Regulatory Impact Statement

Biosecurity Act Amendment Bill

Paper 5: Readiness and response

Contents

1. Introduction

1. The Biosecurity Act Amendment Bill (the Bill) impact statement has been split into a series of impact statements as follows:

    - Paper 1: Overview impact statement;
    - Paper 2: System-wide issues;
    - Paper 3: Funding and compensation;
    - Paper 4: Border and imports;
    - Paper 5: Readiness and response;
    - Paper 6: Long-term management; and
    - Paper 7: Surveillance and interfaces with Department of Conservation-administered legislation.

2. The overview impact statement sets up the background for the Bill, the overarching regulatory stewardship "problem definition", and the objective and criteria for the Bill as a whole. The remaining impact statements detail specific issues and proposals, which relate to the overarching opportunity and objectives. The topic-based impact statements should be read together with the overview impact statement.

3. This impact statement is Paper 5: Readiness and response. It relates to:

    - the government/industry agreement for biosecurity readiness and response partnership (GIA);
    - liability protection for GIA partners;
    - faster emergency declarations; and
    - proactive management of biosecurity risks.

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.

5. Several issues that are directly relevant for the GIA are contained in Paper Three: Funding and compensation, including options for cost-shares for the GIA, and how costs are recovered from non-signatory beneficiaries (industry groups who have not signed up to the GIA, but who benefit from GIA-funded activities).

2. Government/industry agreement

2.1. Background

6. The 2012 amendments to the Biosecurity Act 1993 (the Act) set up the government/industry agreement for biosecurity readiness and response (GIA). The GIA is a partnership between government and industry to improve New Zealand's biosecurity. Signatories and government work as partners and share decision making responsibilities, and the costs of preparing for and responding to incursions.

7. Under the GIA, industry organisations and the Government, represented by MPI, sign an agreement that is made by deed (the Deed).[1] This formally established the biosecurity partnership. The industry organisations represent, and are responsible to, primary producers and processors. 23 industry sectors, representing over 94 percent of primary production, have signed the GIA Deed. Other sectors that would benefit from readiness and response activities, such as tourism, could also join the partnership. To date, none have done so.

8. The GIA Deed outlines the principles for the partnership and the commitments that partners make to engage in the wider biosecurity system. A key element is co-investment to improve collective biosecurity capacity and capability in readiness and response activities:

    - A **readiness activity** prepares to prevent or reduce the effect of an organism if it were to arrive in New Zealand.
    - A **response activity** investigates an unwanted organism, minimises its effect, controls its spread, reduces its distribution, or aims to eradicate it. The activity could be in response to an incursion, or when there is an increased need or ability to eradicate an organism already in the country.

9. Industry and government can achieve better biosecurity outcomes by working together. The GIA enables industry partners to have a direct say in managing biosecurity risks and industry share decision-making, costs, and responsibility in preparing for and responding to biosecurity incursions with government.

2.2. Problem or opportunity

10. The GIA has strengthened the biosecurity system and helped industry organisations build skills to address biosecurity risks. The GIA has created an effective forum for all signatories to partner in readiness and response. The GIA partnership has grown and developed over the past decade.

11. The Bill provides an opportunity to improve the flexibility and resilience of the GIA for the next decade.

12. Some problems with the GIA, identified through discussions with GIA partners, are listed below:

[1] GIA Deed version 3 July 2022

- Due to competing priorities, industry parties cannot always agree on decisions that relate to readiness and response activities. This leads to often lengthy and resource-intensive discussions with decisions based on accommodating all industry participants rather than what may be best for New Zealand as a whole.
- Related to the above problem, other parties – such as Māori, regional councils, and other Crown agencies – are represented by MPI. However, MPI may not effectively represent the interests of these diverse stakeholders.
- The GIA enables clear cost sharing and decision-making arrangements for readiness and response activities. This restriction to readiness and response activities may limit and skew investment in biosecurity. GIA partners may better manage risks in other areas of the biosecurity system such as pest management, pathway management, and proactive risk management/on-farm biosecurity.
- The Deed is, in some ways, prescriptive and limited. Some issues may require more flexibility in the legislation to enable solutions that better respond to the needs of industry and New Zealand.
- Each industry organisation needs to build biosecurity expertise to represent their industry's interests in the GIA. Building industry expertise is an advantage to this approach. However, as much of the relevant expertise is interchangeable between different industries, there are some inefficiencies and duplication of resources. This approach can also disadvantage smaller industries who do not have resources to build their own expertise.

2.3. Options

13. Improving the flexibility and resilience of the GIA to improve coordination and action in the biosecurity system involves a mixture of legislative, operational, and organisational options. We have considered options to support improved coordinated action with partners.[2]

14. Options 2 and 3 are neither mutually exclusive nor do they need to be implemented immediately. The best option may be a mixture of both with the flexibility to implement parts progressively.

15. **Option 1** is the **status quo,** meaning coordination will be maintained at current levels. Changes in the operation and organisation of the GIA would continue evolution of the partnership. Options discussed in Paper Three: Funding and compensation, may, if implemented, indirectly improve the operation of the GIA as well.

16. **Option 2** would **modify and grow the GIA.** There are several opportunities to improve the GIA partnership.

