

In Confidence

Office of the Minister of Agriculture
Chair, Cabinet Economic Development Committee

Animal Welfare Regulations for submission to Executive Council

Proposal

1. I seek the Cabinet Economic Development (DEV) Committee's approval to submit the Animal Welfare (Care and Procedures) Amendment Regulations 2020 to the Executive Council. This includes approval for policy changes to some regulations as a result of new information identified during the regulatory drafting process.
2. In December 2019, Cabinet agreed (CAB-19-MIN-0652):
 - to the policy and associated offences for the animal welfare regulations outlined in this paper; and
 - to DEV, rather than the Cabinet Legislative Committee, approving the submission of these regulations to the Executive Council due to the potential for policy changes and because of the size and complexity of the regulatory package.

Relation to government priorities

3. This proposal relates to the Government's priority area of building a productive, sustainable, and inclusive economy. It will enhance New Zealand's reputation as a safe and ethical food producer through maintaining and improving animal welfare standards in line with up-to-date scientific knowledge and good practice.

Executive Summary

4. In May 2021, new criteria for determining whether a procedure is a significant surgical procedure will come into force within the Animal Welfare Act 1999 (the Act).
5. Some procedures routinely performed by non-veterinarians are likely to meet the new criteria of a significant surgical procedure. Without regulations to state otherwise, these procedures would generally become veterinarian-only¹. For example, sheep tail docking and castration of goats.
6. These regulations will provide greater clarity about who is appropriate to undertake significant surgical procedures on animals, and under what circumstances. The regulations will help people comply with their obligations under the Act, and in turn improve animal welfare.

¹ Reference to a veterinarian, except when in relation to the authorisation of pain relief, also includes a veterinary student under direct supervision of a veterinarian.

7. The new criteria were due to come into force on 9 May 2020, with this package of regulations to be considered by Government in April 2020. However, I did not consider that it would be feasible to introduce new regulations during the outbreak of COVID-19. As such, on 30 April 2020 Parliament passed legislation² that deferred the introduction of the new criteria for one year.
8. While the criteria will not come into force until May 2021, approving regulations now will reduce any uncertainty, and allow for a comprehensive implementation programme to be undertaken.

Further Cabinet approval is sought for a number of policy matters

9. Approval is required for five regulatory proposals that have been amended since the original policy approval in December 2019. These amendments will not adversely impact animal welfare outcomes, and are likely to be more practical for stakeholders to implement. I recommend the following policy changes to:
 - widen the type of pain relief that can be used when castrating sheep and cattle, and disbudding and dehorning cattle. This will allow veterinarians to use their judgement on the most appropriate pain relief to be provided;
 - allow a competent person to replace or reinsert a teat plug that was inserted in a cattle beast's teat by a veterinarian for therapeutic purposes;
 - extend the age that breeder chickens and breeder turkeys can be beak tipped by an infrared beam to six days of age. This will allow more birds to be tipped by infrared beam, which is the preferred method;
 - extend the age that a competent person can amputate a breeder chicken's spur to three days of age. This will align with the timing of other procedures which will minimise the handling of young birds;
 - allow a competent person to perform rectal examinations on equids³ when undertaking non-surgical reproductive procedures.

Commencement dates for regulations

10. The majority of the regulations will come into force on 9 May 2021. Two regulations will come into effect soon after the package is approved⁴. They relate to an amendment to the current regulation for electric prod use⁵, and the regulation that sets an infringement fee for non-compliance with a compliance notice.

² COVID-19 Response (Taxation and other Regulatory Urgent Measures) Act 2020.

³ Equid means any member of the equidae family including any horse, pony, donkey, mule, other wild ass, zebra and any of their hybrids.

⁴ The regulations will come into force 28 days after the package of regulations is approved and notified in the *Gazette*

⁵ Amendments to regulation 48 of the Animal Welfare (Care and Procedures) Regulations 2018 allow for electric prod use on pigs that weigh over 70 kg if the pigs are in a single-file slaughter race leading into, and within 15 metres of, the stunning pen. It also excludes electrical devices used by the New Zealand Police from the regulation.

Financial implications

11. The fiscal implications for Government of the new regulations will be managed within existing baselines. MPI will continue to monitor the implications of the regulations on compliance and enforcement.

Legislative implications

12. Codes of welfare will be updated to reflect amendments that have been made to definitions and minimum standards as a result of the new regulations. Amendments to minimum standards and definitions in codes of welfare are provided in a schedule to the Animal Welfare (Care and Procedures) Amendment Regulations 2020.
13. Subsequent minor amendments⁶ will also be made to the wider text within the codes, as required, to align with the regulations. These are minor amendments that would not materially affect the purposes of the code. The codes will be amended and republished in time for the commencement of the regulations on 9 May 2021.

Intention to submit the draft regulations

14. I now seek approval for the recommended policy changes, and to submit the regulations to the Executive Council.

The structure of this paper

15. This paper is set out in two parts:
 - Part A covers background information on the animal welfare regulations provided with this paper. In particular, it covers additional policy approval required for regulations that have changed substantially during the regulatory drafting process, as well as minor and technical changes required to the wording of some regulations.
 - Part B covers the standard matters considered by Cabinet prior to approving any regulation.

Part A: New regulations on Significant Surgical Procedures

Regulations are necessary to clarify who can undertake significant surgical procedures on animals, and under what circumstances

16. Under the Act, significant surgical procedures on animals may only be performed by a veterinarian, unless regulations provide otherwise.

