly fed. We expect that animals should receive a reasonable standard of humane treatment and not suffer unnecessarily. And increasingly, discerning consumers that buy our products have genuine concerns about animal welfare practices in our production systems.

We must continue to meet the changing expectations of consumers. We must also look after our companion animals, and ensure that there are strict ethical boundaries around the use of animals in research, testing and teaching. And we must do more to avoid, prevent and deter unacceptable treatment of animals.

As the Minister responsible for animal welfare, I receive thousands of letters from all sections of the community asking that we do more to protect our animals. The Government can, and does, play a leading role in the animal welfare system. But the Government cannot act alone – we need partners to work with, and for everyone to take responsibility for meeting the needs of their animals.

I have made animal welfare a personal priority. In late 2010, I asked the Ministry for Primary Industries to lead the development of New Zealand's first national animal welfare strategy, and to review the Animal Welfare Act 1999. The Ministry has talked to a wide range of animal welfare stakeholders and worked closely with a specially appointed advisory group to develop the proposals in this consultation document.

Your feedback will help to improve the proposals and ensure their implications are fully understood. I encourage everyone who works with, uses, cares for, or who shares a concern for animals to make a submission.



Hon David Carter
Minister for Primary Industries

Contents

Page

1 Foreword i

Executive Summary 1
1.1 Proposed Animal Welfare Strategy 1
1.2 Proposals to amend the Animal Welfare Act 1999 4

2 Have your say 6
2.1 What will happen to your submission? 6
2.2 Out of scope 6

3 Proposal for a New Zealand Animal Welfare Strategy 7
3.1 Why a New Zealand strategy? 7
3.2 New Zealand animal welfare values 8
3.3 Outcomes 8
3.4 How best to improve animal welfare? 8
3.5 Roles and responsibilities 10
3.6 Implementation 10
3.7 Priorities 11
3.8 Measuring the success of the strategy 11

4 Proposals to amend the Animal Welfare Act 1999 12
4.1 Review process 12
4.2 General obligations in the Act 12
4.3 Standards of care and conduct toward animals 12
4.4 Criteria to apply in developing animal welfare standards 16
4.5 Role of the National Animal Welfare Advisory Committee 17
4.6 Live animal exports 19
4.7 Significant surgical procedures 21
4.8 Reporting animals killed for research, testing, and teaching 25
4.9 Enforcement tools 26
4.10 Other offences 28
4.11 Other technical amendments 29

5 Questions 32

Executive Summary

This document contains proposals for a New Zealand animal welfare strategy and changes to the Animal Welfare Act 1999. Your feedback will help to improve the final proposals and ensure that the implications are fully understood.

1.1 PROPOSED ANIMAL WELFARE STRATEGY

New Zealand's animal welfare system has evolved without an explicit strategy, but is generally sound. The strengths of the current system include:

- Our history of caring for animals and a tradition of good animal husbandry.
- A strong science base to our decisions and good capability in animal welfare science.
- All the players – government, industry, professionals, non-government organisations, and scientists – work together.
- Progressive animal welfare legislation that goes further than just preventing cruelty and places an explicit obligation on all people in charge of animals to meet their animals' needs.
- Independent committees to provide expert advice on animal welfare, and research, testing and teaching involving animals.
- Strong international links and engagement.

The Government is not proposing radical change. The suggested values, outcomes and approaches are already implicit in the system, and many of the actions are under way or are part of business-as-usual. This strategy is not aiming to lift animal welfare standards from their current settings, but there are some clear opportunities to improve animal welfare where it is falling below minimum standards.

The strategy documents some of the essential features of New Zealand's animal welfare system and provides a focus for where improvements need to be made. It does not describe the entire animal welfare system nor does it spell out a detailed action plan. The attached one-page diagram highlights the main themes of the strategy.

The draft strategy proposes three animal welfare values that capture most New Zealanders' views about the treatment of animals:

- It matters how animals are treated – it matters to the animals and it matters to us.
- We have responsibilities toward animals in our care and animals affected by our activities.
- Using animals is acceptable as long as it is humane.

The draft strategy proposes two outcomes that reflect both the domestic and international dimensions of animal welfare:

- Better care of animals: New Zealanders meet the needs of all our animals, and avoid unreasonable harm to animals affected by our activities.
- Reputation for integrity: New Zealand's animal welfare practices add value to our exports and contribute to our reputation as a responsible agricultural producer.

The strategy suggests that the best opportunities to improve animal welfare are through:

- Better planning to prevent animal welfare issues before they arise – many animal welfare problems are avoidable.
- Better skills, practices, science and technology.
- Clear rules and sanctions, with help for people to comply.
- Measuring animal welfare performance.

Delivering the strategy requires action from Government, industry, and individual New Zealanders:

- Individuals: understanding the needs of our animals and meeting our animal welfare obligations, adopting improved practices and technology, and addressing animal welfare issues early before problems occur.
- Industry: implementing industry schemes to improve welfare; recognising and building stockmanship skills; educating members about best practice and meeting standards; measuring animal welfare performance; replacing, reducing or refining the use of animals in research, testing and teaching; and engaging with the public and consumers.
- Government: setting and maintaining mandatory animal welfare standards, providing opportunities for people to participate in decision-making, providing information to make it easy to comply, acting rapidly and appropriately when standards are breached, maintaining independent advisory committees, and contributing to international networks and standards.
- The strategy encourages continuing collaboration in setting standards, co-investing in research, contingency planning, and the existing joint Government / Industry initiative to improve animal welfare compliance.

The priorities for the Government will be to:

- Implement changes arising from Animal Welfare Act amendments, including converting codes of welfare to regulations and guidelines, developing regulations for live animal exports, and creating a broader set of compliance tools and penalties.
- Continue to implement the joint Government/Industry animal welfare compliance plan Safeguarding our Animals, Safeguarding our Reputation.
- Work with sector and interest groups to address priority animal welfare issues such as transport, shade and shelter, and preparing for adverse events.
- Review animal welfare communication tools to ensure that people in charge of animals, and other audiences, are getting the information they require.
- Continue to co-invest in research to inform animal welfare standards and guidelines, and to support improved technologies and practices.
- Continue to collaborate internationally on animal welfare and help develop international animal welfare guidelines.

New Zealand Animal Welfare Strategy

Why is animal welfare important?

Values

It matters how animals are treated – it matters to the animals and it matters to us.
We have responsibilities toward animals in our care and animals affected by our activities.
Using animals is acceptable as long as it is humane.

Why does New Zealand need a strategy?

Animal welfare is too important to get it wrong
New Zealanders are passionate about animals and even isolated cases of poor animal welfare could damage our reputation.

What is New Zealand trying to achieve?

Outcome 1
Better care of animals
NZers meet the needs of all our animals, and avoid unreasonable harm to animals affected by our activities.

Outcome 2
Reputation for integrity
NZ's animal welfare practices add value to our exports and contribute to our reputation as a responsible producer.

What are the best ways to improve animal welfare?

- Better planning to prevent animal welfare problems
- Better skills, practices, science and technology
- Clear rules and sanctions, with help for people to comply
- Measuring performance

What roles are needed?



Where are our strengths?

- Our history of caring for animals and a tradition of good animal husbandry
- A strong science base to our decisions and good capability in animal welfare science
- All the main players – Government, industry, professionals, non-government organisations, and scientists – work together
- Progressive legislation that obliges all people in charge of animals to meet their animals' needs
- Independent committees to provide expert advice on animal welfare, and for research, testing and teaching involving animals
- Strong international links and engagement

How will we know it is working?

- Evidence of improved compliance with animal welfare standards
- Better evidence base for measuring animal welfare performance
- Industries leading the promotion of best practice
- Evidence of earlier intervention in emerging animal welfare issues by industry
- Increased public satisfaction with New Zealand's animal welfare performance
- Evidence of consumer trust in the animal welfare system, domestic & international

1.2 PROPOSALS TO AMEND THE ANIMAL WELFARE ACT 1999

The Animal Welfare Act shifted the focus of animal welfare in New Zealand from preventing cruelty, to placing a duty of care on people who own or are in charge of animals. People have an obligation to meet an animal's physical, health and behavioural needs, and to alleviate pain or distress.

The Act has served New Zealand well. The fundamental values and duty of care underpinning the Act remain valid, and the standards of care and conduct established under the Act are largely appropriate. The legislation proposals in this paper are directed at improving the way the Act operates by providing greater clarity and enforceability.

The major legislation proposal is to replace codes of welfare and the rules for live animal exports with a mix of mandatory standards and guidelines.

This means enabling the Government to make regulations that specify mandatory animal welfare standards, which would be backed up by specific penalties and a range of compliance tools. The Government would also be able to issue guidelines to describe best practice and help people meet their obligations; these guidelines would have no legal effect. There would need to be a separate process to develop regulations, once the legislation was changed to enable them. This process is likely to take about 12 months and would involve additional public consultation.

To complement this change, the Government proposes to improve the enforcement tools in the Act. This means creating more infringement offences, and compliance orders allowing animal welfare inspectors to require a person to take action to remedy non-compliance with the Act or its regulations. The process to develop regulations will include public consultation about which offences would be suitable as infringement offences. The Government also proposes to increase the maximum infringement fee from $200 to $1000 to provide flexibility to set a suitable level of penalty for each infringement offence.

