

Impact Summary: Infringement offences regulations under the Animal Products Act 1999

Section 1: General information

Purpose
<p>The Ministry for Primary Industries (the Ministry) is solely responsible for the analysis and advice set out in this regulatory impact assessment, except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing final decisions to be taken by Cabinet on proposed regulations under the Animal Products Act 1999.</p> <p>This regulatory impact assessment presents a summary of the analysis of a proposal to create infringement offences regulations to support compliance with Animal Status Declaration (ASD) requirements. It is one of several proposals in a small but important package of urgent legislative and regulatory amendments being progressed to support the ongoing <i>Mycoplasma bovis</i> response and eradication programme.</p> <p>Specifically, the proposal involves the creation of specific infringement offences and accompanying fees for failing to meet requirements in the Animal Products Act to: use the ASD, complete the ASD correctly, and keep the necessary records.</p> <p>Providing a power to issue infringement notices will close a gap in the current suite of compliance and enforcement tools, and target non-compliance that has become evident in the <i>Mycoplasma bovis</i> response and eradication programme.</p>

Key Limitations or Constraints on Analysis
<p>The Minister for Food Safety has proposed that regulations creating the proposed infringement offences be made urgently, and the proposal will not be subject to the usual full public consultation processes. Section 163(5) of the Animal Products Act provides for urgent regulations to be made when necessary or desirable in the public interest, with no requirement for consultation.</p> <p>However, although no formal consultation has been conducted, through the media and informal engagements in the course of the <i>Mycoplasma bovis</i> response stakeholders have asked the Ministry and the Government to take stronger action against non-compliance with ASD requirements and for stronger enforcement of obligations.</p> <p>The Minister for Food Safety has also signalled publicly at a general level that adding a new infringement offence for failing to use the ASD form correctly is under consideration.</p> <p>Failure to comply with ASD requirements is already an offence under the Animal Products Act, as is the power to make regulations providing for infringement notices/fees for specified types of non-compliance. The Ministry considers that the lack of formal public consultation on the proposed regulations does not represent a material constraint on its analysis.</p> <p>That many farmers are not using the ASD properly has become obvious in the course of the <i>Mycoplasma bovis</i> response and eradication programme. Quantitative evidence of the full extent of non-compliance with ASD requirements is relatively limited. However, the Ministry considers the problem is sufficiently large, and the risks posed by the non-compliance significant enough, to warrant the proposed infringement offences. The ability to issue infringement notices is important to the success of the <i>Mycoplasma bovis</i> programme.</p>

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25 July 2018

Section 2: Problem definition and objectives

2.1 What is the policy problem or opportunity?

What is the ASD?

An Animal Status Declaration (ASD) under the Animal Products Act is required when animals are moved between properties or sent to slaughter. As well as being a vital part of New Zealand's food safety assurance system for animal products, ASDs include information about the health of a herd and other information useful for the biosecurity responses.

The requirements relating to ASDs are set out in an Animal Products Notice issued under the Animal Products Act.

The ASD transfers key information from one person in charge of an animal, or group of animals, to the next person in charge of the animals, and ultimately to the processor. It includes information such as the disease status of herds (eg Tb, *Mycoplasma bovis*), the withholding period for animal treatments used (such as veterinary medicines), and whether the animals have been subject to movement or other controls put in place for biosecurity reasons.

The ASD applies to cattle, deer, sheep and lambs, goats, ostriches, emus, horses, buffalos, alpacas, llamas, and pigs.

The ASD is completed by the person in charge of the animals. It must be sent with animals that are moved from one property or saleyard to another place where a different person is in charge. For cattle and deer the ASD must physically accompany the animals.

Problem

The current ASD compliance and enforcement regime does not yet include the ability to issue infringement notices.

In the course of the ongoing *Mycoplasma bovis* response and eradication programme, it has come to the Ministry's attention that many farmers are not using the ASD properly. This has been and is hampering the *Mycoplasma bovis* response and eradication programme. Failing to use the ASD, complete it correctly, or keep the necessary records required by the Animal Products Act directly impacts the tracing of animals, which is critical for both food safety and the phased eradication programme.

The Ministry uses the "VADE" model ("Voluntary, Assisted, Directed, Enforced") to manage compliance and offending across all the regulatory regimes it administers. The model makes use of an escalating suite of interventions and tools to encourage and enforce compliance (eg. guidance, assistance, warnings, notices of direction, infringement notices, prosecutions). However, for ASD requirements there is a gap with respect to the kind of non-compliant behaviour that is most appropriately tackled with an infringement notice. This is because regulations able to be made under existing provisions in the Animal Products Act have not yet been made to enable the issuing of infringement notices.

Given the large monetary investment by the Government in the *Mycoplasma Bovis* eradication programme, it is important that the full suite of tools be available to encourage and require compliance. This will help ensure the eradication programme has the greatest possible chance of success.