⁶ Amendments made to the recommended best practice and general information in the codes of welfare are minor amendments that may be made by the Minister of Agriculture, under section 76(1) of the Act, by notice in *The Gazette*.

17. On 9 May 2021, new criteria for determining whether a procedure is a significant surgical procedure will come into force within the Act⁷. The new criteria were due to come into force on 9 May 2020. However, the introduction of new criteria in the Act was delayed by Parliament during the outbreak of COVID-19 in New Zealand.
18. The purpose of the new criteria, set out below, is to provide clarity on whether a procedure is a significant surgical procedure.
19. If regulations are not in place by 9 May 2021, non-veterinarians carrying out surgical procedures on animals may not have certainty that what they are doing is lawful. This places these people at risk of prosecution.

Section 16 of the Act – Criteria to determine whether a procedure is a significant surgical procedure

If any person has to determine whether a procedure carried out on an animal is a significant surgical procedure under this Act, the person must determine the question by considering the following criteria:

- (a) whether the procedure has the potential to—
 - (i) cause significant pain or distress; or
 - (ii) cause serious or lasting harm, or loss of function, if not carried out by a veterinarian in accordance with recognised professional standards; and
- (b) the nature of the procedure, including whether this involves—
 - (i) a surgical or operative procedure below the surface of the skin, mucous membranes, or teeth or below the gingival margin; or
 - (ii) physical interference with sensitive soft tissue or bone structure; or
 - (iii) significant loss of tissue or loss of significant tissue.

20. Some procedures that are likely to meet the above criteria are routinely undertaken by a competent person. For example, sheep tail docking, goat castration, some artificial reproductive techniques, and some animal identification methods, such as hot branding.

This package of regulations covers a wide range of species and activities

21. Regulations are proposed to clarify:
 - which procedures can be performed by a competent person, and under what circumstances;
 - rules relating to selected veterinary-only procedures;
 - that existing prohibitions on some procedures will be retained; and
 - how the rules for significant surgical procedures apply to the use of animals in research, testing and teaching.

⁷ The 2015 amendments will also repeal the current regime for surgical and painful procedures. The existing prohibitions and restricted surgical procedures in the Act will be removed.

22. The majority of the regulations reflect existing minimum standards within codes of welfare⁸, where they are available, or current practice.
23. This package of regulations will amend the Animal Welfare (Care and Procedures) Regulations 2018 (the 2018 Regulations). The regulations will be incorporated into one package and continue to be known as the Animal Welfare (Care and Procedures) Regulations 2018.

Additional policy approval is required for a number of matters that have been amended subsequent to policy approval

24. Five regulations need further policy approval from Cabinet, as the final policy differs from that approved by the Government in December 2019 [CAB-19-MIN-0652]. One matter, relating to pain relief requirements for some of the 2018 Regulations also needs new policy approval. These changes in policy and the rationale are set out in following tables.
25. The proposed changes outlined in the following tables improve animal welfare and/or provide greater clarity to those who are undertaking the procedures.

Proposed policy changes

Pain relief requirements for cattle disbudding and dehorning, and sheep and cattle castration (Regulations 53, 57, and 58 in the 2018 Regulations)
<p>Current state: The 2018 Regulations allows competent persons to carry out cattle disbudding and dehorning, and sheep and cattle castration, as long as local anaesthetic is used. It was considered, when the regulations were developed, that the type of pain relief required for each procedure should be specified if the procedure was not to be performed by a veterinarian. If a veterinarian was performing the procedure the type of pain relief used would be determined by veterinary judgement and discretion.</p> <p>Recommendation: Amend regulations 53, 57, and 58 in the 2018 Regulations to reflect the wider pain relief requirements in the current package of regulations.</p> <p>Reason for change: The wording of the 2018 Regulations can be restrictive. For example, MPI has received information that some people are considering disbudding their calves under general anaesthetic with post-operative analgesics. While this results in good animal welfare, it is technically a breach of the regulation, as they are not using local anaesthetic.</p> <p>During the development of the current package of regulations, MPI considered that the regulations requiring pain relief should be less prescriptive and left to the discretion of the authorising veterinarian. This amendment will more appropriately allow for veterinarians to use their judgement on the appropriate pain relief to be provided.</p> <p>The veterinary community have indicated that they are comfortable with this approach⁹.</p>

⁸ Codes of welfare set out minimum standards for meeting obligations under the Act. Codes of welfare are issued by the Minister of Agriculture under the Act, on the advice from the National Animal Welfare Advisory Committee (NAWAC). NAWAC is a ministerial advisory group established under the Act to provide independent advice to the Minister.

⁹ The veterinary community refers to the New Zealand Veterinary Association, and the Veterinary Council of New Zealand.

Occlusion of cattle beasts' teats (Regulation 55I)

Current state: The policy approved by Cabinet in December 2019 restricts the use of teat plugs for occluding cattle beasts' teats to a veterinarian, and only for therapeutic purposes. Teat sealants registered under the Agricultural Compounds and Veterinary Medicines Act 1997 are still available for use by non-veterinarians for managing cows at the drying off stage¹⁰.

Recommendation: Amend regulation 55I to allow a competent person to reinsert or replace a teat plug that was originally inserted by a veterinarian for therapeutic purposes.