The move to regulated standards requires a shift in the focus of the National Animal Welfare Advisory Committee from developing codes of welfare to more of an advisory role. The function of developing regulated standards is more appropriate to a ministry. There remains a valuable role for an independent advisory committee and in the future it will carry out studies, consult the public, and publish its advice. This advice would be used by the Ministry and other stakeholders as the starting point to develop standards and guidance material.

There are regular debates about how animal welfare and broader considerations should be balanced. The Government proposes that "practicality" and "economic impact" be included in the statutory criteria for decisions on animal welfare standards. These issues are already considered as animal welfare standards are developed, but it would be better to be transparent about these factors.

Currently, codes of welfare can allow practices that do not meet the general obligations of the Act in "exceptional circumstances". This provision has been used rarely but has always been controversial. It has been used in codes of welfare covering layer hens, pigs, circuses, and commercial slaughter. The Government proposes that this provision be replaced by two different options. Regulations would allow practices that do not meet the general obligations of the Act where:

- A new standard of welfare is being adopted, but current practices are allowed during a defined transition period (such as phasing out sow stalls by 2015).

- There is a need, in genuinely exceptional circumstances, to exempt a practice from animal welfare obligations for an indefinite period (such as a religious practice). The Government proposes that there would be a periodic review of these exemptions.

Significant surgical procedures may only be performed on an animal by a veterinarian, or a person operating under the direct or indirect supervision of a veterinarian. The Government proposes creating a new regulation making power enabling mandatory conditions to be set for procedures carried out by people without veterinary qualifications. The Government is also seeking public feedback about whether a range of specific procedures should be prohibited or restricted to vets or people operating under vet supervision.

The Animal Welfare Act does not make hunting or fishing illegal and the Government does not propose to change that. However, the Government is proposing to clarify in the Act that extreme conduct that goes beyond acceptable practice when hunting, fishing or controlling pests could be subject to a charge of ill-treatment. The Government also proposes to make it an offence to deliberately drown a land animal.

Finally, the Government proposes a number of more minor and technical changes, including requiring reporting of the number of animals killed for research, testing or teaching; and several changes to the administrative provisions.

2 Have your say

Please send your submission to the Ministry for Primary Industries by **5.00pm Friday 28 September 2012** by email to: awsubmission@mpi.govt.nz, or by writing to:

Animal Welfare Strategy and Legislation Review
Ministry for Primary Industries
P O Box 2526
Wellington 6140

This document, and a submissions template, can be downloaded from the Ministry for Primary Industries website: http://www.mpi.govt.nz/news-resources/publications.aspx.

The timing and process for consultation will be:

13 August 2012	Consultation paper released and call for submissions.
20 August - 7 September 2012	Workshops around the country – contact the Ministry for details.
28 September 2012	Deadline for submissions.

Submissions and a summary of submissions will be made available on the Ministry's website as soon as possible after the deadline for submissions. Following this consultation, proposals to change legislation will be considered by the Government before being introduced into Parliament during 2013. If Parliament decides to make changes to the Animal Welfare Act 1999, you will have a further opportunity to make submissions to a Parliamentary Select Committee before legislation is passed.

If changes are made to the legislation, to allow animal welfare regulations then any regulations would be publicly consulted before being adopted.

2.1 WHAT WILL HAPPEN TO YOUR SUBMISSION?

The Ministry intends to publish the submissions it receives and provide a summary of them on its website. This will include your name or the name of your group but not your contact details.

If you or your group do not want information contained in your submission to be published, please make this clear in the submission and explain why. For example, you might want some information to remain confidential because it is commercially sensitive or personal. The Ministry will take this into account when deciding whether to publish the submission and if there are any requests under the Official Information Act 1982.

2.2 OUT OF SCOPE

The focus of the review is on improving the way the Act operates by providing greater clarity and enforceability, rather than addressing the level of care for specific animal species. Matters relating to specific animal welfare standards, such as the standards of care for pigs, dairy cattle, chickens or zoos are not part of this review because they are resolved through a different process. The proposals in this paper are intended to simplify and improve that process in future. Animal welfare standards will continue to evolve as science, good practice, technology, and society's values change, and there will continue to be opportunities for the Government to work with stakeholders to establish standards that are in New Zealand's best overall interests.

3 Proposal for a New Zealand Animal Welfare Strategy

3.1 WHY A NEW ZEALAND STRATEGY?

New Zealanders are passionate about animals[1] and have high expectations of our animal welfare system. New Zealand relies on animals for substantial parts of its economy, and animals are used in recreation, research and for entertainment. Our level of pet ownership is among the highest in the world.

Even isolated cases of poor animal welfare could have a negative impact on our reputation as a responsible agricultural producer with the potential to affect our exports. Primary industry leaders say that New Zealand must do more to protect the significant financial benefit derived from New Zealand's reputation for quality, sustainable, and trustworthy agricultural products:

"There is a strong view among industry leaders that the sector must clearly define its baseline standards for sustainable production. A failure to define and enforce robust standards means we are only ever 'one rogue producer away' from immeasurable market damage."[2]

Animal welfare is too important to get it wrong.

New Zealand's animal welfare system has evolved without an explicit strategy and is generally sound. The strengths of the current system include:

- Our history of caring for animals and a tradition of good animal husbandry.
- A strong science base to our decisions and good capability in animal welfare science.
- All the players – government, industry, professionals, non-government organisations, and scientists – work together.
- Progressive animal welfare legislation that goes further than just preventing cruelty and places an explicit obligation on all people in charge of animals to meet their animals' needs.
- Independent committees to provide expert advice on animal welfare, and for research, testing and teaching involving animals.
- Strong international links and engagement.

However, with so much at stake, the Government considers it appropriate to build on this foundation with a New Zealand strategy that reinforces:

- Animal welfare is important with both domestic and international dimensions – even isolated cases of poor animal welfare could damage our reputation.
- Not complying with minimum animal welfare standards is unacceptable.
- Professional and industry groups should take a proactive and leading role, particularly in educating their members and measuring animal welfare performance.
- Good animal husbandry and stockmanship is fundamental, and there are opportunities to adopt better practices and technologies to improve the way we treat and use animals.

The intended audience is broad. Industry groups – for example producer and processor industries, the transport industry, the zoo and aquarium industry, the racing and rodeo industries, and research, teaching and testing organisations – as well as veterinarians, hunting and fishing groups, agencies and people managing pests, animal advocacy groups, and the 68 percent of New Zealand households that own at least one pet, all have an interest in how New Zealand protects the welfare of its animals and their role in it.

[1] The Animal Welfare Act 1999 defines animals broadly to include mammals, birds, reptiles, amphibians, fish, and other aquatic animals.
[2] KPMG Agribusiness Agenda 2012 (kpmg.com/nz/aa2012)

3.2 NEW ZEALAND ANIMAL WELFARE VALUES

Compassionate treatment of animals has long been a human value. The principle that we take care of animals and animals take care of us reflects the co-evolution of people and domestic animals.

New Zealand's heritage is closely bound with farming, animals, and the environment. However, within our society there is a range of views about how we should use and care for animals. The boundary between acceptable and unacceptable use of animals is continually evolving – whether for farmed animals, pets, wild animals, and animals used in recreation or in research, teaching, and testing.

Opinions on animal use range from those who do not accept their use under any circumstances, to the other extreme of those who exploit animals with little or no regard to their welfare. Most opinion falls within a broad middle ground. We have tried to capture that broad middle ground in three values:

It matters how animals are treated – it matters to the animal and it matters to us
Animals are sentient, which means they can feel pain and distress and have other experiences. All those experiences are important to the animal and it matters to us as a society how animals are treated.

We have responsibilities toward animals in our care and animals affected by our activities
We have a duty to provide for the welfare of animals in our care, by attending to their physical, health, and behavioural needs. We also have a responsibility to avoid causing unreasonable or unnecessary pain or distress to animals affected by our activities.

Using animals is acceptable as long as it is humane
Animals may be used for human benefit, but such use must be carried out without unreasonable or unnecessary suffering to the animal. We should seek ways to reduce pain and distress to animals by improving our practices. Ideas of what is humane, or what is reasonable and necessary, evolve over time.

3.3 OUTCOMES

The Government proposes that New Zealand should work to achieve two broad outcomes for animal welfare that reflect the domestic and international dimensions of animal welfare:

Outcome 1: Better care of animals
New Zealanders meet the needs of all our animals, and avoid unreasonable harm to animals affected by our activities.

Outcome 2: Reputation for integrity
New Zealand's animal welfare practices add value to our exports and contribute to our reputation as a responsible agricultural producer.

3.4 HOW BEST TO IMPROVE ANIMAL WELFARE?

This strategy is not aiming to lift animal welfare standards from their current settings, but there are some clear opportunities to improve animal welfare where it is falling below minimum standards. The best ways to improve animal welfare in New Zealand are through:

3.4.1 Better planning to prevent animal welfare problems

Many animal welfare problems can be avoided with better planning. We need everyone in charge of animals to identify risks and plan to prevent animal welfare issues before they arise. This applies in all contexts: from planning for adverse events; designing facilities for the physical, health, and behavioural needs of animals; and choosing a pet.

3.4.2 Better skills, practices, science and technology

Stockmanship has a significant influence on the welfare of farm animals. In any production system, the knowledge, skills, and behaviour of the stockpeople are integral to the standard of welfare. Declining stock skills and availability of good stockpeople is an area of concern.

Across all sectors, some practices and technologies are being used that have become outdated. There are opportunities to adopt less harmful practices and technologies, and to invest in research and development to support improvements. An example here might be providing environmental enrichment to better meet the behavioural needs of animals in intensive production systems, zoos, and research laboratories.

