

Biosecurity Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill is in 2 Parts. *Part 1* contains amendments to the Biosecurity Act 1993. *Part 2* repeals certain provisions of the Forests Act 1949.

The Biosecurity Act 1993 is stated in its Long Title to be an Act to restate and reform the law relating to the exclusion, eradication, and effective management of pests and unwanted organisms. As such, the Act is the principal legislative authority for actions that are taken to keep harmful organisms out of New Zealand, to maintain surveillance for harmful organisms, to respond to the detection of harmful organisms, and to manage harmful organisms that become established in New Zealand.

The various amendments that this Bill makes to the Biosecurity Act 1993 have been initiated for a number of different reasons.

Some of the amendments are the result of experience in applying the Act to new situations. The Act is relied upon to provide the necessary statutory authority to respond to a wide range of different situations. Actual experience in applying the Act inevitably leads to the recognition of enhancements that can be made to its provisions.

A further reason for some of the amendments is change to organisations that play a part in New Zealand's biosecurity, and in particular the transfer to 2 State enterprises of functions that had previously been performed within the Ministry of Agriculture and Forestry.

Finally, some amendments are included in the interests of providing greater clarity, or to resolve inconsistencies.

The provisions of the Forests Act 1949 that are repealed by the Bill are provisions that deal with the exclusion, control, and eradication of organisms that may be harmful to forest health. The provisions have been found to be redundant in light of the enactment of the Biosecurity Act in 1993 and, in some cases, to be in conflict with internationally agreed approaches to the implementation of biosecurity measures.

Clause by clause analysis

Clause 1 is the Title clause. The Bill amends the Biosecurity Act 1993.

Clause 2 provides that the Bill is to come into force on the day after the date on which it receives the Royal assent.

Part 1

Amendments to principal Act

Clause 3 repeals section 2(4) of the Act, which currently provides that Parts IV to VI of the Act are to apply to pest agents as if they were pests. In fact, specific references to “pest agent” are already included in those Parts in all appropriate cases, so section 2(4) is now seen as at best unnecessary and at worst misleading.

Clause 4 amends section 7 of the Act, which sets out relationships with other Acts. The new *subsection (6)* ensures that the broad protective provisions of the Wildlife Act 1953 will not prevent the use of the Biosecurity Act 1993 to control a wildlife organism that is proving to have undesirable effects (eg the rainbow lorikeet). Existing *subsection (5)* is also amended to standardise wording.

Clause 5 amends section 30A of the Act, which allows inspectors to carry out inspections and treatment of unaccompanied imported goods in transitional facilities to ensure that they can safely be cleared for entry into New Zealand. The amendment extends this provision to inspections and treatment of unaccompanied goods in biosecurity control areas. These areas are used for processing passengers, and so goods will not normally be unaccompanied in them. But this is not always the case, hence the need for the amendment.

Clause 6 re-enacts the previously repealed section 44(1), which imposed a non-enforceable duty on all persons to inform of the presence of organisms not usually seen in New Zealand.

The reintroduced duty is now coupled with a new offence provision in section 154 of the Act (see *clause 24*) that will apply only to persons who know or would reasonably be expected to know that the organism concerned is not normally seen in New Zealand, and fail to comply with the duty to inform its presence.

Clause 7 amends section 69A of the Act, which deals with the contents of national pest management strategies. The substituted *paragraph (b)* adds a requirement for a strategy to include a general description of the principal measures to be taken to implement the strategy.

Clause 8 similarly amends section 80A of the Act, which deals with the contents of regional pest management strategies, to require those strategies to include a general description of the principal measures to be taken to implement the strategy.

Clause 9 amends section 92 of the Act, which sets out the things a Minister must be satisfied of before recommending the making of a levy order that imposes a levy to fund any particular pest management strategy.

The requirements of the existing paragraphs (e), (f), and (g) of section 92(1) are expressed in a way that assumes that it is only beneficiaries of the strategy who will have to pay the relevant levy, whereas it may well be the case that persons whose actions or inaction contribute to the problem that the strategy addresses will also be subject to the levy.

The re-written *paragraph (d)* removes this inconsistency. Existing subsection (2) is also repealed.

Clause 10 amends section 93 of the Act to allow for levy orders to contain provision for the payment of levies by persons who object on conscientious or religious grounds to paying in the manner provided for in the order.

Clauses 11 and 12 amend sections 101 and 102 of the Act to specifically state that persons appointed as chief technical officers and deputy chief technical officers must be government employees under the State Sector Act 1988.

Clause 13 amends section 103 of the Act, which deals with inspectors, authorised persons, and accredited persons, to specify that inspectors, like authorised persons, need not be persons appointed under the State Sector Act 1988.

