

Reprint
as at 1 July 2017



Biosecurity Act 1993

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Commencement see section 1(2)

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

This Act is administered by the Ministry for Primary Industries.

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An Act to restate and reform the law relating to the exclusion, eradication, and effective management of pests and unwanted organisms

1 Short Title and commencement

- (1) This Act may be cited as the Biosecurity Act 1993.
- (2) This Act shall come into force on 1 October 1993.

**Part 1
Preliminary**

2 Interpretation

- (1) In this Act, unless the context otherwise requires,—
accredited person means a person currently accredited under section 103(7)
appointer means the person who appoints an inspector or authorised person
approved means approved by the Director-General
approved identification means any method of identifying animals or animal products approved under section 50 or prescribed under this Act
arrive in New Zealand,—
 - (a) in relation to an aircraft, means to land (whether or not on land) in New Zealand territory after a flight originating outside New Zealand territory:
 - (b) in relation to any other craft, means to anchor, berth, or come ashore in New Zealand territory after a voyage originating outside New Zealand territory:
 - (c) in relation to a person, means to reach land within New Zealand territory after a flight or voyage originating outside New Zealand territory:
 - (d) in relation to goods, means to reach land within New Zealand territory after a flight or voyage originating outside New Zealand territory**arrive in the EEZ** has the same meaning as it has in Part 8A

auditor, in sections 105C to 105F, means a person appointed an auditor under section 105B

authorised person means a person for the time being appointed an authorised person under section 103

Authority means the Environmental Protection Authority established by section 7 of the Environmental Protection Authority Act 2011

automated electronic system means a system that is the subject of an arrangement under section 142F

biosecurity clearance means a clearance under section 26 for the entry of goods into New Zealand

biosecurity control area means a place that is—

- (a) part of a port approved as a place of first arrival in accordance with section 37(1); and
- (b) by written agreement with the port's operator, under the control of the Director-General for the purposes of this Act

biosecurity database means the database established under section 142A

biosecurity law means—

- (a) this Act;
- (b) regulations;
- (c) instruments made under Part 5;
- (d) any thing done under this Act that applies generally;
- (e) any thing done under this Act that applies specifically to a person

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

chief executive means the head of a department; and includes a chief executive appointed under the State Sector Act 1988

chief technical officer means a person appointed a chief technical officer under section 101

compliance order means an order made under section 154

consultation includes actions taken before the enactment of this Act in anticipation of its enactment; and **consult** has a corresponding meaning

containment condition that is still operative, at any time, means a condition of a kind authorised by section 13(2)(ab)(i) of the Animals Act 1967—

- (a) in the case of a condition requiring an organism to be held indefinitely, where the condition has not before that time been revoked; and
- (b) in the case of a condition requiring an organism to be held for a specified period, where the period has not before that time expired; and

- (c) in the case of a condition requiring an organism to be held until the happening of a specified event, where the event has not before that time happened

containment facility means a place approved in accordance with section 39 for holding organisms that should not, whether for the time being or ever, become established in New Zealand

controlled area means an area for the time being declared under subsection (2) of section 131 to be an area that is controlled for the purposes of that section

conveyance includes any craft, truck, cargo container, horse-box, wagon, cart, dray, cage, kennel, or vehicle that is or has been used for the conveyance of, or has come into contact with, any organism or organic material

costs and benefits includes costs and benefits of any kind, whether monetary or non-monetary

craft—

- (a) means an aircraft, ship, boat, or other machine or vessel used or able to be used for the transport of people or goods, or both, by air or sea; and
- (b) includes—
 - (i) an oil rig; and
 - (ii) a structure or installation that is imported by being towed through the sea

craft risk management plan means a plan approved under section 24K

craft risk management standard means a standard issued under section 24G

department has the same meaning as in the State Sector Act 1988

Director-General means the chief executive of the Ministry

EEZ has the same meaning as it has in Part 8A

effects, in sections 12A and 12B and Part 5,—

- (a) include the following, regardless of scale, intensity, duration, or frequency:
 - (i) a positive or adverse effect; and
 - (ii) a temporary or permanent effect; and
 - (iii) a past, present, or future effect; and
 - (iv) a cumulative effect that arises over time or in combination with other effects; and
- (b) also include the following:
 - (i) a potential effect of high probability; and
 - (ii) a potential effect of low probability that has a high potential impact

environment includes—

- (a) ecosystems and their constituent parts, including people and their communities; and
- (b) all natural and physical resources; and
- (c) amenity values; and
- (d) the aesthetic, cultural, economic, and social conditions that affect or are affected by any matter referred to in paragraphs (a) to (c)

facility operator means a person approved under section 40

good neighbour rule means a rule to which the following apply:

- (a) it applies to an occupier of land and to a pest or pest agent that is present on the land; and
- (b) it seeks to manage the spread of a pest that would cause costs to occupiers of land that is adjacent or nearby; and
- (c) it is identified in a regional pest management plan as a good neighbour rule; and
- (d) it complies with the directions in the national policy direction relating to the setting of good neighbour rules

goods means all kinds of moveable personal property

import is defined in section 2A

import health standard has the meaning given to it by section 22

incidentally imported new organism has the same meaning as in section 2(1) of the Hazardous Substances and New Organisms Act 1996

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

inspector means a person who is appointed an inspector under section 103

law, in section 154O, means—

- (a) this Act;
- (b) regulations;
- (c) a pest management plan;
- (d) a pathway management plan;
- (e) a declaration of emergency under section 144

local authority means a regional council or territorial authority

management agency means the body specified as the management agency in a pest management plan or a pathway management plan

marae includes the area of land on which all buildings such as the whareniui (meeting house), the wharekai (dining room), ablution blocks, and any other associated buildings are situated

Minister means a Minister of the Crown

Ministry means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

national policy direction means the direction approved under section 57

natural and physical resources means—

- (a) organisms of all kinds; and
- (b) the air, water, and soil in or on which any organism lives or may live; and
- (c) landscape and land form; and
- (d) geological features; and
- (e) structures of all kinds; and
- (f) systems of interacting living organisms and their environment

new organism has the same meaning as in section 2 of the Hazardous Substances and New Organisms Act 1996

New Zealand territory means the land and the waters enclosed by the outer limits of the territorial sea

occupier,—

- (a) in relation to any place physically occupied by any person, means that person; and
- (b) in relation to any other place, means the owner of the place; and
- (c) in relation to any place, includes any agent, employee, or other person, acting or apparently acting in the general management or control of the place

official means—

- (a) the Director-General:
- (b) an inspector:
- (c) an authorised person:
- (d) an assistant of an inspector:
- (e) an assistant of an authorised person:
- (f) a chief technical officer:
- (g) a person appointed an auditor under section 105B

organic material means material to which the following apply:

- (a) it—
 - (i) is derived from an organism; or

- (ii) is an excretion or secretion of an organism; or
- (iii) contains material derived from an organism; or
- (iv) contains an excretion or secretion of an organism; and
- (b) it—
 - (i) may or may not contain material derived from a human being; and
 - (ii) may or may not contain the secretions of a human being; and
- (c) it—
 - (i) is not cardboard, coal, paper, petroleum oil, a substance derived from coal, or a substance derived from petroleum oil; and
 - (ii) is not material purporting to be organic on the basis only that it contains cardboard, coal, paper, petroleum oil, a substance derived from coal, or a substance derived from petroleum oil

organism—

- (a) does not include a human being or a genetic structure derived from a human being:
- (b) includes a micro-organism:
- (c) subject to paragraph (a), includes a genetic structure that is capable of replicating itself (whether that structure comprises all or only part of an entity, and whether it comprises all or only part of the total genetic structure of an entity):
- (d) includes an entity (other than a human being) declared by the Governor-General by Order in Council to be an organism for the purposes of this Act:
- (e) includes a reproductive cell or developmental stage of an organism:
- (f) includes any particle that is a prion

other department means a department of State other than the Ministry

other Minister means a Minister other than the responsible Minister

pathway means movement that—

- (a) is of goods or craft out of, into, or through—
 - (i) a particular place in New Zealand; or
 - (ii) a particular kind of place in New Zealand; and
- (b) has the potential to spread harmful organisms

pathway management plan means a plan to which the following apply:

- (a) it is for the prevention or management of the spread of harmful organisms:
- (b) it is made under Part 5:

- (c) it is a national pathway management plan or a regional pathway management plan

person includes the Crown, a corporation sole, and a body of persons (whether corporate or unincorporate)

pest means an organism specified as a pest in a pest management plan

pest agent, in relation to any pest, means any organism capable of—

- (a) helping the pest replicate, spread, or survive; or
(b) interfering with the management of the pest

pest management plan means a plan to which the following apply:

- (a) it is for the eradication or effective management of a particular pest or pests:
(b) it is made under Part 5:
(c) it is a national pest management plan or a regional pest management plan

place includes any building, conveyance, craft, land, or structure, and the bed and waters of the sea and any canal, lake, pond, river, or stream

port includes an airport, anchorage, harbour, and wharf

post-clearance requirements means requirements that apply after risk goods are given a biosecurity clearance

prescribed means prescribed by regulations made under this Act

principal officer means,—

- (a) in relation to a regional council, its chief executive; and
(b) in relation to a region, the chief executive of the region's regional council;—

and includes an acting chief executive

quarantine means confinement of organisms or organic material that may be harbouring pests or unwanted organisms

quarantine area means a place so designated under section 41

readiness or response activity has the meaning given to it in section 100Y

reasonable charge means a charge calculated by the Director-General having regard to the direct and indirect costs of performing the activity concerned

region, in relation to a unitary authority, means the region in respect of which it has the functions, duties, and powers of a regional council

regional council includes the Chatham Islands Council and a unitary authority

regulations means regulations made under this Act

responsible Minister means the Minister who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

restricted organism means any organism for which a containment approval has been granted in accordance with the Hazardous Substances and New Organisms Act 1996 (including any approval deemed to have been granted under sections 254(1), 254(3), 254(8)(a), 255(1), 255(2), 256, 258(1), and 258(3))

restricted place means any place that an inspector or an authorised person has declared to be a restricted place under section 130

risk goods means any organism, organic material, or other thing, or substance, that (by reason of its nature, origin, or other relevant factors) it is reasonable to suspect constitutes, harbours, or contains an organism that may—

- (a) cause unwanted harm to natural and physical resources or human health in New Zealand; or
- (b) interfere with the diagnosis, management, or treatment, in New Zealand, of pests or unwanted organisms

road includes all bridges, culverts, and fords forming part of any road

rule means a rule included in a pest management plan or a pathway management plan

sector has the same meaning as it has in Part 5A

small-scale management programme means a small-scale management programme to which section 100V applies

SPS Agreement means the WTO Agreement on the Application of Sanitary and Phytosanitary Measures

territorial authority means a territorial authority within the meaning of the Local Government Act 2002

territorial sea has the meaning given to it in section 3 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977

threatened species includes any species within the meaning given to the terms extinct in the wild, critically endangered, endangered, and vulnerable by the International Union for Conservation of Nature and Natural Resources

transitional facility means:

- (a) any place approved as a transitional facility in accordance with section 39 for the purpose of inspection, storage, treatment, quarantine, holding, or destruction of uncleared goods; or
- (b) a part of a port declared to be a transitional facility in accordance with section 39

unauthorised goods means any goods that are—

- (a) uncleared goods in a place that is not a transitional facility or a biosecurity control area (other than goods that, in accordance with the authority of an inspector, are—
 - (i) proceeding from a transitional facility or a biosecurity control area to a transitional facility, biosecurity control area, or a containment facility; or
 - (ii) being exported from New Zealand); or
- (b) uncleared goods that are in a transitional facility or a biosecurity control area to which those goods proceeded, other than in accordance with the authority of an inspector, from some other transitional facility, or biosecurity control area, and have not later received the authority of an inspector to remain there; or
- (c) goods which have been given a biosecurity clearance by an inspector following receipt by that inspector of false, incomplete, or misleading information concerning the goods; or
- (ca) goods that—
 - (i) are subject to post-clearance requirements in an import health standard; and
 - (ii) do not comply with the requirements; or
- (cb) goods that—
 - (i) are subject to post-clearance conditions under section 27A; and
 - (ii) do not comply with the conditions; or
- (cc) goods that—
 - (i) are subject to regulations made under section 165(3); and
 - (ii) do not comply with the regulations; or
- (cd) goods in relation to which a person is subject to post-clearance requirements in an import health standard and does not comply with the requirements; or
- (ce) goods in relation to which a person is subject to post-clearance conditions under section 27A and does not comply with the conditions; or
- (cf) goods in relation to which a person is subject to regulations made under section 165(3) and does not comply with the regulations; or
- (d) a restricted organism in a place that is not a containment facility (other than an organism that,—
 - (i) in accordance with the authority of an inspector, is proceeding from a transitional facility, biosecurity control area, or a containment facility to another transitional facility, biosecurity control area, or containment facility; or

- (ii) is in a transitional facility or biosecurity control area to which it has proceeded in accordance with the authority of an inspector; or
- (iii) in accordance with the authority of an inspector, is being exported from New Zealand); or
- (e) a restricted organism that is in a containment facility to which it proceeded other than in accordance with the authority of an inspector, and has not later received the authority of an inspector to remain there

uncleared goods means imported goods for which no biosecurity clearance has been given

unitary authority has the meaning given to it by section 5(1) of the Local Government Act 2002

unwanted organism means any 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; and

- (a) includes—
 - (i) any new organism, if the Authority has declined approval to import that organism; and
 - (ii) any organism specified in Schedule 2 of the Hazardous Substances and New Organisms Act 1996; but
- (b) does not include any organism approved for importation under the Hazardous Substances and New Organisms Act 1996, unless—
 - (i) the organism is an organism which has escaped from a containment facility; or
 - (ii) a chief technical officer, after consulting the Authority and taking into account any comments made by the Authority concerning the organism, believes that the organism is capable or potentially capable of causing unwanted harm to any natural and physical resources or human health

working day means any day except—

- (a) a Saturday, a Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday, and Waitangi Day; and
- (ab) the day observed in the region of a regional council as the anniversary day of the province of which the region forms part; and
- (ac) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; and
- (b) a day in the period commencing on 20 December in any year and ending with 15 January in the following year

written or **in writing** means printed, typewritten, or otherwise visibly represented, copied, or reproduced, including by fax, email, or other electronic means.

(2) *[Repealed]*

(3) *[Repealed]*

(4) *[Repealed]*

Section 2(1) **accredited person**: inserted, on 18 September 2012, by section 4(16) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 2(1) **appointer**: inserted, on 18 September 2012, by section 4(16) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 2(1) **arrive in New Zealand** paragraph (d): inserted, on 18 September 2012, by section 4(2) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 2(1) **arrive in the EEZ**: inserted, on 18 September 2012, by section 4(16) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 2(1) **auditor**: inserted, on 18 September 2012, by section 4(16) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 2(1) **Authority**: replaced, on 1 July 2011, by section 53(1) of the Environmental Protection Authority Act 2011 (2011 No 14).

Section 2(1) **automated electronic system**: inserted, on 18 September 2012, by section 4(16) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 2(1) **biosecurity control area**: replaced, on 26 November 1997, by section 2(2) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 2(1) **biosecurity database**: inserted, on 18 September 2012, by section 4(16) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 2(1) **biosecurity law**: inserted, on 18 September 2012, by section 4(16) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 2(1) **border infringement offence**: inserted, on 22 April 2010, by section 4 of the Biosecurity Amendment Act 2009 (2009 No 66).

Section 2(1) **compliance order**: inserted, on 18 September 2012, by section 4(16) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 2(1) **confine**: repealed, on 26 November 1997, by section 2(1) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 2(1) **containment facility**: replaced, on 26 November 1997, by section 2(2) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 2(1) **craft**: replaced, on 18 September 2012, by section 4(3) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 2(1) **craft risk management plan**: inserted, on 18 September 2012, by section 4(16) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 2(1) **craft risk management standard**: inserted, on 18 September 2012, by section 4(16) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 2(1) **designated port of entry**: repealed, on 26 November 1997, by section 2(1) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 2(1) **EEZ**: inserted, on 18 September 2012, by section 4(16) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 2(1) **effects**: inserted, on 18 September 2012, by section 4(16) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 2(1) **exclusive economic zone**: repealed, on 18 September 2012, by section 4(4) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 2(1) **facility operator**: inserted, on 18 September 2012, by section 4(16) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 2(1) **good neighbour rule**: inserted, on 18 September 2012, by section 4(16) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 2(1) **import**: replaced, on 18 September 2012, by section 4(5) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 2(1) **import health permit**: repealed, on 26 November 1997, by section 2(1) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 2(1) **import health standard**: replaced, on 18 September 2012, by section 4(6) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 2(1) **incidentally imported new organism**: inserted, on 9 April 2008, by section 4 of the Biosecurity Amendment Act (No 2) 2008 (2008 No 21).

Section 2(1) **infringement fee**: inserted, on 22 April 2010, by section 4 of the Biosecurity Amendment Act 2009 (2009 No 66).

Section 2(1) **infringement offence**: inserted, on 22 April 2010, by section 4 of the Biosecurity Amendment Act 2009 (2009 No 66).

Section 2(1) **law**: inserted, on 18 September 2012, by section 4(16) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 2(1) **management agency**: replaced, on 18 September 2012, by section 4(7) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 2(1) **Minister**: replaced, on 18 September 2012, by section 4(8) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 2(1) **national policy direction**: inserted, on 18 September 2012, by section 4(16) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 2(1) **natural and physical resources**: inserted, on 26 November 1997, by section 2(2) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 2(1) **natural resources**: repealed, on 26 November 1997, by section 2(1) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 2(1) **new organism**: inserted, on 29 July 1998, by section 128(2) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 2(1) **New Zealand territory**: amended, on 18 September 2012, by section 4(9) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 2(1) **New Zealand territory**: amended, on 26 November 1997, by section 2(3)(a) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 2(1) **official**: inserted, on 18 September 2012, by section 4(16) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 2(1) **organic material**: replaced, on 18 September 2012, by section 4(10) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 2(1) **organism** paragraph (f): inserted, on 26 November 1997, by section 2(3)(b) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 2(1) **pathway**: inserted, on 18 September 2012, by section 4(16) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 2(1) **pathway management plan**: inserted, on 18 September 2012, by section 4(16) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 2(1) **pest**: amended, on 18 September 2012, by section 4(11) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 2(1) **pest management plan**: inserted, on 18 September 2012, by section 4(12) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 2(1) **pest management strategy and strategy**: repealed, on 18 September 2012, by section 4(12) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 2(1) **post-clearance requirements**: inserted, on 18 September 2012, by section 4(16) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 2(1) **principal officer**: replaced, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

Section 2(1) **quarantine**: inserted, on 26 November 1997, by section 2(2) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 2(1) **quarantine facility**: repealed, on 26 November 1997, by section 2(1) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 2(1) **readiness or response activity**: inserted, on 18 September 2012, by section 4(16) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 2(1) **regional council**: amended, on 1 November 1995, by section 36 of the Chatham Islands Council Act 1995 (1995 No 41).

Section 2(1) **restricted organism**: replaced, on 29 July 1998, by section 128(2) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 2(1) **restricted place**: amended, on 26 November 1997, by section 2(5) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 2(1) **risk goods**: replaced, on 26 November 1997, by section 2(2) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 2(1) **road**: inserted, on 26 November 1997, by section 2(2) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 2(1) **rule**: inserted, on 26 November 1997, by section 2(2) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 2(1) **rule**: amended, on 18 September 2012, by section 4(13) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 2(1) **sector**: inserted, on 18 September 2012, by section 4(16) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 2(1) **small-scale management programme**: inserted, on 26 November 1997, by section 2(2) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 2(1) **small-scale management programme**: amended, on 18 September 2012, by section 4(14) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 2(1) **SPS Agreement**: inserted, on 18 September 2012, by section 4(16) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 2(1) **territorial authority**: replaced, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

Section 2(1) **territorial sea**: inserted, on 18 September 2012, by section 4(16) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 2(1) **threatened species**: inserted, on 26 November 1997, by section 2(2) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 2(1) **transitional facility**: replaced, on 26 November 1997, by section 2(2) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 2(1) **treatment**: repealed, on 26 November 1997, by section 2(1) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 2(1) **unauthorised goods**: replaced, on 26 November 1997, by section 2(2) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 2(1) **unauthorised goods** paragraph (ca): inserted, on 18 September 2012, by section 4(15) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 2(1) **unauthorised goods** paragraph (cb): inserted, on 18 September 2012, by section 4(15) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 2(1) **unauthorised goods** paragraph (cc): inserted, on 18 September 2012, by section 4(15) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 2(1) **unauthorised goods** paragraph (cd): inserted, on 18 September 2012, by section 4(15) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 2(1) **unauthorised goods** paragraph (ce): inserted, on 18 September 2012, by section 4(15) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 2(1) **unauthorised goods** paragraph (cf): inserted, on 18 September 2012, by section 4(15) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 2(1) **unitary authority**: replaced, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

Section 2(1) **unwanted organism**: replaced, on 29 July 1998, by section 128(2) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 2(1) **working day** paragraph (ab): inserted, on 26 November 1997, by section 2(6) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 2(1) **working day** paragraph (ac): inserted, on 1 January 2014, by section 8 of the Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Act 2013 (2013 No 19).

Section 2(1) **written or in writing**: inserted, on 18 September 2012, by section 4(16) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 2(2): repealed, on 18 September 2012, by section 4(17) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 2(3): repealed, on 18 September 2012, by section 4(17) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 2(4): repealed, on 8 July 2003, by section 3 of the Biosecurity Amendment Act 2003 (2003 No 38).

2A Interpretation of import

- (1) In this Act, **import** means to bring within New Zealand territory from outside the territory. Verb forms of **import** have a corresponding meaning.
- (2) In this Act, **importation** means bringing within New Zealand territory from outside the territory.
- (3) In this Act, **importer**—
 - (a) means a person who imports goods; and
 - (b) includes a person for whom goods are imported; and
 - (c) includes a New Zealand-based agent who—
 - (i) has an overseas-based person as a principal; and
 - (ii) arranges the importation of goods for the principal; and
 - (d) includes a New Zealand-based representative who—
 - (i) represents an overseas-based person; and
 - (ii) arranges the importation of goods for the person; and
 - (e) includes the New Zealand-based consignee of imported goods.

Section 2A: inserted, on 18 September 2012, by section 5 of the Biosecurity Law Reform Act 2012 (2012 No 73).

2B Interpretation of specified in relation to organisms

For the purposes of this Act, an organism may be specified by 1 or both of the following:

- (a) its scientific name;
- (b) the name of a disease it causes.

Section 2B: inserted, on 18 September 2012, by section 5 of the Biosecurity Law Reform Act 2012 (2012 No 73).

3 Application of Act to syndromes of uncertain origin

- (1) This subsection applies to a syndrome if—
 - (a) the scientific community generally accepts that—
 - (i) it is probably caused by an organism; but
 - (ii) there is no satisfactory proof that it is in fact caused by an organism; or
 - (b) the scientific community generally accepts that—
 - (i) it is caused by an organism; but
 - (ii) there is no satisfactory evidence available as to the identity or nature of the organism causing it.
- (2) This Act shall have effect as if every syndrome to which subsection (1) applies is in fact caused by an organism, which may be specified (in a pest management plan or a pathway management plan or for any other purpose) by reference to the name generally accepted by the scientific community for that syndrome.
- (3) In this section, **syndrome** means a group of characteristic symptoms, behaviours, or symptoms and behaviours, generally recognised by the scientific community as proceeding or being likely to proceed from a single cause.

Section 3(2): amended, on 18 September 2012, by section 6 of the Biosecurity Law Reform Act 2012 (2012 No 73).

4 Application of Act in territorial sea

A provision in this Act that applies in the territorial sea must be interpreted in a way that preserves the rights of vessels of other states to engage in innocent passage through the territorial sea or transit passage through straits used for international navigation as set out in the United Nations Convention on the Law of the Sea of 10 December 1982.

Section 4: replaced, on 18 September 2012, by section 7 of the Biosecurity Law Reform Act 2012 (2012 No 73).

5 Act binds the Crown

- (1) This Act binds the Crown, except as described in subsection (2).

- (2) A regional pest management plan binds the Crown to the extent provided in section 69(5) and a regional pathway management plan binds the Crown to the extent provided in section 89(5).

Section 5: replaced, on 18 September 2012, by section 8 of the Biosecurity Law Reform Act 2012 (2012 No 73).

6 Land may include parts of boundary roads

- (1) Where a pest management plan or a pathway management plan applies to land adjoining a road, the plan may state that the land includes, for the purposes of the plan, all or any of the portions of road bounded by—
- (a) the boundary of that land abutting that road; and
 - (b) lines extended from the end of that portion of boundary to the middle line of the road; and
 - (c) the middle line of the road connecting those extended lines.

- (2) Any person required or authorised by or under a pest management plan or a pathway management plan to do anything on or in relation to land, when the plan provides that the land includes portions of road in accordance with subsection (1), is also required or authorised to do that thing on those portions of the road.

- (3) Nothing in subsection (2) authorises any person to damage any road.

Section 6: replaced, on 26 November 1997, by section 3 of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 6(1): amended, on 18 September 2012, by section 9(1) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 6(2): amended, on 18 September 2012, by section 9(2) of the Biosecurity Law Reform Act 2012 (2012 No 73).

7 Relationship with other enactments

- (1) Nothing in any enactment specified in this section affects the performance or exercise of any power, function, or duty conferred by Part 7.

- (2) Except—

- (a) to the extent provided in subsections (1), (5), and (6), and sections 7A to 7D; and
- (b) to the extent that those enactments are expressly amended by section 168(1),—

this Act must not be construed so as to affect or derogate in any way from the provisions of the Soil Conservation and Rivers Control Act 1941, the Forests Act 1949, the Wildlife Act 1953, the Health Act 1956, the Animal Welfare Act 1999, the Wild Animal Control Act 1977, the Reserves Act 1977, the National Parks Act 1980, the Fisheries Act 1983, the Conservation Act 1987, the Te Urewera Act 2014, the Trade in Endangered Species Act 1989, the Resource

Management Act 1991, or the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.

- (3) This Act must not be construed so as to affect or derogate in any way from the provisions of the Customs and Excise Act 1996 and, in particular, the provisions of this Act do not affect the obligations of any person under the Customs and Excise Act 1996 in relation to goods.
- (4) The provisions of this Act in so far as they relate to risk goods must not be construed to take precedence over the powers provided under the Misuse of Drugs Act 1975 in relation to any controlled drug (as defined in section 2(1) of that Act).
- (5) The provisions of the Wild Animal Control Act 1977 and the Game Animal Council Act 2013 do not apply to prevent or inhibit the exercise of any powers under the Biosecurity Act 1993 on any land (other than land administered under the Acts listed in Schedule 1 of the Conservation Act 1987) when those powers are used in respect of—
 - (a) a pest; or
 - (b) an unwanted organism—
that may be transmitted by any animal to which the Wild Animal Control Act 1977 or Game Animal Council Act 2013 applies.
- (6) The provisions of the Wildlife Act 1953 (including any regulations made under that Act)—
 - (a) do not apply to prevent or inhibit the exercise or performance of any powers, functions, or duties under this Act when those powers, functions, or duties are exercised or performed in respect of an unwanted organism; and
 - (b) do not allow or authorise the contravention of any provision of this Act in respect of wildlife that is also an unwanted organism.

Section 7: replaced, on 26 November 1997, by section 4 of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 7(2): amended, on 28 July 2014, by section 138 of the Te Urewera Act 2014 (2014 No 51).

Section 7(2): amended, on 28 June 2013, by section 169(2) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (2012 No 72).

Section 7(2): amended, on 1 January 2000, by section 194 of the Animal Welfare Act 1999 (1999 No 142).

Section 7(2)(a): amended, on 28 June 2013, by section 169(1) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (2012 No 72).

Section 7(2)(a): amended, on 8 July 2003, by section 4(1) of the Biosecurity Amendment Act 2003 (2003 No 38).

Section 7(5): amended, on 28 November 2013, by section 41(2) of the Game Animal Council Act 2013 (2013 No 98).

Section 7(5): amended, on 8 July 2003, by section 4(2) of the Biosecurity Amendment Act 2003 (2003 No 38).

Section 7(6): inserted, on 8 July 2003, by section 4(3) of the Biosecurity Amendment Act 2003 (2003 No 38).

7A Relationship with Resource Management Act 1991

- (1) The responsible Minister may exempt an action from the provisions of Part 3 of the Resource Management Act 1991 if the action is taken in accordance with Part 6 of this Act in an attempt to eradicate an organism and if—
 - (a) the action would be in breach of Part 3 of the Resource Management Act 1991; and
 - (b) the responsible Minister is satisfied that it is likely that—
 - (i) the organism is not established in New Zealand, the organism is not known to be established in New Zealand, or the organism is established in New Zealand but is restricted to certain parts of New Zealand; and
 - (ii) the organism has the potential to cause 1 or more of significant economic loss, significant adverse effects on human health, or significant environmental loss if it becomes established in New Zealand, or if it becomes established throughout New Zealand; and
 - (iii) it is in the public interest that action be taken immediately in an attempt to eradicate the organism.
- (2) The exemption of an action under subsection (1) may last for up to 20 working days.
- (3) Before making a decision under subsection (1), the responsible Minister—
 - (a) must consult the relevant consent authority (to the extent that is possible in the circumstances); and
 - (b) may consult such other persons as the responsible Minister considers are representative of the persons likely to be affected by the eradication attempt.
- (4) If an exemption is granted under subsection (1) or continued by regulations made under section 7D, Part 3 of the Resource Management Act 1991 does not apply to the action while the exemption continues.
- (5) After the exemption ends,—
 - (a) the provisions of the Resource Management Act 1991 apply to the action and its adverse effects to the same extent as those provisions would have applied but for the exemption; and
 - (b) the responsible Minister must remedy or mitigate the adverse effects to which the provisions of the Resource Management Act 1991 would have applied if not for the exemption.
- (6) For the purposes of this section, **consent authority** has the same meaning as in section 2(1) of the Resource Management Act 1991.

Section 7A: replaced, on 28 June 2013, by section 170 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (2012 No 72).

7B Relationship with Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012

- (1) The responsible Minister may exempt an action from the provisions of Part 2 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 if the action is taken in an attempt to eradicate or manage an organism under this Act and if—
 - (a) the action would be in breach of Part 2 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012; and
 - (b) the responsible Minister is satisfied that it is likely that—
 - (i) the organism is not established in the exclusive economic zone, the organism is not known to be established in the exclusive economic zone, or the organism is established in the exclusive economic zone but is restricted to certain parts of the exclusive economic zone; and
 - (ii) the organism has the potential to cause 1 or more of significant economic loss, significant adverse effects on human health, or significant environmental loss if it becomes established in the exclusive economic zone, or if it becomes established throughout the exclusive economic zone, or if it spreads to New Zealand; and
 - (iii) it is in the public interest that action be taken immediately in an attempt to eradicate or manage the organism.
- (2) The exemption of an action under subsection (1) may last for up to 20 working days.
- (3) Before making a decision under subsection (1), the responsible Minister—
 - (a) must consult the Authority (to the extent that is possible in the circumstances); and
 - (b) may consult such other persons as the responsible Minister considers are representative of the persons likely to be affected by the eradication or management attempt.
- (4) If an exemption is granted under subsection (1) or continued by regulations made under section 7D, Part 2 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 does not apply to the action while the exemption continues.
- (5) After the exemption ends,—
 - (a) the provisions of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 apply to the action and its adverse effects to the same extent as those provisions would have applied but for the exemption; and

- (b) the responsible Minister must remedy or mitigate the adverse effects to which the provisions of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 would have applied if not for the exemption.

Section 7B: inserted, on 28 June 2013, by section 170 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (2012 No 72).

7C Public notice of decision to exempt action

- (1) After making a decision under section 7A or 7B, the responsible Minister must give public notice of the Minister's decision in such a manner as the Minister thinks fit.
- (2) The public notice must specify—
 - (a) the organism to be eradicated or managed; and
 - (b) the principal actions that may be taken in the attempt to eradicate or manage the organism; and
 - (c) the areas affected by the action.
- (3) A failure to comply with the provisions of this section or section 7A(3) or 7B(3) does not affect the validity of any exemption given under section 7A or 7B.

Section 7C: inserted, on 28 June 2013, by section 170 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (2012 No 72).

7D Regulations may continue exemption

- (1) The Governor-General may, by Order in Council made on the recommendation of the responsible Minister, make regulations—
 - (a) continuing the exemption under section 7A of an action from Part 3 of the Resource Management Act 1991:
 - (b) continuing the exemption under section 7B of an action from Part 2 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.
- (2) The responsible Minister must not make a recommendation for the purposes of subsection (1) unless he or she considers that it is necessary to continue the action to attempt to eradicate or manage the organism beyond the duration of the exemption.
- (3) Regulations made under this section come into force on the date of notification in the *Gazette*, or at the time specified in the regulations, whichever is the later.
- (4) The regulations expire on the day that is 2 years after the date on which the regulations come into force unless they are revoked earlier.

Section 7D: inserted, on 28 June 2013, by section 170 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (2012 No 72).

7E Border information supplied using JBMS must be supplied in approved form and manner

- (1) This section applies to a requirement by or under an Act to supply to the Ministry any border information (as defined in section 41A(1)) if the Act is—
 - (a) this Act; or
 - (b) an Act that is specified by regulations under section 165A to be an Act for the purposes of the definition of Ministry-related border management function in section 41A(1).
- (2) Any person who uses the JBMS (which, in this section, has the meaning given in section 131A of the Customs and Excise Act 1996) to comply with the requirement (including, without limitation, by supplying the information to the Customs, or to an appointed agency, in accordance with section 41D or 41H) must supply the information in a form and manner—
 - (a) for complying with the requirement by using the JBMS; and
 - (b) for the time being generally approved in writing,—
 - (i) if the Act is this Act, by the Director-General; or
 - (ii) if the Act is one specified by regulations under section 165A to be an Act for the purposes of the definition of Ministry-related border management function in section 41A(1), under that Act (as modified by this section) by the chief executive of the department of State responsible for the Act's administration.
- (3) The approved form and manner referred to in subsection (2)—
 - (a) must be notified via an Internet site that is, so far as practicable, publicly available free of charge; and
 - (b) may be set out, for the information of registered JBMS users, in Customs rules under section 288(1)(j) of the Customs and Excise Act 1996.

Section 7E: inserted, on 24 June 2014, by section 4 of the Biosecurity (Border Processing—Trade Single Window) Amendment Act 2014 (2014 No 11).

7F Duty to use JBMS to supply border information to Ministry

- (1) This section applies to a requirement by or under an Act to supply to the Ministry any border information (as defined in section 41A(1)) if the Act is—
 - (a) this Act; or
 - (b) an Act that is specified by regulations under section 165A to be an Act for the purposes of the definition of Ministry-related border management function in section 41A(1).
- (2) After the commencement of this section, the only ways in which a person can comply with the requirement are—
 - (a) by using the JBMS (which, in this section, has the meaning given in section 131A of the Customs and Excise Act 1996); or

- (b) by using another means for the time being generally or specifically approved in writing by—
 - (i) the Director-General (as defined in section 2(1)), if the Act is this Act; or
 - (ii) the chief executive of the department of State for the time being responsible for the Act's administration, if the Act is an Act that is specified by regulations under section 165A to be an Act for the purposes of the definition of Ministry-related border management function in section 41A(1).

Section 7F: inserted, on 1 July 2016, by section 17 of the Biosecurity (Border Processing—Trade Single Window) Amendment Act 2014 (2014 No 11).

Part 2

Functions, powers, and duties

Ministers

8 Responsibilities of responsible Minister

- (1) In addition to being responsible for the administration of this Act, the responsible Minister has responsibility for—
 - (a) providing for the co-ordinated implementation of this Act;
 - (b) recording and co-ordinating reports of suspected new organisms;
 - (c) managing appropriate responses to such reports.
- (2) Section 9 does not limit or affect the generality of subsection (1).

9 Powers of responsible Minister

- (1) The responsible Minister has power to—
 - (a) perform the functions in section 7A;
 - (b) *[Repealed]*
 - (c) recommend to the Governor-General the making of Orders in Council under section 45(3):
 - (ca) assign responsibility for decisions under section 55;
 - (cb) recommend to the Governor-General the approval of the national policy direction under section 57;
 - (cc) recommend to the Governor-General the approval of amendments to the national policy direction under section 58(1);
 - (cd) approve amendments to the national policy direction under section 58(2);
 - (ce) recommend to the Governor-General the approval of the revocation and replacement of the national policy direction under section 58(3);

- (cf) publish notices about industry organisations under section 100ZA(2):
 - (cg) recommend to the Governor-General under section 100ZB(1) the making of Orders in Council imposing readiness and response levies:
 - (d) recommend to the Governor-General under section 137(1) or section 140AA(3) the making of Orders in Council imposing levies, and perform other functions in relation to levies:
 - (e) recommend to the Governor-General under section 165 the making of regulations.
- (2) The responsible Minister must not delegate to any person the exercise of any of the powers specified in subsection (1).

Section 9: replaced, on 26 November 1997, by section 5 of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 9(1)(b): repealed, on 18 September 2012, by section 10(1) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 9(1)(ca): inserted, on 18 September 2012, by section 10(2) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 9(1)(cb): inserted, on 18 September 2012, by section 10(2) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 9(1)(cc): inserted, on 18 September 2012, by section 10(2) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 9(1)(cd): inserted, on 18 September 2012, by section 10(2) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 9(1)(ce): inserted, on 18 September 2012, by section 10(2) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 9(1)(cf): inserted, on 18 September 2012, by section 10(2) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 9(1)(cg): inserted, on 18 September 2012, by section 10(2) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 9(1)(d): amended, on 28 May 2015, by section 4 of the Biosecurity Amendment Act (No 2) 2015 (2015 No 56).

Section 9(2): amended, on 18 September 2012, by section 10(3) of the Biosecurity Law Reform Act 2012 (2012 No 73).

10 Functions of Ministers in relation to national plans

- (1) Any Minister may carry out the functions specified in Part 5 as the functions of a Minister.
- (2) Any Minister may carry out the functions of—
- (a) approving the preparation of a national pest management plan under section 64(1):
 - (b) recommending to the Governor-General the making of an Order in Council making a national pest management plan under section 66(1):
 - (c) approving the preparation of a national pathway management plan under section 84(1):

- (d) recommending to the Governor-General the making of an Order in Council making a national pathway management plan under section 86(1):
 - (e) appointing a management agency for a plan under section 100(4):
 - (f) disallowing an operational plan or part of it under section 100B(4):
 - (g) reviewing, amending, revoking and replacing, or revoking a plan under section 100D:
 - (h) recommending to the Governor-General the making of an Order in Council imposing a levy under section 100L(1).
- (3) No Minister may delegate the carrying out of the functions in subsection (2).

Section 10: replaced, on 18 September 2012, by section 11 of the Biosecurity Law Reform Act 2012 (2012 No 73).

11 Other powers of Ministers

- (1) Any Minister has power to—
- (a) direct the forfeiture of organisms and organic material under section 134(3):
 - (b) take action under sections 144 and 147 in relation to biosecurity emergencies:
 - (c) take action under section 145 in relation to biosecurity emergencies:
 - (d) recommend to the Governor-General under section 150(1) the making of biosecurity emergency regulations, and where such regulations are made, the Minister has the duty of laying them before the House of Representatives under section 150(5):
 - (e) declare a provisional control programme under section 152(1):
 - (f) extend under subsection (3) of section 152 a provisional control programme.
- (2) A Minister must not delegate to any person the exercise of the powers specified in subsection (1)(b), (d), (e), and (f).

Section 11: replaced, on 26 November 1997, by section 7 of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 11(2): amended, on 7 May 1999, by section 2 of the Biosecurity Amendment Act 1999 (1999 No 29).

12 Responsible Minister may require information

- (1) The responsible Minister may ask any regional council or management agency to give the responsible Minister, in a form the responsible Minister specifies, any information relating to the exercise or performance of any of its functions, powers, or duties under this Act or under any pest management plan or a pathway management plan—
- (a) in the possession of the council or agency; or

- (b) capable of being obtained by the council or agency without unreasonable difficulty or expense,—
that the responsible Minister reasonably requires.
- (2) A regional council or management agency shall give the responsible Minister any information the responsible Minister has asked for under subsection (1) as soon as is reasonably practicable after being asked to do so.

Section 12(1): amended, on 18 September 2012, by section 12 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Director-General

Heading: replaced, on 18 September 2012, by section 13 of the Biosecurity Law Reform Act 2012 (2012 No 73).

12A Director-General provides overall leadership

- (1) The Director-General provides overall leadership in activities that prevent, reduce, or eliminate adverse effects from harmful organisms that are present in New Zealand (**pest management**).
- (2) The ways in which the Director-General provides leadership include—
- (a) promoting alignment of pest management within the whole biosecurity system:
 - (b) overseeing New Zealand's systems for pest management and measuring overall system performance:
 - (c) facilitating the development and alignment of national pest management plans and national pathway management plans:
 - (d) promoting public support for pest management:
 - (e) facilitating communication, co-operation, and co-ordination among those involved in pest management to enhance effectiveness, efficiency, and equity of programmes.

Section 12A: inserted, on 18 September 2012, by section 13 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Local authorities

Heading: inserted, on 18 September 2012, by section 13 of the Biosecurity Law Reform Act 2012 (2012 No 73).

12B Regional council provides leadership regionally

- (1) A regional council provides leadership in activities that prevent, reduce, or eliminate adverse effects from harmful organisms that are present in New Zealand (**pest management**) in its region.
- (2) The ways in which the regional council provides leadership in the region include—
- (a) promoting the alignment of pest management in the region:

- (b) facilitating the development and alignment of regional pest management plans and regional pathway management plans in the region:
 - (c) promoting public support for pest management:
 - (d) facilitating communication and co-operation among those involved in pest management to enhance effectiveness, efficiency, and equity of programmes.
- (3) A regional council also provides leadership by promoting co-ordination of pest management between regions.

Section 12B: inserted, on 18 September 2012, by section 13 of the Biosecurity Law Reform Act 2012 (2012 No 73).

13 Powers of regional councils

- (1) Every regional council has, in relation to its region, power to—
- (a) cause to be carried out, for the purposes of Part 5,—
 - (i) monitoring to determine whether or not pests, pest agents, and unwanted organisms are present; and
 - (ii) surveillance of pests, pest agents, and unwanted organisms:
 - (b) provide, in accordance with relevant pest management plans, for the assessment and eradication or management of pests:
 - (c) prepare proposals for, make, and implement regional pest management plans and regional pathway management plans:
 - (d) appoint a management agency for a plan under section 100(4):
 - (e) disallow an operational plan or part of it under section 100B(4):
 - (f) review, amend, revoke and replace, or revoke a plan under section 100D:
 - (fa) declare and implement small-scale management programmes:
 - (g) gather information, keep records, undertake research, or do any other similar thing, if doing so is necessary or desirable to enable it to act effectively under this Act:
 - (h) take any action contemplated by or necessary for giving effect to any provision of this Act.
- (2) Regional councils have all the powers of territorial authorities set out in section 14.

Section 13: replaced, on 26 November 1997, by section 8 of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 13(1)(a): replaced, on 18 September 2012, by section 14(1) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 13(1)(b): replaced, on 18 September 2012, by section 14(1) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 13(1)(c): replaced, on 18 September 2012, by section 14(1) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 13(1)(d): replaced, on 18 September 2012, by section 14(1) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 13(1)(e): replaced, on 18 September 2012, by section 14(1) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 13(1)(f): replaced, on 18 September 2012, by section 14(1) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 13(1)(fa): inserted, on 18 September 2012, by section 14(1) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 13(2): replaced, on 18 September 2012, by section 14(2) of the Biosecurity Law Reform Act 2012 (2012 No 73).

14 Powers of territorial authorities

Every territorial authority has power—

- (a) to take any action any natural person could take under Part 5:
- (b) to act as a management agency under a pest management plan or a pathway management plan:
- (c) to take any action provided for or required by a pest management plan or a pathway management plan:
- (d) if, and only if,—
 - (i) a pest management plan or a pathway management plan provides for certain actions to be taken; but does not expressly provide for them to be taken by territorial authorities, territorial authorities of a class or description to which the authority belongs, or the authority; and
 - (ii) the management agency for the plan agrees with the authority that the authority will take those actions and the agency will meet the authority's costs in doing so,—
to take those actions:
- (da) to the extent only that a national pest management plan or a national pathway management plan provides for—
 - (i) territorial authorities; or
 - (ii) territorial authorities of a class or description to which the authority belongs; or
 - (iii) the authority,—
to make contributions towards the costs of the implementation of the plan, to make such contributions (from the authority's general funds or from any fund dedicated for the purpose):
- (db) to set and assess rates under the Local Government (Rating) Act 2002 for the purpose of making any contributions that the authority is empowered by paragraph (da) to make:

- (e) to gather information, keep records, undertake research, or do any other similar thing, if doing so is necessary or desirable to enable it to act effectively under this Act:
- (f) to perform or exercise any function, power, or duty whose performance or exercise is for the time being transferred to it under section 15:
- (g) to perform or exercise any other function, power, or duty conferred on it by this Act.

Section 14(b): amended, on 18 September 2012, by section 15(1) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 14(c): amended, on 18 September 2012, by section 15(2) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 14(d): replaced, on 1 July 1994, by section 3 of the Biosecurity Amendment Act 1994 (1994 No 24).

Section 14(d)(i): amended, on 18 September 2012, by section 15(3) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 14(d)(ii): amended, on 18 September 2012, by section 15(4) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 14(da): inserted, on 1 July 1994, by section 3 of the Biosecurity Amendment Act 1994 (1994 No 24).

Section 14(da): amended, on 18 September 2012, by section 15(5) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 14(da): amended, on 18 September 2012, by section 15(6) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 14(db): replaced, on 1 July 2003, by section 137(1) of the Local Government (Rating) Act 2002 (2002 No 6).

