

Chair  
Cabinet Economic Development Committee

## **Animal Welfare Regulations for submission to Executive Council**

### **Proposal**

1. I seek the Cabinet Economic Development Committee's (DEV) approval to submit the following two sets of regulations to the Executive Council:
  - Animal Welfare (Care and Procedures) Regulations 2018; and
  - Animal Welfare (Records and Statistics) Amendment Regulations 2018.
2. In July 2017, the Government agreed to the policy and associated offences for the animal welfare regulations outlined in this paper. They also invited the Minister responsible for animal welfare to report back to the appropriate Cabinet policy committee with the proposed final regulations for approval (EGI-17-MIN-0172).

### **Executive Summary**

3. The Animal Welfare Act 1999 (the Act) places a duty of care on people who own or are in charge of animals. This duty requires people to meet their animals' physical, health, and behavioural needs, and to alleviate unreasonable or unnecessary pain or distress. The Act applies to a wide range of animals including companion animals, production animals, wild animals, and animals used in research, testing, and teaching.
4. The Act was amended in May 2015 to enable regulations to be made to address issues with the enforceability and clarity of the requirements set out in the Act and enhance the transparency of the Act in relation to the use of animals in research, testing, and teaching.
5. The first tranche of 21 regulations covering nine substantive matters was completed in 2016. These regulations related to young calves (often referred to as bobby calves) and the export of livestock for slaughter<sup>1</sup>. The young calf regulations helped reduce premature mortality in young calves sent to slaughter from 0.25 percent in 2015 (25 calves per 10,000) to 0.06 percent in 2017 (6 calves per 10,000).

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<sup>1</sup>Animal Welfare (Calves) Regulations 2016, and Animal Welfare (Export of Livestock for Slaughter) Regulations 2016, respectively.

6. This paper covers the second tranche of 65 regulations covering 47 substantive matters. The regulations will achieve immediate animal welfare benefits once in place as they address areas of known non-compliance or raise the bar on current requirements.
7. The regulations relate to stock transport, farm husbandry (incl. surgical and painful procedures), companion and working animals, pigs, layer hens, crustaceans and rodeos. They will also enhance the transparency of the numbers of animals killed, that were bred but not used for research, testing and teaching.
8. The majority of the second tranche of regulations are strongly supported by industry, advocacy groups, and the general public. There are only two regulations where some stakeholders are significantly opposed to what is in the regulations. These relate to the prohibition on docking dogs' tails and the restrictions on the removal of dogs' dew claws.
9. The cost impact for most of the regulations is likely to be low as they generally reflect existing minimum standards and do not represent any change in practice for those who already care for their animals well.
10. Where there are costs, these fall unevenly on some farmers<sup>2</sup>, and on the breeders of some docked dog breeds<sup>3</sup>. I consider the benefits of the regulations to the animals involved and the integrity and reputation of our animal welfare system out-weigh any associated costs or other impacts resulting from these regulations.
11. The fiscal implications for Government of the new regulations will be managed within existing baselines.
12. I have discussed this paper with the Hon Damien O'Connor, Minister of Agriculture. He is supportive of the direction of the regulations contained in this paper.
13. I now seek approval to submit the regulations to the Executive Council.

## **Background**

14. The New Zealand Animal Welfare Strategy: *Animal Welfare Matters* was launched in 2013. The Strategy identified two overarching objectives:
  - Care for our animals – recognising that animal welfare has an intrinsic societal value in itself; and
  - Care for our reputation – recognising the importance of good welfare practices for our reputation as a responsible supplier of animals and animal products to overseas markets.

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<sup>2</sup> For example, farmers who are not already using pain relief for disbudding and dehorning cattle, and /or not complying with existing minimum standards for transport of lame sheep.

<sup>3</sup> Some breeders expect there to be a significant drop in demand for their animals, particularly from Australia, where tail docking is prohibited.

15. As a part of implementing the Strategy, the Act was reviewed and issues were identified with its enforceability, clarity, and transparency. As a result of the review the Act was amended in May 2015 to enable regulations to be made that would:
- Enhance the clarity of the Act by specifying who may undertake significant surgical and painful procedures on animals;
  - Enhance the transparency of the Act in relation to the use of animals in research, testing, and teaching; and
  - Enhance the enforceability of the Act in relation to animal welfare offending.

### *Clarity*

16. There is ongoing confusion between the veterinary community and farmers, fertility technicians, dental technicians and others about who can undertake certain surgical and painful procedures on animals. The Act now enables regulations to be made that specify what procedures can be undertaken, by whom and how. Ten of the regulations in the current tranche relate to surgical and painful procedures.

### *Transparency*

17. In order to improve transparency around the use of animals in research, testing and teaching, the Act now enables regulations to be made to provide greater visibility of the numbers of animals used for these purposes. One of the regulations in the current tranche relates to accounting for the numbers of animals killed, which were bred but not used for research, testing and teaching.

### *Enforceability*

18. A regulatory gap was identified. The Act provides for high end offences and penalties for serious instances of abuse and/or neglect against animals. However, effective tools for addressing less serious instances of animal welfare offending were absent. This gap resulted in a significant volume of low to medium level offending not being effectively addressed<sup>4</sup>.
19. In 2015, the Act was amended to enable regulations to be made. Regulations provide a tool to address less serious instances of animal welfare offending.

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<sup>4</sup> The Ministry for Primary Industries (MPI) and the Royal New Zealand Society for the Prevention of Cruelty to Animals (SPCA) jointly enforce the provisions of the Act. MPI handles complaints on production animals and therefore one complaint can involve multiple animals. SPCA tend to manage more complaints but each complaint only relates to one or a very small number of animals. On average, less than 1% of complaints received are prosecuted. During the three years 2014 to 2016 inclusive MPI dealt with 2,594 complaints and took 68 prosecutions. Over the same period SPCA received 43,605 complaints and took 176 prosecutions. In 2017, MPI concluded 29 prosecutions.

20. Regulations, unlike minimum standards in codes of welfare<sup>5</sup>, are directly enforceable through associated offences and penalties. Regulations fill the gap between the Act and codes as they are more specific than the Act, are easier to prove and have appropriate penalties for low to medium offending.
21. New Zealanders have a high expectation of our animal welfare system. Not being able to effectively address low to medium level offending can result in poor animal welfare, and can impact on the credibility of New Zealand's animal welfare regulatory system. Our ability to trade as a responsible supplier of animals and animal products is also critical to maintaining our competitive edge in international markets.
22. Forty five of the regulations in the current tranche relate to issues around enforceability.

#### *Establishing a new regulatory regime – two different types of offences*

23. The Care and Procedures Regulations will establish an entirely new regulatory framework for dealing with offending under the Act. Each regulation has an associated offence, which is either a prosecutable regulatory offence or an infringement offence.
24. A prosecutable regulatory offence must be proven in Court and can lead to a criminal conviction. The penalties for the prosecutable regulatory offences are higher than the penalties for the infringement offences and generally relate to offences that have caused mild to moderate harm with potential for long-term impacts to the animal.
25. An infringement offence can result in a fee being issued but no criminal conviction. The infringement offences generally relate to situations that may cause mild to moderate short-term harm to the animal.
26. None of the offences under the new regulations prevent a prosecution under the Act from being taken for serious offending that causes significant pain or distress.

#### **The structure of this paper**

27. This paper is set out in three parts:
  - Part A covers the Animal Welfare (Care and Procedures) Regulations 2018. These regulations cover 46 substantive matters and deliver greater enforceability and clarity under the Act.

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<sup>5</sup> Codes of welfare are issued by the Minister under the Act, on advice from National Animal Welfare Advisory Committee (an independent ministerial advisory committee). Codes set out on how to meet the obligations under the Act to treat animals well. Codes are developed for specific species and / or activities (such as rodeos, or commercial slaughter).

- Part B covers the Animal Welfare (Records and Statistics) Amendment Regulations 2018. This covers one substantive matter and enhances the transparency around the use of animals in research, testing and teaching.
  - Part C covers the standard matters considered by Cabinet prior to approving any regulation.
28. For each set of regulations covered in Parts A and B, the paper sets out:
- The process undertaken to develop the regulations;
  - Any statutory obligations that I must meet in recommending these regulations;
  - Any new policy approval that is required; and
  - The enforcement approach that will be taken in implementing the new regulations.

## **Part A: New Animal Welfare (Care and Procedures) Regulations 2018**

### **An inclusive process was used to identify and develop the regulatory proposals**

29. In 2015, the Ministry for Primary Industries (MPI) convened a working group to identify which of the 1,200 minimum standards within the 18 codes of welfare would be appropriate to develop into regulation. The working group consisted of MPI, the Society for the Prevention of Cruelty to Animals (SPCA), the Veterinary Council of New Zealand, and the National Animal Welfare Advisory Committee (NAWAC)<sup>6</sup>.
30. In 2016, MPI sought public comment on 91 regulatory proposals it considered appropriate for regulation. Over 1400 submissions were received on the proposals and the six public meetings across New Zealand were well attended. Stakeholder support for the individual regulatory proposals being proposed in this paper ranged from 82 to 90 percent.
31. There were six proposals<sup>7</sup> where stakeholders differed significantly in their views. MPI has worked extensively with affected parties to resolve these issues. There are now only two regulations where stakeholders' perspectives still significantly differ—prohibiting dog tail docking and restrictions on dew claw removal (refer paragraphs 64 to 66).

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<sup>6</sup> These external participants were included because: the SPCA jointly enforces the Act alongside MPI; the Veterinary Council of New Zealand administers the Veterinary Act and must authorise the use of restricted veterinary medicines by non-veterinarians e.g. local anaesthetic for disbudding and dehorning; and NAWAC is an independent ministerial advisory group set up under the Act to provide advice directly to the Minister.

<sup>7</sup> The use of electric prodders, restrictions on the transportation of lame sheep, prohibiting docking of cows' tails, requiring the use of pain relief during disbudding and dehorning, prohibiting docking of dogs' tails and restrictions on the removal of dogs' dew claws.

32. The regulatory proposals consulted on in 2016 are being progressed in three tranches as outlined in Table One. The regulations contained within this paper relate to Tranche 2 and reflect the policy approved by the Government in July 2017 (EGI-17-MIN-0172).

**Table One: Timeframe for developing the Care and Procedure regulations**

	<b>Proposals</b>	<b>Status</b>
Tranche 1	<ul style="list-style-type: none"> <li>• young calves (bobby calves)</li> <li>• export of livestock for slaughter<sup>8</sup></li> </ul>	Completed 2016
<b>Tranche 2</b>	<ul style="list-style-type: none"> <li>• <b>stock transport, farm husbandry (incl. surgical and painful procedures), companion and working animals, pigs, layer hens, crustaceans, and rodeos</b></li> </ul> <p><i>(The research, testing and teaching regulations, in Part B of this paper, are also being progressed as part of Tranche 2)</i></p>	<b>Content of this paper</b>
Tranche 3	<ul style="list-style-type: none"> <li>• the majority of the surgical and painful procedures</li> </ul>	To be progressed in 2018

33. The first tranche of 21 regulations (covering seven substantive matters) was completed in 2016 and related to young calves and the export of livestock for slaughter. The young calf regulations helped reduce premature mortality in young calves sent to slaughter from 0.25% in 2015 to 0.06% in 2017. Table Two shows the change in mortality rates from 2008 to 2017.

**Table Two: Premature mortality prior to slaughter**

	<b>2008 season</b>	<b>2015 season</b>	<b>2016 season</b>	<b>2017 season</b>
<b>Total number of calves</b>	1,515,189	2,171,995	1,935,054	1,773,809
<b>Mortality rate</b>	0.68%	0.25%	0.12%	0.06%
<b>Number of calves dead or condemned prior to slaughter</b>	10,275	5,390	2,255	1,123
<b>Number of calves dead or condemned per 10,000 calves</b>	68	25	12	6

<sup>8</sup> The export of livestock for slaughter requirements perpetuate the existing conditional prohibition on the export of cattle, deer, goats and sheep (collectively referred to as livestock) for slaughter from New Zealand.

34. A third tranche, relating to surgical and painful procedures, is to be progressed during 2018. These regulatory proposals primarily relate to clarifying who may undertake surgical and painful procedures on animals and in which circumstances. They are not necessarily areas where there are any immediate animal welfare concerns<sup>9</sup>.

### *Ongoing issues*

35. Public submissions also highlighted concern amongst advocacy groups that regulations were not being proposed for some areas, such as, banning rodeos, the use of colony cages for layer hens or farrowing crates for pigs. MPI will continue to work with NAWAC and affected stakeholders to determine whether future regulation is required for these activities<sup>10</sup>.

### **The new Animal Welfare (Care and Procedures) Regulations cover a wide range of species and activities**

36. The Animal Welfare (Care and Procedures) Regulations (the Care and Procedures Regulations) discussed in this paper relate to:
- Stock Transport;
  - Farm Husbandry (incl. surgical and painful procedures);
  - Companion and Working Animals;
  - Pigs;
  - Layer Hens;
  - Crustaceans; and
  - Rodeos.
37. The majority of the regulations reflect existing minimum standards within codes of welfare and do not represent any change in practice for owners and people in charge of animals who already care for their animals well. The principal change is that Animal Welfare Inspectors will now be able to directly enforce these regulations without requiring an Act level prosecution to be taken.

