

**Regulatory Impact Statement**

**Biosecurity Act  
Amendment Bill**

Paper 4: Border and Imports

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# 1. Introduction

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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 4: Border and imports. It contains several issues:
  - the development of import health standards;
  - the independent review process in section 24 related to import health standards;
  - the border clearance system for cruise craft passengers;
  - biofouling removal in the exclusive economic zone;
  - limiting food volumes in the air passenger pathway;
  - the legislative framework for containment and transitional facilities; and
  - providing biosecurity information to incoming passengers on commercial craft.
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. Development of import health standards

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### 2.1. Background

5. The biosecurity system manages risk through multiple layers, the first being offshore biosecurity. Offshore biosecurity reduces the chance of pests and diseases even getting to New Zealand in the first instance. The Biosecurity Act 1993 (the Act) manages the biosecurity risks associated with importations by enabling strict controls and requirements to be put in place for imported goods.
6. By managing biosecurity risks offshore, the likelihood of unwanted organisms entering New Zealand is reduced. This is much more feasible and cost effective than trying to manage risks at the border or launching a biosecurity response to eradicate a pest or unwanted organism that has become established within New Zealand. Offshore controls are complemented by sound border and domestic controls and capabilities to support prevention and response. This includes education and awareness, surveillance, compliance checking, and enforcement activity.
7. MPI develops Import Health Standards (IHSs) under section 23 of the Act. IHSs set the requirements that risk goods<sup>1</sup> must meet before they can be given biosecurity clearance. Risk goods are unable to be imported into New Zealand unless there is an applicable IHS in place. If there is no IHS in place, then a trading partner or an importer can submit a request for MPI to develop a new IHS. The importer must wait until an IHS is in place before the good can be imported.
8. The process for developing, amending, and revoking IHSs is set out in section 23. The process is thorough. It includes the following:
  - a comprehensive risk assessment to determine what biosecurity risks are associated with the goods;
  - analysis and selection of proposed measures to manage the biosecurity risks down to an appropriate level;
  - consultation with other relevant Government departments and industry bodies and representatives;
  - taking into consideration any issues raised during the consultation period when developing the final version of an IHS; and
  - section 24 provides for a review process if a consulted person feels their concerns and scientific evidence did not receive sufficient regard during the development process.
9. Section 24B specifies that these processes do not apply if an amendment to an IHS is either minor or urgent.
10. Once an IHS is in place, trade in the applicable goods can begin. Inspectors may clear goods for entry into New Zealand so long as the goods comply with the requirements in the relevant IHS.

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<sup>1</sup> These are goods that may cause unwanted harm to natural and physical resources or human health, or interfere with the management of pests or unwanted organisms. Risk goods also includes goods that are the carrier of the harmful organism and may be biologically benign (e.g. machinery).

## 2.2. Problem or opportunity

11. The import system works well at managing the biosecurity risk associated with importing risk goods once IHSs have been developed and issued. IHSs provide a clear set of requirements able to be consistently applied by importers. However, we have identified critical pain points with the ability to develop new standards, and to maintain and review existing standards, in a timely manner. Opportunities to improve the efficiency of the import system are discussed in turn below.
12. The process for developing IHSs can be lengthy, as the time and resource requirements to review, develop, and implement an IHS are significant. This creates additional unnecessary pressure on the biosecurity system and a backlog of requests for IHSs. Some of the factors contributing to the time taken for IHS development include:
  - the risk assessment and risk management processes can be very time consuming and can take up to two years;
  - the process of consultation with stakeholders can take significant time, due to the range and complexity of the issues raised; and
  - some products are imported only in small quantities and/or sporadically over time, and yet require an IHS to be lawfully imported. This can result in a disproportionate amount of time being spent on these products.
13. There can be unintended consequences that arise from the import system struggling to keep up with demand. From a biosecurity perspective, it could increase the likelihood that our existing requirements will not keep up with changes to biosecurity risks, therefore exposing New Zealand to an increased risk of harmful pests and diseases becoming established here.
14. It can create limitations around what can be imported, and have wider effects on consumer choice, business innovation and growth, and international trade relations. If New Zealand does not enable new lines of trade from other countries, there may be direct consequences in terms of New Zealand not gaining new market access opportunities for our exports. Additionally, it can also result in New Zealand producers having limited access to new genetic material for the plants and animals used in primary industries, which can result in lost opportunities to improve productivity and resilience, and to achieve premium prices through meeting the changing tastes of consumers.

## 2.3. Options

15. MPI has thoroughly reviewed its process for developing IHSs. Several operational ways to speed up and improve delivery have been identified and are being implemented. We have looked at targeted options to improve the efficiency of the import system through legislative changes. None of these proposals are intended to lower the level of protection currently offered by the IHS system. Risk assessment and risk-based measures will continue to underly all requirements for imports.
16. These options are not mutually exclusive, and one or all proposed options could be implemented to ensure that the biosecurity toolbox is fit-for-purpose, efficient, and effective.
17. **Option 1** would maintain the **status quo**.

18. **Option 2 would enable technical amendments to an IHS without consultation.** Option 2 would enable amending a standard to alter technical details, without consultation. For instance, updating the chemical used for a required treatment or changing the time/temperature combination used in a heat treatment process. Our notification obligations under any international agreements would continue, such as the World Trade Organization Agreement on the Application of Sanitary and Phytosanitary Measures (often referred to as the SPS Agreement).
19. Option 2 would effectively expand on section 24B and the range of amendments that can be made to an IHS without consultation beyond just 'urgent' or 'minor'. The interpretations of urgent and minor are narrow. Sometimes an amendment to a standard is making a technical change, such as updating a test or the specifications for a treatment. In these cases, there is little scope for meaningful consultation, yet consultation is required because the technical change does not come within the narrow interpretation of minor.
20. However, removing consultation from the legislation does not prevent MPI from choosing to consult where it would be appropriate. For instance, MPI would consult other agencies where a particular technical amendment might have interactions with other regulatory systems.
21. **Option 3 would enable a rapid amendment process for IHSs during the first year of trade in a good without consultation.** Real-life experience from trade can produce valuable information about the actual nature of biosecurity risks. For instance, it can give us data on whether the way we saw the risk was accurate.
22. If during the first year of trade any requirements within the IHS were found to be inadequate or if further changes to risk management measures were identified, these could be added. Changes may include situations where some measures could be relaxed as a result of overmanaging the risks, or where more stringent measures were needed to protect our borders. Option 3 would keep the IHS up to date. If a serious concern does arise during trade, there is already a mechanism in section 24B which enables the suspension of an IHS.
23. At the end of the one-year period these rapid amendments would no longer be able to be made. Any further amendments (other than those considered minor or urgent) would be required to undergo the consultation processes and established requirements in the Act.
24. Similar to Option 2, removing consultation from the legislation does not prevent MPI from choosing to consult where it would be appropriate. For instance, MPI may consult externally where a particular technical amendment might require other technical expertise.
25. **Option 4 would enable the ability to issue one-off or ad hoc permits for goods being imported as a one-off or on a sporadic basis.** This option would enable the Director-General of MPI to approve the importation of goods for which there is no approved IHS, so long as any associated risks could be safely managed to an appropriate level. Risk assessment and risk-based measures will continue to underly all requirements for imports. This would mean specific goods could be imported for cultural festivals, emergency situations, or trial purposes (e.g., for commercial evaluation) before developing an IHS.

- 26. **Option 5 would enable use of permits to allow trade to continue while a suspended IHS is being reviewed.** Under this proposal a new provision would be added to the Act stating that if importation of a particular good was suspended while the associated IHS was being reviewed, then individual importers would be able to apply for a permit to continue to import the good under stricter risk management measures. The application would be made to a Chief Technical Officer, who would grant a permit on the basis of whether the risks can be adequately managed while still allowing the benefits associated with continued trade to continue. Risk assessment and risk-based measures will continue to underly all requirements for imports.
- 27. **Option 6 would enable consultation on a risk management proposal for a good, rather than on the draft IHS itself.** It would do so by amending the consultation requirements in section 23 of the Act to allow for consultation on a risk management proposal, which would describe the proposed risk management measures and the rationale for them.

**2.4. Assessment**

28. The options are assessed against the following criteria:

<b>Effective</b>	Does the option better protect New Zealand from biosecurity risk, while supporting our economy?
<b>Adaptable</b>	Does the option deliver a modern legislation that is future-proof and enabling?
<b>Efficient</b>	How will the option address the administrative burden on regulators, and/or the compliance burden on regulated parties?
<b>Clarity</b>	Is the option logical, consistent, easy to understand, and provides sufficient certainty?

- 29. Option 1, the status quo, would limit changes to the operational and process improvements already underway. MPI expects that this will improve the capacity the system has to develop new standards and maintain and review existing standards. However, the full potential for improving the import system can only be realised if legislative changes are also made.
- 30. Option 2 (enabling technical amendments without consultation) meets the effective criteria by enabling quicker amendments to standards to ensure they remain up-to-date to best mitigate biosecurity risk. Option 2 meets the adaptable criteria as it increases the system’s flexibility and better enables it to adapt to future changes in biosecurity risk. Option 2 makes the system more operationally effective by reducing the administrative burden associated with consultation requirements. Option 2 may reduce clarity for stakeholders if technical requirements change without consultation, though MPI would still clearly communicate any changes to mitigate this risk. There is also the risk that an amendment MPI considers as being technical may not be considered technical from a stakeholder’s perspective. This may reduce trust in MPI’s decision-making.

31. Option 3 (enabling a rapid amendment process during the first year of trade) meets the effective criteria by enabling import requirements to be amended based on learnt operational information. This provides better biosecurity risk management for future importation of that good. By enabling lessons learnt from trade, Option 3 also enables the system to remain future-proof. The biggest increase in efficiency associated with Option 3 is the ability to adjust risk management measures once trade is underway without having to rely on extensive consultation processes. This option could affect the clarity criteria, as importers could have reduced certainty of import requirements during that first year.
32. Option 4 (process for one-off importations) does not affect the effective criteria. Option 4 does not lessen or increase the existing protection to New Zealand from biosecurity risk. An approval to issue a permit for a one-off importation relies on advice from a Chief Technical Officer, ensuring biosecurity risk for small scale imports can still be managed safely. Risk assessment and risk-based measures will continue to underly all requirements for imports. Option 4 is adaptable as learned experience from small scale imports could be applied to future standard development. It also enables the quick importation of goods to respond to emergency situations. Option 4 will improve efficiency, by enabling resources to be focused on developing standards for goods that will be imported on a larger scale with greater economic benefit. Option 4 does not provide any lesser or greater clarity for importers, as the process relies on a Chief Technical Officer to determine the appropriate level of risk associated with a one-off import.
33. Option 5 (permits to continue trade) does not provide for any lesser or greater protection from biosecurity risk. Option 5 is adaptable, as it recognises that biosecurity risks can be accompanied by trade and economic benefits and provides for future trade opportunities. However, Option 5 would likely increase the operational burden on the import system in order to manage associated biosecurity risks. Option 5 does not provide any lesser or greater clarity for importers, as the process relies on a Chief Technical Officer to determine the appropriate level of risk.
34. Option 6 (enabling consultation on risk management proposal) will likely not have a significant impact on effective or adaptability criteria, as the proposal would still require development of appropriate biosecurity risk management measures that take stakeholder input and expertise into consideration. However, Option 6 is likely to improve the efficiency and clarity of the system, as it could reduce the time taken for consultation by generating more meaningful feedback from stakeholders. This is because Option 6 shifts the focus of consultation to the proposals, rather than on the drafting of the IHS. However, it is unlikely to have a significant impact on the overall standard development time.
35. These options are not mutually exclusive. Two or more of the options could be progressed simultaneously to improve the efficiency of the IHS development process. Notably, while these options may improve the efficiency of the import system, they do not increase the biosecurity risks associated with importing goods into New Zealand. Risk assessment and risk-based measures will continue to underly all requirements for imports.

## 2.5. Cost benefit analysis

36. The work to establish these options is a part of the ordinary business of government. In any combination, the options add to the dynamic efficiency of the Bill (i.e. the ability of the Bill to improve performance over time by fostering innovation and progress). We expect that enabling more rapid amendment processes will decrease the bureaucratic load on government by decreasing the number of IHS that require the full, lengthy process. We have therefore assessed the overall impact of the combination of options.