15 Transfer of powers, etc, by local authorities

- (1) Subject to subsections (2) and (3), a local authority that has an operation under this Act (in this section referred to as the transferor) may transfer the performance of the operation to another local authority (in this section referred to as the transferee), if—
- (a) it has used the special consultative procedure specified in section 83 of the Local Government Act 2002; and
 - (b) in the case of an operation under or relating to a national pest management plan or a national pathway management plan, before using that procedure it has served notice on the Minister of its intention to do so; and
 - (c) in the case of an operation under or relating to a regional pest management plan or a regional pathway management plan,—
 - (i) it is a regional council, and no other regional council is involved in the plan; or
 - (ii) before using that procedure it has served notice on every regional council involved in the plan (other than itself, if it is a regional council) of its intention to do so; and

- (d) it agrees with the transferee that the transfer is desirable on the grounds of—
- (i) efficiency; and
 - (ii) technical or special capability or expertise on the part of the transferee,—
- by (and subject to any terms and conditions contained in) a written agreement with the transferee.
- (2) The transferor shall not transfer—
- (a) the performance of the function of making a regional pest management plan or a regional pathway management plan under Part 5; or
 - (b) the exercise of the power of transfer conferred by subsection (1).
- (3) The agreement shall contain provisions dealing with the revocation and relinquishment of the transfer; and
- (a) the transferor may change or revoke the transfer; and
 - (b) the transferee may relinquish the transfer,—
- accordingly.
- (4) While the operation remains transferred to the transferee,—
- (a) the transferee's functions, powers, and duties shall be deemed to be extended to the extent necessary to enable it to undertake the operation; but
 - (b) the transferor shall continue to be responsible for the operation.
- (5) In this section—

operation means a function, power, or duty

perform includes exercise.

Section 15(1): amended, on 26 November 1997, by section 9(1) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 15(1)(a): replaced, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

Section 15(1)(b): amended, on 18 September 2012, by section 16(1) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 15(1)(c): amended, on 18 September 2012, by section 16(2) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 15(2)(a): amended, on 18 September 2012, by section 16(3) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Part 3 Importation of risk goods

16 Purpose of Part 3

The purpose of this Part is to provide for the effective management of risks associated with—

- (a) the importation of risk goods:
- (b) the entry of craft into New Zealand territory.

Section 16: replaced, on 18 September 2012, by section 17 of the Biosecurity Law Reform Act 2012 (2012 No 73).

16A General duty relating to importation

A person must not—

- (a) provide an official or an automated electronic system with false, misleading, or incomplete information about goods to be imported or uncleared goods; or
- (b) take steps that are likely to hinder the detection by an official of uncleared goods.

Section 16A: inserted, on 18 September 2012, by section 17 of the Biosecurity Law Reform Act 2012 (2012 No 73).

16B Duty of importers to comply with import health standards

An importer of risk goods must—

- (a) take all reasonable steps to ensure that the goods comply with applicable import health standards; and
- (b) if required by an inspector, do the following:
 - (i) provide the inspector with a declaration in an approved form setting out the steps taken to comply with the standard; and
 - (ii) provide the inspector with the declaration in an approved manner.

Section 16B: inserted, on 18 September 2012, by section 17 of the Biosecurity Law Reform Act 2012 (2012 No 73).

16C Duty of importers not to abandon goods

- (1) An importer of goods must not leave the goods in a biosecurity control area, transitional facility, or place approved under section 37.
- (2) For the purposes of this section, leaving goods—
 - (a) means leaving them in a way or for a period that would entitle an inspector or authorised person to regard the goods, under section 119(2), as abandoned; and
 - (b) does not mean putting them into a bin provided for the purpose of having imported goods left in it for disposal.

Section 16C: inserted, on 18 September 2012, by section 17 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Arrival of craft

17 Notice of craft's intended arrival in New Zealand

Craft to which section applies

- (1) This section applies to a craft that is en route to New Zealand territory from a point outside New Zealand territory on a flight or voyage that is intended to include arrival in New Zealand.

Meaning of approved port

- (2) The craft must arrive in New Zealand at 1 of the following approved ports if it is possible and practicable to do so:
- (a) a port of entry approved under this Act as a place of first arrival for craft of all kinds and craft arriving for all purposes:
 - (b) a port of entry approved under this Act as a place of first arrival suitable for the craft and, if relevant, for the purpose for which it is arriving:
 - (c) a port approved under section 37A for the arrival of the craft.

Persons who carry out duties

- (3) The duties in subsections (6), (7), (9), and (10) must be carried out by the person who is in charge of the craft.
- (4) The following persons may carry out the duties on behalf of the person who is in charge of the craft:
- (a) an owner of the craft:
 - (b) an operator of the craft:
 - (c) an agent of an owner of the craft:
 - (d) an agent of an operator of the craft.

Form and manner of notices, and supporting documentation

- (5) The person who is carrying out the duties must give notices under this section in the form and manner—
- (a) approved by the Director-General; and
 - (b) available on an Internet site maintained by or on behalf of the Ministry.
- (5A) Notices under this section must be accompanied by any supporting documents (being documents each of which is genuine, not erroneous, and not misleading) the Director-General may require.

First notice

- (6) The person must give the Director-General notice of the following matters from a point outside New Zealand territory:
- (a) when and where, approximately, the craft will enter New Zealand territory; and
 - (b) in relation to the craft's arrival in New Zealand,—

- (i) the approved port at which it is intended that the craft will arrive;
or
 - (ii) if it is impossible or impracticable to go to an approved port, the destination at which it is intended that the craft will arrive.
- (7) After giving notice under subsection (6), the person must ensure that the craft goes directly to, and arrives in New Zealand at, the notified port or destination.

Second notice

- (8) Subsections (9) and (10) apply when—
 - (a) the person has given the notice; and
 - (b) the craft has not subsequently arrived in New Zealand; and
 - (c) the person learns that it is now impossible or impracticable to go to the port or destination stated in the notice.
- (9) The person must give the Director-General notice of the following matters:
 - (a) where, approximately, the craft is; and
 - (b) when and where, approximately, the craft will enter New Zealand territory; and
 - (c) in relation to the craft's arrival in New Zealand,—
 - (i) the approved port at which it is now intended that the craft will arrive, if it is possible and practicable to go to an approved port;
or
 - (ii) the destination at which it is now intended that the craft will arrive, if it is impossible or impracticable to go to an approved port.
- (10) After giving notice under subsection (9), the person must ensure that the craft goes directly to, and arrives in New Zealand at, the notified port or destination.

Regulations may elaborate duties

- (11) Regulations may—
 - (a) require that a notice contain details of a craft's previous voyages, current voyage, and future intended voyages within New Zealand territory;
 - (b) require that a notice contain the details about the following that are specified in the regulations:
 - (i) the craft's crew;
 - (ii) the craft's passengers;
 - (iii) goods on board the craft;
 - (c) specify the length of time before a craft's arrival in New Zealand at which the notice must be given;
 - (d) require that a notice—
 - (i) give different information about the matters depending on the class or description of the craft:

- (ii) give the information at different times depending on the class or description of the craft:
- (e) provide for the Director-General to require the giving of the information earlier than the time specified in the regulations if—
 - (i) an emergency or an urgent situation has arisen; and
 - (ii) the emergency or the urgent situation creates a risk of significant harm to human health, the environment, or the economy; and
 - (iii) the earlier giving of the information is necessary to avoid or mitigate the risk.

Section 17: replaced, on 18 September 2012, by section 18 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 17(5) heading: amended, on 24 June 2014, by section 5(1) of the Biosecurity (Border Processing—Trade Single Window) Amendment Act 2014 (2014 No 11).

Section 17(5A): inserted, on 24 June 2014, by section 5(2) of the Biosecurity (Border Processing—Trade Single Window) Amendment Act 2014 (2014 No 11).

17A Inward cargo report

Craft and cargo to which section applies

- (1) This section applies to cargo (whether or not all or any of the cargo is goods that are, may be, or are not, risk goods) on a craft if the craft is—
 - (a) en route to, or has arrived in, New Zealand (as defined in section 2(1) of the Customs and Excise Act 1996), from a point outside New Zealand (as so defined); or
 - (b) carrying goods subject to the control of the Customs (as defined in section 20 of the Customs and Excise Act 1996) brought in that craft or any other craft from a point outside New Zealand (as defined in section 2(1) of the Customs and Excise Act 1996).

Inward cargo report

- (2) Every person responsible for the carriage of the cargo on the craft must give to the Director-General, before the prescribed deadline, a report on the cargo, unless a particular person of that kind is exempted from doing so because—
 - (a) that person has been advised by the Director-General that 1 or more other persons of that kind have already done so; or
 - (b) under this paragraph, and for another reason, the Director-General approves that person's being exempted from doing so.
- (3) The prescribed deadline may differ depending on the class or description of the craft, or on the class or description of the person responsible, or both, and may be earlier than the otherwise applicable prescribed deadline if—
 - (a) an emergency or an urgent situation has arisen; and
 - (b) the emergency or the urgent situation creates a risk of significant harm to human health, the environment, or the economy; and

- (c) the earlier giving of the report is necessary to avoid or mitigate the risk.
- (4) This section does not limit, and is not limited by, section 17(11)(b)(iii).

Persons who carry out duty to give report

- (5) A person is, for this section's purposes, responsible for the carriage of cargo on a craft only if the person (whether or not the person owns, or has any proprietary interest of any kind in, all or any part of the cargo) is—
 - (a) the person in charge of the craft; or
 - (b) a cargo aggregator (as defined in subsection (11)) who, in the course of that cargo aggregator's business, has (in or outside New Zealand territory) arranged for the carriage of the cargo on the craft under a shared space, or other negotiated volume of cargo, arrangement with the craft's owner or operator.
- (6) The duty of the person in charge of the craft to give the report may be performed, on that person's behalf, by—
 - (a) an owner of the craft; or
 - (b) an operator of the craft; or
 - (c) an agent of an owner of the craft; or
 - (d) an agent of an operator of the craft.

Requirements for report

- (7) The report must contain such information relating to the cargo (being information that is genuine, not erroneous in a material particular, and not misleading) as may be prescribed.
- (8) The report must be accompanied by such supporting documents (being documents each of which is genuine, not erroneous, and not misleading) as the Director-General may require.
- (9) The prescribed information relating to the cargo, or supporting documents required under subsection (8), or both, may differ depending on the class or description of the craft.

Form and manner in which report given

- (10) The person who is carrying out the duty to give the report must ensure that it is given in an approved form and manner.

Cargo aggregator defined

- (11) **Cargo aggregator**, in subsection (5)(b), means a person who, for reward, aggregates cargo (being cargo to be carried for different people) for carriage together on a craft—
 - (a) in bulk cargo containers, or otherwise; and
 - (b) under a shared space, or other negotiated volume of cargo, arrangement with the craft's owner or operator.

Section 17A: inserted, on 24 June 2014, by section 6 of the Biosecurity (Border Processing—Trade Single Window) Amendment Act 2014 (2014 No 11).

18 Arrival of craft in New Zealand

- (1) The person in charge of any craft that arrives at a place in New Zealand—
 - (a) shall, if—
 - (i) the person has not notified the Director-General under section 17;
or
 - (ii) the place is not the port or destination notified (or, as the case may be, last notified) under section 17,—
give the Director-General notice of where and (approximately) when the craft arrived; and
 - (b) shall prevent risk goods from leaving the craft without the permission of an inspector.
- (2) The person in charge of any such craft shall, if so required by an inspector, pay a bond for such amount not exceeding \$10,000 as the inspector may require to secure due compliance with subsection (1)(b).

Compare: 1967 No 50 s 18

19 Persons in charge of certain craft to obey directions of inspector or authorised person

- (1) This section applies to a craft, and place in New Zealand, if—
 - (a) the craft arrives in New Zealand there; or
 - (b) the craft is carrying risk goods that it was carrying when it arrived in New Zealand at some other place.
- (2) Where this section applies to a craft and place, the person in charge of the craft shall—
 - (a) obey every reasonable direction given by an inspector as to—
 - (i) the movement of the craft in the place; or
 - (ii) the unloading or discharge of risk goods or the disembarkation of crew or passengers from the craft; or
 - (iii) measures (including any bond required under section 18(2)) to ensure that any risk goods not intended to be unloaded or discharged from the craft are maintained in a secure place under the control of that person; and
 - (b) within the required time or times, deliver to an inspector a report, in such manner and form, and containing such particulars verified by declaration, and with such supporting documents, as may be required; and
 - (c) answer all questions relating to the craft or its cargo, crew, passengers, stores, or voyage, asked by an inspector;—

and every person disembarking from the craft shall, on request by an inspector, make his or her baggage available for inspection by the inspector.

Import health standards

Heading: replaced, on 26 November 1997, by section 12(a) of the Biosecurity Amendment Act 1997 (1997 No 89).

20 Import health permits

[Repealed]

Section 20: repealed, on 26 November 1997, by section 12(b) of the Biosecurity Amendment Act 1997 (1997 No 89).

21 Criteria for issue of import health permits

[Repealed]

Section 21: repealed, on 26 November 1997, by section 12(b) of the Biosecurity Amendment Act 1997 (1997 No 89).

22 Meaning of import health standard

- (1) An import health standard specifies requirements to be met for the effective management of risks associated with importing risk goods, including risks arising because importing the goods involves or might involve an incidentally imported new organism.
- (2) An import health standard must include requirements that apply before 1 or more of the following actions may be taken:
 - (a) the risk goods are imported;
 - (b) the risk goods are moved from a biosecurity control area;
 - (c) the risk goods are moved from a transitional facility;
 - (d) the risk goods are given a biosecurity clearance.
- (3) An import health standard may also include post-clearance requirements.
- (4) An import health standard must do the following:
 - (a) specify the class or description of goods to which it applies; and
 - (b) specify that it applies to goods of a class or description imported from—
 - (i) a country or countries specified; or
 - (ii) countries of a class or description specified; or
 - (iii) a location or locations specified; or
 - (iv) all countries.
- (5) An import health standard may specify requirements in any appropriate manner, including, but not limited to, 1 or more of the following:
 - (a) measures to be applied to the goods before or after importation into New Zealand:

- (b) evidence or information to be provided about the measures or the goods:
 - (c) a statement of the outcome to be achieved and the criteria to determine whether the outcome has been achieved.
- (6) An import health standard may specify—
- (a) information that the importer of goods to which the standard applies must provide to the Director-General:
 - (b) the period before the goods' arrival in New Zealand by which the importer must provide the information:
 - (c) the form and manner in which the importer must provide the information.
- (7) Post-clearance requirements in an import health standard may also specify the following:
- (a) the class or description of persons to whom the requirements apply:
 - (b) the use to which the goods must be put:
 - (c) the restrictions or conditions on the use of the goods:
 - (d) the duration of the requirements:
 - (e) any other matters reasonably necessary for the effective implementation of the requirements.

Section 22: replaced, on 18 September 2012, by section 20 of the Biosecurity Law Reform Act 2012 (2012 No 73).

22A Process for independent review panel to be established

[Repealed]

Section 22A: repealed, on 18 September 2012, by section 20 of the Biosecurity Law Reform Act 2012 (2012 No 73).

23 From draft to recommendation

- (1) A chief technical officer begins the process of making an import health standard by analysing or assessing the risks associated with importing a class or description of goods.
- (2) If the officer considers that a standard could effectively manage the risks, the officer may draft a proposed standard.
- (3) The officer must consult the following persons about the draft standard:
 - (a) the chief executive of every department whose responsibilities for human health or natural resources may be adversely affected by it; and
 - (b) any other persons the officer considers to be representative of the classes of persons having an interest in it.
- (4) In the course of developing the version of the standard for recommendation to the Director-General, the officer—
 - (a) must have regard to the matters raised by the persons consulted; and

- (b) must have regard to the following matters in relation to goods of the class or description proposed for coverage by the standard:
 - (i) the likelihood that the goods will import organisms;
 - (ii) the nature of the organisms that the goods may import;
 - (iii) the possible effect on human health, the New Zealand environment, and the New Zealand economy of the organisms that the goods may import;
 - (iv) New Zealand's obligations under international agreements other than the SPS Agreement; and
- (c) must be satisfied that the requirements proposed for inclusion in the standard are consistent with New Zealand's obligations under the SPS Agreement; and
- (d) must have regard to the following matters in relation to goods of the class or description proposed for coverage by the standard and the requirements proposed for inclusion in the standard:
 - (i) the extent to which the requirements reduce or manage the likelihood of adverse effects from organisms that may be imported on the goods or in association with the goods;
 - (ii) the extent to which the requirements reduce or manage the impacts of adverse effects from organisms that may be imported on the goods or in association with the goods; and
- (e) may have regard to the following matters in relation to goods of the class or description proposed for coverage by the standard and the requirements proposed for inclusion in the standard:
 - (i) the direct cost of the requirements on importers;
 - (ii) the direct cost of the requirements on the Crown;
 - (iii) other economic factors involved in implementing the requirements;
 - (iv) technical and operational factors involved in implementing the requirements; and
- (f) must ensure, in relation to post-clearance requirements proposed for inclusion in the standard, that—
 - (i) there is an identifiable class of persons who will be subject to the requirements; and
 - (ii) it is reasonably practicable to notify the persons who will be subject to the requirements about the requirements; and
 - (iii) the requirements are reasonably capable of being enforced; and
- (g) may have regard to any other matters that the officer considers relevant to achieving the purpose of this Part.

- (5) The officer then recommends to the Director-General that the Director-General issue the standard.

Section 23: replaced, on 18 September 2012, by section 20 of the Biosecurity Law Reform Act 2012 (2012 No 73).

24 Review

- (1) A person consulted under section 23(3)(b) may raise with the Director-General the question of whether scientific evidence about which the person raised a significant concern received sufficient regard in the development of the standard.
- (2) The Director-General must ensure that there is a process to establish an independent review panel to review the question of whether scientific evidence about which a person has raised a significant concern received sufficient regard in the development of the standard.
- (3) The process must deal with—
- (a) the criteria for setting up the panel; and
 - (b) how the Director-General will appoint the panel members, including the knowledge and experience that members must have; and
 - (c) the procedures to be followed by—
 - (i) a person consulted under section 23(3)(b); and
 - (ii) the panel in undertaking its review; and
 - (d) the reporting requirements for the panel.
- (4) If a panel reports to the Director-General, the Director-General must, as soon as reasonably practicable,—
- (a) take the panel’s findings and recommendations into account; and
 - (b) determine the issue in dispute; and
 - (c) give reasons for the determination.

Section 24: replaced, on 18 September 2012, by section 20 of the Biosecurity Law Reform Act 2012 (2012 No 73).

24A Issue

- (1) After receiving the officer’s recommendation under section 23(5) and complying with section 24(4), if it applies, the Director-General must decide whether or not to issue a standard.
- (2) If the Director-General decides to issue a standard, he or she must—
- (a) decide on the date on which the standard is to come into force; and
 - (b) issue the standard with the date in it.
- (3) The Director-General is not required to issue a standard for goods of a particular class or description if the Director-General considers that the requirements that could be imposed in the standard would not be sufficient to enable the purpose of this Part to be achieved.

Section 24A: inserted, on 18 September 2012, by section 20 of the Biosecurity Law Reform Act 2012 (2012 No 73).

24B Amendment, revocation, suspension, and reinstatement

Amendment and revocation

- (1) Sections 23 to 24A apply, to the extent to which they are relevant and reading in any necessary modifications, to—
 - (a) proposed amendments to an import health standard:
 - (b) a proposal to revoke an import health standard.
- (2) However, if a chief technical officer considers that the standard needs to be amended or revoked urgently or that a proposed amendment is minor, the officer is not required to comply with section 23(3).

Suspension

- (3) Subsections (4) and (5) apply if a chief technical officer believes on reasonable grounds that circumstances or knowledge have changed in such a way as to cause the requirements in an import health standard to no longer enable the purposes of this Part to be achieved.
- (4) The officer may recommend to the Director-General the suspension of the standard.
- (5) After receiving the officer's recommendation, the Director-General may suspend the standard.

Reinstatement

- (6) Subsections (7) and (8) apply if a chief technical officer believes on reasonable grounds that circumstances or knowledge have changed in such a way as to cause the requirements in a suspended import health standard to again enable the purposes of this Part to be achieved.
- (7) The officer may recommend to the Director-General the reinstatement of the standard.
- (8) After receiving the officer's recommendation, the Director-General may reinstate the standard.

Section 24B: inserted, on 18 September 2012, by section 20 of the Biosecurity Law Reform Act 2012 (2012 No 73).

24C Publication

- (1) The Director-General must maintain a register of current import health standards.
- (2) The register must be available for the public to read free of charge—
 - (a) at the office of the Director-General during normal office hours; or
 - (b) on an Internet site maintained by or on behalf of the Ministry.

Section 24C: inserted, on 18 September 2012, by section 20 of the Biosecurity Law Reform Act 2012 (2012 No 73).

24D Compliance

Post-clearance requirements

- (1) A person to whose goods post-clearance requirements in an import health standard apply must—
 - (a) take all reasonable steps to ensure that the goods comply with the requirements; and
 - (b) if required by an inspector, do the following:
 - (i) provide the inspector with a declaration in an approved form setting out the steps taken to comply with the requirements; and
 - (ii) provide the inspector with the declaration in an approved manner.

Permits

- (2) The Director-General may issue a permit that a standard specifies as a requirement if the Director-General considers it appropriate to do so.

Section 24D: inserted, on 18 September 2012, by section 20 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Craft risk management standards

Heading: inserted, on 18 September 2012, by section 20 of the Biosecurity Law Reform Act 2012 (2012 No 73).

24E Meaning of craft risk management standard

- (1) A craft risk management standard specifies requirements to be met for the effective management of risks that—
 - (a) are associated with the entry of craft into New Zealand territory or the arrival of craft in the EEZ; and
 - (b) are not already covered by, or are not suitable to be covered by, an import health standard.
- (2) A craft risk management standard—
 - (a) must specify the class or description of craft to which it applies;
 - (b) may specify the class or description of activity to which it applies.
- (3) A craft risk management standard must specify that—
 - (a) it applies to the risks specified in the standard; or
 - (b) it applies to all risks except those managed under another enactment; or
 - (c) it applies to all risks.
- (4) A craft risk management standard may specify requirements for craft—
 - (a) entering New Zealand territory;
 - (b) arriving in New Zealand;
 - (c) arriving in the EEZ;
 - (d) while they remain in New Zealand territory.

- (5) A craft risk management standard may specify requirements in any appropriate manner, including, but not limited to, 1 or more of the following:
- (a) measures to be applied:
 - (b) evidence or information to be provided about the measures:
 - (c) a statement of the outcome to be achieved and the criteria to determine whether the outcome has been achieved.
- (6) A craft risk management standard may specify—
- (a) information that must be provided to the Director-General:
 - (b) the period before the craft's arrival in New Zealand by which the information must be provided:
 - (c) the form and manner in which the information must be provided.

Section 24E: inserted, on 18 September 2012, by section 20 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 24E(1)(a): amended, on 26 March 2015, by section 4 of the Biosecurity Amendment Act 2015 (2015 No 8).

24F From draft to recommendation

- (1) A chief technical officer begins the process of making a craft risk management standard by analysing or assessing the risks associated with a class or description of craft.
- (2) If the officer considers that a standard could assist in effectively managing the risks, the officer may draft a proposed standard.
- (3) The chief technical officer must consult the following persons about the draft standard:
- (a) the chief executive of every department whose responsibilities for natural resources or human health may be adversely affected by it; and
 - (b) any other persons the chief technical officer considers to be representative of the classes of persons having an interest in it.
- (4) In the course of developing the version of the standard for recommendation to the Director-General, the officer—
- (a) must have regard to the matters raised by the persons consulted; and
 - (b) must have regard to the following matters in relation to craft of the class or description proposed for coverage by the standard:
 - (i) the likelihood that the craft will import organisms into New Zealand territory;
 - (ii) the nature of the organisms that the craft may import into New Zealand territory;
 - (iii) the possible effect on human health, the New Zealand environment, and the New Zealand economy of the organisms that the craft may import into New Zealand territory:

- (iv) New Zealand's obligations under international agreements; and
 - (c) must have regard to the following matters in relation to craft of the class or description proposed for coverage by the standard and the requirements proposed for inclusion in the standard:
 - (i) the extent to which the requirements reduce or manage the likelihood of adverse effects from organisms that may be imported in or on the craft:
 - (ii) the extent to which the requirements reduce or manage the impacts of adverse effects from organisms that may be imported in or on the craft; and
 - (d) may have regard to the following matters in relation to craft of the class or description proposed for coverage by the standard and the requirements proposed for inclusion in the standard:
 - (i) the direct cost of the requirements on owners or operators, or the persons in charge, of craft:
 - (ii) the direct cost of the requirements on the Crown:
 - (iii) other economic factors involved in implementing the requirements:
 - (iv) technical and operational factors involved in implementing the requirements; and
 - (e) may have regard to any other matters that the officer considers relevant to achieving the purpose of this Part.
- (5) The officer then recommends to the Director-General that the Director-General issue the standard.

Section 24F: inserted, on 18 September 2012, by section 20 of the Biosecurity Law Reform Act 2012 (2012 No 73).

24G Issue

- (1) After receiving the officer's recommendation under section 24F(5), the Director-General must decide whether or not to issue a standard.
- (2) If the Director-General decides to issue a standard, he or she must—
 - (a) decide on the date on which the standard is to come into force; and
 - (b) issue the standard with the date in it.

Section 24G: inserted, on 18 September 2012, by section 20 of the Biosecurity Law Reform Act 2012 (2012 No 73).

24H Amendment, revocation, suspension, and reinstatement

Amendment and revocation

- (1) Sections 24F and 24G apply, to the extent to which they are relevant and reading in any necessary modifications, to—

- (a) proposed amendments to a craft risk management standard;
 - (b) a proposal to revoke a craft risk management standard.
- (2) However, if a chief technical officer considers that the standard needs to be amended or revoked urgently or that a proposed amendment is minor, the officer is not required to comply with section 24F(3).

Suspension

- (3) Subsections (4) and (5) apply if a chief technical officer believes on reasonable grounds that circumstances or knowledge have changed in such a way as to cause the requirements in a craft risk management standard to no longer enable the purposes of this Part to be achieved.
- (4) The officer may recommend to the Director-General the suspension of the standard.
- (5) After receiving the officer's recommendation, the Director-General may suspend the standard.

Reinstatement

- (6) Subsections (7) and (8) apply if a chief technical officer believes on reasonable grounds that circumstances or knowledge have changed in such a way as to cause the requirements in a suspended craft risk management standard to again enable the purposes of this Part to be achieved.
- (7) The officer may recommend to the Director-General the reinstatement of the standard.
- (8) After receiving the officer's recommendation, the Director-General may reinstate the standard.

Section 24H: inserted, on 18 September 2012, by section 20 of the Biosecurity Law Reform Act 2012 (2012 No 73).

24I Publication

- (1) The Director-General must maintain a register of current craft risk management standards.
- (2) The register must be available for the public to read free of charge—
- (a) at the office of the Director-General during normal office hours; or
 - (b) on an Internet site maintained by or on behalf of the Ministry.

Section 24I: inserted, on 18 September 2012, by section 20 of the Biosecurity Law Reform Act 2012 (2012 No 73).

24J Compliance

An operator, or the person in charge, of a craft to which a craft risk management standard applies must—

- (a) take all reasonable steps to comply with the standard; and
- (b) if required by an inspector, do the following:

- (i) provide the inspector with a declaration in an approved form setting out the steps taken to comply with the standard; and
- (ii) provide the inspector with the declaration in an approved manner.

Section 24J: inserted, on 18 September 2012, by section 20 of the Biosecurity Law Reform Act 2012 (2012 No 73).

24K Craft risk management plans

- (1) This section applies if a person—
 - (a) is an owner or an operator, or the person in charge, of a craft; and
 - (b) wants to operate under a craft risk management plan containing requirements that are equivalent to but different from those specified in the applicable craft risk management standard.
- (2) The person must—
 - (a) make the plan; and
 - (b) submit it to the Director-General for approval.
- (3) The Director-General may approve the plan if satisfied that the risks can be managed under the plan to the same extent as, or a greater extent than, they can be managed under the applicable craft risk management standard.
- (4) The Director-General must include in the approval of the plan a statement of the class or description of activity to which it applies.
- (5) The Director-General may include in the approval of the plan a statement of the period for which the approval is valid.
- (6) If the Director-General ceases to be satisfied under subsection (3), the Director-General may—
 - (a) withdraw the approval; or
 - (b) follow the following process:
 - (i) the Director-General informs the person of the aspects of the plan that have ceased to satisfy the Director-General; and
 - (ii) the person may submit draft amendments to the Director-General; and
 - (iii) the Director-General may approve the draft amendments or require other amendments; and
 - (iv) whether or not the person submits draft amendments to the Director-General, the Director-General may withdraw approval of the plan if it is not amended to the Director-General's satisfaction within a reasonable time.
- (7) Throughout the period that the plan has the approval of the Director-General, a person who complies with the plan for an activity to which the plan applies does not have to comply also with the applicable craft risk management standard for the activity.

- (8) An operator, or the person in charge, of a craft to which a craft risk management plan applies must—
- (a) comply with the plan; and
 - (b) if required by an inspector, do the following:
 - (i) provide the inspector with a declaration in an approved form setting out the steps taken to comply with the plan; and
 - (ii) provide the inspector with the declaration in an approved manner.

Section 24K: inserted, on 18 September 2012, by section 20 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Clearance of risk goods

25 Goods to be cleared for entry into New Zealand

- (1) No person may cause or permit any uncleared goods imported on any craft to leave that craft, except to proceed to a transitional facility or a biosecurity control area.
- (2) A person may cause or permit uncleared goods that are in a transitional facility or biosecurity control area to leave the facility or area only if subsection (3) or (4) applies.
- (3) Uncleared goods that are in a transitional facility or biosecurity control area may leave the facility or area to be exported from New Zealand, if an inspector authorises their export.
- (4) Uncleared goods that are in a transitional facility or biosecurity control area may leave the facility or area if an inspector authorises their movement to another transitional facility or biosecurity control area or a containment facility.
- (5) An authorisation may—
- (a) specify how the goods must be moved;
 - (b) specify a time period within which the goods must be moved;
 - (c) specify how the goods must be dealt with at their destination.
- (6) An authorisation may impose conditions.
- (7) An authorisation may be given to—
- (a) a facility operator;
 - (b) a person in charge of the goods in any capacity at a particular time;
 - (c) another person in charge of the goods in any capacity at the same or a later time;
 - (d) a person in possession of the goods at a particular time;
 - (e) another person in possession of the goods at the same or a later time.
- (8) A person to whom an inspector gives an authorisation must—
- (a) act within its terms; and

- (b) take all reasonable steps to communicate its terms to all other persons who come into possession or control of the goods before they are given a biosecurity clearance; and
 - (c) take all other reasonable steps to ensure that other persons act within its terms.
- (9) A person who comes into possession or control of the goods before they are given a biosecurity clearance and has had the terms of the authorisation communicated under subsection (8)(b) must act within the terms.

Section 25: replaced, on 26 November 1997, by section 14 of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 25(2): replaced, on 18 September 2012, by section 21 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 25(3): replaced, on 18 September 2012, by section 21 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 25(4): inserted, on 18 September 2012, by section 21 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 25(5): inserted, on 18 September 2012, by section 21 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 25(6): inserted, on 18 September 2012, by section 21 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 25(7): inserted, on 18 September 2012, by section 21 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 25(8): inserted, on 18 September 2012, by section 21 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 25(9): inserted, on 18 September 2012, by section 21 of the Biosecurity Law Reform Act 2012 (2012 No 73).

26 Clearances by inspectors

- (1) An inspector must not give a clearance for the entry into New Zealand of goods contrary to section 27 but may give a clearance if satisfied as required by section 27.
- (2) An inspector must not give a clearance for the entry into New Zealand of goods contrary to section 28.

Section 26: replaced, on 18 September 2012, by section 22 of the Biosecurity Law Reform Act 2012 (2012 No 73).

27 Requirements for clearances

- (1) An inspector must not give a clearance for goods unless satisfied—
 - (a) that the goods are not risk goods; or
 - (b) that—
 - (i) the goods are of a kind that would not usually be considered as risk goods; and
 - (ii) on or after arrival in New Zealand, the goods may have harboured or contained a harmful organism; and

- (iii) a chief technical officer has issued guidelines, or given directions, on measures that may be applied to manage the risks from the organism effectively; and
 - (iv) the measures have been properly applied; or
 - (c) that—
 - (i) the goods are goods to which an import health standard applies; and
 - (ii) the goods comply with the requirements in the standard for receiving a clearance; or
 - (d) that—
 - (i) the goods are goods to which an import health standard applies; and
 - (ii) the goods do not comply with the requirements in the standard for receiving a clearance; and
 - (iii) a chief technical officer has issued guidelines, or given directions, on measures, different from those in the standard, that may be applied to manage effectively risks of the kind arising from the non-compliance; and
 - (iv) the measures have been properly applied.
- (2) An inspector satisfied as required by subsection (1) must not give a clearance for goods if he or she is aware of any of the following that makes it unwise for them to be given a clearance:
 - (a) circumstances or documents associated with the goods:
 - (b) circumstances or documents associated with the importation of the goods:
 - (c) circumstances or documents associated with the craft on which the goods were imported.
- (3) The Director-General must ensure that the following information is available on an Internet site maintained by or on behalf of the Ministry:
 - (a) the guidelines and directions referred to in subsection (1)(b)(iii) and (d)(iii):
 - (b) the following details about decisions to give a clearance to goods under subsection (1)(d):
 - (i) the goods given clearance; and
 - (ii) the nature of the non-compliance with the requirements in an applicable import health standard; and
 - (iii) the reasons for giving the clearance.

Section 27: replaced, on 18 September 2012, by section 23 of the Biosecurity Law Reform Act 2012 (2012 No 73).

27A Post-clearance conditions on clearances

- (1) An inspector who gives a biosecurity clearance under section 26 may impose post-clearance conditions on the goods.
- (2) The inspector may impose only such conditions as are approved by a chief technical officer specifically or generally.
- (3) A chief technical officer must not approve conditions that are inconsistent with relevant post-clearance requirements of an applicable import health standard.
- (4) The conditions may,—
 - (a) specify the use to which the goods must be put:
 - (b) specify the restrictions or conditions on the use of the goods:
 - (c) specify how long a restriction or condition lasts by reference to a period of time, a date, or an event:
 - (d) specify how the goods must be managed or disposed of:
 - (e) specify the place or area within which the goods must be kept, managed, or used:
 - (f) require notification of a change in circumstances that affects the goods:
 - (g) require reporting to an inspector or another specified person in specified circumstances on specified matters:
 - (h) deal with any other matters reasonably necessary for the effective management of the risks associated with the goods.

Section 27A: inserted, on 18 September 2012, by section 23 of the Biosecurity Law Reform Act 2012 (2012 No 73).

28 Restrictions on giving clearances

- (1) An inspector must not give a biosecurity clearance for goods that are or contain an organism specified in Schedule 2 of the Hazardous Substances and New Organisms Act 1996 or for a new organism.
- (1A) However, subsection (1) does not prohibit an inspector from giving a biosecurity clearance for goods the importation of which involves, or might involve, an incidentally imported new organism.
- (2) Where any new organism is an organism for which—
 - (a) the Authority has given approval for importation into containment in accordance with sections 42 or 45 of the Hazardous Substances and New Organisms Act 1996: and
 - (b) there is in existence a containment facility approved as meeting the standard set by the Authority; and
 - (c) the organism is able to go to that facility,—any inspector may authorise that organism to go to that containment facility.

Section 28: replaced, on 29 July 1998, by section 130 of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 28(1A): inserted, on 9 April 2008, by section 7 of the Biosecurity Amendment Act (No 2) 2008 (2008 No 21).

28A Dealing with suspected new organism

- (1) Any inspector may seize any organism which the inspector has reason to believe may be a new organism.
- (2) The provisions of sections 116 and 117 apply to any organism seized under subsection (1) as if that organism were unauthorised goods.
- (3) A chief technical officer may permit an organism seized under this section to be held in the custody of the Director-General for so long as is necessary for the importer to apply to the Authority for a determination under section 26 of the Hazardous Substances and New Organisms Act 1996 that the organism is, or is not, a new organism.
- (4) Where an organism is held in accordance with this section, the estimated costs and expenses of the custody and maintenance of the organism must be paid in advance to the Director-General by the importer.
- (5) When the Director-General's custody of an organism ceases, the Director-General must calculate the actual and reasonable costs and expenses of holding the organism and, if those actual and reasonable costs—
 - (a) exceed the amount paid in accordance with subsection (4), the balance of the costs and expenses are recoverable as a debt due to the Crown from the importer:
 - (b) are less than the amount paid in accordance with subsection (4), the overpayment must be refunded to the importer.
- (6) Where any organism held under subsection (3) is declared to be a new organism, the chief technical officer may, either generally or in any particular case, give any reasonable directions as to the disposal of, or any other dealing with, that organism, but must not give a biosecurity clearance for that organism.

Section 28A: inserted, on 29 July 1998, by section 130 of the Biosecurity Amendment Act 1997 (1997 No 89).

28B Biosecurity clearance for certain new organisms and qualifying organisms

Section 28 does not apply to organisms approved under the following sections of the Hazardous Substances and New Organisms Act 1996:

- (a) section 38BA:
- (b) section 38C:
- (c) section 38I:
- (d) section 48:
- (e) section 49F.

Section 28B: replaced, on 18 September 2012, by section 24 of the Biosecurity Law Reform Act 2012 (2012 No 73).

29 Restricted organisms to be contained

- (1) No person may cause or permit any restricted organism that is in a transitional facility, a biosecurity control area, or a containment facility to leave that facility or area, except—
 - (a) to proceed, in accordance with the authority of an inspector, to a transitional facility, a biosecurity control area, or a containment facility; or
 - (b) in accordance with the authority of an inspector, to be exported from New Zealand.
- (2) Authority to move a restricted organism given by an inspector in accordance with this section may be given subject to conditions.

Section 29: replaced, on 26 November 1997, by section 16 of the Biosecurity Amendment Act 1997 (1997 No 89).

Inspections, declarations, etc

30 Uncleared imports

- (1) An inspector may require a person arriving in New Zealand to surrender to an inspector uncleared goods that are risk goods that the person has in his or her possession or under his or her control.
- (1A) The purpose for which the inspector may exercise the power in subsection (1) is to enable the goods to be disposed of under this Act.
- (1B) An inspector may require a person arriving in New Zealand to make a declaration about 1 or more of the following in a manner specified by the inspector:
 - (a) the person's name:
 - (b) the person's date of birth:
 - (c) the person's nationality:
 - (d) the person's country of birth:
 - (e) the person's occupation:
 - (f) the person's passport number:
 - (g) any evidence of identity that the person has that is not a passport:
 - (h) the person's residential address and contact details:
 - (i) where and when the person has travelled before and where and when the person will travel in future:
 - (j) whether the person has goods of a kind specified in the declaration in his or her possession, including as part of his or her personal effects or baggage:
 - (k) the place where goods of a kind specified in the declaration were acquired:
 - (l) the origin of goods of a kind specified in the declaration:

- (m) details of the flight or voyage on which the person arrived in New Zealand.
- (2) Every person arriving in New Zealand shall permit any inspector to inspect and examine any specified goods in his or her possession as part of his or her personal effects or baggage, and afford to the inspector all reasonable facilities and assistance in carrying out the inspection and examination.

Compare: 1967 No 50 s 22

Section 30(1): replaced, on 18 September 2012, by section 25 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 30(1A): inserted, on 18 September 2012, by section 25 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 30(1B): inserted, on 18 September 2012, by section 25 of the Biosecurity Law Reform Act 2012 (2012 No 73).

30A Processing unaccompanied goods

- (1) Where any imported goods other than goods inspected, examined, or surrendered in accordance with section 30 or section 35, are in a transitional facility or biosecurity control area, an inspector may, for the purpose of determining whether the goods are, or contain, risk goods,—
 - (a) open any bag, box, parcel, container, or other thing containing the goods:
 - (b) inspect the goods.
- (2) An inspector may enter a transitional facility or biosecurity control area for the purposes of subsection (1), but must do so—
 - (a) at a reasonable time or times; and
 - (b) in the manner required by section 112.
- (3) Subsections (4) to (9) apply to goods in a transitional facility or biosecurity control area that—
 - (a) are risk goods; or
 - (b) contain risk goods; or
 - (c) are unauthorised goods; or
 - (d) contain unauthorised goods.
- (4) A chief technical officer may give directions that—
 - (a) may apply to the particular goods or to goods of their kind;
 - (b) may be about disposal, treatment, or any other dealing;
 - (c) must be reasonable.
- (5) A person to whom the directions are given must comply with them.
- (6) A chief technical officer may offer the importer or owner of the goods the option of exporting the goods or returning them to their place of origin at the importer's or owner's expense.
- (7) A chief technical officer may—

- (a) permit the goods to be held in the Director-General's custody for as long as is necessary for the importer to obtain a biosecurity clearance:
 - (b) require payment in advance of the estimated costs and expenses of the custody and maintenance of the goods.
- (8) A chief technical officer exercising powers under any of subsections (4), (6), or (7) must, as far as practicable, act in a manner that is consistent with avoiding or minimising loss to the importer or owner of the goods while achieving the purpose of this Part.
- (9) If the goods in a transitional facility or biosecurity control area are an endangered species, as defined in section 3 of the Trade in Endangered Species Act 1989, a chief technical officer must—
- (a) consult the Director-General of Conservation about the disposal of the goods; and
 - (b) dispose of the goods as the chief technical officer thinks fit.

Section 30A: inserted, on 26 November 1997, by section 17 of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 30A(1): amended, on 8 July 2003, by section 5 of the Biosecurity Amendment Act 2003 (2003 No 38).

Section 30A(2): replaced, on 18 September 2012, by section 26 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 30A(3): replaced, on 18 September 2012, by section 26 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 30A(4): inserted, on 18 September 2012, by section 26 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 30A(5): inserted, on 18 September 2012, by section 26 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 30A(6): inserted, on 18 September 2012, by section 26 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 30A(7): inserted, on 18 September 2012, by section 26 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 30A(8): inserted, on 18 September 2012, by section 26 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 30A(9): inserted, on 18 September 2012, by section 26 of the Biosecurity Law Reform Act 2012 (2012 No 73).

31 Boarding of craft

- (1) Subject to subsection (2), an inspector may, for the purpose of ascertaining the presence of risk goods, require the person in charge of—
- (a) any craft, used for the transportation of people or goods, or both, by air, that is within New Zealand territory; or
 - (b) any craft, used for the transportation of people or goods, or both, by sea, that is within the area of sea adjacent to New Zealand and bounded by the outer limits of the contiguous zone of New Zealand—
- to—

- (c) bring the craft to for boarding on being so directed by an inspector; and
 - (d) by all reasonable means, facilitate the boarding of the craft by an inspector; and
 - (e) by all reasonable means, facilitate the inspection of the craft, including its exterior surfaces, by an inspector.
- (2) A craft carrying an inspector who gives a direction under this section must be clearly identifiable as being a craft in the service of the Crown.

Section 31(1): replaced, on 1 August 1996, by section 2 of the Biosecurity Amendment Act (No 2) 1996 (1996 No 78).

Section 31(1)(d): replaced, on 18 September 2012, by section 27 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 31(1)(e): inserted, on 18 September 2012, by section 27 of the Biosecurity Law Reform Act 2012 (2012 No 73).

32 Powers relating to craft

- (1) Subject to subsection (2), any person who has the power under any provision in this Act to enter any craft and who has reasonable grounds to suspect that a craft in New Zealand territory contains any unwanted organism may direct the master or other person in charge of the craft to—
- (a) move it to and stop it at any place within New Zealand territory; or
 - (b) move it and keep it outside New Zealand territory; or
 - (c) take any specified action on or in respect of the craft.
- (2) Before exercising a power conferred by subsection (1), the person who proposes to exercise the power shall consult the chief executives of—
- (a) the New Zealand Customs Service; and
 - (b) the Ministry for Primary Industries.

Section 32(2)(a): amended, on 1 October 1996, by section 289(1) of the Customs and Excise Act 1996 (1996 No 27).

33 Risk goods on board craft

- (1) Where there are any risk goods on board or attached to the outside of a craft that has entered New Zealand territory from outside New Zealand territory, an inspector may direct the master or other person in charge of the craft to take (as the master or person thinks fit) one of the following steps:
- (a) deal with the goods in a manner specified by the inspector while the craft is in New Zealand territory; or
 - (b) move the craft outside New Zealand territory (immediately, or within a period specified by the inspector); or
 - (c) destroy the goods in a place and manner approved by the inspector for the purpose.

- (2) Subject to subsection (3), where the master or person in charge of a craft fails or refuses to comply with a direction under subsection (1), any inspector may—
- (a) direct the master or other person in charge of the craft to move the craft outside New Zealand territory (immediately, or within a period specified by the inspector); or
 - (b) seize, destroy, or deal with the risk goods concerned.
- (3) Where—
- (a) an inspector gives a direction under subsection (1) in respect of goods of a particular kind or description on board or attached to the outside of a craft of a particular kind or description; and
 - (b) there are for the time being in force under this Act regulations prescribing the manner in which risk goods of that kind or description should be dealt with while on board or attached to the outside of a craft of that kind or description,—

compliance with those regulations shall be deemed to be a sufficient compliance with the direction.

- (4) Nothing in this section limits or affects the generality of section 32.

Section 33(1): amended, on 18 September 2012, by section 28(1) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 33(2)(b): amended, on 18 September 2012, by section 28(2) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 33(3)(a): amended, on 18 September 2012, by section 28(3) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 33(3)(b): amended, on 18 September 2012, by section 28(3) of the Biosecurity Law Reform Act 2012 (2012 No 73).

34 Disembarkation

- (1) For the purpose of ascertaining the presence of or controlling any risk goods, a person on board a craft that has arrived in New Zealand shall obey every reasonable direction given to the person concerning disembarkation—
- (a) by an inspector; or
 - (b) on the direction of an inspector, by the person in charge of the craft or a crew member of the craft.
- (2) Unless otherwise directed by an inspector, every person arriving in New Zealand shall—
- (a) go directly to a biosecurity control area; and
 - (b) remain there for such reasonable time as an inspector may require to ascertain the presence of any risk goods.
- (3) This subsection applies to a person and a biosecurity control area if the person is required by subsection (2) to go directly to the biosecurity control area and

remain there for such reasonable time as an inspector may require to ascertain the presence of any risk goods.