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<sup>9</sup> For example, the future regulations would make it clear that sheep tail docking can continue to be performed by competent farmers / lay operators while horse tail docking would need to be undertaken by a veterinarian.

<sup>10</sup> NAWAC has indicated that it will work collaboratively during 2018 with MPI, SPCA and industry groups to re-consider both the layer hens and meat chicken codes of welfare and determine if any standards would be appropriate to be prescribed in regulation. MPI has indicated it will continue to work with NZ Pork on issues such as the provision of nesting material in farrowing crates. NAWAC is also undertaking work to consider the use and welfare of animals in exhibition, entertainment and encounter, which is likely to include rodeos.

38. Two further matters are also included within this set of regulations for administrative efficiency. They relate to incorporating the young calf regulations<sup>11</sup> into this new set of regulations and specifying infringement fees and maximum Court fines for infringement offences related to the failure to inspect traps that capture live animals, for example, possum pest control traps.

*The majority of the regulations reflect existing practice*

39. Table Three below sets out regulations that reflect existing practice. The rationale for each draft regulation and its associated offences and penalties is outlined in Appendix One and Two.

**Table Three – Regulations that reflect current practice.**

\*Note: the numbers in the table refer to the correlating regulation numbers set out in the attached Animal Welfare (Care and Procedures) Regulations 2018.

<b>Companion and Working Animals</b>	<b>Farm Husbandry</b> (incl. surgical and painful procedures)
<p><b>\$300 infringement fee</b></p> <p>12. Muzzles used on dogs must not cause injury or distress.</p> <p>13. Dogs must have access to water, dry and shaded shelter, and a toilet area.</p> <p>14. Dogs must not be left in hot vehicles.</p> <p>15. Dogs must be secured on moving vehicles.</p> <p>16. Tethered goats must have access to food, water, and dry and shaded shelter.</p> <p>18. Tethered horses and donkeys must have access to food, water, and protection from weather.</p> <p>19. Equipment used on horses and donkeys must not cause injuries or distress.</p> <p>23. Equipment used on llama and alpaca must not cause injuries or distress.</p> <p>47. Collars and tethers on any animal must not cause injury or distress.</p>	<p><b>\$300 infringement fee</b></p> <p>6. Milk let-down in cows must not be stimulated by inserting anything into the cow's vagina</p> <p><b>Regulatory offence \$3,000 for individual, \$15,000 for body corporate</b></p> <p>7. &amp; 29. Vehicular traction must not be used for the purposes of calving or lambing.</p> <p>53. Castration of cattle and sheep must only be done by an appropriately skilled person and:</p> <p style="margin-left: 20px;">a. Pain relief must be used if the animal is over the age of 6 months; and</p> <p style="margin-left: 20px;">b. Local anaesthetic must be used at any age if high tension bands are used.</p>
<p><b>\$500 infringement fee</b></p> <p>20. Horses and donkeys must not be struck on the head.</p> <p><b>Regulatory offence \$5,000 for individual, \$25,000 for body corporate</b></p> <p>54. Horse castration must be performed by a veterinarian with pain relief.</p>	<p><b>Regulatory offence \$5,000 for individual, \$25,000 for body corporate</b></p> <p>59. Prohibit mulesing<sup>12</sup> of sheep by any method.</p>
<b>Stock Transport<sup>13</sup></b>	<b>Pigs and Layer Hens</b>
<p><b>\$500 infringement fee</b></p> <p>49. Goats must not be used on sensitive areas.</p> <p>5, 17, &amp; 28. A person must not permit a cattle beast, sheep and goat to have ingrown horns.</p> <p>30. Cattle, deer, sheep, goats, and pigs must not be transported in a way that causes acute injuries.</p>	<p><b>\$300 infringement fee</b></p> <p>24. Pigs must have access to a dry and sheltered lying area.</p> <p><b>\$500 infringement fee</b></p> <p>52. Docking of pigs' tails under 7 days must only be undertaken by an appropriately</p>

<sup>11</sup> Animal Welfare (Calves) Regulations 2016.

<sup>12</sup> Mulesing is the removal of strips of wool-bearing skin from around the breech (buttocks) of a sheep to prevent flystrike.

<sup>13</sup> Regulation 44 exempts transporters from Regulations 38 to 43. These cover conditions that existed prior to transport and which can be difficult to detect during loading especially at the lower level of severity targeted.

<b>Companion and Working Animals</b>	<b>Farm Husbandry</b> (incl. surgical and painful procedures)
31. Animals with horns or antlers must not be transported in a way that causes injury. 32. Cattle, deer, sheep, goats, and pigs must not be transported in a way that causes back-rub abrasions. 38. Animals with ingrown horns must not be transported. 39. Animals with bleeding horns or antlers must not be transported. 40. Lambe cattle, sheep, goats, pigs and deer must not be transported. 41. A cattle beast, sheep, deer, pig or goat must not give birth during transport or within 24 hours of arrival at sale-yards or commercial slaughter premises. Also deer must not be transported within 21 days of estimated due date. 42. Cattle, sheep and goats with injured or diseased udders must not be transported. 43. Cattle, sheep and goats with advanced cancer eye must not be transported. 45. Obligations on transporters to comply with veterinary certificate conditions, and to ensure yearling deer arrive at slaughter premises no later than 72 hours after velvet antler removal.	skilled person, and must create a clear cut and not tear tissue.  <b>Regulatory offence \$3,000 for individual, \$15,000 for body corporate</b> 25. A minimum lying space must be provided for grower pigs. 26. Size requirements for farrowing crates. 52. Docking pigs' tails (over 7 days old) must be performed by a veterinarian with pain relief.  <b>Regulatory offence \$5,000 for individual, \$25,000 for body corporate</b> 55. Castration of pigs must be performed by a veterinarian with pain relief. 27. Sows may only be confined in sow stalls for the purpose of mating and for no longer than one week. 21. Conventional cage systems for layer hens are prohibited from 2022. 22. Induced moulting of layer hens is prohibited.
<b>Crustaceans</b>	<b>Rodeos</b>
<b>Regulatory offence \$5,000 for individual, \$25,000 for body corporate</b> 11. Crabs, rock lobster, crayfish and koura must be insensible before being killed for commercial purposes.	<b>Regulatory offence \$5,000 for individual, \$25,000 for body corporate</b> 46. Using fireworks at rodeos is prohibited.

*Six regulations reflect a change from existing practice*

40. Table Four sets out the six regulations that represent a change from existing minimum standards or current practice. The rationale for each regulation and its associated offences and penalties is outlined in Appendix One and Two.

**Table Four: Regulations that reflect a change from current practice**

\*Note: the numbers in the table refer to the correlating regulation numbers set out in the attached Animal Welfare (Care and Procedures) Regulations 2018.

<b>Proposals</b>	<b>Change</b>
<b>\$500 infringement</b> 48. Restrictions on the use of electric prodders	The regulations allow for a slightly wider use of electric prodders than is currently provided for by the codes; but a narrower use than is currently employed in practice.
<b>Regulatory offence \$3,000 for individual, \$15,000 for body corporate</b> 50. Prohibiting cattle tail docking except in an emergency	The Painful Husbandry Procedures Code 2005 currently allows cows' tails to be shortened by removing the final 2 – 3 vertebrae. This regulation prohibits tail docking, including shortening, under all circumstances except in an emergency such as an urgent need to treat an acute injury.

<p><b>Regulatory offence \$3,000 for individual, \$15,000 for body corporate</b> 57. Mandatory use of pain relief when disbudding<sup>14</sup> cattle.</p>	<p>The use of pain relief when undertaking these types of procedures is recommended by the Painful Husbandry Procedures Code 2005. The regulation will make this mandatory.</p>
<p><b>Regulatory offence \$5,000 for individual, \$25,000 for body corporate</b> 58. Mandatory use of pain relief when dehorning cattle.</p>	<p>The use of pain relief when undertaking these types of procedures is recommended by the Painful Husbandry Procedures Code 2005. The regulation will make this mandatory.</p>
<p><b>Regulatory offence \$3,000 for individual, \$15,000 for body corporate</b> 51. Restrictions on docking dogs' tails.</p>	<p>The Dogs' Code of Welfare 2010 allows for dogs' tails to be docked by accredited breeders. This regulation would prohibit the docking of dogs' tails except to treat injury or disease.</p>
<p><b>Regulatory offence \$3,000 for individual, \$15,000 for body corporate</b> 56. Restrictions on removing dogs' dew claws.</p>	<p>Currently dew claws can be removed by any lay person for any purpose. This regulation makes the removal of some dew claws a vet-only procedure.</p>

#### *Inclusion of the Animal Welfare (Calves) Regulations 2016*

41. The Animal Welfare (Calves) Regulations 2016 have been incorporated into this set of regulations so that there is only one package of animal welfare regulations. The content of the Animal Welfare (Calves) Regulations 2016 has not changed.
42. The associated maximum Court fines for the two infringement offences within the Animal Welfare (Calves) Regulations 2016 have also been included. The maximum Court fine will align with the fines set for the other infringement offences contained in this package of regulations, as specified in Table Five.

#### *Fees and fines associated with live-capture traps*

43. Currently no infringement fee has been set for the failure to inspect a live-capture trap within a specified timeframe<sup>15</sup>, to ensure captured animals are attended to in a timely manner. Traps are a common method for capturing animals for pest management and hunting.
44. Following public consultation, an infringement fee for this offence under section 183(1)(h) of the Act of \$300 has been included in the regulations.

<sup>14</sup> Disbudding is the destruction, by any method, of the fee-floating immature horn tissue (the bud) to prevent a horn from growing. Normally occurs before and a calf is around 6-8 weeks old.

<sup>15</sup> Traps intended to capture live animals must be inspected within 12 hours after sunrise on each day the trap remains set, beginning on the day immediately after the day on which the trap was set.

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

45. Prior to recommending the regulations submitted with this paper, I have considered my legal obligations in relation to the regulations made under sections 183A and 183B of the Act.

### *Obligations under section 183A(1)*

46. Section 183A(1) of the Act allows me to make regulations prescribing standards or requirements for the purposes of:
- Giving effect to Part 1: - ensuring that owners of animals and persons in charge of animals attend properly to the welfare of those animals.
  - Giving effect to Part 2: - stating conduct that is or is not permissible in relation to a species of animal or animals used for a certain purpose.
  - Establishing a minimum standard that could be established under Part 5 of the Act.
47. I am satisfied that the regulations developed under section 183A(1) fall within the scope of Parts 1 and 2 of the Act or a minimum standard that could be established under Part 5 of the Act.

### *Obligations under section 183A(2)*

48. Section 183A(2) also allows me to prescribe standards or requirements that do not fully meet the Act's obligations for the physical, health and behavioural needs of animals, or the alleviation of pain or distress of ill or injured animals.
49. Only one regulation—Regulation 21: Phased prohibition on use of conventional cages—prescribes standards to transition from current practices that do not fully meet the obligations under the Act.
50. Before recommending regulations under section 183A(2), I must be satisfied that:
- any adverse effects of a change from current practices to new practices have been considered and there are no feasible alternatives currently available; or
  - meeting the Act's obligations would result in an unreasonable impact on a particular industry sector within New Zealand, a sector of the public, or New Zealand's wider economy. In deciding whether any impact is unreasonable I must have regard to the welfare of any affected animals.
51. The regulation must also only be in force for a specified period of time that does not exceed 10 years, with a possible five year extension.

52. Regulation 21 requires a stepwise transition away from the use of conventional cages to house layer hens, with conventional cages completely phased out by 31 December 2022. Older cages are required to be phased out at the end of 2018 and 2020<sup>16</sup>. These transition dates reflect the dates included within the current Layer Hens Code of Welfare.
53. I consider that, in line with the requirements set out in section 183A(2), the stepwise transition included within the regulations balances the welfare of the hens with the practicality and feasibility for the producers and affordability of eggs to all consumer groups.
54. The transition period allows the majority of producers to see a return on their investment as the oldest cages are removed first. This also has a net welfare benefit for layer hens as the oldest cages are less welfare-friendly.

#### *Obligations under section 183B*

55. Under section 183B of the Act I must, before recommending that surgical and painful procedure regulations be made, have regard to matters, including the purpose and nature of the procedure, the impact of the procedure on the animal, the extent the procedure is established in New Zealand, current good practice, and whether the procedure could be managed by other tools under the Act, for example, codes of welfare.
56. The following regulations were developed under section 183B of the Act:
  - Tail docking in cattle, pigs and dogs—Regulations 50, 51 and 52;
  - Castration in cattle, sheep, horses and pigs—Regulations 53, 54 and 55;
  - Removal of dogs' dew claws—Regulation 56;
  - Disbudding and dehorning cattle—Regulations 57 and 58; and
  - Prohibiting mulesing<sup>17</sup> in sheep—Regulation 59.
57. Based on the evidence and advice provided to me, I am satisfied that the considerations set out in s.183B have been adequately taken into account in relation to all of the procedures set out in paragraph 56 above. 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.

