

**30 APR 2019**

Simon Connell  
fyi-request-9858-c2406dd4@requests.fyi.org.nz

Our ref: OIA 74286

Dear Mr Connell

**Official Information Act request: documents related to the issues paper for targeted consultation  
*Addressing the theft of livestock***

Thank you for your email of 14 March 2019 requesting, under the Official Information Act 1982 (the Act), the:

- 1. issues paper for targeted consultation "Addressing the theft of livestock", provided to the Law Society in 2018 ("the issues paper");*
- 2. list of persons to whom the issues paper was distributed;*
- 3. any documents discussing the desirability or need for consultation on the addition of the proposed new offences to the Crimes Act discussed in the issues paper; and*
- 4. any documents discussing the merits of adding the new offences to the Crimes Act via SOP applying to the then Crimes Amendment Bill versus a new Bill.*

As noted to you on 11 April 2019, the timeframe in which to respond to your request was extended until 25 April 2019 due to the consultations necessary to make a decision on the request. It was then noted in a further email to you on 16 April 2019 that the original extension had not taken into account the public holidays over Easter and that an extension of 10 working days would actually take the extended due date to 30 April 2019.

In response to the second part of your request, I have listed below the seven Government agencies and five other organisations that were given the opportunity to provide feedback on the issues paper for targeted consultation entitled *Addressing the theft of livestock*. Feedback was received from all but one of these organisations. Please note that Treasury and the Department of the Prime Minister and Cabinet were also consulted on the Cabinet paper entitled *Addressing the theft of livestock in New Zealand*.

**Government agencies**

New Zealand Police  
Crown Law Office  
Department of Corrections  
Department of Internal Affairs  
Te Puni Kōkiri  
Ministry for Women  
Ministry of Primary Industries

**Organisations**

Federated Farmers  
Dairy New Zealand  
New Zealand Law Society  
Rural Women New Zealand  
The Royal New Zealand Society for the Prevention of Cruelty to Animals

As noted in the letter sent to you on 11 April 2019, in the interests of providing the information as soon as is practicable, we have interpreted the documents in parts 3 and 4 of your request to mean substantive advice received by the Minister of Justice. This excludes email correspondence, which would require substantial collation and a longer timeframe in which to respond.

The appendix to this letter lists the documents that fall within scope of our interpretation of your request. We have included a number of other documents necessary for context.

Four documents have been withheld in full under section 18(d) of the Act as the information requested is or will soon be publicly available. I have provided links below to where these documents are publicly available.

- **Document 7.2** *Coversheet: Addressing the theft of livestock Rustling New Zealand* - [www.justice.govt.nz/assets/Documents/Publications/regulatory-impact-analysis-addressing-the-theft-of-Livestock-rustling-in-new-zealand.pdf](http://www.justice.govt.nz/assets/Documents/Publications/regulatory-impact-analysis-addressing-the-theft-of-Livestock-rustling-in-new-zealand.pdf)
- **Document 10** *Re: Proposed new offences – unlawfully entering agricultural property and livestock theft* – [www.lawsociety.org.nz/\\_\\_data/assets/pdf\\_file/0008/130787/l-Minister-Justice-livestock-offences-SOP-185-19-12-18.pdf](http://www.lawsociety.org.nz/__data/assets/pdf_file/0008/130787/l-Minister-Justice-livestock-offences-SOP-185-19-12-18.pdf)
- **Document 21** *Crimes Amendment Bill, SOP 185 – new criminal offences relating to livestock rustling* - [www.lawsociety.org.nz/\\_\\_data/assets/pdf\\_file/0008/130787/l-Minister-Justice-livestock-offences-SOP-185-19-12-18.pdf](http://www.lawsociety.org.nz/__data/assets/pdf_file/0008/130787/l-Minister-Justice-livestock-offences-SOP-185-19-12-18.pdf)
- **Document 22** *Crimes Amendment Bill – Third Reading* - [www.parliament.nz/en/pb/hansard-debates/rhr/combined/HansDeb\\_20190221\\_20190221\\_20](http://www.parliament.nz/en/pb/hansard-debates/rhr/combined/HansDeb_20190221_20190221_20).

Copies of the remaining documents are enclosed, including a copy of the issues paper for targeted consultation as document 9. Some information is withheld under:

- section 9(2)(a) to protect the privacy of natural persons;
- section 9(2)(f)(iv) to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials; and
- section 9(2)(g)(i) to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any department or organisation in the course of their duty.

I am satisfied that there are no other public interest considerations that render it desirable to make the information withheld under section 9 available.

If you require any further information, please contact Julia Goode, Acting Team Leader Media and External Relations on 021 636 416, or email [media@justice.govt.nz](mailto:media@justice.govt.nz). If you are not satisfied with my response to your request, you have the right to complain to the Ombudsman under section 28(3) of the Act. The Ombudsman may be contacted by email at [info@ombudsman.parliament.nz](mailto:info@ombudsman.parliament.nz).

Yours sincerely

A handwritten signature in blue ink, appearing to read 'B Gage', with a long horizontal stroke extending to the right.

Brendan Gage  
**General Manager, Criminal Justice**

**Appendix: Documents related to the issues paper for targeted consultation Addressing the theft of livestock**

No	Document title	Date	Document type	Comments
1	RE: IMPORTANT: Urgent advice request	10 April 2018	Email	Some information withheld under s9(2)(a) and some out of scope
2	SOP Livestock Theft	10 April 2018	Aide memoire	Some information withheld under s9(2)(f)(iv)
3	Letter from Minister Little to Andrew Bridgman	6 July 2018	Letter	Released in full
4	Livestock rustling – options for new offence	13 July 2018	Briefing	Some information withheld under s9(2)(a)
5	Livestock rustling – supplementary advice	20 July 2018	Briefing	Some information withheld under s9(2)(a), s9(2)(f)(iv) and s9(2)(g)(i)
6	Livestock rustling: timeline and process	27 July 2018	Aide memoire	Released in full
7	1. Addressing the theft of Livestock in New Zealand 2. Coversheet: Addressing the theft of livestock Rustling New Zealand	24 September 2018	1. Cabinet paper 2. Regulatory Impact Analysis	1. Released in full 2. Withheld in full under s18(d)
8	Proposed new offences – unlawfully entering agricultural property and livestock theft	9 October 2018	Letter	Some information withheld under s9(2)(a)
9	Addressing the theft of livestock – Confidential issues paper for targeted consultation	9 October 2018	Consultation document	Released in full
10	Re: Proposed new offences – unlawfully entering agricultural property and livestock theft	19 October 2018	Feedback	Withheld in full under s18(d)
11	Addressing the theft of livestock consultation paper – Federation Farmers of New Zealand	23 October 2018	Feedback	Some information withheld under s9(2)(a)
12	RE: Draft Cabinet paper for consultation: Addressing the theft of livestock in New Zealand	24 October 2018	Email	Some information withheld under s9(2)(a) and some out of scope
13	RE: Consultation	25 October 2018	Email	Some information withheld under s9(2)(a)
14	Summary of Outcome of Consultation on Livestock Offence Proposals	25 October 2018	Summary document	Some information withheld under s9(2)(f)(iv)
15	Consultation on proposed new offences – Unlawfully entering agricultural property and livestock theft	25 October 2018	Feedback	Released in full
16	RE: Livestock submissions	25 October 2018	Email	Some information withheld under s9(2)(a) and s9(2)(g)(i), and some out of scope

17	Supplementary Order Paper – Livestock rustling: Approval for Introduction	31 October 2018	Draft Cabinet Legislation paper	Released in full
18	Addressing the Theft of Livestock in NZ SOP	29 November 2018	Aide memoire	Some information withheld under s9(2)(g)(i)
19	Supplementary Order Paper – Livestock rustling: Approval for Introduction	3 December 2018	Cabinet paper	Released in full
20	Proposed offences – theft of livestock and other animals & unlawfully entering agricultural land	13 December 2018	Letter	Released in full
21	Crimes Amendment Bill, SOP 185 – new criminal offences relating to livestock rustling	19 December 2018	Letter	Withheld in full under s18(d)
22	Minister Little Third Reading Speech	21 February 2019	Speech	Withheld in full under s18(d)

out of scope

**From:** McGilvray, Stuart  
**Sent:** Tuesday, 10 April 2018 4:49 p.m.  
**To:** s9(2)(a)  
**Cc:** Williams, Bruce <Bruce.Williams@justice.govt.nz>; Stace, Rachael <Rachael.Stace@justice.govt.nz>  
**Subject:** RE: IMPORTANT: Urgent advice request

Hi s9(2)(a),

Let me know if you need more detail than this.

Cheers



Stuart McGilvray  
Policy Manager | Criminal Law  
s9(2)(a) | 04 918 8812  
[www.justice.govt.nz](http://www.justice.govt.nz)

**From:** s9(2)(a)  
**Sent:** Tuesday, 10 April 2018 12:08 p.m.  
**To:** McGilvray, Stuart <Stuart.McGilvray@justice.govt.nz>  
**Subject:** FW: IMPORTANT: Urgent advice request  
**Importance:** High

Hi Stuart – I'll pop over later to discuss, but suggest you start preparing a short aide-memoire.

s9(2)(a)

s9(2)(a) | Private Secretary - Justice

s9(2)(a)

Office of Hon Andrew Little MP, Minister of Justice, Minister for Courts  
Executive Wing, Parliament, Wellington, New Zealand 6160 | PO Box 18 041, Wellington, New Zealand 6160

From: s9(2)(a)  
Sent: Tuesday, 10 April 2018 12:05 PM  
To: s9(2)(a)  
Subject: IMPORTANT: Urgent advice request  
Importance: High

Hi s9(2)(a)

The government is aware of public concerns about livestock rustling, specifically a perceived lack of specificity about the existence of a specific crime of livestock rustling in law.

A pro forma reading of Ministry advice and submissions on the Sentencing (Livestock Rustling) Amendment Bill indicates that that Member's Bill as written is unlikely to address the concerns effectively.

Attached is a draft Supplementary Order Paper on the Crimes Amendment Bill, which has been presented as an option to address the public concerns as above.

Please can we request urgent advice about the SOP. Because this request is urgent the advice should come back to me directly, rather than through the bag process. If this can be done by COP today, or at latest midday tomorrow, we'd be very grateful. Do talk to me about scope of there are questions.

Ngā mihi

s9(2)(a)  
Senior Private Secretary to Hon Andrew Little MP  
s9(2)(a)

Office of Hon Andrew Little MP, Minister of Justice, Minister for Courts, Minister for Treaty of Waitangi Negotiations, Minister Responsible for the NZSIS, Minister Responsible for the GCSB, Minister Responsible for Pike River Re-entry Reception +64 4 817 8707 | Ministerial Email [a.little@ministers.govt.nz](mailto:a.little@ministers.govt.nz) | Web [beehive.govt.nz](http://beehive.govt.nz) | Postal Freepost Parliament, Private Bag 18 041, Parliament Buildings, Wellington 6160, New Zealand



Authorised by Hon Andrew Little MP, Parliament Buildings, Wellington 6160, New Zealand

## **Purpose**

1. This note provides information on the proposal to introduce a Supplementary Order Paper to the Crimes Amendment Bill, currently before the Justice Committee.

## **Advice on the Supplementary Order Paper**

2. The Supplementary Order Paper proposes to introduce a new section 221 for livestock theft, and amend section 223 to create a maximum penalty of 9 years imprisonment for an offence of livestock theft.
3. Officials do not believe there is a demonstrable case for the SOP:
  - a. there is not an identified need for a specific offence of theft of livestock;
  - b. the proposed maximum penalty is disproportionate to penalties for theft;
  - c. increasing penalties is not an effective deterrent; and
  - d. the Crimes Amendment Bill is not the most appropriate vehicle for a change of this type.
4. As currently drafted the SOP also has technical deficiencies that need to be addressed, including the fact that it does not repeal the existing section 221.

s9(2)(f)(iv)

## **There is not a strong case for a new offence**

6. Theft of animals can be charged and adequately addressed through the existing theft offences. Police have not identified problems with the way that the current law operates.

## **The proposed penalty would penalise theft of livestock more severely than theft of all other kinds of property**

7. Creating a specific offence will create inconsistency with no clear rationale. Currently, a person who commits theft of any type is liable to a penalty proportionate to the value of the stolen property. The penalty proposed in the SOP would distinguish the theft of livestock from theft of all other kinds of property (the maximum penalty for the most serious instances of theft is 7 years; the SOP proposes 9 years for theft of livestock). It is not clear why theft of livestock should be treated more seriously than theft of other high value items.

## **Increasing penalties is not an effective deterrent**

8. The risk of detection is considered to be a far more effective deterrent than the severity of punishment. While there is strong evidence for the general deterrent power of having a



criminal justice system<sup>1</sup>, increases in the severity of penalties do not produce a corresponding increase in deterrence.<sup>2</sup>

**The Crimes Amendment Bill is not the most appropriate vehicle for this change**

9. The Crimes Amendment Bill that is before the House is currently limited to removing archaic laws from the statute book. As this proposal is creating an additional offence and amending an existing penalty, it is an uncomfortable fit with the current Bill and arguably better suited to another legislative vehicle.
10. If the Government wishes to progress this kind of reform, it could be considered in the next Crimes Act Amendment Bill, for which policy work is already underway. It is intended for introduction next year.

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<sup>1</sup> For example, significant overall increases in the crime rate were observed during police strikes in Australia and England in the early twentieth century; Andrew von Hirsch, Andrew Ashworth, and Julian Roberts, eds. (2009). *Principled Sentencing: Readings on Theory and Policy* (3<sup>rd</sup> edition).

<sup>2</sup> Donald Ritchie. (April 2011). 'Does Imprisonment Deter? A Review of the Evidence'; Victorian Sentencing Advisory Council.

# Hon Andrew Little

Minister of Justice

Minister for Courts

Minister for Treaty of Waitangi Negotiations

Minister Responsible for the NZSIS

Minister Responsible for the GCSB

Minister Responsible for Pike River Re-entry



Andrew Bridgman  
Chief Executive and Secretary for Justice  
Ministry of Justice  
19 Aitken Street  
Wellington 6011

6 July 2018

Dear Andrew

I have received representations that livestock rustling is creating a serious risk to our rural communities for the following reasons:

- It is estimated to cost the farming community over \$120 million per year;
- Around a quarter of farmers have had livestock taken in the past five years;
- Up to 60% of livestock thefts are not reported;
- The welfare of animals is threatened;
- *Mycoplasma bovis* has increased the urgency of preventing livestock rustling (which is unauthorised transfer).

The issue of livestock rustling was raised by the *Sentencing (Livestock Rustling) Amendment Bill* in the name of Ian McKelvie MP, which proposed an amendment to the aggravating factors in the *Sentencing Act 2002*. I understand that while submitters were broadly in agreement about the importance of addressing livestock rustling, a number of submissions were made to the Primary Production Select Committee that amending the *Sentencing Act* was not the best approach.

I am of a mind to put forward a Government Bill to amend the *Crimes Act 1961* by introducing a stand-alone offence for livestock theft. I am persuaded that the urgency of the matter is such that this work should not wait for a full review of the *Crimes Act*. I also understand that a truncated legislative process might be supported by the Primary Production Committee, where I would expect the Bill to be referred for analysis.

I am therefore seeking timely advice that considers:

- The definition of “livestock rustling” (or, as appropriate, “livestock theft” or “livestock burglary”) for the purposes of making it a separate offence in the Crimes Act;
- Whether a companion separate offence of unauthorised movement of livestock is needed;
- Aligning the penalty for livestock rustling with the current offence of burglary, which has a maximum term of imprisonment of ten years;
- Including an option in the penalty of a fine of no more than \$10,000;
- Whether specific seizure provision are necessary in light of the *Criminal Proceeds (Recovery) Act*, which could include weapons and dogs used in the commission livestock rustling;
- A prudent truncated timeframe for the Bill to be introduced and passed, including consideration by the Primary Production Select Committee.

I would be grateful if the Minister for Primary Industries, Hon Damien O’Connor, could receive copies of the advice to me on this matter.

Yours sincerely



**Hon Andrew Little MP**  
Minister of Justice

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Hon Andrew Little, Minister of Justice

**Livestock rustling – options for new offence**

Date	13 July 2018	File reference	
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Action sought	Timeframe
Indicate whether you wish to amend the Crimes Act to create a specific offence of entering property used for agricultural purposes with the intention to commit an imprisonable offence	N/A
Agree that the penalty for this offence be a maximum 10 years' imprisonment	
Indicate your preference for the vehicle for this work	
Forward a copy of this advice to the Minister for Primary Industries.	

**Contacts for telephone discussion (if required)**

Name	Position	Telephone		First contact
		(work)	(a/h)	
Brendan Gage	General Manager, Criminal Justice	s9(2)(a)	s9(2)(a)	<input type="checkbox"/>
Stuart McGilvray	Policy Manager, Criminal Law	04 918 8812	s9(2)(a)	<input checked="" type="checkbox"/>

**Minister's office to complete**

Noted   
  Approved   
  Overtaken by events  
 Referred to: \_\_\_\_\_  
 Seen   
  Withdrawn   
  Not seen by Minister  
**Minister's office's comments**

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## Purpose

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1. This briefing outlines the Ministry's recommended approach to respond to matters relating to livestock rustling raised in your letter of 6 July 2018 to the Secretary for Justice.