- (4) An inspector, and any person the inspector calls to the inspector's assistance, may use such force as is reasonably necessary to—
- (a) compel to go to the biosecurity control area concerned a person to whom subsection (3) applies who has been directed by the inspector to go directly there; but—
 - (i) has failed or refused to do so within a reasonable time of being so directed; or
 - (ii) has attempted to go instead to some other place; or
 - (b) detain in the biosecurity control area concerned a person to whom subsection (3) applies who—
 - (i) has been required by the inspector to remain there for a reasonable time to ascertain the presence of any risk goods; but
 - (ii) has attempted to leave the biosecurity control area in contravention of the requirement; or
 - (c) stop, return to, and detain in the biosecurity control area concerned a person to whom subsection (3) applies who has gone to the biosecurity control area, and—
 - (i) has been required by the inspector to remain there for a reasonable time to ascertain the presence of any risk goods; but
 - (ii) has left the biosecurity control area in contravention of the requirement; or
 - (d) stop, return to, and detain in the biosecurity control area concerned a person to whom subsection (3) applies who has gone to the biosecurity control area, but left before the inspector has—
 - (i) required the person to remain there; or
 - (ii) had a reasonable time to ascertain the presence of any risk goods.
- (5) Every person who has disembarked from a craft that has arrived in New Zealand, whether or not the person boarded the craft in New Zealand, shall make his or her accompanying baggage available for inspection by an inspector.

Compare: 1967 No 50 s 22

35 Duties of persons in biosecurity control areas

- (1) A person in a biosecurity control area must answer all questions asked by an inspector about—
- (a) the person's identity;
 - (b) the person's residential address and contact details;

- (c) the presence, nature, origin, or itinerary of goods in the person's possession or under his or her immediate control;
- (d) any other matter on which the inspector requires information.
- (2) The purpose for which the inspector may ask for information under subsection (1)(d) is to exercise a power or carry out a function or duty under this Part.
- (3) A person in a biosecurity control area must, if asked to do so by an inspector, provide the inspector with the person's passport or any evidence of identity that the person has that is not a passport.
- (4) An inspector to whom a passport or evidence of identity is provided under subsection (3)—
 - (a) may take a copy; and
 - (b) may keep the copy for a lawful purpose; and
 - (c) must return the passport or evidence immediately after—
 - (i) inspecting it; or
 - (ii) inspecting and copying it.
- (5) A person in a biosecurity control area must, if asked to do so by an inspector, make available to an inspector goods in the person's possession or under his or her immediate control.
- (6) The purpose for which an inspector may make a request under subsection (5) is to enable an inspector to examine the goods to ascertain whether or not risk goods are present.
- (7) A person in a biosecurity control area must comply with a reasonable direction of an inspector in relation to risk goods.

Section 35: replaced, on 18 September 2012, by section 29 of the Biosecurity Law Reform Act 2012 (2012 No 73).

35A Duty of persons to remain in biosecurity control areas

- (1) This section applies to a person in a biosecurity control area who has arrived in New Zealand.
- (2) The person must remain in the area until the person's arrival in New Zealand is processed by the taking of whichever of the following steps are relevant:
 - (a) consideration by an officer authorised under the Act of the applicability to the person of powers or duties in the Act;
 - (b) a request by an inspector that an officer not present at the area consider exercising a particular power, or carrying out a particular duty, in the Act that the inspector considers—
 - (i) may be applicable to the person; and
 - (ii) may not be exercised or carried out by an officer present; and

- (iii) may be exercised or carried out by the officer to whom the request is made:
 - (c) the lapse of time following the request that is reasonable to allow a response from the officer to whom the request is made:
 - (d) the exercise of a particular power, or the carrying out of a particular duty, in the Act in response to the request if the requested officer decides to exercise the power or carry out the duty:
 - (e) the exercise, as far as practicable, in the area of the powers under the Act that are required to be exercised in the area:
 - (f) the carrying out, as far as practicable, in the area of the duties under the Act that are required to be carried out in the area:
 - (g) compliance by the person with all obligations imposed on him or her under the Act relating to his or her arrival in New Zealand.
- (3) An inspector may direct a person to comply with the person's duties under this section.

Definition for this section

- (4) In this section, **Act** means the Customs and Excise Act 1996 or the Immigration Act 2009.

Section 35A: inserted, on 18 September 2012, by section 29 of the Biosecurity Law Reform Act 2012 (2012 No 73).

36 Movement of risk goods

Any person who moves risk goods within a biosecurity control area shall comply with all reasonable directions given to that person by an inspector concerning the movement of those goods.

Section 36: amended, on 18 September 2012, by section 30 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 36: amended, on 26 November 1997, by section 18 of the Biosecurity Amendment Act 1997 (1997 No 89).

37 Approval of ports as places of first arrival

- (1) The Director-General may, by written notice to the operator of a port, approve a port as a place of first arrival for all craft or craft of specified kinds or descriptions if satisfied that there are available, and capable of operating to approved standards, all arrangements, facilities (other than office and parking facilities), and systems that the Director-General for the time being reasonably requires, in relation to that port, for the purposes of this Part.
- (2) An approval given under subsection (1) may limit the arrival of craft to arrivals for the purposes specified in the approval.
- (3) The Director-General must, when considering the arrangements, facilities, and systems available at a port in accordance with subsection (1), have regard to—

- (a) the alternative arrangements, facilities, and systems that are or could be made available; and
 - (b) the cost to the port operator of each alternative arrangement, facility, and system; and
 - (c) the extent to which each alternative arrangement, facility, and system would assist the Director-General in managing the risks associated with the importation of risk goods.
- (4) All arrangements, facilities (other than office or parking facilities), and systems required in accordance with subsection (1) are available for use by the Crown at no expense to the Crown.
- (5) The Director-General must,—
- (a) within 28 days after approving a port in accordance with subsection (1), publish in the *Gazette* a notice specifying the name of the port, the day on which it was so approved, any limitation on the kind or description of craft for which the port was approved, any limitation on arrivals to specified purposes, and a place where the notice of approval may be inspected; and
 - (b) at all reasonable times make the written notice available for inspection at the place specified in the *Gazette* notice.
- (6) The Director-General must be satisfied of the matters referred to in subsection (1), whether or not all of the arrangements, facilities, and systems are under the control of the operator of the port concerned.
- (7) Before taking any action under this section, the Director-General must consult in accordance with section 37D.
- (8) Where approval is declined under this section, the Director-General must give reasons for his or her decision.
- (9) Where a decision under this section is made by a person acting under the delegated authority of the Director-General, the port operator is entitled to have the decision reviewed by the Director-General.

Section 37: replaced, on 26 November 1997, by section 19 of the Biosecurity Amendment Act 1997 (1997 No 89).

37A Approval of arrival of craft at port not approved as place of first arrival

- (1) A person may request the Director-General's approval for the arrival of a craft at a port that is not approved under section 37 as a place of first arrival for—
- (a) any craft; or
 - (b) craft of the kind or description of the craft to which the request relates; or
 - (c) craft arriving for the purpose that the craft to which the request relates is arriving for.

- (2) The Director-General may approve the arrival of the craft at the port if he or she is satisfied that imposing conditions on the arrival of the craft at the port can manage the risks associated with—
- (a) the importation of risk goods; and
 - (b) the entry of the craft into New Zealand territory.
- (2A) The Director-General may give his or her approval subject to the necessary conditions.
- (3) Before taking action under this section, the Director-General must consult in accordance with section 37D.

Section 37A: inserted, on 26 November 1997, by section 19 of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 37A(1): replaced, on 18 September 2012, by section 31 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 37A(2): replaced, on 18 September 2012, by section 31 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 37A(2A): inserted, on 18 September 2012, by section 31 of the Biosecurity Law Reform Act 2012 (2012 No 73).

37B Suspension of approval

- (1) If the Director-General is no longer satisfied that the provisions of section 37(1) are being met for a port, the Director-General may,—
- (a) by written notice to its operator, suspend the port's approval under section 37(1) for a specified period or until a specified action is taken; or
 - (b) by written notice in the *Gazette*, revoke the port's approval under section 37(1); or
 - (c) by written notice in the *Gazette* and written notice to the port's operator, vary the port's approval under section 37(1) by varying the kind or description of craft for which the port is approved as a place of first arrival, or by varying the purposes of arrival for which the port is approved as a place of first arrival.
- (2) Before taking action under this section, the Director-General must consult in accordance with section 37D.
- (3) In exercising a power under this section, the Director-General must observe the rules of natural justice.
- (4) Where a decision under this section is made by a person acting under the delegated authority of the Director-General, the port operator is entitled to have the decision reviewed by the Director-General.

Section 37B: inserted, on 26 November 1997, by section 19 of the Biosecurity Amendment Act 1997 (1997 No 89).

37C Port operators

- (1) Nothing in section 37 authorises a port operator to require any user of a port—

- (a) to use or patronise facilities under the operator's control; or
 - (b) to contribute, directly or indirectly, towards the expense of operating facilities under the operator's control that the user has not used or patronised.
- (2) No operator of a port may wilfully or recklessly represent that the port is an approved place of first arrival for any craft other than craft specified in the approval.
- (3) No operator may wilfully or recklessly represent that the port is an approved place of first arrival where no approval has been given or an approval has been suspended or revoked.

Section 37C: inserted, on 26 November 1997, by section 19 of the Biosecurity Amendment Act 1997 (1997 No 89).

37D Director-General to consult chief executives

The Director-General must not take any action under sections 37, 37A, or 37B without consulting the chief executives of—

- (a) the New Zealand Customs Service; and
- (b) the Ministry of Health; and
- (c) the New Zealand Police; and
- (d) the Ministry of Transport; and
- (e) every other department of State whose operations may, in the Director-General's opinion, be affected by the action.

Section 37D: inserted, on 26 November 1997, by section 19 of the Biosecurity Amendment Act 1997 (1997 No 89).

38 Importers' records

- (1) An importer must keep records about goods the importer intends to import or imports, in accordance with regulations that may specify—
- (a) the class or description of importer who must keep the records, which may be a class or description that is narrower than the definition of importer in section 2A:
 - (b) the class or description of goods about which records must be kept:
 - (c) the class or description of records that must be kept:
 - (d) the manner in which the records must be kept:
 - (e) the period for which the records must be kept.
- (2) The importer must make the records available to an inspector if an inspector requires them to be made available during the period that the importer must keep them.

Section 38: replaced, on 18 September 2012, by section 32 of the Biosecurity Law Reform Act 2012 (2012 No 73).

39 Approval and cancellation of approval of transitional facilities and containment facilities

- (1) The Director-General may approve standards for building, maintaining, or operating transitional facilities.
- (1A) The Director-General must consult the persons the Director-General considers representative of the classes of persons likely to have an interest in a proposed standard before approving the standard.
- (2) Any person may apply in an approved form and manner to the Director-General for the approval of any place as a transitional facility or a containment facility.
- (2A) The Director-General must consider every application for approval of a place as a containment facility made under subsection (2) and,—
 - (a) if the application complies with the requirements of this Act; and
 - (b) if the place meets the relevant standards approved by the Authority in accordance with the Hazardous Substances and New Organisms Act 1996,—

the Director-General may approve the place as a containment facility.
- (3) The Director-General must consider every application for approval of a place as a transitional facility made under subsection (2) and—
 - (a) if the application complies with the requirements of this Act; and
 - (b) if the place meets the relevant standards approved under subsection (1),—

the Director-General may approve the place as a transitional facility for the purpose specified in the approval.
- (3A) The Director-General may approve the place as a transitional facility on conditions that the Director-General considers necessary or desirable.
- (3B) The Director-General may amend conditions in an approval, remove conditions from an approval, or add conditions to an approval when he or she considers it necessary or desirable to do so.
- (4) A transitional facility approval given in accordance with this section must, where the approval specifies, expire at a time specified in the approval or upon the occurrence of an event specified in the approval.
- (5) A transitional facility approval given in accordance with this section may specify the uncleared goods that may be held in the facility.
- (6) A containment facility approval given in accordance with this section may specify the organisms that may be held in the facility.
- (7) The Director-General may, by written notice to the facility operator, cancel an approval for a transitional facility, or a containment facility, or a part of an approval relating to 1 or more uses of a transitional facility, where—

- (a) the facility no longer complies with the relevant standards; or
 - (b) the Director-General is satisfied that the facility is no longer used for the purpose or 1 or more of the purposes specified in the approval.
- (8) In exercising a power under subsection (7), the Director-General must observe the rules of natural justice.
- (9) The Director-General may, if he or she thinks fit and without an application from any person, declare specified parts of ports approved as places of first arrival to be transitional facilities.

Section 39: replaced, on 26 November 1997, by section 20 of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 39 heading: replaced, on 18 September 2012, by section 33(1) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 39(1): replaced, on 18 September 2012, by section 33(2) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 39(1A): inserted, on 18 September 2012, by section 33(2) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 39(2): amended, on 18 September 2012, by section 33(3) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 39(2A): inserted, on 29 July 1998, by section 131(2) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 39(3): amended, on 29 July 1998, by section 131(1)(b) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 39(3): amended, on 29 July 1998, by section 131(1)(c) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 39(3A): inserted, on 18 September 2012, by section 33(4) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 39(3B): inserted, on 18 September 2012, by section 33(4) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 39(7): amended, on 18 September 2012, by section 33(5) of the Biosecurity Law Reform Act 2012 (2012 No 73).

40 Approval and cancellation of approval of facility operators

- (1) Any person may apply, in an approved form and manner, to the Director-General for approval as the operator of a specified transitional facility or specified containment facility.
- (2) Every application must be accompanied by such further information as the Director-General may require.
- (3) The Director-General must consider every application made under subsection (1).
- (3A) In considering an application, the Director-General may take the matters in subsection (3B) into account in relation to—
- (a) the applicant:
 - (b) a person involved in the management of the applicant:

- (c) an organisation of which the applicant is or was a director or manager.
- (3B) The matters are—
- (a) a serious or repeated failure to comply in the past with a duty imposed by this Act on a facility operator:
 - (b) a conviction for an offence against this Act, the Customs and Excise Act 1996, the Hazardous Substances and New Organisms Act 1996, or any other enactment that regulates the importation of goods:
 - (c) a conviction in New Zealand or another country for an offence relating to fraud or dishonesty:
 - (d) a conviction in New Zealand or another country for an offence relating to a business of a kind that is regulated under this Act or any other enactment administered by the Ministry and involving—
 - (i) management control in New Zealand or another country:
 - (ii) business activities in New Zealand or another country:
 - (e) any circumstances that could lead to a failure to comply in the future with a duty imposed by this Act on a facility operator.
- (3C) The Director-General may approve the applicant as a facility operator if satisfied that the applicant—
- (a) is a fit and proper person to be the operator of the transitional facility or containment facility specified in the application; and
 - (b) is able to comply with the operating standards for the facility.
- (3D) The Director-General may approve the applicant as a facility operator—
- (a) on the condition that the operator will comply with applicable standards; and
 - (b) on any other conditions that the Director-General considers necessary or desirable.
- (3E) The Director-General may amend conditions in an approval, remove conditions from an approval, or add conditions to an approval when he or she considers it necessary or desirable to do so.
- (4) The Director-General may, by written notice to a person, and whether or not the Director-General has suspended the person's approval under section 40D, cancel that person's approval to operate a specified transitional facility or a specified containment facility where—
- (a) the person is no longer operating the facility in compliance with the operating standards for the facility; or
 - (b) the person has ceased to act as operator of the facility; or
 - (c) the person is no longer a fit and proper person to operate the facility.
- (5) In exercising a power under subsection (4), the Director-General must observe the rules of natural justice.

- (6) A facility operator must comply with—
- (a) all the conditions of the facility approval and the operator approval; and
 - (b) all directions given by an inspector relating to goods held at the facility; and
 - (c) all restrictions relating to the release of goods held at the facility communicated to the operator by an inspector.

Section 40: replaced, on 26 November 1997, by section 21 of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 40 heading: replaced, on 18 September 2012, by section 34(1) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 40(1): amended, on 18 September 2012, by section 34(2) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 40(3): replaced, on 18 September 2012, by section 34(3) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 40(3A): inserted, on 18 September 2012, by section 34(3) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 40(3B): inserted, on 18 September 2012, by section 34(3) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 40(3C): inserted, on 18 September 2012, by section 34(3) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 40(3D): inserted, on 18 September 2012, by section 34(3) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 40(3E): inserted, on 18 September 2012, by section 34(3) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 40(4): amended, on 18 September 2012, by section 34(4) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 40(6): replaced, on 18 September 2012, by section 34(5) of the Biosecurity Law Reform Act 2012 (2012 No 73).

40A Suspension of facility approval

- (1) The Director-General may suspend an approval given under section 39 if the Director-General has reasonable grounds to believe that an applicable standard has not been complied with.
- (2) The maximum period of the suspension is 3 months.
- (3) The Director-General may extend the period of a suspension if the Director-General has reasonable grounds to believe that the non-compliance with the applicable standard has not been rectified.
- (4) The period of extension must not exceed 3 months.
- (5) The Director-General must lift a suspension or extension before its period ends if the Director-General has reasonable grounds to believe that the non-compliance occasioning the suspension has been rectified.
- (6) In exercising a power under subsections (1) to (5), the Director-General must observe the rules of natural justice.

- (7) The maximum total period of suspension under this section is 6 months.
- (8) At the end of the maximum total period of suspension, the Director-General may cancel the approval if the Director-General has reasonable grounds to believe that the non-compliance occasioning the suspension has not been rectified.

Section 40A: inserted, on 18 September 2012, by section 35 of the Biosecurity Law Reform Act 2012 (2012 No 73).

40B Notice requirements

- (1) If the Director-General suspends an approval under section 40A(1), the Director-General must give written notice to the facility operator.
- (2) The Director-General must give the notice before the suspension takes effect.
- (3) The notice must specify—
 - (a) the reason for the suspension; and
 - (b) the period of the suspension; and
 - (c) the date on which, or the date and time at which, the suspension starts; and
 - (d) the steps to be taken to enable the suspension to be lifted.
- (4) If the Director-General extends the period of suspension under section 40A(3), the Director-General must give written notice to the facility operator.
- (5) The Director-General must give the notice before the expiry of the original suspension.
- (6) The notice must specify—
 - (a) the reason for the extension; and
 - (b) the period of the extension; and
 - (c) the date on which, or the date and time at which, the extension starts; and
 - (d) the steps to be taken to enable the extension to be lifted.

Section 40B: inserted, on 18 September 2012, by section 35 of the Biosecurity Law Reform Act 2012 (2012 No 73).

40C Effect of suspension and extension

- (1) When a suspension or extension is imposed under section 40A, the Director-General, a chief technical officer, or an inspector may give reasonable directions as to the disposal of, treatment of, or any other dealing with the goods held at the facility.
- (2) The suspension or extension does not affect any other actions that the Director-General, a chief technical officer, or an inspector may take under this Act.

Section 40C: inserted, on 18 September 2012, by section 35 of the Biosecurity Law Reform Act 2012 (2012 No 73).

40D Suspension of operator approval

- (1) The Director-General may suspend an approval given under section 40 if the Director-General has reasonable grounds to believe that—
 - (a) the facility operator has not complied with section 40(6); or
 - (b) the facility operator has committed an offence under section 154N(17).
- (2) The maximum period of the suspension is 3 months.
- (3) The Director-General may extend the period of a suspension if the Director-General has reasonable grounds to believe that the conduct occasioning the suspension has not been rectified.
- (4) The period of extension must not exceed 3 months.
- (5) The Director-General must lift a suspension or extension before its period ends if the Director-General has reasonable grounds to believe that the conduct occasioning the suspension has been rectified.
- (6) In exercising a power under subsections (1) to (5), the Director-General must observe the rules of natural justice.
- (7) The maximum total period of suspension under this section is 6 months.
- (8) At the end of the maximum total period of suspension, the Director-General may cancel the approval if the Director-General has reasonable grounds to believe that the non-compliance occasioning the suspension has not been rectified.

Section 40D: inserted, on 18 September 2012, by section 35 of the Biosecurity Law Reform Act 2012 (2012 No 73).

40E Notice requirements

- (1) If the Director-General suspends an approval under section 40D(1), the Director-General must give written notice to the facility operator.
- (2) The Director-General must give the notice before the suspension takes effect.
- (3) The notice must specify—
 - (a) the reason for the suspension; and
 - (b) the period of the suspension; and
 - (c) the date on which, or the date and time at which, the suspension starts; and
 - (d) the steps to be taken to enable the suspension to be lifted.
- (4) If the Director-General extends the period of suspension under section 40D(3), the Director-General must give written notice to the facility operator.
- (5) The Director-General must give the notice before the expiry of the original suspension.
- (6) The notice must specify—
 - (a) the reason for the extension; and

- (b) the period of the extension; and
- (c) the date on which, or the date and time at which, the extension starts; and
- (d) the steps to be taken to enable the extension to be lifted.

Section 40E: inserted, on 18 September 2012, by section 35 of the Biosecurity Law Reform Act 2012 (2012 No 73).

40F Effect of suspension and extension

- (1) When a suspension or extension is imposed under section 40D, the Director-General, a chief technical officer, or an inspector may give reasonable directions as to the disposal of, treatment of, or any other dealing with the goods held at the facility.
- (2) The suspension or extension does not affect any other actions that the Director-General, a chief technical officer, or an inspector may take under this Act.

Section 40F: inserted, on 18 September 2012, by section 35 of the Biosecurity Law Reform Act 2012 (2012 No 73).

41 Designation of quarantine area

- (1) The Director-General may by notice in the *Gazette* designate any place to be a quarantine area, and may at any time revoke or vary such a designation.
- (2) An inspector may, by the display of a clearly visible notice within a biosecurity control area, designate any place within that biosecurity control area to be a quarantine area.
- (3) A designation under subsection (2) shall ordinarily expire after 48 hours, or when sooner revoked; but it may be extended once by an inspector for a further period of not more than 48 hours.
- (4) Every quarantine area shall be under the direct control of an inspector.
- (5) No person shall, knowing that an area is a quarantine area, enter, leave, or use the area for any purpose, without the permission of the inspector who has control of the area.

Definitions for information-sharing provisions

Heading: inserted, on 6 April 2012, by section 4 of the Biosecurity Amendment Act 2012 (2012 No 26).

41A Definitions

- (1) In this section and sections 41B to 41I, unless the context otherwise requires,—
 - access**, in relation to any information, means search, inspect, copy, process, analyse, manipulate, receive, or otherwise make use of the information in a way that is consistent with the purpose for which access has been allowed
 - agency** includes a government department or Crown entity
 - border information**—

- (a) means information—
 - (i) that is required to be supplied to the Ministry or the Customs by or under this Act or the Customs and Excise Act 1996, or both, for a border protection purpose; or
 - (ii) that is otherwise lawfully supplied or collected for a border protection purpose; and
- (b) includes, without limitation, information about—
 - (i) goods, persons, or craft:
 - (ii) import or export transactions:
 - (iii) importers or exporters; and
- (c) also includes data or information that is derived from, or related to, any information referred to in paragraphs (a) and (b) or any analysis of that information

border protection purpose means any lawful purpose relating to, or connected with, the performance or exercise of either or both of the following, as the case may be:

- (a) a Ministry-related border management function:
- (b) a customs-related border management function

chief executive means the chief executive of the Customs

computer system means the whole, or any part, of all or any of the 1 or more items described in the following paragraphs (each of which items includes all related input, output, processing, storage, software, or communication facilities, and stored data):

- (a) a computer:
- (b) 2 or more interconnected computers:
- (c) any communication links between computers or to remote terminals or another device:
- (d) 2 or more interconnected computers combined with any communication links between computers or to remote terminals or any other device

Customs—

- (a) means the New Zealand Customs Service; and
- (b) includes the chief executive and any Customs officer

customs-related border management function means any function, duty, or power imposed or conferred on the Customs by or under the Customs and Excise Act 1996 that is necessary—

- (a) to achieve the purpose of that Act; or
- (b) for the administration of that Act

Joint Border Management System or **JBMS** has the meaning given in section 131A of the Customs and Excise Act 1996

Ministry includes—

- (a) the Director-General; and
- (b) any inspector appointed under section 103

Ministry-related border management function means—

- (a) any function, duty, or power imposed or conferred on the Ministry by or under this Part:
 - (b) any other function, duty, or power imposed or conferred on the Ministry by or under this Act that is necessary—
 - (i) to achieve the purpose of this Part; or
 - (ii) for the administration of this Part:
 - (c) any function, duty, or power imposed or conferred on the Ministry by or under any of the following Acts in relation to the effective management of risks associated with the movement of goods, persons, or craft into or out of New Zealand:
 - (i) the Food Act 2014:
 - (ii) the Hazardous Substances and New Organisms Act 1996:
 - (iii) the Agricultural Compounds and Veterinary Medicines Act 1997:
 - (iv) the Animal Products Act 1999:
 - (v) the Wine Act 2003:
 - (vi) any other Act that is specified by the Governor-General, by Order in Council made under section 165A, to be an Act for the purposes of this definition.
- (2) For the purposes of the definition of computer system, a computer is interconnected with another computer if it can be lawfully used to provide access to that other computer—
- (a) with or without access information; and
 - (b) whether or not either or both computers are currently turned on; and
 - (c) whether or not access is currently occurring.

Section 41A: inserted, on 6 April 2012, by section 4 of the Biosecurity Amendment Act 2012 (2012 No 26).

Section 41A(1) **biosecurity-related border management function**: repealed, on 24 June 2014, by section 7(1) of the Biosecurity (Border Processing—Trade Single Window) Amendment Act 2014 (2014 No 11).

Section 41A(1) **border protection purpose** paragraph (a): amended, on 24 June 2014, by section 7(2) of the Biosecurity (Border Processing—Trade Single Window) Amendment Act 2014 (2014 No 11).

Section 41A(1) **computer system**: replaced, on 24 June 2014, by section 7(3) of the Biosecurity (Border Processing—Trade Single Window) Amendment Act 2014 (2014 No 11).

Section 41A(1) **Joint Border Management System** or **JBMS**: replaced, on 24 June 2014, by section 7(4) of the Biosecurity (Border Processing—Trade Single Window) Amendment Act 2014 (2014 No 11).

Section 41A(1) **Ministry-related border management function**: inserted, on 24 June 2014, by section 7(1) of the Biosecurity (Border Processing—Trade Single Window) Amendment Act 2014 (2014 No 11).

Section 41A(1) **Ministry-related border management function** paragraph (c)(i): amended, on 1 March 2016, by section 447 of the Food Act 2014 (2014 No 32).

Section 41A(2): inserted, on 24 June 2014, by section 7(5) of the Biosecurity (Border Processing—Trade Single Window) Amendment Act 2014 (2014 No 11).

Interim arrangements for information sharing

Heading: inserted, on 6 April 2012, by section 4 of the Biosecurity Amendment Act 2012 (2012 No 26).

41B Purpose of sections 41C to 41E

The purpose of sections 41C to 41E is to support certain interim information-sharing measures (relating to joint border management initiatives between the Ministry and the Customs) that are required to be in place until the JBMS becomes operational by allowing—

- (a) the Ministry or an agency appointed under section 41C to collect or store any border information:
- (b) the Customs to access that border information for a customs-related border management function.

Section 41B: inserted, on 6 April 2012, by section 4 of the Biosecurity Amendment Act 2012 (2012 No 26).

41C Interim collection of border information

- (1) The Ministry may—
 - (a) collect any border information:
 - (b) store any border information.
- (2) If the border information is personal information, subsection (1) applies despite anything in information privacy principle 2 or 3 of the Privacy Act 1993.
- (3) The Minister may appoint any agency (in addition to, or instead of, the Customs) to exercise any of the powers conferred on the Ministry by subsection (1).

Section 41C: inserted, on 6 April 2012, by section 4 of the Biosecurity Amendment Act 2012 (2012 No 26).

41D Requirement by or under this Act to supply border information is complied with if information is supplied to Customs or other agency

- (1) A person must be taken to have complied with a requirement by or under this Act to supply any border information to the Ministry if, instead of to the Ministry, the person supplies the border information to—

- (a) the Customs, for the purposes of, and in accordance with, section 282F(1) of the Customs and Excise Act 1996:
 - (b) an agency appointed under section 41C(3), for the purposes of, and in accordance with, section 41C(1) of this Act or section 282F(1) of the Customs and Excise Act 1996.
- (2) However, subsection (1) does not apply if the Director-General has given the person a written notice requiring the border information to be supplied to the Ministry instead of to the Customs or an agency appointed under section 41C(3).

Section 41D: inserted, on 6 April 2012, by section 4 of the Biosecurity Amendment Act 2012 (2012 No 26).

41E Interim access to border information

- (1) The Director-General may, in accordance with a written agreement entered into by the Director-General and the chief executive, allow the Customs to access any border information that was or is collected or stored before, on, or after the commencement of this section.
- (2) If the border information is personal information, subsection (1) applies despite anything in information privacy principle 10 or 11 of the Privacy Act 1993.
- (3) An agreement must state—
- (a) the purpose of the agreement; and
 - (b) the border information that can be accessed; and
 - (c) the conditions subject to which the border information will be accessed; and
 - (d) how the Customs will use the border information (including the limits on any further disclosure by the Customs); and
 - (e) the method and form of access.
- (4) An agreement may be varied by the Director-General and the chief executive in writing.
- (5) The Director-General and the chief executive must consult the Privacy Commissioner before entering into or varying an agreement.
- (6) To avoid doubt, nothing in subsection (1) limits or prevents the Customs from carrying out an analysis of any border information to which it has access under that subsection for the purpose of examining risk patterns or risk profiles in relation to any or all of the following:
- (a) goods, persons, or craft:
 - (b) import or export transactions:
 - (c) importers or exporters.

Section 41E: inserted, on 6 April 2012, by section 4 of the Biosecurity Amendment Act 2012 (2012 No 26).

41F Expiry of sections 41B to 41E and agreements made under section 41E

Sections 41B to 41E and any agreement made under section 41E expire, or must be taken to have expired, on the date of expiry of sections 282E to 282H of the Customs and Excise Act 1996 (as provided for in section 282I of that Act).

Section 41F: inserted, on 6 April 2012, by section 4 of the Biosecurity Amendment Act 2012 (2012 No 26).

Information sharing for joint border management

Heading: inserted, on 6 April 2012, by section 4 of the Biosecurity Amendment Act 2012 (2012 No 26).

41GAA Application of sections 41G to 41I

- (1) Sections 41G to 41I apply to border information only on and after the date of expiry of the interim arrangements for information sharing (as that date of expiry is provided in section 282I(1) of the Customs and Excise Act 1996).
- (2) The interim arrangements for information sharing are the arrangements under all or any of the following:
 - (a) sections 282E to 282H (and any agreements under section 282H) of the Customs and Excise Act 1996; and
 - (b) sections 41B to 41E (and any agreements under section 41E) of this Act.
- (3) On that date of expiry (as provided in section 282I(1) of the Customs and Excise Act 1996), sections 41B to 41F, and the cross-heading above section 41B, are repealed.

Section 41GAA: inserted, on 24 June 2014, by section 8 of the Biosecurity (Border Processing—Trade Single Window) Amendment Act 2014 (2014 No 11).

41G Collection of border information

- (1) The Ministry may—
 - (a) collect any border information;
 - (b) store any border information in the JBMS.
- (2) If the border information is personal information, subsection (1) applies despite anything in information privacy principle 2 or 3 of the Privacy Act 1993.
- (3) The Minister may appoint any agency (in addition to, or instead, of the Customs) to exercise any of the powers conferred on the Ministry by subsection (1).

Section 41G: inserted, on 6 April 2012, by section 4 of the Biosecurity Amendment Act 2012 (2012 No 26).

41H Requirement by or under this Act to supply border information is complied with if information is supplied to Customs or other agency

- (1) A person must be taken to have complied with a requirement by or under this Act to supply any border information to the Ministry if, instead of to the Ministry, the person supplies the border information to—
 - (a) the Customs, for the purposes of, and in accordance with, section 282J(1) of the Customs and Excise Act 1996:
 - (b) an agency appointed under section 41G(3), for the purposes of, and in accordance with, section 41G(1) of this Act or section 282J(1) of the Customs and Excise Act 1996.
- (2) However, subsection (1) does not apply if the Director-General has given the person a written notice requiring the border information to be supplied to the Ministry instead of to the Customs or an agency appointed under section 41G(3).

Section 41H: inserted, on 6 April 2012, by section 4 of the Biosecurity Amendment Act 2012 (2012 No 26).

41I Ministry may access border information

- (1) The Ministry may access any border information stored in the JBMS that is needed for, or relevant to, a Ministry-related border management function.
- (2) If the border information is personal information, subsection (1) applies despite anything in information privacy principle 10 of the Privacy Act 1993.
- (3) Subsections (1) and (2) apply to any border information stored in the JBMS, whether the border information was or is collected—
 - (a) before, on, or after the commencement of this section; or
 - (b) by an agency appointed under section 41G(3).
- (4) To avoid doubt, nothing in subsection (1) limits or prevents the Ministry from carrying out an analysis of any border information to which it has access under that subsection for the purpose of examining risk patterns or risk profiles in relation to any or all of the following:
 - (a) goods, persons, or craft:
 - (b) import or export transactions:
 - (c) importers or exporters.

Section 41I: inserted, on 6 April 2012, by section 4 of the Biosecurity Amendment Act 2012 (2012 No 26).

Section 41I(1): amended, on 24 June 2014, by section 9 of the Biosecurity (Border Processing—Trade Single Window) Amendment Act 2014 (2014 No 11).

Part 4

Surveillance and prevention

42 Purpose of Part 4

The purpose of this Part is to provide for the continuous monitoring of New Zealand's status in regard to pests and unwanted organisms—

- (a) to facilitate the provision of assurances and certificates in relation to exports of organisms and their products; and
- (b) as a basis for the proper administration of this Act, including the institution of precautionary actions, emergency and exigency arrangements, and pest management plans or pathway management plans; and
- (c) to monitor the effect of pest management plans or pathway management plans; and
- (d) otherwise to enable any of New Zealand's international reporting obligations and trading requirements to be met.

Section 42(b): amended, on 18 September 2012, by section 36 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 42(c): amended, on 18 September 2012, by section 36 of the Biosecurity Law Reform Act 2012 (2012 No 73).

43 Duty to provide information

- (1) For the purposes of this Part, an inspector or authorised person may require any person referred to in subsection (2)—
 - (a) to provide any information held by the person concerning pests, pest agents, unwanted organisms, or risk goods that the inspector or authorised person believes on reasonable grounds is necessary to ascertain the presence or distribution in New Zealand of pests, pest agents, or unwanted organisms (or pests or unwanted organisms of a particular kind or description); and
 - (b) to provide such assistance as the inspector or authorised person reasonably requests to enable or facilitate the acquisition, collection, and recording of any such information ascertained.
- (2) The persons referred to for the purposes of subsection (1) are—
 - (a) every person who owns, manages, or otherwise controls the means by which and the sources from which information required under subsection (1) may be generated; and
 - (b) every person who owns, manages, or otherwise controls any organism, organic material, or risk goods that may be monitored for the purposes of this Part.

Compare: 1969 No 53 s 6

Section 43(1)(a): amended, on 1 January 2005, by section 3(1) of the Biosecurity Amendment Act 2004 (2004 No 106).

Section 43(1)(a): amended, on 26 November 1997, by section 22 of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 43(2)(b): amended, on 1 January 2005, by section 3(2) of the Biosecurity Amendment Act 2004 (2004 No 106).

44 General duty to inform

- (1) Every person is under a duty to inform the Ministry, as soon as practicable in the circumstances, of the presence of what appears to be an organism not normally seen or otherwise detected in New Zealand.
- (2) The duty to inform does not apply in relation to an organism that is seen or otherwise detected in a place where it may lawfully be present in accordance with an approval given under the Hazardous Substances and New Organisms Act 1996.

Section 44: replaced, on 8 July 2003, by section 6 of the Biosecurity Amendment Act 2003 (2003 No 38).

45 Notifiable organisms

- (1) *[Repealed]*
- (2) The Governor-General may, by Order in Council, declare any organism to be a notifiable organism.
- (3) The Governor-General may, by Order in Council, made on the recommendation of the responsible Minister, declare any pest to which a regional pest management plan relates to be an organism notifiable within the region, or within any specified part of the region, of the regional council or regional councils concerned.
- (4) The responsible Minister shall not recommend the making of an order under subsection (3), unless—
 - (a) the regional council or regional councils concerned have asked the Minister to do so; and
 - (b) the Minister is satisfied that it is in the public interest to do so.
- (5) The responsible Minister must not recommend the making of an order under subsection (2) in respect of any organism which has been approved for release in New Zealand by the Authority in accordance with the Hazardous Substances and New Organisms Act 1996 unless that Minister has first consulted with the Authority.

Section 45(1): repealed, on 26 November 1997, by section 35(2)(b) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 45(3): amended, on 18 September 2012, by section 37 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 45(5): inserted, on 29 July 1998, by section 132 of the Biosecurity Amendment Act 1997 (1997 No 89).

46 Duty to report notifiable organisms

- (1) Every person who—

- (a) at any time suspects the presence of an organism in any place in New Zealand; and
 - (b) suspects that it is for the time being declared to be a notifiable organism under subsection (2) of section 45; and
 - (c) believes that it is not at the time established in that place; and
 - (d) has no reasonable grounds for believing that the chief technical officer is aware of its presence or possible presence in that place at that time,—
- shall without unreasonable delay report to the chief technical officer its presence or possible presence in that place at that time.
- (2) Every person who—
- (a) at any time suspects the presence of an organism in a place in the region, or in any part of the region, of a regional council; and
 - (b) suspects that it is for the time being declared to be an organism notifiable within the region or part under subsection (3) of section 45; and
 - (c) believes that it is not at that time established in that place; and
 - (d) has no reasonable grounds for believing that the chief technical officer is aware of its presence or possible presence in that place at that time,—
- shall without unreasonable delay report to the chief technical officer its presence or possible presence in that place at that time.

Section 46(1)(b): amended, on 26 November 1997, by section 35(2)(c) of the Biosecurity Amendment Act 1997 (1997 No 89).

47 Imported risk goods

[Repealed]

Section 47: repealed, on 26 November 1997, by section 24 of the Biosecurity Amendment Act 1997 (1997 No 89).

48 Power to require information

- (1) A chief technical officer may, by notice in writing, require the person in charge of premises used for investigating organisms or organic material, or any person employed in a professional or technical capacity in any area of biological science, to—
- (a) supply the chief technical officer with information held by that person on the incidence, prevalence, or distribution of specified organisms; or
 - (b) permit the chief technical officer, or a person authorised in writing by that officer, to have access to, inspect, and test or sample specimens of any organism or tissues or parts of an organism or organic material held by that person or on those premises.
- (1A) A chief technical officer may, by notice in writing, require any person who has expertise or knowledge in an area of biological science to supply the chief

technical officer with information held by that person on the incidence, prevalence, or distribution of specified organisms.

- (2) Except in relation to circumstances concerning which a regulation makes contrary provision, the reasonable expenses of a person who supplies information to a chief technical officer in response to a requirement under this section will be reimbursed out of money appropriated by Parliament for the purpose if those expenses would not have been incurred but for the requirement.

Section 48(1): replaced, on 26 November 1997, by section 25 of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 48(1A): inserted, on 26 November 1997, by section 25 of the Biosecurity Amendment Act 1997 (1997 No 89).

49 Use of information

Any information acquired by a chief technical officer under this Part may be published for the purpose of communicating the animal or plant health status of New Zealand, or the occurrence (in New Zealand or overseas) of pests or unwanted organisms.

50 Identification systems

- (1) The Director-General may, from time to time, approve systems administered by specified persons for the purpose of enabling the identification of organisms and their products and associated premises.
- (2) The Director-General may approve identification systems under this section for any of the following purposes:
 - (a) facilitating pest management:
 - (b) marking the presence or absence in organisms of particular qualities relating to the purposes of this Act:
 - (c) meeting the certification requirements of overseas authorities in respect of New Zealand exports.
- (3) When considering the approval of an identification system under this section, the Director-General shall ensure that the identifications to be used—
 - (a) provide unique, clear, and lasting identification having regard to the purpose for which the identifications are needed; and
 - (b) do not create confusion with any other generally used system of identification.
- (4) Regulations made under this Act may require persons of any kind or description to use one of any 1 or more identification systems approved under this section and notified in the *Gazette* in accordance with subsection (5).
- (5) The Director-General may, by notice in the *Gazette*, specify the identification systems that may be used to comply with regulations made under this Act; and must keep, and make publicly available, a register of all *Gazette* notices made under this section.

Section 50(1): replaced, on 26 November 1997, by section 26(1) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 50(4): replaced, on 26 November 1997, by section 26(2) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 50(5): inserted, on 26 November 1997, by section 26(2) of the Biosecurity Amendment Act 1997 (1997 No 89).

51 Duties relating to identification of organisms

- (1) No person shall remove, alter, or deface any approved identification that has been used in relation to an organism except with the written permission of an inspector or with reasonable excuse.
- (2) No person shall knowingly use in relation to any organism—
 - (a) an identification forming part of an approved identification system that the person is not entitled to use in relation to that organism; or
 - (b) any mark that is likely to be mistaken for or confused with an identification forming part of an approved identification system.
- (3) No person required by regulations made under this Act to use one of any 1 or more identification systems notified in the *Gazette* shall fail to do so.

Section 51(3): amended, on 26 November 1997, by section 26(3) of the Biosecurity Amendment Act 1997 (1997 No 89).

52 Communication of pest or unwanted organism

No person shall knowingly communicate, cause to be communicated, release, or cause to be released, or otherwise spread any pest or unwanted organism except—

- (a) in the course of and in accordance with a pest management plan; or
- (b) as provided in an emergency regulation made under section 150; or
- (c) for a scientific purpose carried out with the authority of the Minister; or
- (d) as permitted either generally or specifically by a chief technical officer.

Compare: 1967 No 50 s 38; 1967 No 147 s 111

Section 52 heading: amended, on 26 November 1997, by section 27(1) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 52: amended, on 26 November 1997, by section 27(1) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 52(a): amended, on 18 September 2012, by section 38(1) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 52(c): amended, on 18 September 2012, by section 38(2) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 52(d): inserted, on 26 November 1997, by section 27(2) of the Biosecurity Amendment Act 1997 (1997 No 89).

53 Duties of owners of organisms

- (1) Subject to subsection (2), the owner or person in charge of an organism which that person knows or suspects constitutes, contains, or harbours a pest or unwanted organism must not—
 - (a) cause or permit that organism to be in a place where organisms are offered for sale or are exhibited; or
 - (b) sell or offer that organism for sale; or
 - (c) propagate, breed, or multiply the pest or unwanted organism or otherwise act in such a manner as is likely to encourage or cause the propagation, breeding, or multiplication of the pest or unwanted organism.
- (2) A chief technical officer may permit an owner or person in charge of an organism to carry out an act otherwise prohibited by this section.
- (3) Permission given under this section must be given either by notice in the *Gazette* or in writing to the owner or person in charge of an organism.

Compare: 1967 No 50 s 49; 1970 No 151 s 28; 1978 No 15 s 49

Section 53(1): replaced, on 26 November 1997, by section 28(1) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 53(2): replaced, on 26 November 1997, by section 28(2) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 53(3): inserted, on 26 November 1997, by section 28(2) of the Biosecurity Amendment Act 1997 (1997 No 89).

Part 5**Pest management**

Part 5: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

54 Purpose of this Part

The purpose of this Part is to provide for the eradication or effective management of harmful organisms that are present in New Zealand by providing for—

- (a) the development of effective and efficient instruments and measures that prevent, reduce, or eliminate the adverse effects of harmful organisms 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; and
- (b) the appropriate distribution of costs associated with the instruments and measures.

Section 54: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

55 Responsible Minister may assign responsibility for decisions

- (1) The responsible Minister may assign responsibility for a decision on the appropriate response to an issue relating to a harmful organism or pathway.
- (2) The process for the Minister to assign responsibility must be set out in regulations.
- (3) If the Minister assigns responsibility to a department or regional council,—
 - (a) the Minister may specify a time within which the decision must be made; and
 - (b) the Minister may extend the time if the Minister considers that exceptional circumstances exist justifying the extension; and
 - (c) the department or regional council must make the decision within the time or extended time.

Section 55: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Policy direction

Heading: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

56 Responsible Minister provides leadership through national policy direction

- (1) The responsible Minister must make a national policy direction. It is to be the only national policy direction, but it may be amended or revoked and replaced.

Purpose

- (2) The purpose of the national policy direction is to ensure that activities under this Part provide the best use of available resources for New Zealand's best interests and align with one another, when necessary, to contribute to the achievement of the purpose of this Part.

Good neighbour rules

- (3) The national policy direction must contain directions on the setting of good neighbour rules in regional pest management plans.

Timing requirements for determination under section 100E(3)

- (4) The national policy direction must contain directions on the time within which the Minister or council must make a determination under section 100E(3).

Directions

- (5) The national policy direction may include directions on—
 - (a) the process for making plans or small-scale management programmes;
 - (b) the content of plans or small-scale management programmes;
 - (c) any other matter that the responsible Minister considers necessary.
- (6) The following are examples of the matters on which directions may be given:

- (a) the circumstances in which it is or is not appropriate to use plans or small-scale management programmes:
 - (b) the development of plans or small-scale management programmes:
 - (c) the implementation of plans or small-scale management programmes:
 - (d) the monitoring of plans or small-scale management programmes:
 - (e) the review of plans or small-scale management programmes:
 - (f) the relationship of plans with one another:
 - (g) the relationship of small-scale management programmes with one another:
 - (h) the relationship between plans and small-scale management programmes:
 - (i) the achievement of appropriate consistency between plans and instruments under other enactments:
 - (j) the achievement of appropriate consistency between small-scale management programmes and instruments under other enactments:
 - (k) the transitional arrangements that are necessary for plans or small-scale management programmes to conform with the national policy direction.
- (7) Before including a direction under subsection (5), the Minister must have regard to the extent to which the direction is likely to—
- (a) achieve the purpose of this Part and of the national policy direction:
 - (b) affect the flexibility of instruments or measures under this Part:
 - (c) affect the timeliness of decisions made under this Part:
 - (d) improve national consistency among instruments made under this Part:
 - (e) affect the accountability of decision-makers, including the accountability of local decision-makers to their communities of interest:
 - (f) affect any other matter that the Minister considers relevant.