Reason for change: During discussions with stakeholders on the exact wording of the regulations, it was noted that the current wording prevented a farmer from reinserting or replacing a teat plug, as only a veterinarian would be able to insert the plug. It would be impractical and potentially costly to require the veterinarian to return to insert a teat plug. The original intention of the policy was to prevent the use of teat plugs for non-therapeutic purposes. MPI therefore considers that as long as the teat plug was originally inserted by a veterinarian as a part of a treatment programme, it is appropriate for a competent person to reinsert or replace the teat plug if required for treatment.

Restrictions on beak tipping¹¹ for breeder¹² chickens and breeder turkeys (Regulation 56B)

Current state: The policy approved by Cabinet in December 2019 allows for breeder chickens and breeder turkeys to be beak tipped by an infrared beam machine¹³ at three days of age or under, and by a hot blade machine¹⁴ at six days of age or under. Beaks are tipped to prevent pecking injuries when the birds fight and cannibalistic behaviour in chicks after hatching.

Recommendation: Amend regulation 56B to allow beak tipping at six days of age or under by either the infrared beam or hot blade machines.

Reason for change: Subsequent to policy approval, stakeholders raised that it is current practice for breeder chickens and breeder turkeys to be beak tipped up to six days of age with either the hot blade method or with an infrared beam machine. This is because some operators do not have immediate access to infrared beam machines, due to the cost of the machine. However, they are able to transport birds so that they may be tipped by these machines.

Poultry industry stakeholders are supportive of extending the maximum age for beak tipping by the infrared beam machine, as they consider it allows for better animal welfare outcomes while taking into consideration operational costs for the facilities. Beak tipping by infrared beam machine is the preferred method, because while it causes acute pain it is less likely to cause long term chronic pain than the hot blade machine. The veterinary community¹⁵ have indicated they support the change, but on the proviso that the stress from additional travel time does not undermine any animal welfare improvements for chickens and turkeys.

¹⁰ At the end of lactation, dairy cows require a dry period to allow udder tissue to repair and rejuvenate. This is commonly known as 'drying off'.

¹¹ Beak tipping is the removal of the upper and lower tips of the beak (maximum 25 percent). It is commonly performed to prevent injurious pecking amongst birds.

¹² 'Breeder' refers to chickens and turkeys whose offspring are either breeding stock, laying or meat birds.

¹³ An infrared beam machine is a machine which delivers a burst of energy to the beak tip which then erodes over approximately two weeks.

¹⁴ A hot blade machine is a machine which uses an electrically heated blade to cut through the end of the beak.

¹⁵ The veterinary community refers to the New Zealand Veterinary Association, and the Veterinary Council of New Zealand.

MPI therefore considers that it is appropriate to extend the maximum age for beak tipping of breeder chickens and breeder turkeys to six days of age and under. This policy change reflects current practice in the industry, and allows for transitional facilities¹⁶ and small operators to use the infrared beam method if they can access a machine by transporting the birds to a site with access. The allowance to use the hot blade method on birds at six days of age or under is retained for those people who cannot access an infrared beam machine. The six day requirement is also within the ten days identified in scientific literature within which birds should be tipped¹⁷.

Removing breeder chickens' spurs¹⁸ (Regulation 58F)

Current state: The policy approved by Cabinet in December 2019 allows for the permanent amputation of a breeder chicken's spur on the day of hatch only. Permanent spur removal involves amputating the spur, which includes the fleshy nub and keratin sheath, with a hot wire or hot blade to prevent regrowth. Spurs are removed to prevent male birds from injuring female birds when mating.

Recommendation: Amend regulation 58F to allow for permanent amputation of a breeder chicken's spur at three days of age and under.

Reason for change: Following policy approval, some stakeholders noted that spurs are usually removed at the same time that partial toe amputation is performed on chicks for identification purposes.

Regulation 58G allows for partial toe amputation to be undertaken at three days of age and under. MPI considers that extending the age requirement for permanent spur removal reflects current practice, and limits the number of times that young chicks are handled by allowing spur removal to be done at the same time as partial toe amputation. Reduced handling of the bird is better for animal welfare outcomes.

Rectal examinations on equids (Regulation 59H)

Current state: The policy approved by Cabinet in December 2019 makes the performance of rectal examinations on equids a veterinarian-only procedure. A 'rectal examination' was defined as entry into the rectum by the fingers/hand/arm, and/or the introduction of instruments, excluding rectal thermometers.

Recommendation: Amend regulation 59H to allow for a competent person to perform a rectal examination on an equid for the purpose of performing non-surgical reproductive procedures.

Reason for change: Following policy approval, some stakeholders raised concerns that the regulation will affect the viability of their businesses. These stakeholders undertake non-surgical reproductive procedures on horses which, under Regulation 59H, can be performed by a competent person. However, to adequately perform these procedures, non-veterinarians often use rectal examination to help determine when the mare is ovulating. Stakeholders considered that it would be unnecessary, impractical, and expensive to have a veterinarian onsite to perform one part of the entire reproductive procedure, and will therefore prevent them from being able to perform this procedure.

¹⁶ Transitional facilities hold imported poultry or eggs for hatching until biosecurity clearance is given to move them off site.

¹⁷ van Niekerk, T.G.C.M. & Jong, Ingrid. (2007). Mutilations in poultry European poultry production systems. Lohmann Information 42 (2007). "Studies show that the beak is less likely to develop neuromas (benign but painful growths of nerve tissue) if the procedure is performed when the breeder chicken or breeder turkey is under 10 days of age".

¹⁸ A 'spur' is a horn-like protrusion of keratin that develops from a fleshy nub on the back of the legs of roosters and sometimes hens.

