



Regulatory Impact Statement: Proposed amendments to the Biosecurity Act 1993

Decision sought	Cabinet policy decisions for authority to issue drafting instructions
Agency responsible	Ministry for Primary Industries
Proposing Ministers	Minister for Biosecurity
Date finalised	11 September 2025

The Minister for Biosecurity is proposing a Biosecurity Act Amendment Bill to make targeted amendments to the Biosecurity Act 1993 (the Act). The objective of the Bill is to ensure biosecurity law continues to protect our environment, human health and trade, supports our economy, and provides all users of the Act with a fit-for-purpose toolbox that is complete, effective, efficient and future-proof.

Summary: Problem definition and options

What is the policy problem?

- The biosecurity system is increasingly under pressure. The cost of primary sector production losses from pests has increased from an estimated \$1.5 billion cost in 2009, to an estimated \$4.3 billion cost in 2020. The increasing volume and diversification of goods imported has changed the biosecurity risks we face. Climate change increases risks of new pests establishing and established pests spreading. The *Mycoplasma bovis* outbreak is the largest-scale biosecurity event New Zealand has faced. It highlighted significant pressures facing the biosecurity system and Government's exposure to fiscal shocks from medium and high scale biosecurity responses.
- MPI has identified critical pain points in the Biosecurity Act 1993 (the Act) which impede the effectiveness of the biosecurity system, and which constrain progress and trade:
 - Biosecurity risk management is becoming more expensive. Compensation can be a significant cost to the Crown and may not be incentivising individuals to take steps to reduce their biosecurity risk.
 - We need to future proof how we manage risk. For example, significant time and resources are required to develop import standards, increasing the likelihood that our requirements will not keep up with actual risks, and limiting imports. This could adversely affect consumer choice, business innovation, and international trade.

What is the policy objective?

- The overarching policy objective of the proposed amendments is to ensure biosecurity measures continue to protect our environment and human health and support our economy. As a secondary objective, we want to provide all users of the Act with a fit-for-purpose toolbox that is complete, effective, efficient and future-proof.

What policy options have been considered, including any alternatives to regulation?

- We are proposing the Biosecurity Act Amendment Bill as the solution to critical pain points. Our focus is making targeted improvements to ensure that we fulfil our stewardship of the biosecurity system.
- The Bill touches particularly on six aspects of the Biosecurity Act:
 - Enforcement and Compliance
 - Compensation
 - Offshore and Border
 - Readiness and response

○ Long-term management ○ Surveillance and legislative interfaces
What consultation has been undertaken? • MPI started reviewing the Act in 2019. We engaged with partners and key stakeholders (including mana whenua, regional councils, Government Industry Agreement partners and other government agencies) on key policy issues. Progress was slowed by the COVID-19 pandemic. • The Minister for Biosecurity launched public consultation on proposed changes to the Act on 19 September 2024. MPI attended 36 external engagements with a wide range of partners and stakeholders. Consultation ran until 13 December 2024. • We received 137 submissions. We heard from submitters that there is general support for the objectives and for this Bill to proceed, in some form. There was significant interest in more engagement. • Following public consultation, the Minister for Biosecurity approved additional targeted engagement. MPI attended over 40 engagements with partners and stakeholders. Their feedback helped to shape our updated options as discussed in the relevant chapters of this RIS.
Is the preferred option in the Cabinet paper the same as preferred option in the RIS? • The Minister's preferred option is the same as the options MPI has assessed as best meeting the objectives of the Bill, except for <i>Chapter 26 – Section 24 Independent review panels</i>.

Summary: Minister and Agency prefer the same option

Costs (Core information)
• There are varied costs to regulated parties depending on the proposal including: ○ Punitive costs ○ Social freedom costs ○ Operational change costs • There are varied costs to Crown depending on the proposal including: ○ Operational change costs ○ Costs associated with secondary legislation development and implementation • The distributional impacts are proposal specific. For example, the border related proposals primarily impact travellers and export/import industries. The long-term management proposals largely impact those involved with pest and pathway management plans. • It is not expected the proposed changes will impact competition.
Benefits (Core information)
• There are varied benefits to regulated parties depending on the proposal including: ○ Increased operational flexibility ○ Increased operational efficiencies • There are varied benefits to Crown depending on the proposal including: ○ Lower evidentiary thresholds in some proposals allows greater enforcement ability (e.g. the introduction of new infringement offences) ○ Increased operational flexibility ○ Increased operational efficiencies • The distributional impacts are proposal specific, as with the costs. The individual chapters on specific proposals provide greater detail on the distributional impacts of each proposal.
Balance of benefits and costs (Core information)
• The benefits of the proposed amendments accrue primarily from considering the proposed amendments as a package. If considered individually, some proposal analyses found a balance between benefits and costs with no expected net change. However, when considered together, the benefits are expected to build to a large net benefit. When considered this way, the benefits of the preferred options outweigh the costs. • How and if certain enabling proposals are implemented will have the largest impact on the cost-benefit ratio over time. The core changes to the Act from this Bill should not change over time.
Implementation
• The Bill will likely be scheduled to be introduced in mid-2026. A full parliamentary process will follow. MPI would be the lead agency for implementation.

- Some proposals will require changes to secondary legislation. This will be in scope of implementation. Some changes to secondary legislation must be in place by Royal Assent to give effect to the associated legislative change. We have identified these and will deliver them as part of the Bill. However, the extent of the effect on MPI operations and the amount of work required to implement the changes has not yet been scoped. Following Cabinet approval of policy proposals, MPI will determine the operational effects the changes have and will develop a plan to change or create new operational policies and procedures.
- Many of the proposals will affect other users of the Act, including management agencies, local government, and other central government agencies. MPI will work with these stakeholders following Cabinet approvals to understand the full extent of these effects. MPI will develop a communications plan to ensure all users of the Act are aware of the changes made by the Bill.

Limitations and Constraints on Analysis

General

- We have focused on targeted amendments to fix identified problems. To do this promptly, we have set aside some options that would require extensive industry engagement and policy work. This Bill does not seek to be a comprehensive, first-principles change process. There is the option to consider more fundamental changes in a future process.
- As a result of public consultation and further analysis, this impact statement contains new regulatory proposals that were not part of the 2024 public consultation. For these, we undertook targeted engagement with a few key stakeholders to seek feedback on the proposal.
- We have not expressly set out non-regulatory improvements as their own option in most cases (except for Chapter 41). Non-regulatory options are possible under the status quo and do not require regulatory intervention. Therefore, a key assumption throughout the impact statements is that the status quo includes non-regulatory initiatives (where those are possible and make sense).

Impact analysis

- The proposals work together in a way that makes it difficult to consider their costs and benefits independently. The greatest benefit from a given proposal will only be realised when related proposals are also adopted. Because of this, certain proposals have been considered together.
- Some proposals aim to improve non-tangible measures, such as clarity, within the Act. These types of proposals are not expected to have direct impacts with fiscal measures. We have included their qualitative impacts in the multi-criteria analysis.
- The analysis of the suite of proposals on compensation is modelled using a data package from a particular industry stakeholder and should be considered a case study.
- Many proposals are enabling changes or impact small groups for whom we do not have sufficient data to perform a quantitative analysis. For these, we have leaned heavily on consultation notes, targeted feedback, and research to provide a qualitative assessment of the costs and benefits.
- Any limitations and constraints to analysis have been overcome to the extent reasonably possible and should not negatively impact a reader's ability to make an informed decision.

Summary: Minister and Agency prefer different options

The Minister and Agency have different preferred options for *Chapter 26: Section 24 – independent review panels*. The Agency recommends Option 2 (remove section 24). The Minister prefers Option 3 (amend section 24 so the Director-General can appoint one reviewer, and the Minister can prescribe a fee).

Agency's preferred option for Chapter 26 in the RIS (remove section 24)

Costs (Core information)

- The main cost to regulated parties is a reduction in options for review of whether scientific evidence they submitted on has been considered.
- There are no new costs to the Crown expected.
- There is insufficient data to assess if the proposed changes will impact competition.

Benefits (Core information)
- There are no new benefits for the regulated parties. - The expected benefits for the Crown include improved administrative efficiency and associated benefits.
Balance of benefits and costs (Core information)
On balance, it is expected the benefits associated with improving administrative efficiencies will outweigh the potential cost removing Section 24 will have.
Implementation
Most of the implementation work will be complete on removal of the relevant section from the Act with some minor operational updates likely to be required.
Limitations and Constraints on Analysis
There is insufficient data to qualitatively measure the efficiency gains.

Minister's preferred option for Chapter 26 in the RIS (amend section 24)

Costs (Core information)
- The main cost to regulated parties includes the costs associated with cost recovery mechanism - There are no new costs to the Crown expected.
Benefits (Core information)
- The benefits for regulated parties include reviews may be completed faster with one reviewer when compared to the status of requiring a panel to meet, review, and provided a consensus decision. - There are benefits to the Crown including: - There may be some improved administrative efficiency from enabling one reviewer, instead of an entire panel. - Cost recovery would mitigate some or all of the costs associated with reviews currently born by the Crown.
Balance of benefits and costs (Core information)
On balance, it is expected that the benefits would outweigh the costs.
Implementation
Most of the implementation work will involve ensuring the cost recovery mechanism is fit for purpose.
Limitations and Constraints on Analysis
There is insufficient data to qualitatively compare the benefits and costs. However, we know that the absence of a full review panel will require less resources and time than the support of one and are confident in this baseline.

I have read the Regulatory Impact Statement and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the preferred option.


Fiona Duncan
Director Regulatory Systems Policy
11 September 2025

Quality Assurance Statement	
Reviewing Agency Ministry for Primary Industries and Ministry for Regulation joint-panel	QA rating Partially meets
Panel Comment: A quality assurance panel with members from the Ministry for Primary Industries and the Ministry for Regulation have reviewed the Regulatory Impact Statement: <i>Proposed amendments to the Biosecurity Act 1993</i> . The panel considers that it partially meets the Quality Assurance criteria. The panel notes the Cabinet paper is seeking agreement to a large number of proposals and the analysis in the RIS is comprehensive and informed by significant consultation. However, the problem definitions for some of the proposals lacked evidence on the scale of the problem. This makes it difficult to determine whether regulatory change is necessary. In addition, some proposals assume that regulatory change will flow through to behaviour change, but the RIS could be clearer about the intervention logic and how the proposal intends to affect behaviour. In relation to compensation entitlement changes, there is a risk that if affected parties behave in unanticipated ways then the proposal wouldn't meet its objectives.	

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1. Structure of this RIS

1. The Regulatory Impact Statement for the Biosecurity Act Amendment Bill (the Bill) is split into multiple parts to group similar issues together and improve the structure and coherence of the document. The parts are:
 - Part 1: Overview
 - Part 2: Enforcement and Compliance
 - Part 3: Compensation
 - Part 4: Offshore and Border
 - Part 5: Readiness and Response
 - Part 6: Long-term management
 - Part 7: Surveillance and Legislation Interaction
2. Part 1: Overview sets up the background for the Bill, and the overarching problem definition, opportunity, and the objectives for the Bill.
3. Parts 2 to 7 detail the specific issues and options which relate to the overarching opportunity and objectives.

PART 1

OVERVIEW

2. Part 1: Overview

4. This is part of the RIS is Part 1: Overview. This part:
- introduces the biosecurity system and necessary background information;
 - establishes the overarching problem definition and objective for the Bill as a whole;
 - provides information about the 2024 public consultation;
 - sets out the criteria that we will use to assess options; and
 - provides information about how the Bill will be implemented and monitored.

3. Introduction to the biosecurity system

5. New Zealand's biosecurity system underpins trade, primary production, and biodiversity. The Biosecurity Act 1993 (the Act) provides the legal framework for the biosecurity system. The Act helps keep harmful organisms out of New Zealand, manage those that get into the country, manage established pests and diseases, and helps assure trading partners of the quality of our exports. The Act also interfaces with other systems. For example, preventing pests such as exotic mosquitoes (that carry diseases of human health significance) from becoming established has significant positive implications for the economy, environment, and health of New Zealanders.
6. The biosecurity system has multiple components, rules and participants that rely on each other to protect New Zealand's way of life and values.

3.1. Background on the biosecurity system

The biosecurity system protects New Zealand's way of life

7. Biosecurity is about excluding, eradicating, or managing pests and diseases that pose a risk to New Zealand's economy, environment, human health, and way of life. These pests and diseases include threats to plant and animal health, human health, and invasive species that threaten our unique and indigenous species and ecosystems. Biosecurity is part of the One Health approach to recognise the interconnectedness of human, animal, and environmental health, emphasising collaboration to address health challenges.
8. The biosecurity system also contributes to supporting national security outcomes. A major biosecurity incident could have implications for national security, including significant economic harm. An intentional (or attempted) release of disease-causing agents like bacteria, viruses, or toxins to harm humans, animals, or crops by a state or non-state actor would also be of national security concern.
9. Incursion of pests and diseases is included as a National Risk on New Zealand's National Risk Register recognising the potential these have to cause serious immediate and/or long-term effects on New Zealand's safety and prosperity, requiring national-level intervention and coordination to manage and respond.
10. In New Zealand, biosecurity does not include managing or responding to diseases carried and transmitted by humans, such as measles. These are led by Health

New Zealand. It focuses on pests of public health significance which are generally considered to be invertebrate animals (such as mosquitoes) or vertebrates such as rats.

11. Some pests carry zoonotic diseases (i.e. diseases that can be transmitted from animals to human beings). For example, exotic mosquitoes can carry Ross River virus. In this case, the Biosecurity Act and Health Act 1956 each play a separate role. The Biosecurity Act covers how we manage or respond to zoonotic diseases or the pests that may carry zoonotic diseases. The Health Act manages possible effects on human health by empowering officials to deal with infectious and notifiable diseases, including destroying infected animals. New Zealand's biosecurity system is consistent with the One Health approach.

The biosecurity system is more than just the border

12. The biosecurity system manages risk through multiple layers of protection. We manage as much risk offshore as we can, through supporting international standards, import permitting and offshore treatments. The biosecurity system seeks to be protective without pushing us towards zero risk (which is undesirable and not achievable).
13. We then screen all arriving goods, craft and passengers at the border and take steps within New Zealand to either eradicate pests, or reduce their harm through suppression or management. These layers are all connected, and each layer cannot operate successfully without the others.

Figure 1 - Layers of the biosecurity system



Offshore

High standards and strict rules keep most biosecurity risks offshore. We specify what commodities, goods, and craft can come into the country, and how they must be treated before they arrive.



At the border

All incoming goods, passengers, mail, and craft are screened at the border. Our biosecurity officers manage biosecurity risks on the four main pathways to New Zealand — passenger, mail, cargo, and craft. For example, we:

- educate passengers and importers on biosecurity rules;
- inspect items to make sure they comply with import requirements; and
- test new breeding material for pests and diseases in quarantine facilities.



Within New Zealand

If pests and diseases get through offshore and border protections, there are other layers of protection in the country (post-border), including:

- partnership with iwi/Māori, regional councils, industry and communities to coordinate biosecurity activities;
- surveillance to detect pests quickly;
- strong readiness and an ability to anticipate and plan for threats;
- an animal tracing system for cattle and deer;¹
- responses to pest and disease incursions; and
- pest management programmes to control pests that are here.

¹ This is provided for by its own legislation: the National Animal Identification and Tracing Act 2012.

Trade and travel benefit New Zealand, but also present biosecurity risks

14. Biosecurity allows animals, plants, and food to be safely moved within New Zealand and to and from other countries. New Zealand benefits from this trade and travel:
 - Food and fibre export revenue is forecast to reach \$59.9 billion in the year to 30 June 2025.²
 - The food and fibre sector employed 360,000 people in the year to 31 March 2023.³
 - The food and fibre sector accounted for 10 per cent of New Zealand's gross domestic product in the year to 31 March 2023.⁴
15. The food and fibre sector has enabled the economy to grow, creating jobs and prosperity. The country's freedom from major pests and diseases enables primary producers to grow high-quality produce and trade freely. New Zealand's primary producers feed New Zealanders and people across the world. Tourism is an important service export for the economy.
16. New Zealand's native biodiversity and taonga species are socially and culturally important to New Zealanders. Biosecurity protects the health and value of the country's animals and plants, including economically and culturally important species. The country's natural heritage and landscapes are also an intrinsic part of the nation's identity. They are key reasons that international visitors choose to visit, and biosecurity protects this.
17. Trade and travel contribute to a better standard of living and wellbeing in New Zealand. Imports can reduce the price and increase the variety and availability of goods like fresh produce, groceries, cars, appliances, farm machinery, and animal feed.
18. However, trade and travel also create biosecurity risks. Every time something or someone enters New Zealand, a pest or disease could also enter. The biosecurity system aims to reduce biosecurity risk without unnecessarily hampering trade.
19. Biosecurity comes at a cost. For example, offshore exporters and New Zealand importers may need to pay for testing, or for treating products to kill pests before products are shipped. They may need to pay for product inspection before export and on arrival. These costs are often passed on to purchasers in New Zealand.

Biosecurity involves balancing benefits and trade-offs

20. New Zealand seeks a low level of biosecurity risk to protect what we value. However, if New Zealand tried to remove all risk, trade and travel would stop. Some trading partners might retaliate by not accepting New Zealand's exports. Even then, there would still be risk. For example, pests could arrive in the ocean or on the wind.

² Situation and Outlook for Primary Industries (SOPI) June 2025.

³ Situation and Outlook for Primary Industries (SOPI) June 2025.

⁴ Situation and Outlook for Primary Industries (SOPI) June 2025.

21. This raises key questions for biosecurity decision-makers, such as how much risk we can accept while facilitating trade and travel. Such questions are at the heart of how New Zealand manages biosecurity.
22. In balancing these benefits and costs, we also need to be sure that:
 - the system is fair;
 - we create incentives so that people do the right thing;
 - the system is effective at a national and community level;
 - the system remains science-based; and
 - any costs are proportionate and well justified.

Biosecurity involves more than the government

23. Biosecurity is a shared responsibility and operates at all levels — international, national, regional, and local. It is a system where everyone helps to identify, reduce and manage risk. This includes international travellers, landowners, importers and those who work with our natural resources.
24. Many industries have a direct interest in biosecurity, including primary producers, importers, and exporters and the industry bodies that represent them such as DairyNZ, Beef + Lamb New Zealand, Pork NZ, Aquaculture New Zealand, Horticulture New Zealand, and Kiwifruit Vine Health. MPI works closely with industry to manage the risks that industries might face and share decisions in how to respond to outbreaks.
25. Māori hold key interests and statutory and constitutional Treaty roles in the management of natural resources. For example, Māori participate in surveillance, incursion response, and the proactive management of pests and diseases. Māori biosecurity practices such as iwi environmental plans, rāhui,⁵ and surveillance have become an important part of biosecurity management. We are building partnerships with hapū/iwi to increase Māori participation and decision-making in biosecurity readiness and response activities.
26. Science and research organisations are also involved. MPI co-invests to support and enhance research and innovation and to foster the sharing of scientific knowledge to better understand and manage biosecurity risks.

3.2. Background in the Biosecurity Act 1993

The Biosecurity Act 1993

27. The Act provides the legal basis for a wide range of activity across the biosecurity system. There are provisions in the Act which are relevant to:
 - leadership in the biosecurity system;
 - pre-border activities to manage risk offshore;
 - activities at the border to manage risk from incoming craft, passengers and goods;

⁵ A rāhui is a temporary ritual prohibition, closed season, ban, reserve.

- funding arrangements and cost recovery for some areas of biosecurity;
 - surveillance for pests and diseases;
 - responses to incursions;
 - long-term management of established pests and diseases; and
 - interfaces with other legislation administered by other agencies (e.g. Health Act 1956 and the Hazardous Substances and New Organisms Act 1996)
28. The Act does not have a purpose statement. The Long Title of the Act is “An Act to restate and reform the law relating to the exclusion, eradication and effective management of pests and unwanted organisms”. The Act replaced several Acts that dealt with separate aspects of biosecurity. The Long Title also gives an indication of the scope of the Act. The Act focuses on:
- pests, which are organisms that are the subject of a pest management plan; and
 - unwanted organisms, which are organisms that are capable or potentially capable of causing unwanted harm to any natural and physical resources or to human health.
29. Passed in 1993, the Act is now just over 30 years old. The Act focuses on providing the key powers, duties and restrictions that are needed to run an effective biosecurity system, with generally little guidance on how those tools should be used. In other words, the Act is empowering. It provides the toolbox and leaves much scope for policy and practice to determine how those tools should be used.

Other legislation plays an important role

30. Other statutes play an important role in the biosecurity system. This is not a comprehensive list, but highlights some of the other key statutory regimes involved in or related to the biosecurity system:
- Resource Management Act 1991 (administered by the Ministry for the Environment);
 - National Animal Identification and Tracing Act 2012 (administered by MPI);
 - Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (administered by the Ministry for the Environment);
 - Conservation Act 1987 (administered by the Department of Conservation);
 - Wildlife Act 1953 (administered by the Department of Conservation); and
 - Hazardous Substance and New Organisms Act 1996 (administered by the Ministry for the Environment).
 - Health Act 1956 (administered by the Ministry of Health).
 - Civil Defence Emergency Management Act 2002 (administered by the Ministry of Civil Defence and Emergency Management).

Previous regulatory reform in the biosecurity system

31. The Act has been amended quite frequently over the years. Many amendments have been minor (for example, amendments made as part of a Statutes Amendment Bill) or consequential to other reforms (for example, new organisms amendments made in 2003).
32. The most significant amendments to the Act were made in:
 - 1997 – this was a large amendment act, mostly resolving problems or gaps identified during initial experiences of implementing the Act;
 - 2008 – this amendment act was small but significant, as it clarified the interface with the Hazardous Substances and New Organisms Act 1996 and (through a change made at select committee) introduced the independent review process for import health standards; and
 - 2012 – the Biosecurity Law Reform Act 2012 introduced:
 - a full replacement of Part 5 of the Act (pest management), to implement the legislative components of the National Pest Management Plan of Action;
 - a new Part 5A to provide the legislative basis for the Government Industry Agreement on Biosecurity Readiness and Response;⁶ and
 - improved provisions for marine biosecurity, such as the introduction of the craft risk management standard.

Non-regulatory efforts to improve the biosecurity system⁷

33. As part of the Natural Resources cluster budget in 2022, MPI received funding for cost pressures to address critical gaps in New Zealand's biosecurity system and support increasing demand for services.
34. Biosecurity New Zealand, a business unit of MPI, continually delivers research and guidance to help improve biosecurity practices. An example is the Marine Biosecurity Toolbox, a 5-year (2019-24) research programme aimed at protecting New Zealand's marine environments from the impacts of non-indigenous species.
35. The government has implemented national biosecurity strategies for a more resilient biosecurity system and to set strategic priorities. Biosecurity New Zealand launched the Ko Tātou programme as part of implementing the "Biosecurity team of 4.7 million" strategic direction from Biosecurity 2025. While the Ko Tātou campaign has recently been retired, there were several biosecurity engagement programmes that were launched under the Biosecurity 2025 Ko Tātou banner that continue to strengthen New Zealand's biosecurity system.

⁶ The Government Industry Agreement is a partnership between industry groups and the Government. There are 25 partners, including MPI. Its purpose is to promote industry and government working together in decision making and sharing the costs of readiness and response activities.

⁷ This is a snapshot, rather than an exhaustive list, of recent key initiatives.

36. The Biosecurity Business Pledge is a partnership that aims to help all New Zealand businesses take a proactive approach to their biosecurity practices. The Pledge has been developed by businesses and aims to make biosecurity a core part of operational activity. Under the Pledge, businesses commit to proactively manage biosecurity risks and are provided with information and resources to support that.
37. Tauranga Moana Biosecurity Capital (TMBC) and Biosecurity Taranaki are multi-stakeholder regional biosecurity collaborations set up to build engaged and proactive communities that will be more prepared and respond better to biosecurity threats, enabling increased regional environmental and economic resilience.
38. Biosecurity New Zealand is currently developing a Biosecurity System Action Plan to create a shared direction and commitment from partners and participants across the system. This plan will replace the existing Biosecurity 2025 and aims to establish a set of tangible and achievable actions to deliver timely and effective improvements to the system where they are needed most, making the best use of existing resources.
39. There is also the work done under the Government Industry Agreement. The Government Industry Agreement is a partnership between industry groups and the Government. There are 25 Government Industry Agreement partners, including MPI. Its purpose is to promote industry and government working together in decision making and sharing the costs of readiness and response activities.
40. A range of government agencies, boards and local government bodies lead and manage various areas of government relevant to biosecurity outcomes including trade, the border, and surveillance, readiness, response and pest management. MPI works across these bodies to ensure that responsibilities and activities are aligned across the wider state sector to produce good outcomes for biosecurity.
41. International partners and bodies set international standards and obligations including the World Trade Organization, the World Organisation for Animal Health, the International Plant Protection Convention, and Codex Alimentarius Commission. MPI shares and gains expertise to ensure New Zealand's biosecurity requirements align with, and influence, international standards for trade set by these organisations.

4. Problem definition for the Biosecurity Act Amendment Bill

42. The biosecurity system is increasingly under pressure. The cost of primary sector production losses from pests has increased from an estimated \$1.5 billion cost in 2009, to an estimated \$4.3 billion cost in 2020.⁸ The increasing volume and diversification of goods imported today has changed the biosecurity risks we face. Climate change increases risks of new pests establishing and established pests spreading. The *Mycoplasma bovis* outbreak is the biggest biosecurity event New Zealand has faced. It

⁸ Economic cost of pests to New Zealand. 2020 Update. MPI Technical Paper No:2021/29.
www.mpi.govt.nz/dmsdocument/48496/direct

highlighted significant pressures facing the biosecurity system and Government's exposure to fiscal shocks from medium and high scale biosecurity responses.

43. Biosecurity law is increasingly becoming not fit-for-purpose. We started with a broad review of the Act to overhaul the legislation for the future. In the review, we confirmed that the Act remains somewhat enabling, and has generally served us well. However, MPI has identified critical legislative pain points that impede the effectiveness of the biosecurity system, and which constrain progress and trade:⁹
- The costs of biosecurity risk management are not appropriately balanced. The compensation settings are more generous by international standards which means compensation can be a significant cost to the Crown, and may not be incentivising individuals to take steps to reduce their biosecurity risk.
 - Biosecurity risk management is becoming cumbersome and unwieldy. Considerable time and resource are required to develop import standards, increasing the likelihood that our requirements will not keep up with risks, and limiting imports which affects consumer choice, business innovation, and international trade. The long-term management of pests that have established is unnecessarily time consuming and difficult to access.
44. The biosecurity system needs a modern biosecurity law that protects what is important to New Zealand. We have an opportunity to ensure legislative settings reflect the context of today and the future. If these are not addressed, all initiatives from all users of the Act (central government, regional councils, the primary sector, and communities) to address biosecurity threats and risks remain constrained by the outdated framework set by the Act.

5. Objectives of the Bill

45. The overarching objective of the Bill for MPI is ensuring biosecurity law continues to protect our environment, human health, and supports our economy. As well as reducing the risk of pests and diseases from entering New Zealand, biosecurity plays a major part in limiting certain pests and diseases already established in New Zealand, through a range of management activities. This directly impacts productivity, sector growth and market access. The biosecurity system is crucial to protecting our natural environment, taonga species, and biodiversity, and also supports legislation to protect human health.
46. As a secondary objective, we want to pursue targeted changes to the Act to provide all users of the Act with a fit-for-purpose toolbox that is complete, effective, efficient and future-proof. Robust regulatory systems, and the capability to keep them fit-for-purpose, are important to the prosperity of New Zealanders. The now-completed Biosecurity Act Review identified critical pain points with the Act and unrealised opportunities. MPI seeks to strengthen, streamline, and future-proof the biosecurity system. It will help to deliver better value for money and enable more comprehensive management of risk.

⁹ This is not an expansive list but covers the most critical issues. Each pain point we discovered is discussed in detail in the topic-based impact statements.

47. Our focus is to make targeted improvements to ensure that we fulfil our stewardship of the biosecurity system and biosecurity law. As we carry out that work, we also seek to take advantage of opportunities to ensure our system reflects our way of life and the context of today.
48. If these objectives are delivered, we should see:
- enhanced measures to manage biosecurity risks – offshore, at the border and within New Zealand;
 - better incentives of the right behaviours and improved personal responsibility;
 - regulations are fit-for-purpose and reduce regulatory burden and compliance costs;
 - responsibilities are appropriately shared – devolved decision-making; and
 - sustainable economic growth and trade opportunities.

6. Public consultation on the Bill

6.1. 2024 public consultation

49. The Minister for Biosecurity launched public consultation on proposed changes to the Act on 19 September 2024. Consultation ran until 13 December 2024.
50. In addition, MPI attended 36 external engagements with a wide range of partners and stakeholders during the public consultation period. Twenty-seven of the engagements were with industry groups, five were with Māori/iwi groups, and three were with other government agencies. We also met with the Legislation Design and Advisory Committee.
51. MPI has published a summary of submissions on its website.¹⁰
52. We received a total of 137 written submissions from public consultation. We break this down in this document by submitter category and by proposal.

Figure 2 - Submitter categories and number of submitters



¹⁰ www.mpi.govt.nz/dmsdocument/68292-Summary-of-feedback-Consultation-on-proposed-amendments-to-the-Biosecurity-Act-1993

- **Advocacy group:** An advocacy group is any organisation which states that it represents the views of a group, or advocates for changes to policy for a group (and which is not a Government Industry Agreement partner – see further down).
- **Business:** Any other business that is not a primary producer or processor.
- **Community organisation:** Local community groups, volunteer groups, charities, not-for-profits etc (and which is not an advocacy group).
- **Government Industry Agreement partner:** Organisations that are [Signatories](#) to the [Government Industry Agreement for Biosecurity Readiness and Response](#).
- **Individual:** Submitters who did not submit on behalf of an organisation.
- **Local government:** Territorial and unitary authorities, and regional councils.
- **Māori organisation/Iwi/Hapū:** Iwi and hapū, or an organisation representing Māori interests.
- **Other:** Organisations that are not in scope of other categories
- **Primary producer and processors:** A primary producer is any farmer or grower, whether an individual or a business, involved in the production of raw goods (e.g. agriculture, horticulture, aquaculture), or processing of raw goods into products.
- **Research or university entity:** An academic or research organisation.
- **Travel and shipping industry:** Entities involved in either travel or shipping business (airports, airlines, ports, cruise, cargo, shipping).

53. The range of topics covered by the public consultation is diverse. This means it is not possible to draw common themes on the substantive ideas covered in submissions. However, our overall observations are as follows:

- There are strong supporters and equally strong opposition on many of the proposals.
- Submitters who supported a proposal tended not to provide extensive feedback setting out the rationale for their position (though there are exceptions). MPI assumes this is because the submitters agreed with the rationale and position MPI provided in the discussion documents, and therefore, the submitter did not feel compelled to repeat these statements. On the other hand, submitters who opposed a proposal tended to provide extensive information setting out their concerns. This comes through strongly in the submission themes, which may seem disproportionately negative despite a majority of submissions supporting a proposal.
- Many submissions, on various proposals, were supportive of MPI's objective to deliver flexibility and clarity in legislation.
- For many topics, submitters provided feedback which said, or suggested, that implementation is key to their final view on the proposal. Submitters wanted to know in-detail what a proposal would mean for them, on-the-ground, in practice.
- On a related point to the above, across the board, submitters wanted to engage further with MPI to further discuss the proposals (to better understand the proposal

or to collaborate to amend the proposal). Submitters not only wanted more information, they also wanted MPI to sit in the room with them and have a discussion.

54. The key proposals or topics where there was a large degree of consensus were:

- Support for enhancements and expansions to infringement offences (creating an additional infringement penalty for travellers with higher risk goods, introducing the ability for regional councils to establish infringement offences in regional pest management plans, and amending offences relating to breaches of Controlled Area Notices).
- Opposition to legislative intervention for cost shares in the Government Industry Agreement (and support for the status quo).
- Opposition to removal or partial removal of consequential losses from compensation eligibility.

6.2. 2025 targeted engagement

55. Following public consultation, the Minister for Biosecurity approved targeted engagement with select submitters, starting from March 2025. MPI participated in 40 engagements. These engagements helped to shed more light on the submissions we received. The feedback from these engagements helped to shape our updated options and analysis. This is discussed in the relevant chapters in Parts 2 to 7.

7. Criteria used in this Regulatory Impact Statement

56. The options are assessed against the following criteria:

Criteria	Description
Effective	• Does the option better protect New Zealand from biosecurity risk, while supporting our economy? • 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? • Does the option share the costs and effects of biosecurity equitably? • Does the option allow Government to manage fiscal pressures more sustainably?
Adaptable	• Does the option deliver a modern legislation that is future-proof and enabling? • Does the option provide a modern toolbox to users of the Act?
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?
Clear	• Is the option logical, consistent, easy to understand, and does it provide sufficient certainty? • Are roles and responsibilities assigned appropriately and clearly between central government, local government, industry, and local communities?

57. All the sections will use these four criteria. Due to the wide variety of proposals in the Bill, how each criteria applies will differ from topic-to-topic.

58. For example, the focus of the 'Effective' criterion for enforcement proposals will be on the question of "Does the option better protect New Zealand from biosecurity risk, while supporting our economy?". In contrast, the focus of the 'Effective' criterion for compensation proposals will be on the question of "How will the option affect incentives to manage biosecurity risk?" and "Does the option allow Government to manage fiscal pressures more sustainably?". How we consider each criterion will be clearly set out for each topic.
59. Some sections may also have additional criterion where relevant. For example, the compensation section has a specific criterion around fairness. Fairness is particularly relevant to proposals that affect how much compensation the government pays to those who suffer losses from the exercise of government powers.

8. Implementation

60. The Bill is most likely to be scheduled for introduction in mid-2026. A full parliamentary process will follow. MPI would be the lead agency for implementation. The proposed changes will affect many users of the Act, but MPI would be the most substantially affected.
61. Some proposals will require changes to secondary legislation to be implemented. Changes to secondary legislation will be included in scope of implementation.
62. Some changes to secondary legislation must be in place by the date of Royal Assent, to give effect to the associated legislative change. These proposals are:
- Border fines for travellers with high-risk goods;
 - Regional council access to infringement offences for pest management;
 - Enhancing compliance options for breach of a Controlled Area Notice; and
 - Compensation – improvements to the operation of the scheme (specifically the proposal to Codify the dispute resolution process).
63. The extent of the effect on MPI operations and the amount of work required to implement the changes has not yet been scoped. Following Cabinet approval of policy proposals, MPI will determine the operational effects the changes have.
64. Many of the proposals will also affect other users of the Act, including management agencies, local governments, and other central government agencies. MPI will work with these stakeholders following Cabinet approvals to understand the full extent of these effects.
65. Following this, MPI will develop a plan to change, or create new operational policies, protocols, and procedures. MPI will not, however, design implementation for external users. Instead, MPI will develop a dedicated communications plan to ensure that all users of the Act are aware of the changes made by the Bill.

9. Monitoring

66. Once any legislative changes have been in force for five years, MPI will start a review of the performance of the updated Biosecurity Act.
67. Monitoring and review activities would likely focus on answering these questions:
- Have the Bill's amendments led to more effective and efficient biosecurity risk management?
 - Have the legislative changes solved the problems we identified?
 - Are industry groups, producers, and other participants in the biosecurity system well informed of any updated requirements?
 - Are relevant parties complying with the updated requirements?
 - Have sufficient monitoring strategies been implemented?
 - Is MPI working with Treaty partners and relevant industry groups to enable and ensure compliance?
 - Have enforcement activities been undertaken where continued non-compliance has been identified?
 - Have new powers led to appropriate actions, and what impacts or unintended consequences have there been on individuals or communities?

PART 2

ENFORCEMENT AND COMPLIANCE

10. Part 2: Enforcement and Compliance - Introduction

68. Part 2: Enforcement and Compliance addresses areas which touch on enforcement of the Biosecurity Act. MPI has tools to encourage voluntary and assisted compliance with biosecurity law to support the biosecurity system. When these are not enough, enforcement and compliance tools are available under the Act to enable the regulator to penalise those who do not follow biosecurity law. These tools can help drive behaviour change where incentives alone are not sufficient.
69. This model is called the VADE (Voluntary, Assisted, Directed and Enforced) model. MPI uses the VADE model across all its compliance systems:
- Voluntary compliance are actions taken to inform, educate and engage people so they voluntarily comply with legislation. Most people are willing to do the right thing if they know the law.
 - Assisted compliance is providing extra assistance to people and focusing on individuals and groups to remind them of the consequences of non-compliance.
 - Directed compliance is about applying tools to direct people to achieve behaviour change. This can include lower-level regulatory measures.
 - Enforced compliance applies the full extent of the law and includes prosecuting offenders.
70. Within that context, biosecurity enforcement is focussed on preventing biosecurity harm before it occurs. This is because biosecurity offending can have permanent impacts, for example where a new pest or disease is introduced. Deterrence plays a critical role in maintaining compliance with the Biosecurity Act. The severity of penalties issued by the courts is one source of deterrence against non-compliance with the Biosecurity Act.
71. The Biosecurity Act establishes a range of duties, offences and penalties which are applied by the courts. The Act sets out offences that involve prosecution through the courts and the maximum penalties that can be imposed if an offender is successfully convicted.
72. This part of the RIS covers the following topics:
- Increased penalties and sentencing guidance in the Biosecurity Act
 - Power of inspectors during searches
 - Border fines for travellers with high-risk goods
 - Improve information requirements and offences for unaccompanied goods
 - Regional council access to infringements
 - Improve enforcement of controlled area notices
 - Introduce enforceable undertakings
 - Enhancing compliance options for Places of First Arrivals

73. Each topic is structured in the same way:

- background to the topic;
- problem / opportunity;
- options;
- assessment of the options;
- preferred option; and
- impact analysis of preferred option.

Proactively Released

11. Increased penalties and sentencing guidance in the Biosecurity Act

11.1. Background

Offences and penalties regime in the Biosecurity Act

74. The Biosecurity Act sets out a range of civil and criminal offences. The Biosecurity Act provides for a parallel civil process - pecuniary penalty orders – for some criminal offences. Criminal offences comprise a mix of strict liability and mens rea offences.
75. The Biosecurity Act states that where the same act or omission, or substantially the same act or omission, could give rise to proceedings under both pecuniary penalty proceedings and criminal proceedings:
 - Criminal proceedings may be started whether or not pecuniary penalty proceedings have been started.
 - If criminal proceedings are started when pecuniary penalty proceedings have been started but not completed, the pecuniary penalty proceedings are stayed.
 - Criminal proceedings may not be started if pecuniary penalty proceedings have resulted a pecuniary penalty order being made and is upheld following any appeals, or where appeals are abandoned.
76. Most penalties were last updated in 2012.
77. The Biosecurity Act enables the making of Biosecurity Emergency Regulations. These Regulations can specify offences and non-compliance breaches of the Regulations. The Act also empowers any such regulations to prescribe the penalty for an offence —
 - where the offence is committed by an individual, a fine not exceeding \$15,000; and
 - where the offence is committed by a body corporate, a fine not exceeding \$75,000.

Pecuniary penalties

78. The Act provides for pecuniary penalty orders that can be issued by the High Court. Pecuniary penalties are non-criminal monetary penalties that can be imposed by a court in civil proceedings. This means that they aren't criminal proceedings, and the standard of proof required to show that someone didn't comply is that it's more likely than not that they did or didn't do the specified action. This is called the balance of probabilities. Examples of offences include failing to answer official enquiries, providing misleading or false information relating to importation requirements, breaching controlled area notices and breaching compliance orders relating to notifiable organisms.
79. Pecuniary penalties for corporates have a maximum penalty of \$10,000,000 if they do not make a commercial gain from the breach. For corporates that make a commercial gain from the breach (and the amount of that gain can be ascertained) orders can be imposed within the penalty limit of the greater of \$10,000,000 or 3 times the value of the commercial gain. Where the amount of commercial gain cannot be ascertained, the

penalty limit is the greater of \$10,000,000 or 10% of the turnover of the body corporate and all its interconnected bodies corporate (if any).

Infringement offences

80. The Act also provides for infringement offences. Infringement offences are a subset of criminal offences that do not result in criminal convictions. Infringement notices are instant fines issued by inspectors or authorised persons appointed under the Biosecurity Act, and are strict liability offences. Infringement notices at the border are set under specific Regulations. Border infringement fees have a limit of \$1000.

Criminal sanctions

81. For individuals, there are a range of offences that carry both imprisonment and a fine. Fines have different maximum limits depending upon the nature of the offence. Fines for strict liability offences can vary from \$1,000 - \$50,000 for individuals, depending upon the offence. Corresponding imprisonment limits for those offences range from six months to 5 years. For the same offences, criminal fines for corporates range from \$15,000 - \$200,000.
82. Where an offender is prosecuted, judges look at the specific facts of the case to consider the appropriate sentence to deal with the offending. In making this decision, judges rely on the maximum penalties set out in the Biosecurity Act, the guidance, principles and purposes in the Sentencing Act 2002, and any relevant case law. The maximum sentence is usually given only in the most serious cases.

Sentencing guidance

83. The Biosecurity Act currently does not contain sentencing guidance. Courts have developed their own sentencing criteria for biosecurity offences through case law. The criteria include a range of aggravating factors including offending for commercial gain, offending associated with the international wildlife trade, high biosecurity risks with potential significant economic consequences, repeat offending, and extensive premeditation and planning.

11.2. Problem or opportunity

The level of penalties in Biosecurity Act is not effectively supporting the deterrence objective

84. Sufficiently high penalties are a core component to deter non-compliance. However, high penalties for biosecurity offending are rare.
85. Biosecurity offending is not as clear about risk and who the victim is compared with other offending. For example, the risk associated with an assault case is clear as the harm either did or did not happen. There is also a clear victim. For biosecurity offences, risk is a question of yes – a threat to biosecurity was introduced, or no – a threat to biosecurity was not introduced but it could have caused a catastrophic outcome if it had been. This ambiguity around risk can make the decision to issue a penalty for an offence

difficult and unclear. However, even one non-compliant action has the potential to have serious social, economic, environmental and health implications.

86. The current penalties were last updated in 2012 and some of the maximum penalty levels for criminal offences may no longer sufficiently reflect the seriousness of the offending. This has implications for deterring non-compliance and behaviour that presents significant biosecurity risk.
87. From a whole of system perspective, the biosecurity system complements a range of related frameworks - two key ones being resource management and the regulation of hazardous substances. There is an inconsistency between biosecurity and these other systems. The penalties in these other systems are higher for broadly similar misconduct than that provided for under the Biosecurity Act.
88. There is a risk of further growing this disparity between the regimes as both the resource management and hazardous substances regimes are currently being reformed. In both cases, there are substantially higher penalties proposed for offences similar to biosecurity breaches. In addition, the existing disparity between New Zealand and Australian biosecurity penalty thresholds can create a risk of New Zealand being seen as a softer touch.¹¹

There is insufficient caselaw to assist judges in this specialised area

89. Judges deal with a low volume of biosecurity cases where most offenders are first-time offenders who plead guilty. This has created a base of case law for biosecurity sentencing that result in the issuing of low sentences for offending. This case law can influence a judge's decision-making during sentencing and guide them towards imposing a low penalty.
90. Low numbers of cases involving low level offending means judges may not have the necessary depth or range of precedent cases to rely on when sentencing for more complex cases presenting factors unique to the biosecurity system that aggravate the nature of offending.
91. The lack of case law relating to sentencing for breaches of biosecurity law has also been identified by the judiciary. In the September 2024 District Court decision of *MPI v Elliott & Elliotts Wholesale Nursery*,¹² Judge S J O'Driscoll stated the following:
 - *"Counsel have referred me to a number of cases to assist in setting a [sentence] starting point, not all of which are particularly helpful. None relate to charges under s 154O(11) of the Biosecurity Act 1993, and most of them are factually quite dissimilar. That is not the fault of counsel; rather, it is a reflection of the small number of sentencing decisions in this area."*

¹¹ To illustrate, a breach of Australia's biosecurity import conditions can include fines up to \$444,000 or 10 years' jail time or both. New Zealand's penalties for the general duty relating to importation (section 16A) are imprisonment for a term not exceeding 12 months, a fine not exceeding \$50,000, or both.

¹² [72] *MPI v Elliott & Elliotts Wholesale Nursery* [2024] NZDC 23178

92. High penalties are rarely imposed in biosecurity cases. Judges are not always willing to increase penalties beyond what has been imposed previously unless the situation is clearly a serious departure from offending in analogous cases. This stems from the doctrine of precedent where courts look to rules established in prior cases to inform cases where similar facts or points of law are being decided.
93. Two factors may contribute to this:
- Most biosecurity offenders are first-time offenders. Courts tend to reserve harsher penalties for repeat offenders.
 - Most biosecurity offenders plead guilty. Under section 9 of the Sentencing Act, a guilty plea is a mitigating factor in sentencing decisions.
94. This creates a base of case law weighted towards the lower range of possible penalties.

11.3. Options

Increased penalties

Option 1 – status quo

95. Option 1 is the status quo. Penalty levels would remain unchanged.

Option 2 - make targeted increased penalties and criminal sanctions for serious offences in the Biosecurity Act

96. Option 2 seeks to make targeted increased penalties and criminal sanctions for serious offences in the Biosecurity Act. Under this option, specific penalties and criminal sanctions would be increased:
- Where the Act provides for both civil penalties and criminal proceedings - criminal fines should be increased but overall remain lower than what could be imposed under a civil proceeding.
 - Where the Act only provides for criminal proceedings – fines should be increased for some offences to reflect the serious nature of the offending.
 - Biosecurity emergency regulation fines – fines should be increased for both individuals and corporates to reflect the serious nature of the offending.
97. The table at **Appendix 1** lists the offences and proposed increased penalties. The identified offences are those that sit on the more serious side of the spectrum of offending. They also represent the type of offending that could cause significant potential and actual risk of a biosecurity incursion or incident.
98. For individuals, there are a range of breaches which can be prosecuted either as a civil pecuniary penalty or a criminal offence (infringement fines or prosecutions). Having reviewed the current maximum criminal punishment, we consider that overall, these are set at an appropriate level proportionate to the nature of offending – barring the proposals in the Bill looking at specific increases in infringement fees.

99. Criminal offences carry the possibility of imprisonment and a fine, which are significant punitive elements for individuals. MPI data also shows that most offending at the individual level is low-level offending with most offenders entering a guilty plea early in the process.
100. In relation to biosecurity emergency regulation fines, we consider the fines are set too low in the context of:
- the behaviour that is sought to be prevented; and
 - the potential and actual risks from the offending.
101. Biosecurity emergency regulations are anticipated to be made in the event of a severe biosecurity outbreak (such as a Foot and Mouth Disease (FMD) outbreak). The purpose of these regulations would be to provide for necessary restrictive measures to manage and mitigate damage from an extraordinary event. In the case of an FMD outbreak, regulations could provide for:
- authorising or directing people to dispose of animal carcasses and other animal products in burial pits (whether on-farm, in a mass burial pit or in municipal landfills);
 - restricting access to areas of high FMD risk to prevent the disease being spread accidentally; and
 - requiring pre-emptive culling of healthy animals in properties adjacent to an infected property to create a “firebreak”, to avoid infection spreading.
102. Given the severity of FMD to New Zealand’s economy, breaching conditions or failing to follow directions given under biosecurity emergency regulations could have serious consequences.
103. There is a wider issue as to whether biosecurity emergency offences should be set via Regulations. This section does not consider that question. We simply note that as it stands, should offences be made under these Regulations, the penalties would be lower than penalties set for other similar non-emergency related offences (for example, breaching a Controlled Area Notice). This is an anomaly. It is therefore appropriate that penalties for breaching emergency regulations be set high to act as a deterrent to offending (noting that the maximum ceiling would only be applied in the worst-case scenarios).

Option 2 is a new proposal that has not been consulted

104. Option 2 is a new proposal. While we did not consult on a proposal for targeted increases to penalties and criminal fines, we received three submissions from the 2024 public consultation (for example, from Horticulture New Zealand) commenting that the current penalties are too low in the Biosecurity Act.

Sentencing Guidance

Option 1 – status quo

105. Option 1 is the status quo. There would continue to be a lack of sentencing guidance in the Biosecurity Act.

Option 2 – introduce sentencing guidance into the Biosecurity Act

106. Option 2 would introduce sentencing guidance into the Biosecurity Act. The provisions of the Sentencing Act would continue to apply. Guidance in the Biosecurity Act would set out specific factors within that overall framework for judges to consider during sentencing for biosecurity offences. Guidance would promote the following:

- **Deterrence:** breaches of biosecurity compliance requirements can create high/unacceptable risks for the regulated system or sector. Guidance would make it clear that sentencing should be sufficiently punitive to discourage re-offending and encourage others to voluntarily comply.
- **Highlight unique features of the regulated system:** this would be a way to help raise judicial awareness of unique features and specific enforcement challenges in detecting biosecurity offences.

107. The following components could be included within sentencing guidance to support this objective:

- consideration of not just harm but also of the biosecurity risk, whether actual or potential, created because of the offending and likely economic, trade and environmental consequences.
- the specific enforcement challenges in detecting biosecurity offences.
- whether the offending was in the pursuit of commercial gain; and
- the degree of departure from prevailing standards in the person's sector or industry if and where applicable, as an aggravating factor.

Option 2 received wide support in the 2024 public consultation

108. Option 2 was included in the 2024 public consultation as Proposal 13. The proposal was framed as a general concept (i.e. we did not provide specific factors that would be included in a sentencing provision) with feedback invited on whether sentencing guidance should focus on specific factors, such as deterrence or risk.
109. Most submitters supported introducing sentencing guidance, but there was no clear preference whether guidance should focus on addressing harm, or to primarily promote deterrence to manage biosecurity risk.
110. While there was no clear preference on what guidance should focus on, we consider a dual approach on focussing on deterrence and identifying specific aggravating factors unique to the biosecurity system would best serve the overall purpose of sentencing within the biosecurity enforcement system.

11.4. Assessing options to address the problem

111. The options for increased penalties and sentencing guidance are assessed against the following criteria below.
112. The focus of the 'Effective' criterion for increased penalties and sentencing guidance will be on the question of "Does the option better protect New Zealand from biosecurity risk, while supporting our economy?". Effective in this Chapter therefore is focused on how better compliance and enforcement supports the core duties of the Biosecurity Act which protects New Zealand from biosecurity risk.

Effective	- Does the option better protect New Zealand from biosecurity risk, while supporting our economy? - Does the option improve parity across related enforcement-related regulatory frameworks?
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?

Increased penalties

113. Option 1 (status quo) would not appropriately reflect the seriousness of biosecurity offending. In addition, the disparity between related legislation within New Zealand would continue to risk undermining the biosecurity system.
114. Option 2 (increase penalties) would be effective as it would better protect New Zealand from biosecurity risk by ensuring biosecurity offending was effectively addressed and trust in the system remains. Increasing corporate criminal fines for specific serious types of offending is appropriate. While the quantum of increase for some fines may be slightly more than twice the current maximum, we note that an accepted principle of setting maximum fines (whether criminal or civil) is that the maximum penalty should reflect the most serious of cases of that form of offending.¹³
115. MPI met with legal experts from MPI, New Zealand Police and a representative from the New Zealand Law Society. The representative from the New Zealand Law Society emphasised the importance of cohesion across any proposed sentencing guidance and offences and penalties regime, stating that strengthening penalties is the strongest possible signal to Judges of the level of seriousness of an offence.
116. We also consider increasing fines will bring greater parity across related regulatory frameworks. Both the Legislation Design and Advisory Committee's Legislation Guidelines and the Sentencing Act 2002¹⁴ emphasise the importance of sentence parity for similar criminal offences or offences of comparable culpability. The Law Commission Report *Pecuniary Penalties: Guidance for Legislative Design* noted the then Legislation

¹³ Section 8(2) of the Sentencing Act 2002.

¹⁴ Section 8(e) of the Sentencing Act 2002.

Guidelines said that policymakers should consider "the level of maximum penalties provided across the statute book for similar offences of similar severity".¹⁵

117. As noted earlier, both the resource management and hazardous substances legislative regimes are currently being reformed, with substantially higher penalties proposed for comparable offences. We note that reforms in resource management and hazardous substances reflect a systems shift. However, it remains appropriate and equitable that biosecurity penalties are increased to achieve current legislative parity across similar statutes as they relate to breaches of comparable context.
118. Option 2 is adaptable in that increased penalties provide a greater spectrum of fines that could be imposed depending upon the seriousness of specific biosecurity offending. Option 2 would also provide certainty to judges.

Sentencing guidance

119. Option 1 (status quo) would not provide specialist guidance to support judges in a technically complex area like biosecurity. While court developed guidance could enable adaptability to a certain extent, it is less than what clear legislated criteria could provide.
120. Option 2 (introduce sentencing guidance) meets all the criteria better than Option 1. Sentencing guidance would clearly set out deterrence objectives and specific aggravating factors, supporting effectiveness and adaptability of the biosecurity enforcement regime.
121. Sentencing guidance would provide support to judges in better understanding the unique features and risks presented by biosecurity offending and likely to assist in the imposition of higher penalties. Guidance that focusses on deterrence as well as specific aggravating factors unique to the biosecurity system would best achieve the enforcement objective of the biosecurity framework.
122. Biosecurity is a specialist area that judges may be unfamiliar with. Some submitters said sentencing guidance was needed as biosecurity is a complex and technical area. The New Zealand Law Society stated that "The Law Society considers this could be positive in the biosecurity context. This is a specialist area well removed from the ambit of most offences where punishment is dealt with under the Sentencing Act 2002."
123. Experience with other Acts has shown that sentencing guidance can offer greater clarity and consistency into the sentencing process. For example, of the Acts that MPI administers, the Fisheries Act 1996 and the Food Act 2014 contain provisions that provide additional considerations for courts to consider during sentencing. Section 274(4) of the Food Act 2014 requires judges to consider factors such as how likely a person would be harmed from the offence and the potential or actual implications of the offending on trade. Similarly, section 254 of the Fisheries Act 1996 requires judges to consider the inherent difficulty in detecting fisheries offences and the need to maintain adequate deterrence against offending.

¹⁵ Page 155, (2014) NZLC R133 [R133 Pecuniary Penalties](#)

11.5. Which option best addresses the problem, meets the policy objective and delivers the highest benefits?

124. We consider that Option 2 (increased penalties) the Increased Penalties issue and Option 2 (introduce sentencing guidance) for the Sentencing issue best achieves the overall policy objective. Either option can be progressed separately. However, together, both options most likely best achieve the overall policy objective. A holistic "package" approach of increased penalties and sentencing guidance means judges have a full suite of provisions to guide assessing the seriousness of offending.
125. The Minister's preferred options in the Cabinet paper is the same our recommended option.

11.6. Impact analysis of the preferred options

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Regulated groups (offenders)	Cost of a potentially higher penalty because of sentencing guidance or because of a new, higher penalty. Impact is considered medium as it is an enforcement consequence.	Medium	Low
Regulators (Government and Judiciary)	Little to no expected new costs.	Low	Medium
Total monetised costs		N/A	N/A
Non-monetised costs		Low-Medium	Low-Medium
Additional benefits of the preferred option compared to taking no action			
Regulated groups (offenders)	Consequences are consistent across different legislative instruments describing penalties for similar non-compliances. This is a benefit of a clearer application of law. Sentencing guidance would support clarity for defendants about factors considered in sentencing decisions.	Medium	Low
Regulators (Government and Judiciary)	Increased penalties supports the effectiveness objective of biosecurity enforcement for non-compliance. Sentencing guidance would support judicial decision-making and clarity for prosecutors about factors considered in sentencing decisions.	Low	Medium
Total monetised benefits		N/A	N/A
Non-monetised benefits		Low-Medium	Low-Medium

12. Power of inspectors during searches

12.1. Background

126. Under section 111, biosecurity inspectors can apply for a warrant to authorise the entry and search of any place where:
- there has been or may have been an offence committed against the Act that is punishable by imprisonment;
 - there is or may be evidence of the commission of an offence against the Act that is punishable by imprisonment; or
 - there is any thing that is intended to be used for the commission of an offence against the Act that is punishable by imprisonment.
127. The Act requires the New Zealand Police (Police) to attend any search under section 111.¹⁶
128. Sometimes, people obstruct a search by attempting to remove or destroy evidence, or by fleeing the scene. It is an offence to obstruct an official in section 154O(2). Enforcing section 154O(2) requires prosecution in the Courts. Other than prosecution, MPI has no power available in the Act to stop the obstruction immediately which can impede the outcomes of the search.
129. Police have general powers to arrest for obstruction through the Crimes Act 1961. MPI therefore relies on Police to support its searches, as constables have a power to arrest for obstruction. When MPI undertakes a search, it coordinates with Police to ensure a constable is present to attend the search and assist MPI. Since 2019 there have been 17 searches undertaken by MPI under section 111. All these searches have been attended by a constable. We understand that none have resulted in an arrest because after warning the person about potential arrest, the obstruction stopped.
130. Notably, the Fisheries Act 1996 provides Fishery Officers with a power of arrest. Section 203 of the Fisheries Act sets out the parameters of a power of arrest. The power of arrest centres around continued offending behaviour and refusal to desist from offending, with arrest being the last resort. Fishery Officers who have a power of arrest find that it is beneficial in encouraging compliance and to stop obstruction.¹⁷

12.2. Problem or opportunity

131. Obstruction during a biosecurity search can jeopardise the integrity of the search, as it may prevent inspectors collecting vital evidence of offending. An inspector not being able to address obstruction on-the-spot could mean that evidence cannot be collected

¹⁶ There is a proposal in clause 99 of the Regulatory Systems (Primary Industries) Amendment Bill to remove the requirement for Police to attend a search under section 111. That Bill is currently awaiting the Committee of the Whole stage.

¹⁷ Fishery Officers tell us that the power of arrest is only used a handful of times a year. Based on best available information, in the five-year period to November 2022, there were at least 11 arrests made under the Fisheries Act.

where it has been established that there are reasonable grounds to believe there is evidence of offending (through the issuing of the search warrant).

