



DOG SPECIFIC

Proposed Animal Welfare Regulations

(Care & Conduct and Surgical & Painful Procedures)

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1.0 Purpose of this Consultation Document

The Ministry for Primary Industries (MPI) is seeking submissions from interested parties, both individuals and organisations, on proposed regulations under the Animal Welfare Act 1999 (the Act). This document sets out proposals for making regulations that would apply to a range of different animals and situations.

Specifically, submissions are sought on proposed regulations for the care of, and conduct towards, animals (care and conduct) and surgical and painful procedures under sections 183A and 183B of the Act, respectively. It is proposed that the regulations would have infringement offences or prosecutable offences¹ attached to them under section 183 of the Act.

In addition, regulations are also proposed that would set an infringement fee for offences related to non-compliance with a Compliance Notice and for failing to inspect a set trap within 12 hours.

1.1 HOW TO HAVE YOUR SAY

Deadline for making submissions on this discussion document is 19 May 2016

Comments can be provided by e-mail to Animal.WelfareSubmissions@mpi.govt.nz, or by post to:

Animal Welfare Policy
Ministry for Primary Industries
PO Box 2526
Wellington 6140

Please include the term “Submission on Animal Welfare Regulations” clearly in the e-mail subject line or on the front of the envelope.

All received submissions will be acknowledged.

Please make sure you include the following information in your submission:

- the title of the consultation document;
- your name;
- your organisation’s name (if you are submitting on behalf of an organisation); and
- your contact details (e.g. phone number, address and email).

MPI will hold a number of meetings throughout New Zealand to discuss the regulatory proposals. Information on these meetings is available on MPI’s website <http://www.mpi.govt.nz/>

¹ A ‘prosecutable offence’ refers to an offence that can lead to a criminal conviction.

Submissions are public information.

Submissions provided to MPI on the regulatory proposals will be subject to the provisions of the Official Information Act 1982 (OIA). The OIA requires that information be made available on request unless there is good reason, pursuant to the OIA, to withhold the information. If you do not wish any material in your submission to be released, or if you are submitting as an individual and do not wish your identity to be disclosed, please specify the material that you wish to be withheld and the grounds (as set out in the OIA) for withholding it.

The decision on whether to release information under the terms of the OIA rests with the Director-General of MPI. Any decision to withhold information is subject to appeal to the Office of the Ombudsmen.

1.2 WHAT TO EXPECT IN THIS DOCUMENT

This consultation document is divided into two parts.

- Part A – Overview of the proposed regulatory package.
- Part B – Specific regulatory proposals.

Part A provides an overview of New Zealand's animal welfare system, discusses how new regulations will complement the existing system, and describes the issues to be considered before regulations are made. Part A also discusses the penalties associated with any new regulations, how any regulations will be implemented, and the process following consultation.

Part B contains three sections that set out regulatory proposals relating to the care and conduct of animals; the management of young calves (a specific subset of the care and conduct proposals); and surgical and painful procedures. General information relevant to the proposals is provided at the start of each section.

Questions

Questions are included throughout this document to prompt discussion that will help inform the development of any final regulatory package. All questions are highlighted with blue background shading, for example:

Question X: Are there any minimum standards or additional matters you think should become regulation immediately, that are not included in the regulatory proposals in Part B?

A list of the questions asked in Part A is included in section 8 of this document. A glossary is included as Appendix 1.

1.3 THE IMPACT OF THE REGULATORY PROPOSALS

A regulatory impact statement was published during development of amendments to the Animal Welfare Act 1999². It assessed the impact of different options for improving the

² Options to Amend the Animal Welfare Act 1999: Regulatory Impact Statement (2013).
<http://www.treasury.govt.nz/publications/informationreleases/ris/pdfs/ris-mpi-oawa-may13.pdf>.

operation of the Act, including providing for new regulation making powers. It did not include analysis of specific regulatory proposals as these have only now been developed.

This consultation document provides information about the impact of the proposals relating to the care and conduct of animals, and surgical and painful procedures. It covers the substantive elements of a regulatory impact statement, therefore, no separate regulatory impact statement has been provided.

The proposals may result in some increased costs for people who own or are in charge of animals. However, additional costs are likely to be limited as many of the proposals are based on existing minimum standards in codes of welfare, so they should already be current practice. Some proposals go beyond existing minimum standards and the consultation process will help to accurately identify the full costs of these proposals.

Part A – Overview of the Proposed Regulatory Package

2.0 Overview

Animals are important to the people of New Zealand and vital to our country's economy.³

We are a nation of animal lovers – more than two thirds of households own a companion animal, among the highest level of pet ownership in the world. At the same time, exports of meat, wool and dairy products contributed around \$23 billion to New Zealand's export revenue in the year ended June 2015.

Our global reputation as safe food producers depends on us continuing to produce animal products within strong animal welfare standards. Even isolated cases of poor animal welfare could have a negative effect on our reputation as a responsible producer of animals and animal products.

Our animal welfare system has been ranked first equal alongside the United Kingdom, Austria and Switzerland in the Animal Protection Index, produced by the global charity World Animal Protection. Most New Zealanders care for their animals very well and ensure they do not suffer unnecessarily.

Our system has been built on a long tradition of working with animals that has, over time, informed the current 18 codes of welfare. The codes of welfare set out a range of minimum standards together with examples of recommended best practice.⁴ However, we need to make sure that the safeguards we have in place keep pace with changes in good practice and scientific knowledge.

In Budget 2015, the Government approved a \$10 million package over four years to further strengthen New Zealand's animal welfare systems. This funding will cover a range of activities including improving our compliance and enforcement capability.

Last year the Animal Welfare Amendment Act (No 2) 2015 (the Amendment Act) made changes to the Animal Welfare Act 1999. These changes improve the clarity and transparency of New Zealand's animal welfare system and will make it easier to enforce.

Most of the benefits of the Amendment Act will be realised through regulations and this consultation document sets out a number of specific proposals to that effect. In the majority of cases, the proposed regulations reflect the minimum standards that are currently specified in the codes and place them into law so that enforcement action can be taken if they are breached. The offences set out in the regulations will complement the codes of welfare and the more general and serious offences that will continue to be dealt with primarily through the Act itself.

This is the first time a substantial suite of animal welfare regulations will have been made in New Zealand. MPI recognises the importance of ensuring that the regulations make sense and are practical in everyday situations for those people that live and work with animals. That is why it is important that you tell us what you think of these proposals. As well as the specific questions that are asked for each proposal, we are also keen to know the impact that

³ The New Zealand Welfare Act 1999 defines animal broadly to include a mammal, bird, reptile, amphibian, fish, octopus, squid, crab, lobster, or a crayfish.

⁴ The Animal Welfare Act 1999 establishes the fundamental obligations relating to the care of animals. These obligations are written in general terms. The detail is found in codes of welfare. Codes set out minimum standards and recommendations relating to all aspects of the care of animals.

the proposals could potentially have on more general issues such as the costs they might generate, business processes that may need to be adapted and any unintended consequences that could arise (see the general questions in sections 9.1, 10.1 and 12.1).

2.1 REVIEW OF ANIMAL WELFARE ACT 1999

The Act was reviewed during 2011/12 to ensure that New Zealand's animal welfare system was fit for purpose.

As a result of the review, the Amendment Act was developed and passed into law on 9 May 2015. The fundamental principles of the Act have not changed. There is still an obligation on all New Zealanders to provide for the welfare of animals in their care by attending to their physical, health and behavioural needs.

The Amendment Act made changes to the Act to improve the enforceability, clarity and transparency of New Zealand's animal welfare system. Some changes to the Act came into force immediately (see section 2.2). Some changes have a delayed commencement date as they will only work well once regulations are implemented (see section 2.3). It is proposed that these changes will come into force with the proposed regulations in this document.

2.2 CURRENT REGIME

This section describes the current regime, including all the provisions of the Amendment Act that have been brought into force.

Parts 1 and 2 of the Act set out obligations for the care of, and conduct towards, animals. For example, the Act obliges the owner, or the person in charge, of an animal to ensure that the physical, health and behavioural needs of the animal are met in accordance with good practice and scientific knowledge. What constitutes a physical, health or behavioural need is determined by, in each case, what is appropriate to the species, environment, and circumstances of the animal.

The definition of 'physical, health and behavioural needs' is based on what is referred to internationally as the 'five freedoms'. These freedoms provide for:

- proper and sufficient food and water;
- adequate shelter;
- the opportunity to display normal patterns of behaviour;
- appropriate physical handling; and
- protection from, and rapid diagnosis of, injury and disease.

The Act also obliges the owner or the person in charge of an ill or injured animal to ensure that the animal receives treatment to alleviate any unreasonable or unnecessary pain or distress. A person commits an offence if they fail to comply with these obligations or kill an animal in a manner that causes it to suffer unreasonable or unnecessary pain or distress.

The Act provides for the care of animals during surgical and painful procedures by placing restrictions on the procedures that may be performed on them. Only veterinarians, or veterinary students working under supervision, can perform significant surgical procedures on animals unless exceptions are provided for in regulations.

The Act does not expand on the care and conduct obligations set out in Parts 1 and 2. The detailed requirements and specific actions that need to be taken to meet these obligations are set out as minimum standards in codes of welfare.

Currently 18 codes of welfare are in force⁵. The codes of welfare are made by the Minister for Primary Industries on the recommendation of the National Animal Welfare Advisory Committee (NAWAC).

The Act is primarily enforced by MPI and the Royal New Zealand Society for the Prevention of Cruelty to Animals (RNZSPCA)⁶. MPI primarily focuses on production (farm) animal welfare issues while the RNZSPCA focuses on urban areas and on companion (pet) animal welfare issues. There is degree of crossover, particularly in animal welfare issues on 'lifestyle' properties. The RNZSPCA investigates around 13,000 complaints a year mainly relating to companion animals. MPI investigates around 1,300 complaints per year mainly relating to production animals.

The New Zealand Police (the Police) also have the power to enforce the Act. The Police prosecute a couple of hundred cases per year that have an animal welfare element. However, in most cases they will refer animal welfare issues to the RNZSPCA or MPI.

2.2.1 New powers to make regulations

The Act now has powers to make regulations in relation to:

- standards for the care of, and conduct towards, an animal (section 183A of the Act); and
- surgical and painful procedures (section 183B of the Act).

The proposed regulations will complement codes of welfare by specifying directly enforceable animal welfare standards and providing clarity around the performance of surgical and painful procedures. The proposed regulations will also set lower-level penalties for breaches of these standards and requirements. Penalties can either be a fine and criminal conviction as a result of a prosecution under the regulations or an infringement fee without conviction.

Before recommending that surgical and painful procedures regulations be made, the Minister must have regard to whether the procedure fits the criteria for determining whether it is a significant surgical procedure (set out in Box 1 on page 8) and also:

- the purpose of the procedure;
- the extent (if any) to which the procedure is established in New Zealand;
- good practice in relation to the use of the procedure for animal management purposes or in relation to the production of animal products or commercial products;
- the likelihood of the procedure being managed adequately by codes of welfare or other instruments under this Act; and
- any other matter the Minister considers relevant.

⁵ The 18 codes of welfare are listed in Appendix 2. The full codes of welfare can be read on the MPI website <https://www.mpi.govt.nz/protection-and-response/animal-welfare/codes-of-welfare/>

⁶ RNZSPCA is the only approved organisation under section 121 of the Act. This allows them to have animal welfare inspectors who can enforce the Act.

2.2.2 Introduction of Compliance Notices

The Act now allows animal welfare inspectors to issue Compliance Notices, which are designed to be an early intervention tool. For example, under Part 7 of the Act an inspector may issue a Compliance Notice to a person to stop doing something, or prohibit them from doing something, if they have good cause to suspect that something the person is doing contravenes or is likely to contravene the Act or any regulations made under it. A Compliance Notice may also be issued to require a person to do something that the inspector reasonably believes is necessary to ensure that the person complies with the Act or any regulations made under it. Section 2.3.2 discusses the proposed infringement fee for Compliance Notices.

2.2.3 New powers to make transitional regulations

The Act enables the Minister to make transitional standards and requirements under regulations. Transitional standards or requirements allow a particular practice, which does not fully meet the obligations of the Act, to continue for a limited time to enable a transition from current practice to a new practice that is compliant with the Act.

Previously, minimum standards in codes of welfare managed transitional practices. The power to create transitional minimum standards has been revoked. Section 183A of the Act now sets out more transparent and explicit considerations for creating transitional regulations. The Act also differentiates between:

- transitions (where there is a requirement to change practice within a specific time period); and
- exemptions (where a practice is expected to continue indefinitely although these are still subject to periodic review).

The Act sets a maximum time period for transitions so that they cannot last indefinitely. The transition period is limited to a period that does not exceed 10 years, with an additional period of up to five years in very limited circumstances. Exemptions can only be provided for religious or cultural practices.

The use of regulations will make transitional standards and requirements more enforceable if they are breached. The regulatory proposals relating to the transition away from using conventional layer hen cages is an example of a transitional regulation.

2.3 CHANGES TO THE ACT NOT YET IN FORCE

It is proposed that some changes to the Act be brought into force, by Order in Council, with the proposed regulations in this document. Unless otherwise provided for these changes will come into force in 2020.

These changes primarily relate to revising the existing regulatory regime for managing surgical and painful procedures (see section 2.3.1) or attaching an infringement fee for breaching a Compliance Notice (see section 2.3.2). Detail of the technical changes to be brought into force can be found in Appendix 3.

2.3.1 Changes to the regime for surgical and painful procedures

The Amendment Act repeals the existing regime for surgical and painful procedures. The existing regime consists of a tiered classification system for different procedures and some

specific prohibitions and offences⁷. It is proposed that the provisions in the Act, relating to the existing system, be removed by Order in Council with the proposed regulations in late 2016.

Requirements that significant surgical procedures can only be undertaken by a veterinarian, or a veterinary student acting under the direct supervision of a veterinarian, will remain (section 15 of the Act) although exceptions will be able to be provided in the regulations. In addition, it is proposed that the Amendment Act's criteria for determining whether a procedure is a significant surgical procedure be brought into force as part of this regulatory package (see Box 1 below).

Box 1: Section 16 of the Act—Criteria to determine whether a procedure is a significant surgical procedure (not yet in force)

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.

2.3.2 Compliance Notice infringements

The amendments associated with section 2 and section 156I of the Act relate to attaching infringement offences and penalties to Compliance Notices to enhance their effectiveness.