**Table 1 - Cost benefit impact table for all the options**

Affected groups	Comment	Impact	Evidence Certainty
<b>Additional costs of the options compared to taking no action</b>			
Importers	Some burden on importers to keep up-to-date with import requirements in the event of rapid amendments.	Low	Low
Primary industries	None.	None	N/A
Government	Low risk that decreasing consultations for efficiency will impact public will. Low risk that permits will result increased risk from contaminated goods being imported as risk assessment and risk-based measures will continue to underly all requirements for imports.	Low	Low
<b>Total monetised costs</b>		Unknown	Low
<b>Non-monetised costs</b>		Low	Low
<b>Additional benefits of the options compared to taking no action</b>			
Importers	Dynamic efficiencies in managing IHS applications and amendments, which aid importation of goods. Reduced administrative burden from participating in IHS development processes. Faster development of IHS enables importers to import sooner leading to positive business impacts	High	Medium
Primary industries	Quicker delivery of IHSs and therefore improved access to new breeds and varieties	Medium	Low
Government	Reduced administrative burden from a more efficient process to develop IHS. More efficient IHS development has wider trade and economic growth benefits.	High	Medium
<b>Total monetised benefits</b>		Unknown	Low
<b>Non-monetised benefits</b>		High	Medium

## 2.6. Preferred option

37. The options are not mutually exclusive and each of these options could improve the efficiency of developing standards. Before we recommend a preferred option (or combination of options), we want to understand stakeholders' views on:

- which option best delivers on the objective of more efficient development of import health standards; and
- how clear each option would be for an importer.

## 2.7. 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 - enabling technical amendments without consultation	Option 3 - enabling a rapid amendment process during the first year of trade	Option 4 - enable use of one-off or ad hoc permits for one-off imports	Option 5 - enable use of permits to allow trade while a suspended IHS is reviewed	Option 6 - enable consultation on the risk management proposal
<b>Effective</b>	0	<p style="text-align: center;">+</p> <p>Enables quicker amendments to technical requirements in a standard that are needed to ensure the standard is up-to-date and fit-for-purpose to best mitigate biosecurity risk.</p>	<p style="text-align: center;">++</p> <p>Import requirements could be amended to provide better biosecurity risk management based on operational information. Changes may include situations where measures could be relaxed as a result of overmanaging biosecurity risks, or where more stringent measures were needed to protect our borders.</p>	<p style="text-align: center;">0</p> <p>Approval to issue a permit would be based on advice from a Chief Technical Officer (CTO), ensuring biosecurity risk for small-scale imports can still be safely managed. Risk assessment and risk-based measures will continue to underly all requirements for imports.</p>	<p style="text-align: center;">0</p> <p>The issue of a permit would be based on advice from a CTO, ensuring the risk from imports that gave cause to the suspension of the IHS can be managed. Risk assessment and risk-based measures will continue to underly all requirements for imports.</p>	<p style="text-align: center;">0</p> <p>Requires development of appropriate biosecurity risk management measures that takes into consideration stakeholder input and expertise. Consultation focuses on the content of risk management rather than the wording of the standard itself.</p>

	Option 1 - status quo	Option 2 - enabling technical amendments without consultation	Option 3 - enabling a rapid amendment process during the first year of trade	Option 4 - enable use of one-off or ad hoc permits for one-off imports	Option 5 - enable use of permits to allow trade while a suspended IHS is reviewed	Option 6 - enable consultation on the risk management proposal
<b>Adaptable</b>	0	<p style="text-align: center;">+</p> <p>This would increase the systems flexibility and enable standards to be quickly amended to reflect the latest scientific knowledge</p>	<p style="text-align: center;">+</p> <p>Enables experience from trade in a good to inform risk management requirements in a new IHS quickly.</p>	<p style="text-align: center;">+</p> <p>Increases flexibility in the import system. Enables learned experience from small-scale imports to inform risk management in future IHS. Would enable importation to respond quickly to emergency situations.</p>	<p style="text-align: center;">+</p> <p>Reflects that biosecurity risks can be accompanied by trade benefits and provides for future trade opportunities while balancing the risk management required to do so safely.</p>	<p style="text-align: center;">+</p> <p>Enables consultation to focus on content and proposals themselves rather than the wording (which is not possible under the status quo), but the consultation requirement does not change.</p>
<b>Efficient</b>	0	<p style="text-align: center;">+</p> <p>Removing consultation requirements for minor technical changes would mean consultation resources can be focused on amendments to which stakeholders can contribute meaningful comment.</p>	<p style="text-align: center;">+</p> <p>Changes to an IHS during the first year of trade are less administratively burdensome on MPI. But could require more resources on MPI to monitor the IHS in its first year of trade.</p>	<p style="text-align: center;">++</p> <p>Developing IHSs can be time-consuming and costly. Option 4 means resources can be focused on developing IHSs for goods that will be imported on a larger scale with greater economic benefit.</p>	<p style="text-align: center;">-</p> <p>Creates additional administrative burden for MPI to assess permit applications and ensure the biosecurity risk is safely managed while the applicable IHS is suspended.</p>	<p style="text-align: center;">0</p> <p>The consultation requirement does not change.</p>
<b>Clarity</b>	0	<p style="text-align: center;">-</p> <p>Importers may need to check an IHS more frequently to ensure no technical amendments have been made. This can be addressed through regular MPI communications.</p>	<p style="text-align: center;">-</p> <p>Importers operating under an IHS would have reduced certainty of requirements during that first one-year period. This can be addressed through regular MPI communications.</p>	<p style="text-align: center;">0</p> <p>The process relies on a CTO to determine the appropriate level of risk associated with an ad-hoc or one-off import.</p>	<p style="text-align: center;">0</p> <p>The process relies on a CTO to determine the appropriate level of risk associated with continuing trade of a good with no current IHS.</p>	<p style="text-align: center;">+</p> <p>This could speed up the consultation process by keeping comments focussed on the key issues rather than matters of drafting detail.</p>

	<b>Option 1 - status quo</b>	<b>Option 2 - enabling technical amendments without consultation</b>	<b>Option 3 - enabling a rapid amendment process during the first year of trade</b>	<b>Option 4 - enable use of one-off or ad hoc permits for one-off imports</b>	<b>Option 5 - enable use of permits to allow trade while a suspended IHS is reviewed</b>	<b>Option 6 - enable consultation on the risk management proposal</b>
<b>Overall rating</b>	0	<p style="text-align: center;">+</p> <p>This option is likely to make the system more efficient by enabling both MPI and stakeholders to devote their resources to more significant consultations.</p>	<p style="text-align: center;">+</p> <p>This option is likely to make the system more flexible by enabling practical experience to inform risk management requirements.</p>	<p style="text-align: center;">++</p> <p>This option is likely to make the system more efficient by enabling a clearer process for one-off imports so that MPI resources can be focused more on regular IHSs.</p>	<p style="text-align: center;">0</p> <p>This option is unlikely to make the system more efficient but may bring trade and economic benefits. This may be particularly valuable for certain industries which have a high value, low volume trade.</p>	<p style="text-align: center;">+</p> <p>This option may increase the efficiency of the system by focussing on the key issues.</p>

## 3. Section 24 independent review panels

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### 3.1. Background

38. The process for developing, amending, and revoking IHSs is set out in section 23. The process is thorough. It includes the following:
- a comprehensive risk assessment to determine what biosecurity risks are associated with the goods;
  - analysis and selection of proposed measures to manage the biosecurity risks down to an appropriate level;
  - consultation with other relevant Government departments and industry bodies and representatives;
  - taking into consideration any issues raised during the consultation period when developing the final version of an IHS; and
  - section 24 provides for a review process if a consulted person feels their concerns and scientific evidence did not receive sufficient regard during the development process.
39. Section 24 requires the Director-General to ensure there is a process in place to set up an independent review panel to review that question. The Biosecurity (Process for Establishing Independent Review Panel) Notice 2015 sets out the process to establish an independent review panel:
- a request must be in writing, identify the section of the person's submission which raised a concern about scientific evidence, and explain why the person considers there has not been sufficient regard given to their concern;
  - the intention to make a request must be notified within 10 working days after a provisional IHS is supplied to persons who were consulted during the development of the IHS, with a further 10 working days to make the request;
  - factors the Director-General must take into account when considering whether to accept a request for review (e.g., the extent to which the request for review appears to be based on credible scientific evidence); and
  - the necessary details to set out in Terms of Reference for an appointed independent panel, including when the panel must report on its review.

### 3.2. Problem or opportunity

40. There have only been two independent panel reviews since the process was introduced in 2008. Both reviews took several months to complete, with subsequent decision-making and implementation taking several months more. A case study to illustrate the time and costs involved in an independent review is provided in Figure 1 below:

**Figure 1 - Development of the import health standards for pig meat and pig meat products<sup>2</sup>**

MPI issued the provisional IHS for pig meat in April 2009 following public consultation. A request under section 24 for an independent review was made in May 2009. The Director-General accepted the section 24 request in August 2009 and an independent panel was established to conduct the review into whether scientific evidence raised during public consultation was given sufficient regard.

The independent panel reported its findings in March 2010 and made 29 recommendations for the pig meat IHS, covering a variety of technical and process-related issues. The recommendations of the Panel were addressed by MPI in October 2010.

Overall, the review process took 17-months. The cost of this process for MPI was \$500,000.

Despite the independent panel process, the complainant which requested the section 24 review was not satisfied and made an application for judicial review in 2011 with the High Court. The High Court ruled in favour of MPI. The complainant appealed to both Court of Appeal, and the Supreme Court where the appeal was dismissed in December 2013.

41. Given the time and costs involved in an independent review, and the disruption to the IHS work programme, MPI will always endeavour to find a resolution to the concerns of stakeholders. This is the main reason why there have been only two reviews since 2008. However, MPI's experience is that significant time is spent in working to resolve stakeholder concerns whenever an independent review is foreshadowed, regardless of how well-founded the stakeholder's concerns are. This means that the availability of the independent review process has a substantial impact on MPI's ability to efficiently progress the IHS work programme, even if few disputes reach the point where a review panel is established.

### 3.3. Options

42. **Option 1** is the **status quo**. MPI is required to consult with any person that has an interest in a proposed IHS. Under Option 1, section 24 of the Biosecurity Act continues to allow a person consulted during the development of an IHS to request a review of whether scientific evidence that person raised was given sufficient regard by MPI.
43. **Option 2** seeks to **amend the Biosecurity (Process for Establishing Independent Review Panel) Notice 2015 and work on cost recovery** to improve the operation of section 24 by requiring a comprehensive application to request a review, establishing a standing panel for a fixed term (currently, we must establish a new independent panel for each section 24 review), and/or investigating cost recovery for the costs of a review. Section 135 provides for the direct recovery of costs of administering the Act. Alternatively, section 165 enables the creation of regulations for cost recovery.

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<sup>2</sup> <https://www.mpi.govt.nz/dmsdocument/31914/direct>

44. **Option 3** seeks to **amend section 24 so the review is undertaken by a senior public official rather than by establishing an independent review panel**. This proposal could be implemented by amending section 24 so that a senior public official is appointed by the Director-General, if the Director-General is satisfied that the person reviewing is sufficiently independent, having regard to their position, expertise, standing within the scientific community, and previous involvement with the IHS in question.
45. **Option 4** seeks to **amend section 24 so that the review must only be about new evidence**. This option would target section 24 towards new evidence, rather than the status quo which reviews whether evidence already provided was given sufficient regard.
46. **Option 5** seeks to **remove section 24 from the Act**. This option would remove the ability for a person to request a review of whether scientific evidence that person who was consulted raised was given sufficient regard by MPI. Those persons would instead rely on other processes and safeguards to challenge MPI's IHS development process through:
- the existing consultation provisions under section 23;
  - judicial review; and
  - engaging Parliamentary safeguards. Import health standards are classified as secondary legislation and as such they are subject to the oversight of the Regulations Review Committee and can ultimately be disallowed through a vote in the House.

### 3.4. Assessment

47. The options are assessed against the following criteria:

<b>Effective</b>	Does the option better protect New Zealand from biosecurity risk, while supporting our economy?
<b>Adaptable</b>	Does the option deliver a modern legislation that is future-proof and enabling?
<b>Efficient</b>	How will the option address the administrative burden on regulators, and/or the compliance burden on regulated parties?
<b>Clarity</b>	Is the option logical, consistent, easy to understand, and provides sufficient certainty?

48. Option 1, the status quo, would see no change in the current system. It does not address how the availability section 24 reviews hinders the development of import standards.
49. Option 2 (amend the Biosecurity (Process for Establishing Independent Review Panel) Notice 2015 and work on cost recovery) generally does not meet the criteria overall. Option 2 does not worsen or improve biosecurity protection, and so has no effect on the effectiveness criterion. Option 2 does not provide or remove tools from the Act, and so should not have an effect on the adaptable criterion.