Section 56: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

57 Process for making national policy direction

- (1) The responsible Minister must prepare a proposed national policy direction (**proposal**).
- (2) After preparing the proposal, the Minister must establish, and then use, a process that—
 - (a) the Minister is satisfied gives adequate time and opportunity to the following to make a submission on the proposal:
 - (i) management agencies; and
 - (ii) the rest of the public; and

- (b) requires a report and recommendations to be made to the Minister on the submissions and the subject matter of the proposal.
- (3) When the Minister receives the report and recommendations, the Minister must consider them.
- (4) If the Minister does not accept a recommendation, the Minister must publish the Minister's reasons on an Internet site maintained by or on behalf of the Ministry.
- (5) The Minister may then—
 - (a) make changes that the Minister considers appropriate to the proposal or decide to make no changes to it; or
 - (b) withdraw all or part of the proposal and publish the withdrawal, and the reasons for it, on an Internet site maintained by or on behalf of the Ministry.
- (6) When the Minister has made appropriate changes to the proposal or decided to make no changes to it, the Minister must recommend the approval of the national policy direction to the Governor-General in Council.
- (7) The Governor-General in Council may approve the national policy direction.
- (8) As soon as practicable after the Governor-General in Council has approved the national policy direction, the Minister must—
 - (a) publish a notice in the *Gazette* stating that the Governor-General has approved the direction and the date on which the Governor-General approved it; and
 - (b) publicly notify the direction in whatever form he or she thinks appropriate; and
 - (c) send a copy of the direction to every management agency and regional council.
- (9) The national policy direction is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Section 57: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 57(9): replaced, on 1 February 2014, by section 77(3) of the Legislation Act 2012 (2012 No 119).

58 Process for amending or revoking and replacing national policy direction

- (1) If the national policy direction is to be amended in a way that the Minister considers would materially alter the direction, the Minister must—
 - (a) prepare the proposed amendment; and
 - (b) apply the process in section 57(2) to (8) to the proposed amendment.

- (2) If the national policy direction is to be amended in a way that the Minister does not consider would materially alter the direction, the Minister must—
- (a) approve the amendment; and
 - (b) publish a notice in the *Gazette* stating that the amendment has been approved; and
 - (c) publicly notify the amendment in whatever form he or she thinks appropriate; and
 - (d) send a copy of the amendment to every management agency and regional council.
- (3) If the national policy direction is to be revoked and replaced, the Minister must follow the process in section 57(1) to (8).
- (4) An amendment under subsection (1) or (2) or a replacement direction under subsection (3) is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Section 58: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 58(4): replaced, on 1 February 2014, by section 77(3) of the Legislation Act 2012 (2012 No 119).

Pest management plans

National pest management plans

Headings: inserted, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

59 Definitions for sections 60 to 67

For the purposes of sections 60 to 67,—

management agency means a management agency responsible for implementing a national pest management plan

plan means a national pest management plan

proposal means a proposal for a national pest management plan

rule means a rule in a national pest management plan.

Section 59: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

60 Relationship of rules and plan with law

- (1) To the extent to which a bylaw of a local authority is inconsistent with a rule applying to the same locality, the rule prevails.
- (2) If a plan imposes obligations and costs on the Crown, the Crown must comply with the obligations and meet the costs.

Section 60: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

61 First step: plan initiated by proposal

- (1) The first step in the making of a plan is a proposal made by—
 - (a) a Minister; or
 - (b) a person who submits the proposal to a Minister.
- (2) The proposal must set out the following matters:
 - (a) the name of the person making the proposal:
 - (b) the subject of the proposal, which means—
 - (i) the organism proposed to be specified as a pest under the plan or the organisms proposed to be specified as pests under the plan; or
 - (ii) the class or description of organism proposed to be specified as a pest under the plan or the classes or descriptions of organisms proposed to be specified as pests under the plan:
 - (c) for each subject,—
 - (i) a description of its adverse effects:
 - (ii) the reasons for proposing a plan:
 - (iii) the objectives that the plan would have:
 - (iv) the principal measures that would be in the plan to achieve the objectives:
 - (v) other measures that it would be reasonable to take to achieve the objectives, if there are any such measures, and the reasons why the proposed measures are preferable as a means of achieving the objectives:
 - (vi) the reasons why a national plan is more appropriate than a regional plan:
 - (vii) an analysis of the benefits and costs of the plan:
 - (viii) the extent to which any persons, or persons of a class or description, are likely to benefit from the plan:
 - (ix) the extent to which any persons, or persons of a class or description, contribute to the creation, continuance, or exacerbation of the problems proposed to be resolved by the plan:
 - (x) the rationale for the proposed allocation of costs:
 - (xi) if it is proposed that the plan be funded by a levy under section 100L, how the proposed levy satisfies section 100L(5)(d) and what matters will be specified under section 100N(1):

- (xii) whether any unusual administrative problems or costs are expected in recovering the costs allocated to any of the persons whom the plan would require to pay the costs:
- (d) any other organism intended to be controlled:
- (e) the effects that, in the opinion of the person making the proposal, implementation of the plan would have on—
 - (i) 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:
 - (ii) the marketing overseas of New Zealand products:
- (f) if the plan would affect another pest management plan or a pathway management plan, how it is proposed to co-ordinate the implementation of the plans:
- (g) the powers in Part 6 that it is proposed to use to implement the plan:
- (h) each proposed rule and an explanation of its purpose:
- (i) the rules whose contravention is proposed to be an offence under this Act:
- (j) the management agency:
- (k) the means by which it is proposed to monitor or measure the achievement of the plan's objectives:
- (l) the actions that it is proposed local authorities, local authorities of a specified class or description, or specified local authorities may take to implement the plan, including contributing towards the costs of implementation:
- (m) the basis, if any, on which the management agency is to pay compensation for losses incurred as a direct result of the implementation of the plan:
- (n) information on the disposal of the proceeds of any receipts arising in the course of implementing the plan:
- (o) whether or not the plan would apply to the EEZ and, if it would, whether it would apply to all of it or parts of it and, if it would apply to parts, which parts:
- (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:
- (q) the anticipated costs of implementing the plan:
- (r) how it is proposed that the costs be funded:
- (s) the period for which it is proposed the plan be in force:

- (t) the consultation, if any, that has occurred on the proposal and the outcome of it:
- (u) any matter that the national policy direction requires be specified in a plan:
- (v) the steps that have been taken to comply with the process requirements in the national policy direction, if there were any.

Section 61: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

62 Second step: satisfaction on requirements

If the Minister is satisfied that section 61 has been complied with, the Minister may take the second step in the making of a plan, which is to consider whether the Minister is satisfied—

- (a) that the proposal is not inconsistent with the national policy direction; and
- (b) that, during the development of the proposal, the process requirements for a plan in the national policy direction, if there were any, were complied with; and
- (c) that the proposal has merit as a means of eradicating or effectively managing the subject of the proposal, which means—
 - (i) the organism proposed to be specified as a pest under the plan or the organisms proposed to be specified as pests under the plan; or
 - (ii) the class or description of organism proposed to be specified as a pest under the plan or the classes or descriptions of organisms proposed to be specified as pests under the plan; and
- (d) that each subject is capable of causing at some time an adverse effect on 1 or more of the following in New Zealand:
 - (i) economic wellbeing:
 - (ii) the viability of threatened species of organisms:
 - (iii) the survival and distribution of indigenous plants or animals:
 - (iv) the sustainability of natural and developed ecosystems, ecological processes, and biological diversity:
 - (v) soil resources:
 - (vi) water quality:
 - (vii) human health:
 - (viii) social and cultural wellbeing:
 - (ix) the enjoyment of the recreational value of the natural environment:

- (x) the relationship between Māori, their culture, and their traditions and their ancestral lands, waters, sites, wāhi tapu, and taonga;
- (xi) animal welfare; and
- (e) that, for each subject, the benefits of the plan would outweigh the costs, after taking account of the likely consequences of inaction or other courses of action; and
- (f) that, for each subject, persons who are required, as a group, to meet directly any or all of the costs of implementing the plan—
 - (i) would accrue, as a group, benefits outweighing the costs; or
 - (ii) contribute, as a group, to the creation, continuance, or exacerbation of the problems proposed to be resolved by the plan; and
- (g) that, for each subject, there is likely to be adequate funding for the implementation of the plan for the shorter of its proposed duration and 5 years; and
- (h) that the implementation of the plan would not be contrary to New Zealand's international obligations; and
- (i) that each proposed rule—
 - (i) would assist in achieving the plan's objectives; and
 - (ii) would not trespass unduly on the rights of individuals; and
- (j) that the proposal is not frivolous or vexatious; and
- (k) that the proposal is clear enough to be readily understood; and
- (l) that, if the Minister rejected a similar proposal within the last 3 years, new and material information answers the Minister's objection to the previous proposal.

Section 62: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

63 Third step: satisfaction with consultation or requirement of more consultation

- (1) If the Minister is satisfied of the matters in section 62, the Minister may take the third step in the making of a plan, which is for the Minister to consider whether the Minister is satisfied—
 - (a) that, if Ministers' responsibilities may be affected by the plan, the Ministers have been consulted; and
 - (b) that, if local authorities' responsibilities may be affected by the plan, the authorities have been consulted; and
 - (c) that, if consultation with tangata whenua or other persons is appropriate, sufficient consultation has occurred.
- (2) In considering whether the Minister is satisfied as required by subsection (1)(c), the Minister must have regard to the following:

- (a) the scale of the impacts on persons who are likely to be affected by the plan; and
 - (b) whether the persons likely to be affected by the plan or their representatives have already been consulted and, if so, the nature of the consultation; and
 - (c) the level of support for, or opposition to, the proposal from persons who are likely to be affected by it.
- (3) If the Minister is satisfied as required by subsection (1), the Minister must apply section 64.
- (4) If the Minister is not satisfied as required by subsection (1), the Minister may require consultation to be undertaken on the proposal.
- (5) If the Minister requires consultation to be undertaken, the Minister must determine the way or ways in which the consultation must be undertaken, including, but not limited to, ways such as—
- (a) consultation with persons likely to be affected by the plan or with their representatives:
 - (b) the appointment by the Minister of 1 or more persons to carry out an independent inquiry into the proposal on terms of reference set by the Minister:
 - (c) public notification of the proposal and the receipt of submissions.
- (6) After the consultation required by the Minister has been undertaken, the Minister must apply subsection (1) again.

Section 63: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

64 Fourth step: approval of preparation of plan and decision on management agency

- (1) If the Minister is satisfied as required by section 63(1) and is satisfied that the issues raised in all the consultation undertaken on the proposal have been considered, the Minister may take the fourth step in the making of a plan, which is to approve the preparation of a plan.
- (2) If the Minister approves the preparation of a plan, the Minister must apply section 100 to decide which body is to be the management agency.

Matters to be specified

- (3) A plan must specify the following matters:
- (a) the pest or pests to be eradicated or managed:
 - (b) the plan's objectives:
 - (c) the principal measures to be taken to achieve the objectives:
 - (d) the means by which the achievement of the plan's objectives will be monitored or measured:

- (e) the sources of funding for the implementation of the plan:
- (f) the limitations, if any, on how the funds collected from those sources may be used to implement the plan:
- (g) the powers in Part 6 to be used to implement the plan:
- (h) the rules, if any:
- (i) the management agency:
- (j) the actions that local authorities, local authorities of a specified class or description, or specified local authorities may take to implement the plan, including contributing towards the costs of implementation:
- (k) the parts of the EEZ to which the plan applies, if it applies to parts, or the fact that it applies to the whole EEZ, if it does:
- (l) the portions of road, if any, adjoining land covered by the plan and, as authorised by section 6, also covered by the plan:
- (m) the plan's commencement date and termination date:
- (n) any matters required by the national policy direction.

Compensation

- (4) A plan—
- (a) may provide for the payment of compensation for losses incurred as a direct result of the implementation of the plan:
 - (b) must not provide for the payment of compensation for the following losses:
 - (i) loss suffered because a person's income derived from feral or wild organisms is adversely affected by the implementation of the plan:
 - (ii) loss suffered before an inspector or authorised person establishes the presence of the pest on the place of the person suffering the loss:
 - (iii) loss suffered by a person who fails to comply with the plan.

Rules

- (5) A plan may include rules for all or any of the following purposes:
- (a) requiring a person to take specified actions to enable the management agency to determine or monitor the presence or distribution of the pest or a pest agent:
 - (b) requiring a person to keep records of actions taken under the rules and to send to the management agency specified information based on the records:
 - (c) requiring the identification of specified goods:
 - (d) prohibiting or regulating specified methods that may be used in managing the pest:

- (e) prohibiting or regulating activities that may affect measures taken to implement the plan:
 - (f) requiring audits or inspections of specified actions:
 - (g) specifying, for the purposes of section 52(a), the circumstances in which the pest may be communicated, released, or otherwise spread:
 - (h) requiring the occupier of a place to take specified actions to eradicate or manage the pest or a specified pest agent on the place:
 - (i) requiring the occupier of a place to take specified actions to eradicate or manage the habitat of the pest or the habitat of a specified pest agent on the place:
 - (j) prohibiting or regulating specified activities by the occupier of a place if the activities are of the kind that would promote the habitat of the pest on the place:
 - (k) requiring the occupier of a place to carry out specified activities to promote the presence of organisms that assist in the control of the pest on the place:
 - (l) prohibiting or regulating specified activities by the occupier of a place, which deter the presence on that place of organisms that assist in the control of the pest:
 - (m) requiring the occupier of a place to carry out specified treatments or procedures to assist in preventing the spread of the pest:
 - (n) requiring the owner or person in charge of goods to carry out specified treatments or procedures to assist in preventing the spread of the pest:
 - (o) requiring the destruction of goods if the goods may contain or harbour the pest or otherwise pose a risk of spreading the pest:
 - (p) prohibiting or regulating specified uses of goods that may promote the spread or survival of the pest:
 - (q) prohibiting or regulating the use or disposal of organic material:
 - (r) prohibiting or regulating the use of specified practices in the management of organisms that may promote the spread or survival of the pest:
 - (s) prohibiting or regulating the movement of goods that may contain or harbour the pest or otherwise pose a risk of spreading the pest.
- (6) A rule may—
- (a) apply generally or to different classes or descriptions of persons, places, goods, or other things:
 - (b) apply all the time or at 1 or more specified times of the year:
 - (c) apply throughout New Zealand or in a specified part or parts of New Zealand, with, if necessary, another rule on the same subject matter applying to another specified part of New Zealand:

- (d) specify that a contravention of the rule creates an offence under section 154N(18).

Section 64: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

65 Fifth step: satisfaction on contents of plan and requirements

If the Minister is satisfied that section 64 has been complied with, the Minister may take the fifth step in the making of a plan, which is for the Minister to consider whether the Minister is satisfied, in relation to the plan prepared under section 64,—

- (a) that the plan is not inconsistent with the national policy direction; and
- (b) that, for each subject of the plan, the benefits of the plan outweigh the costs, after taking account of the likely consequences of inaction or other courses of action; and
- (c) that, for each subject of the plan, persons who are required, as a group, to meet directly any or all of the costs of implementing the plan—
 - (i) will accrue, as a group, benefits outweighing the costs; or
 - (ii) contribute, as a group, to the creation, continuance, or exacerbation of the problems proposed to be resolved by the plan; and
- (d) that, for each subject of the plan, there is likely to be adequate funding for the implementation of the plan for the shorter of its proposed duration and 5 years; and
- (e) that each rule—
 - (i) will assist in achieving the plan's objectives; and
 - (ii) will not trespass unduly on the rights of individuals; and
- (f) that the implementation of the plan is not contrary to New Zealand's international obligations.

Section 65: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

66 Making of plan

- (1) If the Minister is satisfied of the matters in section 65, the Minister may recommend to the Governor-General that an Order in Council be made making the plan.
- (2) The order is a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Section 66: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 66(2): replaced, on 1 February 2014, by section 77(3) of the Legislation Act 2012 (2012 No 119).

67 Exemptions from rules

- (1) The Minister may exempt a person from a requirement in a rule, without conditions or on conditions that the Minister considers appropriate.
- (2) The Minister may grant an exemption under subsection (1) only if—
 - (a) the Minister is satisfied that granting the exemption will not significantly prejudice the attainment of the plan's objectives; and
 - (b) the Minister is satisfied that 1 or more of the following applies:
 - (i) the requirement has been substantially complied with and further compliance is unnecessary;
 - (ii) the action taken on, or provision made for, the matter to which the requirement relates is as effective as, or more effective than, compliance with the requirement;
 - (iii) the requirement is clearly unreasonable or inappropriate in the particular case;
 - (iv) events have occurred that make the requirement unnecessary or inappropriate in the particular case.
- (3) The Minister may exempt all persons, a specified class of persons, persons in a specified place, or persons responsible for specified goods or things from a requirement in a rule, without conditions or on conditions that the Minister considers appropriate.
- (4) The Minister may grant an exemption under subsection (3) only if the Minister is satisfied that events have occurred that make the requirement unnecessary or inappropriate.
- (5) Conditions on which the Minister grants an exemption must be consistent with the purpose of this Part and must be no more onerous than the requirement from which the exemption is granted.
- (6) The Minister must determine the period of an exemption that the Minister grants.
- (7) As soon as practicable after granting an exemption, the Minister must publish a notice in the *Gazette* giving—
 - (a) a description of the exemption; and
 - (b) the reasons for the exemption; and
 - (c) the period of the exemption.
- (8) The following apply to the extension of the period of an exemption:
 - (a) the Minister may grant an extension of the period; and
 - (b) the extension must be granted before the end of the period; and
 - (c) the extended period becomes the period of the exemption; and

- (d) the Minister may exercise the power in paragraph (a) more than once; and
 - (e) extensions of the period of an exemption must be notified in the *Gazette*.
- (9) An exemption is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Section 67: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 67(9): replaced, on 1 February 2014, by section 77(3) of the Legislation Act 2012 (2012 No 119).

Regional pest management plans

Heading: inserted, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

68 Definitions for sections 69 to 78

For the purposes of sections 69 to 78,—

council means a regional council

management agency means a management agency responsible for implementing a regional pest management plan

plan means a regional pest management plan

proposal means a proposal for a regional pest management plan

rule means a rule in a regional pest management plan.

Section 68: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

69 Relationship of rules with law

- (1) To the extent to which a regulation made under this or any other Act is inconsistent with a rule, the regulation prevails.
- (2) To the extent to which a rule in a national pest management plan is inconsistent with a rule, the rule in the national pest management plan prevails.
- (3) To the extent to which a rule in a national pathway management plan is inconsistent with a rule, the rule in the national pathway management plan prevails.
- (4) To the extent to which a bylaw of a local authority is inconsistent with a rule applying to the same locality, the rule prevails.
- (5) A good neighbour rule in a plan, or action taken under a plan to enforce a good neighbour rule in the plan, are the only ways in which a plan may cause the Crown to become liable to meet obligations or costs.

Section 69: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

70 First step: plan initiated by proposal

- (1) The first step in the making of a plan is a proposal made by—
 - (a) the council; or
 - (b) a person who submits the proposal to the council.
- (2) The proposal must set out the following matters:
 - (a) the name of the person making the proposal:
 - (b) the subject of the proposal, which means—
 - (i) the organism proposed to be specified as a pest under the plan or the organisms proposed to be specified as pests under the plan; or
 - (ii) the class or description of organism proposed to be specified as a pest under the plan or the classes or descriptions of organisms proposed to be specified as pests under the plan:
 - (c) for each subject,—
 - (i) a description of its adverse effects:
 - (ii) the reasons for proposing a plan:
 - (iii) the objectives that the plan would have:
 - (iv) the principal measures that would be in the plan to achieve the objectives:
 - (v) other measures that it would be reasonable to take to achieve the objectives, if there are any such measures, and the reasons why the proposed measures are preferable as a means of achieving the objectives:
 - (vi) the reasons why the plan is more appropriate than relying on voluntary actions:
 - (vii) an analysis of the benefits and costs of the plan:
 - (viii) the extent to which any persons, or persons of a class or description, are likely to benefit from the plan:
 - (ix) the extent to which any persons, or persons of a class or description, contribute to the creation, continuance, or exacerbation of the problems proposed to be resolved by the plan:
 - (x) the rationale for the proposed allocation of costs:
 - (xi) if it is proposed that the plan be funded by a levy under section 100L, how the proposed levy satisfies section 100L(5)(d) and what matters will be specified under section 100N(1):
 - (xii) whether any unusual administrative problems or costs are expected in recovering the costs allocated to any of the persons whom the plan would require to pay the costs:
 - (d) any other organism intended to be controlled:

- (e) the effects that, in the opinion of the person making the proposal, implementation of the plan would have on—
 - (i) 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:
 - (ii) the marketing overseas of New Zealand products:
- (f) if the plan would affect another pest management plan or a pathway management plan, how it is proposed to co-ordinate the implementation of the plans:
- (g) the powers in Part 6 that it is proposed to use to implement the plan:
- (h) each proposed rule and an explanation of its purpose:
- (i) the rules, if any, that are intended to be good neighbour rules:
- (j) the rules whose contravention is proposed to be an offence under this Act:
- (k) the management agency:
- (l) the means by which it is proposed to monitor or measure the achievement of the plan's objectives:
- (m) the actions that it is proposed local authorities, local authorities of a specified class or description, or specified local authorities may take to implement the plan, including contributing towards the costs of implementation:
- (n) the basis, if any, on which the management agency is to pay compensation for losses incurred as a direct result of the implementation of the plan:
- (o) information on the disposal of the proceeds of any receipts arising in the course of implementing the plan:
- (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:
- (q) the anticipated costs of implementing the plan:
- (r) how it is proposed that the costs be funded:
- (s) the period for which it is proposed the plan be in force:
- (t) the consultation, if any, that has occurred on the proposal and the outcome of it:
- (u) any matter that the national policy direction requires be specified in a plan:
- (v) the steps that have been taken to comply with the process requirements in the national policy direction, if there were any.

Section 70: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

71 Second step: satisfaction on requirements

If the council is satisfied that section 70 has been complied with, the council may take the second step in the making of a plan, which is to consider whether the council is satisfied—

- (a) that the proposal is not inconsistent with—
 - (i) the national policy direction; or
 - (ii) any other pest management plan on the same organism; or
 - (iii) any pathway management plan; or
 - (iv) a regional policy statement or regional plan prepared under the Resource Management Act 1991; or
 - (v) any regulations; and
- (b) that, during the development of the proposal, the process requirements for a plan in the national policy direction, if there were any, were complied with; and
- (c) that the proposal has merit as a means of eradicating or effectively managing the subject of the proposal, which means—
 - (i) the organism proposed to be specified as a pest under the plan or the organisms proposed to be specified as pests under the plan; or
 - (ii) the class or description of organism proposed to be specified as a pest under the plan or the classes or descriptions of organisms proposed to be specified as pests under the plan; and
- (d) that each subject is capable of causing at some time an adverse effect on 1 or more of the following in the region:
 - (i) economic wellbeing;
 - (ii) the viability of threatened species of organisms;
 - (iii) the survival and distribution of indigenous plants or animals;
 - (iv) the sustainability of natural and developed ecosystems, ecological processes, and biological diversity;
 - (v) soil resources;
 - (vi) water quality;
 - (vii) human health;
 - (viii) social and cultural wellbeing;
 - (ix) the enjoyment of the recreational value of the natural environment;
 - (x) the relationship between Māori, their culture, and their traditions and their ancestral lands, waters, sites, wāhi tapu, and taonga;

- (xi) animal welfare; and
- (e) that, for each subject, the benefits of the plan would outweigh the costs, after taking account of the likely consequences of inaction or other courses of action; and
- (f) that, for each subject, persons who are required, as a group, to meet directly any or all of the costs of implementing the plan—
 - (i) would accrue, as a group, benefits outweighing the costs; or
 - (ii) contribute, as a group, to the creation, continuance, or exacerbation of the problems proposed to be resolved by the plan; and
- (g) that, for each subject, there is likely to be adequate funding for the implementation of the plan for the shorter of its proposed duration and 5 years; and
- (h) that each proposed rule—
 - (i) would assist in achieving the plan's objectives; and
 - (ii) would not trespass unduly on the rights of individuals; and
- (i) that the proposal is not frivolous or vexatious; and
- (j) that the proposal is clear enough to be readily understood; and
- (k) that, if the council rejected a similar proposal within the last 3 years, new and material information answers the council's objection to the previous proposal.

Section 71: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

72 Third step: satisfaction with consultation or requirement of more consultation

- (1) If the council is satisfied of the matters in section 71, the council may take the third step in the making of a plan, which is for the council to consider whether the council is satisfied—
 - (a) that, if Ministers' responsibilities may be affected by the plan, the Ministers have been consulted; and
 - (b) that, if local authorities' responsibilities may be affected by the plan, the authorities have been consulted; and
 - (c) that the tangata whenua of the area who may be affected by the plan were consulted through iwi authorities and tribal runanga; and
 - (d) that, if consultation with other persons is appropriate, sufficient consultation has occurred.
- (2) In considering whether the council is satisfied as required by subsection (1)(d), the council must have regard to the following:
 - (a) the scale of the impacts on persons who are likely to be affected by the plan; and

- (b) whether the persons likely to be affected by the plan or their representatives have already been consulted and, if so, the nature of the consultation; and
 - (c) the level of support for, or opposition to, the proposal from persons who are likely to be affected by it.
- (3) If the council is satisfied as required by subsection (1), the council must apply section 73.
- (4) If the council is not satisfied as required by subsection (1), the council may require consultation to be undertaken on the proposal.
- (5) If the council requires consultation to be undertaken, the council must determine the way or ways in which the consultation must be undertaken, including, but not limited to, ways such as—
 - (a) consultation with persons likely to be affected by the plan or with their representatives:
 - (b) the appointment by the council of 1 or more persons to carry out an independent inquiry into the proposal on terms of reference set by the council:
 - (c) public notification of the proposal and the receipt of submissions.
- (6) After the consultation required by the council has been undertaken, the council must apply subsection (1) again.

Section 72: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

73 Fourth step: approval of preparation of plan and decision on management agency

- (1) If the council is satisfied as required by section 72(1) and is satisfied that the issues raised in all the consultation undertaken on the proposal have been considered, the council may take the fourth step in the making of a plan, which is to approve the preparation of a plan.
- (2) If the council approves the preparation of a plan, the council must apply section 100 to decide which body is to be the management agency.

Matters to be specified

- (3) A plan must specify the following matters:
 - (a) the pest or pests to be eradicated or managed:
 - (b) the plan's objectives:
 - (c) the principal measures to be taken to achieve the objectives:
 - (d) the means by which the achievement of the plan's objectives will be monitored or measured:
 - (e) the sources of funding for the implementation of the plan:

- (f) the limitations, if any, on how the funds collected from those sources may be used to implement the plan:
- (g) the powers in Part 6 to be used to implement the plan:
- (h) the rules, if any:
- (i) the rules, if any, that are good neighbour rules:
- (j) the management agency:
- (k) the actions that local authorities, local authorities of a specified class or description, or specified local authorities may take to implement the plan, including contributing towards the costs of implementation:
- (l) the portions of road, if any, adjoining land covered by the plan and, as authorised by section 6, also covered by the plan:
- (m) the plan's commencement date and termination date:
- (n) any matters required by the national policy direction.

Compensation

- (4) A plan—
 - (a) may provide for the payment of compensation for losses incurred as a direct result of the implementation of the plan:
 - (b) must not provide for the payment of compensation for the following losses:
 - (i) loss suffered because a person's income derived from feral or wild organisms is adversely affected by the implementation of the plan:
 - (ii) loss suffered before an inspector or authorised person establishes the presence of the pest on the place of the person suffering the loss:
 - (iii) loss suffered by a person who fails to comply with the plan.

Rules

- (5) A plan may include rules for all or any of the following purposes:
 - (a) requiring a person to take specified actions to enable the management agency to determine or monitor the presence or distribution of the pest or a pest agent:
 - (b) requiring a person to keep records of actions taken under the rules and to send to the management agency specified information based on the records:
 - (c) requiring the identification of specified goods:
 - (d) prohibiting or regulating specified methods that may be used in managing the pest:
 - (e) prohibiting or regulating activities that may affect measures taken to implement the plan:

- (f) requiring audits or inspections of specified actions:
 - (g) specifying, for the purposes of section 52(a), the circumstances in which the pest may be communicated, released, or otherwise spread:
 - (h) requiring the occupier of a place to take specified actions to eradicate or manage the pest or a specified pest agent on the place:
 - (i) requiring the occupier of a place to take specified actions to eradicate or manage the habitat of the pest or the habitat of a specified pest agent on the place:
 - (j) prohibiting or regulating specified activities by the occupier of a place if the activities are of the kind that would promote the habitat of the pest on the place:
 - (k) requiring the occupier of a place to carry out specified activities to promote the presence of organisms that assist in the control of the pest on the place:
 - (l) prohibiting or regulating specified activities by the occupier of a place, which deter the presence on that place of organisms that assist in the control of the pest:
 - (m) requiring the occupier of a place to carry out specified treatments or procedures to assist in preventing the spread of the pest:
 - (n) requiring the owner or person in charge of goods to carry out specified treatments or procedures to assist in preventing the spread of the pest:
 - (o) requiring the destruction of goods if the goods may contain or harbour the pest or otherwise pose a risk of spreading the pest:
 - (p) prohibiting or regulating specified uses of goods that may promote the spread or survival of the pest:
 - (q) prohibiting or regulating the use or disposal of organic material:
 - (r) prohibiting or regulating the use of specified practices in the management of organisms that may promote the spread or survival of the pest:
 - (s) prohibiting or regulating the movement of goods that may contain or harbour the pest or otherwise pose a risk of spreading the pest.
- (6) A rule may—
- (a) apply generally or to different classes or descriptions of persons, places, goods, or other things:
 - (b) apply all the time or at 1 or more specified times of the year:
 - (c) apply throughout the region or in a specified part or parts of the region with, if necessary, another rule on the same subject matter applying to another specified part of the region:
 - (d) specify that a contravention of the rule creates an offence under section 154N(19).

Section 73: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

74 Fifth step: satisfaction on contents of plan and requirements

If the council is satisfied that section 73 has been complied with, the council may take the fifth step in the making of a plan, which is for the council to consider whether the council is satisfied, in relation to the plan prepared under section 73,—

- (a) that the plan is not inconsistent with—
 - (i) the national policy direction; or
 - (ii) any other pest management plan on the same organism; or
 - (iii) any pathway management plan; or
 - (iv) a regional policy statement or regional plan prepared under the Resource Management Act 1991; or
 - (v) any regulations; and
- (b) that, for each subject of the plan, the benefits of the plan outweigh the costs, after taking account of the likely consequences of inaction or other courses of action; and
- (c) that, for each subject of the plan, persons who are required, as a group, to meet directly any or all of the costs of implementing the plan—
 - (i) will accrue, as a group, benefits outweighing the costs; or
 - (ii) contribute, as a group, to the creation, continuance, or exacerbation of the problems proposed to be resolved by the plan; and
- (d) that, for each subject of the plan, there is likely to be adequate funding for the implementation of the plan for the shorter of its proposed duration and 5 years; and
- (e) that each rule—
 - (i) will assist in achieving the plan's objectives; and
 - (ii) will not trespass unduly on the rights of individuals.

Section 74: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

75 Sixth step: decision on plan

- (1) When the council is satisfied of the matters in section 74, the council must prepare a written report on the plan.
- (2) If the council has received submissions on the proposal, the council must—
 - (a) set out in the report the council's reasons for accepting or rejecting the submissions; and
 - (b) give a copy of the report to every person who made a submission.
- (3) The report must give the council's decision on the plan.

- (4) The council must give public notice—
- (a) stating the council’s decision on the plan; and
 - (b) stating where the plan resulting from the council’s decision can be read.

Section 75: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

76 Application to Environment Court about plan

- (1) This section applies to the plan resulting from the council’s decision under section 75(3).
- (2) The following matters may be the subject of an application to the Environment Court:
- (a) any aspect of the plan:
 - (b) whether the plan is inconsistent with the national policy direction:
 - (c) whether the process requirements for a plan in the national policy direction, if there were any, were complied with.
- (3) If consultation on the proposal for the plan was undertaken by way of public notification of the proposal and the receipt of submissions, a person who made a submission on the proposal may make an application to the Environment Court.
- (4) If consultation on the proposal was undertaken other than by way of public notification of the proposal and the receipt of submissions, the following persons may make an application to the Environment Court:
- (a) a person who participated in consultation during the preparation of the proposal and whose views were provided or recorded in writing:
 - (b) a person who participated in consultation on the proposal and whose views were provided or recorded in writing:
 - (c) a person who is likely to be affected by the plan and did not participate in consultation only because the person was not given an opportunity to participate.
- (5) The application must be made within 15 working days after the date of the public notice.
- (6) The application is made under section 291 of the Resource Management Act 1991 and regulations made under the Resource Management Act 1991.
- (7) The court must hold a public hearing on the application.
- (8) The court must—
- (a) dismiss the application; or
 - (b) direct the council to modify the plan, delete a provision from the plan, or insert a provision in the plan.

Section 76: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

77 Making of plan

- (1) A plan is made by the council fixing the council's seal to the plan.
- (2) If no person makes an application under section 76, the council must make the plan.
- (3) If a person makes an application under section 76, the council must—
 - (a) decide whether the matter dealt with in the application is severable from the rest of the plan; and
 - (b) take 1 of the courses of action described in subsection (4).
- (4) The courses of action are as follows:
 - (a) if the matter dealt with in the application is severable from the rest of the plan, the council must make the plan without the matter in it and, after the Environment Court's decision, do the applicable 1 of the following:
 - (i) if the Environment Court dismisses the application under section 76(8)(a), make the part of the plan that deals with the matter:
 - (ii) if the Environment Court gives a direction under section 76(8)(b), comply with the direction before making the part of the plan that deals with the matter:
 - (b) if the matter dealt with in the application is not severable from the rest of the plan and the Environment Court dismisses the application under section 76(8)(a), the council must make the plan:
 - (c) if the matter dealt with in the application is not severable from the rest of the plan and the Environment Court gives a direction under section 76(8)(b), the council must comply with the direction before making the plan.
- (5) The council must give public notice of—
 - (a) the making of the plan; and
 - (b) the plan's commencement date or dates, as follows:
 - (i) the commencement date of a plan made in the circumstances described in subsection (2) or (4)(b) or (c) is the date on which the council fixes the council's seal to the plan:
 - (ii) the commencement dates of the parts of a plan made in the circumstances described in subsection (4)(a) are, for the part of the plan made first, the date on which the council fixes the council's seal to that part and, for the part of the plan made after the Environment Court's decision, the date on which the council fixes the council's seal to that part.

Section 77: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

78 Exemptions from rules

- (1) The council may exempt a person from a requirement in a rule, without conditions or on conditions that the council considers appropriate.
- (2) The council may grant an exemption under subsection (1) only if—
 - (a) the council is satisfied that granting the exemption will not significantly prejudice the attainment of the plan's objectives; and
 - (b) the council is satisfied that 1 or more of the following applies:
 - (i) the requirement has been substantially complied with and further compliance is unnecessary;
 - (ii) the action taken on, or provision made for, the matter to which the requirement relates is as effective as, or more effective than, compliance with the requirement;
 - (iii) the requirement is clearly unreasonable or inappropriate in the particular case;
 - (iv) events have occurred that make the requirement unnecessary or inappropriate in the particular case.
- (3) The council may exempt all persons, a specified class of persons, persons in a specified place, or persons responsible for specified goods or things from a requirement in a rule, without conditions or on conditions that the council considers appropriate.
- (4) The council may grant an exemption under subsection (3) only if the council is satisfied that events have occurred that make the requirement unnecessary or inappropriate.
- (5) Conditions on which the council grants an exemption must be consistent with the purpose of this Part and must be no more onerous than the requirement from which the exemption is granted.
- (6) The council must determine the period of an exemption that the council grants.
- (7) The council must provide a register that—
 - (a) records, for each exemption granted,—
 - (i) a description of the exemption; and
 - (ii) the reasons for the exemption; and
 - (iii) the period of the exemption; and
 - (b) is available for the public to read free of charge—
 - (i) at the council's offices during the council's normal office hours; or
 - (ii) on an Internet site maintained by or on behalf of the council.
- (8) The following apply to the extension of the period of an exemption:
 - (a) the council may grant an extension of the period; and
 - (b) the extension must be granted before the end of the period; and

- (c) the extended period becomes the period of the exemption; and
- (d) the council may exercise the power in paragraph (a) more than once.

Section 78: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Pathway management plans

National pathway management plans

Headings: inserted, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

79 Definitions for sections 80 to 87

For the purposes of sections 80 to 87,—

management agency means a management agency responsible for implementing a national pathway management plan

plan means a national pathway management plan

proposal means a proposal for a national pathway management plan

rule means a rule in a national pathway management plan.

Section 79: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

80 Relationship of rules and plan with laws

- (1) To the extent to which a bylaw of a local authority is inconsistent with a rule applying to the same locality, the rule prevails.
- (2) If a plan imposes obligations and costs on the Crown, the Crown must comply with the obligations and meet the costs.

Section 80: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

81 First step: plan initiated by proposal

- (1) The first step in the making of a plan is a proposal made by—
 - (a) a Minister; or
 - (b) a person who submits the proposal to a Minister.
- (2) The proposal must set out the following matters:
 - (a) the name of the person making the proposal:
 - (b) the subject of the proposal, which means the pathway or pathways to which the proposal applies:
 - (c) for each subject,—
 - (i) a description of the actual or potential risks associated with it:
 - (ii) the reasons for proposing a plan:
 - (iii) the objectives that the plan would have:

- (iv) the principal measures that would be in the plan to achieve the objectives:
 - (v) other measures that it would be reasonable to take to achieve the objectives, if there are any such measures, and the reasons why the proposed measures are preferable as a means of achieving the objectives:
 - (vi) the reasons why a national plan is more appropriate than a regional plan:
 - (vii) an analysis of the benefits and costs of the plan:
 - (viii) the extent to which any persons, or persons of a class or description, are likely to benefit from the plan:
 - (ix) the extent to which any persons, or persons of a class or description, contribute to the creation, continuance, or exacerbation of the problems proposed to be resolved by the plan:
 - (x) the anticipated costs of implementing the plan:
 - (xi) how it is proposed that the costs be funded:
 - (xii) the rationale for the proposed allocation of costs:
 - (xiii) if it is proposed that the plan be funded by a levy under section 100L, how the proposed levy satisfies section 100L(5)(d) and what matters will be specified under section 100N(1):
 - (xiv) whether any unusual administrative problems or costs are expected in recovering the costs allocated to any of the persons whom the plan would require to pay the costs:
- (d) the effect that, in the opinion of the person making the proposal, implementation of the plan would have on—
- (i) 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:
 - (ii) the marketing overseas of New Zealand products:
- (e) if the plan would affect another pathway management plan or a pest management plan, how it is proposed to co-ordinate the implementation of the plans:
- (f) the powers in Part 6 that it is proposed to use to implement the plan:
- (g) each proposed rule and an explanation of its purpose:
- (h) the rules whose contravention is proposed to be an offence under this Act:
- (i) the management agency:

- (j) the means by which it is proposed to monitor or measure the achievement of the plan's objectives:
- (k) the actions that it is proposed local authorities, local authorities of a specified class or description, or specified local authorities may take to implement the plan, including contributing towards the costs of implementation:
- (l) the basis, if any, on which the management agency is to pay compensation for losses incurred as a direct result of the implementation of the plan:
- (m) information on the disposal of the proceeds of any receipts arising in the course of implementing the plan:
- (n) whether or not the plan would apply to the EEZ and, if it would, whether it would apply to all of it or parts of it and, if it would apply to parts, which parts:
- (o) 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:
- (p) the period for which it is proposed the plan be in force:
- (q) the consultation, if any, that has occurred on the proposal and the outcome of it:
- (r) any matter that the national policy direction requires be specified in a plan:
- (s) the steps that have been taken to comply with the process requirements in the national policy direction, if there were any.

Section 81: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

82 Second step: satisfaction on requirements

If the Minister is satisfied that section 81 has been complied with, the Minister may take the second step in the making of a plan, which is to consider whether the Minister is satisfied—

- (a) that the proposal is not inconsistent with the national policy direction; and
- (b) that, during the development of the proposal, the process requirements for a plan in the national policy direction, if there were any, were complied with; and
- (c) that the proposal has merit as a means of managing the subject of the proposal, which means the pathway or pathways; and
- (d) that each subject could spread an organism that is capable of causing at some time an adverse effect on 1 or more of the following in New Zealand:

- (i) economic wellbeing;
 - (ii) the viability of threatened species of organisms;
 - (iii) the survival and distribution of indigenous plants or animals;
 - (iv) the sustainability of natural and developed ecosystems, ecological processes, and biological diversity;
 - (v) soil resources;
 - (vi) water quality;
 - (vii) human health;
 - (viii) social and cultural wellbeing;
 - (ix) the enjoyment of the recreational value of the natural environment;
 - (x) the relationship between Māori, their culture, and their traditions and their ancestral lands, waters, sites, wāhi tapu, and taonga;
 - (xi) animal welfare; and
- (e) that, for each subject, the benefits of the plan would outweigh the costs, after taking account of the likely consequences of inaction or other courses of action; and
 - (f) that, for each subject, persons who are required, as a group, to meet directly any or all of the costs of implementing the plan—
 - (i) would accrue, as a group, benefits outweighing the costs; or
 - (ii) contribute, as a group, to the creation, continuance, or exacerbation of the problems proposed to be resolved by the plan; and
 - (g) that, for each subject, there is likely to be adequate funding for the implementation of the plan for the shorter of its proposed duration and 5 years; and
 - (h) that the implementation of the plan would not be contrary to New Zealand's international obligations; and
 - (i) that each proposed rule—
 - (i) would assist in achieving the plan's objectives; and
 - (ii) would not trespass unduly on the rights of individuals; and
 - (j) that the proposal is not frivolous or vexatious; and
 - (k) that the proposal is clear enough to be readily understood; and
 - (l) that, if the Minister rejected a similar proposal within the last 3 years, new and material information answers the Minister's objection to the previous proposal.

Section 82: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

83 Third step: satisfaction with consultation or requirement of more consultation

- (1) If the Minister is satisfied of the matters in section 82, the Minister may take the third step in the making of a plan, which is for the Minister to consider whether the Minister is satisfied—
 - (a) that, if Ministers' responsibilities may be affected by the plan, the Ministers have been consulted; and
 - (b) that, if local authorities' responsibilities may be affected by the plan, the authorities have been consulted; and
 - (c) that, if consultation with tangata whenua or other persons is appropriate, sufficient consultation has occurred.
- (2) In considering whether the Minister is satisfied as required by subsection (1)(c), the Minister must have regard to the following:
 - (a) the scale of the impacts on persons who are likely to be affected by the plan; and
 - (b) whether the persons likely to be affected by the plan or their representatives have already been consulted and, if so, the nature of the consultation; and
 - (c) the level of support for, or opposition to, the proposal from persons who are likely to be affected by it.
- (3) If the Minister is satisfied as required by subsection (1), the Minister must apply section 84.
- (4) If the Minister is not satisfied as required by subsection (1), the Minister may require consultation to be undertaken on the proposal.
- (5) If the Minister requires consultation to be undertaken, the Minister must determine the way or ways in which the consultation must be undertaken, including, but not limited to, ways such as—
 - (a) consultation with persons likely to be affected by the plan or with their representatives;
 - (b) the appointment by the Minister of 1 or more persons to carry out an independent inquiry into the proposal on terms of reference set by the Minister;
 - (c) public notification of the proposal and the receipt of submissions.
- (6) After the consultation required by the Minister has been undertaken, the Minister must apply subsection (1) again.

Section 83: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

84 Fourth step: approval of preparation of plan and decision on management agency

- (1) If the Minister is satisfied as required by section 83(1) and is satisfied that the issues raised in all the consultation undertaken on the proposal have been considered, the Minister may take the fourth step in the making of a plan, which is to approve the preparation of a plan.
- (2) If the Minister approves the preparation of a plan, the Minister must apply section 100 to decide which body is to be the management agency.

Matters to be specified

- (3) A plan must specify the following matters:
 - (a) the pathway or pathways to be managed:
 - (b) the plan's objectives:
 - (c) the principal measures to be taken to achieve the objectives:
 - (d) the means by which the achievement of the plan's objectives will be monitored or measured:
 - (e) the sources of funding for the implementation of the plan:
 - (f) the limitations, if any, on how the funds collected from those sources may be used to implement the plan:
 - (g) the powers in Part 6 to be used to implement the plan:
 - (h) the rules, if any:
 - (i) the management agency:
 - (j) the actions that local authorities, local authorities of a specified class or description, or specified local authorities may take to implement the plan, including contributing towards the costs of implementation:
 - (k) the parts of the EEZ to which the plan applies, if it applies to parts, or the fact that it applies to the whole EEZ, if it does:
 - (l) the portions of road, if any, adjoining land covered by the plan and, as authorised by section 6, also covered by the plan:
 - (m) the plan's commencement date and, if there is one, its termination date:
 - (n) any matters required by the national policy direction.

Compensation

- (4) A plan—
 - (a) may provide for the payment of compensation for losses incurred as a direct result of the implementation of the plan:
 - (b) must not provide for the payment of compensation for the following losses:
 - (i) loss suffered because a person's income derived from feral or wild organisms is adversely affected by the implementation of the plan:

- (ii) loss suffered by a person who fails to comply with the plan.

Rules

- (5) A plan may include rules for all or any of the following purposes:
 - (a) requiring a person to keep records of actions taken under the rules and to send to the management agency specified information based on the records:
 - (b) requiring the identification of specified goods:
 - (c) prohibiting or regulating specified methods that may be used in managing the pathway:
 - (d) prohibiting or regulating activities that may affect measures taken to implement the plan:
 - (e) requiring audits or inspections of specified actions:
 - (f) requiring the occupier of a place to carry out specified treatments or procedures to assist in preventing the spread of organisms that could be spread through the pathway:
 - (g) requiring the owner or person in charge of goods or craft to carry out specified treatments or procedures to assist in preventing the spread of organisms that could be spread through the pathway:
 - (h) requiring the destruction of goods in circumstances in which the goods pose a risk of spreading organisms that could be spread through the pathway:
 - (i) prohibiting or regulating specified uses or movement of goods that may promote the spread of organisms through the pathway:
 - (j) prohibiting or regulating the use or disposal of organic material on the pathway:
 - (k) prohibiting or regulating the use of specified practices in the management of organisms that may promote the spread of organisms through the pathway.
- (6) A rule may—
 - (a) apply generally or to different classes or descriptions of persons, places, goods, or other things:
 - (b) apply all the time or at 1 or more specified times of the year:
 - (c) apply throughout New Zealand or in a specified part or parts of New Zealand, with, if necessary, another rule on the same subject matter applying to another specified part of New Zealand:
 - (d) specify that a contravention of the rule creates an offence under section 154N(18).