It is proposed that the fee for the infringement offence associated with non-compliance with a Compliance Notice (section 156I (1)) be set at \$500. The level of the proposed infringement fee reflects the fact that by the time an infringement offence occurs the owner or person in charge of the animal has:

- already been informed that their practice does not comply with Act or regulatory requirements (i.e. they have been issued with a Compliance Notice);
- been provided with time to rectify the situation; and
- failed to do so.

If an animal is suffering as a result of the non-compliance with a Compliance Notice, offences under the Act or regulation offences could also be available in addition to an infringement fee.

⁷ The existing regime for surgical and painful procedures includes:

- a tiered classification system for surgical procedures— significant, restricted and controlled procedures (sections 15 to 21 of the Act); and
- prohibiting the cropping of the ear of a dog and blistering, firing or nicking a horse (section 21(2) of the Act); and
- specifying that piercing the tongue of an animal and branding an animal in such a manner that the animal suffers unreasonable and unnecessary pain or distress are both ill-treatment offences (section 29 (b) and (f)).

2.3.3 Other changes

Section 36(3) of the Act specifies an infringement offence for failing to inspect a set trap within 12 hours. However, no infringement fee is set for this offence. It is proposed to set the infringement fee at \$300 via a regulation made under section 183 of the Act.

Question 1: Is there any reason why changes to the Act not yet in force, should not be brought into force at the same time as the regulations (rather than waiting for them to automatically commence in 2020)?

Question 2: Are the infringement fees proposed for sections 156I and 36(3) appropriate?

3.0 The Proposed Regulatory Package

3.1 WHY ARE REGULATIONS NEEDED?

The review of the Act identified problems that could best be addressed by regulation. Regulations are also needed to update standards for some existing practices to reflect scientific knowledge and good practice.

MPI has developed this package of proposed regulations because they are the first substantial suit of regulations ever made under the Act. It is envisaged that NAWAC will play a key role in recommending future regulations, for example, as part of its ongoing role in developing and revising codes of welfare.

3.1.1 To respond to problems identified with the operation of the Act

The 2011/12 review of the Act identified problems with the enforceability, clarity and transparency of the Act⁸. Analysis of different options during the development of the Amendment Act determined that regulations would best address many of the problems related to enforceability or clarity. The Amendment Act provided new powers for regulations that could be made to complement the Act and the minimum standards within codes of welfare.

Enforceability

The Act review identified two enforceability problems best addressed by regulations:

- codes of welfare are not directly enforceable; and
- there are limited enforcement tools for dealing with low to medium offending.

Codes of welfare contain minimum standards for the care of animals, however they do not have the status of primary or secondary legislation. They are ‘deemed’ regulations and have no offences attached to them. A breach of a minimum standard in a code of welfare is not an offence in itself. However, breaching a minimum standard can be put forward as evidence in a prosecution and adherence to a minimum standard can be relied on as a defence for an offence against some provisions of the Act.

⁸ For further information see “Options to Amend the Animal Welfare Act 1999: Regulatory Impact Statement” (2013). <http://www.treasury.govt.nz/publications/informationreleases/ris/pdfs/ris-mpi-oawa-may13.pdf>.

A lack of enforceability is a particular problem where codes of welfare prohibit an activity or provide for a period to transition away from practices that do not meet the obligations of the Act.

To enforce a breach of a minimum standard in a code of welfare a prosecution under the Act is required. Prosecutions are resource intensive and generally only appropriate for serious offending. As regulations are intended to be more specific, prosecution under regulations should be more straightforward and potentially less resource intensive.

The majority of animal welfare offending is of a low to medium level of seriousness. Most offending at this level is dealt with through the provision of verbal advice, educational information or by issuing a warning. These types of enforcement tools are not always effective when dealing with frequent or repetitive low to medium level offending as there are limited consequences for the offender.

The Act now provides the ability to make directly enforcement regulations that have appropriate penalties for low to medium offending which are efficient and effective to administer. For further information on the penalty regime attached to regulations see section 4.1.

Clarity

The Act review identified that the existing tiered classification system for regulating surgical and painful procedures (see 2.3.1) was difficult to understand and apply. The difficulty relates to uncertainty and contention about:

- whether a procedure is a significant surgical procedure and therefore must only be undertaken by a veterinarian, or veterinary student acting under the direct supervision of a veterinarian;
- the circumstances in which a procedure can be undertaken; and
- the appropriate method or equipment for carrying out the procedure.

The regulations will improve clarity by:

- prohibiting any surgical or painful procedure; or
- prescribing requirements for any surgical or painful procedure, in particular relating to such things as:
 - the skills, qualifications and experience of the person undertaking the procedure;
 - the types of pain relief or medication used for the procedure;
 - the forms of restraint and equipment used for specified procedures;
 - whether the procedure may only be performed when in the best interests of the animal; and
- declaring that any specified surgical procedure is not a significant surgical procedure for the purposes of this Act.

The new criteria for determining whether something is a significant surgical procedure (see Box 1 on page 8) could capture some routine husbandry procedures (e.g. dehorning cattle), meaning that only a veterinarian or veterinary student could perform the procedure. To avoid doubt, the proposed regulations will make it clear where it is appropriate for a non-veterinarian to perform these types of procedures.

3.1.2 To update current practice

Most of the proposed regulations outlined in this document are based on the existing minimum standards within codes of welfare and do not represent a significant change in requirements although, of course, some changes are involved. However, during the development of the proposed regulations the question of whether the standards for particular practices needed to be updated was considered.

The minimum standards within codes of welfare reflect good practice, scientific knowledge, and available technology at the time when they were developed.

The proposals that update practice, beyond minor changes, primarily relate to the performance of surgical and painful procedures and the management of young calves. For a more thorough explanation of the changes refer to the specific proposals outlined in section 11.4 and 12.4 of this document.

3.2 OBJECTIVES

The Amendment Act enables regulations to be made that will address identified problems related to enforceability and clarity. The overarching objective of the regulatory proposals in this document is to make regulations that will deal effectively with these problems.

We will know that the regulations have been successful when:

- there is a higher level of compliance with animal welfare standards;
- there are fewer instances where an animal's physical, health and behavioural needs are not met;
- transitional standards are clear and able to be enforced;
- the requirements for surgical and painful procedures reflect good practice, therefore, there is a reduction of unreasonable and unnecessary pain and distress to animals in the performance of surgical and painful procedures;
- there is greater clarity about who is able to undertake certain procedures and those people know what they are allowed or not allowed to do in the performance of a procedure; and
- the world leading reputation of New Zealand's animal welfare regulatory system is maintained and enhanced.

3.3 THE PROCESS

The following criteria were used to determine which of the minimum standards and additional matters would be appropriate to consider developing into regulations.

- **Effective** – is there an identified problem? Is it likely that regulations will achieve the desired change in outcomes and/or update practice where necessary?
- **Efficient** – if the regulations set a higher standard than the current minimum standards they should be the minimum necessary to ensure that the purpose of the Act will be met, be practical and economically viable.
- **Equitable** – the level of the offence is proportionate to the lower level penalties that are available under regulation.
- **Clear** – the actions or omissions are specific and measurable. Regulations need to be clear and precise so there is no doubt when an offence is committed. This is especially

so for infringement offences as they are intended to quickly and efficiently deal with minor offending. This value is lost if they are too open to challenge.

Around 1200 minimum standards or requirements were considered against the criteria above, and the options discussed in section 3.4. The vast majority were judged to not require, or, not be suitable for, regulation at this time. For reasons of brevity these are not presented in this document, although examples are given below and in section 3.4.

The regulatory proposals in Part B are those that met the criteria above. A number of questions about suitability, or information gaps still exist around some proposals. MPI is consulting in the expectation that people affected by the proposals will provide further information to help determine if a proposed regulation is likely to be efficient, effective, equitable, clear, and achieve its objective.

In developing these proposals MPI drew on the knowledge and experience of a joint working group⁹ and targeted stakeholder workshops. The purpose of this approach was to provide expertise and practical knowledge about specific animal husbandry practices, and to incorporate aspects of the usual code of welfare development process that stakeholders and the public are familiar with and expect.

The joint working group reviewed the minimum standards in all of the codes of welfare¹⁰ (and draft codes). In addition some matters were identified that were not covered, or not adequately covered, by minimum standards and were included within the review.

In late 2015 and early 2016 the Chair of NAWAC and MPI undertook a series of targeted workshops and meetings with stakeholders to test the areas being considered for potential regulation. Issues considered included whether problems exist in the area, the magnitude of any problems, and the practicality and feasibility of the proposals.

MPI analysed the information collected and identified the areas, set out in Part B of this document, where regulation is considered the most appropriate mechanism to address the issues raised by the Act review. Some other matters may need to be considered for regulation in future but further work is necessary to understand the full implications of progressing regulations for these areas. Examples include:

- *Animals with low body condition.* Condition can be a subjective measure and, in addition, different levels of condition are acceptable between species, situations, and seasons; and
- *Selective breeding.* Selecting for inherited traits that are seen as desirable, whether that be for increased production, efficiency of feed conversion or the way an animal looks, may result in unintended or undesirable consequences. Examples include: negative fertility traits associated with some dairy cow positive milk production traits; or congenital airway obstruction found in brachycephalic breeds of dog.

⁹ The joint working group consisted of representatives from NAWAC, MPI, RNZSPCA and the Veterinary Council of New Zealand.

¹⁰<https://www.mpi.govt.nz/protection-and-response/animal-welfare/codes-of-welfare/>

3.4 OPTIONS

Each minimum standard or additional matter was assessed to determine whether it should be retained in its current form (Option 1), regulated (Option 2) or addressed through non-regulatory mechanisms (Option 3).

3.4.1 Option 1: Retaining the status quo

This option recognises that it is neither necessary nor appropriate to put regulations in place for all areas covered by the existing minimum standards or the additional areas considered. Regulations should only be considered if they are the appropriate mechanism to address a specific problem and the regulatory penalties available are proportionate to the level of offending. More severe omissions or actions will, and should, continue to be addressed via the offence provisions under the Act and associated higher penalties. For further information on the regulatory penalties available refer to Table 2.

Two examples where a code of welfare or the Act are considered more appropriate than regulations are:

1. *Animal cruelty*

Ill-treatment of an animal is sufficiently severe to warrant prosecution under the Act which carries maximum penalties, including up to five years imprisonment for wilful ill-treatment. The penalties available under regulation are not proportionate to the offending. It would not be equitable to downgrade this offending from Act level to regulation. Examples of this kind of ill-treatment could include breaking a cow's tail or torturing a cat.

2. *Stockmanship*

Most codes of welfare contain minimum standards stipulating that animals must be cared for by a sufficient number of knowledgeable and competent personnel. These work well as minimum standards but present difficulties for regulations as they can be met in many ways. This makes it difficult to clearly prescribe the specific act or omission in regulation.

In considering the proposals set out in Part B:

Question 3: Are there any minimum standards or additional matters you think should become regulations immediately, which are not included in the regulatory proposals in Part B?

Questions 4: Are there any minimum standards or additional matters that you think should be considered for regulation in the future, once the implications of regulating these areas are better understood?

3.4.2 Option 2: Developing regulations

MPI consider that the proposed regulations, set out in Part B of this document, meet the criteria identified in section 3.3.

In general the regulations are closely based on the existing minimum standards. However, there are some areas where practice needs to be clarified or updated to reflect good practice and scientific knowledge.

In developing the regulatory proposals for surgical and painful procedures the matters that the Minister must have regard to when making regulations were also taken into consideration.

These matters include, among other things:

- whether the procedure fits the criteria for determining whether it is a significant surgical procedure;
- the purpose of the procedure;
- the extent (if any) to which the procedure is established in New Zealand; and
- good practice in relation to the use of the procedure for animal management purposes or in relation to the production of animal products or commercial products.

The proposed regulations were also tested with a targeted group of stakeholders to determine the need for, and feasibility of, any regulatory proposals.

For all of the proposals in Part B it is considered that regulatory intervention is warranted, that is, they meet the criteria discussed in section 3.3.

For example, proposal 35 prohibits transporting an animal with an ingrown horn. This is due to the risk of exacerbating the injury during transport. The proposal includes the caveat that a veterinarian may examine the animal and where reasonable certify that the animal may be transported. There are on average 90 investigations per year about the transport of animals with ingrown horns.

When this proposal is assessed against the criteria it is:

- effective – as it addresses an identified problem and the proposed infringement fee should provide a deterrent;
- efficient – regulation is the minimum necessary. The current minimum standards are ineffective as they are not directly enforceable;
- equitable – the proposed penalty is proportionate to the failure of the person in charge to meet their obligations not to transport an animal where it will cause unreasonable pain and distress;
- clear – the proposal defines the offence in such a way that the person in charge knows what they need to do to comply with the law.

Question 5: Are there any proposed regulations, set out in Part B, that should not be regulated?

Question 6: If so, how should these matters be managed?

3.4.3 Option 3: Non-regulatory mechanisms

Under this option non-regulatory mechanisms would be used to address problems identified through the Act review process. Mechanisms could be delivered by a government, stakeholder or joint initiative. Initiatives could include education and/or training programmes or the

development of industry standards. Initiatives could expand on existing programmes or be developed in response to a particular issue.

An example of a non-regulatory initiative is calving inductions in the dairy industry. Prior to 2010, calving inductions were routinely performed on some New Zealand dairy farms. Inductions are used as a management tool to align calving and milking. However, the practice has negative impacts on both the cow and the calf, including calves being born that are not viable.

In 2010, the dairy industry¹¹ and the New Zealand Veterinary Association signed a Memorandum of Understanding to gradually reduce the number of routine inductions performed. From 1 June 2015 no routine inductions were permitted except in very limited situations and under veterinary supervision.

This non-regulatory initiative has been effective at reducing the level of inductions. In 2015 inductions occurred in less than 0.5 percent of the dairy herds in New Zealand. Industry expect that over the next 2-3 years the use of inductions will disappear altogether as farmers focus on other aspects of reproductive management.

Question 7: Do you think there should be a wider use of non-regulatory mechanisms? If so, in what situation?

3.5 WHO IS GOING TO BE AFFECTED?

The proposed regulations will directly affect almost everyone who either owns or is in charge of animals and those that care for animals as part of their work, such as veterinarians or those working on farms. However, because many of the regulations reflect existing minimum standards, the majority will not require people who already look after animals well to change their current practice.

