

Coversheet: Addressing the theft of livestock Rustling in New Zealand

Advising agencies	Ministry of Justice
Decision sought	This analysis has been prepared for the purpose of informing final decisions to be taken by Cabinet regarding the creation of two new offences in the Crimes Act 1961 relating to the theft of livestock.
Proposing Ministers	Minister of Justice

Summary: Problem and Proposed Approach

<p>Problem Definition</p> <p>What problem or opportunity does this proposal seek to address? Why is Government intervention required?</p>
<p>Instances of livestock rustling harms the rural community and jeopardises the wellbeing of animals. 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 by Federated Farmers at \$120 million. Additionally, submissions from rural communities on a Member’s Bill entitled the Sentencing (Livestock Rustling) Amendment Bill highlighted that livestock rustling is creating a serious and increasing risk to our rural communities.</p>

<p>Proposed Approach</p> <p>How will Government intervention work to bring about the desired change? How is this the best option?</p>
<p>The proposed Government intervention will introduce two new criminal offences to the Crimes Act 1961:</p> <ul style="list-style-type: none"> • theft of livestock or any animal that is the property of another person – punishable by up to seven years’ imprisonment (option 2); and • entering property used for agricultural purposes with the intention to commit an imprisonable offence – punishable by up to ten years’ imprisonment (option 4). <p>The Ministry of Justice’s preferred option is to progress option four. The Ministry of Justice does not consider that option two, the creation of a specific offence for livestock rustling, can be justified as necessary.</p>

Section B: Summary Impacts: Benefits and costs

<p>Who are the main expected beneficiaries and what is the nature of the expected benefit?</p>
<p>We do not anticipate any significant monetised benefits as a result of the introduction of new criminal offences. There may be some non-monetisable benefits, including increased sense of security in rural communities and recognition in criminal law that livestock are sentient beings.</p>

Where do the costs fall?

The proposals in this paper are not expected to have significant financial implications. 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. However, for these impacts to eventuate, we anticipate that additional operational initiatives and investment in enforcement would be required.

What are the likely risks and unintended impacts, how significant are they and how will they be minimised or mitigated?

The likely risks are that the new offences will not lead to any change in behaviour. To the extent that there is an increase in reporting or prosecution of livestock theft, there may be additional pressure placed on the prison system.

Identify any significant incompatibility with the Government's 'Expectations for the design of regulatory systems'.

The creation of two new criminal offences, option two and option four, complies with the Government's 'Expectations for the design of regulatory systems' (the Expectations). There are no significant incompatibilities with the Expectations.

Section C: Evidence certainty and quality assurance

Agency rating of evidence certainty?

Overall, the evidence base has a lack of certainty.

Sources of evidence in the undertaking of this analysis are primarily;

- information from Federated Farmers; and
- offending statistics from the Ministry of Justice's Case Management System.

Additionally, there is compelling evidence that demonstrates the imposition of offences and/or penalties are not as strong a deterrent as enforcement.¹

¹ 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* (3rd edition); and Donald Ritchie. (April 2011). 'Does Imprisonment Deter? A Review of the Evidence'; Victorian Sentencing Advisory Council.

To be completed by quality assurers:

Quality Assurance Reviewing Agency:
Ministry of Justice
Quality Assurance Assessment:
<p>The Ministry of Justice's RIA QA panel has reviewed the RIA: <i>Addressing the theft of livestock Rustling in New Zealand</i> prepared by the Ministry of Justice and considers that the information and analysis summarised in the RIA partially meets the QA criteria.</p> <p>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.</p>
Reviewer Comments and Recommendations:

