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13 July 2016

Document Number: Sub 16-0042

## Approval of Animal Welfare (Calves) Regulations 2016; Animal Welfare Amendment Act (No 2) 2015 Commencement Order 2016; and Animal Welfare (Export of Livestock for Slaughter) Regulations 2016

### Purpose:

This briefing provides you with a paper for submission to Cabinet by 21 July 2016.

Minister	Action Required:	Minister's Deadline
<b>Minister for Primary Industries</b>	<p><b>Agree</b> to send the attached letter to the members of the Ministerial Group for Young Calf Regulations by 15 July 2016.</p> <p><b>Agree</b> to take the attached paper to Cabinet on 25 July 2016</p>	Cabinet paper due to Cabinet Office by 10.00am 21 July 2016 for Cabinet's meeting on 25 July 2016.
<b>CC Associate Minister for Primary Industries</b>		

### Meeting with officials

If necessary, MPI officials will be available to meet with you in the week of 18 July 2016 to discuss the Cabinet paper and any other matters raised in this briefing.

### Contact for telephone discussion (if required)

	Name	Position	Work	After Hours
Responsible Manager	s 9(2)(a)	Manager Regulatory Reform and Animal Welfare Policy	s 9(2)(a)	s 9(2)(a)
Principal Author (Young Calves)	s 9(2)(a)	Senior Policy Analyst	s 9(2)(a)	
Principal Author (Live Exports)	s 9(2)(a)	Senior Policy Analyst	s 9(2)(a)	

## Key Messages

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1. Regulations covering the welfare of young calves (primarily bobby calves) and regulations for live animal exports have been drafted separately, and are ready for Cabinet approval.
2. The young calf regulations will implement the policy proposals that were authorised on 1 June 2016 by the Ministerial Group delegated by Cabinet for this purpose.
3. Cabinet approval of the Animal Welfare (Calves) Regulations 2016 is required by 25 July 2016 in order to have four of the regulations in effect by 1 August 2016. Cabinet will also need to agree, for those four regulations, to waive the 28 day rule that ordinarily applies once the regulations have been gazetted.
4. The commencement order and regulations relating to the export of live animals implements policy that was approved when the Animal Welfare Act was amended in 2015.
5. The Animal Welfare Amendment Act (No 2) 2015 Commencement Order 2016 will bring into effect new powers for the Director-General to require exporters to provide reports on the welfare of exported animals during their journey and for up to 30 days after their arrival in the importing country.
6. The Animal Welfare (Export of Livestock for Slaughter) Regulations 2016 will transition the current conditional prohibition on the export of livestock for slaughter from the Customs and Excise Act to the Animal Welfare Act. These regulations must be in force by 21 December 2016 to ensure that transition is seamless.
7. A draft letter is attached with this briefing for you to send to the members of the Ministerial Group for their information, together with an advance copy of the Cabinet paper and Animal Welfare (Calves) Regulations 2016.
8. If necessary, MPI officials will be available to meet with you in the week of 18 July 2016 to discuss the Cabinet paper and any other matters raised in this briefing.

## Recommendations

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9. MPI recommends that you:

a) **Note** the contents of this briefing.

**Noted**

b) **Agree** to sign the attached draft letter and send it to the members of the Ministerial Group for Young Calf Regulations by 15 July 2016 for their information, together with an advance copy of the Cabinet paper, Animal Welfare (Calves) Regulations 2016 and Regulatory Impact Statement.

**Agreed / Not Agreed**

c) **Agree** to sign the attached Cabinet paper and submit it to Cabinet Office together with the Regulatory Impact Statement. These documents must be with Cabinet Office by 10.00am 21 July 2016 for consideration by Cabinet at its meeting on 25 July 2016.

**Agreed / Not Agreed**

Deborah Roche  
Deputy Director-General  
Policy and Trade  
for the Director-General