## Executive summary

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2. You have written to the Ministry of Justice raising concerns about the theft of livestock from rural premises, and seeking advice on several issues relating to livestock rustling.
3. We can see no principled reason to distinguish theft of livestock and treat it more seriously than is possible under the tiered sentencing regime which applies to theft. Creating a specific kind of theft would also invite suggestions to treat other specific kinds of theft differently (e.g. theft from retail premises).
4. However, the offence of burglary (entering a building or ship with intent to commit an imprisonable offence – s 231) does not extend to all land that is used for agricultural purposes. Agricultural property is equally deserving of protection from the law particularly given the dispersed nature of many farm properties and the difficulty in ensuring the protection of livestock on such property.
5. To address this gap, you could:
  - 5.1. Add a definition of "property used for agricultural purposes" into the existing offence of burglary in s 231; or
  - 5.2. Create a new standalone offence of burglary of property used for agricultural purposes which mirrors the constituent elements of burglary.
6. For either approach the maximum penalty available should be 10 years' imprisonment, and it would not be necessary to specify a maximum fine (consistent with burglary). This would also mean the Criminal Proceeds (Recovery) Act 2009 will provide powers to forfeit tools used in the commission of the offence as well as any proceeds derived from it, so no specific new powers are required.
7. We understand there is some urgency to progress this amendment. If there is cross party parliamentary support, this change could be given effect by SOP at the CWH stage of the current Crimes Amendment Bill, which is set for enactment by the end of 2018. Otherwise, a stand-alone Bill could be introduced and passed with some degree of urgency.

## Background

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8. Your letter indicates that livestock rustling is a significant burden on rural communities. You also indicated that addressing this issue is an important priority, and asked us to consider:
  - 8.1. Making livestock theft or livestock burglary a specific offence;
  - 8.2. Whether a penalty of 10 years' imprisonment would be appropriate for either proposed offence, and the need to specify a maximum fine of \$10,000;

- 8.3. Whether there is also a need to criminalise the unauthorised movement of livestock;
- 8.4. Whether it is necessary to provide specific seizure powers for weapons or dogs used in the commission of either proposed offence;
- 8.5. A mechanism to introduce and pass the proposed changes.
9. Our advice on these matters is set out below. We note that we have not had an opportunity to consult with agencies, including Police, on this advice.

## Advice

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### *A case exists to extend the offence of burglary*

10. Currently, stealing livestock is criminalised by the general theft offence in the Crimes Act.<sup>1</sup>
11. We can see no principled reason to distinguish theft of livestock and treat it more seriously than is possible under the tiered sentencing regime which applies to theft. Creating a specific kind of theft would also invite suggestions to treat other specific kinds of theft differently (e.g. theft from retail premises).
12. However, the offence of burglary (entering a building or ship with intent to commit an imprisonable offence – s 231) does not extend to all land that is used for agricultural purposes.
13. Burglary requires a person enters a ship or building, without authority, with the intention to commit an imprisonable offence. Building is defined broadly in the act to include any building or structure and any enclosed yard. "Enclosed yard" means an area of land which is appurtenant to a building. Therefore, theft from rural property that is not next a structure (e.g. stealing livestock from a paddock not positioned next to a building) may not be captured by the offence of burglary.
14. This gap means the underlying principle in the offence of burglary, protection of personal property, will not always apply to the same extent for individuals who live in rural environments. Addressing this gap would standardise the protection the criminal law provides to various kinds of land owners. Agricultural property is equally deserving of protection from the law particularly given the dispersed nature of many farm properties and the difficulty in ensuring the protection of livestock on such property.

### *Options for extending the offence of burglary*

15. To address the problem identified above have identified two options for your consideration:
- 15.1. Adding a definition of "property used for agricultural purposes" into the existing offence of burglary in s 231; or
- 15.2. Creating a new standalone offence of burglary of property used for agricultural purposes which mirrors the constituent elements of burglary.

<sup>1</sup> Theft is defined as dishonestly taking any property with intent to deprive any owner permanently – s 219 of the Crimes Act.

→ Theft of livestock is different in character to theft of an inanimate object. As the animals are involved, stress to an animal is more likely than not. Also, the economic benefit to (A&S)

the livestock thief is likely to be ongoing and recurring rather than one-off as with any other object.

Thirdly, in a strongly agrarian nation like ours, there is some value in signalling in our criminal code that livestock offences are viewed differently. I don't see this third argument as different character to the argument in para.17 of the paper in relation to giving agricultural burglary greater prominence. If we can do it for burglary, we must be able to do it for theft.

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16. The first option is simple and only requires creating a new definition. The change would automatically carry over to the drafting of the offences related to burglary – ss 232 (aggravated burglary) and 233 (being disguised or in possession of instrument for burglary).
17. The only benefit of the second approach would be to give the matter greater prominence. This may be more appealing as it speaks to stakeholders' desire for a specific offence.
18. If you prefer the second approach we would propose that:
- 18.1. The framing would include any land and buildings used for agricultural purposes but exclude the space otherwise covered by section 231. This ensures the new offence would supplement, as opposed to supplant, section 231;
  - 18.2. The definition of property used for agricultural purposes would emphasise that the property be demarcated from surrounding land;
  - 18.3. The offence would cover entry to the specified property with the intent to commit "any imprisonable offence" (rather than specifying only theft, for example). Limiting the scope of this would leave a gap between it and burglary, so we consider the proposed offence should fully mirror the scope of burglary;
  - 18.4. The new offence should extend to the offences which are related to burglary – ss 232 (aggravated burglary) and 233 (being disguised or in possession of instrument for burglary) – for consistency.
19. It is important to note that burglary and the proposed specific offence criminalise any unlawful entry where it can be proved the defendant had an intent to commit any imprisonable offence. It is not necessary for the intended offence (e.g. theft) to actually take place, but where it does it would invariably provide proof of the proposed offence and could be the subject of an alternate charge.

*Proposed penalty – no need for specified fine*

20. The penalty for burglary is 10 years' imprisonment – we recommend carrying this through to whichever approach you prefer. We consider this is justified as the same underlying conduct is being criminalised by both offences.
21. It is not necessary to specify a maximum fine, and doing so would be inconsistent with the general approach in the Crimes Act.<sup>2</sup> A fine can always be imposed by the Court where a penalty of imprisonment attaches to an offence, by virtue of s 39(1) of the Sentencing Act:

If an enactment provides that a court may sentence an offender to imprisonment but does not prescribe a fine, the court may sentence the offender to pay a fine instead of sentencing the offender to imprisonment.

22. The appropriate fine in such cases is determined by the Judge having regard to the facts of the case and means of the defendant. The Judge is not bound by any

<sup>2</sup> The only offences in the Crimes Act 1961 with a fine specified are those necessary to fully implement international agreements to which New Zealand is a party or signatory



maximum fine value and could impose, in appropriate cases, a fine greater than the \$10,000 maximum suggested in your letter.

*No need for offence of unauthorised movement of livestock*

23. If an offender is caught transporting stolen livestock that will be evidence of the commission of burglary or the proposed specific offence and (invariably) theft. We can see no need for an additional offence of unauthorised movement.

*No need for specific seizure or forfeiture powers*

24. If burglary is amended or a new specific offence is adopted in the form and with the penalty we propose, the provisions of the Search and Surveillance Act 2012 would apply to that offence. We do not see a need to provide any additional seizure or forfeiture powers.
25. As the maximum penalty for burglary/the proposed specific offence exceeds five years' imprisonment, any tools used in and the proceeds derived from the offending would be eligible to forfeiture under the Criminal Proceeds (Recovery) Act 2009.

*Other relevant considerations*

26. While creating a new offence will address this gap, we note the evidence indicates that the risk of detection is a far greater deterrent than making new offences or raising existing penalties. You may therefore wish to discuss with the Minister for Police whether there are additional steps which Police can take to enhance detection and enforcement.
27. We have also been unable to model the impact that extending burglary to cover agricultural property would have on the prison muster, although we expect the effect to be negligible.

**Options for progressing reform**

28. We understand you wish to progress this change as expediently as possible. We have identified two options for your consideration.<sup>3</sup>

*Amending the Crimes Amendment Bill currently before the House*

29. The Crimes Amendment Bill introduced earlier this year repeals three outdated provisions in the Crimes Act. It is currently before Select Committee (officials are drafting the departmental report).
30. The Office of the Clerk has advised the proposed change outlined above was out of scope of this Bill. We, therefore, cannot progress the change via the Departmental Report to this Bill.
31. They did advise, however, that the change could be made by way of a Supplementary Order Paper at the Committee of the Whole House stage of this Bill if the House gives leave. It is necessary to get leave to consider an SOP containing amendments that would

<sup>3</sup> In line with the comment in your letter, we have not considered using the broader Crimes Amendment Bill as a vehicle as the timeframe for that Bill is introduction in mid-2019.

otherwise be out of order. The support of all members of Parliament is, therefore, required.

32. If you wish to pursue this option we recommend that you raise the matter with the Chair of the Business Committee to get clarity on whether there would be the support that is required for leave to introduce an SOP.

#### *A standalone Bill*

33. Alternatively, you could make this change in a further standalone Crimes Amendment Bill.
34. A standalone Bill could progress through the House in the usual timeframe, which would mean it could be enacted by around July 2019. As you signalled in your letter, the Select Committee stage could be truncated with leave of the House. The Primary Industries Committee may be best placed to consider a standalone Bill given its consideration of the Sentencing (Livestock Rustling) Amendment Bill, and the large number of Bills currently before the Justice Committee. Agreement could also be sought to pass the Bill under urgency without referring it to Select Committee.
35. This approach may be slightly more resource intensive for officials – particularly if a Select Committee process is involved.

#### **Next steps**

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36. You may wish to test your preferred approach on these matters with your parliamentary colleagues and / or members of the rural community. We have not had an opportunity to consult people who made submissions on the Sentencing (Livestock Rustling) Amendment Bill to see whether the change we propose would address their concerns.
37. In your letter, you indicated the Minister for Primary Industries, Hon Damien O'Connor should receive a copy of this advice. We, therefore, recommend your office provide a copy to him.
38. Once we have your direction on a preferred approach we will prepare a Cabinet paper and Regulatory Impact Analysis.

#### **Recommendations**

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39. It is recommended that you:

1. **Note** officials' advice that there is no need to create a YES/NO specific standalone offence of livestock theft

2. **Agree** to amend the Crimes Act to either

- a. extend the existing offence of burglary to property used for agricultural purposes YES/NO
- b. create a specific offence of entering property used for agricultural purposes with the intention to commit an imprisonable offence YES/NO

*- I note it but I disagree with it. See comments at the bottom of p.2 and over*

*YES/NO*

3. **Agree** that the penalty for this offence be a maximum 10 years' imprisonment YES/NO
4. **Note** officials' advice that no fine or other ancillary powers are required to accompany this offence YES/NO
5. **Agree** to make this change either:
- a. In an SOP to the Crimes Amendment Bill (in which case you should test the approach with the Business Committee) YES/NO
- b. In a standalone Bill YES/NO
6. **Consider** testing your preferred approach with parliamentary colleagues and / or the rural community YES/NO
7. **Note** that officials will prepare a cabinet paper and RIA once we have your preferred direction. YES/NO
8. **Forward** a copy of this briefing to the Minister of Primary Industries YES/NO

*under way at time of signing*



Stuart McGilvray  
Policy Manager, Criminal Law

APPROVED SEEN NOT AGREED



Hon Andrew Little  
Minister of Justice

Date 16/7/18

Attachments:

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Hon Andrew Little, Minister of Justice  
**Livestock rustling – supplementary advice**

Date	20 July 2018	File reference	CLW-13-13
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**Action sought**

**Timeframe**

Indicate whether you wish to amend the Crimes Act to create a specific offence relating to the theft of livestock or any animal	
Agree that the penalty for any such offence be a maximum of seven years' imprisonment	
Consider providing for a reasonable opportunity for public consultation on the Supplementary Order Paper that implements your preferred approach	
Forward a copy of this advice to the Minister for Primary Industries	

**Contacts for telephone discussion (if required)**

Name	Position	Telephone		First contact
		(work)	(a/h)	
Brendan Gage	General Manager, Criminal Justice	s9(2)(a)	s9(2)(a)	<input type="checkbox"/>
Matthew Mitchell	Acting Policy Manager, Criminal Law	04 496 6161		<input type="checkbox"/>
Andrew Goddard	Senior Policy Advisor, Criminal Law	04 494 9964		<input checked="" type="checkbox"/>

**Minister's office to complete**

- Noted   
  Approved   
  Overtaken by events  
 Referred to: \_\_\_\_\_  
 Seen   
  Withdrawn   
  Not seen by Minister

**Minister's office's comments**

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982


## Purpose

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1. This briefing provides further advice on matters relating to livestock rustling raised in your letter of 6 July 2018 to the Secretary for Justice, specifically in relation to creating a separate offence of livestock theft.

## Executive summary

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2. You have indicated that you would like further advice on the creation of a specific offence related to theft of livestock. In light of the issues you raised, we have identified three options for proceeding with a bespoke offence relating to theft of livestock:
  - 2.1. **Option One** – create a new offence specifically for the taking of livestock;
  - 2.2. **Option Two** – amend section 221 of the Crimes Act 1961 to include the taking of *live* livestock or any other animals that are the property of another person;<sup>1</sup> or
  - 2.3. **Option Three** – create a new offence focussed on the taking of livestock or any other animal in addition to section 221 of the Crimes Act 1961.
3. There are risks associated with each of the options, as the moral and symbolic value in treating livestock (or any animal) differently to other forms of property is a complex and contestable issue.
4. However, if you wish to proceed with a specific offence relating to theft of an animal, we suggest that either Option Two or Option Three would be a preferable approach.
5. Both approaches would seek to recognise the inherent value of animals as sentient beings and, therefore, their potential suffering as a result of being stolen. They would also recognise the particular relationship between animals and humans that may go beyond the proprietary relationship between people and things. A general offence of theft of animals, rather than livestock alone, would also help to avoid anomalous treatment of different classes of animal.
6. In our view, if the arguments relating to sentience and symbolic importance hold for livestock animals then it is reasonable to believe they apply equally to all other animals as well, whether they have an agricultural benefit or not.
7. s9(2)(g)(i)  


## Background

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8. You wrote to the Secretary of Justice on 6 July 2018 raising concerns about the theft of livestock from rural premises, and seeking advice on several issues relating to livestock rustling. You indicated that addressing this issue is an important priority, and asked us to consider:

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<sup>1</sup> Section 221 currently provides that every one commits theft if he or she *kills* any animal that is the property of any other person with intent to steal the carcass, skin, or plumage, or any other part, of the animal.

- 8.1. making livestock theft or livestock burglary a specific offence;
- 8.2. whether a penalty of 10 years' imprisonment would be appropriate for either proposed offence, and the need to specify a maximum fine of \$10,000;
- 8.3. whether there is also a need to criminalise the unauthorised movement of livestock;
- 8.4. whether it is necessary to provide specific seizure powers for weapons or dogs used in the commission of either proposed offence; and
- 8.5. a mechanism to introduce and pass the proposed changes.
9. We provided initial advice on these matters on 13 July 2018 and received feedback from you on 16 July 2018.
10. You agreed to create a specific offence of entering property used for agricultural purposes with the intention to commit an imprisonable offence, for which the maximum penalty would be 10 years' imprisonment. You also indicated that your preference would be to progress this change by way of a Supplementary Order Paper (SOP) to the Crimes Amendment Bill currently before Parliament.
11. However, you indicated that you did not agree with our view that there was no principled reason to create a separate offence of theft of livestock. We therefore undertook to provide further advice on this matter, which is set out below.

### **Relevant considerations and options for livestock theft**

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12. As noted in our previous advice, stealing livestock is currently criminalised by the general theft offence in section 219 of the Crimes Act.<sup>2</sup> Section 221 of the Crimes Act also expressly criminalises theft where a person kills any animal that is the property of any other person with intent to steal the carcass, skin, or plumage, or any other part, of the animal.
13. We advised that there was no principled reason to distinguish theft of livestock and treat it more seriously than is possible under the tiered penalty regime which applies to theft.<sup>3</sup> We noted the risk that a specific kind of theft may also invite suggestions to treat other specific kinds of theft differently (e.g. theft from certain retail premises).
14. You indicated that you see a basis for theft of livestock / animals being of a different character to theft of an inanimate object because, for example, of the stress involved to the animal itself. You also noted that:
- 14.1. the economic benefit from livestock theft is likely to be ongoing as opposed to one-off; and
- 14.2. in an agrarian economy, there is value in signalling that livestock offences are treated differently.
15. In our view, the potential for ongoing economic benefit from livestock does not present a *prima facie* distinction between theft of livestock / animals and theft of any other type of property. Many inanimate objects or things may provide ongoing economic value or a reduction in the cost of labour such as, for example, a tractor from a farmer or a camera

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<sup>2</sup> Theft is defined as dishonestly taking any property with intent to deprive any owner permanently.

