

Regulatory Impact Statement

**Biosecurity Act
Amendment Bill**

Paper 3: Funding and
compensation

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1. Introduction

1. The Biosecurity Act Amendment Bill (the Bill) impact statement has been split into a series of impact statements as follows:
 - Paper 1: Overview impact statement;
 - Paper 2: System-wide issues;
 - Paper 3: Funding and compensation;
 - Paper 4: Border and imports;
 - Paper 5: Readiness and response;
 - Paper 6: Long-term management; and
 - Paper 7: Surveillance and interfaces with Department of Conservation-administered legislation.
2. The overview impact statement sets up the background for the Bill, the overarching regulatory stewardship “problem definition”, and the objective and criteria for the Bill as a whole. The remaining impact statements detail specific issues and proposals, which relate to the overarching opportunity and objectives. The topic-based impact statements should be read together with the overview impact statement.
3. This impact statement is Paper 3: Funding and compensation. It contains issues to do with the funding and costs of the biosecurity system, and compensation.
4. Each topic is structured in the same way:
 - background to the topic;
 - problem / opportunity;
 - options;
 - assessment of the options;
 - cost benefit analysis; and
 - preferred option.

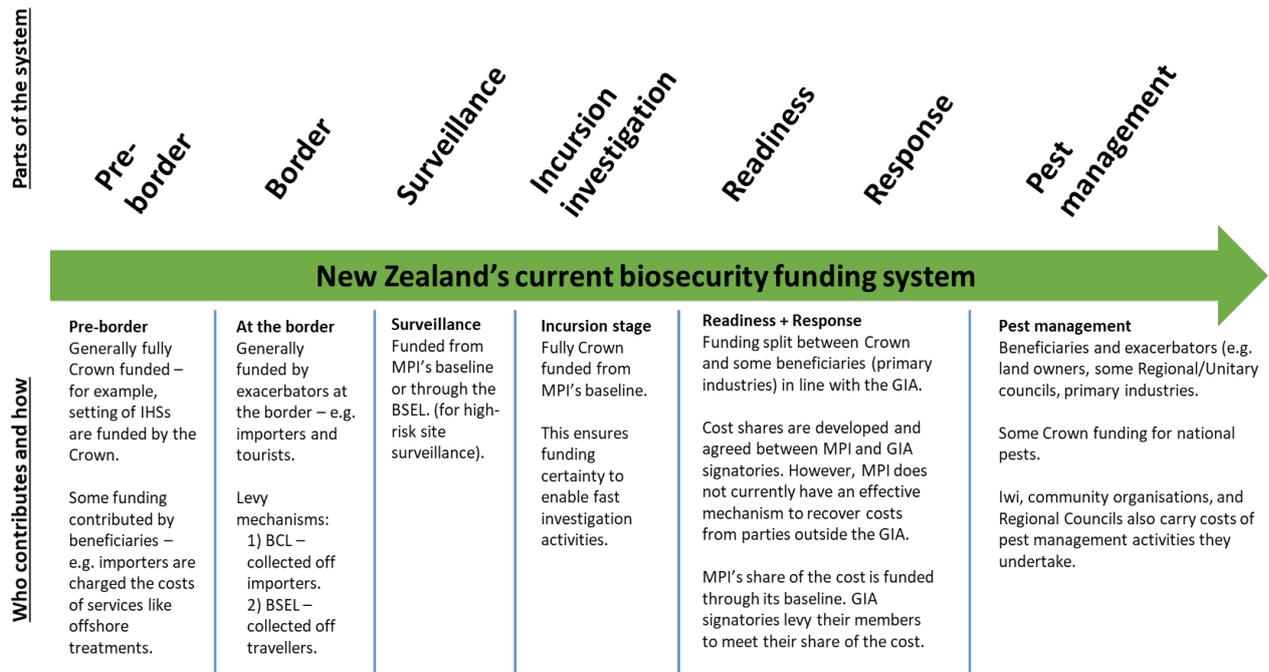
2. Biosecurity Act funding mechanisms

2.1. Background

5. Biosecurity is funded through a mix of Crown appropriations, levies and cost recovery. How each part of the biosecurity system is funded depends on what the activity is, who benefits and who exacerbates risk at each part of the system.
6. Activities throughout the biosecurity continuum cost money, from readiness through to pest management. These costs fall to different groups such as central government, regional councils, industry groups, local community organisations, landowners, and iwi. In the future, biosecurity costs, including response costs, are likely to rise. The impacts of climate change and increases in trade and travel are expected to increase the risks posed by pests and diseases.

7. Access to funding can enable groups to better prepare for and respond to biosecurity risks. In addition, funding arrangements play an important part in incentivising good biosecurity outcomes by different parties. For instance, increased exposure to response costs is likely to drive more proactive readiness activity by all participants in the biosecurity system.
8. Figure 1 below provides an overview of how New Zealand's biosecurity system is funded.

Figure 1 - How the biosecurity system is funded



9. The Act is enabling and provides for provides for broad direct cost-recovery of biosecurity services and levying to deliver biosecurity functions and outcomes. Biosecurity activities can be funded by non-MPI legislation (for example, rates partially fund regional councils' pest management activities).
10. The Act and associated Regulations provide for cost recovery and levy provisions that reflect the mixed funding model underpinning the biosecurity framework. That is - costs for biosecurity are shared between Crown, beneficiaries¹, and exacerbators.²

Cost recovery

11. The cost recovery provision (section 135) empowers MPI to recover the shortfall between money made available by Parliament for a purpose, or money that Parliament has provided (Crown revenue), and the actual cost of the activities required for administration of the Act.

¹ Beneficiaries are those (individuals or groups) who benefit from a government service. Generally, it is equitable to charge beneficiaries because they directly benefit from the service.

² Exacerbators are those (individuals or groups) whose actions or inactions present a risk of negative effects or externalities. Generally, it is equitable to charge exacerbators because their actions or inactions create the need for a government service, and they are best placed to change their behaviour to reduce the negative effects or externalities.

Levy provisions

12. Levies can be charged for:
 - implementation of pest management plans (section 110L);
 - wholly or partly funding an industry organisation's commitments under the Government/Industry Agreement for readiness and response (GIA) under Part 5A; and
 - the purposes of wholly or partially funding a service provided or function performed by the department for the purposes of the Act (section 137). The levying provision in Part 5A does not prevent section 137 being imposed on a sector that is not a GIA partner to fund a readiness or response activity.
13. Currently, there are two biosecurity levies under section 137:
 - The Biosecurity System Entry Levy recovers the cost of services required to clear consignments of imported goods at the border. The Biosecurity System Entry Levy is predominantly collected on consignments of imports valued at over \$1,000. The Biosecurity System Entry Levy is also charged when air or seacraft or freight forwarders submit a cargo report to NZ Customs.
 - The Border Clearance Levy / Border Processing Levy recovers costs incurred by NZ Customs and Biosecurity New Zealand to effectively manage risks at the border. This applies to all travellers entering New Zealand.

Regulations

14. The Biosecurity (Costs) Regulations 2010 set charges for a range of activities and services provided by the Ministry to third parties, including:
 - inspection of imported biosecurity risk goods, including unaccompanied personal baggage and effects, used vehicles and machinery;
 - inspection of offshore craft and shipping containers that do not meet entry requirements;
 - testing, treatment, destruction and disposal of risk goods;
 - call-outs and other work outside standard working hours, travel and waiting time for MPI;
 - inspectors to carry out biosecurity clearance activity;
 - monitoring controls on new organisms in containment facilities;
 - approval and audit of transitional and containment facilities and its operators; and
 - approval of permits issued under Import Health Standards.

Other Legislation

15. The Airports (Cost Recovery for Processing of International Travellers) Act 2014 enables the Crown to recover the costs of aviation security, biosecurity, and customs traveller processing from the operators of international airports in relation to:
 - scheduled international flights arriving at, or departing from, new or re-established international airports; and
 - International flights, where, on request, travellers are processed in a non-routine manner at any international airport.
16. The Airports (Cost Recovery for Processing of International Travellers) Act enables a cost recovery regime to be set in regulations (such regulations are yet to be made).

2.2. Scope of options

17. Appropriate Crown appropriations for the biosecurity system is a public finance issue and out of scope of this analysis. The options and assessment in this Statement are constrained to reviewing current legislative cost recovery and levy provisions to assess whether these could be strengthened to support the long-term financial sustainability of the system.
18. We reviewed MPI cost-recovery and levy provisions (sections 135 and 137). We consider they are sufficiently broad in scope for the purpose they are intended to serve and aligned to the principles of equity and efficiency (as required under the Act). The provisions are necessarily precise in order to meet the Government's and MPI's cost recovery principles.³ These provisions could potentially be used for a variety of non-GIA related pest and disease biosecurity responses. However, any such measures would need to be assessed against public benefit outcomes and cost-recovery principles.
19. MPI is continuing to explore how these provisions can be used to better recover biosecurity costs across a range of services and functions. Accordingly, this assessment does not include options to amend those provisions. However, for completeness, we have assessed one proposal in 'Section 4 – Cost recovery from non-signatory beneficiaries' (pgs. 17 – 28) which would require amendments to the current cost recovery provision.
20. Our analysis also does not consider options that would shift the Act from being enabling to being prescriptive. Accordingly, the option to transfer all GIA Deed elements into legislation (either in primary legislation, or a combination of primary and secondary legislation) has not been considered as it would undermine the partnership principle that underpins Part 5A of the Act.
21. Finally, the options presented in this paper are not mutually exclusive. While they are presented as individual proposals, final policy recommendations following consultation may result in recommendations for a package of different proposals so that they work consistently across the system to deliver desired outcomes.

³ **Transparency** - costs are transparent; **Justifiability** – costs are reasonable; **Efficiency** – net benefits are maximised; **Equity** – costs are fair.

2.3. Problem or opportunity

22. Biosecurity risk management is becoming more expensive. Biosecurity threats to New Zealand are growing in scale and complexity, with increasing pressures on the system from trade, tourism, public health and climate change impacts. As noted above, MPI is continuing to investigate how current MPI-directed cost recovery and levy provisions could be used more effectively to recover costs of biosecurity services and functions.
23. Specific to this assessment, funding arrangements for readiness and response activities may not always be equitable, transparent, efficient, or effective. It is timely to test whether the current settings are equitable so that taxpayers are not paying a disproportionate share of response costs. This includes reviewing existing cost-shares under the GIA (refer Section 3 of this paper), and the recovery of costs from non-signatory beneficiaries (Section 4 of this paper).

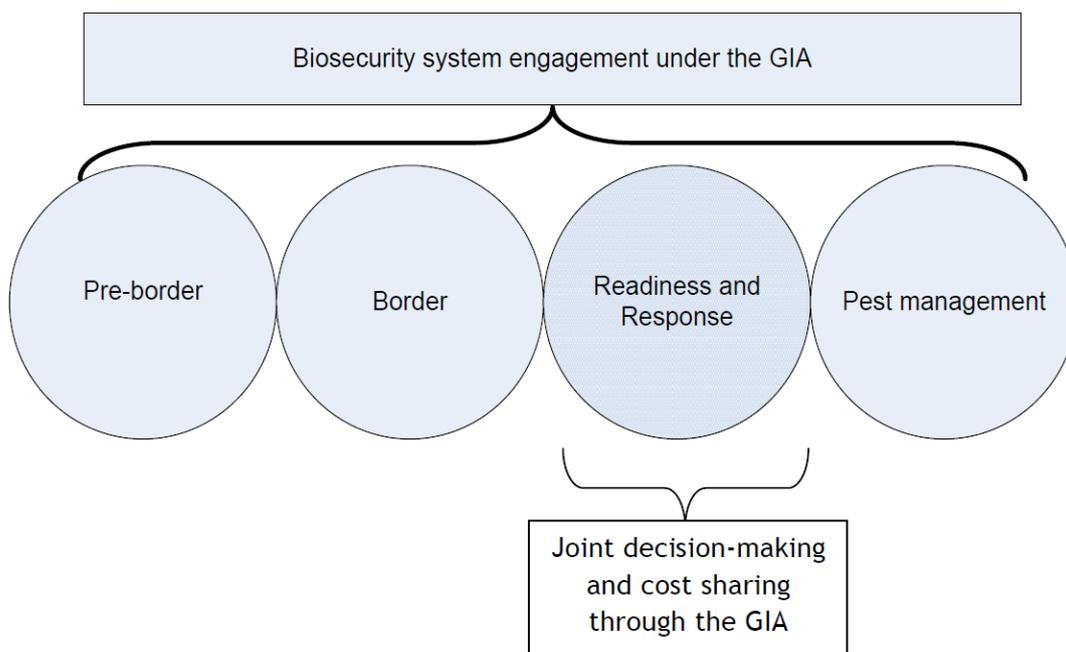
3. Cost-shares in the Government Industry Agreement

3.1. Background

24. In keeping with the overall enabling legislative framework, Part 5A of the Act provides a high degree of flexibility to the Crown and industry signatories in negotiating the GIA.
25. The GIA is a partnership between government and industry to improve New Zealand's biosecurity readiness and response activities.⁴ Under the GIA, industry organisations and the Government, represented by MPI, sign a Deed (the Deed) that formally establishes the biosecurity partnership.⁵ The Deed outlines the principles of the partnerships between MPI and each industry signatory. It is an Agreement that is enabled by legislation, rather than prescribed by it.
26. The Deed supports partnership between government and industry for:
 - engagement across the wider biosecurity system; and
 - joint decision-making and sharing of costs for agreed readiness and response activities for unwanted organisms.