Hon Nathan Guy  
Minister for Primary Industries

/ / 2016

## Background

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10. The Ministry for Primary Industries (MPI) concluded public consultation on 91 regulatory proposals relating to care of and conduct towards animals, surgical and painful procedures and live animal exports on 19 May 2016. This included a number of proposals intended specifically to protect the welfare of young calves.
11. During consultation MPI noted that consideration would be given to whether any of the young calf proposals could come into effect in time for the 2016 spring calving season. Feedback from the consultation, including dialogue with the main industry groups, has confirmed that this will be possible and practicable for four of the regulations.
12. Due to the timing constraints associated with these regulations, Cabinet delegated authority to approve regulatory policy in relation to young calf welfare to four Ministers: the Minister for Regulatory Reform, the Minister of Justice, the Minister for Primary Industries and the Associate Minister for Primary Industries (EGI Min 16-0048 refers). This Ministerial Group approved the policy for these regulations on 1 June 2016 (B 16-0356).
13. It was also agreed by the Ministerial Group for Young Calf Regulations that four of the regulations relating to calves should come into force on 1 August 2016 (B16-0356). The remaining regulations relating to calves will be made at the same time but will include delayed commencement dates of 6-12 months. Details of the commencement dates for each regulation are set out in the Cabinet paper, including in a summary table at Appendix A.
14. The Ministerial Group also noted that regulations and a commencement order relating to the export of live animals would be taken forward at the same time as those for young calves. You notified Cabinet of this decision on 7 June 2016.
15. Regulations covering the welfare of young calves and live animal exports have been drafted and are ready for Cabinet approval.
16. This paper attaches the draft Cabinet paper for your review, and provides further information in relation to each set of regulations, including:
  - further discussion of some of the regulations;
  - an explanation of the associated offences and penalties;
  - a summary of MPI's enforcement approach;
  - the key elements of the extensive consultation that has been undertaken publically and with major stakeholders; and
  - details of the approach MPI intends to take to publicising these regulations for both a general audience and for affected stakeholders.
17. A draft letter is attached with this briefing for you to send to the members of the Ministerial Group for their information, together with an advance copy of the Cabinet paper, the Animal Welfare (Calves) Regulations 2016 and the associated Regulatory Impact Statement.

## **Welfare of calves**

18. Draft versions of the Animal Welfare (Calves) Regulations 2016 have been prepared by the Parliamentary Counsel Office (PCO) and have been submitted with this briefing for you to review. A table summarising all of the calf regulations is also provided in Appendix A to the Cabinet paper.
19. These regulations have been drafted to implement the policy proposals that were consulted on publically and then authorised by the Ministerial Group. The policy underlying these regulations has remained constant since the initial proposals were published. However, the following aspects of the regulations as drafted should be noted:

### *Fitness for transport (in force 1 August 2016)*

20. This regulation contains two main elements. The first is that a calf may not be less than four full days of age (96 hours) before it is transported. In response to feedback from the Ministerial Group, the age requirement is measured from birth rather than the point of separation from mother.
21. The second main element is that each young calf must meet a range of physical criteria including being alert, able to stand and bear weight on all limbs, have firm hooves and a navel cord that is shrivelled and not raw or fleshy.
22. Responsibility for meeting the age requirement will fall on the owner or person in charge of the calf on farm but not the transporter. It is considered that while it is reasonable to require farmers to know the age of each calf, this is not something that transporters can easily determine. However, the duty relating to physical characteristics will apply to both farmers and transporters.

### *Maximum duration of transport (in force 1 August 2016)*

23. As agreed by the Ministerial Group, this regulation will limit to 12 hours the maximum duration that a young calf may be transported. This is the current limit that is recommended in the transport code of welfare but is longer than the eight hour limit on which MPI consulted. The reason for returning to 12 hours is based on the feedback from various stakeholders that imposing an eight hour limit may cause difficulties in certain parts of New Zealand where the number of slaughter facilities is limited, e.g. the West Coast of the South Island.
24. There may also be instances, especially during peak calving season, when those slaughter premises that are within eight hours drive of a farm are operating at full capacity. There is a risk that calves would need to be held in lairage for extended periods in these circumstances. However, slaughter premises that are perhaps 10 hours distant may have capacity to slaughter the calves more swiftly overall, which is a better welfare outcome.
25. The impact of journey and lairage times on bobby calf welfare are among the factors that are being considered as part of a research project led by Massey University that MPI has commissioned. The results of this research will become available over the next two years and will provide specific evidence that will enable MPI to consider whether the 12 hour limit needs to be reviewed.