132. This means that MPI may not be able to effectively enforce breaches of the Act that could have significant impacts on the biosecurity system, the environment, and the primary industries. We consider that inspectors should be empowered to effectively execute search warrants, as so empowered by section 111.
133. MPI expends time and resources to plan a search for a particular day and time, including organising a constable's attendance. At times, MPI may fly staff from other parts of the country. For a variety of reasons, Police may then need to cancel their attendance due to operational priorities which results in delays and an unnecessary expenditure of time and resources. MPI's need to rely on Police to support the execution of search warrant is an unnecessary burden for both Police and MPI because requires a constable to attend a search where they may have a very minor role to play.

12.3. Options

Option 1 – status quo

134. Option 1 would maintain the status quo. That means reliance on Police for arrest powers to support a search warrant.

Option 2 – enable inspectors to arrest a person obstructing the execution of a section 111 search warrant

135. Option 2 would amend the Biosecurity Act to empower a biosecurity inspector to arrest a person who the inspector believes on reasonable grounds is obstructing the inspector from executing a search warrant (issued under s111(1) of the Act).
136. On the recommendation of New Zealand Police, we are proposing to seek a similar power of arrest to that available in sections 263(2) and (3) of the Customs and Excise Act 2018. This empowers a Customs officer to arrest a person and either deliver the person to a constable or release the person where completing the formalities of the arrest is unnecessary.
137. This proposal would require that MPI is responsible for filing a charging document if the arrested person is issued with a summons. To achieve this, the amendment to the Biosecurity Act would require that, if the arrested person is issued with a summons in accordance with sections 28 and 30 of the Criminal Procedure Act 2011, the duties under section 31 of that Act (relating to the filing of a charging document) are the duties of the biosecurity inspector.
138. There would be legislative and operational safeguards on the proposed power of arrest.
139. Legislative safeguards include:
 - The power would be limited to obstruction during the execution of a search warrant under section 111 of the Act. The power would not be available for any other situation.

- A requirement for the inspector to order the person to desist from obstructing before exercising the power of arrest.¹⁸
- Where an arrest is made, MPI could either:
 - release the individual, if the arrest has enabled MPI to control the situation; or
 - promptly deliver the individual to Police if they continue to obstruct.
- Inspectors would need to be specifically authorised with the power of arrest as part of their appointment.

140. Operational safeguards include:

- The power would be limited to the few inspectors who execute search warrants pursuant to section 111 of the Biosecurity Act and are appointed as biosecurity inspectors. This means that of the almost 900 inspectors, the power of arrest would be available to only approximately 60 or so MPI investigators.
- Around 50 MPI investigators are multi-warranted. This means they are already required to complete mandatory safety defensive tactics training before they can be appointed as a Fishery Officer, and this includes training around arrest for obstruction pursuant to section 203 of the Fisheries Act. Around 10 inspectors are in the new Biosecurity New Zealand compliance team, which undertake search warrants of low-to-medium complexity. These inspectors would undergo the same training. This training would include unconscious bias training.
- Arrest would be the last resort where the use of all other field tactics has failed to work such as tactical communications and warnings.
- Where the risk assessment prior to the operation found the operation would be assessed as being of heightened risk, MPI could still request the Police attend.
- MPI will monitor the use of the arrest power, including maintaining and reviewing records of demographic information regarding people who are arrested by biosecurity inspectors.

Option 2 received an equal number of supportive and opposing submissions in the 2024 public consultation

141. Option 2 was included in the 2024 public consultation as Proposal 6. There was an equal number of supportive and opposing submissions for the proposal. Opposing submissions were much firmer in their opposition. Supportive submissions were more conditional and cautious.
142. The overall theme from opposing submissions is that Police have specialist training and specific skills which makes it more appropriate for Police to have arrest powers. They also said that the proposal may not sufficiently safeguard arrestees' rights and dignity. Supportive submissions said that the proposal could increase efficiency and reduce the

¹⁸ See section 203 of the Fisheries Act 1996.

existing burden on Police. Some submitters also raised concerns that Māori are particularly at risk if the powers were misused.

143. In response to the feedback that it is appropriate that only Police have arrest powers, we note that MPI has legislation (i.e. the Fisheries Act) granting it a power of arrest and has a programme in place to train, upskill and support staff to use this power. We also note that other agencies have the power of arrest in specific circumstances (such as the New Zealand Customs Service under section 263 of the Customs and Excise Act 2018).
144. The proposal is mostly unchanged from what we consulted.

12.4. Assessing options to address the problem

145. The options are assessed against the following criteria below.
146. The focus of the 'Effective' criterion for this chapter is on the question of "Does the option better protect New Zealand from biosecurity risk, while supporting our economy?". Effective in this Chapter therefore is focused on how the option supports the core duties of the Biosecurity Act which protects New Zealand from biosecurity risk.
147. Note that this topic has an additional criterion on proportionality. Proportionality is a key factor to consider in the design of compliance tools. It is a long-standing principle of the criminal justice system that powers and penalties should be proportionate in their severity to the gravity of the individual's conduct. This is particularly relevant to the issue of obstruction during searches.

Effective	Does the option better protect New Zealand from biosecurity risk, while supporting our economy?
Adaptable	Does the option provide a modern toolbox to users of the Act?
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?
Proportionate	Is the option proportionate in its severity to the gravity of the individual's offending?

148. Under the status quo, MPI would continue to rely on Police to ensure searches are successful.
149. Option 2 (introduce power of arrest) meets some of the criteria.
150. Option 2 meets the effective criterion because it helps to support investigations to be successful. The central premise of the power of arrest proposal is about the preservation of evidence and maintenance of the law by ensuring search warrants issued by the issuing officer (i.e. a judge) under section 111 of the Biosecurity Act can be carried out without undue interference.
151. The proposal ensures biosecurity inspectors can secure the integrity of biosecurity searches by deterring obstruction. Obstruction can jeopardise the collection of vital evidence, potentially allowing breaches that may have broader implications for the biosecurity system, the environment, and the primary industries. This affects the execution of justice and threatens the orderly functioning of public institutions.

152. Option 2 also ensures that searches are not unduly delayed in situations where Police are required to cancel at the last minute. This ensures enforcement of the Biosecurity Act is more robust.
153. Option 2 meets the adaptable and efficiency criteria as it gives biosecurity inspectors a power to address obstruction during a search. This means searches can be conducted without relying on Police. This reduces administrative, operational, and financial burdens for both MPI and Police as resources are freed up and MPI can schedule its activities without having to coordinate with Police availability.
154. In terms of training, as noted earlier, MPI investigators (warranted as biosecurity inspectors) already go through safety defensive tactics training. Some equipment would be needed if biosecurity inspectors had a power of arrest, for example handcuffs and other health and safety equipment such as stab-resistant vests. However, the implementation costs will be minimal and absorbed through baselines.
155. In terms of clarity, we do not anticipate Option 2 to have any impact on the simplicity, certainty, and transparency of the law.
156. It is contentious how Option 2 meets the proportionate criterion. On one hand, arrest powers are tightly held by specific enforcement agencies. However, MPI is one of those enforcement agencies, as the fisheries regulatory system currently has a power of arrest. Further, obstruction is one of the most serious offences in the biosecurity system.
157. Fishery Officers tell us that the power of arrest is only used a handful of times a year. There are also situations where someone is arrested, but Fishery Officers do not need to proceed with the formalities of the arrest (e.g. did not require handcuffing the individual and delivering them to Police). The initiation of the arrest process achieves the purpose of getting the person of interest to comply. If fishery officers proceed with an arrest, they are required to deliver the person to a constable.
158. Arrest is an intrusive and rights-infringing power. The Bill of Rights Act 1990 protects the right of freedom of movement (section 18), the right to be secure against unreasonable search and seizure (section 21), and the right against arbitrary arrest and detention (section 22). The Crimes Act 1961 carves out justified limitations on those rights for Police when it comes to arresting and detaining people.
159. Further, while the status quo does lead to inefficient operations, since 2019 there have only been 17 search warrants under section 111 undertaken by MPI. It could be argued that the relative infrequency of searches does not create a compelling case for change to the status quo. This was a point that some submitters stated in their submissions.
160. We met with the New Zealand Police on 5 March 2025. Police made suggestions about how the proposal could best be drafted if it proceeds. These suggestions have been reflected in our advice. Police confirmed that it would want to continue to discuss how the power of arrest would be operationalised as the proposal progress. Police were supportive of the proposal.
161. Ultimately, we consider is that there is a sufficient justification for the proposal because:

- **Preservation of evidence and maintenance of the law is an important objective:** the power of arrest serves a critical public interest by ensuring the effectiveness of biosecurity searches and the investigation of serious offending against the biosecurity system, thereby protecting the environment, and the primary industries.
- **The power of arrest is directly connected to the objective:** there is a clear, logical link between the power and its purpose, as the mere existence of this power deters obstruction and preserves the integrity of searches.
- **The power is being delivered in the least restrictive means:** the power is narrowly defined, available only to specially trained inspectors, and represents the most direct means to address the specific problem (without resorting to Police involvement). We considered an alternative power which is a power to detain.
 - Under sections 107-107B, MPI has a power to detain a person at the border to check for uncleared risk goods, unauthorised goods, or for public health or law enforcement purposes. This enables an inspector to detain a person for no longer than four hours, and generally in a biosecurity control area. We note this power exists only at the border in a highly controlled area with lots of biosecurity officials, and for the purpose of waiting for a constable to arrive to search or question the detained individual.
 - The power to detain would not deliver the outcomes we are seeking when executing a search warrant. It would be unclear where and how a person would be detained. Obstruction can still occur where individuals may burn, damage or flush evidence in the room/area where they are being detained. It would also not be clear if a constable would be available to travel to the property being searched within the time period.
- **The power is proportional and there are legislative and operational safeguards:** the potential infringement of rights is minimised through strict limitations, immediate procedural safeguards, and the use of the power solely as a last resort.

12.5. Which option best addresses the problem, meets the policy objective and delivers the highest benefits?

162. On balance, we recommend Option 2 as it best meets the policy objective.

163. The Minister's preferred option in the Cabinet paper is the same our recommended option.

12.6. Impact analysis of the preferred option

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Regulated groups (offenders)	Possible cost to social freedoms if use of powers is 'heavy-handed'. Risk of this cost is mitigated by legislative and operational safeguards.	Low	Low

Affected groups	Comment	Impact	Evidence Certainty
Regulators (Crown)	Limited costs would be incurred in training officers as these powers are already found in other related legislation.	Low	Low
Total monetised costs		N/A	N/A
Non-monetised costs		Low	Low
Additional benefits of the preferred option compared to taking no action			
Regulated groups (offenders)	Decrease instances of offending by acting as a deterrent.	Low	Low
Regulators (Crown)	More effective and efficient enforcement capabilities.	Low	Low
Total monetised benefits		N/A	N/A
Non-monetised benefits		Low	Low

13. Border fines for travellers with high-risk goods

13.1. Background

164. The Biosecurity Act requires passengers arriving in New Zealand to declare all food, animal products, plants, and other items of biosecurity interest to a biosecurity officer. These risk goods may carry harmful pests and diseases that pose a significant risk to New Zealand's primary industries, environment, and way of life. Managing the entry of risk goods at the border reduces the chance of pests and diseases getting into New Zealand in the first instance.
165. Under section 154N(21) of the Act, it is an offence for a person to erroneously declare that they are not in possession of any or all of the goods specified in a declaration that the person is required to make about the goods. The Biosecurity (Infringement Offences) Regulations 2010 prescribe this offence to be an infringement offence. Passengers who make an erroneous declaration can receive either:
- a \$400 infringement fee (Biosecurity (Infringement Offences) Regulations 2010); or
 - a fine of up to \$1000 following a successful prosecution for the infringement offence (section 157(7) of the Act).
166. The infringement offence applies to a person who erroneously does not declare that they, for instance, have food, whether they are in possession of one or multiple items of food. It is the erroneous declaration that constitutes the offence. There is no regard for the volume or severity of risk of the goods related to the erroneous declaration.
167. Erroneous declarations, in most cases, capture offending that is unintentional. For more serious offending, such as smuggling, the Biosecurity Act provides much more significant penalties. Under sections 154O(9) and 154O(15) of the Act, for knowingly bringing, or attempting to bring, unauthorised goods into New Zealand, the maximum penalty for an individual is up to five years imprisonment, a \$100,000 fine, or both.
168. Most passengers want to, and do, comply with biosecurity requirements. MPI issued 7,531 infringement notices in 2023, and 8,871 infringement notices in 2024. With an average of six million passengers coming across the border in those years, this means that around 0.13 percent of arrivals were issued with an infringement notice.
169. In 2022, a higher infringement fee for erroneous declarations was proposed by Hon Jacqui Deans in her Members bill titled the Increased Penalties for Breach of Biosecurity Bill. That Bill attempted to increase the infringement fee from \$400 to \$1000. The Bill was voted down at Second Reading. MPI's advice to the Select Committee is publicly available on Parliament's website.¹⁹ MPI advised that the infringement fee was set at the appropriate level and that increasing the infringement fee to \$1,000 was unlikely to be closely linked to increased compliance at the border. The report advised that financial penalties are not a leading contributing factor for deterrence.

19 [Departmental Report Increased Penalties Bill](#)

13.2. Problem or opportunity

170. The current approach to infringements in the passenger pathway does not have regard to the risk profile of the goods not declared. For instance, there is greater biosecurity risk involved with an erroneous declaration of fresh fruit which can harbour harmful pests, compared with the erroneous declaration of a bar of chocolate. The status quo has no regard for the level of biosecurity risk that different goods pose.

13.3. Options

Option 1 – status quo

171. Option 1 would retain the status quo. That means the key infringement fees that may be issued to passengers at the border are for making an erroneous declaration (\$400 fee).

Option 2 - additional infringement penalty for high-risk goods

172. Option 2 create an additional infringement penalty for high-risk goods. Option 2 would be delivered by:
- create a new offence that applies when a person erroneously declares that they are not in possession of goods that pose high biosecurity risk in a declaration that the person is required to make about the goods;
 - a new regulation making power in the Biosecurity Act to be used to describe which goods are subject to this penalty. Examples of what may be considered as high-risk include fresh fruit and meat or meat products. The Act would need to build in flexibility to change the determination of these goods based on new information. Setting this definition in regulations may be on way to achieve that flexibility; and
 - the new offence would have a maximum penalty of \$2000. This offence will be an infringement offence, with an infringement fee of \$800. The Biosecurity (Infringement Offences) Regulations 2010 will be amended to include this new offence.
173. We have based the new infringement fee at \$800 based on Legislation Design and Advisory Committee's Legislation Guidelines, and consultation with the Ministry of Justice. This figure is based on several factors including:
- the increased level of harm that could arise from higher risk biosecurity risk goods;
 - the pests that high-risk biosecurity risk goods may carry; and
 - the increased potential for damage to New Zealand's primary production sector.
174. We have based the new maximum penalty of \$2000 on the convention that the maximum penalty for an offence is generally three times the corresponding infringement fee. \$2000 is two and a half times the proposed corresponding infringement fee of \$800.
175. The existing infringement offence with the \$400 fee and \$1000 fine would be retained and amended to apply only to passengers who have erroneously declared that they are not in possession of a biosecurity risk good, other than those categorised as high-risk goods.

176. We also propose that passengers who make an erroneous declaration about multiple goods do not receive multiple infringements. For example, if a passenger erroneously declares two items and one goods falls within the definition of a 'high-risk good' and another which falls outside the definition, the passenger only receives one infringement. We propose this would be the higher of the two fees - \$800.
177. Overall, what this means is that when a passenger makes an erroneous declaration, an enforcement officer could either:
- issue an infringement notice to someone who commits the infringement offence (with a fee of \$400 or \$800 depending on what type of good the erroneous declaration relates to); or
 - proceedings could be commenced (i.e. a prosecution) by filing a charging document (see s 159A of the Act). When MPI files a charging document rather than issuing an infringement notice, section 375 of the Criminal Procedure Act 2011 provides that the Court cannot convict the person of the infringement offence, but if the person pleads guilty or is found guilty, then the Court can order that they pay a penalty up to the maximum penalty for the infringement offence.
178. Option 2 brings New Zealand's regime closer to what Australia has. In January 2021, the [Australian] Biosecurity Amendment (Traveller Declarations and Other Measures) Act 2020 came into effect, enabling the Director of Biosecurity to set different amounts payable for different goods or classes according to their relative biosecurity risk via regulations. Before this point all infringement notices at air- and sea-ports had the same penalty.

Option 2 was widely support in the 2024 public consultation

179. Option 2 was included in the 2024 public consultation as Proposal 7. Most submitters supported imposing higher penalties for high-risk goods. Submitters agreed with the level of the fines and fees. Submitters agreed that the additional infringement would help MPI to deter passengers from offending.
180. Option 2 is mostly unchanged from what we consulted.

13.4. Assessing options to address the problem

181. The options are assessed against the following criteria.
182. The focus of the 'Effective' criterion for border fines for high-risk goods is on the question of "Does the option better protect New Zealand from biosecurity risk, while supporting our economy?". Effective in this Chapter is therefore focused on how better compliance and enforcement supports risk management at the border to protect the primary industries.

Effective	• Does the option better protect New Zealand from biosecurity risk, while supporting our economy?
Adaptable	• Does the option provide a modern toolbox to users of the Act?
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?
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183. Under Option 1 (the status quo), there would continue to be a single penalty for an erroneous declaration.
184. Option 2 (create an additional infringement penalty for higher risk goods) is somewhat neutral on most criteria, though it is finely balanced.
185. Option 2 may have some impact on the effectiveness criterion, but this is uncertain. We are unclear if a larger infringement fee would have a significant deterrent effect than the status quo to incentivise compliance based on evidence available to us. In May 2010, the border declaration infringement fee was increased from \$200 to \$400. Despite the higher penalty, MPI data showed no significant change in the issuing rate of infringement fees. From the period of May 2009 to April 2010, 0.11 percent of arrivals were issued with an infringement notice. During the period of May 2010 to April 2011, 0.10 percent of arrivals were issued with an infringement notice.
186. However, there are many factors that influence traveller behaviour that impact our ability to determine whether a higher infringement fee acted as a deterrent. For example, MPI-commissioned research released in 2024 found that if aware of the infringement consequence, it might influence their compliance behaviour.²⁰
187. On the other hand, Australia's legislative changes suggest that an increase in penalties may be necessary to strengthen biosecurity protection at the border. In January 2021, Australia's Biosecurity Amendment (Traveller Declarations and Other Measures) Act 2020 came into effect. This enabled the setting of different fines for erroneous declarations for different goods. Before this, all infringement notices for declarations were for AUS\$444. Now, Australia's infringement regime for border declarations looks like the following:
- Category 1 goods – A\$3,960 infringement fee – live plants, whole unprocessed seeds, meat and meat products (except retorted meat), prawns that are raw or partially raw, live animals and the remains of animals that have died in transit), eggs of a bird or reptile that are intended for hatching, veterinary vaccines;
 - Category 2 goods – A\$1,980 infringement fee – fresh fruit, fresh vegetables, fresh fungi, fresh leaves, fresh herbs; or
 - For any other goods – A\$660 infringement fee.
188. Australia's introduction of the tiered infringement model suggests that there may be a case for increased fines reducing the rate of erroneous declarations at the border. This challenges the status quo which sets out a single penalty system that assumes people will change or not change their behaviour based on the perceived costs of legal punishment versus potential gains of non-compliance. In other words, it assumes a zero-sum risk assessment, but non-compliance is often motivated by social or personal

²⁰ Biosecurity Border Protection Campaign (2024) Quantitative Report. Note that this research was completed after our advice on the Increased Penalties for Breach of Biosecurity Bill.

factors at the border.²¹ For example, people wanting to pass through the border quickly is a motivation for many passengers to comply with the law.²²

189. Option 2 proposes to shift to a combination of a responsive and strategic deterrent model, as Australia has done. This will strengthen the adaptability of our biosecurity system by providing MPI with more flexibility at the border. We could respond to high-risk goods with higher fines, responding to the level of risk more equitably than the status quo.
190. A tiered system provides for future-proofing and adaptability because it delivers more to address different kinds of behaviour, regardless of potential motivation shifts for travellers in the future. A more adaptable approach is more likely to be flexible and fit-for-purpose over that longer term period and capable of supporting the long-term compliance platform. This futureproofs the biosecurity system as it recognises that some goods are higher risk and are more likely to lead to costly biosecurity responses and should be afforded greater scrutiny. This was strongly supported by submitters of the 2024 public consultation.
191. Option 2 may be more or less as efficient as the status quo. Under Option 2, biosecurity officers would have to assess which items were not properly declared, match that with the goods in scope of the definition of 'high risk goods', and therefore which fee would apply. Whereas previously, any erroneous declaration resulted in the same enforcement action. This could create a longer process for biosecurity officers. In addition, new standard operating procedures, guidance and training would be necessary so that the new infringement is applied correctly and consistently. However, we expect these impacts to be low.
192. Option 2 is likely to be neutral on how clear the law is. Having two tiers of infringement offences for erroneous declarations does introduce complexity into the law, and passengers may find it difficult to understand what a 'high-risk good' is. However, MPI should be able to mitigate these risks through its education and communications approaches.

13.5. Which option best addresses the problem, meets the policy objective and delivers the highest benefits?

193. We recommend Option 2 as it strengthens the adaptability of our biosecurity system by providing MPI with more flexibility at the border. A tiered approach recognises that some goods are higher risk and are more likely to lead to costly biosecurity responses and should be afforded greater scrutiny. This was strongly supported by submitters of the 2024 public consultation.
194. The Minister's preferred option in the Cabinet paper is the same our recommended option.

²¹ Biosecurity Border Protection Campaign (2024) Quantitative Report

²² MPI's 2019 Border Monitor Research report, June 2019.

13.6. Impact analysis of the preferred option

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Regulated groups (offenders)	Given the very high compliance rate, we are unable to statistically assess a hypothetical proportion of the 0.11 percent of incoming passengers that may face a higher fine due to a higher risk. The sample size is too small for analysis. Additionally, the current system does not rank "risk goods" so it cannot be retrospectively case studied. However, we acknowledge that the regulated groups, the travellers, would inherently face the potential to pay a higher fine as that is what is being proposed.	Low	Low
Regulators (Crown)	Some initial one-off costs in updating operations to reflect.	Low	Low
Total monetised costs		N/A	N/A
Non-monetised costs		Low	Low
Additional benefits of the preferred option compared to taking no action			
Regulated groups (offenders)	Possible incentive to appropriately declare risk goods as required by legislation.	Low	Low
Regulators (Crown)	Additional compliance tool and greater specificity that would reflect the potential degree of harm risked.	Low	Low
Total monetised benefits		N/A	N/A
Non-monetised benefits		Low	Low

14. Improve information requirements and offences for unaccompanied goods

14.1. Background

There is an increasing volume of goods being imported through e-commerce

195. During public consultation on the Biosecurity Act Amendment Bill, stakeholders raised concerns about the biosecurity risk associated with the high-volumes of low-value goods being imported into New Zealand through e-commerce.
196. In this analysis, 'unaccompanied goods' refers to goods imported into New Zealand by any channel other than the passenger pathway (i.e. anything that is not imported as a person's luggage). This includes, but is not limited to, the mail and cargo pathways.
197. When the Biosecurity Act 1993 came into force, the imports system was more focused on large business-to-business trade. In 1993 cross-border e-commerce did not exist. Today, the internet has fostered a digital economy where it is increasingly easy for individuals to import goods of every variety.
198. We estimate that 27.4 million low-value packages (a subsection of the overall volumes of unaccompanied goods) were imported in 2024. This is an increase from 19.9 million in 2023. This growth is expected to continue.
199. It is not feasible for MPI to inspect every package that is imported without being a significant barrier to trade. MPI instead relies on accurate declarations about the contents of every package for the system to operate effectively.

MPI accesses information about these goods through the New Zealand Customs Services, rather than by requiring it be provided to MPI under the Biosecurity Act

200. MPI does not directly require any information to be provided about unaccompanied goods from importers, or agents working on their behalf. Instead, we access information (in the form of 'inward cargo reports' and 'import entries (IM1)') about unaccompanied goods from the information New Zealand Customs Service (Customs) receives through its regulatory system. The information in these reports (also referred to as 'declarations') is required under the Customs and Excise Act 2018.
201. Section 75 of the Customs and Excise Act 2018 requires that goods must be imported in the way prescribed in rules by the Chief Executive of Customs. The Chief Executive's rules include requirements to submit import entries. Import entries are submitted by 'cargo aggregators'.
202. Section 5 of the Customs and Excise Act 2018 defines cargo aggregators as a person who, for reward, aggregates cargo to be transported for different persons for transportation together on a craft in bulk cargo containers or otherwise, and under a shared space, or other negotiated volume of cargo, arrangement with the craft's owner or operator. A cargo aggregator is usually a New Zealand-based individual or business

who consolidates shipments from multiple clients to optimise transportation efficiency and cost-effectiveness. These entities or individuals also make any declarations required by Customs or MPI about the goods in the shipment.

203. The information included in these Customs declarations is used by MPI to determine whether unaccompanied imports require biosecurity inspection.
204. MPI has no enforcement levers to ensure that the declarations are accurate or useful because the Biosecurity Act does not require any declarations to be made about unaccompanied goods:
- Section 16A of the Biosecurity Act requires a person to not provide an official or an automated electronic system with false, misleading, or incomplete information about goods to be imported.
 - Section 17A of the Biosecurity Act deals with inward cargo reports. The inward cargo report must provide the information relating to cargo as may be prescribed (section 17A(7)). The duty to provide an inward cargo report applies to persons in charge of a craft or a cargo aggregator (section 17A(5)).
 - Under section 165, the Governor-General may, by Order in Council, make regulations to prescribe the information that must be included in an inward cargo report. It is an offence under section 154N(12) to fail to comply with section 17A, with a penalty of a fine not exceeding \$5,000 for an individual, or \$15,000 for a corporation.
205. MPI has not used the regulation-making power to prescribe what must be included in an inward cargo report. Furthermore, the Biosecurity Act is also silent on import entries.

Large volumes of unaccompanied goods come with erroneous declarations

206. Based on the results of targeted operations to check compliance on random subsets of unaccompanied imports, the rates of declaration accuracy for inward cargo reports are around 89 percent. The rate of imports with specific (i.e. providing clear, legible goods descriptions) but incorrect declarations will likely increase in the future. This is partially due to expected increases in volumes and types of goods being ordered from international e-commerce sites such as Temu, and impacts that changes made by other jurisdictions will likely have. For example, US Customs and Border Protection are more strictly enforcing rules against vague declarations. While this may result in declarations being complete and accurate, it is also likely that this will result in declarations being increasingly full, but inaccurate.
207. For example, we are likely to see declarations such as 'clothing, men's shoes, size 12' applied to packages that do not contain men's shoes. Such a declaration would meet the requirements by being full but would not be accurate. We see this done by large companies where they create a series of full declarations to use and apply them randomly to goods.
208. We note that the declarations made by cargo aggregators are largely reliant on the information provided to them by suppliers.

209. The rates of non-compliance (11 percent of declarations being erroneous, misleading or incomplete), coupled with the sheer volume of packages being imported (an increase from 19 million lines of imports in 2023, to 27 million in 2024) poses a significant biosecurity risk. Mis-declared unaccompanied goods may be given biosecurity clearance on the basis that they were declared as low-risk goods (e.g. shoes), when they may have contained biosecurity risk goods (e.g. pork meat, live plants and animals).
210. These compliance rates are unlikely to improve. Low-value goods are outside the scope of the Customs regulatory requirements. This is because it is focused on goods with a value greater than \$50. Continued reliance on the New Zealand Custom Services' regulatory system is likely to lead to poor outcomes for the biosecurity system. MPI is interested in all imported goods, regardless of value.
211. At present, MPI has limited ability to influence the declarations being made about unaccompanied goods. This is because:
- There are no regulations under section 165(1A) that prescribe the information that must be included in inward cargo reports; and
 - The Biosecurity Act does not require people to submit import entries. Given that there is no requirement to provide import entries, there cannot be a requirement to provide accurate information in import entries.

14.2. Problem or opportunity

212. False, misleading or incomplete declarations relating to unaccompanied goods are a concern for MPI. MPI relies on declarations to determine which packages may pose a biosecurity risk and require intervention. If MPI cannot intervene then we cannot fully assess the biosecurity risk posed by imported goods. This means that biosecurity risk goods may be entering the country without MPI having sufficient oversight, which poses a risk to New Zealand's primary industries, environment and human health.

14.3. Options

Option 1 – status quo

213. Option 1 is the status quo.

Option 2 - improve information about unaccompanied goods

214. Option 2 would amend the Biosecurity Act in three ways to improve information about unaccompanied goods:
- amend the Biosecurity Act to require reports to be made about goods that are imported, or are to be imported, regardless of the import pathway;
 - enable the Director-General of MPI to have the power to prescribe the information that must be supplied in those reports through a delegate instrument, rather than rely on regulation-making powers; and
 - assign a tiered infringement offence for providing incorrect, erroneous or misleading information in those reports.

Require reports to be provided about imported goods

215. We intend for Option 2 to be flexible enough so that if different reports about imports were desired in the future, these could be made under the new provision. This could include reports to be made about mail, which are not currently covered under import entries or inward cargo reports.
216. Option 2 may be achieved through the creation of a new provision, amendments to section 17A, or some other amendment. We would defer to Parliamentary Counsel Office for how this is best drafted, keeping in mind the interactions with sections 16A and 17A.
217. The difference between the status quo and Option 2 would be in the detail of information required rather than requiring cargo aggregators to access entirely new and different information from what they already supply. Option 2 would not change who the duty to provide the declaration applies to from the status quo. This means:
- the duty to provide an inward cargo report would remain as per section 17A of the Biosecurity Act;²³ and
 - the duty to provide an import entry under the Biosecurity Act would apply to the same individuals that have a duty to provide an import entry under the Customs and Excise Act 2018.

Enable the Director-General of MPI to prescribe the information

218. The information required in the reports would be specified by the Director-General of MPI through a delegated instrument. The information MPI is likely to require will be the same information we already access under the status quo for inward cargo reports and import entries, though MPI may require more specificity in the information.

Infringement offence

219. We consider that an infringement offence is justified for the following reasons:
- The harm arising from a failure to comply with information requirements is low because there is not an immediate and direct link between the violation and the risk of a biosecurity incursion. The information is used by MPI to assess when and how to assess goods for inspections. However, MPI has processes in place to detect risk goods even where there is an incorrect declaration. Nevertheless, this is not a perfect system, and we must be able to incentivise and encourage correct declarations for unaccompanied goods.
 - Offending occurs at high volumes. There is approximately 2.9 million lines of imports with incorrect information provided.
 - Offending is easily apparent because information provided is either correct (or not).

23 Section 17A says that every person responsible for the carriage of cargo on a craft must provide an inward cargo report to the Director-General of MPI within the prescribed timeframe.

220. Option 2 will establish a new offence for providing incorrect or missing information in reports required to be made to MPI. The penalty for this offence would be a fine of \$1000. This offence will be an infringement offence, with an infringement fee of \$400 for an individual or corporation.
221. The proposed infringement fee level is set to align with similar infringement offences already established in the Biosecurity Act. We consider it reasonable to match the fee level for other declaration-based offences, such as failure to declare biosecurity risk goods when a passenger arrives in New Zealand (section 154N(21) of the Act), and failure to provide notice of a craft's intended arrival in New Zealand (section 154N(12)), both of which carry a \$400 fee for individuals and \$800 for businesses (only section 154N(12), as corporations do not enter New Zealand through the passenger pathway).
222. Having the same infringement fee for an individual and a corporation is in line with the settings under the Customs and Excise Act 2018, which applies an administrative penalty of \$200 when import entries are materially incorrect. Consistency with the Customs and Excise Act is justified as the systems are about the same reports, made often by the same individuals.
223. The infringement notices would apply only to New Zealand-based individuals or entities that submitted the report. As the majority of individuals/entities submitting both inward cargo reports and import entries are New Zealand-based cargo aggregators, these are the groups of people that are likely to be targeted.
224. There are risks that double jeopardy could occur if MPI were to issue an infringement to an individual or corporation for the same error as Customs. For example, should a cargo aggregator provide an incorrect date for the import. The intention of this proposal is that they would not be penalised twice for the same thing. This means that MPI would restrict itself to information provided that related to the biosecurity risk.

Option 2 is a new proposal

225. This proposal was not part of the 2024 public consultation. In developing this proposal, we met with New Zealand Post. New Zealand Post is a cargo aggregator for imports from large e-commerce sites such as Temu. This means that New Zealand Post would be affected by this new proposal, especially as imports from outlets such as Temu increase.
226. Based on the information we presented, New Zealand Post raised no concerns with this proposal. It provided feedback on how MPI could assist New Zealand Post with the implementation of this proposal should it proceed, including providing appropriate guidance material so that stakeholders can easily understand what a 'good' report would look like for MPI.

14.4. Assessing options to address the problem

227. The options are assessed against the follow criteria below.
228. The focus of the 'Effective' criterion for unaccompanied goods will be on the question of "Does the option better protect New Zealand from biosecurity risk, while supporting our

economy?”. Effective in this Chapter therefore is focused on how better compliance and enforcement supports risk management at the border to protect the primary industries.

Effective	Does the option better protect New Zealand from biosecurity risk, while supporting our economy?
Adaptable	Does the option provide a modern toolbox to users of the Act?
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 does it provide sufficient certainty?

229. Under Option 1 (the status quo), the Minister could prescribe information requirements for inward cargo reports through the regulation-making power in section 165 of the Biosecurity Act. The Minister could prescribe an infringement offence for breaches of this regulation. The Biosecurity Act would continue to be silent on import entries, and MPI would continue to have no way to prescribe what information must be included in import entries.
230. Option 2 is more effective than Option 1. Under Option 2, MPI would be better able to protect New Zealand from the biosecurity risk of unaccompanied goods, whilst also supporting trade. Option 2 is not intended to reduce safe trade in goods. Option 2 may impact importers willingness/ability to import into New Zealand if they were previously importing goods without meeting biosecurity requirements.
231. Option 2 is adaptable. We intend for Option 2 to be flexible enough so that if different reports about imports were desired in the future, these could be made under the new provision. This provides solutions to the present issue, but also supports future changes.
232. Option 2 is also more efficient than the status quo. Using delegated instruments rather than regulations ensures that the technical requirements of what information must be included in the reports could be updated more quickly under Option 2 than Option 1. This is because delegated instruments can be amended quicker than Regulations. This also enables MPI to respond quickly to changes in the risk environment. For example, an amendment to include new information requirements for imports coming from a specified country could be prescribed if that country was a newly confirmed host range for a pest of particular concern to us.
233. Empowering MPI to prescribe information requirements is more efficient than the status quo, where MPI relies on Customs to influence what information is required in reports.
234. Option 2 provides more consistency than Option 1. Treating all reports about imported goods the same is clearer than the status quo. Under Option 1, inward cargo reports and import entries are treated differently in the Biosecurity Act. It is logical to treat both reports in the same way as the information requirements are likely to be similar, with the only difference being the import pathway.
235. Option 2 aligns with similar infringement offences already established in the Biosecurity Act. Having the same infringement fee for an individual and a corporation is also in line with the settings under the Customs and Excise Act 2018, which applies an administrative penalty of \$200 when import entries are materially incorrect. It is logical

for Option 2 to be aligned with both the existing provisions in the Biosecurity Act and the settings under the Customs and Excise Act 2018.

14.5. Which option best addresses the problem, meets the policy objective and delivers the highest benefits?

236. Our preferred option is Option 2 because it meets all the criteria and delivers on the objectives of the Bill.
237. The Minister's preferred option in the Cabinet paper is the same our recommended option.

14.6. Impact analysis of the preferred option

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Regulated groups (offenders and cargo aggregator)	Administrative costs associated with increased reporting requirement for shipping companies. However, this is already a voluntary process being followed so the real additional cost burden would be low to negligible.	Low	Low
Regulators (Crown)	Some implementation costs for procedures related to infringement offenses for unaccompanied goods	Low	Low
Total monetised costs		N/A	N/A
Non-monetised costs		Low	Low
Additional benefits of the preferred option compared to taking no action			
Regulated groups (cargo aggregator)	Little to no new benefits expected	Low	Medium
Regulators (Crown)	Improved efficiency of delegated authority processes will improve efficiency of regulatory body overall.	Low	Low
Total monetised benefits		N/A	N/A
Non-monetised benefits		Low	Low-Medium

15. Regional council access to infringement offences for pest management

15.1. Background

238. Part 5 of Act provides for, among other matters, the management of harmful organisms through national and regional pest and pathway management plans. The purpose of these plans is to eradicate or effectively manage harmful organisms present in New Zealand.
239. Section 154N(19) establishes that it is an offence to fail to comply with a rule in a regional pest or pathway management plan (RPMP), if that plan specifies that a contravention of that rule is an offence against the Act. The penalty for this following a successful prosecution is a fine up to \$5,000 for an individual, or a fine up to \$15,000 for a corporation.
240. Not all offending under RPMPs meet the threshold for councils to pursue a prosecution. During engagement with regional councils, councils advised us that contravention of rules within RPMPs is frequently occurring. These rules often address simple behaviours. For example, an individual may fail to remove a pest plant growing on their property. This pest becomes difficult to manage and spreads, negatively impacting native planting regeneration areas.
241. In instances where minor offending is occurring frequently, but a prosecution may not be in the best interest of their ratepayers, council staff often undertake the pest management work themselves. This may not be an effective use of limited local government resources and time. Moreover, this approach has no deterrence value.
242. An alternative to prosecutions is an infringement penalty. There are 17 regional councils and unitary authorities within New Zealand,²⁴ all of whom create separate RPMPs that are tailored to the biosecurity risks their regions face. The process for creating infringement offences for RPMPs already exists in the Act through the following steps:
- Where councils have identified rules within their RPMPs that are appropriate for an infringement offence, they can notify MPI.
 - MPI can then undertake the policy process to amend the Biosecurity (Infringement Offences) Regulations 2010 to create an infringement offence for non-compliance under section 154N(19) in relation to a rule within the relevant RPMP. This needs to be done on case-by-case basis for every rule, and for every RPMP.
243. This means if regional councils wish to make a rule in a pest management plan an offence, MPI would need to make changes on a case-by-case basis for each offence required by regional councils.

²⁴ There are 16 regional councils and unitary authorities on the mainland plus Chatham Islands councils which is a unitary authority. There are 16 regional pest management plans in total (as Nelson/Tasman have a joint one). In this chapter when we refer to 'regional councils', we also mean unitary authorities.

15.2. Problem or opportunity

244. Regional councils need more efficient access to proportionate tools to address instances of minor offending. More proportionate tools ensure councils have an effective and proportionate approach to deter minor instances of non-compliance. Without this, pests may remain unmanaged and spread. Alternatively, regional councils have to expend resources to manage the pest themselves, which may not be an effective use of limited local government resources and time.

15.3. Options

Option 1 - status quo

245. Option 1 is the status quo. This means if regional councils wish to make a rule in a pest management plan an offence, MPI would need to make changes on a case-by-case basis for each and every offence required by each regional council.

Option 2 – provide regional councils with more efficient access to infringement offences for regional pest management plans

246. Option 2 would create a more streamlined process for regional councils to establish infringement offences for breaching rules of a regional pest or pathway management plan. There are risks with fully delegating the ability to create infringement offences to regional councils. It is important that there is central government oversight of the justice system. Therefore, we are proposing that Option 2 can be enabled through the following steps to ensure there are adequate safeguards:
- The proposal would allow regional councils to designate a breach as an infringement offence without MPI needing to amend the Biosecurity (Infringement Offences) Regulations 2010.
 - The infringement fee that would apply for breaching a rule in a regional pest or pathway management plan would be \$400.
 - The Biosecurity Act would be amended to allow MPI to set criteria that regional councils must meet before they can designate the breach of a rule as an infringement offence. It is likely that we will use the Ministry of Justice's guidelines for infringement offences as the criteria, and these would be set in the National Policy Direction for Pest Management.
 - Regional councils must consult with MPI before they can designate the breach of a rule as an infringement offence. This enables MPI to consult the Ministry of Justice.
247. Furthermore, to support regional councils' use of infringements, MPI will also develop guidance around how infringement offences are used, aligned with the Ministry of Justices' framework for the development and operation of infringement schemes. This may include guidance about working with property owners first, before any infringements are issued.

Option 2 was well supported in the 2024 public consultation, but regional councils considered it tied them down too much

248. Option 2 was included in the 2024 public consultation as Proposal 8. Most submitters, including regional councils, supported the proposal. Most submitters said that regional council access to infringement offences for regional pest and pathway management plans supports more efficient compliance
249. However, some submitters said the proposed infringement fee level is too low to deter offending. Regional council submitters also rejected the need for regional councils to consult MPI.
250. In terms of the first comment about the infringement fee being too low, Proposal 8 had the infringement fee set at \$300. This was reached by comparing the infringement offences for failing to comply with rules 8 and 9 of the Biosecurity (National PA Pest Management Plan) Order 2022. There are in fact two different fees in the Biosecurity (Infringement Offences) Regulations 2010, a \$300 and a \$400 fee. In response to submissions, and for consistency with the Controlled Area Notice proposals (see Chapter 16), we increased the infringement fee in Option 2 to \$400.
251. The requirement to consult MPI is part of our regulatory stewardship obligations for the biosecurity system, and part of the Ministry of Justice's stewardship of infringement offences. Despite some opposition to this requirement, we are retaining this in Option 2. Central government must maintain oversight of consistency of infringement offences in the biosecurity system.

15.4. Assessing options to address the problem

252. The options are assessed against the following criteria:

Effective	- 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?
Adaptable	Does the option provide a modern toolbox to users of the Act?
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?

253. Under Option 1 (the status quo), regional councils would continue to either not enforce minor instances of non-compliance or would be reliant on MPI to make case-by-case amendments to enable an infringement offence for a specific rule.
254. Option 2 (enable regional councils to designate an infringement offence) strongly meets all the criteria. Option 2 reduces regulatory burden on central and local government by providing regional councils flexibility to create infringement offences without two separate regulatory processes (the Council reviewing a regional pest management plan and central government amending the regulations).

255. Option 2 is adaptable as pest management plans can work more effectively and be better enforced by regional councils. It safely enables councils the ability to set their compliance strategy but retains central government oversight for effective regulatory stewardship. We acknowledge that regional councils told us in the public consultation that this safeguard makes the proposal less efficient than it could be. However, we maintain that this safeguard is necessary.
256. Option 2 better protects New Zealand. Non-compliance that regional councils would previously not have enforced, could now be enforced under Option 2. This could incentivise compliance with biosecurity rules.
257. Option 2 does involve some up-front implementation complexity as there are a range of primary and secondary legislation changes that are required to set up the system. We expect that the long-term benefits would significantly outweigh this up-front cost.

15.5. Which option best addresses the problem, meets the policy objective and delivers the highest benefits?

258. We recommend Option 2 because it meets all the criteria and delivers on the objectives of the Bill.
259. The Minister's preferred option in the Cabinet paper is the same our recommended option.

15.6. Impact analysis of the preferred option

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Regulated groups (local government)	Some implementation costs to implement or update local government processes to establish their own infringement offences.	Low	Low
Regulated groups (offenders)	Cost of the new infringement to offenders.	Low	Low
Regulators (Crown)	Little to no cost expected	Low	Low
Total monetised costs		N/A	N/A
Non-monetised costs		Low	Low
Additional benefits of the preferred option compared to taking no action			
Regulated groups (local government)	Efficiency benefits expected by enabling regional councils to establish infringement offences, instead of applying to MPI on a case-by-case basis.	Low	Medium
Regulators (Crown)	Minor efficiency gain for MPI resulting from not overseeing applications for regional infringement offenses.	Low	Low
Total monetised benefits		N/A	N/A
Total non-monetised benefits		Low	Low

16. Enhancing compliance options for breach of a Controlled Area Notice

16.1. Background

260. Chief Technical Officers and management agencies (the organisation that operates a pest or pathway management plan) have the power to issue Controlled Area Notices (CANs) under section 131 of the Act. CANs are issued to limit the spread and potential damage caused by unwanted organisms, monitor the risk associated with their movement, and protect against further incursions (of pests or diseases). CANs can cover the whole or any specified part of New Zealand. CANs must be announced via newspaper, radio, television or in a way deemed effective and appropriate by the management agency or Chief Technical Officer.
261. When a CAN is breached, the following tools are available to MPI:
- An inspector can manage the breach through educational measures such as fact sheets;
 - An inspector can issue a compliance order as per section 154(1) as an offence against section 154N(11); or
 - MPI could prosecute for a strict liability offence as per section 154N(8).
 - A person who commits an offence against either of these sections is liable on conviction in the case of an individual person, to imprisonment for a term not exceeding 12 months, a fine not exceeding \$50,000 or both. In the case of a corporation a fine not exceeding \$100,000 may be applied.

Case study: Example of a CAN and non-compliance

Under section 131 of the Biosecurity Act, a CAN for *Bonamia ostreae* (*B. ostreae*) was declared on 31 October 2023. The CAN stipulated a range of rules which affects both commercial entities and the public. MPI was notified of a breach of this CAN when a yacht with some fouling present breached the movement controls of the CAN as it entered an area that required it to be free of fouling. The owner of the yacht did not have specific knowledge of the CAN. However, the offence is strict liability, and the onus was on the individual to comply. In this scenario it was deemed inappropriate to hold this person to the level of prosecution as a penalty.

Issuing warnings and educational advice for this type of behaviour is unlikely to change practices or be an effective deterrent.

262. Data on compliance with CANs is limited. This is due to the high threshold required to take enforcement action when a CAN is breached, paired with limited monitoring resources. This means it is likely that CANs are being breached at a much higher rate than what official data shows.
263. From 2022, MPI response and investigation teams have recorded at least 315 reports of CAN breaches across two exotic *Caulerpa* CANs. In the past six months, three breaches have been referred to MPI investigation teams for further action.

16.2. Problem or opportunity

264. The Act does not contain effective measures for medium to low-level offending in this instance. This gap makes it difficult to effectively and efficiently deal with non-compliance unless the offence is so minor that a warning suffices, or so serious that prosecution is required. Medium to low-level offending, regardless of intent, creates biosecurity risk.
265. This type of offending often covers acts such as spreading an unwanted organism from one area to another. Although done unintentionally or unknowingly, this behaviour may still lead to a negative biosecurity outcome. MPI is unable to deter this level of offending, therefore resulting in a heightened risk of unwanted organisms or pests spreading outside of a controlled area.
266. In the absence of action being taken to amend the status quo, this gap will remain and lead to the continuation of the enforcement of CANs only being able to be dealt with through education in situations when the breach was not serious enough for prosecution.

16.3. Options

Option 1 – status quo

267. Option 1 is the status quo. There would continue to be a gap in the compliance tools available under the Act to deal with medium to low-level offending.

Option 2 - turn the existing strict liability offence into a mens rea offence, and establish a new infringement offence

268. Option 2 would enhance the compliance tools available under the Act to enforce CANs. This would be delivered by:
- Turning the existing offence into a mens rea offence:
 - Add intention to the offence in section 154N(8) and change the maximum penalty of the offence to up to 12 months imprisonment and/or a fine of up to \$50,000 for individuals, and a fine of up to \$300,000 for corporations.
 - Creating a new infringement offence:
 - Create an infringement offence for any breach of a CAN. The infringement offence is strict liability. The infringement offence has a penalty of either:
 - a fee of \$400 for individuals or \$800 for corporations when issued with an infringement notice; or
 - a maximum penalty of a \$5000 fine for individuals, and a \$15,000 fine for corporations on prosecution of the infringement offence.
269. Overall, what this means is that when a person breaches the rules of a CAN, an enforcement officer would:

- Apply the mens rea offence in situations where someone has intentionally broken the rules of a CAN;
 - Issue an infringement notice to someone who commits the infringement offence with a fee of \$400 for an individual or \$800 for corporations; or
 - Commence proceedings for prosecutions of the infringement offence (i.e. a prosecution) by filling a charging document (see 159A of the Act).
270. When MPI files a charging document rather than issuing an infringement notice, section 375 of the Criminal Procedure Act 2011 provides that the Court cannot convict the person of the infringement offence. If the person pleads guilty or is found guilty, then the Court can order that they pay a penalty up to the maximum penalty for the infringement offence.
271. Serious breaches would still be prosecuted. Having both offences provides inspectors with a graduated set of responses to address serious and low-to-medium conduct. The availability of an infringement notice enhances the inspector's toolbox.

Option 2 was widely supported in the 2024 public consultation, and has substantially changed since then

272. Option 2 was included in the 2024 public consultation as Proposal 9. Submitters generally agreed that the proposal would address a gap in enforcement tools. Although most submitters supported the proposal, opposing submitters raised questions about its overall effectiveness.
273. We have made significant changes to the proposal since public consultation:
- The penalty for the mens rea offence has been increased, as a result of the work we have done on Increased penalties (see Chapter 11 which contains a proposal to increase the penalties of the Biosecurity Act).
 - We met with the Ministry of Justice on 4 April 2025. Proposal 9 as consulted suggested three offence levels. The Ministry of Justice advised that there was too much overlap with the offences, and the offences were too subjective. For instance, Proposal 9 as consulted required an inspector to make an assessment on whether the person's breach of a CAN led to a negative biosecurity outcome. Ascertaining causation between a breach of the CAN and the negative consequence would be extremely difficult to prove. The New Zealand Law Society expressed similar concerns. Accordingly, we now only propose two offences for CANs, and have removed references that require establishing causation mitigate this concern. The infringement offence now states that is an offence to breach a CAN.
274. Submissions also said MPI should align the infringement fee with the Resource Management (Infringement Offences) Regulations 1999, which include infringement fees of up to \$1500. We do not recommend any changes to the infringement fee. We proposed the \$400 infringement fee to align with similar biosecurity infringement offences. We considered the penalties of the Biosecurity Act and have not proposed

changes to the level of infringement fees (see Chapter 11 which contains a proposal to increase the penalties of the Biosecurity Act).

16.4. Assessing options to address the problem

275. The options are assessed against the following criteria below.
276. The focus of the 'Effective' criterion for enforcement of CANs will be on the question of "Does the option better protect New Zealand from biosecurity risk, while supporting our economy?". Effective in this Chapter is therefore focused on how better compliance and enforcement supports the management of detected pests and unwanted organisms through CANs.
277. This proposal has an additional criterion on proportionality. Proportionality is a key factor to consider in the design of compliance tools. It is a long-standing principle of the criminal justice system that penalties should be proportionate in their severity to the gravity of the individual's criminal conduct.

Effective	Does the option better protect New Zealand from biosecurity risk, while supporting our economy?
Adaptable	Does the option provide a modern toolbox to users of the Act?
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 does it provide sufficient certainty?
Proportionate	Is the option proportionate in its severity to the gravity of the individual's offending?

278. Under Option 1, the tools in the Act for dealing with non-compliance of CANs would continue to be limited. The gap in compliance tools available to deal with less serious offending would remain.
279. The degree to which Option 2 (turn the existing strict liability offence into a mens rea offence and establish a new infringement offence) is effective is unclear. Enhancing the compliance tools available to deal with non-compliance with CANs could better protect New Zealand from biosecurity risk. These tools should enable better enforcement of the rules contained in CANs, preventing adverse biosecurity events that result from breaches of CANs (e.g., spread of an unwanted organism beyond a controlled area). However, whether breaches can in practice be enforced is uncertain.
280. Option 2 meets the adaptable criteria by providing MPI with a full suite of graduated enforcement tools. Changes under Option 2 will provide MPI with additional levers to deal with non-compliance of CANs such as a new infringement offence.
281. Option 2 makes enforcement for less serious breaches of CANs more efficient with the availability of infringement fees. However, there could be inefficiencies if the infringements MPI issue are appealed in greater numbers. We look to the infringement

offence for erroneous declarations in the passenger pathway (see Chapter 13) for data on the number of defending hearings.²⁵

- 2019: 12 defended hearings
 - 2023: 4 defended hearings
 - 2024: 23 defended hearings
282. MPI issues about 10,000 border related infringements per year. We have found that the volume of individuals that appeal infringements of \$400 is low for the Biosecurity Act in general. We expect the number of appeals of infringements for CANs to also be low.
283. Option 2 would mean there would be a clear distinction between the penalty available for intentional non-compliance compared with non-compliance as a result of ignorance. This structure gives not only inspectors but those subject to the criminal offence clarity on how different levels of offending will be penalised.
284. Option 2 is finely balanced on the proportionate criterion. What was previously a strict liability offence, (with a penalty of up to 3 months imprisonment, and/or a fine of \$50,000 for individuals and a fine of \$100,000 for corporations) will be amended to be a mens rea offence with a new maximum penalty. We consider this better for the proportionate criterion than the status quo because it removes the penalty of imprisonment for a strict liability offence. Strict liability offences limit the right to be presumed innocent until proven guilty, affirmed in section 25(c) of the New Zealand Bill of Rights Act 1990.
285. Our assessment of the new infringement offence is that it is proportionate given the seriousness of breaching a CAN (even if done erroneously) for New Zealand's biosecurity. CANs are a key tool used to control the spread of a pest or unwanted organism. Ensuring compliance with CANs is therefore important. Many of the offences in the Act (including the status quo offence for CANs) are strict liability offences for this reason. Laws involving the environment are generally aimed at protecting the public interest, improves the long-term and prevents harm to people or the environment. The focus of these laws, including the Biosecurity Act, is on prevention and the role others play to achieve positive biosecurity outcomes.

16.5. Which option best addresses the problem, meets the policy objective and delivers the highest benefits?

286. We recommend that Option 2 proceeds. Having both offences will provide inspectors with a graduated set of responses to address serious and less serious conduct. The availability of having an infringement offence will enhance the inspector's toolbox as it would grant inspectors to penalise those who broke the rules of a CAN in situations where prosecution is not proportionate to the breach. The ability for MPI to prosecute remains.
287. The Minister's preferred option in the Cabinet paper is the same our recommended option.

²⁵ Data for 2020-2022 is not provided due to the travel restrictions in place for the COVID-19 pandemic.

16.6. Impact analysis

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Regulated groups (offenders)	Cost of the new infringement to offenders.	Low	Low
Regulators (Crown)	Implementation costs.	Low	Low
Total monetised costs		N/A	N/A
Non-monetised costs		Low	Low
Additional benefits of the preferred option compared to taking no action			
Regulated groups (offenders)	More equitable possible consequences for an offence.	Low	Medium
Regulators (Crown)	The lower evidentiary threshold for strict liability offences allows regulatory enforcers greater ability to enforce and ensure compliance for low level offending.	Low	Low
Total monetised benefits		N/A	N/A
Non-monetised benefits		Low	Low-Medium

17. Enforceable undertakings

17.1. Background

288. As explained in Chapter 11, there are four types of tools which are used by regulators to encourage compliant behaviour: voluntary, assisted, directed, and enforced.

What is an enforceable undertaking?

289. An enforceable undertaking is a legally binding agreement between a person or entity and a regulator which specifies action that the person or entity must take to address non-compliance or alleged non-compliance to an Act. Enforceable undertakings are used to remedy actual or alleged non-compliance. They do so by providing duty holders a voluntary mechanism to acknowledge actual or possible non-compliance and commit to specific actions that will assure compliance in the future.
290. Enforceable undertakings are used to:
- address issues that led to a breach or alleged breach of the Act;
 - remedy any harm caused by a breach; and
 - promote a high standard of ongoing compliance.
291. Enforceable undertakings are an effective tool to change sector behaviour because they allow for a regulator and a person or entity to agree on activities that go beyond statutory requirements.

Features of enforceable undertakings

292. Enforceable undertakings must be requested: they are not imposed by the regulator. If a person or entity would like the regulator to consider an enforceable undertaking, they must request that one is developed. Being an opt-in model places the responsibility on the operator to recognise the benefit of and make a case for an enforceable undertaking.
293. Once a person or entity requests an enforceable undertaking, the regulator can decide whether to accept or reject the request. This allows the regulator to consider whether an enforceable undertaking is appropriate for the context and nature of the breach.
294. If accepted, the regulator and the person or entity negotiate the conditions of the agreement before it is signed and made legally binding. Because enforceable undertakings are negotiated, they allow the person or entity entering the agreement to input on how to address the breach or alleged breach. This can deliver more effective and durable improvements in duty holder behaviour than prosecution, because they must take accountability and play a key role in developing a solution.

17.2. Problem or opportunity

295. There are limited tools in the Biosecurity Act that enable MPI or regulated parties to find alternatives to prosecution. There is an opportunity for a more collaborative approach to compliance, to achieve improved outcomes across a regulated sector, that still holds regulated parties to account.

296. The Bill provides an opportunity to align the Biosecurity Act with other regulatory regimes, such as the Health and Safety at Work Act and the Organic Products and Production Act.

297. s9(2)(f)(iv)

298. Enforceable undertakings have the potential to benefit the biosecurity system. They could improve sector relationships and reduce reputational risk for users of the Act. They can also provide users with an opportunity to rectify non-compliance without prosecution.

17.3. Options

Option 1 – status quo

299. Option 1 is the status quo. Enforceable undertakings would not be available as an enforcement tool in the Biosecurity Act.

Option 2 - add enforceable undertakings to the Biosecurity Act as an enforcement tool

300. Option 2 would add enforceable undertakings to the Biosecurity Act as an enforcement tool. Prosecution under the Biosecurity Act can cause reputational damage to individuals and entities and can affect consumer perception of a brand. Correcting non-compliance through enforceable undertakings is used in other legislation to alleviate some of this risk.

301. For example, in organic production, demonstrating compliance to organic standards is essential for operators seeking price premiums. Enforceable undertakings are a feature of the Organic Products and Production Act 2023 for this reason. Adding enforceable undertakings to the Biosecurity Act could send messages to consumers that an operator is trying to do the right thing, or continuously improving their business operations.