⁴ Readiness activities are undertaken to prepare for, or to prevent or reduce the impact of an unwanted organism entering New Zealand. Response activities are undertaken when a pest or disease arrives here for the purpose of investigating it, minimising its impact, controlling its spread, and/or eradication.

⁵ The current list of GIA signatories can be found at: www.gia.org.nz/About-GIA/Signatories



27. The GIA improves biosecurity readiness and response through a range of measures including sharing decision-making, sharing responsibilities, and sharing of the costs of managing biosecurity threats.
28. The GIA sets out how costs are shared between the Crown and industry. Under current funding arrangements, cost-shares for GIA signatories are agreed and set out in Operational Agreements to provide a clear way of sharing readiness and response costs. The Deed is the foundation document for all Operational Agreements. Each Operational Agreement is a separate agreement detailing commitments binding on the Signatories. The Deed is periodically reviewed, and cost-shares are renegotiated every time an Operational Agreement expires.
29. Costs are intended to be shared in equitable proportions that reflect how much the public and industry each benefit from these activities. The Crown's contribution has been agreed by Cabinet. MPI currently meets the first 20 percent of the cost for a joint activity (excluding minimum commitments) in recognition that activities such as trade and tourism can create biosecurity risks (Clause 3.3 of the Deed). This is referred to as the 'exacerbator fee'. The quantum of the exacerbator fee is not set out in the Act. It was agreed by a Cabinet decision in 2014 and is noted in the Deed. The exacerbator fee acknowledges that MPI cannot reduce risk to zero and some responses may be a result of risk goods entering the country. The 20 percent was accepted as a compromise and recognises that trade benefits everyone and the government's role in trade decisions does not make it liable for all costs associated with all border risks. The government funds a large proportion of border and post border biosecurity costs to recognise the public good aspects of biosecurity. In addition, importers also make a fair contribution to the management of biosecurity risks through existing importer levies.
30. The remaining 80 percent of the cost is split between industry and the government, with industries paying a maximum of 50 percent of the total costs of the readiness and/or response activity (Clauses 3.3, 5.1 of the Deed).
31. Table 1 sets out how these different contributions and caps operate to set out how much government and industry pay respectively.

Table 1 - Cost-share categories

Cost-share categories	Estimated benefit share (%)		Agreed cost-share (minimum 50 percent contribution from MPI) (%)		
	Public	Industry	Exacerbator Contributed by MPI	MPI	Industry
1	10	90	20	30	50
2	20	80	20	30	50
3	30	70	20	30	50
4	40	60	20	32	48
5	50	50	20	40	40
6	60	40	20	48	32
7	70	30	20	56	24
8	80	20	20	64	16
9	90	10	20	72	8
10	100	0	20	80	0

3.2. Problem or opportunity

32. The GIA has been successful in providing opportunities and benefits for industry participants to work together and with MPI in responding to biosecurity incursions. However, there are opportunities to improve the equity and fairness of determining response costs.

It may not be equitable for the Crown to continue meeting the exacerbator fee

33. A potential side effect of this exacerbator fee is that, in some cases, industry may not fully bear the appropriate share of costs of biosecurity risks because the Crown absorbs a flat 20 percent of the risk when some costs may be more appropriately borne by industry. There are also situations where neither the Crown nor industry are responsible for the risk – for example an incursion occurring from wind-borne pests and diseases such as myrtle rust.

34. It is not clear whether a flat 20 percent exacerbator fee is justified on its own merits and/or whether this is consistent with joint cost-shares as envisaged under the GIA and wider cost-recovery guidance. There is an opportunity to design an exacerbator fee in a more robust and transparent way, to ensure that the Crown’s contribution (via taxpayer funds) is appropriate.

Current cost-shares are not always equitable

35. After the exacerbator fee has been applied, the remaining 80 percent of the cost is split between industry and government, with the condition that industry never pays more than 50 percent of the total costs. This means that in some situations where industry is the major beneficiary, the Crown (hence taxpayers) is funding a share of response costs that is greater than the benefits they may receive.
36. This issue was raised as part of the 2022 Deed review. It was not progressed as it was considered too complex to resolve within the Deed review timelines. It was also considered to be an issue on which industry and government would not agree and that it should be subject to further work. This means that current cost-shares have not been reviewed within the timelines specified within the Deed.

3.3. Options

Option 1 - status quo

37. Under this option, Government would continue to meet exacerbator costs. The maximum 50 percent cap on industry contributions to response costs would remain, as previously described. It remains open to the Government to make decisions relating to its contribution cap within the GIA and to seek a renegotiation of the Agreement, subject to Cabinet decisions following a review (periodic or otherwise) of the Deed.

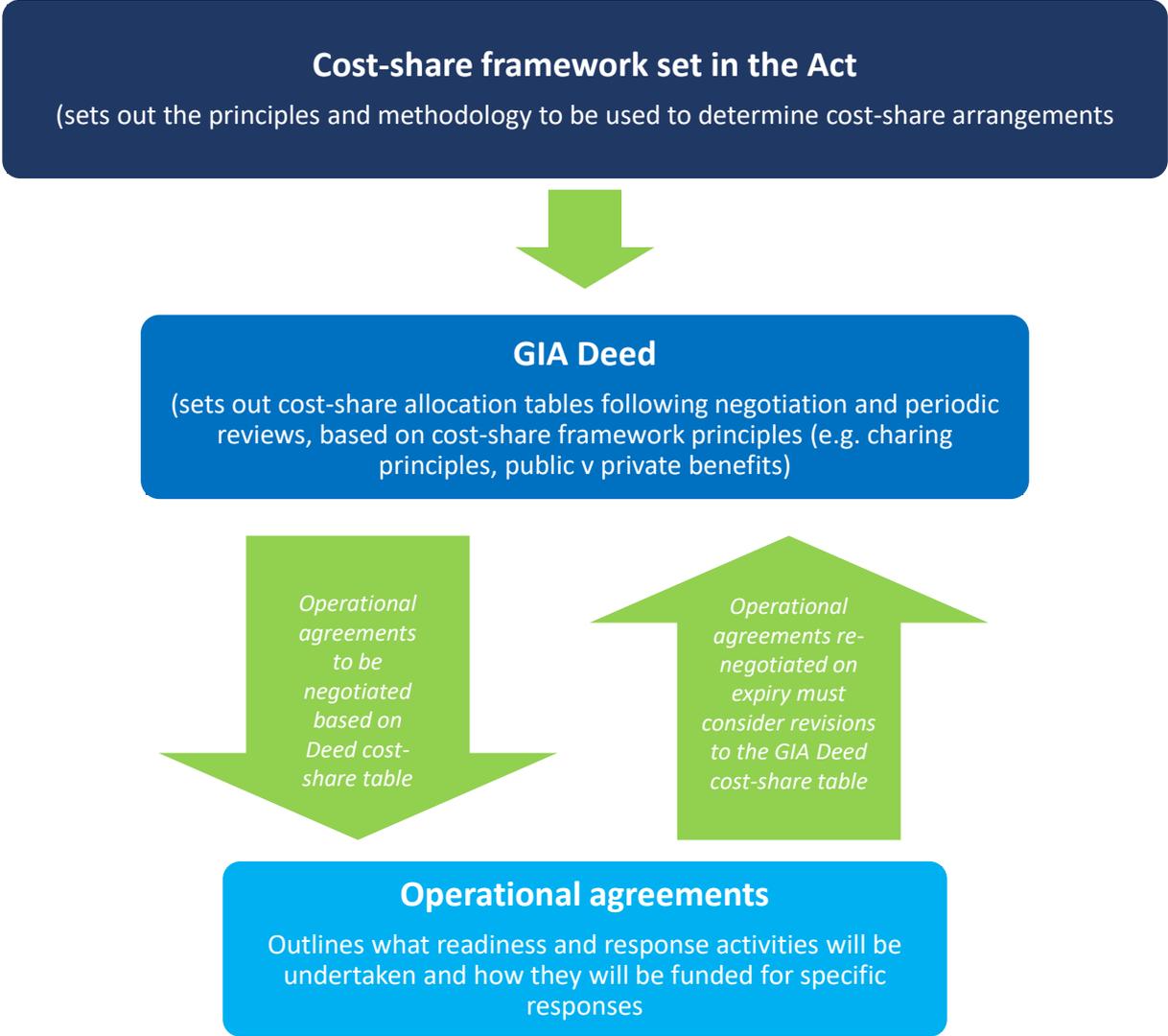
Option 2 – mandate a periodic review of the cost-shares in the GIA Deed

38. The Deed is reviewed every five years. This review is set out in the Deed itself after agreement by Government and industry, rather than as a requirement of the Act. The review also covers the Deed as a whole.
39. Under Option 2, a specific requirement would be added to Part 5A of the Act to compel cost-shares in the Deed to be reviewed at regular intervals. The reviews could be every five years as currently stipulated in the Deed or at more frequent intervals.
40. This requirement would include a review of the exacerbator fee and any cap (currently 50 percent) on the industry share of total cost and would be underpinned with a clear policy rationale for how future cost-shares should be apportioned and why.
41. It would also make it explicit that a review of cost-shares must be conducted and concluded as part of regular Deed reviews. To reflect Government's role (the Deed is between the Crown and Signatories) this option would clarify that recommendations made on cost-shares following a review would be subject to confirmation by the responsible Minister.
42. This option would be limited to reviewing the Deed and not Operational Agreements. While cost-shares under operational agreements would continue to be able to be re-negotiated at any point during the term of the Operational Agreement (or on expiry), any re-negotiation would need to be aligned with revised cost-share arrangements under the Deed.

Option 3 – set out a cost-share framework in legislation to guide cost-share arrangements with GIA partners

43. Under this option, Part 5A could be amended to include a cost-share framework setting out the principles and methodology to guide setting cost-shares between the Crown and GIA partners. Alternatively, we could empower the making of regulations and set out the cost-share framework in secondary legislation. We will consider the best legislative vehicle after public consultation. For now, our focus is on the feasibility of Option 3 (rather than how it would be delivered in legislation).
44. The cost-share framework in legislation would not set out specific allocation of cost-shares between parties. This would not be efficient or adaptable to meet different biosecurity response measures. Instead, the framework would inform negotiation on appropriate cost-shares during periodic reviews of the Deed.
45. Operational agreements would continue to operate as per the Deed under which they were made. On expiry and during renewal negotiations, these agreements would need to be aligned with any updated cost-share arrangements under the Deed.
46. To ensure arrangements stay up to date, a requirement could be included in the Act for all current cost-share arrangements to be reviewed at regular intervals.
47. Any cost-share framework prescribed in the Act could include reference to:
 - Charging principles - cost allocations must be aligned with the principles of cost recovery (namely transparency, justifiability, efficiency, and equity);
 - Entities that are subject to cost-share obligations - For example, the Crown and all primary sector and other entities (either through representation by an industry or individually) that directly benefit from or exacerbate the biosecurity activity to eradicate or manage biosecurity risks.
 - Estimated public vs private benefit considerations – this would recognise that cost allocations should align with estimates of the scale of public v private benefits, considering health, environmental, cultural, and economic impacts.
 - Due process requirements – setting out expectations for reaching agreement on issues such as decision-making and cost allocation; and
 - any other appropriate considerations related to cost-share arrangements.
48. Figure 1 below shows the proposed relationship between the framework in the Act, the Deed and individual operational agreements.