    - **The Deed could cover other areas of biosecurity within New Zealand, such as long-term management**. The GIA limits joint decision-making and cost sharing to readiness and response activities. This means that, for example, cost sharing for pest and pathway management or on-farm biosecurity is excluded from the GIA partnership. Extending the Deed coverage to long-term management or to develop

[2] As noted earlier, there are several issues directly relevant for the GIA in Paper Three: Funding and compensation, including options for cost-sharing in the GIA and how costs are recovered from non-signatory beneficiaries of the GIA. The options here touch on the operation of the GIA which are not related to how it is funded.

risk management/on-farm biosecurity measures could help to enable a more joined up biosecurity system in the future.

- **We could align response and pest management levying provisions** to enable any changes to the Deed as above. Currently, these are governed by different provisions and cover different requirements and have different scopes of what costs can be recovered. We could:
  - allow biosecurity readiness or response levies (section 100ZB) to be used for pest or pathway management plans; or
  - develop a single levy regime to cover a greater scope of the biosecurity system, similar to how the Commodity Levies Act 1990[3] enables industry organisations to fund a range of activities.
- **More than one Deed could be created**. Australia has multiple deeds, including a Plant Health Deed, an Animal Health Deed, and a planned Aquatic Deed. Different types of deeds could enable more tailored approaches for similar sectors.
- **Other participants in the biosecurity system (councils, other government departments etc.) could become more prominent in GIA decisions**. For example, regional councils or the Department of Conservation could have a formal role in readiness or response activities that affect them.

17. **Option 3** would **create one or more cross-industry organisations to build primary sector skill and resilience.** This option seeks to establish one or more industry organisations that are responsible for looking after elements of New Zealand biosecurity. This is partly based on a model in Australia.

18. This option lets the GIA Deed and operational agreements continue largely unchanged, but under a different structure with scope to extend its role.

19. Below is a case study of the Australian model which summarises the structure and roles of the Australian organisations.

Case study: Australian organisations

Animal Health Australia (AHA) and Plant Health Australia (PHA) are not-for-profit companies established in 2000. Members include Australian, State and Territory Governments, industry groups and service providers. They are funded by membership subscription, and industry members can use a specific levy to fund their contribution which is based on the value of their annual production.

The organisations were initially established to be custodians of an Emergency Response Deed. Each Deed is a formal legally binding agreement between AHA or PHA, the Australian Government, all state and territory governments and national industry body signatories. It covers the management and funding of biosecurity responses, formalises the role of industries' participation in decision making, and pre-agrees their cost share of response costs. For example, the Emergency Animal Disease Response Agreement covers 66 animal diseases and 23 Signatories.

Since establishment, the organisations' roles have expanded to foster partnerships in other areas of biosecurity including to:

[3] Commodity Levies Act 1990

- develop strategies and plans for industry biosecurity interests;
- guide and train industry;
- coordinate investment in R&D;
- identify new funding priorities and risks;
- be the secretariat for the Australian equivalents of the GIA;
- improve the diagnostic system;
- develop pest management and readiness programmes; and
- facilitate national surveillance programs.

In 2022-2023 the incomes of AHA and PHA were AUD15.6 million and AUD14.2 million respectively.[4]

20. The organisations could have several functions that develop over time.

- **Developing cross-industry strategies for post-border biosecurity**. This would allow key priorities and new areas for investment to be identified, and long-term improvement plans to be developed.
- **Investing in readiness, prevention, surveillance, and research, and coordinating those investments**. The new organisations would have a dedicated function to investigate and communicate new investment opportunities. One or two organisations doing this might be administratively simpler than multiple organisations doing the same thing. These organisations would be skilled in making the case for research funding from public and private sources in New Zealand and overseas.
- **Providing operational best practice**. The efficiency of centralised expertise would mean better quality advice for a lower overall cost. The organisations would work closely with MPI to understand emerging threats and prioritise biosecurity activities.
- **Building industry skills and communicating best practice**. The new organisations would develop strong relationships with farmers and growers. They would work to develop best practice guidelines that are easy to implement. They would train farmers, growers, veterinarians, farm advisors and industry bodies in important biosecurity practices. Those practices could include identifying pests and diseases, implementing on-farm biosecurity and pest management techniques. Some industry bodies and MPI already perform some of these functions but centralising them may be more efficient.
- **Developing pest and pathway regulations**. These new organisations would be expected to develop new pest and pathway regulations as required and regulate the sector. This would improve the current arrangement because most pests and diseases cross multiple sectors.

[4] AHA Annual Report 2022-23 & PHA Annual Report 2022-23

2.4. Assessment

21. The options are assessed against the following criteria:

Effective	Does the option lead to effective partnership and coordination between government and other players of the biosecurity system?
Adaptable	Does the option deliver a modern legislation that is future-proof and enabling?
Efficient	How will the option address the administrative burden on regulators, and/or the compliance burden on regulated parties? How complex is the option to implement?
Clarity	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?

22. Option 2 (modify and grow the GIA) provides the GIA the flexibility to grow and evolve in partnership between Government and industry to respond to current and future needs. The GIA could expand its scope to the whole New Zealand system and develop long-term strategic approaches. Future investment in biosecurity within New Zealand could be planned and agreed by partners. Option 2 is likely to be less expensive than Option 3 (create cross-industry organisations) and probably more immediately practical. If it were correctly designed, it could enable the organisations proposed in Option 3 to be developed in the future.

23. However, the industry organisations that are current GIA partners may not develop the skills and focus on biosecurity needed for the future. Many of these organisations have a broad range of roles (such as market development, technical services and advocacy) and may face conflicts with their biosecurity priorities that are difficult to resolve.