Continued investment in animal welfare science is essential for New Zealand. Science is a critical part of New Zealand's animal welfare infrastructure. It provides a secure foundation for animal welfare policy and developing animal welfare standards.

3.4.3 Clear rules and sanctions, with help for people to comply

The proposals in this document aim to change the animal welfare system to provide greater clarity about mandatory standards of animal welfare and a wider range of tools to ensure compliance.

The Government plays a key role in setting animal welfare standards, making it easy for people to comply, and providing information to encourage voluntary compliance. Industry groups also play a leadership role in helping to educate their members about welfare standards and best practice. A partnership between Government and industry groups aimed at improving compliance with the Animal Welfare Act, known as *Safeguarding our Animals, Safeguarding our Reputation,* will continue to be a key component of the national animal welfare strategy.

3.4.4 Measuring animal welfare performance

It is important that New Zealand measures and communicates the performance of its animal welfare system over time. There are three main reasons for highlighting this in our strategy:

- measuring our animal welfare performance is the first step to improving our systems and the welfare of our animals;
- we must be able to back up our claims about good animal welfare; and
- we should develop our own systems before external consumers impose them.

The Government and the sectors will need to work together to agree measurement objectives and approaches. Challenges include establishing the baseline data against which performance can be measured, agreeing on performance indicators, and determining how the system overall can best collect and present measurement information. The Government wants to see industry groups playing a strong leadership role in measuring and communicating the animal welfare performance of their sectors.

3.5 ROLES AND RESPONSIBILITIES

The proposed New Zealand animal welfare strategy points to the following leadership roles for Government, industry bodies, and individual New Zealanders.

All New Zealanders:

- Understand the needs of our animals and meet our animal welfare obligations.
- Improve practices and adopt better technology.
- Address animal welfare issues early before problems occur.

Industry leadership:

- Implement industry schemes to improve welfare.
- Recognise and build stockmanship skills.
- Educate members about best practice and meeting standards.
- Measure animal welfare performance.
- Replace, reduce and refine the use of animals in research, testing and teaching.
- Reach out and engage with the public and consumers.

Government leadership:

- Set and maintain mandatory animal welfare standards.
- Provide opportunities for people to participate in decision-making.
- Provide information to make it easy to comply.
- Act rapidly and appropriately when standards are breached.
- Maintain independent advisory committees for animal welfare, and for research, testing, and teaching.
- Contribute to international networks and guidelines.

One of the strengths of New Zealand's animal welfare system is that the main players – Government, industry, professionals, non-government organisations, and scientists – all work together. The strategy encourages continuing collaboration in setting standards, co-investing in research, contingency planning, and the existing joint Government / Industry initiative to improve animal welfare compliance.

3.6 IMPLEMENTATION

Many of the actions are underway or are already part of business-as-usual. The strategy is not a detailed action plan; instead it documents some of the essential features of New Zealand's animal welfare system and provides a focus for where improvements need to be made.

One of the themes in the strategy is for industry to take a proactive leadership role in animal welfare. This is already happening in some industries. The Government will help where it can by working with key industry groups to develop more specific actions to improve the care of animals and prevent animal welfare problems that threaten New Zealand's reputation. For example, the Government intends to work with the fishing and aquaculture sectors to raise awareness of animal welfare. The Government will also work with the Society for the Prevention of Cruelty to Animals (SPCA) and other non-government organisations. It will provide information to help people better understand how to care for their animals and to plan better to avoid animal welfare problems. For example, some improvements would come from simply informing animal owners about better practice or new technologies and helping owners to adopt them.

One of the main changes from the proposals will be how animal welfare standards are enforced. As the new mandatory standards are developed in regulations, the Government will

need to work with the SPCA, industry, and other groups to communicate the changes and develop new ways of ensuring that people comply with mandatory animal welfare standards.

The Government wants better evidence and measurement of animal welfare performance, and will be looking to industry groups to take a stronger and more proactive role in this area. This should help consumers who want better information about animal welfare.

Veterinarians will continue to play a leading role in helping maintain animal welfare and in training and educating people who look after animals. One of the outcomes in the New Zealand Veterinary Association's animal welfare strategy is that its members perform an educational role with their clients and the general public to increase the understanding and awareness of animal welfare. Another outcome is that members are proactive in addressing animal welfare issues when they become aware of them.

3.7 PRIORITIES

The Government's priorities for animal welfare will be to:

- Implement changes arising from Animal Welfare Act amendments, including converting codes of welfare to regulations and guidelines, developing regulations for live animal exports, and creating a broader set of compliance tools and penalties.
- Continue to implement the joint Government/Industry animal welfare compliance plan Safeguarding our Animals, Safeguarding our Reputation.
- Work with sector and interest groups to address priority animal welfare issues such as transport, shade and shelter, and preparing for adverse events.
- Review animal welfare communication tools to ensure that people in charge of animals, and other audiences, are getting the information they require.
- Continue to co-invest in research to inform animal welfare standards and guidelines, and to support improved technologies and practices.
- Continue to collaborate internationally on animal welfare and help develop international animal welfare guidelines.

3.8 MEASURING THE SUCCESS OF THE STRATEGY

We will know the outcomes are being achieved when there is:

- Evidence of improved compliance with animal welfare standards.
- Evidence of earlier intervention in emerging animal welfare issues by industry.
- A better evidence base for animal welfare performance.
- Increased public satisfaction with New Zealand's animal welfare performance.
- Industries leading the promotion of best practice.
- Evidence of consumer trust in the animal welfare system, domestically and internationally.

Questions on proposal for a New Zealand Animal Welfare Strategy

Q1. Do you have any overall comments or feedback about the proposed strategy and its approach?

Q2. What are the risks and benefits of adopting this strategy? Can you think of any missed opportunities or unintended consequences?

Q3. Do the values reflect New Zealanders' views about animal welfare? Would you suggest something else and why?

Q4. Do you have any comments on the proposed approaches, leadership roles, or Government priorities?

4 Proposals to amend the Animal Welfare Act 1999

4.1 REVIEW PROCESS

The Ministry for Primary Industries has reviewed the Animal Welfare Act using its experience implementing the Act over the past 12 years.

Early in the review process the Ministry spoke to a range of individuals and organisations to better understand their concerns about the operation of the Act and the broader animal welfare system. The Ministry also established a stakeholder advisory group to test proposals. The group was made up of nine people from a range of industry, animal advocacy, veterinary, science, and other relevant backgrounds.

4.2 GENERAL OBLIGATIONS IN THE ACT

The Animal Welfare Act 1999 shifted the focus of animal welfare in New Zealand from preventing cruelty, to placing a duty of care on people who own or are in charge of animals. Under the Act, these people have an obligation to meet an animal's physical, health and behavioural needs, and to alleviate unreasonable or unnecessary pain or distress.

The Government considers that the Act has served New Zealand well. The fundamental principles underpinning the Act remain valid, and the standards of care and conduct it has established are largely appropriate. The Government does not propose to change the Act's fundamental approach or alter current standards as part of this review. Instead, the legislation proposals in this paper are directed at improving the way the Act operates by providing greater clarity and enforceability.

4.3 STANDARDS OF CARE AND CONDUCT TOWARD ANIMALS

Codes of welfare are designed to help people in charge of animals comply with their legal obligations. They sit alongside the general obligations in the Act by establishing minimum standards for the care of animals and conduct toward animals. Codes of welfare also contain general information and recommendations for best practice.

Anyone can draft a code of welfare and submit it to the National Animal Welfare Advisory Committee. The committee must consider every code it receives and publicly consult on it, before recommending it to the Minister. There are currently 15 codes of welfare.

Codes of welfare must be reviewed every ten years, or when requested by the Minister, so they keep pace with changes in scientific knowledge, good practice, available technology, and public expectations. Codes of welfare can be reviewed by Parliament's Regulations Review Committee.

Codes of welfare were not intended to be directly enforceable – they do not have the status of regulations and there are no offences attached to them. Instead, meeting or failing to comply with minimum standards can be used in evidence in court to support or defend a prosecution.

4.3.1 Problem

Because codes of welfare are not directly enforceable, the legal effect of not meeting minimum standards is unclear, and inspectors are unable to address breaches of minimum standards effectively. Many industry and non-industry stakeholders have expressed concern that there is no direct penalty for breaching minimum standards, and that this discourages people from meeting the standards. The only available penalty for breach of a minimum

standard in a code of welfare is a prosecution for an offence under the Act, which is resource-intensive for both sides and often not the appropriate response.

The industry is asking for more certainty and for the Government to take stronger action to reduce cases of poor animal welfare.

In addition, there are concerns with the process required by the Act to develop codes of welfare. In particular:

- The Act does not provide for a test of whether a code of welfare is really needed, so a lot of time and effort goes into developing one when there might be better ways of achieving the same outcome.
- Codes of welfare take at least two years to develop and sometimes longer. In part this is because the process is led by a part-time advisory committee, but is also due to the procedural requirements for developing them. Overall, this process is not as efficient as it could be.

4.3.2 Objectives for review

The objectives of the review were to provide for:

- clear and enforceable standards of welfare;
- the ability for standards to evolve with societal expectations, scientific knowledge, good practice, and available technology;
- an efficient process for developing standards;
- the Government to regulate only where necessary;
- the ability for Government to work with sector groups to produce guidance and best practice information that can be used for education, advice, and support for welfare quality assurance schemes.