Figure 2 - Interaction between the Act, GIA Deed and operational agreements under Option 3



3.4. Assessment

49. The options are assessed against the following criteria:

Effective	Does the option share the costs and effects of biosecurity equitably? Does the option lead to effective partnership and coordination between government and other players of the biosecurity system?
Adaptable	Does the option deliver a modern legislation that is future-proof and enabling?
Efficient	How will the option address the administrative burden on regulators, and/or the compliance burden on regulated parties?
Clarity	Is the option logical, consistent, easy to understand, and provides sufficient certainty?

50. The options are not mutually exclusive. All options would retain the current requirement to periodically review the Deed.

51. Option 2 (mandate a periodic review of the cost-shares in the Deed) generally does not meet the criteria. Option 2 is neutral on the effective and adaptable criterion. In theory, Option 2 could lead to more equitable cost-shares that support a comprehensive and robust biosecurity system, economic recovery, and development. The Act sets out a process, but the outcomes are left to the negotiation of the parties to reflect their needs at any given point in time. However, a requirement to update may not result in any fundamental change owing to the existing 'consensus rule'. While Cabinet could make decisions on the Crown's preferred cost share following or during a review of the Deed, it is unlikely that GIA partners will be willing to increase their current contribution caps. This could undermine the continuing operation of the GIA framework if GIA partners choose to withdraw from the Agreement.
52. Option 2 would make the system less efficient. The existing review arrangement is included in the Deed so uses existing processes. This could result in more detailed and lengthy Deed review processes than have been experienced to date.
53. Option 3 (set out a cost-share framework in the Act to guide cost-share arrangements with GIA partners) meets some of the criteria. In terms of effectiveness, Option 3 could achieve more proportionate and equitable cost-shares that best reflects the costs and benefits of activities. This could lead to industry investing more in preventive biosecurity measures. However, Option 3 could seriously disincentivise partnership by taking a core decision about cost-shares away from GIA consensus decision-making. Additionally, amending legislation can be a very resource-intensive and time-consuming process which is less flexible than a process of amending the Deed or Deed partners agreeing rules to manage the issues. It therefore is much worse for the adaptable criterion than the status quo.
54. Option 3 has the added benefit of having wide application across the biosecurity system where cost-shares are relevant. This option would provide an overarching cost-share framework to determine the methodology for setting equitable and efficient cost-recovery mechanisms.

3.5. Cost benefit analysis

55. The analysis for these proposal uses a recent example to illustrate the impact the proposals would have had compared to the status quo.
56. Industry and Government had a cost sharing arrangement in place in the event of a fruit fly incursion. The Fruit Fly Operational Agreement, first signed in May 2016, was the first such agreement under the GIA. The cost-share arrangements, after the 20% exacerbator fee, agreed in the Operational Agreement were as follows:
 - 70% Govt:30% Industry for readiness (annual cost)
 - 70% Govt:30% Industry for a Level 1 response
 - 80% Govt:20% Industry for a Level 2 response
 - 90% Govt:10% Industry for a Level 3 response⁶

⁶ The Fruit Fly Operational Agreement opted to use 'response levels' to agree different cost shares depending on the type of response. Response levels are Operational Agreement specific. For the Fruit Fly Operational Agreement, a Level 1 response is triggered where a fruit fly is detected in a surveillance trap. A Level 2 response is where there is evidence of a breeding population in New Zealand. A Level 3 response is where the infestation of fruit fly is found to be widespread.

57. The 2015 Fruit Fly Response cost \$15 million. Government paid the 20 percent exacerbator fee, i.e., \$3 million. The remaining \$12 million cost share was apportioned as agreed in the Operational Agreement and the final cost shares were as follows:
 - Level 1 response – 76:24 for Government and industry
 - Level 2 response (for Northcote): 84:16 for Government and industry.
58. The Fruit Fly Response illustrates the loss of equitable distribution in cost-recovery during response. The Crown’s cost-share in responses may not always be proportionate to the benefits to taxpayers from taking action (i.e. launching the response).
59. Option 2 (mandate a periodic review of the cost-shares in the Deed) would depend on the consensus decision-making model of the GIA. This option is therefore unlikely to result in a positive cost benefit ratio and is not recommended.
60. Option 3 (set out a cost-share framework in the Act to guide cost-share arrangements with GIA partners) directly addresses the equitable distribution of costs to reflect scale of public versus private benefit by prescribing the cost-sharing framework that must be used. This is likely to shift the cost-sharing distribution towards the intended balance. However, a dramatic change to the cost-sharing that shifts more of the burden to industries will likely result in behavioural changes – their willingness to sign up to and take part in the GIA. We will be requesting information to scale the impact of potential behavioural change and its potential fiscal impact during the consultation period.
61. The overall impact of these options on equitable cost recovery is set out in Table 2. The cost benefit impact of Option 2 is set out in Table 3, and the cost benefit impact of Option 3 is set out in Table 4.

Table 2 – overall impact of options on equitable cost recovery

	Option 1 – status quo	Option 2 – regular reviews	Option 3 – prescribed framework
Impact on equitable cost recovery	No change expected. Under current legislation cost-sharing has not been equitably shared to reflect public versus private benefit. This would continue.	Minimal change. Regular reviews will increase opportunity for discussion and agreement. Each review can shift the equitable balance but is not a guarantee.	Positive change. All parties signed to the GIA required to use the same framework designed to provide equitable cost-recovery spread that reflects public vs private benefit.

Further analysis needed after consultation

62. The suite of proposals shows where change can help strengthen the biosecurity system by equilibrating cost sharing arrangements. However, a change in the number of industries that sign up to or leave the GIA will impact the fiscal outcomes of this cost-sharing initiative.
63. Further information to be gathered as part of the public consultation will add clarity to the feasibility of these proposals. Our primary industries are varied and complex, discussing the potential impacts with them directly will strengthen the final, if any, proposals and will indicate where further cost-benefit analysis is due.

Table 3 - Cost benefit impact table for Option 2

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the option compared to taking no action			
Industry GIA partners	None to minimal cost impact. Assumption that the review will lead to no change in cost share arrangements.	Low	High
Crown	None to minimal cost impact. Assumption that the review will lead to no change in cost share arrangements.	Low	High
Total monetised costs		N/A	High
Non-monetised costs		Low	High
Additional benefits of the option compared to taking no action			
Industry GIA partners	No change. Assumption that the review will lead to no change in cost share arrangements.	Low	High
Crown	No change. Assumption that the review will lead to no change in cost share arrangements.	Low	High
Total monetised benefits		N/A	High
Non-monetised benefits		Low	High

Table 4 - Cost benefit impact table for Option 3

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the option compared to taking no action			
Industry GIA partners	Possible increased cost-shares. Time and resource invested in renegotiating the cost-shares to go in the Deed.	Medium	Low
Crown	Time and resource, and expertise, invested in renegotiating the cost-shares to go in the Deed.	Medium	Medium
Total monetised costs		Unknown	Low
Non-monetised costs		High	Medium
Additional benefits of the option compared to taking no action			
Industry GIA partners	More equitable and flexible cost share arrangements may mean the GIA is more sustainable for some partners	Low	Low
Crown	Possible reduced cost-shares Greater flexibility in allocating resources / costs to address biosecurity readiness and response activities	Medium	Medium
Total monetised benefits		Unknown	Low
Non-monetised benefits		Low to Medium	Low

3.6. Preferred option

64. We consider Option 3 (to amend Part 5A of the Act to include a cost-share framework and remove these requirements from the GIA Deed) will most likely achieve the best balance between our objectives.
65. A key benefit of Option 3 is an ability to review current cost sharing settings that favour industry partners and may not reflect the true costs of a biosecurity response. This reduces the Crown's exposure to disproportionate response costs and ensures a more equitable cost recovery mechanism. It better reflects and aligns with beneficiaries' needs and provides clear policy rationale. In addition, embedding a cost-share framework in legislation would support a consistent approach for setting equitable and transparent cost-recovery mechanisms to both GIA signatories as well as non-signatory beneficiaries.

3.7. Multi-criteria analysis

- ++ Significantly better than the status quo
- + Better than the status quo
- 0 No better or worse than the status quo
- Worse than the status quo
- Significantly worse than the status quo

	Option 1 - status quo	Option 2 - require review of Deed	Option 3 - set out a cost-share framework in the Act
Effective	0	<p style="text-align: center;">0</p> <p>Would require GIA signatories to ensure cost shares are regularly reviewed. The Act sets out a process, but the outcomes are left to the negotiation of the parties to reflect their needs at any given point in time. A mandated review could lead to more equitable cost-shares that support a comprehensive and robust biosecurity system, economic recovery, and development. However, we are uncertain if a requirement to update may will result in any fundamental change owing to the existing 'consensus rule'.</p>	<p style="text-align: center;">0</p> <p>Option 3 could achieve more proportionate and equitable cost-shares that best reflects the costs and benefits of biosecurity activities. This could lead to industry to invest in preventative biosecurity measures. However, it could seriously disincentivise partnership by taking a core decision away from GIA. We are uncertain how these competing interests balance and what this means for how effective Option 3 is.</p>
Adaptable	0	<p style="text-align: center;">0</p> <p>No substantive impact on the adaptable criterion.</p>	<p style="text-align: center;">-</p> <p>Option 3 could improve how costs are shared in the short-term. However, Option 3 would prescribe parameters on GIA negotiations and could jeopardise the value of the GIA in the long-term. Additionally, setting out a cost-share framework in legislation would mean future amendments require legislative change. This can be a very resource- and time-intensive process that is less flexible than amending a Deed.</p>

	Option 1 - status quo	Option 2 - require review of Deed	Option 3 - set out a cost-share framework in the Act
Efficient	0	- The existing review arrangement is included in the GIA Deed so uses existing processes. But could result in more detailed and lengthy Deed review processes than have been experienced to date.	+ An overarching cost-share framework in the Act may result in faster processes as parties would have certainty of the principles to guide the negotiations. Deed review processes to date have been lengthy and resource intensive and have not been able to address MPI's concerns with cost-shares.
Clarity	0	+ Setting the process and required objectives of a review would make the expectations on GIA more transparent and certain than the less specific review clause in the current Deed.	+ Setting a framework for cost-shares in the Act rather than through consensus arrangements in the Deed is likely to provide greater certainty to all parties.
Overall rating	0	0 Option 2 would only achieve the benefits we are seeking if meaningful and equitable cost sharing could be achieved through future Deed reviews. As decisions are by consensus, reviews may not lead to substantive shifts.	+ Cost-shares under Option 3 could likely better reflect and align with risk contribution and benefit sharing by removing any uncertainties associated with future Deed review processes. However, there are risks that this option may undermine industry confidence in the GIA partnership and reduce adaptability to changes in the future.

4. Cost recovery from non-signatory beneficiaries

4.1. Background

66. At least seventeen industry groups have not yet signed up to the GIA.⁷ These Non-Signatory Beneficiaries (NSBs) include wool, apiculture, eggs and numerous small horticultural produce sectors like squash, persimmons, tamarillos, olives, and feijoas. MPI is continuing to engage with these industries on the benefits of joining the GIA.
67. In 2013, Cabinet recognised this potential for non-signatories to benefit from GIA investments while not being part of its cost sharing arrangements. Cabinet determined that costs should be recovered from NSBs, where it is efficient and equitable to do so. This decision was intended to incentivise industries to join the GIA – which enhances the biosecurity coverage and benefits of the GIA.
68. Accordingly, when an operational agreement is developed, GIA partners identify potential NSB sectors and determine their proportion of readiness and response costs based on how much NSBs may benefit from these activities. MPI can then engage with NSBs on their share of costs and consider their feedback when deciding on the proportion each NSB would meet under the operational agreement.
69. MPI initially pays the NSB share and plans to recover this cost from NSBs if doing so would be efficient and equitable. Section 137 of the Act enables MPI to set levies to recover this share of the cost from NSBs but it has yet to be used for this purpose.
70. Section 137 requires MPI to set out details in levy orders in advance — such as who pays the levy, how it is calculated, and how it will be spent.