Impact Statement: Addressing the theft of livestock rustling in New Zealand

Section 1: General information

Purpose
<p>The Ministry of Justice is solely responsible for the analysis and advice set out in this Regulatory Impact Statement, except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing:</p> <ul style="list-style-type: none">• key (or in-principle) policy decisions to be taken by Cabinet, and• final decisions to proceed with a policy change to be taken by or on behalf of Cabinet.
Key Limitations or Constraints on Analysis
<p>This analysis has been constrained by:</p> <ul style="list-style-type: none">• The limited range of options that were considered, as Officials were directed to consider options available through legislative amendment to the Crimes Act 1961;• The short period of time available to scope and develop the problem and options. This was due to timing of suitable legislative vehicles in which changes to the Crimes Act 1961 could occur and the preferred approach of the Government, namely to legislate through amendment of the Crimes Act 1961 to address this problem;• The lack of available evidence about the nature and extent that livestock rustling is a problem, this is because we are unable to distinguish the type of theft that was prosecuted in the Ministry of Justice’s Case Management System; and• Consultation was only undertaken on the Government’s preferred options, as this was the preferred position of the Government. Therefore, analysis of the alternative options and the counterfactual has not had the same level of comment as the two new proposed offences.
Responsible Manager (signature and date):
<p>Stuart McGilvray Policy Manager, Criminal Law Criminal Justice Ministry of Justice 20 September 2018</p>

Section 2: Problem definition and objectives

2.1 What is the context within which action is proposed?

Agriculture is of vital importance to the economy, and livestock farming is a widespread use of land in New Zealand. In 2014, New Zealand farmed around 29.8 million sheep, 10.4 million cattle (6.7 million for dairy), and 0.96 million deer.²

Currently theft of livestock is criminalised by the general theft offence in section 219 of the Crimes Act 1961 (the Act). Section 221 of the 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. Under this approach, animals are treated as morally equivalent to inanimate objects or things, unless they are first killed in order to steal their parts.

At present, the offence of burglary (entering a building or ship with intent to commit an imprisonable offence – section 231) does not extend to all land that is used for agricultural purposes.

2.2 What regulatory system, or systems, are already in place?

As a society we have determined that certain conduct should be criminalised. Factors which should be present, though not all are necessary, in determining whether conduct should be criminalised are set out in our Legislation guidelines:

- 1 the conduct involves physical or emotional harm;
- 2 the conduct involves serious harm to the environment, threats to law and order, fraud, bribery or corruption, or substantial damage to property rights or the economy;
- 3 the conduct, if continued unchecked, would cause significant harm to individual or public interests such that public opinion would support the use of the criminal law;
- 4 the conduct is morally blameworthy, having regard to the required intent and the harm that may result; or
- 5 the harm to public or private interests that would result from the conduct is foreseeable and avoidable by the offender (for example, it involves an element of intent, premeditation, dishonesty, or recklessness in the knowledge that the harms above may eventuate).³

The Crimes Act 1961 currently criminalises general theft (s 219) and theft of animals (s 221). The types of behaviour that would be addressed in order to respond to livestock rustling are compatible with the current approach to criminal liability in New Zealand.

Key partner agencies in the maintenance of the criminal law include the New Zealand Police, Department of Corrections and Crown Law Office.

² Livestock numbers, Statistics New Zealand, available at: http://archive.stats.govt.nz/browse_for_stats/environment/environmental-reporting-series/environmental-indicators/Home/Land/livestock-numbers/livestock-numbers-archived-19-04-2018/livestock-numbers-archived-27-04-2017.aspx.

³ Legislation Guidelines, 2018 Edition, available at: <http://www.ldac.org.nz/assets/Uploads/Legislation-Guidelines-2018-edition.pdf>

Additionally the animal welfare regulatory framework is an existing Government framework which sits alongside proposals related to livestock theft. The Ministry for Primary Industries is responsible for this work, including the Animal Welfare Strategy.

2.3 What is the policy problem or opportunity?

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 by Federated Farmers at \$120 million.

Instances of livestock rustling harms the rural community and jeopardises the wellbeing of animals. Currently, very few instances of livestock rustling are reported. The rural locations exacerbate the already low apprehension rates of theft. The difficulty in detecting those who commit livestock theft is often heightened by the lapse in time between the theft occurring and a farmer being aware of the theft (due to the vastness of land farmed and/or recording practices). There is little information available as to the scale of livestock rustling, however, the below statistics may be indicative of a general decrease in livestock related crime. Current reporting of victimisations for animal theft offences has decreased, as evidenced in the below table, during the last three years. It is worth noting the differing perspectives between the little information we have for recorded incidences (which appear to indicate that instances of livestock rustling are decreasing) and rural communities highlighting that livestock rustling is creating a serious and increasing risk.