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<sup>16</sup> Conventional cages installed prior to 31 December 1999 must be phased out by 31 December 2018 and those installed prior to 31 December 2001 must be phased out by 31 December 2020.

<sup>17</sup> Mulesing is the removal of strips of wool-bearing skin from around the breech (buttocks) of a sheep to prevent flystrike.

## Areas where additional policy approval is required

58. Four areas need further policy approval by Cabinet as the final wording of the regulations differs from the policy approved by the Government in July 2017:
- When and where electric prodders can be used;
  - Who is liable for leaving a dog in a vehicle;
  - Ventilation requirements for pigs; and
  - The maximum Court fines associated with infringement offences.
59. I support the proposed changes outlined in Table Five as they do not substantially impact on the intent or delivery of this regulatory package.

**Table Five: Proposed policy changes**

<b>Electric prodders (Regulation 48)</b>
<p>Electric prodders are devices capable of delivering an electric shock to make an animal move. They are used in a range of situations, including loading and unloading stock trucks or loading stunning pens at slaughter premises.</p> <p><i>Note – electric prodders are also used at rodeos. Regulation 48 will prohibit the use of prodders on calves under 150kgs of weight; which will mean that prodders cannot be used on small or young calves at rodeo or in any other situation.</i></p>
<p><b>Use of electric prodders on deer in transportation:</b></p> <p>Previous policy allowed electric prodders to be used on deer over 150kg. The deer industry has requested a total prohibition on the use of electric prodders on deer when loading or unloading stock trucks. The industry consider that transport is a normal part of stock management and stock-people should have systems to load and unload deer without using an electric prodder.</p> <p><b>Recommendation:</b> Prohibit the use of an electric prodder on deer while loading and unloading for transport.</p>
<p><b>Use of electric prodders on deer when loading a stunning pen at slaughter premises:</b></p> <p>Previous policy did not allow the use of electric prodders on deer under 150 kgs. The deer industry and the meat processing industry requested a more permissive approach for deer when they are being loaded into a stunning pen at slaughter premises because deer are slaughtered at a range of weights above and below 150kg and can still be dangerous at the smaller sizes.</p> <p>MPI and industry agree that a number of factors lead to more frequent use of prodders and in particular the poor design of slaughter facilities. MPI considers that it is appropriate to remove the weight restriction on the use of electric prodders when loading a stunning pen for deer and to revisit the issue in approximately three years' time. In the meantime MPI and industry will work together to research prodder use, explore alternative ways to reduce use, and develop messages and training information for industry</p> <p><b>Recommendation:</b> Allow use of electric prodders on deer of any weight when loading a stunning pen at a slaughter premises.</p>

**Use of electric prodders on the muscled area of the animal’s hind-quarter and fore-quarter**

Previous policy approval restricted the use of electric prodders to the muscled areas of the animal's hind-quarters. MPI and industry agree that occasionally an electric prodder may need to be used on the muscled area of the animal’s fore-quarter to ensure that the animal moves in the appropriate direction and has sufficient room to move away from the prodder.

**Recommendation:** Allow use of electric prodders on the muscled areas of the animal's fore-quarter.

**Dogs left in vehicles (Regulation 14)**

Previous policy placed liability directly onto the person who leaves a dog in a stationary vehicle if that dog then suffered from heat stress. Subsequent to policy approval, stakeholders raised that the regulation would be difficult to enforce as an inspector would have to prove that a person was the one responsible for leaving the dog in the car.

**Recommendation:** Extend liability to the owner of the vehicle and/or the owner of the dog.

**Pigs must have access to shelter and dry lying area (Regulation 24)**

**Inserting a requirement for ventilation**

Previous policy ruled out using ‘ventilation’ as a requirement in this regulation, as it was considered too complex for an infringement level offence. Subsequent to policy approval, stakeholders raised they preferred ‘ventilation’ to existing wording. Stakeholders and MPI consider ‘ventilation’ allows more flexibility in designing appropriate shelters, and that the concept of ventilation is sufficiently clear for compliance purposes.

**Recommendation:** Include a requirement for a dry lying area for pigs to have ventilation.

**Maximum Court fines for infringement offences**

**All infringement offences must specify a maximum infringement fine. The maximum fine provides guidance to the Court on an appropriate penalty to impose in situations where:**

- **MPI lays charges before the Court instead of issuing an infringement notice; or**
- **a person appeals an infringement notice in Court**

The policy agreed by the Government in July 2017 set the maximum Court imposed fine for both \$300 and \$500 infringement offences at \$5,000 for individuals and \$25,000 for body corporates.

Following policy approval, the Ministry of Justice (MoJ) raised concerns at the level of the potential maximum Court imposed fine associated with the infringement offences. MoJ considered that the maximum Court imposed fine should be in the region of two to three times the infringement fee so as to:

- not deter individuals or body corporates from challenging the infringement fee in Court out of concern that they could be liable for a substantially higher penalty—under MoJ’s approach, the maximum Court imposed fine for the \$300 and \$500 infringements would be set at approximately \$900 and \$1,500, respectively; and
- reflect the relatively low seriousness of offences that are appropriate to be treated as infringement offences.

MPI considers that lowering the maximum Court imposed fine, to the levels noted above, is not appropriate in all circumstances. MPI considers that it is important that the Courts are able to impose a meaningful penalty in order to deter offending. In particular, MPI considers that it is important that higher maximum Court imposed fines are available for body corporates for seven stock transport related regulations, noted below, to ensure body corporates do not treat non-compliance with the regulations as an on-going cost of business. Stock transport generally involves large corporate organisations being responsible for the transportation of millions of animals

annually. Electric prodders are used in the transport sector but also in other situations which generate significant revenue e.g. rodeos.

MPI and the MoJ have worked extensively to identify an approach that balances the need to provide a meaningful deterrent, especially for body corporates, against ensuring that the potential maximum Court fine does not unduly influence a person's decision to challenge the infringement notice in Court.

MPI and MoJ agree that the following approach balances these two objectives:

- reduce the maximum Court imposed fine for **individuals** for all the infringement offences to \$900 or \$1,500 where the infringement fee is \$300 or \$500, respectively;
- reduce the maximum Court imposed fine for **body corporates** for infringement offences to \$900 or \$1,500 where the infringement fee is \$300 or \$500, respectively. Except for the seven stock transport related regulations outlined below:
  - Reg 30 – Prevention of injury during transport
  - Reg 32 – Prevention of back rub during transport
  - Reg 33 – Ensuring young calves are fit for transport
  - Reg 40 – Restrictions on transporting lame animals
  - Reg 41 – Restrictions on transporting animals in late pregnancy
  - Reg 42 – Restrictions on transporting animals with injured or diseased udders
  - Reg 48 – Use of electric prodders
- set the maximum Court imposed fines for body corporates, for the seven regulations above, at either \$1,500 or \$7,500 (being five times the penalty imposed on individuals), depending on the situation:
  - \$1,500 – where a body corporate challenges an infringement notice in Court – in these situations MPI or the SPCA considers the original \$500 infringement fee is an appropriate deterrent given the nature of the offending; or
  - \$7,500 – where MPI or SPCA have initiated proceedings in Court against a body corporate, in relation to an infringement offence – in these situations MPI or the SPCA considers that the infringement fee is not appropriate given the nature of the offending, for example, the body corporate is a recidivist offender or the offences were committed against multiple animals during the events in question.

**Recommendation:** Reduce the maximum fine able to be imposed if an infringement offence is taken before the Courts to:

- \$900 where the infringement fee is \$300; and
- \$1,500 where the infringement fee is \$500.

**Except for** the regulations noted above that relate to electric prodders and stock transport where the maximum fine available to the Court for body corporates would be set at:

- \$1,500 – where a body corporate challenges an infringement notice in Court; and
- \$7,500 – where MPI or SPCA have initiated proceedings in Court against a body corporate, in relation to an infringement offence.

## Minor changes made to the regulations

60. The drafting process identified some minor changes required to the wording of the original proposals to ensure the regulations are clear and operationally effective. For example, using different indicators of lameness appropriate for different production animal species.
61. I have agreed to these minor changes and they are reflected in the draft 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 Three.

## Areas where stakeholder perspectives differ

62. During the development of the regulations covered in this paper, consultation identified only six proposals where stakeholders differed significantly in their views. These proposals related to:
- Limitations on the use of electric prodders;
  - Restrictions on the transportation of lame sheep;
  - Prohibiting docking of cows' tails;
  - Requiring the use of pain relief during disbudding and dehorning;
  - Prohibiting docking of dogs' tails; and
  - Restrictions on the removal of dogs' dew claws<sup>18</sup>.
63. MPI worked extensively with stakeholders and advocacy groups to resolve outstanding issues. For the more complex regulations MPI continued to engage with stakeholders throughout the drafting process. Most of these issues have now been resolved as outlined in Table Six.

**Table Six: The resolution of four outstanding issues**

Proposal	Resolution
Limitation on the use of electric prodders	Issues raised by transporters in relation to the minimum weight limit for the use of electric prodders on cattle have been discussed and the existing weight limits confirmed. Policy changes are proposed to the rules relating to the use of prodders on deer at the request of the deer industry.
Restrictions on the transportation of lame sheep	The definition of lameness in the regulations has been developed in collaboration with industry and is now supported by key industry stakeholders.
Prohibiting docking of cows' tails	The dairy industry will work with MPI on an industry wide educational approach to ensure farmers are aware of their obligations prior to the regulation taking effect on 1 October 2018.

<sup>18</sup> Dew claws are digits, analogous to the human thumb, that grow above the paw on the inside of dogs' legs. Almost all front leg dew claws are attached to the leg by bone and tendon (articulated). Hind leg dew claws are not usually attached to bone or tendon (non-articulated) but removal of these claws becomes more painful as the dog gets older.

Proposal	Resolution
Requiring the use of pain relief during disbudding and dehorning	The delayed commencement date of 1 October 2019 will give vets and farmers time to adapt current practices to ensure that farmers are in a high state of voluntary compliance when the new regulation takes effect.

64. There are now only two remaining areas where stakeholders still have significantly different perspectives. These relate to the prohibition on docking dogs' tails and restrictions on the removal of dogs' dew claws. MPI has advised me of the probability of legal challenge in relation to the regulation prohibiting the routine non-therapeutic docking of dogs' tails.
65. I note that ongoing opposition to the prohibition to docking dogs' tails comes from a small group of breeders of traditionally docked dogs. The ban on docking dogs' tails is not opposed by Dogs New Zealand<sup>19</sup>, but these breeders and Dogs NZ both oppose restrictions on the removal of dogs' dew claws. However, both regulations are strongly supported by the New Zealand Veterinary Association and the SPCA.
66. I consider that MPI has followed a robust process to identify and develop these regulations and, as such, support the inclusion of both regulations in the current package.

### **The offences, penalties and defences associated with the regulations**

67. The offences created by the current 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.

#### *Infringement offences*

68. No defences are available for infringement offences. Any person may challenge an infringement notice in writing to the issuing authority. If the person is not satisfied with the outcome of the review by the issuing authority they have the right to take the matter to the Court to decide.

#### *Prosecution offences*

69. For prosecution offences, defendants will have two of the defences specified in sections 13 and 30 of the Act, including that they took all reasonable steps to comply with the relevant provisions; and that the breach occurred in circumstances of stress or emergency and was necessary for the preservation, protection or maintenance of human life.
70. Specific defences are also provided for Regulation 50 and 51 that prohibit cattle and dog tail docking, respectively. In the case of both of these offences, there will be a defence if the tail was docked in response to accidental injury and /or

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<sup>19</sup> Previously the New Zealand Kennel Club

disease. The onus will be on the person who docked the tail to prove it was necessary.

## **The enforcement approach for the Care and Procedures Regulations**

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

71. The SPCA is an approved organisation under the Act, with responsibility for enforcing the provisions of the Act and regulations in partnership with MPI. Both agencies employ fully warranted Animal Welfare Inspectors appointed by the Director-General of MPI under the Act. SPCA inspectors operate under professional technical standards negotiated with MPI, and the SPCA and SPCA centres are subject to audits undertaken by MPI.
72. In general, MPI tends to operate within the context of production animals on large-scale commercial farms, and SPCA operates in relation to wild animals or animals in an urban setting—most often companion animals, including horses. There is a cross-over in relation to small land holdings farms, often called “lifestyle” farms; and incidents involving smaller numbers of animals.

### *How oversight and consistency between both MPI and SPCA is managed*

73. In order to ensure that consistency is managed at a national level and across both agencies, for the first two to three years, Animal Welfare Inspectors (whether acting for SPCA or MPI) will not issue infringement notices themselves. All infringements will be issued either through the SPCA National Inspectorate or by one of MPI's three Regional Animal Welfare Compliance Managers, on recommendation by animal welfare inspectors in the field. That means that only a small number of people across both agencies will issue infringements or lay charges under the regulations.