4.2. Problem or opportunity

The current situation impacts equitable cost-sharing for biosecurity activities

71. NSBs are not excluded from the effects of biosecurity readiness and response activities and so can benefit from GIA-funded activities without contributing directly to their cost.
72. This impacts the equity of the biosecurity funding regime as it shifts the onus and costs onto a subset of sectors. In addition, this impacts the effectiveness of the biosecurity system overall because sectors outside of the GIA are not incentivised to invest in managing biosecurity risk (to reduce their potential exposure to cost). GIA partners have also indicated that the lack of cost recovery from NSBs is an on-going concern.
73. The GIA partnership covers 94 percent of the primary industries. The percentage of NSBs depends upon the specific risk or pest that is being managed. While NSBs generally represent a small proportion of the overall sector, there are some industries that are more significant – for example, the egg industry represents about \$286 million in value to the primary sector⁸ and the wool industry represents \$400 million value⁹

⁷ This is an estimate based on MPI's knowledge of the primary industries.

⁸ As at December 2022, [NZ Egg Farming - Egg Producers Federation \(eggfarmers.org.nz\)](https://eggfarmers.org.nz)

⁹ Pg 148, [Situation and Outlook for Primary Industries June 2024 \(mpi.govt.nz\)](https://mpi.govt.nz)

(approximately 3.7 percent of the livestock industry). A pest or disease impacting these sectors could leave the Crown exposed to a significant fiscal shock in the millions.

It is difficult to recover costs from NSBs under current cost-recovery settings

74. Biosecurity responses, by their nature, are unpredictable. Thousands of pests and diseases could arrive in New Zealand, with no certainty about which ones, when, and which sectors they will affect or what a response might cost. This unpredictability makes it hard to determine a way to recover NSBs' cost shares for future biosecurity responses.
75. MPI would need to update levy orders under section 137 regularly to reflect changes in the types of pests and diseases, the NSBs to be levied, and their cost shares. Developing or updating levy orders and seeking Ministers' approval can take weeks to months — critical time during a biosecurity response. This makes it difficult, if not impossible, to ensure there is an appropriate cost recovery mechanism in place prior to a response occurring.
76. When an operational agreement is not in place at the start of a response, GIA signatories work to rapidly implement an operational agreement. The GIA Deed allows response costs to be shared with GIA signatories from the start of a response. However, the cost shares from NSBs can only be recovered after an operational agreement is in place and included in the levy order under the Act, and then only for response costs incurred after the start of the levy. This may lead to situations where NSBs' shares of the initial (and often most expensive) response costs cannot be recovered because section 137 does not explicitly allow retrospective effect of the levy.

4.3. Options

Option 1 - the status quo

77. Under the current arrangements, costs can be recovered from NSBs under section 137 for readiness and response activities, where equitable and efficient to do so. In a response, this would be possible where cost shares are already known — for example, where there is already an operational agreement in place that sets out NSB cost shares and a levy is in place.

Option 2 - levy NSBs to build an up-front fund

78. This option involves amending the Act to allow MPI to pre-emptively levy NSBs to build a standing readiness and response fund. This would be like an insurance fund that would be used to meet NSBs' shares of readiness and response costs (including compensation costs, where relevant) when a response occurs. Funds would be held in an MPI-managed fund, and then drawn down to meet each NSBs' estimated share of readiness and response costs once these have been incurred.
79. MPI would determine the fund amount in advance to ensure it was large enough to cover NSBs' shares of future readiness and response costs. There would continue to be a risk that a response to a large-scale incursion, or multiple incursions, would deplete the fund, and would not avoid a fiscal shock for Government and industry, and a severe impact on New Zealand.

80. To avoid cross-subsidisation between different sectors, notional accounts could be used to split out contributions. For example, arable, aquaculture, and horticulture NSBs could each pay into a notional fund within the overall 'Readiness and Response Fund' to meet their share of costs.
81. The levies could be paid by individual NSB producers, with their industry organisations acting as a collection agent for the levies (similar to how the current Commodity Levies regime works), with the collected levies then paid on to MPI.
82. Each NSB's contribution to the fund would be based on factors like its size or annual production, and potentially a weighting for the possible impacts of pests and diseases to ensure it was equitable. The overall share from each NSB sector would be split out to determine levies each individual firm pays. Levies would likely be charged over several years to build up the fund and to spread the cost impact on levy payers.
83. Because each NSB industry is different, levies would need to be tailored for each so that the levies reflect:
 - the unique nature of each sector — including their size, nature of what they produce, and exposure to biosecurity risks and benefits;
 - the units of production that levies would be based on (for example, per kilogram or litre of produce); and
 - the collection points for each NSB so that levies are collected at an appropriate point in the production or sales chain for each sector (for example, at first point of sale).
84. MPI could administer the fund to ensure a close link between the response fund and response decisions. Legislation would set out the requirements for managing the fund. Legislation could set a limit on the fund to avoid excessive build up, determine how to consult on levies, specify what the funding is to be used for, and specify how to hold the funds.
85. A key factor in designing this option is ensuring small NSB sectors are not over-burdened by paying readiness and response levies. Determining levy amounts based on sector size and output would help ensure that levies reflect the size and nature of each sector. Also, there may be a minimum threshold for payment — small NSB industries would not pay if it cost more to collect the levy than the levy itself. Suitable recourse for non-payment of the levy would also be developed, such as charging extra for late payment.¹⁰
86. Setting the fund amount will require input from relevant experts (including actuaries, economists, and biosecurity and industry experts) to ensure the fund amount reflects factors like emerging biosecurity risks and economic trends. This detailed design work would only be undertaken if this option be progressed, so is not explored here in detail.

¹⁰ This aligns with how late payments are treated on Commodity Levy Orders.

Example: Allocating costs under Option 2 – a worked example

This worked example sets out how cost shares and levy amounts may be developed and allocated under this option. ***It is indicative only.*** The actual cost shares and levy amounts for NSBs would need to be developed in detail and consulted on if this option is progressed.

How this option may work in practice

As this option involves building up a standing response fund, the first decision would be to determine the target fund amount to meet NSBs' share of cost. In recent years, median response costs have totalled \$15 million (excluding *M. bovis*) per annum.

Under the assumption that NSBs represent approximately 15 percent of sector value, a target fund amount for NSBs may be \$2.25 million per annum, plus a contingency allowance. Funding for large-scale incursions would require a much higher estimate. This amount would be charged annually and drawn down as needed to meet NSBs' share of cost each year. Over and under allocation from the fund would be managed through either adjusted levies in future and rolling over remaining amounts to the year following.

The actual collection point and unit of production the levy would be attached to would need to be determined for each NSB. For simplicity, this worked example assumes a flat levy amount per annum.

Examples of potential cost shares and levy amounts under this option

In the example below, the fund amount of \$2.25 million is split across different NSB groups by using a proxy for each sectors' degree of benefit from biosecurity activities (such as their total annual sector revenue). As an example only, we have not considered other proxies. This gives cost shares attributable to each NSB sector that would then be split across their individual industry members in the form of annual levies.

The table below sets out how cost shares and levies could be set for five fictional NSB sectors based on their sector value and size, using the assumptions above.

Sector	NSB sector value (\$m p.a.)	Sector size (as proportion of fund)	Sector cost share amt (\$)	# levy paying producers	Levy amount per annum (\$)
NSB 1	500	64.5%	1,451,250	500	2,903
NSB 2	200	25.8%	580,500	350	1,659
NSB 3	60	7.7%	173,250	100	1,733
NSB 4	10	1.3%	29,250	50	585
NSB 5	5	0.7%	15,750	30	525
Total	775	100%	2,250,000	1,030	

Ensuring efficient and effective collection of levies across the large number of payers in this example is important. Each levy amount in the table above would be collected from individual NSBs via their industry organisation as collection agency, then passed through to MPI.

The actual methodology for working out cost shares and levies would need to be confirmed if this option were progressed. MPI would consult subsequently on the design of any cost recovery option, and on specific levy amounts, before any cost recovery is sought from NSBs.

Option 3 - levy NSBs after a response to recover costs

87. This option would require changes to section 137 or a new provision to explicitly allow retrospective effect of a levy for readiness and response. This option would enable specific funding schemes for each response. After a response, or at an appropriate point in a response for costs incurred so far, we could set levies to recover response costs from NSBs. This avoids the need to work out cost shares or levy amounts before a response has occurred, allowing sectors to focus their efforts on responding to the pest or disease itself.
88. Under this option, cost recovery for readiness and response could be separated:
 - readiness costs that could be determined in advance would be recovered by levying NSBs under the Act's existing cost recovery provisions (where we can efficiently and equitably recover these costs); and
 - response cost shares would be determined after a response.
89. Different levies would apply to NSBs for readiness and response costs and the levies would be based on actual costs. This avoids the need to predict or pre-determine activities, costs or how costs are to be shared.
90. MPI could determine how NSBs' shares of costs were to be funded based on the actual activities undertaken and costs incurred. MPI would develop a framework to determine how to recover NSBs' response costs, guide decision-making on sharing costs, and set criteria on when to apply a levy. All this would happen before a response. A defined approach to calculate cost shares and levies would be used, based on criteria such as the:
 - actual size of the response and its effect on NSBs;
 - mix of public and private industry benefit, and the cost shares attributable to the Crown and GIA industry signatories;
 - risk exacerbation by any NSB industry or organisation; and
 - benefits of the response for NSBs.
91. The broad requirements for how levies are set and administered could be outlined in the Act — including that cost recovery would apply to costs incurred from the start of a response. A schedule to the levy order would list the levies set for certain NSBs as they are confirmed.
92. When a response occurs, MPI would prepare and consult on a draft response funding scheme with NSBs, including:
 - a proposed breakdown of the costs of the response between the Crown, industry organisations that are parties to the GIA, and NSBs; and
 - how the costs allocated to each party would be recovered, including the method of collection and the timeframe over which the costs would be recovered.
93. Following consultation, levy orders would be made through regulations on the recommendation of the Minister for Biosecurity. Then, the cost shares would be collected via levies charged to NSBs producers. NSB industry organisations would act as collection agents for the levies from their members, with these amounts then paid to MPI.

4.4. Assessment

94. The options are assessed against the following criteria. Note that in addition to the main criteria, we have also included additional criterion around *fairness*. This assesses how fair the options are to producers.

Effective	How will the option affect incentives to manage biosecurity risk? Does the option share the costs and effects of biosecurity equitably?
Adaptable	Does the option deliver a modern legislation that is future-proof and enabling?
Efficient	How complex is the option to implement? Is it compatible with existing systems, processes, and other regulatory systems?
Clarity	Is the option logical, consistent, easy to understand, and provides sufficient certainty?
Fairness	How fair is the option to producers?

95. Option 2 (levy NSBs to build an up-front fund) would come with significant downsides for the efficiency and clarity criterion. Levy amounts and collection methods will need to be tailored for the different nature of each sector. With over 17 sectors identified as still being outside of the GIA, this levy regime would be complex to implement. The administration costs of developing and maintaining a standard fund are likely to be high. There may be an inequity and inefficiency issue as sectors would be paying into a fund for activities that may not occur or may benefit other industries.
96. Option 3 (levy NSBs after a response to recover costs) removes the need to determine a fund amount and levies without knowing future response costs. The administration costs avoided by establishing cost shares after a response and not standing up and managing an upfront fund could make this option more cost effective and operationally efficient, especially as this would focus on levying a smaller number of NSBs. However, this option is likely to be less equitable as it would expose NSBs to costs without knowing what the liability is.
97. In addition, similar to Option 2, Option 3 would be difficult to implement as it is likely be difficult to identify and recover costs from NSBs. While some NSBs have industry representation, the costs will still need to be recovered from individual NSBs. Some NSBs, while belonging to an industry may not be members of their industry body.
98. Cost recovery from NSBs under Option 2 and 3 must meet the requirements of cost recovery principles (namely transparency, justiciability, efficiency, and equity). Recovering costs from NSBs could enhance equity and efficiency in the funding system. However, recovering costs from NSBs may not be efficient or equitable in all instances. For example, administration costs may exceed the amount to be collected where NSB cost shares are very small. Further, for Option 3, the option involves recovering costs after those costs have already been incurred. This option therefore infringes on the rights of NSBs to be consulted before decisions around a response and associated costs are made.