<sup>3</sup> Currently, a person who commits theft of any type is liable to a penalty proportionate to the value of the stolen property (s 223 of the Crimes Act: less than \$500 = 3 months, between \$500 – \$1,000 = 2 years, over \$1,000 = 7 years). Theft by a person in a "special relationship", of any amount, is punishable by 7 years.

from a professional photographer. On its own, we do not see this as a compelling reason to depart from the existing regime which applies to theft.

16. However, the moral and symbolic value in treating livestock / animals differently to other forms of property is a complex and contestable issue, and is highly relevant to the basis of a rationale for creating a distinct offence of livestock / animal theft.

*Animals' status as property is a complex and contestable issue*

17. It is generally accepted that some level of ownership of animals is necessary, desirable, or both. However, debate has long occurred in New Zealand and overseas about the moral equivalency of animals and inanimate objects or things and, consequently, animals' legal status as property.
18. For example, a petition to reclassify the theft of a pet to a specific crime in its own right (the petition) was recently debated in the United Kingdom (UK) House of Commons. The main reasons cited in arguing for this change appear to be the need to recognise animals' sentience, additional emotional harm to the victim, and the need to send a stronger deterrent.
19. The UK Government response to the petition noted that theft was already an offence and that the Sentencing Council updated its guidelines in relation to theft offences in February 2016 to take account of the emotional distress and therefore harm that theft of personal items such as a pet can have on the victim. The issue of sentience and treating animals as morally equivalent to inanimate objects or things does not appear to feature in the response.
20. Elsewhere, however, academics and civil society groups have argued for animals to be granted a legal status distinct from that of things. Some have argued that animals should be granted 'legal personhood', while others instead have proposed an enhanced status such as a new classification of 'living property' that creates a guardianship-like relationship between people and animals.<sup>4</sup> Again, at the core of these arguments is that the current conception of property does not capture people's emotional attachment to animals, or animals' own sentience and autonomy.
21. These calls have received some legal recognition overseas, including case law in the United States,<sup>5</sup> and some amendments to civil law in jurisdictions such as Alaska and France.<sup>6</sup> Generally speaking, however, these questions have been addressed through animal welfare legislation, rather than through reconceptualising the proprietary status of animals via the criminal code, including in New Zealand.
22. Of the jurisdictions we most commonly compare ourselves to, in the time available we have only found explicit livestock offences in Australia (Queensland and New South Wales). The relevant provisions are attached as Appendix for your information.

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<sup>4</sup> See, for example, Favre, D. Living Property: A New Status for Animals within the Legal System. *Marquette Law Rev.* 2010, 93, pg. 1022–1071; Hankin, S.J. Not a living room sofa: Changing the legal status of companion animals. *Rutgers J. Law, Public Policy* 2007, 4, pg. 314–410.

<sup>5</sup> See, for example, *Myers v. City of Hartford* 853 A.2d, 625 (Conn. App. Ct. 2004); *Rabideau v. City of Racine* 627 N.W.2d 795 (Wis. 2001); *Carl Bueckner v. Anthony (Tony) Hamel and Kathy Collins* 886 S.W.2d 368 (Tex. App. 1994); *Corso v. Crawford Cat and Dog Hospital Inc* 415 N.Y.S.2d (182 N.Y. City Civ. Ct., 1979).

<sup>6</sup> France now consider animals "living beings gifted sentience," rather than "moveable property" and Alaska's divorce law now treats animals more like children than inanimate objects; referenced in Lauren K. Harris, 'Dog Theft: A Case for Tougher Sentencing Legislation' *Animals* Vol. 8(5), 2018, pg. 78.

*We have identified options for an offence of theft relating to animals / livestock*

23. As indicated above, we see the differing conceptions about animals' proprietary status as relevant to how their being stolen is treated in criminal law. On one end of the spectrum, the view that animals / livestock are property equivalent to objects or things would tend to suggest maintaining the status quo.
24. However, in light of the concerns you have raised, and the information above, we have identified three options for proceeding with a bespoke offence:
  - 24.1. **Option One** – create a new offence specifically for the taking of livestock;
  - 24.2. **Option Two** – amend section 221 to include the taking of *living* livestock or any other animal that is the property of another person; or
  - 24.3. **Option Three** – create a new offence focussed on the taking of livestock or any other animal that is the property of another person in addition to section 221.
25. All these options would be modelled off the construction of the general offence of theft, but would place the offending outside the tiered penalty regime. To be consistent with other theft offences, and due to the lack of evidence to suggest harsher penalties will achieve the policy intent (see below), we propose that the maximum penalty for any of these options would be seven years' imprisonment.
26. We note that a person committing one of these offences would almost certainly also have committed a burglary offence – whether the existing burglary offence or the proposed burglary offence in relation to agricultural premises – which will be punishable by up to 10 years' imprisonment.

*We recommend any new theft offence apply to livestock and other animals*

27. A justification for Option One could lie in the combination of the sentience of the animal and the ongoing economic benefit of livestock.
28. However, in our view, if the arguments relating to sentience and symbolic importance are relevant for livestock then it is reasonable to believe they apply equally to all other animals as well, whether they have a similar economic benefit or not. In any case, notwithstanding the strongly agrarian nature of the New Zealand economy, this would create an anomaly in the status of livestock vis-à-vis all other animals, including pets (whether in rural or urban environments) and animals in other industries that may have ongoing economic benefit. For example, such an offence would not intuitively capture pedigree animals bred for commercial purpose.<sup>7</sup>
29. If you wish to proceed with a specific offence relating to theft of an animal, we therefore suggest that either Option Two or Option Three would be a preferable approach.
30. We do not anticipate Option Two or Option Three differing in their material effect, but they may be seen to have different symbolic effect.
31. Both options would recognise the inherent value of animals as sentient beings and, therefore, their potential suffering as a result of being stolen.

<sup>7</sup> Other example may include zoo animals, animals in research facilities, racing animals, or animals used in film productions.



32. Options Two and Three would also, particularly in the context of pets, recognise the particular emotional attachment between animals and humans that may go beyond the proprietary relationship between people and things.
33. These options have the additional benefit of largely avoiding the need to define "livestock", which was raised as an issue in relation to the Sentencing (Livestock Rustling) Amendment Bill (the Sentencing Amendment Bill) despite being modelled off the definition in the National Animal Identification and Tracing Act 2012.<sup>8</sup> We have identified a further two definitions of livestock in force in New Zealand legislation,<sup>9</sup> but have not had an opportunity to test whether these would be appropriate in this context. A definition could potentially be expanded or constrained depending on the underlying policy imperatives of this work.
34. Notwithstanding that neither Option Two or Option Three would deal *only* with livestock, they would still signal that the offence *principally* related to livestock rustling.
35. We note that, under either option, the extent of any loss, damage, or harm resulting from the offence – including, for example, ongoing economic loss or physical or psychological harm to an animal – could be a relevant factor at sentencing.<sup>10</sup>

*There are risks associated with any of the options and the benefits are uncertain*

36. Notwithstanding there being an arguable basis for proceeding with a specific offence, we reiterate that we consider there are risks associated with any of the options outlined above.
37. The principal risk is that treating animals / livestock differently to other property constitutes a fundamental distinction in the way that theft for two types of property are penalised. Theft is penalised based on the monetary value of what is taken, as opposed to considerations of *inherent* value or emotional impact (though these may be dealt with at sentencing).
38. Moreover, the underlying policy intent of theft is recognition of the harm caused to a person as a result of deprivation – in the form of the property taken – rather than the protection of the thing *per se*. Protection of animals from harm is, as noted above, dealt with via animal welfare legislation.<sup>11</sup>
39. The change also represents a reasonably significant shift in the way that animals / livestock are considered in proprietary terms. While there may be merit in this, as indicated above, it is unclear that it will be consistent with the approach in animal welfare legislation. We have not yet had sufficient opportunity to work through these issues, s9(2)(f)(iv)

s9(2)(f)(iv)

<sup>8</sup> The Sentencing Amendment Bill and the National Animal Identification and Tracing Act 2012 define livestock as "animals kept as part of an agricultural operation, whether for commercial purposes or for private use".

<sup>9</sup> Specifically, the Conservation Act 1987 and Meat Board Act 2004.

<sup>10</sup> Sentencing Act 2002, s 9(1)(d) refers.

<sup>11</sup> The Animal Welfare Act 1999 contains, for example, offences of wilful or reckless ill-treatment of an animal, which have maximum terms of imprisonment of five and three years respectively.

s9(2)(f)(iv)

40. As noted in our briefing of 13 July 2018, separating out a category of property from the generic theft offence may also lead to calls for further bespoke offences. This is likely to be a particular risk if any amendments are perceived to be industry-specific.
41. There are a large number of industries that require specific tools or property which are not treated differently by the criminal law. Pursuing this change may lead to other industries seeking bespoke offences of theft or other criminal actions that impact their livelihoods, such as viticulture or the film industry.
42. The proliferation of such offences would be contrary to the preferred approach in the Crimes Act towards more general offences.
43. Per our previous advice, we also note that the evidence indicates that the risk of detection is a far greater deterrent than making new offences or raising existing penalties.<sup>13</sup> A specific offence is therefore unlikely to lead to behavioural change.
44. We have also been unable to model the impact that a specific offence of theft of (living) animals would have on the prison muster. We expect the effect to be negligible given the availability of existing prosecutorial options, but to the extent it results in longer sentences of imprisonment being imposed for animal theft, it could increase pressure on the prison system.

*Progressing changes urgently will exacerbate the risks outlined above*

45. The risks outlined above are all exacerbated by the pace and mechanism through which these changes are intended to be made.
46. In our view, the potential significance of the change any of the above options represent warrant full consideration of the implications and ramifications of those decisions. You may therefore wish to consider providing a reasonable opportunity for public consultation on the planned SOP.

### **Next steps**

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47. Further to your direction on our previous briefing, any of the options above would need to be included in the SOP that creates the new offence of entering property used for agricultural purposes with the intention to commit an imprisonable offence, for which the maximum penalty would be 10 years' imprisonment.
48. We will also need to include your preferred option in the draft Cabinet paper and consider it as part of any Regulatory Impact Analysis required.
49. We also note that, due to the impact on resourcing of progressing these changes separately from the broader Crimes Amendment Bill, advice on aspects of that Bill will need to be deferred until October 2018 at the earliest. Several of the same advisors allocated to that work have contributed to advice on this issue and will continue to be needed to ensure your preferred approach is implemented effectively.
50. In your letter of 6 July 2018, you indicated the Minister for Primary Industries, Hon Damien O'Connor should receive a copy of advice on these issues. We, therefore, recommend your office provide a copy of this briefing to him.

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<sup>13</sup> See, for example, Office of the Prime Minister's Chief Science Advisor, 'Using evidence to build a better justice system: The challenge of rising prison costs' (2018) p. 10; Daniel S. Nagin, 'Deterrence in the Twenty-First Century' in M. Tourey (ed.) *Crime & Justice: A Review of Research* (2013); Andrew von Hirsch, Andrew Ashworth, and Julian Roberts, eds. (2009). *Principled Sentencing: Readings on Theory and Policy* (3<sup>rd</sup> edition); and Donald Ritchie. (April 2011). 'Does Imprisonment Deter? A Review of the Evidence'; Victorian Sentencing Advisory Council.

**Recommendations**

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51. It is recommended that you:
1. **Note** that the moral and symbolic value in treating livestock / animals differently to other forms of property is a complex and contestable issue
  2. **Agree** to either:
    - 2.1. continue to criminalise the theft of livestock through the general offence of theft in the Crimes Act 1961; OR YES / NO
    - 2.2. creating a new offence only for the taking of livestock; OR YES / NO
    - 2.3. amend section 221 of the Crimes Act 1961 to include the taking of *living* livestock or any other animal that is the property of another person; OR YES / NO
    - 2.4. create a create a new offence focussed on the taking of livestock or any other animal that is the property of another person in addition to section 221 YES / NO
  3. **Agree** that the penalty for a new or amended theft offence be a maximum of seven years' imprisonment YES / NO
  4. **Consider** providing for a reasonable opportunity for public consultation on the Supplementary Order Paper implementing your preferred approach YES / NO
  5. **Note** that advice on aspects of the broader Crimes Amendment Bill will be deferred until October 2018 at the earliest due to the resourcing implications of progressing this work
  6. **Forward** a copy of this briefing to the Minister for Primary Industries YES / NO



Matthew Mitchell  
Acting Policy Manager, Criminal Law

APPROVED SEEN NOT AGREED



Hon Andrew Little  
Minister of Justice  
Date 27/7/18

## Appendix

52. The livestock rustling provisions in Queensland and New South Wales are set out below. We note that the construction the offences, the definition of relevant animals, and the penalty level are the product of particular jurisdictional approaches and are not likely to be directly applicable to, or appropriate for, a New Zealand context.

Legislation	Definition of "livestock"	Offence
<b>Criminal Code 1899 (Queensland)</b>	<p><b>1 Definitions</b></p> <p>"stock" means any of the following animals or their young</p> <p>(a) horse, asses, mules or camels;</p> <p>(b) cattle, oxen or buffalo;</p> <p>(c) sheep;</p> <p>(d) swine;</p> <p>(e) deer;</p> <p>(f) goats.</p>	<p><b>445 Unlawfully using stock</b></p> <p>(1) Any person who unlawfully uses an animal that is stock, without the consent of the person in lawful possession thereof, is guilty of a misdemeanour and is liable to imprisonment for 5 years, or to a fine of not less than 4 penalty units or, where in respect of the animal in question a value is determined in accordance with the provisions of the regulations made pursuant to section 450F, of not less than that value, whichever is the higher amount, for every animal so used.</p> <p>(2) However, the fine imposed in respect of the offence shall not exceed 455 penalty units.</p> <p>(3) Without in any wise limiting the meaning of the term "unlawfully uses", such term shall, for the purposes of this section, also mean and include the unlawful possession, by any person, of any animal that is stock, without the consent of the person in lawful possession thereof, and with intent to deprive the owner or person in lawful possession thereof of the use and/or possession of the animal, either temporarily or permanently.</p> <p>(4) It is a defence to a charge of an offence defined in this section to prove that the accused person had the lawful consent of the owner to the use or possession by the person of the animal in question.</p>
<b>Crimes Act 1900 (New South Wales)</b>	<p><b>4 Definitions</b></p> <p>"Cattle" includes any horse, mare, gelding, colt, foal, filly, ass, mule, bull, cow, ox, steer, heifer, calf, ram, ewe, sheep, lamb, pig, goat, deer, alpaca, llama, vicuna, camel, or dromedary, and every hybrid or cross thereof.</p>	<p><b>126 Stealing cattle or killing with intent to steal</b></p> <p>Whosoever:</p> <p>steals any cattle, or</p> <p>wilfully kills any cattle with intent to steal the carcass, or skin, or other part, of the cattle so killed,</p> <p>shall be liable to imprisonment for fourteen years.</p>



## Livestock rustling: timeline and process

Hon Andrew Little  
27 July 2018

### Purpose

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1. This paper provides a proposed process and timeline for progressing the amendments to the Crimes Act 1961 to address livestock rustling.

### Decisions

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2. You have directed us to proceed with a Cabinet paper that seeks approval to create two new offences, specifically:
  - 2.1. theft of livestock or any animal that is the property of another person – punishable by up to seven years' imprisonment; and
  - 2.2. entering property used for agricultural purposes with the intention to commit an imprisonable offence – punishable by up to ten years' imprisonment.
3. You have also indicated that your preferred approach is to progress these changes by way of a Supplementary Order Paper ('SOP') to the Crimes Amendment Bill ('the Bill') currently before Parliament. The Justice Select Committee ('the Committee') is due to report back on the Bill by 28 September 2018.

### Approach to consultation

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4. We suggest undertaking consultation with relevant stakeholders – including Federated Farmers and Rural Women New Zealand – by way of a brief discussion document. This discussion document would be appended to the Cabinet paper seeking policy approvals. You could then write to relevant stakeholders specifically inviting their feedback, and the Ministry could publish the document on our website.
5. We will also draft a letter from you to the Chair of the Primary Production Committee, which has been considering the Sentencing (Livestock Rustling) Amendment Bill, signalling your proposed approach. Again, this letter would be sent following Cabinet approvals and could signal the procedural approach discussed below.
6. You may also wish to send a similar letter to the Chair of the Justice Committee.

### SOP process

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7. The House can agree by leave to consider an SOP containing amendments that would otherwise be out of order. Leave requires the agreement of all members.<sup>1</sup>
8. All SOPs that are outside the scope of a bill or that make substantive changes to a Bill must first be submitted to the Cabinet Legislation Committee ('LEG'), or to the relevant Cabinet policy committee, for approval.
9. Members proposing to move amendments to their own Bills usually place such amendments on a SOP for the information of members, which may be circulated at any time.<sup>2</sup>
10. Leave is not required to print and circulate a SOP. A SOP is only officially proclaimed out of order when the Speaker (or Presiding Officer during Committee stage) says so.