## **Part B: Animal Welfare (Records and Statistics) Amendment Regulations 2018.**

74. The second set of regulations included within this paper will amend the Animal Welfare (Records and Statistics) Regulations 1999 (the Records and Statistics Regulations).
75. In New Zealand, as in other jurisdictions, animals are used in research, testing and teaching. Animals used most often in research, testing and teaching include rats, mice and fish. Most commonly animals are used for basic biological research, veterinary research, teaching and medical research. A small percentage are used for testing for public health purposes or to ensure that products meet regulatory requirements for safety, efficacy and quality.
76. In New Zealand in 2015, 225,310 animals were used in research, testing and teaching.

77. Prior to using animals in research, testing, and teaching, a person or institution must hold a code of ethical conduct approved by the Director-General of MPI (code holders). There are 26 code holders under which approximately 100 institutes, such as universities, pharmaceutical companies and Crown Research Institutes, operate. Each year code holders are required to report to MPI on the numbers of animals used in their projects. Returns are published to increase public oversight and transparency around the use of animals in these types of activities.

### **Changes to the Act allow for regulations to record numbers of ‘surplus animals’**

78. A ‘surplus animal’ is an animal that is bred for the purposes of research, testing and teaching, but is then killed without being used<sup>20</sup>. To address a lack of oversight around what happens to ‘surplus animals’, the Act was amended in 2015. The amendment created a new power under section 183(1)(c)(iia) to make a regulation requiring code holders to report on the killing of animals bred, but not used, for the purposes of research, testing and teaching.
79. The current suite of regulations amend the Records and Statistics Regulations and now require code holders to record ‘surplus animals’.
80. The new regulation will result in an increase in the numbers of animals being reported to MPI in 2019 statistical returns. MPI and the National Animal Ethics Advisory Committee<sup>21</sup> will publish information when the new statistics are released in 2020 to explain that the increase in numbers is caused by counting, for the first time, a new category of animals previously not reported to MPI—thereby making the system overall more transparent.

#### *Targeted process to develop the Records and Statistics Regulations*

81. In December 2016, MPI undertook a short targeted consultation with those likely to be impacted by the regulations, including code holders<sup>22</sup> and animal ethics committees. There was general support for the intent and rationale of the proposal. Interested groups (Save Animals from Exploitation (SAFE) and the NZ Anti-Vivisection Society) were notified of the proposal and did not make any further comment.
82. The National Animal Ethics Advisory Committee have been closely involved in this process, and are supportive of progressing this proposal to regulation.

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<sup>20</sup> For example, 500 mice might be bred for a specific research project. If the project only uses 200 and the remaining 300 are killed – those 300 are the surplus mice that now have to be accounted for by the new regulation (previously, only the 200 mice actually used would be recorded in the statistics).

<sup>21</sup> The National Animal Ethics Advisory Committee is appointed under the Animal Welfare Act to provide me with independent advice about the use of animals in research, testing and teaching.

<sup>22</sup> There are 26 code holders under which approximately 100 institutes, such as universities, pharmaceutical companies and Crown Research Institutes, operate.

*Cabinet approval required to change the commencement date of the new regulation*

83. The previous policy approval in July 2017 set the commencement date for 1 January 2018. This needs to be amended as this date has already passed.

**Table Seven: Proposed policy change**

Commencement date
<p><b>Commencement date for Records and Statistics Regulations</b></p> <p>Previous policy set the commencement date at 1 January 2018. MPI considers that a revised date of 1 January 2019 would be appropriate as it is desirable for the amendment to come into effect at the start of a calendar year. Recording information from the start of a calendar year will allow a full years data to be collected in the initial year and will mean that information can be properly compared between years.</p> <p><b>Recommendation:</b> Change the commencement date to 1 January 2019.</p>

84. I support the proposed change outlined in Table Seven as it does not substantially impact on the intent or delivery of this regulatory package.

*Enforcement approach for the Records and Statistics Regulations*

85. The enforcement approach for the Records and Statistics Regulations differs from the approach for the Care and Procedures Regulations. Oversight of code holder compliance with legislative requirements, including the Records and Statistics Regulations, is undertaken by independent accredited reviewers appointed by MPI.
86. Failure to meet the reporting requirements set out in the Records and Statistics Regulations is a prosecutable offence that upon conviction attracts a penalty of up to \$5,000 for individual and \$25,000 for body corporates.

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

87. 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**

88. The commencement dates for the two sets of regulations, and rationale for these dates, are set out in Table Eight.

**Table Eight: – Commencement dates**

<p><b>Regulations already in effect</b></p> <p><i>Care and Procedures Regulations - the young calves regulations (Regulations 8, 9, 10, 33, 34, 35, 36, and 37)</i></p> <p>The regulations for the management of young calves, previously included in the stand-alone Animal Welfare (Calves) Regulations 2016, came into effect in 2016 and 2017. They will remain in effect as stand-alone regulations until they are brought within the scope of the new Care and Procedures Regulations 28 days after they are notified in the New Zealand Gazette—approximately April/May 2018.</p>
<p><b>Commencement 1 October 2018</b></p> <p><i>Care and Procedures Regulations, excluding Disbudding (Reg. 57), Dehorning (Reg 58) and young calves regulations (noted above)</i></p> <p>Allows time for enforcement agencies to work with affected parties to ensure they are in a position to comply with the new regulations before they take effect. It also provides time for those farmers, businesses and individuals that may need to adjust their practices.</p>
<p><b>Commencement 1 January 2019</b></p> <p><i>Records and Statistics Amendment Regulations</i></p> <p>Commencing the requirements at the start of the calendar year will allow a full years data to be collected in the initial year and mean that information can be properly compared between years.</p>
<p><b>Commencement 1 October 2019</b></p> <p><i>Care and Procedures Regulations related to Disbudding (Reg. 57) and Dehorning (Reg. 58)</i></p> <p>Allows time for affected parties to build the required business processes, raise awareness of the regulations and to provide the additional training required for the administration of the pain relief. It is anticipated that this delay will enable industry to achieve high levels of voluntary compliance before the new regulations take effect.</p>

## Financial Implications

89. The implementation of the draft regulations will put pressure on MPI baselines both to fund activities to raise awareness of the new regulations and to manage and support the implementation of the regulations within MPI and the SPCA.
90. Public awareness of animal welfare issues is growing and is leading to an escalation in the number of complaints received year by year. This is also driving an increase in enforcement costs.
91. In budget 2015, MPI was given an additional \$10m to implement the changes to the Act, including development and implementation of the regulations. At this stage MPI is not seeking further additional funding to support implementation of the regulations and will manage these costs within baselines.
92. MPI will continue to closely monitor the impact of the regulations and escalating complaints on existing baselines.

### **Timing and 28-day rule**

93. I intend that the Animal Welfare (Care and Procedure) Regulations 2018 be notified in the New Zealand Gazette in accordance with the 28 day rule and take effect from 1 October 2018 except for:
- Regulations relating to the existing young calf regulations that will come into effect 28 days after the day the regulations are notified in the New Zealand Gazette; and
  - Regulations relating to pain relief for disbudding and dehorning cattle which will come into effect on 1 October 2019.
94. I intend that the amendment to the Animal Welfare (Records and Statistics) Regulations 1999 be notified in the New Zealand Gazette in accordance with the 28 day rule and take effect on 1 January 2019.

### **Compliance**

95. The draft regulations comply with:
- a. Principles of the Treaty of Waitangi
  - b. Rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993
  - c. Principles and guidelines set out in the Privacy Act 1993
  - d. Relevant international standards and obligations, and
  - e. Legislative Advisory Committee Guidelines on Process and Content of Legislation.

### **Regulations Review Committee**

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

### **Certification by Parliamentary Counsel**

97. The draft regulations have been certified by the Parliamentary Council Office as being in order for submission to Cabinet.

### **Regulatory impact analysis**

98. A Regulatory Impact Statement (RIS) 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 (EGI-17-Min-017). The policy changes proposed in this paper do not materially impact the analysis set out in the RIS.
99. The Regulatory Impact Statement is attached as Appendix Four.

## **Publicity**

100. If Cabinet agrees to the recommendations in this paper, a public announcement on the two sets of regulations will be co-ordinated between my Office and MPI.
101. I propose to proactively release the Cabinet paper, Minutes and supporting briefing papers related to these two sets of regulations once approved. These documents will be placed onto MPI's website.
102. MPI will work with stakeholders to undertake further communications work to ensure that all regulated parties are aware of their obligations under the new rules, and know how to meet these.

## **Consultation**

103. I have discussed this paper with the Hon Damien O'Connor, Minister for Agriculture. He is supportive of the regulations contained in this paper.
104. 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.
105. The regulations that are set out in this paper have been developed following extensive consultation with industry groups, advocacy groups and individuals representative of those likely to be affected by the new regulations, including the National Animal Welfare Advisory Committee and the National Animal Ethics Advisory Committee.
106. Information about the regulations and the consultation process was also provided to the Federation of Maori Authorities and distributed through Te Puni Kokiri's Rauiki website where public events of interest to Maori can be listed.
107. In preparing this paper MPI has also consulted with Department of Prime Minister and Cabinet (Policy Advisory Group), WorkSafe New Zealand, The Ministry of Justice, New Zealand Defence Force, Ministry of Business, Innovation and Employment, New Zealand Police, Corrections Department New Zealand, The Treasury, The Department of Internal Affairs, Ministry of Transport, Environmental Protection Authority, The Department of Conservation, New Zealand Customs Service, Te Puni Kokiri, Ministry for the Environment, The Ministry of Foreign Affairs and Trade.

### ***Te Puni Kokiri***

108. Most government agencies had no further comment to make on the regulations, however Te Puni Kokiri have advised that they are supportive of the proposed regulations. Te Puni Kokiri consider that the regulations establish a more flexible approach to addressing non-compliance and the proposed infringement system for minor to moderate offences is administratively simpler and the fines proposed are lower, and are more flexible, than prosecution. They are supportive of the additional policy changes proposed in this paper.

### ***The Ministry of Justice***

109. MPI officials have discussed the proposed offences for these regulations and their potential impact on the wider justice sector with MoJ.

110. MPI and the MoJ have also worked extensively to identify the appropriate level to set the maximum Court imposed fines associated with the infringement offences. MPI and MoJ consider that the maximum Court fines included within the regulations effectively balances the need to provide a meaningful deterrent against ensuring that the potential maximum Court fine does not unduly influence a person's decision to challenge the infringement notice in Court.

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

111. Sections 183A and 183B of the Act, require that I must also formally consult with NAWAC before recommending that regulations be issued. MPI has done this on my behalf during both the policy approval phase in June 2017 and during the drafting of the regulations in February 2018.

112. In both instances, NAWAC formally responded that they were broadly supportive of the regulations and agreed that introducing directly enforceable regulations would improve the enforceability of those standards previously found in codes of welfare.

113. NAWAC 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 in developing the final regulations.

## Recommendations

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114. I recommend that the Cabinet Economic Development Committee:

### ***Policy Approval***

1. **Note** that on 5 July 2017 the Economic Growth and Infrastructure Cabinet Committee (EGI) agreed to regulations under the Animal Welfare Act 1999 in relation to [EGI-17-Min-0172]:
  - 1.1 Stock Transport;
  - 1.2 Farm Husbandry (incl. surgical and painful procedures);
  - 1.3 Companion and Working Animals;
  - 1.4 Pigs;
  - 1.5 Layer Hens;
  - 1.6 Crustaceans;
  - 1.7 Rodeos;
  - 1.8 The way animals are accounted for in research, testing and teaching;  
and
  - 1.9 Setting an infringement fee for failure to check live-capture traps.
  
2. **Note** that the regulations are targeted at low to moderate level offending that is difficult to manage with existing tools under the Animal Welfare Act.
  
3. **Agree** to the following policy changes to the Animal Welfare (Care and Procedures) Regulations 2018:
  - 3.1 Regulation 48 – Use of electric prodders
    - 3.1.1 Prohibit the use of an electric prodder on deer while loading and unloading transport.
    - 3.1.2 Allow use of electric prodders on deer of any weight when loading a stunning pen.
    - 3.1.3 Allow use of electric prodders on the muscled areas of the animal's fore-quarter.
  
  - 3.2 Regulation 14—Dogs left in vehicles
    - 3.2.1 Extend liability to the owner of the vehicle and/or the dog.
  
  - 3.3 Regulation 24—Pigs must have access to shelter and dry lying area
    - 3.3.1 Include a requirement for a dry lying area to have ventilation.
  
  - 3.4 Reduce the maximum fine a Court is able to impose if an infringement is taken before the Courts to:
    - \$900 where the infringement fee is \$300
    - \$1,500 where the infringement fee is \$500

**Except for** the following regulations where an infringement notice has not been issued but proceedings have been initiated in Court against a body corporate in relation to an infringement offence:

- Reg 30 – Prevention of injury during transport
- Reg 32 – Prevention of back rub during transport
- Reg 33 – Ensuring young calves are fit for transport
- Reg 40 – Restrictions on transporting lame animals
- Reg 41 – Restrictions on transporting animals in late pregnancy
- Reg 42 – Restrictions on transporting animals with injured or diseased udders
- Reg 48 – Use of electric prodders.

