

In Confidence

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

Proposed Animal Welfare Regulations (Significant Surgical Procedures): approval to release a public discussion paper

Proposal

1. This paper seeks Cabinet's agreement to the Ministry for Primary Industries (MPI) releasing a public discussion paper (attached) on regulatory proposals relating to significant surgical procedures on animals.

Executive Summary

2. Strong animal welfare standards are important as animals are sentient and can feel pain and distress. Under the Animal Welfare Act 1999 (the Act) we have a responsibility to avoid causing unreasonable or unnecessary pain or distress to animals affected by our activities.
3. Strong standards also enhance our reputation as a trusted food producer, and enrich our human and social capital.
4. Under the Act significant surgical procedures on animals may only be performed by a veterinarian¹ unless regulations are developed to specify otherwise.²
5. In May 2020, new criteria for determining whether something is a significant surgical procedure come into force within the Act.
6. If regulations are not in place by May 2020, it may not be clear whether routine procedures such as sheep tail docking meet the new criteria for a significant surgical procedure. This puts non-veterinarians carrying out these procedures at risk of prosecution.
7. Regulations are proposed to clarify:
 - which procedures can be performed by competent non-veterinarians, and under what circumstances;
 - rules relating to selected veterinary-only procedures;
 - that existing prohibitions on some procedures will be retained; and
 - how the rules for significant surgical procedures apply to the use of animals in research, testing and teaching.

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

² There are very limited exceptions within the Act to this general requirement, such as a procedure undertaken under an Animal Ethics Committee approval as part of research, testing or teaching (section 18 of the Act).

8. Providing greater clarity about who is appropriate to undertake significant surgical procedures on animals and under what circumstances will help people comply with their obligations under the Act and in turn improve animal welfare.
9. In 2016, MPI consulted on a substantial package of animal welfare regulatory proposals. This included proposals relating to the care of and conduct towards animals, and significant surgical procedures. The package has progressed in three stages. This paper relates to the third tranche: significant surgical procedures.
10. Stakeholder feedback on the 2016 package of regulatory proposals indicated that additional significant surgical procedures should be regulated, and that changes should be made to some of the original proposals. In response I propose releasing the attached discussion paper. This paper will supplement and extend the ongoing public consultation process that has been underway since 2016.
11. The majority of the proposals are intended to reflect current practice and should only have minor impacts. A few proposals go beyond existing standards or practices and may result in substantial costs and impacts for both non-veterinarians and owners of animals.
12. Some proposals are also likely to be controversial. This is because there is a broad range of strongly held stakeholder views about how animals should be cared for, and whether some procedures can be justified.
13. Consultation will ensure that different stakeholder views can be fully explored, and the effects, costs and practical impacts of the proposals understood. To assist with this, MPI has developed a consultation plan that builds on the extensive consultation to date.
14. I anticipate bringing final policy proposals to Cabinet by November 2019.

Background

15. Animal welfare is important. It matters for its own sake as animals are sentient and can feel pain and distress. Animals contribute significantly to our economic prosperity, and our commitment to their welfare enhances our global reputation as a trusted food producer.³ Animals enrich our human and social capital through their companionship and their service as working animals. Animal-focused events such as calf days and Agricultural and Pastoral shows are a valued part of our rural traditions.

³ The value of New Zealand's exports of animal and animal products was \$28.3 billion for the year ended June 2018. This accounts for 66.3% of New Zealand's total primary products exported (Statistics New Zealand/MPI).

16. New Zealand's animal welfare system is governed by the Animal Welfare Act 1999 (the Act). The Act requires that people who own or are in charge of animals meet their animals' physical, health and behavioural needs, and alleviate unreasonable or unnecessary pain or distress. The Act applies to a wide range of animals and their uses, including companion animals, production animals, wild animals, and animals used in research, testing and teaching.
17. A review of the Act identified problems with enforceability and clarity that were considered best addressed through the development of regulations. As a result, the Act was amended in 2015 to enable (among other matters) regulations to be made relating to standards of care, surgical and painful procedures, and exporting animals. A substantial package of proposed regulations was released for consultation in 2016, and has proceeded in three tranches (CAB-18-MIN-0103 refers). This set of proposed regulations is the third tranche
18. The first tranche of regulations was completed in 2016. These related to young calves (often referred to as bobby calves), and the export of livestock for slaughter.⁴ The regulations helped reduce premature mortality of young calves sent to slaughter from 0.25 percent in 2015 (25 calves per 10,000) to 0.05 percent in 2018 (5 calves per 10,000).
19. A second tranche of regulations was completed in 2018. These regulations related to stock transport, farm husbandry, companion and working animals, pigs, layer hens, crustaceans and rodeos. They also included some regulations related to significant surgical procedures, for example, dehorning cattle.⁵
20. This third tranche focuses on significant surgical procedures. These are defined as including a restricted or controlled procedure, or a surgical procedure declared to be a significant surgical procedure by the Governor-General.⁶ There is no further guidance in the Act as to what is a significant surgical procedure.
21. The 2015 amendments to the Act will repeal these definitions and create new criteria for what a person must consider when determining whether something is a significant surgical procedure. These changes come into effect in May 2020.