Section 84: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

85 Fifth step: satisfaction on contents of plan and requirements

If the Minister is satisfied that section 84 has been complied with, the Minister may take the fifth step in the making of a plan, which is for the Minister to consider whether the Minister is satisfied, in relation to the plan prepared under section 84,—

- (a) that the plan is not inconsistent with the national policy direction; and
- (b) that, for each subject of the plan, the benefits of the plan outweigh the costs, after taking account of the likely consequences of inaction or other courses of action; and
- (c) that, for each subject of the plan, persons who are required, as a group, to meet directly any or all of the costs of implementing the plan—
 - (i) will accrue, as a group, benefits outweighing the costs; or
 - (ii) contribute, as a group, to the creation, continuance, or exacerbation of the problems proposed to be resolved by the plan; and
- (d) that, for each subject of the plan, there is likely to be adequate funding for the implementation of the plan for the shorter of its proposed duration and 5 years; and
- (e) that each rule—
 - (i) will assist in achieving the plan's objectives; and
 - (ii) will not trespass unduly on the rights of individuals; and
- (f) that the implementation of the plan is not contrary to New Zealand's international obligations.

Section 85: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

86 Making of plan

- (1) If the Minister is satisfied of the matters in section 85, the Minister may recommend to the Governor-General that an Order in Council be made making the plan.
- (2) The order is a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Section 86: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 86(2): replaced, on 1 February 2014, by section 77(3) of the Legislation Act 2012 (2012 No 119).

87 Exemptions from rules

- (1) The following are exempt from the requirements in rules for acts or omissions in the course of an emergency as described in subsection (2):
 - (a) the New Zealand Defence Force:

- (b) a Civil Defence Emergency Management Group established under the Civil Defence Emergency Management Act 2002:
 - (c) the New Zealand Police:
 - (d) Fire and Emergency New Zealand:
 - (e) *[Repealed]*
 - (f) *[Repealed]*
 - (g) DHBs, as defined in section 6 of the New Zealand Public Health and Disability Act 2000.
- (2) An emergency is,—
- (a) for the purposes of subsection (1)(a), an emergency relating to—
 - (i) a threat to New Zealand’s interests under section 5 of the Defence Act 1990:
 - (ii) the safety of human life:
 - (iii) the safety of ships or aircraft:
 - (iv) the protection of the environment:
 - (v) equipment or facilities of high value:
 - (b) for the purposes of subsection (1)(b) to (g), a situation as described in paragraphs (a) and (b) of the definition of **emergency** in section 4 of the Civil Defence Emergency Management Act 2002.
- (3) The Minister may exempt a person from a requirement in a rule, without conditions or on conditions that the Minister considers appropriate.
- (4) The Minister may grant an exemption under subsection (3) only if—
- (a) the Minister is satisfied that granting the exemption will not significantly prejudice the attainment of the plan’s objectives; and
 - (b) the Minister is satisfied that 1 or more of the following applies:
 - (i) the requirement has been substantially complied with and further compliance is unnecessary:
 - (ii) the action taken on, or provision made for, the matter to which the requirement relates is as effective as, or more effective than, compliance with the requirement:
 - (iii) the requirement is clearly unreasonable or inappropriate in the particular case:
 - (iv) events have occurred that make the requirement unnecessary or inappropriate in the particular case.
- (5) The Minister may exempt all persons, a specified class of persons, persons in a specified place, or persons responsible for specified goods or things from a requirement in a rule, without conditions or on conditions that the Minister considers appropriate.

- (6) The Minister may grant an exemption under subsection (5) only if the Minister is satisfied that events have occurred that make the requirement unnecessary or inappropriate.
- (7) Conditions on which the Minister grants an exemption must be consistent with the purpose of this Part and must be no more onerous than the requirement from which the exemption is granted.
- (8) The Minister must determine the period of an exemption that the Minister grants.
- (9) As soon as practicable after granting an exemption, the Minister must publish a notice in the *Gazette* giving—
 - (a) a description of the exemption; and
 - (b) the reasons for the exemption; and
 - (c) the period of the exemption.
- (10) The following apply to the extension of the period of an exemption:
 - (a) the Minister may grant an extension of the period; and
 - (b) the extension must be granted before the end of the period; and
 - (c) the extended period becomes the period of the exemption; and
 - (d) the Minister may exercise the power in paragraph (a) more than once; and
 - (e) extensions of the period of an exemption must be notified in the *Gazette*.
- (11) An exemption is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Section 87: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 87(1)(d): replaced, on 1 July 2017, by section 197 of the Fire and Emergency New Zealand Act 2017 (2017 No 17).

Section 87(1)(e): repealed, on 1 July 2017, by section 197 of the Fire and Emergency New Zealand Act 2017 (2017 No 17).

Section 87(1)(f): repealed, on 1 July 2017, by section 197 of the Fire and Emergency New Zealand Act 2017 (2017 No 17).

Section 87(11): replaced, on 1 February 2014, by section 77(3) of the Legislation Act 2012 (2012 No 119).

Regional pathway management plans

Heading: inserted, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

88 Definitions for sections 89 to 98

For the purposes of sections 89 to 98,—

council means a regional council

management agency means a management agency responsible for implementing a regional pathway management plan

plan means a regional pathway management plan

proposal means a proposal for a regional pathway management plan

rule means a rule in a regional pathway management plan.

Section 88: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

89 Relationship of rules with law

- (1) To the extent to which a regulation made under this or any other Act is inconsistent with a rule, the regulation prevails.
- (2) To the extent to which a rule in a national pest management plan is inconsistent with a rule, the rule in the national pest management plan prevails.
- (3) To the extent to which a rule in a national pathway management plan is inconsistent with a rule, the rule in the national pathway management plan prevails.
- (4) To the extent to which a bylaw of a local authority is inconsistent with a rule applying to the same locality, the rule prevails.
- (5) If a rule imposes obligations and costs on the Crown, the Crown must comply with the obligations and meet the costs.

Section 89: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

90 First step: plan initiated by proposal

- (1) The first step in the making of a plan is a proposal made by—
 - (a) the council; or
 - (b) a person who submits the proposal to the council.
- (2) The proposal must set out the following matters:
 - (a) the name of the person making the proposal;
 - (b) the subject of the proposal, which means the pathway or pathways to which the proposal applies;
 - (c) for each subject,—
 - (i) a description of the actual or potential risks associated with it;
 - (ii) the reasons for proposing a plan;
 - (iii) the objectives that the plan would have;
 - (iv) the principal measures that would be in the plan to achieve the objectives;
 - (v) other measures that it would be reasonable to take to achieve the objectives, if there are any such measures, and the reasons why the proposed measures are preferable as a means of achieving the objectives;

- (vi) an analysis of the benefits and costs of the plan:
 - (vii) the extent to which any persons, or persons of a class or description, are likely to benefit from the plan:
 - (viii) the extent to which any persons, or persons of a class or description, contribute to the creation, continuance, or exacerbation of the problems proposed to be resolved by the plan:
 - (ix) the rationale for the proposed allocation of costs:
 - (x) if it is proposed that the plan be funded by a levy under section 100L, how the proposed levy satisfies section 100L(5)(d) and what matters will be specified under section 100N(1):
 - (xi) whether any unusual administrative problems or costs are expected in recovering the costs allocated to any of the persons whom the plan would require to pay the costs:
- (d) the effects that, in the opinion of the person making the proposal, implementation of the plan would have on—
- (i) 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:
 - (ii) the marketing overseas of New Zealand products:
- (e) if the plan would affect another pathway management plan or a pest management plan, how it is proposed to co-ordinate the implementation of the plans:
- (f) the powers in Part 6 that it is proposed to use to implement the plan:
- (g) each proposed rule and an explanation of its purpose:
- (h) the rules whose contravention is proposed to be an offence under this Act:
- (i) the management agency:
 - (j) the means by which it is proposed to monitor or measure the achievement of the plan's objectives:
- (k) the actions that it is proposed local authorities, local authorities of a specified class or description, or specified local authorities may take to implement the plan, including contributing towards the costs of implementation:
- (l) the basis, if any, on which the management agency is to pay compensation for losses incurred as a direct result of the implementation of the plan:
- (m) information on the disposal of the proceeds of any receipts arising in the course of implementing the plan:

- (n) 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:
- (o) the anticipated costs of implementing the plan:
- (p) how it is proposed that the costs be funded:
- (q) the period for which it is proposed the plan be in force:
- (r) the consultation, if any, that has occurred on the proposal and the outcome of it:
- (s) any matter that the national policy direction requires be specified in a plan:
- (t) the steps that have been taken to comply with the process requirements in the national policy direction, if there were any.

Section 90: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

91 Second step: satisfaction on requirements

If the council is satisfied that section 90 has been complied with, the council may take the second step in the making of a plan, which is to consider whether the council is satisfied—

- (a) that the proposal is not inconsistent with—
 - (i) the national policy direction; or
 - (ii) any other pathway management plan or pest management plan; or
 - (iii) a regional policy statement or regional plan prepared under the Resource Management Act 1991; or
 - (iv) any regulations; and
- (b) that, during the development of the proposal, the process requirements for a plan in the national policy direction, if there were any, were complied with; and
- (c) that the proposal has merit as a means of managing the subject of the proposal, which means the pathway or pathways; and
- (d) that each subject could spread an organism that is capable of causing at some time an adverse effect on 1 or more of the following in the region:
 - (i) economic wellbeing;
 - (ii) the viability of threatened species of organisms;
 - (iii) the survival and distribution of indigenous plants or animals;
 - (iv) the sustainability of natural and developed ecosystems, ecological processes, and biological diversity;
 - (v) soil resources;
 - (vi) water quality;

- (vii) human health;
- (viii) social and cultural wellbeing;
- (ix) the enjoyment of the recreational value of the natural environment;
- (x) the relationship between Māori, their culture, and their traditions and their ancestral lands, waters, sites, wāhi tapu, and taonga;
- (xi) animal welfare; and
- (e) that, for each subject, the benefits of the plan would outweigh the costs, after taking account of the likely consequences of inaction or other courses of action; and
- (f) that, for each subject, persons who are required, as a group, to meet directly any or all of the costs of implementing the plan—
 - (i) would accrue, as a group, benefits outweighing the costs; or
 - (ii) contribute, as a group, to the creation, continuance, or exacerbation of the problems proposed to be resolved by the plan; and
- (g) that, for each subject, there is likely to be adequate funding for the implementation of the plan for the shorter of its proposed duration and 5 years; and
- (h) that each proposed rule—
 - (i) would assist in achieving the plan's objectives; and
 - (ii) would not trespass unduly on the rights of individuals; and
- (i) that the proposal is not frivolous or vexatious; and
- (j) that the proposal is clear enough to be readily understood; and
- (k) that, if the council rejected a similar proposal within the last 3 years, new and material information answers the council's objection to the previous proposal.

Section 91: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

92 Third step: satisfaction with consultation or requirement of more consultation

- (1) If the council is satisfied of the matters in section 91, the council may take the third step in the making of a plan, which is for the council to consider whether the council is satisfied—
 - (a) that, if Ministers' responsibilities may be affected by the plan, the Ministers have been consulted; and
 - (b) that, if local authorities' responsibilities may be affected by the plan, the authorities have been consulted; and

- (c) that the tangata whenua of the area who may be affected by the plan were consulted through iwi authorities and tribal runanga; and
 - (d) that, if consultation with other persons is appropriate, sufficient consultation has occurred.
- (2) In considering whether the council is satisfied as required by subsection (1)(d), the council must have regard to the following:
- (a) the scale of the impacts on persons who are likely to be affected by the plan; and
 - (b) whether the persons likely to be affected by the plan or their representatives have already been consulted and, if so, the nature of the consultation; and
 - (c) the level of support for, or opposition to, the proposal from persons who are likely to be affected by it.
- (3) If the council is satisfied as required by subsection (1), the council must apply section 93.
- (4) If the council is not satisfied as required by subsection (1), the council may require consultation to be undertaken on the proposal.
- (5) If the council requires consultation to be undertaken, the council must determine the way or ways in which the consultation must be undertaken, including, but not limited to, ways such as—
- (a) consultation with persons likely to be affected by the plan or with their representatives;
 - (b) the appointment by the council of 1 or more persons to carry out an independent inquiry into the proposal on terms of reference set by the council;
 - (c) public notification of the proposal and the receipt of submissions.
- (6) After the consultation required by the council has been undertaken, the council must apply subsection (1) again.

Section 92: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

93 Fourth step: approval of preparation of plan and decision on management agency

- (1) If the council is satisfied as required by section 92(1) and is satisfied that the issues raised in all the consultation undertaken on the proposal have been considered, the council may take the fourth step in the making of a plan, which is to approve the preparation of a plan.
- (2) If the council approves the preparation of a plan, the council must apply section 100 to decide which body is to be the management agency.

Matters to be specified

- (3) A plan must specify the following matters:
- (a) the pathway or pathways to be managed:
 - (b) the plan's objectives:
 - (c) the principal measures to be taken to achieve the objectives:
 - (d) the means by which the achievement of the plan's objectives will be monitored or measured:
 - (e) the sources of funding for the implementation of the plan:
 - (f) the limitations, if any, on how the funds collected from those sources may be used to implement the plan:
 - (g) the powers in Part 6 to be used to implement the plan:
 - (h) the rules, if any:
 - (i) the management agency:
 - (j) the actions that local authorities, local authorities of a specified class or description, or specified local authorities may take to implement the plan, including contributing towards the costs of implementation:
 - (k) the portions of road, if any, adjoining land covered by the plan and, as authorised by section 6, also covered by the plan:
 - (l) the plan's commencement date and, if there is one, its termination date:
 - (m) any matters required by the national policy direction.

Compensation

- (4) A plan—
- (a) may provide for the payment of compensation for losses incurred as a direct result of the implementation of the plan:
 - (b) must not provide for the payment of compensation for the following losses:
 - (i) loss suffered because a person's income derived from feral or wild organisms is adversely affected by the implementation of the plan:
 - (ii) loss suffered by a person who fails to comply with the plan.

Rules

- (5) A plan may include rules for all or any of the following purposes:
- (a) requiring a person to keep records of actions taken under the rules and to send to the management agency specified information based on the records:
 - (b) requiring the identification of specified goods:
 - (c) prohibiting or regulating specified methods that may be used in managing the pathway:

- (d) prohibiting or regulating activities that may affect measures taken to implement the plan:
 - (e) requiring audits or inspections of specified actions:
 - (f) requiring the occupier of a place to carry out specified treatments or procedures to assist in preventing the spread of organisms that could be spread through the pathway:
 - (g) requiring the owner or person in charge of goods or craft to carry out specified treatments or procedures to assist in preventing the spread of organisms that could be spread through the pathway:
 - (h) requiring the destruction of goods in circumstances in which the goods pose a risk of spreading organisms that could be spread through the pathway:
 - (i) prohibiting or regulating specified uses or movement of goods that may promote the spread of organisms through the pathway:
 - (j) prohibiting or regulating the use or disposal of organic material on the pathway:
 - (k) prohibiting or regulating the use of specified practices in the management of organisms that may promote the spread of organisms through the pathway.
- (6) A rule may—
- (a) apply generally or to different classes or descriptions of persons, places, goods, or other things:
 - (b) apply all the time or at 1 or more specified times of the year:
 - (c) apply throughout the region or in a specified part or parts of the region, with, if necessary, another rule on the same subject matter applying to another specified part of the region:
 - (d) specify that a contravention of the rule creates an offence under section 154N(19).

Section 93: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

94 Fifth step: satisfaction on contents of plan and requirements

If the council is satisfied that section 93 has been complied with, the council may take the fifth step in the making of a plan, which is for the council to consider whether the council is satisfied, in relation to the plan prepared under section 93,—

- (a) that the plan is not inconsistent with—
 - (i) the national policy direction; or
 - (ii) any other pathway management plan or pest management plan; or

- (iii) a regional policy statement or regional plan prepared under the Resource Management Act 1991; or
- (iv) any regulations; and
- (b) that, for each subject of the plan, the benefits of the plan outweigh the costs, after taking account of the likely consequences of inaction or other courses of action; and
- (c) that, for each subject of the plan, persons who are required, as a group, to meet directly any or all of the costs of implementing the plan—
 - (i) will accrue, as a group, benefits outweighing the costs; or
 - (ii) contribute, as a group, to the creation, continuance, or exacerbation of the problems proposed to be resolved by the plan; and
- (d) that, for each subject of the plan, there is likely to be adequate funding for the implementation of the plan for the shorter of its proposed duration and 5 years; and
- (e) that each rule—
 - (i) will assist in achieving the plan's objectives; and
 - (ii) will not trespass unduly on the rights of individuals.

Section 94: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

95 Sixth step: decision on plan

- (1) When the council is satisfied of the matters in section 94, the council must prepare a written report on the plan.
- (2) If the council has received submissions on the proposal, the council must—
 - (a) set out in the report the council's reasons for accepting or rejecting the submissions; and
 - (b) give a copy of the report to every person who made a submission.
- (3) The report must give the council's decision on the plan.
- (4) The council must give public notice—
 - (a) stating the council's decision on the plan; and
 - (b) stating where the plan resulting from the council's decision can be read.

Section 95: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

96 Application to Environment Court about plan

- (1) This section applies to the plan resulting from the council's decision under section 95(3).
- (2) The following matters may be the subject of an application to the Environment Court:
 - (a) any aspect of the plan:

- (b) whether the plan is inconsistent with the national policy direction:
 - (c) whether the process requirements for a plan in the national policy direction, if there were any, were complied with.
- (3) If consultation on the proposal for the plan was undertaken by way of public notification of the proposal and the receipt of submissions, a person who made a submission on the proposal may make an application to the Environment Court.
- (4) If consultation on the proposal was undertaken other than by way of public notification of the proposal and the receipt of submissions, the following persons may make an application to the Environment Court:
 - (a) a person who participated in consultation during the preparation of the proposal and whose views were provided or recorded in writing:
 - (b) a person who participated in consultation on the proposal and whose views were provided or recorded in writing:
 - (c) a person who is likely to be affected by the plan and did not participate in consultation only because the person was not given an opportunity to participate.
- (5) The application must be made within 15 working days after the date of the public notice.
- (6) The application is made under section 291 of the Resource Management Act 1991 and regulations made under the Resource Management Act 1991.
- (7) The court must hold a public hearing on the application.
- (8) The court must—
 - (a) dismiss the application; or
 - (b) direct the council to modify the plan, delete a provision from the plan, or insert a provision in the plan.

Section 96: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

97 Making of plan

- (1) A plan is made by the council fixing the council's seal to the plan.
- (2) If no person makes an application under section 96, the council must make the plan.
- (3) If a person makes an application under section 96, the council must—
 - (a) decide whether the matter dealt with in the application is severable from the rest of the plan; and
 - (b) take 1 of the courses of action described in subsection (4).
- (4) The courses of action are as follows:

- (a) if the matter dealt with in the application is severable from the rest of the plan, the council must make the plan without the matter in it and, after the Environment Court's decision, do the applicable 1 of the following:
 - (i) if the Environment Court dismisses the application under section 96(8)(a), make the part of the plan that deals with the matter:
 - (ii) if the Environment Court gives a direction under section 96(8)(b), comply with the direction before making the part of the plan that deals with the matter:
 - (b) if the matter dealt with in the application is not severable from the rest of the plan and the Environment Court dismisses the application under section 96(8)(a), the council must make the plan:
 - (c) if the matter dealt with in the application is not severable from the rest of the plan and the Environment Court gives a direction under section 96(8)(b), the council must comply with the direction before making the plan.
- (5) The council must give public notice of—
- (a) the making of the plan; and
 - (b) the plan's commencement date or dates, as follows:
 - (i) the commencement date of a plan made in the circumstances described in subsection (2) or (4)(b) or (c) is the date on which the council fixes the council's seal to the plan:
 - (ii) the commencement dates of the parts of a plan made in the circumstances described in subsection (4)(a) are, for the part of the plan made first, the date on which the council fixes the council's seal to that part and, for the part of the plan made after the Environment Court's decision, the date on which the council fixes the council's seal to that part.

Section 97: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

98 Exemptions from rules

- (1) The following are exempt from the requirements in rules for acts or omissions in the course of an emergency as described in subsection (2):
- (a) the New Zealand Defence Force:
 - (b) a Civil Defence Emergency Management Group established under the Civil Defence Emergency Management Act 2002:
 - (c) the New Zealand Police:
 - (d) Fire and Emergency New Zealand:
 - (e) *[Repealed]*
 - (f) *[Repealed]*

- (g) DHBs, as defined in section 6 of the New Zealand Public Health and Disability Act 2000.
- (2) An emergency is,—
 - (a) for the purposes of subsection (1)(a), an emergency relating to—
 - (i) a threat to New Zealand’s interests under section 5 of the Defence Act 1990:
 - (ii) the safety of human life:
 - (iii) the safety of ships or aircraft:
 - (iv) the protection of the environment:
 - (v) equipment or facilities of high value:
 - (b) for the purposes of subsection (1)(b) to (g), a situation as described in paragraphs (a) and (b) of the definition of **emergency** in section 4 of the Civil Defence Emergency Management Act 2002.
- (3) The council may exempt a person from a requirement in a rule, without conditions or on conditions that the council considers appropriate.
- (4) The council may grant an exemption under subsection (3) only if—
 - (a) the council is satisfied that granting the exemption will not significantly prejudice the attainment of the plan’s objectives; and
 - (b) the council is satisfied that 1 or more of the following applies:
 - (i) the requirement has been substantially complied with and further compliance is unnecessary:
 - (ii) the action taken on, or provision made for, the matter to which the requirement relates is as effective as, or more effective than, compliance with the requirement:
 - (iii) the requirement is clearly unreasonable or inappropriate in the particular case:
 - (iv) events have occurred that make the requirement unnecessary or inappropriate in the particular case.
- (5) The council may exempt all persons, a specified class of persons, persons in a specified place, or persons responsible for specified goods or things from a requirement in a rule, without conditions or on conditions that the council considers appropriate.
- (6) The council may grant an exemption under subsection (5) only if the council is satisfied that events have occurred that make the requirement unnecessary or inappropriate.
- (7) Conditions on which the council grants an exemption must be consistent with the purpose of this Part and must be no more onerous than the requirement from which the exemption is granted.
- (8) The council must determine the period of an exemption that the council grants.

- (9) The council must provide a register that—
- (a) records, for each exemption granted,—
 - (i) a description of the exemption; and
 - (ii) the reasons for the exemption; and
 - (iii) the period of the exemption; and
 - (b) is available for the public to read free of charge—
 - (i) at the council's offices during the council's normal office hours; or
 - (ii) on an Internet site maintained by or on behalf of the council.
- (10) The following apply to the extension of the period of an exemption:
- (a) the council may grant an extension of the period; and
 - (b) the extension must be granted before the end of the period; and
 - (c) the extended period becomes the period of the exemption; and
 - (d) the council may exercise the power in paragraph (a) more than once.

Section 98: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 98(1)(d): replaced, on 1 July 2017, by section 197 of the Fire and Emergency New Zealand Act 2017 (2017 No 17).

Section 98(1)(e): repealed, on 1 July 2017, by section 197 of the Fire and Emergency New Zealand Act 2017 (2017 No 17).

Section 98(1)(f): repealed, on 1 July 2017, by section 197 of the Fire and Emergency New Zealand Act 2017 (2017 No 17).

Implementation of plans

Heading: inserted, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

99 Definitions for sections 100 to 100G

For the purposes of sections 100 to 100G,—

Minister or council means the Minister who recommended the making of the plan, in relation to a national pest management plan and a national pathway management plan, or the regional council that made the plan, in relation to a regional pest management plan or a regional pathway management plan

operational plan means a plan for the implementation of—

- (a) a national pest management plan:
- (b) a regional pest management plan:
- (c) a national pathway management plan:
- (d) a regional pathway management plan

plan means—

- (a) a national pest management plan:

- (b) a regional pest management plan:
- (c) a national pathway management plan:
- (d) a regional pathway management plan.

Section 99: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

100 Management agencies

- (1) The management agency specified in a plan must be 1 of the following bodies:
 - (a) a department:
 - (b) a council:
 - (c) a territorial authority:
 - (d) a body corporate.
- (2) In deciding which body is to be the management agency, the Minister or council must take the following into consideration:
 - (a) the need for accountability to those providing the funds to implement the plan; and
 - (b) the acceptability of the body to—
 - (i) those providing the funds to implement the plan; and
 - (ii) those subject to management provisions under the plan; and
 - (c) the capacity of the body to manage the plan, including the competence and expertise of the body's employees and contractors.
- (3) Subsection (4) applies if a management agency—
 - (a) gives the Minister or council a written notice of resignation; or
 - (b) goes into liquidation, receivership, statutory management, or voluntary administration; or
 - (c) ceases to exist.
- (4) The Minister or council must, as soon as practicable,—
 - (a) appoint another body to be the management agency; and
 - (b) publicly notify the appointment.

Section 100: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

100A Powers in Part 6

- (1) A plan must be implemented using only the powers in Part 6 specified in the plan as those to be used to implement the plan.
- (2) The management agency specified in the plan may exercise a power in Part 6 to implement the plan only if the plan provides for the agency to exercise the power.

- (3) An authorised person may exercise a power in Part 6 to implement a plan only if—
- (a) the authorised person is appointed for the purposes of the plan; and
 - (b) Part 6 gives the power to an authorised person; and
 - (c) the plan specifies the power as one to be used to implement that plan.

Section 100A: replaced, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

100B Operational plans

- (1) A management agency must—
- (a) prepare an operational plan within 3 months after the commencement date specified under section 64(3)(m), 73(3)(m), 84(3)(m), or 93(3)(l); and
 - (b) review the operational plan annually; and
 - (c) decide on appropriate amendments to the operational plan, if necessary; and
 - (d) make copies of the operational plan and every amended version available to the public at cost; and
 - (e) provide a copy of the operational plan and every amended version to the Minister or council.
- (2) A management agency must—
- (a) prepare a report on the operational plan and its implementation not later than 5 months after the end of each financial year; and
 - (b) provide a copy of the report to the Minister or council.
- (3) A management agency for a regional pest management plan or regional pathway management plan—
- (a) may submit the report on the operational plan and its implementation for inclusion in the regional council's annual report; and
 - (b) must make the report on the operational plan and its implementation available to the public as a separate document, at cost, or as an extract from the annual report, at the cost of providing the extract.
- (4) The Minister or council may give the management agency written notice that the Minister or council intends to disallow all or part of an operational plan on the ground that the Minister or council believes that the whole operational plan, or the part of it, is inconsistent with the plan that the operational plan implements.
- (5) A notice under subsection (4)—
- (a) must be given before, or within 20 working days after, the Minister or council receives a copy of the operational plan or an amended version under subsection (1)(e); and

- (b) has the effect that the whole operational plan, or the part of it, is of no effect; and
- (c) may be revoked by a later written notice given by the Minister or council to the management agency allowing the whole operational plan or the part.

Section 100B: inserted, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

100C Duration of plans

A plan ceases to have effect when the earliest of the following occurs:

- (a) the plan's termination date is reached;
- (b) the Minister or council issues a public notice declaring that the plan's objectives have been achieved;
- (c) the plan is revoked following a review under section 100D.

Section 100C: inserted, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

100D Review of plans

Reasons for reviews

- (1) The Minister or council must initiate a review of a plan as a whole if—
 - (a) the plan is due to terminate in less than 12 months and the Minister or council proposes to extend the plan's duration; or
 - (b) the plan is due to terminate in less than 12 months and a person submits a proposal to the Minister or council to extend the plan's duration; or
 - (c) the plan was last reviewed as a whole more than 10 years previously.
- (2) The Minister or council may review the whole or part of a plan if the Minister or council has reason to believe—
 - (a) that the plan or part is failing to achieve its objectives; or
 - (b) that relevant circumstances have changed since the plan or part commenced.
- (3) The Minister or council must review a plan or a relevant part of a plan if—
 - (a) circumstances occur that are circumstances in which the national policy direction requires a review to be conducted; or
 - (b) any other requirement of the national policy direction requires a review to be conducted.

Proposal for review

- (4) A review is initiated by a proposal made by the Minister or council or any other person.
- (5) The proposal—

- (a) must state whether the proposal is to amend, revoke, revoke and replace, or leave unchanged the plan or part of the plan; and
- (b) must give reasons for the proposal; and
- (c) must,—
 - (i) if the proposal is to amend the plan or part of the plan, set out any proposed amendments in full; or
 - (ii) if the proposal is to revoke and replace the plan or part of the plan, set out the replacement plan or part; and
- (d) must comply with section 61, 70, 81, or 90 to the extent to which the sections are relevant and reading in any necessary modifications; and
- (e) may propose that a pest or pathway, as appropriate, be added to the plan, whether or not the review is of the whole plan.

Provisions applying to reviews

- (6) Reviews are conducted under the following sections to the extent to which they are relevant and reading in any necessary modifications:
 - (a) sections 59 to 67, for a national pest management plan;
 - (b) sections 68 to 78, for a regional pest management plan;
 - (c) sections 79 to 87, for a national pathway management plan;
 - (d) sections 88 to 98, for a regional pathway management plan.

Action after review

- (7) Following the review, the Minister or council may approve—
 - (a) the amendment of the plan or part of the plan; or
 - (b) the revocation and replacement of the plan or part of the plan; or
 - (c) the revocation of the plan or part of the plan; or
 - (d) the leaving unchanged of the plan or part of the plan.
- (8) A plan that reaches its termination date during a review that has begun continues in force and its future is determined by the action that the Minister or council approves under subsection (7).

Consequence of not complying with section

- (9) A plan does not cease to be in force only because it is not reviewed as required by this section.

Section 100D: inserted, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

100E Review of plans after national policy direction approved, amended, or revoked and replaced

- (1) This section applies when the national policy direction is—
 - (a) approved by the Governor-General under section 57:

- (b) amended under section 58(1):
 - (c) revoked and replaced under section 58(3).
- (2) In this section, references to the direction mean the national policy direction as approved by the Governor-General, amended, or replaced.
 - (3) The Minister or council must determine whether a plan is inconsistent with the direction and must do so within the timing requirements in the direction.
 - (4) If a plan is inconsistent with the direction but the changes to the plan necessary to resolve the inconsistency would not have a significant effect on any person's rights and obligations, the Minister or council must act under section 100G and must do so within the timing requirements in the direction, if there are any.
 - (5) If the plan is inconsistent with the direction and the changes to the plan necessary to resolve the inconsistency would have a significant effect on any person's rights and obligations,—
 - (a) the Minister or council must initiate a review to address the inconsistency under section 100D(4) within the timing requirements in the direction, if there are any; and
 - (b) section 100D(5) to (9) apply.

Section 100E: inserted, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

100F Application to Environment Court if regional plan not reviewed

- (1) This section applies if a regional pest management plan or a regional pathway management plan is not reviewed as required by section 100D(3) or 100E.
- (2) A person may apply to the Environment Court on the basis that there is an inconsistency between the national policy direction and the regional pest management plan or the regional pathway management plan.
- (3) The application is made under section 291 of the Resource Management Act 1991 and regulations made under the Resource Management Act 1991.
- (4) The court must hold a public hearing on the application.
- (5) The court must—
 - (a) dismiss the application; or
 - (b) direct the council to modify the plan, delete a provision from the plan, or insert a provision in the plan.
- (6) The council must comply with a direction under subsection (5)(b).

Section 100F: inserted, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

100G Minor changes to plans

National pest management plan or national pathway management plan

- (1) The Minister may recommend to the Governor-General the amendment of a national pest management plan or a national pathway management plan by Order in Council without a review under section 100D, if the Minister is satisfied that the amendment—
 - (a) does not have a significant effect on any person's rights and obligations; and
 - (b) is not inconsistent with the national policy direction.
- (2) The Governor-General may make the order.
- (3) The order is a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Regional pest management plan or regional pathway management plan

- (4) A regional pest management plan or a regional pathway management plan may be amended from time to time by a council by resolution without a review under section 100D, if the council is satisfied that the amendment—
 - (a) does not have a significant effect on any person's rights and obligations; and
 - (b) is not inconsistent with the national policy direction.

Section 100G: inserted, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 100G(3): replaced, on 1 February 2014, by section 77(3) of the Legislation Act 2012 (2012 No 119).

Councils' powers and duties relating to regional plans

Heading: inserted, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

100H Councils' powers and duties

- (1) This section applies to—
 - (a) a regional pest management plan;
 - (b) a regional pathway management plan.
- (2) The Local Government Act 2002 applies to the implementation of a plan by a council.
- (3) A council must not delegate—
 - (a) the power to determine the ways in which consultation must be undertaken; or
 - (b) the power to make, review, amend, or revoke a plan; or
 - (c) the power to declare a small-scale management programme.

- (4) Two or more councils may prepare a plan jointly and, if they do, must each make it.
- (5) The following provisions apply to a plan prepared jointly and made by each council:
 - (a) the councils must state in the plan whether it must be implemented by 1, some, or all of them:
 - (b) if the plan must be implemented by 1 council, this Act and the plan have effect as if the regions of the councils are a single region with that council as the single council:
 - (c) if the plan must be implemented by some or all of the councils,—
 - (i) the plan must state the extent to which the councils are empowered to implement it outside their own regions; and
 - (ii) this Act and the plan have effect as stated in the plan:
 - (d) each council retains its power to amend or revoke the plan it has made.
- (6) The council must provide 1 copy of each plan made by the council to every public library in its area.

Section 100H: inserted, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Compensation

Heading: inserted, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

100I Compensation

- (1) This section applies to a pest management plan.
- (2) Subsection (3) applies when—
 - (a) a person owns—
 - (i) domesticated organisms infected by a pest to which a pest management plan applies; or
 - (ii) domesticated organisms that are pest agents for a pest to which a pest management plan applies; or
 - (iii) domesticated organisms whose feral or wild population is a pest to which a pest management plan applies; and
 - (b) some or all of the organisms are necessarily destroyed in the course of implementing the plan; and
 - (c) there are net proceeds available from the disposal of the organisms destroyed.
- (3) The net proceeds—
 - (a) must be paid to the owner if the plan does not provide for the payment of compensation to the owner of organisms destroyed:

- (b) must be paid to the owner instead of compensation if the compensation payable to the owner under the plan is less than the proceeds:
- (c) must be retained by the management agency in any other case.
- (4) If there is a dispute about eligibility for, or the amount of, compensation,—
 - (a) the dispute must be submitted to arbitration; and
 - (b) the arbitration must be conducted under the Arbitration Act 1996.

Section 100I: inserted, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Funding of implementation of plans

Heading: inserted, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

100J Definitions for sections 100K to 100S

For the purposes of sections 100K to 100S, **plan** means—

- (a) a national pest management plan:
- (b) a regional pest management plan:
- (c) a national pathway management plan:
- (d) a regional pathway management plan.

Section 100J: inserted, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

100K Limitation on expenditure

A management agency must not spend funds to meet the costs of implementing a plan in contravention of the limitations, if any, that the plan imposes on the expenditure of funds.

Section 100K: inserted, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Funding from levy

Heading: inserted, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

100L Levy orders

- (1) The Governor-General may impose a levy for the purposes of wholly or partly funding the implementation of a plan or part of a plan.
- (2) The levy is payable to the plan's management agency.
- (3) A levy may be imposed only by Order in Council.
- (4) A levy order may be made only on the recommendation of a Minister.
- (5) The Minister may make a recommendation only if satisfied, on the basis of information and evidence that the Minister regards as satisfactory, that—

- (a) persons likely to be affected by the payment or collection of the levy have been consulted; and
 - (b) persons opposing the levy's imposition have had a reasonable opportunity to put their views to the Minister; and
 - (c) all views put to the Minister about the proposed imposition of the levy have been given due regard; and
 - (d) the imposition of the levy is the most appropriate means of funding the plan or the part of the plan, having regard to the extent to which the levy would target—
 - (i) persons likely to benefit from the implementation of the plan or the part of the plan; 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 plan or the part of the plan; and
 - (e) if the levy is imposed on quantities of a commodity imported, its imposition will not constitute a non-tariff barrier and will not be contrary to New Zealand's international legal obligations; and
 - (f) the management agency will have in place adequate systems of accounting to persons who will be responsible for paying the levy; and
 - (g) all other relevant matters known to the Minister have been properly considered.
- (6) A levy order may be made from time to time.
- (7) The order is a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Section 100L: inserted, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 100L(7): replaced, on 1 February 2014, by section 77(3) of the Legislation Act 2012 (2012 No 119).

100M Effect of order

- (1) A person responsible for paying a levy set by a levy order must pay it.
- (2) The management agency may recover a levy from a person responsible for paying it as a debt due in a court of competent jurisdiction.

Section 100M: inserted, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

100N Contents of order

- (1) A levy order must specify—
 - (a) how the levy may be spent; and
 - (b) the persons responsible for paying the levy; and

- (c) the persons, if any, exempt from paying the levy; and
- (d) the basis on which the amount of levy must be calculated or ascertained; and
- (e) on the rate of levy,—
 - (i) whether there is to be a single rate or 2 or more different rates; and
 - (ii) if there are to be 2 or more different rates, the things to which the different rates apply; and
 - (iii) the maximum for each rate or rates; and
 - (iv) how the management agency must set the actual rate or rates of levy; and
 - (v) how the rate or rates of the levy and variations of the rate or rates must be notified; and
- (f) when and how the levy must be paid; and
- (g) the persons responsible for collecting the levy; and
- (h) on the matter of a fee for recovery,—
 - (i) whether or not the persons responsible for collecting the levy are entitled to charge a fee for recovering it; and
 - (ii) if so, the amount of the fee or a means by which its amount may be calculated or ascertained; and
- (i) for the purpose of ascertaining whether or not the order is being complied with,—
 - (i) the keeping of accounts, statements, and records of a specified class or description by all or any of the persons responsible for collecting the levy, the persons responsible for paying it, and the management agency; and
 - (ii) the retention of the accounts, statements, or records for a specified period; and
- (j) for the purpose of resolving disputes about whether or not a person is required to pay the levy and the amount of levy a person is required to pay,—
 - (i) the appointment of arbitrators; and
 - (ii) the procedures to be followed by arbitrators; and
 - (iii) the remuneration of arbitrators; and
 - (iv) the payment of arbitration costs; and
 - (v) a right of appeal to a District Court Judge against decisions of arbitrators; and
 - (vi) the procedures governing the exercise of the right of appeal; and

- (vii) any other matters relating to the resolution of disputes; and
 - (k) the remuneration payable to an auditor appointed under section 100P.
- (2) A levy order may specify—
- (a) the returns to be made to the management agency or some other person or body for the purpose of enabling or assisting the determination of amounts of levy payable:
 - (b) the circumstances in which, and conditions subject to which, persons may be allowed extensions of time for the payment of the levy:
 - (c) 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 provided in the order:
 - (d) a requirement for the payment of additional or increased amounts of levy when amounts of levy originally payable have been paid late, paid in part, or not paid at all:
 - (e) a requirement for the funds from which levy payments must be made to the management agency to be held on trust in a separate account.
- (3) A levy order may—
- (a) set a rate or rates initially at zero; or
 - (b) provide for a rate or rates to be set at zero.

Section 100N: inserted, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

100O Trust accounts for levy money

- (1) This section applies if a levy order specifies a requirement that the funds from which levy payments must be made to the management agency must be held on trust in a separate account.
- (2) For the purposes of this section, the amount outstanding to the management agency on a day by a person responsible for collecting the levy is calculated by subtracting the total of the levy payments that the person makes before that day to the management agency from the total of the amounts that subsection (4) requires the person to deposit in the account not later than a day before that day.
- (3) A person responsible for collecting the levy must—
 - (a) keep an account—
 - (i) at a registered bank within the meaning of the Reserve Bank of New Zealand Act 1989; and
 - (ii) named in a way that identifies it as a trust account kept by the person responsible for collecting the levy; and
 - (b) take all practicable steps to ensure that the account is used for holding only the amounts that subsection (4) requires to be deposited in it; and

- (c) take all practicable steps to ensure that the balance in the account on any day is not less than the amount outstanding to the management agency on that day by the person; and
 - (d) on ceasing to be a person responsible for collecting the levy, continue to keep the account until all the levy money payable to the management agency for the period during which the person was responsible for collecting the levy has been paid.
- (4) A person responsible for collecting the levy must deposit amounts in the account by depositing an amount equal to the levy, calculated as specified in the levy order, in the account—
- (a) on the day or days specified in the order; or
 - (b) on a day or days calculated as specified in the order.
- (5) The following amount in the account is held on trust for the management agency as levy money:
- (a) the amount outstanding to the management agency on a day by a person responsible for collecting the levy; or
 - (b) if the amount held is less than the amount outstanding, all the money in the account.
- (6) The amount in the account held on trust for the management agency—
- (a) is not available for the payment of any other creditor of a person responsible for collecting the levy; and
 - (b) is not liable to be attached or taken in execution at the instance of any other creditor of a person responsible for collecting the levy.

Section 100O: inserted, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

100P Compliance audits for levy

- (1) This section applies while a levy order is in force.
- (2) If the management agency requests the Minister who recommended the making of the levy order to do so, the Minister may appoint 1 or more auditors to conduct an audit of the affairs of all or any of the following:
 - (a) 1 or more of the persons responsible for collecting the levy;
 - (b) 1 or more of the persons responsible for paying the levy.
- (3) The purpose of the audit is to ascertain the following matters, to the extent to which they are relevant to the affairs being audited and to which it is practicable to ascertain them, and to report to the Minister on them:
 - (a) the extent to which persons responsible for paying the levy are doing and have done so;
 - (b) the extent to which appropriate amounts of levy are being and have been paid:

- (c) the extent to which appropriate amounts of levy are being and have been collected:
 - (d) the extent to which appropriate amounts of levy are being and have been paid to the management agency by the persons collecting the levy:
 - (e) the extent to which accounts, statements, and records are being and have been kept:
 - (f) the extent to which the accounts, statements, and records kept are properly kept.
- (4) If an arbitrator has been appointed to resolve a dispute, the Minister may appoint an auditor to conduct an audit of all or any of the persons involved in the dispute.
- (5) The purpose of the audit is to ascertain the matters of fact that are in dispute, to the extent to which it is practicable to ascertain them, and report them to the arbitrator, the persons involved, and the Minister.
- (6) No person is qualified for appointment as an auditor unless the person is a qualified auditor (within the meaning of section 35 of the Financial Reporting Act 2013).
- (7) No officer or employee of any of the following may be appointed an auditor:
- (a) the management agency:
 - (b) a person responsible for collecting the levy:
 - (c) a person responsible for paying the levy.
- (8) A person appointed as an auditor is entitled to receive from the management agency the remuneration provided for in the order.

Section 100P: inserted, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 100P(6): replaced, on 1 April 2014, by section 126 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

100Q Power of auditors to require production of documents

- (1) This section applies to an auditor appointed under section 100P.
- (2) The Minister may authorise the auditor, for the purposes of conducting an audit, to—
- (a) require the management agency, a person responsible for collecting the levy, a person responsible for paying the levy, or an employee or officer of any of the preceding 3 persons to produce for inspection in a reasonable period specified by the auditor documents that—
 - (i) are accounts, statements, or records; and
 - (ii) are required to be kept by this Act or a levy order; and
 - (iii) are in the possession or under the control of the management agency or person; and

- (b) take copies of or extracts from the documents.
- (3) An authorisation under subsection (2) must—
 - (a) be written; and
 - (b) state the auditor's full name; and
 - (c) refer to this section; and
 - (d) state the powers conferred on the auditor; and
 - (e) state whether the powers are conferred specifically or generally.
- (4) The auditor may act under the authorisation.
- (5) The auditor must not disclose any information the auditor obtains as a result of acting under the authorisation to any other person, except that the auditor may disclose information—
 - (a) under section 100P(3) or (5):
 - (b) to a Minister:
 - (c) to a person authorised by a Minister to receive it:
 - (d) for the purposes of a prosecution under this Act:
 - (e) for the purposes of an action for the recovery of an amount due under this Act.
- (6) The Official Information Act 1982 applies to information held by a Minister that was obtained under this section.

Section 100Q: inserted, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

100R Management agency to account for levy

- (1) As soon as practicable after the end of a financial year in which a levy has been paid to a management agency, the agency must prepare the following for the year:
 - (a) a statement of the money paid to the agency as levy in the year:
 - (b) a statement of the assets the agency has at the end of the year as a result of money paid as levy in the year:
 - (c) a statement of the agency's receipt and expenditure of money paid as levy in the year:
 - (d) all other statements necessary to show fully—
 - (i) the agency's financial position as a result of money paid as levy in the year; and
 - (ii) the financial results of all of the agency's activities involving the use of money paid as levy in the year or the use of assets the agency has at the end of the year as a result of money paid as levy in the year.

- (2) The management agency must ensure that the statements are audited within 5 months after the end of the year.

Section 100R: inserted, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

100S Orders are confirmable instruments

The explanatory note of a levy order made under section 100L must indicate that—

- (a) it is a confirmable instrument under section 47B of the Legislation Act 2012; and
- (b) it is revoked at a time stated in the note, unless earlier confirmed by an Act of Parliament; and
- (c) the stated time is the applicable deadline under section 47C(1)(a) or (b) of that Act.

Section 100S: replaced, on 1 January 2016, by section 14 of the Legislation (Confirmable Instruments) Amendment Act 2015 (2015 No 120).

