

The New Zealand Animal Law Association

Submission on the Proposed Animal Welfare Regulations

May 2016

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About the New Zealand Animal Law Association

The New Zealand Animal Law Association (NZALA) is a registered charity working to improve the welfare of animals through the law and to advance animal law education. It currently comprises over 200 lawyers spanning various practice areas, including practitioners for large commercial law firms, criminal and civil litigators, in-house counsel, crown counsel, and lawyers working for the judiciary. NZALA also has two honorary patrons, including Australia's longest-serving judge, the Honourable Michael Kirby AC CMG Australia.

More information about the charity can be found at www.nzala.org.

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PART A: The consultation process and response to broad legal questions

1 About the consultation process

1.1 NZALA appreciates the opportunity to participate in this consultation process. It considers that the promulgation of animal welfare regulations is likely to assist in ameliorating the enforcement difficulties currently experienced under the Animal Welfare Act 1999 (**'the Act'**) and the Codes of Welfare.

1.2 However, NZALA has real concerns about the adequacy of the consultation process undertaken, and in particular the time frame given for interested parties to provide feedback on the regulatory proposals.

1.3 The *Cabinet Manual 2008* provides at [7.88] that:

Care needs to be taken to ensure that sufficient time is allowed for meaningful consultation, and that proper consultation takes place.

1.4 NZALA considers that a period of just 25 working days to review and prepare meaningful submissions is inadequate relative to the large number of regulations being consulted on. It appreciates that the time frame may not be inconsistent with consultation periods given under other regulatory regimes. However, it is submitted that these regulations necessitated a significantly longer consultation period given that the preparation of a submission requires consideration of:

- a) a consultation document on the proposed Care and Conduct regulations that is 123 pages long;
- b) a separate consultation document for live exports;
- c) 18 distinct Codes of Welfare, which together involve consideration of hundreds of pages of relevant standards and information;
- d) scientific publications relevant to the assessment of the suitability of the proposed standards; and
- e) notes from consultation meetings with stakeholders and industry groups.

1.5 The allocated time frame may be sufficient for industry groups who wish only to comment on a handful of proposed regulations relevant to their particular industry. However, it is far too short to allow non-profit, volunteer-based organisations (such as NZALA) to give comprehensive comment on all of the proposed regulations.

1.6 This is disappointing as it has meant that NZALA has only been in a position to comment on some of the regulatory proposals, despite wishing to utilise its legal expertise to give substantive feedback on all of the proposed regulations. In particular, it has not been able to consider the proposed regulations relating to surgical procedures and young calves, despite the importance of these regulations.

1.7 Furthermore, NZALA considers that the short consultation period has made it extremely difficult for interested members of the public to provide feedback on the proposed regulations.

This is highly problematic given the wide applicability of many of the proposed regulations to New Zealand households, with more than 68% of New Zealand households owning a companion animal. Indeed, this factor further necessitated a longer consultation period.

- 1.8 Accordingly, NZALA is concerned that the balance of the submissions received is unlikely to accurately reflect the views held by the New Zealand public. It considers that, in the very least, an extra month to provide feedback is necessary in order to ensure that the consultation process is meaningful and proper. By enabling sufficient time for all interested parties to give feedback, an extended consultation period would also act to ensure that the regulations promulgated are robust and effective.

2 Changes to the Act not yet in force

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

(Q1)

- 2.1 It is submitted that there is no sensible reason why changes to the Animal Welfare Act 1999 ('Act') not yet in force should not be brought into force at the same time as the regulations. Waiting for the changes to automatically commence in 2020 would constitute an unnecessary delay and would only prolong the current enforcement difficulties. In particular, the availability of an infringement fine for a breach of a compliance notice under section 156I of the Act represents an important enforcement tool, and it is desirable that this be available as soon as the regulations are brought into force.

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

(Q14)

- 2.2 NZALA considers that it is appropriate that the regulations be implemented between the period of late 2016 to early 2017.
- 2.3 NZALA does not consider there to be any need for lead-in periods or delay for the implementation of any of the regulations. Most of the standards are already law, being extracted from the minimum standards in the Codes of Welfare, so parties should already be complying with them. As stated in the primary consultation document, "additional costs are likely to be limited as many of the proposals are based on existing minimum standards in codes of welfare, so they should already be current practice."¹
- 2.4 It will, however, be important that the public is educated about the new regulations prior to their introduction. Once the regulations are finalised, MPI ought to hold public consultation meetings throughout New Zealand, and provide online information about the new regulations, in the months leading up to their introduction.

¹ Proposed Animal Welfare Regulations (Care & Conduct and Surgical & Painful Procedures), MPI Discussion Paper No: 2016/12, April

3 Other Changes

Are the infringement fees proposed for sections 156I and 36(3) appropriate? (Q2)

- 3.1 In keeping with the empowering provisions in the Act, the infringement fee proposed for a breach of section 156I of the Act of \$500 is appropriate for natural persons. This fee is sufficient to recognise the fact that the individual has already been informed that their practice does not comply with the Act or regulatory requirements (because they have been issued with a Compliance Notice), that they have had time to rectify the situation, and that they have failed to do so. However, for reasons set out below, it is submitted that a higher fee of \$1,000 ought to be given for body corporates in order for the infringement to provide a sufficient deterrent.
- 3.2 A fee of \$300 for a breach of section 36(3) of the Act is disproportionate to the level of harm that offending of this nature can cause. It is submitted that the fee ought to be increased to \$500 for natural persons, and \$1,000 for body corporates. As well as being more proportionate, this fee would better reflect the prevalence of the mischief this offence is aiming to address, namely that native birds and other protected wildlife will remain stuck in traps that aren't inspected, and will suffer significantly whilst trapped.

4 Proposed Defences

What defences do you think should be available if the proposed regulations are breached and why? (Q12)

- 4.1 It is submitted that the proposed defences are appropriate. These are:
- a) that the defendant took all reasonable steps to comply with the relevant provision; or
 - b) the Act or omission constituting the offence took place in circumstances of stress or emergency and was necessary for the preservation, protection, and maintenance of human life.
- 4.2 These two proposed defences replicate those contained in ss 13(2) and 30(2) of the Animal Welfare Act, which are available to the offences set out in ss 12 and 29 of that Act respectively. The first defence is ordinarily associated in legislation with strict liability offences. It is appropriate that these defences be available to the similar forms of offending prohibited in the proposed regulations.

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

- 4.3 It is submitted that the second proposed defence set out above should not be extended so that it applies to actions taken that were "...necessary for the preservation, protection, or maintenance of human or animal life."
- 4.4 First, because this defence is not contained within the Act itself, the expansion of this defence within the regulations would be anomalous. It would create an internal inconsistency whereby conduct that is dealt with by way of a regulatory offence would have a wider defence available

than similar but more serious offending prosecuted under ss 12 or 29 of the Act. Given that the offences in the Act prescribe greater penalties than those contained in the regulations, and therefore have more significant consequences for offenders, it is undesirable that the defences available under the Act be narrower than those provided in the regulations.