302. Enforceable undertakings are also a feature of Australia's Biosecurity Act 2015.

When MPI would accept an undertaking

303. Under Option 2, MPI may accept an enforceable undertaking for a contravention, or alleged contravention, of the Biosecurity Act and its secondary legislation.

304. We intend for enforceable undertakings to be used where non-compliance occurred due to:

- lack of oversight;
- situations outside the person or organisation's control; or
- failure to meet biosecurity requirements and standards (e.g. duties on a containment facility).

305. We do not expect that MPI would not accept an undertaking for severe, intentional offending, reckless offending, or for minor breaches such as infringement offences.
306. For example, MPI would not accept an enforceable undertaking for an infringement fee issued for an erroneous border declaration, because there is unlikely to be a suitable alternative. MPI would also not accept an enforceable undertaking for those who intentionally attempt to undermine the biosecurity system, because punitive measures are more appropriate in these cases.
307. We would look to mirror the approach taken in the health and safety regulatory system, where WorkSafe sets out when it would accept an enforceable undertaking in operational policy (rather than setting this out in the Biosecurity Act itself).²⁶ Enforceable undertakings are public-documents, and MPI will publish details of any accepted undertaking (and any associated outcomes on completion) on the MPI website.

What people can request in an undertaking

308. Under Option 2, a person could submit an enforceable undertaking to include any action to address issues that led to a breach or alleged breach, remedy any harm caused by a breach or alleged breach, or promote a high standard of ongoing compliance. For example, an undertaking could require the person entering it to:
- take action to:
 - remedy non-compliance; and/or
 - ensure ongoing compliance;
 - stop or refrain from doing an activity that would breach the Act or lead to a breach of the Act;
 - do anything agreed by both parties; and/or,
 - pay monetary compensation to the Crown or a third party.

Publishing, varying and withdrawing an undertaking

309. Under this option, MPI would be required to publish any agreed undertaking on an internet site or suitable alternative. This is common practice in other regimes that provide for enforceable undertakings, and helps provide transparency that undertakings are not undermining the wider enforcement system.
310. A person who has requested or agreed to an enforceable undertaking would be able to request variation or withdrawal of that undertaking. Any variations or withdrawals, if agreed by MPI, would need to be published on an internet site or suitable alternative.

Offence for breaching an undertaking

311. Under Option 2, it would be a strict liability offence to breach or fail to comply with an active enforceable undertaking that has been agreed to. This offence would be based on

²⁶ [WorkSafe New Zealand Enforceable Undertakings Practice Guide](#)

that currently in section 154N(6), and the penalty for breaching an enforceable undertaking would be based on that contained in section 157(3). Note that we are proposing to increase the maximum penalty, as discussed in Chapter 11:

- In the case of an individual person, to imprisonment for a term not exceeding 12 months, a fine not exceeding \$50,000, or both
- In the case of a corporation, to a fine not exceeding \$100,000.

312. A person charged with this offence has a defence under the same circumstances as described in section 154N of the Act.
313. Entering an enforceable undertaking does not prevent MPI from taking enforcement action for the original contravention or alleged contravention of the Act, should a person breach their undertaking. This means that a user could be prosecuted for both the original offending and breaching the enforceable undertaking.

Introducing enforceable undertakings is a new proposal

314. This proposal was not part of the 2024 public consultation. However, we discussed enforceable undertakings with the Biosecurity Business Pledge Places of First Arrival (PoFA) group on 26 February 2025, during targeted engagement meeting for specific proposals for strengthening PoFA compliance (see Chapter 18).
315. PoFA operators stated that the intent of enforceable undertakings in the context of PoFA compliance was already being achieved through directed compliance action that occurs during verification. They preferred that resource should be dedicated to clarifying the PoFA standards instead of introducing new enforcement tools.
316. Despite PoFA operators not seeing benefit in adding enforceable undertakings to the Biosecurity Act, MPI recommends that the proposal should proceed. This proposal is not limited to apply to PoFA operators. It is intended to apply more broadly, available for other users of the Act. Enforceable undertakings could benefit a wide set of users of the Act, without compromising MPI's ability to take enforcement action when required.
317. Enforceable undertakings are not directed compliance tools. A user must request an enforceable undertaking, and they can be used as an alternative to prosecution. MPI would be given the discretion to accept a proposed undertaking or reject it and choose to prosecute instead. As well as this, breaches of undertakings would be punishable with an offence and a high penalty.

17.4. Assessing options to address the problem

318. These options were assessed against the following criteria.
319. The focus of the 'Effective' criterion for enforceable undertakings will be on the question of how the option incentivises management of biosecurity risk and provide for better partnership in the biosecurity system. Effective in this Chapter is therefore focused on how a compliance and enforcement toolbox supports the core duties of the Biosecurity Act which protects New Zealand from biosecurity risk.

320. This proposal has an additional criterion on proportionality. Proportionality is a key factor to consider in the design of compliance tools. It is a long-standing principle of the criminal justice system that penalties should be proportionate in their severity to the gravity of the individual's criminal conduct.

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? - Does the option provide a modern toolbox to users of the Act?
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 does it provide sufficient certainty?
Proportionality	Is the option proportionate in its severity to the gravity of the individual's offending.

321. Option 1 does not meet any of the criteria and would not achieve the outcomes listed in the opportunities section.
322. Option 2 (adding enforceable undertakings to the Act) meets four of the five criteria (effective, adaptable, clarity, proportionality).
323. Enforceable undertakings are an effective way to remedy non-compliance because they can be used to create a good biosecurity outcome out of a non-compliant situation. An undertaking could achieve this by addressing non-compliance, remedying any harm caused by the non-compliance, or embedding new processes to prevent further non-compliance.
324. The seriousness of the offence and associated penalty for breaching an enforceable undertaking provides a strong incentive for users who enter an undertaking to meet the requirements within it, further increasing the effectiveness of the tool.
325. Enforceable undertakings provide for an opportunity for regulated parties to undertake that they will go beyond statutory requirements to both rectify non-compliance and reduce the likelihood of future non-compliance. These actions are undertaken in place of prosecution, and they could lead to more effective biosecurity management over time. Enforceable undertakings allow for regulators and regulated parties to work collaboratively to achieve better biosecurity outcomes, creating an opportunity for strong partnership between the government and regulated parties of the Biosecurity Act. They can also reduce reputational risk for those who have breached the Biosecurity Act, in cases where this is appropriate, which can support New Zealand's economy.
326. Enforceable undertakings allow for enforcement of the Biosecurity Act to be more adaptable in situations where the regulated parties try to do the right thing. They provide an alternative pathway to remedy and prevent non-compliance, should MPI choose that is an appropriate pathway in place of prosecution. Enforceable undertakings are also a feature of (or are proposed to be added to) other modern legislation, modernising the enforcement tools within the Biosecurity Act.

327. Option 2 is neutral on the efficiency criteria. Administrative work would be required to implement enforceable undertakings, as MPI would need to develop operational policies and processes to use them. It may create efficiencies in future, however, as resource usually dedicated to prosecution could be dedicated to developing and agreeing to an undertaking. There may be many requests for enforceable undertakings for MPI to assess, and enforceable undertakings may require some level of verification, but these are not quantifiable at this time.
328. Other regulators which have enforceable undertakings available (such as WorkSafe) have dedicated teams to negotiate and manage them. This suggests there may be significant resource required, depending on the uptake from the sector. MPI may also choose to issue guidance and fact sheets to explain who is eligible for enforceable undertakings and the process for developing and establishing them. This could require significant resource.
329. Option 2 is no more or less clear than the status quo. The seriousness of entering an enforceable undertaking is signalled by the magnitude of the offence associated with breaching the conditions imposed by it. To address any potential confusion about how enforceable undertakings work, clear operational policy can signal when an enforceable undertaking would be accepted or refused.
330. Option 2 is proportionate, because MPI would have the discretion to accept or reject an enforceable undertaking depending on the severity of the offending. MPI would likely not accept an undertaking for very minor breaches (such as erroneous declarations at the border), because there is not a suitable alternative, nor is the conduct long-term and likely to promote future compliance. MPI would also likely not accept an undertaking for serious offences because punitive measures may be more appropriate.
331. Providing MPI discretion enables proportionality to be assessed when an application is received. The application would then be accepted or rejected with this in mind. Specifying in operational policy the situations where MPI may or must accept or reject an application for an undertaking may also ensure that decisions are made consistently and proportionately. Clear operational policy will ensure that regulated parties know what an enforceable undertaking is, and when MPI may accept or reject an application to enter one.
332. Specifying that breaching an enforceable undertaking carries a high penalty and that users may still be prosecuted for the original offending or alleged offending will also ensure the seriousness of entering an enforceable undertaking is clear.

17.5. Which option best addresses the problem, meets the policy objective and delivers the highest benefits?

333. Our preferred option is Option 2 because it meets most of the criteria and provides an opportunity for users to go beyond statutory requirements in place of prosecution and can promote greater collaboration with the biosecurity sector.
334. The Minister's preferred option in the Cabinet paper is the same our recommended option.

17.6. Impact analysis of the preferred option

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Regulated groups (offender)	Potential cost of the new, higher penalty if an undertaking is breached. Potential costs of operational changes from the undertaking. However, we note an undertaking is an “opt-in” model which mitigates the risk that the person/organisation would face this penalty without their direct involvement.	Low	Low
Regulators (Crown)	Implementation costs associated with the development and application for a new enforcement pathway. However, it is expected to use the same resources as the current compliance system, and therefore somewhat mitigated.	Low	Low
Total monetised costs		N/A	N/A
Non-monetised costs		Low-Medium	Low-Medium
Additional benefits of the preferred option compared to taking no action			
Regulated groups (offender)	Opt-in model for new, more flexible enforcement pathway that can eliminate need for prosecution for the person/organisation	Medium	Medium
Regulators (Crown)	The opt-in model gives regulatory enforcers greater ability to work with the non-compliant party, rather than costly prosecution alone.	Medium	Medium
Total monetised benefits		N/A	N/A
Non-monetised benefits		Low-Medium	Low-Medium

18. Stronger compliance options at Places of First Arrival

18.1. Background

335. Places of first arrival (PoFAs) are ports that are approved by the Director-General under section 37 of the Biosecurity Act to receive goods, craft, and passengers as they first arrive in New Zealand. Craft entering New Zealand must arrive at a PoFA. Ports are approved for specific types of craft, passenger numbers, and types of goods. Ports must have the arrangements, facilities, and systems to manage biosecurity risk.
336. To be approved as a PoFA, a port must comply with the requirements of section 37 and the requirements of a PoFA Standard set by the Director-General. Once a PoFA has received approval to operate, it is required to continually meet the requirements of section 37 of the Biosecurity Act, which includes compliance with the PoFA Standard and any other conditions of approval.
337. The PoFA Standard sets out the general requirements, physical and structural requirements, hygiene management requirements, and operational requirements that PoFAs are required to meet for approval.
338. PoFAs are inspected by MPI annually, with higher risk and non-compliant facilities being inspected more frequently.
339. Some PoFAs are not points of entry under the International Health Regulations (2005), so they do not require audits on their capacity to manage human health risks. This makes PoFA requirements vital to mitigate the human health risks arising from such PoFAs.

Enforcement tools in the Act that apply to PoFAs

340. Where a PoFA is in breach of its compliance requirements, MPI may use the following enforcement levers:
 - Written or verbal warning – MPI continuously engages with PoFAs on how to uphold and improve their compliance with section 37 and the PoFA Standard. MPI can issue a warning to a PoFA when non-compliance arises, such as a failed audit.
 - Compliance orders – under section 154, an MPI inspector or authorised person may issue a compliance order to a PoFA operator. For example, MPI could require them to cease doing something to comply with the requirements in section 37 or the PoFA Standard. Compliance orders could encourage compliance without resorting to prosecution. To date, there has only been one compliance order issued to a PoFA. A compliance order was issued to a PoFA about five years ago to address issues relating to breaches of PoFA requirements and transitional facility compliance. Compliance improved and so the compliance order was 'closed'.
 - Penalties for breaching a compliance order – it is an offence to breach a compliance order. The penalties for this offence are:
 - for individual, imprisonment for a term not exceeding 3 months, a fine not exceeding \$50,000, or both

- for a corporation, a fine not exceeding \$100,000.
- Suspension and revocation of approval – under section 37B, the Director-General may suspend or revoke a PoFA's approval if satisfied that the facility is no longer meeting PoFA requirements.

Other non-compliance tools that do not apply to PoFAs

Pecuniary penalties

341. Pecuniary penalties are monetary penalties sought through the High Court. These aim to deter serious regulatory breaches without criminalising the offender (because non-compliance does not justify imprisonment or criminal conviction). They can still have serious reputational and financial effects on a person or entity, and so have usually been implemented to target commercial behaviour where there is potential for commercial gain from non-compliance.
342. The Biosecurity Act allows pecuniary penalties if a person or organisation fails to comply with certain rules specified in the Biosecurity Act. A breach of PoFA requirements is not one of those rules, so pecuniary penalties do not apply to PoFAs.
343. The maximum amount of pecuniary penalty that a Court may order for an organisation is:
- where the commercial gain produced by the non-compliance can be ascertained, \$10,000,000 or three times the value of the commercial gain resulting from the noncompliance, whichever is greater; or
 - where the commercial gain produced by the non-compliance cannot be readily ascertained, \$10,000,000 or 10% of the turnover of the body corporate and all its interconnected bodies corporate, whichever is greater.

Criminal offences for breach of PoFA requirements

344. The Act has a range of criminal offences that address specific actions or behaviours. For example, a person commits an offence under section 154N when they fail to comply with the duty relating to arrival of craft (section 18), fail to comply with the duties of persons in biosecurity control areas (section 25), and operate or purport to operate a transitional or containment facility that is suspended or not approved. These offences could lead to imprisonment and/or fines.
345. As mentioned above, a PoFA that breaches a compliance order (if they have been issued one) has committed an offence. However, there are no criminal offences that apply directly to PoFA non-compliance.

Biosecurity regulation of PoFAs sits within a wider regulatory framework

346. As border entities, PoFAs are subject to other regulatory requirements aimed at border protection. This includes the New Zealand Customs Service border protection framework. s9(2)(f)(iv)

347. s9(2)(f)(iv)

348. We note that the context for Customs (address transnational organised crime, collecting revenue etc.) is different from Biosecurity (protection of primary sector production, human health and the environment). s9(2)(f)(iv)

18.2. Problem or opportunity

349. PoFAs serve a purpose of managing the border and are a 'first line of defence' for controlling biosecurity threats to New Zealand. PoFAs manage significant volumes of goods and passengers coming through and they also are given a broad scope of functions and requirements. For this reason, PoFAs can breach a range of requirements from minor requirements to significant.
350. We use existing compliance tools that either have minor or severe impacts to deal with minor or serious breaches, respectively. However, practice shows that non-compliance with requirements can fall within a spectrum and the current tools available are not always appropriate to address them. To illustrate, there may be a breach of a PoFA Standard that may warrant a stronger response than a compliance order, but which also may not warrant shutting down the PoFA. However, the only available tools would be to either:
- suspend or revoke the PoFA approval - this could cause significant passenger and freight disruptions and have disproportionate economic and societal impacts.
 - issue a compliance order - this may not be appropriate as it would not be proportionate to the level of non-compliance. In addition, while breaching a compliance order attracts a financial penalty (currently a fine of \$100,000 but is proposed to increase to \$300,000 – see Chapter 11), this could be absorbed by large PoFAs as a cost of doing business.
351. It is important for MPI to be able to address the broad range of breaches that might occur in a proportionate way, without undermining the effectiveness of enforcement, or, by disrupting the important role that PoFAs play in travel and trade, and in processing goods and people.

18.3. Options

Option 1 – status quo

352. Option 1 is the status quo. Under this option, MPI would continue using the existing tools to enforce PoFA requirements for any non-compliance.

Option 2 - enable pecuniary penalties for breaches of PoFA requirements

353. Option 2 proposes to include breaches of PoFA requirements as actionable for a pecuniary penalty. Under section 154J, the maximum amount of pecuniary penalty that a Court may order is:

- where the commercial gain produced by the non-compliance can be ascertained, \$10,000,000 or three times the value of the commercial gain resulting from the noncompliance, whichever is greater; or
- where the commercial gain produced by the non-compliance cannot be readily ascertained, \$10,000,000 or 10% of the turnover of the body corporate and all its interconnected bodies corporate, whichever is greater.

Option 3 – create a new offence for breaching PoFA conditions of approval with a fine of up to \$200,000 and a continuing penalty of \$10,000 each day

354. Option 3 would establish an additional offence under the Act, for contravention of section 37 (in relation to the conditions of approval a PoFA must adhere to). This will carry a fine upon conviction and a further fine for every day or part of a day that offending has occurred.
- The proposed offence is intended to be used in instances where a PoFA has an area of non-compliance, but where the area of non-compliance is not likely to impact the PoFAs wider ability to fulfil their conditions of approval.
 - The proposed penalties were reached through comparison with the use of continuing penalties in the Dairy Industry Restructuring Act 2001. This Act is also administered by MPI and addresses commercial gain that may result from ongoing non-compliance.

Option 4 - introduce a new offence for failing to comply with section 37 or the PoFA Standard

355. Option 4 is a new proposal. It would introduce a new offence for failing to comply with section 37 or the PoFA Standard. The new offence would mirror the offence for transitional facilities failing to comply with facility approvals (section 154N(6)). The offence is strict liability, and the penalty would be based on section 157(3). Note that we are proposing to increase the maximum penalty, as discussed in Chapter 11.
356. We have mirrored the offences because we consider the context for both transitional facilities and PoFAs are similar. Both PoFAs and transitional facilities:
- must be approved before they can operate and are regularly monitored;
 - operate in the border to manage risk goods prior to entry into New Zealand; and
 - must comply with approval conditions and/or standards.

Options 2 and 3 were previously consulted, and Option 4 is new

357. Options 2 and 3 were included in the 2024 public consultation as Proposals 10 and 11 respectively. Most submitters supported both proposals. Submissions from four PoFAs opposed the proposals because they felt the status quo was sufficient, and because they considered that pecuniary penalties would not incentivise compliance. They also commented that there was a lack of evidence about the scale of the problem.

358. In response to the significant concerns from PoFAs which would be most directly affected by the proposal, we met with Biosecurity Business Pledge PoFA group on 26 February 2025 as part of post-consultation targeted engagement. PoFAs reiterated the feedback they provided in their submissions:
- They were keen to understand the underlying issue and how the penalties would work in practice. Their view was that MPI did not fully understand PoFA operations and that has flow-on effects in trying to manage compliance more generally.
 - They stated that MPI needed to take a consistent approach to enforcing compliance and not target a particular sector. There was a risk of over-regulation, as PoFAs are required to meet a host of domestic and international compliance standards already.
 - PoFAs' preference was for MPI to put its resources into improving and clarifying the PoFA standards. The existing tools should be used to incentivise compliance.
 - PoFAs preferred a positive and collaborative approach, rather than a punitive and adversarial approach.
359. We agree with submitters' feedback that ongoing compliance should, as appropriate, support a collaborative approach aligned with the tools available under the VADE model. Enforceable undertakings, as outlined in Chapter 17, are a good example of a collaborative approach that could be used in the PoFA context in appropriate circumstances.
360. We do not agree that additional enforcement tools would result in over-regulation, or specifically target PoFAs within the biosecurity sector. The problem we have identified remains – there is a gap in our ability to apply appropriate enforcement tools available under the Act to address the spectrum of non-compliant PoFA behaviour.
361. We do not consider that the availability of additional punitive enforcement tools would undermine the working relationships between PoFAs and MPI. The current ability to revoke or suspend PoFA approval has not inhibited MPI's on-going work to maintain and foster trusted working relationships with PoFAs. We note that any proposed additional punitive enforcement tool simply completes the range of levers available to MPI to ensure compliance with the Biosecurity Act. This aligns with our enforcement approach for other sectors subject to the Biosecurity Act.
362. Submitters queried how penalties would be applied should the proposals progress and there is a graduated set of tools available. MPI has an organisational policy that sets out guidelines for determining what are – and are not – valid reasons for deciding whether to prosecute and the process that needs to be followed.²⁷ MPI's policy is aligned to the Solicitor-General's Prosecution Guidelines.²⁸ MPI's policy is reviewed periodically by the Crown Law Office to assess how prosecutions are carried out, whether the guidelines

²⁷ [Prosecutions and infringements | NZ Government](#)

²⁸ [Prosecution Guidelines » Crown Law](#)

are clear as to how prosecution decisions are made, that principled prosecuting decisions are made consistently with the Solicitor-General's prosecution guidelines.

363. MPI would apply its policy when making prosecutorial decisions on any new or additional penalties, as it does under any of its regulatory systems.

18.4. Assessing options to address the problem

364. The options are assessed against the criteria below.
365. The focus of the Effective criterion for compliance options at PoFAs will be on the question of “Does the option better protect New Zealand from biosecurity risk, while supporting our economy?” Effective in this chapter is, therefore, focused on how better compliance and enforcement supports border risk management. Increased penalties and any resulting compliance efforts will create costs for PoFAs that will negatively impact the economy; however, this is outweighed by the economic benefits from reduced incursions of pests and diseases.
366. Note that this issue has an additional criterion of proportionality. Proportionality is a key factor to consider in the design of compliance tools. It is a long-standing principle of the criminal justice system that penalties should be proportionate in their severity to the gravity of the individual’s criminal conduct.

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 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 does it provide sufficient certainty? - Are the roles and responsibilities assigned appropriately and clearly between central government, local government, industry and local communities?
Proportionate	Is the option proportionate in its severity to the gravity of the individual’s offending.

Option 1 – status quo

367. Under the status quo, MPI would continue to use existing available tools to enforce PoFA requirements. This restricts MPI’s ability to adopt a graduated approach to the management of non-compliant behaviour.

368. s9(2)(f)(iv)

Option 2 – enable pecuniary penalties for breaches of PoFA requirements

369. Option 2 meets the effective criterion as it would provide a strong enforcement tool to address non-compliance in PoFAs. Addressing non-compliance incentivises PoFAs to meet the standard, and PoFAs that are compliant with the standard pose less of a biosecurity risk. Pecuniary penalties are an existing tool available to address breaches of many other aspects of the biosecurity system, and PoFA non-compliance may pose a

similar risk as these other types of biosecurity non-compliance liable for pecuniary penalties. The high ceiling for pecuniary penalties could be significant enough to incentivise stronger compliance among PoFAs.

370. Option 2 is adaptable by providing MPI with a practical tool to target commercial behaviour. This directly addresses the gap in MPI's enforcement toolbox, where MPI does not have a sufficient range of compliance tools that appropriately reflect the varying levels of non-compliance in PoFAs.
371. Option 2 does not meet the efficiency criterion. Seeking a pecuniary penalty order in the High Court is likely to be more time consuming and costly than the status quo. Implementing the penalty order could require comprehensive preparations depending on the complexity of gathering and analysing evidence.
372. Option 2 is neutral on the clarity criterion. Option 2 would make it clear that a breach of a PoFA requirements can result in a pecuniary penalty. However, this is no more or less clear than the status quo, where pecuniary penalties clearly do not apply.
373. Option 2 is finely balanced for the proportionality criterion. On the one hand, as shown in submissions, pecuniary penalties are designed to be punitive, delivering a penalty with a maximum of \$10 million. Whether this is proportionate or not depends on the offending committed by the PoFA and the size and scale of the PoFA. On the other hand, the pecuniary penalty targets wrongful commercial behaviour. Moreover, the thresholds enable judges to consider the nature of the non-compliance as well as the entity's conduct and resulting profits from the wrongful conduct in deciding the appropriate penalty. This is consistent with the Legislation Design and Advisory Committee's Legislation Guidelines, which states that pecuniary penalties are appropriate to address offending that involves commercial activities.²⁹

Option 3 – create a new offence for breaching PoFA conditions of approval with a fine of up to \$200,000 and a continuing penalty of \$10,000 each day

374. Overall, Option 3 is unlikely to be effective as it would apply a broad, one-size-fits-all punitive approach to PoFA non-compliance. While larger penalties could arguably provide stronger incentives for commercial entities to comply, a disproportionately punitive approach through a continuing penalty that applies each day may adversely affect entities wanting to operate as PoFAs which negatively impacts on the economy.
375. Option 3 would also not meet the adaptable criterion. The Legislation Design and Advisory Committee advised that continuing penalties are no longer used due to the risk of excessive and unpredictable financial burdens. These penalties are being removed as Acts are revised or replaced.
376. Option 3 is less efficient than the status quo. Launching a prosecution and having to prove an offence beyond a reasonable doubt is not a small undertaking and requires a great deal of resources to successfully carry out.

²⁹ [Legislation Guidelines – Chapter 26: Pecuniary penalties](#)

377. Option 3 does not meet the clarity criterion. This option does communicate the seriousness of PoFA requirements; however, the nature of continuing penalties means there is no way to know the final financial penalty ahead of time, and this reduces clarity for those who are non-compliant.
378. Lastly, option 3 does not meet the proportionality criterion. It would likely result in significant uncapped maximum penalties, which is likely to be inequitable. Feedback from the Ministry of Justice confirmed this view.

Option 4 – introduce a new offence for failing to comply with section 37 or the PoFA Standard

379. Option 4 is effective. This new offence would be directly tied to breaches of section 37 and the PoFA Standard. This would provide a strong and direct incentive for complying with section 37 and the PoFA Standard, which in turn would help protect New Zealand from biosecurity risks that could arise from PoFA non-compliance.
380. Option 4 is adaptable as it would make the legislation more consistent; it is unusual that there is not an existing offence relating to the duties imposed on PoFAs. s9(2)(f)(iv)
381. Option 4 does not meet the efficient criterion. Prosecuting the new offence would necessitate court proceedings, which are time-consuming and costly. PoFAs would also likely view the new offence as another administrative and compliance burden, similar to their comments on other options. While the offence is a strict liability offence, where there are fewer elements to prove, prosecutions may still require comprehensive preparations depending on the complexity of gathering and analysing evidence.
382. Option 4 is neutral on the clarity criterion. Delivering a new offence for failing to comply with PoFA requirements is no more or less clear than the status quo, where there is no offence for breaching PoFA requirements.
383. Option 4 is directly proportionate, given that it is intended for breaches of section 37 or the PoFA Standard. The penalties are similar to those that already apply to containment and transitional facilities, as we outlined earlier in the Options section. The nature of the offending and the harm caused by the offending are similar in both circumstances. Similarly, both PoFAs and transitional facilities:
- must be approved before they can operate and are regularly monitored;
 - operate in the border to manage risk goods prior to entry into New Zealand; and
 - must comply with approval conditions and/or standards.

18.5. Which option best addresses the problem, meets the policy objective and delivers the highest benefits?

384. Option 4 best addresses the problem and best meets the policy objectives, so we recommend this option.
385. Option 2 could also address the problem, but it does not meet the policy objectives as well as Option 4, so we do not recommend it.
386. The Minister's preferred option in the Cabinet paper is the same our recommended option.

18.6. Impact analysis of the preferred option

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Regulated groups (Places of First arrival operators)	Costs of challenging breach allegations in court. Cost of paying fine for criminal offence. Reputational risks from recurring enforcement action.	Medium	Medium
Regulators (Crown)	Resource time investment of judiciary proceedings to deter non-compliance (assuming it meets prosecution policy).	Medium	Medium
Total monetised costs		N/A	N/A
Non-monetised costs		Medium	Medium
Additional benefits of the preferred option compared to taking no action			
Regulated groups (Places of First arrival operators)	Provides an avenue for addressing non-compliance that is less severe than closure of the PoFA. Incentives to meet compliance requirements to avoid costs of compliance action by the regulator.	Medium	Medium
Regulators (Crown)	Provides an avenue for addressing non-compliance that is less severe than closure of the PoFA. Efficiencies gained over time from adding to the graduation of sanctions within the enforcement toolkit. s9(2)(f)(iv)	Medium	Medium
Total monetised benefits		N/A	N/A
Non-monetised benefits		Medium	Medium

387.

18.7. 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 – enable pecuniary penalties for breaches of PoFA requirements	Option 3 - create a new offence for breaching PoFA conditions of approval with a fine of up to \$200,000 and a continuing penalty	Option 4 - introduce a new offence for failing to comply with section 37 or the PoFA Standard
Effective (better risk management)	0	++ Making pecuniary penalties available to enforce PoFA requirements delivers better biosecurity protection and incentivises PoFAs' to comply with requirements.	0 May be ineffective as it would apply a broad "one size fits all" punitive approach to PoFA non-compliance. While larger penalties could provide strong incentives for compliance, the severity of this penalty may adversely affect entities wanting to operate as PoFAs, adversely impacting on the economy.	++ This would provide a strong and direct incentive for compliance as it directly targets failures to comply with PoFA requirements. Prosecution carries the weight of a criminal offence.
Adaptable (modern, enabling legislation)	0	+ This would enable judges to consider the nature of non-compliance as well as the PoFA's conduct. s9(2)(f)(iv)	-- The Legislation Design and Advisory Committee advised that continuing penalties are no longer used and that these penalties are being removed as Acts are revised or replaced.	++ This would help deliver a modern legislation with a new offence that is directly tied to breaches of section 37 or the PoFA standard.
Efficient (burden on regulators and parties, and complexity)	0	- Pecuniary penalties require litigation to access.	- This would require prosecution to access.	- This new offence would require prosecution to access.
Clarity (logical and certain, and clear roles)	0	0 Enabling a pecuniary penalty is no more or less clear than the status quo (where pecuniary penalties are not available).	- This nature of continuing penalties means there is no way of knowing the final financial penalty, and this reduces clarity for those who are non-compliant.	0 Delivering a new offence for failing to comply with PoFA requirements is no more or less clear than the status quo (where there is no offence for breaching PoFA requirements).
Proportionate (related to gravity of the individual's offending)	0	0 This is finely balanced. The penalties are punitive and large. Submitters said the penalties are unfair. However, the application of pecuniary penalties PoFA breaches is consistent with the Legislation Design and Advisory Committee's Legislation Guidelines that pecuniary penalties are appropriate to address commercial behaviour.	-- This would likely result in significant uncapped maximum penalties.	++ This is directly intended for breaches of section 37 or the PoFA Standard. The penalties are similar to those that already apply to containment and transitional facilities.
Overall assessment	0	+ This option could fill the gap in enforcement tool and is likely to be proportionate and appropriate for moderate breaches.	- This option is likely to be ineffective and inequitable. The Legislation Design and Advisory Committee has also advised against the use of continuing penalties.	++ This option provides a direct offence to breaches of section 37 or the POFA Standard.

PART 3

COMPENSATION

19. Part 3: Compensation - Introduction

388. Part 3: Compensation is focused on the compensation scheme established in section 162A of the Biosecurity Act. Part 3 begins with Chapter 20 and provides a general background on compensation and the problem definition for compensation.
389. There are then two main topics in Part 3:
- amendments which improve the operation of the compensation scheme; and
 - amendments to the types of losses compensable under the Biosecurity Act.
390. The two topics are structured in the same way:
- options;
 - assessment of the options; and
 - preferred option.
391. The impact analysis for both topics is discussed in Chapter 23.

20. Compensation – background and problem definition

20.1. Background

392. Under section 162A of the Biosecurity Act, a person or business is eligible for compensation where the Government has exercised powers for the purpose of eradicating or managing an organism, and the person or business suffers a verifiable loss. For example, when MPI seizes or destroys property, or restricts the movement of goods, people can claim compensation to cover the losses from these actions.
393. Section 162A states that compensation should put the claimant in no better or worse position than a person who was not directly affected by the exercise of biosecurity power. MPI's experiences with previous biosecurity responses indicate that there are two broad categories of losses that are subject to compensation:
- **Direct losses:** these arise immediately from the Crown's use of powers. This is often the value of a property destroyed e.g. the value of the livestock culled or crops destroyed.
 - **Consequential losses:** these are losses that do not arise immediately but are connected to the property affected. The main example here is income that would have arisen from the property affected e.g. milk production losses for dairy cows. Consequential losses also cover other tangential losses such as professional fees and costs incurred following MPI's directions.
394. Section 162A requires that a claimant must have taken reasonable steps to mitigate their loss.
395. Compensation is not available for the following circumstances:

- the loss was caused by the pest or disease, and not the exercise of powers for losses that occurred before the exercise of powers;³⁰
 - for losses that relate to unauthorised or uncleared goods; and
 - if a person did not comply with biosecurity law in a serious or significant way. 'Biosecurity law' is a defined term (section 2) and relates only to the Biosecurity Act and instruments made under it.
396. Third parties are generally not eligible for compensation because the Biosecurity Act requires the claimant to own the property affected by the use of powers.
397. Government Industry Agreement (GIA) partners³¹ can, by agreement under section 100Z(4)(e), vary how compensation applies. This is subject to the restriction that the variation is likely to discourage early reporting of unwanted organisms or reduce the level of cooperation with biosecurity activities. GIA partners may also share the costs of compensation, if agreed, through Operational Agreements.³² There are standard terms for Operational Agreements which outlines that compensation is a cost-shareable activity under the GIA.³³
398. If a claimant disputes their eligibility for, or the amount of, compensation, the Biosecurity Act requires the claimant to submit their dispute to arbitration. Arbitration can be a costly and lengthy adversarial process. MPI offers alternative intermediary steps to claimants prior to arbitration:
- Step 1: Internal Review: If the claimant disagrees with MPI's decision on a claim, MPI can undertake an internal review of its assessment with a different assessor.
 - Step 2: Independent Review: If the claimant disagrees with the internal review decision, MPI may offer an independent review. This review would be conducted by a Panel of relevant independent experts (i.e. industry, legal, or financial expertise). The Panel may also conduct meetings with both parties to ask questions. The Panel reports its findings back to MPI's Director-General with a recommendation. The claimant receives a copy of the report.
 - Step 3: Arbitration: If a claimant remains dissatisfied, the claimant retains the ability to seek arbitration under the Arbitration Act 1996. Appeals under this Act are constrained to matters of law and only with either the agreement of the disputing parties, or with leave of the High Court (which provides for limited grounds for leave).

³⁰ In the 2017 *Bonamia ostreae* response, MPI made deductions to the amount of compensation payable to reflect the mortality that would have been suffered by oysters as a result of the disease, had MPI not exercised its powers, and the oysters continued to grow in the presence of *Bonamia ostreae*.

³¹ The GIA is a partnership between industry groups and the Government. There are 25 GIA partners, including MPI. The purpose of the GIA is to promote industry and government working together as partners by sharing decision-making and the costs of preparing for and responding to incursions.

³² The government and the relevant GIA partner contract with each other on how to undertake readiness or response activities through an Operational Agreement.

³³ www.gia.org.nz/Portals/79/Content/Documents/Resource-Library/GIA%20OA%20standard%20terms%20and%20conditions%20with%20effect%20from%201%20Sept%202022%20for%20web.pdf?ver=2022-08-19-150421-137

20.2. Problem or opportunity

399. The compensation settings are being reviewed because:

- government should be prudent managers of public finance;
- the Bill provides the opportunity to re-design compensation provisions so that we maximise incentives for good behaviours and disincentives for bad behaviours; and
- we have the opportunity to future-proof compensation settings to strike a better balance between flexibility of the scheme, and certainty for claimants.

The cost of compensation can be significant

400. Compensation can be a significant cost when responding to a pest or disease. Claims data from three previous responses (as of the week ending 31 March 2025) indicates how much compensation could be paid out for a biosecurity response (noting that the scale of responses varies significantly).

Table 1 - Compensation in previous responses

	<i>Mycoplasma bovis</i>	<i>Bonamia ostreae</i>	Fruit Fly
Total compensation (both direct and consequential losses)	\$290.01 million	s9(2)(j)	\$0.25 million

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

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

402. Compensation is a significant financial liability for the Crown. Compensation is also a significant financial liability for GIA partners and their levy payers as compensation is cost-shared under the GIA.³⁴

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

403. Improving biosecurity practices is a key focus area for strengthening the biosecurity system and reflects the idea that everyone has their part to play in preventing and managing biosecurity risk. There are several initiatives underway, led by both Biosecurity

³⁴ The GIA is a partnership between government and industry to improve New Zealand's biosecurity. Government and industry work as partners and share decision-making responsibilities, and the costs of preparing for and responding to incursions. See Part 5 of this impact statement.

New Zealand³⁵ and by sector organisations, that have a focus on lifting biosecurity practices. There is currently no legal requirement for individuals to prove they have taken steps to mitigate their biosecurity risk to be eligible for compensation.

404. Mitigating loss is different from mitigating risk. While the Biosecurity Act specifies claimants must take reasonable steps to mitigate their loss, this refers to taking steps to reduce their loss after the Crown's use of powers. An example is restocking as soon as possible to avoid extended milk production losses. In contrast, mitigating risk refers to behaviours to reduce the likelihood an infection, and therefore the Crown's use of powers in the first place. An example is disinfecting farm vehicles and equipment prior to movement.
405. Managing biosecurity risks can be expensive. Although New Zealand-specific evidence is somewhat limited, research from the Organisation for Economic Co-operation and Development highlights the potential for compensation to have unintended effects and create a moral hazard.³⁶ This is where individuals may be more likely to engage in risky business behaviour and less likely to take steps to reduce their biosecurity risk if they think the Crown will compensate them for their losses.
406. The Biosecurity Act does not differentiate between initial and subsequent infections. For example, a farmer is equally entitled to compensation each time they suffer loss due to the use of powers under the Biosecurity Act. Paying compensation without making people mitigate their biosecurity or financial risk could be raising expectations that the Crown should pay for the full cost of managing biosecurity. Our view is that biosecurity is best protected collectively.
407. Additionally, the Biosecurity Act states compensation must not be paid if biosecurity law has been breached. 'Biosecurity law' is a defined term and covers only the Biosecurity Act and its secondary legislation. A producer who does not comply with other requirements, for instance, the National Animal Identification and Tracing Act 2012 (the NAIT Act), would still receive compensation. One of the purposes of the NAIT Act is to establish an animal identification and tracing system to improve and support biosecurity management. It is counterproductive that a producer might breach other biosecurity requirements which affect response efforts and increasing cost, time and resources, and yet still receive compensation.

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

408. Our compensation arrangements do not reflect the varied natures of responses or claimants' needs. The compensation provisions lack flexibility. As every response and circumstance is different, a one-size-fits-all approach carries risk.
409. Finally, the Biosecurity Act requires that disputes about eligibility or the amount of compensation paid are submitted to arbitration. In practice, MPI offers alternative steps

³⁵ Biosecurity New Zealand is a business unit of MPI.

³⁶ OECD (2017), Producer Incentives in Livestock Disease Management, OECD Publishing, Paris.
<http://dx.doi.org/10.1787/9789264279483-en>

to provide claimants more efficient methods to dispute decisions on their claims. Separately, since *M. bovis*, MPI has been involved in disputes involving very significant amounts of compensation. As the regulator, MPI is concerned that resolving disputes that involve significant sums (from millions to tens of millions, and even over a hundred million), through arbitration, may not be appropriate or transparent. The Bill provides an opportunity for MPI to be clearer about how it resolves disputes in the Biosecurity Act.

21. Compensation – improvements to the operation of the scheme

21.1. Options

410. The options in this chapter are not mutually exclusive (excluding Option 1 which is the status quo). This means one, or any combination of Options 2 to 4, can be delivered to improve the operation of the compensation scheme.

Option 1 – status quo

411. Option 1 is the status quo. Under this option, no change would be made to compensation settings.

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

412. Option 2 has three proposed amendments:

- disentitling a person to compensation if they breach in a serious or significant way:
 - the Biosecurity Act and the NAIT Act; and
 - secondary legislation, plans, orders etc. made under the Biosecurity and NAIT Acts.
- clarifying what a 'serious or significant breach' means by building on guidance from cases and legal advice:
 - "Serious" focuses on the culpability of the individual. A deliberate or reckless breach will be serious; an unintentional breach may not be. The level of involvement of the offender (e.g. principal offender vs an aide/accomplice), and relevance and nature of previous offending are also relevant.
 - "Significant" focuses on the nature of the breach and its actual or potential consequences (whether intentional or not).
 - Each must be seen in light of the particular circumstances.
- Make it explicit that the offending must be connected to the response / the purpose of the exercise of powers for the exclusion to apply. This way, not all offending would result in compensation being unavailable. The offending must be relevant to the reason there is government intervention in the first place.

Majority of submitters supported Proposal 16 but the livestock sector opposed the inclusion of the National Animal Identification and Tracing Act

413. Option 2 was included in the 2024 public consultation as Proposal 16. It received majority support from submitters. Most submitters were supportive of a clearer definition of 'biosecurity law' and 'serious or significant breaches'. Most submitters said that an individual who was purposefully non-compliant with biosecurity law should be ineligible for compensation.
414. Livestock stakeholders opposed the inclusion of the NAIT Act in the definition of biosecurity law. They said their sector was being unfairly targeted and would face additional penalties because they have tracing requirements other sectors do not.
415. A few submitters raised concerns that denying compensation would impact individuals' willingness to report biosecurity risks early, and that non-compliance would be used in perpetuity to make an individual permanently ineligible from compensation.
416. MPI notes that the NAIT Act supports biosecurity, particularly at the outset of a response. The passage of the NAIT Act means that Parliament decided to impose oversight on the livestock sector. MPI should be incentivising operators to comply with the NAIT Act. We note that Option 2 also extends the meaning of 'biosecurity law' to other legislated traceability schemes and other legislated biosecurity requirements (for example, where regional councils set biosecurity requirements as a condition on a resource consent). In other words, the livestock sector is not being expressly targeted with this proposal.
417. There have been some changes to Option 2 since the public consultation. Rather than seeking to expand the definition of 'biosecurity law', we propose to have the Biosecurity Act state which laws, if breached, can disentitle a person from compensation. We also removed breaches of other requirements and other traceability systems from the proposal. We consulted on a proposal that breaching other biosecurity requirements such as resource consent conditions, or future traceability requirements, could disentitle a claimant from compensation. We have done further work and have discarded these options as the policy rationale no longer held up.

Option 3 – enable GIA to fully vary compensation, and enable payment of compensation for future losses that will inevitably be incurred and cannot be mitigated

418. There are two key elements to this proposal:
- Remove restrictions contained in section 100Z(4(e)) on the ability for the Government Industry Agreement (GIA) to vary the application of section 162A.
 - Enable (but not require) payment of compensation for future losses that will inevitably be incurred and cannot be mitigated.
419. Option 3 was included in the 2024 public consultation as Proposal 18. It received strong majority support. Submitters thought Proposal 18 would reduce hardship, improve efficiency, and facilitate faster recovery. There have been no changes to Option 3 since public consultation.

Option 4 – improve the dispute resolution process for compensation

420. Option 4 involves delivering two key elements:

- Codify the existing operational processes that MPI has set up as intermediary steps to arbitration. That means the Act would set out the three steps under the status quo (which are internal re-review, independent panel, and arbitration). Option 4 would also empower MPI to make regulations to set out procedural requirements for the independent review step as necessary (including, for example, how members to the independent panel are appointed, and the procedures of the panel).
- Provide for a mixed model of the final step to resolve disputes so that high-value disputes (which we deem to be disputes of amounts over \$2 million) must now go to the High Court instead. We propose to base the threshold on the scope of the High Court Commercial Panel. The commercial panel covers high-value disputes (over \$2 million), complex and difficult matters of commercial law as well as proceedings brought by public authorities to enforce regulatory standards of commercial behaviour.

421. This means that under Option 4, if there is a dispute about the eligibility for, or amount of, compensation, the dispute must follow the dispute resolution steps:

- **Step 1: Internal review**
 - A claimant requests MPI to reconsider their claim with a different assessor.
 - The claimant will need to request internal review within three-months after receiving MPI's decision on their claim. MPI has discretion to accept a late request.
 - MPI undertakes an internal review of its previous assessment by utilising a different assessor. MPI then makes a decision on the claim.
- **Step 2: Independent review**
 - If a claimant disagrees with MPI's decision at the internal review step, a claimant must request an independent review by a panel.
 - The claimant will need to request an independent review within three-months after receiving MPI's decision on internal review. MPI has discretion to accept a late request.
 - The independent review procedure will be set out in secondary legislation:
 - the appointment of the panel by the Director-General (for example, the experience required of members or the expectation of panel members);
 - the procedures taken by the panel (for example, whether the Panel will meet with the claimant; timeframes for the review); and
 - The panel makes its recommendations to MPI. MPI then makes a decision on the claim.

- **Step 3: Either Arbitration or appeal to High Court**

- If a claimant remains dissatisfied after independent review:
 - if the disputed amount is less than \$2 million, the dispute must be submitted to arbitration under the Arbitration Act 1996. The claimant must submit the dispute to arbitration within three-months after receiving MPI's decision on the independent review recommendation; or
 - if the disputed amount is more than \$2 million, the claimant must go to the High Court. The claimant must do this within three-months after receiving MPI's decision on the independent review recommendation. The relevant High Court Rules apply in terms of procedure. Appeals are enabled on questions of law by leave of the Court of Appeal or Supreme Court in accordance with sections 56, 68 and 69 of the Senior Courts Act 2016.

422. The first element of Option 4 (codifying the status quo) was included in the 2024 public consultation as Proposal 19. It received strong majority support.

423. The second element of Option 4 (modifying the final step so a claimant must go either to arbitration or appeal to the High Court), has not been consulted on.

21.2. Assessing options to address the problem

424. The options are assessed against the following criteria below.

425. The focus of the 'Effective' criterion for improving the operation of compensation will be on the question of incentives and the sharing of costs more equitably.

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

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

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

427. Option 2 is more effective than the status quo. It is counterproductive that a producer might breach the NAIT Act (which affects response efforts and increases cost, time and resources) and yet still receive compensation. The settings should incentivise compliance with duties that contribute to biosecurity outcomes. This takes a holistic view of biosecurity that recognises how the Biosecurity Act and NAIT Act interact and

contribute to the biosecurity system, which makes the system more future-proof and enduring.

428. Option 2 improves the clarity of the law by providing greater certainty to both the Government and claimants on what the terms 'serious or significant way' means, and explicitly stating which laws, if breached, can make a person ineligible for compensation. However, Option 2 means industries subject to the NAIT Act (cattle and deer) could be penalised more than others. This was an important point for livestock stakeholders during the 2024 public consultation.
429. Our response is that the NAIT Act is important to biosecurity, particularly at the outset of a response. It is unreasonable that a person who breaches legal requirements that are directly relevant to biosecurity can still receive compensation. As noted above, the Biosecurity Act has safeguards on the exclusion of compensation as only serious or significant breaches of law (that is, not all breaches) would make a person ineligible for compensation. This is high threshold and would also apply to NAIT Act breaches.

Option 3 – enable GIA to fully vary compensation, and enable payment of compensation for future losses that will inevitably be incurred and cannot be mitigated

430. Option 3 delivers a more enabling and enduring compensation regime through two targeted changes.
431. For the GIA, it removes restrictions on how the GIA can vary compensation. This delivers more tailored arrangements agreed with industry partners. This has the potential to drive improvements in practices by enabling government and industry to come to mutually beneficial arrangements without unnecessary restrictions. An agreement with GIA partners to vary compensation could reduce the Crown's exposure to fiscal risk.
432. For claimants, section 162A requires a loss to have been incurred before compensation is paid. Enabling the payment of compensation for future losses could help reduce hardship for claimants by paying compensation payments sooner. We would only enable this for losses that will inevitably be incurred, and not for other losses where there is less certainty on whether they would be incurred or could not be mitigated. This helps to make the scheme more efficient for claimants.
433. Option 3 improves efficiency as MPI will have a greater ability to work with compensation claimants in ways that suit their needs. GIA partners and MPI will be less restricted in their ability to create arrangements that are mutually beneficial.
434. Option 3 does not have any substantive impact on effectiveness and clarity.

Option 4 – improve the dispute resolution process for compensation

435. Option 4 may not have significant impact on the effective criterion. Option 4 may better reflect the spirit of government and industry partnership because it shares costs related to biosecurity more effectively. It does this by providing a more cost-effective option for both parties through lower-level alternative dispute resolution processes. Equally, Option 4 reduces choice as legislation will now require the three steps, graduating up to

arbitration or appeal to High Court. However, the evidence shows claimants prefer the lower-level processes (there have only been four disputes submitted for arbitration since 2017).

436. Option 4 is more enduring because offering alternative dispute resolution that steers disputes towards cheaper processes leads to a more enduring system. From an access to justice perspective, this is positive as it improves the transparency and clarity of the law.
437. The change to require claimants to go to the High Court for high-value disputes is more future-proof and enduring because:
- the judiciary has specialist skills and authority to manage complex disputes;
 - it provides for transparency and better public accountability (noting that arbitration is confidential) for disputes of large sums of taxpayer money, which has a high public interest component; and
 - there are strong and well-known procedural safeguards with judicial proceedings, including the independence of the judiciary and decisions which have strong institutional authority.
438. However, this option comes with downsides. The current system works well. There are over 3500 compensation claims that have been made since 2017. Only four claimants have initiated arbitration, with a vast majority instead seeking to pursue the internal review and independent review processes MPI offers. This option would likely have little practical impact on what already happens operationally in administering the compensation scheme. It would, however, reduce the flexibility MPI currently has in how it resolves disputes. Inserting the independent panel process into legislation imposes parameters and requirements into how and which members are appointed to the panel which could make the process less efficient.
439. Option 4 however has the added benefit of being clearer than the status quo. From an access to justice perspective, the law becomes more transparent (noting however that MPI does already inform claimants about the alternative processes).

21.3. Which option best addresses the problem, meets the policy objective and delivers the highest benefits?

440. We recommend implementing all the options (Options 2, 3 and 4). Together, this package of changes would improve the efficiency and flexibility of the compensation scheme and would address grey areas in the compliance system.
441. The Minister's preferred option in the Cabinet paper is the same our recommended option.

21.4. Impact analysis of the preferred option

442. The impact analysis for compensation is covered in Chapter 23.

21.5. 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 – refine how non-compliance affects compensation eligibility	Option 3 – remove restrictions to vary compensation and enable upfront payment of future losses	Option 4 – improve dispute resolution process
Effective (better risk management)	0	+ Including breaches for the NAIT Act may increase compliance and help improve overall biosecurity behaviour. The costs are being equitably shared because the costs are still related to biosecurity risk.	0 More tailored arrangements with GIA could drive improvements in risk management and the sharing of costs of biosecurity. However, the proposed amendment is merely a technical change and the impact, while positive, may not be significant.	0 May better reflect the spirit of partnership because it confirms in legislation the more cost-effective option for both MPI and claimants. However, the overall effect is likely to be small so we do not expect much change from the status quo.
Adaptable (modern, enabling legislation)	0	+ Takes a holistic view of biosecurity by including the NAIT Act which contributes to biosecurity outcomes. The biosecurity system is more future-proof if related regulatory systems are better aligned.	+ MPI will have greater ability to manage the compensation scheme in ways that suits claimant or GIA needs.	0 Slightly more future-proof because offering alternative dispute resolution that steers disputes towards cheaper processes is given legislative backing. However, this is only a minor improvement on the status quo.
Efficient (burden on regulators and parties, and complexity)	0	0 Is no more or less efficient than the status quo.	+ MPI will have greater ability to work with compensation claimants in ways that suit their needs. GIA partners and MPI will be less restricted in their ability to create arrangements that are mutually beneficial.	- Reduces the flexibility MPI currently has in how it resolves disputes. For example, codifying the independent panel process imposes legislative parameters and requirements on the appointment of members to the panel.
Clarity (logical and certain, and clear roles)	0	+ Clarifying non-compliance and the definitions of key terms provides more transparency and certainty to both government and regulated parties.	0 Removing restrictions is a simple change to the legislation and may have no effect on this criterion.	+ From an access to justice perspective, the law becomes more transparent (noting that MPI does already inform claimants about the alternative processes). Option 4 may improve the transparency of the appointment of members to review panels.
Overall assessment	0	+ Ensures the law is clearer for all parties and could increase incentives to comply and improve behaviours.	+ While a technical change, addressing barriers to mutually beneficial arrangements produces net positive results.	0 The current settings do not fully cater to people's needs. Operational solutions have addressed the matter but have not solved the underlying issue. Explicitly providing for alternative dispute resolution processes ensures the law is more fit-for-purpose.

22. Compensation – the scope of compensable losses

22.1. Options

443. Options 3 and 4 are mutually exclusive – only one of these can be progressed. Option 2 can be delivered together with Option 3 or Option 4.

Option 1 – status quo

444. Option 1 is the status quo. Under this option, no change would be made to what losses are covered by the compensation regime.

Option 2 - enabling more detailed compensation entitlements and requirements via regulation

445. Option 2 is about enabling more detailed compensation entitlements and requirements via regulation. This option aims to enable the creation of regulations to set:

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

446. Option 2 would amend the Biosecurity Act to state that a person is eligible for compensation for loss arising from the exercise of powers causing damage or destruction of their property, or controls on the movement of goods, in accordance with:

- regulations; or
- if no regulations have been made, in accordance with the Biosecurity Act.

447. Option 2 would then insert a regulation-making power to set compensation levels for particular organisms, goods, sectors, or responses. The regulations may:

- set out specific prices, or a methodology for calculating prices;
- provide for more, or less, compensation than would otherwise be available under the Biosecurity Act;
- set out conditions on the payment of compensation;
- reduce the level of compensation paid as a result of specific non-compliance; or
- increase the level of compensation paid as a result of specific features of an industry or group.

448. Disallowance, and section 164D (requirement to consult) will apply.

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

- creating a schedule of payments for certain types of property;

- limiting or expanding how much compensation is paid out; and
- setting out bespoke regimes for certain industries or responses.

450. An example of this is from Korea which has the following schedule for compensation:³⁷

Figure 3 - Korea compensation schedule

Table 7.4. Compensation discounts for destroyed livestock

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

There was mixed feedback on Option 2 in the 2024 public consultation

451. Option 2 was included in the 2024 public consultation as Proposal 17. It received a modest majority support as there were several opposing submissions. Some submitters suggested that a compensation framework in regulation may only be useful in the following circumstances:

- emergency situations;
- when large numbers of animals are destroyed;
- there is a high volume of claims; and/or
- market values are distorted by the biosecurity event.

452. Fonterra Cooperative Group Ltd suggested that if the compensable amount was higher than the market price, this may create a perverse incentive for individuals to purposely infect their stock in the hopes of accessing a higher price.

³⁷ OECD, Producer Incentives in Livestock Disease Management (2017), [Producer Incentives in Livestock Disease Management](#).

453. Many submitters raised some concern about the applicability of a legislated compensation framework for their industry, or the flexibility of such a framework. For example, non-livestock industry stakeholders (such as horticulture and forestry) said that a schedule may be difficult to develop and maintain for their industry, citing the significant variation in year-to-year and regional values, and wide range of crop types.
454. Animal and Plant Health Association of New Zealand stated that legislated compensation schedules have not been successful in other jurisdictions, citing the United Kingdom's compensation framework for Foot and Mouth Disease as an example.
455. MPI considers empowering regulations to be of low-risk. It enables the creation of pricing schedules, rather than actually creating such schedules. Regulations would enable compensation to be more adaptable and tailored to the varied nature of incursions and response, and pricing schedules could provide greater certainty and clarity to claimants on how much compensation they could receive.
456. Submissions expressed concerns about the workability of a schedule for a given sector. For instance, many non-livestock industry stakeholders said that a schedule may be difficult to develop and maintain for their industry, citing the significant variation in year-to-year and regional values, and wide range of crop types. We consider that these concerns can be best worked through when work is undertaken to develop such schedules in the future. This would include cost-benefit analysis, consultation and Cabinet approvals. Where schedules are not suitable, they need not be used – the proposal just enables this process to occur.
457. There has been a minor change to Option 2 since the public consultation. We have clarified that Option 2 can be used to both limit and expand the scope of compensable losses.

Options 3 and 4 – limiting compensation of consequential loss

458. The remaining options (Options 3 and 4) contain three elements.
- The first element is a **technical amendment to clarify that the Biosecurity Act does not provide compensation for the effects of a pest or disease itself**. Both Options 3 and 4 contain this amendment.
 - The second element is to do with **direct losses**. Both Options 3 and 4 contain this amendment. We propose to make current practice explicit in the legislation:
 - for tangible property or goods that are destroyed, make explicit that compensation is payable for the market value of tangible property or goods; and
 - for tangible property or goods that are damaged, make explicit that compensation is payable for the cost of repair/reinstatement or market value.
 - The third element is to do with **consequential loss**. This is where Options 3 and 4 differ.
 - Under **Option 3**, consequential loss is payable for the first 24 months of loss arising from an exercise of biosecurity powers that damages or destroys the claimant's tangible property or restricts the movement of the claimant's goods.

- All exercise of powers on a claimant in relation to the same pest or unwanted organism are treated as part of the same event for the purpose of the 24-month time limit (i.e. they do not start a new 24-month period). This is to fully give effect to the time-limit and to address the issue of a person who makes multiple claims in the same response (as was experienced during M. Bovis). We need to be clear that there is only one 24-month 'window' in a response. Where MPI exercises multiple powers over a property over time for the same response, these need to be deemed to be treated to be part of a single event and therefore a single 24-month window (which started on the first exercise of power).
- The Director-General has discretion to determine that a subsequent exercise of power is a new event, where there would otherwise be significant unfairness.
- Under **Option 4**, no consequential losses are payable.

Almost all submitters opposed any limits to compensation of consequential loss

459. Options 3 and 4 were included in the 2024 public consultation as Proposals 20B and 20E respectively. There were three other proposals that offered slightly different ways to limit consequential loss. Submitters generally responded to two main ideas (a time limit, or no consequential loss) and that is what we have focused on. This is why we have discarded the three other proposals (which were just different variations of how to limit consequential loss).
460. Most submitters opposed either a time limit or removing consequential loss. Submitters were against the scope of compensable consequential losses being reduced in any way.
461. The overall point from submitters was that the Government should not reduce compensable consequential losses in any way. There were a variety of different reasons for this:
- Submitters said compensation is an important incentive to report incursions and comply with responses.
 - Submitters had mixed opinions about whether less compensation would lead to a behaviour change towards proactive readiness. Many submitters suggested that MPI should support industry to take proactive action. Some suggestions included MPI funding proactive readiness initiatives.
 - For some submitters, insurance backed by industry schemes is available. However, submitters said that most primary producers must self-insure due to either the lack of availability of insurance, or the cost of insurance is prohibitive. Submitters stated that the lack of options available to farmers to effectively mitigate the risks of some types of incursions (e.g. windblown viruses) is further compounded by this kind of loss being effectively uninsurable as underwriters will not insure 'unknown risks'.
 - Many submitters stated that any proposals need to better account for the potential of unnecessary (and unintended) hardship producers may face in a response.