4.3.3 Options considered

Option 1: Keep codes of welfare and add regulations

One option considered was to retain codes of welfare and simply add to the Act the power to create mandatory standards in regulations that could be backed up by penalties. Under this option regulations would supplement the minimum standards and recommended best practices in codes of welfare by setting mandatory rules or prohibiting certain activities.

While this option would retain the value in codes of welfare, it has the following main drawbacks:

- The unclear legal status of codes of welfare would continue.
- It would not provide for a broad base of clear mandatory standards with sanctions that could be used to improve animal welfare compliance across the board.
- Codes of welfare do not go through all the checks and balances that should apply to a regulatory instrument.

Option 2: Keep codes of welfare but make minimum standards directly enforceable

The second option considered was to amend the Act to make minimum standards in codes of welfare directly enforceable. Codes of welfare would still be issued by the Minister but, as they would contain enforceable standards, they would be drafted by the Ministry for Primary Industries rather than The National Animal Welfare Advisory Committee. The committee would be consulted, but the Ministry would lead the process and the drafting. The Ministry would need to ensure that minimum standards developed through this process went through sufficient analysis and justification appropriate for good regulatory practice.

The benefits of this option are that it retains the guidance value in codes of welfare while allowing for directly enforceable standards. However, the main problem with this option is that not all the minimum standards could, or should, be translated into mandatory regulations. The existing minimum standards were not drafted with the intent of being mandatory. Not all are sufficiently black and white enough to be turned directly into regulations, and the people that would be regulated by them have not been consulted.

Option 3 (preferred): Replace codes of welfare with a mix of regulations and guidelines

The Government's preferred option is that the Act be changed to replace codes of welfare with a mix of mandatory standards backed by a range of penalties, and guidelines with no legal effect.

While many of the pros and cons are the same as for Option 2, the Government considers that the best tool for mandatory standards is regulations. Regulations would need to be agreed by Cabinet, which is well placed to resolve the value conflicts and the balance between multiple outcomes that are inherent in animal welfare decisions. Regulations are also subject to additional quality controls including regulatory impact analysis, drafting by specialists in the Parliamentary Counsel Office, and review by Parliament's Regulations Review Committee.

The process for developing regulations should be more efficient than the process for developing codes of welfare. Regulations take on average 6-12 months to develop, including public consultation. If the legislation is changed as proposed, there would need to be a separate process to identify and refine the current set of minimum standards into a set of mandatory standards suitable for regulations.

Guidelines would be initiated by the Director-General of the Ministry for Primary Industries and developed together with the relevant sector. The Government would be required to consult the National Animal Welfare Advisory Committee and affected parties before issuing a guideline. Guidelines would preserve the information and guidance value in current codes of welfare. They would have no legal effect, but would provide information and promote good practice.

Situations where the Government might decide to issue guidelines include:

- Where a sector requires a single document containing both mandatory standards together with general information and best practice guidance.
- Where an industry is diffuse or there is no industry body to take the lead on animal welfare matters.
- Where animal welfare guidance or direction is needed.
- Where national guidelines are considered necessary to support international trade.

The existence of guidelines would not prevent industry or sector groups from producing their own guidance or best practice material.

4.3.4 What might this system look like?

The Government is not proposing any regulations at this stage. The proposal outlined in this document is to change the legislation to allow regulations to be made in future. More analysis and consultation is needed to fully develop the new system, but this section describes how it might work.

The sorts of regulations that could be made under this system could include: welfare of farmed animals, welfare of animals at slaughter; and welfare of animals being transported within New Zealand.

An illustrative example (not Government policy):

A regulation for the welfare of farmed animals might include mandatory standards for:

- Stockmanship and handling
- Inspection of animals
- Food and water
- Shade and shelter
- Housing
- Behaviour
- Equipment
- Disease and injury control
- Emergency humane destruction
- Emergency management

There could be additional standards for specific sectors or animals:

- Layer hens
- Meat chickens
- Dairy cattle
- Beef cattle
- Sheep
- Deer
- Goats
- Pigs

Standards for farmed pigs could include the following (these are drawn from the existing code of welfare for pigs):

- Handling: pigs must not be prodded in sensitive areas, including the eyes, nose, anus, vulva or testicles and electric prodders or whipping must not be used.
- Inspection: all pigs must be inspected at least once a day.
- Food: Immediate remedial measures must be taken when the body condition of pigs falls to 2 or below on a scale of 1-5.
- Drinking water: All pigs over two weeks of age must have continuous access to a sufficient quantity of water that is palatable, not harmful to heath, and at a temperature that does not inhibit drinking.
- Housing: the minimum lying space allowance for growing pigs must be in accordance with following formula:

  Area (m^2) per pig = 0.03 x liveweight0.67 (kg)
- Tethering: pigs must not be tethered.
- Accommodation: a pig must be free to turn around without difficulty at all times.
- Artificially lit buildings: where pigs are kept in an artificially lit building, lighting with an intensity of at least 20 lux must be provided for a minimum period of 9 hours per day.
- Prevention of fighting: If pigs are kept together, measures must be taken to minimise the effects of aggression.
- Prohibition on the use of sow stalls: after 3 December 2015, mated sows and gilts must not be confined in dry sow stalls after mating.

4.3.5 Transitional arrangements

Under this proposal, the Government would need to review each existing code of welfare to identify which parts should be mandatory and which parts voluntary. Public consultation would also be required. We expect that it would be possible to have new regulations in place within 12 months of the Animal Welfare Act being changed. Existing codes of welfare would remain in force until revoked by regulations.

4.3.6 Who will be affected?

These proposals will have little direct impact on most New Zealanders because they are already meeting the needs of their animals. But for those who are not meeting current minimum standards in codes of welfare, there will be clearer mandatory rules and more sanctions.

There will be changes to the way that animal welfare inspectors carry out their compliance roles allowing more time correcting lower level breaches before offending becomes more serious.

Questions on proposal for standards of care and conduct toward animals

Q5. Do you agree with the proposal to replace codes of welfare with a mix of directly enforceable standards and guidelines?

Q6. What are the risks and benefits of this proposal? Can you think of any missed opportunities or unintended consequences?

Q7. What impact will the proposed changes have on you and/or your organisation or sector?

4.4 CRITERIA TO APPLY IN DEVELOPING ANIMAL WELFARE STANDARDS

The proposal to amend the Act to allow for the making of regulations that contain directly enforceable standards requires a review of the criteria that apply when developing standards.

Currently, before deciding to recommend a code to the Minister, the National Animal Welfare Advisory Committee must be satisfied that the proposed standards in the code are the minimum necessary to ensure the purposes of the Act will be met. The Act sets out the factors the committee must consider before it recommends a code:

- all public submissions;
- good practice and scientific knowledge;
- available technology;
- any other matter it considers relevant.

The Act provides that the committee may, in exceptional circumstances, recommend minimum standards that do not fully meet key obligations in the Act. The words “in exceptional circumstances” make it clear this power should only be used rarely, and in situations that are quite out of the ordinary.

If the committee decides to recommend minimum standards that do not fully meet the obligations in the Act, it must have regard to:

- the feasibility and practicality of effecting a transition from current practices to new practices and any adverse effects resulting from such a transition;
- the requirements of religious practices or cultural practices; and
- the economic effects of a transition from current practices to new practices.

The exceptional circumstance provisions have been applied in minimum standards in the codes for layer hens, pigs, circuses, and commercial slaughter.

4.4.1 Problem

There are regular debates about how animal welfare and broader considerations should be balanced. “Practicality” and “economic impact” are considered as welfare standards are developed, but it would be better to be transparent about these factors.

Use of the exceptional circumstances provisions creates concern among some stakeholders and members of the public that codes are being used to indefinitely extend practices that would otherwise be considered breaches of the Act.

The current Act does not deal well with transitions to new, improved practices. As scientific knowledge, good practice, and available technology change over time, animal welfare standards will inevitably evolve. Under the current Act, allowing an existing practice that does not fully meet the general obligations in the Act to continue during the transition to a new practice would need to be considered an "exceptional circumstance". As standards are revised and updated in the future, transition periods will probably need to be provided more frequently than in rare and quite out of the ordinary situations.

4.4.2 Proposal for changes to the Act

The Government proposes to improve the transparency of decision making by extending the list of matters that must be taken into account when developing animal welfare standards to include matters relating to "practicality" and "economic impact". While these are currently considered within the scope of "good practice", "available technology", and "any other relevant matters", there is an opportunity to make these explicit.

Making matters relating to practicality and economic impact explicit in the list of matters that must be taken into account is particularly important as we propose to make the standards directly enforceable.

The Government also proposes that regulations would, in certain circumstances, be able to set a standard that does not fully meet all of the general obligations in the Act. This would be consistent with the current provisions in the Act regarding codes of welfare. There would be two cases where an animal welfare standard could be made that does not fully meet all of the general obligations of the Act:

- A new standard of welfare is being adopted, but current practices are allowed during a defined transition period (e.g. phase out of sow stalls by 2015).
- There is a need, in genuinely exceptional circumstances, to exempt a practice from animal welfare obligations for an indefinite period (e.g. a religious practice). In this circumstance, it is proposed that there would be a periodic review of the exemption.

Questions on criteria for developing standards

Q8. Would the proposals to add "practicality" and "economic impact" to the set of criteria improve the decision-making process, or would you suggest something else?

Q9. Do you agree that having "transitions" and "exemptions" is a better way to handle the situations that currently fall under "exceptional circumstances"?