- 4.5 Secondly, there does not appear to be any need to expand the defence in this way. An animal welfare inspector already has discretion to decide whether to take no action, to issue a warning, compliance notice or infringement fine, or to prosecute, depending on the circumstances of the particular case. Where it is apparent that a regulation had been breached in order to preserve, protect, or maintain animal life, an inspector can (and should) use their discretion to choose not to issue an infringement notice in those circumstances.

Amendments to the Codes of Welfare

How should the Codes of Welfare be amended by the proposed regulations to ensure the codes continue to work effectively within the legislative scheme? (Q15)

- 4.6 It is submitted that Codes of Welfare should only be amended where the regulations provide a higher standard so as to align the minimum standards in the codes with this higher standard. Furthermore, the Codes of Welfare should be amended so that they contain any additional standards created by the regulations.
- 4.7 This option will ensure that the standards provided for in the Codes can be used to a fuller extent as evidence in prosecutions. If standards from the Codes that are transposed into the regulations are removed from the Codes, any breaches of these standards will still be able to be used as evidence in support of a prosecution under the Act. However, the standards would no longer have the evidential value in a prosecution that is provided for in sections 13, 24 and 30 of the Act. These sections provide that evidence of non-compliance with a minimum standard in the relevant Code is rebuttable evidence that the person charged with the offence failed to comply with, or contravened, the provision of this Act to which the offence relates.
- 4.8 Accordingly, if these standards are revoked from the Codes, enforcement agencies may be inclined to proceed with prosecutions under the regulations, even in circumstances where a prosecution under the Act would be more appropriate.
- 4.9 It would also be anomalous if minimum standards from the Codes that are not transposed into regulations have this evidential status as rebuttable evidence, but the standards that are converted into regulations do not.
- 4.10 From an educational perspective, there is also value in maintaining the standards that are converted into regulations in the Codes of Welfare. The importance of the standards will be entrenched if included in both the regulations and the Codes of Welfare.
- 4.11 Further, it is submitted that amending the Codes in the way proposed in the first approach will only cause confusion in an already complex scheme. Given the applicability of these standards to many New Zealand households who have companion animals, simplicity is desirable. By leaving the standards in place, the Codes will provide a more complete guide to the appropriate treatment of animals.

- 4.12 Finally, it is submitted that the standards in the Codes of Welfare that are converted into regulations ought to include a cross-reference to the relevant regulation and penalties. This will ensure that a reader of the Codes will appreciate that the standard is directly enforceable and will be alerted to what the relevant penalty for a breach is.

Which of the approaches as outlined above, or combination of approaches do you support? (Q16)

- 4.13 For the reasons set out above, NZALA supports the second approach whereby the Codes of Welfare are amended only where the regulations provide a higher standard in order to align the minimum standards in the Codes with this higher standard. This approach will ensure that the evidential and educational value of all the standards provided for in the Codes is preserved.

How should MPI best engage with stakeholders to monitor and review the impact of the proposed regulations? (Q18)

- 4.14 The MPI should continue to consult with both stakeholders (including animal welfare organisations) and the general public when monitoring and reviewing the impact of the proposed regulations. This consultation should take the form of meetings, and formal and informal feedback opportunities.
- 4.15 Regular meetings with the Royal New Zealand Society for the Prevention of Cruelty to Animals (RNZSPCA) will also be of critical importance, given its enforcement role. It is important that the RNZSPCA (and its inspectors) are provided with adequate support and resources in enforcing the new regulations.
- 4.16 The MPI must be proactive at acquiring feedback on the effectiveness of the regulations and in remedying any problems. In particular, it is important that the regulations be amended in a timely manner, as necessary, in response to such feedback.

5 The proposed level of infringement fines

Are the infringement offences and respective fees proposed for breaches of the proposed regulations, outlined in Part B, appropriate? Should any of the proposals attract higher or lower fees/penalties? (Q9)

- 5.1 The consultation document proposes to introduce a lower and higher-level infringement fee for different regulatory proposals depending on the relative level of harm. The proposed criteria are:
- a) a fee of \$300 where an activity has the potential to cause low-level harm to an individual animal or a small number of animals; or
 - b) a fee of \$500 where an activity has the potential to cause moderate harm to an individual animal or a small number of animals.
- 5.2 Generally speaking, the proposed range of \$300 - \$500 for the infringement fees issued under the regulations appears appropriate where the defendant is a natural person. The proposed fees are comparable to infringement fees for offences under other legislative schemes that

involve comparable social harm.² For instance, the offences prescribed under the Dog Control Act 1996 are within the range of \$100 - \$750, and the offence of failing to provide proper care and attention, to supply proper and sufficient food, water, and shelter, and to provide adequate exercise is dealt with by a \$300 infringement fine.³

- 5.3 However, where the offender is a body corporate, it is submitted that the fees should be:
- a) \$750 where an activity has the potential to cause low-level harm to an individual animal or a small number of animals; or
 - a) \$1,000 where an activity has the potential to cause moderate harm to an individual animal or a small number of animals.
- 5.4 These higher fees are necessary to ensure that the regulations will deter body corporates from offending. Otherwise, there is a high risk that, in circumstances where there is a financial incentive to breach, breaches of the regulations will merely be “purchasable commodities”. These higher fees are also consistent with infringement schemes contained in other statutory regimes, whereby it is the norm for higher fees to apply to body corporates compared with individuals.⁴
- 5.5 Analysis of the appropriateness of the proposed fees for specific regulatory proposals are set out in Part B below.

6 **Recidivist Offending**

- 6.1 One concern with the current scheme as proposed is how it deals with recidivist offending. Where a breach of a regulation causes a more than moderate level of harm to an individual animal or a small number of animals, or a low level of harm to a high number of animals, it is important that these offences be prosecuted under the Act rather than be dealt with by way of infringement notice. However, if an offender repeatedly breaches the infringement offences but the particular breaches are not of a high enough level or do not involve a high enough number of animals to justify a prosecution, it will be difficult to prosecute them under the Act.
- 6.2 It is therefore submitted that a separate offence with an increased fine (up to the \$1,000 maximum allowed) be created for recidivist offending against lower level infringement offences. This will create a hierarchy of enforcement and add a medium level sanction between the low level infringement offences under the regulations and the prosecutable offences under the Act, in order to ensure both specific and general deterrence.

² See Ministry of Justice *Guidelines for New Infringement Schemes* <<http://www.justice.govt.nz/publications/publications-archived/2008/infringement-guidelines>> at 27 and Danielle Duffield “The enforcement of animal welfare offences and the viability of an infringement regime as a strategy for reform” (2013) 25 *New Zealand Universities Law Review* 897 at 42.

³ Dog Control Act 1996, Schedule 1.

⁴ See, for example, the Land Transport Act 1998 and the Land Transport (Offences and Penalties) Regulations 1999, and the Gas (Safety and Measurement) Regulations 2010.

7 **Mens rea**

Should any of the proposed regulations, set out in Part B, include a mental element (e.g. intention, knowledge or recklessness)? If so are the penalties for a prosecutable offence under regulation (see Table 2) appropriate for the regulated activity? (Q11)

- 7.1 It is submitted that none of the offences in Part B should include a mental element. It is appropriate that these offences, with their low level sanctions and generally restricted scope, remain strict liability offences. Offences that cause a more than moderate level of harm to animals and that involve clear elements of recklessness or wilfulness ought to be prosecuted under sections 28A and 28 respectively.
- 7.2 Incorporating mental elements within the proposed infringement fees would be inconsistent with the vast majority of infringement offences which are strict liability offences and not mens rea ones. It will also make them more open to challenge and will cut across the rationale of creating them as a simple alternative to prosecutions of offences listed under the Act. This may act to undermine the purpose of the regulatory regime, which is to provide an efficient method of addressing low to moderate forms of animal welfare offending.