*Maximum time off feed prior to slaughter (in force 1 February 2017)*

26. This regulation will require that young calves are slaughtered as soon as possible after they arrive at slaughter premises and, in particular, within 24 hours of their last feed on farm. This replaces the current requirement which allows 30 hours off feed prior to slaughter.
27. By focussing this regulation on the treatment of calves at slaughter premises, MPI has sought to make it clear that it is not permissible to leave young calves off feed for 24 hours in any other circumstances. This point was raised during discussion at the Ministerial Group.
28. There are occasions, however, when it may be necessary to keep young calves in lairage beyond the 24 hour point. For example, mechanical failure of processing equipment or the need to ensure that the calves are processed after other species of animal in order to minimise the risk of contamination from the higher levels of bacteria, including *E. coli*, that calves carry compared to many other animals.
29. To accommodate this, the regulation permits slaughter premises operators to feed the calves in lairage prior to the 24 hour point. However, even in these circumstances, the operators will be under the duty to slaughter as soon as possible. This is intended to prevent situations where calves might be held in extended lairage (and perhaps even fed more than once) for convenience or for commercial reasons rather than practical ones.
30. The regulation also includes provisions specifying the quality and quantity of food that must be provided if calves are not slaughtered by the 24 hour point. These go beyond the previous minimum standard in the Commercial Slaughter Code of Welfare, which specifies that the lairage feed must be at least maintenance rations. The reason for raising the standard is that calves held in lairage at the 24 hour point may already be in a diminished physical condition, so simply maintaining them at that level would not be sufficient to meet their welfare needs.
31. The regulation will require that the lairage feed, if it occurs, must be colostrum, milk, or milk replacer at the rate of at least 5% of the calf's body weight. This is half a day's ration (in line with recommended best practice in the Dairy Cattle Code of Welfare) and also meets the specific recommendation made by the National Animal Welfare Advisory Committee (NAWAC) in its formal comments on the draft regulations.

*Requirements for loading and unloading facilities (in force 1 August 2017)*

32. This regulation has been framed so that it will apply to journeys when calves are being transported off farm for the purpose of sale or slaughter or as a result of sale (e.g. the animals are purchased in advance then collected later).

33. Feedback from some stakeholders, including Federated Farmers, suggested that requiring loading facilities for *all* vehicles would unnecessarily cover instances where small numbers of calves are loaded onto low trailers or utes for short journeys. The risk of rough handling is much lower for these journeys than it is for larger stock trucks. The reasons for this include the lower loading height, smaller number of calves and the fact that most of these calves are being taken for rearing or sale rather than slaughter, therefore the commercial incentives to safeguard their welfare are greater.
34. Requiring the use of loading facilities for low vehicles also risks creating situations where farmers need separate sets of kit for trailers, utes and stock trucks.
35. For these reasons, MPI has adjusted the regulation so that the requirement to provide loading or unloading facilities only applies to vehicles with a loading height of 90 centimetres or higher. The floor of a standard stock truck container is around 120 centimetres (1.2 metres) from the ground, although some can be as low as 96 centimetres; whereas the loading height of the latest generation of utes is up to approximately 85 centimetres. By setting a height threshold at 90 centimetres, stock trucks will be covered by the regulation while utes and lower trailers will be out of scope.
36. This approach has been discussed with Federated Farmers, DairyNZ and the Royal New Zealand Society for the Prevention of Cruelty to Animals (RNZSPCA), all of whom have indicated they support the proposal to exclude utes and low trailers.
37. Separately, in accordance with the decision by the Ministerial Group, the regulation contains a requirement that, where loading facilities are required and provided, they must be used. This requirement is framed so that persons in charge “must take all reasonable and practicable steps” to ensure that calves are loaded using the correct facilities. This is to allow for circumstances where, for example, there may be some calves among a large group that refuse to walk up a ramp and it is better for their welfare to carefully lift them rather than attempt to force them to walk.

*Duty to have systems to ensure compliance*

38. Several of the regulations include clauses requiring that persons in charge of young calves have systems in place that, if followed, will ensure compliance with the relevant rules that have been imposed. These clauses have been designed to strike a balance between ensuring that farmers, transporters and processors have effective procedures in place while avoiding being overly prescriptive and imposing unnecessary bureaucracy.
39. There are no direct penalties for failing to meet these system requirements. An infringement fee would be most suitable but this is not possible without specifying in the regulations exactly what sort of system must be in place, thus stifling the potential for innovation. These requirements can, however, be enforced using compliance notices. Failure to comply with one of these notices will carry an infringement fee of \$500 when this penalty provision is brought into effect.

### *Offences and Penalties*

40. The new regulations set out offences and penalties which will be subject to strict liability. This means that the prosecution only needs to prove the prohibited conduct, it is not necessary to prove that the defendant intended to commit the offence.
41. This approach is consistent with existing provisions in the Animal Welfare Act 1999 (as amended) which creates strict liability offences for owners or people in charge of animals who fail to ensure that the physical, health and behavioural needs of their animals are met, or fail to ensure that an ill or injured animal receives treatment; and for any person who ill-treats an animal.