Regulations are necessary to clarify who can undertake significant surgical procedures and under what conditions

22. The Act allows for regulations to be made specifying when it is appropriate for a non-veterinarian to carry out surgical and painful procedures, including those that meet the significant surgical procedure criteria. Without regulation, significant surgical procedures on animals can generally only be carried out by veterinarians.

⁴ These are the Animal Welfare (Calves) Regulations 2016 (which were incorporated into the Animal Welfare (Care and Procedures) Regulations 2018), and the Animal Welfare (Export of Livestock for Slaughter) Regulations 2016.

⁵ These were the Animal Welfare (Care and Procedures) Regulations 2018.

⁶ Section 2(1), 6 and 16 of the Act. Restricted surgical procedure is defined as dog debarking, cat declawing, horse tail docking and any procedure declared as a restricted surgical procedure. Controlled surgical procedure is defined as deer develvetting and any procedure declared as a controlled surgical procedure.

23. Regulations may also:
- specify other matters such as the degree of competency required to perform a procedure, how it is performed, and if pain relief is required;
 - clarify that certain procedures are not significant;
 - prescribe specific offences and penalties for low to medium level offending; and
 - prohibit procedures being undertaken by anyone, even a veterinarian.
24. If regulations are not in place by May 2020, people carrying out procedures that are currently routinely performed by non-veterinarians may not have certainty that what they are doing is lawful. This places these non-veterinarians at risk of prosecution, either by MPI or the Royal Society for the Prevention of Cruelty to Animals (SPCA), or privately. MPI and the SPCA are jointly responsible under the Act for enforcement.⁷
25. Unless regulations are made, examples of procedures that are likely to meet the new criteria of a significant surgical procedure and become veterinarian-only include sheep tail docking and castration, some artificial reproductive techniques, and some animal identification methods including freeze branding.
26. The new criteria are set out immediately below.

Section 16 of the Act – Criteria to determine whether a procedure is a significant surgical procedure (will come into force on 9 May 2020)

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

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

⁷ The SPCA is the only approved organisation under section 121 of the Act. This allows them to have animal welfare inspectors who can enforce the Act.

A further discussion paper will help ensure adequate consultation occurs

27. The proposed consultation on this third tranche of regulations builds on, and complements, previous consultation and on-going engagement with a broad range of animal welfare stakeholders.
28. MPI publically consulted on a substantial package of regulatory proposals in 2016, including some that are contained within this third tranche of regulations. From the beginning of this regulatory programme, MPI has worked with representatives from my two Ministerial Advisory Committees, the National Animal Welfare Advisory Committee (NAWAC), and the National Animal Ethics Advisory Committee (NAEAC).
29. During the consultation process on the 2016 proposals, stakeholders identified additional **new** procedures that would potentially fit the criteria of a significant surgical procedure, and that were currently undertaken by non veterinarians. Feedback has also resulted in a **substantial change** to some of the original regulatory proposals.
30. Consequently, a supplementary discussion paper is needed to ensure that all stakeholders have the opportunity to comment on these changes. I attach a draft discussion paper *Proposed Animal Welfare Regulations: Significant Surgical Procedures* which sets out the proposed content of the regulations.
31. The discussion paper seeks feedback on, among other things, the potential impacts, costs, and practicality of the proposals that are new or have substantially changed since consultation in 2016.
32. The discussion paper does not seek formal feedback on proposals that appeared in the 2016 document and for which no major changes are recommended. I anticipate progressing the new, substantially changed, and not substantially changed proposals together, after this round of public consultation closes. MPI will continue to engage with stakeholders to refine all proposals as necessary.