50. Option 2 seeks to improve the efficiency of section 24 by requiring a full comprehensive statement of claim and investigating cost recovery. The purpose of this is to ensure requests are only made for important issues. However, cost recovery analysis would be required to determine if cost recovery is efficient and equitable, and if cost recovery is appropriate (bearing in mind that the development of IHS is not a cost recovered service, and that submitters will not necessarily be beneficiaries or exacerbators of an IHS). It is a well-established public policy principle that costs are only recovered from the exacerbators or beneficiaries that a service is designed to manage. The complexity involved means Option 2 is unlikely to meet the efficiency criteria.
51. Option 3 (amend section 24 so the review is undertaken by a senior public official) meets some of the criteria. Option 3 does not worsen or improve biosecurity protection, and so has no effect on the effectiveness criterion. Option 3 would constrain the existing flexibility around appointing an independent panel, as the Act would require a public official to undertake the review. However, Option 3 is likely to be more efficient than the current independent panel process.
52. Having a senior, independent public official undertake the review means the process can operate with less formal procedure, and MPI could proactively identify these officials ahead of time to be ready for a future review. This could produce a quicker and less costly review. This in turn may enable decision-makers to be more comfortable with a section 24 review being requested. This could help to address some of organisational incentives under the status quo.
53. The key assumption with Option 3 is one of independence and objectivity. Whether a senior public official, who has not been involved in the development of the IHS, is seen as 'independent' by stakeholders is unclear.
54. Option 4 (amend section 24 so that the review must only be about new evidence) is finely balanced on the criteria. Option 4 would refocus section 24 towards new evidence in reviews. Requests for Section 24 reviews are often about MPI's assessment of existing evidence. If no new information is available, MPI is unlikely to reach a different decision. Narrowing the scope of reviews to focus only on new evidence means reviews are more likely to result in useful recommendations. This may lead to the identification of risks previously not raised and could lead to more robust IHS. This supports the effective criterion.
55. Equally, Option 4 may lead to some unintended consequences around efficiency. The status quo already has a sufficiently narrow scope of focus for the review. Focusing on new evidence may in fact encourage the chasing of red-herrings and irrelevant information. This could have the consequence and effect of longer delays to the development of IHS.
56. Option 5 would remove section 24. This would have significant benefits for more efficient development of IHS. The main concern with Option 5 would be the removal of existing checks and balances. In relation to this point, we note that review provisions are generally for administrative decisions that affect individual rights and for natural justice. This helps to ensure that those decisions are in accordance with the law, and the prospect of scrutiny encourages first-instance decision makers to produce decisions of the highest possible quality. Review provisions are not generally provided to test the creation of secondary legislation, which is what an IHS is. In that sense, section 24 is somewhat unusual.

57. Section 24 is about providing assurance to stakeholders about the level of risk assessment undertaken by MPI, and not about providing individuals with individual review rights and avenue to appeal rights that have been affected. In our experience as the regulator of the import system, section 24 is used by stakeholders as a tool in situations where there are disputed views over the approach taken in an IHS rather than a means of providing assurance that scientific information has been properly considered.
58. In any case, other safeguards exist that may warrant the removal of section 24. As noted earlier in this section, the existing consultation provisions under section 23 ensures MPI consults any representatives of classes of persons that would have an interest in IHS. This ensures industry bodies have an opportunity to be heard on a proposed IHS that may have an impact on their sector (as would be the case for any secondary legislation). In addition, there is:
- judicial review;
  - Parliament's Regulations Review Committee where a person could make a complaint that MPI has not complied with the standards for secondary legislation set out in Parliament's Standing Orders ; or
  - disallowance through Parliament where a person could make representations to elected representatives to seek the House of Representatives' oversight of MPI's development and issuing of an IHS.

### **3.5. Cost benefit analysis**

59. Our analysis compares the cost of the options with the cost of the case study example (2009 Independent Review of IHS – pig meat and pig meat products). The costs in this section are focused on the fiscal costs to MPI. While the options may have broader social costs to stakeholders, these are addressed in the Assessment section rather than in this cost benefit analysis that is focused on fiscal costs.
60. The impacts associated with formally instituting a standing advisory panel include MPI providing secretariat services for the panel and the costs of holding panel meetings. The cost estimates presented are based on secretariat duties requiring one full-time staff member from MPI each year. We have assumed that there will be on average five panel members who will meet on average four times per year, once per quarter. We also assume that reimbursement costs for panel members will average \$1,685 for each member attending a meeting. This amount includes travel, accommodation, and meeting fees according to the Cabinet Fees Framework.<sup>3</sup> An allowance of \$1,000 per meeting is also allowed for venue hire and catering purposes.
61. None of the options result in costs of more than a million dollars per review. Removing the review process all together (Option 5) is the most fiscally cost-effective measure, and likely the costliest qualitative measure.

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<sup>3</sup> While it is likely that premises will be available at the Ministry, including the costs accounts for the opportunity cost of the premises.

62. Given the rarity of independent reviews, if scaled over the time since section 24 was added to the Act, the cost of any of the options is of negligible impact on government.

	Costs estimate (\$m)	
	Upfront	Ongoing (each year)
<b>Option 2</b>	0.33	0.42
<b>Option 3</b>	0.32	0
<b>Option 4</b>	0.32	0.33
<b>Option 5</b>	0	0

63. However, it is important to note that the above cost of a section 24 review is only one element of the cost of independent reviews. The more substantial cost is the ongoing deployment of resources that are put into responding to stakeholder complaints to prevent independent reviews. This can absorb significant hours in staff time that would otherwise be spent on progressing the IHS work programme.

### 3.6. Preferred option

64. Our assessment shows Option 3 and Option 5 have merits. Our initial preference is for Option 5, followed by Option 3. However, we have made assumptions about the views of stakeholders on how they could hold MPI accountable for decision-making on IHS. We would like to understand those perspectives better before we can recommend a preferred option.

### 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 - amend the DG notice to improve the operation of section 24	Option 3 - amend section 24 so the review is undertaken by a senior public official	Option 4 - amend section 24 so that the review must only be about new evidence	Option 5 - remove section 24
<b>Effective</b>	0	0 This option may have no meaningful impact on the development of IHS and ensuring biosecurity protects our environment and economy. The import system already protects New Zealand from biosecurity risk.	0 This option may have no meaningful impact on the development of IHS and ensuring biosecurity protects our environment and economy. The import system already protects New Zealand from biosecurity risk.	+	0 This option may have no meaningful impact on the development of IHS and ensuring biosecurity protects our environment and economy. The import system already protects New Zealand from biosecurity risk.
<b>Adaptable</b>	0	0 This option would use existing tools in secondary legislation to deliver change. It would have no meaningful impact on how enduring the Act is.	- Would constrain existing flexibility as the Act would require a public official to undertake the review which puts restrictions on the membership of the review panel.	0 There is likely to be no significant impact on this criterion. There are already parameters on what the panel reviews. This option would simply amend those parameters.	0 Removing section 24 neither future-proofs or restricts the development of IHS. However, a more efficient IHS system ensures the Act is enduring going forward as it removes an impediment to market access.

	Option 1 - status quo	Option 2 - amend the DG notice to improve the operation of section 24	Option 3 - amend section 24 so the review is undertaken by a senior public official	Option 4 - amend section 24 so that the review must only be about new evidence	Option 5 - remove section 24
<b>Efficient</b>	0	<p>--</p> <p>Amending the DG Notice to require a comprehensive application for a review is likely to be a simple change, and could ensure that any requests are made only for important issues. Could reduce the administrative burden of setting up independent panels for each review. Investigating cost recovery, however, requires significant investment to work through and establish.</p>	<p>++</p> <p>The administrative burden of setting up independent panels is removed. Having a suitable Government official to undertake the review would be likely to produce a quicker and less costly review and may enable decision-makers to be more comfortable with a section 24 review being requested. This could help to address some of organisational incentives with the status quo, leading to the current low-risk tolerance environment.</p>	<p>-</p> <p>Could improve the efficiency of the IHS development ensuring reviews are only initiated when new evidence may significantly affect the outcome. Equally, the requirement to produce new evidence could incentive the chasing of 'red-herrings', as reviewing new evidence could require an even lengthier process than existing evidence.</p>	<p>++</p> <p>Judicial reviews and complaints to the Regulations Review Committee have established procedures, allowing for a review after an IHS has been issued and focusing on the process the decision-maker took to reach the decision. This could minimise delays to IHS decisions. Judicial review, if initiated, would be a more resource-intensive legal process but Regulations Review Committee would be relatively low-cost.</p>
<b>Clarity</b>	0	<p>+</p> <p>The true costs of section 24 would become clearer with a cost recovery scheme. Establishing a standing panel provides more certainty and transparency about who will be undertaking a review, compared to the current case-by-case establishment of a panel.</p>	<p>0</p> <p>Would be clearer about who will be undertaking the review. However, whether the senior public official is viewed by stakeholders as 'independent' is unclear; independence being a focus of the current section 24.</p>	<p>0</p> <p>There is likely to be no significant impact on this criterion. There are already parameters on what the panel reviews. This option would simply amend those parameters.</p>	<p>+</p> <p>Other accountability mechanisms (e.g. judicial review) are less accessible and transparent. However, this option better reflects the nature of IHS and the role MPI plays in developing them, as similar to any other regulation (which do not have review provisions attached to them).</p>

	<b>Option 1 - status quo</b>	<b>Option 2 - amend the DG notice to improve the operation of section 24</b>	<b>Option 3 - amend section 24 so the review is undertaken by a senior public official</b>	<b>Option 4 - amend section 24 so that the review must only be about new evidence</b>	<b>Option 5 - remove section 24</b>
<b>Overall rating</b>	0	- These tweaks may have relatively low impact on the effectiveness and efficiency of the import system, and yet comes at significant implementation complexity and cost.	+ This option is likely to make the import system more efficient, but depending on feedback during consultation on how stakeholders view the 'independence' of a senior public official, this rating may change.	0 It is unclear if this option would made the system more efficient, or if it would in fact have the opposite effect. The status quo already has a sufficiently narrow scope of review. Focusing on new evidence may encourage the chasing of red-herrings and irrelevant information. This could further delay the development of IHS.	++ This option is likely to make the import system more effective, by benefitting IHS development, enabling trade and removing more barriers. This option of making a complaint to the Regulations Review Committee would ensure that stakeholders with fewer resources would still have an avenue for review available.

## 4. Border clearances for cruise craft passengers

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### 4.1. Background

65. The biosecurity system manages risks through multiple different layers. First, risk is managed offshore wherever possible, by requiring specific rules and treatments before commodities, goods, and craft can arrive at the border. The import system in the previous section is an example of managing biosecurity risk offshore.
66. Then, risk is managed at the border to the greatest extent possible, by screening all incoming goods, passengers, mail, and craft at the border. There are different pathways by which pests and unwanted organisms may be able to enter through the border. This includes the passenger pathway, where people arrive either by air or sea. Passengers entering New Zealand can pose significant potential biosecurity risks through the goods they carry, such as food or plant material. Having robust processes to manage these risks is vital to protecting New Zealand from harmful pests and diseases.
67. By managing biosecurity risks offshore and at the border as much as possible, the likelihood of unwanted organisms entering New Zealand is reduced. This is more cost effective than launching a biosecurity response to eradicate a pest or unwanted organism that has become established within New Zealand.
68. As passengers first arrive in New Zealand, MPI uses powers under the Act to process them and manage the biosecurity risks from the goods, they may bring with them. Passengers are required to declare all food, animal products, plants, and other biosecurity risk items on their passenger arrival card to a biosecurity officer. Biosecurity officers may also inspect any uncleared goods passengers have in their possession and require passengers to surrender risk goods for appropriate disposal. If a passenger chooses not to comply with these requests, they may receive an infringement fee.
69. For aircraft passengers, all international flights will land at a Place of First Arrival.<sup>4</sup> The passengers will 'arrive in New Zealand' and pass through a Biosecurity Control Area<sup>5</sup> with all their goods before entering the country. 'Arriving in New Zealand' is a defined term in the Act which requires passengers to reach land after an international journey.
70. For cruise passengers, all cruise crafts first arrive at a port that is a Place of First Arrival and are fully cleared before moving on to other ports in New Zealand. On arrival at the Place of First Arrival, a biosecurity inspector will inspect and clear passengers' goods if they choose to disembark.

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<sup>4</sup> Places of First Arrival are ports approved by the Director General under section 37 of the Act to receive goods, craft and passengers as they first arrive into New Zealand.

<sup>5</sup> A Biosecurity Control Area is a place that is part of a Place of First Arrival but under the control of the Director General, for the purposes of managing biosecurity risk within that port.

## 4.2. Problem or opportunity

71. The first issue is the definition of 'arriving in New Zealand'. The definition under section 2 of the Act requires passengers to reach land after an international journey, yet the passengers may choose to stay onboard until their cruise craft reaches a later port. Many of our powers are only enabled when a person legally arrives in New Zealand and cannot be applied until a passenger decides to disembark a port, not necessarily the first one they arrive at.
72. The second issue is that legally arriving in New Zealand only happens once, and powers tied to arrival can only be used the first time a passenger disembarks. Passengers are likely to leave risk goods on board a cruise craft when they disembark the first time. At each subsequent port they disembark at they could bring in those risk goods on the craft but the full range of powers to process passengers are not available.