2.2 Who is affected and how?

The proposal seeks to change the behaviour of the farmers and other persons in charge of animals who are not complying with ASD requirements. This will help ensure the *Mycoplasma bovis* response has the greatest possible chance of success, as well as provide ongoing support for New Zealand's food safety assurance system.

2.3 Are there any constraints on the scope for decision making?

The proposal is connected to other initiatives supporting the *Mycoplasma bovis* response:

- Proposed urgent technical amendments to the National Animal Identification and Tracing Act (NAIT) Act 2012 to address gaps that are hampering the enforcement of that Act (specifically, correcting small drafting inconsistencies so that the search and inspection powers in the NAIT Act align with the relevant Search and Surveillance Act provisions to ensure that non-compliance can be properly investigated);
- A proposed amendment to the Biosecurity (Notifiable Organisms) Order 2016 to make *Mycoplasma bovis* a notifiable organism under the Biosecurity Act 1993. This will require people who suspect the presence of the disease in a new location to report it to MPI.
- Other improvements to the NAIT Scheme. The recent review of the NAIT Scheme made a number of recommendations to improve its performance. Most of these recommendations are being implemented at the operational level by OSPRI Limited. Some will require changes to the NAIT Act and regulations.

Other proposals requiring legislative or regulatory changes emerging from the NAIT review will require consultation before they can be progressed by the Government. It is expected that the Government will make decisions to consult on proposals in October 2018.

- Other, non-legislative initiatives being implemented by the Ministry, focused on giving farmers more information about *Mycoplasma bovis* to help them better manage risks to their herds.

Section 3: Options identification

3.1 What options have been considered?

We have considered the following options:

1. The status quo - relying on the existing incomplete set of compliance and enforcement tools (namely, education and assistance to encourage compliance, warnings, and full prosecution).
2. Making use of existing powers in the Animal Products Act to make regulations providing for infringement offences - to encourage compliance and provide suitable sanction for specified types of non-compliance with ASD requirements.

We assessed the options against the following criteria:

1. **Certainty:** Certainty for businesses and the Ministry (the regulator) is provided when responses to non-compliance or offending are consistent, graduated, proportionate, and well-understood.
2. **Effectiveness:** Having an appropriate range of tools to address various levels of non-compliance and offending is critical to the effectiveness of a compliance regime achieving the desired deterrence, behavioural change and compliance.
3. **Administrative efficiency:** Administrative efficiency is improved when offending can be responded to in an efficient manner, including the time that may be required to identify and investigate offending. Where matters are more appropriately dealt with by infringement notice, both businesses and the regulator may save the cost and time of prosecutions.

Status quo – The Ministry does not consider the status quo to be a viable option. Without this change, the options available to sanction non-compliance remain limited to issuing a warning or proceeding to prosecution. It is appropriate that, if necessary, a fine be able to be issued for non-compliance with these particular ASD requirements. The need for a shift from the status quo was identified some time ago and became even more apparent during the Whey Protein Concentrate (WPC) Inquiry.

The Ministry considers the gap created by the lack of infringement notice powers in the current compliance regime does not provide certainty for businesses and the Ministry of graduated and proportionate sanctions for non-compliance. The status quo also does not meet the effectiveness criteria as the current arrangements omit a well-established, appropriate tool for dealing with non-compliance.

Creation of infringement offences under the Animal Products Act

The WPC Inquiry recommended that the compliance and enforcement tools in the Animal Products Act be aligned with those in the Food Act 2014 to ensure there is a broad suite of tools available to deal with non-compliance.

The Food Safety Law Reform Act 2018 passed in March 2018 amended the Animal Products Act to provide for infringement offences to be made via regulations under the Act.

The Animal Products Act already contains an offence for not complying with an Animal Products Notice issued under the Act. The Act also allows the making of regulations specifying infringement offences.