Federated Farmers of New Zealand said that “...most farming enterprises do not have enough equity to ‘self-insure’, meaning in a large-scale outbreak in a no consequential loss compensation environment, a large number of farming enterprises will collapse financially and have to stop farming.”

- Submitters said that knowing there is compensation and support during recovery from an incursion helps reduce the stresses associated with a response.
- Regardless of whether they support a change to what consequential losses are compensable, most submitters opposed the ‘arbitrary’ timeframe in the proposal to set a time-limit on consequential loss. The reasoning behind this opposition is that there are many industries where the extent of consequential losses could not be determined within six months or a year.
- Where submitters do support placing limits on compensation through a timeframe, their support was dependent on the time limits being industry specific. Horticulture New Zealand stated “For example, some sectors with higher production flexibility, such as arable crops, can recover quickly and might be fully compensated within a short period of time. Other non-annual crops (e.g. fruit trees, forestry) require a longer time to establish plants and produce crops and have a longer production cycle.”
- Many submitters suggested reconsidering how consequential losses are funded. Several submitters suggested the Government should offer an insurance-type programme and that a biosecurity levy (for example, the Biosecurity (Response – Milksolids Levy) could act as stakeholders’ payment into this programme.
- Twelve submitters stated that if the status quo had to be amended, then a time-limit is preferable to removing consequential loss entirely from the compensation scheme. This support stemmed from the belief that claimants would see full compensation being granted, albeit with a time limit applied. This approach was seen as the fairest of the proposals other than the status quo. Submitters however added that this time limit should be industry-specific rather than an ‘arbitrary’ blanket time limit for all industries.

MPI response

462. The potential consequences and impact of the proposals that submitters provided in their submissions was discussed in the RIS that supported public consultation. The feedback from submission solidified our understanding of the potential consequences of reducing consequential loss payments for the primary sector. In particular, it gave us further information of how consequential loss timeframes are different for some sectors such as horticulture because, for example, non-annual crops require a long time to establish and produce.
463. To further understand this impact, MPI worked closely with one submitter to develop a case study of how changing consequential loss could affect industries with recovery times of greater than one year. This informed our impact analysis which is set out in Chapter 23.

22.2. Assessing options to address the problem

464. The options are assessed against the following criteria below.
465. The focus of the 'Effective' criterion for improving the operation of compensation will be on the question of incentives and the management of fiscal pressures the Crown is exposed to.
466. For this topic, in addition to the main criteria, we have also included additional criterion around fairness. This is because the options which reduce the scope of consequential loss that is compensable could have significant impacts on producers.

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

Option 2 - enabling more detailed compensation entitlements and requirements via regulation

467. Option 2 (enabling more detailed compensation via regulation) aims to futureproof the compensation regime by introducing the ability for the Government to make regulations that can establish broader or more detailed compensation settings. The ability to vary compensation based on organism or sector enables more tailored risk-sharing between the Crown and claimants, and ensures the law is more adaptable and enduring. This may incentivise risk mitigation and loss mitigation which would better protect New Zealand from biosecurity risk.
468. Option 2 is efficient as the scheme can be tailored to the varied nature of incursions and response. Compensation could be tailored to a specific pest in the transition from response to long-term management, considering specific context including the distribution of risks and benefits.
469. Option 2 may affect the clarity of the scheme. Option 2 would require regulations to be developed each time we vary compensation. Having different regulations for different responses, organisms or sectors might make compensation more complex to understand and less transparent. Feedback from our 2024 public consultation noted that schedules may not work well for some industries citing the significant variation in year-to-year and regional values, and wide range of crop types. Additionally, while Option 2 could enable MPI to respond better to the needs of producers during an incursion, it may result in different compensation for different incursions and variability across sectors leading to a perception of 'winners' and 'losers'.

Option 3 - consequential loss is compensable for the first 24 months of loss & Option 4 - no consequential losses are payable

470. Option 3 aims to limit how much consequential loss is compensable, and Option 4 would remove consequential losses entirely. Consequential losses can make up a significant portion of compensation payments. Payments can include losses related to:

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

471. Claims data for three previous responses (as at 31 March 2025) are used to illustrate how much would have been paid out if the settings for consequential losses were different.

Table 2 - Types of compensation

Types of compensation	<i>M. bovis</i>	<i>B. ostreae</i>	Fruit Fly
Direct loss paid	\$140.05 million	s9(2)(j)	Nil.
Consequential loss paid	\$149.96 million	s9(2)(j)	\$0.25 million ³⁹
Total compensation paid	\$290.01 million ⁴⁰	s9(2)(j)	\$0.25 million ⁴²

Table 3 - *Mycoplasma bovis* consequential loss types

Loss Type	Loss Explanation	Compensation Paid
Grazing	Losses from the cancellation of grazing contracts	\$5,544,945.97
Loss of sales income	Losses from being unable to sell cattle as intended	\$24,776,120.32
Loss of beef production income	Losses in beef production income as a result of BNZ's exercise of powers	\$33,411,524.50
Loss of milk production income (full herd)	Losses in milk production following the depopulation of an entire herd	\$20,507,310.42
Loss of milk production income (partial herd)	Losses in milk production following the depopulation of part of a herd	\$8,031,604.34
Other loss of production	Other losses of production such as crop losses, lost farm profits over a period of time etc.	\$1,370,602.65
Novel issue	Costs of mitigation, stock repopulation deposits, losses arising from feed pressures etc.	\$10,064,187.24

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

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

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

41 Similar to footnote 2, this includes income lost from destroyed stock based on eventual value at harvestable size.

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

Repopulation	Additional costs incurred in repopulating stock culled by BNZ. Where the amount paid exceeded that received for stock destruction.	\$8,181,565.54
Loss of milk production (rapid payment)	Losses in milk production following the depopulation of an entire herd. Fast track initial payment process.	\$33,583,256.93
Loss of calf rearing income	Losses in income due to an inability to rear calves.	\$1,745,921.15
Loss of sales contract income	Losses in income due to the inability to fulfil a cattle sales contract.	\$469,495.04
Professional fees	Various fees incurred by claimants in mitigating greater losses or seeking support in preparing complex compensation claims.	\$774,898.40
Interest	Interest on losses from the point income should have been received until the point compensation was paid.	\$1,497,112.97
Total		\$149,958,545.47

Table 4 - *Bonamia ostreae* consequential loss types
s9(2)(j)

Table 5 - Fruit fly consequential loss types

Loss Type	Loss Explanation	Compensation Paid
Loss of income	Losses in income either due to being unable to collect customer's waste or being unable to sell fruit/vegetables during the period the Controlled Area Notice was in place.	\$18,893.13
Additional costs	Additional costs in disposing of waste material due to Controlled Area Notice requirements. Paid to two claimants that were both waste removal companies.	\$237,299.76
Total		\$256,192.89

472. We have not been able to provide costs for the options that involve limiting consequential losses by time limits. Accessing accurate data as to when losses were actually incurred during these responses is complex and not part of MPI's systems.
473. There have also been instances when compensation was provided for losses of intellectual property under the Plant Variety Rights Act 2022. This Act grants plant breeders and developers the exclusive right to commercialise propagating material (e.g. seeds or cuttings) of new varieties. 9(2)(ba)
474. We anticipate the following impacts if consequential losses are limited or removed:
- Consequential losses can be a significant area of loss for producers and limiting it could result in hardship. If they receive less compensation for consequential losses, these businesses may struggle to continue to operate. This may also result in some primary producers leaving the industry if they have concerns that the risk of incursion and loss is too great to justify their operations. Some submitters raised this in the 2024 public consultation as a very significant issue for them.
 - Certainty of fiscal risk and affordability could improve for the Crown and for GIA partners in an environment of ongoing fiscal pressures.
 - Under the status quo, there are no incentives for private insurers to enter the market and provide cover for biosecurity. The status quo means that the government is covering almost all biosecurity losses. If consequential losses are limited or removed, this may create space for insurance companies to create a market for biosecurity insurance.
 - Excluding consequential loss will impact on people's behaviour. This could be positive or negative. If there were to be no compensation for consequential loss (as is the case in many countries), then in some responses, there may be less incentive for producers to co-operate with MPI during a response, or to report pests and diseases. Conversely, compensation payments which do not fully cover a claimant's losses could incentivise better biosecurity management as producers may want to reduce their exposure to risk. A core assumption in our assessment is that compensation payments which do not fully cover a claimant's losses incentivises better biosecurity management. This assumes that producers who face greater exposure to losses would seek to mitigate their risks by improving biosecurity practices. The OECD report *Producer Incentives in Livestock Disease Management* provides some basis for this assumption.⁴³ The OECD report suggests that balancing compensation for biosecurity to farmers is essential. If Governments provide overly generous compensation, farmer may reduce their own biosecurity efforts and take on more risks, creating a 'moral hazard' where the expectation of compensation weakens their incentive to manage risk in the first place.

43 OECD (2017), *Producer Incentives in Livestock Disease Management*, OECD Publishing, Paris.
<http://dx.doi.org/10.1787/9789264279483-en>

- New Zealand would be more aligned with other countries which do not pay compensation for consequential losses. This suggests our compensation scheme is generous by international standards. However, submitters to the public consultation commented that New Zealand has a different context, both in terms of our geographical isolation, our disease profile, and also in the agricultural subsidies other countries provide to their primary industries. A table of other countries that we looked, and whether they paid consequential loss is below. The table also notes where insurance is available.

Table 6 - Compensation in other countries

Country	Compensation for consequential loss	Private insurance available for biosecurity
New Zealand	Yes	No
Germany	No	Yes
Korea	No	Yes
Canada	Minimal business interruption costs covered	Limited
Ireland	Only supplementary income payments under the TB regs	No
Australia	No	Limited
United Kingdom	No	Limited

475. Option 3 seeks to limit consequential losses based on a 24-month time limit. This option is likely to meet the effective and adaptable criteria but is expected to be significantly worse for efficiency, clarity and fairness than the status quo.
476. Option 3 meets the effective criterion because limiting consequential loss incentivises producers to improve biosecurity management to reduce their exposure to ineligible losses. Option 3 meets the adaptable criterion because these retain the availability of a compensation scheme which covers both direct and consequential losses but helps to improve the affordability and long-term sustainability of the scheme.
477. However, Option 3 comes with significant drawbacks. Limiting consequential to a time-limit could be highly unfair for some industries. The timing of when losses are incurred depends heavily on the nature of the response and industry. Limiting compensation for consequential loss to a set period could have quite significant impacts on those affected. For example, for the *B. ostreae* response which affected oysters, the value of oysters increases over time until they are at a harvestable size (after approx. 3 to 4 years growth). If compensating within a 24-month timeframe from the point they were destroyed by MPI, this would only partially recompense affected oyster farmers for their losses. Farmers would then be without half of their income for a period of 3 to 4 years while they reseeded and grew replacement oyster stock.
478. Further, operationalising Option 3 would involve more complexity. It requires tracking when a producer first becomes affected by a power and assessing whether the losses claimed fall within or outside of the time-limit. It also requires tracking whether subsequent exercise of powers is part of the same response event. MPI does not

currently have processes in place for this. This is also why we do not have previous response cost data to provide for Option 3.

479. Option 4 would exclude compensation for all consequential losses. Option 4 meets the effective criterion because limiting consequential loss will impact on people's behaviour. Producers may feel more accountable to improve biosecurity management to reduce their exposure to ineligible losses. Option 4 would make the compensation scheme much more efficient as the remaining losses in scope are simpler to assess. This means the costs of biosecurity are shared more equitably between government and producers and ensures the compensation scheme is more sustainable.
480. As noted earlier, consequential losses can be a significant area of loss for producers and limiting it could result in hardship. For this reason, Option 4 is significantly worse than the status quo for the fairness criteria.
481. Overall, while Option 4 makes the scheme more inflexible, the options would very strongly support the objectives on delivering better incentives for proactive biosecurity management and prudent financial management for the Government.

22.3. Which option best addresses the problem, meets the policy objective and delivers the highest benefits?

482. Under Option 2, there would not be any immediate changes to the scope of consequential loss paid. However, if regulations or schedules are delivered, it could go some way to providing more certainty about the Crown's fiscal exposure for compensation and deliver more prudent fiscal management.
483. For Options 3 and 4, we note the following considerations with limiting consequential losses:
- compensation in the Act is a 'minimum entitlement'. The Government of the day may choose to fund additional support (through, for example ex gratia payments and targeted support packages) where there is a case to do so;
 - research has suggested a moral hazard with paying too much compensation (that it incentivises risky behaviour and disincentivises risk mitigation);
 - the Government's compensation scheme is acting as a 'last resort' insurance scheme rather than as a recognition of the loss government powers create;
 - we need to better incentivise biosecurity practices and risk mitigation; and
 - compensation is a significant cost for the Crown that is unlimited and uncapped.
484. Option 3 responds to the feedback from public consultation that a timeframe may be a fairer approach to limiting consequential loss compared with removing it entirely as per Option 4.
485. Option 4 would deliver best on the outcome of reducing the Crown exposure to fiscal liability and would dramatically simplify the administration of the compensation scheme (where only direct losses are compensable). However, it could lead to significant equity issues for claimants.

486. Which option is best depends on what the Government's priorities are (whether it is balancing fiscal risk, fairness, incentives to report, and/or incentivising biosecurity practice and risk mitigation). It also involves an assumption (based on compelling OECD evidence) that transferring more risk to producers will result in better proactive biosecurity practices.

Option 2 and 3 together is the best way to improve on the status quo

487. Considering everything we have assessed and analysed, on balance, we consider that delivering both Options 2 and 3 together is the best way to improve on the status quo. Option 2 provides flexibility to the compensation scheme, and Option 3 is a fairer way to manage the uncapped liability of consequential losses, but which avoids the significant unfairness brought about by Option 4.
488. We see Options 2 and 3 working together. Under the new settings, the uncapped fiscal liability to the Crown is better managed. Moreover, beyond the issue of costs, striking a better balance of what is compensated creates positive incentives for affected people to recover as quickly as possible and to practice better biosecurity. The risk of paying for long or unlimited periods of time is that claimants become unmotivated to recover or take steps to recover.
489. Option 2 can also look to mitigate any significant unfairness that Option 3 might deliver. If, for instance, lesser or greater compensation is required for a given sector or response, regulations could create settings that go above the minimum requirements set out in the Biosecurity Act.
490. The Minister's preferred option in the Cabinet paper is the same as our recommended option. A second option for Cabinet's consideration, which the Treasury prefers, is to limit consequential losses to 12 months, and to income and professional fees only.

22.4. Impact analysis of the preferred option

491. The impact analysis for compensation is covered in Chapter 24.

22.5. 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 – enable detailed settings in regulations	Option 3 – consequential loss compensable for 24 months	Option 4 - no consequential losses
Effective (better risk management)	0	+ Ability to vary compensation based on specific responses or sectors enables tailored risk-sharing between the Crown and claimants. On the assumption that this leads to lower compensation payments for the Crown (and therefore industry taking on more risk), this may incentivise producers to mitigate risk.	++ Could encourage producers to mitigate their exposure to risk, particularly following an outbreak. Could better share the costs of responses and who bears risk between producers and government. Could be more commensurate with the length of a biosecurity response.	+ Could incentivise producers to mitigate their exposure to risk. But could also discourage producers from reporting pests and diseases to MPI. However, this assumption is untested. Would reduce costs of compensation and allow the Government to manage fiscal pressures more sustainably.
Adaptable (modern, enabling legislation)	0	++ The flexibility to establish alternative compensation would make the law significantly more adaptable and enduring. This enables the scheme to be tailored to the varied nature of responses.	+ Would retain the core operations of the existing scheme but puts a time limit on the payments. This improves the Act's settings as it ensures the long-term sustainability of the scheme in the Act, without severely affecting the long-term social license to operate biosecurity responses.	-- The compensation scheme would be substantively amended, and against the strong feedback provided in public consultation. This means the Act would not be future-proof if significant hardship and fairness issues arise from much lower compensation payments which then require further legislative amendments.
Efficient (burden on regulators and parties, and complexity)	0	+ Regulations would be required each time MPI wants to vary compensation. However, MPI does not expect it would vary compensation often. Moreover, such regulations would improve how quickly and easily the scheme works for government and claimants (for example, regulations that set out a schedule of prices for stock that is destroyed versus MPI calculating market value for each claim).	- There would be administration costs to implement and deliver this option. This requires tracking when a producer first becomes affected by a power, the dates for the claims, and whether the claims fall within the scope of the limit. Depending on how MPI designs the system, there could be efficiencies to mitigate these risks.	++ Removes complexity from the operation of the scheme and reduces the administrative burden on both government and claimants.
Clarity (logical and certain, and clear roles)	0	0 Having different regulations for different situations could make the law less clear for claimants. Conversely, claimants (and the Crown) have greater clarity on their entitlements.	0 Expressly stating the categories of losses would provide better certainty. However, how the time limit works could be complex to understand for claimants.	++ Only destruction or damage to tangible property would be compensable making the scheme much simpler to understand (as understanding and assessing consequential loss can be complex).
Fairness (how fair is the option for claimants)	0	0 This will depend on the regulations. If, for example, regulations simply expand on the market value discussed in the Act by stating market value prices in a regulation, it is no more or less fair than the status quo. If a regulation limits how much would be paid compared with the status quo, this could be unfair. Conversely, if regulations go above the Biosecurity Act and provide more generous compensation, then this option is fairer for claimants. This is therefore extremely case-by-case dependent.	-- Could be very unfair for some industries. For some industries the value of their stock increases over time until they are at a harvestable size (e.g. for oysters, approx. 3 to 4 years growth or forestry over 25 years). If only 24 months of consequential loss was compensated, farmers would only be partially recompensed for their losses.	-- Not providing compensation for consequential loss, particularly income, could lead to significant fairness issues. Some producers are heavily leveraged. If they receive less compensation, these producers may struggle to operate. Some producers may choose to leave their industry if they have concerns about potential losses that are too great to justify their operations.
Overall assessment	0	++ Ability to create bespoke arrangements recognises the need to tailor approaches to the risk being managed.	+ While this proposal improves the incentives on producers to manage risk and improves the affordability of the scheme for the Crown, it seeks to balance the tension between the cost of the scheme and fairness for claimants. However, the proposal involves complexity and administrative costs to operate. There is also unfairness for certain sectors where the stock takes a long time to reach harvestable value.	+ While this makes the scheme less flexible, this option would strongly support the objectives on delivering better incentives for proactive biosecurity management and prudent financial management for the Government.

23. Compensation - impact analysis of proposals

492. There are several significant points to bear in mind when considering this Chapter:

- A traditional 'Cost-Benefit Analysis' looks for *new* costs and benefits. There are no *new* costs or benefits to consider with the compensation proposals. Instead, the preferred option would change the percentage paid per impacted party from the status quo (i.e. the distribution of cost will change). This is explained in this Chapter.
- We used a case study model to illustrate the potential change in distribution. We expect the trend represented by the case study to hold true across industries and circumstances. This means that where we have shown that liability is expected to increase or decrease, we expect that would be the result regardless of industry or circumstance.
- However, we do not expect the dollar value of the change to be the same across all circumstances. In fact, we strongly expect significant differences for different industries and events in the dollar value changes.

23.1. Introduction – horticulture industry case study - Does recovery time matter?

493. As Chapter 22 discussed, what is claimable for compensation impacts the cost the Crown is liable for after an event (referred to in this Chapter as the 'Crown liability'). It also shows that Crown liability can vary widely for different industries.

494. This percentage paid per liable group (industry or Crown), will be by the preferred option.

We contracted Sapere Consultancy to investigate the implications of the preferred option using the horticulture industry as case study

495. We used an external company, Sapere, to derive the relationship between the direct losses and consequential losses for an event that affected a major horticulture industry for the purposes of modelling the distributional change.

496. We contracted Sapere to model a distribution of liability using data from a recent historical event affecting the horticulture industry. This event had a multi-year time investment cost for recovery, from which they derived the relationship between the direct losses and consequential losses for that event.

497. Sapere modelled how the proposed changes would impact compensation by changing the distribution of liability. From their work, we have developed a simplified model to isolate and illustrate the potential implications of the preferred option. We provide an overview of the methodology and findings below.

23.2. Methodology for case study

498. For the purposes of illustrating impact of the preferred option to the distribution of costs, we made the following calculations and assumptions.

Status quo formulas

499. The Biosecurity Act provides the status quo compensation scheme, where a claimant may request compensation for losses from the moment of loss, until they are returned to a status that is no better or worse than at the time of loss. This can be represented by the formula:

$$\text{Claimable Losses} = L_d + L_c$$

$L_d = \text{direct losses}$ $L_c = \text{consequential losses}$

500. A percentage of claimable losses will then be covered by the Crown (referred to in this paper as the Crown liability):

$$\text{Crown liability} = P (L_d + L_c)$$

where $P \geq 50\%$

The Crown has agreed to cover a percentage (P) of claimable losses, where P is negotiated with individual GIA members and cannot be less than 50% of the claimable losses.

501. Finally, the remaining percentage of claimable losses is covered by the industry:

$$\text{Industry liability} = 1 - \text{Crown liability}$$

$$\text{Industry liability} = 1 - [P (L_d + L_c)]$$

Industry is liable for claimable losses outside of the percentage covered by the Crown.

502. We used an external company, Sapere, to model to a distribution of liability using data from a recent historical event affecting the horticulture industry. This event had a multi-year time investment cost for recovery, from which we derived the relationship between the direct losses and consequential losses.

$$L_c = [P_2(L_d)] \times t$$

t = number of years required for claimant status to return to neutral

$$\text{Claimable losses} = L_d + L_c$$

$$\text{Claimable losses} = L_d + [P_2(L_d)] \times t$$

503. Consequential losses were found be 41% (P_2) of the direct costs annually.

$$L_c = 41\%(L_d) \times t$$

504. For this exercise, we assume these costs occur over a timespan of five years and so have set five years as the longest recovery time.

t = number of years required for claimant status to return to neutral = 5 years

$$\text{Claimable losses} = L_d + [41\%(L_d)] \times 5$$

505. We set direct losses to a constant value for the purposes of the model. Direct losses those that must be paid to replace and reinstate to a same or similar status as immediately before the event. For example, the replacement cost paid by the claimant is a direct loss.

where $L_d = \$100,000,000$

$$\text{Claimable losses} = L_d + [(41\%(L_d)) \times 5]$$

$$\text{Claimable losses} = \mathbf{100\ mil} + [(41\%(L_d)) \times 5]$$

506. We then use this value for the direct losses to calculate the estimated consequential losses:

For $L_d = \$100,000,000$;

then $L_c = 41\%(100\text{mil}) \times 5$

then $L_c = \$205,000,000$

Consequential losses are the costs that arise separate from and addition to any replacement or reinstatement costs (direct losses). See Chapter 20 for more information.

507. Then use those figures to calculate the total claimable losses under the status quo.

$$\text{Claimable Losses} = L_d + L_c$$

$$\text{Claimable losses} = \$100,000,000 + \$205,000,000$$

$$\text{Claimable losses} = \$305,000,000$$

508. As Chapter 22.2 illustrated, different industries will incur different types of costs, and therefore have very different ranges of losses. However, we eliminate this variation for this model to highlight the effect of the two changes proposed.

509. It remains important to note that the direct losses and consequential losses vary according to the property lost and, so different industries have different consequential losses. However, the overall trend that the cost of consequential losses outweighs the cost of direct losses is true across industries.

Preferred option analysis compared to the status quo

510. The preferred option seeks to limit the total claimable losses by altering the claimable losses formula:

$$\text{Claimable Losses} = L_d + L_c$$

$$L_c = \mathbf{income\ loss}$$

511. The model defined the relationship between direct losses and income loss as an annual income loss equivalent to twenty eight percent (P_2) of the direct losses:⁴⁴

$$\text{income loss} = L_c = + 28\%(L_d)$$

512. The preferred proposal changes the time variable to the first year since the direct loss:

$$\text{Claimable losses} = L_d + [28\%(L_d) \times t]$$

$$\mathbf{t = first\ two\ years\ since\ the\ direct\ loss = 2}$$

⁴⁴ This figure is the estimated orchard gate value in 2023 (\$295.8m) from Table 4 in Martin Jenkins (2024), adjusted for estimated growth between years from the Hawke's Bay pip fruit orchard model, applied to the proportion of land affected (35%).

23.3. Case study result and discussion

Result

513. Using the methodology set out in the previous section, this results in a change in the sum of losses which are claimable:

Table 7 - Case study results

	Status quo	Preferred option
Claimable Losses	\$305 million	\$156 million
Time restriction for claimable loss	None	Two years
Claimable consequential losses covered	No change	Income only

Who bears the costs?

514. The percentage paid per impacted party from the status quo is defined by individual GIA agreements between industry and the Crown. Under the GIA, the most common agreement between levy payers and the Crown is a 2:1 split, where the Crown provides compensation for 2/3rd of claimable losses and levy payers are responsible for the remaining 1/3rd.

$$\text{Crown Liability} = P \times (\text{Claimable losses})$$

$$\text{where } P = \frac{2}{3}$$

515. We can illustrate the change in Crown liability:

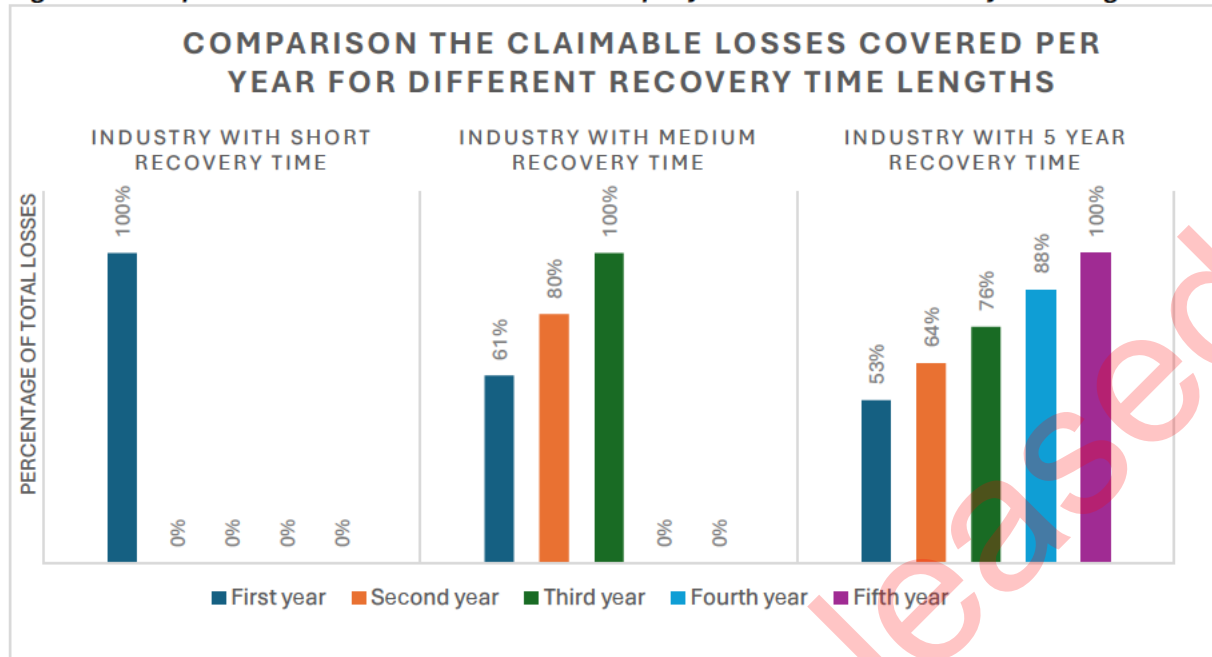
Table 8 - Change in Crown liability

	Status quo	Preferred option
Claimable Losses	\$305 million	\$156 million
Crown liability	\$203.33 million	\$104 million
Industry liability	\$101.67 million	\$52 million
Liability for losses remaining after claimable losses	\$0	\$149 million

516. While the amount that is claimable against the compensation scheme would change, the total cost of event would still have to be paid by someone.

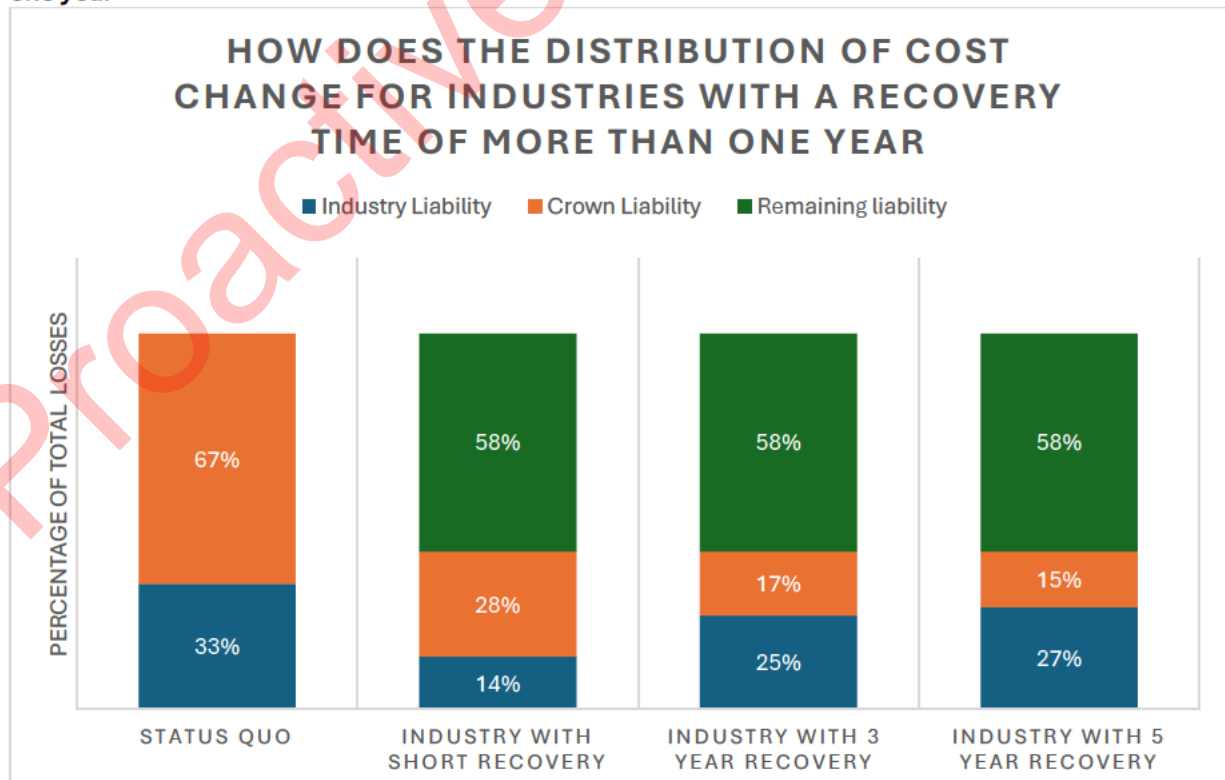
How do the proposed changes impact different industries and the Crown equitably

517. To analyse this, first, we can isolate time and assume status quo conditions for all the other variables, including consequential losses. Under that assumption, we can compare the cost burden for industries with different expected recovery times, if only the costs during the first year are covered.
518. Below we illustrate the percentage of the status quo claimable losses, which would be covered for industries with a short (one year), medium (three year) and long (five year) recovery time:

Figure 4 - Comparison the Claimable losses covered per year for different recovery time lengths

519. This graph shows that a time limitation of one year may result in some industries being able to claim against more losses, than other industries for whom otherwise claimable losses occur after the first year.

520. Next, we can adjust the model to incorporate the impact of second proposed change. If the claimable losses are limited to direct losses and the first year of income loss, the distribution of costs for the three types of industries may be:

Figure 5 - How does the distribution of cost change for industries with a recovery time of more than one year

	Status Quo	Industry with short recovery	Industry with 3-year recovery	Industry with 5-year recovery
Industry Liability	\$101,666,667	\$42,666,667	\$75,946,667	\$82,773,333
Crown Liability	\$203,333,333	\$85,333,333	\$52,053,333	\$45,226,667
Remaining liability	\$0	\$177,000,000	\$177,000,000	\$177,000,000

521. For the purposes of this model, a linear distribution of cost is assumed. This is to simplify illustrating the change in who is likely to be liable for the total costs. It should be noted that different industries will vary and the distribution of costs over time is unlikely to be linear in most cases. However, as is shown in the graph above, industries with more of their claimable losses in the claimable window, will benefit more from Crown compensation availability than others.

23.4. Conclusion

522. The model found there is an equity consideration to applying a time-limit to consequential loss.
523. Industries which have a short lead-in time after a loss, before restoration of profitability, would benefit more from the proposed changes than an industry with a long lead-in time.
524. For example, replacing a farmed oyster requires three years of production costs prior to seeing returns. By comparison, other industries may approach the market to replace lost stock or product in a similar or equal state to what was lost within a year.

23.5. Impact analysis

525. The following tables present the case study in the usual impact analysis format. However, we have separated monetised and non-monetised impacts, to make the tables easier to follow.

Monetised impacts

Table 9 - Claimable losses and impact of options from the case study

	Status quo	Option 3
Claimable Losses	\$305 million	\$156 million
• Crown liability	\$203.33 million	\$104 million
• Industry liability	\$101.67 million	\$52 million
Liability for losses remaining after claimable losses (Remaining liability can fall to various parties: industry; insurance companies; the Crown if the Crown decides to provide support or ex gratia payments); charities; the public.	\$0	\$149 million

Table 10 - Breakdown of how preferred option affects groups compared to the status quo using case study⁴⁵

Affected groups	Comment	Change in cost liability	Evidence Certainty
Compensation Scheme is the impacted party	Overall, less costs would be covered by the compensation scheme. So the liability for compensation costs will decrease.	–\$149 million The “–” indicates a reduction from the status quo.	Medium
Liability of claimable losses for the Crown	Overall, less costs would be covered by the compensation scheme. So the liability for compensation costs will decrease for the Crown.	–\$99.33 million	Medium
Claimable losses for private entities and individuals of industry participating in the Biosecurity Act’s compensation scheme	Overall, less costs would be covered by the compensation scheme. So the liability for compensation costs will decrease. However, some of these entities would be expected to have overlap with the undefined impacted group below.	–\$49.67 million	Medium
Remaining cost liability for unclaimable losses. Impacted party not yet defined. (Remaining liability can fall to various parties: industry; insurance companies; the Crown if the Crown decides to provide support or ex gratia payments)	Costs that are not included in the compensation scheme still exist and liability for those costs must be held by someone.	+\$149 million The “+” indicates an increase from the status quo.	Medium
Total monetised liability costs redistributed	Of the original estimated \$305 million compensational costs, \$177 million of those costs would be redistributed.	\$149 million	Medium

Non-monetised costs and benefits

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Levy payers who fund biosecurity response funds	- Increased risk that some industries (i.e. those subject to the NAIT Act) could be penalised more than others. - Potential that inclusion of compliance with NAIT Act (considered ‘complicated’ and ‘easy to fail’) may reduce major livestock industries willingness to participate in Government-industry collaborations and erode trust in Government services.	None (as explained at the start of this Chapter)	High

⁴⁵ These values assume that costs are spread out evenly across a recovery periods.

Taxpayers (Crown appropriation for non-earners)	- Proposed changes reduce the cost of compensation payouts to taxpayers via Crown funding. - Improving the clarity of the law by providing greater certainty to both the Government and claimants on what the terms 'serious or significant way' means. - Expected that stewardship of crown funds will be improved, if non-compliance that increases compensable costs are excluded from compensation.	Medium	Medium
Agricultural sector (other than the claimant)	- Direct costs are none, as the current compensation system does not consider the costs associated outside of the "directly affected". However, if more of the costs are placed with the affected industry members, it <i>will</i> have indirect flow on effects that are not considered by a CBA and worth noting by decision-makers. These may include, but are not limited to, pressure on the agriculture workforce, loss of future expected revenue, and increased costs of recovery. - Flow-on impacts to wages and sectors is expected, but not directly reviewed for these proposals as the compensation scheme does not extend to them and data is insufficient to model relationships between direct parties and indirect parties.	Low	Low
Consumers	Flow-on impacts to wages and sectors is expected, by not directly reviewed for these proposals.	Medium	Low
Non-monetised costs		Low - Medium	Low - High
Additional benefits of the preferred option compared to taking no action			
Claimants and their representatives	Easier to lodge a claim as the cover boundary would be clearer. Ability to negotiate terms of compensation as required may be of benefit to providers and users.	Low	Medium
Biosecurity system	Potential incentivised good biosecurity risk management behaviours which will reduce demand on compensation schemes.	Low - Medium	Low
Agriculture sector	May lead to greater understanding of the industries within the sector because more descriptive data will be needed in claims.	Low	Low
Non-monetised benefits		Low - Medium	Low

PART 4

OFFSHORE AND BORDER

Proactively Released

24. Part 4: Offshore and Border - Introduction

526. Part 4 addresses areas of the Biosecurity Act to do with offshore and border biosecurity.
527. The biosecurity system manages risks through multiple different layers.
- Risk is managed offshore to reduce the chance of pests and diseases getting to New Zealand. The Biosecurity Act does this by enabling strict controls and requirements for imported goods.
 - Risk is managed at the border by screening incoming goods, passengers, mail, and craft.
 - Other agencies also play a part. For example, public health officers and port/airport companies undertake surveillance, response, and management (e.g. habitat management) activities at the border. A key issue for public health officers is preventing exotic mosquitoes entering and becoming established in New Zealand.
528. Managing biosecurity risks offshore and at the border is easier and more and cost effective than trying to manage risks by launching a biosecurity response once pests and diseases have arrived.
529. Part 4 covers the following issues:
- the development of import health standards;
 - section 24 – independent review panels for import health standards;
 - containment and transitional facility approval; and
 - definitions related to unauthorised goods.
530. Each topic is structured in the same way:
- background to the topic;
 - problem / opportunity;
 - options;
 - assessment of the options;
 - preferred option; and
 - impact analysis of preferred option.

25. Development of import health standards

25.1. Background

How the Biosecurity Act manages the risk of imported goods

531. MPI develops Import Health Standards (IHSs) under section 23 of the Biosecurity Act. IHSs set the requirements that risk goods must meet before they can be given biosecurity clearance. Risk goods cannot 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.
532. 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 their representatives; and
 - consideration of any issues raised during the consultation period when developing the final version of an IHS.
533. 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.

The IHS system is not keeping up with trade demand

534. 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 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 infrequently, and yet require an IHS to be lawfully imported. Requiring a comprehensive IHS process may not be proportionate or necessary.
535. In some aspects of IHS development there are operational improvements that we can make. For example, consultation on draft IHSs can be made more efficient by using tailored approaches where this makes sense. Online workshops and direct discussions

could replace traditional methods such as seeking formal written comments on comprehensive documents.

536. However, if the status quo remains unchanged, even with operational improvements, we expect that the import system will continue to not keep up with trade demand. Many IHSs have not been reviewed in the last five years (and some have not been reviewed for 20 years). There is also a sizeable backlog of unmet requests which will continue to grow.
537. This outcome would not support Government priorities to facilitate trade and enable innovation in the primary industries.

25.2. Problem or opportunity

538. 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, the ability to develop new standards, and to maintain and review existing standards, in a timely manner, are critical pain points.
539. 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.
540. The import system struggling to keep up with demand 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 result in limiting New Zealand producers' access to new genetic material for the plants and animals used in primary industries. This can result in lost opportunities to improve productivity and resilience, and to achieve premium prices through meeting the changing tastes of consumers.

25.3. Options

541. The options in this chapter are not mutually exclusive (excluding Option 1 which is the status quo). This means one, or any combination of Options 2 to 7 can be delivered to improve the development of IHS.

Option 1 – status quo

542. Option 1 would maintain the status quo.

Option 2 - amend the consultation requirements in the Act for IHS, focusing on a threshold of amendments having a ‘substantial effect’, and include a notice period for amendments made without consultation

543. Option 2 would amend the domestic consultation requirements in the Act for IHS, focusing on a threshold of amendments having a ‘substantial effect’, and include a notice period for amendments made without consultation.
544. Option 2 would amend the Act so that MPI’s obligations to consult are as follows:
- Consultation is **required** if the amendment is likely to have a substantial effect.
 - Consultation is **not required** if the amendment is not likely to have a substantial effect.
545. Amendments will be considered as having a substantial effect if they:
- will require substantial change to behaviours of importers or exporters;
 - allow or preclude movement of passengers or new lines of trade;
 - impose substantial new costs or constraints⁴⁶ on anyone; and
 - substantially change how well risks are managed.⁴⁷
546. This includes the creation of new lines of trade, removal of lines of trade, and implementing or removing risk management options.
547. Amendments that do not have a substantial effect include drafting clarifications, changing organisms on a pest list, updates to reflect changes in legislation or taxonomy, and updates driven by new information (for example, where a pest may now be present in a new country).
548. We also propose that where consultation is not required, there would be a public notification period of 10 working days before the draft IHS would come into effect. This notification requirement would involve the Director-General providing the draft amended IHS to the public.
549. The notice period would give stakeholders visibility of upcoming changes to import requirements and enable them to make operational changes before the new requirements come into force. The notice period would also give stakeholders the opportunity to tell MPI if there are any significant issues with the intended settings.
550. At the end of the notice period, the IHS would be finalised unless the Director-General withdraws it.
551. Removing some consultation requirements from the Biosecurity Act does not prevent MPI from choosing to consult where it would be appropriate.
552. Option 2 would not change MPI’s obligations under international agreements.

⁴⁶ These constraints may be financial, or non-financial such as the prevention of business operations due to regulatory barriers.

⁴⁷ Examples include implementing or removing risk management options.

This option is a combination of proposals we consulted on previously

553. Option 2 is a combination of two proposals we included in the 2024 public consultation (Proposals 22 and 23). Both of these proposals were about making technical amendments without consultation. Most submitters opposed both proposals.
554. For most submitters, while they recognised the need to speed up the delivery of IHS, they felt that consultation requirements remain important and should not be reduced to achieve operational efficiency. Submitters said that MPI would lose valuable knowledge from a wide range of experts and stakeholders if it does not consult. They also said frequent amendments made without consultation could require businesses to constantly monitor for, and adjust to, new requirements.
555. However, there was appetite from submitters for the way that MPI does consultation to change. We heard from plant germplasm importers that they would support shorter, more targeted consultation on technical amendments to IHS.
556. MPI has noted the strong feedback that consultation requirements should not be reduced is based on the view that stakeholders should be given the opportunity to provide MPI with information on science and unintended consequences that may not have been considered by MPI when developing IHS. The new Option 2 presented here responds to that.

Option 3 - enable the ability to issue one-off or ad hoc permits for goods being imported as a one-off or on a sporadic basis

557. Option 3 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.
558. Option 3 would also involve amending the Biosecurity Act so that these decisions are required to be published, similarly to the requirement for Chief Technical Officer equivalence decisions to be published (section 27(1)(d)(iii) of the Act).

A majority of submitters supported Option 3

559. Option 3 was included in the 2024 public consultation as Proposal 24. Many submitters said that having the ability to issue one-off or ad hoc permits would deliver efficiencies and encourages compliance because of the availability of a simpler process for irregular importation. Some submitters said that robust risk management measures and processes should be in place for goods eligible for these permits.
560. Some submitters said that it is incorrect to assume that small, one-off imports present less biosecurity risk. Other submitters said that the proposal could lead to a significant

influx of applications for permits that could eventually overwhelm MPI and require similar resources as developing an IHS.

561. Option 3 has been amended slightly since consultation to include a requirement for the decisions to issue one-off or sporadic permits to be published on the MPI website.

Option 4 - enable use of permits to allow trade to continue while a suspended IHS is being reviewed

562. Option 4 would enable use of permits to allow trade to continue while a suspended IHS is being reviewed. Under this proposal, 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.

A majority of submitters supported Option 4

563. Option 4 was included in the 2024 public consultation as Proposal 25. Supportive submitters said the proposals supports supply chain reliability, efficiency and industries that are particularly dependent on imports because it enables imports while an IHS is under review. However, many submitters said they were unsure what, if any, conditions could address the concern that led to an IHS suspension. Submitters said even if such conditions existed, they were unsure if the conditions would be commercially viable.
564. Additionally, some submitters said they would support the proposal if permits were only used where an IHS was suspended for non-technical reasons (for example, it is outdated or has not been used in a while).
565. Opposing submitters said if there is an issue that has led an IHS to be suspended, then all trade relating to that IHS must be stopped. These submitters said they could not understand how a risk that has led to a suspension could be mitigated sufficiently.

Option 5 - enable consultation on a risk management proposal for goods, rather than on the draft IHS itself

566. Option 5 would enable consultation on a risk management proposal for goods, 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.

A majority of submitters supported Option 5

567. Option 5 was included in the 2024 public consultation as Proposal 26. Supportive submitters said the proposal could result in more efficient development of IHS. Early engagement may result in fewer revisions being required and provides MPI and stakeholders with early insights for risk management proposals.

568. Submitters said that the focus on risk management for goods, rather than an IHS, fits well with risk identification and mitigation approaches.
569. A few submissions said that the proposal does not appear to make the process more efficient and could lead to increased risk to New Zealand producers. They said that it is the IHS that is the legal document that importers must comply with, and not a consultation document setting out risk analysis or risk management. These submitters added that stakeholders bring insights and expertise that can only be effectively applied to a fully developed draft IHS.

Option 6 - amend section 23(4) to enable risk assessments and analysis to be tailored to the scenario

570. Option 6 would amend section 23(4) to enable risk assessments and analysis to be tailored to the scenario. Our intent is to amend the Act to have a less prescriptive process in the legislation, and for the legislation to not be read as a step-by-step process. This would enable the tailoring of risk assessments to the circumstances. The intent is not to lower the level of protection that the biosecurity system provides.
571. We propose retaining in the legislation specific references to international obligations, costs and implementation factors (these are currently included within sections 23(4)(c), (e) and (f)). International obligations and considerations of science would still underpin the risk assessment process.
572. Option 6 is a new proposal that has not been publicly consulted.

Option 7 - amend section 27 to be clear that more than one IHS can apply to the same goods

573. Option 7 would amend section 27 to be clear that more than one IHS can apply to the same goods. This would make clear that multiple standards could apply to the same goods, and that compliance with the requirements of those standards must be achieved for the goods to be given clearance.
574. This option supports the long-term goal of having an automated system that will direct stakeholders to requirements, which is part of an ongoing regulatory efficiency programme to redesign the IHS system.
575. Option 7 is a new proposal that has not been publicly consulted.

25.4. Assessment

576. The options are assessed against the criteria below.
577. The focus of the 'Effective' criterion for the development of import health standards will be on the question of balancing stakeholder engagement, enabling trade, and managing biosecurity risks.

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	Is the option logical, consistent, easy to understand, and does it provide sufficient certainty?
Transparency	Will the option enable stakeholders to be better informed of MPI decisions and changes to IHS?

578. Option 1, the status quo, would limit changes to the operational and process improvements already underway. MPI expects that this would 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.

Option 2 - limiting consultation to amendments likely to be substantial in effect

579. Option 2 meets the effective and efficient criteria by enabling quicker amendments to standards to ensure they remain up to date to best mitigate biosecurity risk. It meets the adaptable criteria as it increases the system's flexibility and better enables it to adapt to future changes in biosecurity risk.

580. This option would make the system more operationally effective by reducing the administrative burden associated with consultation requirements.

581. It may also reduce clarity for stakeholders if requirements change without consultation. Stakeholders made it very clear that for them, consultation and notification is critical to the functioning of the IHS system. The new notification period built into Option 2 mitigates this risk by giving stakeholders both an opportunity to raise significant concerns and prepare their businesses to meet any changing requirements. The notification period will improve transparency by keeping stakeholders informed of more changes than under Option 1 (as now even 'minor' amendments would be required to undergo a notification period).

Option 3 - enabling one-off or ad hoc importations

582. Option 3 is neutral on the effective criterion. It 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.

583. This option is adaptable as the knowledge gained from small-scale imports could be applied to future standard development.

584. Option 3 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.

585. This Option 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.
586. By requiring that decisions to permit one-off imports be published on a website, giving stakeholders the ability to remain informed, this option will satisfy the transparency criteria.

Option 4 - permits to continue trade

587. Option 4 does not provide for any lesser or greater protection from biosecurity risk. It is neutral on the effective criterion. It is adaptable, as it recognises that biosecurity risks can be accompanied by trade and economic benefits and provides for future trade opportunities.
588. Enabling permits to continue trade would likely increase the operational burden on the import system in order to manage associated biosecurity risks. Option 4 is likely less efficient than the status quo as it may limit MPI's ability to focus on amending the suspended IHS. Efforts could be diverted to enabling permits. This was a concern raised by stakeholders in the public consultation. In this way, Option 4 may prevent MPI from focusing on amending or developing IHSs if resources are pulled into assessment of high volumes of permit applications (as may occur if the IHS in question was an often-used IHS such as the nursery stock IHS).
589. This option 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. Similarly, this option does not provide lesser or greater transparency.

Option 5 - consult on a risk management proposal rather than the IHS

590. Option 5 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.
591. However, it 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 5 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.
592. Option 5 is consistent with standard practice for regulations. Generally, we do not consult on the specific drafting of regulations. Rather, we consult on the policy intent.
593. This Option would reduce transparency as stakeholders would no longer have the ability to review or comment on the final drafting of the IHS.

Option 6 - amend section 23 to enable risk assessment to be tailored to the circumstances

594. Option 6 will likely not have an impact on the effective criteria. Option 6 will enable adaptability in the IHS development process by enabling risk assessments to be tailored to the specific circumstances. This will also improve the efficiency of the system, enabling MPI to more quickly develop risk management plans appropriate for each situation. However, it is likely to be less clear than Option 1 as it removes the step-by-step process for risk assessment that is currently in the Act.
595. Removing the prescriptive risk assessment process from the legislation is likely to reduce transparency about what process MPI follows when conducting risk assessment.

Option 7 - amend section 27 to be clear that more than one IHS can apply to goods

596. Option 7 is not likely to have an impact on the effective, adaptable or efficient criteria. Option 7 will improve clarity and transparency by making it clear to users that more than one IHS can apply to goods. While words in the singular (i.e. import health standard) can be interpreted as meaning the plural,⁴⁸ making this clear in the legislation provides benefit to the reader and makes the Biosecurity Act consistent with the policy intent of being able to have more than one IHS apply to the same goods.

25.5. Which option best addresses the problem, meets the policy objective and delivers the highest benefits?

597. We are recommending that the following options progress:
- Option 2 (amend the consultation requirements in the Act for IHS, focusing on a threshold of amendments having a 'substantial effect', and include a notice period for amendments made without consultation).
 - Option 3 (enable the ability to issue one-off or ad hoc permits for goods being imported as a one-off or on a sporadic basis).
 - Option 5 (enable consultation on a risk management proposal for a good, rather than on the draft IHS itself).
 - Option 6 (amend section 23(4) to enable risk assessments and analysis to be tailored to the scenario).
 - Option 7 (amend section 27 to be clear that more than one IHS can apply to the same goods).
598. The Minister's preferred option in the Cabinet paper is the same as our recommended option.

⁴⁸ [Legislation Act 2019](#), section 19

25.6. Impact analysis

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Regulated groups (Importers)	No direct costs as underlying IHS would still be in place.	Low	Medium
Regulators (Crown)	Increased administrative burden for MPI to assess permit applications and ensure the biosecurity risk is safely managed while the applicable IHS is suspended. We know that risk analysis can be time and resource intensive depending on the case. The final potential costs would be dependent on many variables, so is not estimated here but noted as likely.	Medium	Medium
Total monetised costs		N/A	N/A
Non-monetised costs		Low-Medium	Medium
Additional benefits of the preferred option compared to taking no action			
Regulated groups (Importers)	No direct benefits	Low	Low
Regulators (Crown)	Some efficiency gains to administration system by clarifying processes.	Medium	Low
Total monetised benefits		N/A	N/A
Non-monetised benefits		Low-Medium	Low-Medium

25.7. 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 – consulting only if substantial in effect	Option 3 – enabling one off or ad hoc permits	Option 4 – enabling permits while IHS suspended	Option 5 – consulting on the risk management proposal rather than draft IHS	Option 6 – enabling risk assessment to be tailored to the circumstances	Option 7 – amend section 27 to be clear that more than one IHS can apply to goods
Effective (balancing stakeholder engagement, trade, and biosecurity risk management)	0	+	0	0	0	0	+
		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, while maintaining ability for stakeholders to provide input.	Option 3 will not affect the effective collaboration between government and other players of the biosecurity system.	Option 4 will not impact the effective collaboration between government and other players of the biosecurity system.	Stakeholders will still be enabled to provide feedback on the risk management measures proposed to be put in place, which is as under Option 1.	Option 6 likely to have little material impact on effectiveness of the IHS system.	Amendment would enable more flexibility for amending IHS requirements, enabling safe trade in goods whilst managing biosecurity risks.
Adaptable (modern, enabling legislation)	0	+	+	+	+	+	+
		This would increase the system's flexibility and enable standards to be quickly amended to reflect the latest scientific knowledge	Increases flexibility in the import system. Enables experience from small-scale imports to inform risk management in future IHS. Would enable importation to support emergencies.	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.	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.	This would increase the system's flexibility and enable standards to be developed quicker.	Enables flexibility, which will assist with achieving the long-term goal of creating an automated system that will direct stakeholders to requirements.
Efficient (burden on regulators and parties, and complexity)	0	+	++	-	0	++	+
		Removing some consultation requirements would mean resources can be focused on amendments to which stakeholders can contribute meaningful comment.	Option 3 means resources can be focused on developing IHSs for goods that will be imported on a larger scale with greater economic benefit.	Creates additional administrative burden for MPI to assess permit applications and ensure the biosecurity risk is safely managed while the applicable IHS is suspended.	The consultation requirement does not change.	Completing risk assessments can be time-consuming and costly. Enabling flexibility will mean resources can be focused on completing a greater number of risk assessments.	Directing stakeholders to more than one may IHS will increase complexity for stakeholders in the short term. The long-term goal of creating an automated system that will direct stakeholders to requirements will reduce the burden on stakeholders.
Clarity (logical and certain, and clear roles)	0	0	0	0	+	-	+
		Notification requirement would ensure that importers were still aware of upcoming IHS changes and given opportunity to prepare for those changes.	Option 3 will provide no lesser or greater clarity than Option 1.	Option 4 will provide no lesser or greater clarity than Option 1.	This could speed up the consultation process by keeping comments focussed on the key issues rather than matters of drafting detail.	Removing the prescriptive process from the legislation is likely to reduce clarity about what process MPI follows when conducting risk assessment.	In the short term, directing stakeholders to more than one IHS may increase complexity. The long-term intent is that operational changes will assist in making the system less complex for stakeholders.
Transparency (informed stakeholders)	0	+	+	0	-	-	0
		This would give stakeholders greater information than provided under the status quo due to the notification requirement.	Publication requirement would give the public access to information about ad hoc permits.	Option 4 would be no more or less transparent than Option 1.	Stakeholders would no longer provide feedback on the final drafting of the IHS.	Removing the prescriptive process from the legislation is likely to reduce transparency about what process MPI follows when conducting risk assessment.	Option 7 would be no more or less transparent than Option 1.

	Option 1 – status quo	Option 2 – consulting only if substantial in effect	Option 3 – enabling one off or ad hoc permits	Option 4 – enabling permits while IHS suspended	Option 5 – consulting on the risk management proposal rather than draft IHS	Option 6 – enabling risk assessment to be tailored to the circumstances	Option 7 – amend section 27 to be clear that more than one IHS can apply to goods
Overall assessment	0	+ This option is likely to make the system more efficient by enabling both MPI and stakeholders to devote their resources to more significant consultations.	+ 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.	0 This option is unlikely to make the system more efficient but may bring trade and economic benefits. This may be valuable for certain industries which have a high value, low volume trade. However, this option is likely to divert resources away from important functions without providing significant long-term benefit.	+ This option may increase the efficiency of the system by focussing on the key issues rather than drafting and language.	+ This option is likely to make the system more efficient by enabling flexibility so that MPI resources can be focused on completing a greater number of risk assessments.	+ This option may improve the clarity and consistency of the Act, enabling future flexibility.

Proactively Released

26. Section 24 – independent review panels

26.1. Background

599. The process for developing, amending, and revoking Import Health Standards (IHSs) is set out in section 23 of the Biosecurity Act. The process is thorough (as discussed in Chapter 25) and includes a review process if a consulted person feels their concerns and scientific evidence did not receive sufficient regard during the development process (section 24 of the Biosecurity Act).
600. Section 24 of the Biosecurity Act requires the Director-General to ensure there is a process in place to set up an independent review panel to review a person's concerns. 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 submitters, 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.
601. The options in this section are interdependent with those presented in Chapter 25 discussing IHS proposals. These options have been assessed according to their relationship with the preferred approach for IHSs.

26.2. Problem or opportunity

602. In the period since 2008 there have only been two independent reviews, relating to IHS for honey and pork. Both reviews were costly, time consuming, and led to lengthy delays in finalising the IHS. They required large amounts of time from key staff, for years in some cases, with a resulting impact on progressing other work. A case study to illustrate the time and costs involved in an independent review is provided in Figure 1:

Figure 6 - Development of the import health standards for pig meat and pig meat products

MPI issued the provisional IHS for pig meat in April 2009 following public consultation. A request was submitted in May 2009. The Director-General accepted this request in August 2009 and a review was completed in March 2010. The total cost of that process was approximately \$500,000. The work recommended by the Panel concluded at the end of October 2010. An application for judicial review was made in 2011. The High Court ruled in favour of MPI. This was appealed to both Court of Appeal, and the Supreme Court where the appeal was dismissed in December 2013.