Some of the proposed regulations are different, either in being more specific than the current minimum standard or updating current requirements to a higher standard. In these situations the owner or person in charge of an animal may be affected, depending on their current practice.

For example, some proposals such as disbudding¹² will require wider use of pain relief than is currently required. Some operators already use pain relief when disbudding—the proposed disbudding regulation is unlikely to affect these operators. For those operators not currently using pain relief the proposed regulations will require a change in practice.

Question 8: Will the proposed regulations, set out in Part B, change the way you or others currently operate, if so, in what ways? What implications would these have for you?

¹¹ Dairy Companies Association of NZ (DCANZ), Federated Farmers and DairyNZ

¹² Disbudding is the destruction, by any method, of the free-floating immature horn tissue (horn 'buds' growing from the skin) from which the horns of an animal subsequently develop.

4.0 The Compliance and Enforcement Regime

The animal welfare compliance approach encourages and facilitates voluntary compliance before escalating to directive and enforcement actions. Currently there are limited tools to address offending (see discussion of current limitations in section 3.1.1).

An animal welfare inspector can issue a Compliance Notice to a person to require them to stop or start doing something to comply with the Act or regulations. It is proposed to bring into force section 56 of the Amendment Act which creates an infringement offence for non-compliance with a Compliance Notice (see section 2.3).

4.1 WHAT ARE THE PROPOSED PENALTIES FOR OFFENDING?

Under section 183 of the Act, a regulation can have either an infringement offence or a prosecutable offence¹³ attached. Two levels of infringement fee are proposed (\$300, and \$500) see Table 2.

Table 2: Penalties under the proposed regulations and existing penalties under the Act

Offence	Penalty	Criminal conviction	Other penalties
Potential penalties under the regulatory proposals.			
<i>Infringement</i>	\$300 fee, or \$500 fee depending on the severity of the offence ¹⁴ . <i>The Act allows infringement fees to be set up to a maximum of \$1000 but none have been proposed at this level.</i>	None	None
<i>Prosecutable offence under regulation</i>	Fine up to \$5,000 individual and \$25,000 body corporate.	Criminal conviction	None
The existing offences in the Act will not change.			
<i>Prosecutable offence under the Act</i>	Penalties range depending on the offence. The majority of offences have a penalty of up to: \$50,000, or up to 12 months imprisonment, for individuals, a fine up to \$250,000 for a body corporate. The most serious wilful ill-treatment offence is up to: \$100,000, or up to 5 years imprisonment, for an individual, or a fine up to \$500,000 for a body corporate.	Criminal conviction	Disqualification Forfeiture (depends on offence)

¹³A "prosecutable offence" refers to an offence that can lead to a criminal conviction.

¹⁴ If proceedings for infringement offences are commenced by filing a charging document the proposed maximum penalty is \$5,000 for an individual and \$25,000 for a body corporate.

The specific penalties for each proposed regulation are outlined in Part B of this document.

4.1.1 Infringement

An infringement offence¹⁵ results in a fee but no criminal conviction—similar to a parking ticket. Infringements are suitable for minor offences. Although there are options to challenge infringement offences, it is envisaged that most will not be challenged.

For the infringement system to be efficient, effective, and avoid challenges, the offence for which an infringement notice is issued needs to be specific and clear. A person needs to know when they have breached a regulation and an animal welfare inspector needs to be certain the offence has been committed when they issue the infringement notice.

The Act allows infringement fees to be set up to a maximum of \$1,000 but no infringements have been proposed at this maximum level. When determining possible fees the following points were considered:

- the level of harm to the animal involved in the offending;
- the affordability and appropriateness of the penalty for the target group – for example, is the fee likely to act as a sufficient deterrent against offending; and
- the proportionality of the proposed fee relative to the infringement fees for other comparable infringement offences.

Whether an offence is most likely to occur in a commercial context was considered relevant to affordability. The infringement fees proposed in the regulations for each offence are similar to those in other New Zealand legislation, for example the Dog Control Act 1996.

A lower and higher-level infringement fee have been proposed for different regulatory proposals depending on the relative level of harm. The following criteria are proposed:

- a fee of \$300 – where an activity has the potential to cause low-level harm to an individual animal or small number of animals; or
- a fee of \$500 – where an activity has the potential to cause moderate harm to an individual animal or small number of animals.

Question 9: Are the infringement offences and respective fees proposed for breaches of the proposed regulations, outlined in Part B, appropriate? Should any of the proposals attract higher or lower fees or penalties?

4.1.2 Prosecutable offences under the regulations

A prosecutable offence under regulation is more serious than an infringement offence and may result in criminal conviction. A fine can be imposed by the court up to the maximum stated in the regulations. The Act limits the fine that is able to be imposed for prosecutable offences under regulations to \$5,000 for an individual or \$25,000 for a body corporate.

¹⁵ See Legislation Design Advisory Committee Infringement guidelines 2014 <http://www.ldac.org.nz/guidelines/lac-revised-guidelines/chapter-22/>; and Ministry of Justice Infringement guidelines 2008 <http://www.justice.govt.nz/publications/publications-archived/2008/infringement-guidelines>

MPI considers that it is appropriate to allow fines up to the maximum level for all the proposed prosecutable offences under regulation. This is due to the variable nature of animal welfare offending and allows the court to respond appropriately to a wider range of offending. In the regulatory proposals prosecutable offences are proposed where:

- a. an activity has caused moderate harm to an animal or a group of animals. In this respect they differ from the proposed infringements, where the principal consideration is the level of potential harm an activity could cause, rather than the extent to which harm has actually occurred in any given case; and
- b. more complex circumstances need to be taken into account than is possible with infringement offences. For example, for the proposed regulations this may include if the offence:
 - would usually involve many animals; or
 - involves actions or omissions that are not straightforward issues of fact.

Prosecutable offences under regulation are not designed to address the most serious animal welfare offending, such as that which results in severe harm to an animal or animals. In these cases, prosecution under the offences in the Act itself is likely to be the most appropriate course of action.

Question 10: Are the prosecutable offences proposed in the regulations appropriate? If not, why not?

4.1.3 Strict liability

The default position in criminal law is that an offence has a physical element (e.g. the prohibited conduct) and a mental element (intention, knowledge or recklessness) both of which need to be proven by the prosecution. However, in strict liability offences, there is only a physical element that must be proven by the prosecution. It is then up to the defendant to prove a specified defence (such as proving an absence of fault) in order to avoid liability.

Strict liability offences are appropriate for minor and straightforward matters. There are existing offences under the Act, in relation to failing to comply with sections 12 and 29(a) that are already strict liability.

It is proposed that the offences for contravention of the regulations (infringements and prosecutable offences) will all be strict liability offences. However, it may be appropriate to incorporate a mental element into some of the proposed offences.

Question 11: Should any of the proposed regulations, set out in Part B, include a mental element (e.g. intention, knowledge or recklessness)? If so are the penalties for a prosecutable offence under regulation (see Table 2) appropriate for the regulated activity?

4.1.4 Enforcement discretion

A range of enforcement options are available under the Act and regulations other than prosecuting an animal welfare offender (see section 3.1.1). Although the proposed regulations would introduce new offences, the decision to prosecute or infringe is always a carefully considered decision and a prosecution or infringement may not be appropriate in all cases. For example educational material may be more appropriate for a first offence where there was a genuine lack of knowledge.

4.1.5 Defences

The ability of the defendant to raise a defence is important to mitigate any possible injustice that may result in strict liability offences.

It is proposed that the following defences be made available to a defendant to prove on the balance of probabilities:

- 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.

Question 12: What defences do you think should be available if the proposed regulations are breached and why?

Question 13: Would it be appropriate to expand the second defence above to include “...*necessary for the preservation, protection, or maintenance of human or animal life.*”? If so, in what circumstances, and which regulatory proposals would this apply to?

5.0 Implementation

5.1 WHEN DO THE REGULATIONS COME INTO FORCE?

It is anticipated that most regulations will come be made by 2016. However, we will be considering the extent to which any regulatory proposals for young calves can be implemented by late July 2016 (the spring bobby calf season).

Across all of the regulatory proposals, we will also consider whether, in order to provide people with a reasonable period of time to change their practice, some proposals would benefit from an extended lead-in time before coming into force.

Question 14: Do any of the proposed regulations, set out in Part B, require a lead-in period? If so what period is reasonable? Are there any other challenges relating to the timing of regulations coming into force?

5.2 WHAT HAPPENS TO THE EXISTING MINIMUM STANDARDS/ REQUIREMENTS?

It is important to ensure that the proposed regulations, the codes of welfare, and the Act continue to work together to regulate animal welfare effectively. The Act sets the high level animal welfare obligations, and sets offences for the most severe offending. Codes of welfare remain important for setting minimum standards and for their evidential role in the prosecution of Act level offences. Adherence to, or breaching, a minimum standard can be used as evidence to support or defend a prosecution against an Act offence. However it is not

intended that adhering to a code be allowed as a defence for the strict liability offences in the regulations (see section 4.1.5).

Many of the proposed regulations are based on the codes of welfare. Amendments to the codes of welfare can be made by regulation under section 183A of the Act. It is intended that the proposed regulations will include some amendments to the codes of welfare. However, until the final proposals have been determined, following consultation, the extent of any required amendments to minimum standards within codes is unknown.

Where existing minimum standards overlap with proposed regulations, or where other changes are necessary to make them work effectively in the legislative scheme, the minimum standards may need to be amended. For matters dealt within transitional standards under regulations it is proposed that minimum standards dealing with these matters are revoked to allow section 183A(11) of the Act to have effect.

For other matters there are two different approaches possible. The first approach is that the codes of welfare will be amended in one, or a combination, of the following ways:

- where a minimum standard is lifted into regulation without extensive alteration, the minimum standard will be revoked to avoid duplication; and/or
- where a regulation contains a higher standard than a minimum standard the minimum standard will be revoked or amended to avoid contradiction; and/or
- where a regulation is more specific than a minimum standard then the minimum standard may remain in place in order to capture the wider intent.

The second approach is that the codes of welfare would be amended only where the regulations provide a higher standard in order to align the minimum standards in the codes with this higher standard. This would mean that the codes of welfare would continue to operate to a fuller extent in their evidential and defence functions in prosecutions for Act offences.

Question 15: How should the codes of welfare be amended by the proposed regulations to ensure the codes continue to work effectively within the legislative scheme?

Question 16: Which of the approaches as outlined above, or combination of approaches do you support?

Question 17: What other options to amend the codes are there?

5.3 HOW ARE THE REGULATIONS GOING TO BE ENFORCED?

MPI shares responsibility for animal welfare enforcement with the RNZSPCA. The RNZSPCA is the only “approved organisation” under the Animal Welfare Act, and has its own MPI-appointed animal welfare inspectors. The New Zealand Police are also deemed to be animal welfare inspectors although typically their involvement is limited to where animal welfare offending is connected to other crimes. Farm animal complaints are predominantly handled by MPI, while companion animal complaints are predominantly handled by the RNZSPCA.

Changes specific to regulations

The regulations create a new ability to issue infringements for animal welfare offences. MPI already issues and administers infringements in other areas such as fisheries and biosecurity. MPI is adapting its infringements system to incorporate animal welfare and is coordinating with the RNZSPCA in this area.

Procedures and guidelines for the use of the new powers are being developed. This will include guidance on the use of the range of compliance responses (from verbal advice and warning, through compliance notices and infringements, up to prosecution). Animal welfare inspectors will receive training before the new powers are implemented. The use of the new powers will be monitored to ensure consistency of application. MPI and RNZSPCA are working together to ensure consistency across all animal welfare inspectors.

6.0 Monitoring and Review

MPI and the RNZSPCA coordinate animal welfare monitoring and analysis. Current monitoring is being adapted to capture additional information relevant to the impact of any new regulations.

MPI is also considering how best to engage with stakeholders about the ongoing impact of the regulations. Options include public and targeted workshops, as well as attitude surveys and research.

MPI will review the performance of the regulations once the regulations have become embedded in the animal welfare compliance system. The review will look at whether the regulatory changes have performed as expected.

Through the review, MPI will seek answers to the following evaluation questions.

- Are the regulations achieving their objectives?
- Could the objectives be better achieved by another option (such as primary legislation, code of welfare, self-regulation, or no regulation)?
- How could the regulations or their implementation better meet their objectives?
- What lessons can be learned for the development of future animal welfare regulation?

To inform the evaluation, MPI will look at:

- any barriers to the regulations meeting their objectives;
- the expected and actual impacts of the regulations;
- stakeholder perception of the regulations' impact and effectiveness;
- implementation processes and communications; and
- any identifiable changes in compliance rates and complaints received.

Question 18: How should MPI best engage with stakeholders to monitor and review the impact of the proposed regulations?

7.0 Next Steps

After consultation the next steps in the process will be for MPI to analyse the submissions, produce a summary of submissions, and make the summary of submissions available on its website www.mpi.govt.nz

All submissions received will inform the final proposals to Government.

We will then implement the Government's decision as a result of this process. It is anticipated most of the regulations will be made by the end of 2016. We will be considering the extent to which regulations relating to young calves can be implemented earlier to have effect during the main calving season in spring 2016.

8.0 A List of the Questions included in Part A

2.3 *Changes to the Act not yet in force*

Question 1: Is there any reason why changes to the Act not yet in force, should not be brought into force at the same time as the regulations (rather than waiting for them to automatically commence in 2020)?

2.1.1 *Other changes*

Question 2: Are the infringement fees proposed for sections 156I and 36(3) appropriate?

3.4.1 *Option 1: Retaining the status quo*

In considering the proposals set out in Part B:

Question 3: Are there any minimum standards or additional matters you think should become regulations immediately, which are not included in the regulatory proposals in Part B?

Questions 4: Are there any minimum standards or additional matters that you think should be considered for regulation in the future, once the implications of regulating these areas are better understood?

3.4.2 *Option 2: Developing regulations*

Question 5: Are there any proposed regulations, set out in Part B that should not be regulated?

Question 6: If so, how should these matters be managed?

3.4.3 *Option 3: Non-regulatory mechanisms*

Question 7: Do you think there should be a wider use of non-regulatory mechanisms? If so, in what situation?

3.5 *Who is going to be affected?*

Question 8: Will the proposed regulations, set out in Part B, change the way you or others currently operate, if so, in what ways? What implications would these have for you?