Non-veterinarians who undertake this procedure support the proposed change. They noted that there is no evidence to suggest that animal welfare is being negatively impacted by competent non-veterinarians performing this procedure. The veterinary community¹⁹ strongly contend that rectal examinations should remain a veterinary-only procedure because of the vulnerability of equids to rectal tears, and the need for veterinary intervention if a tear occurs. However, there is little to no evidence that suggests that rectal tears occur more often when a competent non-veterinarian undertakes this procedure.

MPI considers that there is insufficient evidence of negative animal welfare outcomes associated with non-veterinarians performing rectal examinations on equids, specifically as part of a non-surgical reproductive procedure. Therefore, restricting these stakeholders from undertaking the procedure would not be equitable, and may not improve animal welfare outcomes.

Minor changes to the regulations

26. The drafting process identified minor changes required to the wording of the original proposals to ensure the regulations are clear and operationally effective. For example, Regulation 58C, relating to deer develvetting, is more detailed than originally proposed as it now specifies each requirement needed for develvetting. This detail had previously been encapsulated by the phrase 'complies with the standards set out by the National Velvetting Standards Body.'
27. I have agreed to these minor changes, which are reflected in the regulations. None of these changes have any substantive impact on the intent or delivery of this regulatory package. A full list of these changes is outlined in Appendix One.

The offences, penalties, and defences associated with the regulations

28. The offences created by this suite of regulations are all strict liability offences. This means that the prohibited conduct alone is sufficient for an offence to be committed and it is not necessary for the enforcement agency to prove intent as well. Appendix Two provides an overview of the proposed offences and penalties regime.
29. Given that the offending associated with significant surgical procedures is likely to be a medium level offence, the majority of the offences in this package are prosecutable offences. This approach is in keeping with existing offences and penalties in the Act and the 2018 Regulations.
30. All defendants under the new regulations have the defence that they took all reasonable steps to comply with the relevant provisions. This is consistent with section 21 of the Act that provides a non-veterinarian who performs a significant surgical procedure on an animal only commits an offence if they did so without a reasonable excuse.
31. As with all defences provided for in the Act, the onus would be on the defendant to prove the defence.

¹⁹ The veterinary community refers to the New Zealand Veterinary Association, the Veterinary Council of New Zealand, and the New Zealand Equine Health Association.

The enforcement approach for the regulations

The Royal New Zealand Society for Prevention of Cruelty to Animals (SPCA) is MPI's enforcement partner under the Act

32. The SPCA is an approved organisation under the Act²⁰. Both the SPCA and MPI employ fully warranted animal welfare inspectors appointed by the Director-General of MPI.
33. Guidelines have been developed for MPI and SPCA staff enforcing the existing 2018 Regulations. These are consistent with MPI's Prosecution Policy²¹ and the Solicitor-General's Prosecution Guidelines²². The guidelines will be updated to provide guidance on the proposals contained in this paper should they be approved.

Part B: Standard matters to be considered by Cabinet prior to approving any regulation

34. This section of the paper sets out the timing, implications, and compliance with statutory requirements to be considered prior to approving any regulation. It also sets out who was consulted and how decisions on the regulations will be released.

Commencement dates

35. The majority of the regulations will come into force on 9 May 2021. Two regulations will come into effect soon after the package is approved²³. They relate to an amendment to the current regulation for electric prod use²⁴, and the regulation that sets an infringement fee for non-compliance with a compliance notice.
36. Several regulations had a delayed commencement date of one year. These related to new pain relief requirements²⁵, and a minimum tail length for docking sheep. However, the deferral of the new criteria for a significant surgical procedure due to the outbreak of COVID-19 has added an additional year to work through awareness of the regulations with affected stakeholders. I therefore consider that delayed commencement for these regulations is no longer necessary.

²⁰ SPCA inspectors operate under a Memorandum of Understanding negotiated with MPI, and the SPCA is subject to an annual audit undertaken by MPI.

²¹ <https://www.mpi.govt.nz/dmsdocument/16279-mpi-organisational-prosecutions-and-infringements-policy>

²² <https://www.crownlaw.govt.nz/assets/Uploads/Prosecution-Guidelines/ProsecutionGuidelines2013.pdf>

²³ The regulations will come into force 28 days after the regulations are approved and notified in the *Gazette*.

²⁴ Amendments to regulation 48 of the Animal Welfare (Care and Procedures) Regulations 2018 allow for electric prod use on pigs that weigh over 70 kg if the pigs are in a single-file slaughter race leading into, and within 15 metres of, the stunning pen. It also excludes electrical devices used by the New Zealand Police from the regulation.

²⁵ These regulations relate to goat and sheep disbudding and dehorning; and the treatment of vaginal prolapses in cattle and goats.

37. As agreed by Cabinet in December 2019, one regulation will be subject to a sunset clause²⁶. Hot branding of most animals will be prohibited via a regulation which will commence on 9 May 2021 (Regulation 55L). However, hot branding using pain relief will be permitted for horses, ponies, donkeys, and their hybrids until 9 May 2026 (Regulation 55M). On this date, a sunset clause will take effect, revoking regulation 55M, and extending the prohibition on hot branding to horses, ponies, donkeys, and their hybrids.

Timing and 28-day rule

38. I intend that the Animal Welfare (Care and Procedures) Amendment Regulations 2020 be notified in the New Zealand Gazette, in accordance with the 28-day rule.