603. Given the time and costs involved in an independent review, and the disruption to the IHS work programme, MPI will always try to resolve stakeholders' concerns. Nevertheless, MPI's experience is that significant time is spent in working to resolve concerns whenever an independent review is foreshadowed, regardless of how well-founded the stakeholder's concerns are. This means that the availability of the section 24 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.

26.3. Options

Option 1 – status quo

604. 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.

Option 2 – remove section 24

605. Option 2 seeks to remove section 24 from the Biosecurity Act. This option would remove the ability for a person to request a review of whether the 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 requirement to consult under section 23;
- judicial review; and
- the right of review at Parliament's Regulations Review Committee.

Option 3 – amend section 24 so the Director-General can appoint one reviewer, and empower the Minister to prescribe a fee for section 24 reviews

606. Option 3 seeks to amend section 24 to change the settings so that the Director-General is empowered to appoint a single reviewer, and the Minister is empowered to recommend regulations to be made to prescribe a fee for section 24 reviews. Alongside Option 3, MPI could also review the Biosecurity (Process for Establishing Independent Review Panel) Notice 2015 to ensure that there are appropriate incentives against

frivolous use by requiring a comprehensive application to request a review. The purpose of requiring a full comprehensive statement of claim is to ensure requests are only made for important issues.

607. In order to prescribe a fee, analysis would be required to determine an efficient, equitable and appropriate fee. The fee could be analogous to a filing fee for starting proceedings in the Courts, which range from \$260 for the District Court to \$1755 for the High Court. The fee would not recover the full cost of an independent review (or even a significant proportion of the costs) but would provide an incentive against frivolous use.

Almost all submitters opposed any change from the status quo

608. We had four proposals relating to section 24 in the 2024 public consultation which spanned from keeping it but changing how it works, to removing it entirely. Across all the submissions, retaining some type of mechanism to challenge decisions on IHS, and having access to fair and impartial reviews, was a common preference.
609. Removing section 24 received the most opposition. Other options to keep but amend section 24 received majority opposition as well. The few supportive submissions said that removing section 24 would increase efficiency and that the alternative mechanisms for review are sufficient.
610. There remains insufficient evidence that section 24 reviews assure industry that MPI's decision-making processes are robust. Submitters did not raise compelling reasoning for why section 24 (which we note is an unusual legislative tool) provides substantial benefit to industry that could not be achieved through other, operational, means.
611. Another common view was that fairness and impartiality could only be assured when a review is conducted by at least two or more people. In response to the feedback about a single reviewer, MPI notes that having a single reviewer 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. We also note that the Biosecurity (Process for Establishing Independent Review Panel) Notice 2015 already contemplates a single reviewer - clause 11 of that notice states that the independent review panel may consist of one or more persons, up to a maximum of five people.
612. We have discarded three of the four options that we consulted on, keeping only Option 2 which removes section 24.
613. Option 3 is a new proposal that is a modified version of an option that was publicly consulted on (amend the Biosecurity (Process for Establishing Independent Review Panel) Notice 2015 and work on cost recovery). This new proposal was not publicly consulted.

26.4. Assessing options to address the problem

614. The options are assessed against the criteria below.

615. The focus of the 'Effective' criterion for section 24 reviews is about partnership. For section 24, this means it is about the ability of stakeholders to influence decision-making for IHS and whether scientific evidence was given sufficient regard.

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	Is the option logical, consistent, easy to understand, and does it provide sufficient certainty?

616. Option 1, the status quo, would see no change in the current system. It does not address how the availability of section 24 reviews hinders the development of IHSs.

Option 2 – remove section 24

617. Option 2 is worse on the effective criterion than the status quo. However, we consider there are safeguards to holding MPI to account even if section 24 is removed. As noted in Chapter 25, the existing consultation provisions under section 23 ensures MPI consults any representatives of classes of persons that would have an interest in an 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).
618. In addition to consultation, there are other avenues to challenge MPI's decisions:
- 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.
619. Option 2 was strongly opposed in the public consultation. The main concern submitters raised was the loss of a mechanism to challenge decisions on IHS. We note that this option would not remove all checks and balances as discussed above. Despite there being other avenues, stakeholders made their concerns about any change to section 24 very clear. Therefore, Option 2 is worse than the status quo on the effective criterion because it is worse for partnership in the biosecurity system.
620. Option 2 is marginally better on the adaptable criterion than the status quo. Review provisions are generally for administrative decisions that affect individual rights and for natural justice. This ensures 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 unusual for legislation. Removing section 24 would mean the Biosecurity Act is more consistent with other legislation and promote consistency within the Biosecurity Act

itself, as review provisions do not exist for the development of other security secondary legislation.

621. Option 2 will improve the efficiency of the IHS system by reducing the administrative burden on MPI, enabling MPI to instead focus time on developing more IHS. Section 24 was intended to provide assurance to stakeholders about the level of risk assessment undertaken by MPI. It was not intended to provide individuals with individual review rights and an 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. This has led to significant time spent working to resolve concerns whenever an independent review is foreshadowed, regardless of how well-founded the stakeholder's concerns are. Option 2 directly addresses this: we expect it would improve the efficiency of IHS development.
622. The removal of section 24 is no more or less clear than the status quo. However, stakeholders will need to be aware of the other avenues to challenge MPI's decisions. MPI can mitigate this risk with communications to stakeholders. For this reason, Option 2 is neutral on the clarity criterion.

Option 3 – amend section 24 so the Director-General can appoint one reviewer, and empower the Minister to prescribe a fee for section 24 reviews

623. Through their submissions, stakeholders questioned whether a single reviewer, appointed by the Director-General, would be seen as 'independent'. We note that a single reviewer can already be appointed under the Biosecurity (Process for Establishing Independent Review Panel) Notice 2015. Option 3 would be no more or less effective than the status quo in terms of stakeholders' ability to influence decision-making for IHS.
624. Option 3 is no more or less adaptable than the status quo. Having a single reviewer undertake the review means the process can operate with less formal procedure, and MPI could proactively identify this person ahead of time to be ready for a future review. This could produce a more flexible, quicker and less costly review. An application fee may also mitigate resource concerns and constraints associated with a section 24 review, though this is likely to be only a marginal effect. Overall, the improvements from the adaptable criterion on the status quo are marginal.
625. Option 3 would be more efficient than the status quo. Option 3 requires stakeholders to now pay a fee to challenge MPI decision-making (which previously had no charge). However, the administrative burden of setting up independent panels is reduced. Having a suitable person to undertake the review would be likely to produce a quicker and less costly review and may enable MPI to be more comfortable with a section 24 review being requested. Cost recovery may address the issue of frivolous citation of section 24.
626. Option 3 is likely to provide marginally more clarity about who will undertake the section 24 review under Option 3 than Option 1 (it will be expressly a single reviewer, rather than

the status quo which states that an independent review panel may consist of one or more persons, up to a maximum of five people).

26.5. Which option best addresses the problem, meets the policy objective and delivers the highest benefits?

627. The best option depends on the Government's priorities: minimising cost to stakeholders, creating consistency across legislation, and/or increasing efficiency in the import system.
628. Considering what we have assessed and analysed, on balance, we prefer Option 2. We consider that the presence of other review mechanisms mitigates the main points of contention raised with Option 2.
629. The Minister's preferred option in the Cabinet paper is Option 3.

26.6. Impact analysis of the agency and Minister's preferred options

630. The Minister and Agency have different preferred options. The impact of that difference is expected to be on only the non-monetised costs and benefits. Non-monetised cost benefit tables are provided for the *Agency's preferred option compared to taking no action* and the *Minister's preferred option compared to taking no action*.

Agency's preferred option compared to taking no action

631. The Agency's preferred option is Option 2, which seeks to remove Section 24.

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Regulated groups (IHS applicants)	By removing a less costly review pathway, IHS applicants could potentially have to use a more costly avenue for review (at least for the judicial review avenue), if they wished to do so. For those that wanted a review, this could result in greater cost to them than the status quo.	Low	Low
Regulators (The Crown)	None expected.	Low	Low
Total monetised costs		N/A	N/A
Non-monetised costs		Low	Low
Additional benefits of the preferred option compared to taking no action			
Regulated groups (IHS applicants)	None expected, as efficiency gain would be a result of regulated group choosing not to proceed with one of the remaining review options. This means that group either accepts a decision and associated business impacts or were given approval.	Low	Low
Regulators (The Crown)	Improved administrative efficiency.	Medium	Medium

Total monetised benefits		N/A	N/A
Non-monetised benefits		Low to medium	Low to medium

Minister's preferred option compared to taking no action

632. The Minister's preferred option is Option 3, which seeks to amend section 24 to change the settings so that the Director-General is empowered to appoint a reviewer and the Minister is empowered to recommend regulations to be made to prescribe a fee for section 24 reviews.

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Regulated groups (IHS applicants)	By clearly reducing the reviewing body from a panel to a single individual, it may reduce IHS applicants trust in the decisions of the reviewing body, and by extension their trust in Government processes. Even limited cost recovery will mean that the IHS applicant bears more of the cost of review than under the status quo. The impact of this cost will depend on the terms of cost recovery, which are not defined enough at this time for quantitative analysis.	Low	Low
Regulators (The Crown)	None expected.	Low	Low
Total monetised costs		N/A	N/A
Non-monetised costs		Low	Low
Additional benefits of the preferred option compared to taking no action			
Regulated groups (IHS applicants)	None expected in comparison to the status quo, as both provide an avenue to challenge and review an IHS application decision.	Low	Low
Regulators (The Crown)	Improved administrative efficiency as one reviewer is easier to organise and support than a panel of multiple reviewers.	Medium	Medium
Total monetised benefits		N/A	N/A
Non-monetised benefits		Low to medium	Low to medium

26.7. 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 – remove section 24	Option 3 - amend section 24 to change the settings so that the Director-General is empowered to appoint a reviewer and prescribe a fee for section 24 reviews via regulations
Effective (stakeholder influence)	0	- Will reduce the involvement of stakeholders in the development of IHS, which would reduce partnership. This was strongly felt by submitters in their feedback during public consultation. However, other checks and balances remain to challenge MPI decisions (e.g. Regulations Review Committee, judicial review).	0 Option 3 would be no more or less effective than Option 1 in terms of stakeholders' ability to influence decision-making for IHS.
Adaptable (modern, enabling legislation)	0	+ Marginally better on the adaptable criterion than the status quo. 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).	0 Having a single reviewer undertake the review means the process can operate with less formal procedure. An application fee may also mitigate resource concerns and constraints associated with a section 24 review, though this is likely to be only a marginal effect. Overall, while marginal, Option 3 will be more future proof than the status quo.
Efficient (burden on regulators and parties, and complexity)	0	++ Reduces the workload and uncertainty for MPI by eliminating the time spent responding to frequent mention of section 24 appeals or threats of appeal, while still preserving stakeholder access to established procedures for valid claims. But will require stakeholders to go through either more costly (at least for judicial review) or potentially slower processes to challenge MPI decision-making. The significant benefits of removing section 24 outweigh these costs.	+ Option 3 requires stakeholders to now pay a fee to challenge MPI decision-making (which previously had no charge). However, the administrative burden of setting up independent panels is reduced. Having a suitable person to undertake the review would be likely to produce a quicker and less costly review and may enable MPI to be more comfortable with a section 24 review being requested.
Clarity (logical and certain)	0	0 The removal of section 24 is no more or less clear than the status quo. However, stakeholders will need to be aware of the other avenues to challenge MPI's decisions. MPI can mitigate this risk with communications to stakeholders.	0 Option 3 provides marginally more clarity about who will undertake the section 24 (it will be expressly a single review, rather than the status quo of "one or more persons, up to a maximum of five people"). This is only of marginal benefit.
Overall assessment	0	+ This option is likely to make the import system more effective, by speeding up IHS development. Existing review mechanisms would ensure that stakeholders with fewer resources would still have an avenue for review available.	0 These refinements may have relatively low marginal impacts on the import system.

27. Containment and transitional facility approval

27.1. Background

633. 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.
634. 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.
635. To lawfully conduct business, a facility is subject to two approval processes:
- the **facility** must be approved under Section 39; and
 - the **operator** of the facility must be approved under Section 40.

Facility approval

636. Facilities must be approved by MPI before they can operate. The approval and cancellation of approval for transitional and containment facilities are issued under section 39 of the Biosecurity Act:

Figure 7 - Approval and cancellation of facilities

	Containment facilities	Transitional facilities
Approval	Application complies with: • Biosecurity Act requirements • Standards under the Hazardous Substances and New Organisms Act 1996	Application complies with: • Biosecurity Act requirements • Standards issued under section 39(10)
Cancellation	Facilities may be cancelled by the Director-General if the facility: • no longer complies with the relevant standard(s); or • is no longer used for the purposes specified in the approval.	

Operator approval

637. Section 40 of the Biosecurity Act 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.
638. The Director-General may suspend an operator's approval under section 40 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.
639. 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.
640. Section 156 means that delegates acting as agents or employees of the operator who allow for an offence related to facility compliance to occur with their permission, or without taking all reasonable steps to prevent it, will also be liable for the offence.
641. 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.

27.2. Problem or opportunity

642. The legislative framework for the approval, suspension, and cancellation of facilities operators has created some unintended consequences:
- Under the current framework, a facility is unable to continue to conduct business and remain compliant when their operator is unavailable (i.e., they resign, get sick, go on holiday, are otherwise incapacitated or die). In these cases, goods may need to be transferred to a different facility, or goods may not have a place to go to be held safely before obtaining biosecurity clearance. This creates biosecurity risk, because goods may not have a secure place to be held to manage the risk they carry before they are given biosecurity clearance.
 - There are redundant procedures for cancelling and suspending a facility approval. For example, the Biosecurity Act provides a mechanism to cancel and suspend a facility for non-compliance with the relevant standard, as well as a mechanism to cancel and suspend a facility operator. A facility is not allowed to conduct business without an operator, which means that the distinction between suspending/cancelling a facility approval and suspending/cancelling an operator approval is meaningless. This creates administrative inefficiencies when approving, suspending and cancelling facilities.
 - Sometimes duty- or facility-managers who do not have decision-making power for overall facility management are approved as operators. This means that they are personally liable for compliance instead of those who are responsible for conducting the business that creates biosecurity risk. For example, a day-to-day manager with no control over the total facility management may be assigned as the operator, and therefore personally liable for non-compliance outside of their control (such as failing to meet lighting requirements).

27.3. Options

Option 1 – status quo

643. Option 1 is the status quo. It would maintain the current legislative framework and requirement for legislative approval for facility operators.

Option 2 - streamline the legislative framework for transitional and containment facilities

644. Under Option 2, the Act would have a single-step process to approve a facility that met the requirements of the relevant standard. This would not remove the requirement for a facility to have a fit and proper operator, but operators would not need separate legislative approval.
645. Instead, the Biosecurity Act would specify who a facility operator must be by default. Under Option 2, the Biosecurity Act would automatically assign the facility operator as the person who:
- is responsible for the facility conducting business; and
 - has the appropriate control over matters that affect compliance.
646. The person who is assigned as the operator would also need to be a fit and proper person to operate the facility, as currently described by the approval framework.
647. Option 2 seeks to achieve the following outcomes:
- remove the redundant steps in the current approval, suspension and cancellation processes;
 - provide flexibility for the facility to continue conducting business when staff change, or representatives are otherwise unavailable;
 - retain the requirement that approved facilities have a representative for MPI to contact for matters relating to verification (e.g., inspections), correcting non-compliance, and enforcement action;
 - ensure that the responsibility to comply with the relevant requirements of the facility approval is placed with the person who has decision-making power to influence compliance; and
 - ensure that the operator is a fit and proper person, to retain the integrity of facilities as part of the border management system.
648. Under Option 2 we will also clarify that delegates do not inherit liability from the operator, but that section 156 of the Biosecurity Act still applies. For example, if the delegate actively allowed for something to happen that was not compliant, or did not take all reasonable steps to stop non-compliance, they could be liable. In contrast, they would not be liable for matters they could not reasonably control (such as an order turning up that if accepted, would breach storage conditions).

649. To retain the existing enforcement capability, the relevant offence provisions may need to be amended to accommodate the changes to the facility approval framework. The Biosecurity (Infringement Offences) Regulations 2010 will also need to be amended to align the relevant infringement descriptions with any change made to the relevant infringement offence in section 154N(17).
650. Alongside Option 2, facility standards and the Biosecurity (Costs) Regulations 2010 will also likely need to be amended to reflect the new approval process.

Majority of submitters supported Option 2

651. Option 2 was included in the 2024 public consultation as Proposal 32. Submitters strongly supported streamlining the approval framework for containment and transitional facilities. They generally agreed that this proposal could address the issues that we presented.
652. While supportive of the general direction of the proposal, some submitters sought clarity about the role and responsibilities of a deputy operator, as well as the level of personal liability they would be expected to take on.
653. Following public consultation, MPI conducted one targeted engagement meeting with Tegel Foods Limited to discuss facility operator liability. During this meeting, Tegel Foods Ltd said the following:
- Transitional facility operators are generally site-based people fulfilling day-to-day tasks and should not be personally liable for fines relating to non-compliance.
 - Setting the facility operator as a person works well for small companies where the operator also has decision-making powers. However, this does not always work well for vertically integrated businesses (i.e., businesses that own or control multiple facilities).
 - The high level of personal liability can deter people from accepting facility manager positions if they are approved as the operator.
 - The legislation should make companies liable by default instead of employees within them, and the accountability for action should be managed through internal company processes.
654. The prescriptive nature of the original proposal could create unintended consequences. Option 2 as discussed in this RIS provides a less prescriptive proposal focused on the outcomes we are seeking.
655. The liability associated with the operator position should lie with the person responsible for conducting business and has appropriate control over matters that affect compliance. Formalising a deputy operator process would not assist with this. The changes to this proposal since consultation reflect this view, while taking into account the differences in operating models between facilities. The existing enforcement tools should continue to be available.

27.4. Assessing options to address the problem

656. These options were assessed against the criteria below.

657. The focus of the 'Effective' criterion for containment and transitional facility approval frameworks will be on managing biosecurity risk by preventing sudden requirements for the movements of goods.

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 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?

658. 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, or don't have a place to go. 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.

659. Option 2 (streamlining the legislative framework) meets all of the criteria. Option 2 is effective because it reduces the likelihood of sudden cancellation of a facility approval, preventing situations where goods held at the facility must be transferred to another facility because an operator is not available. This reduces the likelihood of a biosecurity incursion during transfer of the risk goods and lessens pressures on the biosecurity system. Option 2 may also prevent delays in trade caused by the approval process, supporting the New Zealand economy.

660. Option 2 meets the adaptable criteria by changing the way operators are recognised as part of the facility approval framework. Under Option 2, MPI will have greater assurance that a facility is overseen by someone who ensures biosecurity risk management processes are followed. This better enables the Act to respond to changes in biosecurity risk management and reduces operational uncertainty for both MPI and facilities themselves. It also ensures that the appropriate people hold liability for a facility's compliance to its approval.

661. Option 2 creates administrative efficiencies for both MPI and facilities by reducing the redundant steps in the facility approval process. It will allow for facilities to be run from a single approval without increasing compliance burden. Option 2 improves the clarity of the facility approval framework by making it more clear in the Act who is responsible for a facility's compliance.

27.5. Which option best addresses the problem, meets the policy objective and delivers the highest benefits?

662. Option 2 is the preferred option. It will achieve the outcomes that we intend to meet and will improve how facilities are approved under the Act.
663. Option 2 also addressed stakeholder comments raised during targeted engagement. It ensures that the liability associated with facility compliance is appropriately placed by the operator mechanism.
664. The Minister's preferred option in the Cabinet paper is the same as our recommended option.

27.6. Impact analysis of the preferred option

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Regulated groups (Facilities)	No new costs	None	High
Regulators (Crown)	No new costs	None	High
Total monetised costs		N/A	N/A
Non-monetised costs		None	High
Additional benefits of the preferred option compared to taking no action			
Regulated groups (Facilities)	Benefits are largely expected to be operational improvements and equitable application of liability in the case of non-compliance.	Low	Low
Regulators (Crown)	No benefits expected as oversight procedures will still apply	Low	Low
Total monetised benefits		N/A	N/A
Non-monetised benefits		Low	Low

28. Definitions related to unauthorised goods

28.1. Background

665. Section 2 of the Act defines unauthorised goods. Unauthorised goods are:
- goods that are at the border that cannot be cleared to enter New Zealand because they do not meet the requirements/conditions/regulations; or
 - goods that have entered New Zealand without being given biosecurity clearance.
666. Unauthorised goods may be subject to enforcement action under section 154O(9) of the Biosecurity Act.
667. There are a number of definitions across in the Biosecurity Act where certain activities relating to unauthorised goods are not captured by the legislation:
- the lack of a definition for ‘New Zealand-born progeny’; and
 - the definition of ‘goods’ excluding planted trees or plants.

New Zealand-born progeny

668. The definition of unauthorised goods does not extend to the New Zealand-born progeny of those unauthorised goods. In a number of cases, it is challenging to distinguish the unauthorised good from its progeny. For example, where the unauthorised goods are plants, and the progeny are cuttings that have been grown into established plants (making them clones of the original plant), the progeny and original unauthorised goods cannot be easily distinguished from one another.
669. MPI has limited powers to deal with New Zealand-born progeny of illegally imported organisms (i.e. unauthorised goods). The Biosecurity Act’s powers are limited to the following circumstances:
- if it can be established that the progeny had come into contact with unauthorised goods, and pests or unwanted organisms could have been transmitted from the unauthorised goods to the progeny;
 - the progeny is an unwanted organism or pest under the Biosecurity Act; and/or
 - The progeny is known or suspected to harbour or contain an unwanted organism or pest under the Biosecurity Act.

Plants and the definition of “goods”

670. The Biosecurity Act defines “goods” to mean all kinds of moveable personal property. In property law, planted trees or plants are part of the land and are not moveable personal property. Unauthorised goods that are plants may no longer be considered goods if they are planted. We note this scenario is fact specific, and a Court’s decision about whether something would meet the definition of “goods” is context specific.
671. Plants for planting could carry pests or diseases and are a high-risk import pathway if biosecurity risk is not managed effectively.

28.2. Problem or opportunity

No definition of progeny

672. The gaps in legislation relating to the New Zealand-born progeny of unauthorised goods is a well-identified issue without operational solutions to improve the situation. At present, the gap in the legislation means that the progeny of unauthorised goods, which have entered New Zealand without being given lawful biosecurity clearance, can be used, propagated, sold (for example) in New Zealand. This creates an incentive to illegally import animals or plants due to the knowledge that their progeny would be outside of the scope of the legislation. This poses a biosecurity risk.

Definition of goods excludes trees or plants

673. If New Zealand-born progeny cannot be sufficiently captured within the legislation, and they are able to be further propagated, moved and planted, the risk is that pests and diseases could spread. An incursion of plant-related pests and diseases could have significant negative consequences for New Zealand's primary industries.
674. This is also problematic from a credibility perspective, especially where it is clear the New Zealand-born progeny is offspring of/from goods that were clearly imported illegally, but there is no immediate biosecurity risk (i.e. unlikely unwanted organisms could have transmitted from the illegally imported good to the progeny). It may unintentionally encourage a person to unlawfully import species, in the hope that the New Zealand-born progeny could be lawful. This behaviour could be seen as a biosecurity risk by providing an incentive for smuggling and the creation of a market for the progeny of illegally imported goods.

28.3. Options

675. The options are presented in the table below. The options are mutually exclusive.

Table 11 - Table of options

	Option 1 (status quo)	Option 2	Option 3	Option 4
Defining progeny	Not defined	Provide a definition for New Zealand born progeny based on the progeny as being offspring or descendants of unauthorised goods.		Provide a definition for New Zealand-born progeny to include offspring, descendants or clones, that were born, germinated, propagated (including vegetative propagation and fragmentation), or otherwise come from parents or a parent that were present in New Zealand and are unauthorised goods, and includes any life stage of that organism.

Definition of goods	Moveable personal property only	Amend definition of “goods” in section 2 of the Act to include planted flora.		
Dealing with progeny	Not captured	Amend the definition of “ risk goods ” to include the New Zealand-born progeny of unauthorised goods (and therefore have the corresponding requirements and powers available to manage it).	Amend the definition of “ unauthorised goods ” to include the New Zealand-born progeny of unauthorised goods (and therefore have the corresponding requirements and powers available to manage it).	Amend section 116(1)(b) to enable an inspector to seize any goods where an inspector has reasonable grounds to suspect that those goods are progeny of the unauthorised goods.

676. Option 4 would link the powers to deal with progeny to powers used for pests, unwanted organisms, unauthorised goods and risk goods in respect of inspections (section 109 of the Biosecurity Act). This would enable incursion investigators to deal with progeny of unauthorised goods should they be present.
677. Option 4 may also enable MPI to deal with progeny of unauthorised goods that may have been on-sold, or otherwise moved.
678. The key difference between Option 2, Option 3 and Option 4 is how the progeny of unauthorised goods is proposed to be classified in the Biosecurity Act.

Options 2 and Option 3 were consulted and supported by submitters, while Option 4 is new and was developed to address submission feedback

679. In the 2024 public consultation, we sought feedback on Options 2 and 3. Most submitters supported Option 3. Supportive submitters stated that either option would close a gap in the Biosecurity Act around progeny of unauthorised goods. However, some submitters had concerns either Option 2 or 3 could create significant additional costs to producers because it would be a complex and expensive exercise to trace the origin of plants that were already established.
680. Multiple submitters suggested including reference to propagation or multiplication in the definition of ‘progeny’ to resolve issues that may be associated with the use of the term ‘born’. Better Border Biosecurity (B3) recommended the following definition: “*New Zealand-born progeny*” refers to offspring, descendants or clones that were born, germinated or propagated in New Zealand from parents or a parent that were present in New Zealand.”
681. We asked submitters whether there should be a generation cutoff embedded into the legislation whereby only a certain number of generations would be considered progeny. Most submitters said there should not be a generation cutoff embedded in the definition of New Zealand-born progeny to ensure that action can be taken where biosecurity risks exist.
682. Some submitters also provided ideas to ensure that biosecurity risk would be managed appropriately without a generation cutoff. These included using the test for an unwanted

organism or new organism under the Hazardous Substances and New Organisms Act 1996 to determine if action should be taken.

683. Some submitters said that there needs to be flexibility when taking action on goods that meet the definition, to ensure that products of unauthorised goods which do not create significant biosecurity risk are not unnecessarily acted upon.
684. MPI has taken on board submission feedback that it would be useful to define progeny in the Biosecurity Act and close gaps in the legislation regarding planted flora. Based on the consultation feedback on how to define progeny, we developed Option 4. This is to reflect concerns about unintended consequences.

28.4. Assessing options to address the problem

685. The options are assessed against the criteria below.
686. The focus of the 'Effective' criteria for definitions relating to unauthorised goods is whether the option closes the gaps in the legislation, thus enabling MPI to better protect New Zealand from biosecurity risk.

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 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?

687. If the status quo is maintained, New Zealand-born progeny of unauthorised goods will continue to be a significant grey area that is not captured by the Biosecurity Act. This will hinder MPI's ability to manage the biosecurity risks posed by these organisms.
688. Options 2, 3 and 4 will address issues related to the scope of the definition for 'goods' which addresses issues to do with planted trees or plants. MPI has only been able to address this issue if the individual possessing the good voluntarily surrenders it. In cases where voluntary compliance is not agreed, MPI cannot currently act to mitigate the biosecurity risks until they have spread further and there is an incursion issue.
689. Options 2, 3 and 4 supports greater protection from biosecurity risk by capturing current grey areas within the legislation, enabling MPI to respond to and deal with biosecurity risks. These options also improve operational effectiveness by providing certainty and enabling enforcement activities.
690. However, progressing amendments to close this legislative gap may have unintended consequences, such as compensation liability. Despite this risk, on balance, addressing the grey area through legislation remains the preferred approach. This is because the clarity enabled, and the ability to better manage biosecurity risk, outweighs the potential liability created by managing that risk.
691. Options 2, 3 and 4 will also define 'progeny'. The options differ in how New Zealand-born progeny is then regulated. Option 3 is likely to provide better clarity and efficiency than

Option 2 as it treats New Zealand-born progeny of 'unauthorised goods' as 'unauthorised goods'. This is because the progeny is treated the same as the parent organism, which reduces the effort required to identify the progeny's legal status. Whereas Option 2 would provide the progeny with the different status of 'risk goods'.

692. However, Option 4 is likely to be clearer than both Options 2 and 3. As Option 4 limits the power to section 116, it will be clear when progeny of unauthorised goods can be targeted under the Biosecurity Act.
693. Options 3 and 4 are more efficient than Options 1 and 2. In instances where it can be difficult to differentiate between progeny and the original unauthorised goods, having all organisms treated the same under the provisions of the Biosecurity Act will reduce confusion, and reduce the likelihood of MPI acting upon an organism unlawfully. This is because in some circumstances the original imported organism could be indistinguishable from its progeny (e.g. a clone). If the original is to be treated as one thing, but the progeny another, MPI may apply the wrong provisions to the organism.

28.5. Which option best addresses the problem, meets the policy objective and delivers the highest benefits?

694. We are recommending that Option 4 proceeds as this will resolve the identified issues, whilst appropriately limiting the use of powers in the Biosecurity Act to the scenarios of interest.
695. The Minister's preferred option in the Cabinet paper is the same as our recommended option.

28.6. Impact analysis of the preferred option

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Regulated groups (Offenders)	None expected as this is clarity change to the Act itself	Low	Low
Regulators (Crown)	None expected as this is clarity change to the Act itself	Low	Low
Total monetised costs		N/A	N/A
Non-monetised costs		Low	Low
Additional benefits of the preferred option compared to taking no action			
Regulated groups (Offenders)	None	Low	Low
Regulators (Crown)	Improved clarity for regulated groups may result in operational efficiencies	Low	Low
Total monetised benefits		N/A	N/A
Non-monetised benefits		Low	Low

28.7. 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 – treat progeny of unauthorised goods as risk goods	Option 3 – treat progeny of unauthorised goods as unauthorised goods	Option 4 – amend section 116 (1)(b) to enable inspectors to seize progeny of unauthorised goods
Effective (closing gaps, better risk management)	0	+	++	++
		Would support greater protection from biosecurity risk by capturing grey areas within the legislation, enabling biosecurity incursion officers to respond to and deal with biosecurity risks.	Would support even greater outcomes than Option 2 by capturing all grey areas within the legislation, enabling MPI to respond to and deal with biosecurity risks.	Similar to Option 3.
Adaptable (modern, enabling legislation)	0	+	+	+
		Provides MPI with a better toolbox to deal with the illegal importation and propagation of unauthorised/uncleared organisms.	Similar to Option 2.	Similar to Option 2.
Efficient (burden on regulators and parties, and complexity)	0	+	+	++
		Improves operational effectiveness by providing certainty and enabling enforcement activities. Having to treat progeny differently to their parents, and determining which goods are progeny versus which are the unauthorised goods, will reduce efficiency.	Improves operational effectiveness by providing certainty and enabling enforcement activities. However, the broad scope of powers enabled may lead to stakeholders having to ensure that the goods they purchase are not unauthorised goods.	Similar to Option 3. However, limiting the scope of powers to section 116 may reduce the burden on stakeholders.
Clarity (logical and certain, and clear roles)	0	+	+	++
		Would clarify that New Zealand-born progeny and planted flora are within the scope of the Biosecurity Act, explicitly bringing these grey areas within the Act. However, treating progeny differently to their parents will reduce clarity.	Would clarify that New Zealand-born progeny is within the scope of the Biosecurity Act. However, Option 3 will add complexity to the Act, potentially making it unclear what provisions will apply to progeny.	Similar to Option 3. Linking the power strictly to the relevant provision improves clarity compared to Option 3 and provides certainty for stakeholders.
Overall assessment	0	+	+	++
		The main advantages of this option are the clarity that it will provide, and the ability to capture progeny and planted trees or plants within the legislation.	This option will provide greater clarity than Option 2 and captures all grey areas within the legislation leading to better biosecurity and a more fit-for-purpose legislative toolbox.	This option will provide the greatest clarity and certainty for stakeholders. It captures all grey areas in a clear and logical way.

PART 5

READINESS AND RESPONSE

29. Part 5: Readiness and Response - Introduction

696. Part 5 addresses areas of the Biosecurity Act which affect readiness and response activities. Readiness and response means preparing for and responding to incursions of pests and diseases. The issues covered in Part 5 relate to:

- liability protection for GIA partners;
- faster emergency declarations;
- biosecurity emergency regulations; and
- biosecurity practices and proactive management of biosecurity risks.

697. Each topic is structured in the same way:

- background to the topic;
- problem / opportunity;
- options;
- assessment of the options;
- preferred option; and
- impact analysis of preferred option.

30. Liability protection for Government Industry Agreement partners

30.1. Background

698. Section 163 of the Biosecurity 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.
699. Part 5A of the Biosecurity Act establishes the Government Industry Agreement (GIA) partnership and sets out how the GIA operates.
700. As the implementation of GIA progressed, industry organisations raised concerns regarding their potential exposure to significant liability because of their role alongside MPI as joint decision-makers.
701. 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.
702. These concerns were exacerbated by litigation relating to the kiwifruit disease Psa⁴⁹. In 2018, the High Court found MPI personnel owed a duty to take reasonable care in carrying out their biosecurity functions. 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. However, as this case was not about response-decision making, legal risk could still not be ruled out.
703. The issue took on particular significance in the context of the *Mycoplasma bovis* Response 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.
704. 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 made jointly with MPI.
705. 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.

49 *Pseudomonas syringae* pv. *Actinidiae* is one of the most serious diseases of kiwifruit. Litigation arising from the 2010 incursion claimed that the Crown was responsible for losses to growers.

706. 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.
707. If no action is taken the status quo is expected to remain unchanged. Industry concerns about liability will remain and the Crown indemnity, under the Public Finance Act, will continue to be used to address their concerns.
708. The indemnity, which currently expires in 2029, will need to be reviewed by the Minister for Biosecurity. The Minister of Finance will likely be then asked to renew the indemnity.

30.2. Problem or opportunity

709. 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.
710. The use of an indemnity is unnecessarily complex to administer, requiring a regular review and renewal.

30.3. Options

Option 1 – status quo

711. **Option 1** retains the **status quo**. The status quo is to keep the Crown indemnity in place for liability protection of GIA industry partners that share decision-making for readiness and response activities. Liability protection would continue to be split between the Biosecurity Act and the Public Finance Act 1989. The Minister for Biosecurity will need to regularly review liability protection for industry partners and then request the Minister for Finance to renew the Crown indemnity.

Option 2 – make it clear that the Biosecurity Act confers functions on GIA Signatories in Part 5A to connect it with section 163 protections

712. Option 2 amends Part 5A to state that this Part confers functions on GIA Signatories to make joint decisions under the Deed and Operational Agreements. This amendment would connect Part 5A with section 163 by explicitly defining joint decisions as a function.
713. Option 2 was included in the 2024 public consultation as Proposal 38. All submitters supported the proposal.

30.4. Assessing options to address the problem

714. The options were assessed against the criteria below.
715. The focus of the 'Effective' criterion for liability protection for GIA partners is about the effective partnership and equality between government and industry partners.

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	Is the option logical, consistent, easy to understand, and does it provide sufficient certainty?

716. Option 2 meets all the criteria:

- encouraging effective partnership by treating government and industry partners equally;
- modernising the law by bringing biosecurity liability protection into a single Act;
- reducing the administrative burden needed to review and re-approve separate liability protection for partners; and
- clarifies that biosecurity liability protection is provided in one Act and all partners are equal.

30.5. Which option best addresses the problem, meets the policy objective and delivers the highest benefits?

717. We recommend Option 2 because it supports the intent of the GIA partnership by protecting joint decision-makers from potential liability, bringing liability protection together in one Act, and reducing current administrative overheads.

718. The Minister's preferred option in the Cabinet paper is the same as our recommended option.

30.6. Impact analysis of the preferred option

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
GIA signatories	No new costs associated as it would use the systems currently in place.	None	High
Regulators (Crown)	No new costs associated as it would use the systems currently in place.	None	High
Total monetised costs		None	High
Non-monetised costs		None	High
Additional benefits of the preferred option compared to taking no action			
GIA signatories	GIA partners see equality of protection with MPI.	Low	High
Regulators (Crown)	Removes administrative overhead required to maintain a Crown indemnity.	Low	High
Total monetised benefits		N/A	N/A
Non-monetised benefits		Low	High

31. Faster emergency declarations

31.1. Background

719. Part 7 of the Act describes how and when a Minister may recommend to the Governor General that they, by Proclamation, declare a biosecurity emergency. Part 7 could be used by the Minister for Biosecurity, or any Minister, due to the wording in section 144 which refers to “a Minister”.
720. Section 144 prescribes the process. MPI would brief the responsible Minister (usually the Minister for Biosecurity) and advise the Minister to recommend to the Governor-General that they declare a biosecurity emergency by Proclamation.
721. The Minister must be satisfied that there has been a pest or disease outbreak that has potential to cause significant harm to New Zealand, that it is in the public interest to act immediately, and that the organism cannot be eradicated or managed using the powers that are normally available.
722. 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”.
723. New Zealand has never declared a biosecurity emergency.

Foot and mouth disease and biosecurity emergency

724. MPI’s, and GIA partners’, readiness work aims to prepare for outbreaks of different pests and diseases. An outbreak of Foot and mouth disease (FMD) is a scenario where we would expect to recommend the declaration of a biosecurity emergency.
725. 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.
726. 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.
727. 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. A biosecurity emergency gives the Minister broad powers to take such measures they believe necessary or desirable to eradicate FMD.

Case study: stock in-transit in an FMD response

728. 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. In many

instances, MPI would like to require that livestock movements underway be completed using a direct route, without picking up or dropping off stock, until the destination is reached. Normal Biosecurity Act powers would not enable MPI to enforce this requirement.

729. The time between the confirmed detection of FMD and the declaration of a biosecurity emergency by the Governor-General has been estimated to be between 12 to 72 hours. This is a critical period in the response to an FMD outbreak.
730. In this example, 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. Rapidly addressing this issue is important to reduce the spread of FMD and minimise animal welfare impacts.
731. This approach aligns with publicly available FMD Response Strategy Plans for Australia, the United States of America and the United Kingdom.
732. 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. This work is ongoing.

31.2. Problem or opportunity

733. The time between the confirmed detection of significant pest or disease and the declaration of a biosecurity emergency by the Governor-General has been estimated to be between 12 to 72 hours. Responding promptly is critical, especially for a pest or disease significant enough to trigger a biosecurity emergency. We need to ensure that we can respond to the risk as fast as possible.

31.3. Options

Option 1 – status quo

734. Option 1 retains the status quo. To declare a biosecurity emergency a Minister (the Minister for Biosecurity or any other Minister of the Crown) must be satisfied on reasonable grounds that:
- a situation described in section 144(1)(a) (i – iv) is likely; and
 - that, in section 144(1)(b), it is in the public interest to act immediately, and sufficient powers are not available to manage the organism.
735. Section 144(2) requires the Minister to consult “to the extent that is practical in the circumstances”. That Minister would then recommend to the Governor-General that they, by Proclamation, declare a biosecurity emergency.

Option 2 - amend the Biosecurity Act to enable the Minister for Biosecurity to declare a biosecurity emergency

736. Option 2 would change the decision-maker for a biosecurity emergency from the Governor-General to the Minister for Biosecurity. This applies to any biosecurity

emergency and not just for FMD (we have discussed FMD in this Chapter as an example of the need for expediency in the declaration of emergencies).

737. 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 a significant pest or disease (such as FMD) and the declaration of a biosecurity emergency.
738. To declare a biosecurity emergency the Minister for Biosecurity would still be required to meet the conditions in sections 144(1) and (2).

Most submitters supported Option 2

739. Most submitters supported the proposal because removing a step in the process would support more efficient responses.
740. Some submitters felt that additional consultation requirements could be attached to the Minister for Biosecurity ability to declare an emergency.
741. Section 144 of the Act includes requirements the Minister to consult, “to the extent that is practical in the circumstances” before declaring a biosecurity emergency. We do not propose to change this requirement. Adding further requirements for consultation could slow the declaration of an emergency, defeating the purpose of Option 2.

31.4. Assessing options to address the problem

742. The options were assessed against the criteria below.
743. The focus of the ‘Effective’ criterion for faster emergency declarations will be on the question of better protection for New Zealand from biosecurity risk.

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 does it provide sufficient certainty?

744. Option 1 means declaring an emergency is a two-step process requiring both a Minister and the Governor-General to be briefed and quickly make decisions. The time spent to declare an emergency increases risks of disease spread with increased risk to the economy.
745. Option 2 is more effective - reducing the time to declare an emergency will reduce biosecurity risks and economic impacts. Faster declarations reduce the risks of disease spread and potential impact on the economy. In anticipated emergencies, such as FMD, a Ministerial declaration could be much faster than a Proclamation by the Governor General. However, for an unforeseen emergency, while Ministerial declaration is likely faster, it is unclear how much faster it would be than a Proclamation by the Governor-General.

746. Option 2 is adaptable as it delivers modern legislation by matching the process used in the Civil Defence and Emergency Management Act 2022 (which assigns the decision to declare an emergency to the responsible Minister).
747. Efficiency is improved with a single step process and a clearly defined decision-maker.
748. Option 2 has no substantive impact on the clarity criterion as in both the status quo and Option 2, there is a clear decision-maker.

31.5. Which option best addresses the problem, meets the policy objective and delivers the highest benefits?

749. We recommend Option 2. It streamlines the process for the declaration of a biosecurity emergency by enabling the responsible Minister to declare an emergency. The Minister for Biosecurity will be more well-informed and familiar with biosecurity than “a Minister”.
750. Option 2 removes a step in the current process and speeds the declaration of a biosecurity emergency. A faster declaration will reduce the risks of disease spread, enable a faster response, and reduce the impacts of the disease.
751. The Minister’s preferred option in the Cabinet paper is the same as our recommended option.

31.6. Impact analysis of the preferred option

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Regulated groups	No new costs associated as it would use the systems currently in place.	Low	Medium
Regulators	No new costs associated as it would use the systems currently in place.	Low	Medium
Others (e.g., wider govt, consumers, etc.)	Little to no impact on other parties.	Low	Low
Total monetised costs		N/A	N/A
Non-monetised costs		Low	Medium
Additional benefits of the preferred option compared to taking no action			
Regulated groups	No new benefits associated as it would use the systems currently in place	Low	Medium
Regulators	No new benefits associated as it would use the systems currently in place. Note that the indirect, flow-on effects of a more efficient emergency declaration process will benefit regulators’ ability to manage an event. A non-direct benefit is not within scope of the CBA.	Low	Medium
Others (e.g., wider govt, consumers, etc.)	No new benefits associated as it would use the systems currently in place. Note that the indirect, flow-on effects of faster emergency declarations will, potentially, in mitigate the	Low	Low

	economic/health implications of an event to the general public.		
Total monetised benefits		N/A	N/A
Non-monetised benefits		Low	Medium

Proactively Released

32. Biosecurity emergency regulations

32.1. Background

752. Section 150 of the Act enables emergency regulations to be made at any time while a biosecurity emergency is in force. It does not enable regulations to be made before the declaration of an emergency.
753. During preparation for a possible FMD outbreak, GIA partners from the livestock sectors and MPI have looked at what emergency regulations would be needed to support the emergency response. To effectively prepare for a possible FMD outbreak, and potentially other pest or diseases risks, the group suggested that making regulations before an emergency declaration would benefit all stakeholders.
754. Currently, while emergency regulations could be developed to the drafting stage, they would have no legal status and would not be published on the New Zealand legislation website. This:
- is unlikely to be consistent with best practice regulation development;
 - would reduce transparency and accountability; and
 - could reduce stakeholder visibility and understanding of their responsibilities in a biosecurity emergency.

32.2. Problem or opportunity

755. Making emergency regulations before an emergency is an opportunity to improve the quality of regulations to be used in an emergency.
756. Making regulations before an emergency will:
- be consistent with best practice regulation development;
 - publish legal regulations;
 - improve transparency and accountability; and
 - increase stakeholder “buy in” to and understanding of their responsibilities in a biosecurity emergency.

32.3. Options

Option 1 – status quo

757. Option 1 retains the status quo of section 150.

Option 2 - amend section 150 to add the ability to make biosecurity emergency regulations before the declaration of a biosecurity emergency

758. Option 2 is to amend section 150 to add the ability to make biosecurity emergency regulations before the declaration of a biosecurity emergency. This would not hinder the current ability to make regulations during an emergency.

759. These regulations would be made using the full development and consultation process in the Cabinet manual⁵⁰ and brought into force when a defined biosecurity emergency is declared.
760. The benefits of doing this are to:
- improve transparency and accountability by developing regulations with effective public consultation and delivering quality regulations to meet Government and stakeholder needs;
 - allow the Minister to better meet the requirements to consult (section 150(2)) and to develop any infringement offences and disputes procedures (section 150(3));
 - allow response planning to continue with a clear legal framework;
 - publish regulations that enable all stakeholders to understand their responsibilities in an emergency and plan for that emergency; and
 - quickly implement emergency regulations without a requirement for the Governor-General to make an Order in Council at the time.

Option 3 – deliver Option 2 plus add a requirement for review

761. Option 3 would deliver Option 2 plus add a requirement that at the time of an emergency being declared, the Minister would set a timeline for the review of those regulations.
762. The benefits of requiring a review are to ensure the regulations are working as intended during the emergency. This would give confidence to all parties that any unintended consequences or issues with emergency regulations will be addressed and not lost in the emergency activity.

Options 2 and 3 are new proposals but have come up as a result of our work with GIA partners

763. We developed Options 2 and 3 after public consultation ended. We have not consulted these options. However, these options came from work with GIA partners as discussed earlier (to prepare for an FMD outbreak).
764. If either option progresses, it will go through well-established regulation-making process, including public consultation, Cabinet sign-off, and publication of the regulations before an emergency.
765. Given related engagement to date on emergency regulations in case of an FMD outbreak, we believe that this proposal will be likely well-supported.

32.4. Assessing options to address the problem

766. The options were assessed against the criteria below.

⁵⁰ [Cabinet Manual paragraph 7.95](#)

767. The focus of the 'Effective criterion' for biosecurity emergency declarations will be on whether the proposal enables fit-for-purpose regulations so that biosecurity risks can be effectively managed.

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 does it provide sufficient certainty?

768. Option 1 increases the likelihood of hurried regulation development and implementation during an emergency. This increases risk of poor regulation, as regulations can only be made in the heat of an emergency with limited public and government input and review. This risk can be mitigated by progressing regulatory work to the drafting stage.
769. Options 2 and 3 are better on all criteria because they enable all parties (stakeholders, government, and the public), to contribute to regulation development before an emergency (with the exception that Option 2 is finely balanced on the effective criterion).
770. Regulations developed before an emergency will enable regulated parties to clearly understand their responsibilities and liabilities in an emergency and to develop plans to meet their responsibilities and mitigate their risks. This allows the Minister to better meet the requirements to consult (section 150(2)) and to develop infringement offences and a disputes procedure (section 150(3)).
771. The crucial difference between these options and the status quo is that any regulations would be fully visible alongside other biosecurity law. Greater transparency will help hold MPI accountable from a regulatory stewardship perspective. For example, if the regulations become outdated, it is more likely that industry partners could bring this to MPI's attention, and they could be updated.
772. Option 3 gives better clarity and assurance to all parties by assuring that regulations will be reviewed to ensure they work as planned and any unintended consequences will be addressed. However, Option 3 may be less efficient because of added complexity to review regulations during an emergency.
773. We do not recommend a specific time for the review. This is because setting a time frame is difficult to predict depending on the nature of the emergency. However, it should be less than four months which is the maximum time a biosecurity emergency can remain in force until it is reviewed (section 146).

32.5. Which option best addresses the problem, meets the policy objective and delivers the highest benefits?

774. We recommend Option 3 over Option 2. Option 3 delivers on the benefits provided by Option 2, but also builds in mechanisms to ensure improved assurance to stakeholders that the regulations delivered prior to an emergency remain relevant and fit-for-purpose.
775. The Minister's preferred option in the Cabinet paper is the same as our recommended option.

32.6. Impact analysis of the preferred option

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Regulated groups	Establishing an enabling change does not directly impact cost regulated groups. Regulated groups will be better able to contribute to regulation development and may face costs to do so. However, they will be better able to plan for possible cost impacts if emergency regulations are used.	Low	Low
Regulators	Little cost is associated with inserting an enabling change into the Act. Regulation development before an emergency will be more costly than during an emergency. However, the benefits of effective regulation development outweigh the costs.	Low	High
Total monetised costs		N/A	N/A
Non-monetised costs		Low	Low and High
Additional benefits of the preferred option compared to taking no action			
Regulated groups	None expected from an enabling change to the Act. Better involvement in and visibility of emergency regulations will enable groups to reduce risks and mitigate liabilities.	Low	Low
Regulators	None expected from an enabling change to the Act.	Low	Low
Total monetised benefits		N/A	N/A
Non-monetised benefits		Low	Low

32.7. 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 – Enable emergency regulations to be made before a declaration of an emergency	Option 3 – Enable Option 2 and require Minister to set a timeline for review of the regulations
Effective (fit-for-purpose)	0	0 Will improve transparency and accountability. Enables the Minister to better meet the requirements in section 150 of the Act. However, this may run counter to our regulatory stewardship obligations if the regulation remains unreviewed. The older a regulation gets, the more likely it becomes not fit-for-purpose. Whether that improves the status quo is unclear.	++ Similar to Option 2 with the benefit that the risk of out-dated regulations is addressed with the addition of a review. This improves regulatory stewardship and helps hold management of the emergency account.
Adaptable (modern, enabling legislation)	0	+ Future-proofs by enabling better planning for emergency regulations.	+ Similar to Option 2.
Efficient (burden on regulators and parties, and complexity)	0	+ Regulations can be made using a well understood, public process involving all stakeholders.	+ Similar to Option 2, but a review may divert resources from managing the emergency and add cost and complexity.
Clarity (logical and certain, and clear roles)	0	+ Improves clarity and certainty by letting stakeholders understand their responsibilities and better plan for an emergency.	++ Similar to Option to 2, but review of regulations will: • assure Cabinet and stakeholders that regulations will be reviewed as the emergency progresses and remain fit-for-purpose; and • provide a framework for review during an emergency.
Overall assessment	0	+ Making regulations before an emergency ensures that all stakeholders can be consulted in advance, understand their obligations, and can better prepare.	+ Option 3 is preferred because it delivers the benefits of Option 2 and introduces an assurance mechanism through the requirement to review (and the benefits of reviewing regulations outweigh the possible costs).

33. Biosecurity practices and proactive management of biosecurity risks

33.1. Background

776. One of the key ideas in the biosecurity system is that everybody has a part to play in preventing and managing biosecurity risks.
777. Observing good biosecurity practices is particularly helpful for primary industry producers. It helps protect their businesses from pests and diseases, which in turn boosts productivity and the environment.
778. Below are some examples of what good biosecurity looks like in certain businesses or activities:

Table 12 - Examples of good biosecurity practice

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.

779. There have been initiatives over many years – both legislative and non-legislative – to promote good biosecurity practices.
780. 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.

781. Non-legislative initiatives include:

- The Biosecurity Business Pledge, a partnership that aims to help all New Zealand businesses take a proactive approach to their biosecurity practice.
- Tauranga Moana Biosecurity Capital Inc. is a collaboration of biosecurity champions working together to achieve regional biosecurity excellence. Their focus is on raising awareness, building capability, and developing future leaders.
- Aquaculture New Zealand has developed a sustainability programme called A+. It aims to enable the aquaculture industry to engage with its communities to improve environmental practices. The programme includes biosecurity standards that aim to implement management measures that reduce biosecurity risks.

33.2. Problem or opportunity

782. Earlier work during the review of the Biosecurity Act considered the adequacy of biosecurity practices. A 2018 survey showed that less than half of primary producers surveyed had biosecurity processes and documentation, and 11 percent said they undertook no biosecurity actions daily.⁵¹
783. Acknowledging the age of the 2018 survey, we have also drawn on several other sources which are predominantly anecdotal. These include industry meetings, Māori engagement, farmer/grower engagement, and MPI's experience during biosecurity responses. What we heard and learned from these suggest that that biosecurity is not always being effectively managed on-farm/orchard.
784. New Zealand's biosecurity system has three interlocking layers of protection that act like a series of protective nets (see Chapter 3 – Introduction to the biosecurity system). Together, each layer needs to work in concert to protect New Zealand from pests and diseases. Biosecurity practice is particularly important to the third layer. Poor practices can turn an isolated incident into a much wider incursion that is of regional or national concern. Promoting a more consistent uptake of good biosecurity practices would help strengthen the biosecurity system (shifting the focus from reactive responses to proactive harm prevention).

⁵¹ www.mpi.govt.nz/dmsdocument/29849-biosecurity-2025-business-survey-baseline-report/

33.3. Options

Option 1 – status quo

785. 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).

Option 2 – add a general biosecurity duty to the Biosecurity Act

786. Option 2 would add a general biosecurity duty in the Act. A general biosecurity duty would be a broadly worded standard. It would set an expectation that every person who deals with risk goods, or engages in activities that may pose biosecurity risks, must take all reasonable and practical measures to prevent or mitigate biosecurity risks.
787. The general biosecurity duty would not be directly enforceable. However, it could be used as the basis for interventions using other powers in the Biosecurity Act to address poor biosecurity practice. For example, including a general duty in the Biosecurity Act could allow MPI to issue a compliance order under section 154(2)(a) if we found a farmer observing poor biosecurity practices. If the farmer breached the compliance order, the farmer may commit an offence under the Biosecurity Act. MPI may also carry out actions required by the compliance order and recover the costs of doing so from the farmer.
788. There is a risk under Option 2 that a defendant could potentially assert that by meeting the general biosecurity duty, they have taken all reasonable steps to mitigate biosecurity risks for a specific duty they have breached. For example, a poultry operator may be accused of failing to prevent the spread of avian influenza into their farms because they failed to properly disinfect some of the vehicles that entered their farms. In their defence, the poultry operator may say that it has remained compliant with the general biosecurity duty. For example, it has observed other good biosecurity practices such as regular cleaning of facilities, training staff, and preventing wild birds from accessing poultry housing, feeds, and water sources.
789. To address this risk, Option 2 would make it clear that:
- compliance with the general duty is not a defence. That is, being explicit that compliance with the general duty does not affect offending against other requirements of the Biosecurity Act;
 - the general biosecurity duty is a baseline, and more specific requirements are over and above the duty; and
 - a breach of any requirement/any offending is considered a breach of the duty itself (regardless of whether the general biosecurity duty is enforceable or not).

Option 2 received majority support, but there was strong minority opposition

790. Option 2 was included in the 2024 public consultation as Proposal 40.

791. Supportive submissions came from a wide range of sectors, such as GIA partners, advocacy groups, local government, and iwi, hapū, and Māori organisations. Supportive submissions said that a general biosecurity duty would clarify that everyone in New Zealand has a responsibility to maintain our biosecurity system.
792. Those opposed said the proposal would be an additional regulatory burden. They said that resources are better spent on non-legislative levers such as education and support to promote good behaviour and decision-making.
793. Some submitters said they needed more information on the proposal before they could form an opinion. This includes how the proposals might work and what the final wording would look like.
794. Lastly, some submitters said the lack of enforceability made it a “nice-to-have” but felt it was overall not a good use of resources.
795. Following public consultation, we discussed the general biosecurity duty further with GIA partners. There is not a consensus among GIA partners about the general biosecurity duty.
796. We also met with Australian regulators to further understand the provisions for general biosecurity duty in their respective legislation. Biosecurity legislation in New South Wales, Queensland, South Australia, and Tasmania each includes a directly enforceable biosecurity duty. Each biosecurity legislation in those states also specifies the penalties for breaching the general biosecurity duty. Each state placed a strong emphasis on education and public awareness, rather than a punitive approach.
797. We have considered the feedback from GIA partners and our conversations with Australian regulators in finalising this proposal. The insights from these engagements have been helpful in informing our multi-criteria analyses.
798. There have been no changes to this option since public consultation.

Option 3 - expand the range of risk management requirements that can be set up through regulations under the Act

799. Option 3 would expand the range of risk management requirements that can be set up through regulations under the Act. Option 3 would enable regulations to be created to set requirements on industries to prevent the spread of pests and diseases. These requirements may be prescriptive or outcome-based, depending on the specific scenario.
800. The Biosecurity 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)).
801. 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.
802. For example, the range of matters we may want to set requirements for includes:

- stock health management (e.g. practices a person carries out to ensure stock are healthy to minimise risk of disease);
- stock movement (e.g. practices a person carries out to ensure stock is moved in a bio-secure way);
- water (e.g. practices a facility as to ensure intake or outtake of water addresses risk of pests or disease transferring through water);
- equipment, vehicles, vessels (e.g. practices a facility carries out to ensure movement of these things addresses risk of pest or disease movement);
- people management;
- feed;
- wildlife, scavengers, vermin;
- monitoring/surveillance;
- waste;
- recordkeeping pertaining to biosecurity practices;
- quality assurance/auditing; and
- contingency plan.

803. In addition, we may also want to require a farmer to create an on-farm biosecurity plan that covers the above matters.

804. Amendments to the regulation-making powers in the Biosecurity Act could fill any gap that is not addressed by existing regulation-making provisions.

Option 3 received majority support, but there was strong minority opposition

805. Option 3 was included in the 2024 public consultation as Proposal 41.

806. Many submitters expressed support that was conditional. Some supportive submitters of this proposal asked that the current biosecurity practices of industries be reviewed during further development of the proposals or at implementation of any proposal.

