

BIOSECURITY AMENDMENT BILL (NO. 2)

AS REPORTED FROM THE PRIMARY PRODUCTION COMMITTEE

COMMENTARY

Recommendation

The Primary Production Committee has examined the Biosecurity Amendment Bill (No. 2) and recommends that it be passed with the amendments shown in the bill.

Introduction

The bill was introduced on 19 December 1995 and referred to the Primary Production Committee for consideration. The closing date for submissions was 23 February 1996. We received 17 submissions from regional councils and other interested groups and individuals. Four of these submissions, New Zealand Local Government Association Inc., Environment Waikato Regional Council, Otago Regional Council and the National Council of Women Inc., were heard orally. Advice was received from the Ministry of Agriculture.

This commentary sets out the details of our consideration of the bill and the major issues we addressed.

Background

The Biosecurity Act 1993 embodies several principles relating to the implementation and funding of pest management strategies. The main funding principle is that beneficiaries of pest management and those contributing to the problem should be required to pay the costs of pest management. Based on this, the funding structure established by the Biosecurity Act 1993, provides that if regional pest management strategies are to be funded by rates, a special pest management rate must be used. The pest management rate may be imposed across the whole or part of a region only, and may be applied as a uniform rate or on a differential basis.

The Act provides that a pest management rate is the only rating option that can be used to fund regional pest management strategies. However, general rates may be used to fund small scale pest management of unwanted organisms and work associated with general administration of regional pest management. The rationale for the Act allowing these costs to be funded by general rates is that there is no reasonable basis for allocating such costs to any one group. For the

same reason, general rates can also be used to provide funds for functions associated with a national pest management strategy.

The Act's requirement that beneficiaries and those contributing to the problem fund pest management strategies is intended to encourage them to make a judgment about whether its benefits will exceed the costs of the strategy. This process is intended to allow those affected by the proposed strategy to assess the perceived collective worth of the strategy and is designed to limit pest management strategies to those that are needed.

Where a regional pest management strategy involves funding by rates, the strategy must include the equivalent of all the public notice and consultation information that applies to other local authority rating proposals, and must specify maximum proposed rating levels. This enables affected ratepayers to assess the costs of the proposed strategy against the potential benefit to them. Once the strategy is adopted, the regional council must levy a rate in accordance with the strategy in each year that the strategy is in force. This provides certainty of funding and precludes the costs of the strategy being imposed on rate payers not specified in the strategy proposal. In order to provide this certainty, the Biosecurity Act inserted provisions for a special pest management rate in the Rating Powers Act 1988. In addition, the Biosecurity Act 1993 required that specific criteria to be met before the inclusion of special pest management rating provisions in a regional pest management strategy.

Purpose

The purpose of the bill is to alter the rating provisions in the Biosecurity Act 1993 which require that a pest management rate is the only rating option that can be used to fund regional pest management strategies. The amendment bill allows regional councils, from 1 July 1996, to use a general rate under section 33 of the Rating Powers Act 1988 or a works and services rate made under section 34 of the Rating Powers Act 1988, instead of using the specially targeted pest management rate required by section 99 of the principal Act. The bill will also change the rating principles in section 97.

The submissions

There is widespread support in submissions for the bill. Regional councils as a group are opposed to using the pest management rate and the rating principles in the Biosecurity Act because they consider that they will:

- limit the flexibility of funding for pest management strategies;
- require more time to administer and be consequently more costly to administer; and
- cause the council to be subject to legal challenge.

Regional councils argue that the setting up of a separate highly prescriptive rating process for pest management in the Biosecurity Act 1993 suggests that pest management is inherently different to other functions of regional councils. They consider that robust accountability provisions already exist for the funding of any regional council function under the Rating Powers Act 1988 and the Local Government Act 1974. Regional councils consider that the special pest management rate in the Biosecurity Act 1993 would be unlikely to provide further advantage.

Regional councils consider that the detailed targeting of rates would be difficult to achieve in all circumstances and that a degree of averaging between different classes of beneficiaries and those contributing to pest problems would be required in the interests of overall efficiency. Their experience in using special rates to pay for river control and land drainage schemes has indicated that the transaction costs associated with special rates can be significant. Consequently, the

advantages of a targeted rating system need to be balanced against the cost that such a rating structure generates. They also consider that there is a lack of consistency in retaining a pest management rate because regional councils currently undertake a range of activities that are funded to some extent by rates. Therefore, it would be inconsistent to retain a pest management rate under the Rating Powers Act 1988 which does not contain specific provision for any other type of activity. It is felt that amending the principal Act by removing the requirement to rate by way of a special pest management rate will avoid public confusion.

The National Council of Women Inc. supports the proposal to fund regional pest management from a general or works and services rate on the basis that a regional council might not have the background to make a wise decision about the relative costs and risks of pest management. The Council considers that funding pest management from a regular source would allow councils some capacity for movement.