Most proposals preserve current practice: a small number may have substantial effects

33. The proposed regulations are likely to directly affect veterinarians and veterinary paraprofessionals, farmers and others involved in the care of animals. They will also clarify the responsibilities on animal owners, and those in charge of animals, and a number of the proposal have specific offences and penalties attached (refer to Appendix One for further information on the offences and penalties).
34. As most proposals preserve existing practice they should have only minor impacts. The consultation process will help to accurately identify the full impacts and costs of the proposals.

35. Only a small number of proposals are likely to have an impact that is more than minor. Some proposals go beyond existing standards or practices and may result in costs and impacts for both non-veterinarians performing procedures (such as veterinary paraprofessionals) and owners of animals. An example is requiring pain relief during goat disbudding.⁸ For practitioners who currently disbud without pain relief, they are likely to experience increased costs (comprising additional veterinarian consultations, and the cost of the pain relief itself).
36. In other cases, confirming that procedures are veterinarian-only, or requiring the use of pain relief, may reduce the scope of practice of some paraprofessionals. For example, the discussion paper proposes that the extraction of most kinds of horse teeth will become veterinarian-only. This may impact on the viability of non-veterinarian equine dental businesses. Some unintended consequences for animal welfare may also emerge if owners are deterred from accessing treatment because of increased costs.
37. Consultation will help to identify the full scale and nature of these impacts.

Summary of proposals

38. The attached discussion paper sets out a range of proposals primarily relating to significant surgical procedures, and who can perform them. Appendix Two gives a summary of each proposal.
39. The provisions of the Act that relate to who can perform a significant surgical procedure contain no specific provisions for emergency situations. However, in any prosecution it must be proved that the defendant had no reasonable excuse for their action.

New proposals identified through consultation

40. The majority of the **new** proposals allow for competent non-veterinarians to perform the procedures, with restrictions (such as mandating the use of pain relief). These proposals relate to:
- **all animals** - tissue removal, desexing, and surgical tagging within research, testing and teaching, and for conservation/fisheries management purposes; and epidurals;⁹
 - **cattle** - vaginal prolapse repair and nose rings;
 - **sheep** teat removal and vaginal prolapse (bearings) repair;
 - **pig** rectal prolapse repair and nose rings;
 - **goat** teat removal and castration; and
 - **poultry** beak tipping, spur removal, and toe trimming.¹⁰

⁸ Disbudding destroys free-floating immature horn tissue so that a horn will not grow.

⁹ Epidurals are a type of anaesthetic injected into the spine.

¹⁰ These procedures refer to the removal of the tip of a bird's beak, its rear toenail, or the tip of a bird's toe.

41. In addition, the Animal Welfare (Care and Procedures) Regulations 2018 provide that horse castration is veterinarian-only. A new proposal extends this to all other equids¹¹ (such as donkeys).

Proposals that have substantially changed from those consulted on in 2016

42. Some proposals have **changed substantially** from what was suggested in the 2016 discussion paper. What has changed varies between proposals, but includes such matters as extending the type of animals the proposal applies to, and changes to definitions.
43. MPI proposes that competent non-veterinarians will be able to perform the following procedures, with restrictions:
- **all animals** – freeze branding and surgical reproductive procedures;
 - **cattle** teat removal;
 - **horses** and/or **equids** – some limited dentistry procedures and opening a Caslick's suture;¹²
 - **llama** and **alpaca** fighting tooth¹³ cutting
 - **piglet** teeth clipping and **boar** tusk cutting
 - **goat** disbudding and dehorning; and
 - **game fowl** dubbing¹⁴ (option 1).
44. In some cases, MPI proposes that procedures, or significant aspects of them, would be veterinarian-only. They are:
- **horse/equid** dentistry (most types of tooth extractions), and creating/repairing a Caslick's suture; and
 - **game fowl** dubbing (option 2).
45. Blistering, firing, and mechanical soring of a horse's legs, or nicking its tail would remain prohibited.¹⁵ This means even veterinarians may not perform these procedures.

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

12 Caslick's procedure means the surgical closing (suture) of the upper part of a horse's vulva.

13 Fighting teeth are sometimes referred to as fangs, and are modified canine and incisor teeth found between the incisors and molars.

14 Dubbing is the removal of the comb, wattle, and earlobes of poultry. This is ordinarily performed on game fowl by poultry fanciers. It is not performed on production birds.

15 Blistering, firing and mechanical soring are methods to damage leg tissue to change a horse's gait. Nicking involves cutting tail ligaments to make a horse carry its tail in a raised position.