807. Likewise, conditionally supportive submitters said that this proposal:

- should only provide legislative backing to existing industry best practice, where best practice is determined in partnership between Government and industries; and
- regulatory controls should apply according to the amount of risk an industry or business poses, to keep it fair.

808. Fully opposed submitters said that farmers would be averse to additional prescriptive regulations which are an administrative and regulatory burden on business, and that stakeholders may not have the required knowledge and expertise to implement the proposal.

809. This proposal is enabling only. Any future regulations would need to go through a standard regulatory development process, including consultation and regulatory impact

assessment. Developing any new regulations would provide the opportunity to engage with industries in determining biosecurity requirements.

810. This proposal would mean that the Act is future-proofed, and that regulations (where justified) can be tailored to specific risk situations.
811. There have been no changes to this option since public consultation.

We discarded an option since public consultation

812. We have since discarded another proposal that we consulted on. Proposal 42 sought to enable greater use of the risk-based regulatory model where businesses are required to develop their own risk management plan (i.e. the risk management model in the food safety regulatory system).
813. While a majority of submissions supported Proposal 42, submitters raised concerns that that show there is significant further work necessary to develop the proposal. For example, MPI would need to consider the differences in risk posed by different practices, systems, and industries.
814. This means that Proposal 42 would deliver a substantively new and different way of managing biosecurity risk domestically, by business, in New Zealand. The Bill is focused on targeted amendments to fix identified problems. To do this promptly, we have set aside Proposal 42.

33.4. Assessing options to address the problem

815. The options are assessed against the criteria below.
816. The focus of the 'Effective' criterion for biosecurity practices and proactive management of biosecurity risks will be on the question of better protecting New Zealand from biosecurity risk.

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 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 does it provide sufficient certainty? - Are the roles and responsibilities assigned appropriately and clearly between central government, local government, industry and local communities?

Option 1 – status quo

817. Retaining the status quo may result in missed opportunities to address concerns about biosecurity practices via the legislation. However, there is nothing in the legislation that prevents sectors to encourage and observe good biosecurity practices.

Option 2 – add a general biosecurity duty in the Act

818. The scope of the general biosecurity duty would be broad and cover a wide range of individuals and businesses—from small lifestyle blocks to large exporters. A general

biosecurity duty would also send a clear message of “doing the right thing” through the law. Assuming these lead to everyone in New Zealand doing their part to better manage biosecurity risk, this could better protect New Zealand’s biosecurity system. However, this is an assumption that has been put into question by the public consultation.

819. Some submitters said their sector already has good biosecurity practices. Other submitters said the lack of enforceable of the duty made it a ‘nice-to-have’ and that efforts are better focused on non-legislative means to promote good biosecurity practice. This suggests that potentially, a general biosecurity duty may not result in any substantive improvements to biosecurity practice.
820. There is also the potential unintended consequence with a general biosecurity being used as a defence to avoid accountability for other biosecurity breaches.
821. While this risk can be mitigated, risk is being created to the regulatory system for potentially little gain (given our assumption about the effectiveness of a biosecurity duty has been indirectly refuted by at least some submissions). Overall, this means Option 2 does not meet the effective criterion.
822. Option 2 is adaptable as it 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. For instance, education and training schemes advocating for good biosecurity practice could be strengthened with wording that managing biosecurity risk is a legislative requirement that everyone must meet. Should Option 3 proceed, regulations would also be supported by a general biosecurity duty creating stronger incentives for biosecurity practice.
823. Option 2 is finely balanced on the efficiency criterion. On one hand, the wide scope of the duty means that it covers a wide range of people without regard to the level of risks that they deal with and the existing resources or expertise they have. This may impose unnecessary cost on businesses if they fail to understand what specific things they need to do for their business to meet the biosecurity duty. On the other hand, if a certain sector already has robust industry standards or codes of practice, they may already be compliant with a potential biosecurity duty and may not need to take further action.
824. Option 2 would not meet the clarity criterion. This is the nature of a broadly worded general duty. This could include terms like “activities that may pose biosecurity risks” and “reasonable and practical measures”. Users of the Biosecurity Act could interpret these differently and could find these ambiguous, and, therefore, difficult to understand and comply with.

Option 3 – expand the range of risk management requirements that can be set through regulations under the Act

825. Option 3 is effective as it expands the range of legislative tools the government has to promote better biosecurity practices. A regulation, if delivered, could set specific risk management requirements that are targeted at biosecurity risks. This can directly address gaps in biosecurity practice or lift standards where there may be biosecurity practices that are not sufficiently managing risk. Option 3 is more effective than both

Option 2 and Option 1 (the status quo) as it will set clear, enforceable requirements for industry members to manage biosecurity risks on their farms.

826. Option 3 would provide certainty that the government could deliver a regulation that set specific biosecurity management requirements when needed (and justified through a subsequent regulatory process). Having the ability to set specific good biosecurity practice requirements would also ensure a stronger and proactive focus on on-farm and orchard biosecurity to both pre-empt and better manage any future biosecurity risks. Likewise, it could also fill any gap that is not addressed by existing regulation-making provisions. For example, it could provide for risk organism response plans to be captured through regulations under the Act to enhance readiness for a biosecurity incursion. Option 3 therefore meets the adaptable criterion.
827. Option 3 does not meet the efficient criterion. Enabling the creation of regulations is no more or less efficient than the status quo. However, developing a regulation is a significant undertaking for the Crown. Similarly, regulations impose duties on regulated parties that could require them to start or stop doing something that affects their existing business operations/activities and imposes compliance costs. We do note, that as with any regulation, requirements would need carefully designed and need to be fully justified to be proportionate to the identified risks and needs of the sectors so that the benefits outweigh costs.
828. Option 3 is clearer than the status quo. The Biosecurity Act already includes broad powers to regulate a wide range of activities like powers to regulate a wide range of activities using rules in pest and pathway management plans (sections 64(5) and 84(5)). 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. Option 3 provides sufficient certainty that regulations could be used to set biosecurity risk requirements to address biosecurity risks in a sector.

33.5. Which option best addresses the problem, meets the policy objective and delivers the highest benefits?

829. Option 3 (expand the range of risk management requirements that can be set through regulations under the Act) best addresses the problem and would ensure that proactive tools are available to improve biosecurity practice and manage risk.
830. The Minister's preferred option in the Cabinet paper is the same as our recommended option.

33.6. Impact analysis of the preferred option

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Regulated groups	An enabling change does not directly cost regulated groups and therefore has no new direct costs for the purposes of this impact	Low	Low

	analysis. However, if the power that is enabled is used in the future, that may have costs associated. The actual impact of use would need to be assessed at such a time as the power is exercised.		
Regulators	Little cost is associated with inserting an enabling change into the Act. However, we can expect operational, and implementation associated costs each time this power is used.	Low	High
Total monetised costs		N/A	N/A
Non-monetised costs		Low	High
Additional benefits of the preferred option compared to taking no action			
Regulated groups	None expected from an enabling change to the Act.	Low	Low
Regulators	An additional tool to support a flexible approach to regulatory oversight.	Low	Low
Total monetised benefits		N/A	N/A
Non-monetised benefits		Low	Low

33.7. 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 in the Act	Option 3 - expand the range of risk management requirements that can be set through regulations under the Act
Effective (better protection from biosecurity risk)	0	0 This option would promote the message of protecting New Zealand from biosecurity risks. However, there are risks with delivering a biosecurity duty, and our assumption that Option 2 will result in better biosecurity practices has been refuted by some submissions.	++ Option 3 would set specific risk management requirements that are targeted at biosecurity risks. This can directly address gaps in biosecurity practices or lift standards where there may be biosecurity practices that are not sufficiently managing risk. Sets clear, enforceable requirements for all industry members to manage biosecurity risks on their farms.
Adaptable (modern, enabling legislation)	0	+ Would serve as a foundational principle for future initiatives on biosecurity practices.	++ Adding provisions that give new regulation-making power for secondary legislation addresses current gaps and future issues.
Efficient (burden on regulators and parties, and complexity)	0	0 On one hand, the wide scope of the duty means that it covers a wide range of people without regard to the level of risks that they deal with and the existing resources or expertise they have. This may impose unnecessary administrative cost on businesses. On the other hand, if a certain sector already has robust industry standards or codes of practice, they may already be compliant with a potential biosecurity duty and may not need to take further action. Option 2 is finely balanced on the efficiency criterion.	- Option 3 does not meet the efficient criterion. Enabling the creation of regulations is no more or less efficient than the status quo. However, developing a regulation is a significant undertaking for the Crown. Similarly, regulations impose duties on regulated parties that could require them to start or stop doing something that affects their existing business operations/activities and imposes compliance costs. We do note, that as with any regulation, requirements would need carefully designed and need to be fully justified to be proportionate to the identified risks and needs of the sectors so that the benefits outweigh costs..
Clarity (logical and certain, and clear roles)	0	- While it is a simple way to convey the message of “doing the right thing”, it could lead to uncertainty as the law beds in. Depending on how the duty is worded, how someone could meet the duty could be open to interpretation. Although MPI can look to mitigate this through information, guidance, or education materials, the nature of a broadly worded duty is that there will always be some ambiguity.	++ This option provides certainty that regulations could be used to set biosecurity risk requirements to address biosecurity risks in a sector.
Overall assessment	0	0 While this promotes good biosecurity practices in the legislation, its unintended consequences outweigh its benefits, though these could be mitigated. Addressing the unintended consequences would require further detailed policy work.	++ Adding enabling provisions into the Act for specific risk management requirements future-proofs the regulation. We note of the potential administrative and compliance burden.

PART 6

LONG-TERM MANAGEMENT

34. Part 6: Long-term management - Introduction

831. The Biosecurity Act provides the legislative framework for long-term management (pest and pathway management) within New Zealand. Part 5 (Pest management) of the Act establishes instruments for national and regional pest management and provides:
- the ability to create national and regional pest or pathway management plans and small-scale management programmes);
 - a national policy direction for pest management; and
 - the ability for the Minister for Biosecurity to assign responsibility for a decision on a harmful organism or pathway.
832. Participants in long-term management include regional councils (including unitary authorities), management agencies for pest and pathway plans, and central government (including the Department of Conservation (DOC), Land Information New Zealand, and MPI). Te Tiriti o Waitangi/Treaty of Waitangi partners, landowners and community groups also manage pests on their land or in their communities.
833. This RIS covers proposals relating to Part 5 of the Act, along with those relating to the management of unwanted organisms and notifiable organisms. It is divided into three topics:
- pest and pathway management and small-scale management programmes;
 - alignment of long term management outcomes; and
 - management of unwanted organisms and notifiable organisms.
834. Each topic is structured in the same way:
- background to the topic;
 - problem / opportunity;
 - options;
 - assessment of the options;
 - preferred option; and
 - impact analysis of preferred option.

35. Pest and pathway management and small-scale management programmes

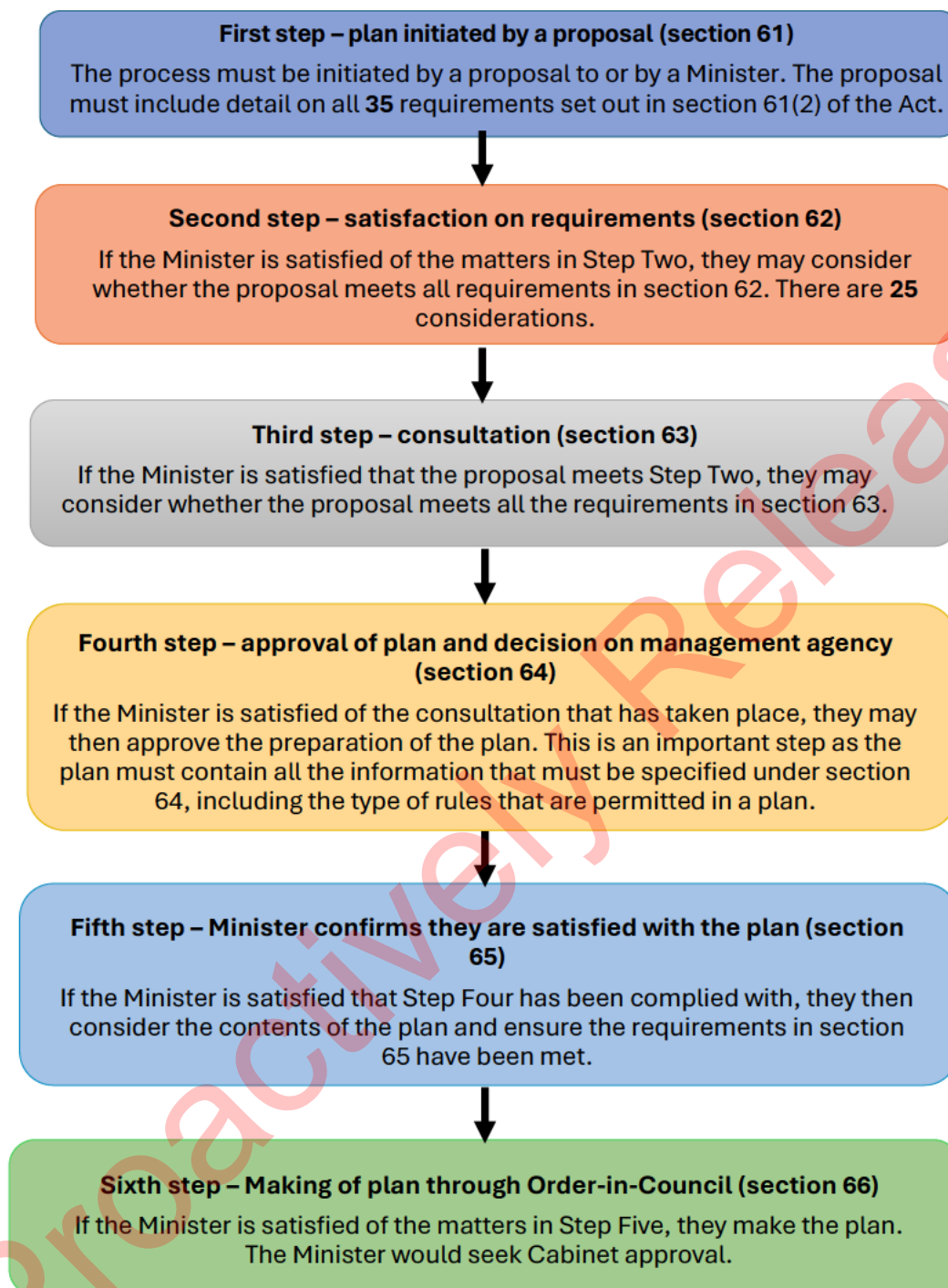
35.1. Background

835. The definition of a 'pest' under the Biosecurity Act is an organism that is specified as a pest in a pest management plan. Examples of pests are those in specific regional pest management plans including possums, mustelids (ferrets, stoats and weasels), wilding conifers (wilding pines), ragwort and *Corbicula* (a freshwater clam). The definition of a 'pathway' means the movement of goods or craft out of, into, or through a particular place in New Zealand, or a particular kind of place, and has the potential to spread harmful organisms. An example of a pathway is the movement of a marine vessel or machinery or equipment in an area that is subject to a pathway management plan.
836. The Act allows biosecurity activities to be undertaken by delegating regulatory powers to entities outside of central government. This includes regional councils and management agencies (including those operated by industry organisations). These entities access regulatory powers they through one of the following four types of management plans under Part 5 of the Act:
- a national pest management plan;
 - a national pathway management plan;
 - a regional pest management plan; and
 - a regional pathway management plan.
837. A fifth instrument, small-scale management programmes, are available to regional councils only.
838. Throughout this Chapter we will refer generically to national management plans (whether pest or pathway) as NPMPs and refer generically to regional management plans (whether pest or pathway) as RPMPs.

Pest and pathway management

839. NPMPs and RPMPs give access to comprehensive powers including the ability for councils or management agencies to, for example, require landowners to control a pest, inspect any place, give directions, declare a restricted place or controlled area.
840. The Act prescribes an extensive process for developing NPMPs and RPMPs. There is some variation depending on if a NPMP or a RPMP is pursued, but on the whole the steps are similar. The process for developing NPMPs and RPMPs are set out in different sections of the Biosecurity Act. For NPMP, the decision-maker is a Minister and for RPMPs the decision-maker is a regional council.
841. We provide the steps below for a NPMP:

Figure 8 - Steps to develop a NPMP



842. There are:

- four national pest management plans;
- one national pathway management plan;
- fifteen regional pest management plans; and
- two regional pathway management plans.

843. National-level pest or pathway management agencies (management agencies) are responsible for delivering specific national pest or pathway management plans. The current NPMPs and their respective management agencies are listed in the table below:

Table 13 - Current NPMPs and the management agencies

National pest or pathway management plan	Management agency responsible for the plan
National American Foulbrood Pest Management Plan	The Management Agency for American Foulbrood
National Kiwifruit Pathway Management Plan	Kiwifruit Vine Health
National Bovine Tuberculosis Pest Management Plan	TBfree New Zealand Limited
National Mycoplasma Bovis Pest Management Plan	M. bovis Free New Zealand Limited
National PA Pest Management Plan	Tiakina Kauri (Kauri Protection)

Small-scale management programmes

844. Under section 13 of the Biosecurity Act, regional councils can implement SSMPs to eradicate or control an unwanted organism. SSMPs are the primary response tools available to regional councils for managing unwanted organisms that are not declared pests in a regional pest management plan for the region (and are not managed wholly by MPI).
845. Sections 100V of the Biosecurity Act outlines the process to be followed by a regional council to declare a SSMP. This process includes pre-requisites to meet around the subject organism causing serious and unintended effects, and the exercise of powers that are proposed to be used. The requirements for a SSMP include:
- stating the particular adverse effect or effects of the subject on the matters listed in section 54(a) of the Act that the programme addresses;
 - stating the outcomes that the programme is seeking to achieve (exclusion, eradication, progressive containment, or sustained control); and
 - specifying, for each outcome above, the area it applies to and the extent to which the outcome will be achieved and in what time period.

35.2. Problem or opportunity

846. While there are no fundamental or systemic issues that have been identified with pest and pathway management tools under the Act, improvements could be made to streamline, clarify and improve the effectiveness of these tools:
- Tools for long-term management need to be easier to access:** While the Act provides a range of tools for pest and pathway management, they are unnecessarily time consuming and difficult to access. The resulted in that these tools not used readily and generally have only been used by management agencies and regional

councils. An example is the process for creating a NPMP or RPMPs, which involves a significant number of steps and takes considerable time and resources to develop. A NPMP or RPMP can take several years from the development through to the approval stage. This may deter the development and use of NPMPs and RPMPs. Currently there are only five NPMPs in place. Similarly, SSMPs have been seldom used by regional councils due to parameters placed on these programmes.⁵² Not enabling these tools to be easier to access could lead to the proliferation of a pest or disease at a national or regional level.

- **There is a need for greater flexibility in the Act for long-term management tools:** Long-term management tools can be inflexible. For example, the Act requires separate plans for the management of a pest and a pathway. The impact is that this makes those plans more difficult and costly to develop and implement, leading to worse management of pests and pathways.
- **Delegating responsibilities to management agency and regional council powers to manage pests and diseases in NPMPs and RPMPs:** While management agencies and regional councils are responsible for managing pests in a NPMP or RPMP, several functions relating to these plans require decisions from central government - either the Minister that is responsible for a NPMP or an MPI Chief Technical Officer. For example, only the Minister can grant an exemption from a rule in a NPMP. Similarly, permissions for pests and diseases in NPMPs and RPMPs must be granted by a Chief Technical Officer. There is a case for delegating these responsibilities to management agencies and regional councils who are responsible for managing pests and diseases under their respective NPMPs and RPMPs.

35.3. Options

847. We have identified eight options to improve pest and pathway management and small-scale management programmes.
848. Option 1 is the status quo.
849. The remaining options are not mutually exclusive and could be implemented together:
- Option 2 - simplify the process to create national or regional pest and pathway management plans
 - Option 3 - enable (but not require) integrated pest and pathway management plans
 - Option 4 - make it easier for regional councils to create small-scale management programmes
 - Option 5 - allow management agencies to exempt a person/s from a rule in a NPMP
 - Option 6 - enable more than one legal entity to share management agency responsibilities for NPMPs

⁵² The parameters under section 100V of the Act include that SSMPs may only be used for an unwanted organism and that it must be eradicated or controlled within three years from the measures starting. The Biosecurity (Small Scale Organism Management) Order 1993 limits the funding of SSMPs to \$500,000.

- Option 7 - enable management agencies and regional councils the function of issuing permits for pests in NPMPs or RPMPs
- Option 8 - enable the Minister to dismiss a management agency for a NPMP.

Option 2 - simplify the process to create, review, or renew national or regional pest and pathway management plans

850. Option 2 delivers two changes to simplify NPMPs and RPMPs:

- streamline the process to create NPMPs and RPMPs; and
- streamline the review or renewal of NPMPs and RPMPs.

Streamline the process to create NPMPs and RPMPs

851. This aspect of Option 2 remains largely the same as consulted. Streamlining would be achieved by:

- removing any unnecessary duplication and certain procedural steps⁵³ that are contained the Act (see Figure 1 and Table 1 below for further detail);
- clarifying in the Act that the steps to develop NPMPs and RPMPs are not necessarily sequential and can be undertaken concurrently;
- simplifying the process for initiating proposals for NPMPs and RPMPs through amending sections 61(1), 70, 81 and 90 of the Act, so that a proposal for a plan will not be required if the proposer of a NPMP or RPMP is a Minister, central government agency or regional council;
- for any other person or parties proposing a NPMP or RPMP, a proposal for a plan would only need to include the following:
 - the name of the person making the proposal;
 - the subject of the proposal;
 - for each subject, a description of its adverse effects or the potential risks associated with it, the reasons for proposing a plan and the objectives the plan would have;
 - for a national plan proposal, the reasons why a national plan would be more appropriate than a regional plan; and
 - for a regional plan proposal, the reasons why the plan is more appropriate than relying on voluntary actions.

852. To ensure that NPMPs and RPMPs are robust, all safeguards included in the Act would be retained for developing plans, including consultation requirements (sections 63, 72, 83 and 92 of the Act), requirements to finance plans, requirements for what plans may, and must, contain and ensuring that NPMPs and RPMPs are consistent with the National

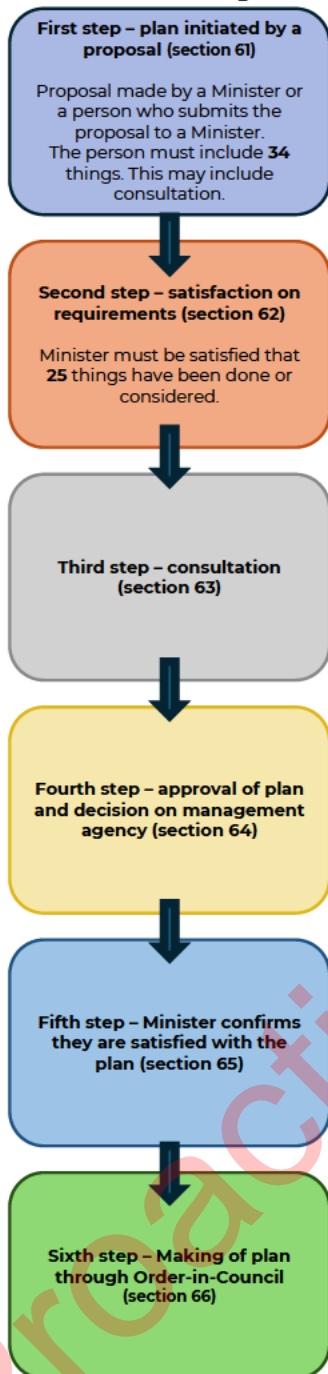
⁵³ Contained in sections 61 – 67 and 81 – 86 (for NPMPs) and sections 70 – 75 and 90 – 95 (for RPMPs) of the Act.

Policy Direction for Pest Management (see Chapter 3.1 of this paper for more detail on the National Policy Direction).

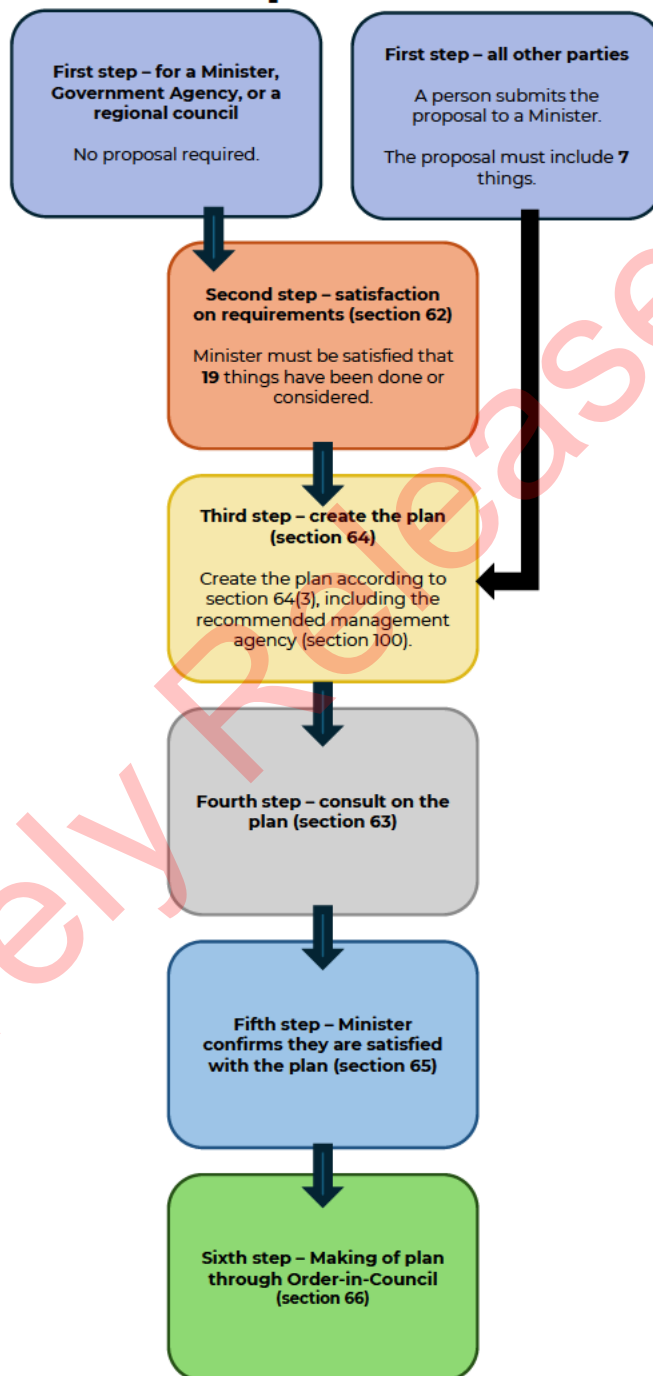
853. Option 2 also seeks to retain the requirement that a proposed rule would assist in achieving a NPMP or RPMP's objective. It is important that there is a requirement that rules would assist in achieving the objectives of a NPMP or RPMP, otherwise there could be a risk of including rules that are not directly contributing to the objectives of these plans. The requirement that the rules would assist in achieving the plans objectives is an important test and it would remove an area of potential challenge (i.e., if a rule cannot be justified against a NPMP or RPMP's objectives).
854. This option would effectively be retaining in the first step of creating plans (plan initiated by proposal):
- the principle measures of achieving the plan (contained in sections 61(2)(c)(iv), 70(2)(c)(iv), 81(2)(c)(iv) and (90(2)(c)(iv));
 - the monitoring or measurement of the plan's objectives (sections 61(2)(k), 70(2)(l), 81(2)(j) and 90(2)(j));
855. Option 2 would also be retaining in the second step of creating plans (the satisfaction on requirements) that each proposed rule in a NPMP and RPMP would assist in achieving the plan's objective (contained in sections 62(i)(i) and 71(h)(i), 82(i)(i) and 91(h)(i) of the Act).
856. Option 2 would include a requirement that the Minister must be satisfied that there are appropriate arrangements in place for the successful operation of any joint management agency, including, for example, a dispute resolution process, governance arrangements and decision-making processes.
857. These proposed changes for creating plans, using NPMPs as an example, are presented in the diagram on the following pages. The specific provisions are set out in a table at Appendix 2.

Figure 9 - Proposal to streamline plans

Status quo



Proposal 44



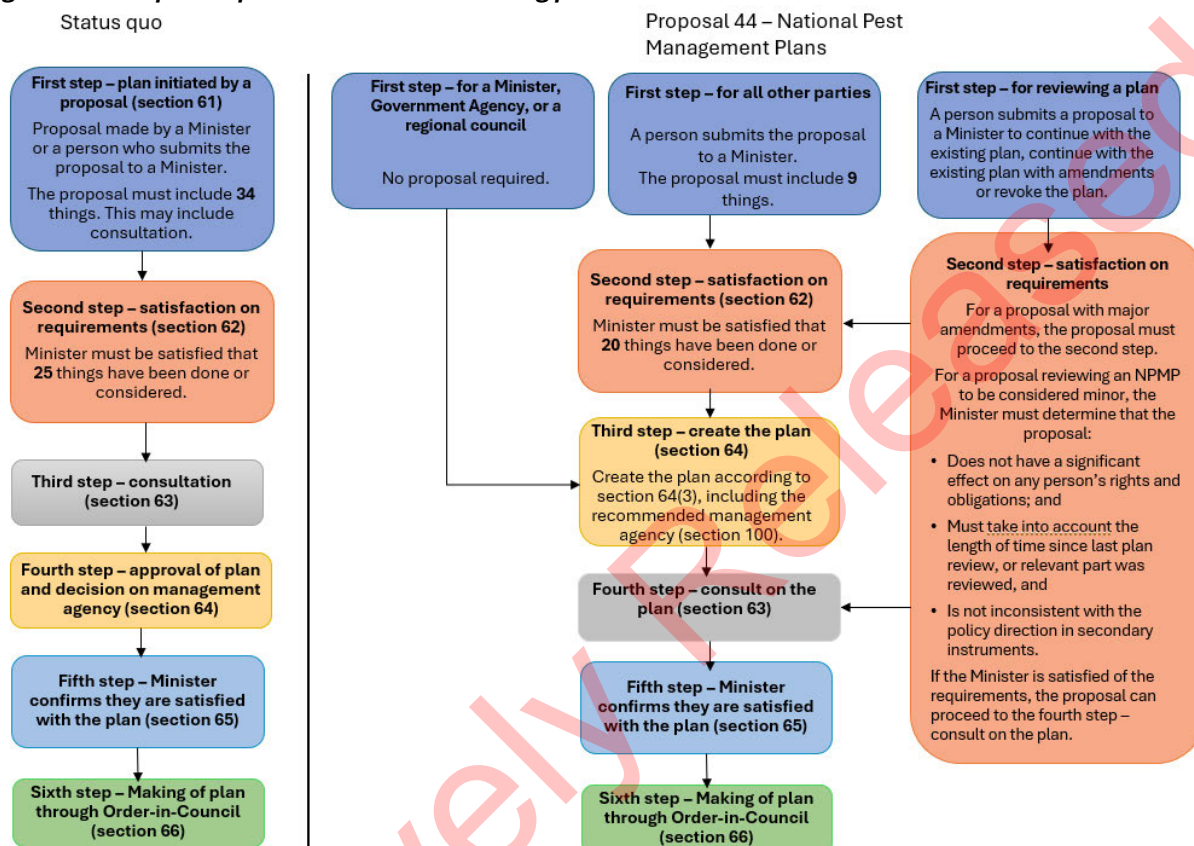
Streamline the review or renewal of NPMPs and RPMPs

858. In response to submissions, we have developed a simplified process for reviewing and renewing NPMPs and RPMPs. This aims to make the initial steps for reviewing and renewing NPMPs more streamlined and easier for proposers.
859. This simplified proposed process would reduce the administrative costs and the duplication of steps for proposals seeking to ‘roll over’ an existing NPMP, while retaining consultation requirements with the persons who are likely to be affected by a NPMP or

RPMP. The simplified process is shown in the diagram below (using a NPMP as the example).

860. We have summarised the simplified process for reviewing existing NPMPs in the diagram below:

Figure 10 - Simplified process to review existing plans



Almost all submitters supported Option 2

861. Option 2 was included in the 2024 public consultation as Proposal 44.
862. Submitters said that the proposal could provide for more effective pest and/or pathway management, speed up the process, and reduce the costs associated with developing pest and/or pathway management plans.
863. Submitters said that MPI should include a simplified process for reviewing and renewing NPMPs and RPMPs, which will make the initial steps for reviewing and renewing these plans more streamlined and easier for proposers. MPI has included this within Option 2.
864. In response to submissions and further internal analysis on Option 2, we are retaining two provisions that we previously suggested could be repealed as well as a new matter. These are
- Retain in the first step of creating plans (plan initiated by proposal) the principal measures of achieving the plan and the monitoring or measurement of the plan's objectives. The principal measures are an important test for the feasibility of control

measures proposed for a NPMP or RPMP. It is important to retain this step as it specifies how progress towards achieving the objectives is measured.

- Retain in the second step of creating plans (the satisfaction on requirements) that each proposed rule in a NPMP and RPMP would assist in achieving the plan's objective. It is important that this requirement is retained, otherwise there could be a risk of including rules that are not directly contributing to the objectives of these plans. The requirement is an important test, and it would remove an area of potential challenge (i.e., if a rule cannot be justified against a NPMP or RPMP's objective).
- A new requirement that the Minister (or a territorial authority or regional council for a joint RPMP) must be satisfied that there are appropriate arrangements in place for the successful operation of any joint management agency, including, for example a dispute resolution process (refer to Option 7).

Option 3 - enable (but not require) integrated pest and pathway management plans

865. Option 3 seeks to enable (but not require) integrated pest and pathway management plans, which would provide the option of having a single plan covering specific pests and pathways. This option would include a provision in the Act that would clarify that the pest and pathway rules in an integrated plan would have the same relationships with law as those in separate pest and pathway plans.
866. The relevant rules in both integrated and separate plans must be consistent with sections 60, 69, 80, 89, including:
- section 69(5) - the Crown is only bound to costs and obligations for good neighbour rules in regional pest management plans; and
 - section 89(5) - the Crown is bound to all relevant costs and obligations for rules relating to regional pathway management plans.

Almost all submitters supported Option 3

867. Option 3 was included in the 2024 public consultation as Proposal 45. Submitters said that this proposal would improve efficiency and deliver more holistic management of biosecurity risks. However, some submitters said that this proposal could make plans confusing and there may be a misalignment of powers, offences and penalties.
868. There have been no changes to Option 3 since public consultation.

Option 4 - make it easier for regional councils to create small-scale management programmes

869. Option 4 seeks to make it easier for regional councils to create small-scale management programmes. This would be achieved through the following amendments to the Act and the Biosecurity (Small Scale Organisms Management) Order 1993 (the Order):

- amending section 100V(2)(a) of the Act to replace the term “unwanted organism” with the term “any organism” to allow small-scale management programmes to be used for any organism;
- amending the Act to enable regional councils access to relevant powers under Part 6 of the Act that are required to implement a small-scale management programme if the relevant organism does not have unwanted status;
- amending the Order to increase the timeframe for small-scale management programmes from three years to five years to allow regional councils enough time to control the organism and add the pest to their RPMPs for long-term management (if appropriate); and
- amending the Order to increase the funding cap for the life of a small-scale management programme from \$500,000 to \$1 million.

870. Existing safeguards for small-scale management programmes would be retained under the Act such as section 100V(2)(a) which states that the regional council must be satisfied that the organism could cause serious adverse and unintended effects unless early action is taken to control it.

Almost all submitters supported Option 4

871. Option 4 was included in the 2024 public consultation as Proposal 47. Submitters welcomed this proposal and said that this promotes more effective management of new incursions, emerging pests, and localised outbreaks. Some submitters suggested that safeguards were required to mitigate potential misuse of powers that may arise from applying small-scale management programmes to any organism.

872. There have been no changes to Option 4 since public consultation.

Option 5 - allow management agencies to exempt a person/s from a rule in a NPMP

873. Option 5 would allow management agencies to exempt a person/s from a rule in a NPMP through amending sections 67 and 87 of the Biosecurity Act. This power would be practically exercised by management agencies, who are responsible for their respective NPMPs, to be able to provide exemptions from certain rules in NPMPs. This option could provide a more timely and efficient process for providing exemptions to rules (rather than this needed to be granted by a Minister) and would provide management agencies a greater degree of control over their NPMPs. This option would also include the following:

- Criteria for management agencies to consider when granting exemptions from rules in a NPMP.
- A requirement for management agencies to publish information on the exemptions granted on their respective websites.

A majority of submissions supported Option 5

874. Option 5 was included in the 2024 public consultation as Proposal 48. Submitters said that it could make granting exemptions more efficient, but safeguards are needed, and that this proposal could benefit from further discussions.
875. Following submitters' feedback, we made amendments to Option 5 to include criteria on the granting of exemptions and that exemptions granted are recorded.
876. Some submitters suggested a dispute resolution process to address potential conflicts regarding the granting or declining of an exemption. In response to this, we have included further details in Option 2 which includes a requirement that there are appropriate arrangements in place when there is more than one management agency. This could for example include a disputes resolution process, governance arrangements and decision-making processes.

Option 6 - enable more than one legal entity to share management agency responsibilities for NPMPs

877. Option 6 would enable more than one legal entity to share management agency responsibilities for NPMPs. This could empower partnerships with tangata whenua groups, regional councils, management agencies and central government agencies. The proposal may empower partnerships between tangata whenua groups, regional councils, management agencies and central government agencies for addressing a pest or disease that is of national significance.
878. Option 6 would also amend the Biosecurity Act to include stating that more than one entity could be responsible for both a NPMP or a RPMP. Under Option 2, there will be a requirement for the Minister to be satisfied that there are appropriate arrangements in place for the successful operation of any joint management agency, including a dispute resolution process (see Option 2).

A majority of submissions supported Option 6

879. Option 6 was included in the 2024 public consultation as Proposal 49. Some submitters, particularly regional councils, supported this proposal with an understanding that it also applies to regional pest and pathway management plans. Additionally, submitters said that disputes between management agencies, role clarity and clear governance are risks that need to be addressed.
880. Several submitters and targeted engagement with Te Uru Kahika and the Bio-Managers Group⁵⁴ suggested that we amend the proposal to extend it to include RPMPs.
881. We agree with this and have included it in Option 6. This will enable multiple entities to be responsible for a RPMP. The Minister must be satisfied that there are appropriate

54 Both Te Uru Kahika and the Bio-Managers Group represent regional councils. Te Uru Kahika represents New Zealand's 16 regional and unitary councils and the Bio-Managers Group represents regional councils biosecurity interests.

arrangements in place for the successful operation of any joint management agency, including a disputes resolution process (refer to Option 2).

Option 7 - enable management agencies and regional councils the function of issuing permits for pests in NPMPs or RPMPs

882. Option 7 would enable management agencies and regional councils the function of issuing permits for pests in NPMPs or RPMPs. Providing the function of issuing permissions for pests contained in NPMPs and RPMPs to management agencies and regional councils may empower them to make decisions and improve accountability for their respective plans.

Almost all submitters supported Option 7

883. Option 7 was included in the 2024 public consultation as Proposal 50. Supportive submitters said that this proposal would promote efficiency and empower management agencies and regional councils. Some submitters said that if this proposal proceeds, safeguards should be put in place.
884. Submitters suggested decision-making criteria for management agencies and regional councils for issuing permits for pests contained in NPMPs and RPMPs.
885. Under the Biosecurity Act, Chief Technical Officers issue permits for a pest or unwanted organism under section 52 and 53. Criteria for issuing permits is not set out in the Biosecurity Act. MPI has developed operational guidance that has conditions, which can vary depending on the specific pest or unwanted organism. To maintain consistency with this approach, we do not propose to include criteria in the Biosecurity Act, due to the potential variation in each specific case for issuing a permit.

Option 8 - enable the Minister who is responsible for the Act to remove a management agency for a NPMP

886. Option 8 is a new proposal. Section 100(3) of the Biosecurity Act does not currently provide for when the Minister can remove a management agency. Option 8 would enable the Minister to remove a management agency for a NPMP. This would be achieved by introducing provisions under the Act specifying circumstances for when the Minister would remove a management agency.
887. Option 8 would enable the Minister to remove a management agency if they believe on reasonable grounds that the continued involvement of a management agency poses a significant risk to the integrity and achievement of the objectives of a NPMP. In assessing whether a management agency should be removed, the Minister must follow the proposed legislative process:
- Step one – The Minister receives information that the management agency may not be performing, and the continued involvement of the management agency poses a significant risk to the integrity and achievement of the objectives of an NPMP.
 - Step two – The Minister decides whether to investigate the issue using one of the available tools under the Act or notifying the management agency of their concerns.

- Step three – After investigating the issue, the Minister assesses whether the management agency continues to be accountable to those providing the funds to implement the NPMP; and acceptable to those providing the funds to implement the NPMP and subject to management provisions under the NPMP; and capable of managing the NPMP.
- Step four - If the Minister believes, on reasonable grounds that management agency has failed to meet the criteria above and the continued involvement of the management agency poses a significant risk to the integrity and achievement of the objectives of an NPMP, the Minister must notify the Management agency and give them 30 working days to remedy the issue.
- Step five – If the Minister has received a report and is satisfied of the situation has been remedied then the process ends here. However, if the Minister is not satisfied with the situation or the management agency has not responded after 30 days, the Minister may consult persons likely to be affected by the plan on the decision to remove the management agency.
- Step six – After consulting on the decision to remove a management agency, the Minister makes a decision on whether to remove the management agency or not.

Option 8 is a new proposal that has not been consulted

888. This is a new proposal which was developed after the 2024 public consultation. While it has not been consulted on, Option 8 aligns with the general theme of the proposals to improve provisions for pest management under the Biosecurity Act.

We have discarded one option

889. There was another proposal that we had in the 2024 public consultation. This was a proposal to enable regional councils to remove exemptions from a RPMP rule before the end of the original time frame) that was part of our public consultation. However, following further work, we determined that the proposal was unnecessary as it was possible under the existing Biosecurity Act. It has therefore been discarded as an option.

35.4. Assessment

890. The options are assessed against the criteria below:

891. The focus of the 'Effective' criterion for pest and pathway management and small-scale management programmes is whether the options will improve the use of pest and pathway management tools, thus enabling better protection from biosecurity risk.

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 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 does it provide sufficient certainty?

Option 2 - simplify the process to create national or regional pest and pathway management plans

892. Option 2 (make it easier to create NPMPs and RPMPs by simplifying the process) meets all the criteria by promoting greater use of an existing biosecurity risk management tool. Option 2 strongly supports both the effective and the efficiency criteria. Removing duplication and unnecessary procedural steps would promote greater use of management plans. Enabling plans to be developed more quickly would address the management gap that can occur during the transition from biosecurity responses to long-term management. This would not have any negative consequences on biosecurity protections because plans would still need to include robust evidence on biosecurity risk management processes before being approved.
893. Option 2 increases the flexibility of the Act through providing easier implementation of plans to address a previously identified gap in the transition from response to long-term management. Option 2 improves the clarity of the law as it would clarify that the steps to develop plans are not necessarily sequential and can be undertaken concurrently. Existing safeguards under the Act, including consultation requirements for developing a plan, financing requirements, requirements for what plans must contain, and consistency with the NPD, would remain, ensuring continued transparency for stakeholders.

Option 3 - enable (but not require) integrated pest and pathway management plans

894. Option 3 (enable integrated pest and pathway management plans) meets all the criteria by ensuring that consistent protection from biosecurity risk remains in place. Currently the Act requires separate pest or pathway management plans. Combining pest and pathway management plans removes duplication and encourages management plans to be made that covers both pest and pathway which would improve biosecurity protection. Option 3 would reduce the administrative and operational costs associated with having separate pest and pathway management plans. It will increase clarity by providing a single source of biosecurity risk management requirements.

Option 4 - make it easier for regional councils to create small-scale management programmes

895. Option 4 (make it easier for regional councils to create small-scale management programmes) meets most of the criteria. Option 4 is effective by assisting regional councils to better manage emerging pests in a time efficient way. It would allow regional councils to address emerging risks within their region by allowing small-scale management programmes to be applied to any organism, not only unwanted organisms. Increasing the timeframe for small-scale management programmes to five years will allow regional councils enough time to control the organism and add the pest to their RPMP if long term management is appropriate.
896. This option does not impact the clarity of application of the tool, and existing legislative safeguards will remain in place. This option meets the adaptability criterion, as it will

enable greater use of SSMPs as tool by regional councils through widening SSMPs scope, timeframe and funding cap.

Option 5 - allow management agencies to exempt a person/s from a rule in a NPMP

897. Option 5 (enable management agencies to provide exemptions from rules in NPMPs) meets most of the criteria. Option 5 would not have an impact on the current protection of New Zealand from biosecurity risk. Exemptions to rules within NPMPs are already able to be granted by the Minister for Biosecurity. Enabling management agencies to provide exemptions to rules within NPMPs would only shift the decision-maker of the exemptions, which we do not expect to lead to better or worse biosecurity outcomes than the status quo.
898. Option 5 meets the adaptable and efficiency criteria by enabling a more timely and efficient process and providing management agencies to have a greater degree of control of the NPMPs they manage.
899. Option 5 provides no better or worse clarity than the status quo. The process for exemptions is currently clear under the status quo and will continue to be as clear if Option 5 proceeds. Regulated parties would apply to the management agency that is responsible for the NPMP rather than to a Minister which the person may not have had any involvement with previously. The management agency will have developed and consulted on rules in a NPMP and will have a detailed understanding of their application.

Option 6 - enable more than one legal entity to share management agency responsibilities for NPMPs and RPMPs

900. Option 6 (enable more than one legal entity to share management agency responsibilities) meets most of the criteria. Option 6 is effective and adaptable. The proposal will enable several parties to jointly share responsibilities for a NPMP or a RPMP. This provides an additional tool for NPMPs that reflects that multiple groups often cooperate to manage a pest or pathway. Option 6 empowers partnerships between tangata whenua groups, central government, regional councils, and industry on national pest and pathway management issues, which could lead to improved biosecurity outcomes.
901. Option 6 meets the efficiency criteria. Multiple entities would make decisions to deliver and implement a NPMP or RPMP. The efficiencies that could be gained in decision-making from this would depend on the entities cooperating well. If the entities do not work well, this could decrease the overall efficiency of Option 6. However, there are existing safeguards in the Act to manage this risk. Under section 64(2) of the Act, the Minister for Biosecurity must make a decision on appointing a management agency for a NPMP. As part of this decision, the Minister needs to consider a range of factors to ensure the management agency would be successful. This includes the capacity of the management agency to manage the plan, including the competence and expertise of the agency's staff. For a RPMP, a regional council would consider these factors.

902. If multiple entities are enabled under Option 6, the Minister or a regional council would have to consider how the multiple entities would cooperate to successfully deliver the plan. This is included in Option 2. Option 7 would only decrease clarity for stakeholders if they were not clear on which entity could assist them. This risk would be addressed by the Minister or a regional council needing to be satisfied that the multiple entities could implement the NPMP or RPMP, and clarity provided on the central contact point for the NPMP or RPMP.

Option 7 - enable management agencies and regional councils the function of issuing permits for pests in NPMPs or RPMPs

903. Option 7 (provide management agencies and regional councils the function of issuing permits for pests in NPMPs and RPMPs) meets most of the criteria. Option 7 is neutral on the effective criterion. Permits for organisms contained in NPMPs and RPMPs are already able to be issued on the decision of a Chief Technical Officer, who is able to determine appropriate biosecurity risk management requirements. Enabling management agencies and regional councils to issue permissions would likely not create better or worse outcomes, as they are also well placed to determine appropriate biosecurity risk management requirements.
904. Option 7 would not improve clarity for stakeholders on applying for an exemption, as it is currently clear under the status quo, and it would continue to be clear if the option proceeds. This option would be more operationally efficient for management agencies and regional councils, as it removes the need for management agencies and regional councils to have to apply to a Chief Technical Officer for a permission. It would also provide greater clarity for stakeholders and be more operationally efficient for management agencies and regional councils.
905. The key benefit of this option is that it would empower the decision making of management agencies and regional councils and increase their accountability for decisions made under their respective plans. This option provides adaptability by enabling management agencies and councils to make decisions on pests and diseases contained in their respective NPMPs and RPMPs. It would also more administratively efficient by applying to management agencies and regional councils for permits, rather than applying to MPI's Chief Technical Officers.

Option 8 - enable the Minister to dismiss a management agency for a NPMP

906. Option 8 (enable the Minister responsible for the Act to remove a management agency for a NPMP) is effective for protecting New Zealand from biosecurity risk because this proposed provision would ensure that management agencies appointed to administer NPMPs would deliver the intended performance needed to achieve NPMP objectives. This option futureproofs the Minister's ability to monitor a management agency's performance which is not currently available under the Act. This option is no better or worse on the efficient criterion. It simply introduces provisions under the Act which specify circumstances for when the Minister would remove a management agency.

35.5. Which option best addresses the problem, meets the policy objective and delivers the highest benefits?

907. Our assessment finds that all the options to improve NPMPs, RPMPs and small-scale management programmes (Options 2 to 8) are better than the status quo. The options are also not mutually exclusive. Therefore, we are recommending that all of the options progress.
908. These changes will enable us to modernise the Act to deliver a more flexible toolbox for regional councils and management agencies. These entities are well-placed to deliver long-term management outcomes in their respective areas of responsibilities.
909. The Minister's preferred options in the Cabinet paper is the same as our recommended options.

35.6. Impact analysis

910. We have assessed the impact of all the preferred options in Part 6 as a package (refer to Chapter 5).

35.7. Multi-criteria analysis

	Option 1 – status quo	Option 2 – simplify the process for developing NPMPs and RPMPs	Option 3 – enable integrated pest and pathway management plans	Option 4 – easier for councils to create small-scale management programmes (SSMPs)	Option 5 – enable management agencies to provide exemptions from rules in NPMPs	Option 6 – enable more than one legal entity to share management agency responsibilities for NPMP or a RPMP	Option 7 – enable management agencies and regional councils to issue permissions for pests in plans	Option 8 – enable Minister to dismiss a management agency where the agency is underperforming or intends to resign
Effective (improving use, biosecurity protection)	0	++ This process for making NPMPs and RPMPs would be more effective and would encourage greater use of these long-term management tools, leading to better biosecurity management.	++ Currently the Act requires separate pest or pathway management plans. Combining pest and pathway management plans removes duplication and encourages management plans to be made that covers both pest and pathways.	++ Enabling greater use of SSMPs will assist regional councils in managing emerging pests in a time efficient way. Increasing the timeframe for SSMPs to five years would provide councils enough time to control the organism and add it to their RPMP (if appropriate).	0 Exemptions to rules within NPMPs are already able to be granted by the Minister for Biosecurity. Enabling management agencies to provide exemptions to rules within NPMPs would not create better or worse biosecurity outcomes than the status quo.	++ Enabling multiple entities to have responsibilities for a NPMP or a RPMP could increase coordination and partnership and improve biosecurity outcomes by enabling biosecurity risk management processes to reflect differences in areas and pathways between regions.	0 A Chief Technical Officer already issues permits after setting appropriate risk management measures. Enabling management agencies and councils to issue permits should not have better or worse biosecurity outcomes. These parties are also well placed to set risk management measures.	++ Enabling the Minister responsible for the Act to remove a management agency for a NPMP) is effective for protecting New Zealand from biosecurity risk because this proposed provision would ensure that management agencies appointed to administer NPMPs would deliver the intended performance needed to achieve NPMP objectives.
Adaptable (modern, enabling legislation)	0	++ This option enables better use of an existing tool within the Act.	++ Future proofs the Act by enabling the use of either combined or separated plans based on which approach would lead to greater biosecurity outcomes	++ SSMPs have a limited scope, short timeframe and funding cap so councils have seldom used it. Option 5 would enable greater use of this existing tool through widening the scope of SSMPs, timeframe and funding cap.	++ This would enable management agencies to have greater degree of control over their NPMPs and ensure they are well placed to respond to future changes in biosecurity risk management.	++ The proposal will enable several parties to jointly share responsibilities for a NPMP or a RPMP. This provides an additional tool for NPMPs or RPMPs that reflects that multiple groups often cooperate to manage a pest or pathway.	++ Would empower management agencies and councils to make decisions and improve accountability for their respective plans. It will also create an additional tool for future biosecurity risk management.	++ This option futureproofs the Minister's ability to monitor a management agency's performance which isn't currently available under the Act.
Efficient (burden on regulators and parties, and complexity)	0	++ Removing unnecessary processes promotes greater use of the plans. This better enables transition from a response to long-term management, plans would still include robust evidence on biosecurity risk management. Removing duplication would enable plans to be developed faster and much more efficiently.	++ This would reduce the administrative and operational costs associated with having separate pest and pathway management plans.	++ The timeframe for these plans is currently three years. Increasing the timeframe to five years will make more efficient use of the administrative resource required to develop these plans.	++ The Act only allows the Minister for Biosecurity to exempt a person from a rule in a NPMP. Enabling management agencies, who are responsible for implementing NPMPs, to be able to provide exemptions could provide a more timely and efficient process.	++ Improves efficiency as multiple entities deliver and implement a NPMP or a RPMP, rather than an individual agency undertaking separate processes to work with relevant entities. These efficiencies depend on the entities cooperating. Existing safeguards under section 64(2) manages this risk.	++ This would be more administratively efficient than applying to MPI's Chief Technical Officers for permissions, which is the current process for issuing permission under the Act.	0 This option would not lead to better or worse efficiency outcomes. It simply asserts a new Ministerial power to allow for a structured removal of a management agency.

	Option 1 – status quo	Option 2 – simplify the process for developing NPMPs and RPMPs	Option 3 – enable integrated pest and pathway management plans	Option 4 – easier for councils to create small-scale management programmes (SSMPs)	Option 5 – enable management agencies to provide exemptions from rules in NPMPs	Option 6 – enable more than one legal entity to share management agency responsibilities for NPMP or a RPMP	Option 7 – enable management agencies and regional councils to issue permissions for pests in plans	Option 8 – enable Minister to dismiss a management agency where the agency is underperforming or intends to resign
Clarity (logical and certain, and clear roles)	0	+	++	0	+	0	0	++
		Would clarify that the steps to develop plans are not necessarily sequential and can be undertaken concurrently. The consultation requirements for developing a plan would remain, ensuring continued stakeholder clarity	Having a single integrated plan for a pest and pathway where appropriate will provide easier access for stakeholders. It will increase clarity on their obligations, by providing a single source of biosecurity risk management requirements	The requirements for SSMPs established in the NPD, as well as the existing safeguards in the Act, will remain.	Delegating exemptions to management agencies would provide clarity for regulated parties. Regulated parties are familiar with the management agency (compared with the Minister) and it is the management agency that has a detailed understanding of the NPMP.	Would decrease clarity for stakeholders if they do not understand which entity can assist them. However, this risk would likely be addressed by the Minister needing to be satisfied that the multiple entities could implement the NPMP or a regional council be satisfied for a RPMP. Clarity would be provided on the central contact point for the NPMP or the RPMP.	This option would not improve clarity for stakeholders on applying for an exemption. It is currently clear under the status quo, and it would continue to be clear if the option proceeds.	This option provides clarity for management agencies on what they are required to do under the Act.
Overall assessment	0	++	++	+	+	+	+	+
		This option provides easier access to an existing tool for long-term management, by reducing the time and costs associated with developing national and regional pest and pathway management plans. This may encourage an increase in the development and use of these plans.	This will provide the option of having a single plan covering specific pests and pathways. This may reduce administrative and operational costs associated with having separate pest and pathway management plans.	This option will encourage greater use of SSMPs as an effective tool for regional councils to manage emerging risks, including organisms that may not be included in a regional pest management plan.	This could provide a more timely and efficient process for providing exemptions to rules, rather than the Minister for Biosecurity providing an exemption from a rule in a NPMP. It would also provide management agencies a greater degree of control over NPMPs.	This could empower partnerships with tangata whenua groups, central government, regional councils, and the industry, leading to improved biosecurity outcomes. There is a risk that Option 7 could create complexity with multiple entities working together. However, this would be mitigated by existing safeguards in section 64(2).	Management agencies and regional councils are best placed to issue permissions for the pests they manage, and this option would empower their decision making and improve accountability for individual plans.	This option would introduce provisions for when a Minister can remove a management agency who is no longer fit and proper to administer an NPMP. This would provide the Minister with an enabling tool in the Act to assess the performance of a management agency.

36. Alignment of long-term management outcomes

36.1. Background

911. While some pests or diseases arriving in New Zealand may be difficult to eradicate, we may still be able to minimise the damage they cause. Rules in NPMPs and RPMPs can be used to require people to manage pests in certain ways where individual actions alone are not effective and collective action may result in improved biosecurity outcomes.
912. Biosecurity is a shared responsibility, and it requires different groups operating at all levels - national, regional and local – to be effective. It is important to consider how the Act could support the biosecurity system with national oversight, coordination, and accountability to enable responsibilities and activities to be coordinated and delegated appropriately.
913. Part 5 of the Act contains powers for the Minister for Biosecurity to, among other matters, align long-term management outcomes through a national policy direction for pest management (NPD).
914. Section 56 of the Act requires the Minister to make a NPD and states that it is to be the only NPD. The NPD may be amended or revoked and replaced by the Minister, and the process for doing so is prescribed in the Act.
915. The purpose of the NPD is to ensure that pest management activities under Part 5 provide the best use of available resources for New Zealand's best interest and align with one another where necessary, to contribute to long-term management.
916. The NPD came into effect in 2015 and does the following:
- sets out the framework for developing NPMPs, RPMPs and SSMPs;
 - clarifies the Act's requirements for these plans; and
 - ensures that plans are aligned and consistent, both nationally and regionally.
917. In 2021, the Parliamentary Commissioner for the Environment released the report, *Space invaders: A review of how New Zealand manages weeds that threaten native ecosystems*.⁵⁵ The report included several recommendations for the NPD, including that it provides specific direction on native ecosystem weeds either through:
- rewriting the existing NPD to include several targeted sections on the management of different pests already present in New Zealand (including predators, browsers, invertebrates, pathogens, plants) or including one specifically devoted to the management of native ecosystem weeds; or
 - amending section 56 of the Act to allow for multiple targeted NPDs.