### Infringements

42. The Act provides for regulations to be made that impose an infringement fee for non-compliance. Infringement fees are suitable for relatively low-level offending where breach can be proven by a straightforward application of the facts.
43. Two of the proposed regulations are suitable for infringement fees. These are the fitness for transport requirements (both age and physical characteristics) and the need to provide suitable loading and unloading facilities. The infringement fee for both offences has been set at \$500. This is consistent with similar offences in other legislation, such as the Dog Control Act 1996.

### Prosecutable offences

44. The remaining calf regulations are not suitable to carry infringement offences because of the varied circumstances in which the regulations will apply or the potential degree of harm that could be caused to sometimes large numbers of animals.
45. Prosecutable offences may be created in regulations if the subject matter is considered more complex or risks causing more harm than an infringement-level offence. The Act allows maximum fines in these circumstances up to \$5,000 for an individual and \$25,000 for a body corporate. Criminal convictions may also apply.
46. The level of penalty attached to each of the prosecutable offences has been discussed at some length with the Ministry of Justice. The maximum penalty set for each offence, and the rationale for differentiating these, is set out below.

### Use of loading facilities and the provision of suitable shelter - \$2,000/ \$10,000

47. In respect of the use of loading facilities, what may be “reasonable and practicable steps” to comply in one situation may not be in another. This recognises in particular the unpredictability of young calves and the extent to which they may or may not walk of their own accord.
48. For the shelter regulation, constructions that might provide suitable shelter in Northland are less likely to do so in Southland, for example. Similarly, a farm that is exposed to strong coastal winds will require different constructions to those necessary in more sheltered locations.

49. In both cases, failure to comply with the regulations does not automatically mean that a calf's welfare will have been compromised. For that reason, the maximum fines have been set at \$2,000 for individuals and \$10,000 for bodies corporate.
50. Courts do not automatically impose the maximum penalties set by law, but adjust the penalty imposed in each case after consideration of the facts on a case-by-case basis. For that reason, we do not expect fines of \$2,000 or \$10,000, respectively, to be imposed. Instead, we anticipate that the true level of penalty imposed is more likely to be between \$500 to \$1,000 for an individual or \$2,500 to \$5,000 for a body corporate. This is consistent with the infringement fee set in relation to the requirement to have loading facilities, which means that all "infrastructure" type offences will carry a similar monetary tariff.

#### Prohibition of killing by blunt force to the head - \$3,000/ \$15,000

51. Done properly, blunt force trauma is an effective means of humanely killing a calf. Because of this, the use of blunt force trauma does not, in itself, mean that a calf will have suffered unnecessary or unreasonable pain or distress. For that reason, the penalty for using blunt force trauma has been set at \$3,000 for an individual and \$15,000 for a body corporate. Where blunt force trauma has been used poorly and the calf has suffered as a result, prosecution under the Act remains available.
52. Note that blunt force trauma has been prohibited in response to the need to maintain New Zealand's reputation as an ethical producer of animals and animal products. MPI advises farmers to use a firearm or captive bolt gun as an effective means of euthanasing young calves on farm where this is necessary. The requirement to use a firearm or captive bolt gun is also reflected in relevant codes of welfare.

#### Remaining prosecutable offences - \$5,000/ \$25,000

53. The three remaining prosecutable offences are those covering the 12 hour maximum duration of transport, prohibition of crossing the Cook Strait and the 24 hour maximum time off feed prior to slaughter.
54. In each of these cases there is a particularly high likelihood that breaching the regulation will affect the welfare of significant numbers of animals. In addition, in many circumstances, the liability is likely to fall on corporate entities, so the prospect of higher-level fines will be a more effective deterrent against offending. There is a risk that a smaller fine such as \$10,000 could, in some circumstances, be seen as the cost of doing business. This is unlikely to be the case if the defendant is at risk of incurring a \$25,000 penalty.
55. For all of the prosecutable offences, the court will have the discretion to vary the penalty according to the nature and the scale of the welfare compromise in any given case. Criminal convictions may also be applied.
56. In cases involving the most severe levels of offending, prosecution under the provisions in the Act itself (rather than these regulations) will remain an option. Act-level offences may receive fines of up to \$100,000, or up to five years imprisonment, for an individual; or a fine up to \$500,000 for a body corporate. Criminal convictions may be applied as well as other penalties, such as disqualifications or forfeitures, depending on the offence.