99. A key challenge in setting cost recovery regimes is therefore balancing efficiency and equity. This means ensuring that costs are shared appropriately based on benefits received, while also making any levy regime efficient to administer.
100. An up-front NSB readiness and response fund is particularly suited to funding unpredictable biosecurity responses, as it ensures that funds are available to meet NSBs' share of response costs before they are needed. Readiness costs could also be drawn from the fund to meet NSBs' shares of readiness costs. Spreading the costs via levies over several years also reduces the cost burden on NSBs and makes it more efficient to recover both smaller and larger readiness and response cost shares.
101. Recovering costs from NSBs could also incentivise them to invest in biosecurity risk management and to join the GIA, which supports the effective criterion.

4.5. Cost benefit analysis

102. This proposal requires further scoping to develop individual cost estimates for the impacted groups. The impact analysis focuses on the proposal for change and whether it is appropriate to seek change given economic principles and Treasury standards. It analyses the overall cost of addressing marginal groups (non-signatory beneficiaries or NSBs) for cost-recovery measures from an economic perspective.
103. It is unclear what level of benefit NSBs derive so it is difficult to estimate the total benefits and the shares received by them. Statistically, this problem is considered incidental as the measured benefits to this smaller group is so little in comparison to the benefits for the larger players.
104. Both Option 2 and Option 3 are subject to efficiency challenges. The internal costs of assessing how much these smaller groups should pay to cover their portion of the benefit is not aligned with economic efficiency, whether that assessment is proactive (Option 2), or retrospective (Option 3).

Option 2 – levy NSBs to build an up-front fund

105. This option involves amending the Act to allow us to pre-emptively levy NSBs to build a standing readiness and response fund. This fund would be used to meet NSBs' shares of readiness and response costs (including compensation costs, where relevant) when a response occurs, alongside contributions from the Crown and GIA signatories.

Table 5 - Cost benefit impact table for Option 2

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the option compared to taking no action			
Non-signatories of GIA	Paying levies into a standing fund. Could be minimal to high for different NSBs depending upon how levy contributions are calculated. Opportunity costs – investing in a standing fund reduces funds to invest in other activities.	Unknown	Low
Signatories of GIA	None.	None	High
Government	Significant costs to Government to design administer and monitor standing fund and activities undertaken under the fund (e.g. if the make up of NSBs change or if the risk profile of sectors changes)	High	High
Total monetised costs		Unknown	Low
Non-monetised costs		Unknown	Low
Additional benefits of the preferred option compared to taking no action			
Non-signatories of GIA	Standing fund has impacts over time from improved resiliency. Ready resources to invest into more co-ordinated readiness and response activities that benefit the sector.	Low	Medium
Signatories of GIA	Standing fund has impacts over time from improved resiliency. Could incentivise some NSBs to join the GIA	Low	Medium
Government	The spread of cost-sharing will include more of the possible beneficiaries. Standing fund has impacts over time from improved resiliency. Could incentivise some NSBs to join the GIA	High	High
Total monetised benefits		Medium	Medium
Non-monetised benefits		Low	Medium

Option 3 – levy NSBs after a response to recover costs

106. This option would require changes to section 137 or a new provision to explicitly allow retrospective effect of a levy for readiness and response. This option would enable specific funding schemes for each response. After a response, or at an appropriate point in a response for costs incurred so far, we could set levies to recover response costs from NSBs. This avoids the need to work out cost shares or levy amounts before a response has occurred, allowing sectors to focus their efforts on responding to the pest or disease itself.

Table 6 - Cost benefit impact table for Option 3

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the option compared to taking no action			
Non-signatories of GIA	Payment of levy after a response. There will be a cost, and it could be high, but this is unknown as it depends on the response.	Unknown	High
Signatories of GIA	None.	None	High
Government	Calculating the cost sharing would be a costly and inefficient exercise. Reputational risk from deviating from cost recovery principles.	High	High
Total monetised costs		Unknown	Low
Non-monetised costs		Medium	Medium
Additional benefits of the preferred option compared to taking no action			
Non-signatories of GIA	None – this option is about recovering costs for benefits already.	None	High
Signatories of GIA	Could incentivise some NSBs to join the GIA.	Low	Medium
Government	The spread of cost-sharing will include more of the possible beneficiaries. Could incentivise some NSBs to join the GIA.	High	High
Total monetised benefits		Low	Medium
Non-monetised benefits		Low	Medium

4.6. Preferred option

107. At this stage, we do not have a preferred option. Both options could achieve the desired policy objective but would engage substantive legislative and design challenges. Option 3 would enable recovering costs and setting levies based on actual response or readiness costs incurred. However, this would involve recovering actual levies retrospectively. Option 2 would provide more transparency and equitable treatment but would be an inefficient process.
108. We anticipate feedback from public consultation to further inform our analysis. We will seek specific comment from NSBs on the likely impacts and costs of the two options. We will also continue to engage with the Treasury to explore how Option 3 could be designed to align with charging principles.
109. The actual costs of each option, and the shares of costs that would be attributable to NSBs and benefits of cost recovery, would be determined based on which option, if any, is progressed.

4.7. Multi-criteria analysis

- ++ Significantly better than the status quo
- + Better than the status quo
- 0 No better or worse than the status quo
- Worse than the status quo
- Significantly worse than the status quo

	Option 1 – status quo	Option 2 – levy NSBs to build an up-front fund	Option 3 – levy NSBs after response to recover costs
Effective	0	<p style="text-align: center;">+</p> <p>Could incentivise NSBs to proactively manage biosecurity as the levy incentivises NSBs to reduce their exposure to risk. This option also has potential to incentivise NSBs to join the GIA as they would have the additional benefit of influencing GIA decision-making, including decision-making over the usage of funding. Conversely, NSBs may decide that as they are paying into a levy for future responses, that they have less need to manage their risk. On balance, we consider the effectiveness of the biosecurity system is improved overall.</p>	<p style="text-align: center;">0</p> <p>Option 3 could have similar impacts as Option 2, but instead the prospect of recovery is based on actual costs incurred. On one hand, this could provide an incentive for sectors to proactively manage biosecurity risks to reduce their potential exposure to cost. However, equally, the incentive may be low as NSBs will operate with imperfect information. NSBs would not know how much they will be paying ahead of time (given the levy comes after a response), and with this imperfect information, it is possible NSBs will undervalue the risks they face. We are uncertain which of these incentives will be stronger for NSBs.</p>
Adaptable	0	<p style="text-align: center;">+</p> <p>Provides the government with an enabling power to pre-emptively building a standing fund. As it is enabling, each sector would have its own levy amount allowing for tailoring of levy amounts and collection methods. This future-proofs the management of readiness and response costs.</p>	<p style="text-align: center;">+</p> <p>Provides the government with an enabling power to recover costs after a response. Different levies would apply to NSBs for readiness and response costs and the levies would be based on actual costs. This avoids the need to predict or pre-determine activities, costs or how costs are to be shared. This future-proofs the management of readiness and response costs.</p>

	Option 1 – status quo	Option 2 – levy NSBs to build an up-front fund	Option 3 – levy NSBs after response to recover costs
Efficient	0	<p style="text-align: center;">--</p> <p>Because each NSB is different, levy amounts and collection methods will need to be tailored for each sector. With over 13 sectors identified as outside of the GIA, the levy regime would be significantly complex to implement. Based on experience from Maritime New Zealand’s Oil Pollution Fund, the administration costs of developing and maintaining a standard fund are likely to be high.</p>	<p style="text-align: center;">0</p> <p>Option 3 removes the need to determine a fund amount and levies without knowing future response costs. Administration costs are avoided as cost shares after instead worked out after a response. Option 3 could therefore be more cost effective and operationally efficient than seeking to levy NSBs in advance. However, clawing back costs after an event could still be administratively burdensome.</p>
Clarity	0	<p style="text-align: center;">-</p> <p>The complexity of this scheme may make it difficult to understand, though that risk may be alleviated if levies are well consulted during policy development. There may be an inequity and inefficiency issue as sectors would be paying into a fund for activities that may not occur or may benefit other industries.</p>	<p style="text-align: center;">-</p> <p>By enabling cost recovery from NSBs to be based on actual costs, this option would not likely meet the “open book” test of setting levies transparently.</p>
Fairness	0	<p style="text-align: center;">+</p> <p>Option 2 is fairer than the status quo, assuming that in the development of levy amounts and collection methods NSBs are given the opportunity to input into the policy design. This is an assumption.</p>	<p style="text-align: center;">--</p> <p>This is because this option involves recovering costs after those costs have already been incurred. This option therefore infringes on the rights of NSBs to be consulted before decisions around a response and associated costs are made.</p>
Overall rating	0	<p style="text-align: center;">-</p> <p>While this option may allow costs to be more equitably shared across affected sectors, there are significant concerns about whether this could be achieved efficiently, undermining how effective the option could be.</p>	<p style="text-align: center;">-</p> <p>This option would still make progress towards sharing the costs of readiness and response more equitably across the sector but would conflict with cost-recovery charging principles relating to equity and transparency.</p>

5. Compensation

5.1. Background

110. Under section 162A of the Biosecurity Act 1993, a person or business is eligible for compensation where the Government has exercised powers for the purpose of eradicating or managing an organism, and the person or business suffers a verifiable loss. For example, when MPI seizes or destroys property, or restricts the movement of goods, people can claim compensation to cover the losses from these actions.
111. Section 162A states that compensation should put someone in no better or worse position than a person who was not directly affected by the exercise of biosecurity power. MPI's experiences with previous biosecurity responses indicate that there are two broad categories of losses that are subject to compensation:
- **Direct losses:** these arise immediately from the Crown's use of powers. This is often the value of a property destroyed e.g. the value of the livestock culled or crops destroyed.
 - **Consequential losses:** these are losses that do not arise immediately but are connected to the property affected. The main example here is income that would have arisen from the property affected e.g. milk production losses for dairy cows. Consequential losses also cover other tangential losses such as professional fees and costs incurred in making claims or following MPI's directions.
112. Section 162A requires that a claimant must have taken reasonable steps to mitigate their loss.
113. Compensation is not available for the following circumstances:
- for losses that occurred before the exercise of powers;
 - for losses that relate to unauthorised or uncleared goods; and
 - if a person did not comply with biosecurity law in a serious or significant way. 'Biosecurity law' is a defined term and relates only to the Biosecurity Act and instruments made under it.
114. Third parties are generally not eligible for compensation because the Act requires the claimant to own the property affected by the use of powers.
115. If a claimant disputes their eligibility for, or the amount of, compensation, the claimant must submit their dispute to arbitration. In practice, MPI understands that arbitration can be a costly and lengthy process that is adversarial in nature. As part of operational practice, MPI offers alternative intermediary steps to claimants prior to arbitration:
- **Step 1: Internal Review:** If the claimant disagrees with MPI's decision on a claim, MPI can undertake an internal review of its assessment with a different assessor.
 - **Step 2: Independent Review:** If the claimant disagrees with the internal review decision, MPI may offer an independent review. This review would be conducted by a Panel of relevant independent experts (i.e. industry, legal, or financial expertise). The Panel may also conduct meetings with both parties to ask questions. The Panel reports its findings back to MPI's Director-General, with a recommendation. The claimant receives a copy of the report.

- **Step 3: Arbitration:** If a claimant remains dissatisfied, the claimant retains the ability to seek arbitration under the Arbitration Act 1996.

5.2. Problem or opportunity

116. The compensation settings are being reviewed because:

- Government should be prudent managers of public finance.
- The Bill provides the opportunity to re-design compensation provisions so that we maximise incentives for good behaviours and disincentives for bad behaviours and
- We have the opportunity to future-proof compensation settings to be more enduring and more flexible.