4.1.1 Infringement

Question 9: Are the infringement offences and respective fees proposed for breaches of the proposed regulations, outlined in Part B, appropriate? Should any of the proposals attract higher or lower fees or penalties?

4.1.2 Prosecutable offences under the regulations

Question 10: Are the prosecutable offences proposed in the regulations appropriate? If not, why not?

4.1.4 Strict liability

Question 11: Should any of the proposed regulations, set out in Part B, include a mental element (e.g. intention, knowledge or recklessness)? If so are the penalties for a prosecutable offence under regulation (see Table 2) appropriate for the regulated activity?

4.1.5 Defences

Question 12: What defences do you think should be available if the proposed regulations are breached and why?

Question 13: Would it be appropriate to expand the second defence above to include “...necessary for the preservation, protection, or maintenance of human or animal life.”? If so, in what circumstances, and which regulatory proposals would this apply to?

5.1 When do the regulations come into force?

Question 14: Do any of the proposed regulations, set out in Part B, require a lead-in period? If so, what period is reasonable? Are there any other challenges relating to the timing of regulations coming into force?

5.2 What happens to the existing minimum standards/requirements?

Question 15: How should the codes of welfare be amended by the proposed regulations to ensure the codes continue to work effectively within the legislative scheme?

Question 16: Which of the approaches as outlined above, or combination of approaches do you support?

Question 17: What other options to amend the codes are there?

6 Monitoring and Review

Question 18: How should MPI best engage with stakeholders to monitor and review the impact of the proposed regulations?

Part B – Specific Regulatory proposals

9.0 Overview

This part of the document sets out specific regulatory proposals, which are divided into three sections for ease of reference.

- Care and conduct proposals*
These proposals relate to the care of and conduct towards animals, and are generally stand-alone proposals. While there are some closely related matters each proposal can be considered on its own merits.
- Young calf management proposals*
These proposals are a subset of the care and conduct proposals, relating to the care of young calves. They have been grouped together as the proposals should be considered as a package of options to improve the care of young calves. Implementing some proposals may make other proposals more effective or reduce the need for another proposal.
- Surgical and painful procedure proposals*
These proposals relate to the performance of surgical and painful procedures. While each proposal covers a distinct procedure, the package as a whole should provide a consistent framework for governing surgical and painful procedures.

Each matter is included within a table, like the example in Table 3, and covers the same information.

Table 3: Example of how the regulatory proposals are presented within this document

Proposal Number and Title	
Proposal	The proposal describes the intent of the regulation. The exact wording in any final regulation may differ.
Current state	Outlines existing standards or requirements, if any, under the Animal Welfare Act 1999 or within a code of welfare developed under the Act. Section 5.2 sets out how it is proposed any regulations will align with the current state.
What is the problem?	Provides a brief description of why regulations are proposed for a particular matter.
How will regulations help?	Provides a brief description of how it is expected the regulations will help.
Penalty	Sets out the proposed penalty for breaching the regulation, that is, whether it is proposed to be a prosecutable offence under regulation or an infringement offence where a fee is issued.
Additional questions and information	Outlines any questions or additional information specific to the particular proposal.

9.1 KEY QUESTIONS TO ASK OF EACH PROPOSAL

Generally, good regulations should address the following questions. We are seeking feedback on these questions for each proposal.

- Should this area be regulated?
- What would be the positive impacts of this regulation?
- What would be the negative impacts of the regulation, including costs of complying?

- Would a transitional or phase in period be required to manage these impacts? If so, how long would be appropriate?
- Are there any unintended consequences?
- Do you think the regulation will achieve its aim?
- Is the current issue being managed adequately by codes of welfare or other instruments under this Act?
- Are there any non-regulatory options that would be more effective?
- Has the right conduct been targeted?
- Is the right person being held responsible?
- Are there any exemptions or defences that should apply?
- Are the penalties appropriate to the severity of the offence?
- Is the right type of offence (regulatory or infringement) proposed?
- It is important that the regulatory proposals will not place an unjustifiable limitation on a person's religious or cultural practices. Are there any religious or cultural practices that would be impacted by the proposals?

10.0 Care and Conduct Regulatory Proposals

The regulatory proposals relating to the care of, and conduct towards, animals are intended to provide directly enforceable standards and appropriate tools for low to medium offending (see section 3.1.1).

10.1 KEY QUESTIONS

As well as the generic questions, set out in section 9.1, there are some questions that are common or more relevant to the care and conduct proposals that should also be considered:

- The care of animals is often a question of degrees, for example an animal can be well fed, hungry, or starving. A regulation needs to draw a clear line between acceptable and unacceptable. Do the proposals set out below clearly define this line?
- If so, is the line drawn in the appropriate place?
- In order to make them more enforceable a number of proposals have been made more specific than the minimum standard they are based on. For example 'injury and distress' may be changed to 'cuts and abrasions'. Where this has occurred:
 - Have any key impacts or behaviours been omitted that should be covered?
 - Does the changed language capture a wider set of behaviours or impacts?
 - If so, are there any that shouldn't be covered?
- The Act places responsibility for care of animals on both the owner and/or the person in charge of the animal.
 - Should the same principle apply to the care and conduct regulatory proposals?
 - Are there any proposals where it may be appropriate to hold only one of these parties responsible or to hold another party responsible?

Questions related to specific proposals are included with each proposal.

10.2 THE PROPOSALS

1. All animals – Electric prodders	
Proposal	<p>Electric prodders may only be used on:</p> <ul style="list-style-type: none"> a) cattle over 100kg; b) cattle over 100kg and other animals, in a circus where the safety of the handler is at risk; or c) cattle over 100kg, and other animals, in a commercial slaughter premises: <ul style="list-style-type: none"> i. where the safety of the handler is at risk; or ii. when loading a stunning pen.
Current state	<p>Thirteen codes of welfare prohibit use of electric prodders on a species, restrict the use to adult cattle, or provide specific situations where they can be used. Only the minimum standards relevant to the exceptions are listed here.</p> <p><i>Commercial slaughter code of welfare 2010</i></p> <p>Minimum Standard 4 – Handling of Large Mammals</p> <ul style="list-style-type: none"> (t) Goads must not be used to move animals, except: <ul style="list-style-type: none"> (i) where the safety of the handler is at risk; or (ii) when loading a stunning pen; or (iii) for very stubborn cattle (but not calves). <p><i>Transport code of welfare 2011 definition of goad – an object, including an electric prodder, used to stimulate or prod an animal to make it move.</i></p> <p><i>Circuses code of welfare 2005</i></p> <p>Minimum Standard 7 – Training and Performances</p> <ul style="list-style-type: none"> (f) Electric prods must be used with restraint and only in situations where the animal handler is at risk and must not be used: <ul style="list-style-type: none"> (i) on sensitive areas of the animal, including eyes, nose, anus, vulva and testicles; (ii) by casual or inexperienced animal handlers; (iii) in a manner that causes unreasonable or unnecessary pain or distress to the animal.
What is the problem?	<p>If misused, electric prodders can cause pain and distress.</p> <p>The proposal is a strong restriction amounting to a general prohibition of the use of electric prodders on most animals except adult cattle.</p> <p>Prohibitions in codes of welfare are not directly enforceable (see discussion in section 3.1.1).</p>
How will regulation help?	<p>Placing the prohibition in regulation means it will be directly enforceable.</p> <p>Provides clarity by having the rules for electric prodders in one place and uses weight as an objective measure.</p>
Penalty	<p>Proposed infringement offence with a fee of \$300. No criminal conviction.</p>
Additional questions and information	<p>Refer to the general questions set out in section 9.1 and 10.1.</p> <p>In addition, please also consider the following questions:</p> <p>Are the exceptions at a commercial slaughter premises justified?</p> <p>Are the exceptions for a circus justified?</p>

	<p>Are there other situations/species where exceptions may be justified?</p> <p>Is the judgement 'where the handler is at risk' too subjective for an infringement offence (see section 3.1.1)?</p> <p>If so, could those situations be adequately covered by proposed defence "<i>The action was necessary for the preservation, protection, or maintenance of human life</i>" (see section 4.1.5)?</p> <p>Electric prodders are a health and safety tool. Does this regulation unduly limit the ability to use an electric prodder to protect human health and safety e.g. for stock transporters?</p> <p>Should there be further restrictions on the use of electric prodders on cattle over 100kg? For example the Rodeo code of welfare minimum standard 4 stipulates:</p> <p><i>(h) Goads, including electric prodders, must only be used where there is sufficient room for the animals to move away from the goad and where:</i></p> <ul style="list-style-type: none"> <i>i) the safety of the handler or another person is at risk; or</i> <i>ii) their use is essential to move difficult animals</i> <p>Is weight a practical measure?</p> <p>Is 100kg correct?</p> <p>Note that extreme and repeated use of an electric prodder, such that it causes unnecessary or unreasonable pain and distress, would still be able to be prosecuted as ill-treatment under the Act (including for use on adult cattle).</p>
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2. All Animals – Use of goads	
Proposal	<p>Prohibit using a goad to prod an animal in the udder, anus, vulva, scrotum or eyes</p> <p><i>Transport code of welfare 2011 definition of goad – an object, including an electric prodder, used to stimulate or prod an animal to make it move.</i></p>
Current state	<p><i>Transport within New Zealand code of welfare 2011</i></p> <p>Minimum Standard 7 – Loading and Unloading</p> <p>(d) Goads must not be used on the most sensitive areas of animals, including eyes, nose, anus, vulva, udder and testicles.</p> <p>Similar minimum standards are also in the pigs, goats, sheep and beef, dairy cattle, rodeos, and commercial slaughter codes of welfare.</p>
What is the problem?	<p>If misused, goads can cause pain and distress.</p> <p>Prohibitions in codes of welfare are not directly enforceable (see discussion in section 3.1.1).</p>
How will regulation help?	<p>Placing the prohibition in regulation means it will be directly enforceable.</p>
Penalty	<p>Proposed infringement offence with a fee of \$300. No criminal conviction.</p>
Additional questions and information	<p>Refer to the general questions set out in section 9.1 and 10.1.</p> <p>In addition, please also consider the following questions:</p>

	<p>Are there any situations where using a goad in these sensitive areas is justified?</p> <p>Restricting the proposal to the use of goads means other prodding, such as, veterinary examination will not be unintentionally caught, but does it allow other unjustified prodding?</p> <p>If so, how could the proposal be worded to include this?</p>
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3. All Animals – Twisting an animal’s tail

Proposal	Prohibit twisting the tail of an animal in a manner that causes the animal pain.
Current state	<p><i>Sheep and Beef code of welfare 2010</i></p> <p>Minimum Standard 2 – Animal Handling</p> <p>Recommended Best Practice</p> <p>(i) Tails should not be lifted or twisted.</p>
What is the problem?	<p>Tail twisting behaviour runs a risk of leading to tail breaking which causes pain and distress. There are no enforceable standards to prevent tail twisting.</p> <p>Tail breaking is an identified area of non-compliance, mainly in cattle. This regulation is aimed at behaviour that may lead to tail breaking. Tail breaking would remain a prosecutable offence.</p>
How will regulation help?	Regulation is intended to provide an enforceable deterrent to tail twisting.
Penalty	Proposed infringement offence with a fee of \$300. No criminal conviction.
Additional questions and information	<p>Refer to the general questions set out in section 9.1 and 10.1.</p> <p>In addition, please also consider the following questions:</p> <p>Is it possible to identify and regulate a level of unnecessary and risky twisting, below tail-breaking (still a prosecutable offence), but above normal handling?</p> <p>Will the possibility of a fee provide an effective deterrent to reduce risky tail handling behaviour?</p> <p>We are unsure if we should regulate in this area. The tail is used, and bent, in some acceptable methods of restraining and moving animals e.g. tail-jacking in cattle. Fine distinctions in the degree of tail twisting could make enforcement and feasibility difficult. If the regulation is not enforceable then it loses its deterrent value.</p>

4. Dogs – Pinch and prong collars

Proposal	<p>Prohibit the use of pinch and prong collars.</p> <p><i>Proposed change to definition: A collar with prongs positioned against the neck, or any other protrusion intended to cause pain or discomfort when tightened.</i></p>
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Current state	<p><i>Dogs code of welfare 2010</i></p> <p>Minimum Standard 19 – Aids for Behavioural Modification (b) Pinch or prong collars must not be used</p> <p>Code definition of ‘Pinch or prong collar’ – “A chain made of metal or hardened plastic links with prongs positioned against the neck on each link.”</p>
What is the problem?	<p>If misused, pinch and prong collars can cause pain and distress. Prohibitions in codes of welfare are not directly enforceable (see discussion in section 3.1.1).</p> <p>Despite prohibition in the Dogs code of welfare, New Zealand businesses still sell pinch and prong collars.</p>
How will regulation help?	Placing the prohibition in regulation means it will be directly enforceable.
Penalty	Proposed infringement offence with a fee of \$300. No criminal conviction.
Additional questions and information	<p>Refer to the general questions set out in section 9.1 and 10.1.</p> <p>In addition, please also consider the following questions:</p> <p>Are there legitimate uses for pinch and prong collars where the risk of harm/misuse is outweighed and could be managed?</p> <p>Dogs used in law enforcement or the defence forces are chosen for their particular temperamental qualities and require highly specialised training. Dog training in these forces is based on positive reinforcement; however, on occasion a particular dog’s temperament may require additional tools. Would it be appropriate to allow skilled trainers in the law enforcement and defence forces to have access to pinch and prong collars?</p> <p>Is the definition sufficient to capture all types of pinch and prong collars while not capturing other collars or devices?</p> <p>Should the sale of pinch and prong collars also be prohibited?</p> <p>If so, one mechanism to do so would be to declare it a prohibited device under section 32 of the Act. The associated penalties in the Act are up to 12 months imprisonment or a fine of up to \$50,000 for an individual or a fine of up to \$250,000 for a body corporate. Would these penalties be proportionate?</p> <p>The use of pinch and prong collars does not necessarily cause pain and distress, but the risk that they do is high. If unnecessary or unreasonable pain and distress were caused this would still be able to be prosecuted as ill-treatment under the Act.</p>

5. Dogs – Injuries from collars or tethers

Proposal	<p>Use of a collar, and/or a tether, must not cause cuts, abrasions, swelling, restrict breathing or panting.</p> <p>Links to goat and horse tethering, links to dog muzzling, access to shade and dry sleeping quarters, and heat stress in vehicles.</p>
Current state	<p><i>Dogs code of welfare 2010</i></p> <p>Minimum Standard 4 – Containment and Tethering (a) Dogs must not be contained or tethered in a way that causes them injury or distress.</p>

	(b) Collars must fit comfortably without damaging the skin or restricting breathing.
What is the problem?	If misused, a collar or tether can cause pain and distress. An identified area of frequent non-compliance. On average 95 tethered dog complaints are investigated per year. Current enforcement responses are inappropriate for frequent offending. Injury and distress has to be severe before prosecution under the Act.
How will regulation help?	Will provide an enforcement response proportionate to the offence. Will clarify that injuries or distress caused by inappropriate collars and tethering is unacceptable.
Penalty	Proposed infringement offence with a fee of \$300. No criminal conviction.
Additional questions and information	Refer to the general questions set out in section 9.1 and 10.1. In addition, please also consider the following questions: Are the restrictions (must not cause cuts, abrasions, swelling, restrict breathing or panting) at the right level? Should there be other restrictions such as 'must not prevent drinking', or fewer restrictions? Would it be appropriate for this regulation to cover all species restrained by a collar or tether?