Q10. What are the risks and benefits of these proposals? Can you think of any missed opportunities or unintended consequences?

Q11. What impact would the proposed changes have on you and/or your organisation or sector?

4.5 ROLE OF THE NATIONAL ANIMAL WELFARE ADVISORY COMMITTEE

The move to regulated standards requires changing the focus of the National Animal Welfare Advisory Committee (NAWAC), which currently develops codes of welfare and recommends them to the Minister.

The committee provides advice to the Minister on matters relating to the welfare of animals in New Zealand, including research needs, legislative proposals, codes of welfare, and hunting and killing animals in the wild.

NAWAC is comprised of a chairperson and 10 other members, one of whom is the chairperson of the National Animal Ethics Advisory Committee (NAEAC). Members are appointed by the Minister, recognising the need for the committee to have experience and knowledge in the following areas:

- veterinary science;
- agricultural science;:
- animal science;
- the commercial use of animals;
- the care, breeding, and management of companion animals;
- ethical standards and conduct in respect of animals;
- animal welfare advocacy;
- the public interest in respect of animals;
- environmental and conservation management;
- any other area the Minister considers relevant.

4.5.1 Problem

This issue arises as a consequence of the proposal to have mandatory standards in regulations because it is not appropriate for an independent committee to develop regulations.

Additionally, the amount of time that the National Animal Welfare Advisory Committee must spend on codes of welfare has stretched it beyond its capacity as a part-time animal welfare advisory group. The committee has also raised the question of whether its advice to the Minister, which is currently confidential, should be made public as is the case with equivalent committees in other jurisdictions.

4.5.2 Proposal for changes to the Act

The Government proposes that in future the Ministry for Primary Industries would lead the development of animal welfare regulations and make recommendations to the Minister following public consultation. The Ministry would also lead the development of guidelines.

The National Animal Welfare Advisory Committee would be consulted on regulations and guidelines but would not have to develop them, which will greatly reduce its workload and allow it to focus on its other functions including providing the Minister with advice on animal welfare matters.

The committee would be able to investigate any topic falling within its remit, consult with and take advice from external experts, consult with the public, and publish its advice to the Minister at its discretion. Allowing the committee to publish its advice, as is the case in other countries, would increase the transparency of its deliberations and add to the public body of knowledge on animal welfare.

The committee might commence a study for a variety of reasons. There may be public concern about a particular issue, the Minister may request advice, or the committee itself may decide that a subject warrants review.

Questions on the role of the National Animal Welfare Advisory Committee

Q12. Do you agree there is still a role for an independent committee on animal welfare?
Q13. Do you agree that the committee should be able to publish its advice at its discretion?
Q14. Do you agree that the current membership of the committee is appropriate or does it need to be changed?

4.6 LIVE ANIMAL EXPORTS

New Zealand has a small market exporting livestock, focused primarily on the export of dairy heifers for breeding to South-East Asia, Latin America, and China.

Under Part 3 of the Animal Welfare Act, any person planning to export livestock must apply to the Director-General of the Ministry for Primary Industries for an Animal Welfare Export Certificate. Applicants must satisfy the Director-General that they can adequately manage the welfare of the animals during export. The Director-General may publish guidelines for the issue of Animal Welfare Export Certificates, but they have no legal effect.

There are a number of factors that the Director-General must have regard to when considering an application for an Animal Welfare Export Certificate, such as:

- the capability and skills of the applicants;
- the species and number of animals proposed for export; and
- the length and nature of the journey.

In addition, the Director-General may impose conditions on an Animal Welfare Export Certificate, such as:

- a condition that the animal receive specified pre-conditioning before travel;
- a condition that the animal be accompanied on the ship or aircraft by a person approved by the director-general to undertake the work; and
- a condition that the animal be provided on the ship or aircraft with facilities specified by the Director-General.

The Government has a specific policy covering exports of live animals for slaughter and is not proposing to change that policy. Exports of live animals for slaughter are currently restricted unless the Director-General can be satisfied that risks to both animal welfare and to New Zealand's reputation as a responsible exporter can be managed. This policy is currently implemented under the Customs and Excise Act 1996.

4.6.1 Problem

It is not possible to set mandatory standards that apply to all animal exports; each export must be evaluated on a case-by-case basis. For example, the systems, facilities and treatment of animals before export make a significant difference to their welfare but are not currently regulated. Also, there is no mandatory requirement to report on the outcomes of any voyage. The Director-General can issue guidelines but they are not part of the criteria for deciding whether to grant an Animal Welfare Export Certificate, so the Government relies on exporters to comply with them voluntarily.

With limited ability to ensure compliance or to set generic standards, the Ministry relies on the previous track record of exporters, which makes it hard for new exporters or new markets to get approval.

Without the ability to require pre-approval of exports, sometimes the Ministry is asked to make urgent decisions when animals are ready to be loaded, when there is no time to request more information or to make alternative choices.

Policy covering exports for slaughter has been implemented using Customs legislation. The Customs Order must be renewed every three years and is due to expire in December 2013. The use of a Customs Order was intended as a temporary measure until animal welfare legislation could be amended.

4.6.2 Objectives of review

The objectives of the review were to ensure management of the risks to animal welfare and to New Zealand's reputation from live animal exports. The review also aimed to create a system that would clarify which rules were mandatory and provide clear and enforceable standards.

4.6.3 Options considered

Option 1 – no change, continue to issue guidelines and rely on industry voluntary compliance

This option leaves some animal welfare risks unregulated, particularly the systems leading up to export and the reporting of problems that occur during the voyage.

Option 2 (preferred) – allow mandatory rules to be set in regulations, backed up by a range of compliance tools

Setting mandatory standards in regulations would clarify the rules for exporters and allow the Government to act when the rules are breached. Regulations could cover pre-export approval, and mandatory reporting of any problems during a voyage, and some of the rules currently expressed in guidelines.

Option 3 – create an export regime like that created under the Animal Products Act

The review team considered an export regime similar to the ones that apply to food and other animal products. This would involve licensing all exporters and requiring them to have risk management programmes for animal welfare. It also includes a verification regime where independent third parties ensure that the Government's standards have been met. Australia has recently adopted some of these regulatory mechanisms.

The review team considered that since all exporters were already licensed under the Animal Products Act that there was no value in including a similar requirement in the Animal Welfare Act. The team agreed that better monitoring and reporting was important for live animal exports but that these could be achieved using regulations, and could be introduced in an incremental way, without needing to create a whole verification system within the legislation.

Additional option – use Customs legislation or Animal Welfare legislation

The team also considered the merits of leaving the current restrictions on live exports for slaughter in Customs legislation, but recommended that the Animal Welfare Act be amended so those rules could be made under animal welfare legislation.

4.6.4 Proposal for changes to the Act

The Government proposes that the Act be amended to allow for regulations to be created that provide directly enforceable standards for live animal exports.

This is consistent with the other proposals in this document. It allows the Government to set mandatory standards and create rules covering classes of exports, as well as rules providing for the Director-General to set conditions for each export case-by-case. These standards would cover similar issues currently covered by guidelines, including:

- species, age and fitness of animals;
- duration and date of journeys;
- the transport vehicle;
- the purpose of the export;
- the people accompanying the animals;
- pre-loading facilities; and
- reporting and monitoring.

The Director-General would be able to consider whether any regulations made under this part of the Act had been met when deciding whether to issue an Animal Welfare Export Certificate. Regulations would carry penalties if breached.

The Government also proposes to enable current policy on exports for slaughter to be implemented under the Animal Welfare Act rather than the Customs and Excise Act. This will require broadening the purpose of the exports part of the Act (Part 3) so that New Zealand's reputation can be considered when making regulations or deciding on applications.

4.6.5 Transitional arrangements

Under this proposal, the Government would need to develop new regulations covering live exports. Public consultation would also be required. We expect that it would be possible to have new regulations in place within 12 months of the Animal Welfare Act being changed. Until then the existing system, standards and guidelines will continue to apply.

Question on live animal exports

Q15. Do you agree with the proposal to create directly enforceable standards for the export of live animals?

Q16. Do you agree with broadening the purpose of the exports part of the Act so that New Zealand's reputation can be considered when making rules or deciding on applications?

Q17. What are the risks and benefits of these proposals? Can you think of any missed opportunities or unintended consequences?

Q18. What impacts will the proposal have on you and/or your organisation or sector?

4.7 SIGNIFICANT SURGICAL PROCEDURES

The Animal Welfare Act says that significant surgical procedures can only be performed on an animal if that person is a veterinarian or a person who is acting under the direct supervision of a veterinarian and who is being taught veterinary science at undergraduate level.

Significant surgical procedures include:

- Restricted surgical procedures that may only be carried out if the procedure is in the animal's interests and using appropriate pain relief;
- Controlled surgical procedures that may also be carried out by the owner of an animal, or their employee, with written veterinary approval.

Most significant surgical procedures are not specifically mentioned in the Act, but a few are specifically classified as restricted or controlled surgical procedures:

- Debarking a dog is a restricted procedure.
- Declawing a cat is a restricted procedure.
- Docking the tail of a horse is a restricted procedure.
- Develvetting a deer is a controlled procedure.

The Act also prohibits cropping the ears of a dog and blistering, firing, or nicking a horse. Piercing the tongue of an animal and branding an animal in such a manner that the animal suffers unreasonable or unnecessary pain or distress are both ill-treatment offences.