24. Option 3's main advantages are efficiencies created by the scale of the organisations, and the coordination advantage of having cross-sector organisations undertaking these activities. We also think the broad scope of these organisations is an advantage and they can take a long-term strategic approach. This is something that the current GIA may struggle with because it focuses on readiness and response activity. Finally, these organisations are specially created for biosecurity activities, giving them a different kind of mandate and organisational culture from current industry organisations. By centralising this expertise and building a strong culture of proactive biosecurity investment and activity, we expect industry to be more likely to build biosecurity resilience over time.

25. The model may benefit industry because it:

- enables industry to coordinate and ensure their own biosecurity resilience;
- may be cheaper than each industry developing their own biosecurity expertise — many plant and animal pests spread across industries, and most of the technical expertise to manage pests and pathways is transferable between industries; and

- may make good practices more effective and overcome free-rider issues in biosecurity by focusing on the plant, aquaculture and animal sectors.

26. The model may benefit the government because it:

    - may reduce future productivity losses and pest management costs by making the biosecurity system more effective and resilient;
    - may offer broader environmental benefits as better management of pests and diseases that have commercial impacts may also bring about environmental benefits;
    - may reduce the cost and frequency of future responses if it results in more proactive investment in resilience and preventive biosecurity; and
    - may make coordination between industry, central and local government easier.

27. Challenges could include the following:

    - Bigger industries could dominate these new organisations at the expense of smaller industries. We think designing the organisations and their operational policy carefully could avoid this. In principle, the aim of the new organisations is to use club funding and other efficiencies of scale to deliver more value to all members.
    - These organisations can only exist if industry and their stakeholders see value in supporting them. The value proposition is that for a short-term cost, farmers and growers can significantly reduce their long-term biosecurity costs for the reasons above.
    - The organisations could have increased short-term costs for the government, though we expect this approach to reduce overall long-term costs for the reasons above.

2.5. Cost benefit analysis

28. Further feedback from industries and individuals is needed to understand the scope of change desired. This impact statement and its associated discussion document outline optional pathways that could be considered to modify and grow the GIA.

29. However, before the relative costs, benefits, and risks of the options can be fully considered the range of change possible needs to be narrowed. We can then develop quantitative analysis of the potential costs and benefits associated with Options 2 and 3. It is therefore not further reviewed as a part of this preliminary cost-benefit analysis.

2.6. Preferred option

30. We do not have a preferred option ahead of public consultation, and detailed discussions with GIA partners. Creating new organisations takes time. Both government and industry need to support a major reform of the system and invest in it. Option 2 is the short-term, pragmatic option but retains flexibility for longer-term changes like Option 3.

31. The options discussed aim to create a flexible, future-focussed legislative framework to encourage effective management of biosecurity risks and share costs equitably across those who benefit from biosecurity activities or those who exacerbate risks. The best result may be a combination of Options 2 and 3.

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 - modify and grow the GIA	Option 3 - create industry organisations to build primary sector skill and resilience
Effective	0	+ The GIA would have the flexibility to grow and evolve in partnership between Government and industry to respond to current and future needs. Also supports stronger partnership between the government and industry through an improved Deed.	+ + Enable industry to coordinate and ensure their own biosecurity resiliencies. Reduces future productivity losses and pest management costs by making the biosecurity system more effective and resilient. May reduce the cost and frequency of future responses if it results in more proactive investment in preventive biosecurity, and improves coordination between industry, central and local government.
Adaptable	0	+ + Option 2 enables the GIA could expand its scope to the whole domestic biosecurity system and develop long-term strategic approaches. Future investment in biosecurity within New Zealand could be planned and agreed by partners. This is a significant improvement and expansion of the role of the GIA from the status quo. However, extending cost-shares to pest management and on-farm biosecurity would conflict with charging principles. This means the tool may not achieve its intended outcomes.	+ Dedicated organisations could support a stronger government-industry partnership, by providing opportunities for scientific collaboration and shared investments in readiness and prevention.

	Option 1 – status quo	Option 2 - modify and grow the GIA	Option 3 - create industry organisations to build primary sector skill and resilience
Efficient	0	+ Removes legislative barriers that restrict coverage of the GIA deed, which could improve operational effectiveness across the system. Regarding consolidating aligning response and pest management levies, it may not be efficient and it may be administratively complex to initiate.	- Improves operational effectiveness through a major reform of the organisations involved. However, short-term effectiveness is likely to decrease while the organisations are setup. Costs for all partners are likely to increase while organisations are setup.
Clarity	0	+ Clarifies accountability in the pest management system by enabling operational agreements to address it.	+ Improves accountability by creating organisations with clearly defined roles and responsibilities. Industry would also be accountable for post-border risks. This would build industry capability to manage those risks and meet their accountabilities, enabling more efficient and effective industry self-regulation.
Overall rating	0	+ + The GIA would have the flexibility to grow and evolve in partnership between Government and industry to respond to current and future needs.	+ The main advantages of this option are efficiencies created by the scale of the organisations, and the coordination advantage of having cross-sector organisations undertaking these activities.

3. Liability protection for GIA partners

3.1. Background

32. Section 163 of the Act protects people who are carrying out functions or duties under the Act from civil or criminal liability, unless the person has acted, or omitted to act, in bad faith or without reasonable cause.

33. As the implementation of GIA progressed, industry organisations raised concerns regarding their potential exposure to significant liability as a result of their role alongside MPI as joint decision-makers.