The cost of compensation can be significant

117. Compensation can be a significant cost when responding to a pest or disease. Claims data from three previous responses (as of week ending 15 July 2024) indicates how much compensation could be paid out for a biosecurity response (noting that the scale of responses varies significantly).

	<i>M. bovis</i>	<i>B. ostreae</i>	Fruit Fly
Total compensation (both direct and consequential losses)	\$286.72 million	\$11.81 million	\$0.25 million

118. Compensation is one of several payments the Crown can make to producers during a response. Other payments can include:

- payments to cover extra operational costs imposed by the response — such as paying to feed animals under a movement restriction;
- payments to support economic or community recovery — for example, Rural Assistance Payments from the Primary Sector Recovery Policy; and
- other financial payments — for example, welfare support following major civil emergencies and economic shocks to support the productivity and resilience of New Zealand’s primary sectors.

The Bill provides the opportunity to re-design compensation to maximise incentives for good behaviours and disincentives for bad behaviours

119. Improving biosecurity practices is a key focus area for strengthening the biosecurity system and reflects the idea that everyone has their part to play in preventing and managing biosecurity risk. There are several initiatives underway, led by both Biosecurity New Zealand and by sector organisations, that have a focus on lifting biosecurity practices. There is currently no legal requirement for individuals to prove they have taken steps to mitigate their biosecurity risk to be eligible for compensation.

120. Mitigating loss is different from mitigating risk. While the Act specifies claimants must take reasonable steps to mitigate their loss, this refers to taking steps to reduce their loss after the Crown’s use of powers. An example is restocking as soon as possible to avoid extended milk production losses. In contrast, mitigating risk refers to behaviours that prevent an infection, and therefore Crown’s use of powers in the first place. An example is disinfecting farm vehicles and equipment.

121. Managing biosecurity risks can be expensive. Research highlights the potential for compensation to have unintended effects.¹¹ Individuals may be more likely to engage in risky business behaviour and less likely to take steps to reduce their biosecurity risk if they think the Crown will compensate them for their losses.
122. The Act does not differentiate between initial and subsequent infections. A farmer is equally entitled to compensation each time they suffer loss due to the use of powers under the Act. Paying compensation without making people mitigate their biosecurity or financial risk could be raising expectations that the Crown should pay for the full cost of managing biosecurity. Our view is that biosecurity is best protected collectively.
123. Additionally, the Act states compensation must not be paid if biosecurity law has been breached. 'Biosecurity law' is a defined term and covers only the Biosecurity Act and its secondary legislation. A producer who does not comply with other requirements, for instance, the National Animal Identification and Tracing Act 2012, would still receive compensation. One of the purposes of the National Animal Identification and Tracing Act is to establish an animal identification and tracing system that improves biosecurity management. These other duties that New Zealanders must follow contribute to biosecurity management. It is counterproductive that a producer might breach other biosecurity requirements, affecting response efforts and increasing cost, time and resources, and yet still receive compensation.

The Bill provides the opportunity future-proof compensation settings to be more enduring and flexible

124. Our compensation arrangements do not reflect the varied natures of responses or claimants' needs. The compensation provisions lack flexibility. As every response and circumstance is different, a one-size-fits-all approach carries risk.
125. Finally, the Act requires that disputes about eligibility or the amount of compensation paid are submitted to arbitration. In practice, MPI offers alternative steps to provide claimants more efficient methods to dispute decisions on their claims. This process is working well. Nevertheless, the Bill provides an opportunity for MPI to be clearer about how it resolves disputes in the Act. This would provide better clarity about how the system is working in practice.

5.3. Options analysis introduction

126. We have considered five proposals (in addition to the status quo) to ensure compensation better addresses the incentives for producers to manage biosecurity risk, to report suspicious organisms, and to cooperate with a response. These are:
 - Option 2: refining how non-compliance would make a person ineligible for compensation.
 - Option 3: enabling more detailed compensation entitlements and requirements via regulation.
 - Option 4: removing restrictions on the ability for a government industry agreement to vary compensation and enable upfront payment of future losses that have not yet been incurred.

¹¹ <https://www.oecd-ilibrary.org/docserver/9789264279483-en.pdf?expires=1692749016&id=id&accname=oid056905&checksum=70724A464951A4B8BBEB5D308BC71398>

- Option 5: codifying the operational dispute resolution processes.
 - Option 6: stating which types of losses are and are not compensable, including removing some or all consequential losses from compensation, such as losses related to intellectual property.
127. There are two parts to the option analysis. The first part investigates Options 2 to 5 which improve the operation of the scheme. These are assessed together.
128. Option 6 involves sub-options and represents significant changes to the fundamentals of which types of losses can be subject to compensation. These are assessed separately.

5.4. Options – improvements to the operation of the scheme

129. The options assessed here to improve the operation of the compensation scheme are not mutually exclusive. All the options (except Option 1) could be progressed and implemented together, as each targets a different pain point in the legislation.

Option 1 - status quo

130. Under this option, no change would be made to compensation settings.

Option 2 - refining how non-compliance would make a person ineligible for compensation

131. There are three proposed amendments to section 162A(3)(c)¹² under this option:

- Provide an explicit definition for ‘biosecurity law’ which includes:
 - the Biosecurity Act and the National Animal Identification and Tracing Act 2012;
 - secondary legislation, plans, orders etc. made under the Biosecurity and National Animal Identification and Tracing Acts;
 - other legislated traceability systems; and
 - other legislated biosecurity requirements (for example, resource consents that set out a condition requiring a biosecurity management plan).
- Provide a clearer definition of what “in a serious or significant way” breach of law means by building on guidance already settled through cases and legal advice.¹³ That could mean taking into account various factors such as:
 - the culpability of the claimant, including the level of premeditation/planning and involvement of the offender (e.g. principal offender vs an aide/accomplice); and
 - the number, seriousness, date, relevance and nature of any previous offending.
- Make it explicit that the offending must be connected to the response / the purpose of the exercise of powers for the exclusion to apply. This way, not all offending would result in compensation being unavailable. The offending must be relevant to the reason there is government intervention in the first place.

¹² Section 162A(3)(c) states that compensation is not available to a claimant if they “did not comply with biosecurity law in a serious or significant way.”

¹³ The Paper 2: System-wide issues impact statement contains a discussion about providing sentencing criteria in the Act to guide courts in their sentencing decisions.

Option 3 - enabling more detailed compensation entitlements and requirements via regulation

132. This proposal aims to enable the creation of regulations to set:

- conditions on entitlement to compensation;
- which losses are eligible and ineligible for compensation;
- the amount of compensation paid; and
- varied schemes by industry, pest or disease.

133. These regulations would enable MPI to work with stakeholders to deliver improvements to compensation schemes including:

- creating a schedule of payments for certain types of property;
- limiting how much compensation is paid out; and
- setting out bespoke regimes for certain industries or responses.

134. An example of this is from Korea which has the following schedule for compensation:¹⁴

Table 7.4. Compensation discounts for destroyed livestock

Discount criteria		Reduction to the base compensation rate, %
Infection with FMD, AI, swine fever, and brucellosis		20%
Unregistered, unauthorised farms		10%
Non-compliance with the recommended stocking densities of livestock		No compensation for the livestock in excess of the recommended number
Failure by contractor to ensure training in farms raising animals under contracts		5%
Risk profile of farm	2 outbreaks within 2 years	20%
	3 outbreaks within 2 years	50%
	4 outbreaks within 2 years	80%
Disease reporting	Delay in reporting from 1 to 4 days	20%
	Delay in reporting of 5 days and over	40%
	Failure to report	60%
	Early reporting (on the day of outbreak or before the appearance of symptoms)	A decrease of rates by 10% of other penalties if they apply
Prevention during "peace time"	Failure to comply with orders such as inspection, administration of medicine or injection	5%
	Failure to vaccinate for FMD	40%
	Rejection, interruption, evasion of epidemiological study	5%
Compliance with control measures	Failure to disinfect	5%
	Failure to comply with movement restrictions	5%
	Violation of temporary movement restrictions	5%
	Failure to carry out culling	5%
	Failure to carry out orders, such as burial or disinfection	5%
	Failure to carry out orders, such as movement restrictions of infected object, restriction of washing	5%

Source: MAFRA (2016d).

Option 4 - removing restrictions on the ability to vary compensation and enable upfront payment of future losses that have not yet been incurred

135. The key elements to this proposal are:

- Remove restrictions on the ability for a government/industry agreement to vary the application of section 162A.

¹⁴ OECD, Producer Incentives in Livestock Disease Management (2017), [Producer Incentives in Livestock Disease Management - OECD](#).

- Enable (but not require) payment of compensation for future losses that will inevitably be incurred and cannot be mitigated.

Option 5 – codify the operational dispute resolution process

136. This option would codify the existing operational processes that MPI has set up as intermediary steps to arbitration. That means the Act would set out (or the Act could empower regulations to set out) the three steps, graduating up to arbitration:

- internal review;
- independent review; and
- arbitration.

5.5. Assessment - improvements to the operation of the scheme

137. The options are assessed against the following criteria:

Effective	How will the option affect incentives to manage biosecurity risk? Does the option share the costs and effects of biosecurity equitably?
Adaptable	Does the option deliver a modern legislation that is future-proof and enabling?
Efficient	How will the option address the administrative burden on regulators, and/or the compliance burden on regulated parties? How complex is the option to implement?
Clarity	Is the option logical, consistent, easy to understand, and provides sufficient certainty?

138. The options to improve the operation of the compensation scheme are not mutually exclusive. All four options for change could be progressed and implemented together, as each targets a different pain point in the legislation. Implementing multiple options together would more strongly improve the operation of the compensation scheme than only one or some of the options.

139. Option 2 (refining how non-compliance affects compensation entitlement) is more effective than the status quo. It is counterproductive that a producer might breach the National Animal Identification and Tracing Act and other biosecurity requirements, affecting response efforts and increasing cost, time and resources, and yet still receive compensation. Expanding the definition of biosecurity law to include breaches for other legislation that contributes to biosecurity outcomes may increase compliance and help to drive overall biosecurity behaviour. This takes a broader view of biosecurity beyond just the Biosecurity Act and makes the system more enduring.

140. Option 2 improves the clarity of the law by providing greater certainty to both the Government and claimants on what the terms ‘biosecurity law’ and ‘serious or significant way’ means.

141. However, Option 2 means some industries (i.e. those subject to the National Animal Identification and Tracing Act) and regions (i.e. where a regional council has set biosecurity requirements) could be penalised more than others. This might have unintended consequences. For instance, this may act as a disincentive for working with central government on other biosecurity or traceability systems (as the existence of those requirements and non-compliance could exclude someone from compensation). Additionally, the stewards of those other regulatory systems are unlikely to have contemplated that non-compliance within their regulatory system could have consequences on the entitlement to compensation within the biosecurity system.
142. Option 3 (enabling more detailed compensation via regulation) aims to futureproof the compensation regime by introducing the ability for the Government to make regulations that can establish broader compensation settings. The ability to vary compensation based on organism or sector enables more tailored risk-sharing between the Crown and claimants, and ensures the law is more adaptable and enduring. This may incentivise risk mitigation and loss mitigation which would better protect New Zealand from biosecurity risk.
143. Option 3 is efficient as the scheme can be tailored to the varied nature of incursions and response. Compensation could be tailored to a specific pest in the transition from response to long-term management, considering specific context including the distribution of risks and benefits.
144. Option 3 may affect the clarity of the scheme. Option 3 would require regulations to be developed each time we vary compensation. Having different regulations for different responses, organisms or sectors could make compensation more complex to understand and less transparent. Additionally, while Option 3 could enable MPI to respond better to the needs of producers during an incursion, it may result in different compensation for different incursions.
145. Option 4 (removing restrictions on the ability to vary compensation and enable upfront payment of future losses that have not yet been incurred) delivers a more enabling and enduring compensation regime through two targeted changes.
146. For the GIA, it removes restrictions on how the GIA can vary compensation. This delivers more tailored arrangements agreed with industry partners. This has the potential to drive improvements in practices by enabling Government and industry to come to mutually beneficial arrangements without unnecessary restrictions. An agreement with GIA partners to vary compensation could reduce the Crown's exposure to fiscal risk.
147. For claimants, section 162A requires a loss to have been incurred before compensation is paid. Enabling the payment of compensation for future losses could help reduce hardship for claimants by paying compensation payments sooner. We would only enable this for losses that will inevitably be incurred, and not for other losses where there is less certainty on whether they would be incurred or could not be mitigated. This helps to make the scheme more efficient for claimants.
148. Option 4 improves efficiency as MPI will have greater ability to work with compensation claimants in ways that suit their needs. GIA partners and MPI will be less restricted in their ability to create arrangements that are mutually beneficial. Option 4 does not have any substantive impact on effectiveness and clarity.