Number of victimisations for animal theft offences by offence: 2015/2017			
Offence	Year		
	2015	2016	2017
Theft Of Animals (Under \$500)	200	116	106
Theft Of Animals (\$500-\$1,000)	115	68	67
Theft Of Animals (Over \$1,000)	174	124	127
Other Theft Of Animals	36	30	23
Grand Total	525	338	323

Rural communities also feel the wider effects of livestock rustling as it often contributes to a feeling of enhanced isolation and lack of safety. Members of rural communities have discussed their experiences as victims of livestock rustling and the resulting psychological and emotional effects.⁴ The emotional stress that livestock theft, and the violation of property, can cause for individuals and families must be recognised. Additionally, sentience is a key concept in the New Zealand Animal Welfare Strategy and, as such, a reasonable case exists for taking into account sentience by treating animals as separate, with an offence that explicitly deals with the taking of animals. The nature of large-scale theft can involve significant planning, being on a property for some time, and the movement of vehicles across a significant proportion of a property. All of these factors compound the feelings of insecurity that the illegal entry onto a property can have. A further compounding effect is the physical

⁴ For example, submissions made on the Sentencing (Livestock Rustling) Amendment Bill, available at: https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/BILL_74309/tab/submissionsandadvice.

isolation of properties. The ability to seek assistance is reduced in a rural or isolated location.

Research has identified that the stress caused by insecurity (e.g. a series of stock and property thefts in an area) tends to be greatest on families without close neighbours or social connections, and where the household has a single adult (or where one partner is absent for extended periods).⁵

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

The Minister of Justice has directed officials to consider legislative options for response, including specific offences.

These options could be supplemented by non-legislative responses but have not been considered in the course of this analysis.

2.5 What do stakeholders think?

Key stakeholders are farmers and rural communities. 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. All submitters who appeared before the Committee in support of the Bill commended its aim to deter people from engaging in livestock rustling, and saw it as an important first step. Key issues raised by Federated Farmers, Rural Women New Zealand, Richard Powdrell, and Taranaki and Whanganui Rural Security Partnerships included: the impact of livestock rustling on rural communities; the vulnerability of people living in rural locations; the psychological harm caused by livestock rustling; the financial cost of rustling to farmers; issues of animal welfare; and, more broadly, the impact of rural crime.

Consultation is proposed to be undertaken on the creation of two new offences. Specifically, a consultation document will be shared with key stakeholders, including Federated Farmers and Rural Women New Zealand, on the detail of the proposed offences.

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 the problem and the preferred options. Consulted Departments understood the need to address the gap in current burglary provisions and therefore supported option four (the creation of a new standalone burglary offence), however, questioned the necessity of a change to the status quo in respect of theft.

Section 3: Options identification

3.1 What options are available to address the problem?

⁵ See for example, Ruth Panelli, Jo Little and Anna Crack (July 2005) - Claiming space and community: Rural women's strategies for living with, and beyond, fear, *Geoforum* 36(4): 495-508. Abstract - <https://www.sciencedirect.com/science/article/pii/S0016718504001149>

The options considered in our analysis are:

1. **Option one** - maintain the status quo
 - Currently instances of livestock rustling are prosecuted as general theft under s 219 of the Crimes Act 1961
 - The current penalty is a maximum of seven years' imprisonment, depending on the value of the animal(s) stolen⁶
2. **Option two** - the creation of a new offence of theft of livestock
 - A stand-alone offence created in the Crimes Act 1961 only for the taking of livestock
 - The proposed penalty is a maximum of seven years' imprisonment
3. **Option three** - amendment to current s 221 of the Crimes Act 1961
 - This would amend s 221 (theft of animals) to include the taking of living livestock or any other animal that is the property of another person
 - The proposed penalty is a maximum of seven years' imprisonment, depending on the value of the animal(s) stolen
4. **Option four** - the creation a new standalone burglary offence
 - A standalone offence of burglary created in the Crimes Act 1961, for entering property used for agricultural purposes with the intention to commit an imprisonable offence
 - The proposed penalty is a maximum of ten years' imprisonment

3.2 What criteria, in addition to monetary costs and benefits, have been used to assess the likely impacts of the options under consideration?