34. This liability issue arose during the development of the Fruit Fly Operational Agreement in 2016. It was decided that MPI would be the sole decision-maker. Therefore, cost-sharing for responses would be deferred until the industry parties agreed that the Crown had provided acceptable protection from potential liability in relation to joint decision-making for responses.

35. These concerns were exacerbated by litigation relating to the kiwifruit disease Psa.[5] In 2018, the High Court found MPI personnel owed a duty to take reasonable care in carrying out their biosecurity functions.[6] This was a new legal development in New Zealand. Based on the Court's decision, the possibility of legal risk for response decisions taken by the Crown and GIA industry signatories could not be ruled out. In 2020, the Court of Appeal reversed the High Court's decision[7]. However, as this case was not about response-decision making, legal risk could still not be ruled out.

36. The issue took on particular significance in the context of the *Mycoplasma bovis* Operational Agreement in 2018. The dairy and beef sectors agreed to contribute 32 percent of the costs of the eradication programme (estimated at $870 million over 10 years). However, the industry funding proposal was conditional on industry signatories being protected from liability in their joint decision-making role. Without liability protection, the two organisations (DairyNZ and Beef+Lamb New Zealand) would not have participated as joint decision-makers, and as a result, co-funders of the response.

37. To address industry concerns about statutory protection MPI developed a proposal which included a Crown indemnity for industry organisations that would provide cover for any claims relating to decisions they take jointly with MPI.

38. The Crown indemnity, under the Public Finance Act 1989, was signed by the Minister of Finance and has been in place since 28 May 2019. This has allowed full participation of GIA partners in readiness and response activities.

39. The indemnity expired after 5 years and in April 2024, after a request from the Minister for Biosecurity, the Minister of Finance renewed the indemnity for a further 5 years.

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[5] Psa (*Pseudomonas syringae pv. actinidiae*) is one of the most serious diseases for kiwifruit.

[6] *Strathboss Kiwifruit Limited v Attorney-General* [2018] NZHC 1559, High Court, 27 June 2018.

[7] *Attorney-General v Strathboss Kiwifruit Ltd* [2020] NZCA 98, Court of Appeal, 9 April 2020.

3.2. Problem or opportunity

40. Industry partners' concerns about statutory protection inhibits them from fully participating in the GIA. This frustrates the intent of the GIA and leads to ineffective partnership and coordination between government and industry in the biosecurity system.

41. The use of an indemnity is unnecessarily complex to administer, requiring a regular review and renewal. We have an opportunity to replace the Crown indemnity by amending the Act to include GIA partners undertaking functions under Part 5A.

3.3. Options

42. **Option 1** is the **status quo** meaning that the Crown indemnity would remain and would need to be regularly reviewed and renewed.

43. **Option 2** would **amend Part 5A to state that this confers functions on GIA Signatories to make joint decisions under the Deed and Operational Agreements**.

44. The purpose of Part 5A is to provide a framework to enable government and industry to work in partnership by making joint decisions on readiness and response activities. This amendment would connect Part 5A with section 163 by explicitly defining joint decisions as a function. Section 163 protects people who are carrying out functions or duties under the Act from civil or criminal liability (unless the person has acted, or omitted to act, in bad faith or without reasonable cause).

3.4. Assessment

45. The options are assessed against the following criteria:

Effective	Does the option lead to effective partnership and coordination between government and other players of the biosecurity system?
Adaptable	Does the option deliver a modern legislation that is future-proof and enabling?
Efficient	How will the option address the administrative burden on regulators, and/or the compliance burden on regulated parties?
Clarity	Are roles and responsibilities assigned appropriately and clearly between central government, local government, industry, and local communities?

46. Option 1 continues the current protection but may not fully incentivise partnership because industry concerns are not specifically addressed. The GIA would continue to rely on the use of an indemnity requiring a regular review and renewal. While this additional step does give the Minister of Finance opportunity to review and influence the operation of the GIA, we consider that this is more appropriately done through normal Budget and Cabinet processes.

47. Option 2 (amend Part 5A to state that this confers functions on GIA Signatories) would continue the current protection but better support the GIA partnership by specifically addressing industry concerns. This supports the primary objective by supporting the principles of partnership in the biosecurity system.

48. Option 2 is simple to implement (requiring a simple amendment to the Act), applies no additional compliance burden, reduces administrative costs, and better defines biosecurity roles and functions in the Act.

3.5. Cost benefit analysis

49. MPI acts in partnership with GIA signatories which includes joint decision-making and cost-sharing on readiness and response activities. As evidenced in Section 2 of this paper, working with GIA partners offers both improved efficiency and significant financial contributions to responses. Addressing concerns about statutory protection helps incentivise full partnership and participation in the biosecurity system.

Table 1 - Cost benefit impact table for Option 2

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the option compared to taking no action			
GIA signatories	None.	None	High
Government	None.	None	High
Total monetised costs		None	High
Non-monetised costs		None	High
Additional benefits of the option compared to taking no action			
GIA signatories	Maintains incentives for industry to continue in the GIA partnership and directly addresses concerns industry has raised with MPI.	Medium	High
Government	Continued industry partnership has benefits for the wider biosecurity system. Supports the effective operations of the GIA provisions of the Act.	Medium	High
Total monetised benefits		None	High
Non-monetised benefits		Medium	High

3.6. Preferred option

50. Option 2 is our preferred option as it best meets the criteria.

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 – Part 5A confers functions on GIA Signatories to make joint decisions
Effective	0	+ Supports stronger partnership between the government and industry by treating them equally.
Adaptable	0	+ Address a gap in the legislation that frustrates the functioning of the GIA and how enduring it is.
Efficient	0	+ Removes the administrative burden and inefficient process to regularly review and renew the Crown indemnity.
Clarity	0	+ Clarifies the functions of joint decision-making in Part 5A of the Act.
Overall rating	0	+ This is a simple option to clarify the Act and better support the GIA partnership.

