

In-Confidence  
Office of the Minister for Biosecurity

Chair,  
Cabinet Economic Development Committee

## Overhaul of the Biosecurity Act 1993 – Terms of Reference

### Proposal

1. This paper seeks approval of the terms of reference for an overhaul of the Biosecurity Act 1993 (the Act).

### Executive Summary

2. New Zealand has a strong biosecurity system but it is under increasing pressure. This comes from sustained increases in the volume and complexity of incoming goods and passengers, climate change technology changes, trade commitments, the ongoing impact of established pests, and increasing expectations of what the biosecurity system should achieve.
3. The Act works well in some areas, but it is over 25 years old and no longer provides the regulatory framework required to effectively manage the changes listed above.
4. To build resilience in biosecurity and to ensure that funding for the system is sustainable there is a clear need for an overhaul of the Act. I have directed the Ministry for Primary Industries (MPI) to begin this process.
5. The proposed terms of reference for the overhaul of the Act is attached in Appendix One. This outlines the scope, objectives, and principles of the work programme. A key theme of this overhaul is to enable and encourage all New Zealanders to play a greater role in biosecurity. This is because farmers, growers, importers and the public have the greatest ability to reduce post-border biosecurity risk through their day to day activities and practices.
6. Engagement and consultation will be important for developing a regulatory system which relies more on public and industry roles in biosecurity, preparing industry for possible changes to biosecurity funding and compensation, managing farmer welfare and regulatory burden, and working with iwi and hapū as Treaty partners.
7. Confidentiality

## Background

8. New Zealand has a strong biosecurity system which provides protection from high impact pests and diseases. Biosecurity supports the well-being of all New Zealanders by protecting four key values: cultural, environmental, economic and social.
9. Biosecurity supports our indigenous biodiversity by protecting against threats to our natural ecosystem. Pests and diseases like kauri dieback, myrtle rust and didymo can cause irreparable damage to our environment.
10. Biosecurity also protects the productivity of our primary industries from pests and diseases like Brown Marmorated Stink Bug, which would cost our economy hundreds of millions of dollars if not managed.
11. The Act establishes the laws relating to the exclusion, eradication, and effective management of pests and unwanted organisms. The Act puts in place essential powers and duties that enable:
  - Leadership in the biosecurity system;
  - Pre-border activities to manage risk offshore;
  - Border activities to effectively manage risks from incoming craft, mail, passengers and goods;
  - Funding arrangements and cost recovery for some areas of biosecurity;
  - Surveillance for pests and diseases;
  - Timely responses to incursions; and
  - Long-term management of pests and diseases already established in New Zealand.
12. The biosecurity system is under increasing pressure for several reasons, including:
  - Sustained increases in the volume of goods and number of passengers arriving in the country due to growth in trade and tourism;
  - A greater range of risks from incoming trade from more diverse countries of origin;
  - Climate change; and
  - Changes in technology and business practices (e.g. the growth in online shopping).
13. Another important development in the last 25 years is a growing interest from industry, Māori, and other stakeholders to have a stronger voice in the biosecurity system. This has been especially driven by the Government Industry Agreement for Biosecurity Readiness and Response (GIA), and programmes to increase public participation in biosecurity including the Biosecurity 2025 and the Predator Free 2050 programmes. Legislation can better enable non-government involvement in biosecurity, including through encouraging self-regulation and best practice.

## The Biosecurity Act Overhaul

14. The Act works well in some areas, but is now over 25 years old and there is a need to examine whether key parts of it are achieving their intended objectives. I have directed MPI to undertake an overhaul of the Act, to ensure that it remains fit for purpose.
15. This overhaul will start with engagement with stakeholders on the purpose of the Act and the principles that should inform decision-making under the Act. These principles will help decision-makers in dealing with trade-offs between the different values reflected in the biosecurity system.