## 4.3. Options

73. **Option 1** is the **status quo**. Currently border officials are unable to process passengers and inspect risk goods at all points in the cruise craft passenger pathway where a passenger may have access to new risk goods. We currently manage the risk through operational agreements with cruise crafts, but because the different passenger pathways do not align, we cannot fully manage risk and make passengers comply with biosecurity rules.
74. **Option 2** proposes to **create additional powers and duties in the Act enabling biosecurity inspectors to process passengers disembarking a craft but who have already arrived in New Zealand**. These additional powers are the same as those already existing for when passengers first arrive in New Zealand, in that they would:
  - enable biosecurity inspectors to:
    - inspect passenger's baggage for risk goods;
    - seize any identified risk goods for appropriate disposal;
    - require a biosecurity declaration; and
    - issue infringement offences to non-compliant passengers.
  - require passengers to:
    - make their baggage available for inspection upon request;
    - surrender any uncleared risk goods they have in their possession for appropriate disposal;
    - answer any questions made by an inspector in relation to their risk goods; and
    - complete a biosecurity declaration if requested.
75. These proposed additional powers would be limited to use only when a passenger is disembarking a craft in a Biosecurity Control Area, providing additional safeguards for human rights and privacy obligations.

76. We considered amending the definition of “arriving in New Zealand” in the Act, determining passengers as arriving in New Zealand each time they disembark a craft. This would see cruise craft passengers arriving in New Zealand more than once and enable biosecurity inspectors to fully process cruise craft passengers at second and subsequent stops around New Zealand to better manage biosecurity risk.
77. However, we have discarded this option from further consideration. The current definition of “arriving” in New Zealand for cruise passengers is consistent with the definitions of “arriving” in relation to air passengers, (possibly) craft, crafts, and goods (i.e., they can all only arrive once). This option would not meet the adaptable criterion, as amending the definition of passengers “arriving” would result in these definitions no longer being aligned in the Biosecurity Act.
78. The current definition of “arriving” in New Zealand is also aligned with the definition of “arriving” in other pieces of border legislation, such as the Customs and Excise Act 2018. This ensures consistency between border agencies and MPI’s wider cross agency border role. Amending the definition could result in significant adverse impacts on other border agencies.

#### 4.4. Assessment

79. The options are assessed against the following criteria:

<b>Effective</b>	Does the option better protect New Zealand from biosecurity risk, while supporting our economy?
<b>Adaptable</b>	Does the option deliver a modern legislation that is future-proof and enabling? Does the option provide a modern toolbox to users of the Act?
<b>Efficient</b>	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?
<b>Clarity</b>	Is the option logical, consistent, easy to understand, and provides sufficient certainty?

80. Under the status quo MPI is able to assess the biosecurity risks associated with cruise craft passengers as they arrive in New Zealand.
81. Option 2 (create additional powers and duties in the Act enabling biosecurity inspectors to process passengers disembarking a craft but who have already arrived in New Zealand) would require cruise craft passengers to answer inspector’s questions about the goods they are carrying, and inspectors to issue non-compliant cruise craft passengers’ infringements at second and subsequent disembarkations. These activities are already carried out by biosecurity inspectors and existing systems and processes are already well set up to manage the additional requirements of the proposed options. Option 2 is effective as it provides for broader use of existing tools to manage the biosecurity risk associated with cruise craft passengers.
82. Option 2 is adaptable, as tools for subsequent disembarkations do not currently exist in the Act. Enabling these tools will provide MPI with a greater range of tools to better manage the biosecurity risk associated with cruise craft passengers.

83. Option 2 has no greater or less effect on the efficiency and clarity of the system compared with the status quo. The tools are already used to assess biosecurity risk associated with cruise craft passengers. This option simply looks to enable them to be used at multiple stops on a cruise tour. The tool would not be complex to implement, and the process and obligations are already well understood by MPI staff and the cruise industry.

#### **4.5. Cost benefit analysis**

84. This set of proposals is not expected to have cost or impacts with fiscal measures. Their consideration and implementation are a part of the regular work of government.
85. We analysed the options using multi-criteria analysis.

#### **4.6. Preferred option**

86. Our preferred option is Option 2, as it will provide for greater biosecurity risk management through an increased range of tools available to MPI staff.

## 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 – creating additional powers and duties in the Biosecurity Act
<b>Effective</b>	0	+
<b>Adaptable</b>	0	++
<b>Efficient</b>	0	0
<b>Clarity</b>	0	0
<b>Overall rating</b>	0	++

## 5. Better management of biofouling removal in New Zealand's Exclusive Economic Zone

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### 5.1. Background

87. Internationally arriving crafts transporting biofouling on their hulls is a key pathway for the introduction of harmful aquatic organisms into New Zealand's marine environment.<sup>6</sup> All crafts have some degree of biofouling present, even those which follow international best-practice guidelines.
88. Biofouling accumulates in a successional pattern, starting with the settlement of microorganisms on submerged objects (within hours), progressing to algae (soft fouling) and eventually the growth of 'mature' fouling that includes diverse species and those with calcareous shells such as barnacles, oysters, etc. (hard fouling). As this succession occurs the number of species increases, and mature organisms are more likely to survive and reproduce.
89. In-water cleaning of craft biofouling can be conducted 'proactively', prior to the accumulation of hard fouling, and 'reactively' after hard fouling is present. Reactive in-water cleaning carries more biosecurity, chemical, plastic, and health and safety risks compared with proactive cleaning. Proactive cleaning can occur in inshore locations (harbour) as the risks are much lower compared to reactive cleaning that is pushed offshore as the effluent is typically uncontained. Inshore activity is much more easily regulated.
90. To manage some of the above risks, in-water cleaning devices are often fitted with biofouling containment and water filtering systems. Frameworks have been developed to test the efficacy of such systems, but no national or internationally agreed testing frameworks are yet in place.
91. New Zealand balances managing biosecurity risks from biofouling against trade and travel priority outcomes, as well as protecting New Zealand's biodiversity. We cannot remove all risk, but we can take steps to manage it.
92. The UN Convention on the Law of the Sea (UNCLOS) sets out various maritime zones and describes states' entitlements and obligations in respect of each zone. New Zealand has sovereignty over its territorial sea (out to 12 nautical miles) and manages biosecurity risks from biofouling within this limit. Note that all crafts have the right of innocent passage through the territorial sea. New Zealand can impose certain regulations on crafts undertaking innocent passage, but not regulations that relate to design, construction, manning or equipment unless they are giving effect to generally accepted international rules or standards (e.g. International Maritime Organisation rules).

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<sup>6</sup> [www.imo.org/en/OurWork/Environment/Pages/Biofouling.aspx](http://www.imo.org/en/OurWork/Environment/Pages/Biofouling.aspx)

93. UNCLOS provides for “sovereign rights” in the Exclusive Economic Zone (“EEZ” – out to 200 nautical miles). ‘Sovereign rights’ refers to the limited rights of a State over its EEZ and its continental shelf where this extends beyond the EEZ. These rights relate to fisheries in the EEZ, petroleum and mineral resources on and under the seabed, producing energy from wind and wave resources, and undertaking marine research. NZ also has jurisdiction related to protecting and preserving the marine environment (Article 56). These rights must be exercised taking into account other countries rights to freedom of navigation and the laying of pipelines and cables. There are also a number of considerations that need to be taken into account regarding regulating the protection and preservation of the environment.

### **New Zealand's international obligations under the United Nations Convention on the Law of the Sea**

94. The United Nations Convention on the Law of the Sea (UNCLOS) provides that the coastal state (New Zealand) has "sovereign rights" in respect of the natural resources in the EEZ and continental shelf and jurisdiction in accordance with the "relevant provisions" of UNCLOS in respect to the protection and preservation of the marine environment (article 56). UNCLOS also preserves the freedom of navigation for foreign crafts in the EEZ (article 58).
95. Part XII provides that states may only adopt laws in respect of marine pollution in the EEZ if those laws conform to and give effect to "generally accepted international rules and standards established through the competent international organization or general diplomatic conference" (article 211(5) and (6)). One such competent international organisation is the International Maritime Organization which is a specialised agency of the United Nations ("IMO"). A number of Articles also provide for enabling environmental regulation that preserve and protect the marine environment, as well as prevent, reduce, and control marine pollution.<sup>7</sup>
96. UNCLOS also contains express rules concerning dumping. Article 210 obliges states to adopt laws to prevent, reduce and control dumping. It specifically prohibits dumping within the EEZ or onto the continental shelf without the express prior permission of the coastal state and makes it clear that the coastal state has the right to permit, regulate or control such dumping. Accordingly, this provision provides a basis for requiring a permit for foreign crafts in respect of defouling in the EEZ when defouling is considered to be dumping.

### **New Zealand's maritime zones**

97. Under UNCLOS there are a number of maritime zones defined generally by their distance from the land, but more precisely, as their distance from the Territorial Sea Baseline (TSB). These are:
- [Inland Waters](#) Landward of the Baseline
  - [Territorial Sea Baseline](#) -12 nautical miles
  - [Contiguous Zone](#) 12-24 nautical miles

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<sup>7</sup> Such as Articles 194 and 196: [PREAMBLE TO THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA](#)

- [Exclusive Economic Zone](#) (EEZ) 12-200 nautical miles
- [Continental Shelf](#) 12-350 nautical miles

## Relevant New Zealand agencies and their roles

98. A range of agencies have different roles and responsibilities across New Zealand's territorial sea, contiguous zone and exclusive economic zone.

## MPI

99. MPI manages biosecurity risks through the Craft Risk Management Standards (CRMS).<sup>8</sup> The CRMS applies to all crafts that enter New Zealand territory after a voyage outside of New Zealand's territory. It does not apply to crafts that are passing through New Zealand territory on innocent or transit passage as defined in the United Nations Convention on Law of the Sea.

100. Under the CRMS, craft are required to arrive in New Zealand with a "clean hull".<sup>9</sup> This means that operators or the person in charge of a craft must provide evidence for one of the following options to show compliance:

- **Continual maintenance using best practice:** This includes application of antifouling coatings, operation of marine growth prevention systems and in-water inspections with biofouling removal as required. This measure is suitable for short-stay crafts only.
- **Clean before arrival:** Inspect and if required, remove all biofouling found from all parts of the hull, including niche areas, less than 30 days before arrival to New Zealand.
- **Clean out of water on arrival:** Have a booking at a MPI approved haul-out facility to remove biofouling and enter this facility within 24 hours of arrival to New Zealand. Once in the facility, all biofouling from all parts of the hull, including niche areas are removed.
- **Treat on arrival:** All available approved treatments are listed in Approved Biosecurity Treatments (MPI-STD-ABTRT). This excludes the removal of biofouling in an approved haul-out facility.

101. MPI also applies a graded response through its notice issuance powers. If a craft fails to meet the biofouling requirements of the CRMS, the craft may receive a direction containing one or a combination of the following;

- the craft must collect further evidence to prove compliance,
- the crafts itinerary is restricted,
- the craft must leave New Zealand's territorial seas.

102. In cases where significant biofouling is present the craft is directed not to return to New Zealand until the hull is at a compliant level.

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<sup>8</sup> [Microsoft Word - CRMS-Crafts \(mpi.govt.nz\)](#). Mandatory since May 2018.

<sup>9</sup> Defined under the Craft Risk Management Standards

103. The Biosecurity Reform Act 2012 (through inserting new Part 8A) extended the New Zealand biosecurity regime to the EEZ consistent with the United Nations Convention on the Law of the Sea. “Craft” for the purposes of Part 8A are crafts that are anchored or berthed in the EEZ for the purpose of exploring or exploiting EEZ resources, or in support of such activities.
104. Section 162AK of the Act allows MPI to make the following directions to craft in the EEZ:
- move the craft outside New Zealand territory or the EEZ; or
  - move the craft into New Zealand territory from the EEZ (immediately, or within a period specified by the inspector)
105. This however only applies if there is no feasible alternative to managing the biosecurity risks posed by the craft and if the movement directed is only to the extent reasonably necessary to manage the biosecurity risks posed by the craft.”

### **The Environmental Protection Authority (EPA)**

106. The EPA has a number of functions related to regulating the environmental effects of activities in the EEZ and extended continental shelf. These include protecting the environment from pollution by regulating “dumping”<sup>10</sup> under the framework set up by the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act), and in accordance with commitments under the international Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter.
107. Dumping of waste material within New Zealand’s EEZ is a ‘notified activity’ under the Exclusive Economic Zone and Continental Shelf (Environmental Effects – Discharge and Dumping) Regulations 2015 and requires a marine consent. Operators must specify what they will dump, and where, as part of their application for a marine dumping consent.
108. Non-notified marine consents on average have a 70-day processing time (20 days to assess completeness and 50 days to make a decision). In addition to the statutory processing time, time is also required to prepare an application and undertake any necessary consultation.