Regulations can be made to declare a surgical procedure to be significant, not significant, restricted or controlled. Separately, there is a code of welfare covering painful husbandry procedures that includes some surgical procedures.

No one may perform a non-significant surgical procedure in a way that causes unreasonable or unnecessary pain or distress.

4.7.1 Problem

There are three cases where the Act excludes suitably trained people from carrying out significant surgical procedures:

- Overseas qualified veterinarians seeking to gain practical experience before sitting New Zealand registration examinations, working under the direct supervision of a vet.
- New Zealand registered veterinarians who have taken time out from the profession and are seeking to gain practical experience before applying for a practicing certificate, working under the direct supervision of a vet.
- For controlled procedures – skilled technicians that are contracted by but not employed by the owner of the animal.

The current legislation provides no ability to set mandatory standards for controlled surgical procedures that can be carried out by the owner of the animal or their employee with written veterinary approval.

Several recommendations have been made for specific procedures to be listed as significant, restricted or controlled procedures, or to be prohibited. This review provides the opportunity to achieve greater clarity around the status of these procedures.

4.7.2 Review objectives

The objectives of the review were:

- to ensure that surgical procedures are carried out in such a way that any immediate or post-operative pain the animal experiences is minimised; and
- to ensure the framework in the Act covering surgical procedures is clear and flexible enough to accommodate changes in animal management and societal attitudes.

4.7.3 Options considered

The review team considered that the framework governing surgical procedures in the Act is largely sound, but that it requires minor changes to clarify the test for classifying a procedure as significant, and to make the framework more easily understood. The key issue was whether surgical procedures should be classified in legislation and debated in Parliament or classified in regulations and debated in Cabinet.

Option 1 – classifying procedures through regulations

Classifying surgical procedures in regulations would allow greater flexibility to prohibit or restrict procedures in line with changes in animal management and societal attitudes. However, only a few procedures require classification and change occurs slowly over a long period of time. Some new procedures may need to be classified from time to time, but not at a great frequency.

Option 2 (preferred) – classifying procedures in the Act

The benefit of classifying procedures in the Act itself is that contentious or ethical issues associated with procedures would be able to be debated in Parliament. Under this option, the Government would have the ability to classify or prohibit new procedures in regulations if necessary.

4.7.4 Proposal for changes to the Act

Changes to who can perform surgical procedures

The Government proposes amending the Act to allow vets that are not yet New Zealand registered or do not have a current practicing certificate to perform significant surgical procedures under the direct supervision of a vet.

The Government also proposes amending the definition of controlled surgical procedure so that these can be conducted by trained and competent technicians in addition to the owner or employees of the owner. The requirement for veterinary approval would remain the same.

Mandatory standards for controlled surgical procedures

The Government proposes amending the Act to create the ability to make mandatory standards in regulations for controlled surgical procedures. The regulations would be backed up by penalties and other enforcement tools.

An example of a regulation that would be considered is for velvet antler removal from deer. In this case, it would be desirable to set conditions on the methods of analgesia that are required or allowed and to disallow particular forms of restraint (e.g. electro-immobilisation). Another example is laparoscopic artificial insemination, where risks to animal welfare could be better managed by specifying the level of training and competence. A requirement to use particular tools or restrict particular forms of restraint can also be applied.

Other minor changes

The Government proposes to add a new power enabling a surgical procedure to be prohibited by Order in Council. This is consistent with powers already available to add significant surgical procedures to the Act by Order in Council, and provides the flexibility to prohibit procedures without having to amend the Act. The Government also proposes to clarify the test for classifying a procedure as significant, and to tidy up the surgical procedures sections in the Act to make the framework more easily understood.

Questions on significant surgical procedures

Q19. Do you agree with the proposals to change who can perform significant surgical procedures under veterinary supervision?
Q20. Do you agree that the Act should allow for mandatory conditions to be placed on controlled surgical procedures?
Q21. What are the risks and benefits of these proposals? Can you think of any missed opportunities or unintended consequences?
Q22. Are there any other ways the system should be improved?
Q23. What impact would the proposed changes have on you and/or your organisation or sector?

4.7.5 We are also seeking your views on what controls are appropriate for each of the surgical procedures listed below.

The Government has received several recommendations for the procedures below to be classified as significant, restricted or controlled surgical procedures in the Animal Welfare Act, or to be prohibited. The Government has not formed a view on whether and how these procedures should be classified in the Act, and is seeking public feedback on this issue.

For each of the procedures in section 4.7.5 please indicate your views about how they should be classified:

- Not significant: can be carried out by anyone.

- Significant: may only be carried out by a veterinarian or a person who is acting under the direct supervision of a veterinarian and who is being taught veterinary science at undergraduate level. Note the proposal to include vets not yet registered in New Zealand or without a current practicing certificate under vet supervision.
- Restricted: as for significant surgical procedures plus may only be carried out if the procedure is in the animal's interests and using appropriate pain relief.
- Controlled: as for significant surgical procedures plus may also be carried out by the owner of an animal, or their employee (note proposal to include contractors), with written veterinary approval.
- Prohibited: no one may carry out the procedure.

Mulesing – surgical removal of skin from the breech of merino sheep as a way of managing flystrike. The industries involved committed to end this practice by 2010. Regulation would support the industry initiative and ensure that the practice does not resume.

Tail docking of horses – this is a restricted surgical procedure, but there is anecdotal evidence that the practice may be increasing in certain heavy horse breeds. There is concern that there are alternatives and this practice is unnecessary.

Laparoscopic artificial insemination of sheep and goats – artificial insemination direct into the uterus, via keyhole surgery, to assist breeding. It has been suggested this procedure needs to be conducted by veterinarians or people with appropriate competence.

Embryo collection via exteriorized uterus (surgical embryo collection) in sheep and deer – a technique to assist breeding where the uterus is pulled out through an incision in the side of anaesthetized animals so that embryos can be washed out and collected. There is concern that the procedure requires competent conduct, and appropriate pain management and post-surgical care.

Tail docking of dogs – tails are removed according to the code of welfare for dogs (usually with rubber bands under certain conditions). There is concern that this is an unnecessary procedure that can cause short- and long-term animal welfare problems.

Tail shortening of cows – tails are shortened according to the code of welfare for painful husbandry procedures (surgically or with rubber rings, under certain conditions). There is concern there are management alternatives that make this procedure unnecessary.

Desexing of companion animals – surgical castration (spaying or neutering) of pets, while under anaesthetic, to prevent breeding. There is concern that this procedure requires careful pain management, and care during and after surgery, to manage risks to animal welfare.

Desexing of horses, llamas and alpacas – a surgical procedure on male animals to prevent breeding and/or manage behaviour. There is concern that this procedure requires appropriate pain relief, and care during and after surgery, to manage risks to animal welfare.

Tooth extraction in horses and companion animals – conducted to prevent damage to other animals, or for veterinary treatment. There is concern that this procedure requires appropriate conduct and use of pain relief and sedation in order to manage possible complications and pain.

Liver biopsy – a surgical procedure where a special needle is inserted into the body to take a sample directly from the liver, for nutritional and health assessments. There is concern that the procedure requires competent operators and pain relief to avoid animal welfare problems.

Removal of articulated (jointed/attached) dew claws in dogs – these claws are removed to avoid damage or to improve appearance. There is concern that the procedure requires appropriate pain relief.

Caslick's procedure – surgery to the vulva of horses to avoid faecal contamination and consequent infection and inflammation, in order to maintain reproduction in horses. There is concern that this procedure requires appropriate competence and pain relief, to manage risks to animal welfare.

Comb removal from game poultry (dubbing) – surgical removal of the comb and sometimes other fleshy parts of the head from particular breeds of game birds, using pain relief on the skin (local anaesthetic). The procedure is to avoid the risk of comb damage caused by fighting. There is concern that there are other ways of managing the risk of fighting, and that the procedure needs competent conduct and pain relief.

Surgical castration of livestock on farm within certain age limits and under certain conditions – this is currently managed under the code of welfare for painful husbandry procedures. There is concern that surgical castration needs to be conducted appropriately under particular conditions, and that there are alternative methods.

4.8 REPORTING ANIMALS KILLED FOR RESEARCH, TESTING, AND TEACHING

Part 6 of the Act deals with animals used in research, testing, and teaching. It requires a two part test: that an application to undertake research, testing, or teaching using animals demonstrates benefits for society, and that benefits are not outweighed by the likely harm to the animals. It also sets out that each animal ethics committee has a role in ensuring all reasonable steps are taken to alleviate unreasonable or unnecessary pain or distress, and in promoting the 3Rs of using animals in research (reducing numbers, refining techniques, replacing animals).

Reporting of numbers of animals used in research, teaching, and testing that the Crown can require by regulation is limited by the definition of "manipulation". The definition of manipulation specifically excludes "the killing of an animal in order to undertake research, testing, or teaching on a dead animal or on prenatal or developmental tissue of the animal if the animal is killed in such a manner that the animal does not suffer unreasonable or unnecessary pain or distress".

4.8.1 Issue identified

The National Animal Ethics Advisory Committee has asked the Government to include animals killed as part of research, testing and teaching in the definition of manipulation. The exclusion of killing without unreasonable pain or distress from the definition of manipulation means that animals that are killed humanely to be used in research, testing, or teaching are not captured by the rules for animals used in research, testing or teaching. The tests do not apply and the Government cannot collect and release statistics on numbers killed.