A number of submissions identified the need to amend the principal Act in order to provide for the effective enforcement of regional pest management strategies. The New Zealand Local Government Association noted the need for these amendments to be passed, as soon as possible, to provide certainty during the public consultation processes and, more importantly, to ensure that pest management strategies are in operation by 1 July 1996. We were also concerned that many farmers may be unwilling to incur pest management costs as they expect rabbit calicivirus disease to become a tool in pest management. We investigated the possibility of amending the bill to include enforcement provisions. However, it became apparent that this was outside the scope of the bill. The amendments necessary to provide an enforcement regime are considerable and we were told that it was not practical to make these amendments by the 1 July 1996 deadline.

Funding for regional pest strategies

Clause 2 repeals section 97 of the principal Act and substitutes a new section to enable regional pest management strategies to be funded wholly or partially from the proceeds of a general rate or from a works and service rate made under the Rating Powers Act 1988.

When determining whether to fund a strategy from a general or a works and services rate and how to make and levy a works and services rate regional councils would be required to have regard to:

- the interest of the occupiers of properties on which the rate is to be levied;
- the benefits likely to accrue to the occupiers of those properties;
- the collective benefits to those occupiers relative to the collective costs of the rate; and
- the extent to which the characteristics of their properties and the uses to which they are put contribute to the presence or prevalence of the pests concerned.

Electricity Corporation of New Zealand Limited supports the principles in this clause for determining the most appropriate rating mechanism and considers that these principles along with the requirements of the Local Government Act 1974 and the Rating Powers Act 1988 will ensure that funding is targeted at those who will benefit from pest management or who exacerbate pest problems. The corporation also accepts the substitution of a works and services rate for a pest management rate as it considers that the purpose and amount of the rate together with the particular part of the region to be rated must continue to be clearly defined. It believes that the requirement to strike these rates is a useful accountability tool for regional councils. However, Electricity Corporation of New Zealand Limited opposes the funding of pest control activities through the general

rate as it considers that the level of clarity in accounting for the general rate among regional councils is variable and would be contrary to recent legislative trends designed to achieve greater accountability.

We believe that regional councils in deciding to fund a strategy or part of a strategy under the general rate must have regard for the interests of the occupiers of properties, the benefits that will accrue to them relative to the costs and the extent to which such properties contribute to the prevalence of pests. The committee considers that this provides sufficient accountability for the use of the general rate.

We were concerned, however, that new section 97(1), as inserted by clause 2, might not allow regional councils to use a mix of funding from general and works and services rates for regional pest management strategies. We, therefore, recommend an amendment to clause 2 which would make it clear that such a mix of rates to fund a regional pest management strategy is possible.

We also recommend a further amendment to clause 2 that has the effect of ensuring that a regional pest management strategy may not be funded out of rates to an extent greater than what is specified in the strategy.

Repeal of powers to make or levy the pest management rate

Clause 3 repeals sections 77 (c) (i), 77 (d), 98 and 99 of the Biosecurity Act 1993 and sections 34A to 34C of the Rating Powers Act 1988. Those sections provide for the making and levying of a special pest management rate. Environmental and Conservation Organisations of New Zealand (ECO) considers that the deletions of the provisions contained in this clause will provide greater flexibility to regional councils to set a general rate. ECO believes that while this flexibility may be justified there is no additional requirement to consult on the rate that is being considered under the Act and to establish what benefits will accrue from this rate. We agree with ECO's comment that there is no additional requirement to consult in the setting of the general rate. However, we believe that sufficient accountability and consultation provisions are included in the Rating Powers Act 1988 and Local Government Act 1974. In addition, new section 97A, as inserted by clause 4, will also require some degree of consultation. We, therefore, recommend no amendments be made to this clause.

Approval of regional pest strategies

Clause 4 inserts a new section 97A into the Biosecurity Act 1993. This new section places responsibilities on regional councils when approving regional pest management strategies funded by way of general or works and services rates. They must have regard to the extent to which the strategy proposal gave notice of the intention to fund it by means of a rate, the level of consultation with the rateable occupiers of the properties affected, the views of other persons on the proposal to fund the strategy, and all other relevant matters known to the regional council.

ECO considers that the wording in clause 4 could be expressed to provide more certainty of interpretation and save potential legal challenges. It supports the requirements to consult in section 97A (1) (b) but believes that the clause needs strengthening to ensure consultation takes place prior to a rate being set.

We believe that the wording in clause 4 is needed to maintain consistency with the funding principles in the principal Act. The wording in the clause is not difficult to interpret and should not be the cause of potential challenge. Furthermore, we consider the provisions in this clause are adequate because they require regional councils to consult and consider the views of land occupiers. Accordingly, we recommend no changes to this clause.

