



# Options to Amend the Animal Welfare Act 1999

Regulatory Impact Statement

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# Regulatory Impact Statement

## Options to Amend the Animal Welfare Act 1999

### Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Ministry for Primary Industries. It provides an analysis of options to improve the operation of the Animal Welfare Act 1999.

New Zealand relies on farmed animals for substantial parts of its economy and animals are used in recreation, research, and for entertainment. Our level of pet ownership is among the highest in the world. Good animal welfare is important to New Zealanders and it contributes to our reputation as a responsible agricultural producer.

The Animal Welfare Act provides the framework for New Zealand's animal welfare system. The fundamental principles underpinning the Act remain appropriate, but there are a number of issues with how the Act is operating.

In 2011, the Ministry talked with a wide range of stakeholders, including the Royal New Zealand Society for the Prevention of Cruelty to Animals, the New Zealand Veterinary Association, Federated Farmers and other industry groups, and the National Animal Welfare Advisory Committee, to better understand the concerns about the operation of the Act. In August and September 2012, the Ministry undertook public consultation on the issues and options to improve the Act. The problem definition and options in this RIS take into account the views of stakeholders and the submissions of the wider public.

There are some constraints in the RIS analysis. In particular, there is a lack of data on the level of non-compliance with animal welfare requirements across the various animal sectors. The Ministry has used qualitative information from animal welfare inspectors, public submissions, and stakeholders when quantitative information was not available.

The impact analysis, especially the economic aspect, is limited for some options due to a lack of information or evidence. The Ministry has used internal knowledge and experience, as well as information gained during the consultation, to estimate potential costs, benefits and risks associated with the options. In terms of costs to Government, all proposed changes to the Act would be implemented by the Ministry on a fiscally neutral basis.

Many of the options would create new regulation-making powers in the Act. The development of regulation would be subject to separate Cabinet and RIS processes. The potential impact of future regulations has not been discussed in this analysis.

The options to improve the Act should not have any other effects (compliance costs on businesses, common law, property rights, impact on competition or innovation) such that the Government would require a particularly strong analysis and justification.

Aoife Martin, Acting Director of Biosecurity, Food and Animal Welfare Policy

[Signature of person]

[Date]

## Executive summary

1. The Ministry for Primary Industries' review of the Animal Welfare Act 1999 has identified several concerns with the operation of the Act. The issues fall broadly within the areas of clarity and enforceability, and transparency.

### Clarity and enforceability

2. There are a number of provisions in the Animal Welfare Act that require greater clarity and enforceability. Problematic areas include codes of welfare, compliance tools, ill-treatment of animals in the wild, and significant surgical procedures. The Ministry has analysed options to clarify the obligations of people who own or are in charge of animals and allow animal welfare inspectors to respond appropriately to breaches of the Act.
3. The Ministry has identified a lack of enforceable animal welfare standards as a particular concern. Although the Act provides for codes of welfare that contain minimum standards for the care of animals, the codes have a quasi-legal status and cannot be directly enforced. Options for resolving this are to either create regulations that would sit above codes of welfare for matters that require direct enforceability, or to replace codes of welfare with a comprehensive set of enforceable animal welfare regulations.

### Transparency

4. Some sections of the Animal Welfare Act are not sufficiently transparent to provide assurance that the decisions being made and activities being carried out under the Act protect the welfare of animals and are in the best interests of New Zealand.
5. Problematic areas include the criteria for developing minimum animal welfare standards, exporting animals for slaughter, and the use of animals in research, teaching and testing. The Ministry has analysed options to improve the transparency of the Act, and in particular clarify key decision-making processes.

### Objectives

6. The Ministry has assessed the options to address each problem against the following objectives:
  - effective – the option achieves the desired outcomes and addresses the problem identified;
  - efficient – the requirements minimise compliance costs and are no more than necessary to achieve the outcomes sought;
  - equitable – the requirements are fair and are consistently applied;
  - clear – people understand what is required of them; and
  - transparent – people understand the basis of decisions and/or the process allows them to contribute to decision-making.

## **Implementation**

7. The preferred options identified in the RIS would require amending the Animal Welfare Act. Subject to Cabinet approval, the changes would be implemented through an Animal Welfare Amendment Bill that would be introduced in 2013. Subsequent development of regulations would be subject to separate Cabinet and RIS processes. An implementation timetable for the legislative changes would be developed in consultation with the Minister for Primary Industries.

## **Summary table**

8. The following table lists the issues discussed in this RIS and summarises the analysis of the options.

## Summary of Information in Regulatory Impact Statement<sup>1</sup>

Problems and associated options	Objective 1 - Effective	Objective 2 - Efficient	Objective 3 - Equitable	Objective 4 - Clear	Objective 5 - Transparent	Key risks
<b>Problem 1: Codes of welfare are not directly enforceable</b>						
Status quo – retain codes of welfare in their current form and function	x	–	–	–	✓	Lack of enforceability may reduce compliance with codes of welfare.
Option 1: Keep codes of welfare and add regulations	✓	–	✓	✓	✓	Reduction in efficiency due to NAWAC and the Ministry being involved in the production of two different regulatory instruments.
Option 2: Keep codes of welfare and make minimum standards directly enforceable	–	–	–	✓	x	There are constitutional concerns about making rules in tertiary regulatory instruments directly enforceable.
Option 3: Replace codes of welfare with a mix of regulations and guidelines	✓	✓	✓	✓	–	Reduction in transparency due to the loss of the NAWAC consultative process.
<b>Problem 2: Enforcement tools are limited</b>						
Status quo – Animal welfare inspectors would use existing enforcement tools	x	–	x	–	x	Animal welfare is likely to suffer if inspectors do not have an effective range of enforcement tools.
Option 1: New compliance and enforcement tools	✓	✓	–	–	–	A tiered scheme of offences and penalties may cause confusion as to which penalty applies to which offence.
<b>Problem 3: Lack of certainty around live animal exports</b>						
Status quo – continue to issue guidelines and rely on industry voluntary compliance with animal welfare standards	–	–	–	–	x	This option would not address the animal welfare and reputational risks inherent in the current system.
Option 1: Develop regulations for live animal exports	✓	–	✓	✓	✓	Regulations will likely impose more compliance costs on exporters.

<sup>1</sup> KEY: ✓ = option supports objective; x = option does not support objective; – = neutral impact; ? = unclear if option supports objective.



Problems and associated options	Objective 1 - Effective	Objective 2 - Efficient	Objective 3 - Equitable	Objective 4 - Clear	Objective 5 - Transparent	Key risks
Option 2: Create an export regime like that under the Animal Products Act 1999	✓	✗	✓	✓	✓	Over-regulation could result in the export process becoming too expensive.
<b>Problem 4: Surgical procedure provisions unclear and limiting</b>						
Status quo – surgical procedures are regulated through a tiered classification system	–	–	–	✗	✗	Prohibited, restricted and controlled procedures are listed in different places throughout the Act – and can be added to via Order in Council.
Option 1: Develop surgical procedures regulations and remove classification system	✓	–	✓	–	–	Including some surgical procedures in regulations may cast doubt over those that are not included.
Option 2: List prohibited, significant, restricted and controlled surgical procedures in the Act	✓	✗	✓	–	–	The Act would not be sufficiently flexible to accommodate changes in animal management and societal attitudes.
<b>Problem 5: Lack of clarity regarding ill-treatment of animals in the wild</b>						
Status quo – prosecutors would need to continue to use the generic ill-treatment offences	–	✗	–	✗	–	Risk of lengthy court proceedings and multiple appeals.
Option 1: Apply ill-treatment provisions to hunting and killing animals in the wild	✓	✓	✓	–	–	May create uncertainty over what hunting and killing practices are acceptable.
<b>Problem 6: Regulatory gap regarding defendants who are unfit to stand trial</b>						
Status quo – people who are found unfit to stand trial on animal welfare charges cannot be ordered to forfeit their animals or be disqualified from owning animals.	✗	✗	✓	✓	✓	Animal welfare is likely to suffer if there is no way to resolve an unfit person's offending.
Option 1: Enable the court to order forfeiture and disqualification for people who are found unfit to stand trial.	✓	✓	–	–	✓	The court would have discretion to determine whether an order is appropriate in any given case, which may result in inconsistent imposition of the orders.
<b>Problem 7: Lack of transparency in criteria for developing animal welfare standards<sup>2</sup></b>						
Status quo – NAWAC must consider:	✓	✓	–	✓	✗	NAWAC may choose not to take practicality or

<sup>2</sup> KEY: ✓ = option supports objective; ✗ = option does not support objective; – = neutral impact; ? = unclear if option supports objective.

Problems and associated options	Objective 1 - Effective	Objective 2 - Efficient	Objective 3 - Equitable	Objective 4 - Clear	Objective 5 - Transparent	Key risks
public submissions; good practice and scientific knowledge; available technology; and any other matters						industry economic risk into account when developing minimum standards.
Option 1: Add practicality and economic impact	–	✓	–	✓	✓	Risks consistently putting the interests of animal users ahead of the welfare of the animals.
Option 2: Include practicality and economic impact as second tier considerations	✓	✓	–	✓	–	Leaves discretion with decision-maker on when practicality and economic impact are considered.
<b>Problem 8: Lack of transparency in criteria for exceptional circumstances</b>						
Status quo – NAWAC would continue to use the existing criteria under section 73(4)	✓	–	–	–	–	Not clear what constitutes exceptional circumstances
Option 1: No criteria specified	?	–	?	–	–	Leaves the decision-maker with a difficult decision without any guidance.
Option 2: Replace exceptional circumstances with transitions and exemptions	✓	–	–	✓	✓	Difficulty in determining the right criteria for transitions and exemptions. Some people consider there is no justification for permanent exemptions.
<b>Problem 9: No information on animals killed so that their bodies or tissues can be used for research, testing and teaching</b>						
Status quo – no animal ethics committee approval needed and the Government cannot collect data on numbers killed	✗	✓	✓	✓	✗	There may be RTT occurring that kills animals to use their tissues without being of benefit to society. Lack of information on numbers of animals killed.
Option 1: Require researchers to seek ethics approval and enable data to be collected on animals killed for RTT	✓	✗	✓	✓	✓	Requiring researchers to seek ethics approval will impose additional compliance costs.
Option 2: Enable data to be collected on animals killed for RTT	–	–	✓	✓	–	Without requiring ethics approval there will be no way to drive 'reduction, replacement, and refinement' for this type of research.
<b>Problem 10: Oversight of research involving animals with compromised welfare</b>						
Status quo – no animal ethics committee	✗	✓	✓	✓	✗	Animal welfare may not be being taken into

Problems and associated options	Objective 1 - Effective	Objective 2 - Efficient	Objective 3 - Equitable	Objective 4 - Clear	Objective 5 - Transparent	Key risks
approval needed						consideration or properly managed.
Option 1: Require animal ethics committee approval of research that involves producing or breeding animals with compromised welfare	✓	✗	✓	✓	✓	Requiring researchers to seek ethics approval will impose additional compliance costs.
<b>Problem 11: Rules governing exporting livestock for slaughter</b>						
Status quo – continue to control the export of livestock for slaughter with an order under the Customs and Excise Act	✓	–	✓	–	–	Regulating livestock export across two different Acts is not transparent and the order has to be renewed every three years.
Option 1: Restrict export for slaughter under regulations to the Animal Welfare Act	✓	✓	✓	–	✓	Restrictions may not provide sufficient clarity for exporters about what they need to satisfy in order to get export approval.
Option 2: Prohibit exports of livestock for slaughter	–	✓	–	✓	–	Prohibition on live exports for slaughter may be inconsistent with New Zealand's obligations.

