

Biosecurity Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill will increase the maximum fine on summary conviction for the offence of making an erroneous declaration concerning possession of risk goods from \$400 to \$800 and enable the amount of infringement fees to be increased (to a maximum of \$1,000) in regulations rather than by amendment to the Act.

The Bill will enable the detail of the infringement offence regime in the Biosecurity Act 1993 to be prescribed in regulations made under the Act rather than specified in the Act itself. Currently, the Act specifies 2 infringement offences, each with its own procedure: the standard procedure under the Summary Proceedings Act 1957 and an accelerated procedure tailored for offences committed by people arriving in New Zealand, recognising that many of them will depart again relatively soon. The Bill will enable new infringement offences to be specified in regulations and will distinguish between ordinary infringement offences and border infringement offences. The accelerated procedure will apply to border infringement offences.

Clause by clause analysis

Clause 1 states the Bill's title.

Clause 2 provides that the Bill will come into force on a date appointed by the Governor-General by Order in Council. This is to

allow time for regulations to be drafted to specify the infringement and border infringement offences, the form of infringement notices, and the infringement fees.

Clause 3 provides that the Bill amends the Biosecurity Act 1993.

Clause 4 inserts new definitions in section 2(1).

Clause 5 amends section 157(7) to increase the penalty on summary conviction for an offence against section 154(s) from \$400 to \$800. A person commits an offence against section 154(s) if the person erroneously declares, in circumstances where the person is required to make a declaration in relation to goods specified in the declaration, that he or she is not in possession of any or all of those goods.

Clause 6 amends section 159 so that instead of applying only to offences against section 154(p), section 159 will apply to all offences prescribed as infringement offences (other than border infringement offences).

Clause 7 amends section 159A, which sets out an accelerated procedure for an infringement offence against section 154(s) committed by people arriving in New Zealand, so that instead of applying only to offences against section 154(s), section 159A will apply to all infringement offences specified as border infringement offences.

Clause 8 amends the regulation-making power in section 165(1) to allow regulations to be made that—

- prescribe offences as infringement offences and specify infringement offences that are committed at the border to be border infringement offences (*new paragraphs (va) and (vb)*);
- prescribe the infringement fees payable for the infringement offences (*new paragraph (vc)*);
- prescribe the forms of the infringement notices for infringement offences and border infringement offences and any particulars additional to those specified in sections 159 and 159A that must be included in the forms (*new paragraph (vd)*).

Regulatory impact statement

Executive summary

In June 2009, Cabinet agreed to amend the Biosecurity Act 1993 to increase the penalties for failing to declare risk goods from \$400 to \$800 (on summary conviction) and from \$200 to \$400 (if dealt with

as an infringement offence). The penalties are to be increased to help improve passengers' compliance with biosecurity border measures. Cabinet also agreed to amend the Act to enable infringement offences, infringement fees, and infringement notices to be prescribed by regulations to allow greater flexibility.

Adequacy statement

The Ministry of Agriculture and Forestry (MAF) has reviewed this regulatory impact statement and considers it to be adequate.

Status quo and problem

Raising the infringement fee for erroneous declaration

New Zealand, due to its isolation and rigorous biosecurity measures, is free of many of the serious pests and diseases that affect livestock and crops around the world. High-risk items brought into the country have the potential to seriously harm our economy, environment, and human health and social well-being.

Despite publicity efforts, large numbers of people do not declare biosecurity risk items such as fruit and meat products they may be carrying when entering the country. The infringement notice procedure was put in place to change people's behaviour and encourage compliance with the law.

The offence of "erroneous declaration" under the Biosecurity Act 1993 can be dealt with either by way of an infringement fee of \$200, or prosecution through the court system, which carries a maximum penalty of \$400 on conviction. The Ministry of Justice's policy framework Guidelines for New Infringement Schemes suggest that the infringement fee should generally be considerably less than the maximum penalty.

Between 2004 and 2008, the number of seizures of undeclared goods reduced by 20%; nevertheless, in 2008 over 17 000 individual seizures were made. Although the number of breaches is dropping, we think that we can use the infringement scheme as part of a linked series of initiatives to reduce the numbers further. The Government has made a commitment to increase the infringement fee to improve passengers' compliance with biosecurity border measures.

The Act was amended in 1999 to include the infringement notice procedure. The fee has not been reviewed since that time. The real

value of the \$200 fee originally set has declined by 23% since 1999 according to the Consumers' Price Index.

Clarifying infringement provisions in the Act

Currently, 2 sections of the Act deal with the application of infringement notices. Both of these sections set penalties for infringement fees in the Act itself, together with prescribing various matters about the content and format of the notices to be served. Providing these matters in primary legislation is too inflexible to deal effectively with the issues involved when relatively minor improvements are being sought.

Objectives

To encourage compliance with biosecurity measures at the border, hold people accountable for offending against the law, and reduce the amount of undeclared risk goods being brought into the country.

Preferred option

It is proposed to raise the current infringement fee from \$200 to \$400 to meet the policy objectives of improving compliance, holding people accountable for breaking the law, and retaining practical enforcement capability. It is also proposed to raise the current maximum penalty on court conviction from \$400 to \$800 to maintain relativity with the proposed infringement fee increase.

The costs will be placed on people who break the law. The benefits of the change should be a wider public understanding of New Zealand's need for strict biosecurity measures, and over time a continued reduction in the amount of undeclared risk goods seized at the border.

MAF does not expect that the fee increase will represent a barrier to payment, given that only 8% of the notices are currently unpaid after the 14-day period.

There will be some additional costs to government in implementing the changes, which will be met from within baselines. Implementation costs include the need to reprint the forms, public notices, and other publicity material, but these costs can be minimised with good planning. Stockpiled publicity material can be run down during the lead-in time.