3.2 Which of these options is the proposed approach?

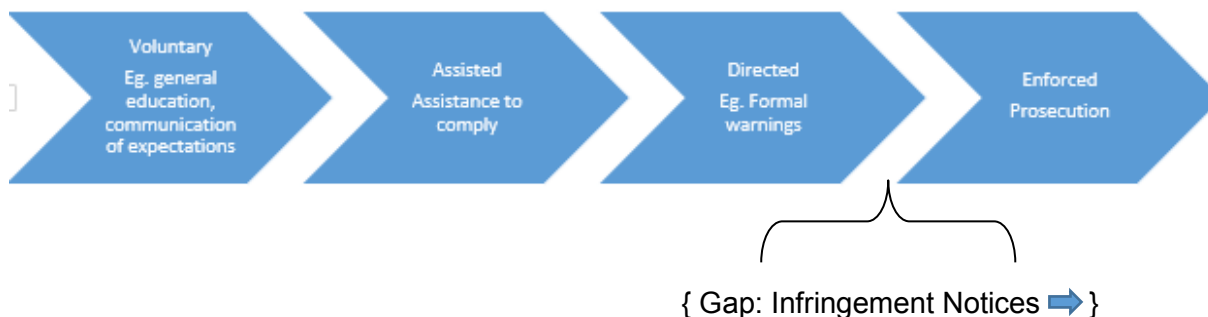
The proposed approach is the creation of infringement offences to provide a further enforcement tool to support better compliance with ASD requirements. Although the Animal Products Act is clear that not complying with ASD requirements is an offence, the Ministry considers certain non-compliant behaviour should be able to be dealt with by infringement notice. This would complement existing compliance and enforcement tools (ie. education, communication of expectations and obligations, training, further assistance to comply, warnings, prosecutions). It would in effect provide another tool in the compliance and enforcement ‘toolbox’.

As noted above, the Ministry uses the VADE model to manage compliance and offending across all the regulatory regimes it administers, supported by an escalating suite of interventions and tools to encourage and require compliance. The VADE model is summarised below.

Voluntary – ‘willing and able to comply’	Assisted – ‘try to comply but don’t always succeed’	Directed – ‘don’t want to comply’	Enforced – ‘deliberate decisions not to comply’
	Assist people to comply by reinforcing expectations and obligations.		Enforced compliance is where the full extent of the law is applied.
Influence behaviours by making it easy for voluntary compliance to happen by ensuring people know what they need to do and how.	Interventions are shaped by information gathered through monitoring, inspection and business intelligence activities.	Directed compliance is a range of tools that can be applied to direct a desired behaviour change, ranging from Notices of Direction, Formal Warnings, Infringement Notices and when appropriate lower threshold prosecutions.	Can be as a consequence of no noticeable behaviour change despite V, A and D interventions.
Understanding that the consequences of non-compliance are proportionate.	Feedback loops help form a picture to determine if stakeholders are attempting to comply, are aware of their obligations or indeed choosing not to comply.	Deter by detection, convince people there is value in complying.	Is also for stakeholders who deliberately choose to break the law and where a lesser intervention is inappropriate; can be for serious offending or where legislation requires an enforcement action.
Compliance outcomes are achieved through education, training, engagement and communication of expectations and obligations.	Assisted compliance remains heavily focused on reminding stakeholders that they are being monitored and if no discernible behaviour change can be observed; formal direction or sanction will occur.		Cases are generally referred for formal investigation with a view to prosecution.

The VADE model assumes that most people want to comply and only a small minority choose not to comply. However, the VADE model often requires a number of graduated steps to be taken before an offender receives a penalty. As a result it can take time to influence behaviours. This is particularly detrimental where even a minor instance of non-compliance can have a high impact (eg. an ASD that fails to correctly disclose the health status of a herd, which then leads to further spread of a disease and/or impacts its tracing eg. *Mycoplasma bovis*).

An infringement notice is appropriate for addressing conduct that is of relatively low seriousness (in and of itself) and that involves straightforward issues of fact. Infringement notices/fees bridge the gap between warnings and other interventions in the ‘Directed’ part of the VADE model and non-compliance meriting prosecution (‘Enforced’).



Effectiveness, Certainty - The Ministry considers that introducing an ability to issue infringement notices will more effectively encourage compliance and deter non-compliance with ASD requirements by sending a clear message about the importance of these requirements, and enabling a rapid and proportionate sanction to drive behaviour change.

The use of infringement notices/fees to deter lower level offending is a standard practice in compliance regimes. The Ministry makes regular use of infringement offences/fees across the other regulatory regimes it administers (eg. biosecurity). The power to issue infringement notices under the Animal Products Act was created by the Food Safety Law Reform Act 2018, with the intention that it be used in precisely these kind of circumstances.

The Ministry's experience with other compliance regimes indicates that the ability to issue infringement notices is an important compliance tool.

Efficiency - The use of infringement offences can also reduce the burden of lengthy and expensive Court proceedings.

The proposal does not alter existing policy and legislative intent, or impose new obligations on those required to complete ASDs. It makes use of an existing power to create infringement offences.

The proposed regulations make specific infringement offences for failing to comply with the existing Animal Products Notice that specifies how an ASD must be completed. The infringement offences and associated fees have been calibrated to be proportionate to the seriousness and impact of each type of non-compliance. They are:

- failing to use the ASD - \$800
- failing to complete the ASD correctly - \$400
- failing to keep the necessary records - \$800

The proposed offences are consistent with the Ministry of Justice's "Policy Framework for New Infringement Schemes". The Ministry of Justice has been consulted on the proposed infringement offences, and supports the proposed approach.