# Status quo

## Animals in New Zealand

9. New Zealand's heritage is closely bound with farming, animals, and the environment. Today we continue to use animals for a variety of purposes, including for agriculture, as pets, for entertainment, and in research. Approximately 68 percent of households in New Zealand own at least one pet.<sup>3</sup> Each year, around 50 percent of New Zealand's export earnings are attributable to animals and animal products.<sup>4</sup> Animal welfare is important both domestically and internationally, and consumers have high expectations of our animal welfare system.
10. Positive animal welfare has the potential to differentiate and add value to New Zealand's animal products. However, even isolated cases of poor animal welfare could have a negative impact on our reputation. This could result in a loss of export markets, inability to gain access to new markets, and/or additional conditions and checks being placed on our products or production processes. Primary industry leaders have said that New Zealand must do more to protect the significant financial benefit derived from New Zealand's reputation for quality, sustainable, and trustworthy agricultural products.<sup>5</sup>

## The Animal Welfare Act 1999

11. The Animal Welfare Act 1999 (the Act) provides the framework for regulating the welfare of animals and preventing their ill-treatment. The Act:
  - requires people who own or are in charge of animals to meet an animal's "physical, health and behavioural needs", and to alleviate unreasonable or unnecessary pain or distress;
  - prohibits certain types of conduct towards animals;
  - provides a process for approving the use of animals in research, testing, and teaching;
  - establishes two national advisory committees on animal welfare; and
  - provides for the development and issue of codes of welfare.
12. 'Physical, health and behavioural needs' is defined by what is referred to internationally as the 'five freedoms'. These are:
  - proper and sufficient food and water;
  - adequate shelter;
  - opportunity to display normal patterns of behaviour;
  - appropriate physical handling; and
  - protection from, and rapid diagnosis of, injury and disease.
13. The Act does not expand on these obligations. The detailed standards of care are found in 'codes of welfare', which are developed by the National Animal Welfare Advisory Committee and issued by the Minister for Primary Industries under the Act. There are currently 15 codes of welfare in force.
14. The Ministry for Primary Industries works in partnership with the Royal New Zealand Society for the Prevention of Cruelty to Animals (SPCA) to enforce

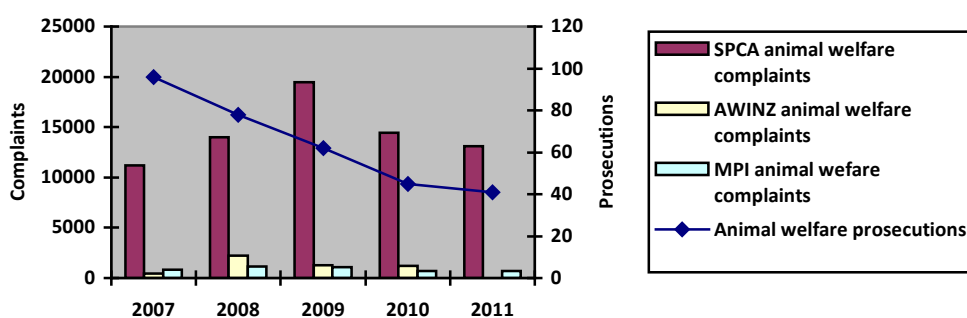
<sup>3</sup> The New Zealand Companion Animal Council. *Companion Animals in New Zealand*. July 2011.

<sup>4</sup> Ministry for Primary Industries. *Primary Industries Production and Trade*. June Quarter 2012.

<sup>5</sup> KPMG. *Agribusiness Agenda 2012*. (kpmg.com/nz/aa2012).

the Act. The Ministry employs 11 full time animal welfare inspectors and five part time inspectors, who deal mainly with rural animal welfare issues. The SPCA has 94 inspectors and 42 auxiliary officers who focus on urban areas and companion animal welfare issues. The Ministry also employs approximately 220 Verification Services veterinarians who are appointed as animal welfare inspectors. They perform a range of functions at slaughter premises, including monitoring compliance with animal welfare standards of animals presented for slaughter. The New Zealand Police are also deemed to be animal welfare inspectors.

15. Over the past five years there have been on average approximately 16,000 animal welfare complaints each year.<sup>6</sup> The majority of these (95% in 2011) are dealt with by the SPCA. There are less than 100 prosecutions brought against alleged offenders per year, and the number of prosecutions is dropping. The following graph shows the number of animal welfare complaints received and the number of prosecutions brought over the past five years.<sup>7</sup>



## Review of the Animal Welfare Act

16. Since the Animal Welfare Act came into force in 2000, stakeholders have raised concerns about certain aspects of the Act. In December 2010, the Minister for Primary Industries directed the Ministry to review the Animal Welfare Act and develop New Zealand's first national animal welfare strategy.
17. The review found that the fundamental approach taken in the legislation and the underlying values remain appropriate. The following aspects of the Act have been identified as problematic:
- clarity and enforceability; and
  - transparency.
18. The following sections of the RIS discuss the problem definition, objectives, and options associated with each issue.
19. A number of minor and/or technical changes to the Act are also proposed. These have not been discussed in the RIS as they either:
- are technical revisions or consolidations that substantially re-enact the current law in order to improve legislative clarity or navigability; or

<sup>6</sup> The Ministry has two datasets for animal welfare complaints. One dataset captures animal welfare complaints per Ministry complaint logged for investigation, the other captures Ministry and SPCA complaints by species (the way SPCA data is reported), i.e. if a complaint is about the body condition of rabbits and guinea pigs, the complaint will be captured twice in the 'per species' dataset, but only once in the "per complaint" dataset (if the rabbits and guinea pigs reside at the same property). This results in a slight variation between the total numbers of Ministry complaints in each dataset.

<sup>7</sup> The Animal Welfare Institute of New Zealand (AWINZ) was an 'approved organisation' investigating animal welfare complaints under the Animal Welfare Act until 2010.

- have no or only minor impacts on businesses, individuals or not-for-profit entities.

## Objectives

20. The Ministry has assessed the options to address each problem against the following regulatory objectives:
- effective – the option achieves the desired outcomes and addresses the problem identified;
  - efficient – the requirements minimise compliance costs and are no more than necessary to achieve the outcomes sought;
  - equitable – the requirements are fair and are consistently applied;
  - clear – people understand what is required of them; and
  - transparent – people understand the basis of decisions and/or the process allows them to participate in decision-making.

## Clarity and enforceability

### Problem definition summary

21. The underlying problem is that there are too many cases of unacceptable care and conduct towards animals. Some of these cases are a result of people not understanding the animal welfare rules and their obligations. Other cases are a result of not being able to enforce breaches of the Act at a level appropriate to the offending, particularly for lower level offending. This in turn undermines people's confidence in the animal welfare regime.
22. The codes of welfare are not directly enforceable so a breach of a minimum standard is not an offence in itself, but can be used in evidence to support a prosecution. There are not many other enforcement tools that inspectors can use when they find breaches of the Act. The result is that prosecution is the main tool available for ensuring compliance with the Act, which is often not the best response and is expensive for both the individual and the enforcement agencies. There is also a legal gap when someone is not capable of meeting their animal welfare obligations but is declared unfit to stand trial. Currently, the Court can only order animals to be forfeited or a person be disqualified from owning animals after they have been convicted.
23. There is a lack of certainty around the rules for live animal exports because the guidelines issued by the Director-General have no legal effect, and there is no mechanism to create mandatory rules for live animal exports. The classification system for surgical procedures is also confusing and cumbersome, and has meant that some procedures may be carried out by insufficiently trained people while others are unnecessarily restricted. Finally, there are some unacceptable practices relating to animals in the wild where there is some uncertainty about whether they are prohibited by the Act.

### Problem 1: Codes of welfare are not directly enforceable

24. Codes of welfare contain minimum standards for the care of animals and recommendations for best practice. They elaborate on the general duty of care in the Act, and help people in charge of animals understand and meet their statutory obligations. Codes of welfare are in place for most of the important animal sectors

and activities involving animals, including dairy cattle, sheep and beef, pigs, layer hens, meat chickens, transport of animals and commercial slaughter of animals.

25. Many stakeholders value codes of welfare because they are developed through an inclusive process. Codes of welfare also contain valuable and useful information about how to care for animals, and explain both the minimum standards necessary to meet animals' needs as well as best practice guidance.
26. Minimum standards in codes of welfare are not directly enforceable – they do not have the status of traditional regulations (they are 'deemed' regulations) and there are no offences attached to them. Rather, compliance or non-compliance with minimum standards can be used in evidence to support or defend a prosecution.
27. Because codes of welfare are not directly enforceable, there is no immediate legal consequence for a failure to meet a minimum standard. The penalty for breach of a minimum standard in a code of welfare is via a prosecution for an offence under the Act, which is resource-intensive for both sides and usually not an appropriate response. To date, there have been only two prosecutions based on the failure to meet a minimum standard in a code of welfare.
28. Breaching a minimum standard in a code of welfare will, in the vast majority of cases, result in verbal advice, the provision of educational information, or a warning. In 2011/12, the Ministry's Verification Services veterinarians located at slaughter premises recorded 820 cases of non-compliance with the minimum standards for selecting and accepting animals for transport in the *Animal Welfare (Transport within New Zealand) Code of Welfare 2011*. Common issues seen in transported animals include poor condition or emaciated animals, lameness, open wounds, ingrown horns, cancer eye, and mastitis.
29. Of the 820 cases, 78 were considered to be serious offending and were referred to the Ministry's animal welfare inspectors for investigation. Most of these 78 were dealt with by verbal advice and educational material, a few resulted in a warning, and the remaining 742 cases were dealt with by educational letters. Because it is usual for a person who has not complied with a minimum standard to receive educational material, but it is also possible to be prosecuted, it is difficult for an animal owner to determine what their liability might be for breaching a minimum standard. This reduces the effectiveness of the Act and makes it hard for people to understand the consequences of their actions.
30. It is also difficult to encourage and compel compliance using standards that are not directly enforceable. There is little motivation for animal owners to abide by minimum standards that involve some investment in time or cost, if there is no risk of penalty or prosecution for non-compliance. Industry and non-industry stakeholders have expressed concern that the absence of a direct penalty for breaching minimum standards in codes of welfare encourages non-compliance.
31. There is limited data on the levels of compliance with animal welfare standards in New Zealand. A recent survey undertaken on behalf of the Ministry indicated that most farmers comply with most animal welfare standards. Approximately 83% of respondents reported compliance levels of 85% or more. Only 3% indicated that they met less than 75% of legal animal welfare requirements.<sup>8</sup> However, even if these levels of self-reported compliance is accepted, the large livestock numbers

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<sup>8</sup> Ministry for Primary Industries, *What drives primary sector compliance with Animal Welfare Legislation?* Final Report, 2012.

carried by farms means that the number of animals affected by non-compliance is still significant.