<sup>1</sup> 'Leave' or 'leave of the House' or 'leave of the committee' means permission to do something that is granted without a dissentient voice.

<sup>2</sup> If it is available at the time, a SOP may be referred to in general terms during the second reading debate, but not discussed in detail.

11. The Office of the Clerk has suggested that a draft SOP could be provided to the Business Committee with a letter seeking support for the leave in the House. This could help to address any concerns about the out of order SOP being circulated ahead of leave being given.
12. Further, the Office of the Clerk has suggested that this approach to the Business Committee is probably most helpful as close as possible to the Bill's first Committee of the Whole House stage session. The best result of the Business Committee's consideration would be that the Committee notes that members indicated that they would not oppose a motion seeking leave in the House for the SOP to be considered. As this is an indication, rather than a binding determination, the closer it happens to the Bill being in Committee of the Whole House the better.
13. A further letter, with a draft SOP appended, could potentially be sent to the Primary Production and Justice Committees at this point.
14. We suggest discussing this approach with the Leader of the House ahead of seeking Cabinet approvals, with a view to also confirming the approach with the Business Committee.

### **Timeline**

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15. To align the proposed SOP with the progress of the Bill we suggest the following overall timeline:
- **As soon as practicable** – Discussion between your office and the Office of the Leader of the House on the proposed approach
  - **1 – 8 August 2018** – Departmental consultation on draft Cabinet paper
  - **10 August 2018** – Draft Cabinet paper, discussion document and letters provided to your office
  - **14 – 28 August 2018** – Ministerial consultation on draft Cabinet paper and discussion paper
  - **30 August 2018** – Cabinet paper lodged
  - **5 September 2018** – Social Wellbeing Committee ('SWC') considers Cabinet paper and approval of discussion document
  - **10 September 2018** – Cabinet decisions on policy approvals and discussion document
  - **11 September 2018** – Discussion document issued
  - **13 September 2018** – Initial drafting instructions issued to Parliamentary Counsel Office
16. As indicated above, the timing of bringing the SOP to LEG for approval is largely dependent on the approach above and when the Bill is likely to have its first Committee of the Whole House stage.

In Confidence

Office of the Minister of Justice

Chair, Cabinet Social Wellbeing Committee

## Addressing the theft of livestock in New Zealand

### Proposal

- 1 This paper seeks approval to create two new offences in the Crimes Act 1961 ('the Crimes Act') relating to the theft of livestock ('livestock rustling') and other animals.

### Executive Summary

- 2 Livestock rustling harms the rural community and jeopardises the wellbeing of animals. I understand from concerns raised by rural communities that the risks of livestock rustling are significant and increasing.
- 3 I consider there are legislative gaps in the offence framework for theft of livestock and burglary in relation to rural property. Specifically, I am aware that the offence of theft currently treats animals and inanimate objects the same, and that the offence of burglary does not apply equally to remote rural property.
- 4 I therefore propose to amend the Crimes Act to create two new offences relating to the theft of livestock, specifically:
  - 4.1 theft of livestock or any animal that is the property of another person – punishable by up to seven years' imprisonment; and
  - 4.2 entering property used for agricultural purposes with the intention to commit an imprisonable offence – punishable by up to ten years' imprisonment.
- 5 My preferred approach to implementing these changes is by way of a Supplementary Order Paper ('SOP') to the Crimes Amendment Bill ('the Bill') currently before Parliament.
- 6 To ensure that the community has an opportunity to express their views on the proposals, I intend to undertake targeted consultation with relevant stakeholders – including Federated Farmers and Rural Women New Zealand – by way of a discussion document. A copy of the proposed discussion document is attached to this paper. I will seek Cabinet's final agreement to these proposals, and approval to introduce the SOP implementing them, following that targeted consultation.

### Livestock rustling in New Zealand

- 7 Stealing livestock is currently criminalised by the general theft offence in section 219 of the Crimes Act.<sup>1</sup> Section 221 of the Crimes Act also expressly criminalises theft where a person kills any animal that is the property of any other person with intent to steal the carcass, skin, or plumage, or any other part, of the animal.

<sup>1</sup> Theft is defined as dishonestly taking any property with intent to deprive any owner permanently.

- 8 Submissions from rural communities on the Sentencing (Livestock Rustling) Amendment Bill highlighted that livestock rustling is creating a serious and increasing risk to our rural communities. Approximately a quarter of all farmers have had livestock stolen in the past five years, and the annual cost to the rural community of livestock theft has been estimated at \$120 million. This is particularly concerning given the importance of agriculture to New Zealand's economy.
- 9 Livestock theft, and the violation of property, can also cause significant stress for owners. The nature of large-scale theft, in particular, can involve significant planning, being on a property for some time, and the movement of vehicles across property. All of these factors may compound the feelings of insecurity that the illegal entry onto property can have.
- 10 A further compounding effect is the physical isolation of properties. The ability to seek assistance is reduced in a rural or isolated location, and research suggests that stress is greatest on families without close neighbours or social connections, and where the household has a single adult (or where one partner is absented for extended periods).
- 11 In addition to the economic and emotional harm caused by livestock theft, the welfare of the animals concerned is threatened.
- 12 Very few instances of livestock rustling are reported to authorities and enforcing the existing legislative framework has challenges. As above, the isolated nature of rural properties leads to difficulties identifying suspected offenders and bringing charges.
- 13 To respond to these risks, and the representations made by rural communities, I propose to create two new offences relating to the theft of livestock, specifically:
- 13.1 theft of livestock or any animal that is the property of another person; and
  - 13.2 entering property used for agricultural purposes with the intention to commit an imprisonable offence.

**A new offence of theft of livestock or any animal that is the property of another person**

- 14 I propose to create a new offence focussed on the taking of livestock or any other animal that is the property of another person. This offence would be in addition to the offence of killing an animal with intent to steal the carcass, skin, plumage or any other part of the animal in section 221 of the Crimes Act.
- 15 Under the current offences of theft, animals are treated as morally equivalent to inanimate objects or things, unless they are first killed in order to steal their parts. In my view, this position does not recognise the inherent value of animals as sentient beings and, therefore, their potential suffering as a result of being stolen. Addressing harm to animals is generally the province of animal welfare legislation, however I consider it is also relevant to how we conceive of animals in the context of theft.
- 16 It is generally accepted that some level of ownership of animals is necessary, desirable, or both. However, the proprietary status of animals remains a complex and contestable issue. For example, a petition to reclassify the theft of a pet as a specific crime in its own right was recently debated in the United Kingdom House of Commons.<sup>2</sup>

<sup>2</sup> The UK Government response to the petition noted that theft was already an offence and that the Sentencing Council updated its guidelines in relation to theft offences in February 2016 to take account of the emotional distress



- 17 Academics and civil society groups have also called for animals to be granted a legal status distinct from that of things. Some have argued that animals should be granted 'legal personhood', while others instead have proposed an enhanced status such as a new classification of 'living property' that creates a guardianship-like relationship between people and animals.<sup>3</sup>
- 18 I acknowledge that treating animals differently to other property by separating out a bespoke theft offence, may be seen to constitute a significant shift in the way that theft for two types of property are penalised. Theft is penalised based on the monetary value of what is taken, as opposed to considerations of inherent value or emotional impact (though these may be dealt with at sentencing).
- 19 However, in my view, a combination of value in recognising animals' sentience and autonomy, and their particular relationship to humans (both emotional and economic), justifies treating theft of animals differently from the theft of things.

*The maximum penalty to be consistent with the maximum available for theft*

- 20 To be consistent with the maximum penalty for theft<sup>4</sup>, I propose that the maximum penalty for the new theft offence would be seven years' imprisonment.
- 21 I do not see a principled reason to have a higher penalty based on the factors outlined above. The extent of any loss, damage, or harm resulting from the offence – including, for example, ongoing economic loss or physical or psychological harm to an animal – should instead be considered at sentencing based on the individual circumstances of the offending. A higher penalty would also be disproportionate with the maximum penalties in animal welfare legislation, which are already lower than that for theft.<sup>5</sup>
- 22 I also note that a person committing this proposed offence of theft would almost certainly also have committed a burglary offence (entering a building or ship with intent to commit an imprisonable offence – section 231) – whether the existing burglary offence or the proposed new offence in relation to agricultural property – which is punishable by up to 10 years' imprisonment.
- 23 During submissions on the Sentencing (Livestock Rustling) Amendment Bill, the suggestion of a fine for livestock rustling was raised. It is not necessary to specify a maximum fine, and doing so would be inconsistent with the general approach in the Crimes Act.<sup>6</sup> A fine can always be imposed by the court where a penalty of imprisonment attaches to an offence, by virtue of section 39(1) of the Sentencing Act 2002.

*Consideration was given to an offence for theft of livestock only*

- 24 For completeness, I note that I considered whether this new offence of theft should apply only to livestock, such as offences in the criminal codes of jurisdictions like New South Wales and Queensland.<sup>7</sup>

and therefore harm that theft of personal items such as a pet can have on the victim.

3 See, for example, Favre, D. Living Property: A New Status for Animals within the Legal System. *Marquette Law Rev.* 2010, 93, pg. 1022–1071; Hankin, S.J. Not a living room sofa: Changing the legal status of companion animals. *Rutgers J. Law, Public Policy* 2007, 4, pg. 314–410.

4 Theft of property worth in excess of \$1,000.

5 The Animal Welfare Act 1999 contains, for example, offences of wilful or reckless ill-treatment of an animal, which have maximum terms of imprisonment of five and three years respectively.

6 The only offences in the Crimes Act 1961 with a fine specified are those necessary to fully implement international agreements to which New Zealand is a party or signatory

7 Crimes Act 1900 (New South Wales), s 126; Criminal Code 1899 (Queensland), s 445.

- 25 However, I consider that the justifications for creating a separate offence of livestock apply equally to all other animals. It would be anomalous to recognise the sentence of livestock animals in this manner while excluding other animals.
- 26 Notwithstanding the strongly agrarian nature of the New Zealand economy, an offence of theft of livestock alone would also create an anomaly in the status of livestock vis-à-vis animals in other industries that may have ongoing economic benefit. For example, such an offence would not intuitively capture pedigree animals bred for commercial purpose, or animals used in the racing industry.<sup>8</sup> It would also be inconsistent with the approach in section 221 of the Crimes Act which relates to the killing of any animal that is the property of another person in order to steal its parts.
- 27 I note that, in the context of pets, there may be a particular emotional attachment between animals and humans – that goes beyond the general proprietary relationship between people and things – justifying their inclusion in this new offence.
- 28 By capturing ‘any animal that is the property of another person’, this option also has the benefit of largely avoiding the need to define “livestock”, which was raised as an issue in relation to the Sentencing (Livestock Rustling) Amendment Bill. It may, however, be possible to signal that the offence is *principally* concerned with the theft of livestock, for example in the heading to this new offence.

#### **A new offence of entering property used for agricultural purposes**

- 29 I propose to create a new standalone offence of entering property used for agricultural purposes, which extends the concept of burglary.
- 30 The term “property” as opposed to “land” is used through this paper. Although unlawful entry onto land used for agricultural purposes is the focus of the new offence, it is important to ensure no gap exists in the law in relation to structures used for agricultural purposes.
- 31 Rural buildings, including those on farm land, are likely covered by the existing offence of burglary. The scope of the term “building” used in that section is extremely wide referring to a “structure of any description.” However, to the extent that any doubt exists as to the status of structures specifically built and used for agricultural purposes, the proposed SOP will clarify that entering such buildings to commit an imprisonable offence is unlawful.
- 32 As the key element of the current burglary offence is the entering of buildings and only immediately adjacent enclosed yards, it does not extend to most land that is used for agricultural purposes, due the distance of most rural land used for farming from buildings.
- 33 Burglary requires that a person enters a ship or building, without authority, with the intention to commit an imprisonable offence. Building is defined broadly in the Act to include any building or structure and any enclosed yard. “Enclosed yard” means an area of land which is appurtenant to a building; meaning theft from rural property that is not next to a structure (for example, stealing livestock from a paddock not positioned next to a building) may not be captured by the offence of burglary.
- 34 This gap means the underlying principle in the offence of burglary, protection of personal property, will not always apply to the same extent for owners of livestock in rural environments. Addressing this gap would standardise the protection the criminal law provides to various kinds of land owners. Agricultural property is equally

<sup>8</sup> Other examples could include zoo animals, animals in research facilities, or animals used in film productions.

deserving of protection from the law particularly given the dispersed nature of many farm properties and the difficulty in ensuring the protection of livestock on such property.

*The framing of the new burglary offence is critical*

- 35 The framing of the offence would include entering any property used for agricultural purposes but exclude the space otherwise covered by section 231. This ensures the new offence would supplement, as opposed to supplant, section 231. It would, in effect, extend the concept of enclosed yard to include rural land used for agricultural purposes, irrespective of the land's proximity to buildings.
- 36 The definition of property used for agricultural purposes would clarify that the property may be demarcated from surrounding land. Further consideration will need to be given to how the offence applies in relation to entry on unformed roads and other public rights of way.
- 37 The offence would cover entry to the specified property with the intent to commit "any imprisonable offence" (rather than specifying only theft, for example). Limiting the scope of this to only specified offences would leave a gap between it and burglary, so I consider the proposed offence should fully mirror the scope of burglary.
- 38 Section 232 (aggravated burglary) and section 233 (being disguised or in possession of instrument for burglary) should be extended to cover the new offence for the sake of consistency.
- 39 It is important to note that burglary and the proposed specific offence criminalise any unlawful entry where it can be proved the defendant had an intent to commit any imprisonable offence. It is not necessary for the intended offence to actually take place, but where it does it would invariably provide proof of the proposed offence and could be the subject of an alternate or additional charge.

*The maximum penalty to be consistent with burglary*

- 40 The maximum penalty for the offence would be 10 years' imprisonment; the same as for the existing offence of burglary. I consider this is justified as the same underlying conduct is being criminalised by both offences.
- 41 As with proposed offence of theft of livestock or other animals, it is not necessary to specify a fine for burglary of a property used for agricultural purposes.

**Enforcing the proposed new offences**

- 42 While, in my view, creating new offences will address a legislative gap, I note that the evidence indicates that the risk of detection is a far greater deterrent than making new offences or raising existing penalties.<sup>9</sup>
- 43 In this vein, I note that the provisions of the Search and Surveillance Act 2012 would apply to both offences. Moreover, any tools used in, and the proceeds derived from, the offending would be eligible for forfeiture under the Criminal Proceeds (Recovery) Act 2009, as the maximum penalty for both offences exceeds five years' imprisonment.

<sup>9</sup> See, for example, Office of the Prime Minister's Chief Science Advisor, 'Using evidence to build a better justice system: The challenge of rising prison costs' (2018) p. 10; Daniel S. Nagin, 'Deterrence in the Twenty-First Century' in M. Tourey (ed.) *Crime & Justice: A Review of Research* (2013); Andrew von Hirsch, Andrew Ashworth, and Julian Roberts, eds. (2009). *Principled Sentencing: Readings on Theory and Policy* (3<sup>rd</sup> edition); and Donald Ritchie. (April 2011). 'Does Imprisonment Deter? A Review of the Evidence'; Victorian Sentencing Advisory Council.

44 Given the availability of these mechanisms, I do not see a need to provide any additional seizure or forfeiture powers.

### **Consultation**

45 The Ministry for Primary Industries, New Zealand Police, Department of Internal Affairs, Crown Law Office, Department of Corrections, Department of the Prime Minister and Cabinet, Ministry for Women and Treasury have been consulted on this paper.

46 I propose to undertake targeted consultation with relevant stakeholders – such as Federated Farmers and Rural Women New Zealand – on the proposals in this paper by way of a discussion document, which is attached to this paper.

### **Financial Implications**

47 The proposals in this paper are not expected to have significant financial implications and any increase in costs will be met from within existing baselines.

48 However, if the rate of reporting, detection and prosecution increases as a result of the new offences, it will lead to additional enforcement, court, and imprisonment costs.

49 For example, the maximum penalties for the offences mean that defendants will be able to elect trial by jury, at which point the prosecutions are funded by the Crown Law Office. Any additional prosecutions will therefore result in increased costs to Crown Law.

50 While it has not been possible to model the impact that the proposed offences would have on the prison muster, to the extent the proposals result in more charges and longer sentences of imprisonment being imposed, it could also increase pressure on the prison system.

### **Human Rights**

51 There are no human rights implications arising from the proposals in this paper.

### **Legislative Implications**

52 Creating new offences relating to livestock rustling requires amendments to the Crimes Act. My preferred approach to implementing these changes is by way of a SOP to the Crimes Amendment Bill ('the Bill') currently before Parliament. I will seek Cabinet's final agreement to these proposals, and approval to introduce the SOP implementing them, following targeted consultation.

53 The Bill is due to be reported back from the Justice Committee ('the Committee') by 28 September 2018.

54 I am advised that, as the new offences fall outside the scope of the Bill, and the amendments would otherwise be out of order, leave of the House will be required to table the SOP. The support of all members of Parliament is, therefore, required.