### *Enforcement*

57. The majority of calves will come from commercial farms. Enforcement of the regulations will therefore primarily be undertaken by MPI officials holding animal welfare warrants - this includes animal welfare inspectors and veterinarians. The Royal New Zealand Society for the Prevention of Cruelty to Animals (RNZSPCA) will enforce the regulations in relation to the small number of calves on lifestyle blocks. Enforcement action by the RNZSPCA will be controlled by the RNZSPCA National Inspectorate.
58. Over the coming year, MPI is planning to visit a minimum of 1,200 farms around the country to verify compliance with animal welfare requirements. These will include at least 300 dairy farms. The majority of dairy farm audits will be targeted at those dairy farms where animal welfare issues have been identified for calves supplied to meat processing premises. MPI will familiarise farmers with their legal responsibilities, including the farmer's responsibilities regarding calves, and may take enforcement action if the circumstances require it.
59. This season, for the first time, investigations and autopsies will be carried out on 100% of calves that are dead or condemned for welfare reasons prior to slaughter. This work will be carried by MPI veterinarians who are already present at meat works. Where the investigation/ autopsy reveals any animal welfare concerns, enquiries will be made of the supplier, transporter or processor as appropriate. Where necessary, the farm of origin will be visited by an animal welfare inspector within one week. At that point, further enforcement action may be taken. This could range from issuing compliance notices or infringements through to laying criminal charges.
60. MPI has estimated that it may issue approximately 200 infringements and make up to 30 prosecutions in the first year for failure to comply with the new regulations for calves. Use of compliance notices, where appropriate, may reduce these figures.

### *Regulatory Impact Assessment*

61. Public consultation on the proposals relating to young calves closed on 19 May. The Ministerial Group delegated to approve the policy in relation to those proposals did so on 1 June. Because of these timeframes a formal Regulatory Impact Statement (RIS) was not included with the briefing that went to the Ministerial Group but MPI undertook to provide one to Cabinet along with the paper seeking approval for the regulations themselves.
62. Key findings from the RIS are summarised in the Cabinet paper and the full RIS is attached to Appendix C of the Cabinet paper.

### *Consultation*

63. MPI has consulted widely on the proposals for the whole package of animal welfare regulations. As part of this work, additional targeted consultation was undertaken with stakeholders that have a direct interest in the young calf regulations. An overview of the consultation process is set out in the Cabinet paper. This briefing highlights notable areas of dialogue with key stakeholders. A general summary of the consultation submissions overall is provided in Appendix A of this briefing.

### Federated Farmers and DairyNZ

64. Discussions with Federated Farmers and DairyNZ helped MPI to assess the likely practical impact of the regulations on farmers. It also helped us to determine the level of detail that was necessary in each regulation. For example, the loading/unloading and shelter regulations intentionally only set some broad parameters for the sorts of facilities that must be provided. This is in order to enable farmers to innovate and come up with solutions of their own to meet the regulations. This will be supported by guidance from industry groups.

### The Meat Industry Association

65. The Meat Industry Association (MIA) expressed reservations about the potential impact of reducing the time limits for young calves' journeys and, particularly, the period they may be off feed prior to slaughter. MPI discussed these issues with MIA in some detail, which helped to inform the final policy positions that have been taken. The maximum journey time will remain 12 hours, pending review following the Massey University-led study which MPI has commissioned. Commencement of the time off feed regulation will be delayed until February 2017 in order to allow meat processors to put into place updated contracts of supply for the Autumn 2017 season.

### The Road Transport Forum

66. The Road Transport Forum raised objections regarding the extent to which transporters should be liable under some of the regulations. In particular, they submitted that responsibility should lie solely with farmers for ensuring every young calf which is presented for transportation meets the relevant age and physical criteria. MPI's final view, however, is that the act of transportation does risk compounding any problems that are experienced by unfit calves. It is the transporters that are the "persons in charge" of young calves during these journeys, so they should carry a degree of responsibility for ensuring their welfare. It was agreed, however, that transporters cannot reasonably be expected to know the age of individual calves (as opposed to assess their physical condition), so that requirement will only apply to farmers.

### The Bobby Calf Action Group

67. Prior to instructing PCO, MPI held a workshop with members of the Bobby Calf Action Group<sup>1</sup> to consider options for the precise scope of the regulations. This helped to inform many points of detail that are now part of the final drafts.
68. A notable contribution from this workshop has been the approach the regulations take to demonstrating compliance. Rather than specifying detailed record-keeping obligations, the regulations will instead require practitioners to ensure that they have a system in place that, if followed, will ensure compliance with the relevant rules. This should avoid creating unnecessary bureaucracy while still ensuring that practitioners are actively managing their efforts to comply.