4. **Agree** to set the maximum court fine that can be imposed on a body corporate at \$7,500 where an infringement notice has not been issued but proceedings have been initiated in Court against a body corporate in relation to the following regulations:
  - Reg 30 – Prevention of injury during transport
  - Reg 32 – Prevention of back rub during transport
  - Reg 33 – Ensuring young calves are fit for transport
  - Reg 40 – Restrictions on transporting lame animals
  - Reg 41 – Restrictions on transporting animals in late pregnancy
  - Reg 42 – Restrictions on transporting animals with injured or diseased udders
  - Reg 48 – Use of electric prodders.
5. **Agree** to a change in policy so that the Animal Welfare (Records and Statistics) Amendment Regulations 2018 now commence on 1 January 2019.
6. **Note** that, in accordance with section 183A(1) of the Act prescribing matters relating to the care of an animal, I am satisfied that the regulations prescribe standards or requirements that are within the scope of Part 1 and Part 2 of the Act or minimum standards that could be established under Part 5 of the Act .
7. **Note** that in recommending the making of Regulation 21 (stepwise transition away from the use of conventional cages for layer hens), which prescribes standards and requirements to transition from current practices that do not fully meet the obligations of the Act, I am satisfied of the matters outlined in section 183A(2) to (8).
8. **Note** that in recommending the making of the regulations relating to surgical and painful procedures (Regulations 50 to 59), I have had regard to the matters outlined in section 183B(2) of the Act.

9. **Note** that I am satisfied that the Animal Welfare (Records and Statistics) Amendment Regulations 2018 are made in accordance with section 183(1)(c)(iia), which allows for regulations to be made requiring information on the killing of animals that were bred, but not used, for the purposes of research, testing, and teaching to be recorded.
10. **Note** that as required by sections 183A(10), 183B(3) and 184(1) I have consulted with:
  - 10.1 persons that I have reason to believe are representative of interests likely to be substantially affected by the regulations; and
  - 10.2 the National Animal Welfare Advisory Committee.
11. **Authorise** the submission to the Executive Council of the:
  - 11.1 Animal Welfare (Care and Procedures) Regulations 2018;
  - 11.2 Animal Welfare (Records and Statistics) Amendment Regulations 2018.

### ***Commencement dates***

12. **Note** that the Animal Welfare (Care and Procedure) Regulations 2018 come into force on 1 October 2018 except for:
  - 12.1 Regulations relating to the existing young calf regulations that will come into effect 28 days after the day the regulations are notified in the New Zealand Gazette; and
  - 12.2 Regulations relating to pain relief for disbudding and dehorning cattle, which will come into effect on 1 October 2019.
13. **Note** that the Animal Welfare (Records and Statistics) Regulations 1999 will be notified in the New Zealand Gazette in accordance with the 28 day rule and take effect on 1 January 2019 if you agree to this change in commencement date.

### ***Publicity***

14. **Note** that the Ministry for Primary Industries will work with my office to:
  - 14.1 ensure that all affected stakeholders are aware of the regulations; and
  - 14.2 manage announcements arising out of decisions made, including any media interest.

15. **Agree** to the proactive release of this Cabinet paper together with the related Minutes, on the Ministry for Primary Industries website.

Hon. Meka Whaitiri  
**Associate Minister of Agriculture**

## **APPENDIX ONE: RATIONALE FOR EACH SPECIFIC REGULATION**

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## Infringements \$300 - Commence 1 October 2018

A person who contravenes a regulation in this section commits an offence. The offence is an infringement offence with an infringement fee of \$300.

Any person wishing to challenge an infringement notice may write to the issuing authority and ask for the notice to be cancelled or they may request a formal hearing before the District Court.

### Regulation 6. Prohibited methods of milk stimulation in cattle

This rule reflects a minimum standard in the Animal Welfare (Dairy Cattle) Code of Welfare 2010. The insertion of water, air, objects or other substances into a cow's vagina to try to stimulate milk let-down can cause the cow pain and/or distress. This practice is generally considered outdated and unnecessary as oxytocin injections are available to stimulate milk let-down.<sup>23</sup>

### Regulation 12. Muzzles on dogs

The proposed rule reflects current minimum standard 19 in the Dogs Code of Welfare 2010 and is not inconsistent with requirements under the Dog Control Act 1996. The code addresses the fit of a muzzle and requires that a dog must be able to open its mouth sufficiently to pant or drink. The Dog Control Act 1996 requires muzzling of dogs classified as dangerous or menacing in public places (section 32(1)(b), section 33E(1)(a)), but also requires that a dog must also be able to breathe and drink without obstruction.

A muzzle that is not fitted properly to an animal can cause injury and distress. Correct use of a muzzle should only seek to prevent specific behaviours being targeted, and should not restrict other normal and necessary behaviours such as panting and drinking. Panting, in particular, is an essential way for dogs to moderate their heat. If panting is inhibited during high temperatures or physical exertion, it can lead to an increased risk of heatstroke, severe distress, and death.

There will be situations in which a restrictive muzzle will be needed as a safety tool, or to ensure the safe handling of a dog. These scenarios include veterinary examinations of nervous or snappy dogs and capture of dangerous dogs by Animal Control Officers or Animal Welfare Inspectors. A more restrictive muzzle should only be used for short periods of time to minimise the risk of injury or distress to the dog.

### Regulation 13. Dogs must have dry and shaded shelter

This proposed rule reflects current minimum standards in the Dogs Code of Welfare. This rule is intended to apply to dogs in an area where they are habitually kept, whether by tether, fence, or some other restraint. If a dog is restrained from accessing, or is not provided with, adequate shade and shelter it can cause injury and distress to the dog.

Providing adequate shade and water for dogs confined outdoors is essential for the prevention of heatstroke. As well as providing comfort and enrichment, a comfortable resting and sleeping area also prevents other veterinary issues related to lying on cold hard surfaces. Requiring that faeces and urine do not accumulate in the dog's space is necessary for the dog's health and comfort.

This rule will not apply to dogs that have been temporarily tethered or confined to an area where they are not habitually kept, such as working farm dogs tethered in the yards after they have been used to muster the animals into the yards, but which are not required for the yard work.

There are varying degrees of requirements for different species of animals depending on common practice associated with them, and the likely ability of owners to provide these requirements. Dogs are provided with the highest level of requirements under these regulations due to their higher exposure to their owners, their

<sup>23</sup> <http://www.nzva.org.nz>. NZVA Policy: Induction of lactation in dairy cattle.

lower (depending on breed) ability to cope with extreme weather conditions, and the higher societal expectations of care afforded to dogs.

#### **Regulation 14. Dogs left in vehicles**

This regulation reflects an existing minimum standard in the Dogs Code of Welfare 2010, which states that dogs must not be left unattended in a vehicle in conditions where the dog is likely to suffer from heat stress.

Leaving a dog in a car on a hot day poses a real risk of actual harm to the physical, health, or behavioural needs of the dog. Dogs suffering from heat stress from being left in a hot car can suffer pain and distress and ultimately die. Dogs that survive the resulting heat stroke often have lasting disabilities even with appropriate specialist treatment.

There are further symptoms of heat stress such as the dog becoming non-responsive or collapsing, but these are indicative of a higher level of harm that often result in serious pain and distress or death. Prosecution will remain available for injuries of this level of seriousness.

A requirement for 'adequate ventilation' has been removed as the usual methods which people employ to ventilate their car can often be inadequate and the sufficiency of the ventilation may be too subjective for infringement level.

#### **Regulation 15. Dogs on moving vehicles**

This proposed rule reflects an existing minimum standard in the Dogs Code of Welfare 2010, which states that except for working dogs at work, dogs must not be carried on the open rear of a moving vehicle unless they are secured or enclosed in a crate. This rule also reflects NZTA guidelines on the transport of dogs on the deck of a vehicle.

If a dog falls from a moving vehicle it is likely to suffer serious injuries, if not death. Typical injuries when a dog falls from a vehicle include multiple fractures and internal injuries, missing skin, and often toes worn down to the bone as they try to stand up. If tethered by a rope that is too long, they may not hit the ground, but be strangled as they hang over the side of the vehicle. The aim of this rule is not to penalise the outcome of a dog falling from a vehicle, but to put in place requirements to ensure this does not happen. Prosecution will remain available for injuries of this level of seriousness.

An exception for working farm dogs to be able to jump on and off moving vehicles while working is considered necessary as it relates to common and accepted farming practice. This exception extends to public roads as farmers may be moving animals from one paddock to another that is down the road.

The definition of motor vehicle has been limited to exclude motorcycles and quadbikes as farm dogs are regularly transported on them between properties and this regulation should not apply to those situations. It is also more likely for a dog to come to harm from being dragged by a tether behind a bike than by falling clear of it.

#### **Regulation 16. Tethered goats must have access to food, water and shelter**

This proposed rule reflects an existing minimum standard in the Goats Code of Welfare 2012, which provides requirements for a tethered goat. There was strong support from public submissions for the tethering of goats to be completely prohibited, with only a few submitters requesting the status quo.

Goats that are habitually tethered can be restricted in their ability to seek out food, water, and dry shelter sufficient to meet their needs. Goats are more susceptible to hypothermia than other ruminants due to differences in the distribution of their fat and consistency of their coat. This also makes them more susceptible to forms of heat stress and weather extremes such as rain and wind. This rule establishes that a goat must be

provided with shelter that protects it from the heat and cold, but also that its tether does not prevent it from accessing food and water.

There are varying degrees of requirements for different species of animals depending on common practice associated with them, and the likely ability of owners to provide these requirements. A goat's lower ability to deal with weather extremes means that they should be provided with a greater amount of shelter than other species such as equines.

### **Regulation 18. Horses tethered for the purpose of grazing**

This proposed rule reflects shelter requirements for tethered horses in the Horses and Donkeys Code of Welfare 2016. There was support from public submissions for the tethering of horses and donkeys to be completely prohibited. While this may not be a best practice scenario, some aspects of society still consider it to be an acceptable practice and so more work is needed to assess a possible prohibition in the future.

Horses that are tethered for the purpose of grazing can be restricted in their ability to move about freely to find food, water, and shelter sufficient to meet their needs. This rule aims to ensure some form of protection from weather extremes is provided to horses which are tethered.

There are varying degrees of requirements for different species of animals depending on common practice associated with them, and the likely ability of owners to provide these requirements. Explicitly requiring a physical shelter in this regulation may place an overly onerous standard on horse owners to provide a stable or house for shelter. The SPCA considers that in most circumstances a cover / blanket will provide sufficient protection as long as the correct type is being used for the circumstances, and that their advisers are well-trained to recognise when the wrong cover is being used.

### **Regulation 19. Use of equipment that may injure horses**

Saddles and ill-fitting equipment can cause saddle sores, cuts, abrasions and swelling on horses if they have not been fitted properly. These injuries can be significantly painful for a horse and can cause them distress if the equipment continues to be used. Problems can also be seen when owners leave halters on horses in the paddock for ease of catching them, and do not monitor the condition of the skin (sores can cause a horse pain and distress). The aim of the rule is to deter owners from these practices which result in injuries to horses.

A distinction has been made between a horse's head and neck and the rest of its body as there are some training practices, such as gait-training, that can cause swelling to a horse's legs that industry considers to be a usual consequence of training. If an inspector believes that swelling on a horse is unreasonable or is the result of ill-treatment, there is the option to prosecute under the Act.

There are also varying degrees of requirements for different species of animals depending on common practice associated with them, and the likely ability of owners to provide these requirements. This proposal has a higher level of injury than the comparative proposal for collars and tethers or muzzling dogs. A wider range of training equipment is used on horses than other animals, and the nature of the training can result in swelling which is considered a usual consequence of training by some. As above, if an inspector believes the swelling is unreasonable or a result of ill-treatment, they may choose to prosecute.

### **Regulation 23. Use of equipment that may injure llama or alpaca**

This proposed rule extends on the current minimum standard in the Llama & Alpaca Code of Welfare 2013 which requires halters to be properly fitted.

Packs, halters and ill-fitting equipment can cause cuts, abrasions, hair loss and swelling on llama and alpaca if they have not been fitted properly. These injuries can be significantly painful for llama and alpacas and can cause them distress if the equipment continues to be used.

Trekking and carting is becoming increasingly popular in New Zealand, therefore is important to ensure that correct procedures are being followed and that animals being used are not under any pain or distress from ill-fitting equipment. The rule aims to make it clear to the growing trekking industry, and others who use alpaca or llama, that they must not allow equipment injury to become an issue in their industry.

There are varying degrees of requirements for different species of animals depending on common practice associated with them, and the likely ability of owners to provide these requirements. This proposal requires a higher level of injury to be established than the comparative proposal for collars and tethers or muzzling dogs because education is needed in this area for owners and businesses such as trekking businesses, before using regulation to penalise them.

#### **Regulation 24. Pigs must have access to shelter and dry lying area**

This regulation reflects the minimum standards in the Pigs Code of Welfare that require pigs to have shelter. An identified area of frequent non-compliance where pigs housed outdoors are subject to muddy conditions and a lack of shelter. These generally relate to small scale or lifestyle owners. The severity can vary, but if left unaddressed, the welfare impact on the hygiene and condition of the animals could be significant. This reflects a similar existing standard in the industry accreditation scheme for indoor systems.