4. Faster emergency declarations

4.1. Background

51. Foot and Mouth Disease (FMD) is a highly contagious livestock disease, including of cattle, sheep, deer, and pigs. FMD can be transmitted through infected animals and animal products. FMD is one of the most significant disease risks to our trade in animal products and is the single biggest potential threat to New Zealand's livestock industries.[8]

52. If FMD were confirmed in New Zealand, all exports of animal products would stop. MPI would start a biosecurity response to eradicate the disease as soon as possible. One of the first steps would be to declare a national livestock movement standstill, banning the movement of all livestock and livestock products.

53. Because of the national impact and risks of FMD transmission, MPI would ask the Minister for Biosecurity to recommend to the Governor General that they declare a Biosecurity Emergency under Part 7 of the Biosecurity Act. A Biosecurity Emergency gives the Minister broad powers to take such measures they believe necessary or desirable to eradicate the organism. New Zealand has never declared a biosecurity emergency.

54. By way of example, emergency powers would be needed to manage the risks from "stock in transit" described below.

55. At the early stage of an FMD response, before a biosecurity emergency is declared, it is highly likely that there will be large numbers of animals in transit to processors and between farms and saleyards. These stock in transit must be dealt with in a way that reduces animal welfare impacts and minimises the risk of spreading FMD further around New Zealand. In many instances, MPI is likely to require that livestock movements underway be completed using a direct route, without picking up or dropping off stock, until the destination is reached. This approach aligns with publicly available FMD Response Strategy Plans for Australia, the United States of America and the United Kingdom.

56. In early 2024, MPI and livestock industry partners established a group to start exploring options to manage animals at saleyards and in transit to meat processors. The group's work is ongoing. This means that we do not yet have detailed information about the full range of options to address this issue. However, we consider that it is important to keep the legislative options available and to make the direction of travel toward possible legislative change clear during public consultation. For this reason, we have included this topic in our proposals and in this impact statement.

4.2. Problem or opportunity

57. The time between the confirmed detection of FMD and the declaration of a biosecurity emergency has been estimated to be between 12 to 72 hours. This is a critical period in the response to an FMD outbreak.

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[8] https://www.mpi.govt.nz/biosecurity/pests-and-diseases-not-in-new-zealand/animal-diseases-not-in-nz/foot-and-mouth-disease-response-plans/

58. The management of stock in transit in the early stages of an FMD outbreak is a critical issue in our readiness planning for this disease. We have the opportunity to address this issue by amending the Act.

4.3. Options

59. **Option 1** is the status quo. In the unlikely event that FMD were confirmed in New Zealand, MPI would contact the responsible Minister (usually the Minister for Biosecurity) and request that they recommend the Governor-General declare a biosecurity emergency (section 144 of the Act). The Minister must be satisfied that there has been a disease outbreak that has potential to cause significant harm to New Zealand, that it is in the public interest, and that the organism cannot be eradicated or managed using the powers that are normally available.

60. The Minister would need to consult with persons representing interested parties before making any recommendation to the Governor-General, "to the extent that is practical in the circumstances". However, in the context of an FMD outbreak, interested parties are already aware of the impacts and detailed consultation is likely impractical.

61. This process has been estimated to take between 12 and 72 hours.

62. **Option 2** would **change the decision-maker for a biosecurity emergency from the Governor-General to the Minister for Biosecurity**. Option 2 would amend the Biosecurity Act to enable the Minister for Biosecurity to declare a biosecurity emergency. This applies to any emergency and not just for FMD (we have discussed FMD in this section as an example of the need to expediency in the declaration of emergencies).

63. The Minister would no longer need to recommend to the Governor General that they declare a biosecurity emergency. This process matches that used in Part 4 of the Civil Defence and Emergency Management Act 2022 to declare a state of national emergency. This proposal would reduce any delay between the detection of FMD and the declaration of a biosecurity emergency.

4.4. Assessment

64. The options are assessed against the following criteria:

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

65. Under Option 1, there may be a delay of 12 to 72 hour between the detection of FMD and the Governor-General declaring a biosecurity emergency. The first 72 hours is a critical period in the response to an FMD outbreak as emergency powers are necessary to reduce animal welfare impacts and minimises the risk of spreading FMD further around New Zealand.

66. Option 2 (change the decision-maker for a biosecurity emergency from the Governor-General to the Minister for Biosecurity) may provide greater certainty to the management of FMD in the early stages of an outbreak. This is effective and efficient as the speed of launching a response to FMD would be a key factor supporting the successful eradication of FMD and return to trade.

67. Option 2 is neutral on the clarity criterion. Option 2 simply changes the decision-maker for the declaration of a biosecurity emergency. It does shift the decision into a single Minister, whereas previously the Minister would have needed to go to Executive Council. In practice, we expect that the Minister would likely work collaboratively with Ministerial and Cabinet colleagues before deciding to declare an emergency.[9] Option 2 has no impact on the adaptable criterion.

4.5. Cost benefit analysis

68. Analysis of options to address a FMD response started in 2024. Further feedback from industries, individuals and officials is needed to understand the benefits, risks, and costs of options – both legislative and non-legislative. The speed and efficiency of a response would be a key factor supporting the successful eradication of FMD and return to trade.