### **Regional Councils**

109. Under the Resource Management Act, Regional Councils undertake the majority of regulatory and enforcement activity relating to biofouling removal within the Territorial Sea. Regional Councils require and administer consents for biofouling limits and removal.<sup>11</sup> Discretionary decisions may lead to variance in how biofouling removal is managed across different councils. Regional Councils’ authority is limited to the 12 nautical mile limit and they cannot allow in-water cleaning from international crafts.

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<sup>10</sup> Sections 10 and 13, Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012

<sup>11</sup> For example, Auckland Council states that if passive discharge from (domestic or international) macro-organisms, unusual organisms, or suspected harmful aquatic organisms exceeds fouling scale limits, it will need a consent.

## Ministry for Foreign Affairs and Trade

110. The Ministry for Foreign Affairs and Trade (MFAT) advise New Zealand in international law matters and advises on implementation of international law, including UNCLOS.

## Maritime NZ

111. Maritime NZ is the national regulatory, compliance and response agency for the safety, security and environmental protection of coastal and inland waterways. It has regulatory responsibilities to regulate discharges of hazardous substances in the EEZ from craft under the Maritime Transport Act.

## 5.2. Problem or opportunity

112. The Biosecurity Reform Act 2012 [Part 8A (Exclusive Economic Zone)] aimed to extend the biosecurity regime to the full exclusive economic zone, consistent with the UNCLOS. However, since enactment it has become clear that the definition of “craft” in Part 8A is restrictive regarding management of crafts removing biofoul in the EEZ.
113. MPI can direct incoming craft with high levels of biofouling to leave New Zealand's territorial seas. However, some of these craft are then being reactively cleaned just beyond the 12 nautical mile limit without the biofouling or antifouling paint being contained. Cleaning events in the EEZ (within the 12 - 24 nautical mile limit) increased significantly over the past years.<sup>12</sup> Ideally all craft should be arriving in New Zealand with a 'clean hull' as defined under the CRMS.
114. This practice is becoming increasingly problematic as they can impact marine values (social, cultural, environmental and economic). This activity increases the likelihood of biofouling organisms (including marine pests and pathogens) establishing viable populations on the seafloor directly below the dumping sites. There is a risk that ocean currents carrying marine pests, associated pathogens, plastic and chemical pollution can flow back into New Zealand coastlines.
115. Part 8A provisions only apply to crafts/craft that are operating in the EEZ for the purpose of exploring or exploiting resources in the EEZ. These would be crafts operating under a marine consent issued under the EEZ Act or as allowed by regulations under the EEZ Act for these activities. Crafts that are anchored or berthed in the EEZ for other purposes (such as removing biofouling) ahead of entering the 12 nautical mile limit do not come within scope of the Part 8A provisions. It is an anomaly that MPI arguably has the power to manage biosecurity risks in relation to certain crafts operating beyond the 12 nm limit, but not other crafts seeking to arrive in New Zealand that may present the same or even a greater level of biosecurity risk to New Zealand.
116. Potentially, the removal of biofoul could be considered a form of dumping and therefore could be regulated under the EEZ Act provisions restricting dumping without a consent. While UNCLOS permits biofouling removal to be managed as “dumping activity”, the framework set up by the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act) is to regulate planned activities and is not set up, or intended to, manage biosecurity risks.

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<sup>12</sup> 3 in 2018, 9 in 2019, 58 in 2021, approximately 38 in 2022. Between 1st January – 31st March 2024, 26 crafts did not meet CRMS requirements on arrival. While the figures are an estimate based on proactive monitoring by Biosecurity NZ, we have a moderately high degree of confidence in their accuracy.

117. More broadly, regulating biofouling removal under the EEZ Act would not align with the policy intent behind the Part 8A amendment to the Biosecurity Act that biosecurity risk management in the EEZ be regulated under that Act.
118. The current situation poses a wider international reputational risk for New Zealand if biofouling removal remains poorly managed in the EEZ and continental shelf and causes resulting damage in those, and adjacent, marine environments.

### 5.3. Options

119. **Option 1** is the **status quo**. Under this option, there would be continuing uncertainty about whether all crafts “arriving in the EEZ” were subject to biosecurity risk management regulation. It would also continue to leave regulator uncertainty between the EPA and MPI about their authority to regulate for biofouling removal in the EEZ and continental shelf.
120. **Option 2** would **amend the Biosecurity Act to clarify that MPI has the power to regulate biofouling removal in relation to all crafts arriving in the EEZ with a clearly stated intention of arriving in NZ**. Under this option, Part 8A of the Biosecurity Act would be amended to make it clear that MPI’s ability to regulate and manage biosecurity risks from biofouling removal applies to all crafts arriving in New Zealand’s EEZ with the clearly stated intention of entering New Zealand territorial seas, and not just those anchored or berthed in the EEZ for exploiting or exploring resources in the EEZ. The extension to crafts clearly intending to arrive in New Zealand would be consistent with New Zealand’s obligations under UNCLOS. It would continue to maintain the freedom of navigation for crafts in New Zealand’s EEZ that were in transit or not intending to enter New Zealand territorial seas.
121. This means that all ‘in scope’ crafts in New Zealand’s EEZ would need to meet the CRMS while in the EEZ. If found non-compliant, they would be required to follow MPI directions on appropriate ways to meet requirements as set out in the CRMS. Any requirements to manage biofouling removal would need to remain aligned with health and safety compliance measures. In situations where there was significant biofouling and there was no safe or feasible way to manage the risks from biofouling removal, they could be directed to leave the EEZ.
122. **Option 3** would **amend the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act) to enable MPI to regulate biofouling removal under specific regulations**. Under this option, the EEZ Act would be amended to make it clear that “dumping” activity in the EEZ included biofouling removal. It would also give MPI the power to regulate biofouling removal in relation to any “dumping” activity.
123. The EEZ Act enables the making of regulations to prohibit an activity, allow an activity without a marine consent or describe an activity as permitted. Potentially, relevant regulations could be made to regulate biofouling removal activities. However, the London Convention (on the prevention of marine pollution by dumping of wastes and other matter) provides that regulations should be considered only if other alternatives are not available. Any regulations would be administered by MPI. Similar to Option 2, any biofouling removal requirements would need to remain aligned with health and safety compliance measures.

124. Crafts operating under a marine consent are already subject to dumping regulatory requirements under the Exclusive Economic Zone and Continental Shelf (Environmental Effects-Discharge and Dumping) Regulations 2015 (Dumping Regulations).
125. The EPA would continue to be the primary regulator under the EEZ Act (and the Ministry for the Environment the administrator of the EEZ Act). MPI's role would be limited to specific functions under the new set of Regulations.

## 5.4. Assessment

126. The options are assessed against the following criteria:

<b>Effective</b>	Does the option better protect New Zealand from biosecurity risk, while supporting our economy?
<b>Adaptable</b>	Does the option deliver a modern legislation that is future-proof and enabling?
<b>Efficient</b>	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?
<b>Clarity</b>	Is the option logical, consistent, easy to understand, and provides sufficient certainty?

127. Option 2 (amend the Biosecurity Act) would be effective. It would help better protect New Zealand from biosecurity risks by providing complete coverage of the CRMS to all crafts in the EEZ. It would incentivise crafts to meet "clean hull" requirements given the cost of not being able to arrive in New Zealand or remain in the EEZ. The risk of this option adversely affecting New Zealand's economy is low. The percentage of crafts not meeting the CRMS is low, and craft operators are primarily seeking clarity on their obligations rather than looking for ways to evade the requirements.
128. This option could create perverse incentives for some craft operators to delay informing MPI of their intention to enter New Zealand's territorial seas. However, we consider this to be a minimal risk. Under the CRMS, craft operators must provide specific information to MPI at least 48 hours ahead of arriving in New Zealand, including how they are meeting NZ's biofouling risk standards.
129. This option would be efficient and clear as it would rest all biosecurity obligations and requirements in the same piece of legislation with a single regulator responsible for regulating all biosecurity risk activity.
130. Option 3 (amend the EEZ Act) meets some of the criteria. Similar to Option 2, it would meet both the effective and adaptable criteria. However, as noted previously, the EEZ framework is not set up to manage biosecurity risk requirements. Regulations would also need to be consistent with the London Convention.

131. Option 3 is likely to require more operational co-ordination between agencies given responsibilities for managing different activities would be split between two agencies. It may also lead to inefficiencies for craft operators in managing different processes to address different impacts/risks arising from the same activity (dumping). Similar to option 2, it would provide certainty to craft operators of their obligations.

## **5.5. Cost benefit analysis**

132. This set of proposals is not expected to have cost or impacts with fiscal measures. The options relate to clarifying at what point craft operators in the EEZ intending to arrive in New Zealand (not operating in the EEZ for exploring and exploiting purposes) must demonstrate that they are compliant with CRMS – which is currently a requirement for them to enter New Zealand territorial seas.

133. We analysed the options using multi-criteria analysis.

## **5.6. Preferred option**

134. Option 2 (amend the Biosecurity Act) is our preferred option. This option would provide MPI with the necessary regulatory tools to manage biofouling removal activity in a cost-effective and efficient way, within the wider biosecurity framework. It would provide certainty to craft operators on their obligations, while remaining consistent with international obligations under UNCLOS.

## 5.7. 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 – Amend the Biosecurity Act	Option 3 – Amend the EEZ Act
<b>Effective</b>	0	++ MPI would be able to manage biosecurity risks from biofouling removal cohesively within its overall biosecurity risk management framework, while staying consistent with international obligations.	+ MPI would be better able to manage biofouling removal risks, while remaining consistent with international obligations.
<b>Adaptable</b>	0	+ This option would provide MPI with clear powers to manage biofouling removal in New Zealand’s EEZ.	+ This option would provide MPI with clear powers to manage biofouling removal in New Zealand’s EEZ.
<b>Efficient</b>	0	++ This option would be more efficient as all powers and requirements would be in one statute with one administering regulator responsible for both policy and regulatory decisions.	- Greater operational co-ordination between EPA, MfE and MPI is likely to be more resource intensive and complex to manage.
<b>Clarity</b>	0	++ A single regulator setting out all relevant biosecurity compliance requirements is likely to provide greater certainty to all crafts operating in the EEZ and intending to arrive in New Zealand.	- There may be less certainty for craft operators about what their specific biosecurity risk compliance requirements are if there are multiple regulations to manage similar activity.
<b>Overall rating</b>	0	++ This option would best meet biosecurity objectives within the wider biosecurity framework. It would provide MPI with necessary regulatory tools to manage the activity in an efficient way. It would provide certainty to craft operators on their obligations.	+ This option provides MPI with the necessary powers to manage biofouling removal within New Zealand’s EEZ. While it would require more operational co-ordination, this could be managed similar to how MPI manages its role in other regulatory frameworks (for example, with Maritime NZ and DoC).

## 6. Limiting volumes of food in the air passenger pathway

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### 6.1. Background

135. MPI's border clearance function works to ensure that passenger processing is efficient and biosecurity risk is managed effectively. Goods, such as food, can move through the air passenger pathway in high volumes. It is the role of border clearance to assess all goods moving through the pathway in order to clear or deal with high-risk goods.
136. Part 3 of the Biosecurity Act deals with the importation of risk goods. This includes the importation of risk goods through the air passenger pathway. Section 16 sets out the purpose of Part 3 – to provide for the effective management of risks associated with the importation of risk goods and the entry of craft into New Zealand.
137. Section 26 provides inspectors with the power to clear goods for entry into New Zealand, including in the air passenger pathway. Section 27 sets out assessment requirements for clearances for goods to enter New Zealand. An inspector *must not* give a clearance unless satisfied as required by section 27. The assessment inspectors use to clear goods for entry into New Zealand is based on risk – in particular, an assessment of compliance with the requirements in Import Health Standards (IHSs).
138. IHSs are issued under section 24A of the Act. The purpose of an IHS is to specify requirements to be met for the effective management of risks associated with importing risk goods. Some IHS impose limitations on the volume of high-risk goods that you can bring into New Zealand through the air passenger pathway. The Personal Consignments of Products for Human Consumption and Personal Effect IHS limits the volume of food a person can bring through the pathway to 40kg.<sup>13</sup> Biosecurity inspectors make sure that goods moving through the air passenger pathway comply with the relevant IHS.
139. The process for developing an IHS is laid out in section 23. This section sets out legal requirements for consultation and a series of matters that the Chief Technical Officer either must have regard to, or may have regard to, in developing the IHS for recommendation to the Director-General. Section 24, together with the Biosecurity (Process for Establishing an Independent Review Panel) Notice, sets up a process whereby parties can seek an independent review of whether scientific evidence received sufficient regard in developing the IHS. New Zealand's obligations under the WTO-SPS Agreement<sup>14</sup> may also require MPI to notify trading partners of certain proposed IHS changes in advance. This process can be time consuming. There is no mechanism to urgently amend or suspend an IHS to respond to a developing situation unless that situation relates to a change in biosecurity risk.