6. Dogs – Muzzling a dog	
Proposal	Muzzling a dog must not cause cuts, abrasions, swelling, or restrict breathing and must allow panting.
Current state	<i>Dogs code of welfare 2010</i> Minimum Standard 19 – Aids for Behavioural Modification (c) Muzzles must fit comfortably without chafing the skin or impeding breathing and must allow the dog to open its mouth sufficiently to enable panting or drinking.
What is the problem?	If misused, a muzzle can cause pain and distress. An identified area of non-compliance. It is estimated from available data that there are around 10-20 complaints per year relating to dog injuries from muzzles. Current enforcement responses are inappropriate for offending. Injury and distress has to be severe before prosecution under the Act.
How will regulation help?	Regulation will provide an appropriate and enforceable tool for addressing low-level non-compliance.
Penalty	Proposed infringement offence with a fee of \$300. No criminal conviction.
Additional questions and information	Refer to the general questions set out in section 9.1 and 10.1. In addition, please also consider the following questions: Should the regulation also specify that the dog must be able to drink? Are there legitimate times when a dog should be muzzled in such a way it cannot pant or drink?

	<p>If more restrictive muzzles are allowed should there be a stipulation that these cannot be used if the dog is exercising or otherwise at risk of overheating?</p> <p>Is the regulation clear about what is allowable and what isn't?</p> <p>Are the restrictions (must not cause cuts, abrasions, swelling, restrict breathing or panting) at the right level?</p> <p>Is the penalty likely to be effective in changing muzzling behaviour?</p>
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7. Dogs – Dry and shaded shelter

Proposal	Dogs confined to an area where they are habitually kept must have access at all times to a fully shaded and dry area for resting and sleeping.
Current state	<p><i>Dogs code of welfare 2010</i></p> <p>Minimum Standard 5 – Kennelling, Shelter and Ventilation</p> <p>(a) Dogs must be provided with sheltered and dry sleeping quarters.</p> <p>(e) Ventilation and shade must be provided in situations where dogs are likely to experience heat distress.</p>
What is the problem?	<p>Failure to provide adequate shelter can cause pain and distress.</p> <p>An identified area of frequent non-compliance. On average of 30-40 complaints per year are investigated about dogs with inadequate shelter.</p> <p>Current enforcement responses appear ineffective at deterring frequent offending. Injury and distress has to be severe before prosecution under the Act.</p>
How will regulation help?	<p>Will clarify that dogs must be provided with appropriate shelter when confined.</p> <p>Will provide an enforcement response proportionate to the offence.</p> <p>Will provide a more effective deterrent.</p>
Penalty	Proposed infringement offence with a fee of \$300. No criminal conviction.
Additional questions and information	<p>Refer to the general questions set out in section 9.1 and 10.1.</p> <p>In addition, please also consider the following questions:</p> <p>Are the protections for confined dogs adequate or too onerous?</p> <p>Are there legitimate situations where dogs are regularly confined for long periods where access to a dry and shady area is not feasible?</p>

8. Dogs – Dogs left in vehicles

Proposal	<p>A person leaving a dog in a vehicle must ensure the dog does not display symptoms consistent with heat stress such as any or a combination of:</p> <ul style="list-style-type: none"> - hyperventilation; - excessive panting; - excessive drooling; - lethargy, weakness, or collapse; and - non-responsive to attempts to check a dog's alertness
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Current state	<p><i>Dogs code of welfare 2010</i></p> <p>Minimum Standard 20 - Transportation</p> <p>(e) Dogs must not be left unattended in a vehicle in conditions where the dog is likely to suffer from heat stress.</p>
What is the problem?	<p>Dogs suffering from heat stress can suffer pain and distress and ultimately die.</p> <p>An identified area of frequent non-compliance. It is estimated from available data that there are around 300 complaints per year relating to dogs locked in vehicles.</p> <p>Current enforcement responses appear ineffective at deterring frequent offending. Injury and distress has to be severe, in this case the death of a dog, before prosecution under the Act.</p>
How will regulation help?	<p>Will provide clarity that leaving a dog in a vehicle at risk of heat stress is unacceptable.</p> <p>Will provide an enforcement response proportionate to the offence.</p> <p>Will provide a more effective deterrent.</p> <p>Actions that breach this proposal are unlikely to be deliberate. Education may be more appropriate but that needs to be balanced by the high risk to a dog's welfare.</p>
Penalty	<p>The penalty attached to this regulation could be either</p> <p>An infringement offence with a fee of \$500. No criminal conviction;</p> <p>or,</p> <p>A prosecutable regulation offence. Can include a criminal conviction. Maximum penalty fine of \$5,000 for an individual, \$25,000 for a body corporate.</p>
Additional questions and information	<p>Refer to the general questions set out in section 9.1 and 10.1.</p> <p>In addition, please also consider the following questions:</p> <p>Does the offence deal with sufficiently straight forward issues of fact to be an infringement offence (see section 4.1.1)?</p> <p>If not, what could be changed to make it clearer?</p> <p>If it cannot be made clearer, would a prosecutable regulation offence be appropriate?</p> <p>Is the risk of an infringement going to be a stronger deterrent factor than the risk of harm to the dog?</p> <p>Is an infringement appropriate in this situation?</p>

9. Dogs – Secured on moving vehicles

Proposal	Dogs on moving vehicles on public roads must be secured in a way that prevents them from falling off, except for working dogs which may be unsecured on a vehicle while working.
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Current state	<i>Dogs code of welfare 2010</i> Minimum Standard 20 - Transportation (d) 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.
What is the problem?	If a dog falls from a moving vehicle it is likely to suffer serious injuries, if not death. Prohibitions in codes of welfare are not directly enforceable (see discussion in section 3.1.1).
How will regulation help?	Placing the prohibition in regulation means it will be directly enforceable. Will provide clarity that having an improperly secured dog on a moving vehicle is unacceptable. Will prevent injuries to dogs.
Penalty	Proposed infringement offence with a fee of \$500. No criminal conviction.
Additional questions and information	Refer to the general questions set out in section 9.1 and 10.1. In addition, please also consider the following question: Is the conduct in this proposal sufficiently risky to warrant regulation? This proposals may prove difficult to enforce as animal welfare inspectors have no power to stop vehicles. However, photographic evidence could be used if the offender can be traced.

10. Dogs & Cats – Drowning dogs & cats

Proposal	Prohibit the killing of a cat or dog, of any age, by drowning.
Current state	<i>Animal Welfare Act 1999</i> Section 12 A person commits an offence who, being the owner of, or a person in charge of, an animal, (a)... (b)... (c) kills the animal in such a manner that the animal suffers unreasonable or unnecessary pain or distress <i>Dogs code of welfare 2010</i> Minimum Standard 21 - Euthanasia (b) Dogs of any age must not be killed by drowning. <i>Cats code of welfare 2007</i> Minimum Standard 11 – Euthanasia (b) Cats (including kittens) must not be killed by drowning
What is the problem?	It is inhumane to kill mammals, including dogs and cats, by drowning. If killed by drowning they will experience a prolonged period of distress before death. This is especially so for new-born kittens and puppies as they have a diving reflex which prolongs the time they can survive without breathing. Prohibitions in codes of welfare are not directly enforceable (see discussion in section 3.1.1).
How will regulation help?	Placing the prohibition in regulation means it will be directly enforceable. Will clarify that drowning cats and dogs is unacceptable.
Penalty	A prosecutable regulation offence. Can include a criminal conviction. Maximum penalty fine of \$5,000 for an individual, \$25,000 for a body corporate.

	<p><i>Animal Welfare Act 1999</i></p> <p>Section 12 A person commits an offence who, being the owner of, or a person in charge of, an animal, (a)... (b)...</p> <p>(c) kills the animal in such a manner that the animal suffers unreasonable or unnecessary pain or distress</p> <p>Section 30D Captured animals</p> <p>(1) If a person has in captivity an animal captured in a wild state (not being an animal that has been captured for the purpose of facilitating its imminent destruction), this Act applies in relation to that person as the person in charge of that animal.</p> <p>(2) If a person has in captivity an animal captured in a wild state (not being an animal caught by fishing) for the purpose of facilitating its imminent destruction, section 12(c) applies in relation to the killing of that animal.</p>
What is the problem?	<p>Crabs, rock lobsters, and crayfish are sentient animals under the Act. Some of the pain and distress associated with killing sentient animals can be mitigated by rendering them insensible before being killed.</p> <p>Prohibitions in codes of welfare are not directly enforceable (see discussion in section 3.1.1).</p>
How will regulation help?	<p>Placing the prohibition in regulation means it will be directly enforceable.</p> <p>Will provide an enforcement response proportionate to the offence.</p>
Penalty	<p>A prosecutable regulation offence. Can include a criminal conviction.</p> <p>Maximum penalty fine of \$5,000 for an individual, \$25,000 for a body corporate.</p>
Additional questions and information	<p>Refer to the general questions set out in section 9.1 and 10.1.</p> <p>In addition, please also consider the following questions:</p> <p>Are there practical methods available to restaurants to render crayfish insensible before killing?</p> <p>There is a need to be conscious that greater clarity is being traded for potential downgrading of section 12(c) of the Act.</p> <p>Is it appropriate that killing crabs, rock lobsters, and crayfish that were not immediately killed while they are still sensible becomes a regulation offence, or should it be dealt with under the broader offence 12(c) of the Act?</p>

12.0 Surgical and Painful Procedures Regulatory Proposals

12.1 KEY QUESTIONS FOR SURGICAL AND PAINFUL PROCEDURES PROPOSALS

As well as the generic questions in section 9.1, there are some questions that are common or more relevant to the proposals related to surgical and painful procedures that should be considered. These include:

- What is the purpose of the procedure?
- What does good practice look like? Good practice can be thought about in relation to the use of the procedure for animal management purposes, or, in relation to the production of animal or commercial products;
- How widespread is the procedure in New Zealand? In what situation(s) does it occur?
- Who currently performs this procedure and under what circumstances?
 - Should the procedure only be performed by a veterinarian, if so, why?
 - Should a non-veterinarian be able to perform this procedure, if so, under what circumstances?
- Where there is a new requirement for a veterinarian to be involved or additional pain relief requirements, are there any additional implications (including cost) associated with these new requirements?
- Are there alternatives to the current practice that are less harmful?
 - Are there any reasons why alternatives can't be used?
 - Are there any additional implications (including cost) associated with the alternative approach?
- Do you know of any procedures, not covered in the following tables, which would fit the criteria for a significant surgical procedure (see Box 1 on page 8), that are currently not being undertaken by a veterinarian or veterinary student?

Questions related to specific proposals are included with each proposal.

12.2 INTRODUCTION

Animals are subjected to surgical and painful procedures for a variety of reasons, including animal or farm management (e.g. castration), animal and human safety (e.g. disbudding or dehorning), animal health (e.g. dentistry), identification (e.g. branding), breeding (e.g. rectal pregnancy examinations in horses), to harvest products (e.g. deer velvet antler removal) and aesthetics (e.g. cropping the pinnae of a dog's ear to make it stand upright). These procedures can cause significant anxiety, fear, discomfort, pain and/or distress to the animal²⁴.

It is important that when undertaking these types of procedures they can be justified, and any harmful consequences are minimised. The Painful Husbandry Procedure (PHP) code of welfare encompasses these general principles within two minimum standards (see Appendix 4). These general principles have been applied to the development of all the surgical and painful procedures proposals outlined in this document to help inform what constitutes good practice.

²⁴ Painful Husbandry Procedures (PHP) code of welfare - <https://www.mpi.govt.nz/protection-and-response/animal-welfare/codes-of-welfare/>

Regulatory proposals relating to surgical and painful procedures are intended to primarily provide greater clarity and update standards to reflect good practice and scientific knowledge (see section 3.1.1).

12.3 UPDATING CURRENT PRACTICE

The PHP code of welfare governs the majority of surgical and painful procedures. In 2005 when the code was issued, NAWAC acknowledged that there was a need to continue efforts to minimise pain and distress associated with the husbandry procedures described in the code²⁵, including wider use of pain relief. It encouraged operators and industries to further develop management systems and breeding programmes which removed the need to routinely perform these types of procedures²⁶.

Consideration of whether the obligations relating to surgical and painful procedures need to be updated reflects the fact that the PHP code of welfare is now over 10 years old. It also reflects the fact that the PHP code of welfare was made under a statutory regime that has now been amended (see section 2.3.1).

When making regulations relating to surgical and painful procedures the Minister must have regard to factors that were not necessarily considered in the making of the PHP code of welfare. These include:

- whether the procedure fits the criteria for determining whether it is a significant surgical procedure (see Box 1 on page 8);
- the purpose of the procedure;
- the extent (if any) to which the procedure is established in New Zealand;
- good practice in relation to the use of the procedure for animal management purposes or in relation to the production of animal products or commercial products;

In light of the points above, consideration was given to:

- whether it was appropriate to consider the wider use of pain relief at this time;
- how and why a procedure is currently performed and whether it reflects good practice, for example, is it necessary or reasonable given changes in scientific knowledge; and
- the wider involvement of veterinarians.

Considering the factors above greater use of pain relief or veterinarian oversight has been proposed for some procedures. However, for some routine husbandry procedures current practice is considered appropriate given the balance between animal management and the pain experienced by the animal. Pain relief and veterinarian oversight is not proposed for docking of sheep, and castration of sheep and cattle, under 6 months when using approved methods.