#### **Regulation 47. Collars or tethers**

The proposed rule reflects current minimum standards for the prevention of injury when using a collar or tether on an animal.

A collar or tether that is not fitted properly can cause injury and distress. While a collar needs to be secure enough to ensure that the animal cannot slip its head from it, it must not physically restrict breathing or cut or abrade the skin of the animal's neck. This rule establishes that any damage caused to an animals' skin from a collar or tether is not acceptable. The rule is intended to be used as a preventative to stop injuries becoming more serious, such as the collar or tether embedding into the neck of the animal. Prosecution will remain available for injuries of this level of seriousness.

## **Infringements \$500 - Commence 1 October 2018**

A person who contravenes a regulation in this section commits an offence. The offence is an infringement offence with an infringement fee of \$500.

Any person wishing to challenge an infringement notice may write to the issuing authority and ask for the notice to be cancelled or they may request a formal hearing before the District Court.

#### **Regulations 5, 17 and 28. Cattle, goats & sheep with ingrown horns**

This rule reflects a minimum standard in the Sheep and Beef Code of Welfare 2010 that timely preventative or remedial action be taken when an animal is ill or injured. Ingrown horns can cause pain and distress. Timely treatment is needed to ensure that the ingrown horn does not cause unnecessary pain or distress.

Ingrown horns are primarily detected when they are transported to slaughter premises or sale yards—but are a pre-existing issue prior to transport. On average 90 cases a year are investigated for ingrown horns. Three quarters of these are in beef cattle where ingrown horns make up 20% of beef cattle animal welfare complaints.

Targeting ingrown horns on farms is likely to have the double benefit of reducing the incidence of ingrown horns on farms as well as the numbers of animals transported with ingrown horns.

Offending that causes severe harm to the animal(s) can be prosecuted under existing offences in the Animal Welfare Act 1999.

### **Regulation 20. Persons must not strike horse on its head**

This proposed rule reflects the current minimum standard in the Horses and Donkeys Code of Welfare 2016.

The act of striking a horse or donkey around the head can cause significant pain or distress to the animal. It is not generally an accepted practice in the racing industry, show industry, or in general horsemanship. The use of punishment by striking a horse might reduce the likelihood that a behaviour will be performed again in the future, however, it does not provide the horse with any information as to how it should act appropriately in that context. As such, the use of this kind of negative reinforcement is criticised by animal behaviourists.

The intention of this proposal is not to infringe situations where a person pushes a horse's head away when it is being pushy or trying to bite. The common definition of strike requires a certain level of force that is deemed to be higher than that used to push a horse away. Some submissions reference smacking a horse on a nose when it is biting, which may be reasonable force in the circumstances. The use of 'strike' is not intended to capture this situation.

### **Regulation 30. Prevention of injury**

Transport that causes injuries such as serious cuts and abrasions is a known compliance issue. Injuries can be due to poorly designed or maintained stock crates, stocking density, or driving behaviour. This regulation is intended to cover acute cuts and abrasions that occur during transport, loading, or unloading. It is not intended that this regulation cover injuries caused by back-rub (Regulation 32).

Liability for this offence rests on transporters as this reflects the onus in primary legislation (section 23(1) of the Animal Welfare Act 1999). Transporter-supplier communication is essential but transporter is best placed to know the condition that their truck is in and whether it is fit for purpose and does not pose a risk to the animals. The transporter is also in charge of the manner in which the vehicle is driven in, and whether this causes animals to be thrown around or go down in the truck.

### **Regulation 31. Transport of animals with horns and antlers**

This rule reflects a minimum standard in the Transport within New Zealand Code of Welfare 2016 that animals with horns or antlers of a length that may cause injury or be damaged must not be transported, except where special provision is made for such animals to be transported so that they do not cause injury and are not injured themselves.

Animals with horns and antlers have the potential to injure themselves or other animals during transport. It is important that animals which are likely to be at risk or pose a risk to the welfare of other animals are dealt with appropriately. The manner in which an animal is transported to reduce this risk will be determined by the circumstances of the animal and the journey to be taken.

Liability has been placed on both the supplier of the animal and the transporter as both the pre-existing condition (has horns or antlers) and the conditions of transport are factors that contribute to whether injury occurs.

### **Regulation 32. Prevention of back-rub**

Back-rub commonly occurs where stock are too tall for the stock crates and their head, spine, hip bones, or tail-head rub raw on the deck or other structures above. Transport that results in abrasions, particularly back-rub, is a known compliance issue. On average 30 complaints relating to significant abrasions (back-rub) are investigated each year. Most involve multiple animals, almost all are cattle though there are occasional cases in deer. Current enforcement responses appear ineffective at deterring offending.

Liability for this offence rests on transporters as this reflects the onus in primary legislation (section 23(1) of the Animal Welfare Act 1999). Transporter-supplier communication is essential but transporter is best placed to know the capacity of their truck and trailer and the size of animals they can load in different crates.

### Regulation 38. Restrictions on transporting animals with ingrown horns

This rule reflects the minimum standard in the 2016 Transport within New Zealand Code of Welfare that animals must not be transported if they display, among other things, any injuries or physical abnormalities that could compromise their welfare during the journey, unless a veterinary declaration of fitness has been completed.

Ingrown horns can cause significant pain and distress. Transporting an injured animal risks exacerbating the effects of the injury. Allowing transport within a farm for treatment recognises that facilities to treat an ingrown horn may not be available in all locations on a farm. This exception is limited to only 'minor' ingrown horns. Where the horn invades the underlying tissue of the skin or eye a veterinary certificate will be required.

Liability has been placed on suppliers presenting animals with ingrown horns for transport, rather than transporters. Suppliers have a greater responsibility and opportunity to inspect the animals and ensure they are fit for transport.

### Regulation 39. Restrictions on transporting animals with injured horns or antlers

This rule reflects a minimum standard in the Transport within New Zealand Code of Welfare 2016 that animals must not be transported with bleeding antler or horns stumps [.....], except yearling deer where approved rings have been used.

The requirement for yearling deer to be at slaughter premises within 72 hours of having their velvet antler removed reflects research underpinning the DeerQA Transport Programme<sup>24</sup> that antlers on yearling deer, velvetted with rubber rings (*NaturO rings*), can start to become necrotic 72 hours after being velvetted if the ring is still attached.

Transporting an injured animal risks exacerbating the effects of the injury. Allowing transport within a farm for treatment recognises that:

- facilities may not be available in all locations on a farm to adequately treat an injured antler or horn; or
- it may not be practical to monitor an injured animal in more isolated locations on a farm.

Liability has been placed on suppliers presenting animals with injured horns or antlers for transport, rather than transporters. Suppliers have a greater responsibility and opportunity to inspect the animals and ensure they are fit for transport.

### Regulation 40. Restrictions on transporting lame animals

Lameness is a known compliance issue that causes pain and distress and is likely to be made worse by transport. An average of 120 complaints are investigated per year relating to the transport of lame cattle, sheep, deer, pigs, and goats. Cattle make up 80% of these complaints. Current enforcement responses appear ineffective at deterring offending.

Liability has been placed on suppliers presenting lame animals for transport, rather than transporters. Suppliers have a greater responsibility and opportunity to inspect the animals and ensure they are fit for transport.

Early signs of lameness that are difficult to clearly identify are not intended to be covered by this regulation. It is expected that prosecutions will continue to be taken for transporting severely lame animals.

It is practically more difficult to monitor and detect lameness in large mobs of sheep. Animal Welfare Inspectors already have guidance in place to allow for these practicalities when assessing welfare cases.

<sup>24</sup> <http://deernz.org/dinz-activity/quality-assurance/transport-qa>

#### **Regulation 41. Restrictions on transporting animals in late pregnancy**

Animals are transported in late stage pregnancy and giving birth during transport or shortly afterwards is a known area of non-compliance. Both the dam and her offspring are likely to suffer pain and distress by giving birth and being born in unsuitable conditions.

An average of 40 complaints are investigated per year relating to transportation of animals that have given birth during transport, sometimes relating to multiple animals. Current enforcement responses appear ineffective at deterring offending.

A stricter rule for deer reflects the greater risks for pregnant hinds, current practice in the deer industry, and existing minimum standards in the Deer Code of Welfare.

Liability has been placed on suppliers, rather than transporters. Suppliers have a greater responsibility and opportunity to inspect the animals and ensure they are fit for transport.

#### **Regulation 42. Restrictions on transporting animals with injured or diseased udders**

Animals with injured or diseased udders can experience pain or distress which is likely to be made worse by transport. On average 33 complaints per year are received about animals transported with injured and diseased udders, sometimes multiple animals are related.

Animals with udders that have become necrotic through disease or injury, have clinical mastitis, or have unhealed lesions cause an animal pain and distress while being transported and can lead to further injury.

Liability has been placed on suppliers, rather than transporters. Suppliers have a greater responsibility and opportunity to inspect the animals and ensure they are fit for transport.

#### **Regulation 43. Restrictions on transporting animals with advanced eye cancer**

Eye cancers occur in livestock, mainly in cattle. On average 40 complaints a year are investigated relating to cattle, sheep and goats transported with an advanced cancer eye.

Animals with an early stage eye cancer that is not causing irritation to the eyeball are not intended to be covered by this regulation, as animals in this condition should be able to be transported for cull or for treatment before the cancer becomes large enough to cause the animal unreasonable pain or distress.

Transporting an animal with an advanced eye cancer risks exacerbating the effect of the condition. Eye cancers that are over 2cm in size, or are not visibly confined to the eye or eyelid are considered to be advanced. Eye cancers that are discharging, bleeding or irritating the eye cause the animal pain and distress.

Liability has been placed on suppliers, rather than transporters. Suppliers have a greater responsibility and opportunity to inspect the animals and ensure they are fit for transport.

#### **Regulation 45. Obligations of transporters in relation to animals to which regulations 38 to 44 apply**

For the avoidance of doubt this regulation clarifies that transporters must comply with conditions specified on veterinary certificates, and ensure that yearling deer arrive at slaughter premises no later than 72 hours following velvet antler removal.

#### **Regulation 48. Use of electric prodders**

Electric prodders are an important tool and their use may sometimes, from an animal welfare perspective, be a preferable method of moving animals. For example, an electric prod may cause less distress than prolonged shouting and use of a non-electric prod. However, they can cause pain and distress and they should not be used on young or small animals, or species prone to stress. This rule therefore restricts their use.

The proposed rule largely reflects existing restrictions (i.e. minimum standards) in thirteen animal codes of welfare. The most notable changes from current practice are that electric prodders may be used:

- when loading and unloading large pigs. This is permitted to protect human health and safety when moving large boars and sows that can be obstinate and aggressive.
- on cattle that weigh over 150 kilograms because it is sometimes necessary to move obstinate adult cattle. Currently in codes of welfare restrictions on the use of prodders on cattle are based on age or weaned status. This rule restricts the use of prodders by weight, as weight is more readily identifiable for enforcement purposes.

More generally the rule prohibits the use of electric prodders on all other animals except large cattle and pigs, and deer of any size when loading a stunning pen at slaughter premises. This is permitted because this process will be unfamiliar to the animals and therefore moving the animals is likely to be more difficult and/or dangerous. It is also in the best interests of the animal to move through this process as quickly as possible. To further restrict unnecessary pain and distress use on sensitive areas, such as eyes or genitals, is also prohibited by requiring prodders only be used on the muscled areas of the animals forequarters or hind quarters.

#### Regulation 49. Prodding animals in sensitive areas

This rule generally reflects existing minimum standards on the use of objects to guide and move stock set out in eight animal welfare codes. Being struck, or prodded in sensitive areas is likely to cause unreasonable and unnecessary pain or distress to animals. This rule restricts the use of objects on animals to less sensitive areas of the body.

#### Regulation 52. Docking pigs' tails (under 7 days)

Incorrectly docking the tails of pigs under 7 days old is an infringement offence with a penalty fee of \$500.

**Note:** *The proposal is discussed alongside the regulatory offence relating to docking pigs tails over 7 days old in the section on regulatory offences with a penalty of \$3,000 for an individual or \$15,000 for a body corporate.*

## Regulatory prosecution \$3000 - Commence 1 October 2018

A person who contravenes a regulation in this section commits an offence and is liable on conviction to a fine not exceeding \$3,000 for an individual, and \$15,000 for a body corporate.

It is a defence to a prosecution for an offence against a regulation in this section, if the defendant proves that the defendant took all reasonable steps to comply with the relevant provision.

#### Regulations 7 and 29. Use of traction in calving and lambing

This rule reflects a minimum standard in the Sheep and Beef Code of Welfare 2010 and in the Dairy Cattle Code of Welfare 2010. The use of devices that do not allow for the quick release of tension for calving or lambing have a high risk of causing injuries, pain and distress to both the young and the mother.