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<sup>13</sup> [Import Health Standard - Personal Consignments of Products for Human Consumption and Personal Effects](#)

<sup>14</sup> World Trade Organisation Agreement on the Application of Sanitary and Phytosanitary Measures.

140. During busy periods, such as summer, the air passenger pathway can get congested. This congestion is made worse by the fact that all goods, including food items, moving through the air passenger pathway need to be assessed. Where high-risk goods are declared or identified, these goods need to be dealt with in an appropriate manner (e.g. inspected for pests, fumigated, or destroyed). Food can be cleared for entry where an inspector determines there is no risk, or the risk has been appropriately managed. Time and expertise are required to clear food in the pathway. This can cause delays, queues and congestion as passengers move through the border.
141. The cost of processing passengers at the border is recovered under the Biosecurity (Border Processing Levy) Order 2015. The Border Processing Levy is relied on to fund border clearance processes in the air passenger pathway. If more people move through the air passenger pathway, levy collection eventually increases and MPI receives more money to fund border clearance services. However, there are practical limits to reactively expanding border clearance services to deal with congestion in a timely way.
142. Operational solutions can be effective. In August 2023, an Express Risk Assessment was adopted in the Auckland Airport air passenger pathway. Biosecurity Officers passengers deemed low-risk (e.g. with no goods to declare) were directed through an Express Lane. All other passengers went through the standard biosecurity processing. The adoption of operational solutions saw processing times reduce from 11.31 and 13.10 minutes for January and February 2023 respectively, to 7.26 and 6.38 minutes in January and February 2024.

## 6.2. Problem or opportunity

143. The process for clearing food in the air passenger pathway can be extensive. This is especially problematic where the volume of passengers and levels of congestion in the pathway changes quickly and seasonally. There are no dynamic legislative levers to quickly reduce congestion in the pathway. There is an opportunity through the Biosecurity Act Amendment Bill to support current operational efforts to reduce congestion in the pathway.

## 6.3. Options

144. **Option 1** is the **status quo**. The assessment for clearing goods for entry into New Zealand is risk based. Limits can continue to be imposed through IHS on food items that are considered high-risk where there is a biosecurity risk rationale for the limit. Congestion in the air passenger pathway may continue during periods when there are high volumes of goods in the air passenger pathway.
145. **Option 2** would **amend the purpose section of Part 3 of the Act to include improving operational efficiencies**. Currently, matters of operational efficiency do not meet the risk threshold to impose limitations on the movement of food through the air passenger pathway. This would enable tools in Part 3 to be used for the purposes of improving operational efficiency.<sup>15</sup>

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<sup>15</sup> Paper 2: System-wide issues contains a discussion about purpose provisions in the Act and proposals to insert or amend purpose provisions in the Act.

146. **Option 3** would create a provision in the Act that **enables the Director-General to impose a limit on the volume of a class of food moving through the air passenger pathway**. This would enable the Director-General to issue a ban or a restriction on the volume of a food that can move through the pathway for reasons other than just biosecurity risk. For example, under Option 3 the Director-General could impose a limit on the volume of a specific food item to improve operational efficiency.
147. Appropriate checks and balances would be applied to this new power, for instance, consultation requirements. The decision to impose a limit on the volume of a class of good would need to be fair and reasonable (e.g., to increase operational efficiency in the air passenger pathway). These limitations could also be time-limited to address particularly busy periods, or they could also be restricted to a specific passenger pathway (e.g. a specific airport experiencing high congestion).
148. Option 3 would also establish an exemptions regime for any limitations that are imposed by the Director-General. These exemptions could be relied on to exempt specific classes of food or people from limitations. For example, the exemptions regime could exempt passengers on human rights grounds (e.g., passengers bringing in foods for religious purposes) and medical grounds (e.g., passengers bringing in foods relating to pregnancy or health conditions).
149. An exemptions regime should not create large increases in congestion in the air passenger pathway. The number of passengers who require food items as they move through the pathway is low.
150. Several changes to operational policy and procedure would be required to implement any exemptions regime. The exemptions regime would be implemented via communications to operational staff. Operational procedure could be relied on to inform staff that certain groups of people or certain classes of food are exempted from any limitations. Proof of eligibility for exemption could be provided through the New Zealand Traveller Declaration. Passengers could declare they are bringing food through the air passenger pathway and specify why they are eligible for an exemption. For example, should an exemption be implemented for religious reasons, passengers could declare that they are bringing food through the pathway. The passenger could then state through the declaration that the food item is being brought “for religious purposes.” It is an offence to make an erroneous or knowingly incorrect declaration under the Act.

## 6.4. Assessment

151. The options are assessed against the following criteria. We have introduced an extra criterion for this topic to do with equity and fairness. Under this criterion, we assess how an option affects passengers to New Zealand and if the restrictions on them are unfair. We also assess whether some classes of passengers might be treated differently or are disproportionately impacted by an option.

<b>Effective</b>	Does the option better protect New Zealand from biosecurity risk, while supporting our economy?
<b>Adaptable</b>	Does the option deliver a modern legislation that is future-proof and enabling?
<b>Efficient</b>	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?
<b>Clarity</b>	Is the option logical, consistent, easy to understand, and provides sufficient certainty?
<b>Fairness</b>	Is the option unfair for passengers; are some classes of passengers treated differently or disproportionately?

152. Option 2 (amend the purpose section of Part 3 of the Act to include improving operational efficiencies) and Option 3 (enable the Director-General to impose a limit the volume of a class of food moving through the air passenger pathway) would not advance or limit the effectiveness of the Biosecurity Act Amendment Bill. The limitations imposed under these options would be on any class of food that moves through the air passenger pathway. These are foods that do not necessarily pose a risk to New Zealand's biosecurity. High-risk foods that do pose a risk to biosecurity are already limited by the Act through IHS and managed through the border clearance process.
153. Option 2 would expand existing tools in Part 3 of the Act to be used for purposes beyond the management of risks. Tools under Part 3 of the Act, such as IHS, would be able to be used for the purposes of improving operational efficiencies, not just the management of biosecurity risk.
154. Option 3 will provide an additional tool to the Act's toolbox by providing the option for the Director-General to impose a limitation on a specific class of food in the air passenger pathway for reasons other than reducing biosecurity risk.
155. Option 2 and 3 may increase efficiencies in the air passenger pathway by reducing congestion. Placing limitations on the movement of a specific class of food moving through the air passenger pathway will likely change how people behave as they enter New Zealand. For example, if there was a limitation on a specific food item, we expect passengers would take steps not to bring the limited food into New Zealand through the pathway. This would reduce the volume of the limited food moving through the pathway and consequently the amount of time passengers spend moving through the pathway. Lower volumes of food items moving through the pathway would take less time for biosecurity officers to clear.
156. Option 2 and 3 may increase the verification burden at the border. Verification of whether a limited class of food are moving through the pathway will still be required. This verification will still take time and skill to carry out. However, the level of administrative and compliance burden may reduce where the volume of high-risk foods moving through the pathway is reduced as a result of limitations. Further verification would be required under option 3 where an exemption regime excludes specific groups of people and classes of foods from limitations.

157. Option 2 may provide less clarity in the Act than Option 3. As an amendment to the purpose section of Part 3, the implications of this purpose would not be immediately clear to someone plainly reading the Act. Other amendments may be required in Part 3 to bring specific wording in IHS provisions of the Act in line with the new purpose. Option 3 however makes it very clear that the Director-General is enabled to impose a limitation on specific high-risk goods moving through the passenger pathway.
158. Option 2 would impact the Act's fundamental focus on biosecurity risk management. The amendment of the purpose section in Part 3 to include operational efficiencies would introduce a new consideration into the Act. Improving operational efficiencies does not necessarily relate with the Act's fundamental focus on biosecurity risk management.
159. Options 2 and 3 may adversely affect some groups of people over others. Some groups of people rely on specific classes of foods when moving through the air passenger pathway. There is risk that if some classes of foods were to be limited, then specific groups that rely on those foods would be negatively impacted. For example, a limit on food in the pathway may adversely impact individuals with health conditions, pregnant women, and individuals bringing in food for cultural reasons. Under Option 3, this risk could be mitigated through an exemption regime that allowed specific groups of people or classes of food to be exempted from limitations.
160. Option 2 may have unintended impacts on how Part 3 of the Act operates. If the purpose of Part 3 was amended to include operational efficiencies, there may be scope for MPI decisions related to functions under Part 3 to be scrutinised on the basis of operational inefficiency. This may be problematic where operational inefficiency is a necessary burden to identify or deal with biosecurity risk.

## **6.5. Cost benefit analysis**

161. Both Option 2 and Option 3 seek to enable a method to address the congestion to relieve pressure on the biosecurity officers responsible for clearance activities on the air passenger pathway. However, there is insufficient data to provide confidence in their impact.

## **6.6. Preferred option**

162. We do not have a preferred option. It is unclear whether Option 2 would provide benefits compared with the status quo. We are uncertain on Option 3 as it may have disproportionate impacts on passengers. We would like to gather views on how Option 3 might affect travel and perceptions of New Zealand before we can recommend it over the status quo.

## 6.7. 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 – amend the purpose section in Part 3	Option 3 – enable the Director-General to impose a volume limit on a class of good in the air passenger pathway
<b>Effective</b>	0	0 Option 2 is unlikely to have any effect on this criterion. High risk goods are already limited through the IHS. This option would limit foods that do not have biosecurity risk on the basis of operational inefficiency.	0 Option 3 is unlikely to have any effect on this criterion. High risk goods are already limited through the IHS. This option would limit foods that do not have biosecurity risk on the basis of operational inefficiency.
<b>Adaptable</b>	0	+ Option 2 will expand existing tools in the Act by broadening the grounds for limiting the movement of a class of foods through the air passenger pathway. This will enable greater use of limits to increase operational efficiencies at the border.	+ Option 3 expands the tools available to improve efficiencies in the air passenger pathway.
<b>Efficient</b>	0	+ Option 2 should increase efficiency in the air passenger pathway. The reduction in the volume of a class of food in the air passenger pathway should reduce the amount of time inspectors are spending ensuring compliance with the limitation. This should make the pathway more efficient to move through for passengers. There is some risk that the burden of verification will increase for inspectors. Inspectors will need to check whether a limited food is moving through the pathway.	+ Option 3 should increase efficiency in the air passenger pathway. The reduction in the volume of a class of foods in the air passenger pathway should reduce the amount of time inspectors are spending ensuring compliance with the limitation. This should make the pathway more efficient to move through for passengers. There is some risk that the burden of verification will increase for inspectors. Inspectors will need to check whether a limited good is moving through the pathway.

	Option 1 – status quo	Option 2 – amend the purpose section in Part 3	Option 3 – enable the Director-General to impose a volume limit on a class of good in the air passenger pathway
<b>Clarity</b>	0	<p style="text-align: center;">-</p> <p>Option 2 would likely reduce the level of clarity in the Act. Amending the purpose of Part 3 to unlock functions to limit foods that do not contain biosecurity risk is not transparent or clear. It is also not entirely clear what potential impacts Option 2 will have on other provisions under Part 3.</p>	<p style="text-align: center;">+</p> <p>Option 3 would provide clarity in the Act around the Director-General's ability to impose a limitation on high-risk goods moving through the air passenger pathway. Unlike Option 2, the explicit enablement of limitations would be clear upon a plain reading of the Act.</p>
<b>Fairness</b>	0	<p style="text-align: center;">-</p> <p>Option 2 may lead to unfair treatment between different classes of passengers. Providing limitations on food may adversely impact different groups of people including individuals with health conditions, pregnant women, and individuals bringing food for cultural reasons.</p>	<p style="text-align: center;">0</p> <p>Option 3 could lead to unfair treatment between different classes of passengers. Like Option 2, limitations on food items may adversely impact different groups of people such as individuals with health conditions, pregnant women, and individuals bringing food for cultural reasons. These adverse impacts could be mitigated through the use of an exemptions regime.</p>
<b>Overall rating</b>	0	<p style="text-align: center;">0</p> <p>Option 2 would enable options to increase efficiency in the air passenger pathway. It would provide decision makers the ability to limit specific foods for the purpose of improving operational efficiency. However, there may be unintended consequences to Option 2.</p>	<p style="text-align: center;">+</p> <p>Option 3 would enable the Director-General to increase efficiency in the air passenger pathway by directly imposing volume limits on a class of foods. Less time will likely be required to assess and verify compliance in the air passenger pathway. This assessment presumes that volume of food items will reduce. It is also contingent on a carefully designed and well-implemented exemptions regime.</p>