PART B: Submission on the proposed Care and Conduct regulations

Regulation 1. All animals – Electric prodders

Electric prodders may only be used on:

- a) *cattle over 100kg;*
- b) *cattle over 100kg and other animals, in a circus where the safety of the handler is at risk;*
or
- c) *cattle over 100kg, and other animals, in a commercial slaughter premises:*
 - i *i. where the safety of the handler is at risk; or*
 - ii *ii. when loading a stunning pen.*

- 8 This proposal is problematic as an infringement offence as it requires a difficult element of weight assessment. In particular, it is unlikely to be clear to an animal welfare inspector when a cow is over 100kg, and it is unlikely that weighing facilities will be available in all circumstances where potential offending may be detected.
- 9 A more clear and precise regulatory proposal would be to prohibit the use of electric prodders, with the defence available where it is necessary for the protection, preservation or maintenance of human life. This defence would capture the intent behind the limited permitted use set out in parts b and c(i), whereby prodders may be used in circuses and commercial slaughter premises where the safety of the handler is at risk.

Regulation 2. All animals – Use of Goads

Prohibit using a goad to prod an animal in the udder, anus, vulva, scrotum or eyes.

10 It is submitted that more appropriate wording would be:

Prohibit prodding an animal in the udder, anus, vulva, scrotum, or eyes, other than in circumstances in which it is reasonably necessary for the purposes of a veterinary examination.

11 This wording would ensure that other forms of unjustified prodding (that do not involve goads) is captured, but prodding for the purposes of veterinary examinations will not be unintentionally caught.

12 This action causes at least moderate harm to animals. Accordingly, a \$500 infringement fine for natural persons, and a \$1,000 infringement fine for body corporates, would be more appropriate.

Regulation 3. All animals - Twisting an animal's tail.

Prohibit twisting the tail of an animal in a manner that causes the animal pain.

13 It is appropriate that this conduct be regulated, as it is a prevalent practice in New Zealand and one that can cause significant suffering to animals.

14 Although this regulation may be difficult to enforce, the possibility of an infringement fine is likely to provide greater deterrence compared with the current regime, in which the proposal is merely a recommended best practice in the Sheep and Beef Code of Welfare that has no penalties or negative consequences associated with a breach.

Regulation 4. Dogs – pinch and prong collars

Prohibit the use of pinch and prong collars.

15 It is appropriate that this practice be prohibited, given the availability of alternatives and the high risk to dogs that the use of these collars imposes.

16 It is highly appropriate that, in prohibiting the use of these collars, the sale of the collars is also prohibited. Declaring the collars to be a prohibited device under s 32 of the Act would be an appropriate means of doing so.

Regulation 5. Dogs – Injuries from Collars or Tethers

Use of a collar, and/or a tether, must not cause cuts, abrasions, swelling, restrict breathing or panting.

17 Access to water is of critical importance to the health of dogs (as it is to all animals). That is particularly so when they are involved in prolonged activity. For companion dogs especially, it is at such times that they are most likely to be collared. A collar which is too tight may impede or prevent the dog from drinking, and thus interfere with its effective access to water. Accordingly Regulation 5 should be extended by adding the words “impede or prevent drinking”.

- 18 Excessively tight collars and tethers may cause pain and distress to any animal; not just dogs. Accordingly this Regulation should not be confined to dogs. (It is noted that draft Regulations 13 and 16 would regulate the tethering of goats, horses, and donkeys. However the object of those Regulations is to ensure the access of those animals to water, food and shelter; not to protect them from the pain and suffering caused by tethers which are too tight).

Regulation 6. Dogs — Muzzling a dog

Muzzling a dog must not cause cuts, abrasions, swelling, or restrict breathing and must allow panting.

- 19 As previously noted, access to water is of critical importance to the health of dogs. Just as it is important that collars and tethers not be so tight as to impede or prevent a dog from drinking, so too is it important that muzzles not impair a dog's access to water. Accordingly, Regulation 6 should be amended to prohibit the muzzle from restricting access to water.

Regulation 7. Dogs – Dry and Shaded Shelter

Dogs confined to an area where they are habitually kept must have access at all times to a fully shaded and dry area for resting and sleeping.

- 20 Minimum Standard no. 5 of the Dogs Code of Welfare prescribes five standards under the heading “Kennelling, Shelter and Ventilation”. Breach of any of these standards represents a significant risk of harm to the animal. For example, the failure to provide warm shelter in cold weather (in breach of standard 5 (b)) may expose a dog to harm no less significant than the failure to provide dry sleeping quarters (in breach of standard 5 (a)).
- 21 In substance the proposed Regulation would codify only the first of the standards prescribed by Minimum Standard 5. It is submitted that there is no principled rationale for excluding the other four standards. All five of the requirements of Minimum Standard 5 meet the stated criteria for developing them into Regulations, in that:
- a) Each one of them is clear and precise in its term.
 - b) Each addresses the same substantive problem as the draft Regulation, that is the avoidance of suffering and distress caused by inadequate shelter.
 - c) They each represent different facets of a practical, coherent response to that problem. Put another way, it makes no sense to regulate for a resting/sleeping area which is “fully shaded and dry”, without requiring also that it be sufficiently warm.
 - d) The inclusion of all five requirements of Minimum Standard 5 is equitable. Again it makes no sense, for example, for a person to be liable to an infringement fee for failing to provide a “fully shaded and dry” area, but to have no liability (under the Regulations) for the equally pernicious failure to provide adequate warmth, or a place for the dog to urinate or defecate away from its sleeping area.
- 22 It is therefore submitted that the five requirements set out in Minimum Standard 5 be included in five separate enforceable regulations, with each being subject to an infringement fine of \$300.
- 23 As previously noted, access to water is of critical importance to the health of dogs. The risk of harm to a dog confined to an area without access to water is significant; no less so than if the

area of confinement is inadequately sheltered, shaded, or ventilated. Although the requirement to ensure access to water in such circumstances is not covered expressly by the Dogs Code of Welfare, it is submitted that Regulation 5 should do so. This would also be consistent with, and give greater effect to, the obligation imposed by section 5 of the Dog Control Act “to ensure that the dog... is supplied with proper and sufficient... water”.

Regulation 8. Dogs – Dogs Left in Vehicles

A person leaving a dog in a vehicle must ensure the dog does not display symptoms consistent with heat stress such as any or a combination of:

- *Hyperventilation;*
- *Excessive panting;*
- *Excessive drooling;*
- *Lethargy, weakness, or collapse; and*
- *Non-responsive to attempts to check a dog’s alertness.*

24 This kind of mistreatment is capable of causing low-level, moderate, or severe suffering, and in some cases death. Given this scale of harm, it is submitted that the most appropriate enforcement response is to make it an infringement offence, with the more serious cases to be prosecuted under the Animal Welfare Act.