The criteria that have been used to address the impacts of the options proposed to address instances of livestock theft are:

Certainty

- Is the proposed option effective at reducing uncertainty in the law?

Deterrence

- Does the proposed option work as a deterrent for the behaviour which is being criminalised?

Community focussed

- Does the proposed option appropriately respond to the needs of rural communities?

Necessity

- Is the proposed option required to address the problem?

3.3 What other options have been ruled out of scope, or not considered, and why?

⁶ 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.”

In the course of assessing options to address the theft of livestock, officials were limited to legislative change, specifically through the Crimes Act 1961 at the Minister of Justice's direction. As a result, operational initiatives have not been considered.

Operational options could have potentially included initiatives to encourage greater reporting of livestock rustling or the establishment of a police taskforce to better police rural properties and communities, and could be considered further to supplement legislative changes.

Section 4: Impact Analysis

Marginal impact: How does each of the options identified at section 3.1 compare with the counterfactual, under each of the criteria set out in section 3.2?

	Option one: Status quo	Option two: Creation of new theft of livestock offence	Option three: Amending section 221 of the Act	Option four: New standalone offence of burglary of property used for agricultural purposes
Certainty	0	0 Currently theft of livestock is successfully prosecuted under general theft (s219 of the Act).	0 Currently theft of livestock is successfully prosecuted under general theft (s219 of the Act).	+ There is currently a gap in burglary, this 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 ensures the law can work effectively to respond to harm.
Deterrence	0	0 The creation of a new theft offence is not automatically a deterrent, as evidence suggests that the risk of detection is a more effective deterrent than the severity of punishment ⁷ .	0 The amendment of an offence is not automatically a deterrent, as evidence suggests that the risk of detection is a more effective deterrent than the severity of punishment ⁸ .	0 The creation of a new burglary offence is not automatically a deterrent, as evidence suggests that the risk of detection is a more effective deterrent than the severity of punishment ⁹ .
Community focussed	0	+ It recognises the sentience of livestock and the importance of livestock to rural communities as opposed to treating instances	+ It recognises the sentience of livestock and the importance of livestock to rural communities as opposed to treating instances of livestock theft in	+ 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

⁷ 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* (3rd edition); and Donald Ritchie. (April 2011). 'Does Imprisonment Deter? A Review of the Evidence'; Victorian Sentencing Advisory Council.

⁸ See footnote 5.

⁹ See footnote 5.

		of livestock theft in the same way as general theft.	the same way as general theft.	protection of livestock on such property.
Necessity	0	0 Instances of livestock rustling can be prosecuted under general theft (s219 of the Act), therefore the addition of a new offence isn't required.	0 Instances of livestock rustling can be prosecuted under general theft (s219 of the Act), therefore the addition of an amended offence isn't required.	+ The creation of an offence of burglary of property used for agricultural purposes is required to standardise the protection the criminal law provides to various kinds of land owners.
Overall assessment		0	0	+

Key:

- ++** much better than doing nothing/the status quo
- +** better than doing nothing/the status quo
- 0** about the same as doing nothing/the status quo
- worse than doing nothing/the status quo
- much worse than doing nothing/the status quo

Section 5: Conclusions

5.1 What option, or combination of options, is likely best to address the problem, meet the policy objectives and deliver the highest net benefits?

Option four responds to a gap that is currently not addressed at law, namely that the offence of burglary does not currently extend to all land that is used for agricultural purposes, for this reason it is preferable to the status quo, and is therefore advanced as the preferred option.