Section 4: Impact Analysis (Proposed approach)

4.1 Summary table of costs and benefits

Affected parties	Comment: nature of cost or benefit (eg ongoing, one-off), evidence and assumption (eg compliance rates), risks	Impact <i>\$m present value, for monetised impacts; high, medium or low for non-monetised impacts</i>
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Additional costs of proposed approach, compared to taking no action

Regulated parties	The proposal does not impose any additional obligations, and therefore does not in itself impose any additional costs. ¹	-
Regulators	There will be some additional costs for the Ministry in making use of the infringement powers: investigating non-compliance, issuing infringement notices, file management, fee collection, debt recovery. Ministry systems and processes to manage infringement offence regimes already exist; moving to issue infringement notices for ASDs will make use of these existing systems.	Low
Wider government	There may be some additional costs for the court system in dealing with any infringement notices that are appealed. These costs are expected to be very minor.	Low
Other parties		-
Total Monetised Cost		
Non-monetised costs		<i>Low</i>

Expected benefits of proposed approach, compared to taking no action

Regulated parties	<p>Better compliance with ASD requirements will help ensure the success of the <i>Mycoplasma Bovis</i> eradication programme, as well as provide ongoing support to New Zealand's food safety assurance system for animal products.</p> <p>The approach offers protection for all users of the system, including farmers who are the most vulnerable to direct adverse outcomes from the non-compliance of others.</p>	Medium
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¹ The impact analysis assumes that a fine for non-compliance with existing legal requirements is not a relevant 'impact' for the purposes of assessing the net benefit of the proposal (or any proposal).

	For non-compliers, receiving a fine is expected to be preferable to prosecution, as all compliance activity in this area ramps up under the eradication programme.	
Regulators	As above, the ability to issue infringement offences will provide another tool to achieve better compliance with ASD requirements	Medium to high. Once the tool starts being used, word of mouth among farmers is expected to generate momentum for compliant behaviour.
Wider government	The Government has invested heavily in the biosecurity and food safety systems, as well as recent investments to eradicate <i>Mycoplasma bovis</i> . It is important that these investments are protected by a sound system that enforces the law. The use of infringement offences can reduce the need for more expensive court proceedings (by replacing court proceedings as an enforcement option, or by reducing the non-compliant behaviour before it escalates to the point where court proceedings are required)	Medium
Other parties	The public wants to be assured that the systems related to trade and human health are being adhered to.	Medium.
Total Monetised Benefit		
Non-monetised benefits		<i>Medium</i>

4.2 What other impacts is this approach likely to have?

N/A

Section 5: Stakeholder views

5.1 What do stakeholders think about the problem and the proposed solution?

As noted above, it is proposed that the regulations be made urgently, and they will not be subject to the usual full public consultation processes.

However, since the *Mycoplasma bovis* outbreak there have been calls from stakeholders throughout the biosecurity system for more action to ensure better compliance with existing obligations.

Section 163(5) of the Animal Products Act provides for urgent regulations to be made when necessary or desirable in the public interest, with no requirement for consultation. The Ministry considers the making of the proposed regulations is necessary or desirable in the public interest. They will help ensure the *Mycoplasma bovis* response and eradication programme has the greatest possible chance of success, as well as provide ongoing support for New Zealand's food safety assurance system for animal products.

Section 6: Implementation and operation

6.1 How will the new arrangements be given effect?

The creation of the new offences will be given effect via regulations made under section 125E and 166 of the Animal Products Act. These regulations will amend the Animal Products Regulations 2000 and will specify the relevant requirements relating to ASDs set out in the *Animal Products Notice Specifications for Products Intended for Human Consumption* for which failure to comply constitutes an infringement offence. They will also prescribe the associated infringement fee (as outlined in section 3.2 above)

Section 163(5) of the Animal Products Act provides for urgent regulations to be made when necessary or desirable in the public interest, with no requirement for consultation.

The Ministry will be responsible for ongoing administration.

The regulations will come into force as soon as possible, 28 days after promulgation in the Gazette.

The Ministry's ability to issue infringement notices will be communicated through existing channels, both for the Ministry's compliance activities generally, and as part of its specific approach to the *Mycoplasma Bovis* response and eradication programme.

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

No new data will need to be collected (above what is already collected). The Ministry will monitor compliance with ASD requirements, the issuance of infringement notices, and how compliance changes over time in response to the proposed infringement offences regime.

7.2 When and how will the new arrangements be reviewed?

The Ministry is not proposing any formal review of the proposed new infringement offences regime. It will be monitored on an ongoing basis in accordance with normal Ministry compliance systems and processes, and regular assessments of how the system is working. The operation of the new regime and the level of compliance with ASD requirements (and other requirements relevant to the *Bovis* response) will be communicated as appropriate to Ministers, industry, and the wider public.