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<sup>1</sup> The Bobby Calf Action Group was convened by MPI in November 2015 and includes MPI, the Dairy Companies Association of New Zealand, DairyNZ, the Road Transport Forum, the Meat Industry Association, Federated Farmers, the New Zealand Veterinary Association and the New Zealand Petfood Manufacturers Association.

The Royal New Zealand Society for the Prevention of Cruelty to Animals (RNZSPCA)

69. The text of the draft regulations has been workshopped at various stages of its development with key MPI enforcement staff and representatives from the RNZSPCA National Inspectorate. These discussions have been particularly important in considering the practicalities relating to each of the regulations and ensuring that the language of the regulations is fit for purpose from an enforcement perspective.

The National Animal Welfare Advisory Committee (NAWAC)

70. MPI has engaged with NAWAC at various points during the development of the regulations. John Hellström, Chair of NAWAC, wrote to you on 27 June 2016 to provide NAWAC's formal independent submission on the regulations in accordance with section 183A(10) of the Animal Welfare Act. This letter highlighted the following three issues:

- (i) NAWAC consider that it is important to minimise the time between a calf's last feed on farm and its eventual slaughter. NAWAC also submitted that the regulations should only allow calves to be fed once in lairage and that any such feed should be a higher standard than maintenance rations.

MPI has subsequently revised the text of the regulation to require that slaughter take place as soon as possible after the arrival of a young calf at a slaughter premises. If they must be fed in lairage (to the standard recommended by NAWAC), slaughter should occur as soon as possible after that feed. We believe that these adjustments to the regulation are sufficient to drive the swift slaughter that NAWAC is seeking.

- (ii) NAWAC suggested that stocking density should be taken into account by the regulations relating to fitness for transport and shelter, however they noted that this could be covered in guidance material rather than the regulations themselves.

MPI considers that the regulations make sufficient provision in relation to stocking density. For example, the shelter regulation requires that any shelter must enable young calves to stand up or lie down in a natural posture. We believe that this high-level requirement is the appropriate level of detail for regulations that will need to cover a wide range of circumstances and locations. We will, however, consider how the Codes of Welfare could be revised to provide more guidance around this.

- (iii) Finally, NAWAC submitted that a journey across the Cook Strait may be a shorter route to slaughter for some animals from the top of the South Island than an alternative route by road to a processing plant on the South Island itself. However, the Committee acknowledges that calves have not been transported by ferry for some time and that this proposal is therefore unlikely to have adverse effects.

### *Publicity and Communications*

71. The welfare of bobby calves has had a high profile in the media since the Farmwatch/SAFE video exposé in November 2015. This has led to significant interest in the young calf regulations, particularly in local newspapers and in farming industry publications.
72. Moving forward, MPI will be working to communicate the changes the regulations will bring for all industry sectors. Much of this work is being coordinated with the organisations that are members of the Bobby Calf Action Group in order to strike a balance between information direct from Government and more detailed guidance tailored for specific sectors. This will be distributed through meat and milk companies to be shared across the supply chain.
73. This includes DairyNZ's 'tick all eight to leave the gate' poster that clearly outlines the fitness for transport requirements. Some members of the Bobby Calf Action Group have also worked together to develop whiteboards for both farmers and transport operators to fill out to confirm that the calves leaving the farm gate are fit for transport. This follows a similar system that is already in place in Australia.
74. DairyNZ has prepared information for farmers setting out good practice in relation to the sorts of loading facilities that will meet the new regulatory requirements. In addition, training programmes focussed on calf welfare have been delivered to dairy farmers across the country.
75. MPI's well-established communications programme "Safeguarding our Animals, Safeguarding our Reputation" is designed to improve voluntary compliance of animal welfare laws. This year it will feature updated information about the calf regulations, including the launch of a new smartphone app for farmers and truck drivers to educate about what the law requires and what best practice involves to ensure that calves are fit for transport.
76. A broader plan is also being developed for communicating with the wider public. This will emphasise the importance that the government and industry is placing on protecting the welfare of young calves, as well as highlighting the significance of the regulations among this wider activity.

### *Timetable and Process*

77. As noted above, four of the Animal Welfare (Calves) Regulations 2016 can be brought into effect prior to the bulk of the spring calving season in August. These are:
  - the requirement that a young calf must be four full days of age and display certain physical characteristics prior to transport;
  - the limitation of maximum journey time to 12 hours;
  - the prohibition on the use of blunt force trauma except in an emergency; and
  - the prohibition on transportation of young calves by sea across the Cook Strait.
78. Cabinet approval of the Animal Welfare (Calves) Regulations 2016 is required by 25 July 2016 in order to have these regulations in effect by 1 August 2016. Cabinet will also need to agree, for those four regulations, to waive the 28 day rule that ordinarily applies once the regulations have been gazetted.