⁵⁵ [Space Invaders Report](#), Parliamentary Commissioner for the Environment (2021).

36.2. Problem or opportunity

918. We have identified particular pain points in aligning national activities which limits the government's ability to support long-term management at a national level. These relate to the Act be enabled to provide direction on the management of specific pests and diseases of concern at a national level.
919. The Act states that there is only one NPD. There was not a clear policy intent to enable only one NPD, and there is no clear rationale for this position.
920. The NPD does not set mandatory requirements for the management of specific pests at a national level. Rather, it sets the content and process requirements for creating NPMPs, RPMPs and SSMPs. An NPD could be used to provide national leadership and direction on pests at a national level.
921. In some cases, there has been variation in regional approaches for managing a pest that may have benefit from mandatory direction to ensure consistency in approaches. In these situations, there might be a need for nationally consistent objectives, policies and/or rules to manage pests across different regions. For example, a nationally consistent approach could be beneficial for managing wilding conifers. Incorporating a standardised suit of rules in RPMPs for wilding conifers would provide an efficient and effective means of achieving this.

36.3. Options

922. We now have two options for consideration for the alignment of long-term management outcomes.

Option 1 – the status quo

923. Option 1 is the status quo. Keeping the current arrangement means national oversight of pest management would remain limited. We would continue to use to NPD to provide leadership on procedural matters and coordination of activities.

Option 2 – enable multiple NPDs to be made, and clarify that NPDs can set baseline objectives, policies or rules for pest and pathway management

924. Option 2 combines Proposal 52 (enable multiple NPDs to be made) and Proposal 53 (enable new regulations to be made to create nationally consistent baseline objectives, policies or rules for pest and pathway management). Option 2 contains two parts:
- enable the creation multiple NPDs; and
 - clarify that an NPD can set baseline objectives, policies or rules for pest and pathway management.

Enable multiple NPDs

925. Option 2 retains the NPD instrument of Proposal 52 and incorporates aspects of Proposal 53 to clarify that an NPD can set baselines objectives, policies, or rules for pest and pathway management.

926. This option responds to the Parliamentary Commissioner for the Environment's recommendation that national policy direction on native ecosystem weeds should be provided either by rewriting the existing NPD to include several targeted sections on specific ecosystem weeds, or to allow for multiple targeted NPDs to be created.

Enable NPD to set baseline objectives, policies or rules for pest and pathway management

927. This would clarify that NPDs enable nationally consistent baseline objectives, policies, and/or rules to be set for a pest or pathway. For example, baseline objectives, policies and/or rules must be used by regional councils in their RPMPs for pests that of a concern nationally and would benefit from a consistent approach across regions and/or by Crown agencies that administer Crown land.
928. There is an opportunity to provide nationally consistent rules for managing pests of national significance across different regions and at a national level. The existing NPD focusses on setting out the framework for:
- developing the content of NPMP, RPMPs and SSMPs;
 - clarifying the Act's requirement for these plans;
 - ensuring that plans are aligned and consistent; and
 - outlines the requirements for developing good neighbour rules for RPMPs.
929. Enabling the NPD to create nationally consistent baseline objectives, policies or rules could assist enhancing visible national leadership.
930. The Minister for Biosecurity would develop or amend NPDs in consultation with potentially affected parties (e.g. regional councils and Crown agencies, such as the Department of Conservation and Land Information New Zealand) and would require Cabinet approval.
931. Crown agencies that administer Crown land may be bound to a baseline objective, policy, or rule in an NPD, if it is in the balance of public interest to do so. Whether the Crown should be bound to particular baseline objectives, policies, or rules would be determined as part of the development of a proposed NPD.
932. To further ensure that fiscal limitations are addressed we propose two additional safeguards:
- Option 2 would provide that the Minister must have regard to financial implications for the Crown when approving an NPD. This would be achieved by linking the approval of an NPD to being satisfied of the Crown's ability to meet its obligations within existing appropriations and/or through new appropriations.
 - Option 2 would also insert an explicit review provision into an NPD so that a review can be (rather than must be) initiated within a certain timeframe (not exceeding 10 years) on the direction, or any part of the direction. This could provide additional assurance, especially in a situation where funding to implement an element of an NPD were no longer sustainable.

Option 2 amalgamates two proposals that we consulted on

933. In the 2024 public consultation, we sought feedback on two non-mutually exclusive proposals:⁵⁶

- Proposal 52 sought to enable multiple National Policy Directions for pest management to be made.
- Proposal 53 sought to enable new regulations to be made to create nationally consistent baseline objectives, policies or rules for pest management.

934. There was strong support for both of these proposals.

935. Following further analysis, we determined that there was an overlap with the intent of Proposals 52 and 53. Both proposals affect management agencies and regional councils (and therefore the delivery of regional pest management plans). Given this, only one of these proposals is needed to achieve the objective of providing greater national consistency for long-term management outcomes.

936. We worked on an option which progresses Proposal 52, and then amalgamating the aspects of Proposal 53 into Proposal 52, to clarify that an NPD can also set baseline objectives, policies or rules for pest and pathway management.

937. We have chosen to do this because the NPD is a well-known and familiar instrument to regional councils. We consulted this alternative option with regional councils as part of 2025 targeted consultation. Regional councils had no substantive comments on MPI's approach to combine Proposals 52 and 53.

938. Option 2 is therefore a combination of Proposals 52 and 53.

36.4. Assessing options to address the problem

939. The options are assessed against the criteria below.

940. The focus of the 'Effective' criterion for alignment of long-term management outcomes will be on whether the option leads to better biosecurity outcomes.

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 will the option address the administrative burden on regulators, and/or the compliance burden on regulated parties?
Clarity	• Is the option logical, consistent, easy to understand, and does it provide sufficient certainty? • Are the roles and responsibilities assigned appropriately and clearly between central government, local government, industry and local communities?

941. Under Option 1, while the tools for long-term management work well, they do not always align between different regions or with national priorities. For example, variation in how

⁵⁶ There was a third proposal (Proposals 54A-C) relating to the Minister's ability to assign responsibility for a decision on a harmful organism or pathway (section 55 of the Act). We have subsequently identified that our preferred option is Proposal 54B, which is to streamline the process set out in regulations to remove unnecessary steps or duplication. This can be enabled without primary legislative change and therefore not discussed further in this Regulatory Impact Statement.

regions manage a pest, such as wilding confiders, may not contribute to the desired outcome for a pest at a national level.

942. Option 2 (enable multiple NPDs and NPDs can set baseline rules and objectives) could lead to better biosecurity outcomes by providing clear targeted direction on the management of different organisms. Different NPDs would enable tailoring biosecurity outcomes and practices between different organisms to be considered and used to create flexible, tailor-made policies to achieve biosecurity objectives.
943. Option 2 would provide for future flexibility in the Act to make targeted policy directions, if that was determined to be the most appropriate approach to better biosecurity outcomes. This option also improves the efficiency of pest management by ensuring rules and policies are nationally consistent. Option 2 increases clarity on the desired outcomes for pest management nationally. By creating consistent rules and policies through an NPD or multiple NPDs, long-term management activities can be used more efficiently and lead to better biosecurity outcomes that are consistent across the entirety of New Zealand.
944. Option 2 is more efficient than the status quo because enabling more than one NPD could ensure that, if an NPD is amended, consultation can be focused on a specific topic, rather than opening the whole instrument up for review and potential challenge. The new safeguards (the requirement to consider impact on appropriations and the new review provision) do not impact on efficiency because both safeguards are already contemplated under the status quo. NPDs are substantive policy decisions that must go to Cabinet, which requires a Minister to expressly consider fiscal implications for the Crown in the Cabinet paper to seek a decision from Cabinet.
945. Option 2 may improve clarity by providing targeted direction for the management of specific organisms through multiple NPDs, rather than an overly broad direction for all long-term management activities. An NPD could be developed for a particular pest or disease and lead to effective partnership between MPI, other Crown agencies, regional councils, management agencies and other stakeholders. This enables MPI to provide leadership and direction on national-level objectives or outcomes, rather than relying singularly on NPMPs and RPMPs for direction on long-term management issues.

36.5. Which option best addresses the problem, meets the policy objective and delivers the highest benefits?

946. We recommend proceeding with Option 2. This option improves on the ability for the Minister to provide leadership for long-term management. Option 2 would create multiple NPDs, and clarify that an NPD can set baseline objectives, policies or rules for pest and pathway management. The Minister's preferred option in the Cabinet paper is the same as our recommended option.

36.6. Impact analysis of the preferred option

947. We have assessed the impact of all the preferred options in Part 6 together. See Chapter 38.

37. Management of unwanted organisms and notifiable organisms

37.1. Background

Unwanted organisms

948. An unwanted organism is an organism that a Chief Technical Officer believes is capable or potentially capable of causing unwanted harm to any natural and physical resources or human health. Unwanted organisms are listed in the Official New Zealand Pest Register.⁵⁷ The register has approximately 15,000 organisms listed as unwanted. Examples of unwanted organisms include:

- Undaria – an invasive seaweed with the ability to quickly establish and outcompete native marine species.
- Myrtle rust – a serious fungal disease considered to pose serious risk to significant natives such as pōhutukawa, ramarama, rata and mānuka
- Wallabies – introduced herbivores that damage native forests, destroy native species habitat and food sources and compete for feed with sheep, cattle, and other livestock

949. When an organism is designated as an unwanted organism, the powers to eradicate or manage the organism under Part 6 of the Act become available (e.g. powers to control the movement of goods in an area, or powers to direct people to treat or destroy goods). There are also duties and restrictions under:

- Section 52, which states no person shall knowingly communicate, cause to be communicated, release, or cause to be released or otherwise spread any pest or unwanted organism.
- Section 53, which states that the owner or person in charge of an organism which they know or suspects contains or harbours a pest or unwanted organism, must not:
 - cause or permit that organism to be in a place where organisms are offered for sale or exhibited;
 - sell or offer that organism for sale;
 - propagate, breed, or multiply the pest or unwanted organism or otherwise act in a manner that is likely to encourage or cause its propagation, breeding, or multiplication.

950. Sections 52 and 53 apply automatically when an organism is declared as unwanted. Every person who fails to comply with sections 52 and 53 is liable on conviction of:

- For individuals: imprisonment not exceeding five years, a fine not exceeding \$100,000, or both

⁵⁷ <https://pierpestregister.mpi.govt.nz/>

- For corporations: a fine not exceeding \$200,000.
951. A Chief Technical Officer may permit an owner or person in charge of an organism to carry out an act otherwise prohibited by sections 52 and 53. Most permissions need to have a biosecurity benefit or outcome to be considered for approval (there are exceptions to this). A person may apply for a permission to handle unwanted organisms for the purposes of:
- education;
 - research;
 - pest management or removal/disposal; or
 - any other purpose that the Chief Technical Officer approves.
952. During the biosecurity response for freshwater golden clam (*Corbicula fluminea*) which was declared as an unwanted organism, there were applications to a Chief Technical Officer for permissions to extract water from waterways. Permissions were required to avoid criminal liability from extracting water. Similar cases have occurred for the passage of water through a hydro-electric power station, where a permission was required to avoid criminal liability for power companies.
953. Unwanted organism status is an important consideration for several biosecurity functions. These are implemented by MPI and other agencies such as the DOC, regional councils, and management agencies and include:
- preventing risky organisms from entering New Zealand through the border,
 - long term pest management, and
 - response.
954. As well as these functions, unwanted organism status is used to inform decisions made by other agencies, sometimes under other legislation. For example, the EPA must consider whether an organism is an unwanted organism when making a decision under section 35 of the Hazardous Substances and New Organisms Act 1996 (HSNO Act).

Notifiable organisms

955. Under section 46, every person in New Zealand is legally obliged to notify a Chief Technical Officer if they suspect the presence of a notifiable organism. Notifiable organisms are organisms that would impact the economic viability of New Zealand's animal and plant production, biodiversity, human health, or trade and market access. They are often considered a subset of unwanted organisms.
956. The key purpose of this tool is to enable surveillance and fast detection of specific organisms. Notifiable organisms are listed in the Biosecurity (Notifiable Organism) Order 2016. Notifiable organisms include pests and diseases of major concern, including foot and mouth disease, fruit flies, malarial mosquitos, and the rabies virus.
957. The process for declaring a notifiable organism is set out under the Act. Organisms are declared notifiable by the Governor-General through Order in Council.

958. Notifiable organism status can assist in a biosecurity response by requiring suspected cases of these pests and diseases to be notified to a Chief Technical Officer. Early notification can assist MPI in a response to eradicate, control or contain a notifiable organism and prevent it from establishing in New Zealand.
959. Notifiable organism status provides for:
- the gathering of information on disease occurrence to understand an organism's status in New Zealand;
 - enabling New Zealand to meet the World Organisation for Animal Health requirements, which enable a country to declare freedom from significant diseases (all organisms listed by the World Organisation for Animal Health that New Zealand wishes to declare freedom from need to be categorised as a notifiable organism for surveillance and reporting purposes);
 - increasing the expectation for expediency in reporting diseases that are particularly significant; and
 - having a role in disease control outside of national and regional pest and pathway management plans.
960. It is an offence to not report the suspected presence of a notifiable organism. The penalties for this offence are high. If convicted, an individual may be liable for imprisonment for a term not exceeding five years and/or a fine of up to \$100,000 for an individual, or \$200,000 for a corporation.

37.2. Problem or opportunity

A very large number of organisms are classified as unwanted

961. Over time, organisms have been declared unwanted because of they cause or potentially cause harm to any natural and physical resource or human health, regardless of the likelihood that that harm would ever eventuate or the magnitude of that harm. This is because the criteria for an organism to be unwanted is low: a Chief Technical Officer must only be able to form a belief the organism causes or potentially causes unwanted harm to any natural or physical resource, or human health.
962. A Chief Technical Officer does not need to consider whether the restrictions or powers granted by the Act when an organism is declared an unwanted organism are necessary or appropriate. As well as this, some organisms automatically become unwanted organisms because of the interaction between the definition of an unwanted organism and the HSNO Act.
963. Because of this, declaring an organism is an unwanted organism is no longer as meaningful as it is intended to be. There are many organisms which are “unwanted” that don't pose a true risk, that should not be restricted or would not be responded to if found in the environment. There are also unwanted organisms which are no longer taxonomically distinct species.

964. The Biosecurity Act Amendment Bill provides an opportunity to make the unwanted organism classification a more targeted, effective tool for managing and responding to Biosecurity threats.
965. The Act is also not clear when unwanted organism status can be removed.⁵⁸ This means that it has been difficult to rationalise the register of unwanted organisms, despite our knowledge that there are many organisms which should no longer be unwanted.

The language in Section 52 means regulated parties don't know what the rules are, and there are unmanaged risks

966. Section 52 of the Biosecurity Act states that “no person shall knowingly communicate, cause to be communicated, release or cause to be released, or otherwise spread any pest or unwanted organism,” unless done so in line with a set of exceptions. “Communicate” is a confusing term that doesn't clearly articulate what activity is restricted. This has led to stakeholders being unsure whether their activity breaches the Act.
967. As well as this, because “knowingly” is included in section 52, the prohibition only applies in situations where the user acted with full knowledge that their actions were in breach. This means the prohibition doesn't apply in situations where users are aware that their activity *risks* breaching the section, but they do the activity anyway. As a result, these users are not in breach of the Act, and this is an enforcement gap.
968. For example, if a person were to move water that they have good reason to suspect (and thus would communicate etc) an unwanted organism or pest, they may choose to not test the water before doing so to avoid triggering “knowingly.” Under the status quo, it would be difficult to prove that the person “knowingly” breached the section, even though the person appreciated the risk and acted regardless.

Section 52 and 53 can unnecessarily prohibit legitimate activity by being applied automatically

969. In responses, MPI often needs to act quickly to declare an organism as unwanted under Part 6 of the Biosecurity Act. This automatically triggers prohibitions under sections 52 and 53, which can unintentionally criminalise legitimate activities. For example, if a marine pest were declared an unwanted organism and it was found in a body of water, any activity that moves or redirects that water could potentially be in breach of the section. While MPI can issue exemptions these can take time to design and approve, potentially delaying urgent responses.
970. As well as this, section 52 of the Biosecurity Act contains a wider set of exceptions to the prohibition it sets than section 53. This means that permissions must be granted under section 53 for activity that would otherwise not require permission under section 52. There is an opportunity to align the exceptions in section 53 with those in section 52 to

⁵⁸ Refer to paragraph 171.

make their application more consistent and ensure that permissions are only required in appropriate circumstances.

971. Finally, section 52(c) exempts activity from restriction if it is carried out “for a scientific purpose with the authority of the Minister.” This authority would be better placed with a Chief Technical Officer because of the technical expertise required (Legislation Guidelines 18.2).⁵⁹

Notifiable organisms have restrictions and powers associated with them that extend beyond the core purpose of surveillance

972. Because of the way the Act is written, notifiable organisms are considered a subset of unwanted organisms. This means that an organism must be an unwanted organism to be declared notifiable. This is a problem because some organisms which should be declared notifiable do not also need to be unwanted. For example, surveillance may be being conducted for an organism to meet World Organisation for Animal Health obligations, but biosecurity control measures empowered by declaring that organism as an unwanted organism would likely not be required if the disease was detected.
973. Further, the process for declaring a notifiable organism is inflexible. Declaring an organism as notifiable requires making changes to the Biosecurity (Notifiable Organisms) Order (an Order in Council). Updating this order requires significant time and resource. This process is also not responsive enough to address emerging biosecurity risks, such as new organisms entering New Zealand that may quickly require notifiable organism status.

37.3. Options

974. We have identified eight options to improve the management of unwanted and notifiable organisms.
975. Option 1 is the status quo.
976. The remaining options are not mutually exclusive and could be implemented together:
- Option 2 - amend section 52 to replace “communicate” with wording that prohibits the movement of an unwanted organism or pest
 - Option 3 - enable a Chief Technical Officer to tailor the application of sections 52 and 53 when declaring an unwanted organism
 - Option 4 - remove section 52(c) from the Act, and add two exceptions to section 53, which mirror those provided in section 52(a) and section 52(b)
 - Option 5 - limit the scope of the unwanted organisms classification to organisms which are capable or potentially capable of harm, and powers are required to manage that harm or potential harm

⁵⁹www.ldac.org.nz/guidelines/legislation-guidelines-2021-edition/new-powers-and-entities-2/chapter-18#part-2-who-should-hold-the-new-power-b778daef

- Option 6 - clarify in the Biosecurity Act how unwanted organism status can be removed and make this process more efficient
- Option 7 - deliver a new one-off provision for all unwanted organisms to expire after five years
- Option 8 - deliver amendments to improve the management of notifiable organisms

Option 2 - amend section 52 to replace “communicate” with wording that prohibits the movement of an unwanted organism or pest

977. Option 2 would amend section 52 to replace “communicate” with wording that prohibits the movement of an unwanted organism or pest, such as:

- directly moving an unwanted organism or pest from a place to a different place,
- round trips not involving a release, such as moving an unwanted organism or pest from a place, through another place (without releasing it in this place), then returning it back to the original place, and,
- an unwanted organism or pest is moved from a place to a different place by association, such as:
 - moving craft or a vehicle from a place where an unwanted organism or pest is present and likely to be able to be moved by moving that craft or vehicle to another place; and
 - moving something that is contaminated or likely contaminated with an unwanted organism or pest from a place to a different place.

978. The amendment would aim to reduce the uncertainty as to the meaning and scope of the term “communicate” and “cause to be communicated.” This will decrease the ambiguity of complying with section 52 and help prevent unintended breaches of the provision.

979. Option 2 would also expand the application of section 52 to also prohibit individuals from acting when they contemplate their actions may breach the section, and they are reckless as to whether they do or not. This will give MPI access to enforcement powers to control or prevent risky activity when users act with “wilful blindness,” or when users appreciate the risk of their activity and act anyway.

Almost all submitters supported Option 2

980. Option 2 was included in the 2024 public consultation as Proposal 55. Almost all submitters on Proposal 55 agreed that “communicate” in section 52 is confusing. They stated that it is not clear whether an action has breached the law or not, and they supported our intention to address this issue. Te Uru Kahika and Otago Regional Council also stated in their submissions that the inclusion of “knowingly” in section 52 has caused problems. They stated that “proving intent is rarely possible and reduces the ability to effectively.

981. Following consultation, MPI engaged regional councils, the DOC, and management agencies to determine the most appropriate activity to be targeted by Proposal 55.

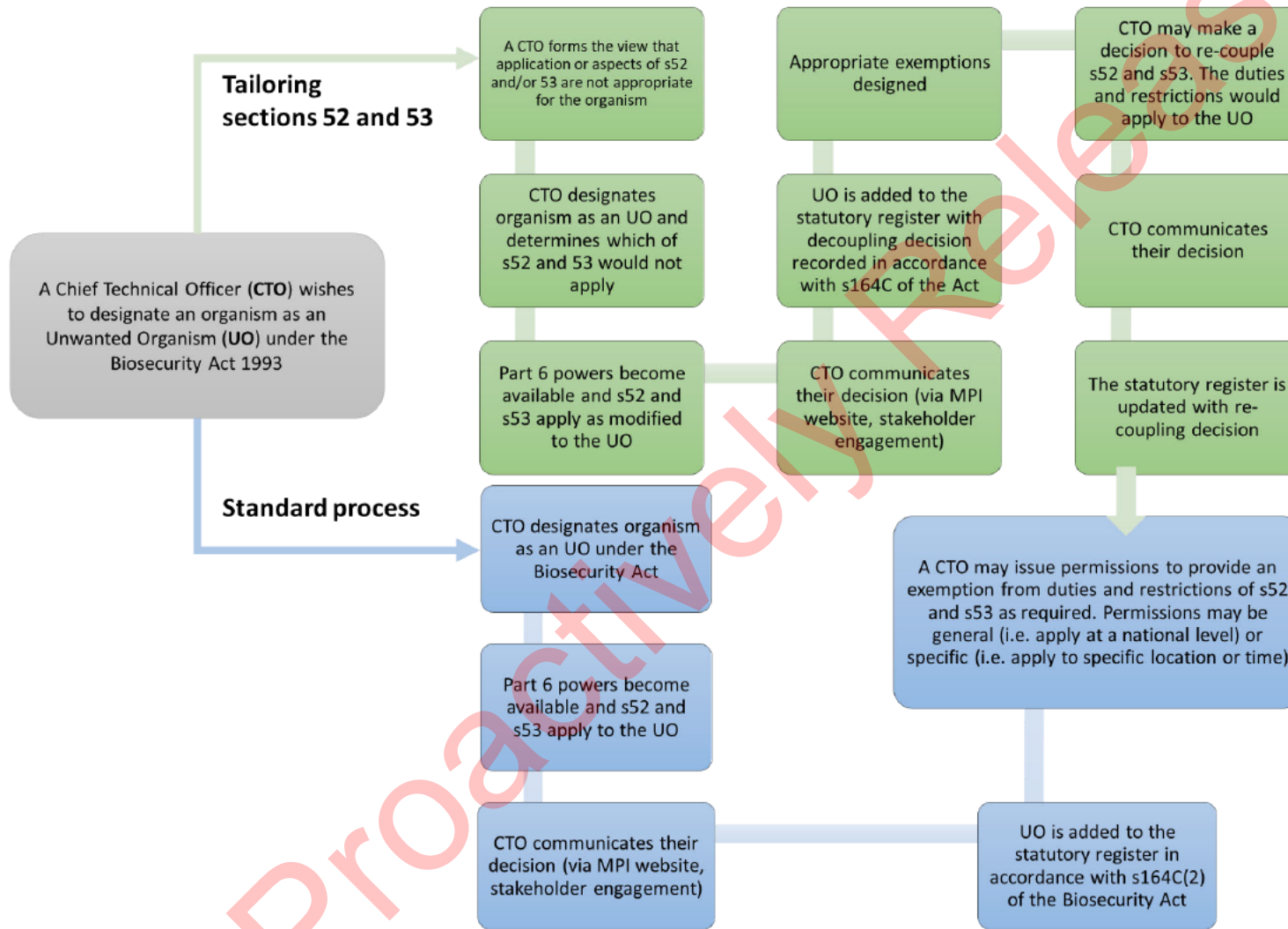
982. This led to changes to Option 2 since public consultation, including an amendment to the *mens rea* element of section 52 of the Act, as was discussed above.

Option 3 - enable a Chief Technical Officer to tailor the application of sections 52 and 53 when declaring an unwanted organism

983. Option 3 would enable a Chief Technical Officer to tailor which aspects of section 52 and 53 apply when declaring an unwanted organism. The purpose of Chief Technical Officers making decisions during a biosecurity response is to ensure the quick delivery of decisions and technical advice. Option 3 would enable this decision-making process to be more efficient and adaptable during the initial stages of a biosecurity response.
984. Under this option, if the Chief Technical Officer wishes to declare an organism as unwanted and parts of sections 52 and 53 are not appropriate (e.g. because the restrictions are too broad and there is insufficient time to determine appropriate exemptions during the initial stage of a biosecurity response), they could follow the process described in **Figure 11**.

Figure 11 - Process for Chief Technical Officers to tailor application of sections 52 and 53

Process for chief technical officers to tailor applications of sections 52 and sections 53 for an unwanted organism



Almost all submitters supported Option 3

985. Option 3 was included in the 2024 public consultation as Proposal 56. Submitters strongly supported Proposal 56, stating it would enable rapid decision making in a response, enable legitimate activity without a permission, and avoid situations that don't make sense. Submitters also indicated that implementation will be critical to ensure that users know which organisms have which sections applying to them.
986. There have been no changes to this option since public consultation.

Option 4 – remove section 52(c) from the Act, and add two exceptions to section 53, which mirror those provided in section 52(a) and section 52(b)

987. This option would also align the exceptions to the activity prohibited by section 53 with the exceptions provided in section 52. This option will make the application of section 52 and 53 more consistent and ensure that permissions are only required in specific circumstances.
988. Option 4 would remove section 52(c) from the Act, and add two exceptions to section 53, which mirror those provided in section 52(a) and section 52(b). This option would remove the Minister's ability to permit activity if carried out for a scientific purpose that would otherwise breach section 52. A Chief Technical Officer would still be able to give permission for a scientific purpose under section 52(d).
989. If the exemptions in section 53(2) are aligned with section 52, applications to a Chief Technical Officer for permission to sell, exhibit, multiply or propagate a pest or unwanted organism would not be required if the activity is being carried out:
- in the course of and in accordance with a pest management plan; or
 - in relation to a biosecurity emergency regulation made under section 150 of the Act.

Almost all submitters supported Option 4

990. Option 4 was included in the 2024 public consultation as Proposal 57. Submitters strongly supported Proposal 57.
991. Option 4 has been expanded since public consultation. Proposal 57 did not include any reference to removing section 52(c) from the Act. MPI developed this additional detail following further review of section 52, where it found that the provision has never been used.
992. MPI conducted targeted engagement with regional councils, the Department of Conservation, and management agencies on removing section 52(c). There were no comments regarding this additional detail.

Option 5 - clarify the scope of the unwanted organisms classification

993. Option 5 would limit the scope of the unwanted organisms classification to organisms which are:
- capable or potentially capable of harm to any natural and physical resources or human health, and

- that harm or potential harm means that it may be appropriate for the relevant provisions of the Act to apply to support the eradication or management of the organism (where that is justified).
994. Option 5 would also amend the interaction between the unwanted organism definition and the HSNO Act. It would do so by:
- removing the provision that any new organism declined for import under the HSNO Act automatically becomes an unwanted organism; and
 - removing the requirement that any new organism approved for import into containment that is found outside of containment automatically becomes an unwanted organism.
995. Organisms that are prohibited New Organisms (Schedule 2 of the HSNO Act) would remain unwanted organisms by default under this option. These organisms have already been assessed by the EPA as of sufficient risk to not be allowed in New Zealand, even in containment.
996. Chief Technical Officers will also retain the power to declare an organism that has been approved for importation under the HSNO Act as an unwanted organism. Chief Technical Officers must still consult the Authority and consider any comments made by the Authority concerning the organism. In these cases, a Chief Technical Officer would need to be of the belief that:
- the organism is capable or potentially capable of harm to any natural and physical resources or human health, and
 - that harm is to the extent that it is appropriate for the relevant provisions of the Act to apply to support the eradication or management of the organism.
997. Option 5 would deliver an amendment to the HSNO Act which would require that the EPA notify the Director-General of MPI if the EPA were to decline an application to import a new organism based on risk to any natural and physical resources or human health. This notification would need to be made as soon as practicable after a decision has been made, and no later than 30 working days. The Biosecurity Act would then require that a Chief Technical Officer decide whether that organism should be an unwanted organism within 30 working days.
998. To ensure that administrative effort is not wasted on overlapping assessments, the HSNO Act would empower information sharing between the Authority and Chief Technical Officers under the Biosecurity Act for the purpose of deciding whether an organism should be an unwanted organism.

Option 5 is a new proposal

999. Option 5 is a new proposal and has not been public consulted on. This proposal was developed to ensure that the process for declaring an organism as an unwanted organism was consistent with our proposed process for removing unwanted organism status (Option 6), and to update the interaction with the HSNO Act.

1000. The details of the interaction with the HSNO Act were developed with the Environmental Protection Authority following public consultation.

Option 6 – clarify in the Biosecurity Act how unwanted organism status can be removed and make this process more efficient

1001. Option 6 is Proposal 58 with minor amendments. Option 6 would include new provisions in the Act that clarify the process for removing unwanted organism status from an organism. The unwanted status could be removed where the harm caused by an organism no longer warrants the application of the relevant restriction, and requirement for the relevant powers under the Act. This would enable the removal of unwanted organism status even where the organism was still potentially capable of causing harm.⁶⁰

1002. The process for removing unwanted status would involve the following:

- A Chief Technical Officer determining that the relevant provisions of the Act with respect to the organism in question are not required by:
 - MPI;
 - other Government agencies;
 - local Government; or
 - any other relevant organisation.
- A Chief Technical Officer may issue a notice in the New Zealand Gazette or any other notification that the Chief Technical Officer considers appropriate (i.e., notification on MPI's website), in declaring that an organism is no longer an unwanted organism under the Act.
- The Chief Technical Officer will amend the organism's status on the register of unwanted organisms in accordance with section 164C(2) (Registration on unwanted organisms).

1003. In the process for removing the unwanted organism status for an organism, a Chief Technical Officer would have the opportunity to consult with regional councils, management agencies, other government agencies and iwi. For efficiency, and reflecting the technical nature of the decision, it is proposed that consultation would be an operational decision by MPI and considered on a case-by-case basis, rather than a legislative requirement.

Almost all submitters supported Option 6

1004. Option 6 was included in the 2024 public consultation as Proposal 58. Submitters agreed that it would improve transparency, clarity, and efficiency in the Act. Many submitters also advocated for rationalising the list of unwanted organisms. Some stated that there are organisms on the register that should no longer be unwanted and that this causes problems.

60 Refer to Paragraph 135.

1005. Because there is no requirement to consult when declaring an organism as an unwanted organism, it may not be reasonable to mandate consultation when removing unwanted status. Mandatory consultation may also impede the speed of decisions. Importantly, MPI can consult stakeholders in either case to help inform decision-making.

1006. There have been no changes to this option since public consultation.

Option 7 - deliver a new one-off provision for all unwanted organisms to expire after five years

1007. Option 7 is Proposal 59. Option 7 would deliver a new one-off provision for all unwanted organisms to expire after five years. Under this option, all current unwanted organisms would cease to be unwanted organisms from five years after the Royal Assent of the Biosecurity Act Amendment Bill. This would be a one-off occurrence only and would assist in reducing the number unwanted organisms contained in the Official New Zealand Pest Register that may no longer require unwanted organism status.

1008. There would be no legislative requirement for further analysis to retain the unwanted organism status of organisms. A Chief Technical Officer may choose a substantial analytical process or could simply confirm that they were still of the view that unwanted organism status was appropriate. A Chief Technical Officer may consider any information they consider relevant during this process, including whether a particular unwanted organism may significantly impact one or more taonga species.

1009. The five-year period, and provision to delist from a future date, would ensure that the transition can be well signalled and planned.

1010. The options during this one-off period for unwanted organisms currently on the register would be:

Table 14 - options during this one-off period for unwanted organisms currently on the register

Possible actions for an organism during the transition period	Effect
No action.	Organism ceases to be unwanted from five years after Royal Assent
Confirm that an organism should remain unwanted.	Organism continues to be unwanted with no time limit.
Decide that an organism that is currently unwanted will cease to be an unwanted organism from a date no more than 12 months in the future.	Unwanted organism status expires at the time stated by the Chief Technical Officer.
Decide that an organism will cease to be unwanted.	Unwanted organism status expires from the time of the Chief Technical Officer's decision.

1011. Organisms newly declared to be unwanted during the five-year transition period would not be subject to the one-off provisions (that is, they would remain unwanted organisms in perpetuity subject to a subsequent Chief Technical Officer decision that they should be delisted).

Submissions on Option 7 were mixed

1012. Option 7 was included in the 2024 public consultation as Proposal 59. A small majority of submissions were supportive, but this majority was by a small margin. Many supporters noted that their support was conditional on organism risk being reviewed and assessed before unwanted organism status is removed.
1013. Opposing submitters were concerned that the mass removal of organisms would result in harmful organisms unwittingly “falling off the list.” They also felt that the size of the register is appropriate, given the risk that the organisms pose to New Zealand.
1014. Regarding stakeholders’ concern regarding the risk of organisms ‘falling off the list’, this can be managed by strong analysis during the one-off period. Organisms can also quickly be re-declared as unwanted, should they be removed under this provision inappropriately.
1015. There have been no changes to this option since public consultation.

Option 8 - deliver amendments to improve the management of notifiable organisms

1016. Option 8 is Proposal 60. Option 8 would deliver amendments to improve the management of notifiable organisms. Option 8 would include new provisions in the Act to improve the management of notifiable organisms that:
- clarifies that notifiable organisms are a separate classification from unwanted organisms; and
 - amends the Act to enable a Chief Technical Officer to make a decision on whether an organism is to be declared a notifiable organism and remove the need for an Order-in-Council to be able to declare a notifiable organism.
1017. This would enable more efficient and timely updates to the schedule of notifiable organisms under the Act, as it would not require an Order-in-Council and the associated Cabinet processes. Moreover, an unwanted organism can be designated by a Chief Technical Officer. This aligns the designation of a notifiable organism with the designation of unwanted organisms.

Almost all submitters supported Option 8

1018. Option 8 was included in the 2024 public consultation as Proposal 60. Submitters indicated that it would improve the clarity on the difference between unwanted organisms and notifiable organisms and would improve the process for how notifiable organisms are declared.
1019. There have been no changes to this option since public consultation.

37.4. Assessing options to address the problem

1020. The options are assessed against the criteria below.

1021. The focus of the 'Effective' criterion for the management of unwanted organisms and notifiable organisms is on the remedying limitations in the legislation to enable biosecurity risks to be managed.

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 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 does it provide sufficient certainty?

1022. Option 1, the status quo, would not address the issues identified in the problem definition. Maintaining the current system for managing unwanted and notifiable organisms would not meet the criteria.

Option 2 - amend section 52 to replace “communicate” with specific wording that prohibits the movement of an unwanted organism or pest

1023. Option 2 meets all the criteria.
1024. Option 2 is effective because expanding the prohibition to reckless behaviour captures activity that creates risk but is not currently captured. Section 52 intends to prevent activity that could cause unwanted organisms and pests to spread.
1025. Replacing the term “communicate” with clearer wording will make section 52 more effective by providing much more certainty about the scope of the section. Option 2 would modernise the language in the Act and improve the clarity of section 52. Users of the Act would have a better understanding on if the duties and restrictions of section 52 apply. This will help prevent unintended breaches of this section of the Act and may reduce the costs of complying, increasing its effectiveness.
1026. Option 2 is adaptable because it modernises the language of the Act and removes ambiguity around what activity requires a permission from a Chief Technical Officer. Currently, because of this uncertainty, there is a risk that the requirement for a permission is not applied consistently. Clarifying the scope of the section will ensure that the Act is being applied consistently in all future cases. Option 2 also contributes to future-proofing the biosecurity system, because it closes a gap of risky activity that is not regulated by the current wording of the section.
1027. Option 2 is efficient because it reduces the administrative burden experienced by inspectors and users needing to determine whether activity has or has not triggered “communicate.” The section also creates efficiency by reducing the threshold of mens rea for breaches in cases where “knowingly” is difficult to prove, but enforcement action is warranted, such as in cases of wilful blindness.

Option 3 - enable a Chief Technical Officer to tailor the application of sections 52 and 53 when declaring an unwanted organism

1028. Option 3 meets the effective and adaptable criteria and partially meets the efficient criteria.
1029. Option 3 will assist Chief Technical Officers to be able to move at speed during a biosecurity response. Currently there may be delays in this declaration if there are concerns that the automatic application of sections 52 and 53 will inappropriately criminalise some behaviours. Option 3 will manage this risk while still enabling access to management powers given by declaring an organism unwanted.
1030. Option 3 will enable sections 52 and 53 to be applied in a way that is appropriate for that organism, improving the effectiveness and adaptability of the unwanted organism declaration. It will allow for the prohibitions placed on that organism to be tailored to the specific circumstance, to ensure the application of the Act is appropriate.
1031. Chief Technical Officers issue general or specific permissions for activity prohibited by sections 52 and 53 under the status quo. These take time to design and approve. Option 3 will improve efficiency, because a Chief Technical Officer can choose whether the requirements for permissions should apply when an unwanted organism declaration is made. This would reduce the administrative burden of processing permissions for exemptions from the duties and restrictions of section 52 and 53 when they are not necessary, but other management powers given by declaring an organism unwanted are required.
1032. Option 3 does not meet the clarity criteria. While MPI would communicate decisions, and the tailored application would be described on the unwanted organism register, it may be less clear which sections apply to an unwanted organism, should this proposal proceed. This option creates a system where different unwanted organisms have different requirements. Option 3 may also reduce the overall efficiency of the unwanted organism mechanism because it reduces clarity. A Chief Technical Officer would be empowered to communicate their decisions in any way they deem appropriate, which may improve clarity. As well as this, any tailored decision would be reflected in the unwanted organisms register.

Option 4 - section 52(c) from the Act, and add two exceptions to section 53, which mirror those provided in section 52(a) and section 52(b)

1033. Option 4 meets all the criteria.
1034. Option 4 is effective because it will make the application of section 53 more appropriate for the organisms and activity it intends to regulate, focusing biosecurity effort on activities that matter and improving biosecurity outcomes. The effective criterion does not apply to the removal of section 52(c), as it has never been used.
1035. Option 4 future proofs the Act by aligning the exemptions to the requirement for a permission created by sections 52 and 53. It will ensure the exemptions are consistent across these sections. Removing section 52(c) from the Act meets the adaptability

criteria because it ensures that future requests for permissions are made to a technical decisionmaker (a Chief Technical Officer) and removes potential future administrative burden for the Minister should the provision be enacted.

1036. Option 4 is efficient because it allows for relatively minor matters that would have required a permission from a Chief Technical Officer under the status quo to no longer require one, reducing administrative burden for these activities. Option 4 will also create efficiency by removing unused powers for the Minister to exempt activity.
1037. Option 4 will remove confusion caused by the inconsistency between section 52 and 53. It will also clarify who a person conducting scientific research should seek permission from. Currently there are two options (a Chief Technical Officer or the Minister), which could create uncertainty about who to apply to.

Option 5 - clarify the scope of the unwanted organisms classification

1038. Option 5 meets all the criteria. It will overall improve the use of the unwanted organism mechanism.
1039. Option 5 may improve the effectiveness of the unwanted organism mechanism because it clarifies the scope of the unwanted organism classification, which means it may be more effective at managing risk. This assumes that a more focused list means an unwanted status is taken more seriously. Option 5 will ensure that the classification is only used when it is truly warranted.
1040. This Option will focus the unwanted organism mechanism on risks that require the relevant restrictions and powers to support their eradication and management. This will improve biosecurity outcomes because it will allow for agencies that manage unwanted organisms to focus effort on those organisms that matter. This will reduce noise in the system caused by organisms that should not be restricted or do not need to be managed. Option 5 future-proofs the unwanted organism register for this same reason.
1041. Option 5 will create efficiencies because only organisms that pose high enough risk that the organism should be subject to the restrictions and management actions empowered by the Act will be declared as unwanted organisms. As well as this, new organisms that have been declined approval for import will only become unwanted if the risk they pose meets the criteria for an unwanted organism.
1042. Under the status quo, organisms can be made unwanted despite the risk profile they create not justifying the imposition of restrictions and management powers, or because they were declined for import for unrelated reasons. This leads to organism becoming unwanted organisms without improving biosecurity outcomes, which is inefficient. Option 5 will ensure that resource can be focused on managing risks that matter, instead of applying administrative effort to organisms which pose very little risk.
1043. Similarly, new organisms could be declined approval to import under the HSNO Act for reasons unrelated to the risk they create. These organisms should not be unwanted organisms by default. Following this change, and in combination with the other options presented in this section, the Act will be clear that unwanted organisms pose a threat

that a Chief Technical Officer believes is of a high enough magnitude that the relevant restrictions and powers could be justified.

Option 6 - clarify in the Biosecurity Act how unwanted organism status can be removed and make this process more efficient

1044. Option 6 meets all the criteria.
1045. Option 6 will improve the effectiveness of the unwanted organism mechanism because it will explicitly provide for organisms to have unwanted status removed when the relevant restrictions and powers are no longer required to support effective eradication or management. This will give more weight to the unwanted classification, as organisms that should no longer have the appropriate provisions apply will no longer be listed.
1046. This option also allows for Chief Technical Officers to update and maintain the usability of the unwanted organism register more effectively, future-proofing the mechanism by ensuring it is kept up to date through both additions and removals.
1047. Option 6 would provide a pragmatic way for more efficient removal of unwanted organism status, without compromising the protection the classification provides. This option will be efficient to implement, because it will formalise an existing process, meaning it can be used more effectively. Option 6 will also improve the transparency of the Act by making it clear that a Chief Technical Officer is working within their powers when removing unwanted status. While Chief Technical Officers can remove unwanted status under the status quo, the Act does not explicitly say this.

Option 7 - deliver a new one-off provision for all unwanted organisms to expire after five years

1048. Option 7 meets all the criteria and would assist in reducing the number of organisms that are classified as unwanted organisms. This will improve the effectiveness of the unwanted organism mechanism as it will help ensure that resource prioritised to risks that matter. This will also create efficiencies, by ensuring resource is not inappropriately dedicated to unwanted organisms which should not be unwanted.
1049. The mechanism provided by Option 7 would allow for efficient rationalisation and consideration of what organisms should be classified unwanted organism, allowing the mechanism to be more effective. This would provide a much more manageable register of unwanted organisms.
1050. Option 7 would futureproof the unwanted organisms register by providing an opportunity “reset” the register of unwanted organisms. This, in combination with other options presented in this section, will provide for a more effective tool in future. This proposal does not affect a Chief Technical Officer’s ability to make something unwanted, so organisms removed may be re-added should new evidence arise, or if there’s a change in the risk environment.
1051. Similar to Option 5, Option 7 will clarify the intent of the unwanted organism mechanism by removing unwanted organisms that do not pose risk to the threshold that

management powers are required. Organisms can be re-added, and organisms added during the one-off period are not affected by the expiry.

1052. The implementation of Option 7 will require planning and coordination from MPI and for others who have an interest in unwanted organism status such as DOC, the EPA and regional councils. However, the five-year expiry date likely provides sufficient lead-in time for planning.
1053. During implementation, organisms which do not exist at all or were not assessed in detail when they were added may be able to have their unwanted status removed without significant time investment. Effort can instead be dedicated to reviewing those that have been assessed, to identify if those risks still warrant the organism having unwanted status.

Option 8 - deliver amendments to improve the management of notifiable organisms

1054. Option 8 meets all the criteria. Having a well-functioning system for notifiable organisms is important in assisting New Zealand's trade and market access by being able to declare freedom from certain pests and diseases. By improving the process by which they are declared, the tool will be more effective and easier to update, thus more useful in situations where decisions need to be made in a timely manner. For this same reason, Option 8 improves the adaptability of the notifiable organisms tool.
1055. Option 8 provides significant improvements to the management of notifiable organisms, including a more efficient process for declaring a notifiable organism. This would reduce the administrative burden and time required to updating the schedule of notifiable organisms through an Order in Council.
1056. Option 8 significantly improves clarity. Notifiable organisms will be clarified as separate from unwanted organism status under the Act. There has been uncertainty on whether an organism must be an unwanted organism before it can be declared as a notifiable organism. There have also been cases where having notifiable organism status has been necessary for meeting disease freedom requirements, but the restrictions of unwanted organism status have not been required. Determining that notifiable organisms are a separate class of organisms under the Act would assist with this.

37.5. Which option best addresses the problem, meets the policy objective and delivers the highest benefits?

1057. Based on our assessment, our preferred option is to progress and all the options for change (Options 2 to 8). Delivering these options as a cohesive package will address all the issues identified in the problem definition and improve the functioning of the management system for unwanted and notifiable organisms. If only some options were delivered, it is likely that further amendments would be required in the future.
1058. The Minister's preferred options in the Cabinet paper is the same as our recommended options.

37.6. Impact analysis of the preferred option

1059. We have assessed the impact of all the preferred options in Part 6 together. See Chapter 38.

Proactively Released

37.7. Multi-criteria analysis

	Option 1 – status quo	Option 2 – defining “communicate” in relation to a pest or unwanted organism	Option 3 – enabling a Chief Technical Officer to tailor the application of sections 52 and 53 for unwanted organisms	Option 4 – remove section 52(c) from the Act and add two exemptions to section 53 which mirror those in section 52	Option 5 – add a new criterion that must be fulfilled to declare an organism as an unwanted organism	Option 6 – clarify how unwanted status can be removed and make this process more efficient	Option 7 – create a new one-off provision for all current unwanted organisms to expire after 5 years	Option 8 – improve the management of notifiable organisms
Effective (reducing limitations, biosecurity outcomes)	0	+	++	+	+	+	+	++
		Option 2 will help prevent unintended breaches and may decrease the costs associated with compliance by providing greater certainty over what is prohibited by the section. It will also prohibit a wider range of intentional activity that creates biosecurity risk. This will give MPI the tools to take action to manage risk where they cannot currently.	Option 3 would help make timely declarations about unwanted status during responses. This will enable Chief Technical Officers to manage a risk that sections 52 and 53 may criminalise legitimate behaviour, while still enabling access to biosecurity risk management powers.	Option 4 is effective because it will make the application of section 53 more appropriate for the organisms and activity it intends to regulate, focusing biosecurity efforts on activities that matter. This could improve biosecurity outcomes.	Option 5 may improve the effectiveness of the unwanted organism a more focused list could mean an unwanted status is taken more seriously. It will focus the classification on risks that matter.	Option 6 will improve the effectiveness of the unwanted organism mechanism because it will explicitly provide for organisms to be removed when they no longer require management. This will give more weight to the unwanted classification, as organisms that do not require powers will no longer be listed.	Option 7 will improve the effectiveness of the unwanted organism tool by rationalising and focusing the currently inflated register of unwanted organisms. This will improve resource prioritisation and ensure effort is dedicated to risks that should be managed.	Option 8 would improve how notifiable organisms are declared. This will ensure that the mechanism is used effectively, which will support New Zealand's ability to meet obligations for market access and trade.
Adaptable (modern, enabling legislation)	0	+	++	+	+	+	++	++
		Option 2 would modernise the language in section 52 and make it clearer what activity is restricted and enabled by the section. It will future proof the Act by ensuring that the section is applied consistently. It would also ensure that enforcement action can be taken in a wider range of scenarios.	Option 3 would provide a new tool that enables more flexibility on the application of sections 52 to 53. This would enable Chief Technical Officers to move quickly during response, while still retaining a process for recognising and managing risk. This option also allows for a Chief Technical Officer to tailor restrictions on activity to the specific risks posed by an organism.	Option 4 will ensure that the qualification for exemptions to sections 52 and 53 are consistent, while ensuring the exemptions they provide are not overly broad. This will make the system more adaptable, but it would not future proof the Act. Removing section 52(c) from the Act ensures that future permission applications are made to technical decision makers (a Chief Technical Officer) and alleviates potential future administrative burden for the Minister.	Option 5 future proofs the Act by ensuring that activities relating to unwanted organisms are focused on organisms that create harm to the extent that the relevant restrictions and powers are appropriate to support effective eradication or management. It also ensures the register of unwanted organisms does not become inflated and unmanageable.	Option 6 allows for Chief Technical Officers to ensure the unwanted organisms register is kept up to date through both additions and removals.	Option 7 enables a “reset” of the unwanted organisms register, which, in combination with other proposals, can be used to ensure that it remains an effective tool in the future. This proposal does not affect a Chief Technical Officer's ability to make an organism unwanted.	Option 8 will clarify that notifiable organisms are a separate classification and improve the process for all future declarations. Option 8 will also make it easier to declare an organism notifiable, enabling MPI to keep the register up to date.

	Option 1 – status quo	Option 2 – defining “communicate” in relation to a pest or unwanted organism	Option 3 – enabling a Chief Technical Officer to tailor the application of sections 52 and 53 for unwanted organisms	Option 4 – remove section 52(c) from the Act and add two exemptions to section 53 which mirror those in section 52	Option 5 – add a new criterion that must be fulfilled to declare an organism as an unwanted organism	Option 6 – clarify how unwanted status can be removed and make this process more efficient	Option 7 – create a new one-off provision for all current unwanted organisms to expire after 5 years	Option 8 – improve the management of notifiable organisms
Efficient (burden on regulators and parties, and complexity)	0	+	+	+	++	++	+	++
		Option 2 makes it easier for inspectors and other users of the Act to determine whether an activity has “communicated” an unwanted organism. It would also reduce the administrative burden for proving “knowingly” in situations where users have acted “recklessly.”	Option 3 would reduce the administrative burden of designing and issuing permissions required by sections 52 and 53 of the Act when they are not necessary. This would benefit applicants and MPI. Option 3 may also reduce the overall efficiency of the unwanted organism tool by creating uncertainty about which parts of sections 52 and 53 apply.	Option 4 is efficient because it allows for relatively minor matters that would have required a permission from a Chief Technical Officer under the status quo to no longer require one, reducing administrative burden. Option 4 will also create efficiency by removing unused powers for the Minister to exempt activity.	Option 5 will create efficiency by ensuring that only organisms that pose high enough risk to require management will be subject to the restrictions and management actions empowered by the Act. Under option 5 resource can be focused on managing risks that matter, instead of applying administrative effort to organisms which pose very little risk.	Option 6 will provide an explicit process for removing of unwanted organism status in the Act, creating a tool that can be consistently and efficiently applied by Chief Technical Officers. Option 6 will be easy to implement as it will formalise an existing process.	Option 7 would reduce administrative burden because it will remove a significant number of organisms that no longer require unwanted status. Implementation will require planning and coordination from MPI and other agencies and may require significant dedicated resource. However, the five-year expiry date provides time for planning.	Enabling a Chief Technical Officer to make a decision on whether an organism is to be declared a notifiable organism would enable more efficient and timely updates to the schedule of notifiable organisms under the Act and reduces administrative burden.
Clarity (logical and certain, and clear roles)	0	++	-	+	+	++	+	++
		Option 2 would remove the widespread uncertainty about the meaning and scope of the term “communicate.” It will deliver significant improvements to clarity of the section.	While the application of sections 52 and 53 would be communicated with stakeholders and on MPI’s website, Option 3 does create a much more complex system where different rules apply to different unwanted organisms. This may reduce clarity and create confusion over which parts of section 52 and 53 apply.	Option 4 would make it more clear what activity requires permission, and what is exempt, and remove confusion caused by the inconsistency between section 52 and 53. It will also make it clearer who a person conducting scientific research should apply for a permission from.	Option 5 clarifies the intent of the unwanted organism mechanism. It will make it more clear to users that unwanted organisms pose a real threat that requires management.	Option 6 would clarify that Chief Technical Officer are working within their powers when removing unwanted organism status.	Option 7 would remove a significant number of unwanted organisms which are not under active management. Once completed, this will clarify the intent of the unwanted organism mechanism alongside other proposals. There may be uncertainty during the transition period. This may be mitigated by communications.	Option 8 clarifies that notifiable organism status is distinct from unwanted organism status, and a notifiable organism does not need to be an unwanted organism. Currently, notifiable organisms are considered a subset of unwanted organisms under the Act.
Overall assessment	0	+	+	+	+	++	++	++
		Improving the clarity of section 52 will help users understand the scope of section. It will deliver administrative efficiency by removing ambiguity caused by “communicate.” Option 2 also closes a gap in risk management, where risky activity is conducted recklessly.	Allowing a Chief Technical Officer to tailor the application of sections 52 and 53 when declaring an unwanted organism would provide a more efficient approach to making decisions in response scenarios. It will also allow for context to be considered when declaring an organism unwanted, creating efficiency when dedicating management efforts and allowing for more effective management of biosecurity risk.	Aligning the exemptions under section 53 with those in section 52 would make the approach to regulating activity involving unwanted organisms and pests more consistent. This would provide clarity about what activities are regulated for users of the Act who have duties and obligations for unwanted organisms. It would also reduce the administrative burden caused by applications for permissions from Chief Technical Officers for situations that pose a relatively low risk.	Limiting the scope of the unwanted organism definition will improve the mechanism as a whole. It will future proof the unwanted organisms register by preventing organisms being inappropriately declared unwanted. It will create efficiencies in administering the Act and clarify the intent of the unwanted organism.	Setting out the process for removing unwanted organism status in the Act would clarify and standardise the process and for removing unwanted organism status.	Rationalising the unwanted organisms register in this way would allow MPI to address its unwieldy size. This will provide a MPI an opportunity to “reset” the list and enable better management in the future.	Making the process of declaring an organism notifiable more efficient and clarifying it as a distinct category from unwanted organisms will help to ensure they are declared both effectively and for the intended purpose. This will deliver administrative efficiency and improve the overall use of the tool.

38. Impact analysis for Part 6: Long-term management

1060. All the preferred options in *Part 6: Long-term management* are designed to complement and support each other as a package. The proposals target change that looks at supporting the entire biosecurity system, from fiscal, to operational, to enforcement. This comprehensive approach allows for a more complete strengthening of our biosecurity system than if only one aspect is considered in isolation. Implementing the package in this way provides for comprehensive, consistent, and coordinated change to improve the management of pests and diseases in New Zealand.

1061. Implementing only a selection of the proposals, rather than the comprehensive package of proposals, would not provide the same benefits:

- For example, progressing the proposal to simplify creating NPMPs and RPMPs would make it easier to create these plans. However, if the proposals that provide management agencies and regional councils responsibilities for pests and diseases in NPMPs and RPMPs (the ability to issue permits and exemptions) do not proceed, then the efficiencies in implementing aspects of the NPMPs and RPMPs would not be fully realised.
- Allowing the consolidation of pest and pathway management levies may have ongoing cost-savings in the long term. Similarly, we propose to allow a unified pest and pathway management plan (rather than two plans). Together, this could lead to a increase in public investment by enabling the industry body to spend that effort and resource on pest management rather than on administration.
- Similarly, we recommended all proposals related to the management of unwanted organisms proceed because they are stronger as a package than when considered separately. For example, amending section 52 to replace “communicate” with more specific wording makes it clearer what section 52 prohibits. This supports the proposal to enable a Chief Technical Officer to tailor the application of section 52 as it clarifies the meaning of a key term. Together, they make it easier to understand and make decisions about unwanted organisms.

1062. By acting together, the Long-Term Management proposals are expected to have a total effect that is greater than the sum of benefits from each proposal acting alone.

1063. For that reason, we consider their combined impacts here:

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Regulated groups	Enabling the proposals will have initial once off costs associated with implementation.	Medium	Low
Regulators	Enabling the proposals will have initial once off costs associated with implementation.	Low	Low
Total monetised costs			

Non-monetised costs		Low - Medium	Low
Additional benefits of the preferred option compared to taking no action			
Regulated groups	As explained above, we expect the combined effect of the proposals working together to be greater than the sum of their individual effects. Our evidence is based on the feedback and discussions with the regulated groups. Enabling proposals that are aligned and support each other in strengthening the biosecurity system is expected to result in lower operational costs and improved efficacy. These benefits are most likely to impact regional councils.	High	Medium
Regulators	As above. Where regional councils benefit, we expect the benefits to also be realised by the Crown which will be able to more efficiently use resources to support regional councils as a result of a more efficient overall system.	High	Medium
Total monetised benefits			
Non-monetised benefits		High	Medium

PART 7

SURVEILLANCE AND LEGISLATIVE INTERACTIONS

39. Part 7: Surveillance and Legislative Interactions - Introduction

1064. Section 7 of the Biosecurity Act sets out the relationship between the Biosecurity Act and other primary and secondary legislation. It confirms that the Act does not affect or derogate from listed legislation and lists specific exceptions to this rule that apply. Exemptions are provided for the Conservation Act 1987, the Freshwater Fisheries Regulations, the Wild Animal Control Act, the Wildlife Act 1953, and the Game Animal Council Act 2013.
1065. This chapter addresses areas of the Act that interact with legislation that is administered by DOC. The proposals are presented in the following sections:
- interaction with the Freshwater Fisheries Regulations 1983;
 - Surveillance and interaction with the Marine Mammals Protection Act 1978 and the Marine Reserves Act 1971;
 - interaction with the Wild Animal Control Act 1977.
1066. Each topic is structured in the same way:
- background to the topic;
 - problem / opportunity;
 - options;
 - assessment of the options;
 - preferred option; and
 - impact analysis of preferred option.