Funding from rates

Heading: inserted, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

100T Regional pest management plan or regional pathway management plan

- (1) A regional council must decide the extent to which it should fund the implementation of its regional pest management plan or its regional pathway management plan from a general rate, a targeted rate, or a combination of both, set and assessed under the Local Government (Rating) Act 2002.
- (2) In making the decision, the council must have regard to—
 - (a) the extent to which the plan relates to the interests of the occupiers of the properties on which the rate would be levied;
 - (b) the extent to which the occupiers of the properties on which the rate would be levied will obtain direct or indirect benefits from the implementation of the plan;
 - (c) the collective benefits of the implementation of the plan to the occupiers of the properties on which the rate would be levied compared with the collective costs to them of the rate;
 - (d) for the regional pest management plan, the extent to which the characteristics of the properties on which the rate would be levied and the uses to which they are put contribute to the presence or prevalence of the pest or pests covered by it;
 - (e) for the regional pathway management plan, the extent to which the characteristics of the properties on which the rate would be levied and the

uses to which they are put contribute to the actual or potential risks associated with the pathway.

Section 100T: inserted, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

100U National pest management plan or national pathway management plan

Section 100T does not limit or affect the powers of a council under the Local Government (Rating) Act 2002 to set and assess rates for the purpose of exercising a power that this Act confers on the council in relation to—

- (a) national pest management plans; or
- (b) national pathway management plans; or
- (c) small-scale management programmes.

Section 100U: inserted, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Small-scale management programmes

Heading: inserted, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

100V Regional council may declare small-scale management programme

- (1) A regional council may declare a small-scale management programme consisting of—
 - (a) small-scale measures to eradicate or control an unwanted organism; and
 - (b) provisions for compensation for losses caused by the programme.
- (2) The council may declare the programme if satisfied that—
 - (a) an unwanted organism present in the region could cause serious adverse and unintended effects unless early action is taken to control it; and
 - (b) the organism can be eradicated or controlled effectively by small-scale measures within 3 years of the measures starting, because—
 - (i) its distribution is limited; and
 - (ii) technical means to control it are available; and
 - (c) the programme is not inconsistent with the national policy direction; and
 - (d) the process requirements in the national policy direction for declaring the programme, if there were any, were complied with; and
 - (e) the taking of the measures and, if necessary, payment of compensation is likely to cost less than an amount prescribed for the purposes of this section by the Governor-General by Order in Council; and
 - (f) the taking of the measures is unlikely to result in significant monetary loss to any person, other than a person who has contributed to the presence or spread of the organism by failing to comply with biosecurity law.
- (3) The council may—

- (a) include in the programme provision for a person other than the council to take steps to bring an organism under control; and
 - (b) meet all or some of the costs to the person of taking the steps.
- (4) The council declares the programme by giving public notice in a manner appropriate to the distribution of the organism and the persons likely to be affected by the programme.
- (5) The public notice must specify—
- (a) the unwanted organism that is the subject of the programme; and
 - (b) the objectives of the programme; and
 - (c) the powers to be exercised under Part 6 to implement the programme.
- (6) A programme ceases to have effect on the occurrence of the earliest of the following:
- (a) the regional council declares by public notice that the programme is failing to control the organism;
 - (b) the regional council declares by public notice that the organism has been eradicated or controlled;
 - (c) 5 years have passed after the declaration of the programme.

Section 100V: inserted, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

100W Exercise of powers under programme

- (1) A small-scale management programme must be implemented using only the powers in Part 6 specified in the public notice.
- (2) An authorised person may exercise a power in Part 6 to implement a programme only if—
- (a) the authorised person is appointed for the purposes of the programme; and
 - (b) Part 6 gives the power to an authorised person; and
 - (c) the public notice specifies the power as one to be used to implement the programme.
- (3) An occupier of a place on which work is to be done to implement the programme must receive a notice as follows:
- (a) the notice must incorporate the details in the public notice;
 - (b) the notice must specify the work to be done;
 - (c) the notice must be received not less than 5 working days before the work is due to start.
- (4) Subsection (3) does not apply if the regional council is satisfied that there are reasonable grounds to believe that the unwanted organism may spread beyond the place before the end of 5 working days.

Section 100W: inserted, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Part 5A

Government/industry agreement for readiness or response

Part 5A: inserted, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

100X Purpose of Part 5A

The purpose of this Part is to provide a framework that enables the government and industry to work together in partnership to achieve the best possible outcomes from readiness or response activities by—

- (a) making joint decisions on the activities; and
- (b) jointly funding the costs of the activities in shares that take into account the public benefits and industry benefits that the activities deliver.

Section 100X: inserted, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

100Y Definitions for Part 5A

- (1) In this Part,—

agreement means the government/industry agreement for readiness or response

government/industry agreement for readiness or response means the agreement described in section 100Z

industry organisation means an organisation described in section 100ZA

payee means the person to whom the levy is payable under section 100ZC(2)

readiness or response activity means a readiness activity or a response activity

readiness or response levy order means an Order in Council made under section 100ZB

sector means a group made up of businesses—

- (a) that are engaged in 1 or more of the following activities:
 - (i) producing animals:
 - (ii) producing animal products:
 - (iii) harvesting animals:
 - (iv) harvesting animal products:
 - (v) producing plants:
 - (vi) producing plant products:
 - (vii) harvesting plants:

- (viii) harvesting plant products:
 - (ix) processing animals, animal products, plants, or plant products that have been produced or harvested; or
 - (b) that, although engaged in a different activity from any of those described in paragraph (a), would benefit directly from readiness or response activities.
- (2) A **readiness activity** means an activity undertaken to prepare to prevent or reduce the impact that an unwanted organism that is not present in New Zealand would have if it were to enter New Zealand.
- (3) A **response activity** means an activity undertaken—
- (a) after an event described in subsection (4); and
 - (b) for a purpose described in subsection (5).
- (4) The events are—
- (a) the detection of an unwanted organism not previously known to be present in New Zealand;
 - (b) the appearance of different effects of an unwanted organism known to be present in New Zealand and capable of being eradicated;
 - (c) the development of new control methods that could make it possible to eradicate an unwanted organism known to be present in New Zealand.
- (5) The purposes are—
- (a) to investigate the unwanted organism;
 - (b) to minimise the impact of the unwanted organism on natural and physical resources, human health, and overseas market access for New Zealand products;
 - (c) to control the spread of the unwanted organism;
 - (d) to reduce the geographical distribution of the unwanted organism;
 - (e) to eradicate the unwanted organism.
- (6) A response activity ends when—
- (a) the unwanted organism is confirmed to be eradicated; or
 - (b) long term arrangements for controlling the unwanted organism have been developed for implementation; or
 - (c) the decision-makers for the response activity decide that it is appropriate to take no action, or no further action, on the unwanted organism.

Section 100Y: inserted, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

100Z Government/industry agreement for readiness or response

- (1) The government/industry agreement for readiness or response is the agreement described in this section.

- (2) The agreement is made by deed between the Director-General and 1 or more industry organisations.
- (3) The agreement consists of,—
 - (a) for a party to the deed that makes an operational agreement with the Director-General, the deed and the operational agreement:
 - (b) for a party to the deed that does not make an operational agreement with the Director-General, the deed.
- (4) The agreement may include provisions on 1 or more of the following matters:
 - (a) the unwanted organisms against which the parties wish to undertake readiness or response activities:
 - (b) readiness or response activities that the parties have agreed to undertake:
 - (c) joint decision-making on the readiness or response activities that the parties wish to undertake:
 - (d) the sharing of the costs of the readiness or response activities, which may include decisions on matters such as—
 - (i) the proportions in which the parties will share the costs:
 - (ii) the methods by which each party will provide its share of the costs:
 - (iii) whether or not an industry party will limit its liability to meet costs by setting a fiscal cap:
 - (e) the variation of the compensation provisions in section 162A, subject to the restriction that the Director-General may agree to vary the compensation provisions only if satisfied that the alternative provisions are unlikely to discourage early reporting of unwanted organisms or reduce the level of co-operation with readiness or response activities:
 - (f) how the parties will engage on issues relating to parts of the biosecurity system other than readiness or response activities:
 - (g) any other matter that the parties agree on.
- (5) Subsection (6) applies to the exercise of a statutory power under—
 - (a) this Act; or
 - (b) any other Act that confers powers to carry out readiness or response activities as defined in this Act.
- (6) The exercise of the power cannot be challenged on the ground that it was the result of a joint decision under the agreement.

Section 100Z: inserted, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

100ZA Industry organisation

- (1) An industry organisation is an organisation named in a notice published under subsection (2).
- (2) If the Minister is satisfied that an organisation meets the criteria in subsections (3), (4), (6), (7), and (9), the Minister must publish a notice in the *Gazette* stating that the organisation named in the notice represents the sector specified in the notice for the purposes of this Part.
- (3) The organisation must be a body corporate.
- (4) The organisation must represent the interests of a sector.
- (5) In deciding whether an organisation represents the interests of a sector, the Minister may include the following among the factors that the Minister takes into account:
 - (a) whether the businesses that comprise the sector that the organisation claims to represent are able to be members of the organisation or another body that is a member of the organisation:
 - (b) the proportion of businesses that comprise the sector that are members of the organisation or another body that is a member of the organisation:
 - (c) how accountable the executive of the organisation is to members of the organisation.
- (6) The organisation must have consulted the sector that would be affected by the organisation becoming a party to the agreement about the following matters:
 - (a) the proposal that the organisation become a party to the agreement; and
 - (b) the way in which it is proposed that the sector's views will be represented by the organisation during joint decision-making under the agreement; and
 - (c) the arrangements proposed to fund the organisation's commitments under the agreement.
- (7) The organisation must have had due regard to the views expressed during the consultation.
- (8) In deciding whether an organisation has had due regard to the views expressed during the consultation, the Minister must also have regard to the views expressed during the consultation.
- (9) The organisation must—
 - (a) have arrangements in place to fund its commitments under the agreement; or
 - (b) have an adequate plan as to how it is going to fund its commitments under the agreement.

Section 100ZA: inserted, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

100ZB Readiness or response levy orders

- (1) The Governor-General may impose a levy for the purposes of wholly or partly funding an industry organisation's commitments under the agreement.
- (2) A levy may be imposed only by Order in Council.
- (3) A levy order may be made only on the recommendation of the responsible Minister.
- (4) A levy may be imposed on a sector specified in a *Gazette* notice under section 100ZA.
- (5) In addition, the levy may be imposed on persons outside a sector specified in a *Gazette* notice under section 100ZA if—
 - (a) the Minister is satisfied that—
 - (i) the persons are represented by an industry organisation that is a party to the agreement; and
 - (ii) the persons are likely to receive benefits from the readiness or response activities to be funded from the levy; and
 - (iii) the costs to the persons of paying the levy are not disproportionate to the benefits that they are likely to receive; or
 - (b) the Minister is satisfied that—
 - (i) the levy is the most effective and efficient means of collecting funds from the sector that the organisation represents; and
 - (ii) it is not practicable to exclude the persons from the application of the levy; and
 - (iii) the persons are likely to receive benefits from the readiness or response activities to be funded from the levy; and
 - (iv) the costs to the persons of paying the levy are not disproportionate to the benefits that they are likely to receive.
- (6) The Minister must not recommend that a levy order be made unless satisfied that the proposed levy payers have been consulted and their views taken into account.
- (7) For the purposes of subsection (6), the Minister may be satisfied by consultation undertaken under section 100ZA(6).
- (8) A levy order may be made from time to time.
- (9) A levy order is a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Section 100ZB: inserted, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 100ZB(9): replaced, on 1 February 2014, by section 77(3) of the Legislation Act 2012 (2012 No 119).

100ZC Effect of order

- (1) This section applies to a levy imposed by a readiness or response levy order.
- (2) The levy may be payable to—
 - (a) the Director-General; or
 - (b) the industry organisation.
- (3) If the levy is payable to the industry organisation, it is payable to enable the organisation to meet its commitments under the agreement.
- (4) A person responsible for paying the levy must pay it.
- (5) The payee may recover a levy from a person responsible for paying it as a debt due in a court of competent jurisdiction.

Section 100ZC: inserted, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

100ZD Contents of order

- (1) A readiness or response levy order must specify—
 - (a) how the levy may be spent; and
 - (b) the persons responsible for paying the levy; and
 - (c) the persons, if any, exempt from paying the levy; and
 - (d) the basis on which the amount of levy must be calculated or ascertained; and
 - (e) on the rate of levy,—
 - (i) whether there is to be a single rate or 2 or more different rates; and
 - (ii) if there are to be 2 or more different rates, the things to which the different rates apply; and
 - (iii) the maximum for each rate or rates; and
 - (iv) the setting of the actual rate by the payee so that the industry organisation can meet its commitments under the agreement; and
 - (v) how the rate or rates of the levy and variations of the rate or rates must be notified; and
 - (f) when and how the levy must be paid; and
 - (g) the persons responsible for collecting the levy; and
 - (h) on the matter of a fee for recovery,—
 - (i) whether or not the persons responsible for collecting the levy are entitled to charge a fee for recovering it; and
 - (ii) if so, the amount of the fee or a means by which its amount may be calculated or ascertained; and

- (i) for the purpose of ascertaining whether or not the order is being complied with,—
 - (i) the keeping of accounts, statements, and records of a specified class or description by all or any of the persons responsible for collecting the levy, the persons responsible for paying it, and the payee; and
 - (ii) the retention of the accounts, statements, or records for a specified period; and
 - (j) for the purpose of resolving disputes about whether or not a person is required to pay the levy and the amount of levy a person is required to pay,—
 - (i) the appointment of arbitrators; and
 - (ii) the procedures to be followed by arbitrators; and
 - (iii) the remuneration of arbitrators; and
 - (iv) the payment of arbitration costs; and
 - (v) a right of appeal to a District Court Judge against decisions of arbitrators; and
 - (vi) the procedures governing the exercise of the right of appeal; and
 - (vii) any other matters relating to the resolution of disputes; and
 - (k) the remuneration payable to an auditor appointed under section 100ZF.
- (2) A readiness or response levy order may specify—
- (a) the returns to be made to the payee for the purpose of enabling or assisting the determination of amounts of levy payable;
 - (b) the circumstances in which, and conditions subject to which, persons may be allowed extensions of time for the payment of the levy;
 - (c) 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 provided in the order;
 - (d) a requirement for the payment of additional or increased levy when amounts of levy originally payable have been paid late, paid in part, or not paid at all;
 - (e) a requirement for the funds from which levy payments must be made to the payee to be held on trust in a separate account.
- (3) A readiness or response levy order may—
- (a) set a rate or rates initially at zero; or
 - (b) provide for a rate or rates to be set at zero.

Section 100ZD: inserted, on 18 September 2012, by section 39 of the Bioresecurity Law Reform Act 2012 (2012 No 73).

100ZE Trust accounts for levy money

- (1) This section applies if a readiness or response levy order specifies a requirement that the funds from which levy payments must be made to the payee must be held on trust in a separate account.
- (2) For the purposes of this section, the amount outstanding to the payee on a day by a person responsible for collecting the levy is calculated by subtracting the total of the levy payments that the person makes before that day to the payee from the total of the amounts that subsection (4) requires the person to deposit in the account not later than a day before that day.
- (3) A person responsible for collecting the levy must—
 - (a) keep an account—
 - (i) at a registered bank within the meaning of the Reserve Bank of New Zealand Act 1989; and
 - (ii) named in a way that identifies it as a trust account kept by the person responsible for collecting the levy; and
 - (b) take all practicable steps to ensure that the account is used for holding only the amounts that subsection (4) requires to be deposited in it; and
 - (c) take all practicable steps to ensure that the balance in the account on any day is not less than the amount outstanding to the payee on that day by the person; and
 - (d) on ceasing to be a person responsible for collecting the levy, continue to keep the account until all the levy money payable to the payee for the period during which the person was responsible for collecting the levy has been paid.
- (4) A person responsible for collecting the levy must deposit amounts in the account by depositing an amount equal to the levy, calculated as specified in the readiness or response levy order, in the account—
 - (a) on the day or days specified in the order; or
 - (b) on a day or days calculated as specified in the order.
- (5) The following amount in the account is held on trust for the payee as levy money:
 - (a) the amount outstanding to the payee on a day by a person responsible for collecting the levy; or
 - (b) if the amount held is less than the amount outstanding, all the money in the account.
- (6) The amount in the account held on trust for the payee—
 - (a) is not available for the payment of any other creditor of a person responsible for collecting the levy; and

- (b) is not liable to be attached or taken in execution at the instance of any other creditor of a person responsible for collecting the levy.

Section 100ZE: inserted, on 18 September 2012, by section 39 of the Bioresecurity Law Reform Act 2012 (2012 No 73).

100ZF Compliance audits for levy

- (1) This section applies while a readiness or response levy order is in force.
- (2) If the payee requests the Minister to do so, the Minister may appoint 1 or more auditors to conduct an audit of the affairs of all or any of the following:
 - (a) 1 or more of the persons responsible for collecting the levy;
 - (b) 1 or more of the persons responsible for paying the levy.
- (3) The purpose of the audit is to ascertain the following matters, to the extent to which they are relevant to the affairs being audited and to which it is practicable to ascertain them, and to report to the Minister on them:
 - (a) the extent to which persons responsible for paying the levy are doing and have done so;
 - (b) the extent to which appropriate amounts of the levy are being and have been paid;
 - (c) the extent to which appropriate amounts of the levy are being and have been collected;
 - (d) the extent to which appropriate amounts of the levy are being and have been paid over to the payee by the person collecting it;
 - (e) the extent to which accounts, statements, and records are being and have been kept;
 - (f) the extent to which the accounts, statements, and records kept are properly kept.
- (4) If an arbitrator has been appointed to resolve a dispute, the Minister may appoint an auditor to conduct an audit of all or any of the persons involved in the dispute.
- (5) The purpose of the audit is to ascertain the matters of fact that are in dispute, to the extent to which it is practicable to ascertain them, and report them to the arbitrator, the persons involved, and the Minister.
- (6) No person is qualified for appointment as an auditor unless the person is a qualified auditor (within the meaning of section 35 of the Financial Reporting Act 2013).
- (7) No officer or employee of any of the following may be appointed an auditor:
 - (a) the payee;
 - (b) a person responsible for collecting the levy;
 - (c) a person responsible for paying the levy.

- (8) A person appointed as an auditor is entitled to receive from the payee the remuneration provided for in the order.

Section 100ZF: inserted, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 100ZF(6): replaced, on 1 April 2014, by section 126 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

100ZG Power of auditors to require production of documents

- (1) This section applies to an auditor appointed under section 100ZF.
- (2) The Minister may authorise the auditor, for the purposes of conducting an audit, to—
- (a) require the payee, a person responsible for collecting the levy, a person responsible for paying the levy, or an employee or officer of any of the preceding 3 persons to produce for inspection in a reasonable period specified by the auditor documents that—
 - (i) are accounts, statements, or records; and
 - (ii) are required to be kept by this Act or a levy order; and
 - (iii) are in the possession or under the control of the payee or person; and
 - (b) take copies of or extracts from the documents.
- (3) An authorisation under subsection (2) must—
- (a) be written; and
 - (b) state the auditor's full name; and
 - (c) refer to this section; and
 - (d) state the powers conferred on the auditor; and
 - (e) state whether the powers are conferred specifically or generally.
- (4) An auditor who acts under an authorisation must not disclose any information the auditor obtains as a result of acting under it to any other person, except that the auditor may disclose information—
- (a) under section 100ZF(3) or (5):
 - (b) to a Minister:
 - (c) to a person authorised by a Minister to receive it:
 - (d) for the purposes of a prosecution under this Act:
 - (e) for the purposes of an action for the recovery of an amount due under this Act.
- (5) The Official Information Act 1982 applies to information held by a Minister that was obtained under this section.

Section 100ZG: inserted, on 18 September 2012, by section 39 of the Biosecurity Law Reform Act 2012 (2012 No 73).

100ZH Orders are confirmable instruments

The explanatory note of a readiness or response levy order made under section 100ZB must indicate that—

- (a) it is a confirmable instrument under section 47B of the Legislation Act 2012; and
- (b) it is revoked at a time stated in the note, unless earlier confirmed by an Act of Parliament; and
- (c) the stated time is the applicable deadline under section 47C(1)(a) or (b) of that Act.

Section 100ZH: replaced, on 1 January 2016, by section 14 of the Legislation (Confirmable Instruments) Amendment Act 2015 (2015 No 120).

Part 6

Administrative provisions

Appointments and delegations

101 Chief technical officers

- (1) The Director-General shall appoint chief technical officers for the purposes of this Act, being in each case a person with appropriate experience, technical competence, and qualifications relevant to the area of responsibilities allocated by the Director-General to that person.
- (2) The chief executive of a department recognised by the responsible Minister as having responsibilities for natural and physical resources or human health that could be adversely affected by an organism may appoint chief technical officers for the purposes of this Act, being in each case a person with appropriate experience, technical competence, and qualifications relevant to the area of responsibilities allocated by the chief executive to that person.
- (2A) A person appointed as a chief technical officer must be employed under the State Sector Act 1988.
- (3) A chief technical officer appointed under subsection (2) may exercise all the powers and perform all the functions and duties conferred on a chief technical officer by this Act except those powers conferred under sections 103(1), 116, 126, and 127.
- (4) The chief executive (including the Director-General) may not delegate to any person the power to appoint chief technical officers.

Compare: 1967 No 50 s 2

Section 101(2): replaced, on 26 November 1997, by section 66 of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 101(2A): inserted, on 8 July 2003, by section 11 of the Biosecurity Amendment Act 2003 (2003 No 38).

Section 101(3): inserted, on 26 November 1997, by section 66 of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 101(4): inserted, on 15 December 2005, by section 3 of the Biosecurity Amendment Act 2005 (2005 No 91).

102 Deputy chief technical officers

- (1) The Director-General and the chief executive of any other department may appoint, in respect of any chief technical officer appointed by the Director-General or that chief executive, 1 or more deputy chief technical officers who must in each case be a person with appropriate experience, technical competence, and qualifications relevant to the area of responsibilities allocated by the chief executive to that person.
- (1A) A person appointed as a deputy chief technical officer must be employed under the State Sector Act 1988.
- (2) Subject to the direction of the chief technical officer concerned, a deputy chief technical officer shall have and may exercise all of the powers, duties, and functions of a chief technical officer under this Act, including the power to appoint inspectors, authorised persons, and accredited persons.
- (3) The chief executive (including the Director-General) may not delegate to any person the power to appoint deputy chief technical officers.

Section 102(1): replaced, on 26 November 1997, by section 67 of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 102(1A): inserted, on 8 July 2003, by section 12 of the Biosecurity Amendment Act 2003 (2003 No 38).

Section 102(2): amended, on 27 March 2008, by section 4 of the Biosecurity Amendment Act 2008 (2008 No 6).

Section 102(3): inserted, on 15 December 2005, by section 4 of the Biosecurity Amendment Act 2005 (2005 No 91).

103 Inspectors, authorised persons, and accredited persons

- (1) A chief technical officer appointed as such by the Director-General may from time to time—
 - (a) appoint inspectors and authorised persons for the purposes of administering and enforcing the provisions of this Act:
 - (b) appoint authorised persons for the purposes of a national pest management plan or a national pathway management plan.
- (2) A chief technical officer appointed as such by the chief executive of a department may from time to time—
 - (a) appoint inspectors and authorised persons for the purposes of administering and enforcing all or any of the provisions of this Act except the provisions of Part 3:
 - (b) appoint authorised persons for the purposes of a national pest management plan or a national pathway management plan.

- (3) The principal officer of a region may from time to time appoint authorised persons for the purpose of exercising functions, powers, and duties under this Act in relation to any regional pest management plan or a regional pathway management plan in force in the region or any small-scale management programme declared by the council for that region, or to ascertain the presence or distribution of any pest, pest agent, or unwanted organism.
- (4) A person shall not be appointed as an inspector or an authorised person unless the person has appropriate experience, technical competence, and qualifications relevant to the area of responsibilities proposed to be allocated to that person.
- (5) Inspectors or authorised persons appointed under this section may, but need not, be persons who are employed under the State Sector Act 1988 or by a regional council.
- (6) Inspectors and authorised persons may be authorised on their appointment to exercise all of the powers conferred on inspectors and authorised persons under this Act, or the regulations, or only such of those powers as are specified in their instruments of appointment or subsequently by written notice.
- (7) A chief technical officer or the principal officer of a region may accredit persons for the purposes of performing particular functions—
 - (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;—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.
- (8) Every inspector, authorised person, and accredited person shall in the performance of functions, powers, and duties for the purposes of this Act use his or her best endeavours to comply with and give effect to any relevant performance or technical standards.

Compare: 1967 No 50 s 5; 1967 No 147 s 100; 1968 No 13 s 5; 1969 No 53 ss 36, 39A; 1970 No 151 s 17; 1978 No 15 s 41; 1982 No 42 s 9

Section 103(1): replaced, on 26 November 1997, by section 68(1) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 103(1)(b): amended, on 18 September 2012, by section 40(1) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 103(2): replaced, on 26 November 1997, by section 68(1) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 103(2)(b): amended, on 18 September 2012, by section 40(2) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 103(3): amended, on 18 September 2012, by section 40(3) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 103(3): amended, on 26 November 1997, by section 68(2)(a) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 103(4): amended, on 8 July 2003, by section 13(1)(a) of the Biosecurity Amendment Act 2003 (2003 No 38).

Section 103(5): amended, on 8 July 2003, by section 13(1)(b) of the Biosecurity Amendment Act 2003 (2003 No 38).

Section 103(6): amended, on 26 November 1997, by section 68(2)(b) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 103(7): replaced, on 8 July 2003, by section 13(2) of the Biosecurity Amendment Act 2003 (2003 No 38).

Section 103(7): amended, on 18 September 2012, by section 40(4) of the Biosecurity Law Reform Act 2012 (2012 No 73).

104 Authorised persons to comply with instructions

- (1) All inspectors and authorised persons appointed by a chief technical officer must comply with any lawful direction or instruction given by a relevant chief technical officer in relation to the exercise and performance of the powers, duties, and functions conferred or imposed on inspectors or authorised persons by this Act.
- (2) All authorised persons appointed by a principal officer must comply with any lawful direction or instruction given by that officer in relation to the exercise and performance of the powers, duties, and functions conferred or imposed on authorised persons by this Act.
- (3) For the purposes of this section, **relevant chief technical officer** means any 1 or more of the chief technical officers appointed by the chief executive who appointed the chief technical officer responsible for the appointment of the inspector or authorised person.

Section 104: replaced, on 26 November 1997, by section 69 of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 104(1): amended, on 8 July 2003, by section 14(a) of the Biosecurity Amendment Act 2003 (2003 No 38).

Section 104(1): amended, on 8 July 2003, by section 14(b) of the Biosecurity Amendment Act 2003 (2003 No 38).

Section 104(3): amended, on 8 July 2003, by section 14(c) of the Biosecurity Amendment Act 2003 (2003 No 38).

105 Delegation to authorised persons

- (1) A principal officer or chief technical officer may delegate to any person any of his or her functions, powers, or duties under this Act, except for—
 - (a) this power of delegation; and
 - (b) the power to appoint inspectors and authorised persons.
- (2) Any delegation under this section may be made on such terms and conditions as the person delegating the power thinks fit, and may be revoked at any time by notice in writing to the delegate.
- (3) Except as provided in the instrument of delegation, every person to whom a function, power, or duty has been delegated under this section may, without

confirmation by the person delegating the function, power, or duty, exercise or perform the function, power, or duty in the same manner and with the same effect as the person so delegating could himself or herself have exercised or performed it.

- (4) Every person authorised to act under a delegation under this section is presumed to be acting in accordance with its terms in the absence of proof to the contrary.
- (5) A delegation under this section does not affect the performance or exercise of any function, power, or duty by the person on whom the function, power, or duty is conferred or imposed.

Section 105(1): replaced, on 15 December 2005, by section 5 of the Biosecurity Amendment Act 2005 (2005 No 91).

105A Call in of powers or functions

- (1) This section applies to the powers or functions in sections 19(2)(a), 26, 32, 33, 43, 122, 125, and 130 that an inspector or authorised person may exercise or carry out.
- (2) A chief technical officer may decide that the power must be exercised or the function carried out by the chief technical officer instead of by the inspector or authorised person.
- (3) The chief technical officer may not make a decision under subsection (2) if—
 - (a) the inspector or authorised person has already exercised the power or carried out the function; and
 - (b) the person affected by the exercise or carrying out knows that the inspector or authorised person has done so.
- (4) The chief technical officer may make a decision under subsection (2) if the officer considers that 1 or more of the following applies to the exercise of the power or the carrying out of the function:
 - (a) it is likely to have effects on New Zealand's culture, economy, industry, environment, public health, animal health, or international trade:
 - (b) it is likely to involve treatment or post-clearance management that—
 - (i) will require or is likely to require significant resources; or
 - (ii) will have or is likely to have significant budgetary implications; or
 - (iii) will involve or is likely to involve technology, processes, or methods that are new:
 - (c) it is likely to involve issues of a systemic nature:
 - (d) it is likely to involve issues that increase risk to, complexity for, or the liability of the Ministry:
 - (e) it is likely to involve issues that have the potential to seriously affect the Ministry's reputation:

- (f) it must be done urgently in circumstances in which there is insufficient time to follow normal decision-making procedure.
- (5) A chief technical officer who makes a decision under subsection (2) must give a written notice to the inspector or authorised person—
 - (a) stating that the chief technical officer will exercise the power or carry out the function; and
 - (b) stating the ground in subsection (4) that applies.
- (6) A chief technical officer who makes a decision under subsection (2) must, if it is reasonably practicable to do so, give a written notice to the person affected by the exercise of the power or the carrying out of the function stating that the chief technical officer will exercise the power or carry out the function.
- (7) A chief technical officer who makes a decision under subsection (2) may give a written notice to the person affected by the exercise of the power or the carrying out of the function—
 - (a) stating that the chief technical officer will exercise the power or carry out the function; and
 - (b) stating that the officer requires information from the person to enable the officer to exercise the power or carry out the function; and
 - (c) requiring the person to provide the information that the officer specifies.
- (8) For the purposes of this section, the relevant one of the provisions listed in subsection (1) must be read as if it said “chief technical officer” instead of “inspector” or “authorised person”.

Section 105A: inserted, on 18 September 2012, by section 41 of the Biosecurity Law Reform Act 2012 (2012 No 73).

105B Appointment of auditors

- (1) The Director-General may appoint auditors under this Act.
- (2) The Director-General may appoint as auditors only those persons who have appropriate experience, technical competence, and qualifications relevant to the audits.
- (3) Auditors may, but need not, be persons who are employed under the State Sector Act 1988 or by a regional council.

Section 105B: inserted, on 18 September 2012, by section 41 of the Biosecurity Law Reform Act 2012 (2012 No 73).

105C Audits

- (1) The Director-General must set terms of reference for audits.
- (2) Audits include examinations, investigations, and reviews.
- (3) Auditors conduct audits of the following kinds as to the previous and current positions and as to the likely future position:

- (a) audits of the effectiveness and appropriateness of standards issued under this Act in achieving the objectives of the standards:
- (b) audits of compliance with standards issued under this Act:
- (c) audits of the effectiveness and appropriateness of the Ministry's internal systems and procedures for the administration of this Act:
- (d) audits of compliance with the Ministry's internal systems and procedures for the administration of this Act:
- (e) audits of the exercise of powers or carrying out of functions or duties of statutory officers appointed under this Act:
- (f) audits of compliance with biosecurity law:
- (g) audits of the performance of activities by persons who carry out activities for the purposes of this Act:
- (h) audits of the performance of activities by persons, and audits of systems, procedures, and facilities, to assess compliance with biosecurity law:
- (i) any other class or description of audit specified in regulations.

Section 105C: inserted, on 18 September 2012, by section 41 of the Biosecurity Law Reform Act 2012 (2012 No 73).

105D Auditors' general duties

- (1) An auditor must use his or her best endeavours to comply with and give effect to relevant performance or technical standards when exercising powers or carrying out functions or duties for the purposes of this Act.
- (2) An auditor must give the subject of the audit written notice of the audit and the terms of reference a reasonable time before the audit starts, unless giving notice would defeat the purpose of the audit.
- (3) The auditor must conduct the audit within the terms of reference.

Section 105D: inserted, on 18 September 2012, by section 41 of the Biosecurity Law Reform Act 2012 (2012 No 73).

105E Auditors' powers

- (1) An auditor may exercise the powers in this section for the purposes of an audit.
- (2) The Director-General may give the subject of the audit a written notice to appear before an auditor at a time and place specified in the notice.
- (3) If the Director-General acts under subsection (2), the auditor may require the subject of the audit to answer all questions relating to the audit put to the subject.
- (4) An auditor may examine the systems, processes, and records of the subject of the audit.
- (5) An auditor may enter a place of business where—
 - (a) any thing of relevance to the audit is held or is likely to be held; or

- (b) any activity of relevance to the audit is carried out or is likely to be carried out; or
 - (c) any document of relevance to the audit is held or is likely to be held.
- (6) At the place, the auditor may—
- (a) examine the thing, activity, or document:
 - (b) inspect or take samples of any thing:
 - (c) test or analyse, or arrange for the testing or analysis of, any thing:
 - (d) inquire about, examine, and copy electronic or non-electronic documents or records about the application of biosecurity law by or to the subject of the audit, whether held by the subject or by or on behalf of the subject:
 - (e) remove documents or records to another place for the purpose of copying them for as long as is reasonably necessary to allow for their copying:
 - (f) require a person who has control of or knowledge of the documents or records to reproduce or assist in reproducing in usable form information recorded or stored in an electronic or non-electronic device or system.
- (7) This section does not override the privilege against self-incrimination.

Section 105E: inserted, on 18 September 2012, by section 41 of the Biosecurity Law Reform Act 2012 (2012 No 73).

105F Auditors' duties relating to power of entry

- (1) An auditor may enter a place of business under section 105E(5) within or outside business hours but only at a reasonable time.
- (2) If an occupier of the place is present when the auditor enters the place, the auditor must—
 - (a) identify himself or herself to an occupier of the place; and
 - (b) if asked by an occupier to do so, produce evidence of identity.
- (3) If an occupier of the place is not present at any time while the auditor is at the place, the auditor must leave a prominent notice at the place stating—
 - (a) the day and time when the entry was carried out; and
 - (b) the auditor's name and contact details.
- (4) If the auditor takes a document, article, or thing from the place when the auditor leaves it, the auditor must—
 - (a) prepare a schedule that specifies—
 - (i) the document, article, or thing taken; and
 - (ii) the place where each document, article, or thing is to be held; and
 - (b) ensure that an occupier of the place gets the schedule under subsection (5) or (6).

- (5) If it is practicable for the auditor to prepare at the place a schedule of what the auditor takes, the auditor must prepare and leave the schedule at the place.
- (6) If it is practicable for the auditor to prepare and leave a schedule of what the auditor takes but the occupier of the place consents to the auditor not doing so, or if it is not practicable for the auditor to do so, the auditor must—
 - (a) leave a notice stating that—
 - (i) the auditor has taken a document, article, or thing; and
 - (ii) a schedule will be with an occupier of the place within 7 days after the date of entry; and
 - (b) ensure that a schedule is with an occupier of the place within 7 days after the date of entry.

Section 105F: inserted, on 18 September 2012, by section 41 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Administrative powers

106 Power to require assistance

- (1) When it is necessary to do so, an inspector or authorised person may employ any person or request any person to assist that inspector or authorised person in carrying out the provisions of this Act, the regulations, and any directions or instructions issued by (as the case requires) the Director-General, a principal officer, or a chief technical officer under this Act.
- (2) A person employed or requested to assist an inspector or authorised person has the same powers as that inspector or authorised person while that person is under the immediate direction and control of that inspector or authorised person.

Compare: 1967 No 50 s 7; 1970 No 151 s 20

Section 106(2): inserted, on 26 November 1997, by section 71 of the Biosecurity Amendment Act 1997 (1997 No 89).

107 Power to detain for purpose of checking for uncleared risk goods

- (1) Subsection (2) applies to a person to whom section 34(2) applies who does not comply with section 34(2).
- (2) An inspector who suspects on reasonable grounds that the person may be in possession of uncleared risk goods may—
 - (a) detain the person, for a period that is reasonable in the circumstances and no longer than 4 consecutive hours, to be searched by a constable:
 - (b) use the force that is reasonably necessary to detain the person:
 - (c) use the force that is reasonably necessary to stop the person if he or she is moving:
 - (d) use the force that is reasonably necessary to bring the person to a biosecurity control area.

- (3) Subsection (4) applies to a person who is in a biosecurity control area.
- (4) An inspector who suspects on reasonable grounds that the person may be in possession of uncleared risk goods may—
 - (a) detain the person, for a period that is reasonable in the circumstances and no longer than 4 consecutive hours, to be searched by a constable:
 - (b) use the force that is reasonably necessary to detain the person:
 - (c) use the force that is reasonably necessary to stop the person if he or she is moving.

Section 107: replaced, on 18 September 2012, by section 42 of the Biosecurity Law Reform Act 2012 (2012 No 73).

107A Power to detain for purpose of checking for unauthorised goods

An inspector who suspects on reasonable grounds that a person may be in possession of unauthorised goods may—

- (a) detain the person, for a period that is reasonable in the circumstances and no longer than 4 consecutive hours, to be searched by a constable:
- (b) use the force that is reasonably necessary to detain the person.

Section 107A: inserted, on 18 September 2012, by section 42 of the Biosecurity Law Reform Act 2012 (2012 No 73).

107B Power to detain for public health or law enforcement purposes

- (1) This section applies when—
 - (a) a person in a biosecurity control area has arrived in New Zealand; and
 - (b) an inspector has reasonable cause to suspect that the person—
 - (i) is, under an enactment, liable to be detained because of an infectious disease; or
 - (ii) is liable to be arrested under a warrant issued by a court or a registrar; or
 - (iii) is liable to be prosecuted for an offence punishable by imprisonment; or
 - (iv) has contravened the Civil Aviation Act 1990; or
 - (v) has contravened the Customs and Excise Act 1996; or
 - (vi) has contravened the Human Assisted Reproductive Technology Act 2004; or
 - (vii) has contravened the Immigration Act 2009; or
 - (viii) has contravened the Misuse of Drugs Act 1975; or
 - (ix) has contravened the Passports Act 1992; or
 - (x) has contravened the Terrorism Suppression Act 2002; or
 - (xi) has contravened the Trade in Endangered Species Act 1989; or

- (xii) has contravened regulations under the United Nations Act 1946;
or
 - (xiii) has contravened an enactment that contains an offence involving the unlawful entry into New Zealand of a person, matter, or thing and that is specified for the purposes of this section by the Governor-General in Council; or
 - (xiv) is endangering, or threatening to endanger, the life, health, or safety of a person or group of persons.
- (2) The inspector may direct the person to remain in the area for a period that is reasonable in the circumstances and no longer than 4 consecutive hours to—
- (a) allow the inspector to obtain the attendance of, or make inquiries of, a constable, bailiff, or employee or agent of a department who has the powers described in paragraph (b); and
 - (b) allow the constable, bailiff, or employee or agent of a department to do what is necessary of the following:
 - (i) question the person:
 - (ii) ascertain or determine the status of the person:
 - (iii) detain the person:
 - (iv) arrest the person.
- (3) The person must comply with a direction given under this section.
- (4) Reasonable force may be used, if necessary, to keep the person in the area for the period directed under subsection (2).

Section 107B: inserted, on 18 September 2012, by section 42 of the Biosecurity Law Reform Act 2012 (2012 No 73).

108 Power to search people

- (1) Subject to subsections (2) and (3), a constable who—
- (a) suspects on reasonable grounds that a person to whom section 107 applies may be in possession of any uncleared risk goods; or
 - (b) has been told by an inspector, and believes, that the inspector suspects on reasonable grounds that a person—
 - (i) is a person to whom section 107 applies; and
 - (ii) may be in possession of any uncleared risk goods; or
 - (c) suspects on reasonable grounds that any person is in possession of any unauthorised goods; or
 - (d) has been told by an inspector, and believes, that the inspector suspects on reasonable grounds that any person is in possession of any unauthorised goods,—

may search the person, and take possession of any uncleared risk goods or unauthorised goods found.

- (2) No constable shall search a person under the authority of subsection (1) without first—
- (a) telling the person that he or she proposes to do so under the authority of that subsection; and
 - (b) telling the person that he or she is a constable; and
 - (c) if not in uniform, producing to the person evidence that he or she is a constable.
- (3) Nothing in subsection (1) authorises any constable to conduct an internal search of any part of a person's body.
- (4) A constable who takes possession of any goods under subsection (1) shall give them into the custody of an inspector.
- (5) Within 3 days of searching a person under the authority of subsection (1), a constable shall give the Commissioner of Police a written report on the search, and the circumstances in which it came to be conducted.

Section 108(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 108(1): amended, on 8 July 2003, by section 15 of the Biosecurity Amendment Act 2003 (2003 No 38).

Section 108(1)(a): amended, on 18 September 2012, by section 43 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 108(1)(b)(i): amended, on 18 September 2012, by section 43 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 108(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 108(2)(b): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 108(2)(c): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 108(3): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 108(4): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 108(5): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

109 Power of inspection

- (1) Subject to subsections (2) and (3),—
- (a) an inspector may, at any reasonable time or times, enter and inspect any place for the purpose of confirming the presence, former presence, or absence of—
 - (i) any pest, pest agent, or unwanted organism; or

- (ii) any unauthorised goods; or
 - (iii) any risk goods:
 - (iv) *[Repealed]*
 - (b) an inspector or authorised person may, at any reasonable time or times, enter and inspect any place for the purpose of—
 - (i) confirming the presence, former presence, or absence, of any pest, pest agent, or unwanted organism; or
 - (ii) eradicating or managing any pest, pest agent, or unwanted organism:
 - (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 biosecurity law.
- (2) An inspector or authorised person shall not enter and inspect a dwellinghouse, a marae, or a building associated with a marae, under subsection (1), except with—
- (a) the consent of an occupier; or
 - (b) a warrant issued under section 110.
- (3) Where a warrant under section 110 has been issued to an inspector or authorised person subject to conditions, the inspector or authorised person—
- (a) shall not enter the dwellinghouse, marae, or building associated with a marae, specified in the warrant otherwise than in accordance with the conditions; and
 - (b) shall in all other respects comply with the conditions.
- (4) Subject to subsection (3), an inspector or authorised person exercising the powers of entry and inspection conferred by subsection (1)(a) and (b) may use such force in going on, into, or under, the place concerned (whether by breaking down a door or otherwise), or in breaking open anything in the place, as is reasonable in the circumstances.

Section 109(1)(a): amended, on 26 November 1997, by section 73(a) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 109(1)(a): amended, on 26 November 1997, by section 73(b) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 109(1)(a)(iii): replaced, on 26 November 1997, by section 73(c) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 109(1)(a)(iv): repealed, on 26 November 1997, by section 73(c) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 109(1)(b): amended, on 26 November 1997, by section 73(a) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 109(1)(b): amended, on 26 November 1997, by section 73(d) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 109(1)(b)(ii): amended, on 18 September 2012, by section 44(1) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 109(1)(c): inserted, on 8 July 2003, by section 16(1) of the Biosecurity Amendment Act 2003 (2003 No 38).

Section 109(1)(c): amended, on 18 September 2012, by section 44(2) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 109(2): amended, on 26 November 1997, by section 73(a) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 109(2)(b): amended, on 26 November 1997, by section 73(e) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 109(3): amended, on 26 November 1997, by section 73(f) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 109(4): amended, on 8 July 2003, by section 16(2) of the Biosecurity Amendment Act 2003 (2003 No 38).

Section 109(4): amended, on 26 November 1997, by section 73(g) of the Biosecurity Amendment Act 1997 (1997 No 89).

110 Warrant to inspect dwellinghouse, marae, etc

- (1) An issuing officer (within the meaning of section 3 of the Search and Surveillance Act 2012) may, on an application made in the manner provided by subpart 3 of Part 4 of that Act by an inspector or authorised person, issue a warrant authorising every inspector and authorised person to enter and inspect the dwellinghouse, marae, or building associated with a marae specified in the application.
- (2) Such a warrant may be issued only if the issuing officer 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
 - (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.
- (3) Such a warrant—
 - (a) authorises every inspector and authorised person to enter and inspect the place concerned on 1 occasion within 14 days of the issue of the warrant; and
 - (b) may be unconditional or subject to conditions.
- (4) The provisions of subparts 1, 3, 7, 9, and 10 of Part 4 of the Search and Surveillance Act 2012 apply.

Section 110: replaced, on 8 July 2003, by section 17 of the Biosecurity Amendment Act 2003 (2003 No 38).

Section 110(1): replaced, on 1 October 2012, by section 203(2) of the Search and Surveillance Act 2012 (2012 No 24).

Section 110(1): amended, on 26 March 2015, by section 5(1) of the Biosecurity Amendment Act 2015 (2015 No 8).

Section 110(2): amended, on 1 October 2012, by section 203(3) of the Search and Surveillance Act 2012 (2012 No 24).

Section 110(3)(a): amended, on 26 March 2015, by section 5(2) of the Biosecurity Amendment Act 2015 (2015 No 8).

Section 110(4): inserted, on 1 October 2012, by section 203(4) of the Search and Surveillance Act 2012 (2012 No 24).

111 Entry in respect of offences

- (1) Subject to subsection (2), an issuing officer (within the meaning of section 3 of the Search and Surveillance Act 2012) who, on an application (made in the manner provided by subpart 3 of Part 4 of that Act) by an inspector or authorised person, is satisfied that there is reasonable ground for believing that there is on or in any place specified in the application any thing—
 - (a) in respect of which an offence against this Act punishable by imprisonment has been or may have been committed; or
 - (b) that is or may be evidence of the commission of an offence against this Act punishable by imprisonment; or
 - (c) that is intended to be used for the commission of an offence against this Act punishable by imprisonment,—may issue, unconditionally or subject to conditions, a warrant (in the prescribed form) authorising the entry and search of the place, at any reasonable time on 1 occasion within 14 days of the issue of the warrant.
- (2) The inspector or authorised person applying for a warrant under subsection (1)—
 - (a) shall first make reasonable inquiries as to whether any other applications for such a warrant (or a similar warrant under a provision of any enactment repealed by this Act) have been made in respect of the place concerned, and (if so) the following matters:
 - (i) the offence or offences alleged in respect of each application;
 - (ii) the result of each application; and
 - (b) shall disclose on the application for the warrant the results of the inquiries.
- (3) Every warrant under subsection (1) shall be directed to and exercisable only by—
 - (a) a constable specified in the warrant; or
 - (b) an inspector or authorised person specified in the warrant, if accompanied by a constable; or
 - (c) any constable; or
 - (d) any inspector or authorised person, if accompanied by a constable.
- (4) Where a warrant under subsection (1) has been issued subject to conditions, the person exercising it—

- (a) shall not enter or search the place specified in it otherwise than in accordance with the conditions; and
 - (b) shall in all other respects comply with the conditions.
- (5) Subject to subsection (4), a person exercising a warrant under subsection (1) may use such force in entering the place specified in it (whether by breaking down a door or otherwise), or in breaking open anything in the place, as is reasonable in the circumstances.
- (6) The provisions of Part 4 of the Search and Surveillance Act 2012 (except for sections 118 and 119) apply.