### *Known issues with the current Act*

16. The terms of reference in Appendix One sets out the purpose of the overhaul of the Act, the scope of this work, and key stages of the process. Some of the known issues to be considered in the overhaul of the Act follow below. These may shift and evolve during engagement and consultation.
17. **Incorporating a purpose statement and principles to guide decision-making under the Act.**  
During initial engagement stakeholders have expressed a strong interest in establishing overarching principles for the Act. This would help guide decision-making and set public expectations of what biosecurity legislation can achieve.
18. **The relationship between Te Ao Māori and biosecurity regulation.**  
Biosecurity protects cultural values relating to taonga species (e.g. indigenous plants and animals), and Māori are partners with the Crown through Te Tiriti o Waitangi. The Act could do more to recognise and integrate Te Ao Māori and the role of tangata whenua as kaitiaki (guardians).
19. **Roles and responsibilities across the biosecurity system.**  
Many agencies and organisations have important roles to play in the biosecurity system, and legislation could better support this, including:
  - Opportunities for industry to play a greater role in self-regulating and supporting best practice including at a farm/orchard level.
  - Addressing misalignment and inefficiencies between the different regulators and stakeholders involved in pest management and marine biosecurity.
  - Enabling iwi/hapū and community roles in responses and pest management.

**20. Funding the biosecurity system.**

The biosecurity system is funded through various mechanisms which are not always as connected or rationalised as they should be. For example, four issues to be addressed are:

- How to manage the substantial and unpredictable fiscal impacts of large biosecurity responses (like *Mycoplasma bovis*);
- Ensuring that those benefiting from biosecurity or exacerbating biosecurity risk contribute appropriately to biosecurity costs;
- Funding for threats to biodiversity like kauri dieback; and
- Ensuring funding alignment across the biosecurity system.

**21. The setting of import requirements.**

The requirements for entry of biosecurity risk goods into the country are set in Import Health Standards (IHS). The Act establishes the import requirements system, including processes for IHS development. Currently, it takes years and a large amount of resource to develop import requirements for goods and plant and animal breeding material. The risk assessment process required to develop standards is unsuitable for today's demands and pressures. This is a growing frustration to our trading partners, as well as some of our primary industries and the general public, who benefit from access to imported goods.

**22. Compliance, enforcement and incentives**

The biosecurity system needs to strike the right balance between enforcement and incentives in driving good biosecurity practices. This includes developing a broader suite of options to address non-compliance such as infringement offences. It will also include ensuring that compensation for biosecurity responses is working as intended, recognising that compensation can also be a powerful incentive for behaviour change.

**23. Aligning and streamlining the Act.**

MPI, stakeholders and other government agencies have identified numerous alignment and technical issues with the Act. Including how it interfaces with other Acts and international conventions, problems with definitions, and other issues. This will be an opportunity to create a more user friendly and modern Act, which links well with other regulatory systems.

**24. Incorporating lessons learned.**

Recent biosecurity responses and other events have revealed gaps in biosecurity legislation which need to be addressed. Identifying and resolving historic issues will underlie all aspects of this overhaul.

**25. These issues are likely to generate strong stakeholder interest especially from the primary sector, Māori, rural communities, local government, environmental groups, food importers and our export market trading partners. They are likely to involve trade-offs between the different values and stakeholders involved in biosecurity. To address this interest and contention, and to make sure we get the settings right, the overhaul process will involve significant stakeholder engagement and consultation.**