32. Furthermore, in the absence of other more appropriate tools, codes are being used in some cases to effect prohibitions on activities that is arguably beyond their legal mandate. For example:
  - under the *Animal Welfare (Dogs) Code of Welfare 2010*, pinch or prong collars must not be used; and
  - under the *Animal Welfare (Pigs) Code of Welfare 2010*, after 3 December 2015, mated sows and gilts must not be confined in dry sow stalls after mating.
33. There are no sections in the Act that specifically prohibit the use of pinch or prong collars, or dry sow stalls, and therefore it would be necessary for the animal to suffer unreasonable or unnecessary pain or distress as a result of the collar or sow stall in order support a prosecution of ill-treatment. The evidential requirements necessary to build a successful prosecution would be difficult to satisfy.

## **Problem 2: Enforcement tools are limited**

34. The Animal Welfare Act gives animal welfare inspectors the following enforcement options and tools when someone is in breach of the Act or an animal is suffering or likely to suffer:
  - issue a notice under section 130 of the Act which directs a person to take steps to prevent or mitigate the suffering of an animal;
  - obtain an enforcement order from a District Court, which requires the person to comply with the Act or any regulations made under it;
  - issue an infringement notice for failure to inspect traps or failure to provide name and address to an inspector;
  - power to enter and inspect, seize animals, and take steps to prevent or mitigate the suffering of an animal and to search land/premises and seize evidence under search warrant; and
  - seek a prosecution for an offence under the Act. Penalties on conviction may include fines, imprisonment, disqualification from being in charge of animals, and forfeiture of animals.
35. In 2011, the Ministry for Primary Industries dealt with 567 of a total of 13,772<sup>9</sup> animal welfare complaints (the balance were dealt with by the SPCA largely because they related to urban/companion animals). In dealing with these 567 complaints, the Ministry's animal welfare inspectors issued 55 section 130 notices, executed two search warrants, imposed two enforcement orders, and brought six prosecutions. The vast majority of complaints (over 500) that the Ministry responded to were simply closed or dealt with through verbal advice, educational information, or a warning. The SPCA similarly advises that over 95% of bona fide complaints they deal with result in little or no formal sanction or consequence for the offender such as prosecution.
36. As the lowest level of enforcement tool available, section 130 notices are useful for some medium to lower level offending. However, they can only be used if the inspector believes the animal is suffering, or is likely to suffer, unreasonable or unnecessary pain or distress. This may be difficult to establish in some situations, even when an animal is receiving care below that required by a code of welfare.

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<sup>9</sup> See footnote 6.



For example, the *Animal Welfare (Meat Chickens) Code of Welfare 2012* requires that chickens are stocked at no more than 38kg per square metre. However, the welfare of chickens may not appear to be any different when they are stocked at 39kg per square metre.

37. In addition, if a person does not comply with a section 130 notice, the only recourse inspectors have is to seek a prosecution for failing to comply with the notice, or escalate the issue by seeking an enforcement order. Neither option gives inspectors a straight-forward way to ensure the notice is complied with or penalise the owner for their non-compliance.
38. The other enforcement tools available to animal welfare inspectors (court orders and prosecutions) are resource-intensive, time consuming, and have more significant implications for animal owners. For this reason they are only used sparingly and in the most serious cases.
39. These figures show that the enforcement tools available in the Act are not suitable for the majority cases where people fail to meet their obligations under the Act. Most offending is of a medium to lower level, and is around not meeting the duty of care in the Act to provide for an animal's physical, health or behavioural needs. The existing enforcement tools are too harsh or focused on ill-treatment offending to be used in many cases. Examples of low-to-medium level offending for which there are limited tools to correct include low body condition, lack of feeding, poor hygiene, lack of containment and shelter, injury, painful training methods, transportation issues, and problems with methods of euthanasia.
40. Deterrence is an important aspect of prevention, and without effective measures for dealing with low and medium level offending, people are more likely to push the boundaries of acceptable behaviour. In some cases lower-level offending can escalate to serious breaches of the legislation. MPI animal welfare inspectors have dealt with people over a number of years where their offending has escalated, either from a small number of animals affected to a larger number affected, or the severity of the problem has escalated (for example, from poor/marginal conditioned animals to emaciated animals). It is important to have effective penalties for lower level offenders to change behaviours before more serious offending occurs.
41. The lack of enforcement tools for low and medium level offending means that the majority of minor animal welfare breaches are not being punished and it is difficult to compel people to comply with an animal welfare inspector's directions to ameliorate unsatisfactory animal welfare situations. These issues risk undermining the animal welfare regime and may encourage sub-standard levels of animal care. It is important to penalise offending to stop the behaviour and prevent others from being tempted to engage in the same practices.

### **Problem 3: Lack of certainty around live animal exports**<sup>10</sup>

42. New Zealand has a small market exporting livestock, focused primarily on the export of dairy cows for breeding to China. Under Part 3 of the Animal Welfare Act, any person planning to export livestock (travelling for more than six hours) must apply to the Director-General of the Ministry for Primary Industries for an Animal Welfare Export Certificate. Applicants must satisfy the Director-General that they can adequately manage the welfare of the animal during export.

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<sup>10</sup> Exporting animals for slaughter is discussed on page 30.

43. There are no mandatory standards that apply to animal exports; each export must be evaluated on a case-by-case basis. The systems, facilities and treatment of animals before export can make a significant difference to their welfare but are only regulated through the general obligations of the Animal Welfare Act. The Director-General may publish guidelines for the issue of Animal Welfare Export Certificates, but they have no legal effect.
44. There is also no requirement on exporters to report on the outcomes of any voyage, until they wish to apply for another animal welfare export certificate. Without timely feedback it is difficult to assess how the current system is working and ultimately improve animal welfare outcomes. A serious animal welfare incident involving exported livestock could damage New Zealand's reputation across other exports.
45. With limited ability to ensure compliance or to set generic standards, it is difficult for the Ministry to assess the competence of new exporters, which makes it hard for them to get approval for animal welfare export certificates. This is potentially limiting the innovation that could be introduced by a more diverse group of live animal exporters. The export of animals is a small market for New Zealand, making up 0.5 percent of total exports (\$235 million in 2011/12).<sup>11</sup> There are currently six companies that export small amounts of livestock overseas.
46. The Ministry has been managing the limitations of the Act by working in partnership with the industry and developing export guidelines with no legal effect. However, the current legislative framework is inadequate and it creates unnecessary risks for animal welfare and New Zealand's reputation. Industry stakeholders, such as the Animal Trade Advisory Council, have expressed their concern about the legislation and have asked for tighter regulation to protect the market from future problems.

#### **Problem 4: Surgical procedure provisions unclear and limiting**

47. The Animal Welfare Act places controls on surgical procedures through a tiered classification system that is difficult to understand and apply.
48. 'Significant surgical procedures' can only be carried out by a veterinarian or a veterinary undergraduate student working under the direct supervision of a veterinarian. The Act does not define what is or is not a significant surgical procedure. At the time the Act was passed it was assumed that an informal consensus would develop on what procedures should only be carried out by veterinarians. However, there are a number of procedures for which there is no consensus on whether they should be limited to only veterinarians.
49. The Act provides for a surgical procedure to be classified as significant in regulations if there is some doubt about its status. To date, no procedures have been classified using this mechanism. This may be because the criteria for classifying a procedure are too high. In order to designate a significant surgical procedure, the Minister must be satisfied that:
  - the question whether a surgical procedure is a significant surgical procedure for the purposes of this Act is so uncertain as to require that uncertainty be removed; or

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<sup>11</sup> Ministry for Primary Industries. *Primary Industries Production and Trade*. June Quarter 2012.

- the question whether a surgical procedure should or should not be able to be performed on an animal by any person is a matter of public concern and that concern is so great that it needs to be.
50. The Act enables some significant surgical procedures to be declared 'restricted procedures' or 'controlled procedures'. These two sub-categories of significant surgical procedures are subject to additional conditions:
- restricted procedures may only be carried out by a veterinarian, or a veterinary undergraduate student working under the direct supervision of a veterinarian, if it is in the animal's best interests and anaesthetic or analgesia is used; and
  - controlled procedures may be carried out by a veterinarian, or a veterinary undergraduate student working under the direct supervision of a veterinarian, or by the owner of the animal or their employee with written veterinary approval.
51. The Act specifies that deer de velvetting is a controlled procedure, and the following procedures are classified as restricted:
- the debarking of a dog;
  - the declawing of a cat; and
  - docking the tail of a horse.
52. Both lists of procedures can be added to via Order in Council. The Act also prohibits certain surgical procedures:
- cropping the ears of a dog; and
  - blistering, firing, or nicking a horse.
53. The regulatory framework for surgical procedures has proved to be difficult to understand and quite inflexible. There is no ability to provide clear and up-to-date mandatory standards for the performance of surgical procedures. For some procedures, it would be desirable to specify certain conditions, such as the level of training needed by a practitioner, the kind of anaesthetic and/or analgesic to be used, and the appropriate method or equipment for carrying out the procedure.
54. In addition, there are some skilled and qualified technicians that could perform some surgical procedures, but are unable to due to the restrictions around who can perform significant surgical procedures in the Act.

### **Problem 5: Lack of clarity regarding ill-treatment of animals in the wild**

55. Under the Animal Welfare Act it is an offence to wilfully or recklessly ill-treat an animal in such a way that the animal:
- is permanently disabled;
  - the animal dies;
  - the pain and distress caused to the animal is so great it is necessary to destroy the animal to end its suffering; or
  - the animal is seriously injured or impaired.
56. Section 175 states that nothing in the Act makes it unlawful to hunt or kill any wild animal. It is uncertain whether wilfully or recklessly ill-treating an animal in the course of hunting or killing (for example, setting fire to a possum in a trap, or breaking the legs of a deer and throwing it into a river) would constitute wilful or reckless ill-treatment under the Act.