## 7. Containment and transitional facilities

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### 7.1. Background

163. At the border, MPI verifies that necessary import requirements have been met once risk goods arrive in New Zealand. On arrival, cargo moves to MPI approved and audited transitional or containment facilities for inspection and clearance.
164. Transitional facilities are facilities that receive containers and goods that are considered risks to biosecurity. These goods may require treatment or inspection at the facility before being cleared into New Zealand. Containment facilities are similar, but they also manage the risks associated with the goods themselves, rather than just the biosecurity risks they pose. The goods held in containment facilities, for example a lion in a zoo, are never allowed general release into New Zealand.
165. Facilities must be approved by MPI before they can operate lawfully. The approval and cancellation of approval for transitional and containment facilities are issued under section 39 of the Act:
- The Director-General may approve a containment facility under section 39(2A), provided the application complies with the requirements of the Act and the facility meets the relevant standard approved by the Ministry for the Environment under the Hazardous Substances and New Organisms Act 1996 (HSNO Act).
  - The Director-General may approve a transitional facility under section 39(3), provided the application complies with the requirements of the Act and facilities meets the relevant standard issued under section 39(10).
  - Approvals for both transitional and containment facilities may be cancelled under section 39(7) if the facility no longer complies with the relevant standard(s). The Director-General may also cancel an approval if they are satisfied the facility is no longer used for the purposes specified in the approval.
166. Section 40 establishes requirements for the approval of facility operators. This approval may be cancelled under section 40(4). Operators are required to comply with section 40(6), which specifies that a facility operator must comply with facility and operator approval conditions, directions given by an inspector about goods held at the facility, and any restrictions that an inspector may impose on releasing goods held at the facility.
167. The Director-General may suspend an operator's approval under section if they believe the operator is not complying with section 40(6), or has committed an offence under section 154N(17). The Director-General may cancel an operator's approval after suspension under section 40D(8), if they believe that the non-compliance leading to suspension has not been rectified.
168. There are two offences associated with facility operator non-compliance:
- It is an offence under section 154N(6) to fail to comply with section 40(6).
  - It is an offence under section 154N(17) for a person to operate a facility if that person:
    - is not approved as the facility operator of the facility; or

- has had their facility operator approval suspended; or
  - operates an unapproved facility; or
  - operates a suspended facility; or
  - does not comply with the standards for that facility.
169. MPI undertakes regular verification of all facilities to ensure they are meeting approved standards. This ensures that facilities are compliant and well equipped to manage the associated biosecurity risks of the goods they are approved to receive.
170. These verification activities are operated under a performance-based model, where the type and frequency of activities is determined by a facility's biosecurity risk profile and their previous record of compliance. This approach encourages improved compliance and enables MPI to apply a targeted approach to regulatory intervention. MPI's Border Clearance Services are responsible for these verification activities.

## 7.2. Problem or opportunity

### Facility approval framework

171. Using facilities to manage biosecurity risk relieves physical and resource pressures at the border, while providing an additional layer of protection to the biosecurity system.
172. However, the legislative framework for the approval, suspension, and cancellation of facilities operators has created some unintended consequences:
- There can be operational consequences when a facility operator resigns, gets sick, dies, or is otherwise incapacitated. A facility cannot legally operate without an operator.
  - There is reduced liability for facility owners, as the owner of a facility does not fall under the legal framework unless they are also the facility operator.
  - There are redundant procedures for cancellation and suspension of a facility. For example, the Act provides a mechanism to cancel and suspend a facility for non-compliance, as well as a mechanism to cancel and suspend a facility operator. However, a facility is not allowed to operate without an operator and the distinction between suspending/cancelling a facility and an operator is meaningless.

### Enabling third-party verification at transitional facilities

173. There are more than 3000 transitional facilities around New Zealand, all of which require regular on-site auditing by verifiers. MPI uses a performance based-verification approach to determine the risk profile of each facility. Factors that determine a facility's risk profile include the types of goods they receive and their previous compliance with biosecurity requirements.
174. The use of third-party verifiers for lower-risk facilities would take some of the operational burden off MPI staff and resources that could be used elsewhere. However, the Act does not clearly support the use of third parties for this purpose. Third parties are used elsewhere in the biosecurity system, to treat goods prior to import or export. Without the Act clearly supporting the use of third parties, the use of third-party treatment providers is reliant on contract law.

## 7.3. Options

### Facility approval framework

175. **Option 1** is the **status quo**. It would maintain the current legislative framework and requirement for legislative approval for facility operators.
176. **Option 2** looks to **streamline the legislative framework for transitional and containment facilities**. It would do so by removing the requirement for transitional or containment facility operators to be approved under the Act. This would not remove the requirement for a facility to have an operator; in order to be approved under the Act facilities must still meet the requirements of the relevant standard, and the standards themselves require each facility to have a competent operator. However, the operators would not have to have legislative approval under the Act to carry out this function.
177. Instead, the requirements for operators would be specified within the standard(s) under which the facility is approved. If a facility operator is an entity, or is not based at the facility, then the standard would require them to delegate a deputy operator to oversee the day-to-day operations of the facility. The requirements for deputy operators would also be specified in the standard under which the facility is approved.

### Enabling third-party verification at transitional facilities

178. **Option 1** would maintain the **status quo**. This would mean MPI's Border Clearance Services would undertake verification activities at all transitional facilities on a frequency determined by each facilities biosecurity risk profile and operational complexity.
179. **Option 2** would **amend the Biosecurity Act to include the ability for an authorised third-party to undertake verification activities at transitional facilities**. Under this option section 126(1) of the Biosecurity Act would be amended to enable third-party verification of transitional facilities with a lower biosecurity risk profile.
180. **Option 3** would **enable the Director-General of MPI to recognise third parties to undertake specified roles and functions**. Under this option a new section would be inserted into the administrative provisions of the Biosecurity Act. This would enable third-party verification across the wider biosecurity system if needed, rather than limiting it to only verification activities of transitional facilities.
181. When developing Options 2 and 3 we compared them with the use of third-party verification in regulatory systems under another Act that MPI administers: the Food Act 2014.

## 7.4. Assessment

182. The options are assessed against the following criteria:

<b>Effective</b>	Does the option better protect New Zealand from biosecurity risk, while supporting our economy?  Does the option lead to effective partnership and coordination between government and other players of the biosecurity system?
<b>Adaptable</b>	Does the option deliver a modern legislation that is future-proof and enabling?

<b>Efficient</b>	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?
<b>Clarity</b>	Is the option logical, consistent, easy to understand, and provides sufficient certainty?  Are roles and responsibilities assigned appropriately and clearly between central government, local government, industry, and local communities?

### Facility approval framework

183. Under Option 1, the status quo, a facility's approval may be cancelled if the operator is incapacitated. The facility cannot continue to operate without someone ensuring that the necessary biosecurity risk management processes are followed. This can lead to operational inefficiencies and increase the biosecurity risk while goods are having to be transferred to another facility. This may also create economic consequences if there are delays in trade. This option can also limit the flexibility of the Act, as biosecurity requirements and the roles that facilities play in the system may change in the future.
184. Option 2 (streamlining the legislative framework) meets all the criteria. By setting operator requirements in secondary legislation, and therefore reducing the likelihood of a sudden biosecurity incursion it provides greater assurance that a facility continues to be overseen by someone ensuring biosecurity risk management processes are followed. This better enables the Act to adapt and respond to changes in biosecurity risk management and reduces operational uncertainty for both MPI and facilities themselves.

### Enabling third-party verification at transitional facilities

185. Under the status quo MPI is required to verify all transitional facilities, and ensure they are meeting their requirements to appropriately manage biosecurity risk. Due to the large number of facilities in New Zealand, this can lead to operational burden on MPI. Additionally, because some of these facilities pose a lower biosecurity risk, MPI resources could better be used to focus on facilities with a higher risk, and who require more risk management intervention.
186. Both Option 2 (amend the Biosecurity Act to include the ability for an authorised third-party to undertake verification activities at transitional facilities) and Option 3 (enable the Director-General of MPI to recognise third parties to undertake specified roles and functions) will allow for third parties to undertake verification activities of lower risk transitional facilities. The key difference between the two options is that Option 2 allows only for third-party verification of transitional facilities. In contrast, Option 3 would allow for third parties to be used in other areas of the biosecurity system if desired. Both options meet the effective criterion and enable MPI resource to be focused on higher risk facilities.
187. Option 2 is adaptable by clarifying the role of third parties. However, Option 3 best meets the adaptable criterion by enabling the use of third parties across the wider biosecurity system if the need arose. This better enables the Act to adapt to resource and requirement changes without the need for consequential amendments to primary legislation.

188. Both Options 2 and 3 meet the efficiency criteria, by improving operational cost effectiveness and better sharing accountability between MPI border staff and industry. Both options would reduce the regulatory burden on compliant facilities, share responsibility more appropriately, and provide more incentives to manage biosecurity risk. Similarly, both options provide increased clarity and legislative underpinning on the responsibilities of third parties operating in the biosecurity system.
189. Under both options MPI would continue to recover the costs associated with undertaking verification activities at transitional facilities from the facilities themselves. MPI would utilise these funds to use third party operators for verification activities. This would ensure biosecurity objectives remain consistent between verification agencies and MPI operational staff.

## **7.5. Cost benefit analysis**

### **Facility approval framework**

190. This set of proposals is not expected to have cost or impacts with fiscal measures. Their consideration and implementation are a part of the regular work of government.
191. We analysed the options using multi-criteria analysis.

### **Enabling third-party verification at transitional facilities**

192. It is reasonable to enable the ability to recognise third party verifiers under either Option 2 (amend the Biosecurity Act to include the ability for an authorised third-party to undertake verification activities at transitional facilities) and Option 3 (enable the Director-General of MPI to recognise third parties to undertake specified roles and functions). The work of enabling this provision is not an additional cost but a part of BAU.
193. A key uncertainty for this proposal is the ability for the market to meet the demand created by implementing either Option 2 or 3.

## **7.6. Preferred option**

### **Facility approval framework**

194. Our preferred option is Option 2 as it meets all the criteria.

### **Enabling third-party verification at transitional facilities**

195. Our preferred option is Option 3, as it better future proofs the Act by providing legislative underpinning for the use of third parties across the whole of the biosecurity system if needed.

## 7.7. 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

### Facility approval framework

	Option 1 – status quo	Option 2 – streamlining the legislative framework
<b>Effective</b>	0	<p style="text-align: center;">+</p> <p>Reduces the likelihood of sudden cancellation of a facility, which requires the goods held there to be transferred to another facility to undergo treatment and clearance. This reduces the likelihood of a biosecurity incursion during transfer of the risk goods and lessens pressures on the biosecurity system.</p>
<b>Adaptable</b>	0	<p style="text-align: center;">+ +</p> <p>Better enables the Act to adapt and respond to changes in biosecurity risk management and the role of facilities and operators by setting requirements in secondary legislation and reducing the need to amend primary legislation.</p>
<b>Efficient</b>	0	<p style="text-align: center;">+</p> <p>Facilities play a key role in managing biosecurity risk and the border and by reducing the likelihood of a facility needing to be cancelled if an operator is incapacitated that facility can continue to mitigate biosecurity risk.</p>
<b>Clarity</b>	0	<p style="text-align: center;">+</p> <p>Reduces operational uncertainty if a facility operator is suddenly incapacitated. Enables requirements for operators and deputy operators to be clearly specified in standards. Enabling the delegation of a deputy operator ensures that MPI still has a key point of contact at each facility.</p>

	Option 1 – status quo	Option 2 – streamlining the legislative framework
<b>Overall rating</b>	0	<p style="text-align: center;">+</p> <p>Reduces the operational uncertainties that can arise from a single point of failure approach. Enables the Act to adapt and respond to changes in biosecurity risk management and the role of transitional facilities at the border in a timely manner, while still providing strong legislative underpinning.</p>

### Enabling third-party verification at transitional facilities

	Option 1 – status quo	Option 2 – amending the Act to enable third parties to undertake verification activities at transitional facilities	Option 3 - enable the Director-General of MPI to recognise third parties to undertake specified roles and functions
<b>Effective</b>	0	<p style="text-align: center;">+</p> <p>Enables a wider source of expertise to support the biosecurity system by undertaking verification activities of lower risk facilities. The use of third parties is not required under legislation and their use would be dependent the operational benefit and effectiveness at the time.</p>	<p style="text-align: center;">+</p> <p>Enables a wider source of expertise to support the biosecurity system as and when required. Ensures maintaining management of biosecurity risks by recognising in statute activities currently under contract law. Third party use in the biosecurity system would not be required but would instead provide an additional tool to manage biosecurity risks if needed.</p>
<b>Adaptable</b>	0	<p style="text-align: center;">+</p> <p>This option enables MPI to make better use of their performance based verification approach to facility auditing and creates an additional tool that may be utilised for verification activities of lower risk facilities</p>	<p style="text-align: center;">++</p> <p>Third parties are already used in the biosecurity system in the biosecurity treatments area. Without legislative underpinning, the current use of third parties in the treatments space is reliant on contract law. This option would clarify the role of third parties in biosecurity treatment activities and reduce the reliance on contract law, which can be costly and time consuming for MPI. It also enables the use of third parties across the wider biosecurity system if future need arose, without the need for consequential amendments to primary legislation, including for verification activities of transitional facilities.</p>