55 I will work with the Leader of the House and the Business Committee to test levels of support among all members of Parliament for the proposals in this paper. I will also write to the Justice Committee and the Primary Production Committee, which has been considering the Sentencing (Livestock Rustling) Amendment Bill, inviting their feedback on the proposed approach.

## Regulatory Impact Analysis

- 56 The Ministry of Justice's RIA QA panel has reviewed the RIA: *Addressing the theft of livestock Rustling in New Zealand* prepared by the Ministry of Justice and considers that the information and analysis summarised in the RIA **partially meets** the QA criteria.
- 57 As is explained in the Impact Summary, there were significant constraints on the analysis. The RIA is confined to legislative options (other than the status quo, only possible amendments to the Crimes Act have been considered) and only the Government's preferred option has been consulted. Within the constraints, the RIA clearly analyses three options in a simple framework. The RIA also clearly describes the evidence supporting the problem, and makes good use of submitters' evidence, including to describe the impact of livestock rustling on rural communities.

## Gender Implications

- 58 There are no gender implications arising from the proposals in this paper.

## Disability Perspective

- 59 There are no disability implications arising from the proposals in this paper.

## Publicity

- 60 I intend to publish this paper and related Cabinet decisions online, subject to consideration of any redactions that would be justified if the information had been requested under the Official Information Act 1982.

## Recommendations

- 61 The Minister of Justice recommends that the Committee:
- 1 note that the rural community has raised significant concerns about the theft of livestock in New Zealand.
  - 2 agree to amend the Crimes Act 1961 to create two new offences of:
    - 2.1 theft of livestock or any animal that is the property of another person; and
    - 2.2 entering property used for agricultural purposes with the intention to commit an imprisonable offence.
  - 3 agree in principle that the new offences be included in the Crimes Amendment Bill currently before Parliament by way of a Supplementary Order Paper at the Committee of the Whole House.
  - 4 note that the Minister of Justice will work with the Leader of the House and the Business Committee to test levels of support among all members of Parliament for the proposals in this paper.
  - 5 invite the Minister of Justice to issue drafting instructions to the Parliamentary Counsel Office to give effect to these policy proposals.
  - 6 agree that the Minister of Justice may resolve minor policy issues in relation to the drafting of legislation, following consultation with the Minister for Rural Communities, which are consistent with the contents of this paper, without further reference to Cabinet.

- 7 agree that the Minister of Justice will undertake targeted consultation with relevant stakeholders on the issues in the attached draft discussion document.
- 8 agree that the Minister of Justice will seek Cabinet's final agreement to these proposals, and approval to introduce the Supplementary Order Paper, following targeted consultation with relevant stakeholders.
- 9 note that if the proposals in this paper are implemented, this may result in minor increases in Court, Police, Corrections, and Crown Law costs and any increase in costs will be covered from within existing baselines.
- 10 note that the Minister of Justice intends to publish this paper and related Cabinet decisions online, subject to consideration of any deletions that would be justified if the information had been requested under the Official Information Act 1982.

Authorised for lodgement

Hon Andrew Little

Minister of Justice

9 October 2018

Gavin Forrest  
GM Policy & Advocacy, Federated farmers  
s9(2)(a)

Dear Mr Forrest

**Proposed new offences – unlawfully entering agricultural property and livestock theft**

I am writing to consult Federated Farmers on proposals to create two new criminal offences:

- Unlawfully entering property used for agricultural purposes;
- The theft of animals (including livestock)

The Government recognises that livestock rustling harms the rural community and jeopardises the wellbeing of animals. Rural communities have expressed concern that the risks of livestock rustling are significant and increasing. The Primary Production Committee heard these concerns directly from the community during its consideration of the Sentencing (Livestock Rustling) Amendment Bill.

The Government has identified legislative gaps in the offence framework for theft of livestock and burglary of rural property. Specifically, the offence of theft currently treats animals and inanimate objects the same, and that the offence of burglary does not apply in the same way to remote rural property.

The Government proposes to amend the Crimes Act 1961 to address these gaps.

To ensure that the community has an opportunity to express their views on the proposals, the Minister of Justice Hon Andrew Little has asked that we undertake targeted consultation with relevant stakeholders. The attached document sets out the proposals and some questions which we would welcome your feedback on.

Your comments will inform the development of final policy proposals to be considered by Cabinet. As such, and subject to the provisions of the Official Information Act 1982, this consultation is being undertaken on a confidential basis.

The Government's preferred approach to implementing these changes is by way of a Supplementary Order Paper to the Crimes Amendment Bill currently before Parliament. To ensure these proposals can be included in this Bill we need to undertake consultation in a compressed timeframe – we would appreciate

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and feedback you can offer by 23 October 2018. We are happy to receive feedback in writing, in person, or both.

If you have any questions about this matter please contact me on s9(2)(a) or via email [Stuart.McGilvray@justice.govt.nz](mailto:Stuart.McGilvray@justice.govt.nz).

Yours sincerely



Stuart McGilvray  
Policy Manager, Criminal Law, Ministry of Justice

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# Addressing the theft of livestock

Confidential issues paper for targeted consultation

October 2018



New Zealand Government

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## Overview

Theft of livestock harms the rural community and jeopardises the wellbeing of animals. The Government has heard concerns from rural communities that these risks are significant and increasing.

The Government believes that there are legislative gaps in the offence framework for theft of livestock. The Government therefore proposes to amend the Crimes Act 1961 to create two new offences relating to the theft of livestock, specifically:

- entering property used for agricultural purposes with the intention to commit an imprisonable offence – punishable by up to ten years' imprisonment; and
- theft of livestock or any animal that is the property of another person – punishable by up to seven years' imprisonment.

The Government's preferred approach to implementing these changes is by way of a Supplementary Order Paper ('SOP') to the Crimes Amendment Bill ('the Bill') currently before Parliament.

## How to provide feedback

We are keen to hear what you have to say and would appreciate any feedback you can offer by 23 October 2018.

We are interested primarily in whether the proposed amendments to the Crimes Act 1961 would address the concerns raised by rural communities.

Please send your submissions, or any questions, to Stuart McGilvray, Policy Manager ([stuart.mcgilvray@justice.govt.nz](mailto:stuart.mcgilvray@justice.govt.nz), 04 918 8812)

## Official Information Act

Please note that contents of submissions may be released to the public under the Official Information Act 1982. While we are undertaking this consultation confidentially, the effect of the Official Information Act is that confidentiality in what we provide, and your responses, is likely to expire once policy decisions have been made, unless there is some exceptional reason which justifies continued confidentiality.

Please advise us if you have any objection to the release of any information contained in a submission and, in particular, which part(s) you consider should be withheld, together with the reason(s) for withholding the information.

We will take into account all such objections when responding to requests for copies of, and information on, submissions to this document under the Official Information Act.

# Burglary in relation to agricultural property

## Status quo

The offence of burglary requires that a person enters a ship or building, without authority, with the intention to commit an imprisonable offence. Building is defined broadly in the Crimes Act to include any building or structure and any enclosed yard. "Enclosed yard" means an area of land which is next to a building. Therefore, theft from rural land that is not next to a structure (for example, stealing livestock from a paddock not positioned near a farmhouse or barn) is not captured by the offence of burglary.

## Rationale for change

As above, the offence of burglary (entering a building or ship with intent to commit an imprisonable offence) does not extend to most land that is used for agricultural purposes.

This means the underlying principle in the offence of burglary, protection of personal property, will not always apply to the same extent for those who live in rural environments. Addressing this gap would standardise the protection the criminal law provides to various kinds of land owners. Agricultural property is equally deserving of protection from the law particularly given the dispersed nature of many farm properties and the difficulty in ensuring the protection of livestock on such property.

1. Do you agree that a new offence is needed to cover unlawful entry to agricultural land?

## Proposed new offence

The Government proposes to create a new standalone offence of entering property used for agricultural purposes, which extends the concept of burglary.

The framing of the offence would include any land used for agricultural purposes but exclude the space otherwise covered by section 231 (enclosed yards). This ensures the new offence would supplement, as opposed to supplant, section 231.

The definition of land used for agricultural purposes would emphasise that the property be demarcated from surrounding land.

The offence would cover entry to the specified land with the intent to commit "any imprisonable offence" (rather than specifying only theft, for example). Limiting the scope

In Confidence

of this new offence to only intent to commit only specified offences would leave a gap between it and burglary, so we consider the proposed offence should fully mirror the scope of burglary in this regard.

As noted above, entry to land used for agricultural purposes is the focus of the new offence. Rural buildings, including those on farm land, are likely covered by the existing offence of burglary. The scope of the term “building” used in that section is extremely wide referring to a “structure of any description.” However, to the extent that any doubt exists as to the status of structures specifically built and used for agricultural purposes, the proposed legislative reforms will clarify that entering such buildings to commit an imprisonable offence is unlawful.

Section 232 (aggravated burglary) and section 233 (being disguised or in possession of instrument for burglary) should be extended to the new offence for consistency.

Importantly, burglary and the proposed specific offence criminalise any unlawful entry where it can be proved the defendant had an intent to commit any imprisonable offence. It is not necessary for the intended offence to actually take place, but where it does it would almost certainly provide proof of the proposed offence and could be the subject of an alternate charge.

The maximum penalty for the offence would be 10 years’ imprisonment; the same as for the existing offence of burglary. Fines can already be imposed by the court where a penalty of imprisonment attaches to an offence, see section 39(1) of the Sentencing Act 2002. Therefore, it is unnecessary to specify a maximum or specific fine.

2. Do you agree with the proposed scope of the new offence; if not, why?
3. Do you agree that the maximum penalty for the proposed new offence should be ten years’ imprisonment; if not, why?

## Enforcement

If the offence is adopted in the form and with the penalty proposed, the Government does not consider that there is a need to provide any additional seizure or forfeiture powers.

The Search and Surveillance Act 2012 contains powers that could be used to stop and search vehicles which may be involved in the transportation of stolen livestock.

The maximum penalty for the proposed offence exceeds five years’ imprisonment. Therefore, tools used in and the proceeds derived from the offending would be eligible to forfeiture to the Crown under the Criminal Proceeds (Recovery) Act 2009.

This forfeiture power would extend to vehicles used in the commission of this new offence or purchased from the proceeds of such offending.

# Theft of animals

## Status quo

Stealing livestock is currently criminalised by the general theft offence in section 219 of the Crimes Act.<sup>1</sup> Section 221 of the Crimes Act also expressly criminalises theft where a person kills any animal that is the property of any other person with intent to steal the carcass, skin, or plumage, or any other part, of the animal.

## Rationale for change

Under the current offences of theft, animals are largely treated as morally equivalent to inanimate objects or things, unless they are first killed in order to steal their parts. Arguably, this situation does not adequately recognise the inherent value of animals as sentient beings and, therefore, their potential suffering as a result of being stolen.

Similar issues have arisen in other jurisdictions. Academics and civil society groups have also called for animals to be granted a legal status distinct from that of things, such as a new classification of 'living property' that creates a guardianship-like relationship between people and animals.<sup>2</sup>

In the Government's view, recognising the harm to the animal, their particular relationship to humans (both emotional and economic), and the particular harm involved to rural communities in particular, justifies treating theft of animals differently from the theft of things.

4. Do you agree that the current offence of theft does not adequately differentiate between animals that are the property of a person and inanimate objects?

## Proposed new theft offence

The Government therefore proposes to create a new offence focussed on the taking of livestock or any other animal that is the property of another person.

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<sup>1</sup> Theft is defined as dishonestly taking any property with intent to deprive any owner permanently.

<sup>2</sup> See, for example, Favre, D. Living Property: A New Status for Animals within the Legal System. *Marquette Law Rev.* 2010, 93, pg. 1022–1071; Hankin, S.J. Not a living room sofa: Changing the legal status of companion animals. *Rutgers J. Law, Public Policy* 2007, 4, pg. 314–410.

In Confidence

While the Government sees the new offence as being primarily about livestock theft, it also believes that it would be inconsistent to recognise the sentence of livestock animals in this manner while excluding other animals. For example, a livestock theft offence would likely not capture the theft of pedigree animals bred for commercial purpose, or animals used in the racing industry.<sup>3</sup> It would also be inconsistent with the approach in section 221 of the Crimes Act which relates to the killing of *any* animal that is the property of another person in order to steal its parts.

To be consistent with the penalty for theft, the maximum penalty for this offence would be seven years' imprisonment. As with proposed offence of burglary of a property used for agricultural purposes, it is not necessary to specify a fine.

The extent of any loss, damage, or harm resulting from the offence – including, for example, ongoing economic loss or physical or psychological harm to an animal – should instead be considered at sentencing based on the individual circumstances of the offending.

5. Do you agree that the new offence of theft should focus on all animals that are the property of a person, or exclusively on livestock?
6. Do you agree that the maximum penalty for the proposed new offence should be seven years' imprisonment; if not, why?

## Enforcement

As with the proposed offence of burglary of a property used for agricultural purposes, the Government does not consider that it is necessary to provide for additional powers of search, seizure or forfeiture. The proposed maximum penalty of seven years' imprisonment means that the relevant powers under the Search and Surveillance Act and Criminal Proceeds (Recovery) Act will be available.

Forfeiture under the Criminal Proceeds (Recovery) Act would also extend to vehicles used in the commission of this new offence (for example in transporting the stolen livestock) or purchased from the proceeds of such offending.

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<sup>3</sup> Other examples could include zoo animals, animals in research facilities, or animals used in film productions.

**Ministry of Justice**  
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New Zealand Government

Reference no\_March16





# Addressing the theft of livestock consultation paper

Federated Farmers of New Zealand

23 October 2018



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**SUBMISSION ON ADDRESSING THE THEFT OF LIVESTOCK  
CONSULTATION PAPER**

**TO:** Ministry of Justice  
National Office  
Justice Centre, 19 Aitken Street  
Wellington

**SUBMISSION ON:** Addressing the theft of livestock consultation paper

**DATE:** 23 October 2018

**CONTACT DETAILS:**

<b>Ewan Kelsall</b>	Federated Farmers, Senior Policy Advisor	s9(2)(a)	s9(2)(a)	<u>L6, 154 Featherston Street, PO Box 715, Wellington 6140</u>
<b>Miles Anderson</b>	Federated Farmers, Rural Security Spokesperson	s9(2)(a)	s9(2)(a)	<u>L6, 154 Featherston Street, PO Box 715, Wellington 6140</u>

Federated Farmers would like to be heard in support of this submission.

# **SUBMISSION TO THE MINISTRY OF JUSTICE ON THE CONSULTATION PAPER 'ADDRESSING THE THEFT OF LIVESTOCK'**

## **1. INTRODUCTION**

2. Federated Farmers of New Zealand (FFNZ) welcomes the opportunity to submit on the 'addressing the theft of livestock' consultation paper. We previously submitted in support of the proposed amendment to the Sentencing Act 2002 (the Act) to deter people from engaging in livestock rustling, by identifying it as an aggravating factor at sentencing. We understand this process is a continuation of that consultation, and the Government is now looking to implement changes through a Supplementary Order Paper to the Crimes Amendment Bill.
3. In our submission we indicated that we would like to see further steps considered by the Committee than those proposed in the amendment bill, including making theft of livestock a specific criminal offence. This would enable powers of seizure provisions similar to those in section 207 of the Fisheries Act 1996 and section 13 of the Wild Animal Control Act 1977 to be applied. Given the highly organised nature of livestock theft, seizing vehicles and other property used in rustling would provide both a firm deterrent for offending and help to inhibit reoffending by removal of the necessary equipment to undertake the crime.
4. The New Zealand farmed livestock industry is worth over \$20 billion dollars annually. Livestock rustling (the theft of livestock) has become increasingly prevalent in rural areas, and is estimated to cost the farming community over \$120 million each year. Livestock theft also creates serious risks for the health and safety of farmers and rural communities, as firearms and other weapons are often involved. A 2016 Federated Farmers membership survey indicated that approximately one in four members had suffered stock theft in the past five years. Farmers often feel that stock theft is difficult to address and that police and the courts have little power to discourage criminals who operate in the rural space.

## **5. BACKGROUND**

6. Rural New Zealand traditionally considered itself to have fewer issues with security than those living in urban areas. Small communities, based around family farms, had strong community ties and a good awareness of people and activities in the immediate area. These rural communities have changed in the last few decades, with the reduction in family farms and subsequent amalgamation of properties leading to a more mobile and changing workforce. Rural rental properties can be difficult to tenant, and the subsequent low rental rates present opportunities for criminals to live cheaply in rural areas.
7. An increase in crime, particularly theft and criminal trespass, have been noted as a growing concern in the rural community. Rural properties are often faced with criminal activities that are very specific to the rural sector such as stock theft, wild game poaching, beehive thefts and cannabis growing.