Section 111(1): amended, on 1 October 2012, by section 203(5) of the Search and Surveillance Act 2012 (2012 No 24).

Section 111(1): amended, on 26 November 1997, by section 75(1) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 111(2): amended, on 26 November 1997, by section 75(1) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 111(3)(a): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 111(3)(b): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 111(3)(b): amended, on 26 November 1997, by section 75(1) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 111(3)(c): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 111(3)(d): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 111(3)(d): amended, on 26 November 1997, by section 75(1) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 111(6): inserted, on 1 October 2012, by section 203(6) of the Search and Surveillance Act 2012 (2012 No 24).

112 Duties on exercising power of entry

- (1) An inspector, authorised person, or constable, exercising a power of entry conferred by sections 30A, 109, 111, or 126—
- (a) must have with him or her—
 - (i) evidence of his or her identity and appointment as an inspector, authorised person, or constable; and
 - (ii) in the case of entry under section 109 to a place that is a dwelling-house, a marae, or a building associated with a marae, the warrant or copy of the warrant under section 110 or in the case of entry under section 111, the warrant or copy of the warrant authorising the entry; and
 - (b) must produce them to any person appearing to be in charge of the place entered—
 - (i) on entering the place (if such a person is then present); and

- (ii) at any reasonable time thereafter, if asked to do so by the person;
and
 - (c) if there is no person appearing to be in charge of the place at any time between the time of entry and the time the inspector, authorised person, or constable leaves the place, must, as soon as is practicable upon leaving the place, give an occupier or person in charge of the place written notice stating that the place has been entered, and specifying the following matters:
 - (i) the time and date of entry:
 - (ii) the circumstances and purpose of entry:
 - (iii) the name, office or position, and employer of every person entering:
 - (iv) if entry was under warrant, the principal contents of the warrant:
 - (v) every thing that has been seized, or that nothing has been seized, and every action taken, or that no action has been taken.
- (2) An inspector, authorised person, or constable exercising a power of entry conferred by sections 30A, 109, 111, or 126 in relation to a marae or a building associated with a marae must have regard to the kawa of the marae.

Section 112: replaced, on 26 November 1997, by section 76 of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 112(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 112(1)(a)(i): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 112(1)(a)(ii): amended, on 1 October 2012, by section 203(7) of the Search and Surveillance Act 2012 (2012 No 24).

Section 112(1)(c): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 112(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

113 Power to record information

A person lawfully exercising the powers conferred by section 109 or section 111 may make or take copies of any document or any information recorded or stored in a computer or other device, and for that purpose may take possession of and remove any document, tape, or disc from the place where it is kept for such period of time as is reasonable in the circumstances, or may require a person to reproduce, or assist the inspector or authorised person to reproduce, in usable form information recorded or stored in a computer or other device.

114 General powers

An inspector or authorised person who has lawfully entered a place under section 109 or 111 may do anything in, on, or in relation to the place that the inspector or authorised person considers necessary or expedient to—

- (a) eradicate or manage a pest or unwanted organism on the place;
- (b) prevent the spread of a pest or unwanted organism from or to the place;
- (c) avoid, remedy, or mitigate any effect on the place of non-compliance with a pathway management plan.

Section 114: replaced, on 18 September 2012, by section 45 of the Biosecurity Law Reform Act 2012 (2012 No 73).

114A Application of articles or substances from aircraft

- (1) A chief technical officer or principal officer may, by notice in writing, give approval for a specified person or any specified class of persons to apply any article or substance to any place from the airspace above that place for the purposes of—
 - (a) eradicating or managing any pest or unwanted organism; or
 - (b) ascertaining the presence or absence of any pest or unwanted organism.
- (2) An approval given under subsection (1) may be given subject to any conditions that the chief technical officer or principal officer thinks fit.
- (3) Any person specified in an approval or person of the class specified in an approval given in accordance with subsection (1) may, after public notice has been given in accordance with this section, act in accordance with that approval.
- (4) Nothing in this section derogates from any provision of the Civil Aviation Act 1990 or any rule or regulation made under that Act.
- (5) Subject to subsection (6), public notice for the purposes of this section is given by publishing, at least 2 weeks before the intended date when the article or substance is to be applied, in a newspaper circulating in the area in which the place is situated, a notice specifying the following information:
 - (a) the date on which, or as soon as practicable after which, it is intended to apply the article or substance;
 - (b) the article or substance to be applied;
 - (c) a clear description by reference to its boundaries (including districts, roads, and other commonly known features) of the place to which the article or substance is to be applied;
 - (d) the name and address of the person or body responsible for the application of the article or substance.
- (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),—
- (a) the chief technical officer must notify the responsible Minister of that fact, and, unless the urgency of the situation makes it impracticable, obtain the approval of the Minister to a forgoing of the 2 weeks' notice requirement; and
 - (b) the 2 weeks' notice requirement does not then apply, but the chief technical officer must give as much public notice of the matters specified in subsection (5)(a) to (d) as is consistent with avoiding prejudice to the chances of eradicating or containing the organism; and
 - (c) the public notice may be given 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).
- (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
 - (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:
 - (iii) significant environmental loss.

Section 114A: inserted, on 26 November 1997, by section 78 of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 114A(5): amended, on 8 July 2003, by section 18(1) of the Biosecurity Amendment Act 2003 (2003 No 38).

Section 114A(6): inserted, on 8 July 2003, by section 18(2) of the Biosecurity Amendment Act 2003 (2003 No 38).

Section 114A(7): inserted, on 8 July 2003, by section 18(2) of the Biosecurity Amendment Act 2003 (2003 No 38).

115 Use of dogs and devices

Any person lawfully exercising a power under any of sections 109, 111, 113, 114, or 120 may—

- (a) be accompanied by a dog; or
- (b) bring and use any thing,—

to assist in the exercise of the power.

Section 115(b): amended, on 26 November 1997, by section 79 of the Biosecurity Amendment Act 1997 (1997 No 89).

116 Power to seize and dispose of unauthorised goods

- (1) Any inspector lawfully exercising a power under any of sections 19(2), 30A, 31, 34(5), 109, 111, 113, 114, or 120 may seize—
 - (a) any unauthorised goods:
 - (b) any goods where an inspector has reasonable grounds to suspect—
 - (i) those goods are in contact with, or have been in contact with, unauthorised goods; and
 - (ii) pests or unwanted organisms could have been transmitted from the unauthorised goods to those goods.
- (2) A chief technical officer may, either generally or in any particular case, give any reasonable directions as to the disposal of, the treatment of, or any other dealing with, any goods seized in accordance with subsection (1); and any person may dispose of, treat, or otherwise deal with any such goods accordingly.
- (3) A chief technical officer may offer the importer or owner of any goods imported into New Zealand and seized under subsection (1) the option of exporting or returning the goods to their place of origin provided that the importer or owner undertakes the payment of any costs associated with the export or return of the goods.
- (4) A chief technical officer may permit goods seized under this section to be held in the custody of the Director-General for so long as is necessary for the importer to obtain a biosecurity clearance and in such a case the estimated costs and expenses of the custody and maintenance of the goods must be paid in advance to the Director-General.
- (5) If an organism seized in accordance with subsection (1) is an endangered species, as defined in section 3 of the Trade in Endangered Species Act 1989, a chief technical officer must, after consulting the Director-General of Conservation concerning the disposal of the organism, dispose of it as he or she thinks fit.
- (6) In exercising the powers of a chief technical officer in accordance with subsections (2), (3), and (4), a chief technical officer must, so far as is practicable while achieving the purpose of Part 3, act in a manner that is consistent with avoiding or minimising loss to the importer or owner of goods seized in accordance with subsection (1).

Section 116: replaced, on 26 November 1997, by section 80 of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 116(1): amended, on 20 September 2007, by section 5 of the Biosecurity Amendment Act 2007 (2007 No 41).

117 Expenses and compensation

- (1) All costs and expenses attendant upon the custody and disposal of goods seized under section 116 and forfeited to the Crown shall be borne by the owner or

any other person in possession of the goods immediately before seizure; and shall be recoverable from that person as a debt due to the Crown.

- (2) If satisfied that the person in possession of any goods seized under section 116 was not aware that they were unauthorised goods, the Director-General may, at the Director-General's absolute discretion waive or reduce the amount otherwise recoverable in respect of those goods under subsection (1).

117A Seizure and detention of goods or documents as evidence for other enactments

- (1) An inspector exercising a power or carrying out a function or duty under Part 3 may seize and detain goods or documents presented to or located by the inspector in the circumstances described in subsection (2).
- (2) The circumstances are that the inspector must have reasonable grounds to suspect that the goods or documents are evidence of the commission of 1 or more offences under 1 or more of the following enactments:

Constable to deal with

- (a) section 98C of the Crimes Act 1961:
(b) section 342 of the Immigration Act 2009:
(c) section 29A, 30, or 31 of the Passports Act 1992:

Officer to deal with

- (d) the Customs and Excise Act 1996:
(e) sections 123 and 124 of the Films, Videos, and Publications Classification Act 1993:
(f) section 232 or 233 of the Fisheries Act 1996:
(g) section 37 or 43 of the Medicines Act 1981:
(h) the Trade in Endangered Species Act 1989:
(i) enactments administered by the Ministry.
- (3) The inspector must, as soon as practicable, deliver the goods or documents into the custody of 1 of the following persons:
- (a) if the inspector believes that any of subsection (2)(a) to (c) applies to the goods or documents, a constable:
(b) if the inspector believes that any of subsection (2)(d) to (i) applies to the goods or documents, an appropriately authorised officer who—
(i) holds office under the Act specified in the paragraph; or
(ii) is employed by the department that administers the Act.
- (4) The inspector may also deliver to the person, when delivering goods, a notice stating 1 of the following:
- (a) that the goods have been given a biosecurity clearance; or

- (b) that the goods—
 - (i) have not been given a biosecurity clearance; and
 - (ii) must be held, handled, or managed in the manner specified in the notice.
- (5) Responsibility for goods delivered under subsection (3) passes to the person to whom the goods are delivered.

Section 117A: inserted, on 18 September 2012, by section 46 of the Biosecurity Law Reform Act 2012 (2012 No 73).

118 Power to seize evidence

- (1) Any person exercising the power of search conferred by section 111,—
 - (a) may search for, and if it is found seize, any thing that is, or is a thing of a kind or description, specified in the warrant concerned; and
 - (b) while at the place specified in the warrant, may seize any other thing that the person believes on reasonable grounds to be a thing in respect of which the person could have obtained a warrant under that section.
- (2) Subpart 6 of Part 4 of the Search and Surveillance Act 2012 shall, with any necessary modifications, apply to any thing seized under subsection (1).
- (3) The provisions of subparts 1, 5, 6, 7, 9, and 10 of Part 4 of the Search and Surveillance Act 2012 apply.

Section 118(2): amended, on 1 October 2012, by section 203(8) of the Search and Surveillance Act 2012 (2012 No 24).

Section 118(3): inserted, on 1 October 2012, by section 203(9) of the Search and Surveillance Act 2012 (2012 No 24).

119 Power to seize abandoned goods

- (1) An inspector or authorised person may seize and may treat or dispose of any abandoned organism (where necessary disabling or killing it first) or any abandoned conveyance, craft, or goods that are reasonably suspected by the inspector or authorised person of containing or harbouring any pest or unwanted organism.
- (2) An inspector or authorised person is entitled to regard as abandoned any organism or goods that appear to the inspector or authorised person, after making such inquiries as are reasonable in the circumstances, to have been abandoned or have no apparent or readily identifiable owner.

Compare: 1969 No 53 s 10

Section 119(1): amended, on 18 September 2012, by section 47 of the Biosecurity Law Reform Act 2012 (2012 No 73).

120 Power to intercept risk goods

- (1) This section applies to an inspector or authorised person who believes on reasonable grounds that—

- (a) any of sections 25, 130, 131, 132, and 134(1), or a pathway management plan, has been contravened in relation to risk goods; and
 - (b) a thing of any kind contains, or is likely to contain, some or all of the risk goods.
- (2) The inspector or authorised person may—
- (a) open the thing, using the force that is reasonable in the circumstances, and inspect the contents for the presence of risk goods:
 - (b) stop a conveyance or craft for the purposes of paragraph (a).

Section 120: replaced, on 18 September 2012, by section 48 of the Biosecurity Law Reform Act 2012 (2012 No 73).

121 Power to examine organisms

- (1) An inspector or authorised person may exercise any or all of the powers in subsection (1B) on—
- (a) organisms:
 - (b) organic material:
 - (c) any other goods or material.
- (1A) The purposes for which the inspector or authorised person may exercise the powers are—
- (a) taxonomical identification of an organism:
 - (b) diagnosing a disease:
 - (c) determining whether imported goods may be given a biosecurity clearance:
 - (d) ascertaining the presence or absence of any pest or unwanted organism:
 - (e) making an assessment of measures taken to eradicate or manage any pest or unwanted organism.
- (1B) The powers are to—
- (a) autopsy:
 - (b) destroy:
 - (c) examine:
 - (d) inspect:
 - (e) sample:
 - (f) section:
 - (g) take specimens:
 - (h) test:
 - (i) apply any other treatment or procedure.
- (2) Every owner or person in control of any organism, and every occupier of a place in which any organism is present, shall, whenever required by an

- inspector or authorised person by written notice to do so, submit the organism specified in the notice for the purposes of subsection (1A).
- (3) Where an inspector or authorised person has under subsection (2) required the submission of any organism an inspector or authorised person may direct the owner or person in control of the organism, or the occupier of any place where it is present, to bring it—
- (a) in a specified manner:
 - (b) to a specified place:
 - (c) on a specified day:
 - (d) for a specified purpose.
- (4) If the owner or person in control of any animal or the occupier of any place in which an animal is present fails to comply with a direction under this section, an inspector or authorised person may—
- (a) exercise any or all of the powers in subsection (1B); and
 - (b) in the case of any animal or animals,—
 - (i) to the extent that it is necessary to enable those powers to be exercised (or exercised efficiently), capture, pen, or muster it or them or any of them; or
 - (ii) if for any reason it is not practicable to capture, pen, or muster it or them or any of them, kill or destroy it or them or any of them if the inspector or authorised person believes on reasonable grounds that it is necessary to do so for the purpose of controlling pests or unwanted organisms.
- (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.

Compare: 1967 No 50 ss 6, 34; 1978 No 15 s 46; 1982 No 42 s 67

Section 121(1): replaced, on 18 September 2012, by section 49(1) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 121(1A): inserted, on 18 September 2012, by section 49(1) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 121(1B): inserted, on 18 September 2012, by section 49(1) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 121(2): amended, on 18 September 2012, by section 49(2) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 121(4)(a): replaced, on 18 September 2012, by section 49(3) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 121(4)(b)(i): amended, on 18 September 2012, by section 49(4) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 121(4)(b)(ii): amended, on 8 July 2003, by section 19(2) of the Biosecurity Amendment Act 2003 (2003 No 38).

Section 121(5): inserted, on 8 July 2003, by section 19(3) of the Biosecurity Amendment Act 2003 (2003 No 38).

121A Power to apply article or substance to place

- (1) An inspector or authorised person may, for the purpose of ascertaining the presence or absence of any pest or unwanted organism, or of assessing measures taken to eradicate or manage any pest or unwanted organism, bring onto and leave for a reasonable time at any place, any article or substance.
- (2) An article or substance brought onto or left at any place must have a volume no greater than 1 cubic metre unless the article or substance is specified in regulations made under this Act.
- (3) No person may, without reasonable excuse, move or interfere with any article or substance left at a place by an inspector or authorised person pursuant to this section.

Section 121A: inserted, on 26 November 1997, by section 81 of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 121A(1): amended, on 18 September 2012, by section 50 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 121A(1): amended, on 8 July 2003, by section 20 of the Biosecurity Amendment Act 2003 (2003 No 38).

121B Prohibition or control of certain tests

- (1) The Governor-General may by Order in Council, prohibit any test, or control the use of any test by making that test subject to conditions imposed by a chief technical officer if the prohibition or control of that test is necessary for—
 - (a) the eradication or effective management of any pest or unwanted organism; or
 - (b) the provision of assurances and certificates in relation to exports of organisms and their products.
- (2) No person may—
 - (a) carry out any test prohibited by an Order in Council made under this section;
 - (b) carry out any test controlled by an Order in Council made under this section other than in accordance with the conditions imposed by a chief technical officer.
- (3) No person may act in a manner that the person knows or suspects is likely to alter a response to a controlled test.
- (4) For the purposes of this section a **test** means a test carried out for any of the purposes specified in section 121(1A).
- (5) An order made under this section is a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Section 121B: inserted, on 26 November 1997, by section 82 of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 121B(1)(a): amended, on 18 September 2012, by section 51(1) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 121B(4): amended, on 18 September 2012, by section 51(2) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 121B(5): replaced, on 1 February 2014, by section 77(3) of the Legislation Act 2012 (2012 No 119).

122 Power to give directions

- (1) An inspector or authorised person may, whenever that inspector or authorised person considers it to be necessary, direct the occupier of any place or the owner or person in charge of any organism or risk goods—
 - (a) to treat any goods, water, place, equipment, fitting, or other thing that may be contaminated with pests or unwanted organisms; or
 - (b) to destroy any pest or unwanted organism or any organism or organic material or thing that there are reasonable grounds to believe harbours a pest or unwanted organism; or
 - (c) to take steps to prevent the spread of any pest or unwanted organism.
- (2) An inspector or authorised person may, by notice in writing, direct any person who has failed to comply with a rule included in a pest management strategy to comply with that rule.
- (3) An inspector or authorised person may direct the owner or person in charge of risk goods or a craft to take steps to avoid, remedy, or mitigate an effect of non-compliance with a pathway management plan.

Section 122: replaced, on 26 November 1997, by section 83 of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 122(3): inserted, on 18 September 2012, by section 52 of the Biosecurity Law Reform Act 2012 (2012 No 73).

123 Power to vaccinate, etc

An inspector or authorised person may apply any procedure to organisms (such as medication or vaccination) therapeutically or prophylactically for the purposes of this Act.

Compare: 1967 No 50 s 6

124 Power to destroy organism on non-payment of fees

An inspector may destroy or otherwise dispose of an organism that is being lawfully held by the Crown if any treatment fees, quarantine isolation fees, or containment fees due in respect of that organism have not been paid within 20 working days of those fees being demanded from the owner or person who was in apparent control of that organism prior to it passing into the control of the Crown.

125 Transitional facility direction

An inspector may by notice in writing direct that any risk goods specified in the notice shall be placed in a transitional facility for such period as is specified in the notice or until the occurrence of an event specified in the notice.

Compare: 1967 No 50 s 6

Section 125 heading: amended, on 26 November 1997, by section 84 of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 125: amended, on 26 November 1997, by section 84 of the Biosecurity Amendment Act 1997 (1997 No 89).

126 Inspection of and intervention in transitional facilities and containment facilities

- (1) An inspector authorised in writing by the Director-General may at any reasonable time enter a transitional facility or a containment facility for the purpose of confirming that the facility complies with the standards set in accordance with section 39 or section 11(1)(fc) of the Hazardous Substances and New Organisms Act 1996 or that the operator is approved as the facility operator for that facility, and the provisions of section 112 apply to any such entry.
- (2) An inspector may exercise a power described in subsection (3) if (and only if) the inspector has reasonable grounds to suspect that—
 - (a) a transitional facility or containment facility does not comply with the standards approved for a facility of that kind; or
 - (b) the facility operator is not complying with the standards approved for operating that facility; or
 - (c) the terms (including any controls imposed under section 45(2) of the Hazardous Substances and New Organisms Act 1996) upon which an organism is confined to the facility are not being complied with.
- (3) An inspector may—
 - (a) give a direction in writing to the facility operator specifying the suspected failure to comply or unsatisfactory circumstances, stating what the operator is required to do to remedy the situation and specifying the time within which the direction must be complied with; or
 - (b) if a chief technical officer considers that emergency or other special circumstances so require, intervene summarily in the management or operation of the transitional facility or containment facility to ensure—
 - (i) compliance with the standards for that facility; or
 - (ii) compliance with the terms (including any controls imposed under section 45(2) of the Hazardous Substances and New Organisms Act 1996) upon which the organism is confined to the facility.
- (4) A direction given under this section may be cancelled or varied by a subsequent notice in writing.

- (5) If a direction given under this section is not complied with within the time specified in the notice, an inspector may take such action as the inspector considers necessary to give effect to the requirements of the notice.
- (6) The costs and expenses reasonably incurred by an inspector in intervening summarily under subsection (3) or an inspector taking action under subsection (5) may be recovered from the facility operator as a debt due to the Crown.

Section 126: replaced, on 26 November 1997, by section 85 of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 126(1): amended, on 18 September 2012, by section 53(1) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 126(1): amended, on 18 September 2012, by section 53(2) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 126(2)(a): amended, on 18 September 2012, by section 53(3) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 126(2)(b): amended, on 18 September 2012, by section 53(4) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 126(2)(c): amended, on 8 July 2003, by section 21(1) of the Biosecurity Amendment Act 2003 (2003 No 38).

Section 126(3)(a): amended, on 18 September 2012, by section 53(5) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 126(3)(b)(ii): amended, on 8 July 2003, by section 21(2) of the Biosecurity Amendment Act 2003 (2003 No 38).

Section 126(6): amended, on 18 September 2012, by section 53(6) of the Biosecurity Law Reform Act 2012 (2012 No 73).

127 Destruction of imported organisms

- (1) A chief technical officer may by notice in writing given to the operator of a transitional facility direct that any imported organism that has been placed in that facility, and any organism or goods at any time associated with that organism, shall be destroyed or treated or subjected to a specified procedure if the chief technical officer believes on reasonable grounds—
- (a) that the imported organism is affected by or harbours a pest or unwanted organism of a kind or to a degree that, even when the organism is in the transitional facility, constitutes an unacceptable risk to the health of organisms in New Zealand; or
 - (b) the organism is, is affected by, or harbours, a pest under active control in New Zealand; or
 - (c) that the health of the organism has not been and cannot be satisfactorily established within a reasonable time.
- (2) If the operator of a transitional facility fails to comply with a direction under this section, an inspector may seize and destroy the organism concerned.
- (3) *[Repealed]*

- (4) The costs and expenses of seizure and destruction of an organism under subsection (2) shall be the responsibility of the owner of the organism and may be recovered as a debt due to the Crown.

Compare: 1967 No 50 s 13

Section 127(1): amended, on 26 November 1997, by section 86(a) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 127(1): amended, on 26 November 1997, by section 86(b) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 127(1)(a): amended, on 26 November 1997, by section 86(a) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 127(2): amended, on 26 November 1997, by section 86(a) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 127(3): repealed, on 1 October 1998, by section 106(2) of the Biosecurity Amendment Act 1997 (1997 No 89).

128 Power to act on default

Definition for this section

- (1) In this section, **enforcement document** means—
- (a) a notice given to a person under this Act lawfully directing or requiring the person to carry out works or measures, or take some other action, specified in the notice;
 - (b) a compliance order that is not stayed under section 154E.
- (1A) Subsection (1B) applies when an enforcement document has not been complied with in—
- (a) the time specified in it for compliance; or
 - (b) if no time was specified in it, a reasonable time.
- (1B) A chief technical officer, a principal officer, or a management agency may bring about the implementation of the enforcement document in a way that is reasonably necessary and appropriate to achieve the document's purpose.
- (2) Where specified works or measures are to be carried out on Maori land, any notice given to the owners shall be given in accordance with section 181 of Te Ture Whenua Maori Act 1993.
- (3) The chief technical officer, a principal officer or management agency may recover the costs and expenses reasonably incurred under this section as a debt due from the person to whom the notice was given.

Compare: 1967 No 50 s 8; 1967 No 147 s 104; 1968 No 13 s 9; 1969 No 53 s 45; 1970 No 151 s 11; 1978 No 15 s 57; 1982 No 42 ss 68, 74

Section 128(1): replaced, on 18 September 2012, by section 54 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 128(1A): inserted, on 18 September 2012, by section 54 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 128(1B): inserted, on 18 September 2012, by section 54 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 128(3): amended, on 26 November 1997, by section 87(b) of the Biosecurity Amendment Act 1997 (1997 No 89).

129 Liens

All costs recoverable by a chief technical officer, principal officer, or management agency under section 128 shall be a charge (in this section referred to as the recovery charge) against the land concerned; and—

- (a) subject to paragraph (b), the recovery charge shall have priority over all existing or later mortgages, charges, and incumbrances over the land, however they may have been created (including mortgages, charges, and incumbrances in favour of the Crown);
- (b) if the land is or becomes subject to some other charge (being a charge created by an enactment other than this section), the charges shall rank equally unless the enactment provides that the other charge is to be deferred to the recovery charge.

Section 129: amended, on 26 November 1997, by section 88 of the Biosecurity Amendment Act 1997 (1997 No 89).

Place and area controls

130 Declaration of restricted place

- (1) If an inspector or authorised person believes or suspects on reasonable grounds that a pest or unwanted organism is or has been in a place, the inspector or authorised person may, by notice given in accordance with subsections (2) and (3), declare that place and any other place in the neighbourhood the inspector or authorised person considers necessary to be a restricted place.
- (2) A notice shall be in a form approved for the purpose by a chief technical officer, a principal officer, or a management agency.
- (3) A notice shall be given by serving a copy on the occupier of each place included in the area of the restricted place except that—
 - (a) a copy need not be served on the occupier of any part of the place if the inspector or authorised person cannot with reasonable diligence discover an occupier of that place who can be found quickly; and
 - (b) notice may be given publicly if it is impractical to give notice in accordance with the preceding provisions of this subsection.
- (4) While a notice under subsection (1) is in force, no person shall, without the permission of an inspector or authorised person,—
 - (a) remove—
 - (i) any organism, organic material, or risk goods; or
 - (ii) any other goods that may have been in contact with any organism, organic material, or risk goods,—
 from the place to which the notice relates; or

- (b) introduce any goods of any kind to the place.
- (4A) Where the agent or employee of an occupier to whom a notice has been given under subsection (1) acts in breach of subsection (4), that action is deemed to be an action of the occupier unless the occupier had given a copy of the notice under subsection (1) to that agent or employee before the agent or employee breached subsection (4).
- (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—
 - (a) isolated, confined, or stored in such manner as the inspector or authorised person directs:
 - (b) identified in a manner specified in the direction, or with an identification applied by the inspector or authorised person.

Compare: 1967 No 50 s 29

Section 130(1): replaced, on 26 November 1997, by section 89(1) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 130(2): amended, on 26 November 1997, by section 89(2) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 130(4A): inserted, on 26 November 1997, by section 89(3) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 130(5): replaced, on 8 July 2003, by section 22 of the Biosecurity Amendment Act 2003 (2003 No 38).

131 Declaration of controlled area

- (1) The purpose of this section is to enable the institution of movement and other controls in order to—
 - (a) enable the limitation of the spread of any pest or unwanted organism; or
 - (b) minimise the damage caused by any pest or unwanted organism; or
 - (c) protect any area from the incursion of pests or unwanted organisms; or
 - (d) facilitate the access of New Zealand products to overseas markets; or
 - (e) monitor risks associated with the movement of organisms from parts of New Zealand the pest status of which is unknown.
- (2) A chief technical officer or a management agency may, by public notice in a newspaper, or by radio or television announcement, or otherwise as the chief technical officer or management agency considers effective and appropriate, declare any specified area (which may be the whole or any specified part or parts of New Zealand) to be an area that is controlled for the purposes of this section.
- (3) At any time while the declaration of a controlled area is in force, the chief technical officer or management agency, as the case may require, may, by public notice in a newspaper, or by radio or television announcement, or otherwise as

the chief technical officer or management agency considers effective and appropriate, give notice of either or both of the following matters:

- (a) the movement into, within, or from the controlled area of such organisms, organic material, risk goods or other goods as are specified in the notice is restricted, regulated, or prohibited in the manner, to the extent and subject to the conditions specified in the notice:
 - (b) the organisms, organic material, risk goods, or other goods within the controlled area that are specified in the notice, must be subject to such treatment and procedures as are specified in the notice.
- (4) A notice given under subsection (3) may be revoked or may from time to time be replaced or amended.

Compare: 1967 No 50 ss 13A, 29; 1969 No 53 ss 13, 16, 30, 31; 1982 No 42 s 79

Section 131(2): amended, on 8 July 2003, by section 23 of the Biosecurity Amendment Act 2003 (2003 No 38).

Section 131(3)(b): replaced, on 26 November 1997, by section 90 of the Biosecurity Amendment Act 1997 (1997 No 89).

132 Road blocks, cordons, checkpoints, etc

- (1) In this section, **control** means a road block, a cordon, or a checkpoint.
- (2) A District Court Judge may, on the written application (made on oath) of a chief technical officer, issue a warrant authorising the establishment of controls in relation to a place or area, if the District Court Judge is satisfied that—
 - (a) attempts are being made to eradicate or manage a pest or unwanted organism; and
 - (b) there are reasonable grounds to suspect that the pest or unwanted organism is present within the place or area; and
 - (c) the pest or unwanted organism is not known to be present in the places or areas that are adjacent to the place or area; and
 - (d) it is necessary to establish controls in order to—
 - (i) prevent or limit the risk of the pest or unwanted organism spreading beyond the place or area if any spread of the organism would significantly affect the likely success of the eradication or management of the pest or unwanted organism; or
 - (ii) otherwise avoid significant prejudice to the eradication or management of the pest or unwanted organism.
- (3) The warrant shall be issued for a period of not more than 7 days; but may from time to time be renewed (in the form in which it was issued or in any amended form) for a period not exceeding 7 days.
- (4) The warrant may be issued in writing or orally; but—
 - (a) if it is issued in writing, it shall specify—
 - (i) the pest or organism concerned; and

- (ii) the approximate location of every cordon whose establishment it authorises; and
 - (iii) the location (either by way of individual descriptions or by way of descriptions of places of any class or classes) of every other control whose establishment it authorises; and
 - (iv) the period for which it is granted; and
 - (v) the grounds on which it was issued; and
 - (b) if it is issued orally, the Judge shall cause to be made and kept a written record of the matters specified in subparagraphs (i) to (v) of paragraph (a).
- (5) Subsection (4) shall, with any necessary modifications, apply to the renewal of a warrant as if it is the issue of a warrant.
- (6) Any constable may establish or operate a control whose establishment is authorised by a warrant under this section.
- (7) A constable operating a control whose establishment is authorised by a warrant under this section may—
- (a) stop any vehicle, conveyance, or craft, that is at or near the control; or
 - (b) detain any vehicle, conveyance, or craft, that is stopped at or near the control, either at the place where it is stopped or at any other convenient place nearby,—
- for the purpose of exercising the powers conferred by subsection (8).
- (8) A constable who has stopped or detained a vehicle, conveyance, or craft under subsection (7) may—
- (a) enter and search that vehicle, conveyance, or craft; and
 - (b) open any box or receptacle in that vehicle, conveyance, or craft; and
 - (c) seize—
 - (i) any organism that is the pest or unwanted organism in respect of which the warrant concerned was issued; or
 - (ii) any thing that may harbour or contain the pest or unwanted organism in respect of which the warrant concerned was issued; or
 - (iii) any thing that, if moved beyond the control, would be moved in breach of section 130(4); or
 - (iv) any thing that, if moved beyond the control, would be moved in breach of section 134(1)(b).
- (8A) A chief technical officer may, either generally or in any particular case, give any reasonable directions as to the disposal of, the treatment of, or any other dealing with, any organism or other thing seized in accordance with subsection (8); and any person may dispose of, treat, or otherwise deal with any such organism or thing accordingly.

- (8B) In exercising the powers of a chief technical officer in accordance with subsection (8A), a chief technical officer must, so far as is practicable without significantly prejudicing the successful eradication or management of the pest or unwanted organism concerned, act in a manner that is consistent with avoiding or minimising loss to the owner or person in charge of the organism or other thing that was seized.
- (9) No person shall,—
- (a) while in charge of any vehicle or craft, that is at or near a control, without reasonable excuse fail or refuse to stop it when a constable in uniform asks him or her to stop it, or tries to stop it; or
 - (b) while in charge of any vehicle or craft lawfully stopped or detained under this section, without reasonable excuse move it from the place where it is stopped or detained without the permission of a constable.

Section 132(2): replaced, on 26 November 1997, by section 91(1) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 132(2)(a): amended, on 18 September 2012, by section 55(1) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 132(2)(d)(i): amended, on 18 September 2012, by section 55(2) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 132(2)(d)(ii): amended, on 18 September 2012, by section 55(2) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 132(6): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 132(7): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 132(7): amended, on 26 November 1997, by section 91(2) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 132(8): replaced, on 26 November 1997, by section 91(3) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 132(8): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 132(8A): inserted, on 26 November 1997, by section 91(3) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 132(8B): inserted, on 26 November 1997, by section 91(3) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 132(8B): amended, on 18 September 2012, by section 55(3) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 132(9)(a): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 132(9)(b): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

133 Duration of place and area declarations

A declaration of a restricted place or a controlled area shall remain in force until it is revoked by a notice of revocation given substantially in the same manner as the declaration of the area concerned was notified.

Compare: 1967 No 50 ss 13A, 29

134 Enforcement of area controls

- (1) No person shall—
 - (a) resist or obstruct the performance of, or fail to comply with, any direction of a constable who is acting in the performance of duties under section 132; or
 - (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.
- (1A) Every owner or person in control of an organism, organic material, risk goods, or other goods in respect of which treatment and procedures are specified by a notice under section 131(3) must carry out the treatment and procedures specified in the notice.
- (2) All organisms, organic material, risk goods, or other goods that are removed or moved in contravention of subsection (1) may be seized by an inspector or authorised person and destroyed, treated, or otherwise dealt with, if it is reasonable in the circumstances to do so.
- (3) A Minister may direct that organisms, organic material, risk goods, or other goods that were removed or moved in contravention of subsection (1) and have been seized shall be forfeited to a management agency and destroyed, sold, or otherwise disposed of as that agency may direct.

Compare: 1967 No 50 ss 13A, 29

Section 134(1)(a): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 134(1)(b): replaced, on 8 July 2003, by section 24 of the Biosecurity Amendment Act 2003 (2003 No 38).

Section 134(1A): inserted, on 26 November 1997, by section 92(1) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 134(2): amended, on 26 November 1997, by section 92(2) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 134(3): amended, on 26 November 1997, by section 92(3)(a) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 134(3): amended, on 26 November 1997, by section 92(3)(b) of the Biosecurity Amendment Act 1997 (1997 No 89).

*Recovery of costs***135 Options for cost recovery**

- (1) The Director-General, every other chief executive, and every management agency, (hereafter in this section and in section 136 referred to as a recovering authority) shall take all reasonable steps to ensure that so much of the costs of administering this Act, including costs incurred as the management agency of a pest management plan or pathway management plan, as are not provided for by money appropriated by Parliament for the purpose are recovered in accordance with the principles of equity and efficiency in accordance with this section and the regulations.
- (2) In determining appropriate mechanisms for the recovery of costs of a particular function or service, a recovering authority shall ensure that there is recovered any amount by which—
 - (a) the sum of—
 - (i) the costs of the function in the current year; and
 - (ii) any shortfall in the recovery of the costs in the preceding year; exceeds
 - (b) any over-recovery of costs in respect of the preceding year.
- (3) A recovering authority may recover costs of administering this Act and performing the functions, powers, and duties provided for in this Act by such methods as he or she or it believes on reasonable grounds to be the most suitable and equitable in the circumstances, including any 1 or more of the following methods:
 - (a) fixed charges:
 - (b) charges fixed on an hourly or other unit basis:
 - (c) estimated charges paid before the provision of the service or performance of the function followed by reconciliation and an appropriate payment or refund after provision of the service or performance of the function:
 - (d) actual and reasonable charges:
 - (e) refundable or non-refundable deposits paid before provision of the service or performance of the function:
 - (f) charges imposed on users of services or third parties:
 - (g) in the case only of the Director-General or some other chief executive, liens on property in the possession of the Crown.
- (4) This section does not apply to costs incurred by a recovering authority in processing travellers to which the Airports (Cost Recovery for Processing of International Travellers) Act 2014 applies.

Section 135(1): amended, on 18 September 2012, by section 56 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 135(4): inserted, on 15 February 2014, by section 21(1) of the Airports (Cost Recovery for Processing of International Travellers) Act 2014 (2014 No 3).

136 Failure to pay

- (1) Where all or part of a charge made under this Act or the regulations remains unpaid after 20 working days since the charge was demanded in writing, the debt shall be deemed to have been increased by an amount calculated in accordance with subsection (2).
- (2) The amount by which an unpaid charge is deemed to have increased is the sum of—
 - (a) 10% of the debt, or that part of it that remained unpaid after the expiration of the period of 20 working days referred to in subsection (1); and
 - (b) for every complete period of 6 months after the expiration of that period during which the debt or any part of it (including any deemed increase under this section) has remained unpaid, 10% of that debt or that part.
- (3) If a recovering authority is satisfied that the failure or refusal of any person to pay all or any part of a debt was a result of a genuine dispute between the person and department as to the person's liability to pay the debt, the amount of the debt, or both, the recovering authority may waive the payment of all or any part by which the debt has increased under this section.
- (4) In an action for recovery of the debt, the court may exercise the power of waiver contained in subsection (3) if the court is satisfied in the terms set out in that subsection.

137 Levies

- (1) The Governor-General may from time to time, on the recommendation of the responsible Minister, by Order in Council impose a levy payable to the Director-General for the purposes of wholly or partially funding a service provided or function performed by the department for the purposes of this Act.
- (2) A levy order made under this section is a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.
- (3) The fact that Part 5A provides for levies to be made to fund readiness or response activities does not prevent this section imposing a levy to which both the following apply:
 - (a) it is imposed to wholly or partly fund a readiness or response activity; and
 - (b) it is imposed on a sector that is not specified in a *Gazette* notice under section 100ZA.

Compare: 1967 No 50 s 107

Section 137(1): amended, on 8 July 2003, by section 25 of the Biosecurity Amendment Act 2003 (2003 No 38).

Section 137(2): replaced, on 1 February 2014, by section 77(3) of the Legislation Act 2012 (2012 No 119).

Section 137(3): inserted, on 18 September 2012, by section 57 of the Biosecurity Law Reform Act 2012 (2012 No 73).

138 Orders are confirmable instruments

The explanatory note of a levy order made under section 137 must indicate that—

- (a) it is a confirmable instrument under section 47B of the Legislation Act 2012; and
- (b) it is revoked at a time stated in the note, unless earlier confirmed by an Act of Parliament; and
- (c) the stated time is the applicable deadline under section 47C(1)(a) or (b) of that Act.

Section 138: replaced, on 1 January 2016, by section 14 of the Legislation (Confirmable Instruments) Amendment Act 2015 (2015 No 120).

139 Restrictions on levies

The Minister shall not recommend the making of an order under section 137 unless the Director-General has satisfied the Minister that—

- (a) the imposition of a levy recovering the costs of providing or performing a particular service or function is in accordance with the principles of equity and efficiency; and
- (b) either—
 - (i) the persons who will be responsible for paying the levy will benefit from the provision or performance of the particular service or function; or
 - (ii) the persons who will be responsible for paying the levy create risks that require the provision or performance of the particular service or function; and
- (c) all other relevant matters known to the Minister have been properly considered.

140 Contents of levy order

- (1) Every order under section 137 shall specify—
 - (a) the persons primarily responsible for paying the levy; and
 - (b) the basis on which the amount of levy is to be calculated or ascertained; and
 - (c) the persons (if any) to be exempt from paying the levy; and

- (d) the persons responsible for collecting the levy from those primarily responsible for paying it; and
 - (e) how the levy is to be spent, in consultation with those persons primarily responsible for paying the levy; and
 - (f) when and how the levy is to be paid; and
 - (g) on the rate of levy,—
 - (i) whether there is to be a single rate or 2 or more different rates; and
 - (ii) if there are to be 2 or more different rates, the things to which the different rates apply; and
 - (iii) the maximum for each rate; and
 - (h) how each actual rate of the levy is to be set (if, or insofar as, the order does not set each actual rate); and
 - (i) how the rates of the levy and variation of rates are to be notified; and
 - (j) whether or not the persons collecting the levy are entitled to recover the cost of levy collection and the estimated amount.
- (2) The order may prescribe any of the following matters:
- (a) the making of returns to the Director-General or some other person or body for the purpose of enabling or assisting the determination of amounts of levy payable;
 - (b) the circumstances in which, and conditions subject to which, persons may be allowed extensions of time for the payment of any levy;
 - (c) the payment of additional or increased levy when amounts of levy otherwise payable have been paid late, paid in part or not paid at all.
 - (d) the holding of funds from which payments of levy are to be made, on trust in separate accounts.

Section 140(1)(g): replaced, on 24 June 2014, by section 10 of the Biosecurity (Border Processing—Trade Single Window) Amendment Act 2014 (2014 No 11).

Section 140(1)(h): replaced, on 24 June 2014, by section 10 of the Biosecurity (Border Processing—Trade Single Window) Amendment Act 2014 (2014 No 11).

Section 140(2)(d): inserted, on 26 November 1997, by section 93 of the Biosecurity Amendment Act 1997 (1997 No 89).

140AA Levies for recovering border processing costs

- (1) In this section, **traveller** means any person who arrives in New Zealand from any place outside New Zealand.
- (2) Every traveller who arrives in New Zealand on or after 1 January 2016 is liable, while there is a levy order in force under subsection (3), to pay a levy to the Director-General in relation to the costs incurred by the Ministry in, or for the purpose of, exercising its powers or performing its functions under this Act

- in relation to travellers and the goods in their possession or under their control (including as part of their personal effects or baggage).
- (3) The Governor-General may, by Order in Council, on the recommendation of the responsible Minister, make a levy order prescribing—
 - (a) the rate of levy or the basis on which the rate is to be calculated or ascertained; and
 - (b) insofar as the order does not set an actual rate, how the actual rate of the levy is to be set; and
 - (c) when and how the levy is to be paid; and
 - (d) how the rate of levy, and any variation of the rate, is to be notified.
 - (4) The responsible Minister must, before recommending that a levy order be made under this section, consult with persons who the Minister believes are representative of interests likely to be affected substantially by the order.
 - (5) A levy order must not be made in respect of the costs that are otherwise recovered or otherwise to be recovered under this Act or the Airports (Cost Recovery for Processing of International Travellers) Act 2014.
 - (6) A levy order made under this section—
 - (a) is a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012; and
 - (b) must be presented to the House of Representatives under section 41 of that Act.
 - (7) To avoid doubt, this section does not limit section 135 or 137.

Section 140AA: inserted, on 28 May 2015, by section 5 of the Biosecurity Amendment Act (No 2) 2015 (2015 No 56).

140AB Contents of border processing levy order

A levy order under section 140AA may—

- (a) prescribe different rates of levy, on any differential basis, for different persons or different classes of persons:
- (b) prescribe a maximum rate or maximum rates of levy:
- (c) exempt certain persons or classes of persons from the requirement to pay the levy:
- (d) prescribe persons responsible for collecting the levy from those primarily responsible for paying it:
- (e) allow persons collecting the levy to recover the costs of collecting the levy and, if so, prescribe the basis on which those costs are to be calculated or ascertained:
- (f) require that returns be made to the Director-General or some other person or body to enable amounts of levy payable to be calculated, determined, or verified:

- (g) provide, subject to such conditions as may be prescribed, for extensions of time for the payment of levy;
- (h) provide for the payment of additional or increased levy in the event of late payment or non-payment;
- (i) provide for circumstances in which levy paid may be refunded;
- (j) require that levy funds payable be held on trust in separate accounts.

Section 140AB: inserted, on 28 May 2015, by section 5 of the Biosecurity Amendment Act (No 2) 2015 (2015 No 56).

140A Trust accounts for levy money payable to Director-General

- (1) Where an order under section 137 or 140AA provides that funds from which payments of levy are made are to be held on trust in separate accounts, the persons responsible for collecting the levy must each keep a bank account (in this section referred to as a trust account) at a registered bank within the meaning of the Reserve Bank of New Zealand Act 1989; and—
 - (a) ensure that the account is so named as to identify that it is a trust account kept by the person responsible for collecting the levy for the purposes of the order; and
 - (b) take all practicable steps to ensure that—
 - (i) the account is used only for holding amounts required to be deposited by subsection (3); and
 - (ii) the balance in the account on any day is not less than the amount outstanding to the Director-General on that day by the person responsible for collecting the levy.
- (2) For the purpose of this section, the amount outstanding to the Director-General by a person responsible for collecting the levy on any day is the remainder obtained by subtracting—
 - (a) the total of all amounts of levy paid by that person to the Director-General before that day calculated on the basis specified in the order under section 137 or 140AA; from
 - (b) the total of all amounts required by subsection (3) to be deposited in the trust account by the person responsible for collecting the levy not later than a day before that day.
- (3) Where a person is responsible for collecting a levy, that person must deposit an amount equal to the levy calculated on the basis provided for in the order under section 137 or 140AA in the trust account on the day or days specified in that order or on a day or days calculated in accordance with that order.
- (4) There is deemed to be held on trust for the Director-General as levy money—
 - (a) the amount outstanding to the Director-General by the person responsible for collecting the levy held in the trust account specified in the order under section 137 or 140AA; or

- (b) where the amount held in the account is less than the amount outstanding, all the money in the account.
- (5) Money deemed by subsection (4) to be held on trust—
 - (a) is not available for the payment of; and
 - (b) is not liable to be attached or taken in execution at the instance of— any creditor of the person responsible for collecting the levy (other than the Director-General).
- (6) A person who ceases to be a person responsible for collecting a levy must continue to maintain the trust account referred to in this section until all the levy money payable to the Director-General in respect of the period during which that person was responsible for collecting the levy has been paid.
- (7) Nothing in subsection (6) limits or affects any obligation or liability under this Act of any person who has become responsible for collecting the levy.