Pain relief at the time of the procedure

There is a growing understanding worldwide of the nature of pain caused by routine procedures, and of the nature of pain in different animals of different ages.

During the development of the PHP code of welfare, NAWAC noted its intention to consider making pain relief, within defined periods, a requirement for a wider range of procedures in any review of the code²⁷.

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

²⁶ Report on the PHP code of welfare - <https://www.mpi.govt.nz/protection-and-response/animal-welfare/codes-of-welfare/>

²⁷ Report on the PHP code of welfare <https://www.mpi.govt.nz/protection-and-response/animal-welfare/codes-of-welfare/>

NAWAC held a workshop in 2006 to identify barriers to the wider use of pain relief. A number of criteria, including simplicity of use, were recognised as preventing wider use of pain relief at the time. Other barriers noted were:

- the availability, safety and efficacy of pain relieving drugs;
- practical and economic aspects determining the use of pain relieving drugs;
- attitudes and expectations towards minimising pain associated with painful husbandry procedures, and the equitable distribution of the costs and benefits of doing so; and
- the regulatory environment required to support the use of restricted drugs.

Since the issue of the PHP code of welfare and the outcomes of the 2006 workshop on pain relief, scientific knowledge and good practice have moved on. There is research showing that effective pain relief can be provided during many routine husbandry procedures, and the means to provide pain relief are available to farmers and animal owners (see Box 2 below).

Box 2: Pain relief

What is pain relief?

For the regulatory proposals in this document the proposed definition of pain relief is:

- *throughout the performance of the surgical procedure, an animal must be under the influence of a general or local anaesthetic that is sufficient to prevent the animal from feeling pain.*

While it is only proposed that pain at the time of the procedure be regulated, ongoing pain mitigation after the procedure has been conducted is also important. Consideration should be given to means to alleviate or minimise any ongoing discomfort, pain or distress caused to the animal as a result of the procedure.

In most cases, pain relief will be a restricted veterinary medicine (RVM) under the Agricultural Compounds and Veterinarian Medicines Act 1997 (ACVM Act), which requires veterinary authorisation.

RVMs can pose significant risks, particularly to the welfare of the animals treated and residues that could jeopardise trade. As such the use of RVMs requires oversight to ensure that the risks are kept at an acceptable level.

How can I access pain relief?

Under the ACVM Act, only veterinarians are able to authorise the purchase and use of RVMs²⁸.

The ACVM Act does allow veterinarians to authorise non-veterinarians to hold RVMs in anticipation of use, and administer these medicines without a veterinarian being present. The authorising veterinarian, in certain situations after assessing whether direct veterinary oversight is needed for the use of RVMs, can decide to issue Veterinary Operating Instructions (VOI) to allow this. VOIs are a set of instructions from the veterinarian to the non-veterinarian that authorise RVMs to be held in anticipation of their use, and provide detailed instructions on when and how the RVMs can be used.

²⁸ http://www.foodsafety.govt.nz/elibrary/industry/Veterinarians_Recognised-Sets_Expectations.pdf

VOIs address all matters requiring consideration by the veterinarian, and can include situations where the non-veterinarian has been trained by the veterinarian to perform a repeatable procedure or treatment involving RVMs. Use of RVMs under a VOI means veterinary discretion, oversight and guidance is not required for each individual animal on which the procedure or treatment is undertaken e.g. deer de velvetting, or disbudding calves, lambs or kids.

Before a veterinarian can authorise the use of the RVM, they must first assess the need for an RVM and determine which RVM will be most appropriate in each case. When considering authorisation for a non-veterinarian to hold RVMs in anticipation of use, the veterinarian must also:

- establish that the purchase, holding for use, and use of the RVM is appropriate and justified under the circumstances; and
- confirm that any person who will administer the RVM understands and is able to competently carry out the authorising veterinarian's instructions for use; and
- provide direction (or make arrangements) to address anticipated adverse events that are likely to arise from the use of the RVM.

Further information on VOIs is available in MPI's guidance material on VOIs²⁹.

Pain relief questions

Some of the regulatory proposals include a requirement for pain relief to be used at the time of the procedure. We are interested in the feasibility and practicality of accessing and administering pain relief in these situations. In particular:

- Are there any instances where the proposed definition of pain relief at the time of the procedure, outlined in Box 2 on pages 75-76, would be problematic?
- In the proposals some procedures can be performed by a non-veterinarian with pain relief - in most cases the pain relief will need to be authorised by a veterinarian (see Box 2).
 - Is it appropriate for a veterinarian to authorise a non-veterinarian to hold and use pain relief for all the procedures discussed in the following tables?
 - Are there any factors, other than the nature of the procedure, which could limit access to pain relief under the VOI framework discussed in Box 2?
- In addition, the regulatory proposals address pain relief at the time of the procedure. What, if anything, is used to mitigate post-operative pain? How frequently, and in what circumstances is post-operative pain mitigated?

Good practice

Whether a procedure is good practice needs to be determined, in each case, by what is appropriate to the species, environment and circumstances of the animal.

In looking at whether a procedure reflects good practice, consideration was given to whether it was necessary or reasonable, including, the benefits and harms of the procedure to the

²⁹ http://www.foodsafety.govt.nz/elibrary/industry/Veterinary_Operating-Guidelines_Issuing.pdf

animal and management and production systems related to the animal and whether there are any less harmful alternatives³⁰.

For example, the proposed regulations consider tail docking standards for five different species of animal—horses, dogs, cattle, pigs and sheep. The proposals for each species differ and reflect a balance between the benefits of undertaking the procedure, the harms caused by the procedure itself, and whether there are alternatives to achieving the benefits or reducing the harms. The specific detail for each proposal is outlined in the following tables.

Involvement of veterinarians

Under section 15 of the Act, a significant surgical procedure must only be undertaken by a veterinarian or veterinary student acting under the direct supervision of a veterinarian. Although exceptions will be able to be provided in the regulations where appropriate, the criteria for determining whether a procedure is a significant surgical procedure, which will be included within the Act, reduces the ambiguity about when a veterinarian needs to be involved.

Regulations are also able to be made that prescribe requirements in relation to the performance of specified surgical or painful procedures. This may include requiring that only veterinarians carry out some of the specified procedures.

12.4 THE PROPOSALS

51. All animals – Hot branding	
Proposal	<p>Prohibit hot branding</p> <p><i>Hot branding is used on some types of animals for identification. Hot-iron branding involves the use of a hot iron that burns the skin, creating a permanent mark on which no hair will grow.</i></p>
Current state	<p><i>Animal Welfare Act 1999</i> Section 29(f) of the Animal Welfare Act – a person commits an offence who brands any animal in such a manner that the animal suffers unreasonable or unnecessary pain or distress</p> <p><i>Horses and Donkeys code of welfare 2016</i> (the code notes that regulations are being developed and, as such, some of the minimum standards in the code may need to be reviewed following consultation as part of the regulation developing process).</p> <p>Minimum Standard 12 – Identification (b) Pain relief must be used with hot branding</p> <p>Recommended Best Practice (d) Hot branding should not be used</p>

³⁰ NAWAC took a similar approach when it developed the requirements set out in the PHP code of welfare 2005 (see the report on the PHP code of welfare <https://www.mpi.govt.nz/protection-and-response/animal-welfare/codes-of-welfare>).

	<p><i>Dairy Cattle code of welfare 2014</i></p> <p>Minimum Standard 13 – Identification Hot branding must not be used without pain relief</p> <p><i>Sheep and Beef code of welfare 2010</i></p> <p>Minimum Standard 13 – Identification (b) Hot branding must only be used with pain relief</p> <p><i>Llamas and alpacas code of welfare 2013</i></p> <p>Minimum Standard 14 – Animal Identification (b) pain relief must be used with any hot or freeze branding</p> <p><i>Goats code of welfare 2012</i></p> <p>Minimum Standard 16 – Identification (b) pain relief must be used with hot or freeze branding</p> <p>Recommended Best Practice Goats and camelids should not be branded</p> <p><i>Painful Husbandry Procedure code of welfare 2005</i> The code includes two minimum standards and associated recommended best practice that relate to ensuring procedures are only undertaken when they can be justified and that any harmful consequences are minimised (see Appendix 4 for the specific standards). The code states these general principles apply to all painful husbandry procedures and not just those specifically mentioned in the code.</p>
What is the problem?	<p>Hot branding is performed for aesthetic or management purposes and has no benefits to the animal. Hot branding has been shown to be more painful than other forms of identification.</p> <p>Alternative methods to hot branding are available for management purposes and are less painful^{31, 32}. Alternatives include freeze branding and microchipping. Cattle and deer are generally required to have identification tags under the National Animal Identification and Tracing (NAIT) regulations.</p>
How will regulation help?	<p>Provides clarity that hot branding is an unnecessary and unreasonable procedure given that alternatives are available.</p> <p>Placing the prohibition in regulations means that it is directly enforceable.</p>
Penalty	<p>A prosecutable regulation offence. Can include a criminal conviction. Maximum penalty fine of \$5,000 for an individual, \$25,000 for a body corporate.</p>
Additional questions and information	<p>Refer to the general questions set out in sections 9.1 and 12.1.</p>

³¹ Lindegaard C., Vaabengard D, Christophersen M.T., Ekstøm C.T and Fjeldbord J. (2009). Evaluation of pain and inflammation associated with hot iron branding and microchip transponder injection in horses. *American Journal of Veterinary Research* 70, 840-847.

³² Erber R., Wulf M., Becker-Birk M., Kaps S., Aurich J.E., M
young horses to hot iron branding and microchip implantation. *The Veterinary Journal* 191, 171-175.

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52. All animals – Embryo collection via exteriorised uterus (surgical embryo transfer)	
Proposal	<p>May be performed by any person. Pain relief must be used at the time of the procedure.</p> <p><i>This is a technique to assist breeding where the uterus is pulled out through an incision in the side of an animal so that the embryo can be washed and collected.</i></p>
Current state	<p>There are no specific minimum standards or Act requirements related to surgical embryo collection. NAWAC has previously indicated in the Sheep and Beef Cattle code of welfare 2010 that surgical embryo transfer should be listed as a significant surgical procedure as defined by section 6 of the Act.</p> <p><i>Painful Husbandry Procedure code of welfare 2005</i></p> <p>The code includes two minimum standards and associated recommended best practice that relate to ensuring procedures are only undertaken when they can be justified and that any harmful consequences are minimised (see Appendix 4 for the specific standards). The code states these general principles apply to all painful husbandry procedures and not just those specifically mentioned in the code.</p>
What is the problem?	<p>This procedure is currently performed by non-veterinarians. These non-veterinarians are a significant supplier of this procedure to the industry in terms of the total numbers of procedures undertaken industry-wide; especially in the sheep and goats.</p> <p>This procedure is likely to meet the criteria (see Box 1 on page 8) for determining whether it is a significant surgical procedure. The criteria will come into effect when the regulations come into force. 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.</p>
How will regulation help?	<p>Provides clear mandatory standards for the procedure.</p> <p>Allows non-veterinarians to undertake a procedure, within appropriate constraints (i.e. pain relief), that is likely to meet the criteria for a significant surgical procedure.</p> <p>Minimises the level of pain and distress caused by requiring pain relief at the time of the procedure.</p>
Penalty	<p>A prosecutable regulation offence. Can include a criminal conviction. Maximum penalty fine of \$5,000 for an individual, \$25,000 for a body corporate.</p>
Additional questions and information	<p>Refer to the general questions set out in sections 9.1 and 12.1.</p>

53. All animals – Laparoscopic artificial insemination (Laparoscopic A.I.)	
Proposal	<p>May be performed by any person. Pain relief must be used at the time of the procedure.</p> <p><i>This is a technique to assist breeding where semen is directly deposited into each of the uterine horns.</i></p>
Current state	<p><i>Horses and Donkeys code of welfare 2016</i> (the code notes that regulations are being developed and, as such, some of the minimum standards in the code may need to be reviewed following consultation as part of the regulation developing process).</p> <p>Minimum Standard 10 – Breeding and Foaling (b) Laparoscopic artificial insemination must only be carried out by veterinarians or trained and competent operators under veterinary supervision</p>
What is the problem?	<p>This procedure is currently performed by both veterinarians and non-veterinarians.</p> <p>This procedure is likely to meet the criteria (see Box 1 on page 8) for determining whether it is a significant surgical procedure. The criteria will come into effect when the regulations come into force. 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.</p>
How will regulation help?	<p>Provides clear mandatory standards for the procedure.</p> <p>Allows non-veterinarians to undertake a procedure, within appropriate constraints (i.e. pain relief), that is likely to meet the criteria for a significant surgical procedure.</p> <p>Minimises the level of pain and distress caused by requiring pain relief at the time of the procedure.</p>
Penalty	<p>A prosecutable regulation offence. Can include a criminal conviction.</p> <p>Maximum penalty fine of \$5,000 for an individual, \$25,000 for a body corporate.</p>
Additional questions and information	<p>Refer to the general questions set out in sections 9.1 and 12.1.</p>

54. All animals – Liver biopsy	
Proposal	<p>Must be performed by a veterinarian or a veterinary student under the direct supervision of a veterinarian. Pain relief must be used at the time of the procedure.</p> <p><i>This is a surgical procedure where a needle is inserted into the body of an animal to take a sample directly from the liver for nutritional and health assessments.</i></p>
Current state	<p>There are no specific minimum standards or Act requirements related to conducting liver biopsies. Comment on this procedure was sought through public consultation on the discussion document 'Animal Welfare Matters 2012'.</p> <p><i>Painful Husbandry Procedure code of welfare 2005</i> The code includes two minimum standards and associated recommended best practice that relate to ensuring procedures are only undertaken when</p>

	they can be justified and that any harmful consequences are minimised (see Appendix 4 for the specific standards). The code states these general principles apply to all painful husbandry procedures and not just those specifically mentioned in the code.
What is the problem?	This procedure is likely to meet the criteria (see Box 1 on page 8) for determining whether it is a significant surgical procedure. The criteria will come into effect when the regulations come into force. Submissions on this procedure as part of Animal Welfare Matters 2012 discussion document ³³ indicated that at a minimum it should be undertaken by a veterinarian, or veterinary student under supervision. Alternatives to liver biopsies are available in some situations.
How will regulation help?	Provides clear mandatory standards for the procedure. Minimises the level of pain and distress caused by requiring pain relief at the time of the procedure.
Penalty	A prosecutable regulation offence. Can include a criminal conviction. Maximum penalty fine of \$5,000 for an individual, \$25,000 for a body corporate.
Additional questions and information	Refer to the general questions set out in sections 9.1 and 12.1.