Maintaining the status quo for research, testing and teaching, and conservation/fisheries management

46. Part 6 of the Act provides the framework for the use of animals in research, testing and teaching (RTT). There are safeguards within the Act to ensure that high standards of animal welfare are maintained during RTT. Projects must be approved and monitored by an Animal Ethics Committee (AEC). Every project must demonstrate that its benefits are not outweighed by the likely harm to the animals.
47. Some procedures undertaken to support RTT are carried out under standard operating procedures. An example is mouse tail tipping for DNA sampling purposes. Standard operating procedures are not required to have AEC approval (although some do), because they include routine procedures and are often carried out before an animal is selected to be in a project.
48. Other procedures are excluded from the definition of RTT under section 5(3). These include some routine activities such as tagging or trapping by organisations such as the Department of Conservation. Activities under section 5(3) are restricted to those necessary to fulfil responsibilities under Acts such as the Conservation Act 1987 and the Fisheries Act 1996. The safeguards for these procedures are contained in the internal policies and procedures of the relevant organisation.
49. When the new criteria for a significant surgical procedure come into force, some procedures done routinely by non-veterinarians for the purposes of RTT but outside of an AEC approved project, or under section 5(3), may become veterinary-only. These procedures may not have previously been considered to be significant surgical procedures. Regulations are required to clarify the status of these activities and ensure that the status quo can be maintained.
50. MPI proposes regulations to allow competent non-veterinarians to remove tissue (for example, perform biopsies), place tags surgically, or desex animals (with some restrictions):
 - within AEC approved projects;
 - under standard operating procedures, only if the procedures have been approved by an AEC; and
 - under section 5(3), with some restrictions.
51. In addition, this tranche of regulations presents an opportunity to clarify that regulations about surgical and painful procedures¹⁶ do not apply to RTT procedures undertaken as part of an AEC approved project, unless stated otherwise.

¹⁶ Significant surgical procedures are a subset of surgical and painful procedures.

Changes to existing regulations: the use of, and definition of electric prodders

52. Changes are also proposed to the regulation on the use of electric prodders that came into force in October 2018.¹⁷ The current regulation provides that prodders may only be used on pigs over 150 kilogrammes. It is proposed that further consultation be carried out on whether to reduce the weight limit for the use of electric prodders on pigs being loaded into a restrained stunning pen.
53. This proposed change is to take into account changes in some management systems since 2016. The updated management systems have improved overall animal welfare outcomes, but resulted in the potential need to use prodders on smaller pigs in a limited number of circumstances.
54. In addition, the definition of an electric prodder will clarify that devices such as Tasers are excluded. This would allow New Zealand police officers to use electric devices to deter an attacking animal, or remove an animal from a circumstance or location where it poses a risk to any person.

Some proposals are likely to generate significant comment

55. Many animal welfare issues arouse strong and varied stakeholder views. Releasing a discussion paper in itself will raise awareness of the variety of procedures that are routinely performed on animals. Some of these procedures are painful or appear unusual to those not working day-to-day with animals. Some proposals in this tranche may be particularly controversial. These are discussed below.

Proposals relating to research, testing and teaching

56. Several of the proposals relate to the use of animals in research, testing and teaching. While these generally seek to clarify and preserve the status quo, any policy proposals will be followed closely by stakeholders, including animal advocates and researchers. MPI will ensure that it is clear in any information released that a robust system to manage research, testing and teaching already exists under the Act.

Proposals requiring the use of pain relief

57. A number of the proposals require pain relief to be used (for example, during goat dehorning). For almost all of the proposals¹⁸ the pain relief is a restricted veterinary medicine under the Agricultural Compounds and Veterinarian Medicines Act 1997. Currently the use of these medicines can only be authorised by a veterinarian.¹⁹
58. This creates two issues: additional costs of pain relief, and access to pain relief.

¹⁷ Clause 48, Animal Welfare (Care and Procedures) Regulations 2018.

¹⁸ The exception is use of rings for deVelvetting yearling deer.

¹⁹ These types of medicines can pose significant risks to the welfare of the animals treated, and in food-producing animals can cause residues that could jeopardise trade. To maintain oversight of their use and manage these risks, only veterinarians are able to authorise these medicines' purchase and use, and they must be used according to the veterinarian's authorisation and instruction.

Requirements for pain relief may impose additional costs

59. In some cases, requiring pain relief will raise the standard above existing requirements. While improving animal welfare outcomes, these requirements will raise costs for some practitioners. The 2017 Regulatory Impact Statement (RIS)²⁰ estimated the costs of requiring pain relief for disbudding and dehorning cattle to be approximately \$1 per animal for cattle disbudding, and \$10 for cattle dehorning. There would be additional costs, reducing over time, for training associated with upskilling.
60. How applicable these estimates are to the current proposals will vary depending on matters such as the type of procedure, size of the animal (and how much drug is required) and the type of drug used. The impact will also depend on how many people are already using pain relief voluntarily. MPI will actively seek out information to determine the scale of these impacts during consultation.