Including animals killed in animal use statistics was considered at the time the Act was passed. It was excluded because the Act focuses on the prevention of ill-treatment of live animals rather than the exercise of moral judgement about using animals where the animal is killed humanely.

4.8.2 Proposal for changes to the Act

The Government proposes to include animals killed for research, testing, or teaching on a dead animal or on prenatal or developmental tissue within the definition of manipulation. This will mean that the Crown can require statistics on the numbers of animals killed in order to undertake research, testing, and teaching, making animal use statistics more transparent.

The Ministry's analysis suggests that there is a rationale for killing to be subject to the first of the two tests. This test simply requires demonstration that there is good reason to believe benefits will result from the proposed research, testing, and teaching. Given the less certain outcomes of research, testing, and teaching it is reasonable to ask for justification rather than assuming an automatic benefit for using an animal for research, testing or teaching.

However, the second 'harm-benefit' test would represent a significant departure from the philosophy of the Act. It would result in situations where an animal ethics committee would be required to make a moral judgement on the sacrifice of life as part of the harm caused by research, testing, and teaching.

The Government also needs to ensure that including killing as a 'manipulation' under the Act does not make research, testing, and teaching obligations within the Act unreasonable. We therefore propose to:

- Exempt researchers who kill an animal for research, testing, and teaching purposes from needing to satisfy the second 'harm-benefit' test. Animal ethics committees would only have to be satisfied that an application to undertake research, testing, or teaching using animals demonstrates benefits for society; and
- Exempt circumstances where research, testing, and teaching is undertaken on a dead animal (and/or their tissue) procured from a commercial retail outlet. These industries already operate under codes of welfare and, in the case of most livestock slaughter, have Government veterinarian oversight. The focus is on the situations where killing is conducted in the research, testing, and teaching environment.

Questions on reporting of animals killed for research, testing or teaching

Q24. Do you agree that the number of animals killed humanely for research, testing and teaching should be included in official statistics?

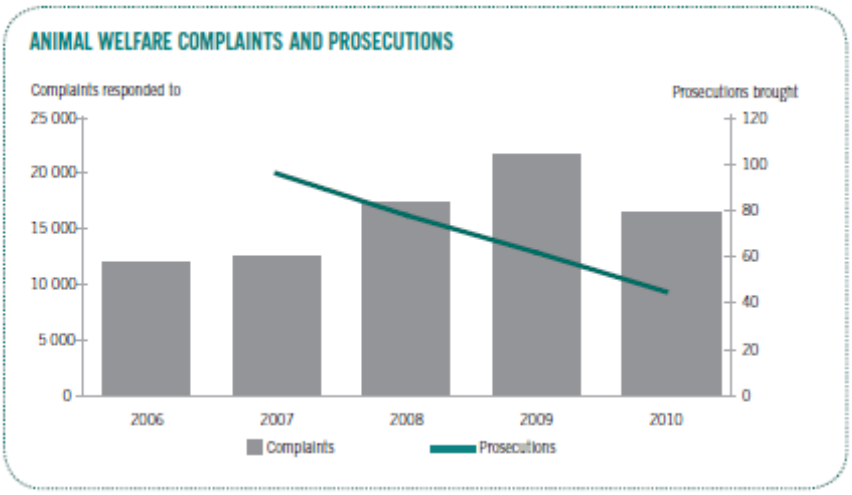
Q25. What impact, including costs, would the requirement to report animals killed for use in research, teaching, and testing have on you or your organisation?

Q26. Can you think of any other changes that would improve the system for regulating animals used in research, testing and teaching?

4.9 ENFORCEMENT TOOLS

4.9.1 Enforcement of the Animal Welfare Act

More than 10,000 animal welfare complaints are made each year to either the Ministry or to the Royal New Zealand Society for the Prevention of Cruelty to Animals (RNZSPCA), as shown in the graph below. The RNZSPCA deals with the vast majority of the complaints, which tend to relate to pets and urban areas, while the Ministry focuses on farm animals in rural areas and the most serious offending.



In 2010, 16,421 animal welfare complaints were received, the majority of which were dealt with by the RNZSPCA. The Ministry handled 567 of the complaints, of these it categorised eight complaints as organised illegal activity, 88 as being a lower threshold of criminal behaviour, and the rest as minor breaches. The Ministry undertook the following enforcement actions:

- 179 people given verbal advice following a complaint;
- 119 people given education material;
- 14 warning letters;
- 77 notices issued under s130 of the Animal Welfare Act;
- 3 enforcement orders; and
- 3 prosecutions recommended.

The Ministry also carried out over 1000 educational visits to farms in 2010.

4.9.2 Existing Animal Welfare Act enforcement tools

Animal welfare inspectors have the following enforcement options and tools where someone is in breach of the Animal Welfare Act and/or an animal is suffering or likely to suffer:

- They can issue a notice under section 130 of the Act, which directs the person to take steps to prevent or mitigate the suffering of the animal.
- They can obtain an enforcement order from a District Court, which requires the person to comply with the Act or any regulations made under it.
- They can issue an infringement notice for offences relating to failure to inspect traps and failure to provide name and address.
- They can seek a prosecution for an offence under the Act. Penalties may include fines, imprisonment, disqualification from being in charge of animals, and/or forfeiture of animals.

4.9.3 Problem

Inspectors encounter a significant number of situations that warrant a response that is stronger than a warning letter, but are not severe enough to justify a full prosecution or court order. To address welfare problems early and deter more serious offending, animal welfare inspectors need an alternative penalty that is more suited to lower-level offending.

Specific problems encountered in enforcing the Animal Welfare Act are:

- The range of offences that can receive an infringement fine is very limited, and the Act sets the maximum infringement fee at $200.

- Before a notice can be issued under section 130, the inspector needs to believe that the animal is suffering, or is likely to suffer, unreasonable or unnecessary pain or distress, which may be too late for a simple intervention.
- Enforcement orders need to be made by a District Court, meaning that they are used on a fairly infrequent basis.

4.9.4 Proposal for changes to the Act

The Government proposes to enhance the range of enforcement tools available under the Act, to allow a larger number of animal welfare problems to be addressed locally and more quickly, without resorting to prosecutions. We propose to:

- Create new infringement offences and fines tied to the proposed regulations. Specific infringement offences and fines would be set in regulations.
- Enable animal welfare inspectors to issue compliance orders for certain breaches of the Act, without needing to apply to a District Court. Compliance orders would require a person to cease doing something or to prohibit them from doing something that would breach or be likely to breach an animal welfare law. Failing to follow a compliance order would be an offence liable for either an instant fine or prosecution.
- Increase the maximum infringement fee set in the Act from $200 to $1000 to give flexibility to set a suitable level of penalty for each infringement offence.

Inspectors would still be able to seek prosecutions for breaches of the general duty of care or for ill-treatment offences.

4.9.5 Implementation

Only certain offences will be suitable to be subject to instant fines, as fines should only be issued for relatively minor offending where it is clear and a matter of fact as to whether an offence has been committed. The process to determine which offences would be suitable to be classified as infringement offences would take place once the legislation is changed, and would be subject to public consultation.

There are Ministry of Justice guidelines for infringement regimes that include the right to contest infringements in courts and the need for agencies to develop operating guidelines to help their staff act consistently and exercise their discretion.

Not all animal welfare inspectors would have the power to issue infringement notices. Further analysis is required to determine what level of experience and training is necessary in order for inspectors to exercise this power.

Questions on enforcement tools

Q27. Do you agree with the proposals to attach instant fines to some minor offences and give some animal welfare inspectors the ability to issue compliance orders?
Q28. What are the risks and benefits of this proposal? Can you think of any missed opportunities or unintended consequences?
Q29. What impact would the proposal have on you and/or your organisation or sector?

4.10 OTHER OFFENCES

4.10.1 Deliberate drowning

Drowning is no longer accepted as a way of deliberately killing land animals or unwanted terrestrial wildlife. Drowning causes unreasonable distress before animals lose unconsciousness or die, and there are a variety of alternatives available that cause less pain and distress.

There have been several prosecutions in New Zealand under the Animal Welfare Act and previous legislation in relation to drowning various animals, including a cat captured in a cage trap, puppies, and a sow. Each case of drowning a land animal must be determined on its own merit to prove suffering has occurred, which is inefficient administratively.

The Government proposes to make intentional drowning or attempting to intentionally drown any land animal, including any animal in a wild state, an offence.

4.10.2 Ill-treatment offences apply to animals in the wild

The Animal Welfare Act does not make it illegal to hunt or kill any animal in a wild state, any wild animal, any pest, or any fish caught from a constructed pond. "Hunt or kill" is defined in section 2 of the Act, and includes killing, taking, catching, trapping, capturing, tranquillising, and immobilising an animal by any means, and pursuing or disturbing any animal.

A captured animal must be killed in a manner that does not cause unreasonable or unnecessary pain or distress. The Act excludes animals caught by fishing from this provision.

If an animal in a wild state is captured without an intention to kill it imminently, then the person who has captured that animal is subject to all the responsibilities of a person in charge of an animal and the provisions of the Act apply in full.

There is doubt over whether ill-treatment offences apply to animals in a wild state.

The Animal Welfare Act allows hunting and fishing and the Government is not proposing to change that. But the Government proposes to prevent extreme conduct that goes beyond acceptable practice when hunting, fishing or controlling pests by clarifying that it is an offence to willfully or recklessly ill-treat an animal a wild state.

It will be important to ensure that generally accepted hunting and pest management activities are not prevented by this proposal.