55. All animals – Dental work

Proposal	Any power tool used on an animal for dental work must be designed for the purpose of dentistry. <i>Power tools are used in some dentistry procedures, for example, grinding float teeth in horses.</i>
Current state	<i>Pigs code of welfare 2010</i> Minimum Standards 16 – Elective husbandry procedures (c) Clipping or grinding of needle teeth must be carried out before five days of age. Recommended Best Practice (e) Needle teeth should be ground down rather than clipped <i>Llamas and Alpacas code of welfare 2013</i> Minimum Standard 18 – Elective Husbandry Procedures (a) Elective husbandry procedures must only be carried out where they are justifiable to prevent undesirable consequences that could subsequently result in animal suffering. Recommended Best Practice (c) Removal or blunting of fighting teeth should be performed by a veterinarian using pain relief <i>Horses and Donkeys code of welfare 2016</i> Minimum Standard 14 – Health, injury and disease (d) Teeth must be maintained as required to permit normal grazing and chewing

³³ Animal welfare matters. Proposals for a New Zealand Animal Welfare Strategy and amendments to the Animal Welfare 1999. MPI Discussion Paper No: 2012/07.

	<p><i>Recommended Best Practice</i></p> <p>(d) Equine teeth should be examined and treated as necessary, but at least annually for dental conditions that may cause pain or interfere with normal feeding, digestion, or work.</p>
What is the problem?	<p>Power tools generate heat. This heat can damage the pulp of a tooth and may result in the death of a tooth. These damaged teeth may then become infected and result in abscesses which if untreated can lead to further complications³⁴.</p> <p>Power tools, specifically designed for dentistry, reduce the risk of damage by using water to cool the area while the power tool is being used.</p>
How will regulation help?	Clarifies the types of tools that can be used to minimise the welfare risks of this procedure.
Penalty	Proposed infringement offence with a fee of \$500. No criminal conviction.
Additional questions and information	<p>Refer to the general questions set out in section 9.1 and 12.1.</p> <p>What proportion of power tools used would have an in-built coolant associated with them?</p>

57. Companion animals – Desexing (including stray/feral cats, dogs, and other species)	
Proposal	Must be performed by a veterinarian or a veterinary student under the direct supervision of a veterinarian. Pain relief must be used at the time of the procedure.
Current state	<p><i>Dogs code of welfare 2010</i> The general information section states that desexing is a significant surgical procedure.</p> <p><i>Companion cats code of welfare 2007</i> In the introduction to the section on breeding (section 6) it states that cats should be desexed to prevent unplanned breeding.</p> <p>Recommended Best Practice (a) Cats, other than those kept by a registered breeder for breeding purposes, should be desexed at or before puberty.</p>
What is the problem?	This procedure is likely to meet the criteria (see Box 1 on page 8) for determining whether it is a significant surgical procedure. The criteria will come into effect when the regulations come into force.
How will regulation help?	Provides clear mandatory standards for the procedure. Minimises the level of pain and distress caused by requiring pain relief at the time of the procedure.
Penalty	A prosecutable regulation offence. Can include a criminal conviction. Maximum penalty fine of \$5,000 for an individual, \$25,000 for a body corporate.
Additional questions and information	Refer to the general questions set out in section 9.1 and 12.1. In addition, please also consider the following questions: Are there any situations where a non-veterinarian, for example a veterinary nurse, is desexing a companion animal e.g. desexing male kittens?

58. Dogs – Freeze branding	
Proposal	Must be performed by a veterinarian or a veterinary student under the direct supervision of a veterinarian. Pain relief must be used at the time of the procedure.

	<i>Freeze-branding is a method of identification where a coolant is applied to the branding iron, rather than heat. This works at the site to destroy the pigment-producing hair cells, causing the hair to grow white where the brand has been applied.</i>
Current state	<i>Animal Welfare Act 1999</i> Section 29(f) of the Animal Welfare Act – a person commits an offence who brands any animal in such a manner that the animal suffers unreasonable or unnecessary pain or distress.
What is the problem?	Freeze-branding causes pain, although to a lesser degree than hot-branding ³⁵ . It is considered that freeze branding may be especially painful for hunting dogs due to their muscular and lean body condition. However, freeze branding or other forms of permanent identification are required for dogs to enter some hunting blocks ³⁶ . Identification is used, among other things, to manage the risk of dogs to native species by identifying those dogs that have been certified as 'Bird Safe'.
How will regulation help?	Provides clear mandatory standards for a procedure that is likely to meet the criteria for a significant surgical procedure (See Box 1 on page 8). These criteria that will be included within the Act once the regulations come into force. Minimises the level of pain and distress caused by requiring pain relief at the time of the procedure.
Penalty	A prosecutable regulation offence. Can include a criminal conviction. Maximum penalty fine of \$5,000 for an individual, \$25,000 for a body corporate.
Additional questions and information	Refer to the general questions set out in sections 9.1 and 12.1.

59. Dogs – Dog debarking (and devoicing of other species)

Proposal	<p>Must be performed by a veterinarian or a veterinary student under the direct supervision of a veterinarian</p> <p>Must only be performed in the best interests of the animal</p> <p>Pain relief must be used at the time of the procedure.</p> <p><i>The purpose of debarking is to remove the sound made when a dog barks.</i></p> <p><i>For the purposes of this regulatory proposal it is proposed that the term 'best interests of the animal' will mean that this procedure should only be contemplated after other suitable means of treating inappropriate barking have been attempted and have failed and euthanasia is the only alternative.</i></p> <p><i>Restricting a procedure to 'in the best interest of the animals' does not preclude a vet from undertaking the procedure for therapeutic reasons as a result of disease or injury.</i></p>
Current state	<i>Animal Welfare Act 1999</i> Debarking is currently a restricted surgical procedure under section 2(1) of the Act and may only be undertaken by a veterinarian or veterinary student under supervision who must first satisfy themselves that the procedure is in

³⁵ Schwartzkopf-Genswein K.S., Stookey J.M., Crowe T.G. and Genswein B.M. (1998). Comparison of image analysis, exertion force, and behavior measurements for use in the assessment of beef cattle responses to hot-iron and freeze branding. *Journal of Animal Science* 76, 972-979.

³⁶ <http://www.doc.govt.nz/parks-and-recreation/things-to-do/hunting/permits-and-licences/dog-permit/>

	<p>the interests of the animal of the Act and that appropriate pain relief is used (section 17).</p> <p><i>Dogs code of welfare 2010</i> Minimum Standard 15 Dogs must only be taken to a veterinarian for debarking after other suitable means of treating inappropriate barking have been attempted and have failed.</p>
What is the problem?	<p>Debarking a dog restricts its ability to express natural behaviours. There will be no specific restrictions on debarking a dog once the classification system for significant surgical procedures, currently in the Act, is revoked when the regulations come into force.</p> <p>This could cause ambiguity and be interpreted to mean that this procedure no longer needs to be limited to situations where it is in the interests of the animal.</p>
How will regulation help?	<p>Ensures that specific restriction on the debarking of dogs remain once the regulations come into force.</p> <p>Provides clear mandatory standards for a procedure that is likely to meet the criteria for a significant surgical procedure (See Box 1 on page 8). These criteria that will be included within the Act once the regulations come into force. Minimises the level of pain and distress caused by requiring pain relief at the time of the procedure.</p>
Penalty	<p>A prosecutable regulation offence. Can include a criminal conviction. Maximum penalty fine of \$5,000 for an individual, \$25,000 for a body corporate.</p>
Additional questions and information	<p>Refer to the general questions set out in sections 9.1 and 12.1.</p> <p>In addition, please also consider the following questions:</p> <p>For the purposes of this regulatory proposal it is proposed that the term 'best interests of the animal' will mean that this procedure should only be contemplated after other suitable means of treating inappropriate barking have been attempted and have failed and euthanasia is the only alternative.</p> <p>Is it clear from the above definition when the procedure would be in the best interests of the animal? If not, why not?</p>

60. Dogs – Cropping the ears

Proposal	<p>Prohibit the cropping of a dogs ears</p> <p><i>In relation to this proposal, cropping means performing, on the pinnae of the ears of the dog, a surgical procedure that is designed to make the ears of the dog stand upright.</i></p>
Current state	<p><i>Animal Welfare Act 1999</i> It is currently an offence to crop, or causes to be cropped, the ears of a dog ear under section 21(2)(a) of the Act.</p>
What is the problem?	<p>This is an unnecessary procedure that provides no benefit to the animal or animal management practices.</p> <p>The restrictions on cropping a dog's ear will be revoked once the regulations come into force.</p> <p>This could cause ambiguity and be interpreted to mean cropping a dog's ear is no longer a concern from an animal welfare perspective.</p>

How will regulation help?	Provides clarity that the cropping of a dog's ear, for the purpose of making it stand upright, will continue to be an offence. Placing the prohibition in regulation means it will be directly enforceable.
Penalty	A prosecutable regulation offence. Can include a criminal conviction. Maximum penalty fine of \$5,000 for an individual, \$25,000 for a body corporate.
Additional questions and information	Refer to the general questions set out in sections 9.1 and 12.1.

61. Dogs – Dew claws	
Proposal	<p>Front limb dew claw removal and articulated (jointed) hind limb dew claw removal:</p> <ul style="list-style-type: none"> - Must be performed by a veterinarian or a veterinary student under the direct supervision of a veterinarian; - Must only be performed for therapeutic reasons; and - Pain relief must be used at the time of the procedure. <p>Hind limb dew claws: non-articulated (greater than or equal to four days of age):</p> <ul style="list-style-type: none"> - Must be performed by a veterinarian or veterinary student under supervision; and - Pain relief must be used at the time of the procedure. <p><i>For the purposes of this regulatory proposal 'performed for therapeutic reasons' will mean to undertake a procedure to respond to disease or injury.</i></p> <p><i>Note: there is no proposal to regulate the removal of non-articulated hind limb dew claws in puppies under four days old.</i></p>
Current state	<p><i>Dogs code of welfare 2010</i></p> <p>Minimum Standard 16 – Dew Claws</p> <p>(a) Where dew claws are to be removed from puppies by a person other than a veterinarian, it must be done before the eyes have started to open or before four days old, whichever comes first.</p> <p>(b) Where dew claws are removed by a person other than a veterinarian, that person must possess the knowledge, training and competence, in relation to that procedure, that is necessary to maintain the health and welfare of the pup.</p> <p>(c) Dew claws on dogs after their eyes have begun to open or after four days of age, must only be removed by a veterinarian.</p> <p>(d) If dew claw removal is not performed, care must be taken to manage any consequential risks to animal health and welfare.</p> <p>Recommended Best Practice</p> <p>(a) Jointed dew claws should not be routinely removed.</p> <p>(b) Dew claw removal, when conducted, should be carried out by a veterinarian.</p>
What is the problem?	Articulated dew claws are firmly attached to the leg. Most front limb dew claws are articulated. Articulated claws may also be found on a dog's hind limbs.

	<p>The removal of articulated dew often requires the bone to be cut through. This can result in complications including pain, haemorrhage, infection and scarring if not performed correctly.</p> <p>In addition, articulated dew claws may function to prevent foot injury by providing support when running³⁷ and to keep objects steady while a dog is chewing them.</p>
How will regulation help?	<p>Provides clear mandatory standards for the procedure.</p> <p>Minimises the level of pain and distress caused by:</p> <ul style="list-style-type: none"> • requiring pain relief at the time of the procedure; and • in the case of front limb dew claws and articulated hind limb dew claws, limiting the procedure to situations where it is being undertaken to respond to injury or disease.
Penalty	<p>A prosecutable regulation offence. Can include a criminal conviction. Maximum penalty fine of \$5,000 for an individual, \$25,000 for a body corporate.</p>
Additional questions and information	<p>Refer to the general questions set out in sections 9.1 and 12.1.</p> <p>In addition, please also consider the following questions:</p> <p>For the purposes of this regulatory proposal it is proposed that the term 'performed for therapeutic reasons' will mean to undertake a procedure to respond to disease or injury.</p> <p>Is it clear from the above definition when the procedure would be performed for therapeutic reasons? If not, why not?</p> <p>Should this procedure be limited to therapeutic purposes only, if not, why?</p>

62. Dogs – Tail docking

Proposal	<p>Must be performed by a veterinarian or a veterinary student under the direct supervision of a veterinarian</p> <p>Must only be performed for therapeutic reasons</p> <p>Pain relief must be used at the time of the procedure.</p> <p><i>Docking in the context of this proposal means the shortening or removal of the tail by any means. This relates to docking that may occur either directly after application of the method (e.g. surgery), or at any stage afterwards (e.g. banding).</i></p> <p><i>For the purposes of this regulatory proposal it is proposed that the term 'performed for therapeutic reasons' will mean to undertake a procedure to respond to disease or injury.</i></p>
Current state	<p><i>Dogs code of welfare 2010</i></p> <p>Minimum Standard 17 – Tail docking</p> <p>(a) Tails may only be shortened or removed by using a tail band—</p> <p>(i) in puppies that are less than four days old in which the eyes have not started to open; and</p> <p>(ii) by a person who possesses the appropriate knowledge, training and competency necessary to do so effectively, and who is acting under a documented quality assurance scheme that assures compliance with this minimum standard; and</p>

³⁷ Zink M. Christine (2013). What is a canine athlete?, in "Canine Sports Medicine and Rehabilitation", eds. M. C. Zink and J. B. van Dyke, pp1-18.