#### Regulation 25. Minimum lying space for grower pigs

This regulation reflects an existing minimum standard in the Pigs Code of Welfare. Grower pigs in overstocked systems cannot adequately express normal behaviours and overstocking may also contribute to the expression of undesirable behaviours such as aggression. There is a high risk of poor welfare outcomes, as a 'single instance' is likely to affect many animals. Compliance complaints often relate to unhygienic conditions including overcrowding. Current enforcement responses are viewed as inappropriate to address offending, where the threshold for undertaking a prosecution is not met.

## Regulation 26. Farrowing crate requirements

While a sow is confined to a farrowing crate, it is important they are provided with sufficient space to be able to lie down at full length without leg restriction, when standing, they must be able to do so without touching both sides at the same time and must be provided with sufficient space so their backs do not touch the top of the crate.

Modern sows have been bred to be larger than their predecessors. Some older farrowing crates may no longer be large enough to cater for modern sows and need to clarify that crates should be longer than the sows. Placing this standard into an enforceable regulation will provide a level playing field for all pork producers. It will also provide stronger assurances about how New Zealand's pigs are treated in farrowing crate systems.

## Regulation 50. Docking cattle beasts' tails

This rule is more restrictive than an existing minimum standard under the Painful Husbandry Procedure Code of Welfare 2005 which allows the last two to three vertebrae (referred to as the switch) of the tail to be shortened.

In the 2005, a common advantage put forward for tail docking was that it enhances udder and milk hygiene. NAWAC's report on the Code found that docking did not improve cow hygiene.<sup>25</sup> However, the procedure was allowed on the basis that it improves the comfort of milking personnel and enhanced milking efficiency. The procedure was also allowed on the basis that it was consistent with two further minimum standards in the 2005 Code. These provide that procedures must only be performed when:

- there are no other practical, economically viable, effective or less noxious alternatives; and
- any harmful consequences of a procedure are minimised.

This rule prohibits cattle tail shortening and removal because since the Code was issued in 2005 a further study<sup>26</sup> has been published that supports the finding that docking does not improve cow hygiene. Further, switch trimming<sup>27</sup> has become an economically viable, effective and less noxious alternative to switch removal as efficient automated tail trimmers are now available.

In addition, industry organisations advise that a prohibition is likely to become a requirement to access some global supply chains. Internationally docking is already banned in Germany, Denmark, the United Kingdom and California. In some Australian states docking is prohibited unless performed by veterinarian. Failure to take steps to constrain cattle tail docking could have international reputational risks and effect trade.

## Regulation 51. Docking dogs' tails

The primary reasons that dogs' tails are docked are to meet traditional breed standards and the belief that docking a dogs will prevent injury.

There are two key considerations; the extent to which neonate dogs experience pain from tail docking, and whether docking is necessary or reasonable. The science around pain perception is complex, so advocates for and against docking can cite evidence supporting their positions.

The prevention of tail injuries is the main reason used to justify docking. Evidence from New Zealand and elsewhere suggests that tail injuries are relatively rare, and only a small fraction of docked dogs would have been likely to experience a tail injury. There is no close relationship between whether breeds are docked and whether they are used for activities likely to cause tail injury (e.g. hunting).

<sup>25</sup> <https://www.mpi.govt.nz/protection-and-response/animal-welfare/codes-of-welfare/>

<sup>26</sup> Morabito, E.A., Nolan D.T., and Bewley J.M (2014). Evaluation of cow cleanliness and fly avoidance behaviour among cows with docked, switch-trimmed and switch intact tails. <https://asas.confex.com/asas/jam2014/webprogram/Paper8007.html>

<sup>27</sup> Clipping the hair of the lower distal part of the tail of cattle.

Dogs' tails have a function in terms of balance and a means of communication with other dogs and humans. Research has shown that a longer tail is more effective at conveying different cues. Given the infrequency of tail injuries and the role of a tail in communication, routine docking is not justified.

### **Regulation 52. Docking pigs' tails – (over 7 days, under 7 days, and at any age)**

This procedure is likely to fit the criteria for determining whether it is a significant surgical procedure. Regardless of the age of the animal, without regulations specifying otherwise, this procedure would only be able to be performed by a veterinarian or veterinary student under the direct supervision of a veterinarian.

The current requirements are considered appropriate given the balance between the benefits of tail docking reducing problems such as tail biting and the pain associated with the procedure. This allows non-veterinarians who display the necessary competency requirements to undertake a procedure under 7 days of age, within appropriate constraints that is likely to meet the criteria for a significant surgical procedure. The regulation also aims to minimise pain and distress by requiring pain relief at the time of the procedure when undertaken over 7 days of age, and would raise the current minimum standard in the elective husbandry procedures to make the use of pain relief by veterinarians mandatory.

The competence requirements in 52 (5) and 6) are from the Minimum Standard 6a from the Painful Husbandry Procedures Code of Welfare 2005 – made specific to pig tail docking. No offence is attached to the competence requirements. Incompetence can be dealt with via a compliance notice requiring training, or if serious enough via prosecution under the Act.

### **Regulation 53. Castrating cattle beasts and sheep**

This proposal lifts the current requirements of the Painful Husbandry Procedures Code of Welfare 2005 into regulation.

Surgical and painful procedure criteria were introduced into the Animal Welfare Act in 2015. By default they will come into force in 2020 if not brought in earlier. Castration is likely to fit these criteria and would only be able to be performed by a veterinarian when the criteria come into force. Providing a specific regulatory exception will allow competent people (farmers and contractors) to continue to perform this routine husbandry procedure after the criteria are in force.

The competence requirements in 53 (3) and 4) are from the Minimum Standard 6a from the Painful Husbandry Procedures Code of Welfare 2005 – made specific to castration and shortening of the scrotum. No offence is attached to the competence requirements. Incompetence can be dealt with via a compliance notice requiring training, or if serious enough via prosecution under the Act.

### **Regulation 56. Removing dogs' dew claws**

Articulated dew claws are attached to the leg by bone and tendons. Front limb dew claws are usually articulated, while rear limb dew claws are generally non-articulated. Non-articulated dew claws are attached to a flap of skin and tissue.

Dog dew claws are removed for both aesthetic and functional reasons. Dew claws can become overgrown and require regular trimming. Dew claws can also catch on solid objects such as fences, and tear causing a painful injury. Statistics on dew claw injuries are very limited, but vets report injuries to rear dew claws as being the most commonly presented injury. Injuries resulting from incorrect removal of dew claws are also reasonably common.

Some breed standards also mandate the removal of dew claws for aesthetic reasons.

Articulated front dew claws are used by dogs in holding and manipulating large objects such as bones. They may also play a role in aiding some breeds to change direction rapidly when running.

As far as MPI is aware, no country has placed an outright ban on dew claw removal. This contrasts with the situation regarding tail docking.

On balance, there are generally benefits to dogs in retaining articulated front dew claws, while their removal undoubtedly causes some degree of distress. Removal of articulated dew claws will therefore be restricted to veterinarians and pain relief will be required. After four days of age, the removal of non-articulated hind dew claws can only be undertaken by a veterinarian using pain relief.

### Regulation 57. Disbudding cattle beasts (Commences 1 October 2019)

Disbudding is undertaken to prevent horn growth and reduce the risks of horns causing injuries to handlers and to other animals. It is a regular procedure in bovine dairy herds, but also occurs in beef cattle.

Disbudding without pain relief, regardless of method, has been shown to cause acute pain and distress.<sup>28,29,30</sup>

Options are available to minimise the pain experienced at the time of the procedure. However, it is acknowledged that in some situations local anaesthetic will alleviate, but may not eliminate, the pain caused by disbudding<sup>31, 32</sup>.

In 2005, when the Painful Husbandry Procedure Code of Welfare was developed, NAWAC signalled that they would consider making pain relief mandatory, within defined periods, for a wider range of procedures where pain relief was accessible, practical, effective and affordable. Local anaesthetic is already being effectively used by approximately 40 to 50 percent of the bovine dairy sector when disbudding calves.

Due to the pain caused by this procedure, it is likely that it would meet the criteria for determining whether it is a significant surgical procedure that come into effect on or before May 2020. Without regulations specifying otherwise, only a veterinarian<sup>33</sup> would be able to undertake this procedure.

The competence requirements in 57 (3) and (4) are from the Minimum Standard 6a from the Painful Husbandry Procedures Code of Welfare 2005 – made specific to disbudding. No offence is attached to the competence requirements. Incompetence can be dealt with via a compliance notice requiring training, or if serious enough via prosecution under the Act.

## Regulatory prosecution \$5000 - Commence 1 October 2018

A person who contravenes a regulation in this section commits an offence and is liable on conviction to a fine not exceeding \$5,000 for an individual, and \$25,000 for a body corporate.

It is a defence to a prosecution for an offence against a regulation in this section, if the defendant proves that the defendant took all reasonable steps to comply with the relevant provision.

<sup>28</sup> Stilwel G., Lima M.S., Carvalho R. C., & Broom D. M. 2012. Effects of hot-iron disbudding, using regional anaesthesia with and without carprofen, on cortisol and behaviour of calves. *Research in Veterinary Science*. 92, 338-41.

<sup>29</sup> Braz M., Carreira M., Carolino N., Rodrigues T., & Stilwell G. 2012. Effects of rectal or intravenous tramadol on the incidence of pain-related behaviour after disbudding calves with caustic paste. *Applied Animal Behaviour Science*. 136, 20-5

<sup>30</sup> Report on the Painful Husbandry Procedure code <https://www.mpi.govt.nz/protection-and-response/animal-welfare/codes-of-welfare/>

<sup>31</sup> Ibid, ref 27

<sup>32</sup> Stafford K., J., and Mellor D., J., 2011. Addressing the pain associated with disbudding and dehorning in cattle. *Applied Animal Behaviour Science* 135(3), 226-231.

<sup>33</sup> or a veterinary student under the direct supervision of a veterinarian who is present throughout the performance of that surgical procedure (see section 15 of the Animal Welfare Act 1999).

### **Regulation 11. Killing of crabs, rock lobster, crayfish and koura**

Crabs, rock lobster crayfish and koura are classified as sentient creatures under the Act. The pain and distress associated with slaughter can be minimised by rendering them insensible before being killed.

This regulation is in line with the existing Commercial Slaughter Code of Welfare 2010. Extending it to cover recreational fishers would be desirable on animal welfare grounds, but is considered impractical to enforce at this stage.

This regulation applies to both commercially farmed and wild-caught crabs, rock lobsters (crayfish) and freshwater crayfish (koura). It also applies to restaurants killing these animals on site. It does not apply to crabs, rock lobsters (crayfish) or freshwater crayfish (koura) that are caught in the wild and immediately killed at the point of capture.

The rule does not specify the means by which crabs, rock lobster, crayfish and koura must be rendered insensible, allowing for innovation and for operators to select an option that suits their business model, so long as it achieves the outcome of the regulation. Minimum standards 22e in the commercial slaughter code will be retained along with further guidance material on effective methods.

### **Regulation 21. Phased prohibition on use of conventional cages**

This regulation reflects the intent of Minimum standard 12 in the Layer Hens Code of Welfare. Conventional 'battery cages' do not provide hens with an opportunity to express their normal behaviours. Accordingly the Layer Hens Code of Welfare sets transitional dates for layer systems to meet the needs of hens. Farmers using conventional cages will have to transition to an alternate system. The transition will ensure systems that no longer allow hens to express normal behaviours are phased out.

### **Regulation 22. Induced moulting**

Induced moulting can cause unnecessary distress and harm to hens. Currently the prohibition in code of welfare is not directly enforceable and non-compliance would be likely to compromise the welfare of thousands of birds. Induced moulting is not considered regular practice or widespread in New Zealand. Therefore prohibition should not adversely impact the current farming systems.

### **Regulation 27. Use of sow stalls**

This regulation reflects an existing minimum standard in the Pigs Code of Welfare. Dry sow stalls restrict the movement of sows and limit their ability to express natural behaviours. Consequently dry sow stalls have been phased out since December 2015. As a result they are now only used for mating purposes by the NZ Pork industry.

Because the infrastructure of a stall is used for multiple purposes such as mating, a system requirement has been added to place a proactive obligation on a farmer to illustrate to an animal welfare inspector, the intended purposes of confining the sow and the time the animals has spent in the stall.

### **Regulation 46. Prohibition on fireworks at rodeos**

This proposed rule reflects the current minimum standard prohibiting fireworks at rodeos in the Rodeos Code of Welfare 2014.

Fireworks and loud explosions can cause fear and distress. Studies have shown that animals such as horses and heifers experience increased heart rates and movement peaks in response to auditory stimulus. Animals startled by fireworks are at risk of injuring themselves. This rule aims to prevent further distress experienced by animals at rodeo events by removing fireworks.

In addition, the New Zealand Rodeo Cowboy Association 2015 Rulebook states (rule 12.4.14) *Fireworks, pyrotechnics and gas fired explosions of any type must not be used at rodeos.*

#### **Regulation 54. Castrating horses**

Male horses are often castrated (gelded) to reduce aggression, make them more docile and remove lower-quality animals from the gene pool. Horses are normally castrated in the first year of life. In New Zealand this is normally carried out by a veterinarian under local anaesthetic, although a general anaesthetic can be used in some circumstances. Castration without anaesthesia will cause severe distress to the animal, and there is a high risk of infection if carried out by a non-veterinarian with improvised equipment.