Non-veterinarians may have difficulty accessing pain relief

61. Non-veterinarians will need to work with veterinarians to access pain relief for some procedures. It will take time to develop the necessary relationships, training and systems. Delayed commencement of these regulations may help with the transition to using pain relief. Stakeholders are asked whether delayed commencement would be useful in the draft discussion paper.
62. There could be a risk that some proposals that allow non-veterinarians to undertake procedures, as long as pain relief is provided, may not be able to be implemented. This is because currently only veterinarians can authorise the use of veterinary medicines and they may, in some circumstances, be unwilling to supply pain relief to non-veterinarians.
63. If the veterinary community as a whole declines to provide pain relief to non-veterinarians, non-veterinarians will not be able to undertake procedures, regardless of their experience, where pain relief is required.
64. MPI is working closely with the veterinary community in good faith to ensure that the regulatory regime does not compromise animal welfare, but makes effective use of the skilled non-veterinarian work force. More information about the scope and scale of these potential impacts will be actively sought during consultation.
65. A related issue is ensuring that sufficient supplies of pain relief will be available across New Zealand once any new regulations are in force. While no problems are anticipated, MPI will continue monitor the situation during regulatory development.

²⁰ Ministry for Primary Industries (2017) *Animal Welfare Regulations 2017: Regulatory Impact Statement*.

Defining which non-veterinarians are competent to perform each procedure is complex

66. Many non-veterinarians currently perform a wide range of procedures on animals. Their skills and experience vary. For example, some farmers will be extremely skilled at a particular procedure. Some veterinary nurses may have a broad range of skills across, for example, large animal husbandry.
67. The proposals intend that those with the appropriate training and/or experience may continue to perform some significant surgical procedures. The proposals achieve this end by requiring that only *competent* non-veterinarians may perform the procedures.
68. Existing clauses in the Animal Welfare (Care and Procedures) Regulations 2018 provide a model for how proposals may eventually be drafted.²¹ In general, competent people would need to be experienced or have received training, and be able to recognise early signs of significant distress so that specialist advice can be sought.
69. There is no proposal to create a register of, or licence for, non-veterinarians who may perform significant surgical procedures, or impose any test.
70. There are no legal definitions associated with veterinary paraprofessionals that prescribe their varied skills and qualifications. Neither are they always moderated by an industry body (such as the Veterinary Council of New Zealand). This makes it difficult to make regulations that could, for example, name “veterinary technicians” as competent people able to perform certain procedures.²²
71. Consultation will allow MPI to refine and test how competence in non-veterinarians should be provided for in the proposals.

The veterinary community may be unwilling to perform some procedures

72. The veterinary community may consider that some procedures that are proposed to be veterinarian-only should only be performed for therapeutic purposes. This would significantly reduce how often they are performed. An example could be poultry dubbing, which is usually performed for animal management purposes. MPI will work with stakeholders to understand the implications of, and options to address this issue.

21 An example is clause 53, castrating cattle, goats and sheep. Subclause 3 states that a person who castrates a cattle, goat or a sheep must be experienced with, or have received training in, the correct use of the method being used, and be able to recognise early signs of significant distress, injury, ill-health so that the person can take prompt remedial action or seek advice.

22 It may be possible to regulate for paraprofessionals through amendments to the Veterinarians Act 2005. However this is beyond the scope of this tranche of regulations and is not a current Government priority.

Next steps

73. I seek agreement to release the attached discussion paper for a public consultation period of six weeks through June and July 2019. MPI has developed a consultation plan that builds on the ongoing engagement with stakeholders since the first tranche of regulations was proposed. The consultation plan includes:
- a mix of open-invitation, and targeted meetings and workshops; and
 - seeking written and online submissions on the attached discussion paper.
74. I anticipate bringing final policy proposals to Cabinet by November 2019, to ensure that regulations are in place by May 2020.

Consultation

75. In preparing this paper MPI has consulted the Department of Prime Minister and Cabinet (Policy Advisory Group), the Ministry of Civil Defence and Emergency Management, the Ministry of Justice, Te Arawhiti, the Ministry of Health, the Ministry of Business, Innovation and Employment, the New Zealand Police, New Zealand Customs Service, the Corrections Department New Zealand, the Department of Conservation, the New Zealand Defence Force, The Treasury, Te Puni Kōkiri, the Ministry for the Environment the Environmental Protection Authority, the Department of Internal Affairs, and the Ministry of Foreign Affairs and Trade.