149. Option 5 (codify the operational dispute resolution process) may not have significant positive or negative impact on the effective criterion. Though Option 5 may better reflect the spirit of government and industry partnership because it shares costs related to biosecurity more effectively by providing a more cost-effective option for both parties. Equally, Option 5 may reduce choice as legislation could now require the three steps, graduating up to arbitration, whereas currently a claimant could opt directly to go to arbitration. However, the evidence shows claimants prefer the lower-level processes (there have only been three disputes have been submitted for arbitration since 2017). Option 5 is more enduring because offering alternative dispute resolution that steers disputes towards cheaper processes leads to a more enduring system. From an access to justice perspective, this is positive as it improves the transparency and clarity of the law.
150. However, this option comes with downsides. The current system works well. There are over 3500 compensation claims that have been made since 2017. Only three claimants have initiated arbitration, with a vast majority instead seeking to pursue the internal review and independent review processes MPI offers. This option would likely have little practical impact on what already happens operationally in administering the compensation scheme. It would, however, reduce the flexibility MPI currently has in how it resolves disputes. Inserting the independent panel process into legislation imposes parameters and requirements into how and which members are appointed to the panel which could make the process less efficient.

5.6. Cost benefit analysis - improvements to the operation of the scheme

151. For Option 2 (refining how non-compliance affects compensation entitlement), the work to enact this change is a part of government's business as usual so the cost is not included in this analysis. The benefits are qualitative improvements to the Act and so no calculated analysis is done.
152. Option 3 (enabling more detailed compensation via regulation) enables the ability to set secondary legislation that would help add clarity, transparency, and greater rules around compensation. The potential regulations would have cost implications for New Zealanders, and if this option is progressed and regulations are developed, the expectation is that they would be analysed in turn during that regulatory process. The cost of amending the Act to enable them is a part of the ordinary business of government, and so is not analysed further here. The benefit is a more flexible and appropriate method to regulate compensation that is subject to appropriate regulatory review.
153. Option 4 (removing restrictions on the ability to vary compensation and enable upfront payment of future losses that have not yet been incurred) enables greater action, but does not require it. The cost of amending the Act to enable them is a part of the ordinary business of government, and so is not analysed further here.
154. The scale, type, and cost of compensation varies too widely for different events to accurately measure what fiscal cost this tool will have in the future. It will need to be assessed case by case whether it is appropriate, efficient, fair, and equitable to pay compensation for future losses. It provides greater flexibility to aid industries and individuals with compensation where it is appropriate.

155. Option 5 (codify the existing operational processes that MPI has set up as intermediary steps to arbitration) would add clarity to our processes. As it is a part of the current practice, it will not have an additional cost to calculate for analysis.
156. Largely the work to enact this change is a part of government's business as usual so the cost is not included in this analysis. The benefits are qualitative improvements to the Act and so no calculated analysis possible. This impact analysis supports all options as a part of dynamic strengthening of the biosecurity system.

5.7. Preferred option - improvements to the operation of the scheme

157. We recommend implementing Options 2, 3 and 4. Together, this package of changes would improve the efficiency and flexibility of the compensation scheme and would address grey areas in the compliance system.
158. Based on the criteria and the objectives of the Biosecurity Amendment Bill, we are neutral on Option 5. Feedback from public consultation could enable MPI to better understand if the proposed changes improve access to justice and what impact it could have for claimants.

5.8. Options – the scope of losses that are compensable

Option 1 – status quo

159. Under this option, no change would be made to compensation settings.

Option 6 – stating which types of losses are and are not compensable, including removing some or all consequential losses from compensation

160. The first part of this option is about tangible property and goods. Under this option we propose to make current practice explicit in the legislation:
- For tangible property or goods that are destroyed, make explicit that compensation is payable for the market value of tangible property or goods.
 - For tangible property or goods that are damaged, make explicit that compensation is payable for the cost of repair/reinstatement or market value, whichever is lower.
- This effectively makes the existing operation of the scheme clearer for everyone. There should be no discernible difference to how claims are paid out compared with the status quo, but Option 6 makes the law more certain and transparent.
161. The second part of this option contains more substantive changes for consequential losses. This would potentially change what consequential losses we pay compensation for (if at all). For consequential losses, the Act could be amended to specify:
- **Option 6A:** income and professional fees are payable (including income would capture most consequential losses):
 - **Option 6B:** all consequential losses are payable for the first year a producer is affected by the exercise of government powers;
 - **Option 6C:** all consequential losses are payable for the first six months a producer is affected by the exercise of government powers;
 - **Option 6D:** professional fees are payable; or
 - **Option 6E:** no consequential losses are payable.

162. All sub-options in Option 6 include the proposal in the first part of the option to address tangible property and goods. The main trade-off between the options is how consequential losses are treated.

5.9. Assessment - the scope of losses that are compensable

163. The options are assessed against the following criteria. Note that for this option, in addition to the main criteria, we have also included additional criterion around *fairness*. This is because the proposed amendments to the scope of consequential loss that is compensable could have significant impacts on producers.

Effective	How will the option affect incentives to manage biosecurity risk? Does the option allow Government to manage fiscal pressures more sustainably?
Adaptable	Does the option deliver a modern legislation that is future-proof and enabling?
Efficient	How will the option address the administrative burden on regulators, and/or the compliance burden on regulated parties? How complex is the option to implement?
Clarity	Is the option logical, consistent, easy to understand, and provides sufficient certainty?
Fairness	How fair is the option for claimants?

164. All the options aim to limit how much consequential loss is compensable or would remove consequential losses entirely. Consequential losses can make up a significant portion of compensation payments. Claims can include:

- income;
- professional fees (typically legal, financial or farm consultancy fees);
- interest (where the delay in receipt of a person's usual income has caused them to incur greater penalty interest or miss out on credit interest); and
- intellectual property such as plant variety rights;

165. Claims data for three previous responses (as of week ending 15 September 2023) are used to illustrate how much would have been paid out if the settings for consequential losses were different.

Table 7 – Comparing cost of different options for removing consequential losses

Consequential losses	<i>M. bovis</i>	<i>B. ostreae</i>	Fruit Fly
If all consequential losses were paid (<i>i.e. status quo</i>)	\$147.30 million	\$10.22 million ¹⁵	\$0.25 million ¹⁶
If only income and professional fees were paid	\$127.30 million	\$10.06 million	\$0.018 million
If only professional fees were paid	\$0.77 million	\$0	\$0
If no consequential losses were paid	\$0	\$0	\$0

Table 8 – Total compensation cost

All losses	<i>M. bovis</i>	<i>B. ostreae</i>	Fruit Fly
Total paid for both property destruction and consequential losses (<i>i.e. status quo</i>)	\$286.72 million ¹⁷	\$11.81 million ¹⁸	\$0.25 million ¹⁹

166. We have not been able to provide costs for the options that involve limiting consequential losses by time limits. Accessing accurate data as to when losses were actually incurred during these responses is complex and not part of MPI's systems.
167. There have also been instances when compensation was provided for losses of intellectual property under the Plant Variety Rights Act 2022. This Act grants plant breeders and developers the exclusive right to commercialise propagating material (e.g. seeds or cuttings) of new varieties. [REDACTED]
[REDACTED] 9(2)(ba)
168. We anticipate the following impacts if consequential losses are limited or removed:
- Consequential losses can be a significant area of loss for producers and limiting it could result in hardship. If they receive less consequential losses, these businesses may struggle to continue to operate. This may also result in some primary producers leaving the industry if they have concerns that the risk of incursion and loss is too great to justify their operations.
 - Certainty of fiscal risk and affordability could improve for the Crown and for GIA partners in an environment of ongoing fiscal pressures.

¹⁵ Includes income lost from destroyed oyster/mussel stock, based on their eventual value at harvestable size rather than market value when destroyed.

¹⁶ Most losses were additional costs from operating waste collection businesses under the Controlled Area Notice.

¹⁷ This includes non-specified losses of \$4.177 million which have been assumed to be stock destruction payments.

¹⁸ Similar to footnote 15, this includes income lost from destroyed stock based on eventual value at harvestable size.

¹⁹ No compensation was paid for stock destruction in this response. Rather, income losses / additional costs resulting from the Controlled Area Notice movement restrictions were compensated.

- Excluding consequential loss will impact on people's behaviour. This could be positive or negative. If there were to be no compensation for consequential loss (as is the case in many countries), then in some responses, there may be less incentive for producers to co-operate with MPI during a response, or to report pests and diseases. Conversely, compensation payments which do not fully cover a claimant's losses could incentivise better biosecurity management as producers may want to reduce their exposure to risk. A core assumption in our assessment is that compensation payments which do not fully cover a claimant's losses incentivises better biosecurity management. This assumes that producers who face greater exposure to losses would seek to mitigate their risks by improving biosecurity practices.²⁰
 - New Zealand would be more aligned with other countries which do not pay compensation for consequential losses. This suggests our compensation scheme is generous by international standards.
169. Option 6A would seek to limit consequential losses to just income and professional fees. This would exclude other losses such as interest or potentially intellectual property. Option 6A is likely to be neutral on most of the criteria. Option 6A would be more efficient than the status quo as excluding interest and intellectual property makes assessment of claims easier.
170. Options 6B and 6C seek to limit consequential losses based on time-limits. Both options are likely to meet the effective and adaptable criteria but are expected to be significantly worse for efficiency, clarity and fairness. Options 6B and 6C meet the effective criterion because limiting consequential loss incentivises producers to improve biosecurity management to reduce their exposure to ineligible losses. Options 6B and 6C meet the adaptable criterion because these retain the availability of a compensation scheme which covers both direct and consequential losses but helps to improve the affordability and long-term sustainability of the scheme.
171. However, Options 6B and 6C come with significant drawbacks. Limiting consequential time-limits is highly unfair for some industries. The timing of when losses are incurred depends heavily on the nature of the response and industry. Limiting compensation for consequential loss to a set period could have quite significant impacts on those affected. For example:
- **B. ostreae** - the value of oysters increases over time until they are at a harvestable size (after approx. 3 to 4 years growth). If compensating within a 6 to 12-month timeframe from the point they were destroyed by MPI, this would only partially recompense affected oyster farmers for their losses. Farmers would then be without most of their income for a period of 3 to 4 years while they reseeded and grew replacement oyster stock.

²⁰ Koonts S. R. et al. 2006. *The Economics of Livestock Disease Insurance: Concepts, Issues and International Case Studies*. Chapter 6, page 76.

- ***M. bovis*** - if consequential losses are paid out for the first six months of an individual being affected by government powers, depending on the timing, a farmer could lose six months or more of their expected milk income for the affected season. The farmer would be limited in their ability to mitigate uncompensated losses. Replacement in-milk dairy cattle would be challenging to locate mid-season, and replacement in-calf dairy cattle (not yet in-milk) would likely not begin production until the start of the following milking season.
172. Further, operationalising Options 6B and 6C could involve a great deal of complexity. It requires tracking when a producer first becomes affected by a power and assessing whether the losses claimed fall within or outside of the time-limit. MPI does not currently have processes in place for this and is also why we do not have previous response cost data to provide for Options 6B and 6C.
 173. Options 6D and 6E would effectively exclude compensation for all consequential losses. Options 6D and 6E meet the effective criterion because limiting consequential loss will impact on people's behaviour. Producers may feel more accountable to improve biosecurity management to reduce their exposure to ineligible losses. These options would make the compensation scheme much more efficient as the remaining losses in scope are simpler to assess. The law would also be much clearer because only professional fees (for Option 6D), and destruction or damage to tangible property would be compensable. This means the costs of biosecurity are shared more equitably between government and producers, and ensures the compensation scheme is more sustainable.
 174. As noted earlier, consequential losses can be a significant area of loss for producers and limiting it could result in hardship. For this reason, Options 6D and 6E are both substantially worse than the status quo for the fairness criteria.
 175. Overall, while Options 6D and 6E make the scheme more inflexible, the options would very strongly support the objectives on delivering better incentives for proactive biosecurity management and prudent financial management for the Government.