25 It is submitted that the infringement fee should be set at \$500, having regard to:

- a) the potential seriousness of the harm which may be caused by this kind of offending;
- b) almost invariably, such offending is deliberate, or at least reckless;
- c) given the number of cases being reported annually, there is a demonstrable need for an effective deterrent; and
- d) the comparison with the \$300 fee set for relatively low-level offending.

26 The use of the adjective “excessive” does add an element of subjectivity to two of the stated criteria, thereby opening the door to challenge. However given that panting and drooling are natural states for many animals including dogs, the use of the adjective would seem unavoidable.

27 Although dogs make up the majority of animals harmed by such mistreatment, other companion animals including cats, are at risk also. There is no principled reason to exclude them from the scope of the Regulation. It is therefore submitted that the regulation be widened so that a person leaving any animal in a vehicle must ensure that the animal does not display symptoms consistent with heat stress. In the very least, the regulation ought to be extended to cats.

Regulation 9. Dogs – Secured on Moving Vehicles

Dogs on moving vehicles on public roads must be secured in a way that prevents them from falling off, except for working dogs which may be unsecured on a vehicle while working.

- 28 The gravity of the potential harm, not only to the animal itself but also to road users, caused by such conduct is a sufficient risk to warrant regulation, and to set the infringement fee at \$500.
- 29 It is submitted that the enforcement difficulty is an insufficient reason to refrain from regulating the conduct:
- a) The potential harm caused by such conduct is sufficiently grave to regulate it anyway.
 - b) The Regulation is likely to have a stronger educative and deterrent effect than would be the case if the conduct were to be regulated only by the Dogs Code of Welfare.
 - c) The Police are empowered to stop vehicles and to issue infringement notices for breach of the Regulations. It is to be expected then that in spite of the challenges in enforcing this Regulation, sufficient infringement notices will be issued to provide real and effective deterrence.
- 30 Although dogs make up the majority of animals carried on moving vehicles, other animals such as goats and pigs are transported in this way also. In principle there would seem no reason why the Regulation should not extend to all animals. It is therefore submitted that the wording of the offence be amended so that all animals on moving vehicles on public roads must be secured in a way that prevents them from falling off.

Regulation 10. Dogs & Cats — Drowning dogs & cats

Prohibit the killing of a cat or dog, of any age, by drowning.

- 31 It is submitted that the regulation ought to be extended to cover any harm caused to animals by drowning:

Prohibit the killing or harming of a cat or dog, of any age, by drowning.

- 32 A partially drowned animal may initially appear to recover, but death may still occur sometime after the attempt as a direct consequence of the period of deprivation of air and/or ingestion of water. Further, brain and other functions may be permanently damaged and the animal may be subjected to considerable distress. Extending the offence as proposed will prevent an offender avoiding liability by using partial drowning as a means of inflicting distress.
- 33 This regulation should also apply to the drowning of all animals, not just cats and dogs. Although new-born kittens and puppies may experience greater distress by drowning than other animals due to their diving reflexes, drowning any animal is a breach of section 12(c) of the Act. Indeed, given the potentially greater distress experienced by young cats and dogs when drowned, it would be anomalous for the drowning of these species to be prosecuted by way of regulatory offence, but the drowning of other animals to be prosecuted under section 12(c) of the Act, which prescribes much greater penalties.

Regulation 11. Eels - Insensible for desliming

Eels must be insensible for the duration of desliming, or killed before they are deslimed.

- 34 It is important that this practice be regulated. Desliming sensible eels has been recognised as inconsistent with the objects of the Act by the National Animal Welfare Advisory Committee (NAWAC).⁵
- 35 After consultation concerning commercially viable processes in 2010, the industry was permitted five years to adjust and the practice was prohibited by Minimum Standard 21 of the Commercial Slaughter Code of Welfare 2010, effective 1 January 2015.
- 36 Industry should have already resolved the issue of implementing humane processes given that the proposed regulation is based on Minimum Standard 21 of the Commercial Slaughter Code of Welfare, which has been in force for 17 months. Further, industry was on notice about this change for five years prior to the Code being issued, following consultation with MPI about commercially viable processes in 2010.⁶

Regulation 12. Crabs, rock lobster, and crayfish - Insensible before being killed

Crabs, rock lobsters, and crayfish that are captured but not imminently destroyed, must be chilled to 4°C or less, or be electrically stunned, or be otherwise rendered insensible before being killed.

- 37 It is desirable that this be a prosecutable regulatory offence, given the commercial context in which the offending is likely to occur. More serious breaches can (and should) be prosecuted under section 12(c) of the Act.

Regulation 13. Goats – tethering requirements

Tethered goats must have constant access to food, water, and shelter.

- 38 The recommended best practice in the Goat Code of Welfare 2012 is that goats should not be tethered as they are social animals. It is submitted that it would be appropriate for this recommended best practice to be promulgated as a regulations because this would make the regulation:
- a) more consistent with the requirement in section 10 of the Act that the physical, health and behavioural needs of animals must be met, and the definition of this in section 4 of the Act, which includes the opportunity to express normal patterns of behaviour
 - b) more clear and precise in its terms, and less open to challenge, than the proposed regulation.
- 39 However, if the standard set out in the proposed regulation is adopted, it is submitted that the proposed definition be amended so that it reads:
- Tethered goats must have constant access to:*
- a) proper and sufficient food*
 - b) proper and sufficient water; and*
 - c) a fully shaded and dry area that is large enough for the goat to stand, lie down and turn around.*

⁵ Animal Welfare (Commercial Slaughter) Code of Welfare Report, page 18.

⁶ Ibid at page 19.

- 40 It is submitted that the proposal above is more consistent with:
- a) the definition of physical, health and behavioural needs that is provided for in section 4 of the Act, which requires, inter alia, that animals have proper and sufficient food, proper and sufficient water, and adequate shelter;
 - b) the infringement offence provided for in Schedule 1 of the Dog Control Act 1996, which provides for a \$300 infringement fine where there is a failure to provide proper care and attention, to supply proper and sufficient food, water, and shelter, and to provide adequate exercise, to a dog; and
 - c) regulatory proposal 7, which relates to the provision of a fully shaded and dry area for dogs.
- 41 Although this amended wording would involve a greater level of judgment than the current proposal, it is submitted that this is necessary to give effect to the object of the regulation. The current proposal would only enable an infringement notice to be given in the most severe cases (where **no** food, water or shelter is provided). It would not impose any liability on owners or those in charge of animals who fail to provide for the animal's physical and behavioural needs due to insufficient or improper provision of food or water, or inadequate shelter.
- 42 Further, we note that the analogous infringement offence provided for in the Dog Control Act, set out above, involves a similar level of judgment as to the sufficiency of the food and water provided.
- 43 Finally, we note that there is an anomaly in the current proposals in that persons can be fined for failing to provide constant access to food, water, or shelter to tethered goats, but not for the same omissions in relation to goats that are not tethered. There appears to be no principled basis for this distinction. Indeed, it would be highly appropriate to create a regulation requiring that all animals be given proper and sufficient food, water, and shelter (as there seems to be no reason to limit a regulation of this nature only to goats).