The existing subsection (7) is also rewritten to clarify that functions of accredited persons may be conferred or recognised by regulations.

Clause 14 amends section 104 of the Act, which currently requires authorised persons to comply with instructions of chief technical officers and other officers, to extend the requirement to inspectors.

Clause 15 amends section 108 of the Act, which provides the power to search persons and seize goods. While the power to search is clearly aimed at both risk goods and unauthorised goods, the power of seizure currently refers only to unauthorised goods and not to risk goods. The amendment remedies this inconsistency.

Clause 16 amends section 109 of the Act, which provides powers of entry and inspection. The new *paragraph (c)* extends these powers to allow for routine audits of compliance with the Act, where there may not necessarily be suspicion of the existence of uncleared risk goods or unauthorised goods.

Clause 17 repeals and restates section 110 of the Act, which deals with warrants to enter and inspect dwellinghouses and marae, to include as a ground for the issue of a warrant the issuer being satisfied that an activity regulated by or under the Act is being carried out on or in the dwellinghouse or marae.

Clause 18 amends section 114A of the Act in relation to the notice requirements for aerial spraying.

The section currently requires at least 2 weeks' notice of spraying to be given, with publication in a newspaper circulating in the area concerned.

The amendment reduces the notice period to 24 hours in cases where the 2-week notice period would seriously damage the chance of containing or eradicating an undesirable organism. In such cases notice may be given by way of radio or television announcement or other means appropriate in the circumstances.

Clause 19(2) amends section 121 of the Act to allow for the recovery of reasonably incurred costs in the situation where a person fails to comply with a direction to present an organism for examination, and an inspector or authorised person instead has to take the necessary practical steps that will allow the organism to be examined.

Subclause (1) of the clause corrects the anomalous omission of a reference to authorised persons in section 121(4).

Clause 20 amends section 126 of the Act, which (among other things) allows an inspector to give certain directions where the terms on which an organism is confined to a transitional facility or a containment facility are not being complied with.

The amendments make it clear that the terms on which an organism is confined in such a facility include the terms of any controls imposed under section 45(2) of the Hazardous Substances and New Organisms Act 1996.

Clause 21 amends section 130 of the Act. The existing subsection (5) of that section sets out powers of inspectors and authorised persons that may be exercised where a restricted place has been declared. The new *subsection (5)(b)* allows the giving of directions as to the identification of any particular organism, risk goods, or other goods in the restricted place. Such a power may be needed where, for example, an animal has been in contact with another animal suspected to be diseased, and it is necessary to monitor the contact animal over a period to see whether the disease develops.

Clause 22 amends section 134 of the Act, which provides for the enforcement of area controls where a controlled area has been declared under section 131 of the Act. The prohibition on the movement of organisms and other things into and out of a controlled area is extended to clearly cover persons who, while not physically transporting any organism or goods, direct or arrange for their transportation.

Clause 23 alters the existing reference to “the Minister” in section 137(1) of the Act to more correctly read “the responsible Minister”.

Clause 24 amends section 154 of the Act, the offence provision, to insert new offences as a consequence of the amendments to section 130 (removal, altering, or defacing identification directed under that section in relation to a restricted place), and the new *section 44* (failure to comply with duty to inform of organism not normally seen in New Zealand—see *clause 6*).

Clause 25 amends section 157 of the Act to provide a penalty for the new offence created by *clause 24(2)* (failure to inform of organism).

Part 2

Amendments to Forests Act 1949

Clause 26 repeals various redundant sections of the Forests Act 1949 that deal with—

- the importation and export of forest products that may contain organisms that are harmful to forest health; and
 - the exclusion, eradication, and control of organisms that are harmful to forest health.
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Hon Jim Sutton

Biosecurity Amendment Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Biosecurity Amendment Act **2001**.
- (2) In this Act, the Biosecurity Act 1993¹ is called “the principal Act”.

¹ 1993 No 95

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

Part 1

Amendments to principal Act

3 Interpretation

Section 2(4) of the principal Act is repealed.

4 Relationship with other enactments

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(1) Section 7(2)(a) of the principal Act is amended by omitting the expression “(1) and (5)”, and substituting the expression “(1), (5), and **(6)**”.

(2) Section 7(5) of the principal Act is amended by inserting, after the words “do not apply to”, the words “prevent or inhibit”.

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(3) Section 7 of the principal Act is amended by adding the following subsection:

“(6) The provisions of the Wildlife Act 1953 do not apply to prevent or inhibit the exercise of any powers under this Act when those powers are used in respect of an unwanted organism.”

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5 Processing unaccompanied goods

Section 30A of the principal Act is amended by inserting in each of subsections (1), (2), and (3), in each case after the words “transitional facility”, the words “or biosecurity control area”.