Compliance

39. The draft regulations comply with:
- the principles of the Treaty of Waitangi;
 - the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - the principles and guidelines set out in the Privacy Act 1993;
 - relevant international standards and obligations; and
 - the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

The statutory requirements considered by the Minister prior to recommending the regulations

40. Prior to recommending the policy proposals agreed to by Cabinet in December 2019, I considered my legal obligations in relation to the regulations made under sections 183, 183A, and 183B of the Act.
41. Based on the evidence and advice provided to me, I am satisfied that the considerations set out in sections 183, 183A, and 183B under the Act have been adequately taken into account in relation to all of the regulations submitted with this paper. These regulations have been developed based on scientific knowledge, good practice, and extensive consultation with affected parties as well as other groups with an interest in animal welfare.
42. MPI has also advised me on the policy changes provided in this paper, and I am satisfied that all of my legal obligations have been adequately taken into account in relation to those changes.

Regulations Review Committee

43. I do not consider that there are any grounds for the Regulations Review Committee to draw the regulations to the attention of the House of Representatives under Standing Order 319.

²⁶ A sunset clause is a clause within a regulation that provides that it will cease to have effect after a specific date.

Certification by Parliamentary Counsel Office (PCO)

44. The draft regulations were certified by PCO as being in order for submission to Cabinet.

Implementation plan for the regulations

45. MPI is coordinating an implementation programme with input from the National Animal Welfare Advisory Committee (NAWAC)²⁷, SPCA, key stakeholders including the veterinary community, and industry representatives. The deferral of the regulations during the response to COVID-19 has allowed for a more comprehensive implementation programme to be developed than was possible under previous timeframes.
46. The work programme includes:
- working with stakeholders to develop key messages and coordinate communication activities to raise awareness and educate affected people;
 - making consequential amendments to codes of welfare; and
 - ensuring compliance and enforcement policies and procedures are in place, and staff are trained.
47. The approach is the same as for the 2018 Regulations where a collaborative effort was undertaken to ensure animal owners and persons in charge of animals are aware of, and can meet, the new obligations.

Financial Implications

48. The fiscal implications for Government associated with the new regulations will be implemented and enforced within existing baselines. MPI will continue to monitor the implications of the regulations on compliance and enforcement.

Legislative Implications

49. I intend to make changes to minimum standards and definitions within the codes of welfare by regulation under section 183A(1)(b) of the Act. I intend to progress the minor amendments to codes of welfare under section 76(1) of the Act. This section allows the Minister of Agriculture to make amendments of a minor nature that would not materially affect the purpose of the code.

Regulatory Impact Statement

50. A Regulatory Impact Assessment (RIA) was prepared in accordance with the necessary requirements, and was submitted at the time that Cabinet approval was sought on the policy relating to these regulations (CAB-19-MIN-0652).

²⁷ NAWAC is the independent statutory body that advises the Minister of Agriculture on matters of animal welfare.

51. Subsequent changes to the regulation relating to rectal examinations on equids (Regulation 59H) affected the analysis set out in the RIA. A Quality Assurance Panel within MPI has reviewed the changes, and considers that the updated RIA template meets the Quality Assurance criteria. The updated RIA template for rectal examinations on equids is attached in Appendix Three.
52. Treasury's Regulatory Quality team has also determined that the following proposals are exempt from the regulatory impact analysis requirements because they are expected to have minor impacts on individuals, businesses and not-for-profit entities: beak tipping breeder chickens and turkeys; removal of spurs; local anaesthetic and pain relief; and teat occlusions.

Population Implications

53. Overall, the proposals will mostly affect those working with animals in rural communities. However, the majority of the regulations will not have a major effect on animal owners and those in charge of animals, as they reflect current practice or are for the purpose of clarification.
54. No gender, or disability perspectives are associated with the recommendations of this paper.

Human Rights

55. The recommendations of this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Consultation

56. Section 184(1) of the Act requires that I must consult those persons that I have reason to believe are representative of interests likely to be substantially affected by the proposed regulations.
57. The regulations that are set out in this paper have been developed following extensive consultation with the veterinary community, industry groups, animal advocacy groups, and individuals representative of those likely to be affected by the new regulations. Key stakeholders were provided with an opportunity to review the draft wording of the regulations. NAWAC and the National Animal Ethics Advisory Committee have also been consulted, during both the policy development and regulatory drafting stages.
58. In preparing this paper, MPI has also consulted with: the Ministry of Business, Innovation, and Employment, the New Zealand Police, the National Security Policy Directorate, the National Emergency Management Agency, the New Zealand Customs Service, the Department of Corrections, the Department of Conservation, the New Zealand Defence Force, the Treasury, Te Puni Kōkiri, Te Arawhiti, the Environmental Protection Authority, the Department of Internal Affairs, Worksafe New Zealand, and the Ministry of Foreign Affairs and Trade.
59. The Ministry of Justice was consulted on the regulations and had no comment.

60. The Department of the Prime Minister and Cabinet (Policy Advisory Group) has also been informed.

Consultation with the National Animal Welfare Advisory Committee

61. I am required to formally consult with NAWAC before recommending that regulations be issued. MPI has done this on my behalf during both the policy approval phase in July 2019 and during the drafting of the regulations in May and June 2020.
62. In 2019, NAWAC formally responded that they were broadly supportive of the policy proposals and agreed with the intent of the regulations in clarifying who can undertake significant surgical procedures.
63. NAWAC also provided specific comment on a number of the regulations in relation to both the policy and the detail of the drafted regulations. MPI has taken into account these comments when developing the final regulations.
64. NAWAC were also consulted on the proposed policy changes described in this paper, and have indicated that they are comfortable with the changes.