Financial Implications

76. Creating any new regulations will put pressure on MPI baselines to fund both activities to implement them, including raising awareness, and enforcement activities within MPI and the SPCA. Further advice on financial implications will be provided when final policy proposals are placed before Cabinet.

Impact Analysis

77. The Ministry of Primary Industries' Regulatory Impact Analysis Panel has reviewed the attached discussion document *Proposed Animal Welfare Regulations: Significant Surgical Procedures*. The Panel considers that the discussion document incorporates the substantive elements of the Regulatory Impact Analysis framework.

Human Rights, Gender, Legislative Implications, and Disability Perspective

78. No human rights, gender or legislative implications, or disability perspectives are associated with the recommendations of this paper.

Publicity

79. I will issue a media statement inviting submissions when MPI releases the discussion paper for consultation. The discussion paper will be published on MPI's website. Copies will also be sent directly to key stakeholders.

Proactive Release

80. Following Cabinet consideration I intend to consider the release of this paper in full. Cabinet papers related to the previous tranches of regulations were proactively released.

Proactively Released

Recommendations

81. The Minister of Agriculture recommends that the Committee:

1. **Note** that new criteria, in the Animal Welfare Act 1999, for determining whether a procedure is a significant surgical procedure come into force on May 2020;
2. **Note** that following an analysis of the implications of these new criteria the Minister of Agriculture proposes to introduce regulations that will:
 - 2.1 clarify that existing prohibitions on some procedures provided for within the Animal Welfare Act 1999 will be retained;
 - 2.2 prohibit specified procedures from being performed by persons other than veterinarians or supervised veterinary students, and requiring that pain relief be used;
 - 2.3 allow competent non-veterinarians to carry out specific significant surgical procedures if certain conditions are met;
 - 2.4 clarify how regulations apply to the use of animals in research, testing and teaching, and conservation/fisheries management activities carried out under section 5(3) of the Animal Welfare Act 1999;
 - 2.5 consider amending the weight limit for the use of electric prodders on pigs when they are loaded into restrained stunning pens, and the definition of electric prodders to clarify that devices such as Tasers are excluded;
3. **Agree** to the release of the attached public discussion paper *Proposed Animal Welfare Regulations: Significant Surgical Procedures*;
4. **Note** that it is intended that public consultation will be carried out for six weeks during June and July 2019;
5. **Agree** that the Minister of Agriculture may approve any minor or technical amendments to the public discussion paper before consultation starts;
6. **Note** that the Minister of Agriculture will issue a media statement inviting submissions when the public discussion paper is released; and
7. **Note** that the Minister of Agriculture anticipates seeking approval for final policy proposals by November 2019.

Authorised for lodgement

Hon Damien O'Connor
Minister of Agriculture

Appendix One: Proposed penalties for offending

1. The Act provides for regulations to be made that can specify either an infringement offence or a prosecutable offence. Offences under regulations are targeted at low to medium level offending. The penalties may apply to the person performing the procedure being regulated. They may also apply to the owner or person in charge of the animal who has a responsibility to ensure procedures are not undertaken on their animals in breach of any regulation.
2. The proposed offences and penalties for each regulatory proposals are outlined in Part C of the discussion paper.

Some regulatory proposals do not have specific offences and penalties

3. If the regulatory proposal allows a non-veterinarian to perform the procedure, and only has restrictions related to the competency of the person undertaking the procedure (that is, no requirements are set about how the procedure is performed), then it is proposed that no specific penalty be set.
4. These proposals are to clarify that it is appropriate for non-veterinarians to continue to undertake these procedures that could otherwise be restricted to veterinarians under the Act. Offences and penalties under the Act are still available where animal welfare is severely compromised.

Some regulatory proposals are infringement offences

5. An infringement offence results in a fee but no criminal conviction. Infringements are suitable for minor offences.
6. Two levels of infringement fee were considered (\$300 and \$500). MPI considered a number of factors when considering possible infringement fee levels, including level of harm, affordability and appropriateness of penalty, and consistency with other infringement fees set in the Animal Welfare (Care and Procedures) Regulations 2018.
7. All infringement offences also specify a maximum fine. The maximum fine provides guidance to the Court on an appropriate penalty to impose in situations where:
 - an enforcement agency lays charges before the Court instead of issuing an infringement notice; or
 - a person appeals an infringement notice in Court.