8. Livestock rustling is a prevalent crime in rural New Zealand. The theft of an individual animal may seem a relatively minor offence in the urban context, but the problem is significant, with wide ranging impacts that can be very detrimental to farmers and their businesses. Rustling activities range from the basic opportunist to highly organised professional operations. Presently, many farmers feel that they have little recourse under the law to counter livestock theft in any form.
9. A 2016 Federated Farmers on-farm crime survey of over 1000 members showed that 41% had suffered theft in the last two years. Stock was the most commonly targeted item at 38%, followed by 33% for vehicles and equipment and 25% for fuel. Survey participants indicated that they felt Police were unable to act on many rural crimes, and indicated that the recovery of reported stolen property was only 6%. This low recovery rate can be linked to the low reporting rate of this type of crime, meaning the true extent of the rural crime problem is unknown.

## 10. PROPOSED NEW OFFENCE

### 11. Do you agree that a new offence is needed to cover unlawful entry to agricultural land?

12. Federated Farmers strongly supports the proposal to create a new offence to cover unlawful entry of agricultural land. The current offence of burglary, which extends only to farm buildings and directly adjacent yards, excludes much of an agricultural property with the current definition. We believe that rural properties deserve equal protection from criminal activities as those in urban areas, and that the current definition of burglary leaves our members in a vulnerable position.
13. The worry and physical risk of theft is a continual burden to those farming in the rural community. Farmers and their families often live remotely, working alone and in isolation much of the time. Farmers face both the physical risk and emotional worry of confronting or accidentally coming across armed criminals undertaking stock theft. Remote rural properties are often targeted, as this makes the likelihood of being disturbed and a police presence or response more unlikely. These factors all contribute to the risk for farm owners and employees, and uncertainty for their families waiting at home.
14. Family farms are also the home of the family, with families recreating and children playing on the property. This means that work and home are never separated, and farmers feel compelled to investigate any suspicious activity such as lights, vehicle activity or gun shots, to protect their property and their livestock. Farmers who have suffered trespass, livestock theft and wild game poaching report feelings of suspicion and paranoia, loss of sleep and a reluctance to leave the property unattended.

### 15. Do you agree with the proposed scope of the new offence?

16. We support the proposed scope of the new offence, and consider the inclusion of all agricultural land as essential to the protection of rural properties from theft. Farming properties are often extensive, with 'run-off blocks' or grazing properties at a separate location to the main farm, with no buildings or permanent structures present. Animals are frequently grazed on properties with

no permanent residence for large parts of the year, or at remote parts of large-scale farming properties well away from the farm buildings and infrastructure. Even smaller farming operations have many paddocks which are not adjacent to farm buildings, meaning any theft from these areas is also not captured under the burglary criteria.

17. It is important that all parts of a farming property, including pastoral lease and marginal scrublands are included in the definition. Relatively undeveloped areas of tussock or scrubland may not appear to be part of the working farm, but are often important areas for summer grazing or the housing of beehives. These remote areas also attract criminal activities such as cannabis growing and wild animal poaching, and the common theft or property damage which accompanies these activities.
18. Livestock are the most obvious and numerous item of value in paddocks away from buildings, as are other items such as beehives and valuable crops and produce such as avocados. Other items of value such as fencing materials, herbicides, fuel and tools are also occasionally left in remote locations on farm overnight if the farmer is travelling large distances to a worksite or starting early the following day. It is important that the new proposed criteria would cover the theft in all of these instances.
19. We equally consider the criteria of 'intent to commit any imprisonable offence' as very important, as intruders on to agricultural land are often opportunists who will enter a property and then target anything of value. Farmers may come across or confront individuals which have the 'tools of trade' such as firearms, bolt cutters, or working dogs but at that point have not committed the offence or have abandoned any stolen items upon being discovered.
20. **Do you agree that the maximum penalty for the proposed new offence should be ten years' imprisonment?**
21. We support the maximum penalty for the offence being ten year's imprisonment, as it is currently for burglary. We consider that the proposed offence of unlawful entry to agricultural land to commit a crime as the same as entering an entering an urban commercial or residential property, and that criminals should be subject to the same punishment as for burglary offences.
22. Our previous submission to the Livestock Rustling Amendment Bill proposed that powers of seizure provisions be put in place for livestock theft offences, similar to those in section 207 of the Fisheries Act 1996 and section 13 of the Wild Animal Control Act 1977. These provisions are successfully used in the prevention of fishery and wild animal offences. The loss of valuable equipment acts as both a deterrent to prevent offending and makes reoffending more difficult without the tools required. Federated Farmers supports the use of the Criminal Proceeds (Recovery) Act 2009, in conjunction with the proposed unlawful entry to agricultural land, if this will deliver the same benefits of powers of seizure as those in the Acts listed above.

## 23. THEFT OF ANIMALS

24. The estimated cost to the New Zealand farming community from stock theft is over \$120 million in lost earnings a year. Farmers are unable to insure unspecified livestock, with insurance cover only available for high value individual animals such as stud breeding bulls. With the value (based on IRD's National Average Market Value for 16-17) of dairy cows currently sitting at \$1,649, beef cows at \$1,431 and breeding ewes at \$150 per animal, farmers have a considerable investment living relatively unprotected in their paddocks. Alongside the economic cost, the industry, farmer and the animals themselves face a range of other risks as a consequence of livestock theft.
25. **Do you agree that the current offence of livestock theft does not adequately differentiate between animals that are the property of a person and inanimate objects?**
26. Federated Farmers can see value in the additional consideration of the theft of animals when sentencing for a crime of theft. Although farmers are in the business of raising meat animals, it is a disturbing and confronting sight for farmers to discover that animals have been stolen or to come across slaughtered or butchered animals on their properties. Mobs of livestock are not just an unidentifiable group of animals, farmers work with individual breeding or milking animals daily, often for a number of years. The theft of these animals is upsetting to farmers, and rustlers can be even more indiscriminate with cases of rare breeds, family pets and horses being stolen or crudely slaughtered for meat.
27. The animals themselves are put at additional risk of stress and injury when slaughtered or transported as part of a criminal activity. Because of the need for secrecy animals are often crudely slaughtered by hand, or shot with firearms at night. This increases the risk of animals being injured or killed inhumanely, and perpetrators when disturbed may leave behind injured animals or ones that they are unable to capture.
28. Live transportation of animals also poses welfare issues. Animals may be concealed in vehicles not designed for animal transport, or left in trailers or trucks for far longer than under usual transport conditions. Animals may be injured when being herded or loaded, and because of the fear of being caught in the act, the usual transportation rules and practices to protect animals are not adhered to.
29. **Do you agree that the new offence of theft should focus on all animals that are the property of a person, or exclusively on livestock?**
30. While livestock theft is of primary economic concern to farmers, domestic animals also play an important role on farms. Domestic animals, particularly working dogs, have a high value to the farmer both for their skill and subsequent economic value, and also the bond that forms between the animal and owner from continually working together.
31. We consider that there is potential for conflict between this proposed new theft offence and existing legislation that relates to animals. Existing legislation such as the Animal Welfare Act 1999, Dog Control Act 1996, Wild Animal Control Act 1977 and the Impounding Act 1955 all play an

essential role in how farmers manage animals. It is essential that the impact of this new proposed animal theft offence is considered against the existing regulations of the Acts listed above.

32. **Do you consider that the maximum penalty for the proposed new offence should be seven years' imprisonment?**

33. We support the maximum penalty for the offence being seven year's imprisonment, as it is currently for theft. We consider that if animals are stolen, alive or dead, that this should be an additional factor for consideration at sentencing. As with the unlawful entry to agricultural land example above, Federated Farmers supports the use of the Criminal Proceeds (Recovery) Act 2009 if this will deliver the powers of seizure necessary to confiscate tools and equipment used during animal theft.

#### 34. **CONCLUSION**

35. Livestock rustling is estimated to cost the farming community over \$120 million each year. Livestock theft also creates serious risks for the health and safety of farmers and rural communities, with social costs that extend far beyond the economic losses. Federated Farmers supports the proposed new offences of unlawful entry to agricultural land and the theft of animals, when used in conjunction with the Criminal Proceeds (Recovery) Act 2009 to confiscate tools and equipment used in these crimes. The creation of these two new offences will assist both New Zealand Police and the agricultural industry to reduce theft in our rural communities.

out of scope

From: Isa Ritchie [s9\(2\)\(a\)](#)  
 Sent: Wednesday, 24 October 2018 2:42 p.m.  
 To: Williams, Bruce <[Bruce.Williams@justice.govt.nz](mailto:Bruce.Williams@justice.govt.nz)>  
 Cc: Megan Somerville [s9\(2\)\(a\)](#); Anthony Dancer [s9\(2\)\(a\)](#)  
 Subject: RE: Draft Cabinet paper for consultation: Addressing the theft of livestock in New Zealand

Kia ora Bruce,  
 Anthony passed this paper on to me to comment.

Although the paper is unclear about how the proposed change will affect conviction and imprisonment rates, it suggests that this change will potentially lead to more convictions and imprisonment. Māori are disproportionately affected by incarceration and the paper does not address this or suggest a way to mitigate it as a good Treaty partner.

The wider Government strategy, as we understand it, is to reduce imprisonment rates and move towards a safer and more effective justice system. It would be good to see this reflected in the paper. As the shift is away from imprisonment, have you considered other approaches (rather than the maximum 7 years as consistent with burglary) such as fines? We understand that the penalty is supposed to act as a deterrent, however is unclear that it will be effective – as you note, the risk of detection is a greater deterrent than penalties.

While there could potentially be positive economic results for Māori farmers if theft is deterred, the ambiguity over the effectiveness of the policy leaves this unclear.

While these changes are in response to concerns raised by the rural community, we are interested in whether this includes consultation with rural Māori, including iwi consultation which is not mentioned in the paper. We suggest they be included as Māori are likely to be disproportionately affected by these changes if they lead to more convictions and imprisonment.

Happy to discuss

Ngā mihi

Dr Isa Ritchie  
 Senior Policy Analyst, Whānau Wellbeing Policy  
 National Office



[s9\(2\)\(a\)](#)

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Kōkiri Magazine



Facebook

From: Williams, Bruce <[Bruce.Williams@justice.govt.nz](mailto:Bruce.Williams@justice.govt.nz)>  
 Sent: Rāapa, 24 Whiringa-ā-nuku, 2018 12:45 p.m.



To: Anthony Dancer s9(2)(a)  
Subject: RE: Draft Cabinet paper for consultation: Addressing the theft of livestock in New Zealand

Hi Antony

I am just following up to see if you have any comments or queries about any of this?

If you do have any questions, I'm more than happy to try and answer them.

Thanks

Bruce



**Bruce Williams**  
Principal Advisor | Criminal Law | Criminal Justice Policy  
DDI: +64 4 494 9772 | Ext 50772  
[www.justice.govt.nz](http://www.justice.govt.nz)

From: McGilvray, Stuart  
Sent: Tuesday, 9 October 2018 8:38 a.m.  
To: s9(2)(a)  
Cc: Williams, Bruce <[Bruce.Williams@justice.govt.nz](mailto:Bruce.Williams@justice.govt.nz)>  
Subject: FW: Draft Cabinet paper for consultation: Addressing the theft of livestock in New Zealand

Hi Antony

I have just noted that we did not include TPK in our consultation on the draft cabinet paper. My apologies.

I have attached the Cabinet paper that was approved yesterday, together with the consultation document which we have just sent to external stakeholders – this should give you the context for the draft SOP.

If you have any comments on the SOP or the proposals more generally, we would welcome them by 23 October.

I'd be very happy to discuss if I can clarify anything.

Regards



**Stuart McGilvray**  
Policy Manager | Criminal Law  
s9(2)(a) | 04 918 8812  
[www.justice.govt.nz](http://www.justice.govt.nz)

From: McGilvray, Stuart  
Sent: Tuesday, 9 October 2018 8:34 a.m.  
To: s9(2)(a); 'Jeremy Wood' s9(2)(a); MACKENZIE, Christine  
s9(2)(a); SPACKMAN, Scott s9(2)(a)  
s9(2)(a); Tania Warburton [DPMC] s9(2)(a); Alex Smith [TSY]  
s9(2)(a); SANDERS, Oliver (WELLHO) s9(2)(a)  
s9(2)(a); Fergus Broom s9(2)(a)

s9(2)(a)

Cc: Williams, Bruce <[Bruce.Williams@justice.govt.nz](mailto:Bruce.Williams@justice.govt.nz)>

Subject: RE: Draft Cabinet paper for consultation: Addressing the theft of livestock in New Zealand

Good morning all,

Yesterday Cabinet approved the proposals in the paper Andrew distributed to you all below.

We are undertaking consultation with some external stakeholders to test the proposals.

In the meantime, PCO have prepared a draft SOP which would give effect to the proposals (you may recall the Minister wishes to make these changes via the Crimes Amendment Bill which was just reported back from Select Committee).

We would be interested in any comments that your agencies have on the draft SOP before 23 October.

Kind regards



Stuart McGilvray

Policy Manager | Criminal Law

s9(2)(a) | 04 918 8812

[www.justice.govt.nz](http://www.justice.govt.nz)

From: Goddard, Andrew

Sent: Monday, 30 July 2018 4:48 p.m.

To: s9(2)(a); 'Jeremy Wood' s9(2)(a); MACKENZIE, Christine

s9(2)(a); SPACKMAN, Scott s9(2)(a)

s9(2)(a); Tania Warburton [DPMC] s9(2)(a); Alex Smith [TSY]

s9(2)(a); SANDERS, Oliver (WELLHO) s9(2)(a)

s9(2)(a); Fergus Broom s9(2)(a)

s9(2)(a)

Cc: Gleadow, Adelaide <[Adelaide.Gleadow@justice.govt.nz](mailto:Adelaide.Gleadow@justice.govt.nz)>; McGilvray, Stuart <[Stuart.McGilvray@justice.govt.nz](mailto:Stuart.McGilvray@justice.govt.nz)>;

Mitchell, Matthew <[Matthew.Mitchell@justice.govt.nz](mailto:Matthew.Mitchell@justice.govt.nz)>; Gage, Brendan <[Brendan.Gage@justice.govt.nz](mailto:Brendan.Gage@justice.govt.nz)>

Subject: Draft Cabinet paper for consultation: Addressing the theft of livestock in New Zealand

Kia ora koutou,

Please find attached a draft Cabinet paper "Addressing the theft of livestock in New Zealand" for comment by 8 August 2018.

The paper proposes to amend the Crimes Act 1961 to create two new offences relating to the theft of livestock, specifically:

- theft of livestock or any animal that is the property of another person – punishable by up to seven years' imprisonment; and
- entering property used for agricultural purposes with the intention to commit an imprisonable offence – punishable by up to ten years' imprisonment.

The preferred approach to implementing these changes is by way of a Supplementary Order Paper ('SOP') to the Crimes Amendment Bill ('the Bill') currently before Parliament. To facilitate this, and a process for some public consultation, the current plan is that this paper go to the Social Policy Committee in early September 2018.

There is some explanation of the context / background in the paper. However, at a high-level, we understand there have been cross-party discussions about the issue arising out of the Primary Production Committee's consideration of the Sentencing (Livestock Rustling) Amendment Bill. We were asked for urgent advice relating to the creation of new offences – which I also attach for additional background – and received direction on the preferred approach.

Please do let me know if there is anyone else that you can think of, internal or external to your organisation, who will have an interest in this work. We're keen to make sure that as many people as possible have an opportunity to comment, in the time available, whether on the Cabinet paper or as part of targeted consultation later.

Happy to discuss.

Ngā mihi nui,

Andrew



Andrew Goddard  
Senior Policy Advisor | Criminal Law  
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out of scope

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**From:** Tim Mackle [s9(2)(a)]  
**Sent:** Thursday, 25 October 2018 11:21 a.m.  
**To:** Williams, Bruce <[Bruce.xxxxxxxx@xxxxxxx.xxx.xx](mailto:Bruce.xxxxxxxx@xxxxxxx.xxx.xx)>  
**Cc:** Kay Brown [s9(2)(a)]  
**Subject:** RE: Consultation

Hi Bruce

Thanks for the opportunity to provide feedback on the Confidential Issues Paper on livestock theft. Apologies for the delay in responding, I've been overseas. The team have been working closely with our colleagues at Federated Farmers on this issue and endorse the comments contained in their formal submission document which will be reaching you later today. I've cc'd Kay Brown in as our point of contact moving forward.

We are very grateful to the Ministry of Justice for engaging us at such an early stage in this policy development process, and look forward to receiving an update once you have had the opportunity to review the submissions.

Best regards

Tim

**Tim Mackle**  
Chief Executive

**DairyNZ**

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---

**From:** Williams, Bruce [<mailto:Bruce.Williams@justice.govt.nz>]  
**Sent:** Wednesday, 24 October 2018 5:00 PM  
**To:** Tim.MackleCEO [s9(2)(a)]  
**Subject:** RE: Consultation

Hello Tim

We are intending to advise our Minister on the outcome of consultation tomorrow.

I'm just checking to see if you have any comments on the Consultation Paper.