79. The Cabinet paper explains this issue and seeks Cabinet approval to waive the 28 day rule accordingly.

### **Live Animal Exports**

80. A commencement order and regulations have been drafted to implement policy proposals publicly consulted on and agreed in the development of the Animal Welfare Amendment (No 2) Act 2015.

#### *Animal Welfare Amendment Act (No 2) 2015 Commencement Order 2016*

81. Provisions enabling the Director-General to require exporters to provide reports on the welfare of exported animals during their journey and for up to 30 days after their arrival in the importing country were inserted into the Act by the 2015 Amendment.
82. The Animal Welfare Amendment Act (No 2) 2015 Commencement Order 2016 will bring those provisions forward so that they come into effect in late 2016, rather than waiting for them to commence automatically in May 2020.
83. Public consultation on the intention to bring forward the commencement of these provisions was included as part of the suite of animal welfare regulatory proposals that were publically consulted on during April/ May 2016. Consultation closed on 19 May 2016.
84. MPI received 60 submissions relating specifically to the live animal export proposals. Submissions from the general public principally sought a total ban on live animal exports, for any purpose. Submissions from industry were largely supportive of the regulations.

#### *The Animal Welfare (Export of Livestock for Slaughter) Regulations 2016*

85. Currently, the conditional prohibition on the export of livestock for slaughter is implemented under a Customs and Excise Prohibition Order (CEPO). The Animal Welfare (Export of Livestock for Slaughter) Regulations 2016 will transfer this prohibition into regulations under the Act.
86. The offence and penalties associated with the current CEPO are also transferred. However, to be consistent with the Animal Welfare Act the regulations prescribe a strict liability offence. This means that the prosecution only needs to prove the prohibited conduct, it is not necessary to prove that the defendant intended to commit the offence. This is slightly different to the CEPO which is silent on whether the offence is meant to be strict liability or require the necessary intent or mental state.
87. Two new defences are also provided in the regulations to ensure that exporters are not prosecuted for circumstances outside of their control. It will therefore be a defence if the defendant proves that they took all reasonable steps to:
- (i) ensure that the livestock would be used for a purpose other than slaughter after exportation (for example, breeding); and
  - (ii) comply with the conditions of export.

88. The regulatory offence and penalty will complement an existing Act offence and penalty for non-compliance with the requirement to obtain an AWEC or comply with any conditions of an AWEC.
89. Under the Customs and Excise Act, CEPOs must be renewed every three years. The current CEPO prohibiting the export of livestock for slaughter is due to expire on 20 December 2016. The Animal Welfare (Export of Livestock for Slaughter) Regulations 2016 must come into force on 21 December 2016 to ensure the transition between the two regimes is seamless.

### Next Steps

90. A draft letter is attached with this briefing for you to send to the members of the Ministerial Group for young Calf Regulations for their information together with an advance copy of the Cabinet paper, the Animal Welfare (Calves) Regulations 2016 and associated Regulatory Impact Statement. The letter is intended to issue by Friday 15 July 2016.
91. MPI officials will be available to meet with you, if required, in the week of 18 July to discuss the Cabinet paper and any other matters raised in this briefing.
92. The final versions of these documents need to be submitted to Cabinet Office by 10:00 on Thursday 21 July for discussion at Cabinet on Monday 25 July. The Parliamentary Counsel Office will arrange to submit the draft regulations and commencement order to Cabinet Office separately.
93. If Cabinet approves the regulations and commencement order they will be submitted to the Executive Council on the same day and notified in the *Gazette* on 28 July 2016. The order and regulations will come into force as outlined in the following table.

<b>Legislative instrument</b>	<b>Date regulations come into effect.</b>
The Animal Welfare (Calves) Regulations 2016	<ul style="list-style-type: none"> <li>• 1 August 2016</li> <li>• Commencement of the regulation relating to feeding before slaughter will be delayed until 1 February 2017.</li> <li>• Commencement of regulations in relation to the provision and use of loading and unloading facilities and the provision of shelter before and during transport will be delayed until 1 August 2017.</li> </ul>
The Animal Welfare Amendment Act (No 2) 2015 Commencement Order 2016	25 August 2016
The Animal Welfare (Export of Livestock for Slaughter) Regulations 2016	21 December 2016

## Appendix A

### Young calf regulatory proposals - Summary of consultation submissions

MPI consulted publically on 91 proposals for animal welfare regulations between 14 April and 19 May 2016. A total of 120 submissions contained specific comments about some or all of the proposed young calf regulations. Submitters broadly welcomed the intent behind developing regulations to manage the welfare of young calves across the supply chain. Overall, there was majority support for proposals 43, 44, 46 and 50 (as numbered in the consultation document). The proposal covering time off feed and age for transport were more contentious.