Regulation 14. Horses – Use of a whip, lead or any other object

Prohibit striking a horse around the head with a whip, lead or any other object

- 44 It is submitted that this regulation be extended to reflect Minimum Standard 8 of the Horses and Donkeys Code of Welfare by prohibiting striking horses around the genitals. It is unclear why the proposed regulation has been limited in this way.
- 45 We do not consider there to be any circumstances where striking a horse around the head or genitals with a whip, lead or other object would be justified. The equine head and genitals are sensitive areas with little protection for vital organs and this makes it virtually impossible to strike those areas in a manner that would minimise the likelihood of unreasonable or unnecessary pain and distress, as required by section 4(d) of the Act.

Regulation 15 – Horses – Injuries from equipment such as halter, head ropes, and saddles

The use of halters, head ropes, saddles and other equipment must not cause cuts, abrasions, or swelling

- 46 The incorporation of this standard into a regulatory offence is appropriate given most reputable equine sports organisations provide training and guidance on the correct selection, fitting, and use of equine gear and equipment.
- 47 However, the regulation ought to be amended to extend beyond cuts, abrasions and swelling to include any other injury caused by equipment. For example, bruising and pinching can cause more intense pain and permanent damage than an abrasion, and can be readily identified by a basic physical inspection.
- 48 It is also appropriate to extend the regulation to cover the use of equipment in a way that causes the horse distress. For example, restraining a horse's head with tight draw reins or similar equipment while it is being ridden or exercised would not create any visible signs of injury, but would cause it considerable distress. Similarly, use of an overly tight nose band which constrains the horse's breathing during exercise would also cause great distress and harm to the horse, but would not be captured by the proposed infringement.
- 49 The suggested amendments noted above are necessary to capture the full intent of Minimum Standard 9 of the Horses and Donkeys Code of Welfare, which is to ensure that equipment does not cause pain, injury or distress of any kind.
- 50 Accordingly, it is submitted that the regulation be amended as follows:

The use of halters, head ropes, saddles and other equipment must not cause cuts, abrasions, swelling, or other injury or distress to the horse.

- 51 It is submitted that this wording would give fuller effect to the intention in Minimum Standard 9 without sacrificing clarity or precision.

Regulation 16. Horses and donkeys – tethering requirements

Tethered horses and donkeys must have constant access to water, food, and shelter.

- 52 We note that, similar to goat tethering in the Goat Code of Welfare, the recommended best practice in the Horses and Donkeys Code of Welfare is that horses should not be tethered. We submit that it would be appropriate for this recommended best practice to be implemented, alongside a prohibition on donkey tethering, because this would make the regulation:
- a) more consistent with the requirement in section 10 of the Act that the physical, health and behavioural needs of animals must be met, and the definition of this in section 4 of the Act, which includes the opportunity to express normal patterns of behaviour
 - b) more clear and precise in its terms, and less open to challenge, than the proposed regulation.
- 53 Furthermore, as with Regulation 13 above, there is an anomaly in the current proposals in that persons can be fined for failing to provide constant access to food, water and shelter to tethered horses and donkeys, but not to horses and donkeys that are not tethered. Again, there appears to be no principled basis for this distinction. However, as noted above, this could be remedied by promulgating a regulation requiring that all animals be provided with proper and sufficient food, water, and shelter.

Regulation 17: Layer hens – Opportunity to express normal behaviours in housing systems

- (a) *Hens must have the opportunity to express a range of normal behaviours. These include, but are not limited to nesting, perching, scratching, ground pecking, and dustbathing.*
- (b) *Any cage installed prior to 31 December 1999 must be replaced with a housing system that meets the requirements specified in (a) by 31 December 2018.*
- (c) *Any cage installed prior to 31 December 2001 must be replaced with a housing system that meets the requirements specified in (a) by 31 December 2020.*
- (d) *All cages must be replaced with a housing system that meets the requirements specified in (a) by 31 December 2022.*
- (e) *Any housing system installed from 7 December 2012 must meet the requirements specified in (a).*

Note: Colony cages are considered a housing system that meets the requirements specified in (a).

- 54 While the intention behind the standard is obviously positive, the wording renders it unclear and therefore difficult to enforce.
- 55 As currently drafted, the use of the word “range” in the regulation is problematic. A number of examples are given of what constitutes normal behaviours but it is not clear how many of these behaviours hens must be able to exhibit to comply with the standard. We note that the Animal Welfare (Layer Hens) Code of Welfare report identifies the following behaviours as important for hens: feeding, drinking, perching, sleeping, preening, dustbathing, ground pecking, wing flapping, scratching, nesting, head shaking, tail wagging, feather ruffling, beak wiping, unilateral wing-leg stretching and avoiding predators.⁷
- 56 Further, it is submitted that colony cages do not comply with the proposed regulation 17(a), as hens are still unable to genuinely express many of the normal behaviours listed in the proposed standard. Thus, to the extent that the regulatory proposal permits the use of colony cages, it is inconsistent with sections 12 and 4 of the Act, which provide that animals must have the opportunity to display normal patterns of behaviour.
- 57 Finally, we note that repeat offenders should also face an increased penalty to ensure both specific and general deterrence.

Regulation 18: Layer hens – Stocking densities

- a) *Stocking densities or space per pullet (7–18 weeks of age):*
 - (i) *must be a minimum of 370 cm² per pullet for those reared in cages or colony cages.*
 - (ii) *must not exceed 14 pullets per m² for those reared in barns.*

⁷ Doctor John Hellström *Animal Welfare (Layer Hens) Code of Welfare Report* (National Animal Welfare Advisory Committee, 29 June 2012) at 10 [**Code of Welfare Report**]. See also I Duncan “Behaviour and Behavioural Needs” (1998) 77 *Poult Sci* 1766. C.A Weeks and C.J. Nicol “Behavioural needs, priorities and preferences of laying hens” (2006) 62 *Worlds Poult Sci J* 296.

b) *Stocking densities or space per layer hen (19 weeks of age or older):*

Cages

(iii) must be a minimum of 550 cm² per hen for all cages

Colony cages

(i) must be a minimum of 750 cm² per hen or 13 hens per m² .

Barns

(i) must not exceed 7 hens per m² for barns with no access to an outdoor ranging area.

(ii) must not exceed 9 hens per m² for within barns with access to an outdoor ranging area.

c) *Stocking of the outdoor ranging area must not exceed 2,500 hens per hectare.*

- 58 Stocking density has a significant impact on the welfare of hens in any laying system. Accordingly, a regulatory offence is required to deter stockholders from having a high stock density. NZALA agrees that Minimum Standard 6 – Stocking Densities be uplifted into the regulations.
- 59 It is submitted that, as with standard 17, there needs to be an increased penalty for repeat offenders.

Standard 19: Layer hens – Housing and equipment design

Lift minimum standard 4 into regulation.

- 60 It is appropriate that all of the requirements set out in Minimum Standard No.4 (i) be regulated to ensure compliance with them and the proposed penalties are likely to provide an effective deterrent.

Standard 20: Layer hens – Induced moulting

Prohibit induced moulting of layer hens

- 61 Given that research suggests that induced moulting significantly compromises a laying hen's well-being and welfare and induces a large amount of stress on laying birds, NZALA agrees that it is appropriate that this practice be prohibited. The standard appears to be sufficiently clear and precise and the penalty appropriate.