Communications

65. MPI has developed an overarching communications strategy to accompany Cabinet's decision on the proposals included in this paper. This includes the announcement of the Government's decisions and associated key media statements.

Proactive release

66. Following Cabinet consideration, I intend to consider the release of this paper with redactions, if necessary, under the Official Information Act 1982.

Recommendations

The Minister of Agriculture recommends that the Committee:

Background

1. **Note** that this package of regulations was due to come into force on 9 May 2020. However, due to the outbreak of COVID-19, the commencement date for the majority of the regulations has been delayed to 9 May 2021 to allow affected parties time to become familiar with the new requirements.
2. **Note** that if regulations are not in place by 9 May 2021, people carrying out some procedures that are currently routinely performed by non-veterinarians, such as tail-docking sheep, will not have certainty about what procedures they can legally perform.

Policy Approval

3. **Agree** to the following policy changes to the Animal Welfare (Care and Procedures) Amendment Regulations 2020:
 - 3.1. Regulations 53, 57, and 58 – widen the type of pain relief that can be used when castrating sheep and cattle, and disbudding and dehorning cattle. This will allow veterinarians to use their judgement on the most appropriate pain relief to be provided;
 - 3.2. Regulation 55I – allow a competent person to replace or reinsert a teat plug that was inserted in a cattle beast's teat by a veterinarian for therapeutic purposes;
 - 3.3. Regulation 56B – extend the age that breeder chickens and breeder turkeys can be beak tipped by an infrared beam to six days of age. This will allow more birds to be tipped by infrared beam, which is the preferred method;
 - 3.4. Regulation 58F – extend the age that a competent person can amputate a breeder chicken's spur to three days of age. This will align with the timing of other procedures which will minimise the handling of young birds; and
 - 3.5. Regulation 59H – allow a competent person to perform rectal examinations in equids when undertaking non-surgical reproductive procedures.
4. **Note** that I have agreed to minor changes to the wording of the draft regulations that were identified during the regulatory drafting process, outlined in Appendix One.
5. **Note** that I have given regard to and taken into consideration my legal obligations in relation to regulations made under sections 183, 183A, and 183B of the Act.

6. **Note** that as required by sections 183A(10), 183B(3), and 184(1) of the Act, I have consulted with:
 - 6.1. persons that I have reason to believe are representative of interests likely to be substantially affected by the regulations; and
 - 6.2. the National Animal Welfare Advisory Committee.
7. **Note** that amendments to the definitions and minimum standards in the codes of welfare, necessary as a consequence of any provisions made in these regulations, are made by regulation under section 183A(1)(b) of the Act, and are included in a schedule to the Animal Welfare (Care and Procedures) Amendment Regulations 2020.
8. **Note** that subsequent minor amendments will also be made to the wider text within the codes, as required, to align with the regulations. The codes will be amended and republished in time for the commencement of the regulations on 9 May 2021.

Submission to Executive Council

9. **Authorise** the submission to the Executive Council of the Animal Welfare (Care and Procedures) Amendment Regulations 2020.

Commencement dates

10. **Agree** that the majority of the regulations will come into force on 9 May 2021. Two regulations will come into force 28 days after they have been approved and notified in the *Gazette*. These regulations are:
 - 10.1. Amendment to Regulation 48 of the Animal Welfare (Care and Procedures) Regulations 2018 - allow for electric prod use on pigs that weigh over 70 kg if the pigs are in a single-file slaughter race leading into, and within 15 metres of, the stunning pen. Also excludes electrical devices used by the New Zealand Police from the regulation.
 - 10.2. Regulation 63 – provides an infringement fee for non-compliance with section 156I of Animal Welfare Act 1999.
11. **Agree** that Regulation 55M, relating to hot branding for horses, ponies, donkeys, and their hybrids, will be revoked on 9 May 2026, and that Regulation 55L, which prohibits hot branding for all species generally, will subsequently apply to horses, ponies, donkeys, and their hybrids.

28-day rule and timing

12. **Note** that I intend that the Animal Welfare (Care and Procedures) Amendment Regulations 2020 be notified in the *New Zealand Gazette*, in accordance with the 28-day rule.

Publicity

13. **Note** that the Ministry for Primary Industries will work with my office to manage announcements arising out of decisions made, including any media interest.

Authorised for lodgement

Hon Damien O'Connor
Minister of Agriculture

Appendix One: Minor and technical amendments to the Animal Welfare (Care and Procedures) Amendment Regulations 2020 since December 2019

Regulation	Amendment	Rationale
3 and 54: References to 'horse'	Definition of horse has been repealed and replaced with the definition for equid.	During drafting it was noted that the original approach, to maintain the definition of horse which applies to all equids, would create some anomalies in the regulations and in the corresponding codes of welfare. The current approach reflects the original intent to expand appropriate horse-related regulations to all equids, without creating the same anomalies.
48: Use of electric prodders	Replaced the wording 'immediately prior to the pigs entering the enclosed part of the stunning pen' with a specific measurement of "15 metres prior to the stunning box".	Providing a specific measurement for the regulation provides certainty for pig processors about how to meet the requirements under the regulation. It also creates a more enforceable requirement.
56B: Beak tipping breeder chickens and turkeys	Removed meat chickens and meat turkeys.	Following policy approval the poultry industry noted that beak tipping does not occur in meat chickens or meat turkeys, as they are culled before injurious pecking or cannibalistic behaviours become apparent.
58C: Develvetting deer	Inserted specific requirements to meet competency requirements.	The regulation names the National Velveting Standards Body (NVSB) as the main body that can authorise a person to remove velvet antler (other than a veterinarian). This effectively allows the NVSB to set its own standards for develvetting. The regulation has been made more rigorous to reinforce the NVSB's current standards for develvetting and ensure they are maintained.
58E: Ringing, clipping, and wiring noses of pigs and cattle beasts	Removed the provision for nose clips to be used on cattle.	Nose clips are not used on cattle therefore this redundant clause has been removed.
59D: Performing Caslick's procedures on horses	Allowed for a non-veterinarian to close a Caslick's seam after a mare has been serviced.	During drafting it was noted that the regulation did not allow for a non-veterinarian to close a seam that had been opened for servicing a mare. This was not the intention of the regulation, and stakeholders had previously considered that it would be inconvenient for a veterinarian to close seams. The wording has therefore been amended to reflect the original policy intent.