57. In a recent case,<sup>12</sup> a District Court Judge considered that the exception in the Act was not comprehensive and only covered reasonable hunting or killing methods. Therefore, where someone's actions are considered to be ill-treatment and outside the norms of hunting or killing, the ill-treatment provisions should apply. However, the ambiguity in the Act makes it difficult for hunters and trappers to know what behaviour is acceptable or not, and may lead to difficult prosecutions and costly appeals.

### **Problem 6: Regulatory gap regarding defendants who are unfit to stand trial**

58. If a person is convicted of an offence under the Animal Welfare Act, the court can make a forfeiture order for the person's animals and in some circumstances can disqualify a person from owning animals for a specified period. If, during the course of proceedings, a person is found 'unfit to stand trial', the court cannot make forfeiture or disqualification orders because the person has not been convicted.
59. A person who is found unfit to stand trial may be:
- detained on a long-term basis in a forensic hospital;
  - receive treatment for their mental impairment in the community; or
  - discharged from court without any order.
60. All three outcomes can have serious welfare implications for the person's animals. For example, if the person is detained in hospital, their animals may be neglected or abandoned, and if the person remains in the community they could continue ill-treating their animals in the manner that lead to the prosecution. In these situations animal welfare inspectors have no ability to seize the animals on a permanent basis or prevent the person from acquiring more animals.

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<sup>12</sup> *R v Large* (2012) CRI-2011-006-001205.

# Options

## Options for problem 1: Codes of welfare

Options	Benefits	Costs	Risks	Other impacts
<p><b>Status quo</b></p> <p>Retain codes of welfare in their current form and function.</p>	<p>This option would retain unchanged the value of codes:</p> <ul style="list-style-type: none"> <li>they are developed by an independent advisory committee (NAWAC) through an inclusive process that is valued by stakeholders; and</li> <li>they contain best practice and guidance material, in addition to minimum standards, in a coherent package.</li> </ul> <p>Government and sectors have invested heavily in developing and implementing codes of welfare, and there is broad understanding of how the system works.</p> <p>Codes work by persuasion rather than regulation.</p>	<p>The requirement to review codes every ten years regardless of whether there is a need can result in low value and expensive activity for NAWAC and the Government. It also creates risks for sectors investing in new systems necessary to meet code requirements.</p> <p>Because codes of welfare are not directly enforceable, animal welfare inspectors may need to use court enforcement orders or prosecution to ensure compliance or to punish offending against the codes. This is costly and time-consuming for the Government, SPCA and respondents/defendants.</p> <p>Prosecution is reserved for serious offending, which means a substantial amount of medium and lower-level offending goes unpunished.</p>	<p>The unclear legal status of codes of welfare would continue.</p> <p>Over time adherence to codes may reduce as people realise the minimum standards cannot be easily enforced.</p> <p>This may lead to reputational risks for the Government (including our trade reputation) because minimum standards are not directly enforceable.</p>	<p>Minimum standards in codes can be difficult to apply consistently because they describe outcomes rather than specific and measurable requirements.</p> <p>As a part-time committee, NAWAC would continue to be stretched in leading the codes development process.</p>
<p><b>Option 1: Keep codes of welfare and add regulations</b></p>	<p>The value of codes (collaboration and content) would be retained.</p>	<p>Government and the SPCA would incur the cost of enforcing the regulations.</p>	<p>The existence of codes and regulations, with different requirements and</p>	<p>As a part time committee, NAWAC would continue to be stretched in leading the</p>

Options	Benefits	Costs	Risks	Other impacts
<p>Retain codes of welfare and add to the Act the power to create mandatory standards in regulations.</p> <p>Under this option regulations would supplement the minimum standards in codes by prohibiting certain things (e.g. sow stalls) or specifying certain things (e.g. housing requirements).</p> <p>Make some process improvements for codes, e.g. remove 10 year review period.</p>	<p>There would be an enhanced ability to change behaviour through enforceable regulations.</p> <p>The work of NAWAC, industry and other stakeholders over the past 10 years to create a 'culture of animal welfare' would be retained.</p> <p>The number of regulations would be small and they would be focused on measurable standards, such as prohibitions and specific requirements.</p>	<p>The exact cost is not known – the Ministry will be implementing any changes from within baselines.</p> <p>Industry and individuals that are not currently meeting certain minimum standards (i.e. those to be translated into regulations) may incur additional compliance costs. There is not enough data about animal welfare compliance to accurately estimate these costs.</p> <p>The process for developing codes and regulations could be difficult to manage because they are separate statutory processes with different decision-makers. The Ministry and NAWAC would work closely together to ensure that the process meets the principles of good regulatory practice as well as meeting the animal welfare objectives.</p>	<p>compliance provisions/ penalties attached to them, may cause confusion.</p> <p>The codes may lose importance for sectors in light of the regulations.</p>	<p>codes development process. It would also need to contribute to regulations development.</p>
<p><b>Option 2: Keep codes of welfare but make minimum standards directly enforceable</b></p> <p>Amend the Act to make it an offence to breach minimum standards in codes of welfare.</p>	<p>This option retains the value of codes (collaboration and content), while allowing for directly enforceable minimum standards.</p> <p>There would be an enhanced ability to change behaviour.</p>	<p>The minimum standards in the codes were not drafted with the intent of being mandatory. Not all the minimum standards in existing codes could, or should, be enforceable. The codes would need to be reassessed, redrafted and</p>	<p>There are constitutional concerns about making rules in tertiary regulatory instruments directly enforceable, and attaching offences and penalties to them, because they are developed without the full disciplines inherent in the</p>	<p>This option is likely to attract criticism from the Legislation Advisory Committee and Ministry of Justice on the basis that the normal regulation making process is being bypassed in favour of a tertiary level regime.</p>

Options	Benefits	Costs	Risks	Other impacts
<p>Codes would still be developed by sector groups/NAWAC and issued by the Minister. The Ministry would need to ensure that minimum standards are sufficiently clear to enable direct enforcement before they are issued.</p> <p>The codes would continue to be 'deemed regulations' which enables scrutiny by Parliament's Regulations Review Committee.</p>		<p>consulted on, at a cost to NAWAC, the Government, and stakeholders.</p> <p>MPI would need to have a higher degree of regulatory oversight to ensure minimum standards could be directly enforceable.</p>	<p>regulation making process, including specialist legal drafting, regulatory impact analysis, and Cabinet consideration.</p> <p>The need for good regulatory oversight might create some conflicts between sectors, NAWAC, and the Ministry over roles and decision rights. This could further elongate the code development process.</p> <p>The redrafting of codes may lead to relitigation of issues.</p> <p>Stakeholders may consider the loss of those standards not considered suitable for direct enforceability to be a retrograde step.</p> <p>There is a risk that animal owners would focus on meeting minimum standards rather than achieving the best outcomes possible for their animals.</p>	<p>Stakeholder perception of the value of codes may decrease if they are rewritten in a different form e.g. with more specific (less outcome-based) standards.</p> <p>Prescriptive minimum standards may inhibit innovation and development.</p> <p>As a part time committee, NAWAC would continue to be stretched in leading the codes development process.</p>
<p><b>Option 3: Replace codes of welfare with a mix of regulations and guidelines</b></p> <p>Codes of welfare would be replaced with a mix of mandatory standards in regulations and guidelines with no legal effect.</p>	<p>Regulations would provide a comprehensive set of enforceable standards.</p> <p>The regulations development process is robust, including PCO drafting, regulatory impact analysis, and Cabinet consideration.</p>	<p>The Government, NAWAC and sectors would incur the cost of developing regulations. The exact cost is not known but the Ministry will be implementing any changes from within baselines.</p>	<p>Not all of the minimum standards could, or should be translated into regulation. Stakeholders may consider the loss of some standards a retrograde step.</p> <p>The redrafting of codes into regulations may lead to</p>	<p>Animal owners may focus on the regulations and ignore guidelines.</p> <p>Stakeholders may distrust a standard-setting process that is managed by the Ministry.</p> <p>Prescriptive regulations may inhibit innovation and</p>

Options	Benefits	Costs	Risks	Other impacts
<p>The regulation making power would require consultation with representative parties and NAWAC.</p> <p>Mandatory standards in regulations and best practice guidelines could continue to be published in one document.</p>	<p>This option would provide clearer mandatory rules for animal owners, and it would give animal welfare inspectors the ability to enforce mandatory standards and punish medium and lower-level offending.</p> <p>This regulatory framework would be more robust over a longer timeframe.</p> <p>This option would reduce the workload on NAWAC.</p>	<p>The minimum standards in existing codes of welfare were not drafted with the intent of being mandatory. They would need to be reassessed, redrafted and consulted on as they were translated to regulations.</p> <p>Industry and individuals that are not currently meeting minimum standards may incur additional compliance costs. There is not enough data about animal welfare compliance to accurately estimate these costs.</p>	<p>relitigation of issues and arguments already resolved.</p> <p>Government priority changes may result in regulations and guidelines not being written or updated.</p> <p>There are credibility risks if the regulations are not properly enforced.</p> <p>Unsuccessful implementation may affect industry trust of the Ministry.</p>	<p>development.</p> <p>The process for developing regulations and guidelines would need to capture the collaborative approach of the status quo and involve MPI, sectors, and NAWAC.</p>



## Options for problem 2: Enforcement tools

Options	Benefits	Costs	Risks	Other impacts
<p><b>Status quo</b></p> <p>Animal welfare inspectors would continue to use the existing enforcement tools under the Act.</p>	<p>There is broad understanding of the current regime and enforcement tools available.</p>	<p>Animal welfare inspectors may need to use court enforcement orders or prosecution to ensure compliance or to punish offenders. This is costly and time-consuming for the Government, SPCA and respondents/defendants.</p> <p>Prosecution is reserved for serious offending, which means a substantial amount of medium and lower-level offending goes unpunished.</p>	<p>Animal welfare is likely to suffer if inspectors do not have an effective range of enforcement tools to address non-compliance.</p>	<p>People's confidence in the animal welfare system may erode if inspectors cannot fully enforce the Act.</p>
<p><b>Option 1 (preferred): New compliance and enforcement tools</b></p> <p>Create a tiered scheme of offences, penalties, and infringements in regulations, in addition to the existing offences in the main Act.</p> <p>Enable compliance orders to be issued for breaches of the Act, regulations or minimum standards in codes of welfare.</p>	<p>This option would provide animal welfare inspectors with additional compliance options to address medium to lower-level offending.</p> <p>Infringement fines would provide a cost-effective and efficient way of dealing immediately with non-compliance.</p> <p>People who commit less serious offences would receive a response more proportionate to their offending.</p>	<p>This option would have no impact on most animal owners because they are already meeting the needs of their animals. For those who are not meeting their obligations under the Act, there would more sanctions. There is not enough data about animal welfare compliance to accurately estimate these costs</p> <p>Government and the SPCA would incur enforcement costs – this option will require MPI and SPCA to change the way compliance services are</p>	<p>A tiered scheme of offences and penalties may cause confusion as to which penalty applies to which offence.</p> <p>Care will be needed to ensure that infringement offences and prosecutable offences do not cover similar areas, creating confusion for both animal welfare inspectors and the owner/person in charge.</p> <p>There are credibility risks if the enforcement tools are not used, or are perceived to be being used inappropriately.</p>	<p>Greater clarity in the provisions, and improved and updated compliance and law enforcement tools should provide enhanced deterrence, and increased protection for the welfare of animals.</p> <p>Infringement fines may be viewed as too punitive for pet owners and too lenient for businesses.</p>