4.6. Preferred option

69. Our assessment shows that Option 2 improves on the status quo in terms of effectiveness and efficiency, and is neutral on the adaptable and clarity criteria. While the benefits are somewhat muted, on balance, we recommend Option 2.

[9] In accordance with the Cabinet Manual paragraphs 5.11 and 5.12, Ministers are expected to put before their colleagues the sorts of issues which they themselves would wish to be consulted on. Ministers should keep their colleagues informed about matters of public interest, importance, or controversy.

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 – change the decision-maker for a biosecurity emergency from the Governor-General to the Minister for Biosecurity
Effective	0	+ The speed and efficiency of launching a response to FMD would be a key factor supporting the successful eradication of FMD and return to trade.
Adaptable	0	0 Amending the decision-maker of a biosecurity emergency has no significant impact on how future proof or enabling the Act is.
Efficient	0	+ Changing the decision-maker to the Minister for Biosecurity removes the need to involve additional parties to the declaration of a biosecurity emergency, which is particularly critical for FMD.
Clarity	0	0 Do not expect a significant impact on clarity. Option 2 simply changes the decision-maker for the declaration of a biosecurity emergency. It does shift the decision into a single Minister, whereas previously the Minister would have needed to go to the Governor-General. In practice, we expect that the Minister would likely work collaboratively with Ministerial and Cabinet colleagues before deciding to declare an emergency.
Overall rating	0	+ Our assessment shows that Option 2 improves on the status quo in terms of effectiveness and efficiency, and is neutral on the adaptable and clarity criteria. While the benefits are somewhat muted, on balance, we recommend Option 2.

5. Biosecurity practices

5.1. Background

70. One of the key strategic themes in the biosecurity system is the idea that everybody has a part to play in preventing and managing biosecurity risks.

71. Observing good biosecurity practices is particularly helpful to primary industry producers. It helps protect their businesses from pests and diseases, which in turn boosts productivity and enhances their way of life.

72. Below are some examples of what good biosecurity looks like in certain businesses or activities:

Type of business or activity	Examples of good biosecurity practice
Importing business	• Source goods from reputable suppliers. • Ensure goods meet the requirements of import health standards. • Train staff in biosecurity awareness and encourage reporting of unusual detections.
Transportation business (domestic)	• Ensure that vehicles are clean and not likely to spread pests and diseases. • Refuse to carry goods that are not clean and could carry pests and diseases.
Tourism business	• Ensure that vehicles and equipment are clean and not likely to spread pests and diseases. • Inform customers about biosecurity and encourage them to do the right thing.
Livestock farmer	• Source livestock from reputable suppliers who can demonstrate disease freedom. • Ensure risk items brought onto farm are clean and unlikely to spread pests and diseases.
Horticulturalist	• Source plants from reputable suppliers who can demonstrate disease freedom. • Ensure risk items brought onto orchard/vineyard/farm are clean and unlikely to spread pests and diseases.
International Traveller	• Dispose of risk goods before entering New Zealand. • Complete declarations and answer questions accurately.
E-commerce purchaser	• Purchase from reputable suppliers. • Unpack imported goods carefully in case hitchhiker pests are present.
Home gardener	• Do not acquire or spread pest plants. • Report any unusual insects or disease symptoms in plants.

73. There have been initiatives over many years - both legislative and non-legislative - to promote good biosecurity practices.

74. Legislative initiatives include the following:

- The Act itself legislates for some aspects of good practice, such as requiring the prompt reporting of organisms not normally seen or detected in New Zealand.

- Regulations under the Act address some specific risks. For example, the Biosecurity (Ruminant Protein) Regulations 1999 prohibits the feeding of ruminant protein to ruminant animals, due to the risk of amplifying and spreading transmissible spongiform encephalopathies (e.g., mad cow disease).
- Pest and pathway management plans. For example, the Biosecurity (National Kiwifruit Pathway Management Plan) Order 2022 requires kiwifruit growers and packhouse operators to follow a range of good practices.

75. Non-legislative initiatives include:

- Biosecurity New Zealand's 'Ko Tātou This is Us' programme[10], with the key message that *we're all responsible for protecting Aotearoa from pests and diseases*. It provides information and encouragement for all New Zealanders to play their part, including businesses, schools, and community groups; and
- the Biosecurity Business Pledge. This pledge is a partnership that aims to help all New Zealand businesses take a proactive approach to their biosecurity practices.[11]

5.2. Problem or opportunity

76. Earlier work during the review of the Biosecurity Act considered the adequacy of biosecurity practices. Several sources were drawn on, including industry meetings, Māori engagement, farmer/grower engagement, international studies and previous responses, and suggested that biosecurity is not being effectively managed on-farm/orchard.

77. For example, a 2018 survey[12] showed that less than half of primary producers surveyed had biosecurity processes and documentation, and 11 percent said they undertook no biosecurity actions daily.

78. There is also no clear way to provide a legislative mandate for on-farm biosecurity planning and good practice under the current Act.

79. These identified pain points and the benefits of observing good biosecurity practices present opportunities to incentivise good biosecurity practices through legislative change. Promoting a more consistent uptake of good biosecurity practices would help strengthen the biosecurity system.