Kind Regards

Bruce



**Bruce Williams**

Principal Advisor | Criminal Law | Criminal Justice Policy  
DDI: +64 4 494 9772 | Ext 50772

[www.justice.govt.nz](http://www.justice.govt.nz)

---

**From:** McGilvray, Stuart

**Sent:** Tuesday, 9 October 2018 8:23 a.m.

**To:** s9(2)(a)

**Subject:** Consultation

Dear Tim,

Please see the attached letter

Kind regards



**Stuart McGilvray**

Policy Manager | Criminal Law

s9(2)(a) | 04 918 8812

[www.justice.govt.nz](http://www.justice.govt.nz)

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## SUMMARY OF OUTCOME OF CONSULTATION ON LIVESTOCK OFFENCE PROPOSALS

### EXTERNAL STAKEHOLDERS

#### Federated Farmers (FF)

- FF supports all proposals outlined in the Consultation Paper and submits that the two new offences will assist both Police and the agricultural industry to reduce theft in rural communities;
- FF considers that, in relation to the new entering agricultural land offence, that the 'intent to commit **any** imprisonable offence' element is very important (we will discuss this issue further below);
- FF also considers that an assessment of the new theft offence needs to be considered against existing legislation such as the Animal Welfare Act.

#### *Comment*

- Justice had considered independently, and then again as a result of the NZLS (below), that the entering agricultural land with intent to commit **any** imprisonable offence is potentially too wide as it could cover conduct unrelated to causing any harm to any agricultural land or property on that land (for example, a person entering the land to smoke cannabis with no intent to damage any property and only a brief and minor incursion into the land).
- We agree with the NZLS that such formulation is too wide for an offence carrying up to 10 years' imprisonment and propose that the intent be limited committing an imprisonable offence against anything on the land – limiting the new offence in the manner we propose will still meet FF's objective that when a person enters agricultural land to 'target anything of value' that the new offence apply to them.
- Justice considers that given that theft of livestock or any other property is already covered by the general theft offence in the Crimes Act that it can, without conflict, sit alongside any existing other animal welfare or animal control legislation. s9(2)(f)(iv)  
[REDACTED]  
[REDACTED]  
[REDACTED]
- Justice officials will respond to Federated Farmers on these matters.

#### Dairy NZ

- Dairy NZ advises that it has been working closely with Federated Farmers on this issue and endorses the comments contained in FF's formal submission document and looks forward to receiving an update once we have had the opportunity to review all the submissions.

#### NZ Law Society (LS)

- The LS considers that we need to bring to the Minister of Justice's urgent attention its view that a separate Bill is needed to promote new offences of such significant consequence and that the usual Select Committee and public submission process is necessary;
- The LS questions the need for both new offences;

- It notes that the new theft offence is not necessary as theft of livestock is already covered by general theft in the Crimes Act and that the new entering agricultural land offence extends burglary too far – neither are necessary or appropriate.
- Regarding, the new entering agricultural land offence the LS notes that burglary requires entering buildings or enclosed space which is ‘inherently more serious’ than entering open fields;
- Thus, the proposed penalty of up to 10 years’ imprisonment is too high;
- It opposes the intent to commit any imprisonable offence element as being too wide as it may capture relatively low-level offences like ‘disorderly behaviour’;
- It considers the current law adequate;
- The LS questions the necessity of the new theft offence as it can be dealt with by the current theft offence and at sentencing.

#### *Comment*

- Re the proposed new entering agricultural land offence, while we accept that entering homes certainly involves a greater invasion of privacy than for ‘open fields’, it is important to recognise that the existing burglary offence extends to any building (it need not be a residential dwelling and may be a shed or other structure with low privacy expectations or personal habitation elements attaching to it) and ships.
- Given the importance (economic, livelihood) and remoteness of agricultural land, a case can be made for special treatment by extending the concepts of burglary to it.
- We note the strong support for new offence from FF, noting that remote rural properties are often targeted and the emotional and economic consequences that result for farmers.
- We have acknowledged the LS point about intent to commit “any imprisonable offence” being overly broad in scope (see above), although find the LS example of disorderly behaviour to be less than convincing as it requires a being in (or within view or hearing of) a public place element that will generally be missing on remote rural private land.

#### **Other external stakeholders**

As at 25 October 2018 we have not had response from the SPCA or Rural Women NZ despite the date by which comment was sought was 23 October and follow up invitations for comment being e-mailed to these organisations on 24 October.

#### **GOVERNMENT AGENCIES**

We have provided a draft PCO SOP containing both new offences (including limiting the new entering agricultural land offence to intent to commit an imprisonable offence ‘relating to any building or structure, livestock, animal, crop, or any other thing on that land’) to the below agencies:

#### **Police**

Police are comfortable with the draft SOP and have no additional comment.

**CLO**

CLO has no comments on the draft SOP, and notes that the amendments look to them to be entirely in line with the policy proposals.

**Corrections**

Corrections has no comment on the SOP.

**DIA**

DIA has no comment on the SOP.

**TPK**

TPK has requested that comment be included in the final LEG paper about the disproportionate impact these offences may have for Māori in the criminal justice system.

TPK also suggests that because of that consultation with iwi should be undertaken.

It appears unlikely, and we not aware of anything to indicate, that:

- Māori are likely to disproportionately affected in the prosecution of these new offences;
- the new offences are likely to affect or undermine existing Crown/Māori commitments and/or Treaty settlements;
- that the policy will adversely affect Māori rights or interests;
- Māori issues have previously been raised in relation to this matter.

We seek the Minister's direction on consultation with iwi.

**Other Government agencies**

As at 25 October we have not received any comment from MPI or Ministry for Women.



## Consultation on proposed new offences

### Unlawfully entering agricultural property and livestock theft

1. The SPCA is grateful for the opportunity to provide a submission on the above matter.
2. Through the performance of its duties pursuant to the Animal Welfare Act 1999, the SPCA is aware that ill-treatment of animals occurs from time to time in relation to the theft of livestock from rural communities. The SPCA commends the government for acknowledging this matter and seeking to address the problem.

#### Issue one – “Burglary in relation to agricultural property”

3. The SPCA is supportive of the proposal to amend the Crimes Act to cover unlawful entry onto agricultural land. The current legislative status quo provides an anomaly whereby the protection of the law is not provided to property, including animals, situated away from structures.
4. We support the proposed scope of the new offence. Limiting the unlawful entry to apply only to specific offences may result in some offending not being captured by the new provision. The unlawful entry may occur for example with the intent of killing or maiming animals for the purpose of collecting meat or material. Should offences occur that are imprisonable offences under the Animal Welfare Act then the offending will be able to be captured by the provision as proposed.
5. The SPCA agrees with the proposed maximum penalty of 10 years’ imprisonment as it is consistent with the penalty for the existing offence of burglary.

#### Issue two – “Theft of animals”

6. The SPCA is in full agreement with the Government’s view that the theft of animals should be addressed differently than the theft of inanimate objects. Animals are seen as more than merely property to the vast majority of New Zealanders and this is no different in the rural community.
7. Despite production animals inherently existing for the purpose of profit, their safety wellbeing and state of health are extremely important to those responsible for caring for them. Situations involving the illegal killing, maiming or ill-treatment of animals bring a particular type of harm and damage to rural communities where people spend large amounts of the time ensuring the welfare of those animals.
8. In addition to the unique harm incurred by the people involved, the theft of an animal must by definition also involve a level of additional harm to that animal/s.
9. The long title of the Animal Welfare Act was amended in 2015 by the Animal Welfare Amendment Act (No 2) 2015 to adopt the concept of sentience; the relevant part of the long title now reads:

An Act:

(a) to reform the law relating to the welfare of animals and the prevention of their ill-treatment; and, in particular, —

(i) **to recognise that animals are sentient:**

(ia) to require owners of animals, and persons in charge of animals, to attend properly to the welfare of those animals:

(ii) to specify conduct that is or is not permissible in relation to any animal or class of animals:

10. The definition of sentience is “to be able to perceive or feel” in particular in relation to fear, pain, distress or their antonyms.
11. Parliament’s recognition that, like humans, animals can feel and perceive deserves consideration when discussing the impacts of the theft of animals by criminals from rural properties. The SPCA is aware that when livestock theft occurs, it is usually conducted in a manner whereby the welfare of the animals is completely neglected. Examples of animals confined in undersized vehicles or trailers are common, as are those where animals are injured through being forcibly removed from properties without use of correct facilities.
12. The SPCA agrees with the reasoning that the new offence should be broad enough to cover situations involving all animals, not just livestock. To do otherwise would result in the somewhat unique situation of livestock animals receiving more protection than other animals. For that reason, we would support the wording of the charge as proposed to include the phrase “... that are the property of a person”.
13. The SPCA agrees with the proposed sentence of 7 years as it is consistent with the currently penalty for theft.
14. In closing the SPCA would like to reiterate its appreciation at being consulted on this matter. We strongly encourage the Government to move ahead with the proposed amendments.

out of scope

**From:** McGilvray, Stuart  
**Sent:** Thursday, 25 October 2018 5:36 p.m.  
**To:** s9(2)(a)  
**Cc:** Williams, Bruce <[Bruce.Williams@justice.govt.nz](mailto:Bruce.Williams@justice.govt.nz)>; Purple, Folder <[Folder.Purple@justice.govt.nz](mailto:Folder.Purple@justice.govt.nz)>; Williams, Bruce <[Bruce.Williams@justice.govt.nz](mailto:Bruce.Williams@justice.govt.nz)>  
**Subject:** RE: Livestock submissions

Hi s9(2)(a)

Further to our submissions summary earlier today on the Livestock Consultation Paper, please find attached the submission of the SPCA which has since arrived and fully endorses both new offences and concludes with noting that the SPCA strongly encourages the Government to move ahead with proposed amendments.

In addition, since I last e-mailed MPI has come back to us saying that they have no comments on the SOP.

Cheers



**Stuart McGilvray**  
 Policy Manager | Criminal Law  
 s9(2)(a) | 04 918 8812  
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s9(2)(g)(i)



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Office of the Minister of Justice  
Chair, Cabinet Legislation Committee

## Supplementary Order Paper- Livestock rustling: Approval for Introduction

### Proposal

1. This paper seeks approval for amendments to the Crimes Amendment Bill by way of a Supplementary Order Paper ('SOP') to create two new offences in the Crimes Act 1961 ('the Crimes Act') relating to the theft of livestock ('livestock rustling') and other animals and protection of land used for agricultural purposes.

### Policy

2. The rural community has raised significant concerns about the theft of livestock in New Zealand.
3. Ian McKelvie's Member's Bill - the Sentencing (Livestock Rustling) Amendment Bill - was reported back to the House by the Primary Production Committee at the end of July 2018 with a recommendation that it not proceed. The Committee noted that the intent of the Bill could be better achieved by amending the Crimes Act to make livestock rustling a specific offence.
4. The Cabinet Social Wellbeing Committee subsequently agreed to amend the Crimes Act to create two new offences [CAB-18-MIN-0484.01 refers], specifically:
  - 4.1. theft of livestock or any animal that is the property of another person; and
  - 4.2. entering property used for agricultural purposes with the intention to commit an imprisonable offence.
5. Under current law, stealing livestock is criminalised by the general offence of theft in section 219 of the Crimes Act. Section 221 of the Crime Act also expressly criminalises theft where a person kills any animal that is the property of any other person with intent to steal the carcass, skin, or plumage, or any other part, of the animal.
6. Under the current offences of theft, animals are treated as morally equivalent to inanimate objects or things, unless they are first killed in order to steal their parts. The current offence of burglary only applies to entry into buildings or ships. This means the underlying principle in the offence of burglary, protection of personal property, does not always apply to the same extent for owners of livestock and other property in rural environments.

### *Legislation is needed to implement Cabinet's decisions*

7. Legislation is necessary to create any new offence. Cabinet agreed that the new offences be included in the Crimes Amendment Bill by way of a SOP at the Committee of the Whole House stage of the Crimes Amendment Bill [CAB-18-MIN-0484.01].
8. As the Office of the Clerk has advised that these new offences are out of scope of the Crimes Amendment Bill (dealing only with repeals of outdated laws) leave of the House will be required to progress these amendments by SOP to that Bill. The support of all

members of Parliament will be required. Indications are that all members of the House support the changes.

9. While it may be seen as contentious to create two substantive new criminal offences by way of a SOP, without Select Committee scrutiny, I consider these are important matters which should not wait for a standalone Bill.

*The proposed SOP would create the new livestock rustling related offences*

10. The proposed SOP would deliver on the Cabinet decision to create two new offences.
11. New section 221AA (Theft of livestock and other animals) would provide that:

“Every one commits theft and is liable to imprisonment for a term not exceeding 7 years if he or she steals any livestock or any other animal that is the property of any other person.”
12. In my view, this standalone offence will recognise that the theft of animals is morally distinct from the theft of things because of animals’ sentience and autonomy, and their particular relationship to humans (both emotional and economic).
13. New section 231A (Entry onto agricultural land with intent to commit offence) would provide that:

“Every one commits an offence and is liable to imprisonment for a term not exceeding 10 years who enters onto any land used for agricultural purposes, without authority and with intent to commit an imprisonable offence relating to any building or structure, livestock, animal, crop, or any other thing on that land.”
14. “Agricultural purposes” is defined as including (without limitation) the farming of livestock or crops, horticulture including growing fruit, berries, or vegetables, viticulture, bee-keeping, or forest cultivation.
15. This definition would particularise the protection the criminal law provides to agricultural land owners. Agricultural property is deserving of protection from the law particularly given the dispersed nature of many farm properties and the difficulty in ensuring the protection of livestock on such property.
16. I note that the element of the offence relating to intent to commit *any* imprisonable offence has been narrowed following reconsideration by Justice officials and the New Zealand Law Society raising the same point. The original proposal for this offence was that it should relate to an intent to commit any imprisonable offence. A maximum of 10 years imprisonment for intent to commit a relatively low-level offence, carrying a maximum penalty of say 3 months imprisonment, unrelated to any property on the land in question is inappropriate. Accordingly, the offence has been tightened as reflected in paragraph 13, above.
17. However, even with that element of the offence being more limited in scope, it still meets what Federated Farmers consider to be a ‘very important’ element of the offence. Federated Farmers note that intruders may target anything of value on agricultural land. The new formulation of the offence outlined above specifically addresses that issue.
18. The SOP would also make minor consequential amendments to related sections of the Crimes Act, specifically section 221 (theft of animals) and section 223 (punishment of

theft). It also extends the application of section 232 (aggravated burglary using a weapon) and section 233 (being disguised or in possession of instrument for burglary) to the new offence of entering agricultural land.

### **Impact analysis**

19. A Regulatory Impact Assessment was prepared in accordance with the necessary requirements, and was submitted at the time that the Cabinet paper *Addressing the theft of livestock in New Zealand* sought approval from Cabinet. This was submitted on 21 September 2018.

### **Compliance**

20. The SOP complies with the following:
  - 20.1. the principles of the Treaty of Waitangi;
  - 20.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 (the Bill of Rights Act) and the Human Rights Act 1993.
  - 20.3. the disclosure statement requirements (a disclosure statement has been prepared and is attached to this the paper);
  - 20.4. the principles and guidelines set out in the Privacy Act 1993;
  - 20.5. we have not identified any relevant international standards and obligations;
  - 20.6. the *Legislation Guidelines 2018*, which are maintained by the Legislation Design and Advisory Committee.

### **Consultation**

#### *Relevant Government departments*

21. The Ministry for Primary Industries, New Zealand Police, Department of Internal Affairs, Crown Law Office, Department of Corrections, Department of the Prime Minister and Cabinet (Policy Advisory Group), Ministry for Women, Te Puni Kokiri and Treasury have been consulted.
22. The Ministry for Primary Industries, New Zealand Police, Department of Internal Affairs, Crown Law Office, Department of Corrections, have been consulted on the SOP and either agree or have no comment on the draft SOP. Te Puni Kokiri notes the disproportionate representation of Māori in the criminal justice system and the potential for the new offences to exacerbate that situation. TPK also queries the likely effectiveness of the new offences, how they will contribute to the Government's goal of reduction of imprisonment rates, and the lack of consultation with iwi.

#### *Relevant private sector organisations and public consultation*

23. I have also undertaken targeted consultation with Federated Farmers, Rural Women New Zealand, the SPCA, Dairy NZ and the New Zealand Law Society.
24. Federated Farmers, the SPCA, and Dairy NZ support the proposed offences (no comment was received from Rural Women NZ). The Law Society does not consider either of the

offences are necessary and recommends that, given the significance of the new offences, that a usual legislative process, including Select Committee process, is necessary.

*Government caucus and other parties represented in Parliament*

25. I will work with the Leader of the House and the Business Committee to test levels of support among all members of Parliament for the proposals in this paper – early indications are that there is unanimous support. I have also written to the Justice Committee and the Primary Production Committee, which considered the Sentencing (Livestock Rustling) Amendment Bill, on the proposed approach. The Deputy Chair of the latter Committee has indicated the Committee's support for the proposals outlined in this paper.

**Binding on the Crown**

26. The Crimes Act expressly binds the Crown, and accordingly this proposed SOP to the Crimes Amendment Bill will do so.

**Allocation of decision making powers**

27. Not applicable.

**Associated regulations**

28. Not applicable.

**Other instruments**

29. Not applicable.

**Definition of Minister/department**

30. Not applicable.

**Commencement of legislation**

31. The Bill will come into force on the day after the date of Royal assent.

**Parliamentary stages**

32. The Crimes Amendment Bill was reported back from the Justice Select Committee on 28 September. The Crimes Amendment Bill holds a category three priority on the 2018 Legislative Programme (to be passed if possible in 2018).