Appendix Two: An overview of the offences and penalties regime

Infringement offences <i>One level of penalty is proposed for infringement offences</i>	Prosecutable regulation offences <i>Two levels of penalty are proposed for regulatory prosecutable offences</i>	
\$500 flat fee with a maximum court fine of \$1,500 or \$7,500 (refer to para 3 below)	\$3,000 maximum fine for an individual \$15,000 maximum fine for a body corporate	\$5,000 maximum fine for an individual \$25,000 maximum fine for a body corporate
All revenues collected from fees and fines go to the Government's Consolidated Fund.		
Offence <u>may</u> cause mild to moderate short-term harm to the animal	Offence <u>has</u> caused mild to moderate and possible long-term harm to the animal	Offence <u>has</u> caused moderate and likely long term harm to the animal
<ul style="list-style-type: none">Enforcement agencies issue an infringement notice requiring the recipient to pay a specified fee.Do not result in any criminal conviction, and an infringement fee will not appear on the formal criminal record of the recipient.	<ul style="list-style-type: none">Prosecution offences must be proven in court, but are specified in regulations in a way that is easier to prove than offences under the Act.Will carry heavier financial penalties than the proposed infringement offences, and result in criminal convictions.Do not extend to sentences of imprisonment, forfeiture of animals, or the significant fines provided for by the Act.	
<i>When is an offence appropriate for an infringement?</i> <ul style="list-style-type: none">The nature of the offending is minorThe potential impact on the animal is lowA criminal conviction would be disproportionate to the level of offendingA low-level financial penalty is sufficient to drive behaviour changeA breach of the regulations is straightforward and easy to determine on the facts	<i>When is an offence appropriate for a prosecution?</i> <ul style="list-style-type: none">The offending has caused a moderate level of harm to the animalThe offending may involve many animalsA criminal conviction is appropriate given the conduct and/or impact involvedThe offending is more likely to occur in a commercial context where higher financial penalties may be needed to drive behaviour changeThe offending involves actions or omissions that are not straight forward enough matters of fact to suit an infringement offence	
More serious offending causing significant pain or distress can still be prosecuted under the Act <p>Prosecution under the Act enables the court to impose significant penalties in cases of serious animal cruelty. These penalties include:</p> <ul style="list-style-type: none">Up to 5 years imprisonment;Up to \$100,000 fine for an individual, or \$500,000 for a body corporate;Forfeiture of the animals involved, and/or any other animals owned by the offender; andDisqualification orders prohibiting the offender from owning an animal for a specified period of time.		

Infringements

1. The regulations in this paper include a small number of infringement offences.
2. In addition to a flat fee for infringement offences all infringement offences must specify a maximum court imposed fine. The maximum fine provides guidance to the court on an appropriate penalty to impose in situations where:
 - a person appeals an infringement notice in court; or
 - MPI lays charges before the court instead of issuing an infringement notice, for example, in the case of multiple offending.
3. This allows the Court to impose a penalty as it sees appropriate within the maximum allowed under regulation. Generally, as agreed with the Ministry of Justice, the maximum court imposed fine is three times the infringement fee. However, for three regulations, beak tipping of layer hens, breeder chickens and breeder turkeys and tail docking of sheep, which involve a large number of animals, a maximum Court imposed fine of \$7,500 is proposed.
4. None of the offences included in this paper are intended to prevent a prosecution under the Act for offending that caused significant pain or distress for the animal involved. This ability to seek recourse to the Act for high end offending remains an important component of the overall regulatory framework that is complemented by introduction of the proposed regulations.

No defences are available for infringement offences

5. Any person wishing to challenge an infringement offence may write a letter to the issuing authority setting out the grounds for why they think the infringement notice should be set aside. The issuing authority is then obliged to review the infringement notice and decide whether to revoke or amend the notice.
6. A number of submitters have asked for defences or exemptions to be built into infringement offences to cater for events outside the defendant's control, such as natural disasters or other scenarios where the defendant has taken all reasonable steps to comply. Providing defences to infringement offences is not common practice in any regulatory system because it undermines the simplicity of the offence and the ease with which it can be used.
7. My expectation is that infringement notices would not be issued in the circumstances outlined above in the first place. However, should the recipient still feel aggrieved, they are entitled to ask the issuing authority to re-consider the context of the offending and or appeal the infringement notice in court.