#### **Regulation 55. Castrating pigs**

This regulation largely reflects existing standards relating to elective husbandry procedures in the Pigs Code of Welfare.

Castration is likely to meet the criteria for determining whether it is a significant surgical procedure that will come into effect on or before May 2020. While not known to occur in New Zealand current practices could change. Internationally there is demand for meat from castrated animals. The regulation therefore will provide clear mandatory standards for the procedure if undertaken in the future; and minimise the level of pain and distress that the procedure could cause.

#### **Regulation 58. Dehorning cattle beasts (Commences 1 October 2019)**

Dehorning is undertaken to reduce the risks of horns causing injuries to handlers and to other animals.

The procedure causes significant pain to an animal when it is performed without pain relief. Disbudding is preferable to dehorning as it results in markedly less pain than dehorning<sup>34,35</sup>.

Options are available to minimise the pain experienced at the time of the procedure<sup>36,37</sup>.

In 2005, when the Painful Husbandry Procedure Code of Welfare was developed, NAWAC signalled that they would consider making pain relief mandatory, within defined periods, for a wider range of procedures where pain relief was accessible, practical, effective and affordable.

Due to the pain caused by this procedure, it is likely that it would meet the criteria for determining whether it is a significant surgical procedure that come into effect on or before May 2020. Without regulations specifying otherwise, only a veterinarian<sup>38</sup> would be able to undertake this procedure.

Tipping and removal of less severe ingrown horns within 3 cm of the point of penetration have been excluded from the definition of a dehorning because:

- Tipping is the removal of insensitive tissue – while difficult to accurately determine – it is primarily undertaken to blunt sharp horns and as such there is little reason or justification to remove more than is necessary to blunt the tip;
- Less severe ingrown horns – where the horn only touches or breaks the surface of the skin or touches the eye or eyelid of the animal its removal is likely to be expected to provide some relief from the pain or

<sup>34</sup> Report on the Painful Husbandry Procedure code <https://www.mpi.govt.nz/protection-and-response/animal-welfare/codes-of-welfare/>

<sup>35</sup> Stafford K. J. and Mellor D. J., 2011. Addressing the pain associated with disbudding and dehorning in cattle. *Applied Animal Behaviour Science*. 135(3): 226-231.

<sup>36</sup> *Ibid*, ref 27

<sup>37</sup> *Ibid* ref 33

<sup>38</sup> or a veterinary student under the direct supervision of a veterinarian who is present throughout the performance of that surgical procedure (see section 15 of the Animal Welfare Act 1999).

distress caused by the ingrown horn. Where the ingrown horn causes more significant damage to the underlying tissue it would fall within the definition of dehorning and pain relief would be required to be used to remove the ingrown horn.

The competence requirements in 58 (3) and (4) are from the Minimum Standard 6a from the Painful Husbandry Procedures Code of Welfare 2005 – made specific to dehorning. No offence is attached to the competence requirements. Incompetence can be dealt with via a compliance notice requiring training, or if serious enough via prosecution under the Act.

### Regulation 59. Prohibition on mulesing sheep

No specific minimum standard currently prohibits mulesing. However, the rule reflects two minimum standards in the Painful Husbandry Procedure Code of Welfare. These standards provide that procedures must only be performed when:

- there are no other practical, economically viable, effective or less noxious alternatives; and
- any harmful consequences of a procedure are minimised.

Mulesing is a painful procedure to manage flystrike where strips of wool-bearing skin from around the breech (buttocks) of a sheep are removed. Methods include: surgery, clipping, clamping and chemical mulesing.

This rule prohibits all mulesing because the practice by any method is painful and unnecessary as alternatives to manage flystrike are available including:

- ensuring shearing and crutching are timed to reduce flystrike
- strategic application of preventative chemical treatments to prevent flystrike
- effective control of scouring and the control of intestinal worms
- genetic improvement to breed sheep with low wrinkle, fewer dags, less urine stain and less wool around the breech
- effective tail docking.

The New Zealand Merino industry (NZM) in response to animal welfare concerns and market pressure adopted a voluntary ban on surgical mulesing in December 2010. Consequently, the majority of NZM growers have ceased to practice any form of mulesing, and it is strictly prohibited on NZ Merino (ZQ-certified) farms. The market also provides an economic incentive to cease all forms of mulesing as wool from non-mulesed sheep generally attracts higher prices.

## Other regulatory proposals

### Regulation 44. Certain regulations do not apply to transporters

For the avoidance of doubt this regulation clarifies that transporters will not be liable for a pre-existing condition which renders the animal unfit for transport.

### Regulations 8, 9, 10, 33, 34, 35, 36 and 37. Young calves

These regulations have been incorporated from the Animal Welfare (Calves) Regulations 2016 so that there is only one package of animal welfare regulations.

### Regulations 60, 61, 63 and 64

These regulations are administrative. They provide clarity around administrative issues such as defences for non-infringement offences, consequential amendments to codes of welfare, and the revocation of the Animal Welfare (Calves) Regulations 2016.

## Regulation 62. Traps and devices infringement fee \$300

Section 36 in the Animal Welfare Act 1999 sets obligations on a person who uses a trap to capture live animals. The Act also provides for an infringement offence for failure to inspect a set trap, but currently there is no fee attached to that offence. It is proposed that the infringement fee be set at \$300.

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

### Amendment to research, testing and teaching recordkeeping requirements

During the passage of the Animal Welfare Amendment Bill, some submitters indicated that there was a perceived lack of transparency regarding oversight of what happened to animals that were bred but not used for research, testing and teaching projects.

A common concern was that an excessive number of animals were being bred for research, testing and teaching, and killed without being used, in other words, offspring that were surplus to requirement. A gap in knowledge exists where there is no project or ethical oversight over animals killed in these situations, as there is currently no reporting requirement on code of ethical conduct holders to report this.

As a result the Animal Welfare Amendment Act (No. 2) 2015 created the power to make a regulation requiring code holders to collect, maintain and provide the Director-General of MPI or an inspector information relating to *“the killing of animals that were bred, but not used, for the purposes of research, testing and teaching.”* By requiring code holders to now report these figures in annual statistics returns, the proposed regulation will close this gap, and build a more complete picture of the uses of animals in research, testing and teaching in New Zealand.

The regulation making power for this proposal is contained in Section 183(1)(c)(iiia) of the Animal Welfare Act 1999.

## **Appendix Two: - Rationale for the offences and penalties**

<b>Infringement offences</b> <i>Two levels of penalty are proposed for infringement offences</i>		<b>Prosecutable regulation offences</b> <i>Two levels of penalty are proposed for regulatory prosecutable offences</i>	
\$300 flat fee	\$500 flat fee	\$3,000 maximum fine for an individual \$15,000 maximum fine for a body corporate	\$5,000 maximum fine for an individual \$25,000 maximum fine for a body corporate
All revenues collected from fees and fines go to the Government's Consolidated Fund.			
Offence <u>may</u> cause mild short-term harm to the animal <sup>39</sup>	Offence <u>may</u> cause mild to moderate short-term harm to the animal <sup>40</sup>	Offence <u>has</u> caused mild to moderate and possible long-term harm to the animal <sup>41</sup>	Offence <u>has</u> caused moderate and likely long term harm to the animal <sup>42</sup>
<ul style="list-style-type: none"> <li>Enforcement agencies issue an infringement notice requiring the recipient to pay a specified fee.</li> <li>Do not result in any criminal conviction, and an infringement fee will not appear on the formal criminal record of the recipient.</li> </ul>		<ul style="list-style-type: none"> <li>Prosecution offences must be proven in Court, but are specified in regulations in a way that is easier to prove than offences under the Act.<sup>43</sup></li> <li>Will carry heavier financial penalties than the proposed infringement offences, and result in criminal convictions.</li> <li>Do not extend to sentences of imprisonment, forfeiture of animals, or the significant fines provided for by the Act.</li> </ul>	
<p><i>When is an offence appropriate for an infringement?</i></p> <ul style="list-style-type: none"> <li>The nature of the offending is minor</li> <li>The potential impact on the animal is low</li> <li>A criminal conviction would be disproportionate to the level of offending</li> <li>A low-level financial penalty is sufficient to drive behaviour change</li> <li>A breach of the regulations is straightforward and easy to determine on the facts</li> </ul>		<p><i>When is an offence appropriate for a prosecution?</i></p> <ul style="list-style-type: none"> <li>The offending has caused a moderate level of harm to the animal.</li> <li>The offending may involve many animals.</li> <li>A criminal conviction is appropriate given the conduct and/or impact involved.</li> <li>The offending is more likely to occur in a commercial context where higher financial penalties may be needed to drive behaviour change.</li> <li>The offending involves actions or omissions that are not straight forward enough matters of fact to suit an infringement offence.</li> </ul>	
<p><b>More serious offending causing significant pain or distress can still be prosecuted under the Act</b></p> <p>Prosecution under the Act enables the Court to impose significant penalties in cases of serious animal cruelty. These penalties include:</p> <ul style="list-style-type: none"> <li>Up to 5 years imprisonment;</li> <li>Up to \$100,000 fine for an individual, or \$500,000 for a body corporate;</li> </ul>			

<sup>39</sup> For example, the proposal that collars and tethers must not cause injury or distress to any animal.

<sup>40</sup> For example, the proposal that horses and donkeys must not be struck in the head.

<sup>41</sup> For example, the proposal that a minimum lying space must be provided for grower pigs.

<sup>42</sup> For example, the proposal to prohibit mulesing of sheep by any method.

<sup>43</sup> For example, ill treatment offences under the Act require the enforcement agency to prove ill treatment occurred, and that the animal to suffered unreasonable or unnecessary pain or distress. Prosecution offences in Regulations only require the prosecutor to prove the defendant did the relevant action (for example: docked their dog's tail; failed to provide adequate lying space for their pigs or used a moving vehicle for traction in calving). It is not necessary to also prove the action or omission caused the animal pain or distress, or that the pain or distress involved was unreasonable or unnecessary.

- Forfeiture of the animals involved, and/or any other animals owned by the offender; and
- Disqualification orders prohibiting the offender from owning an animal for a specified period of time.

**Appendix Three: - Minor and Technical Amendments to the Animal (Care and Procedure) Regulations since 17 August 2017**

Regulation	Amendment	Rationale
12: Muzzles on dogs	Inserted an extra 'exception' category to allow muzzles to be used when undertaking preventative care.	This will allow lay people to protect themselves from their dogs when performing preventative care.
13: Shelter requirements for dogs	Remove concept of 'through draft' and insert a requirement for ventilation.	Preventing 'through draft' was a large design constraint for shelters designed to provide cooling, and intent of regulation is still covered by the requirement for shelter to protect an animal from 'extremes of heat and cold'. Ventilation was requested to be inserted by industry as an important qualifier for 'extremes of heat and cold'.
14: Dogs left in vehicles	Have made shade-seeking the main symptom used to identify heat stress, with other symptoms becoming supporting factors.	Symptoms of heat stress and separation anxiety can be similar, so focussing on shade seeking helps differentiate the two. This was requested by the New Zealand Veterinary Association.
15: Dogs on moving vehicles	Have excluded motorcycles and similar from the definition of motor vehicle.	When dogs are being transported on motorbikes and other similar vehicles, it is safer for the dog to be un-tethered so it does not remain attached if a crash occurs.
18: Horses tethered for the purposes of grazing	Removed requirement for protection from precipitation.	Explicit mention of precipitation is considered unnecessary, it will be included in protecting from extremes of heat and cold. Removed to improve clarity.
21: Phased prohibition on use of conventional cages	Removed the requirement to keep records.	Initially intended to compel record keeping to demonstrate when a system was installed and, hence, the applicable transition date.  As this is a prosecutable offence this evidence would be procured through the normal prosecution processes. Therefore a specific requirement is unnecessary.
40: Restrictions on transporting lame animals	Different indicators of lameness developed for sheep and goats.	Sheep and goats display lameness differently and the practicalities in managing and detecting lameness for these species are also different, and this change reflects this in practice.
41: Late Pregnancy	Included a requirement for owners and persons in charge of pregnant deer to have a system ensuring no deer in late pregnancy will be transported.	The regulation prohibits transporting hinds during the last 21 days of pregnancy. This reflects current practice and was requested by the deer industry. As an infringement offence a system to demonstrate that hinds are not transported in late pregnancy is

		required in to make the regulation more enforceable.
52 Docking pigs' tails	Clarify that the prosecutable fine associated with failing to comply with requirements for docking the tail of a pig that is over 7 days is \$3,000 for an individual or \$15,000 for a body corporate.	The prosecutable fine included within the previous Cabinet paper noted the level of fine in three different places within the document (EGI-17-MIN-0172). In one instance, the fine was incorrectly stated as \$5,000 for an individual or \$25,000 for a body corporate. To avoid doubt, this point has been included as a minor and technical amendment to be noted.

**Appendix Four - Regulatory Impact Statement**