Questions on other offences

Q30. Do you agree with the proposal to make drowning a land animal an offence?
Q31. Do you agree with the proposal to clarify that wilful and reckless ill-treatment offences apply to animals in a wild state?
Q32. What are the risks and benefits of these proposals? Can you think of any missed opportunities or unintended consequences?

4.11 OTHER TECHNICAL AMENDMENTS

Table 1: Other technical amendments

Issue	The Government's proposal
An animal welfare issue may arise where a person is failing to meet their obligations under the Animal Welfare Act but does not face conviction and associated penalties of forfeiture or disqualification from owning an animal because they are found unfit to stand trial. In these cases no long-term resolution is able to be given for the welfare of the animals concerned.	Clarify whether the Animal Welfare Act needs to be amended to ensure that the Courts can, if a person is found unfit to stand trial: -Appoint someone to look after their animals on a temporary basis. -Order forfeiture of animals on a permanent basis. -Order disqualification from future animal ownership. -Provide for the Crown to recover costs.

Issue	The Government's proposal
The Ministry for Primary Industries needs the ability to suspend animal welfare inspectors and auxiliary officers who work for approved organisations, pending the outcome of an investigation into a complaint or suspected misconduct.	Clarify whether the Animal Welfare Act needs an explicit power for investigators and auxiliary officers to be suspended pending the outcome of an investigation.
The appointment process for Ministry for Primary Industries' animal welfare inspectors is currently linked to the State Sector Act, which has caused administrative problems in the past.	Remove the reference to the State Sector Act 1988 from subsection 124(1) of the Animal Welfare Act, meaning that Ministry for Primary Industries animal welfare inspectors will be appointed directly under the Animal Welfare Act.
The Ministry for Primary Industries needs the ability to audit approved organisations (including the RNZSPCA) to confirm that they continue to meet the criteria set out in section 122 of the Act.	Amend the Act to provide power for the Director-General to, from time to time, audit an organisation approved under section 121 or section 189, to confirm that it continues to meet the criteria set out in section 122(1).
The Local Government Official Information and Meetings Act (LGOIMA) provides that every meeting of a local authority shall be open to the public, unless an exception applies. NAWAC and NAEAC are 'local authorities' for the purposes of the relevant Part of the LGOIMA.	Remove NAWAC and NAEAC from being subject to the LGOIMA. NAWAC and NAEAC are already covered under the Official Information Act and meeting information can be requested under that Act.
Definition of device in section 2 interpretation does not cover explosive devices.	Add explosive to the definition of device to enable regulations to be made covering explosive devices in future if needed.
The current definition of 'pest' in the Animal Welfare Act includes grass carp (Ctenopharyngodon idella) and silver carp (Hypophthalmichthys molitrix), which are managed as pests in New Zealand. However, there is also increasing interest in breeding and keeping these species for weed control and farming them for food. Section 177 currently says that nothing in the Act makes it unlawful to kill any pest - meaning that people farming grass or silver carp are not obligated to comply with section 12(c), which makes it an offence to kill an animal in such a manner that the animal suffers unreasonable or unnecessary pain or distress.	We propose to amend the Act to clarify that the killing of all farmed fish is covered by section 12(c) of the Animal Welfare Act, making it an offence to kill farmed fish in such a manner that the fish suffer unreasonable or unnecessary pain or distress. This is to ensure consistency in the requirements for the care and killing of all captive-bred and farmed fish. It does not include fish in a wild state that are caught in recreational fishing or those hunted or killed for pest management purposes.
Section 11 says that owners of animals must, where practicable, ensure that any ill or injured animal receives treatment that alleviates any unreasonable or unnecessary pain or distress being suffered by the animal.	Remove 'where practicable' from section 11. Section 13(2)(a) provides a defence if the defendant took all reasonable steps to comply, so allows owners a defence for situations where it is not practicable to get treatment.
The passing of the Search and Surveillance Act has changed the landscape of general inspection and search powers. We want to ensure clarity remains around the scope of an inspector's power when he or she is exercising an inspection power under section 127. Specifically, inspectors who carry out an inspection under section 127 need to be able to record what was observed during the inspection and need to be able to take evidence (including samples) to make a diagnosis, and/or support any decision to seize or destroy an animal.	Amend the Act to expressly state that when exercising inspection powers under section 127 inspector may take photos, sound, video recordings, drawings, etc as may be relevant to the purpose of the inspection. Amend the Act to clarify that inspectors are able to take samples from animals (such as blood samples) when exercising an inspection power under section 127.
Section 130 allows inspectors to destroy an animal if they believe that destruction is the only way to prevent the animal suffering unreasonable or unnecessary pain or distress. Section 138 sets out the process that must be followed before an animal can be destroyed.	An amendment should be made to section 130 requiring that, before an animal is destroyed, the inspector must follow the process in section 138.

Issue	The Government's proposal
S138(4) refers to "other veterinarian", although there may be no initial veterinarian if the initial assessment was made by inspector.	Clarify that S138(4) refers to the veterinarian giving the second opinion.

Question on technical amendments proposed

Q33. Do you have any comments on any of the technical amendments proposed in Table 1?

Any other comments

Q34. Do you have any other comments or feedback not covered by these questions?

5 Questions

The Ministry would appreciate your feedback on the following questions, though you do not have to restrict your submissions to these questions. All comments and feedback will be considered.

Questions on proposal for a New Zealand Animal Welfare Strategy

Q1. Do you have any overall comments or feedback about the proposed strategy and its approach?

Q2. What are the risks and benefits of adopting this strategy? Can you think of any missed opportunities or unintended consequences?

Q3. Do the values reflect New Zealanders' views about animal welfare? Would you suggest something else and why?

Q4. Do you have any comments on the proposed approaches, leadership roles, or Government priorities?

Questions on proposal for standards of care and conduct toward animals

Q5. Do you agree with the proposal to replace codes of welfare with a mix of directly enforceable standards and guidelines?

Q6. What are the risks and benefits of this proposal? Can you think of any missed opportunities or unintended consequences?

Q7. What impact will the proposed changes have on you and/or your organisation or sector?

Questions on criteria for developing standards

Q8. Would the proposals to add "practicality" and "economic impact" to the set of criteria improve the decision-making process, or would you suggest something else?

Q9. Do you agree that having "transitions" and "exemptions" is a better way to handle the situations that currently fall under 'exceptional circumstances'?

Q10. What are the risks and benefits of these proposals? Can you think of any missed opportunities or unintended consequences?

Q11. What impact would the proposed changes have on you and/or your organisation or sector?

Questions on the role of the National Animal Welfare Advisory Committee

Q12. Do you agree there is still a role for an independent committee on animal welfare?

Q13. Do you agree that the committee should be able to publish its advice at its discretion?

Q14. Do you agree that the current membership of the committee is appropriate or does it need to be changed?

Question on live animal exports

Q15. Do you agree with the proposal to create directly enforceable standards for the export of live animals?

Q16. Do you agree with broadening the purpose of the exports part of the Act so that New Zealand's reputation can be considered when making rules or deciding on applications?

Q17. What are the risks and benefits of these proposals? Can you think of any missed opportunities or unintended consequences?

Q18. What impacts will the proposal have on you and/or your organisation or sector?

Questions on significant surgical procedures

Q19. Do you agree with the proposals to change who can perform significant surgical procedures under veterinary supervision?

Q20. Do you agree that the Act should allow for mandatory conditions to be placed on controlled surgical procedures?
Q21. What are the risks and benefits of these proposals? Can you think of any missed opportunities or unintended consequences?
Q22. Are there any other ways the system should be improved?
Q23. What impact would the proposed changes have on you and/or your organisation or sector?

For each of the procedures in section 4.7.5 please indicate your views about how they should be classified:

- Not significant: can be carried out by anyone.
- Significant: may only be carried out by a veterinarian or a person who is acting under the direct supervision of a veterinarian and who is being taught veterinary science at undergraduate level. Note the proposal to include vets not yet registered in New Zealand or without a current practicing certificate under vet supervision.
- Restricted: as for significant surgical procedures plus may only be carried out if the procedure is in the animal's interests and using appropriate pain relief.
- Controlled: as for significant surgical procedures plus may also be carried out by the owner of an animal, or their employee (note proposal to include contractors), with written veterinary approval.
- Prohibited: no one may carry out the procedure.

Questions on reporting of animals killed for research, testing or teaching

Q24. Do you agree that the number of animals killed humanely for research, testing and teaching should be included in official statistics?
Q25. What impact, including costs, would the requirement to report animals killed for use in research, teaching, and testing have on you or your organisation?
Q26. Can you think of any other changes that would improve the system for regulating animals used in research, testing and teaching?

Questions on enforcement tools

Q27. Do you agree with the proposals to attach instant fines to some minor offences and give some animal welfare inspectors the ability to issue compliance orders?
Q28. What are the risks and benefits of this proposal? Can you think of any missed opportunities or unintended consequences?
Q29. What impact would the proposal have on you and/or your organisation or sector?

Questions on other offences

Q30. Do you agree with the proposal to make drowning a land animal an offence?
Q31. Do you agree with the proposal to clarify that wilful and reckless ill-treatment offences apply to animals in a wild state?
Q32. What are the risks and benefits of these proposals? Can you think of any missed opportunities or unintended consequences?

Question on technical amendments proposed

Q33. Do you have any comments on any of the technical amendments proposed in Table 1?

Any other comments

Q34. Do you have any other comments or feedback not covered by these questions?