KEY TO SYMBOLS USED IN REPRINTED BILL
AS REPORTED FROM A SELECT COMMITTEE

Struck Out (Unanimous)

The quick brown fox

Text struck out unanimously

New (Unanimous)

The quick brown fox

Text inserted unanimously

(The quick brown fox)

Words struck out unanimously

The quick brown fox

Words inserted unanimously

Hon. Dr Lockwood Smith

BIOSECURITY AMENDMENT (NO. 2)

ANALYSIS

Title	3. Repeal of powers to make and levy pest management rate
1. Short Title and commencement	4. Approval of regional pest management strategy
2. Regional strategy to be funded by rates	5. Consequential amendment
	6. Savings

A BILL INTITULED

An Act to amend the Biosecurity Act 1993

BE IT ENACTED by the Parliament of New Zealand as follows:

5 **1. Short Title and commencement**—(1) This Act may be cited as the Biosecurity Amendment Act (No. 2) 1995, and shall be read together with and deemed part of the Biosecurity Act 1993* (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of July 1996.

10 **2. Regional strategy to be funded by rates**—The principal Act is hereby amended by repealing section 97, and substituting the following section:

15 “97. (1) *(Where)* To the extent only that a regional pest management strategy provides for that strategy to be wholly or partially funded from the proceeds of a rate, the strategy may be funded from time to time—

Struck Out

to time from the proceeds of a general rate made and levied under section 33 of the Rating Powers Act 1988, or a works

*1993, No. 95
Amendments: 1993, No. 129; 1994, No. 24

Struck Out

and services rate made and levied under section 34 of the Rating Powers Act 1988.

“(2) To determine—

“(a) Whether to make and levy a general rate or a works and services rate: 5

“(b) How to make and levy a works and services rate, if the regional council decides upon that rate—

New

“(a) From the proceeds of a general rate made and levied under section 33 of the Rating Powers Act 1988; or 10

“(b) From the proceeds of a works and services rate made and levied under section 34 of the Rating Powers Act 1988; or

“(c) Partly from the proceeds of such a general rate and partly from the proceeds of such a works and services rate. 15

“(2) In determining—

“(a) The extent (if any) to which it should fund a regional pest management strategy from the proceeds of a general rate; or 20

“(aa) The extent (if any) to which it should fund a regional pest management strategy from the proceeds of a works and services rate; or

“(b) How to make and levy a works and services rate from the proceeds of which a regional pest management strategy is to be funded,— 25

a regional council shall have regard to—

“(c) The extent to which the strategy or the part of the strategy to be funded from the proceeds of the rate relates to the interests of the occupiers of properties on which the rate is to be levied: 30

“(d) The extent to which direct or indirect benefits from the expenditure of the rate (or that portion of the rate that is to be used to fund the strategy) are likely to accrue to the occupiers of the properties on which the rate is to be levied: 35

“(e) The collective benefits from the strategy to the occupiers of the properties on which the rate is to

be levied relative to the collective costs to them of the payment of the rate or that portion of the rate that is to be used to fund the strategy:

- 5 “(f) The extent to which the characteristics of the properties on which the rate is to be levied and the uses to which they are put contribute to the presence or prevalence of the pest or pests concerned.”

3. Repeal of powers to make and levy pest management rate—The following enactments are hereby
10 repealed:

- (a) Sections 98 and 99 of the principal Act;
(b) Sections 34A to 34C of the Rating Powers Act 1988 (as inserted by section 168(1) of the Biosecurity Act 1993);
15 (c) Section 77(c)(i) and section 77(d) of the principal Act;
(d) So much of the Fourth Schedule to the principal Act as relates to the Rating Powers Act 1988.

4. Approval of regional pest management strategy—
The principal Act is hereby amended by inserting, after section
20 97, the following section:

“97A. (1) A regional council, when deciding whether or not to approve a pest management strategy that includes provision for funding that strategy in accordance with section 97 of this Act, shall have regard to—

- 25 “(a) The extent to which the proposal for the pest management strategy gave notice of the intention to provide in the strategy for wholly or partially funding the strategy in accordance with section 97 of this Act; and
30 “(b) The extent of consultation with the occupiers of properties on which the rate or rates is or are likely to be levied and the views of those occupiers; and
“(c) All views expressed to the regional council by any other person concerning the proposal to fund the strategy
35 in accordance with section 97 of this Act; and
“(d) All other relevant matters known to the regional council.”

5. Consequential amendment—Section 99A of the principal Act (as inserted by section 4 of the Biosecurity
40 Amendment Act 1994) is hereby amended by repealing paragraphs (a) and (b), and substituting the following paragraph:

“(a) Sections 97 and 97A of this Act; or”.

6. Savings—Where a strategy has been approved by a regional council before the commencement of this Act, no provision in that strategy for funding the strategy or a part of the strategy by a rate shall be invalid or prevent the funding of that strategy by a rate made in accordance with **section 97** of this Act. 5