Regulation 21. Llama & Alpaca – Injuries from equipment such as halters, head ropes, and packs

The use of halters, head ropes, packs and other equipment on llama and alpaca must not cause cuts, abrasions, or swelling.

- 62 It is submitted that this standard is appropriate for inclusion in the proposed regulation. However, the wording should be widened to include other injuries and distress caused by

equipment so as to give better effect to the objects of the regulation. The suggested wording should be:

The use of halters, head ropes, packs and other equipment on llama and alpaca must not cause cuts, abrasions, swelling, or any other injury or distress.

Regulation 22. Llama & alpaca – Companion animals

Camelids must be provided with a companion animal such as another camelid, sheep, or goat.

63 NZALA considers that this standard is appropriate for inclusion in a regulation.

Regulation 23. Llama & Alpaca – Offspring (Cria) camelid companions

Prohibit raising Cria without the company of other camelids

64 NZALA considers this standard appropriate for inclusion in a regulation.

Regulation 24. Pigs – Dry Sleeping Area

Pigs must have access to a dry sleeping area.

65 It is submitted that an infringement fine of \$500 (and \$1,000 for body corporates) is more appropriate given the level of harm to the pigs caused by inadequate shelter. It is submitted that the likelihood that pigs be used for profit or economic reasons (rather than companionship) raises the likelihood of a breach, and this also necessitates a higher infringement fine in order to achieve effective deterrence.

66 In substance the proposed Regulation would codify Minimum Standard 5 of the Pigs Code of Welfare 2010. It is submitted that there is no principled basis for excluding Minimum Standard 6(b) from new Regulations. This standard provides that all group housed pigs must be able to stand, move about and lie down without undue interference with each other in a space that provides for separation of dunging, lying and eating areas. This standard meets the stated criteria for transposition into a Regulation, in that:

- a) It is clear and precise in its term.
- b) It addresses the same substantive problem as the draft Regulation, that is the avoidance of suffering and distress caused by an inadequate living environment.
- c) It represents an effective response to the problem of inadequate housing being provided for pigs.
- d) The inclusion of Minimum Standard 6 in the regulation is equitable. It makes no sense for a person to be liable to an infringement fee for failing to provide a dry sleeping area but to have no liability (under the Regulations) for the equally harmful failure to provide adequate space for housed pigs to stand, move about and lie down without undue interference.

67 Accordingly, it is submitted that Minimum Standard 6 be incorporated into a separate enforceable regulation, subject to an infringement fine of \$500.

Regulation 25. Pigs – Lying space for grower pigs

Grower pigs housed inside on non-litter systems such as slatted or solid floors must have lying space of at least: Area (m²) per pig = 0.03 x liveweight 0.67(kg)

- 68 Given the financial incentive to overcrowd, it is appropriate that this be a prosecutable, regulatory offence to offer a suitable deterrent.

Regulation 26. Pigs – Dry sow stalls

Dry sow stalls must not be used.

- 69 It is submitted that the definition of 'dry sow stalls' should be included in this regulation.

- 70 A suitable definition is "an enclosure which keeps the sow physically isolated from other sows, and in which a sow cannot stand up, turn around or lie down naturally."

- 71 The exception relating to the use of mating stalls should be defined in the regulation as provided for in the Code. It should also state in the regulation that it is an offence to confine pigs in mating stalls for longer than one week.

- 72 Again, it is appropriate to have this as a prosecutable, regulatory offence given the suffering of pigs in long-term confinement.

Regulation 27. Pigs – Size of Farrowing crate

Prohibit keeping a sow in a farrowing crate where the sow cannot avoid touching the top of the crate, or touching both sides of the crate simultaneously, or touching the front and the back of the crate simultaneously.

- 73 NAWAC considers that confining sows in farrowing crates for extended periods of time does not fully meet the obligations of the Act.⁸ It is considered that a regulation disallowing the use of farrowing crates would be:

- a) more consistent with the requirement in section 10 of the Act the physical, health and behavioural needs of animals must be met, and the definition of this in section 4 of the Act which includes the opportunity to express normal patterns of behaviour; and
- b) more clear and precise in its terms, and less open to challenge, than the proposed regulation.

- 74 Regardless of whether this standard is amended as proposed, it is appropriate that this regulation be a prosecutable, regulatory offence given the high level of harm to animals that a breach entails.

Regulation 28. Pigs – Provision of nesting material

Sows, in any farrowing system constructed after 3 December 2010, must be provided with material that can be manipulated until farrowing.

⁸ Pigs Code of Welfare 2010, page 19.

75 It is submitted that if farrowing crates are permitted under the proposed regulations, this regulation should read:

Sows in any farrowing system must be provided with appropriate material that can be manipulated at ground level for the purpose of nesting and chewing until farrowing.

76 We recommend these amendments because:

- a) Although the term 'appropriate' introduces an element of subjectiveness, this is necessary to ensure that suitable material is provided, and therefore to give effect to the object of the regulation. We note that this element of subjectiveness could be mitigated by providing a list of suitable material in the regulation.
- b) The reference to ground level ensures that the sow can manipulate the material with a rooting action, which is necessary to ensure the sow's welfare is met.
- c) There is no reason why old farrowing systems constructed before 3 December 2010 should be permitted to **indefinitely** use systems that fail to meet the welfare requirements of sows and therefore the obligations of sections 12 and 4 of the Act. At the very least, there ought to be a sunset clause at which point the regulation applies to all farrowing systems.

Regulation 29 – Rodeo – Fireworks

Fireworks, pyrotechnics, and gas fired explosions of any type must not be used at rodeos.

77 It is appropriate that this be a prosecutable regulation offence, given the harm to animals involved. An infringement notice is unlikely to provide a sufficient deterrent, particularly given the commercial context in which rodeos occur.

Regulation 30 – Exotic Animals – Use in circuses

Place restrictions on the use of exotic animals in circuses to adequately provide for their physical, health, and behavioural needs.

78 It is submitted that it be most appropriate that this regulation prohibit the use of exotic animals in circuses. This prohibition would be:

- a) more consistent with the requirement in section 10 of the Act that the physical, health and behavioural needs of animals be met, and the definition of this in section 4 of the Act which includes the opportunity to express normal patterns of behaviour.
- b) more clear and precise in its terms, and less open to challenge, than the proposed regulation.

79 Further, as there are currently no circuses in New Zealand that use exotic animals, these improvements to animal welfare and to the effectiveness of the regulatory regime would not impose any costs on any persons. Thus, there appears to be no sound rationale for failing to implement this prohibition.

Regulation 31. Cattle – Milk Stimulation

Prohibit stimulating milk let-down by inserting water or air into a cow's vagina.

- 79.1 It is appropriate that this standard be regulated as proposed, as this practice is outdated and there are other alternatives to stimulate milk let-down (and this is accepted by the industry).

Regulation 32. Cattle and sheep – Vehicular traction in calving and lambing

Prohibit using a moving vehicle to provide traction in calving or lambing.