## Overhaul Process and Timing

- 26.** If Cabinet agrees to approve the terms of reference then MPI will undertake broad and inclusive stakeholder engagement to inform the development of policy options and a discussion document for public consultation.
- 27.** Stakeholder engagement and public consultation are critically important to the overhaul of the Act, and a reasonable amount of time has been allowed for this to take place. The primary purpose of this engagement is to enable and encourage greater industry and public involvement in the biosecurity regulatory system. Benefits of this engagement will include:
- Working with industry will mean we are more likely to get solutions that work on the ground, endure, and are practical to implement.
  - Response funding and compensation decisions will have economic and social impacts on the rural community. It is appropriate to have robust consultation and engagement process for such a potentially major change. This will result in better planning for transitioning to new arrangements.
  - Industry groups and those working in primary industries like veterinarians and farm advisors are often more effective at influencing the behaviour of farmers and growers, than government regulation. These groups want positive biosecurity outcomes and are keen to work with MPI on solutions to issues like early reporting of biosecurity threats, compliance with animal tracking regulation, and good on-farm biosecurity practices.
  - There are numerous regulatory changes coming to the rural community in the near future, and consideration needs to be given to the alignment and timing of these changes. New regulations are being introduced for waterways, methane emissions, health and safety, animal welfare, and other areas. Engagement with industry groups will enable a more coordinated and workable approach to on-farm change.
  - Māori and iwi have an important role in the biosecurity system as partners in Te Tiriti o Waitangi, and as kaitiaki (guardians) of New Zealand's taonga. MPI needs to engage early and over a time period sufficient to ensure Māori and iwi interests are heard and solutions can be co-developed where appropriate.
- 28.** The first priority will be a broad discussion on the principles and purpose of the Act. This will inform subsequent discussions about the operation of the Act and will be the foundation for the issues and options set out in the discussion paper.

- 29.** Confidentiality
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**30. Confidentiality**

[Redacted content]

**Consultation**

- 31.** The following departments were consulted in the preparation of this paper: Department of Conservation; Treasury; Te Puni Kōkiri; Ministry of Health; Ministry for the Environment; Environmental Protection Authority; Ministry of Justice (Justice and Te Arawhiti); New Zealand Customs Service; Ministry of Foreign Affairs and Trade; Ministry of Business, Innovation and Employment (Immigration and Tourism); Department of Internal Affairs (Local Government); Department of Prime Minister and Cabinet; and State Services Commission.
- 32.** MPI has undertaken initial engagement with a selection of affected stakeholders on the scope of the Act overhaul. This has included engagement with primary industry groups, Māori stakeholder groups, local government, environmental groups, other industry groups including tourism and transport, and many others (see full list of those engaged with in Appendix Two).
- 33.** This initial engagement indicates that the scope of the terms of reference captures the priorities of stakeholders and relevant government agencies for the overhaul of the Act.

**Financial Implications**

- 34.** This paper does not have immediate financial implications.

**Legislative Implications**

- 35.** This paper does not have immediate legislative implications, but ultimately it is intended to lead to legislative change. The terms of reference for the overhaul of the Act will set parameters for the scope of that legislative change.

## **Impact Analysis**

36. This paper does not have immediate regulatory implications, but ultimately it is intended to lead to significant regulatory change. A Regulatory Impact Statement for Cabinet consideration will be prepared when policy proposals are finalised, following public consultation.

## **Human Rights, Gender Implications, and Disability Perspective**

37. There are no human rights issues, gender implications or issues from a disability perspective associated with this paper.

## **Publicity**

38. My office will work with MPI to manage any media interest.

## **Proactive Release**

39. Following Cabinet consideration I intend to release this paper in full as well as the terms of reference in Appendix One via MPI's website.

Proactively Released

## Recommendations

The Minister for Biosecurity recommends that the Committee:

1. **note** that MPI is undertaking a major overhaul of the Biosecurity Act 1993 and that this is likely to generate strong stakeholder interest;
2. **note** the timeline for the overhaul of the Act will include extensive engagement and consultation. The approximate dates are:
  - Policy development and engagement with affected stakeholders until December 2019;
  - Public consultation between February and April 2020;
  - Cabinet policy decisions in by June 2020;
  - Drafting of a bill by November 2020; and
  - Bill ready for introduction in December 2020.
3. **approve** the terms of reference for the overhaul of the Biosecurity Act 1993, attached in Appendix One; and
4. **note** I intend to proactively release this paper in full as well as the terms of reference.

Authorised for lodgement  
Hon Damien O'Connor  
Minister for Biosecurity