MAF is about to begin a new advertising campaign “Declare or Dispose” around border processes and passenger compliance, and will notify the public, travel agencies, and other bodies about the increased penalty. The campaign is underpinned with the key message: “*Declare or Dispose. It is New Zealand law.*”

The focus is on increasing compliance—particularly by New Zealanders for whom English is a second language—and to reinforce the message to those who already comply. The concept is based on audience research and was focus group tested. It has been adapted to suit particular audiences in the choice of photos used, the variety of languages it is translated into, and the media channels chosen.

Additional costs may also be incurred in staff training for the new procedures, increased compliance efforts, and collection of payments. At present, 92% of the notices are paid within the 14-day period. If the increased fee leads fewer people to pay on the spot, then additional resources will be required for recovery activity. These costs would include District Court administration in fines recovery, additional court hearings, and the cost of biosecurity inspectors attending to give evidence.

Alternative options

No alternative options have been considered. The increase in the infringement fee (and the maximum penalty on court conviction) forms part of a suite of measures designed to improve risk targeting at airports. Streamlined border processes, including refinements to the targeting of biosecurity risks at the border, will allow passengers who comply with the requirements to pass through with minimal intervention, while passengers who breach biosecurity requirements will face higher penalties.

The proposals in this paper are the first of 3 Cabinet submissions that propose changes to the way that biosecurity risks are managed at the border. A second paper focused on “better biosecurity risk targeting” at international airports is due to be presented to Cabinet in early July 2009. That paper will outline several initiatives that MAF is exploring to facilitate passengers through biosecurity processes at the border, such as the pre-arrival assessment of X-ray images of baggage from Australia, and the use of risk profiling to identify low-risk trans-Tasman passengers. These proposals will be integral to a

third submission, from border sector Ministers, on facilitating trans-Tasman travel.

Revenue implications

In 2008 there were over 17 000 seizures of biosecurity risk goods made at the border. That represents a 20% drop in offending following the introduction of the infringement fee process. It is expected that an increase in the fee will further reduce offending. If offending drops a further 20%, there will still be some 13 500 offences detected each year.

The higher fee will potentially increase revenue by some \$2.5 million per year. A more accurate estimate is not possible at this point; not every offence will lead to issue of an infringement notice, and as noted earlier there may be additional costs incurred in collection of fees and a larger number of non-payments.

Implementation and review

It is proposed for the sake of clarity and flexibility to revise the 2 sections of the Act that deal with infringement fees, and replace them with a single provision. It is expected that provisions around the particular offences that may be dealt with by an infringement notice, who can issue the notices, and the applicability of time limits will remain in the Act.

It is also proposed to introduce a new section that provides for content and format matters to be set by regulations.

These legislative changes will be neutral in terms of content, as the re-drafting will not alter current provisions of the Act. It will, however, potentially allow legal challenge to the content of the regulations in the High Court.

An Order in Council will be required to align the commencement dates of regulations and the amendments to the Act, to be sure that they take place at the same time. Commencement by Order in Council will also allow certainty that all necessary supporting structures and administration, such as the printing of new forms, training, and publicity, have been completed.

Setting the infringement fee in regulations will allow a more flexible review process than allowed for currently in the Act. No detailed timetable has been proposed.

Consultation

This regulatory impact statement and the associated Cabinet paper have been provided to the following departments for comment: Ministry of Tourism, Ministry of Justice, The Treasury, Department of Conservation, Immigration New Zealand and New Zealand Customs Service.

Hon David Carter

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Biosecurity Amendment Act **2009**.

- 2 Commencement**
This Act comes into force on a date appointed by the Governor-General by Order in Council. 5

- 3 Principal Act amended**
This Act amends the Biosecurity Act 1993.

4 Interpretation

Section 2(1) is amended by inserting the following definitions in their appropriate alphabetical order:

“**border infringement offence** means an infringement offence specified as a border infringement offence by regulations made under this Act 5

“**infringement fee** means the amount prescribed by regulations made under this Act as the infringement fee for an infringement offence

“**infringement offence** means an offence prescribed by regulations made under this Act as an infringement offence”. 10

5 Penalties

Section 157(7) is amended by omitting “\$400” and substituting “\$800”.

6 Certain clearance offences may be proceeded with by way of infringement notice 15

(1) Section 159 is amended by omitting the heading and substituting the following heading: “**Proceedings for infringement offences**”.

(2) Section 159(1) is amended by omitting “an offence against section 154(p) of this Act” and substituting “an infringement offence (other than a border infringement offence)” 20

(3) Section 159(3) is amended by repealing paragraph (b) and substituting the following paragraph:

“(b) the amount of the infringement fee for the offence; and” 25

7 Certain declaration offences may be proceeded with by way of accelerated infringement notice procedure

(1) Section 159A is amended by omitting the heading and substituting the following heading: “**Accelerated infringement notice procedure for border infringement offences**” 30

(2) Section 159A(1) is amended by omitting “an offence against section 154(s)” and substituting “a border infringement offence”.

(3) Section 159A(4) is amended by repealing paragraph (b) and substituting the following paragraph: 35

“(b) the amount of the infringement fee for the offence; and”.

8 Regulations

Section 165(1) is amended by inserting the following paragraphs after paragraph (v):

“(va) prescribing offences as infringement offences: 5

“(vb) specifying that an infringement offence is a border infringement offence if it is committed—

“(i) in a biosecurity control area at a port approved as a place of first arrival under section 37; or

“(ii) at a port approved for the arrival of a craft under section 37A: 10

“(vc) prescribing the infringement fee payable for each infringement offence, which may not exceed \$1,000:

“(vd) prescribing the form of, and any additional particulars required in, an infringement notice for a border infringement offence or an infringement offence.” 15