Options	Benefits	Costs	Risks	Other impacts
		<p>delivered. The exact cost is not known but the Ministry will be implementing any changes from within its baseline.</p> <p>Increasing the range of compliance tools should result in fewer court cases. Some infringements may be challenged or filed for enforcement in the courts. It is unlikely that this will be common, but if it happens this will displace some costs from one part of the courts system to another.</p>		

### Options for problem 3: Animal exports

Options	Benefits	Costs	Risks	Other impacts
<p><b>Status quo</b></p> <p>Continue to issue guidelines and rely on industry voluntary compliance with animal welfare standards.</p>	<p>Few mandatory standards for exporters.</p> <p>Low compliance costs for exporters.</p>	<p>Approval barriers for new exporters may be inhibiting trade in this area.</p> <p>Current system is not fully cost-recovered.</p>	<p>This option would not address the animal welfare risks inherent in the current system, particularly the procedures leading up to export and the reporting of problems that occur during the voyage.</p> <p>Reputational risks because the Government has no mandatory animal welfare rules in place.</p>	<p>Little transparency in the current system for those people interested in sending animals overseas.</p> <p>Overseas companies can register as exporters and may have less inclination to voluntarily comply to protect New Zealand's reputation.</p>
<p><b>Option 1 (preferred): Develop regulations</b></p> <p>Allow mandatory rules to be set in regulations, backed up by a range of compliance tools.</p> <p>Regulations could cover pre-export approval, mandatory reporting of any problems during a voyage, and some of the rules currently expressed in guidelines.</p>	<p>Setting mandatory standards in regulations would clarify the rules for exporters and allow the Government to act when the rules are breached.</p> <p>Information about the welfare of exported animals would be more accessible.</p> <p>Regulations can be targeted at the issues most in need of enforceable standards.</p>	<p>Exporters who are not complying with current export guidelines would incur some compliance costs in order to meet mandatory standards.</p> <p>There is not enough data about animal welfare compliance to accurately estimate these costs.</p> <p>The Government would incur the cost of developing regulations.</p> <p>Government would incur enforcement costs. The exact cost is not known but the Ministry will be implementing any changes from within its baseline.</p>	<p>There are credibility risks if the regulations are not properly enforced.</p> <p>Mandatory regulations will not eliminate the possibility of unforeseen events (storms, mechanical failure etc) that could jeopardise animal welfare.</p> <p>Inflexible regulations could make the export process overly complex and difficult to navigate.</p>	<p>Information about the welfare of exported animals would be more accessible – may result in more media/public interest.</p>

Options	Benefits	Costs	Risks	Other impacts
<p><b>Option 2: Create an export regime like that under the Animal Products Act 1999</b></p> <p>This would involve licensing all exporters and requiring them to have risk management programmes for animal welfare. It also includes a verification regime where independent third parties ensure that the Government's standards have been met.</p>	<p>Most aligned to our other export regimes.</p> <p>Comprehensive regime that would ensure tighter control of animal exports.</p> <p>Better monitoring and reporting.</p>	<p>Compliance costs for exporters would increase with additional planning and reporting requirements.</p> <p>The Government would incur the cost of establishing the new export regime. The exact cost is not known but the Ministry will be implementing any changes from within its baseline.</p> <p>Cost to Government to manage (if not fully cost-recovered) and enforce the regime.</p>	<p>Does not support the Government's aim to reduce unnecessary regulation and compliance costs.</p> <p>Over-regulation could result in the export process becoming too expensive. This would have an impact on income earning potential for farmers.</p>	<p>All exporters of live animals are already required to be licensed under the Animal Products Act. As such, there would be little value in including a similar requirement in the Animal Welfare Act.</p>

## Options for problem 4: Significant surgical procedures

Options	Benefits	Costs	Risks	Other impacts
<p><b>Status quo</b></p> <p>Surgical procedures can be declared either significant or not significant by Order in Council, if there is sufficient uncertainty or public concern.</p> <p>A significant surgical procedure can also be classified as restricted or controlled by Order in Council.</p> <p>Controlled surgical procedures can only be performed by a veterinarian or an animal owner or their employee with written veterinary approval.</p> <p>Significant surgical procedures have no mandatory requirements or conditions attached to them.</p>	<p>The surgical procedure provisions would remain unchanged.</p> <p>There is flexibility to classify a significant surgical procedure through an Order in Council. Procedures can also be further classified as restricted or controlled.</p> <p>Veterinarians are appropriately placed to determine whether a person is sufficiently competent and has the appropriate equipment to perform controlled procedures.</p>	<p>The order in council process may be unavailable in some cases due to the requirement for proposed significant surgical procedures to have 'a great level of uncertainty or public concern'.</p> <p>There is no criteria or guidance about which procedures are significant (or not) and therefore should only be carried out by veterinarians.</p> <p>Animal owners incur the costs of getting written veterinary approval for themselves or their employees.</p>	<p>Prohibited, restricted and controlled procedures are listed in different places through the Act. It is confusing and difficult for people to understand the rules. Adding further significant surgical procedures to regulations would increase the confusion.</p> <p>Creating lists of what is and what is not a significant surgical procedure may cast doubt on the status of procedures that have not been included.</p> <p>Controlled procedures may be being carried out inappropriately as a result of a lack of mandatory conditions.</p>	<p>The threshold of 'a great level of uncertainty or public concern' may be too high.</p> <p>Suitably skilled technicians are prevented from carrying out certain procedures.</p>
<p><b>Option 1 (preferred): Develop surgical procedures regulations</b></p> <p>Retain the default position in the Act that significant surgical procedures are veterinarian-only.</p> <p>Remove the current sub-</p>	<p>Including specific surgical procedures in regulations would allow flexibility to prohibit, restrict or set conditions in line with changes in animal management and societal attitudes.</p> <p>The rules would be easily</p>	<p>There would be a cost to Government to develop regulations. The exact cost is not known but the Ministry will be implementing any changes from within its baseline.</p> <p>The Government and the SPCA would incur</p>	<p>There may continue to be doubt about some procedures because there would be no criteria or guidance about which procedures are significant (or not) and specifying a few procedures in regulations may cast doubt on those not</p>	<p>Removing the threshold of 'a great level of uncertainty or public concern' would give Government the flexibility to respond quickly if concerns are raised (e.g. by NAWAC) about a new surgical procedure.</p> <p>A skilled and competent</p>

Options	Benefits	Costs	Risks	Other impacts
<p>categories of significant surgical procedures from the Act, and replace this with a regulation making power that would enable the default position in the Act to be varied for specific procedures.</p> <p>The regulations would enable specific procedures to be prohibited, or have mandatory conditions placed on them - for example, who can carry them out, under what circumstances, and through what methods.</p> <p>Remove the uncertainty or public concern threshold.</p>	<p>accessible in the Act and in surgical procedures regulations.</p> <p>May improve animal welfare outcomes by allowing regulations to specify certain conditions for procedures, such as the level of training needed by a practitioner, the kind of anaesthetic and/or analgesic to be used, and the appropriate method for carrying out the procedure</p>	<p>enforcement costs.</p> <p>Cost of compliance for people who do not meet the mandatory standards in the regulations. There is not enough data about animal welfare compliance to accurately estimate these costs.</p> <p>The regulations would allow some procedures traditionally performed by veterinarians to be able to be performed by competent technicians, which should reduce costs for farmers and animal owners.</p>	<p>specified.</p> <p>Some people may consider that all contentious procedures should be set in primary rather than secondary legislation.</p> <p>If compliance with mandatory conditions is not monitored, poor animal welfare outcomes could result.</p> <p>Allowing non-veterinarians to perform some procedures under certain conditions will not have the protections of a professional organisation with a code of conduct and a registration process.</p>	<p>technician could perform certain surgical procedures under certain conditions.</p>
<p><b>Option 2: List all prohibited, significant, restricted and controlled surgical procedures in the Act</b></p> <p>Amend the Act to classify all procedures for which there is uncertainty about their classification in the Act.</p>	<p>The rules would be easily accessible in one place in the Act.</p> <p>All contentious procedures would be debated openly and have their classification determined by Parliament.</p>	<p>Cost to Government to amend the Act every time a new procedure was developed whose classification was uncertain, or there was a need to change the classification of an existing procedure.</p>	<p>Listing some surgical procedures in the Act may cast doubt over the classification of those that are not included.</p> <p>The Act would not be sufficiently flexible to accommodate changes in animal management and societal attitudes.</p>	

## Options for problem 5: Ill-treatment of animals in the wild

Options	Benefits	Costs	Risks	Other impacts
<p><b>Status quo</b></p> <p>Prosecutors would need to continue to use the generic ill-treatment offences.</p>	<p>No need to change the legislation.</p>	<p>Cost of court time to determine whether the ill-treatment provisions apply to wild animals.</p> <p>Cost to prosecution to prove that a person has acting outside 'normal' hunting and killing behaviour.</p>	<p>A judgment may determine that ill-treatment offences do not apply to animals in a wild state.</p> <p>Risk of appeals and lengthy court proceedings.</p>	<p>People may not realise that it is an offence to ill-treat wild animals.</p> <p>Aberrant and cruel hunting practices may continue to be practised.</p>
<p><b>Option 1 (preferred): Apply ill-treatment provisions to hunting and killing animals in the wild</b></p> <p>Amend the Act to remove any doubt that it is an offence to hunt or kill an animal in the wild in a way that causes it to suffer unreasonable or unnecessary pain or distress.</p>	<p>This would help to prevent extreme conduct that goes beyond acceptable practice when hunting, fishing or controlling pests.</p>	<p>May lead to more prosecutions for ill-treatment, incurring prosecution and court costs.</p>	<p>May create uncertainty over what hunting and killing practices are acceptable. This risk is mitigated by guidance available in existing codes and guidelines issued by hunting, fishing, and pest management organisations. NAWAC also intends to work with sectors to develop national guidelines.</p>	<p>May create unintended consequences for pest management.</p>