5.3. Options

80. **Option 1** is the **status quo**. Under this option, no changes to the Act would be made. Existing non-legislative initiatives, like the Biosecurity Business Pledge, would continue to develop. Industry would also continue promoting good biosecurity practices through the development of voluntary guidelines (e.g., Aquaculture New Zealand's A+ Sustainability Framework, DairyNZ's Biosecurity Warrant of Fitness). Likewise, it is possible that greater use of secondary legislation mechanisms might be seen. For example, other industries might follow the example of the kiwifruit industry and develop a pathway management plan for their sector.

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[10] https://www.thisisus.nz/

[11] www.thisisus.nz/biosecurity-business/biosecurity-business-pledge/

[12] www.mpi.govt.nz/dmsdocument/29849-biosecurity-2025-business-survey-baseline-report

81. Options 2 to 4 seek to add more legislative mechanisms for improving biosecurity practices. These options would enable a more systematic approach to improving biosecurity practices under the Act. These options are not mutually exclusive, and it would be possible to enact all or any of them in any combination.

82. **Option 2 would add a general biosecurity duty in the Act**. It would be a broadly worded standard that is expected of people who are dealing with risk goods or engaged in activities that may pose biosecurity risks. The purpose of the general biosecurity duty is to reflect and support clear messaging about "doing the right thing". The general duty would be part of a package of initiatives promoting good practices, including non-legislative approaches (e.g., information and advice) and the selective application of other legislative tools.

83. As it is a principle promoting "doing the right thing", the general biosecurity duty would be enforced in the same way as the duty in section 17 of the Resource Management Act 1991. This means that the duty would not be enforced itself but could be the basis for interventions to address poor practices using other powers in the Act. For example, if a farmer is observing poor biosecurity practice, a compliance order under section 154(2)(a) may be issued to require the farmer to cease observing the poor practice. Additionally, a serious or significant breach of the general duty could lead to a person being disentitled from receiving compensation payments in the event that they suffer losses from the exercise of government powers during a biosecurity response.[13]

84. **Option 3** would **expand the range of risk management requirements that can be set up through regulations under the Act.** This option would enable specific rules to be put in place that would target particularly risky practices being followed in individual sectors. For example, a requirement could be put in place that requires equipment to be properly cleaned before being moved between farms or orchards.

85. The Act already includes broad powers to regulate a wide range of activities like holding, disposal, and treatment of risk goods (section 165(16)), and using organic material (section 165(18)). There are also broad powers to regulate a wide range of activities using rules in pest and pathway management plans (sections 64(5) and 84(5)).

86. However, if there is to be a stronger focus on on-farm and orchard biosecurity, the regulation-making powers could more clearly authorise a full suite of good-practice requirements. Requirements would be put in place on a case-by-case basis where justified. Amendments to the regulation-making powers could fill any gap that is not addressed by existing regulation-making provisions.

87. This option would ensure that legislative tools are available if practices in a particular sector or area of activity are creating an unreasonable degree of biosecurity risk. This is especially helpful in cases where there are cross-boundary risks (i.e., poor practice in one sector or area of activity significantly impacts others).

[13] Paper 3: Funding and compensation contains a discussion of the compensation scheme and how breaches of biosecurity law could disentitle a claimant from receiving any compensation.

88. **Option 4** would **add provisions to the Act to enable greater use of the risk-based regulatory model where businesses are required to develop their own risk management plan.** The option is based on the underlying premise that businesses know their operations best and are well-positioned to identify and manage risks. It would also provide the foundation to achieve a greater level of assurance as to the level of risk management that is being achieved in a particular sector.

89. This approach draws from the regulatory model that has been implemented in the food safety system over the last 20 to 30 years. In this model, food businesses are required to develop their own risk management plans to ensure food safety.

90. This approach has also been applied to at least some extent in the biosecurity system. For example, the Biosecurity (National Kiwifruit Pathway Management Plan) Order 2022 requires that risk management plans be developed and followed by orchardists, post-harvest operators, and kiwifruit contractors. Another example is the Biosecurity (Ruminant Protein) Regulations 1999, which requires ruminant protein control programmes.

91. This option could be implemented to some extent by relying on the existing tools in the Act. However, to give full effect to the model, this option may require amending the Act to adopt legislative machinery that is in place under the food safety legislation. This may include processes or rules relating to the:

- requirement for the risk management plan;
- content and duration of the risk management plan;
- assessment and approval of the risk management plan;
- registration, suspension, and removal from registration;
- independent verification of compliance with risk management plans, including the process for approving the people who are responsible for the independent verification; and
- enforcement of the risk management plan.

92. This option would ensure that legislative tools are available to enable sectors or industries create their own risk management plans.

5.4. Assessment

93. The options are assessed against the following criteria:

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

94. Retaining the status quo may result in missed opportunities to address concerns about biosecurity practices via the legislation.

95. Option 2 (add a general biosecurity duty) is effective. Option 2 would uphold the position of the Act that those who deal with risk goods or engage in biosecurity activities are expected to demonstrate good biosecurity practices. This sends a clear message of "doing the right thing" at the highest form of the legislation. Option 2 also futureproofs the Act. A general duty could serve as a foundation to any legislative and non-legislative initiatives regarding best biosecurity practices in the future.

96. However, the scope to which Option 2 is applied to could be seen as too broad. Also, while it could be used as a basis for interventions to address poor practices, it may achieve less than what it could if it were directly enforceable.

97. Option 3 (expand the range of specific risk management requirements that can be set up through regulations under the Act) is effective and adaptable by expanding the range of tools that promote better biosecurity practices. New regulations could be applicable to people who are engaged in certain biosecurity matter or activities, or to facilities where biosecurity activities occur. This seeks to enable specific requirements to be put in place for sectors where particularly risky practices have been identified. However, imposing such regulations may be seen negatively as an additional compliance and administrative burden. This would depend on the design of the risk management measures set in the regulations. We note that regulations (if pursued) would be subject to consultation and impact assessment.