- 80 Codification of this standard from the Sheep and Beef Code of Welfare 2010 is appropriate. Franklin Vets advise that “you should never need to apply more pressure than one person’s strength for lambing, or two people at a maximum for calving”.⁹ Using the traction of a moving vehicle provides significantly more pressure than a person can exert, and (as stated in the regulatory proposal) has a high risk of causing injuries, pain and distress to both the young and the mother.
- 81 This regulation is important in ensuring that young and mothers are not injured or distressed unnecessarily in the process of birthing.
- 82 It is submitted that the \$500 penalty is proportionate for one-off offending, as it is an act that will cause significant harm and stress to the animal and its young. It would be a very intentional act that would require someone to have to actively prepare to undertake this activity.

Regulation 33. Cattle and sheep – ingrown horns

Failure to treat an ingrown horn that is touching skin or eye.

- 83 It is appropriate that this penalty is higher than that imposed under Standard 31 given it is likely to cause long-term suffering to the animal. However, the costs associated with treating the ingrown horn should also be taken into account and weighed up against the fine imposed. In other words, the fine should be more expensive than the costs to remove an ingrown horn. This may necessitate a higher fine than that proposed.
- 84 It is likely that a person will be able to tell the difference when a horn is touching skin or eye, and when the horn has actually penetrated the eye or the skull. The penetration of an ingrown horn is a much more serious offence which should be prosecuted under section 12(b) of the Act.
- 85 To ensure compliance with this regulation, the MPI should provide guidance to farmers about the safe and humane removal of horns (particularly before they become ingrown) so that farmers are informed.

Regulation 34. Stock Transport – Cuts and abrasions

Transport of cattle, deer, sheep, goats, and pigs must not result in cuts or abrasions.

⁹ See <http://www.franklinvets.co.nz/Lifestyle/Services/Calving.html>

86 The proposed fine is appropriate and the offence sufficiently clear and precise. However, it is not clear why the offence does not apply to all animals.

Regulation 35. Stock Transport – Animals with horns

An animal with an ingrown horn that is touching the skin or eye must not be transported, except when certified fit for transport by a veterinarian.

87 The proposed regulation is clear and unambiguous. The severity of the ingrown horn is well-defined ('touching the skin or eye') and therefore it should be apparent when an offence has been committed.

88 This regulation complements the regulation proposal about 'failure to treat an ingrown horn'. Where an animal has not been treated for an ingrown horn **and** is transported, two separate infringement fines should be imposed (i.e. under both regulations 33 and 35) as these are two distinct and separate acts of harm.

Regulation 36. Stock transport – Animals with bleeding horns or antlers

An animal with a bleeding or broken horn or antler must not be transported, except when certified fit for transport by a veterinarian.

89 The standard is sufficiently clear and precise, and the proposed penalty appropriate.

90 The regulation is likely to lessen the culture of people 'taking a chance' that no pain or injury results from the transport of animals with bleeding horns or antlers.

Regulation 37. Stock transport – Animals with long horns or antlers

Transport of animals with horns or antlers greater than 110mm must not cause injury to themselves or other animals.

91 It is submitted that more appropriate wording would be:

Transport of animals with horns must not cause injury to themselves or other animals.

92 Assuming the availability of the defence of taking all reasonable steps to comply with the regulation, it is submitted that this wording would not unfairly penalise a person whose animals were injured by horns despite reasonable efforts being taken to avoid injury.

Regulation 38. Stock transport – Lameness score of two

A cattle beast, deer, pig, or goat that has a lameness score of two must not be transported, except when certified fit for transport by a veterinarian.

A cattle beast, deer, pig, or goat that has a lameness score of three must not be transported.

93 It is submitted that:

- a) It is appropriate that this standard be regulated.
- b) However, sheep should not be excluded from this regulation.

39. Stock transport – Animals that cannot bear weight evenly due to injury

A cattle beast, sheep, deer, pig, or goat that has suffered a physical injury or defect that means it cannot bear weight evenly on all four legs should not be transported, except when certified fit for transport by a veterinarian.

94 It is submitted that more appropriate wording would be:

An animal that is transported must be able to stand and bear weight evenly on all limbs, except when certified fit for transport by a veterinarian.

95 This wording better captures the intention of the standard in the Code, which applies to all animals, and is not limited to circumstances in which the inability to stand on all four legs is due to an injury or defect.

40. Stock transport – Pregnant animals

Prohibit transporting a cattle beast, sheep, deer, pig, or goat that is likely to give birth during transport, or within 24 hours of arrival at a commercial slaughter premises, except when certified fit for transport by a veterinarian.

96 We note that the regulation as currently worded provides for where birth is likely during or after transportation.

97 It is submitted that the proposal could be improved by including the recommended best practice (c) from the Transport Code of Welfare, 'the last third of pregnancy'. This is a sufficiently clear and precise threshold and gives better effect to the objects of the Act, given the welfare risks associated with transporting pregnant animals in their final stage of pregnancy.

98 Accordingly, it is submitted that the regulation be amended as follows:

Prohibit transporting a cattle beast, sheep, deer, pig or goat that is in the last third of pregnancy, except when certified fit for transport by a veterinarian.

41. Stock transport – Animals with injured or diseased udders

An animal with a burst, distended, or necrotic udder or an animal with mastitis where there are signs of fever or the udder is hot, red, swollen, discharging, or necrotic must not be transported, except when certified fit for transport by a veterinarian.

99 The proposed regulation is sufficiently precise to enable persons involved in the handling of animals to be able to determine whether the animal is exhibiting symptoms that would prevent transport from occurring.

100 It is difficult to see when obtaining a veterinarian's certificate (if required) prior to transport would be impractical. If a veterinarian, for whatever reason, is unable to inspect an animal which is exhibiting injured or diseased udders and certify its fitness for travel, then it is not appropriate that the animal be transported.

Regulation 42. Stock transport – Cattle or sheep with cancer eye

A cattle beast or sheep with a cancer eye greater than 2cm in diameter and not confined to the eye or eyelid, or that is bleeding or discharging, must not be transported, except when certified fit for transport by a veterinarian.

101 The current wording of the regulation limits the prohibition to circumstances where the cancer is confined to the eye or eyelid, or is bleeding or discharging. However, there will be cases where the cancer eye is located on the eye or eyelid (or surrounding tissue) and the animal will not be fit for transport.

102 It is therefore submitted that the wording be amended as follows:

A cattle beast or sheep with a cancer eye greater than 2cm in diameter on either the eye, eyelid or surrounding tissue, or that is bleeding or discharging, must not be transported, except when certified fit for transport by a veterinarian.

103 As above, it is difficult to see when obtaining a veterinarian's certificate (if required) prior to transport would be impractical. If a veterinarian, for whatever reason, is unable to inspect an animal which is exhibiting cancer eye and unable to certify its fitness for travel, then the animal should not be transported.

Further regulatory proposals relating to the transportation of animals

104 It is submitted that the following standards from Transport Code of Welfare are also appropriate for inclusion in further regulatory proposals and ought to be subject to \$500 infringement fines (or \$1,000 for a body corporate):

- a) Animals must not be thrown or dropped, or be lifted or dragged by their tail, head, horns, ears, limbs, wool, hair or feathers. (Minimum Standard 7)
- b) Animals must not be secured to conveyances or containers by a nose ring. (Minimum Standard 7)

We note that these breaches of the minimum standards in the Codes will cause harm to the animals but may not necessarily cause cuts or abrasions. Thus, they will not be captured by regulatory proposal 34 and require incorporation into further regulations.