## Options for problem 6: Defendants who are found unfit to stand trial

Options	Benefits	Costs	Risks	Other impacts
<p><b>Status quo</b></p> <p>People who are found unfit to stand trial on animal welfare charges can retain their animals.</p>	<p>No need to change the legislation.</p>	<p>The Government and SPCA incur the cost of discontinued prosecutions with no permanent resolution for the welfare of the animals.</p> <p>The Government and SPCA incur the cost of enforcement with no ability to resolve the situation.</p>	<p>Animal welfare is likely to suffer if there is no way to address the unfit person's offending.</p>	
<p><b>Option 1 (preferred): Enable the court to order forfeiture and disqualification</b></p> <p>Amend the animal welfare Act so that the court can order forfeiture and disqualification for people who are found unfit to stand trial.</p>	<p>Animal welfare would improve - an unfit person's animals could be sold (farm animals) or appropriately rehomed (companion animals).</p> <p>The person could be prevented from acquiring further animals and continuing to offend.</p> <p>Prosecutions involving people found unfit could be permanently resolved without the need for ongoing enforcement action.</p>	<p>The unfit person may incur some enforcement costs. The Act enables the Ministry to recover the cost associated with seizure and sale of livestock. This is deducted from the sale price of the stock which is given to the owner.</p>		



# Transparency

## Problem definition summary

61. Transparency in legislation is an important feature of open and trusted government and public services. Some sections of the Animal Welfare Act are not sufficiently transparent to provide the public with confidence that the decisions being made and activities being undertaken under the Act sufficiently protect animal welfare and are in the best interests of New Zealand.
62. The most controversial decisions in animal welfare involve balancing animal welfare objectives against economic and cultural considerations. There are two places in the Act where this happens: the decision-making criteria for codes of welfare, and the ability to exempt practices from the general obligations. Economic impacts and practicality are not explicitly part of the decision-making criteria for codes of welfare but are taken into account as “other relevant matters” when necessary. The exceptional circumstances provisions do not transparently manage transitions to new technologies or practices.
63. Transparency is an important part of the system governing the use of animals in research, testing and teaching. Animals that are killed so that their bodies or tissues can be used in research, testing and teaching are not included in ethical approvals or the statistics on animal use. There is also no ethical oversight of animals bred with characteristics that lead to known or potentially compromised welfare. Finally, the Government’s policy on animals exported for slaughter is currently implemented through the Customs and Excise Act rather than the Animal Welfare Act, and must be renewed every three years.

## Problem 7: Lack of transparency in criteria for developing animal welfare standards

64. The Animal Welfare Act sets out the matters NAWAC must consider before it recommends a code of welfare to the Minister. Specifically, NAWAC must be satisfied that:
  - the proposed standards are the minimum necessary to ensure the purposes of the Act will be met; and
  - the recommendations for best practice (if any) are appropriate.
65. When developing a code of welfare, NAWAC must also have regard to:
  - all public submissions;
  - good practice and scientific knowledge;
  - available technology; and
  - any other matter it considers relevant.
66. ‘Practicality’ and ‘economic impact’ are also important factors that sometimes need to be considered when minimum standards are being developed. These considerations ensure that minimum standards are workable and practical for animal owners.
67. It is not explicit in the Act that the practicality and economic impact need to be taken into account when relevant. This reduces the transparency of the decision-making process. It can also disadvantage people who make submissions on a

proposed code of welfare, because the rationale for a minimum standard may not be clear.

68. Currently, NAWAC does consider economic and feasibility aspects of minimum standards as part of the 'other matters it considers relevant' criteria. However, because the committee is not required to under the Act, there is a risk that in future NAWAC may decide not to consider these aspects when developing minimum standards. This has the potential to affect the viability of recommended standards.

### **Problem 8: Lack of transparency in criteria for exceptional circumstances**

69. The Animal Welfare Act provides that NAWAC may, in exceptional circumstances, recommend minimum standards that do not fully meet the purposes of the Act. One of the key aims of the Act is to ensure that animal owners and people in charge of animals meet the physical, health and behavioural needs of their animals, in accordance with good practice and scientific knowledge.
70. In recommending a minimum standard that does not meet the purposes of the Act, NAWAC must have regard to:
- the feasibility and practicality of effecting transition from current practices to new practices and any adverse effects that may result from such a transition;
  - the requirements of religious practices or cultural practices or both; and
  - the economic effects of any transition from current practices to new practices.
71. The exceptional circumstances provisions have been used rarely, but they can apply to a large number of animals. For example, NAWAC considered that the use of dry sow stalls does not fully comply with section 10 of the Act. However, the *Animal Welfare (Pigs) Code of Welfare 2010* allows these stalls to be used until December 2015. NAWAC considered the five year phase out period was necessary to enable farmers to plan the necessary changes to their production systems, secure finance and resource consents, and train staff in the management techniques needed to successfully manage pigs in group housed systems.
72. The criteria for recommending a minimum standard that does not fully meet the obligations in the Act are not sufficiently clear and transparent. In addition, the criteria confuse the issue of continuing to allow a practice during the transition to a new standard (e.g. during the phase out of sow stalls) and exemptions that are required in genuinely exceptional circumstances (e.g. Jewish shechita slaughter).

### **Problem 9: No ethical oversight of animals killed for the purposes of carrying out research, testing, or teaching on their body or tissues**

73. Under Part 6 of the Animal Welfare Act, live animals can only be used in research, testing, or teaching where:
- the research, testing or teaching will provide benefits for society; and
  - the benefits will not be outweighed by the likely harm to the animals (section 80).
74. These rules do not apply to animals that are humanely killed for the purpose of carrying out research, testing, or teaching on their body or tissues (section 3(2)(b)). This means that researchers and others do not need to seek ethics committee approval to kill an animal so that its body or tissues can be used for research, testing, or teaching. The exemption also means that the Government cannot collect

and release data on numbers of animals killed for the purpose of carrying out research, testing, or teaching on their body or tissues.

75. The exclusion of such animals from animal research data collection results in statistics that some people perceive to be misleading. This is because society interprets 'animals used' in research, testing, or teaching to include those animals that are killed for that purpose. The lack of transparency generates concerns about the numbers of animals being killed for the purposes of carrying out research, testing, or teaching on their body or tissues, and also that animals are being bred and killed for research that may have no benefit to society.

### **Problem 10: Oversight of research involving animals with compromised welfare**

76. There is a regulatory gap in the Animal Welfare Act regarding research that involves breeding animals with known or potentially compromised welfare.
77. Animals may be deliberately bred to have compromised welfare in order to act as a research model for a particular disease. For example:
- researchers in New Zealand are using genetic modification to remove the tumour suppressor gene in mice and rats so that the animals develop tumours. These animals are valuable models for studying the efficacy of certain cancer treatments; and
  - other disease models have arisen through spontaneous mutation and been developed through selective breeding, for example batten disease in sheep – a fatal neurodegenerative disease which causes brain atrophy, blindness, and seizures of increasing severity.
78. Research that involves the production and breeding of animals with known or potentially compromised welfare (by selective breeding or genetic modification) does not require animal ethics committee approval. This is because the procedures are always undertaken before the second half of gestation, i.e. before the embryo or fetus is an 'animal' as defined in the Act.
79. This means the Act does not require an animal ethics committee to take the welfare implications for the offspring once it becomes sentient/is born into account when it considers the research proposal. As a result, animal ethics committees, the National Animal Ethics Advisory Committee, and the Government have little oversight or information about this type of research and the welfare implications it can have for animals.
80. In addition, caring for research animals bred to have compromised welfare, and particularly those with unpredictable welfare outcomes, requires extra resources including staff time and attention. Members of the research community have expressed concern that research facilities are not always providing the extra care required to meet the obligations in the Act.
81. Inadequate care of research animals with unpredictable welfare outcomes can affect hundreds or thousands of animals in each research project. For example, a report from the UK estimates that the number of animals required to establish a genetic line carrying a particular mutation currently ranges from 50 to several hundred. The National Animal Ethics Advisory Committee notes that the use of genetically modified animals in research in New Zealand is increasing and expects this trend to continue.

82. The lack of transparency and ethical oversight of this type of research is generating concern amongst stakeholders and interest groups inside and outside the research sector. It also poses a risk to New Zealand's reputation for having an open and sound animal welfare framework for research, teaching and teaching.

### **Problem 11: Rules governing exporting livestock for slaughter**

83. The Customs Exports Prohibition (Livestock for Slaughter) Order 2010 prohibits the export of livestock (sheep, cattle, deer and goats) for slaughter unless the risks to animal welfare and New Zealand's trade reputation can be adequately managed. Individual consignments may be approved on a case-by-case basis at the discretion of the Director-General of Ministry for Primary Industries. Approval may only be granted if the Director-General judges that the risks can be adequately managed.
84. The Customs Order must be renewed every three years and is due to expire in December 2013. The use of a Customs Order was intended as a temporary measure until animal welfare legislation could be amended. It is not efficient or transparent for rules relating to live animal exports to be spread across regulatory regimes.

## Options

### Options for problem 7: Criteria for developing animal welfare standards

85. Depending on the Government's decisions in regard to codes of welfare (see pages 17 – 20 above), NAWAC may continue to be the decision-maker for minimum standards, or the task might be split between NAWAC and the Ministry, or the Ministry may lead decision-making in consultation with NAWAC. In the following two tables, the status quo describes the implications of NAWAC continuing to draft codes of welfare and develop minimum standards using current criteria. The other options use the term 'decision-maker' to reflect the possibility that it may be NAWAC or the Ministry leading the decisions.