8. For the majority of the infringement offences, a maximum penalty of three times the infringement fee of \$500 is proposed for individuals and body corporates (that is, a fine of up to \$1,500). Two new proposals²³ where offending is more likely to involve multiple animals, sheep tail docking and poultry beak trimming, set the maximum Court imposed fine for body corporates at five times the maximum fine (that is, a fine of up to \$7,500) in situation where charges are laid by enforcement agencies.
9. The maximum Court fines have been set at a level that 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.

Some regulatory proposals are prosecutable offences

10. A prosecutable offence under regulation may result in criminal conviction. Two levels of regulatory fines are proposed for the regulations (\$3 000 and \$5,000). When determining possible fine levels, MPI again consider factors such as level of harm, affordability and appropriateness of penalty, and consistency with other fees set in the Animal Welfare (Care and Procedures) Regulations 2018.
11. Prosecutable regulatory offences are appropriate when complex circumstances need to be taken into account.

Defences

12. MPI proposes that for regulatory offences, the defences be the same as those that appear in clause 61 of the Animal Welfare (Care and Procedures) Regulations 2018. These are that:
 - the defendant took all reasonable steps to comply with the relevant provision; or
 - the act or omission constituting the offence took place in circumstances of stress or emergency and was necessary for the preservation, protection, or maintenance of human life.
13. Defences may also be available under the Act.

²³ One proposal, relating to electric prodders, has an existing maximum fine for body corporates of \$7,500. There is no proposal to change this penalty.

Appendix Two: Proposed Regulations Relating to Significant Surgical Procedures

Table one: new proposals

New proposals	Summary of key points
1. All animals – tissue removal for research, testing and teaching, or for functions under section 5(3) of the Act	Competent non-veterinarians may remove tissue within the context of research, testing and teaching, or for functions under section 5(3) of the Act (which includes for conservation and wildlife management purposes). Examples include tail tipping of reptiles and animal biopsies.
2. All animals – surgical tagging for research, testing and teaching, or for functions under section 5(3) of the Act	Competent non-veterinarians may insert tags surgically within the context of research, testing and teaching, or for functions under section 5(3) of the Act (which includes for conservation and wildlife management purposes). Pain relief must be used. Examples include inserting a tag into a fish's body.
3. All animals - desexing and sterilisation of animals used in research, testing and teaching.	Competent non-veterinarians may desex or sterilise animals such as rodents, rabbits and fish within the context of research, testing and teaching. Pain relief must be used. An example is rabbit castration.
4. All animals – exclusion of research, testing and teaching procedures carried out as part of an Animal Ethics Committee approved project under Part 6 of the Act	Unless stated otherwise, the proposals do not prevent a person using animals as part of research, testing and teaching procedures carried out as part of an Animal Ethics Committee approved project under Part 6 of the Act.
5. All animals - epidurals	Competent non-veterinarians may perform epidurals in association with a reproductive procedure. An example is performing an epidural in association with embryo collection.
6. All animals – exclusion of electric devices (such as Tasers) used by the NZ Police from the definition of electric prodders and use of electric prodders on pigs	MPI seeks feedback on reducing the weight limit for the use of electric prodders on pigs when they are loaded into restrained stunning pens. In addition, the definition of electric prodders will clarify that electric devices used by the NZ Police (such as Tasers) will not be included.
7. Cattle – vaginal prolapses	Competent non-veterinarians may treat a cow's prolapsed vagina.
8. Equid castration	Castration of any equid, including donkeys, is veterinarian-only. Pain relief must be used.
9. Sheep - restrictions on teat removal	Competent non-veterinarians may remove extra teats from a sheep younger than 12 weeks old. All other teat removal is veterinarian-only, and pain relief must be used.
10. Sheep – vaginal prolapse (bearings)	Competent non-veterinarians may treat a sheep's prolapsed vagina.
11. Pigs - rectal prolapse	Competent non-veterinarians may treat a pig's prolapsed rectum.
12. Pigs and cattle nose rings	Competent non-veterinarians may insert pig and cattle nose rings for animal management purposes.
13. Goat castration	Competent non-veterinarians may castrate goats. Pain relief is

	required after six months or when using high tension bands.
14. Goat restrictions on teat removal	Competent non-veterinarians may remove extra teats from a goat younger than 12 weeks old. All other teat removal is veterinarian-only, and pain relief must be used.
15. Poultry beak tipping	Competent non-veterinarians may tip poultry beaks within 3 days of hatching.
16. Poultry spur removal	Competent non-veterinarians may remove poultry rear toenails (spurs).
17. Poultry toe trimming	Competent non-veterinarians may remove the tips of poultry toes.