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6 New section 44 inserted

The principal Act is amended by inserting, after section 43, the following section:

“44 General duty to inform

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Every person is under a duty to inform a chief technical officer, as soon as practicable in the circumstances, of the presence of what appears to be an organism not normally seen in New Zealand.”

7 Contents of national pest management strategy

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(1) Section 69A of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:

“(b) the objectives of the strategy, and a general description of the principal measures to be taken to implement the strategy:”.

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- (2) This section applies only to national pest management strategies made on or after the date on which this Act comes into force.
- 8 Contents of regional pest management strategy**
- (1) Section 80A of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph: 5
 “(b) the objectives of the strategy, and a general description of the principal measures to be taken to implement the strategy:”.
- (2) This section applies only to regional pest management strategies made on or after the date on which this Act comes into force. 10
- 9 Restrictions on levies**
- (1) Section 92(1) of the principal Act is amended by repealing paragraphs (d), (e), (f), and (g), and substituting the following paragraph: 15
 “(d) the imposition of the levy is the most appropriate means of funding the pest management strategy, or the part of the strategy concerned, having regard to the extent to which the levy would target— 20
 “(i) persons likely to benefit from the implementation of the strategy; and
 “(ii) persons who by their activities or inaction contribute to the creation, continuance, or exacerbation of the problems proposed to be resolved by the strategy; and” 25
- (2) Section 92(2) of the principal Act is repealed.
- 10 Contents of levy provisions in strategy**
- Section 93(2) of the principal Act is amended by adding the following paragraph: 30
 “(e) a method of paying the levy that may be used by persons who object on conscientious or religious grounds to paying the levy in the manner otherwise provided in the order.”

11 Chief technical officers

Section 101 of the principal Act is amended by inserting, after subsection (2), the following subsection:

“(2A) A person appointed as a chief technical officer must be employed under the State Sector Act 1988.” 5

12 Deputy chief technical officers

Section 102 of the principal Act is amended by inserting, after subsection (1), the following subsection:

“(1A) A person appointed as a deputy chief technical officer must be employed under the State Sector Act 1988.” 10

13 Inspectors, authorised persons, and accredited persons

(1) Section 103 of the principal Act is amended—

(a) by inserting in subsection (4), immediately before the words “an authorised person”, the words “an inspector or”: 15

(b) by inserting at the beginning of subsection (5) the words “Inspectors or”.

(2) Section 103 of the principal Act is amended by repealing subsection (7), and substituting the following subsection:

“(7) A chief technical officer or the principal officer of a region may accredit persons (to be known as accredited persons) for the purposes of performing particular functions— 20

“(a) that are consequential upon the exercise of powers under this Act by an inspector or authorised person; or

“(b) that may be conferred on or may be performed by accredited persons under regulations made under this Act;— 25

but may not accredit a person for a particular function unless satisfied that the person has appropriate experience, technical competence, and qualifications relevant to the function.” 30

(3) The appointment of any person as an inspector before the commencement of this Act is not invalid by reason only of the person not being, or not at the time of the appointment having been, a person employed under the State Sector Act 1988 or by a regional council. 35

- 14 Inspectors and authorised persons to comply with instructions**
- Section 104 of the principal Act is amended—
- (a) by inserting in subsection (1), after the word “All”, the words “inspectors and”: 5
 - (b) by inserting in subsection (1), after the words “conferred or imposed on”, the words “inspectors or”:
 - (c) by inserting in subsection (3), after the words “appointment of the”, the words “inspector or”.
- 15 Power to search people** 10
- Section 108(1) of the principal Act is amended by inserting, before the words “unauthorised goods found” where they occur after paragraph (d), the words “uncleared risk goods or”.
- 16 Power of inspection** 15
- (1) Section 109(1) of the principal Act is amended by adding the following paragraph:
- “(c) an inspector or authorised person may, at any reasonable time or times, enter and inspect any place for the purpose of determining whether or not any person is complying with this Act, the regulations, or any pest management strategy.” 20
- (2) Section 109(4) of the principal Act is amended by omitting the expression “subsection (1)”, and substituting the expression “subsection (1)(a) and (b)”. 25
- 17 New section 110 substituted**
- The principal Act is amended by repealing section 110, and substituting the following section:
- “110 Warrant to inspect dwellinghouse, marae, etc**
- “(1) A District Court Judge, a Justice of the Peace, a Community Magistrate, or a Registrar (not being a member of the police) may, on the written application of an inspector or authorised person made on oath, issue a warrant in the prescribed form authorising the inspector or authorised person to enter and inspect the dwellinghouse, marae, or building associated with a marae specified in the application. 30 35