Appendix Three: Changes to the Regulatory Impact Assessment as a result of subsequent policy changes

1. MPI is seeking to amend the regulatory policy relating to rectal examinations on equids²⁸ set out in the Regulatory Impact Assessment, Animal Welfare Regulations: significant surgical procedures (Proposal 4 in Appendix 2 of the RIA dated December 2019). The amendment is in response to new information received by MPI subsequent to Cabinet approving the policies.
2. The policy approved in December 2019 made rectal examinations on equids a veterinarian-only procedure. An amendment to allow a competent person to undertake a rectal examination on equids is sought because:
 - a. MPI understood that current practice was that rectal examinations on equids were only performed by veterinarians, and restricting this procedure to veterinarians would have little or no impact on people who own or care for animals. MPI has received new information that a number of non-veterinarians perform rectal examinations on equids.
 - b. MPI considers that competent non-veterinarians should be able to continue to perform rectal examinations on equids for the purpose of non-surgical reproductive procedures because there is little to no evidence indicating animal welfare is being compromised in the current state.
3. The previous criteria of effective, efficient, clear and equitable has been used to assess the proposed changes.
4. Rectal examinations in equids – will effectively remove legal ambiguity by providing a legal basis for competent non-veterinarians to perform non-surgical reproductive procedures. Allowing competent non-veterinarians to carry out non-surgical reproductive procedures allows for the best use of the knowledge and skills of experienced non-veterinarians who routinely undertake this procedure. For serious animal welfare offending related to undertaking this procedure, for example performing it in such a way that causes suffering to the animal, a person may be prosecuted under the Act. A detailed assessment of the regulatory impact of this change in policy is provided in the table below.

²⁸ Regulation 59 H in the proposed Animal Welfare (Care and Procedures) Amendment Regulations 2020.

Equids – restrictions on rectal examination for any purpose

Background and issues	<p>A rectal examination is a diagnostic procedure that may be used as part of a clinical examination for conditions such as colic and pregnancy.</p> <p>The procedure carries a high risk of tissue tearing during the procedure²⁹ and should only be performed when there is a clear clinical reason for performing a rectal examination and when the animal is a suitable candidate for the procedure.³⁰</p> <p>An equid's rectum is more prone to injury or trauma than other animals. An examination can perforate an equid's rectum which can lead to peritonitis and death. Veterinary experience is needed to ensure that any problems that do arise can be responded to appropriately and efficiently.</p> <p>Subsequent to Cabinet's agreement on the policies, MPI was made aware that restricting rectal examinations on equids for the purpose of non-surgical reproductive procedures would impact a small number of stakeholders. These stakeholders are currently performing the entire non-surgical reproductive procedure including the rectal examination.</p> <p>MPI has re-considered the regulation with regards to the welfare of the animals during the rectal examination. There is little to no research that suggests rectal examinations are more likely to result in a rectal tear when being performed by competent non-veterinarians.</p> <p>MPI has not received any evidence of negative animal welfare outcomes in the current state being caused by competent non-veterinarians performing the examinations.</p> <p>The stakeholders affected have also indicated that it would be too costly to get a veterinarian to perform all the rectal examinations as part of the procedure and that their business would become unviable if this regulation came into effect.</p>
Proposal consulted on (no. 29 in discussion document)	<p>Rectal examinations on horses for any purpose, including pregnancy diagnosis, must be performed by a veterinarian or a veterinarian student under direct supervision of a veterinarian.</p> <p>The proposed restriction includes entry into the rectum by the fingers/hand/arm, and/or the introduction of instruments, excluding rectal thermometers, for any purpose.</p> <p>Horse means any equid, including horse, pony, zebra, or donkey or any of their hybrids.</p>
Submitters' views on proposal	<p>The original proposal was supported during initial consultation. Targeted engagement was undertaken on the proposed amendment, and submissions on the new proposal have indicated that a small number of stakeholders do not support the change.</p>
Approved regulatory policy	<ol style="list-style-type: none"> Rectal examinations on equids must be performed by a veterinarian. The owner or person in charge of the animal has responsibility to ensure that only a veterinarian performs this procedure. <p><i>'Rectal examination' includes entry into the rectum by the fingers/hand/arm, and/or the introduction of instruments, excluding rectal thermometers.</i></p> <p><i>'Equid' means any member of the equidae family, including any horse, pony, donkey, mule, other wild ass, zebra, and any of their hybrids</i></p>
Proposed regulatory policy with amendment 1a and 1b	<ol style="list-style-type: none"> Performing a rectal examination on an equid will be veterinarian only unless the person undertaking the examination is competent and is carrying out the examination: <ol style="list-style-type: none"> for the purpose of non-surgical reproductive procedures; or to determine if the animal is pregnant. The owner or person in charge of the animal has responsibility to ensure that this procedure is performed in accordance with one above. <p><i>'Non-surgical reproductive procedures' include transcervical insemination, cervical insemination and embryo transfer through transcervical methods.</i></p> <p><i>'Rectal examination' includes entry into the rectum by the fingers/hand/arm, and/or the introduction of instruments, excluding rectal thermometers.</i></p>

²⁹ OM Rostits, CC Gray, KW Hinchcliff and PD Constable (eds) 10th edition, (2006) Veterinary Medicine: A textbook of the diseases of cattle, sheep, goats, pigs and horse.

³⁰ *Ibid.*

	'Equid' means any member of the equidae family, including any horse, pony, donkey, mule, other wild ass, zebra, and any of their hybrids
Proposed penalty	Category C (prosecutable regulatory offence which may result in a criminal conviction). A maximum \$3,000 fine for an individual or maximum \$15,000 fine for a body corporate may apply for a person who is not a veterinarian performing a rectal examination on an equid.