5.10. Cost benefit analysis - the scope of losses that are compensable

176. Options 6A-6E review the extent to which taxpayer funding should compensate consequential losses. It reviews the balance of costs and benefits split between industries and the public from lengthy and costly consequential harm.
177. Monetary compensation for losses incurred due to loss of stock or production likely incentivises farmer collaboration. It also provides industries with some assurance against risk, incentivising the industries to continue to produce and support our economy. A large-scale incursion can wipe out industries, by decimating the plants needed, or resulting in the destruction of the animals needed. For an industry to exist, it must be willing to bear the cost of this volatility.
178. The status quo provides the greatest coverage of consequential losses by Government. Option 6E provides the least coverage of consequential losses. Option 6D is expected to be somewhere between status quo and Option 6E.

179. Options 6D and 6E offer increased clarity by defining or categorising consequential losses within the Act. Options 6D and 6E may allow the Government to practice greater fiscal responsibility by reducing the consequential losses Government covers. Option 6D and 6E may have a negative impact on the overall economy if industries respond by shrinking. Option 6E has the greatest risk of causing negative economic impacts, as it moves the greatest portion of risk onto industries.
180. Options 6B and 6C suggest limiting consequential loss coverage by time, with Option 6B allowing for a longer period of coverage than Option 6C. Timeframe dependent losses cannot be applied fairly or equitably across industries which often operate on multi-year production cycles. Industries with shorter production cycles, who bear most of their consequential losses within the first 6 months to a year of an event, would benefit more than those that face years of consequential losses.
181. It's possible applying timeframe measures will impact MPI's reputation negatively if it is perceived as unfair or inequitable by industries and the public. As discussed elsewhere, industry "buy-in" to biosecurity measures is integral to the overall function of the biosecurity system, so reputational cost can result in large dynamic efficiency costs.
182. The impact table below sets out the costs and benefits of Option 6E which removes compensation for all consequential losses. We have provided an impact table for Option 6E is to provide information about the status quo, and about the option that would be the most dramatic change, rather than as an indicator of a preferred option. This enables submitters to understand that the cost of the options in the middle would be somewhere in the middle of the status quo and Option 6E.

Table 9 - Cost benefit impact table for Option 6

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the option compared to taking no action			
Government	Reputational cost if compensation is perceived as unfair and inequitable. Increased economic volatility if the shifting of the burden of consequential loss onto industries causes industry shrinkage. No more costs for compensation of consequential losses.	Medium	Low
Industry	Will bear 100 percent of the cost of consequential losses. We cannot model what the ongoing cost of this will be. We can only provide a retrospective case study from three past responses (<i>M. Bovis</i> , <i>B. Ostreae</i> and Fruit Fly) to provide some sense of costs.	\$90.83 million (average of three past responses)	Low
Total monetised costs		\$90.83 million	Low
Non-monetised costs		Medium	Low

Additional benefits of the option compared to taking no action			
Government	Use of funding for other parts of the biosecurity system. Improved protections if industries are motivated to self-drive biosecurity practices to minimize risk of consequential losses.	\$90.83 million (average of three past responses)	Low
Industry	Reduced levy amounts under GIA (as compensation is cost-shareable).	Low	Medium
Total monetised benefits		\$90.83 million	Low
Non-monetised benefits		Medium	Low

5.11. Preferred option - the scope of losses that are compensable

183. Of the options for change, based on our assessment there is a stronger case for Options 6D and 6E. These options strike a better balance between effectiveness and efficiency. However, our analysis is based on a key assumption that reduced compensation payments leads to greater proactive biosecurity management by producers. For this reason, we do not currently have a preferred option for what the scope of losses should be compensable. We are keen to get feedback during public consultation to test this analysis.

5.12. Multi-criteria analysis

- ++ Significantly better than the status quo
- + Better than the status quo
- 0 No better or worse than the status quo
- Worse than the status quo
- Significantly worse than the status quo

Improving the operation of the scheme

	Option 1 – status Quo	Option 2 – how non-compliance affects eligibility	Option 3 – enable detailed settings in regulations	Option 4 – remove restrictions to vary compensation and enable upfront payment of future losses	Option 5 – codify the operational dispute resolution process
Effective	0	+	++	0	0
		Including breaches for other related biosecurity requirements may increase compliance and help improve overall biosecurity behaviour. The costs are being equitably shared because the costs are still related to biosecurity risk.	Ability to vary compensation based on organisms or sectors enables tailored risk-sharing between the Crown and claimants. On the assumption that this leads to lower compensation payments for the Crown (and therefore industry taking on more risk), this may incentivise producers to mitigate risk.	More tailored arrangements with GIA could drive improvements in risk management and the sharing of costs of biosecurity. However, the proposed amendment is merely a technical change and the impact, while positive, may not be significant.	May better reflect the spirit of partnership because it confirms in legislation the more cost-effective option for both MPI and claimants. However, the overall effect is likely to be insignificant so we do not expect much change from the status quo.
Adaptable	0	+	++	+	0
		Takes a broader view of biosecurity beyond the Act by including other regulatory systems which also contribute to biosecurity outcomes. The biosecurity system is more enduring if related regulatory systems are better aligned.	The flexibility to establish alternative compensation would make the law significantly more adaptable and enduring. This enables the scheme to be tailored to the varied nature of responses.	MPI will have greater ability to manage the compensation scheme in ways that suits claimant or GIA needs.	Slightly more future-proof because offering alternative dispute resolution that steers disputes towards cheaper processes is given legislative backing. However, this is only a minor improvement on the status quo.
Efficient	0	-	+	+	-
		Will require initial work to ensure there are no unintended impacts on other regulatory systems.	Regulations are required each time MPI wants to vary compensation. However, MPI does not expect it would vary compensation often. Moreover, such regulations would improve how quickly and easily the scheme works for government and claimants (for example, regulations that set out a schedule of prices for stock that is destroyed versus MPI calculating market value for each claim).	MPI will have greater ability to work with compensation claimants in ways that suit their needs. GIA partners and MPI will be less restricted in their ability to create arrangements that are mutually beneficial.	Could reduce the flexibility MPI currently has in how it resolves disputes. For example, codifying the independent panel process could impose legislative parameters and requirements on the appointment of members to the panel.
Clarity	0	++	0	0	+
		Clarifying non-compliance and the definitions of key terms provides more transparency and certainty to both government and regulated parties.	Having different regulations for different situations could make the law less clear. But for the claimants, there is greater clarity on their entitlements.	Removing restrictions is a simple change to the legislation and may have no effect on this criteria.	From an access to justice perspective, the law becomes more transparent (noting that MPI does already inform claimants about the alternative processes). Option 5 may improve the transparency of the appointment of members to review panels.
Overall rating	0	+	++	+	+
		Ensures the law is clearer for all parties and could increase incentives to comply and improve behaviours.	Ability to create bespoke arrangements recognises the need to tailor approaches to the risk being managed.	While merely a technical change, addressing barriers to mutually beneficial arrangements produces net positive results.	The current settings do not cater to people's needs. Operational solutions have addressed the matter but have not solved the underlying issue. Explicitly providing for alternative dispute resolution processes ensures the law is more fit-for-purpose.

The scope of losses that are compensable

	Option 1 – status quo	Option 6A – only income and professional fees	Option 6B – all consequential losses for 12 months	Option 6C – all consequential losses for 6 months	Option 6D – only professional fees	Option 6E – no consequential losses
Effective	0	0 Option 6A could slightly improve incentives and the cost of the scheme. However, the bulk of consequential loss payments are for income, so Option 6A may not have a substantive improvement on the status quo.	++ Could encourage producers to mitigate their exposure to risk, particularly following an outbreak. Could better share the costs of responses and who bears risk between producers and government. Could be more commensurate with the length of a biosecurity response.	++ Similar to Option 6B but the effects could be to a greater extent due to the shorter time limit on compensation payments which may provide even stronger incentives on producers to mitigate their exposure to biosecurity risk.	+ Could incentivise producers to mitigate their exposure to risk. But could also discourage producers from reporting pests and diseases to MPI. However, this assumption is untested. Would reduce costs of compensation and allow the Government to manage fiscal pressures more sustainability. On balance, we consider Option 6D is more effective than the status quo.	+ Similar to Option 6D.
Adaptable	0	0 The proposed change is relatively small and minor in its effect on how future-proof and enabling the Act is.	++ Would retain the core operations of the existing scheme, but puts a time limit on the payments. This improves the Act's settings as it ensures the long-term sustainability of the scheme in the Act, without severely affecting the long-term social license to operate biosecurity responses.	+ Similar to Option 6B but with less impact on the adaptable criterion.	-- The compensation scheme would no longer support the social license to run responses. This means the Act would not be future-proof if significant hardship and fairness issues arise from much lower compensation payments which then require further amendments.	-- Similar to Option 6D.
Efficient	0	+ The losses left out could be complex to assess, so there may be some small efficiency gains by removing those categories.	- There would be administration costs to implement and deliver this option. This requires tracking when a producer first becomes affected by a power, the dates for the claims, and whether the claims fall within the scope of the limit. Depending on how MPI designs the system, there could be efficiencies to mitigate these risks.	- Similar to Option 6B.	++ Removes complexity from the operation of the scheme and reduces the administrative burden on both government and claimants.	++ Similar to Option 6D but would be even more efficient (as there would no longer be any consequential losses claims to assess).
Clarity	0	0 Some more certainty is provided by expressly stating categories of losses. However, defining income could be difficult.	+ Expressly stating the categories of losses would provide better certainty. How the time limit works could be complex to understand.	+ Expressly stating the categories of losses would provide better certainty. How the time limit works could be complex to understand.	++ Only professional fees and destruction or damage to tangible property would be compensable and at market rates, making the scheme much simpler to understand.	++ Only destruction or damage to tangible property would be compensable and at market rates making the scheme much simpler to understand.

	Option 1 – status quo	Option 6A – only income and professional fees	Option 6B – all consequential losses for 12 months	Option 6C – all consequential losses for 6 months	Option 6D – only professional fees	Option 6E – no consequential losses
Fairness	0	0 The bulk of consequential loss payments are for income, so this has minimal impact on fairness.	-- Can be very unfair for some industries. For some industries the value of their stock increases over time until they are at a harvestable size (e.g. for oysters, approx. 3 to 4 years growth or forestry over 25 years). If only 12 months of income was compensated, farmers would only be partially recompensed for their losses.	-- Similar to Option 6B but is more unfair given the shorter timeframe provided to claimants.	-- Not providing compensation for consequential loss, particularly income, could lead to significant fairness issues. Some producers are heavily leveraged. If they receive less compensation, these producers may struggle to operate. Some producers may choose to leave their industry if they have concerns about potential losses that are too great to justify their operations.	-- Similar to Option 6D.
Overall rating	0	0 This option would have minimal impact, though it would improve the efficiency and transparency of the scheme.	-- While this proposal improves the incentives on producers to manage risk, and improves the affordability of the scheme for the Crown, the proposal involves significant complexity and administrative costs to operate. There is also significant unfairness for certain sectors where the stock takes a long time to reach harvestable value.	-- While this proposal improves the incentives on producers to manage risk, and improves the affordability of the scheme for the Crown, the proposal involves significant complexity and administrative costs to operate. There is also significant unfairness for certain sectors where the stock takes a long time to reach harvestable value.	+ While this makes the scheme less flexible, this option would very strongly support the objectives on delivering better incentives for proactive biosecurity management and prudent financial management for the Government.	+ While this makes the scheme less flexible, this option would very strongly support the objectives on delivering better incentives for proactive biosecurity management and prudent financial management for the Government.