Table two: substantially changed proposals

Proposals that have changed significantly since the 2016 discussion paper was issued	Summary of key points
18. All animals - freeze branding	Competent non-veterinarians may freeze brand an animal. Previously MPI proposed that freeze branding of a dog would be veterinarian-only. This was seen as too restrictive.
19. All animals - dentistry (cutting teeth)	Nobody may cut animal teeth except for: <ul style="list-style-type: none"> a veterinarian or competent non-veterinarian who may: <ul style="list-style-type: none"> clip needle teeth in a pig less than 5 days old; cut a boar's tusk with a wire; cut a llama or alpaca's fighting tooth with a wire. a veterinarian cutting teeth for the purposes of extraction, and pain relief must be used. <p>Previously MPI proposed a general regulation relating to power tools only. The new proposal gives greater certainty through greater specificity.</p>
20. All animals - surgical reproductive procedures	Competent non-veterinarians may perform surgical reproductive procedures. Pain relief must be used. Previously MPI limited this to two specific methods of performing embryo collection and artificial insemination. This was seen as too narrow and overly restrictive.
21. Cattle - restrictions on teat removal	Competent non-veterinarians may remove extra teats from a cattle beast younger than 12 weeks old. All other teat removal is veterinarian-only, and pain relief must be used. Previously MPI proposed a 6 week age restriction: the new proposal better matches current practice and international standards.
22. Horses - blistering, firing, mechanical, soring and nicking	Blistering, firing and mechanical soring (methods of inducing lameness in order to change a horse's gait), and nicking (cutting skin or ligaments to change how a horse carries its tail) are prohibited. The new proposal changes definitions to ensure that all known processes that damage tissue to induce lameness are captured. It will apply to all equids.
23. Horses - dentistry (teeth extraction)	Two options are proposed. Both options limit non-veterinary extractions to deciduous teeth (baby teeth) loose to the touch. Most extractions will require pain relief. The difference between the two options relates to how deciduous teeth can be removed.

	Previously MPI proposed a general regulation relating to power tools only. The new proposal gives greater certainty through greater specificity. The proposal will apply to all equids.
24. Horses - Caslick's procedure	Surgically closing a mare's vulva is a veterinarian-only procedure. Pain relief must be used. Competent non-veterinarians may open this seam with pain relief where no tissue is removed. Previously MPI proposed that all aspects of this procedure should be veterinarian-only. This was seen as too restrictive. This proposal applies to horses only.
25. Goat disbudding/dehorning	Competent non-veterinarians may disbud or dehorn goats. Pain relief must be used. The details of this proposal compared with the original allow greater veterinary discretion with respect to the administration of the pain relief.
26. Poultry - dubbing	Two options are proposed: making the removal of poultry combs, wattles and earlobes veterinarian-only, or allowing competent non-veterinarians to do this using pain relief. The original proposal was that this should be veterinarian-only. As feedback was highly variable, further submissions are invited.

Table three: proposals that have not changed significantly

Proposals that have not changed significantly since the 2016 discussion paper was issued	Summary of key points
27. All animals – prohibit hot branding	Hot branding is prohibited.
28. Horses – tail docking.	Horse tail docking is prohibited, unless a veterinarian does it for therapeutic reasons. This proposal applies to all equids.
29. Horses – restrictions on rectal examinations for any purpose	Rectal examinations on horses, including for pregnancy diagnosis, are veterinarian-only. This proposal applies to all equids.
30. Cattle - restrictions on teat occlusion	Blocking a cow's teat is only permitted with a teat sealant registered under the Agricultural Compounds and Veterinary Medicines Act 1997.
31. Deer – restrictions on de velvetting (velvet antler removal)	Current practices and restrictions relating to deer de velvetting are preserved. Competent non-veterinarians who have veterinarian approval may de velvet deer using pain relief.
32. Sheep – restrictions on tail docking	Competent non-veterinarians may dock sheep tails when the sheep is less than 6 months old.
33. Sheep disbudding/dehorning	Competent non-veterinarians may disbud or dehorn sheep. Pain relief must be used.
34. Dogs - prohibit ear cropping	Performing surgery on a dog's ear to make it stand upright is prohibited.
35. Compliance notice infringements	Non-compliance with a Compliance Notice can lead to an infringement offence fee of \$500.