- “(2) Such a warrant may be issued only if the Judge, Justice, Magistrate, or Registrar is satisfied that there is reasonable ground for believing that—
- “(a) there is, on or in the place (being a dwellinghouse, marae, or building associated with a marae) specified in the application, any pest, pest agent, unwanted organism, unauthorised goods, or risk goods; or 5
 - “(b) an activity that is regulated by or under the Act is being carried out on or in the place (being a dwellinghouse, marae, or building associated with a marae) specified in the application. 10
- “(3) Such a warrant—
- “(a) authorises the inspector or authorised person to enter and inspect the place concerned on 1 occasion within 14 days of the issue of the warrant; and 15
 - “(b) may be unconditional or subject to conditions.”
- 18 Application of articles or substances from aircraft**
- (1) Section 114A(5) of the principal Act is amended by omitting the words “For the purposes of this section, public notice is given”, and substituting the words “Subject to **subsection (6)**, public notice for the purposes of this section is given”. 20
- (2) Section 114A of the principal Act is amended by adding the following subsections:
- “(6) If the chief technical officer is satisfied that compliance with the 2 weeks’ notice requirement under subsection (5) would significantly prejudice the chances of eradicating or containing an organism of a kind described in **subsection (7)**, public notice of the matters specified in subsection (5)(a) to (d) may instead be given— 25
- “(a) not less than 24 hours before the intended time when the article or substance is to be applied; and 30
 - “(b) by whatever means the chief technical officer considers effective and appropriate to inform the persons who may be affected (including by radio or television announcement). 35
- “(7) The kinds of organism in respect of which shorter notification may be given under **subsection (6)** are organisms that—
- “(a) are not established or not known to be established in New Zealand, or are established in New Zealand but restricted to certain parts of New Zealand; and 40

- “(b) have the potential to cause all or any of the following if they become established in New Zealand, or established throughout New Zealand:
- “(i) significant economic loss:
 - “(ii) significant adverse effects on human health: 5
 - “(iii) significant environmental loss.”

19 Power to examine organisms

- (1) Section 121(4)(b)(ii) of the principal Act is amended by inserting, after the word “inspector”, the words “or authorised person”. 10
- (2) Section 121 of the principal Act is amended by adding the following subsection:
- “(5) Costs and expenses reasonably incurred by an inspector or authorised person in taking any action under subsection (4) may be recovered as a debt due from the person who failed to comply with the direction concerned.” 15

20 Inspection of and intervention in transitional facilities and containment facilities

- (1) Section 126(2)(c) of the principal Act is amended by inserting, after the word “terms”, the words “(including any controls imposed under section 45(2) of the Hazardous Substances and New Organisms Act 1996)”. 20
- (2) Section 126(3)(b)(ii) of the principal Act is amended by inserting, after the word “terms”, the words “(including any controls imposed under section 45(2) of the Hazardous Substances and New Organisms Act 1996)”. 25

21 Declaration of restricted place

Section 130 of the principal Act is amended by repealing subsection (5), and substituting the following subsection:

- “(5) An inspector or authorised person may, at any time while the declaration of a restricted place is in force, direct that specified organisms, risk goods, or other goods in the restricted place must be— 30
- “(a) isolated, confined, or stored in such manner as the inspector or authorised person directs: 35

“(b) identified in a manner specified in the direction, or with an identification applied by the inspector or authorised person.”

22 Enforcement of area controls

Section 134(1) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph: 5

“(b) move, or direct or arrange the movement of, any organism, organic material, risk goods, or other goods in contravention of a notice under section 131(3), unless permitted by an inspector or authorised person.” 10

23 Levies

Section 137(1) of the principal Act is amended by inserting, before the word “Minister”, the word “responsible”.

24 Offences

(1) Section 154(1) of the principal Act is amended by adding the word “; or” to subparagraph (iii), and also by adding the following subparagraph: 15

“(iv) removes, alters, or defaces any identification that an inspector or authorised person has directed be used to identify any organism, risk goods, or other goods in the place:” 20

(2) Section 154 of the principal Act is amended by inserting, after paragraph (m), the following paragraph:

“(ma) fails to comply with **section 44** (duty to inform chief technical officer of organism not normally seen in New Zealand), if the person knows or could reasonably be expected to know that the organism is not normally seen in New Zealand:” 25

25 Penalties

Section 157(5) of the principal Act is amended by omitting the expression “paragraphs (o)”, and substituting the expression “**paragraphs (ma), (o)**”. 30

Part 2

Amendments to Forests Act 1949

26 Repeal of redundant provisions

- (1) Sections 69, 70, 70A, 71, and 71C of the Forests Act 1949 (1949 No 19) are repealed.
- (2) Section 71B(2) of the Forests Act 1949 is amended by repealing paragraph (b)(i) and paragraph (c).

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