40. Interaction with the Freshwater Fisheries Regulations

40.1. Background

The Freshwater Fisheries Regulations 1983 and the Conservation Act 1987

1067. The Freshwater Fisheries Regulations 1983 cover the management and conservation of fisheries and fishery resources. They were made under the Fisheries Act 1983 but are now deemed to have been made under the Conservation Act.⁶¹
1068. The Conservation Act promotes the conservation of New Zealand's natural and historic resources. It specifies the functions of New Zealand Fish and Game Councils, which are to manage, maintain, and enhance the sports fish resources. Taking sports fish from any freshwater at any time without a licence is an offence under the Conservation Act.
1069. Sports fish are defined under the Conservation Act as every species of freshwater fish that is designated as such. Under the Conservation Act and the Freshwater Fisheries Regulations, the Minister responsible for sports fishing may designate a fish species as a sports fish. This enables implementing rules and restrictions designed to improve the stock of the specified sports fish and the sport fishing benefits it may provide. Species of fish that have been defined as a sports fish in New Zealand are listed in Schedule 1 of the Freshwater Fisheries Regulations.

Legislative interaction with the Biosecurity Act

1070. The Biosecurity Act provides for the management of pest fish that present a threat to New Zealand's marine ecosystem and aquatic industries. When developing regional pest or pathway management plans, regional councils may designate a fish as a "pest fish" and set rules for their management. Rules can include the prohibition or limitation of release, breeding, sale, or fishing of designated pest fish.
1071. The most common type of fish that are designated as pest fish in New Zealand are koi carp, brown bullhead catfish, and perch. These fish are predatory and out-compete New Zealand native fish and freshwater invertebrates. Often the feeding habits of these fish can also have significant impacts on water quality. For example, as koi carp feed, they stir up the bottom of ponds, lakes and rivers, muddying the water and destroying native fish and plant habitats.
1072. If one of the fish species a regional council wishes to designate as a pest fish has already been designated as a sports fish, the regional council must apply for a special licence from the relevant Fish and Game Council. This enables the council to include that fish as part of their regional pest or pathway management plans and undertake pest control activities relating to that fish. This licence must be authorised by the Minister of Conservation under the Freshwater Fisheries Regulations.
1073. Section 7(2) of the Biosecurity Act states that the Biosecurity Act must not be used to affect the provisions of the Conservation Act. This means the provisions of the Conservation Act take precedence over the Biosecurity Act. Effectively, if a rule in a

⁶¹ By section 39 of the Conservation Law Reform Act 1990.

regional pest management plan is inconsistent with the Freshwater Fisheries Regulations, the Freshwater Fisheries Regulations prevail.

40.2. Problem or opportunity

1074. There are instances where fish are designated as both a pest fish under the Biosecurity Act and a sports fish under the Freshwater Fisheries Regulations. For example, perch and tench are considered pest fish but are also identified as sports fish under the Freshwater Fisheries Regulations. When this occurs, the regional council must have the requisite licence from the relevant Fish and Game Council to be able to include that fish as part of the settings in their regional pest management plans.
1075. Agreement between the relevant Fish and Game Council and regional council is not always easily achieved, as biosecurity outcome and sports fishing benefits may not align with each other. This can hinder a regional council's ability to undertake management of that pest fish, and it can place the environment at risk.

40.3. Options

Option 1 – status quo

1076. Option 1 is the status quo. Under this option, some fish species may be designated a pest under the Biosecurity Act, while also designated as a sports fish under the Conservation Act and the Freshwater Fisheries Regulations. In these instances, the Freshwater Fisheries Regulations prevail.

Option 2 - enable the Biosecurity Act to take precedence over sports fishing benefits

1077. Option 2 amends the Biosecurity Act to take precedence over the relevant sports fishing provisions in the Conservation Act and its Freshwater Fisheries Regulations in instances where biosecurity objectives and sports fishing priorities do not align.
1078. The Biosecurity Act would require that one or more of the following conditions would need to be met for the precedence to take effect:
- the fish is causing or has the potential to cause significant harm to the environment, amenity, recreation, cultural or economic values; or
 - the fish is being or is to be managed as part of an ecological protection or restoration programme.
1079. Option 2 would deliver a definition of “sports fish” in the Biosecurity Act as those listed in Schedule 1 of the Freshwater Fisheries Regulations 1983.
1080. Option 2 also now confirms that the application of when the Biosecurity Act would take precedence over sports fishing benefits applies to sports fish, excluding trout, salmon and char species listed in Schedule 1 of the Freshwater Fisheries Regulations.
1081. Regional councils will still be required to consult under section 92 of the Act. Consultation with Fish and Game Councils, the Minister for Conservation and the Minister responsible for sports fishing would likely be appropriate under section 72.

1082. This consultation requirement provides an opportunity for the benefits of sport fishing to be taken into consideration, and while still ensuring the biosecurity risks and concerns outweigh sport fishing benefits in instances where the two do not align. It also ensures that the decision-making processes followed by regional councils remain transparent and accountable.

Option 2 was well supported so we have discarded other proposals

1083. In the 2024 public consultation, we sought feedback on four proposals to address the problem we have identified (Proposals 64 – 67). Out of the four proposals, Proposal 64 (which is Option 2 of this RIS) received the most support from submitters. There was strong support from submitters for the Biosecurity Act to take precedence over sports fishing benefits. There was significant opposition to Proposals 65-67.
1084. Out of the four proposals, Proposal 64 received the most support from submitters. There was strong support from submitters for the Biosecurity Act to take precedence over sports fishing benefits. There was significant, and majority opposition to proposals 65-67.
1085. Fish and Game New Zealand's submission stated their support for Proposal 64 (i.e. Option 2). They commented that in certain situations, it is reasonable for the Biosecurity Act to take precedence and that this may occasionally result in a temporary loss or compromise over sports fishing benefits. Their key concerns were with the proposed conditions for the precedence to take effect, including whether it should include existing salmonid populations and whether the conditions for the Biosecurity Act to take precedence were too broad.
1086. Following public consultation, we undertook targeted engagement with Fish and Game New Zealand and DOC to seek additional feedback on Proposal 64. Based on this engagement, we made the following amendments to the proposal:
- Including a definition of "sports fish" in the Biosecurity Act as those fish listed in Schedule 1 of the Freshwater Fisheries Regulations.
 - Confirming that the application of when the Biosecurity Act would take precedence over sports fishing benefits would exclude trout, salmon and char species listed in Schedule 1 of the Freshwater Fisheries Regulations. This would provide certainty for these fisheries and avoid different regulatory regimes using slightly different definitions for the same terms.
 - Removing the condition relating to proof of the legal introduction of a fish to the specific waterway that is being managed, as there may be practical difficulties with finding records in all cases.
 - Amending the condition that the fish is causing *significant* harm to the environment, amenity, recreation, cultural, or economic values (rather than just harm).
1087. These are all reflected in Option 2.
1088. In addition, we amended the condition that the fish is being or is to be managed as part of an ecological restoration programme, to add "an ecological protection programme".

This is to address situations where regional councils may want to remove pest fish where there may not be a formal restoration programme in place, but they want to prevent the degradation of the waterbody, rather than restoration/improvement to a better standard.

1089. These amendments will not allay all of Fish and Game New Zealand's concerns. However, the Biosecurity Act provides robust consultation requirements that would allow for Fish and Game New Zealand and the sports fishing community to submit on any proposals to specify a pest fish in national or regional pest or pathway management plan, and rules relating to this fish. DOC supported the proposal.
1090. For these reasons, we have discarded Proposals 65 - 67.

40.4. Assessing options to address the problem

1091. The options are assessed against the criteria below.
1092. The focus of the 'Effective' criterion for the interaction with Freshwater Fisheries Regulations is on the question of better protecting New Zealand from biosecurity risk.

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 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	Are the roles and responsibilities assigned appropriately and clearly between central government, local government, industry and local communities?

1093. Option 1 is the status quo. Under the status quo, regional councils would continue to require a special licence from the relevant Fish and Game Council to designate a fish a "pest fish" in regional pest or pathway management plans. Agreement is not easily achieved between a regional council and a Fish and Game Council, and it does not provide the most efficient way of determining the inclusion of pest fish in regional pest or pathway management plans.
1094. Option 2 meets all the criteria. The option is effective as the Biosecurity Act would be amended to allow it to take precedence over sports fish benefits when the protection from biosecurity risks is required. This will lead to improved biosecurity outcomes.
1095. Option 2 modernises the Act by improving regional councils' autonomy to designate pests and undertake their individual biosecurity activities and objectives.
1096. Option 2 is more efficient as regional councils would be able to designate pest fish and undertake pest management activities to achieve biosecurity objectives without additional consultation requirements.
1097. Option 2 increases clarity by defining "sports fish" and by confirming that when the Biosecurity Act would take precedence over sports fishing benefits, this applies to sports fish, with the exception of certain species listed in Schedule 1 of the Freshwater Fisheries Regulations.
1098. The requirement for regional councils to consult under section 92 of the Biosecurity Act would also remain, and consultation with Fish and Game councils and the Minister for

Conservation would likely also be appropriate. This would ensure sports fishing benefits are also taken into consideration against biosecurity objectives. The condition/s that need to be met for the Biosecurity Act to take precedence over sports fishing benefits also provides clarity.

40.5. Which option best addresses the problem, meets the policy objective and delivers the highest benefits?

1099. We recommend Option 2 as enables better biosecurity outcomes while retaining the autonomy of regional councils to manage their regional pest management plans.

1100. The Minister's preferred option in the Cabinet paper is the same as our recommended option.

40.6. Impact analysis of the preferred option

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Regulated groups (regional councils and Fish and Game)	The preferred option involves policy changes that are not expected to result in new costs to either party.	Low	Low
Regulators (the Crown)	The preferred option involves policy changes that are not expected to result in new costs to the Crown.	Low	Low
Total monetised costs		N/A	N/A
Non-monetised costs		Low	Low
Additional benefits of the preferred option compared to taking no action			
Regulated groups (regional councils)	Efficiency benefits expected by enabling regional councils to undertake pest management activities to achieve biosecurity objectives without additional consultation requirements.	Low	Low
Regulated groups (Fish and Game)			
Regulators (the Crown)	Minor efficiency gain for the Crown resulting from reducing involvement with regional councils' oversight by increasing regional council autonomy.	Low	Low
Total monetised benefits		N/A	N/A
Non-monetised benefits		Low	Low

41. Surveillance and interaction with the Marine Mammals Protection Act and the Marine Reserves Act

41.1. Background

1101. Surveillance is an integral part of the biosecurity system and protects New Zealand from biosecurity risks. At MPI, it involves collecting, analysing, and sharing relevant information about risk organisms and the plants and animals they infect.⁶² We do surveillance to:

- detect foreign and new pests and diseases early, so we can appropriately eradicate, control or manage them;
- document national pest and disease occurrence and help with the long-term management of pests and diseases already present in the country;
- establish a disease-freedom status, which supports the implementation of border controls to prevent the introduction of new disease organisms; and
- help meet our reporting obligations to organisations such as the World Organisation for Animal Health (WOAH).

1102. At MPI, surveillance activities include incursion investigations and cover terrestrial and aquatic environments. Our approaches to surveillance can be general or targeted.

- General surveillance is employed to keep continuous watch for pests or diseases. It is not limited to a particular pest or disease agent⁶³ and the wildlife they infect. It involves routine checks and relies on government and public reports of unusual pests and disease events.
- On the other hand, targeted surveillance is designed to look for specific organisms in a particular host, habitat, or area. For example, Biosecurity New Zealand has undertaken targeted surveillance on various fruit fly species since 1989. If the fruit fly is established, it would expose New Zealand's horticulture industry to trade restrictions from many countries.

1103. Surveillance is critical to biodiversity, wildlife health, and the values that the biosecurity system protects. For example, if High Pathogenicity Avian Influenza arrives in New Zealand and is not detected early, we may miss a critical window to eradicate or mitigate the impact on native birds, including taonga species such as kākāpō and takahē. Avian influenza can also be transmitted to humans and has been associated with significant disease events in marine mammals such as seals and sea lions. Highly Pathogenicity Avian Influenza has been classified as both an unwanted organism and notifiable organism⁶⁴ in New Zealand.

⁶² Biosecurity surveillance strategy 2020 - MAF Biosecurity New Zealand (2009)

⁶³ Disease agents here refer to pathogens, vectors, and organisms that can negatively affect other organisms

⁶⁴ Section 45 of the Biosecurity Act specifies the provisions relating to notifiable organisms

1104. There is an interface between surveillance under the Biosecurity Act and zoonotic surveillance under the Health Act 1956. For example, the Health Act provides that veterinarians who have reason to believe that animals they attend are suffering from certain communicable diseases need to notify the medical officer of health.⁶⁵

1105. This requires an effective and efficient surveillance system which allows MPI to:

- undertake surveillance activities without delay;
- efficiently monitor the occurrence of pests and diseases already here;
- collect comprehensive information and share it (where appropriate) quickly and easily.

Surveillance under Part 4 of the Biosecurity Act

1106. Surveillance operates under section 42 (Part 4 of the Biosecurity Act). The Biosecurity Act states that the purpose of this Part is to provide for the continuous monitoring of New Zealand's status regarding pests and unwanted organisms. It does so to facilitate exports, monitor the outcomes of pest and pathway management plans, enable international reporting obligations, meet trade requirements, and serve as basis for administering the Biosecurity Act.

Marine Mammals Protection Act 1978

1107. The Marine Mammals Protection Act sets rules and procedures to protect and manage marine mammals within New Zealand and New Zealand fisheries waters. When conducting surveillance activities under the Biosecurity Act, MPI must have the relevant permits under the Marine Mammals Protection Act.

1108. In comparison, the Biosecurity Act is also subject to the permitting requirements of the Wildlife Act, which is another piece of legislation that DOC administers. However, the Biosecurity Act establishes an exemption from the permitting requirements of the Wildlife Act, allowing MPI to undertake surveillance on unwanted organisms. This exemption is outlined in section 7(6) of the Biosecurity Act.

1109. There is **not** a similar exemption in the Biosecurity Act from needing a Marine Mammals Protection Act permit, even when undertaking surveillance on unwanted organisms. The Biosecurity Act does not explicitly specify its relationship with the Marine Mammals Protection Act.

⁶⁵ See section 87A of the Health Act 1956 and the Health (Diseases Communicated by Animals) Regulations 1965.

Marine Reserves Act 1971

1110. Marine reserves provide the highest level of marine protection from sea surface to the seafloor, including the foreshore.⁶⁶ They are complete no-take areas to protect marine life for scientific research and recreation.⁶⁷
1111. The Marine Reserves Act enlists the activities prohibited in marine reserves and the corresponding penalties under section 18I. Prohibited activities include fishing, taking or killing of marine life, removal or disturbance of any marine life or materials, and introduction of any living organism.
1112. As with the Marine Mammals Protection Act, the Biosecurity Act does not specify its relationship with the Marine Reserves Act. This means that any activities within marine reserves, including those carried out under the Biosecurity Act, would require an authorisation (i.e., permit) from DOC.
1113. There has been confusion and requests for clarification on the process of obtaining authorisation for activities in marine reserves. For example:
- In June 2017, Auckland Council asked whether it was possible for school groups to remove fanworms (*Sabella*) from rock pools in Long Bay-Okura Marine Reserve. *Sabella spallanzanii* (Mediterranean fanworm) is both an unwanted organism and a notifiable organism under the Biosecurity Act.
 - In 2017, MPI wanted to take samples of a shellfish in a marine reserve in Paterson Inlet, Stewart Island, to test for the presence of *Bonamia ostreae*. This pest is both an unwanted organism and a notifiable organism. Its detection in New Zealand had prompted a significant biosecurity response. A Notice of Direction under section 121 of the Biosecurity Act was served to the Director-General of the DOC, as it was unclear how MPI could otherwise be authorised to take shellfish from the marine reserve.
 - In September 2020, DOC sought clarification on whether it needed any authorisation under the Fisheries Act 1996 and the Biosecurity Act to remove *Undaria* from the Pohatu Marine Reserve.
 - There are instances where members of the public report the presence of suspected pests in marine reserves. MPI may want to collect samples for species identification, which is essential to assessing their biosecurity risk, and determining whether they may be a pest or unwanted organism. However, it is unclear if sample collection is allowed and under what authorisation.
1114. Even if the process of obtaining authorisation is made clear, there remains a risk of significant delays in obtaining authorisation under the Marine Reserves Act. This could go against the need to undertake surveillance and response activities quickly and effectively.

⁶⁶ www.doc.govt.nz/nature/habitats/marine/type-1-marine-protected-areas-marine-reserves/purpose-and-benefits/

⁶⁷ www.doc.govt.nz/marinereserves

Permitting by the DOC

1115. Based on our understanding, DOC's process for issuing permits under the Marine Mammals Protection Act and the Marine Reserves Act includes:

- pre-application meeting to help applicants understand the requirements and process;
- statutory analyses to ensure consistency with relevant legislation;
- technical assessments to identify potential adverse effects on wildlife and environment, and the measures to avoid, remedy, or mitigate these effects; and
- consultation with relevant iwi, hapū, or whānau to give effect to the principles of Te Tiriti. This includes promoting their interests and supporting them to contribute to decisions about activities that occur within their tribal boundary.

41.2. Problem or opportunity

Surveillance under Part 4 of the Biosecurity Act

1116. The purpose of Part 4 refers only to pests and unwanted organisms. However, surveillance also includes monitoring certain organisms already present in the country, which are not necessarily classified as unwanted organisms. This presents an inconsistency between what is covered under the current purpose of surveillance in Part 4 (i.e., pests and unwanted organisms) and what MPI's surveillance work encompasses.

1117. This inconsistency may affect our ability to meet international reporting obligations. For example, avian chlamydiosis and avian infectious laryngotracheitis are WOA-listed diseases.⁶⁸ However, both are not classified as unwanted organisms in New Zealand. Therefore, surveillance for these diseases in wildlife is not provided for directly in the current purpose of Part 4.

Permitting requirements under the Marine Mammals Protection Act

1118. The Biosecurity Act does not explicitly specify its relationship with the Marine Mammals Protection Act. This means that all surveillance activities related to marine mammals would require a permit from the DOC, whether these involve unwanted organisms or not.

1119. Obtaining permits can take a significant amount of time. For example, it took almost a year to obtain permits to undertake surveillance on seal deaths that was reported in Kaikoura in August 2020. This goes against the need to act quickly in detecting exotic pests and diseases. As a successful response is time-dependent, delays in permit application may heighten the risk of harmful organisms to wildlife and taonga species.

1120. If we are unable to quickly undertake surveillance on marine mammals, it may undermine the broader objectives of the Wildlife Act especially on the protection of wild animals.

⁶⁸ Listed diseases are diseases, infections, or infestations selected based on the criteria specified in the World Organisation for Animal Health's Terrestrial Animal Health Code and Aquatic Animal Health Code.

Permitting requirements under the Marine Reserves Act

1121. Early detection and control are critical in aquatic environments, where containment of harmful organisms is challenging. Delays could hamper efforts to manage the spread and impacts of the organism more widely. This could further heighten the risk of harmful organisms impacting the overall health of the marine reserve. Likewise, delays may be perceived poorly by stakeholders and partners given the high value attached to marine reserves.

41.3. Options

Surveillance under Part 4 of the Biosecurity Act

Option 1 – status quo

1122. Option 1 is the status quo. Under this option, the current purpose of Part 4 would continue to be restricted to pests and unwanted organisms.

Option 2 – change the purpose of Part 4 by enabling monitoring for pests, notifiable organisms, unwanted organisms, and other organisms that may cause infections, diseases, or unwanted harm

1123. Option 2 seeks to change the purpose of Part 4 by enabling monitoring for pests, notifiable organisms, unwanted organisms, and other organisms that may cause infections, diseases, or unwanted harm. This would involve replacing “pests and unwanted organisms” with references to the said categories of organisms. This would also require amending certain sections under Part 4 of the Act to reflect the change in the purpose. We prefer this option as it best supports MPI’s surveillance mandate compared with the status quo.
1124. Option was included in the 2024 public consultation as Proposal 68. Most submitters indicated full support to the proposal.
1125. The Poultry Industry Association of New Zealand expressed opposition to “*any proposal that grants MPI broad surveillance powers*”. However, they did not elaborate on this statement further.
1126. We acknowledge the reservations about proposals that may grant MPI broad surveillance powers. The intent of the proposal is that the power would be restricted to actions required for the purpose of surveillance under Part 4 of the Act.
1127. We also recognise that the proposal to amend the purpose of Part 4 could raise expectations that MPI would have to deal with all harmful organisms. The policy intent is that Part 4 enables continuous monitoring but does not mandate how or whether this is done for any specific organism, management tool, or system.

Permitting requirements

1128. Option 2 is mutually exclusive to the other options. Options 3 and 4 could be delivered together.

Option 1 – status quo

1129. Option 1 is the status quo. All MPI activities for marine mammals continue to be subject to permitting. The Biosecurity Act would remain without any reference to the Marine Mammals Protection Act. Similarly, all MPI activities in the marine reserves would continue to be subject to the permitting requirements of the Marine Reserves Act. The Biosecurity Act would remain without any reference to the Marine Reserves Act.

Option 2 - consider non-legislative measures such as operational agreements with the DOC about unwanted organisms

1130. Option 2 would consider non-legislative measures such as operational agreements with the DOC about unwanted organisms. Under this option, MPI would explore and formalise operational agreements with DOC to coordinate and support surveillance activities to marine mammals, and in marine reserves, as it relates to unwanted organisms. This would not require changes to the Act but would instead rely on administrative and cross-agency cooperation.

1131. Option 2 is new option that was not part of the 2024 public consultation.

Option 3 - amend the Act to include a reference to the Marine Mammals Protection Act in the Biosecurity Act

1132. Option 3 would amend the Act to include a reference to the Marine Mammals Protection Act in the Biosecurity Act. Under this proposal, powers under the Biosecurity Act for MPI surveillance activities (including incursion investigations) would take precedence over provisions in the Marine Mammals Protection Act, when those powers are used with respect to unwanted organisms.

1133. Option 3 was included in the 2024 public consultation as Proposal 69. There have been no changes to Option 3 since consultation.

1134. Submitters that indicated conditional support or support with caution had concerns around the impact of surveillance on marine taonga species and wanted to ensure that Treaty partners will be sufficiently consulted now and in the future.

1135. Other submitters said that DOC has the necessary expertise and could take the lead on surveillance activities that impact marine mammal species.

1136. MPI met with some Māori partners as part of the targeted engagement and discussed Option 3. Their comments were as follows:

- Their main concern revolves around the level of relationship and engagement that MPI has with mana whenua.
- One Māori partner said that the biosecurity system does not generally work alongside mana whenua well, particularly on relationship-building and on-going engagements. For example, they expect surveillance plans to be developed alongside mana whenua. Doing so would enable mana whenua to fully undertake their kaitiaki responsibilities. However, this does not seem to occur. They also want to ensure that MPI directly communicates with mana whenua to avoid situations

where mana whenua would obtain information or updates about MPI activities somewhere else. Additionally, they provided MPI with guidelines outlining their expectations for Crown engagements.

- Another Māori partner said that MPI's relationship with them has always been 'embryonic'. They also said that the Minister for Conservation, Hon Tama Potaka, instructed DOC to ensure permitting regimes are efficient and supportive.

1137. We acknowledge the feedback regarding the relationship between mana whenua and MPI in relation to surveillance. Biosecurity New Zealand is actively taking this on board in its day-to-day operations, including efforts to ensure that surveillance is carried out with minimal impact on taonga species. Biosecurity New Zealand is also reviewing how it engages with mana whenua and how it can better support their kaitiaki responsibilities. Lastly, we would engage with various Treaty partners to better understand their expectations around engagement.

Option 4 - amend the Act to include a reference to the Marine Reserves Act

1138. Option 4 would amend the Act to include a reference to the Marine Reserves Act. Under this proposal, powers under the Biosecurity Act for MPI surveillance (including incursion investigations) and response activities would take precedence over provisions in the Marine Reserves Act, when those powers are used with respect to unwanted organisms. For example, if the presence of *Bonamia ostreae* has been reported in areas adjacent to a marine reserve, MPI would be able to test for its presence in shellfish within the marine reserve without having to apply and wait for permits. Likewise, MPI would be able to remove *Undaria pinnatifida* in a marine reserve immediately as part of MPI's response to mitigate its spread.

1139. Option 4 is new and was not part of the 2024 public consultation. We invited the DOC to provide feedback on the proposal.

- The DOC considered that the proposal would support the intent of the Marine Reserves Act, if exempting other defined harmful organisms (e.g., notifiable organisms) would ensure MPI could respond quickly to new incursions of any organisms that may threaten the natural state of the marine reserve. However, it noted that some surveillance and response activities (e.g., treatment or removal of unwanted organisms) could severely impact the values of a marine reserve.
- It suggested that operational agreements or similar non-statutory solutions may address current barriers to carrying out biosecurity activities in marine reserves.
- As an alternative to the proposal, it also suggested adding a provision requiring MPI to notify, consult, or work alongside it under certain situations where the natural state of the marine reserve may be significantly affected.
- It was also keen to understand how or whether MPI will be engaging on this proposal with Treaty partners.

1140. We considered the suggestion to notify, consult, or work alongside the DOC relating to marine reserves. We think that there is a risk that we would be no better off if we have a

mandatory consultation requirement. We think that this requirement would leave issues around permit applications unresolved.

1141. We were unable to consult with Māori partners on Option 4. We note that there will be opportunities for the public, including Māori partners, to provide feedback on our proposals as they progress through the parliamentary process (for example, at Select Committee, should Option 4 be included in a bill).

41.4. Assessing options to address the problem

1142. The options are assessed against the criteria below.

1143. The focus of the 'Effective' criterion for surveillance and interaction with the Marine Mammals Protection Act and the Marine Reserves Act is on empowering MPI to undertake activities to manage biosecurity risk.

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 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 does it provide sufficient certainty? - Are the roles and responsibilities assigned appropriately and clearly between central government, local government, industry and local communities?

Surveillance under Part 4 of the Biosecurity Act

1144. Under Option 1, the purpose of surveillance under the Biosecurity Act remains inconsistent with what MPI's current surveillance work encompasses. There would be continued ambiguity about whether MPI has the authority to undertake surveillance on harmful organisms that fall outside the definitions of pests and unwanted organisms.
1145. Option 2 (change the purpose of Part 4 by enabling monitoring for pests, notifiable organisms, unwanted organisms, and other organisms that may cause infections, diseases, or unwanted harm) meets the clarity criterion. It would provide legislative clarity that surveillance is undertaken for any harmful organisms when necessary. This would ensure consistency between the purpose of surveillance under Part 4 of the Act and what MPI surveillance currently encompasses. We note that the concerns about granting broader surveillance powers to MPI may reflect a view that roles and responsibilities are being assigned disproportionately to MPI. However, this is not the intent of the proposal, as discussed in paragraph 11263.
1146. Option 2 is effective. The clear legislative mandate would better enable MPI to undertake activities to support New Zealand's statements of freedom from pests or diseases. This in turn would help facilitate export trade and inform appropriate border controls to prevent introduction of harmful organisms.
1147. Likewise, this option would provide for surveillance of WOA-listed diseases that are not classified as unwanted organisms. This could help us fully meet international reporting obligations and maintain positive trade reputation, which would support the economy.

1148. Option 2 is adaptable. This option would help futureproof the legislation as it would explicitly enable surveillance of any harmful organisms (regardless of official MPI status) that may require monitoring.
1149. However, Option 2 is not more efficient than the status quo. There is a concern that this option could be an administrative and compliance burden on MPI, as it could raise expectations that MPI would have to deal with all harmful organisms. However, this concern will be mitigated as discussed in paragraph 1153.

Permitting requirements under the Marine Mammals Protection Act and the Marine Reserves Act

1150. Under the status quo, MPI would continue to apply for permits to undertake surveillance activities in marine mammals and marine reserves, as well as response activities in marine reserves. MPI may continue to encounter issues relating to permitting application.
1151. Option 2 (non-legislative measures such as operational agreements with the DOC about unwanted organisms) is more effective than the status quo. Developing operational agreements would give MPI and the DOC the opportunity to identify issues surrounding permitting requirements, find gaps in current operational processes, and agree on how to address them. This would help support MPI surveillance and/or response activities.
1152. Option 2 better meets the clarity criterion than the status quo. Operational agreements could provide sufficient certainty that faster and more effective MPI surveillance and/or response activities is enabled and supported. Operational agreements are also expected to clearly define the roles and responsibilities of MPI, the DOC, and other involved parties in enabling MPI surveillance and/or response activities.
1153. However, Option 2 is no more efficient than the status quo. We note that this option would work within the current legal framework and avoids any complexity of legislative change. However, developing operational agreements may necessitate reviews and adjustments to the current operational settings and processes. This may take some time and resources to undertake. It is uncertain how successfully any memorandum of understanding could be implemented.
1154. Option 2 could help future-proof MPI operations as operational agreements could be updated over time and tailored to specific needs or situations. Though it still means the legislation is not future proof. Option 2 is therefore neutral on the adaptable criterion.
1155. Option 3 (amend the Act to include a reference to the Marine Mammals Protection Act in the Biosecurity Act) meets all the criteria.
1156. The clear legislative mandate enables MPI to deliver more effective and faster surveillance activities and fulfil its responsibilities under the Biosecurity Act more effectively. This strengthens the biosecurity system.
1157. This option would also help deliver a modern legislation that is clear with respect to its relationship with the Marine Mammals Protection Act. This would enable surveillance activities relating to marine mammals to work at speed, when required, in the future.

1158. Option 3 could enable more efficient surveillance by eliminating the administrative burden of obtaining permits, especially when surveillance is urgently required. It would also avoid any potential issues associated with developing operational agreements (e.g., delays).
1159. Explicitly specifying the relationship between the Biosecurity Act and Marine Mammals Protection Act would clarify requirements at a system level. In this case, it would clarify that MPI is not required to obtain permits when undertaking surveillance on marine mammals, where these activities relate to unwanted organisms.
1160. Option 3 would also ensure consistency with the existing relationship between the Biosecurity Act and the Wildlife Act. This option would enhance coherence between the Biosecurity Act and other legislation focused on conservation.
1161. Option 4 (amend the Act to include a reference to the Marine Reserves Act) meets the criteria in the same way as Option 3. Option 4 has the added benefit of clarifying not only surveillance activities but also response activities, to do with marine reserves.

41.5. Which option best addresses the problem, meets the policy objective and delivers the highest benefits?

Surveillance under Part 4 of the Biosecurity Act

1162. We recommend Option 2 as it would provide a clear legislative basis and better reflect what the current surveillance work at MPI encompasses. This would improve biosecurity protection and help deliver an enabling and future-proofed legislation.
1163. The Minister's preferred option in the Cabinet paper is the same as our recommended option.

Permitting requirements under the Marine Mammals Protection Act and the Marine Reserves Act

1164. We recommend Option 3 and 4 as it would clarify requirements at a system level and help MPI undertake more efficient and effective surveillance in marine mammals, and surveillance and response in marine reserves, with respect to unwanted organisms.
1165. The Minister's preferred option in the Cabinet paper is the same as our recommended option.

41.6. Impact analysis of the preferred option

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Regulated groups (DOC and Ministry for Primary Industries)	While future operational changes may result in costs, the preferred option does not create any new costs for consideration.	Low	Low
Regulators (the Crown)	While future operational changes may result in costs, the preferred option does	Low	Low

	not create any new costs for consideration to the Crown.		
Total monetised costs		N/A	N/A
Non-monetised costs		Low	Low
Additional benefits of the preferred option compared to taking no action			
Regulated groups (DOC and Ministry for Primary Industries)	Coordinated surveillance activities between the two agencies.	Low	Low
Regulators (the Crown)	The preferred option involves policy changes that are not expected to result in new benefits to the Crown.	Low	Low
Total monetised benefits		N/A	N/A
Non-monetised benefits		Low	Low

Proactively Released

41.7. 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

Surveillance under Part 4 of the Biosecurity Act

	Option 1 – Status quo	Option 2 – change the purpose of Part 4 by enabling monitoring for pests, notifiable organisms, unwanted organisms, and other organisms that may cause infections, diseases, or unwanted harm
Effective (empowering MPI, and protection from biosecurity risk)	0	The clear legislative mandate would better enable MPI to undertake activities to support New Zealand's statements of freedom from pests or diseases. This in turn would help facilitate export trade and inform appropriate border controls to prevent introduction of harmful organisms. +
Adaptable (modern, enabling legislation)	0	This would help futureproof the legislation as it would explicitly enable surveillance of any harmful organisms (regardless of official MPI status) that may require monitoring. +
Efficient (burden on regulators and parties, and complexity)	0	This option may raise expectations that MPI would have to deal with all harmful organisms. This risk will be mitigated. 0
Clarity (logical and certain, and clear roles)	0	This option would provide legislative clarity and ensure consistency between the purpose of surveillance under Part 4 of the Act and what surveillance encompasses. ++
Overall assessment	0	This option would provide a clear legislative mandate to undertake surveillance activities for harmful organisms. +

Permitting requirements under the Marine Mammals Protection Act

	Option 1 – Status Quo	Option 2 – consider non-legislative measures such as operational agreements with the DOC	Option 3 - include a reference to the Marine Mammals Protection Act in the Biosecurity Act	Option 4 - include a reference to the Marine Reserves Act in the Biosecurity Act
Effective (empowering MPI, and protection from biosecurity risk)	0	Developing operational agreements would help address issues surrounding permitting requirements. This would help support MPI surveillance on marine mammals with respect to unwanted organisms. +	The clear legislative mandate and more efficient surveillance would help MPI meet its responsibilities more effectively. +	The same as Option 3. +
Adaptable (modern, enabling legislation)	0	Not directly applicable in terms of delivering a modern legislation but could help future-proof MPI operations. 0	This option would enable surveillance activities relating to marine mammals to work at speed, when required, in the future. +	This option would ensure that surveillance and response activities relating to marine reserves can work at speed, when required, in the future. +
Efficient (burden on regulators and parties, and complexity)	0	This option would work within the current legal framework and avoids any complexity of legislative change. However, developing operational agreements may necessitate reviews and adjustments to the current operational settings and processes. 0	This option eliminates the administrative burden of obtaining permits and avoid any potential issues associated with developing operational agreements. +	The same as Option 3. +
Clarity (logical and certain, and clear roles)	0	Operational agreements would provide sufficient clarity that faster and more effective MPI surveillance is enabled and supported. +	Explicitly specifying the relationship between the Biosecurity Act and the Marine Mammals Protection Act would clarify requirements at a system level. +	Explicitly specifying the relationship between the Biosecurity Act and the Marine Reserves Act would clarify requirements at a system level. +
Overall assessment	0	Non-legislative measures such as operational agreements could help support a more effective and efficient MPI surveillance in marine mammals. +	This would provide a clear legislative mandate for surveillance in marine mammals with respect to unwanted organisms. This helps deliver an enabling and modern legislation. +	This would support protecting New Zealand from biosecurity risks in relation to marine reserves and help provide a modern, enabling legislation. +

42. Interaction with the Wild Animal Control Act

42.1. Background

1166. The Biosecurity Act interacts with the Wild Animal Control Act (the WACA) to allow for the management of “wild animals” if they are a vector for a pest or unwanted organism that is being controlled. “Wild animals” are any deer that is not lawfully kept for farming, tahr, chamois, any goat that is not constrained or identified under the NAIT Act, and any pig that is living in a wild state. “Wild animals” also includes any land mammal that has been declared a wild animal by an Order in Council. To date, no other land mammals have been declared a wild animal by an Order in Council.
1167. The WACA manages the damaging effects of wild animals and provides for the regulation of recreational and commercial hunters. The WACA is administered by the DOC.
1168. Section 8(2) of the WACA establishes an offence for person to hunt, kill, or possess any wild animal on any land, or to use a firearm on any land, without the landowner’s consent. There are strict penalties for this including up to two years imprisonment, a fine up to \$100,000, or both for an individual, or a fine up to \$200,000 for a corporation.
1169. Section 16 of the WACA establishes an exemption for the DOC (and its agents or contractors) from the offence in section 8(2). This means the DOC can enter land for the purposes of controlling wild animals.
1170. Section 8(2) of the WACA also establishes a similar exemption for Pest Boards acting under section 56 of the Agricultural Pests Destruction Act 1967 (which was the predecessor to the Biosecurity Act).
1171. Section 7(5) of the Biosecurity Act allows biosecurity powers to take precedence over the WACA on any land (other than land administered under Schedule 1 of the Conservation Act 1987). However, this is only in relation to a pest or unwanted organism that can be transmitted by an animal listed in the WACA. This means regional councils are not able to undertake pest management activities on wild animals that are a vector for transmission of a pest or unwanted organism.

42.2. Problem or opportunity

1172. The exemption in section 8(2) of the WACA allowed Pest Boards acting under section 56 of the Agricultural Pests Destruction Act to enter private land to control wild animals. However, when the Agricultural Pests Destruction Act was repealed by Schedule 3 of the Biosecurity Act, the exemption in section 8(2) of the WACA was not updated.
1173. Although regional councils are legal successors of Pest Boards, the revocation of the Agricultural Pests Destruction Act and the omission of updating section 8(2) of the WACA means councils’ exemption under section 8(2) of the WACA is not clear.
1174. Without this clarity, if regional councils want to carry out their pest management functions and duties in relation to wild animals, they need the express authority of the owner or occupier of the land they intend to enter. Obtaining landowner or occupier

permission to enter land to control wild animals is not efficient or effective because it has not enabled comprehensive operations.

1175. While regional councils can coordinate with the DOC, this coordination is not always easy, especially in instances where there are different priorities that may lead to delays in pest management. Additionally, while the DOC's operational teams are unlikely to prosecute regional councils, this risk can understandably hinder and disincentive regional council's pest management activities and operations.

42.3. Options

Option 1 – status quo

1176. **Option 1** is to retain the **status quo**. Under this option, the ability for regional councils to enter private land to undertake pest management activities on wild animals is not clear, unless those animals are a vector for a pest or unwanted organism.

Option 2 - clarify that regional councils can enter private land to control wild animals

1177. Option 2 would make a clarifying technical change to section 8(2) of the WACA to replace “section 56 of the Agricultural Pests Destruction Act 1967” with “section 109(1)b of the Biosecurity Act”.
1178. Option 2 clarifies that regional councils can enter private land to control wild animals that are included in regional pest or pathway management plans. This would clarify the powers available to regional councils to carry out pest management activities on private land under their regional pest management plans.

Most submitters supported Option 2 (including regional councils) but faced strong opposition from the New Zealand Game Animal Council

1179. Option 2 was included in the 2024 public consultation as Proposal 70. Most submitters, including all regional councils, supported the proposal. Councils said that the risk of prosecution has disincentivised and prevented regional councils from undertaking pest management activities and operations.
1180. Those submitters who opposed or requested changes to Proposal 70 considered the proposal to be a major change to council's powers under existing legislation and that consultation with landowners should be required.
1181. The New Zealand Game Animal Council's submission supported the status quo. It stated that except for emergency situations, no government body should hold powers to enter private land or public conservation land to control what it deemed as 'valued species' (wild animals) without following appropriate processes. They noted that section 16 of the Wild Animal Control Act outlines the process that must be followed before entering private land.⁶⁹ This includes providing the landowner a period of 28-days and an opportunity to appeal the Minister of Conservation's decision.

69 [Section 16 \(Entry on land for purposes of Act\) of the Wild Animal Control Act 1977](#)

1182. The New Zealand Game Animal Council wanted to ensure that there are processes in place to prevent decisions being made that negatively affect the hunting community and other stakeholders. They had a specific concern that if a regional council included a wild animal as a pest in a regional pest or pathway management plan, that this could negatively affect hunting safari businesses (who may have agreements in place with private landowners to conduct their business).

We undertook further engagement with New Zealand Game Animal Council, Fish and Game New Zealand and DOC after public consultation

1183. Following public consultation, we undertook further targeted engagement with the New Zealand Game Animal Council, Fish and Game New Zealand and DOC. DOC supported the proposal. The New Zealand Game Animal Council's submission did not support the proposal, and they reaffirmed their position in targeted engagement.
1184. Regional councils are required to consult on including a wild animal as a "pest" in a regional pest or pathway management plan.
- Regional councils would only be able enter private land to control a wild animal if that animal is included in a regional pest or pathway management plan. Regional councils are required to consult on a proposed regional pest or pathway management plan under the Biosecurity Act.⁷⁰ If a wild animal was proposed to be included in a plan, this would include consulting potentially affected persons, such as a hunting business, on the inclusion of a wild animal as a "pest" in a plan. A cost benefit analysis of any regional pest management plan should consider any impacts on businesses such as hunting safaris. Regional councils will usually try and work with potential effected businesses, including their activities into the control programme.
 - Regional councils are also highly likely to consult with the Game Animal Council, the recreational hunting community, private landowners on the proposal to meet consultation requirements. They are also likely to have consulted with the DOC.
 - Regional councils must consult with the Minister of Conservation on a proposal to include a wild animal in a regional pest or pathway management plan under section 31 of the Wild Animal Control Act.
1185. The proposal would support biosecurity and long-term management outcomes.
- The proposal would clarify that regional councils can enter private land to control wild animals under their regional pest or pathway management plans. This would lead to more effective biosecurity and long-term management outcomes, by enabling regional councils to enter private land to undertake long-term management activities in line with the objectives of their regional pest or pathway management plans. DOC is supportive of additional measures that can be taken by regional councils to support and assist in pest management and supports this work being more evenly spread across DOC and regional councils.

⁷⁰ Under sections 72, 73, 83, 84, 92 and 93 of the Biosecurity Act.

42.4. Assessing options to address the problem

1186. The options are assessed against the criteria below.

1187. The focus of the 'Effective' criterion for the interaction with the Wild Animal Control Act is on the clarification of regional councils' role in managing biosecurity risk.

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 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?

1188. Under the status quo, it is not clear whether regional councils are exempted from the offence established in the WACA when they enter private land to undertake pest management activities for wild animals. This can lead to ineffective and inefficient biosecurity outcomes if pest management activities are hindered.

1189. Option 2 (clarify that regional councils can enter private land to control wild animals) would lead to more effective biosecurity outcomes, by clarifying an existing exemption for regional councils to enter private land to undertake pest management activities in line with the objectives of their regional pest or pathway management plans. It would also be more efficient, by removing the administrative burden on regional councils to coordinate with the DOC to undertake these activities.

1190. Option 2 also meets the adaptable and clarity criteria, as it ensures the biosecurity regulatory system is up-to-date and clarifies the exemption for regional councils for wild animals. It improves regional council's autonomy to undertake pest management activities and updates the WACA by removing a reference to revoked legislation.

42.5. Which option best addresses the problem, meets the policy objective and delivers the highest benefits?

1191. We recommend Option 2 proceed as this leads to improved outcomes for long-term management if implemented.

1192. Option 2 will reduce ambiguity within the WACA by clarifying regional councils have an exemption under section 8(2) of the WACA to enter private land to control wild animals.

1193. The Minister's preferred option in the Cabinet paper is the same as our recommended option.

42.6. Impact analysis of the preferred option

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared with taking no action			
Regulated groups	The preferred option involves changes that are not expected to result in new costs.	Low	Low
Regulators	The preferred option involves changes that are not expected to result in new costs.	Low	Low
Total monetised costs		N/A	N/A
Non-monetised costs		Low	Low
Additional benefits of the preferred option compared to taking no action			
Regulated groups	The preferred option involves changes that are not expected to result in new benefits.	Low	Low
Regulators	Removes the administrative burden on regional councils to coordinate with the DOC to undertake certain activities.	Low	Low
Total monetised benefits		N/A	N/A
Non-monetised benefits		Low	Low

43. Appendix 1 – Proposed increased penalties for Chapter 11

The table below lists the offences and proposed increased penalties:

43.1. Where the Act provides for both civil penalties and criminal proceedings

Part 3 – Importation of risk goods			
Section	Current penalty for individual	Current penalty for corporate	Proposed increase for corporates
Sections 25(1), (2), (8), and (9) Goods to be cleared for entry into New Zealand	Imprisonment 12 months AND/OR fine \$50,000	Fine \$100,000	\$300,000
Section 27A Post-clearance conditions on clearances	Imprisonment 12 months AND/OR fine \$50,000	Fine \$100,000	\$300,000
Section 29(1) Restricted organisms to be contained	Imprisonment 12 months AND/OR fine \$50,000	Fine \$100,000	\$300,000
Section 29(2) Restricted organisms to be contained	Imprisonment 12 months AND/OR fine \$50,000	Fine \$100,000	\$300,000
Section 40(6) Approval and cancellation of approval of facility operators	Imprisonment 12 months AND/OR fine \$50,000	Fine \$100,000	\$300,000
Part 4 – Surveillance and prevention			
Section	Current penalty for individual	Current penalty for corporate	Proposed increase for corporates
Section 52 Communication of pest or unwanted organism	- Imprisonment - 5 years - OR - Fine \$100,00	Fine \$200,000	\$500,000
Section 53 Duties of owners of organisms	- Imprisonment - 5 years - OR - Fine \$100,000	Fine \$200,000	\$500,000

43.2. Where the Act only provides for criminal proceedings

Part 3 – Importation of risk goods			
Section	Current penalty for individuals	Current penalty for corporates	Proposed increase for corporates
Section 19(2) Persons in charge of certain craft to obey directions of inspector or authorised person	Imprisonment 12 months AND/OR fine \$50,000	Fine \$100,000	\$300,000
Sections 30(1) and (2) Uncleared imports	Imprisonment 12 months AND/OR fine \$50,000	Fine \$100,000	\$300,000
Section 35 Duties of persons in biosecurity control areas	Imprisonment 12 months AND/OR fine \$50,000	Fine \$100,000	\$300,000

Section 35A Duty of persons to remain in biosecurity control areas	Imprisonment 12 months AND/OR fine \$50,000	Fine \$100,000	\$300,000
Section 41(5) Designation of quarantine area	Imprisonment 12 months AND/OR fine \$50,000	Fine \$100,000	\$300,000
Part 4 – Surveillance and prevention			
Section	Current penalty for individual	Current penalty for corporate	Proposed increase for corporates
Section 46 Duty to report notifiable organisms	Imprisonment 5 years OR fine \$100,000	Fine \$200,000	\$500,000
Section 51(1) Duties relating to identification of organisms	Imprisonment 12 months AND/OR fine \$50,000	Fine \$100,000	\$300,000
Section 51(2) Duties relating to identification of organisms	Imprisonment 12 months AND/OR fine \$50,000	Fine \$100,000	\$300,000
Part 6 - Administrative provisions			
Section	Current penalty for individuals	Current penalty for corporates	Proposed increase for corporates
Section 121B Prohibition or control of certain tests	Imprisonment 12 months AND/OR fine \$50,000	Fine \$100,000	\$300,000
Section 134(1)(a) Enforcement of area controls	Imprisonment 5 years OR fine \$100,000	Fine \$200,000	\$500,000
Part 8 – offences and penalties			
Section	Current penalty for individuals	Current penalty for corporates	Proposed increase for corporates
Section 154N(9) [Duty to comply with reasonable requirement made by official or automated electronic system]	Imprisonment 3 months AND/OR fine \$50,000	Fine \$100,000	\$300,000
Section 154N(10) [Duty to comply with reasonable direction made by official or automated electronic system]	Imprisonment 3 months AND/OR fine \$50,000	Fine \$100,000	\$300,000
Section 154N(11) [Duty to comply with compliance order]	Imprisonment 3 months AND/OR fine \$50,000	Fine \$100,000	\$300,000
Section 154O(2) [Duty not to threaten, assault or obstruct an official acting under the Act]	Imprisonment 5 years OR fine \$100,000	Fine \$200,000	\$500,000
Section 154O(3) [Duty not to obstruct or hinder automated electronic system]	Imprisonment 5 years OR fine \$100,000	Fine \$200,000	\$500,000
Section 154O(4) [Duty not to damage or impair an automated electronic system]	Imprisonment 5 years OR fine \$100,000	Fine \$200,000	\$500,000
Section 154O(5) [Duty not to knowingly make a false statement]	Imprisonment 5 years OR fine \$100,000	Fine \$200,000	\$500,000

Section 154O(6) [Duty to provide information to an official or automated electronic system when required by law]	Imprisonment 5 years OR fine \$100,000	Fine \$200,000	\$500,000
Section 154O(7) [Duty to make a return, make a declaration, or give a certificate that is true]	Imprisonment 5 years OR fine \$100,000	Fine \$200,000	\$500,000
Section 154O(8) [Duty to represent yourself truly and not as an official or authorised person if you are not one]	Imprisonment 5 years OR fine \$100,000	Fine \$200,000	\$500,000
Section 154O(9) [Duty to not buy, sell, exchange, acquire or dispose authorised goods]	Imprisonment 5 years OR fine \$100,000	Fine \$200,000	\$500,000
Section 154O(10) [Duty not to alter, unpack or repack goods that have been seized by an authorised person]	Imprisonment 5 years OR fine \$100,000	Fine \$200,000	\$500,000
Section 154O(11) [Duty to not remove seized risk goods that have been placed somewhere by an authorised person]	Imprisonment 5 years OR fine \$100,000	Fine \$200,000	\$500,000
Section 154O(12) [Duty to not carry away and use goods that have been seized by authorised person]	Imprisonment 5 years OR fine \$100,000	Fine \$200,000	\$500,000
Section 154O(13) [Duty to not exhume carcass that has been buried by authorised person per their direction, without their permission]	Imprisonment 5 years OR fine \$100,000	Fine \$200,000	\$500,000
Section 154O(14) [Duty to not remove, introduce or alter an organism, organic material or risk good in a place when a notice under s130(1) is in force]	Imprisonment 5 years OR fine \$100,000	Fine \$200,000	\$500,000
Section 154O(15) [Duty to not possess unauthorised goods with the knowledge they are unauthorised goods]	Imprisonment 5 years OR fine \$100,000	Fine \$200,000	\$500,000
Section 154O(18) [Duty to comply with a provision in this Act relating to holding levy money in trust accounts]	Imprisonment 12 months AND/OR fine \$50,000	Fine \$100,000	\$300,000

43.3. Biosecurity emergency regulation fines

Current fine for individuals	Current fine for corporates	Proposed fine for individuals	Proposed fine for corporates
\$15,000	\$75,000	\$30,000	\$150,000

44. Appendix 2 – Simplifying the process to create NPMPs and RPMPs (Chapter 35, Option 2)

1194. The table below provides the current steps for creating plans and proposed amendments to remove a number of steps to simplify the process for creating plans, using NPMPs as an example.

Status quo	Amendments to simplify the creation of national pest management plans
Step 1 - plan initiated by proposal by individual, government or council Section 61 requirements for a proposal: • (2)(a) – name of proposer • (2)(b)(i) – organism(s) proposed to be a pest in the plan • (2)(b)(ii) – description or class of organism(s) to be a pest in the plan • (2)(c)(i) – adverse effects of organism • (2)(c)(ii) – reasons for proposing the plan • (2)(c)(iii) – objectives the plan would have • (2)(c)(iv) – principal measures in the plan to achieve the objectives • (2)(c)(v) – other measures reasonable to take to achieve the objective and explanation of why • (2)(c)(vi) – why a national plan is more appropriate than a regional plan • (2)(c)(vii) – costs and benefits analysis • (2)(c)(viii) – which persons or class of persons would benefit from a plan • (2)(c)(ix) – which persons or class of persons contribute to creation, continuance or exacerbation of problems the plan solves • (2)(c)(x) – rationale for allocation of costs • (2)(c)(xi) – if the plan will be funded by a levy under the Act and how the levy meets necessary requirements • (2)(c)(xii) – any unusual administrative problems or costs are expected in cost recovery • (2)(d) – any other organisms needed to be controlled • (2)(e)(i) – effects the plan would have on economic wellbeing, the environment, human health, enjoyment of the natural environment, and the relationship between Māori, their culture, and their traditions and their ancestral lands, waters, sites, wāhi tapu, and taonga • (2)(e)(ii) – effects the plan would have on the marketing overseas of New Zealand products	Step 1 – plan initiated by proposal by individual Proposed requirements for proposal: • (2)(a) – name of proposer • (2)(b)(i) – organism(s) proposed to be a pest in the plan • (2)(b)(ii) – description or class of organism(s) to be a pest in the plan • (2)(c)(i) – adverse effects of organism • (2)(c)(ii) – reasons for proposing the plan • (2)(c)(iii) – objectives the plan would have • 2(c)(iv) – the principal objectives that would be in the plan to achieve the objectives • (2)(c)(vi) – why a national plan is more appropriate than a regional plan • (2)(k) - the means by which it is proposed to monitor or measure the achievement of the plan's objectives.

Status quo	Amendments to simplify the creation of national pest management plans
• (2)(f) - if the plan affects another plan, how to co-ordinate the implementation of the plans • (2)(g) – Part 6 powers to be used to implement the plan • (2)(h) – each rule in the plan and the purpose of the rule • (2)(i) – which rules would be an offence if breached • (2)(j) – the management agency for the plan • (2)(k) – monitoring or measurement of achievement of the plan's objectives • (2)(l) – actions that local authorities may take to implement the plan, including contributing towards the cost of the plan • (2)(m) – what compensation is available, if any • (2)(n) - information on the disposal of the proceeds of any receipts arising in the course of implementing the plan • (2)(o) - whether or not the plan would apply to the EEZ and whether just parts of it or all of it • (2)(p) - whether the plan includes portions of road adjoining land it covers, as authorised by section 6, and, if so, the portions of road proposed to be included • (2)(q) - the anticipated costs of implementing the plan • (2)(r) – how the costs are funded • (2)(s) – period the plan would be in force • (2)(t) – consultation that has occurred on the proposal • (2)(u) – matters in the national policy direction required to be in the plan • (2)(v) - steps taken to comply with the process requirements in the national policy direction, if there were any	
Step 2 – satisfaction on key considerations Section 62 requirements: • (a) – the proposal is not inconsistent with the national policy direction • (b) – process requirements in the national policy direction were complied with during the development of the proposal • (c)(i) - proposal has merit as a means of eradicating or effectively managing the organism(s) proposed to be a pest • (c)(ii) - proposal has merit as a means of eradicating or effectively managing the description or class of organism(s) to be a pest	Step 2 - satisfaction on key considerations Proposed requirements for proposal: • (a) – the proposal is not inconsistent with the national policy direction • (b) – process requirements in the national policy direction were complied with during the development of the proposal • (c)(i) – proposal has merit as a means of eradicating or effectively managing the organism(s) proposed to be a pest • (c)(ii) – proposal has merit as a means of eradicating or effectively managing the description or class of organism(s) to be a pest • (d)(i) – organism is capable of causing adverse effect on economic wellbeing

Status quo	Amendments to simplify the creation of national pest management plans
• (d)(i) – organism is capable of causing adverse effect on economic wellbeing • (d)(ii) – organism is capable of causing adverse effect on the viability of threatened species of organisms • (d)(iii) – organism is capable of causing adverse effect on the survival and distribution of indigenous plants or animals • (d)(iv) – organism is capable of causing adverse effect on the sustainability of natural and develop ecosystems, ecological processes, and biological diversity • (d)(v) – organism is capable of causing adverse effect on soil resources • (d)(vi) – organism is capable of causing adverse effect on water quality • (d)(vii) – organism is capable of causing adverse effect on human health • (d)(viii) – organism is capable of causing adverse effect on social and cultural wellbeing • (d)(ix) – organism is capable of causing adverse effect on enjoyment of the recreational value of the natural environment • (d)(x) – organism is capable of causing adverse effect on the relationship between Māori, their culture, and their traditions and their ancestral lands, waters, sites, wāhi tapu and taonga • (d)(xi) – organism is capable of causing adverse effect on animal welfare • (e) – that for each organism, the benefits of the plan outweigh the costs, after taking account of the likely consequences of inaction or other courses of action • (f)(i) – that for each organism, persons who are required, as a group, to meet directly any or all of the costs of implementing the plan would accrue, as a group, benefits outweighing the costs • (f)(ii) – that for each organism, persons who are required, as a group, to meet directly any or all of the costs of implementing the plan contribute, as a group, to the creation, continuance, or exacerbation of the problems proposed to be resolved by the plan • (g) – that for each organism there is likely to be adequate funding for the implementation of the plan for the shorter of its proposed duration and 5 years	• (d)(ii) – organism is capable of causing adverse effect on the viability of threatened species of organisms • (d)(iii) – organism is capable of causing adverse effect on the survival and distribution of indigenous plants or animals • (d)(iv) – organism is capable of causing adverse effect on the sustainability of natural and develop ecosystems, ecological processes, and biological diversity • (d)(v) – organism is capable of causing adverse effect on soil resources • (d)(vi) – organism is capable of causing adverse effect on water quality • (d)(vii) – organism is capable of causing adverse effect on human health • (d)(viii) – organism is capable of causing adverse effect on social and cultural wellbeing • (d)(ix) – organism is capable of causing adverse effect on enjoyment of the recreational value of the natural environment • (d)(x) – organism is capable of causing adverse effect on the relationship between Māori, their culture, and their traditions and their ancestral lands, waters, sites, wāhi tapu and taonga • (d)(xi) – organism is capable of causing adverse effect on animal welfare • (h) – implementation of the plan would not be contrary to New Zealand's international obligations • (i)(i) – would assist in achieving the plan's objective • (j) – the proposal is not frivolous or vexatious • (k) – proposal is clear enough to be readily understood • (l) – if the Minister rejected a similar proposal within the last 3 years, new and material information answers the objections to the previous proposal.

Status quo	Amendments to simplify the creation of national pest management plans
• (h) - implementation of the plan would not be contrary to New Zealand's international obligations • (i)(i) – each proposed rule would assist in achieving the plan's objectives • (i)(ii) – each proposed rule would not trespass unduly on the rights of individuals • (j) – the proposal is not frivolous or vexatious • (k) – proposal is clear enough to be readily understood • (l) – if the Minister rejected a similar proposal within the last 3 years, new and material information answers the objections to the previous proposal	

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