	Option 1 – status quo	Option 2 – amending the Act to enable third parties to undertake verification activities at transitional facilities	Option 3 - enable the Director-General of MPI to recognise third parties to undertake specified roles and functions
<b>Efficient</b>	0	<p style="text-align: center;">+</p> <p>The use of third parties for verification activities at transitional facilities would allow for more efficient use of MPI’s operational resources. However, this option assumes there is availability of third parties available to authorise. There may also be additional administrative burden on MPI to approve third party operators and undertake proactive compliance checking to ensure their function to appropriately performed.</p>	<p style="text-align: center;">++</p> <p>Enables MPI to make use of all available private resources and expertise across the wider biosecurity system. There may be additional administrative burden on MPI to approve third party operators and undertake proactive compliance checking to ensure their function to appropriately performed.</p>
<b>Clarity</b>	0	<p style="text-align: center;">0</p> <p>Likely no change in clarity as verification requirements for facilities would not change and the use of third parties at a facility would be determined by the existing performance-based verification model.</p>	<p style="text-align: center;">+</p> <p>This would provide legislative underpinning on the responsibilities of third parties operating in the biosecurity system. It would also enable a wider group of non-central government and private sector expertise to support the biosecurity system.</p>
<b>Overall rating</b>	0	<p style="text-align: center;">+</p> <p>The use of third parties for verification of lower risk transitional facilities provides for effective use of a performance-based verification model and better utilisation of MPI resources.</p>	<p style="text-align: center;">++</p> <p>Similar to Option 2, however this option would enable the use of third parties across the wider biosecurity system if the future need arose.</p>

## 8. Providing biosecurity information to incoming passengers on commercial craft

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### 8.1. Background

196. The Biosecurity (Information for Incoming Passengers) Amendment Act 2022 amended the Biosecurity Act to include section 17AA. Section 17AA introduced a general duty for the person in charge of a commercial craft (such as an aircraft or cruise craft) with 20 or more incoming passengers (excluding crew) to provide information on New Zealand's biosecurity laws.<sup>16</sup>
197. Prior to the general duty being introduced, while it was not a legal requirement, the majority of airlines and cruise line carriers provided MPI-produced biosecurity information to incoming passengers on a voluntary basis.
198. The Biosecurity (Information for Incoming Passengers) Regulations 2023 (the regulations) provide the details on how the biosecurity information is to be provided to incoming passengers. Airline or cruise line carriers can choose to use the biosecurity information produced by MPI or they can develop their own biosecurity information, which must be submitted to the Director-General of MPI for approval.
199. If airline and cruise line carriers choose to provide their own biosecurity information, it must include the following elements:
- what items are a biosecurity risk;
  - how these items could damage New Zealand's environment and industries;
  - how these items can be disposed of safely;
  - how to make a biosecurity declaration;
  - penalties for failing to dispose or declare; and
  - any additional information deemed necessary by MPI's Director-General to manage biosecurity risk.
200. If a person in charge of a commercial craft does not provide biosecurity information to incoming passengers, they could be subject to a compliance order or an infringement fee of \$400 for an individual or \$800 for a corporate.
201. Verifying that airline and cruise line carriers have complied with the general duty is done using two methods, depending on if the craft is an aircraft or a cruise craft:
- For airlines, the airlines or Board of Airline Representatives of New Zealand provides a letter of assurance to MPI and compliance is verified during routine auditing. In addition to the letter of assurance, MPI randomly audits aircraft against the Craft Risk Management Standard by boarding one percent of flights per year. To support compliance with section 17AA of the Act and the regulations, a Quarantine Officer requests evidence from the pilot (as the person in charge of the craft) as to how they provided biosecurity information.

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<sup>16</sup> The Amendment Act defines a large commercial craft as a commercial craft as defined by section 4 of the Immigration Act 2009 and having 20 or more passengers (which excludes crew) on board.

- For cruise lines, MPI's Recognised Cruise Line Programme includes a formal commitment to provide biosecurity messaging to passengers and this messaging is verified through existing audits. An additional question has been added to existing recording measures to allow an Inspecting Officer to capture onboard verification that biosecurity information has been provided to incoming passengers.

## 8.2. Problem or opportunity

202. There is an opportunity to review whether the requirement to provide biosecurity information to incoming passengers is delivering its intended outcome, which is to ensure that passengers entering New Zealand are aware of the biosecurity risk that certain items pose (e.g., food, plants, wooden products, soil, water, outdoor equipment and animal products) and the penalties associated with not declaring these items on arrival in New Zealand.
203. Providing notice to the Director-General of MPI that the information has been provided to passengers could add an additional layer of accountability and to assist in the verification and compliance with section 17AA and the regulations.
204. Currently the regulations do not require notification to the Director-General of MPI. At the time the regulations were developed, it was initially thought that the requirement to provide the Director-General of MPI notice that the information had been provided to incoming passengers could be done through existing verification methods. However, it was found that it was difficult to retrospectively add an additional reporting obligation onto carriers. It could create undue operational burden or compliance costs on both MPI and carriers.
205. There is an opportunity to examine if the requirement to notify the Director-General of MPI should be included in the regulations. Current methods of verification and compliance could be considered less rigorous than ideal. They are dependent on the airlines and cruise line carriers own self-moderation. The lack of independent verification may make it more difficult for MPI to pursue prosecution in the event of non-compliance with section 17AA and the regulations.
206. There are the following information gaps on the general duty and the regulations:
- If the general duty and the regulations are providing the intended outcome of improving biosecurity outcomes.
  - If the general duty and the regulations are providing additional biosecurity protection at the border.
  - If the benefits provided by the general duty and the regulations are worth the administrative and compliance costs.
207. To assist in the analysis and to build an evidence base, MPI is seeking feedback on whether the general duty and the regulations are improving biosecurity outcomes and passengers' awareness of New Zealand's biosecurity laws.

## 8.3. Options

208. **Option 1** is the **status quo**. This would maintain the general duty under section 17AA of the Act and the regulations for airline and cruise line carriers to provide biosecurity information to incoming passengers.

- 209. **Option 2** proposes **removing the general duty under section 17AA of the Biosecurity Act and its supporting regulations to provide biosecurity information to incoming passengers**. This would remove section 17AA and the associated regulations, which would result biosecurity information being provided to incoming passengers on a voluntary basis only.
- 210. **Option 3** would **include a requirement for carriers of commercial craft to provide notice to the Director-General of MPI that biosecurity information has been provided** to incoming passengers for each individual flight or voyage into New Zealand in the regulations. The purpose of this would be to:
  - address the compliance and verification for section 17AA and the regulations so that they are consistent with each other; and
  - clarify how airline and cruise line carriers would provide notification to the Director-General of MPI.

**8.4. Assessment**

211. The options are assessed against the following criteria:

<b>Effective</b>	Does the option better protect New Zealand from biosecurity risk, while supporting our economy?
<b>Adaptable</b>	Does the option deliver a modern legislation that is future-proof and enabling?
<b>Efficient</b>	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?
<b>Clarity</b>	Is the option logical, consistent, easy to understand, and provides sufficient certainty?

- 212. Option 1 would retain the provision of biosecurity information to incoming passengers as a general duty and the regulations. There are issues with verification and compliance, such providing a more efficient way for airline and cruise line carriers to provide verification to MPI that the information has been provided to passengers.
- 213. The general duty was introduced relatively recently (October 2023). Option 1 would enable the effectiveness to be assessed over a longer timeframe. It could be considered premature to revoke section 17AA and the regulations before enough time has passed to assess the impacts that it has had on informing passengers of New Zealand’s biosecurity laws.
- 214. Option 2 (removing the general duty under section 17AA) would remove the administrative burden on airline and cruise line carriers and MPI through revoking section 17AA of the Act.

215. Option 3 (include a requirement for carriers of a commercial craft to provide notice to the Director-General of MPI that biosecurity information has been provided) would improve the verification of compliance with section 17AA and the regulations. Introducing the requirement to provide notice to the Director-General of MPI would provide a clearer basis for prosecution purposes in situations where an airline or cruise line carrier did not provide biosecurity information to incoming passengers. However, there are difficulties and costs associated with retrospectively adding an additional reporting obligation, including introducing new operational procedures and compliance costs for airline and cruise lines and MPI. It may result in additional procedures and compliance costs that are unlikely to be justified in relation to mitigation of biosecurity risk posed by not informing the Director-General or MPI.

## **8.5. Cost benefit analysis**

216. This set of proposals is not expected to have cost or impacts with fiscal measures. Their consideration and implementation are a part of the regular work of government.

217. We analysed the options using multi-criteria analysis.

## **8.6. Preferred option**

218. Based on the multi-criteria analysis, Option 2 best meets the criteria. However, at this stage we do not have a preferred option as we lack a strong evidence base on whether the objectives of section 17AA are being met. A preferred option will be informed by the feedback received from airline and cruise line carriers and passengers during public consultation on the amendments to the Act.

## 8.7. 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 – removing the general duty in the Act to provide biosecurity information to incoming passengers	Option 3 – include a requirement to provide notice to the Director-General of MPI
<b>Effective</b>	0	<p style="text-align: center;">0</p> <p>The removal of the general duty and the regulations would have unknown impacts on biosecurity protection. Prior to the general duty, there was a very high level of compliance with 99 percent of cruise craft passengers and 98.5 percent of airline passengers being compliant with New Zealand’s biosecurity laws. Removing the general duty could be interpreted as reducing the importance of the provision of biosecurity information to passengers.</p>	<p style="text-align: center;">0</p> <p>Introducing an additional requirement to provide notice to the Director-General of MPI that biosecurity information had been provided would assist in the verification and compliance of section 17AA and the regulations. However, it would not substantively provide improved levels of protection from biosecurity risk.</p>
<b>Adaptable</b>	0	<p style="text-align: center;">0</p> <p>Due to the high levels of voluntary compliance prior to the general duty being introduced recently in October 2023, the removal of the general duty and the regulations would not significantly affect the toolbox for users of the Act. The general duty is largely administrative in its function.</p>	<p style="text-align: center;">0</p> <p>Would establish a requirement on airlines and cruise lines carriers to provide notice to the Director-General of MPI that biosecurity information had been provided. This would not be a tool to improve biosecurity outcomes, rather it would be to assist with the verification and compliance with section 17AA and its associated regulations.</p>

	Option 1 – status quo	Option 2 – removing the general duty in the Act to provide biosecurity information to incoming passengers	Option 3 – include a requirement to provide notice to the Director-General of MPI
<b>Efficient</b>	0	<p style="text-align: center;">+</p> <p>Removing the general duty to provide biosecurity information to incoming passengers would remove the administrative burden on airline and cruise line carriers and MPI. The removal of the general duty and the regulations would address the verification and compliance issues that have been identified in the problem definition.</p>	<p style="text-align: center;">-</p> <p>Would create an administrative burden for airlines and cruise line carriers and MPI, as new operational procedures would be required to provide notification to the Director-General of MPI. The process would be complex to implement, as airlines and cruise line carriers and MPI are not set up to accommodate this requirement currently. The introduction of the requirement would be unjustified in relation to the level of low mitigation that it would provide against biosecurity risk.</p>
<b>Clarity</b>	0	<p style="text-align: center;">+</p> <p>The general duty and the regulations have been in place since 21 October 2023 and have not yet been assessed. It is possible that removing the general duty will create uncertainty amongst carriers. However, removing the general duty and the regulations would not create significant uncertainty, given the previous high level of voluntary compliance by airlines and cruise line carriers and incoming passengers.</p>	<p style="text-align: center;">0</p> <p>The inclusion of the requirement to provide notice to the Director-General of MPI would provide a clear basis for prosecution. However, the requirement is not necessarily to improve with sufficient certainty that the biosecurity information had been provided to incoming passengers on all flights and cruise crafts. There are difficulties with compliance, which for definitive purposes may require increase MPI staff presence to interview incoming passengers to confirm whether or not the airline or cruise line had provided the biosecurity information to passengers.</p>
<b>Overall Rating</b>	0	<p style="text-align: center;">+</p> <p>This would remove the difficulties associated with verification and compliance for the general duty and the regulations. Having a general duty reinforces the importance of biosecurity at the border and the role of educating individuals to prevent biosecurity risk items from entering New Zealand. However, the level of voluntary provision of biosecurity information to passengers and compliance with New Zealand’s biosecurity laws by passengers had been very high prior to the introduction of the general duty and the regulations.</p>	<p style="text-align: center;">-</p> <p>This option would create an administrative burden on airline and cruise line carriers and MPI without significant improvements to biosecurity protection. The benefits associated with addressing the implementation issues would not outweigh the overall costs and minimal impacts on biosecurity outcomes.</p>