98. Option 4 (add provisions in the Act to enable greater use of the risk-based regulatory model where businesses are required to develop their own risk management plan) builds on existing practice and leverages on partnership with and enablement of sectors. It empowers the sectors as they are best placed to identify biosecurity risks within their businesses. Additionally, it fosters ownership and responsible decision-making among sectors.

99. However, requiring businesses or sectors to develop their own risk management plans would require knowledge, capacity, and resources to design and implement the risk management plans. Correspondingly, this would require new functions and capability within Biosecurity New Zealand and impose greater costs on those who are subject to the plans. However, these issues may be resolved by a provision that enables, rather than requires, the use of the model.

5.5. Cost benefit analysis

100. For Option 2 (add a general biosecurity duty), the cost benefit impact is outlined in Table 2 below.

101. Option 3 (expand the range of specific risk management requirements that can be set up through regulations under the Act) is an enabling power. MPI would undertake detailed cost benefit analysis when developing regulations enabled by Option 3.

102. Option 4 (add provisions in the Act to enable greater use of the risk-based regulatory model where businesses are required to develop their own risk management plan) proposes to enable an extensive system. Further scoping and detailing will be necessary to fully assess the cost implications of enabling a regulatory model like the food safety system. We expect that Option 4 would have significant cost implications for businesses. Businesses that do not have a formalised biosecurity risk management plan would need to invest resources and time in developing one. For businesses that have biosecurity risk management practices, the proposal is likely to require medium to high levels of investment depending on the scale of change needed.

103. Based on reviews of the food and animal product systems, there is a significant risk that we would be unable to support the labour requirements of a system reliant on verification to ensure compliance. Further detailed consideration and discussion with industries is necessary before MPI can assess the costs and benefits of Option 4.

Table 2 - Cost benefit impact table for Option 2

Affected groups *(identify)*	***Comment*** *nature*	***Impact***	***Evidence Certainty***
Additional costs of the option compared to taking no action			
Businesses	May face higher compliance costs to meet any new requirements (depending on their current level of biosecurity practice).	Low to Medium	Low
Government	Likely minimal costs as the duty would be enforced in conjunction with any other substantive breaches.	Low	High
Public	Businesses which face increased compliance costs may pass on these costs to consumers.	Unknown	Low
Total monetised costs		Unknown	Low
Non-monetised costs		None	Low
Additional benefits of the preferred option compared to taking no action			
Businesses	May incentivise considering biosecurity practices from a whole-of-business perspective.	Low	Low
Government	Sets expectations on the primary industries to manage biosecurity as part of their business. Improvements over time in overall biosecurity risk management practices as the system matures.	Low to Medium	Low
Public	Unknown – there may be wider benefits to environmental, social and cultural values.	Unknown	Low
Total monetised benefits		Unknown	Low
Non-monetised benefits		Low	Low

5.6. Preferred option

104. We believe that Options 2 to 4 can improve the uptake of good biosecurity practices and we prefer implementing all these options as a single package. However, we would like to test this approach during the public consultation to determine:

- whether there is an appetite for new regulation-making powers;
- how to avoid unnecessary compliance costs; and
- whether there are other ways to promote biosecurity practices.

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 - add a general biosecurity duty	Option 3 - consider expanding specific risk management rules	Option 4 - enable regulatory model where businesses must develop a risk management plan
Effective	0	+ Would promote the message of protecting New Zealand from biosecurity risks. It could foster partnership between the Crown, business, communities, and individuals in biosecurity.	+ Would enable the creation of regulations that promote better biosecurity practices in certain sectors. This helps in protecting the country from biosecurity risk.	+ + Would promote effective partnership between the Government and businesses in managing biosecurity risks. This assumes a high-trust regulatory model.
Adaptable	0	+ Would serve as a foundational principle for future biosecurity initiatives.	+ Adding provisions that give new regulation-making power for secondary legislation addresses current gaps and future issues.	+ + Would enable sectors to change their risk management plans amid evolving needs and biosecurity risks. However, this would depend on the contents and wording of the provisions.
Efficient	0	+ While subject to compliance order mechanism in the Act, it would not require extensive resources to be applied to enforcement.	- Regulations that come from the new power may be seen negatively as additional compliance and administrative burden. However, this option is just an expansion to approaches already in place under the Act.	- Risk management plans are already followed in some parts of the primary sector. This option would build on that. However, this may be seen as administrative and compliance burden.

	Option 1 - status quo	Option 2 - add a general biosecurity duty	Option 3 - consider expanding specific risk management rules	Option 4 - enable regulatory model where businesses must develop a risk management plan
Clarity	0	- A simple way to convey the principle of “doing the right thing”. It could lead to a period of uncertainty as the law beds in, and as the duty is interpreted and challenged.	+ This option expands on existing approaches already in place under the Act.	+ This option is logical as it builds on existing practice and leverages on partnership with and enablement of businesses. However, the corresponding legislative machinery to support the new provisions may result in complexity.
Overall rating	0	+ One way of promoting good biosecurity practices in the legislation.	+ Adding enabling provisions into the Act for specific risk management rules future-proofs the legislation.	+ This option may not only promote better biosecurity practices within businesses but also leverage on partnership and enablement. However, it has significant costs.