	<p>(iii) the remaining length of the tail must be sufficient to avoid compromising health and welfare when the dog is mature.</p> <p>(b) Tails that need to be shortened or removed to manage existing injury or disease, must only be shortened or removed by a veterinarian using appropriate pain relief.</p> <p>Recommended Best Practice</p> <p>(a) Tail docking should not be performed at all unless it is required for treatment of an existing injury or disease.</p>
<p>What is the problem?</p>	<p>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 such as those provided by tail motion³⁸.</p> <p>The primary reasons that dogs' tails are docked are aesthetic (e.g. breed standards), convenience, to allow for physical adaptation and prevent injury. Much of the debate supporting tail docking is centred on whether the animal feels pain at the time of the procedure. The science on this issue is complex and both sides can cite research that supports their respective positions³⁹.</p> <p>Given that dogs' tails have a function, factors in addition to whether or not docking causes pain need to be considered, including whether the procedure is necessary or reasonable.</p> <p>Injury prevention is the other main reason cited for supporting tail docking in dogs. Overall, recent research suggests that tail docking to prevent injury is unnecessary. Far more dogs generally need to have their tails docked than would suffer an injury if they were not docked. In addition, tail injuries represent only a small percentage of why dogs are presented to a veterinary clinic—most research studies report that the prevalence of tail injuries represents less than 1 percent of all veterinary clinic visits. Studies do differ as to whether working dogs have a higher incidence of tail injury. For example, while a Scottish study found that certain working dog breeds were at a higher risk of injury, a New Zealand based study found that causes of injury varied but that farming or work related injuries were not overly represented as a cause of tail injury^{40, 41, 42, 43}.</p> <p>Internationally tail docking is either banned or restricted in over 30 countries worldwide. Australia, Scotland, parts of Canada and Switzerland are among the jurisdictions that have banned the practice outright. Countries such as England, Germany and Wales have restricted the practice to certain working dogs. In these countries tail docking can only be performed by a veterinarian.</p>
<p>How will regulation help?</p>	<p>Provides clear mandatory standards for the procedure.</p> <p>Minimises the level of pain and distress caused by requiring pain relief at the time of the procedure and limiting the procedure to situations where it is being undertaken to respond to injury or disease.</p>

³⁸ Leaver, SDA, Reimchen TE. (2008). Behavioural responses of Canis Familiaris to different tail lengths of a remotely-controlled life-size dog replica. Behaviour 145:377-390.

³⁹ See the report supporting the development of the Dogs code of welfare 2010 - <https://www.mpi.govt.nz/protection-and-response/animal-welfare/codes-of-welfare/>

⁴⁰ Cameron, N., Lederer, R., Bennett, D. and Parkins, T. (2014). The prevalence of tail injuries in working and non-working breed dogs visiting veterinary practices in Scotland. <http://veterinaryrecord.bmj.com/content/early/2014/03/27/vr.102042>

⁴¹ Wells, A. (2013). Canine tail injuries in New Zealand: causes, treatments and risk factors and the prophylactic justification for canine tail docking. <http://mro.massey.ac.nz/handle/10179/4782>

⁴² Diesel, G. Pfeiffers, D., Crispin, S. and Brodbelt, D. (2010). Risk factors for tail injuries in dogs in Great Britain <http://www.cdb.org/News/Veterinary%20Record%20tail%20damage%20report%202010.pdf>

⁴³ Lederer, R., Bennett, D., and Parkins, T. (2014). Survey of tail injuries sustained by working gundogs and terriers in Scotland <http://veterinaryrecord.bmj.com/content/early/2014/03/27/vr.102041>

Penalty	A prosecutable regulation offence. Can include a criminal conviction. Maximum penalty fine of \$5,000 for an individual, \$25,000 for a body corporate.
Additional questions and information	<p>Refer to the general questions set out in sections 9.1 and 12.1.</p> <p>In addition, please also consider the following questions:</p> <p>For the purposes of this regulatory proposal it is proposed that the term 'performed for therapeutic reasons' will mean to undertake a procedure to respond to disease or injury.</p> <p>Is it clear from the above definition when the procedure would be performed for therapeutic reasons? If not, why not?</p> <p>Should this procedure be limited to therapeutic purposes only, if not, why?</p>

Appendix 1: Glossary

Blistering and firing a horse – a procedure which involves the application of chemical cautery to the legs of the horse and which creates tissue damage to, or inflammatory reaction in, the legs of the horse

Cancer eye – is a skin cancer occurring on the eye or eyelids. It is the most common form of cancer in cattle. It also occurs in sheep but is less common.

Caponising – castration of a rooster

Castration – the removal of an animals testicles

Companion Animal – an animal that is primarily kept for companionship and enjoyment rather than commercial benefit

Cropping of a dogs ear – performing, on the pinnae of the ears of a dog, a surgical procedure that is designed to make the ears of the dog stand upright

Dehorning – the removal of whole horns (including any regrowth after disbudding) from an animal by amputation

Desliming – The removal of the protective layer of slime from an eel through a lengthy abrasive process using either sand or salt

Develvetting – Removing the velvet antler from deer

Dew claw - articulated – a digit on the foot of a dog that is attached firmly to the leg. Front limb dew claws are generally articulated, although articulated dew claws can also be found on the hind legs.

Dew claw – non-articulated – a digit on the foot of a dog that does not have a joint where it is attached to the leg and has little bone or muscle structure. Non-articulated dew claws are usually found on the hind legs.

Disbudding – the destruction, by any method, of the free-floating immature horn tissue (horn buds growing from the skin) from which the horns of an animal subsequently develop

Docking – the shortening or removal of the tail by any means

Dog debarking – a surgical procedure to remove the sound a dog makes when it barks

Dry sow stalls – an enclosure in which gilts and sows are kept individually for the purpose of mating

Dubbing – the procedure of removing the comb, wattles and sometimes earlobes of poultry

Embryo collection via exteriorised uterus – This is a technique to assist breeding where the uterus is pulled out through an incision in the side of an animal so that the embryo can be washed and collected.

Farrowing crate – an enclosure in which pregnant sows are kept individually during and after farrowing. Most crates prevent sows from turning around

Freeze branding – a method of identification where a coolant is applied to the branding iron, rather than heat. This works at the site to destroy the pigment-producing hair cells, causing the hair to grow white where the brand has been applied

Goad – an object, including an electric prodder, used to stimulate or prod an animal to make it move

Grower pig – a weaned pig being grown to finishing weight

Hot branding – hot branding is used in some types of animals for identification. Hot-iron branding involves the use of a hot iron that burns the skin, creating a permanent mark on which no hair will grow.

Husbandry procedure – care and management practices

Induced moulting – The deliberate practice of making hens in a group cease egg production simultaneously and then lose and replace feathers and restore bone integrity to bring them into another laying cycle.

Laparoscopic artificial insemination – a technique to assist breeding where semen is directly deposited into each of the uterine horns

Liver biopsy – A surgical procedure where a needle is inserted into the body of an animal to take a sample directly from the liver for nutritional and health assessments.

Mastitis – persistent, inflammatory reaction the mammary gland and udder tissue

MPI – Ministry for Primary Industries

NAWAC – National Animal Welfare Advisory Committee

Nicking a horse – the cutting of the skin or ligaments of the tail of the horse, being a cutting that is designed to make the horse carry its tail in a raised position

Pinch and prong collar – A collar with prongs positioned against the neck, or any other protrusion intended to cause pain or discomfort when tightened

Pinioning – surgically removing a bird’s pinion joint to prevent the growth of flight feathers.

Rectal examination – rectal examination is a diagnostic tool and may be used as a part of a clinical examination for conditions such as colic. For this procedure an operator inserts their hand and arm into the rectum as far as necessary

Rectal pregnancy diagnosis – this procedure involves an ultrasound probe inserted into the rectum of the animal, and is routinely used for checking the stage of cycle of a mare about to be bred and for subsequent pregnancy diagnosis

RNZSPCA – Royal New Zealand Society for the Prevention of Cruelty to Animals

Supernumerary teat – a small teat on a cow’s udder, in addition to the four main teats, which can sometimes have teat canals, gland tissue and produce milk

Tail-jack – a technique used to restrain cattle or move cattle forward. The tail is lifted vertically and may be bent forwards over the animal’s back. The tail is usually held at its base.

Teat occlusion – is defined as any physical process which leads to a permanent blocking of the teat canal. This includes the application of any rubber ring or other device which might lead to physical occlusion of the canal

Transitional regulation – allows a particular practice, which does not fully meet the obligations of the Act, to continue for a limited time to enable a transition from current practice to a new practice that is compliant with the Act

Young calf – calves up to two weeks old that have been separated from their mothers

Appendix 2: Codes of Welfare

Please refer to the following list for animal specific codes of welfare:

Animal Welfare (Circuses) Code of Welfare 2005

Animal Welfare (Commercial Slaughter) Code of Welfare 2010

Animal Welfare (Companion Cats) Code of Welfare 2007

Animal Welfare (Deer) Code of Welfare 2007

Animal Welfare (Dogs) Code of Welfare 2010

Animal Welfare (Goats) Code of Welfare 2012

Animal Welfare (Layer Hens) Code of Welfare 2012

Animal Welfare (Llamas and Alpacas) Code of Welfare 2013

Animal Welfare (Meat Chickens) Code of Welfare 2012

Animal Welfare (Painful Husbandry Procedures) Code of Welfare 2005

Animal Welfare (Pigs) Code of Welfare 2010

Animal Welfare (Sheep & Beef Cattle) Code of Welfare 2010

Animal Welfare (Transport within New Zealand) Code of Welfare 2011

Animal Welfare (Zoos) Code of Welfare 2005

Code of Recommendations and Minimum Standards for the Welfare of Ostrich and Emu 1997

Code of Welfare: Dairy Cattle 2014

Code of Welfare: Horses and Donkeys 2016

Code of Welfare: Rodeos 2014

Appendix 3: Changes to the Act to be brought into force

Provisions in the Animal Welfare Act 1999	Changes made by the Animal Welfare Amendment (No 2) Act 2015
Section 2 amended (Interpretation)	The definition of “controlled surgical procedure”, “restricted surgical procedure” and “significant surgical procedure” are to be repealed. The definition of “infringement offence” is replaced.
Sections 6 and 7 repealed	Sections 6 and 7 of the Act are to be repealed, which relate to the meaning of the term significant surgical procedure.
Section 9 amended (Purpose)	Section 9 of the Act, which relates to the purpose of Part 1 of the Act (care of animals), is amended to align the statement of purpose with changes to the surgical procedures provisions.
Section 15 amended (Restriction on performance of surgical procedures)	Section 15(1) of the Act is amended to replace a cross reference (the new reference is to section 183B). The amendment allows the regulations to create exceptions to the requirements of section 15(1) that relate to significant surgical procedures.
Section 16 replaced (Criteria to determine whether procedure is significant surgical procedure)	Section 16 will be replaced by section 13 of the Amendment Act which provides a new criteria to determine whether a procedure is a significant surgical procedure.
Sections 17 to 20 repealed	Section 17 to 20 are to be repealed, which relate to the performance of restricted surgical procedures, performance of controlled surgical procedures, veterinary approval, and the revocation and surrender of certificate of veterinary approval.
Section 21 replaced (Surgical procedure offences)	This section is to be amended to remove reference to offences committed by contravening sections being repealed by section 15 of the Amendment Act and to remove from the Act two specific procedures that will instead be covered in regulations (i.e. cropping ears of a dog and blistering, firing or nicking on a horse).
Section 24 amended (Defence and rebuttable evidence)	Section 24 is to be amended to alter a cross reference in section 24 to align it with the new section 21.
Section 25 amended (Penalties)	Section 25 is to be amended to alter a cross reference in section 25 to align it with the new section 21.
Section 29 amended (Further offences)	Two offences in section 29 of the Act are to be repealed. The offences concerned are: <ul style="list-style-type: none"> • piercing the tongue or tongue phrenum of an animal with a pig ring or similar thing or with any wire; and • branding any animal in such a manner that the animal suffers unreasonable or unnecessary pain or distress. The intention is that these practices will be prohibited by regulations.
Section 57 amended (Functions)	Section 57 is amended to remove the reference to sections 6 to 16 of the Act and replaced with the power to make regulations under section 183B. These changes update NAWAC’s functions to include the making of

Provisions in the Animal Welfare Act 1999	Changes made by the Animal Welfare Amendment (No 2) Act 2015
	recommendations to the Minister relating to the making of regulations under section 183B.
Section 156I amended (Penalties for non-compliance with compliance notice)	Section 156I is amended to make the offence created by section 156I an infringement offence.
Section 184 amended (Consultation)	Section 184, which relates to the Minister's consultation requirements when making regulations and Orders in Council, is amended to bring it into line with the Amendment Act.

Appendix 4: Minimum standards within the Painful Husbandry Procedures code of welfare 2005 that apply to all painful husbandry procedures

Painful Husbandry Procedures code of welfare 2005

Minimum Standard 1 – Justification for Painful Procedures

Painful husbandry procedures must only be performed where there are no other practical, economically viable, effective, less noxious alternatives to the procedure; and they:

- (i) result in an overall enhancement of the animals' welfare through reduced susceptibility to ill-health, injury or compromised welfare; or
- (ii) facilitate advantageous farm management systems; or
- (ii) result in an enhanced animal product; or
- (iv) result in reduced safety risks to humans.

Recommended Best Practice

- Careful consideration should be given to the need to perform routine, painful husbandry procedures on any animal. The benefits to the animal, to farm management, to product harvest or attributes, or to human safety from treating the animal in that way should outweigh any discomfort, pain or distress caused to the animal.
- Operators should seek-up-to-date advice from competent sources, including veterinarians and industry advisory bodies, on the need to undertake husbandry procedures resulting in pain in animals. This should include
 - o whether it is necessary to perform the procedure;
 - o whether the procedure causes pain;
 - o if it does cause pain, can the issue it addresses be resolved or managed in other less invasive ways;
 - o if it cannot be managed in other ways, what is the best method, the optimal age for the animal for undertaking the procedure; and
 - o can any discomfort, pain or distress associated with the procedure be minimised or relieved, including through the use of pain relief or using a veterinarian to undertake the procedure?
- Economically viable and practicable farming systems and practices not requiring the routine use of painful husbandry procedures should be adopted in preference.

Painful Husbandry Procedures code of welfare 2005

Minimum Standard 2 – Minimising Harmful Consequences

- (a) Painful husbandry procedures must not be performed on new-born animals less than 12 hours old, where handling, pain and post-operative complications are likely to compromise survival through impairing maternal bonding and/or colostrum intake.
- (b) If painful husbandry procedures that have animal health and welfare benefits are not used, care must be taken to manage any consequential risks to animal health and welfare of not using them.

Recommended Best Practice

- Consideration should be given to means of minimising any discomfort, pain or distress caused to the animal as a result of the husbandry procedure.
- If painful husbandry procedures are used, the methods and techniques likely to cause the least discomfort, pain or distress within particular practical and economic constraints should be used.
- Pain relief should be used if it is economically and practically viable to do so.
- Animals should be checked for signs of post-operative complications, including significant pain and distress, and appropriate remedial action taken as required.