- c) The time and place of inspection, and any deaths and incidents causing pain or distress to animals, must be recorded. (Minimum Standard 9)

105 It is further submitted that in order to capture the wider intent of Minimum Standard 6, it is necessary to ensure animals with other injuries (other than those provided for in regulatory proposals 41 and 42) cannot be transported without veterinarian approval.

106 It is also of fundamental importance that Minimum Standard 2, relating to Conveyance and Container Design and Maintenance, is incorporated into the Minimum Standards. As noted in the Transport Code of Welfare 2011, appropriate design and maintenance of conveyances and containers is essential for ensuring that animals are secure and well-ventilated during transport, and the risk of injury and distress is minimised. In the very least, the following standards (extracted and amended from Minimum Standard No. 2) ought to be regulated:

- a) Containers must be constructed and maintained so that they do not present hazards to animals.
- b) Conveyances and containers must be designed so that the faeces or urine from animals on upper levels do not soil any animals, feed or water on lower levels.

- c) Containers must be designed to ensure enough room to enable animals to travel in natural posture.
- d) Conveyances and containers must be designed to ensure adequate ventilation or oxygenation.
- e) Conveyances must protect animals from adverse weather, including rain, wind, cold, and heat.
- f) Containers must be secured so that they do not move when underway.

107 Finally, we note that the Regulations refer to the conveyance and containers but not the ramps and/or other loading and unloading facilities. Although regulatory proposal 43 requires that facilities must be provided to enable young calves to walk onto and off transportation by their own action, this only applies to calves, and in any event, there is no requirement to ensure that the loading facilities are fit-for purpose and are kept in good repair.

108 The ramp leading up to and away from the conveyance and container can be an area of hazard causing injury to the animals. For example, boards and planks with small gaps may be safe for cattle to walk on, but not for sheep with smaller hooves. MPI ought to develop a regulation addressing this issue in order to ensure the welfare of transported animals is adequately provided for.

PART C: Submission on proposed regulations for the live export of animals

Question 1: The conditional prohibition on the export of livestock for slaughter will be moved into regulations under the Animal Welfare Act 1999. Do you have any comment on this transition occurring in the second half of 2016?

109 This timeframe is expedient, given the expiry date is 20 December 2016, of the Customs Export Prohibition (Livestock for Slaughter) Order 2013 (“CEPO”).

Question 2: Do you have any comment on the proposed regulatory offence and penalty for non-compliance with the conditional prohibition on the export of livestock for slaughter?

110 The conduct described in the regulation seems to be already captured under the Act’s section 40 offence. We understand the regulatory offence is designed to allow for greater prosecution options in light of the hurdle of the strong burden of proof required under section 40, due to the possibility of imprisonment. (Accordingly there is a mens rea element which must be satisfied, likely requiring knowing or intent rather than recklessness, equating to high threshold to prove beyond reasonable doubt.) MPI prosecutors will be able to prosecute under either the main act or under the proposed regulatory offence. Therefore we find the ability to take a prosecution is widened by the proposed regulatory offence, as the evidential burden is lower.

111 It is important context that although the statutory penalties available under the Animal Welfare Act 1999 are relatively high, actual sentences issued still remain very low. In the majority of cases judges are “treating animal cruelty as a purely regulatory offence” anyway.¹⁰ A concern we have that availability of a new lower level of punishment for what is a serious breach of a

10 A Markham “Animal Cruelty Sentencing in Australia and New Zealand” in Peter Sankoff and Steven White (ed) Animal Law in Australasia (The Federation Press, Sydney, 2009), at 303.

“prohibition” may reinforce the trend to lightly treat offenders. It is therefore critical that the range of prosecution options be fully utilised depending on the circumstances.

Question 3: Do you have any comment on the proposal to repeal the legislative provision “Guidelines for issue of animal welfare export certificates” by late 2016? (Refer section 41).

- 112 The repeal of these unenforceable guidelines in favour of enforceable regulation should improve clarity and guidance for exporters, and for the enforcement of animal welfare in live export. However our concern is if the current guidelines are not supplemented with clear regulations, rather instead a collection of non-specific, case-by-case discretionary powers. A greater level of transparency of the live animal export trade and oversight is hoped to flow from the amendments to the act.
- 113 It is crucial that the regulatory measures that supplement the guidelines contain transparent, robust and effective measures to ensure enforceable animal welfare standards, and protect New Zealand’s reputation.
- 114 The ability to provide this increased clarity is available under new operative section 183C that allows for making stricter enforceable requirements on exporters relating to matters such as independent monitoring, preloading and transport facilities, condition of the animals and preconditions required to be satisfied before travel. Enforceable regulation coupled with actual oversight of these factors would go a long way to prevent animal welfare breaches rather than to attract the criticism laid on the Australian regulations that they are merely “reactive operating primarily to monitor and detect breaches, not to prevent them”.¹¹

Question 4: Do you have any comment on the proposal to bring into force, by late 2016, the new provisions of the Act that expand the matters the Director-General of MPI must or may consider when assessing an application for export? (Refer section 43).

- 115 We support the proposal to make operative this amendment in late 2016. The amendment allows for important inclusions that can be considered when assessing an application for live animal export.
- 116 It is important that, in applicable instances, the post-arrival conditions, and manner in which the welfare of any animals previously exported by the applicant was attended to, will be considered as a matter of course.
- 117 Whilst out of scope of the consultation, we wish to add that for a robust analysis to be undertaken of the above factors, independent, objective monitoring and reporting would be the most reliable measure, and would also act to encourage best practice.

Question 5: Do you have any comment on the proposal to bring into force, by late 2016, the new provisions of the Act that allow the Director-General of MPI to impose conditions on an animal welfare export certificate? (Refer section 45).

- 118 We support the proposal to make operative this amendment in late 2016. The additions to section 45 are welcome inclusions to strengthen the oversight of live animal export.
- 119 Whilst out of scope of the consultation, we add that for a robust analysis to be undertaken, independent, objective monitoring and reporting would be the most reliable measurement.

¹¹ RSPCA Australia “How is the live export trade regulated?” accessed 12 May 2016 < www.kb.rspca.org.au >.

120 It is critical that MPI's oversight is focused on preventing animal welfare breaches rather than reviewing the aftereffects of them. New Zealand's legislative health and safety regime requires pre-emptive risk management plans and processes to be an integral part of preventing health and safety breaches. The analogy to the oversight of vulnerable animals' welfare for long export journeys, to health and safety oversight is relevant. It is not unreasonable to create a mandatory requirement on exporters to provide comprehensive risk management plans that identify the risks to animal welfare and New Zealand's reputation, and the measures they have put in place to prevent or mitigate them.

Question 6. Do you have any comment on the proposal to bring into force, by late 2016, the new provision that allows the Director-General of MPI to refuse to issue an animal welfare export certificate, or revoke or amend a certificate? (Refer section 46).

121 We support the proposal to make operative this amendment in late 2016. The additions to section 46 are welcome inclusions to the Director Generals powers to refuse, revoke, or amend a certificate.