#### 43. Loading and unloading facilities

Submitters were supportive of this proposal. Industry groups noted it was important the regulation allowed farmers to find innovative solutions to meet the requirements. There was support that the proposal be amended to clarify that only calves being transported to stockyards or for slaughter would be covered. This will avoid catching calves being picked up in the paddock or transported on-farm.

Support - 55	Amend - 7	Do not support - 5
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#### 44. Shelter on-farm, before and during transportation and at processing plants

There was general support for the shelter proposals, although a number of amendments were recommended. In particular, access to fresh water, comfortable bedding, and stocking density were mentioned. Industry and advocacy groups both recommended ensuring that calves had sufficient space to lie down before and during transport.

Support - 47	Amend - 28	Do not support - 2
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#### 45. Fitness for transport – age

The intent of this proposal was supported, however submitters differed on the appropriate age and how it should be measured. NAWAC and industry groups supported the 4 day rule as the status quo. While other submitters supported amending this to state 'since separation from its mother'. DairyNZ and Federated Farmers supported combining proposals 45 and 46 to clarify that all fitness transport requirements must be fulfilled before a calf is transported. Advocacy groups submitted that the age limit should be increased, the most common proposed alternative was 10 days old. SAFE referenced existing European standards that MPI should consider.

Support - 7	Amend – 59	Do not support - 3
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#### 46. Fitness for transport – physical characteristics

There was wide support for the proposal. Some concerns were raised about the enforceability of the proposal across the supply chain.

Support - 54	Amend – 4	Do not support - 2
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47. Maximum time off feed

This proposal was supported by industry bodies, however there were differing views about how feasible a minimum feed time prior to pick up would be. The proposal was contentious with advocacy groups and individual submitters who recommended a reduction in the time limit. Views ranged from 2 to 12 hours before slaughter. Meat industry representatives argued that non-regulatory measures should be used to encourage swifter slaughter until more data becomes available to support regulating.

Support - 10	Amend – 57	Do not support - 6
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48. Maximum duration of transport

There was support for the proposal's intent but a number of submitters suggested amendments. DairyNZ, MIA and Fonterra submitted that more evaluation of the transport network and evidence was required information to assess value of setting the duration at 8 hours rather than the current standard of 12 hours. They cited potential issues that may arise where processing capacity at certain locations cannot keep up with the large number of calves that may be supplied during peak season. Advocacy groups submitted that the transport duration should decrease.

Support - 50	Amend – 14	Do not support - 4
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49. Prohibition of blunt force trauma

There was conditional support for this proposal, on the basis that it include an exemption for emergency situations. The RNZSPCA and NAWAC did not support the proposal, submitting that if performed correctly the procedure remains a humane method of euthanasia.

Support - 47	Amend – 12	Do not support - 2
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50. Prohibition of transport by sea across the Cook Strait

There was support for the intent of the proposal. Industry bodies observed that this was not common practice. It was recommended by some submitters that the wording incorporate an exemption for emergency situations.

Support - 53	Amend – 3	Do not support - 3
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**Other matters raised**Increased communication, education and monitoring across the supply chain -

Submitters highlighted this as an area that should be addressed through non-regulatory means. This included improving supply chain relationships, greater use of 'animal status declarations' and increased education for stock handlers. Some submitters suggested increased monitoring through installation of cameras in shelters and stock-trucks.

Transitional Periods - There was support for transitional periods from industry groups for loading facilities, shelter, maximum time off feed, and duration of transport. This ranged from 6-24 months for delayed commencement. Loading facilities attracted the most support for transitional arrangements.

*Enforcement and infringement levels* - Submitters raised questions of how the regulations will be enforced, citing potential difficulties in accurately identifying liability within the supply chain and the extent of current proactive enforcement. Advocacy groups also suggested that the proposed infringement fees were too low and that they should instead be \$1,000. Industry groups generally agreed with the prescribed fee level and submitted that some prosecutable offences may be better addressed as infringements if possible.

*Opposition to bobby calf 'trade'* - Five submitters explicitly requested an end to the bobby calf trade, stating the animals should not be treated as a waste product of the dairy industry and arguing that it is inherently cruel to remove the calves from their mothers at a young age.