There is no preferred approach in respect of theft, as changes to the current theft regime (option one – status quo) are not considered necessary. As discussed, currently Police successfully charge instances of livestock theft under general theft (s 219) in the Crimes Act 1961. While recognising the sentence and inherent difference between livestock and general property and responding to the concerns of the rural community, options two and three are unlikely to have an impact on behaviour vis-à-vis the status quo.

5.2 Summary table of costs and benefits of the preferred approach

Affected parties (identify)	Comment: nature of cost or benefit (eg ongoing, one-off), evidence and assumption (eg compliance rates), risks	Impact	Evidence certainty (High, medium or low)
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Additional costs of proposed approach, compared to taking no action			
Government	<p>The anticipated cost to Government is low, agencies that will be affected are:</p> <p><i>Police</i></p> <ul style="list-style-type: none"> The proposed new offences could lead to an uptake in reporting, which would lead to higher use of Police resourcing <p><i>Corrections</i></p> <ul style="list-style-type: none"> Little to no impact on the prison population is expected. <p><i>Crown Law</i></p> <ul style="list-style-type: none"> It is unclear how many new prosecutions may be initiated, nor how many of those defendants will elect trial by jury, however an uptake in prosecutions would lead to a higher use of Crown Law resourcing. <p>An increase in reporting and successful prosecutions will increase the cost to Government, however, evidence available does not suggest an increase will occur.</p>	Low-medium (monetisable)	Low
Total Monetised Cost		Low	
Non-monetised costs		Low	

Expected benefits of proposed approach, compared to taking no action			
Members of rural communities	<p>It recognises the sentience of livestock and the importance of livestock to rural communities as opposed to treating instances of livestock theft as distinct to general theft. To the unlikely extent that these changes impact the instances of livestock theft, it could have an impact on the perception of rural communities' safety.</p>	Low (monetisable and non-monetisable)	

Food safety	The black-market trade of stolen animals has the potential for significant food safety implications. To the unlikely extent that these changes impact the instances of livestock theft, it could improve food safety.	<i>Low (monetisable and non-monetisable)</i>	
Total Monetised Benefit		<i>Low</i>	
Non-monetised benefits		<i>Low</i>	

5.3 What other impacts is this approach likely to have?

The proposals in this paper are not expected to have significant financial implications. 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. 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. 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. However, for these impacts to eventuate, we anticipate that additional operational initiatives and investment in enforcement would be required.

5.4 Is the preferred option compatible with the Government's 'Expectations for the design of regulatory systems'?

There are no significant incompatibilities identified with the Government's 'Expectations for the design of regulatory systems'. There are clear objectives for the changes sought, which will provide consistent and predictable outcomes.

Section 6: Implementation and operation

6.1 How will the new arrangements work in practice?

The preferred option (option four – the creation a new standalone burglary offence) and option two would be given effect by way of amendment to the Crimes Act 1961.

The ongoing operation and enforcement of the two new offences, would be as in the usual operation of the criminal law, in conjunction with the relevant Justice Sector agencies: Police, Corrections and Crown Law.

Police, Corrections and Crown Law have been consulted and have not raised any concerns with their ability to implement it in a manner consistent with the Government's 'Expectations for regulatory stewardship by government agencies'.

It is anticipated the two new offences will come into effect before the end of 2018.

6.2 What are the implementation risks?

Instances of livestock rustling occur in remote rural locations by their very nature. As discussed, currently very few instances of livestock rustling are reported. The rural locations exacerbate the already low apprehension rates of theft. The difficulty in detecting those who commit livestock theft is often heightened by the lapse in time between the theft occurring and a farmer being aware of the theft (due to the vastness of land farmed and/or recording practices).

The proposed new offences don't resolve the difficulty in apprehending those responsible for the theft of livestock.

Section 7: Monitoring, evaluation and review

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

Current data collection processes are considered sufficient. There is current system-level monitoring of the prison population. Additionally, data is collected on sentencing and there is comprehensive data available in the Case Management System (CMS).

7.2 When and how will the new arrangements be reviewed?

Justice sector agencies already monitor crime rates, and share information, including sentencing data. This will help us understand if these changes are achieving the desired effects.