Options	Benefits	Costs	Risks	Other impacts
<p><b>Status quo</b></p> <p>NAWAC must consider:</p> <ul style="list-style-type: none"> <li>• all public submissions;</li> <li>• good practice and scientific knowledge;</li> <li>• available technology; and</li> <li>• any other matter it considers relevant.</li> </ul> <p>NAWAC can consider practicality and economic impact under as part of "any other matters considered relevant".</p>	<p>No need to amend the legislation.</p> <p>'Any other matter' is flexible enough to enable NAWAC to take into account any factor it considers important.</p>	<p>If NAWAC decides not to consider practicality and economic impact when developing minimum standards, some standards may not be economically viable or practical for animal owners. There will be administrative costs for NAWAC, the Ministry, and sectors to redraft and re-consult on any problematic standards.</p>	<p>NAWAC may not take practicality or economic impact into account when developing minimum standards.</p> <p>The lack of transparency in the decision-making process may generate concerns amongst stakeholders.</p>	
<p><b>Option 1: Add practicality and economic impact</b></p> <p>Add economic impact and practicality to the list of existing criteria.</p>	<p>Ensures that these issues are considered by the decision-maker.</p> <p>Would improve transparency of decision making.</p> <p>Provides reassurance to stakeholders likely to be</p>	<p>The weight given to practicality and economic impact may override animal welfare considerations making the minimum standards <i>ultra vires</i> and subject to judicial review.</p>	<p>Unnecessary suffering could be justified as the easier option than changing a husbandry practice or investing in more welfare friendly husbandry systems.</p> <p>Risk of putting the interests of animal users ahead of the</p>	<p>Economic impact and practicality are not relevant to every animal welfare standard.</p>

Options	Benefits	Costs	Risks	Other impacts
	subject to regulations.		interests of animals.	
<p><b>Option 2 (preferred):</b>  <b>Include practicality and economic impact as second tier considerations</b></p> <p>Extend the list of matters that the decision-maker takes into account when developing animal welfare standards by including “practicality” and “economic impact” as second tier considerations.</p> <p>Practicality and economic impact would be taken into account only where relevant.</p>	<p>Would improve the transparency of decision making.</p> <p>Making matters relating to practicality and economic impact second tier considerations would reduce the risk of these matters overriding animal welfare considerations.</p> <p>Additional safeguard for those stakeholders likely to be subject to regulations.</p>	<p>May take extra time to develop minimum standards as a result of the need to balance animal welfare and broader societal outcomes.</p>	<p>May raise questions about other criteria that could be considered by the decision-maker, e.g. how animals’ lives can be enriched; how production systems can improve food safety.</p>	<p>Good practice, scientific knowledge, technology, practicality and economic impact all contain degrees of subjectivity. At the end of the day the minimum standards will depend on the decision-making process, the decision maker, and available scientific and economic information.</p>

## Options for problem 8: Criteria for exceptional circumstances

Options	Benefits	Costs	Risks	Other impacts
<p><b>Status quo</b></p> <p>NAWAC would continue to use the existing criteria under section 73(4).</p>	<p>No need to amend the legislation.</p>	<p>Not clear what constitutes “exceptional circumstances”. Decisions using exceptional circumstances criteria may be more likely to be challenged through the courts or the Regulations Review Committee.</p>	<p>Means different things to different people – used only a few times, but affects large numbers of animals.</p> <p>Does not easily allow transitions to new or better technology or practices.</p>	<p>Concern that exceptional circumstances provisions allows ongoing use of practices that would otherwise be considered breaches of the Act.</p> <p>Lack of transparency may increase distrust of decision-making process.</p>
<p><b>Option 1: No criteria specified</b></p> <p>The Act would be silent on matters the decision-maker must take into account when developing standards that do not meet the animal welfare requirements of Act.</p>	<p>There is no compelling need to apply statutory criteria to the making of regulations.</p> <p>Flexible – allows decisions to be made that suit the situation.</p>	<p>The Government may need to produce extra information for stakeholders and the public on the rationale for the minimum standards that do not meet the requirements of the Act.</p>	<p>Leaves the decision-maker with a difficult decision without any guidance.</p>	<p>Concern that exceptional circumstances provisions allow ongoing use of practices that would otherwise be considered breaches of the Act.</p> <p>Many stakeholders concerned that the provision could be open to misuse.</p>
<p><b>Option 2 (preferred): Replace exceptional circumstances with transitions and exemptions</b></p> <p>An animal welfare standard could be made that does not meet the general obligations of the Act:</p> <ul style="list-style-type: none"> <li>to allow a transition from a current practice to a new one (defined expiry date);</li> <li>to exempt a practice in exceptional circumstances</li> </ul>	<p>This option would make the purpose, criteria and length of time for transitions and exemptions explicit in the Act and would better manage transitions to new practices or new technologies.</p> <p>There would be a clearer test to meet before the decision-maker could recommend a transition or exemption.</p> <p>Cabinet is well-placed to decide how to balance the competing values.</p>	<p>Still leaves judgment call to be made about how much cost is practical or feasible or what is in New Zealand’s best interests.</p>	<p>Might not provide enough guidance for the decision maker, these are likely to be difficult decisions.</p> <p>Decisions may be contested.</p>	<p>Concern that exceptional circumstances provisions allow ongoing use of practices that would otherwise be considered breaches of the Act.</p>

Options	Benefits	Costs	Risks	Other impacts
<p>(for an indefinite period but subject to review in 10 years or less).</p> <p>The decision-maker must be satisfied that:</p> <ul style="list-style-type: none"> <li>i. there are no feasible or practical alternatives;</li> <li>ii. there would be an unreasonable impact on religious or cultural practices;</li> <li>iii. There would be an unreasonable economic impact on a particular sector or on New Zealand's wider economy;</li> </ul> <p>In the case of an exemption, the decision-maker would need to be satisfied that a transition is either not achievable or feasible.</p> <p>Transitions and exemptions would be contained in regulations rather than codes of welfare.</p>				



## Options for problem 9: Animals humanely killed for the purposes of carrying out research, testing or teaching (RTT) on their body or tissues

Options	Benefits	Costs	Risks	Other impacts
<p><b>Status quo</b></p> <p>Researchers can humanely kill animals to carry out RTT on their body or tissues without Animal Ethics Committee approval.</p> <p>The Government cannot collect data on the numbers of animals killed for RTT.</p>	<p>No need to amend the legislation.</p> <p>Does not confuse the ethical position taken in the Act that people can kill animals for any purpose as long as it is done humanely.</p>	<p>If a situation arose where the Government needs to know how many animals are killed to carry out RTT on their bodies or tissues, it would be difficult and costly to try and obtain this information.</p>	<p>There may be RTT occurring that requires animals to be killed and is of no benefit to society.</p> <p>Government and the public would continue to have no information on the number of animals killed to carry out RTT on their bodies or tissues – may increase distrust of all RTT that uses animals.</p>	<p>Public concern about RTT being ‘hidden’ from public view. Concern that current figures ‘cover-up’ the truth about the number of animals used in RTT.</p>
<p><b>Option 1 (preferred): Require animal ethics committee approval to kill animals for purpose of carrying out RTT on bodies or tissues</b></p> <p>Amend the Act to require animal ethics committee approval to kill animals for the purpose of carrying out RTT on their bodies or tissues.</p> <p>This would require researchers to show in their application that the research has benefits for society.</p> <p>Researchers would not need approval to use tissue from already dead animals (e.g. organs from an abattoir or</p>	<p>The option would mean that researchers and animal ethics committees would be required to consider what benefits may result from the killing of animals to carry out RTT on their bodies or tissues. It would also allow the Government to monitor the number of animals killed to carry out RTT.</p> <p>The public would be more informed about animals used in RTT.</p> <p>There is a working example of this option - the University of Otago’s current Code of Ethical Conduct redefines killing as a manipulation.</p>	<p>Requiring researchers to apply for ethical approval to kill animals to carry out RTT on their bodies or tissues would increase administrative costs for researchers.</p> <p>Reporting numbers of animals killed to carry out RTT on their bodies or tissues would increase compliance costs for some researchers and educational institutions that do not already collect this data.</p>	<p>It suggests that killing animals for RTT has an ethical cost. However, animals are used and killed humanely for many reasons in New Zealand, including for food production purposes.</p> <p>Post-mortem research can often replace research on live animals, and the use of dead animals can reduce the ethical costs of subsequent manipulations of live animals.</p>	<p>Over-regulation of research using dead animals may prevent exploratory experiments from being done – may reduce New Zealand universities’ competitiveness.</p> <p>The inclusion of animals killed for RTT in statistics may create additional public concerns about RTT.</p>

Options	Benefits	Costs	Risks	Other impacts
<p>existing stored tissue).</p> <p>This change would allow the Government to collect statistics on the numbers of animals killed in order to undertake RTT.</p>				
<p><b>Option 2: Enable data to be collected on animals killed for RTT</b></p> <p>Enable the Government to require researchers to report on the numbers of animals killed to carry out RTT on their bodies or tissues.</p>	<p>The Government and the public would be more informed about the number of animals used for all RTT.</p> <p>Does not confuse the ethical position taken in the Act that people can kill animals for any purpose as long as it is done humanely.</p>	<p>Reporting numbers of animals killed for RTT would increase compliance costs for some researchers and educational institutions that do not already collect this data.</p>	<p>The inclusion of animals killed to carry out RTT on their bodies or tissues in statistics may create additional public concerns about RTT.</p> <p>The humane killing of animals would continue to fall outside of ethics committee oversight, making it hard to tell whether the animal use is of benefit.</p>	

## Options for problem 10: Research involving animals with compromised welfare

Options	Benefits	Costs	Risks	Other impacts
<p><b>Status quo</b></p> <p>Researchers would not need to seek ethics approval for research that involves breeding animals with known or potentially compromised welfare.</p> <p>There would be no oversight of the care of animals bred with known or potentially compromised welfare.</p>	<p>No changes to the legislation.</p> <p>Researchers would not face additional costs associated with applying for project approvals and meeting any conditions imposed by animal ethics committees.</p>		<p>Possible reputational risk for New Zealand if welfare protections for animals in research fall behind countries such as Australia and the UK.</p> <p>Level of ethical oversight of animals used in certain research projects may fall out of step with public expectations as the use of GM animals in RTT increases over time.</p>	<p>Little information available about this type of research which causes concern for stakeholders.</p>
<p><b>Option 1 (preferred): Require researchers to apply for ethical approval</b></p> <p>Amend the Animal Welfare Act to require animal ethics committee approval of research that involves production and breeding of animals with known or potentially compromised welfare.</p> <p>The Government would also collect data on this type of research.</p>	<p>The welfare of animals intended to be bred with genetic defects would be better protected.</p> <p>The Act would be future-proofed for the increasing use of GM animals in research.</p> <p>New Zealand's regulatory framework would be in line with other comparable countries.</p> <p>Animal ethics committees could set conditions for the care of animals bred with compromised welfare that are being used in research projects.</p> <p>Goes some way toward addressing reputational risks</p>	<p>There may be additional costs for researchers associated with applying for project approvals and meeting any conditions imposed by animal ethics committees.</p> <p>The option may increase animal ethics committees' workloads.</p> <p>The Government would incur the cost of amending the Act.</p>	<p>Requirement for animal ethics committee oversight may be seen as a constraint on research and innovation.</p>	<p>The Government would be able to publish data on this type of research for interested stakeholders and members of the public.</p>

<b>Options</b>	<b>Benefits</b>	<b>Costs</b>	<b>Risks</b>	<b>Other impacts</b>
	and public expectations.			