33. I propose that the SOP be referred to the Committee of the Whole House. The Committee stage of the Crimes Amendment Bill is likely to take place from 27 November.

34. I will resolve any minor policy issues in relation to the drafting of legislation, following consultation with the Minister for Rural Communities, which are consistent with the contents of the paper under SWC-18-SUB-0136, without further reference to Cabinet.

35. As the Office of the Clerk has advised that these new offences are out of scope of the Crimes Amendment Bill (dealing only with repeals of outdated laws) leave of the House



will be required to progress these amendments by SOP to that Bill. The support of all members of Parliament will be required.

36. As such, I will work with the Leader of the House and the Business Committee to test levels of support among all members of Parliament for the proposals in this paper – early indications are that there is unanimous support. I also propose to release the SOP prior to the Committee of the Whole House stage of the Bill, subject to being satisfied that the Supplementary Order Paper accurately reflects Cabinet decisions.

### Recommendations

37. The Minister of Justice recommends that the Committee:
- 37.1. **note** that the Crimes Amendment Bill holds a category three priority on the 2018 Legislation Programme as noted in the Cabinet minute of 8 October [CAB-18-MIN-0484.01];
  - 37.2. **note** that the Bill adds two new offences to the Crimes Act 1961;
  - 37.3. **approve** the Supplementary Order Paper to the Crimes Amendment Bill for introduction, subject to the final approval of the Government caucus and sufficient support in the House of Representatives;
  - 37.4. **agree** that the Minister of Justice may resolve minor policy issues in relation to the drafting of legislation, following consultation with the Minister for Rural Communities, which are consistent with the contents of the paper SWC-18-SUB-0136, without further reference to Cabinet;
  - 37.5. **authorise** the release of the Supplementary Order Paper prior to the Committee of the Whole House stage of the Bill, subject to the Minister of Justice being satisfied that the Supplementary Order Paper accurately reflects Cabinet decisions
  - 37.6. **note** that the Minister of Justice will work with the Leader of the House and the Business Committee to test levels of support among all members of Parliament.

Authorised for lodgement

Hon Andrew Little  
Minister of Justice



## Addressing the Theft of Livestock in NZ SOP

Hon Andrew Little, Minister of Justice

### Purpose

1. This aide memoire is to advise you of the consequences of the decision made at LEG on 29 November 2019 to remove 'crops' from the scope of the proposed new offence of entry onto agricultural land.
2. We recommend that, should you wish to attempt to enact the Crimes Amendment Bill and the SOP this year, the entry to agricultural land offence be removed from the SOP and picked up in next year's Crimes Amendment Bill to allow more time for consideration of the structure of the offence. The livestock theft offence could still proceed in the SOP.

### Background to this issue

3. You will recall that on 16 July this year, following a briefing from the Ministry on 13 July, you directed officials to develop an offence of entering property (land) used for agricultural purposes.
4. This was on the basis that entry with intent to steal from agricultural land that is not next to a building is not captured by the existing burglary offence.
5. Consistent with the current burglary offence, its scope was to cover entry with intent to commit any imprisonable offence and to have a maximum penalty of 10 years imprisonment.
6. Cabinet agreed in principle, on 8 October 2018, to that offence construction, and to the livestock theft offence, subject to the outcome of consultation (CAB-18-MIN-0484.01).

7. s9(2)(g)(i)

8. Accordingly, the offence finally recommended to LEG relates only to an intention to commit an imprisonable offence against something on the agricultural land, including crops.

### Difficulty with removing crops from the scope of the offence

9. Other than livestock, officials consider that one of the most compelling arguments in favour of the new offence is in relation to things grown on the land; these are essentially part and parcel of the land and form the basis of many farmers and horticulturalists livelihood. Crops, in officials view, are an integral part of this new offence.
10. Federated Farmers, in commenting on this proposed new offence, specifically noted the importance and value of crops: "Livestock are the most obvious and numerous item of value in paddocks away from buildings, as are other items such as beehives and valuable crops and produce such as avocados. Other items of value such as fencing materials, herbicides, fuel and tools are also occasionally left [by farmers] on remote locations..."
11. The effect of the amendment agreed to by LEG would be that if someone entered with intent to steal a tractor (or indeed a non-agricultural vehicle) worth \$1,500 it would fall within the scope of the proposed offence, but if the intent was to steal crops (for example, avocados or hops) worth \$50,000 it would not. s9(2)(g)(i)

12. It also creates some potential drafting issues with the SOP which may not be amenable to quick fix.

**Recommendation**

13. It is our view that should you wish to enact the Crimes Amendment Bill and the SOP this year that the 'entry onto agricultural land' offence be removed from the SOP. s9(2)(g)(i)

14 s9(2)(g)(i)

15. If you agree with this recommendation to progress the SOP this year to deal only with theft of livestock, work on the entry of agricultural land offence could be incorporated into next year's Crime Amendment Bill.

16. The message to interested stakeholders could be that due to some technical issues as to the scope and drafting of the offence this work has been deferred, but it is still your intention to enact such an offence while addressing a range of views both from outside and within Government on the precise and appropriate parameters of this offence.

**Direction**

17. We need your urgent direction (by Friday 30 December) on this issue in order to work with PCO and Cabinet Office on next steps. This will include to test the feasibility of any agreed approach and what it means for documents (Cabinet paper, RIA, Departmental Disclosure Statement) already posted to Cabnet (Cabinet Office's official document repository) and those to be posted to the Treasury and PCO websites on the proposed SOP.

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In Confidence

Office of the Minister of Justice  
Chair, Cabinet Legislation Committee

## Supplementary Order Paper- Livestock rustling: Approval for Introduction

### Proposal

1. This paper seeks approval for amendments to the Crimes Amendment Bill by way of a Supplementary Order Paper ('SOP') to create two new offences in the Crimes Act 1961 ('the Crimes Act') relating to the theft of livestock ('livestock rustling') and other animals and protection of land used for agricultural purposes.

### Policy

2. The rural community has raised significant concerns about the theft of livestock in New Zealand.
3. Ian McKelvie's Member's Bill - the Sentencing (Livestock Rustling) Amendment Bill - was reported back to the House by the Primary Production Committee at the end of July 2018 with a recommendation that it not proceed. The Committee noted that the intent of the Bill could be better achieved by amending the Crimes Act to make livestock rustling a specific offence.
4. The Cabinet Social Wellbeing Committee subsequently agreed to amend the Crimes Act to create two new offences [CAB-18-MIN-0484.01 refers], specifically:
  - 4.1. theft of livestock or any animal that is the property of another person; and
  - 4.2. entering property used for agricultural purposes with the intention to commit an imprisonable offence.
5. Under current law, stealing livestock is criminalised by the general offence of theft in section 219 of the Crimes Act. Section 221 of the Crime Act also expressly criminalises theft where a person kills any animal that is the property of any other person with intent to steal the carcass, skin, or plumage, or any other part, of the animal.
6. Under the current offences of theft, animals are treated as morally equivalent to inanimate objects or things, unless they are first killed in order to steal their parts. The current offence of burglary only applies to entry into buildings or ships. This means the underlying principle in the offence of burglary, protection of personal property, does not always apply to the same extent for owners of livestock and other property in rural environments.

### *Legislation is needed to implement Cabinet's decisions*

7. Legislation is necessary to create any new offence. Cabinet agreed that the new offences be included in the Crimes Amendment Bill by way of a SOP at the Committee of the Whole House stage of the Crimes Amendment Bill [CAB-18-MIN-0484.01].
8. As the Office of the Clerk has advised that these new offences are out of scope of the Crimes Amendment Bill (dealing only with repeals of outdated laws) leave of the House will be required to progress these amendments by SOP to that Bill. The support of all

members of Parliament will be required. Indications are that all members of the House support the changes.

9. While it may be seen as contentious to create two substantive new criminal offences by way of a SOP, without Select Committee scrutiny, I consider these are important matters which should not wait for a standalone Bill.

*The proposed SOP would create the new livestock rustling related offences*

10. The proposed SOP would deliver on the Cabinet decision to create two new offences.
11. New section 221AA (Theft of livestock and other animals) would provide to the effect that:

A person commits theft and is liable to imprisonment for a term not exceeding 7 years if they steal any livestock or any other animal that is the property of any other person.
12. In my view, this standalone offence will recognise that the theft of animals is morally distinct from the theft of things because of animals' sentience and autonomy, and their particular relationship to humans (both emotional and economic).
13. New section 231A (Entry onto agricultural land with intent to commit offence) would provide to the effect that:

A person commits an offence and is liable to imprisonment for a term not exceeding 10 years if they enter onto any land used for agricultural purposes, without authority and with intent to commit an imprisonable offence relating to any building or structure, livestock, animal, or machinery on that land.
14. "Agricultural purposes" is defined to include the farming of livestock and other activities customarily undertaken on the land to be protected. New section 231A particularises the property on that land deserving of protection from the law, particularly given the dispersed nature of many farm properties and the difficulty in ensuring the protection of livestock on such property.
15. I note that the element of the offence relating to intent to commit *any* imprisonable offence has been narrowed following reconsideration by Justice officials and the New Zealand Law Society raising the same point. The original proposal for this offence was that it should relate to an intent to commit any imprisonable offence. A maximum of 10 years imprisonment for intent to commit a relatively low-level offence, carrying a maximum penalty of say 3 months imprisonment, unrelated to any property on the land in question is inappropriate. Accordingly, the offence has been tightened as reflected in paragraph 13, above.
16. However, even with that element of the offence being more limited in scope, it still meets what Federated Farmers consider to be a 'very important' element of the offence. Federated Farmers note that intruders may target anything of value on agricultural land. The new formulation of the offence outlined above specifically addresses that issue.
17. The SOP would also make minor consequential amendments to related sections of the Crimes Act, specifically section 221 (theft of animals) and section 223 (punishment of theft). It also extends the application of section 232 (aggravated burglary using a weapon) and section 233 (being disguised or in possession of instrument for burglary) to the new offence of entering agricultural land.

## Impact analysis

18. A Regulatory Impact Assessment was prepared in accordance with the necessary requirements, and was submitted at the time that the Cabinet paper *Addressing the theft of livestock in New Zealand* sought approval from Cabinet. This was submitted on 21 September 2018.

## Compliance

19. The SOP complies with the following:
  - 19.1. the principles of the Treaty of Waitangi;
  - 19.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 (the Bill of Rights Act) and the Human Rights Act 1993.
  - 19.3. the disclosure statement requirements (a disclosure statement has been prepared and is attached to this the paper);
  - 19.4. the principles and guidelines set out in the Privacy Act 1993;
  - 19.5. we have not identified any relevant international standards and obligations;
  - 19.6. the *Legislation Guidelines 2018*, which are maintained by the Legislation Design and Advisory Committee.

## Consultation

### *Relevant Government departments*

20. The Ministry for Primary Industries, New Zealand Police, Department of Internal Affairs, Crown Law Office, Department of Corrections, Department of the Prime Minister and Cabinet (Policy Advisory Group), Ministry for Women, Te Puni Kokiri and Treasury have been consulted.
21. The Ministry for Primary Industries, New Zealand Police, Department of Internal Affairs, Crown Law Office, Department of Corrections, have been consulted on the SOP and either agree or have no comment on the draft SOP. Te Puni Kokiri notes the disproportionate representation of Māori in the criminal justice system and the potential for the new offences to exacerbate that situation. TPK also queries the likely effectiveness of the new offences, how they will contribute to the Government's goal of reduction of imprisonment rates, and the lack of consultation with iwi.

### *Relevant private sector organisations and public consultation*

22. I have also undertaken targeted consultation with Federated Farmers, Rural Women New Zealand, the SPCA, Dairy NZ and the New Zealand Law Society.
23. Federated Farmers, the SPCA, and Dairy NZ support the proposed offences (no comment was received from Rural Women NZ). The Law Society does not consider either of the offences are necessary and recommends that, given the significance of the new offences, that a usual legislative process, including Select Committee process, is necessary.

*Government caucus and other parties represented in Parliament*

24. I will work with the Leader of the House and the Business Committee to test levels of support among all members of Parliament for the proposals in this paper – early indications are that there is unanimous support. I have also written to the Justice Committee and the Primary Production Committee, which considered the Sentencing (Livestock Rustling) Amendment Bill, on the proposed approach. The Deputy Chair of the latter Committee has indicated the Committee's support for the proposals outlined in this paper.

**Binding on the Crown**

25. The Crimes Act expressly binds the Crown, and accordingly this proposed SOP to the Crimes Amendment Bill will do so.

**Allocation of decision making powers**

26. Not applicable.

**Associated regulations**

27. Not applicable.

**Other instruments**

28. Not applicable.

**Definition of Minister/department**

29. Not applicable.

**Commencement of legislation**

30. The Bill will come into force on the day after the date of Royal assent.

**Parliamentary stages**

31. The Crimes Amendment Bill was reported back from the Justice Select Committee on 28 September. The Crimes Amendment Bill holds a category three priority on the 2018 Legislative Programme (to be passed if possible in 2018).
32. I propose that the SOP be referred to the Committee of the Whole House. The Committee stage of the Crimes Amendment Bill is likely to take place from 27 November.
33. I will resolve any minor policy issues in relation to the drafting of legislation, following consultation with the Minister for Rural Communities, which are consistent with the contents of the paper under SWC-18-SUB-0136, without further reference to Cabinet.
34. As the Office of the Clerk has advised that these new offences are out of scope of the Crimes Amendment Bill (dealing only with repeals of outdated laws) leave of the House will be required to progress these amendments by SOP to that Bill. The support of all members of Parliament will be required.

35. As such, I will work with the Leader of the House and the Business Committee to test levels of support among all members of Parliament for the proposals in this paper – early indications are that there is unanimous support. I also propose to release the SOP prior to the Committee of the Whole House stage of the Bill, subject to being satisfied that the Supplementary Order Paper accurately reflects Cabinet decisions.

### Recommendations

36. The Minister of Justice recommends that the Committee:

- 36.1. **note** that the Crimes Amendment Bill holds a category three priority on the 2018 Legislation Programme as noted in the Cabinet minute of 8 October [CAB-18-MIN-0484.01];
- 36.2. **note** that the Bill adds two new offences to the Crimes Act 1961;
- 36.3. **approve** the Supplementary Order Paper to the Crimes Amendment Bill for introduction, subject to the final approval of the Government caucus and sufficient support in the House of Representatives;
- 36.4. **agree** that the Minister of Justice may resolve minor policy issues in relation to the drafting of legislation, following consultation with the Minister for Rural Communities, which are consistent with the contents of the paper SWC-18-SUB-0136, without further reference to Cabinet;
- 36.5. **authorise** the release of the Supplementary Order Paper prior to the Committee of the Whole House stage of the Bill, subject to the Minister of Justice being satisfied that the Supplementary Order Paper accurately reflects Cabinet decisions
- 36.6. **note** that the Minister of Justice will work with the Leader of the House and the Business Committee to test levels of support among all members of Parliament.

Authorised for lodgement

Hon Andrew Little  
Minister of Justice





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13 December 2018

Stephen Bonnar QC  
Convenor, NZLS Criminal Law Committee  
New Zealand Law Society  
PO Box 5041  
Wellington 6145

Dear Mr Bonnar

**Proposed offences – theft of livestock and other animals & unlawfully entering agricultural land**

I would like to thank you for providing a submission on the proposed new offences at such short notice. Your thorough response was greatly appreciated and was carefully considered. We provided it to our Minister for his consideration.

The Ministry understands the position that the Law Society holds in recommending a separate Bill and Select Committee process. However, members of the rural community have made it clear that the stealing of livestock and burglary of property is a significant concern that they currently face. As such, it is the Minister's commitment to move quickly to address this issue. You may have seen the Minister announced the proposed changes yesterday: <https://www.beehive.govt.nz/release/government-ropes-livestock-rustling>

During the consultation period, the Minister received widespread support from other submitters for a new offence of theft of animals on the basis that animals should not simply be treated as other objects. They have both a sentience and a continuing economic benefit which distinguish them from other property. Under the current offences of theft, animals are treated as morally equivalent to inanimate objects or things.

The Ministry agreed with your comment that in relation to the proposed new offence of entering agricultural land, it is not appropriate that it include an intent to commit *any* imprisonable offences. A maximum of 10 years imprisonment for intent to commit a relatively low-level offence, for example, carrying a maximum penalty of 3 months imprisonment, unrelated to any property on the land in question is inappropriate. Ministry officials suggested amending the proposed offence accordingly. The new offence will be limited to imprisonable offences relating to any building or structure, livestock, animal, or machinery on that land.

Thank you again for your prompt submission and the thorough consideration that your submission provided in relation to the proposed new offences.

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If you would like to discuss any of my comments further, please feel free to get in touch.

Yours sincerely



Stuart McGilvray

Policy Manager, Criminal Law

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