## Options for problem 11: Exporting livestock for slaughter

Options	Benefits	Costs	Risks	Other impacts
<p><b>Status quo</b></p> <p>Continue to control the export of livestock for slaughter with an order under the Customs and Excise Act 1996 (section 56).</p>	<p>No change to current regulatory system.</p>	<p>Orders need to be renewed every three years which is an administrative cost to Government.</p>	<p>The current system lacks enforcement capability. Although the Director-General may impose conditions on an Animal Welfare Export Certificate, the ability to regulate and maintain animal welfare following departure from New Zealand is limited.</p> <p>There are risks to both animal welfare and the reputation of New Zealand as a responsible exporter.</p>	<p>New Zealand has little control over what happens to livestock once overseas.</p>
<p><b>Option 1 (preferred): Regulate export for slaughter under the Animal Welfare Act</b></p> <p>Regulate export for slaughter under the Animal Welfare Act rather than the Customs and Excise Act. This will require broadening the purpose of the exports part of the Act (Part 3) so that New Zealand's reputation can be considered when making regulations or deciding on applications.</p>	<p>Having the rules relating to exporting animals within the one legislative regime would be more transparent and administratively efficient.</p>	<p>There is a cost to Government of developing regulations.</p> <p>Government would incur enforcement costs.</p>	<p>There are risks to both animal welfare and the reputation of New Zealand as a responsible exporter if regulations are not clear or well implemented.</p> <p>The ability to regulate and maintain animal welfare following departure from New Zealand is limited.</p> <p>It is nearly impossible to regulate for such occurrences as adverse weather, disease outbreaks, or the quarantine practices of foreign ports.</p>	<p>The example of Australia shows that, even after tightening the regulation of live exports, and the introduction of tougher procedures and memorandums of understanding, animal welfare may still be placed at risk.</p> <p>Many New Zealanders oppose exporting livestock for slaughter.</p>
<p><b>Option 3: Prohibit exports of livestock for slaughter</b></p> <p>Prohibit exports of livestock</p>	<p>Eliminates risks to animal welfare.</p> <p>Many people are opposed to</p>	<p>Closes a potential export market.</p>	<p>Prohibition on live exports for slaughter may be inconsistent with New Zealand's</p>	<p>May be viewed as inconsistent with New Zealand's policy on exporting</p>

Options	Benefits	Costs	Risks	Other impacts
for slaughter.	animal exports for slaughter.		obligations under the World Trade Organisation.	livestock for other purposes.

## Consultation

86. In 2011, the Ministry for Primary Industries spoke to a range of individuals and organisations to better understand the concerns about the operation of the Animal Welfare Act and the broader animal welfare system. This included Federated Farmers, DairyNZ, Beef+Lamb, Poultry Industry Association of New Zealand and Egg Producers Federation, NZ Pork, New Zealand Veterinary Association, Royal New Zealand Society for the Prevention of Cruelty to Animals, Save Animals from Exploitation, Animal Health Board, Seafood Industry Council, Aquaculture New Zealand, and others.
87. The Ministry used an advisory group of nine members from a range of industry, animal advocacy, veterinary, and science backgrounds to test possible options to improve the operation of the Act.
88. In August 2012, the Ministry released *Animal Welfare Matters: Proposal for a New Zealand Animal Welfare Strategy and amendments to the Animal Welfare Act 1999* for public consultation. The document outlined the issues with the legislation and discussed potential options to amend the Act. The Ministry also held six stakeholder workshops around the country to discuss the issues and options in the document.
89. The Ministry received written 2,207 submissions from a variety of sectors, industry organisations, animal welfare interest groups, and individuals. Many of these submissions (1,756) were generated from the SAFE website. There were also about 150 submissions that dealt mostly or exclusively with dog issues, often about dog tail docking.
90. The following Government departments were consulted on this RIS: The Treasury; the New Zealand Police Service, the New Zealand Customs Service; the Parliamentary Counsel Office; the Departments of Conservation and Internal Affairs; the Ministries of Justice, Education, and Foreign Affairs and Trade; the Ministry of Health, and Te Puni Kokiri. The Department of Prime Minister and Cabinet was informed.
91. The Ministries of Business, Innovation and Employment and for the Environment, and the Environmental Protection Agency, were consulted on problem 10 (animals bred for research purposes with known or potentially compromised welfare).

## Feedback on the proposals

92. The animal welfare sector is diverse, comprising industry groups (producers, processors, transport, zoos and aquaria, racing and rodeo interests, and research, testing and teaching organisations) as well as vets, hunting and fishing groups, agencies and people handling pests, animal advocacy groups, and the 68% of New Zealanders that own at least one pet. Responses to most issues reflected that diversity, however, the majority of the proposals in the consultation document were generally well-received.

## **Enforceability and clarity**

93. While there was a lot of support for the concept of enforceable animal welfare standards, many stakeholders from across the animal welfare spectrum had serious concerns about the proposed mechanism for achieving this. Stakeholders were variously concerned about the potential for over regulation, about the potential for under regulation, about the loss of NAWAC and its independence from the standard setting role, and about the fate of best practice guidelines if these were no longer located in a document with legal status. Some stakeholders also perceive that MPI has a conflict of interest in setting animal welfare standards given its strategic focus on the Government's business growth agenda.
94. Submissions showed high levels of support for increased enforcement through the creation of new infringement offences and fines tied to regulations and the enabling of animal welfare inspectors to issue compliance orders for certain breaches of the Act.
95. There was very significant agreement with the proposal that wilful and reckless ill-treatment offences should apply to animals in a wild state.
96. The Department of Conservation supported this proposal, but also noted that the change to the Act will need to be carefully drafted to ensure the offences focus on deliberate acts of cruelty. The Department considers there is a high risk people may attempt to use the Act as a vehicle to prevent some established hunting, fishing, or pest control activities. This would have significant impacts on New Zealand's ability to protect production and biodiversity as well as customary, recreational and commercial hunting and fishing. Effects on hunting could also have flow-on effects on New Zealand's biodiversity as hunting is the main method of managing some pest populations.

## **Transparency**

97. There was a great division of views on the proposal to add 'economic impact' and 'practicality' to the list of matters that must be considered when setting animal welfare standards in regulation. Generally, industry stakeholders were strongly in favour of this proposal, while animal welfare and advocacy groups were strongly against.
98. There was a high level of agreement that the Animal Welfare Act should provide for practices that fall below the general obligations of the Act in certain circumstances. There was a general level of support for the proposal to distinguish these circumstances as "transitions" and "exemptions" rather than continuing to use a single "exceptional circumstances" provision.
99. Most submissions that covered killing animals for RTT agreed on the proposal to amend the definition of manipulation so that animals humanely killed for the purpose of carrying out research, testing or teaching on their bodies or tissues would be counted in official records. However, a large number of submissions from people or organisations in the research, testing and teaching sector disagreed that the definition of manipulation should be amended, while agreeing that the numbers of animals killed should be counted in official records.
100. A very high number of submissions opposed the export of live animals for slaughter including but not limited to the SAFE submissions.



## Conclusions and recommendations

101. In summary, the following recommendations are made:

### Clarity and enforcement

- **either** retain codes of welfare and develop complementary regulations **or** replace codes of welfare with regulations and guidelines;
- enhance the range of enforcement tools available under the Act;
- create a new power in the Act allowing regulations to be made setting out clear and enforceable standards for live exports;
- retain the position in the Act that significant surgical procedures are veterinarian-only. Create a regulation-making power that would enable specific procedures to be prohibited, or have mandatory conditions;
- clarify that it is an offence to wilfully or recklessly ill-treat an animal in a wild state;
- enable the court to order forfeiture and disqualification for defendants found unfit to stand trial on animal welfare charges.

### Transparency

- include 'practicality' and 'economic impact' as second tier considerations in the statutory criteria for developing animal welfare standards;
- replace exceptional circumstances with transitions and exemptions;
- require the killing of animals for the purposes of carrying out research, testing or teaching on their bodies or tissues to be subject to animal ethics committee approval and animal usage reporting requirements;
- require researchers to apply for ethics approval to conduct research that involves production and breeding of animals with known or potentially compromised welfare;
- regulate export for slaughter under the Animal Welfare Act;

## Implementation

102. The Cabinet paper that this RIS accompanies, *Proposals for a New Zealand Animal Welfare Strategy and Amendments to the Animal Welfare Act 1999*, proposes that Cabinet agree to a number of the options considered in this RIS. It is proposed that the changes be progressed in an Animal Welfare Amendment Bill in 2013. The Ministry would prepare a regulation-making timetable in consultation with the Minister for Primary Industries.
103. We expect that it would be possible to have at least the first set of new regulations in place within about 12 months of the Act being changed. A separate consultation and regulatory impact analysis will be undertaken for the development of any regulations. While some future enforcement costs have been referenced in this RIS, further work will be required to understand the cost impacts as the regulations are being developed. It is anticipated that future regulations will also be implemented on a fiscally neutral basis, and this may require the Ministry to examine enforcement priorities and realign how it allocates resources.
104. There is a change programme underway in the Ministry to enhance the way compliance and enforcement activities are undertaken across the primary sectors. If the proposed changes to the Animal Welfare Act are agreed by the Government, the programme will incorporate the changes to animal welfare enforcement.
105. The Ministry will develop training material for animal welfare inspectors, and educational material for industry participants, advising of the changes to the Animal Welfare Act. Guidance material for imposing infringement notices and compliance orders will also be developed. This will help to ensure stakeholders are aware of changes and that the changes are implemented consistently across the country.
106. All options would be implemented by the Ministry on a fiscally neutral basis. The Ministry's budget for animal welfare activities is outlined below:

Year	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13
<b>Actual \$(000)</b>	2634	2808	3191	4993 (4170+823)	Budget: 5721 <sup>13</sup> (4729+992)	Budget: 5136 <sup>14</sup>
<b>Notes</b>	All animal welfare	All animal welfare	All animal welfare	(education and enforcement + policy advice)  The baseline for the education and enforcement appropriation was increased by \$1.2 m in Budget 2010.	(education and enforcement + policy advice)	Education and enforcement only. AW policy advice rolled into Agriculture and Forestry Policy Advice

107. The SPCA will also incur costs to enforce the new provisions and the Ministry will work with the charity to ensure that the enforcement changes can be implemented within available resources. The SPCA supports increasing enforcement tools for animal welfare inspectors.

<sup>13</sup> Estimates of Appropriations 2011/12

<sup>14</sup> Estimates of Appropriations 2012/13

## Monitoring, evaluation and review

108. The Ministry and NAWAC oversee the animal welfare system and will monitor implementation of the legislative changes so that any problems can be examined and addressed as they arise.
109. The RIS highlights that there is a lack of information about non-compliance with animal welfare requirements. Measuring animal welfare performance and increasing monitoring and reporting of animal welfare outcomes are priorities for the proposed New Zealand Animal Welfare Strategy and the Animal Welfare Review implementation plan. Further work will be undertaken in 2013 to ensure that the Ministry improves monitoring and reporting of compliance within the sector and is able to assess the impact of the proposed legislative reforms on the animal welfare sector.
110. The Ministry will use a range of mechanisms to monitor animal welfare and the regulatory system. This will include collecting:
- data about the number and type of infringements imposed and prosecutions completed;
  - feedback from stakeholders and the public; and
  - information on the number and type of animal welfare complaints made to the Ministry and the SPCA.
111. The Ministry has commissioned research into farmer attitudes towards animal welfare compliance with the intention of conducting follow up surveys in future to show changes over time. This will also contribute to the Ministry's overall picture of the impact of the changes to the animal welfare system.