Section 140A: inserted, on 26 November 1997, by section 94 of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 140A(1): amended, on 28 May 2015, by section 6 of the Biosecurity Amendment Act (No 2) 2015 (2015 No 56).

Section 140A(2)(a): amended, on 28 May 2015, by section 6 of the Biosecurity Amendment Act (No 2) 2015 (2015 No 56).

Section 140A(3): amended, on 28 May 2015, by section 6 of the Biosecurity Amendment Act (No 2) 2015 (2015 No 56).

Section 140A(4)(a): amended, on 28 May 2015, by section 6 of the Biosecurity Amendment Act (No 2) 2015 (2015 No 56).

141 Effect of levy order

Where an order is made under section 137 or 140AA, the following provisions apply:

- (a) every person responsible for paying or collecting the levy shall do so; and
- (b) the Director-General may recover the levy from any person responsible for paying or collecting it as a debt due in a court of competent jurisdiction.

Section 141: amended, on 28 May 2015, by section 7(1) of the Biosecurity Amendment Act (No 2) 2015 (2015 No 56).

Section 141(a): amended, on 28 May 2015, by section 7(2) of the Biosecurity Amendment Act (No 2) 2015 (2015 No 56).

Section 141(b): amended, on 28 May 2015, by section 7(3) of the Biosecurity Amendment Act (No 2) 2015 (2015 No 56).

141A Orders to provide for records to be kept for Director-General's levy

For the purpose of ascertaining whether or not an order under section 137 or 140AA is being complied with, the order must provide for—

- (a) the keeping of statements, accounts, and records of specified classes or descriptions by the Director-General, persons responsible for collecting the levy, and persons responsible for paying the levy concerned, or any of them; and
- (b) any such statements, accounts, or records to be retained for a specified period.

Section 141A: inserted, on 26 November 1997, by section 95 of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 141A: amended, on 28 May 2015, by section 8 of the Biosecurity Amendment Act (No 2) 2015 (2015 No 56).

141B Compliance audits for Director-General's levy

- (1) While an order under section 137 or 140AA is in force, the Minister may, at the request of the Director-General, appoint 1 or more auditors to conduct an audit of the affairs of all or any of the following:
 - (a) some or all of the persons responsible for collecting the levy:
 - (b) some or all of the persons responsible for paying the levy.
- (2) While an order under section 137 or 140AA is in force, the Minister may, if an arbitrator has been appointed to resolve a dispute, appoint an auditor to conduct an audit of all or any of the persons involved in the dispute.
- (3) No person is qualified for appointment as an auditor unless the person is a qualified auditor (within the meaning of section 35 of the Financial Reporting Act 2013).
- (4) No officer or employee of any of the following persons or organisations may be appointed an auditor:
 - (a) the Director-General:
 - (b) any person responsible for collecting the levy under the order concerned:
 - (c) any person responsible for paying the levy under the order concerned.
- (5) Every person appointed as an auditor is entitled to remuneration (paid by the Director-General) as provided in the relevant levy order.
- (6) For the purposes of sections 141C and 141D, **auditor** means a person for the time being appointed under subsection (1) or subsection (2).

Section 141B: inserted, on 26 November 1997, by section 95 of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 141B(1): amended, on 28 May 2015, by section 9 of the Biosecurity Amendment Act (No 2) 2015 (2015 No 56).

Section 141B(2): amended, on 28 May 2015, by section 9 of the Biosecurity Amendment Act (No 2) 2015 (2015 No 56).

Section 141B(3): replaced, on 1 April 2014, by section 126 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

141C Purpose of compliance audits for Director-General's levy

- (1) The purpose of an audit conducted by an auditor appointed under section 141B(1) is (so far as is practicable) to ascertain in respect of the affairs of the persons whose affairs are to be audited, and report to the Minister responsible for the order on, as many of the following matters as are relevant to those affairs:
 - (a) the extent to which persons responsible for paying the levy concerned are doing and have done so:
 - (b) the extent to which appropriate amounts of the levy concerned are being and have been paid:
 - (c) the extent to which appropriate amounts of the levy concerned are being and have been collected:
 - (d) the extent to which appropriate amounts of the levy concerned are being and have been paid over to the Director-General by persons collecting it:
 - (e) the extent to which statements, accounts, and records are being and have been kept:
 - (f) the extent to which statements, accounts, and records that are being and have been kept are being and have been properly kept.
- (2) The purpose of an audit conducted by an auditor appointed under section 141B(2) is (so far as is practicable) to ascertain in respect of the affairs of the parties to the dispute, and report to the arbitrator concerned, the Minister responsible for the order, and those parties, on the matters of fact that are in dispute.

Section 141C: inserted, on 26 November 1997, by section 95 of the Biosecurity Amendment Act 1997 (1997 No 89).

141D Power of auditors to require production of statements and records

- (1) For the purposes of conducting an audit, any auditor specifically or generally authorised in writing in that behalf by a Minister may from time to time require any person (being the Director-General, a person responsible for collecting levies, a person responsible for paying levies, or any employee or officer of the Director-General, or any such person) to produce for inspection within a reasonable period specified by the auditor any statements, accounts, and records in the possession or under the control of that person (being statements, accounts, or records that are required to be kept under this Act or by an order), and may take copies of or extracts from any such document.
- (2) Every authorisation under subsection (1) must contain—
 - (a) a reference to this section; and
 - (b) the full name of the auditor; and
 - (c) a statement of the powers conferred on the auditor by subsection (1).

- (3) Subject to section 141C(2), except in respect of a prosecution under this Act or an action for the recovery of any amount due under this Act, no auditor who exercises powers under this section may disclose to any other person (other than a Minister or a person authorised in that behalf by a Minister) any information obtained by the auditor as a result of the exercise of the power.
- (4) Notwithstanding subsection (3), the Official Information Act 1982 applies in respect of any information held by a Minister that was obtained pursuant to this section.
- (5) A person who is the subject of a requirement of an auditor under subsection (1) must comply with the requirement.

Section 141D: inserted, on 26 November 1997, by section 95 of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 141D(5): inserted, on 18 September 2012, by section 58 of the Biosecurity Law Reform Act 2012 (2012 No 73).

142 Resolution of disputes

Every order under section 137 shall provide for—

- (a) the appointment of arbitrators to resolve disputes as to—
 - (i) whether or not any person is required to pay the levy concerned:
 - (ii) the amount of levy any person is required to pay; and
- (b) the procedures to be followed by arbitrators; and
- (c) remuneration of arbitrators; and
- (d) the payment of arbitration costs; and
- (e) a right of appeal to a District Court Judge against decisions of arbitrators and the procedures governing the exercise of that right; and
- (f) any other matters relating to the resolution of such disputes.

Section 142(a): amended, on 26 November 1997, by section 96(1) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 142(b): amended, on 26 November 1997, by section 96(1) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 142(c): amended, on 26 November 1997, by section 96(1) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 142(d): amended, on 26 November 1997, by section 96(2) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 142(e): amended, on 26 November 1997, by section 96(1) of the Biosecurity Amendment Act 1997 (1997 No 89).

Biosecurity database

Heading: inserted, on 18 September 2012, by section 59 of the Biosecurity Law Reform Act 2012 (2012 No 73).

142A Establishment

- (1) The Director-General may establish and maintain a biosecurity database containing information about land for the purposes of this Act.
- (2) The database may be in any form that the Director-General thinks fit, including an electronic form that—
 - (a) records or stores information electronically; and
 - (b) permits the information to be readily inspected; and
 - (c) permits the information to be readily reproduced; and
 - (d) permits the information to be accessed by remote log-on access or any other electronic means.
- (3) The database may record all or some of the following information about land:
 - (a) legal description:
 - (b) valuation:
 - (c) land use:
 - (d) the name and contact details of the owner:
 - (e) the name and contact details of the occupier.
- (4) The database may contain any other information about land that the Director-General considers useful.
- (5) The information in the database may come from any source, such as—
 - (a) information that is publicly available, as defined in section 142C(7):
 - (b) information provided voluntarily for inclusion in the database by a person to whom the information relates or by the person's agent:
 - (c) information provided or made available to the Director-General or the Ministry under this Act or any other enactment.
- (6) The fact that information is in the biosecurity database because it is provided or made available to the Director-General or the Ministry under another enactment does not affect any provisions in the other enactment relating to the handling of the information.

Section 142A: inserted, on 18 September 2012, by section 59 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 142A(5)(a): amended, on 26 March 2015, by section 6 of the Biosecurity Amendment Act 2015 (2015 No 8).

142B Information from local authorities

- (1) This section applies to information to which both the following apply:

- (a) it comes from the database that is required to be kept by a local authority under section 27 of the Local Government (Rating) Act 2002; and
 - (b) it is of a kind described in section 142A(3).
- (2) Local authorities must provide the information, or make it available,—
- (a) to the Director-General; and
 - (b) for inclusion in the biosecurity database; and
 - (c) either—
 - (i) in accordance with a timetable set by the Director-General; or
 - (ii) when the Director-General requires its provision or availability; and
 - (d) free of any charge except the actual and reasonable costs of transferring the information.
- (3) The Local Government (Rating) Act 2002 does not prevent a local authority from complying with this section.

Section 142B: inserted, on 18 September 2012, by section 59 of the Biosecurity Law Reform Act 2012 (2012 No 73).

142C Access, use, or disclosure

Publicly available information

- (1) For information in the biosecurity database that is publicly available, the Director-General may—
- (a) access, use, or disclose it for any lawful purpose:
 - (b) authorise other persons to access and use it for any lawful purpose.

Information that is not publicly available

- (2) For information in the biosecurity database that is not publicly available, the only rights that the Director-General has are—
- (a) to access, use, or disclose it for the purposes of this Act:
 - (b) to authorise other persons to access and use it for the purposes of this Act:
 - (c) to access, use, or disclose it as required by any other enactment, except the Official Information Act 1982:
 - (d) to authorise other persons to access and use it as required by any other enactment, except the Official Information Act 1982:
 - (e) to access, use, or disclose it in accordance with a permission of a kind described in subsection (4) or (5):
 - (f) to authorise other persons to access and use it in accordance with a permission of a kind described in subsection (4) or (5):
 - (g) to access, use, or disclose it for statistical or research purposes, provided that the information accessed, used, or disclosed—

- (i) does not identify any person; and
 - (ii) is not published in any form that could reasonably be expected to identify any person:
- (h) to authorise other persons to access and use it for statistical or research purposes, provided that the information used—
 - (i) does not identify any person; and
 - (ii) is not published in any form that could reasonably be expected to identify any person.
- (3) The references to the Official Information Act 1982 (**OIA**) in subsection (2)(c) and (d) mean that the OIA cannot be used to access information in the biosecurity database, whether or not the OIA can be used to access the same information from another source.
- (4) For information in the biosecurity database that is not publicly available, the person to whom the information relates or the person's agent may give written permission for access to it and use and disclosure of it for a purpose specified in the permission.
- (5) For information in the biosecurity database that is not publicly available, the person to whom the information relates or the person's agent may give an oral permission to which the following apply:
 - (a) it must be for 1 or all of access to the information, use of the information, or disclosure of the information; and
 - (b) it must state the purpose for which the person permits the access, use, or disclosure; and
 - (c) it may be withdrawn at any time; and
 - (d) it may be relied on only for as long as—
 - (i) the Ministry has a written record of it; and
 - (ii) it has not been withdrawn.

Register of relevant enactments

- (6) The Director-General must—
 - (a) establish and maintain a register that lists all enactments of the following kinds:
 - (i) an enactment containing a provision expressly allowing access to, use of, or disclosure of information in the biosecurity database;
 - (ii) an enactment containing a provision under which the Director-General may make an agreement allowing a person access to, use of, or disclosure of information in the biosecurity database;
 - (iii) an enactment containing a provision under which the Director-General has made an agreement allowing a person access to, use of, or disclosure of information in the biosecurity database; and

- (b) ensure that the register is available on an Internet site maintained by or on behalf of the Ministry.

Meaning of publicly available

- (7) In this section and section 142A(5)(a), information that is **publicly available** means information that—
 - (a) comes directly or indirectly from a source that is, or was at the time of collection, available to the public; or
 - (b) the Director-General believes on reasonable grounds is available to the public.

Section 142C: inserted, on 18 September 2012, by section 59 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 142C(1) heading: replaced, on 26 March 2015, by section 7(1) of the Biosecurity Amendment Act 2015 (2015 No 8).

Section 142C(1): amended, on 26 March 2015, by section 7(2) of the Biosecurity Amendment Act 2015 (2015 No 8).

Section 142C(2) heading: replaced, on 26 March 2015, by section 7(3) of the Biosecurity Amendment Act 2015 (2015 No 8).

Section 142C(2): amended, on 26 March 2015, by section 7(4) of the Biosecurity Amendment Act 2015 (2015 No 8).

Section 142C(2)(g): inserted, on 26 March 2015, by section 7(5) of the Biosecurity Amendment Act 2015 (2015 No 8).

Section 142C(2)(h): inserted, on 26 March 2015, by section 7(5) of the Biosecurity Amendment Act 2015 (2015 No 8).

Section 142C(4): amended, on 26 March 2015, by section 7(4) of the Biosecurity Amendment Act 2015 (2015 No 8).

Section 142C(5): amended, on 26 March 2015, by section 7(4) of the Biosecurity Amendment Act 2015 (2015 No 8).

Section 142C(7) heading: inserted, on 26 March 2015, by section 7(6) of the Biosecurity Amendment Act 2015 (2015 No 8).

Section 142C(7): inserted, on 26 March 2015, by section 7(6) of the Biosecurity Amendment Act 2015 (2015 No 8).

142D Person may require Director-General not to access, use, or disclose information

- (1) A person whose information is in the biosecurity database may request the Director-General not to access, use, or disclose the following information about the person:
 - (a) his or her name:
 - (b) his or her postal address:
 - (c) his or her other personal contact details.
- (2) The person—
 - (a) must make the request in writing; and
 - (b) is not required to provide reasons for the request.

- (3) The Director-General must comply with the request.
- (4) The person may later inform the Director-General that the person withdraws his or her request.

Section 142D: inserted, on 18 September 2012, by section 59 of the Biosecurity Law Reform Act 2012 (2012 No 73).

142E Voluntary provision of information

Sections 142A to 142D do not prevent—

- (a) a person giving the Director-General information if the person wishes to do so; or
- (b) the Director-General using the information for any lawful purpose.

Section 142E: inserted, on 18 September 2012, by section 59 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Automated electronic systems

Heading: inserted, on 18 September 2012, by section 59 of the Biosecurity Law Reform Act 2012 (2012 No 73).

142F Arrangement for system

- (1) The Director-General may arrange for the use of an automated electronic system to do the actions described in subsection (2) that this Act or another enactment allows or requires the persons described in subsection (3) to do.
- (2) The actions are—
 - (a) exercising a power:
 - (b) carrying out a function:
 - (c) carrying out a duty:
 - (d) making a decision, including making a decision by—
 - (i) analysing information that the Director-General holds or has access to about a person, goods, or craft; and
 - (ii) applying criteria predetermined by the Director-General to the analysis:
 - (e) doing an action for the purpose of exercising a power, carrying out a function or duty, or making a decision:
 - (f) communicating the exercising of a power, carrying out of a function or duty, or making of a decision.
- (3) The persons are—
 - (a) the Director-General:
 - (b) inspectors:
 - (c) chief technical officers:
 - (d) authorised persons:

- (e) accredited persons:
- (f) assistants of inspectors or authorised persons.
- (4) The Director-General may make an arrangement only if satisfied that—
 - (a) the system has the capacity to do the action with reasonable reliability; and
 - (b) a process is available under which a person affected by an action done by the system can have the action reviewed by a person described in subsection (3) without undue delay.
- (5) A system used in accordance with an arrangement may include components outside New Zealand.
- (6) The Director-General must consult the Privacy Commissioner about including in an arrangement actions that involve the collection or use of personal information.

Section 142F: inserted, on 18 September 2012, by section 59 of the Biosecurity Law Reform Act 2012 (2012 No 73).

142G Effect of use of system

- (1) This section applies to an action done by an automated electronic system.
- (2) An action allowed or required by this Act done by the system—
 - (a) is treated as an action done properly by the appropriate person referred to in section 142F(3); and
 - (b) is not invalid by virtue only of the fact that it is done by the system.
- (3) If an action allowed or required by another enactment done by the system is done in accordance with any applicable provisions in the enactment on the use of an automated electronic system, the action—
 - (a) is treated as an action done properly by the appropriate person referred to in section 142F(3); and
 - (b) is not invalid by virtue only of the fact that it is done by the system.
- (4) If the system operates in such a way as to render the action done or partly done by the system clearly wrong, the action may be done by the appropriate person referred to in section 142F(3).

Section 142G: inserted, on 18 September 2012, by section 59 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Risk profiling

Heading: inserted, on 18 September 2012, by section 59 of the Biosecurity Law Reform Act 2012 (2012 No 73).

142H Retention and use of information for risk profiling

- (1) Subsections (2) and (3) apply to information—
 - (a) provided to the Director-General under this Act; or

- (b) disclosed to the Director-General by a border sector agency; or
 - (c) held by the Director-General after coming to the Director-General from another source.
- (2) The Director-General may collect, retain, analyse, process, or use information for the purpose of developing—
- (a) an assessment of the risk that craft, goods, or persons may present in future;
 - (b) criteria for the exercise of powers or the carrying out of functions or duties under this Act.
- (3) A person exercising powers or carrying out duties or functions under this Act may apply a risk assessment or criteria developed under subsection (2).

Section 142H: inserted, on 18 September 2012, by section 59 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Disclosure of personal information

Heading: inserted, on 18 September 2012, by section 59 of the Biosecurity Law Reform Act 2012 (2012 No 73).

142I Disclosure of personal information in New Zealand

- (1) This section applies to personal information—
- (a) provided to the Director-General under this Act; or
 - (b) disclosed to the Director-General by a border sector agency; or
 - (c) held by the Director-General after coming to the Director-General from another source.
- (2) The Director-General may disclose the information to agencies in New Zealand to facilitate the carrying out by the agencies of—
- (a) the prevention, detection, investigation, prosecution, and punishment of offences;
 - (b) the enforcement of a law imposing a pecuniary penalty;
 - (c) the protection of the life, health, or safety of a person or group of persons;
 - (d) the protection of the environment;
 - (e) the protection of public revenue;
 - (f) the maintenance of border security;
 - (g) the achievement of the purposes of this Act.
- (3) If the disclosure is to be made to a private sector agency, it must be made under an arrangement made between the Director-General and the agency to which subsection (4) applies.
- (4) The arrangement—

- (a) must be in writing; and
 - (b) must state criteria for the disclosure of information under it; and
 - (c) must state the use that the private sector agency may make of the information; and
 - (d) must—
 - (i) prohibit the agency from disclosing the information to any other agency; or
 - (ii) specify the other agencies to whom the agency may disclose the information, the extent to which the agency may disclose the information, and conditions subject to which the agency may disclose the information; and
 - (e) may state—
 - (i) the form in which the information may be disclosed;
 - (ii) the method by which the information may be disclosed; and
 - (f) may be varied.
- (5) This section does not apply to information in the biosecurity database.

Section 142I: inserted, on 18 September 2012, by section 59 of the Biosecurity Law Reform Act 2012 (2012 No 73).

142J Disclosure of personal information outside New Zealand

- (1) This section applies to personal information—
- (a) provided to the Director-General under this Act; or
 - (b) disclosed to the Director-General by a border sector agency; or
 - (c) held by the Director-General after coming to the Director-General from another source.
- (2) The Director-General may disclose the information to agencies overseas to facilitate the carrying out by the agencies of—
- (a) the prevention, detection, investigation, prosecution, and punishment of offences;
 - (b) the enforcement of a law imposing a pecuniary penalty;
 - (c) the protection of the life, health, or safety of a person or group of persons;
 - (d) the protection of the environment;
 - (e) the protection of public revenue;
 - (f) the maintenance of border security;
 - (g) the achievement of the purposes of this Act.
- (3) The disclosure must be made under an arrangement made between the Director-General and the agency overseas to which subsections (4) to (6) apply.

- (4) The Director-General may make an arrangement only if satisfied that it is justified to help prevent, identify, or respond to—
- (a) contraventions of New Zealand law; or
 - (b) contraventions of the overseas country's law; or
 - (c) actions that it is the function of the agency to which the information is disclosed to prevent, identify, or respond to.
- (5) An arrangement—
- (a) must be in writing; and
 - (b) must state criteria for the disclosure of information under it; and
 - (c) must state the use that the agency to whom the information is disclosed may make of the information; and
 - (d) must—
 - (i) prohibit the agency from disclosing the information to any other agency; or
 - (ii) specify the other agencies to whom the agency may disclose the information, the extent to which the agency may disclose the information, and conditions subject to which the agency may disclose the information; and
 - (e) may state—
 - (i) the form in which the information may be disclosed;
 - (ii) the method by which the information may be disclosed; and
 - (f) may be varied.
- (6) The Director-General—
- (a) must consult the Privacy Commissioner before entering into an arrangement, or varying an arrangement, involving the disclosure of personal information; and
 - (b) must, if the Privacy Commissioner requires the Director-General to undertake a review of the arrangement and the arrangements for disclosure under it and it is at least 12 months since the last review,—
 - (i) undertake the review; and
 - (ii) report the result to the Privacy Commissioner as soon as practicable after concluding the review.
- (7) This section does not apply to information in the biosecurity database.

Section 142J: inserted, on 18 September 2012, by section 59 of the Biosecurity Law Reform Act 2012 (2012 No 73).

142K Disclosure of personal information outside New Zealand: urgent action required

- (1) The Director-General may disclose personal information to a person overseas if—
 - (a) a situation arises requiring urgent action; and
 - (b) the requirements of this section are satisfied.
- (2) The first requirement is that the powers, functions, or duties of the overseas person include—
 - (a) helping to investigate, prevent, identify, or respond to non-compliance with the law in New Zealand or in the overseas country; or
 - (b) responding to difficulties arising in the course of trade between New Zealand and the overseas country.
- (3) The second requirement is that the information is disclosed subject to conditions that—
 - (a) state the use that the overseas person may make of the information disclosed; and
 - (b) state whether or not the overseas person may disclose the information disclosed to any other person; and
 - (c) if the overseas person may disclose any of the information disclosed to any other person, state—
 - (i) the persons to whom the overseas person may disclose it; and
 - (ii) the extent to which the overseas person may disclose it; and
 - (iii) the conditions subject to which the overseas person may disclose it.
- (4) The third requirement is that the Director-General makes and keeps a record of—
 - (a) the information that was disclosed; and
 - (b) the person to whom it was disclosed; and
 - (c) any conditions subject to which it was disclosed.
- (5) The Director-General must make the records kept under subsection (4) available to the Privacy Commissioner if the Privacy Commissioner asks to see them.
- (6) This section does not apply to information in the biosecurity database.

Section 142K: inserted, on 18 September 2012, by section 59 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Incorporation by reference

Heading: inserted, on 18 September 2012, by section 59 of the Biosecurity Law Reform Act 2012 (2012 No 73).

142L Definitions for sections 142M to 142S

In sections 142M to 142S,—

biosecurity document means—

- (a) regulations:
- (b) Orders in Council made under this Act:
- (c) standards issued under this Act:
- (d) notices issued under this Act:
- (e) instruments made under this Act

incorporated means incorporated by reference

inspection site means—

- (a) the head office of the responsible body:
- (b) any other place determined by the responsible body

material means, except in section 142O,—

- (a) all of the original material:
- (b) part of the original material:
- (c) the original material with modifications, additions, or variations:
- (d) the original material with amendments incorporated:
- (e) material that amends the original material:
- (f) material that replaces the original material

original material means material as first published

responsible body means—

- (a) the Director-General, for biosecurity documents for which the Ministry is responsible:
- (b) the chief executive, for biosecurity documents for which an other department is responsible:
- (c) the principal officer, for biosecurity documents for which a regional council is responsible.

Section 142L: inserted, on 18 September 2012, by section 59 of the Biosecurity Law Reform Act 2012 (2012 No 73).

142M Incorporation in biosecurity documents

- (1) The following written material may be incorporated in a biosecurity document:
 - (a) frameworks, codes of practice, standards, requirements, or recommended practices of international or national organisations:

- (b) frameworks, codes of practice, standards, requirements, or recommended practices prescribed in any country or jurisdiction:
 - (c) material that is from any other source, deals with technical matters, and is too large to include in, or print as part of, the biosecurity document:
 - (d) material that is from any other source and deals with technical matters and that it would be impractical to include in, or print as part of, the biosecurity document:
 - (e) the current edition of a work of reference that the Director-General considers is accepted internationally or by an industry as a standard one to refer to on its subject matter:
 - (f) a specific edition of a work of reference that the Director-General considers is accepted internationally or by an industry as a standard one to refer to on its subject matter:
 - (g) a register established by or under this Act.
- (2) Material incorporated in a biosecurity document has legal effect as part of the document.

Section 142M: inserted, on 18 September 2012, by section 59 of the Biosecurity Law Reform Act 2012 (2012 No 73).

142N Requirement to consult on proposal to incorporate material

- (1) This section applies if it is proposed to incorporate material in a biosecurity document.
- (2) The responsible body must make the material available in 1 or more of the following ways:
 - (a) making it available for reading free of charge during working hours at the inspection sites:
 - (b) making it available for reading free of charge in any other way determined by the responsible body:
 - (c) making it available free of charge—
 - (i) on an Internet site maintained by or on behalf of the responsible body:
 - (ii) by providing a hypertext link from an Internet site maintained by or on behalf of the responsible body to an Internet site maintained by or on behalf of someone else where the material is available free of charge:
 - (d) making copies of the material available for purchase.
- (3) If the material is not in an official New Zealand language, an accurate translation of the material into an official New Zealand language must also be available in each of the circumstances described in subsection (2).
- (4) The responsible body must—

- (a) give notice in the *Gazette* stating that—
 - (i) the material is proposed for incorporation in a biosecurity document; and
 - (ii) the material is available in the way or ways in which the responsible body has made it available; and
 - (iii) public comment on the proposal to incorporate the material may be made to the responsible body; and
 - (b) allow a reasonable opportunity for the public to comment on the proposal; and
 - (c) consider any comments made.
- (5) If the material is material as described in section 142M(1)(e), the latest edition of the work available at the time of reading, together with any changes made to it up to that time, must be used.
- (6) If the material is material as described in section 142M(1)(f), the specific edition must be used.
- (7) If the material is material as described in section 142M(1)(g), the version of the register available at the time of reading must be used.
- (8) Failure to comply with this section does not invalidate a biosecurity document that incorporates material.

Section 142N: inserted, on 18 September 2012, by section 59 of the Biosecurity Law Reform Act 2012 (2012 No 73).

142O Effect of amendments to, or replacement of, material incorporated

- (1) Material that amends or replaces material incorporated in a biosecurity document has legal effect as part of the document only if the responsible body publishes a notice under subsection (2).
- (2) The responsible body may publish a notice in the *Gazette* that—
 - (a) states that the material has legal effect as part of the document; and
 - (b) specifies the date on which the material has legal effect as part of the document.
- (3) Subsection (1) does not apply if the biosecurity document expressly says that it does not apply.
- (4) Subsection (1) does not apply to the material described in any of section 142M(1)(e) to (g).

Section 142O: inserted, on 18 September 2012, by section 59 of the Biosecurity Law Reform Act 2012 (2012 No 73).

142P Proof of material incorporated

- (1) A copy of material incorporated in a biosecurity document must be—
 - (a) certified as a correct copy of the material by the responsible body; and

- (b) retained by the responsible body.
- (2) The production in proceedings of a certified copy of the material is, in the absence of evidence to the contrary, sufficient evidence of the incorporation in the biosecurity document of the material.

Section 142P: inserted, on 18 September 2012, by section 59 of the Biosecurity Law Reform Act 2012 (2012 No 73).

142Q Effect of expiry of material incorporated

- (1) Material incorporated in a biosecurity document that expires or that is revoked or that ceases to have effect ceases to have legal effect as part of the document only if the responsible body publishes a notice under subsection (2).
- (2) The responsible body may publish a notice in the *Gazette* that—
 - (a) states that the material ceases to have legal effect as part of the document; and
 - (b) specifies the date on which the material ceases to have legal effect as part of the document.
- (3) Subsection (1) does not apply if the biosecurity document expressly says that it does not apply.

Section 142Q: inserted, on 18 September 2012, by section 59 of the Biosecurity Law Reform Act 2012 (2012 No 73).

142R Access to material incorporated

- (1) The responsible body must make material incorporated in a biosecurity document available in 1 or more of the following ways:
 - (a) making it available for reading free of charge during working hours at the inspection sites;
 - (b) making it available for reading free of charge in any other way determined by the responsible body;
 - (c) making it available free of charge—
 - (i) on an Internet site maintained by or on behalf of the responsible body;
 - (ii) by providing a hypertext link from an Internet site maintained by or on behalf of the responsible body to an Internet site maintained by or on behalf of someone else where the material is available free of charge;
 - (d) making copies of the material available for purchase.
- (2) If the material is not in an official New Zealand language, an accurate translation of the material into an official New Zealand language must also be available in each of the circumstances described in subsection (1).
- (3) The responsible body must give notice in the *Gazette* stating that—
 - (a) the material is incorporated in the biosecurity document; and

- (b) the material is available in the way or ways in which the responsible body has made it available.
- (4) Failure to comply with this section does not invalidate a biosecurity document that incorporates material.

Section 142R: inserted, on 18 September 2012, by section 59 of the Biosecurity Law Reform Act 2012 (2012 No 73).

142S Effect of other enactments

- (1) Part 2 of the Legislation Act 2012 does not apply to material incorporated in a biosecurity document.
- (2) Subpart 1 of Part 3 of the Legislation Act 2012 applies to regulations that incorporate material, but the requirement in section 41 to present a disallowable instrument to the House of Representatives does not apply to material incorporated in regulations.
- (3) Sections 29 to 32 of the Standards and Accreditation Act 2015 are not affected by sections 142L to 142R.

Section 142S: inserted, on 18 September 2012, by section 59 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 142S(1): replaced, on 1 February 2014, by section 77(3) of the Legislation Act 2012 (2012 No 119).

Section 142S(2): replaced, on 1 February 2014, by section 77(3) of the Legislation Act 2012 (2012 No 119).

Section 142S(3): amended, on 1 March 2016, by section 45(1) of the Standards and Accreditation Act 2015 (2015 No 91).

Part 7 Exigency actions

143 Purpose of Part 7

The purpose of this Part is to provide for the effective prevention, eradication, or management of unwanted organisms if emergencies or other exigencies occur.

Section 143: amended, on 18 September 2012, by section 60 of the Biosecurity Law Reform Act 2012 (2012 No 73).

144 Declaration of biosecurity emergency

- (1) On the recommendation of a Minister, the Governor-General may, by Proclamation, declare a biosecurity emergency if satisfied on reasonable grounds after having regard to all available information that—
 - (a) it is likely that—
 - (i) there has been an outbreak or occurrence in New Zealand of an organism (being an organism not previously known to be established in New Zealand) that has the potential to cause significant

- economic loss, significant environmental loss, or both, if it becomes established in New Zealand; or
- (ii) there is established in part of New Zealand an organism (being an organism not previously known to be established in New Zealand) that has the potential to cause significant economic loss, significant environmental loss, or both, if it becomes established in other parts of New Zealand; or
 - (iii) an organism previously thought to be of restricted distribution or abundance (or both) in New Zealand is becoming or has become so distributed and abundant in New Zealand or any part of New Zealand that it has the potential to cause significant economic loss, significant environmental loss, or both; or
 - (iv) a pest is, or threatens to be, beyond control by the application of the national pest management plan for that pest; and
- (b) it is in the public interest that action be taken immediately to eradicate or manage the organism and sufficient powers are not otherwise available to enable the organism to be eradicated or effectively managed.
- (2) The Minister shall, to the extent that is practical in the circumstances, consult such persons as the Minister believes on reasonable grounds are representative of interests involved in the emergency before recommending that the Governor-General declare a biosecurity emergency.
 - (3) A declaration of a biosecurity emergency shall state the area or areas to which it applies and specify the nature of the emergency.
 - (4) A declaration of a biosecurity emergency comes into force when it is declared or at any later time stipulated in the Proclamation declaring it.
 - (5) The Minister shall publish notice of the declaration not later than 24 hours after it is made by such means as the Minister considers practical and appropriate and shall cause the Proclamation to be published in the *Gazette* without delay.
 - (6) On the recommendation of the Minister, the Governor-General may by further Proclamation amend, extend, or revoke a Proclamation under this section and the Minister must publish notice of the amendment, extension, or revocation in the manner provided by subsection (5).

Compare: 1967 No 50 s 30; 1970 No 151 s 12

Section 144(1): amended, on 26 November 1997, by section 97(1) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 144(1)(a)(iv): amended, on 18 September 2012, by section 61(1) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 144(1)(b): amended, on 18 September 2012, by section 61(2) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 144(1)(b): amended, on 18 September 2012, by section 61(3) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 144(1)(b): amended, on 26 November 1997, by section 97(2)(a) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 144(1)(b): amended, on 26 November 1997, by section 97(2)(b) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 144(6): amended, on 18 September 2012, by section 61(4) of the Biosecurity Law Reform Act 2012 (2012 No 73).

145 Emergency powers

- (1) The Minister may, in the area or areas in which a declaration of biosecurity emergency is in force, take such measures, and do all such acts and things and give all such directions, and require all such acts to be done or not to be done, as the Minister believes on reasonable grounds to be necessary or desirable for the purpose of eradicating or managing the organism in respect of which the emergency has been declared.
- (2) Without prejudice to the generality of the powers conferred by subsection (1), the Minister, or any person authorised by the Minister for the purpose, may require the owner of any goods or premises or craft (being a craft registered in New Zealand, or chartered by a company (within the meaning of section 2(1) of the Companies Act 1993)) that is anywhere in New Zealand and that the Minister or person authorised by the Minister believes on reasonable grounds to be necessary or would be of assistance in eradicating or limiting the spread of the organism to transfer the goods to or permit the premises or craft to be used for a specified period by the Minister or any other person.

Compare: 1967 No 50 ss 30, 31; 1970 No 151 s 13(1)

Section 145(1): amended, on 18 September 2012, by section 62(1) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 145(1): amended, on 26 November 1997, by section 98 of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 145(2): amended, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

Section 145(2): amended, on 18 September 2012, by section 62(2) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 145(2): amended, on 26 November 1997, by section 98 of the Biosecurity Amendment Act 1997 (1997 No 89).

146 Duration of emergency

- (1) A declaration of biosecurity emergency ceases to have effect at the end of 4 months after it comes into force, unless subsection (2) or (5) applies.
- (2) Before a declaration ceases to have effect, it may be extended by—
 - (a) another Proclamation under section 144; or
 - (b) a resolution of the House of Representatives.
- (3) If a declaration is extended under subsection (2)(a), subsection (1) applies to it.
- (4) If a declaration is extended under subsection (2)(b), it is extended for the period stated in the resolution.
- (5) Before a declaration ceases to have effect, it may be revoked by—

- (a) another Proclamation under section 144; or
 - (b) a resolution of the House of Representatives.
- (6) A resolution revoking a declaration has effect from the time of the resolution or a later time specified in the resolution.
- (7) An extension under subsection (2)(b) or a revocation under subsection (5)(b) must be published as provided in section 47 of the Legislation Act 2012.

Section 146: replaced, on 18 September 2012, by section 63 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 146(7): replaced, on 1 February 2014, by section 77(3) of the Legislation Act 2012 (2012 No 119).

147 House of Representatives must be informed

- (1) The Minister must inform the House of the making of a Proclamation under section 144.
- (2) The Minister must inform the House if the Minister intends—
- (a) to recommend or not to recommend the extension of a biosecurity emergency; or
 - (b) to recommend the revocation of a biosecurity emergency.
- (3) When informing the House, the Minister must provide reasons.
- (4) The Minister must inform the House,—
- (a) if the House is sitting, immediately; or
 - (b) if the House is not sitting, as early as is practicable on its next sitting day.

Definition for this section

- (5) In this section, **House** means the House of Representatives.

Section 147: replaced, on 18 September 2012, by section 64 of the Biosecurity Law Reform Act 2012 (2012 No 73).

148 Revocation by House of Representatives of biosecurity emergency

[Repealed]

Section 148: repealed, on 18 September 2012, by section 64 of the Biosecurity Law Reform Act 2012 (2012 No 73).

149 Compensation

[Repealed]

Section 149: repealed, on 1 October 1998, by section 106(2) of the Biosecurity Amendment Act 1997 (1997 No 89).

150 Biosecurity emergency regulations

- (1) On the recommendation of the Minister, the Governor-General may, at any time while a declaration of biosecurity emergency is in force, by Order in Council make regulations for the eradication or management of the organism in

respect of which the emergency has been declared or otherwise for dealing effectively with the emergency.

- (2) The Minister shall, to the extent that is practical in the circumstances, consult such persons as the Minister believes on reasonable grounds are representative of interests affected by the proposed regulations before recommending that the Governor-General make regulations under this section; and shall not recommend that the Governor-General make them unless satisfied, on reasonable grounds, that they are necessary or desirable for the eradication or management of the organism concerned.
- (3) Without prejudice to the generality of subsection (1), biosecurity emergency regulations may do all or any of the following things:
 - (a) create offences in respect of the breach of a biosecurity emergency regulation or non-compliance with a direction given or requirement made under the authority of such a regulation:
 - (b) prescribe as the penalty for an offence created by a biosecurity emergency regulation—
 - (i) where the offence is committed by an individual, a fine not exceeding \$15,000; and
 - (ii) where the offence is committed by a body corporate, a fine not exceeding \$75,000:
 - (c) *[Repealed]*
 - (d) *[Repealed]*
 - (e) *[Repealed]*
 - (f) prescribe procedures for arbitration or resolution of disputes.
- (4) A biosecurity emergency regulation comes into force at the time at which the regulation is made, or the time specified in the regulation, whichever is the later.
- (5) The responsible Minister shall lay all biosecurity emergency regulations before the House of Representatives not later than the second sitting day after they are made.

Section 150(1): amended, on 18 September 2012, by section 65 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 150(1): amended, on 26 November 1997, by section 99 of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 150(2): amended, on 18 September 2012, by section 65 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 150(2): amended, on 26 November 1997, by section 99 of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 150(3)(c): repealed, on 1 October 1998, by section 106(2) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 150(3)(d): repealed, on 1 October 1998, by section 106(2) of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 150(3)(e): repealed, on 1 October 1998, by section 106(2) of the Biosecurity Amendment Act 1997 (1997 No 89).

151 Emergency regulations are confirmable instruments

The explanatory note of regulations made under section 150 must indicate that—

- (a) they are a confirmable instrument under section 47B of the Legislation Act 2012; and
- (b) they are revoked at a time stated in the note, unless earlier confirmed by an Act of Parliament; and
- (c) the stated time is the applicable deadline under section 47C(1)(a) or (b) of that Act.

Section 151: replaced, on 1 January 2016, by section 14 of the Legislation (Confirmable Instruments) Amendment Act 2015 (2015 No 120).

152 Provisional control action

- (1) If a Minister suspects on reasonable grounds that a pest or unwanted organism may be present in New Zealand but is unable to confirm the suspicion until further information is available to enable identification of the organism and consideration of the appropriate means of eradicating or managing the organism, and the Minister believes on reasonable grounds that sufficient powers are not otherwise available under this Act to prevent the spread or development of the organism, the Minister may by written notice to a chief technical officer declare a provisional control programme.
- (2) A notice given under subsection (1) must—
 - (a) specify the steps that the Minister believes are necessary or desirable to provisionally control the spread or development of the suspected organism; and
 - (b) authorise the chief technical officer to direct any inspector or authorised person to carry out the steps specified in the notice in such a manner as the chief technical officer thinks fit, and the inspector or authorised person may act accordingly.
- (3) A provisional control programme declared in accordance with this section may remain in force for such period not exceeding 60 days as the Minister believes on reasonable grounds to be necessary and the Minister may extend the programme for 1 further period not exceeding 60 days.

Section 152: replaced, on 26 November 1997, by section 100 of the Biosecurity Amendment Act 1997 (1997 No 89).

153 Compensation following investigation of pests

[Repealed]

Section 153: repealed, on 1 October 1998, by section 106(2) of the Biosecurity Amendment Act 1997 (1997 No 89).

Part 8

Enforcement, offences, and penalties

Compliance orders

Heading: inserted, on 18 September 2012, by section 66 of the Biosecurity Law Reform Act 2012 (2012 No 73).

154 Scope

- (1) An inspector or authorised person may make a compliance order against a person.
- (2) A compliance order may—
 - (a) require the person to cease doing something that, in the opinion of the inspector or authorised person, contravenes or is likely to contravene biosecurity law; or
 - (b) prohibit the person from starting something that, in the opinion of the inspector or authorised person, contravenes or is likely to contravene biosecurity law; or
 - (c) prohibit the person from doing something again that, in the opinion of the inspector or authorised person, contravenes or is likely to contravene biosecurity law; or
 - (d) prohibit the person from having something done on the person's behalf that, in the opinion of the inspector or authorised person, contravenes or is likely to contravene biosecurity law; or
 - (e) prohibit the person from having something done on the person's behalf again that, in the opinion of the inspector or authorised person, contravenes or is likely to contravene biosecurity law; or
 - (f) require the person to do something that, in the opinion of the inspector or authorised person, is necessary to ensure that the person complies with biosecurity law.

Section 154: replaced, on 18 September 2012, by section 66 of the Biosecurity Law Reform Act 2012 (2012 No 73).

154A Content

A compliance order must state—

- (a) the name of the person against whom it is made; and
- (b) the reasons why the inspector or authorised person made it; and
- (c) the requirement or prohibition in section 154(2) ordered by the inspector or authorised person; and
- (d) either,—
 - (i) for a requirement, the period, if any, within which the requirement must be achieved, which must start on the day on which the order

- is served and end after a time that is reasonable for the achievement of the requirement; or
- (ii) for a prohibition, the time and date, if any, from which the prohibition is to take effect; and
 - (e) the conditions, if any, imposed by the inspector or authorised person; and
 - (f) the consequences of not complying with the order; and
 - (g) the rights of appeal in section 154E; and
 - (h) the name and address of the agency whose inspector or authorised person made the order.

Section 154A: inserted, on 18 September 2012, by section 66 of the Biosecurity Law Reform Act 2012 (2012 No 73).

154B Service

- (1) An inspector or authorised person who makes a compliance order must ensure that it is served on the person against whom it is made.
- (2) A compliance order may be served by—
 - (a) delivering it personally to the person;
 - (b) delivering it to the person at the person's usual or last-known place of residence or business;
 - (c) sending it by fax or email to the person's fax number or email address;
 - (d) posting it in a letter addressed to the person at the person's usual or last known place of residence or business.
- (3) The following provisions apply to service as described in subsection (2):
 - (a) service on an officer of a body, or on the body's registered office, is deemed to be service on the body;
 - (b) service on any of the partners in a partnership is deemed to be service on the partnership;
 - (c) service by post is deemed to occur at the time at which the order would have been delivered in the ordinary course of the post.

Section 154B: inserted, on 18 September 2012, by section 66 of the Biosecurity Law Reform Act 2012 (2012 No 73).

154C Compliance

The person against whom a compliance order is made must—

- (a) comply with the order; and
- (b) do so within the period stated in the order, if a period is stated; and
- (c) pay all the costs and expenses of complying with the order, unless the order states otherwise.

Section 154C: inserted, on 18 September 2012, by section 66 of the Biosecurity Law Reform Act 2012 (2012 No 73).

154D Change or cancellation

- (1) A compliance order may be changed or cancelled under subsection (2) or cancelled under subsection (3) by the appointer of the inspector or authorised person who made the order.
- (2) If the appointer receives a written application from the person against whom the order was made to change or cancel the order, the appointer—
 - (a) must consider the application as soon as practicable, having regard to—
 - (i) the purpose for which the order was made; and
 - (ii) the effect of a change or cancellation on the purpose; and
 - (iii) any other matter the appointer thinks fit:
 - (b) may confirm, change, or cancel the order:
 - (c) must give the person against whom the order was made written notice of the confirmation, change, or cancellation.
- (3) The appointer—
 - (a) may cancel the order if the appointer considers that the order is no longer required; and
 - (b) must give the person against whom the order was made written notice of the cancellation.

Section 154D: inserted, on 18 September 2012, by section 66 of the Biosecurity Law Reform Act 2012 (2012 No 73).

154E Appeal to District Court

- (1) The following persons may appeal to the District Court:
 - (a) the person against whom a compliance order is made under section 154:
 - (b) a person whose application under section 154D(2) did not succeed.

Stay of compliance order pending appeal result
- (2) The appeal does not operate as a stay of the compliance order.
- (3) The person may apply to the court for a stay of the compliance order pending the court's decision on the appeal.
- (4) The court must consider the application for a stay as soon as practicable after the application for it is lodged.
- (5) The court must consider—
 - (a) whether to hear—
 - (i) the person:
 - (ii) the appointer of the inspector or authorised person whose compliance order is appealed against; and
 - (b) the likely effect of granting a stay on human health or natural and physical resources; and

- (c) whether it is unreasonable for the person to comply with the compliance order pending the decision on the appeal; and
 - (d) any other matters that the court thinks fit.
- (6) The court may grant or refuse a stay and may impose any terms or conditions that the court thinks fit.
- (7) The stay has legal effect once a copy of it is served on the appointer of the inspector or authorised person whose compliance order is appealed against.
- (8) The stay remains in force until the District Court orders it lifted.

District Courts Rules apply

- (9) The rules of procedure under the District Court Act 2016 apply to the making of an appeal and an application for a stay.

Powers of District Court

- (10) The District Court may confirm, change, or cancel the order appealed against.

Section 154E: inserted, on 18 September 2012, by section 66 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 154E(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 154E(9): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

154F Appeal to High Court, Court of Appeal, or Supreme Court

- (1) A party to an appeal under section 154E may appeal to the High Court on a question of law.
- (2) The High Court Rules 2016 and sections 126 to 130 of the District Court Act 2016 apply to an appeal under subsection (1)—
- (a) as if it were an appeal under section 124 of the District Court Act 2016; and
 - (b) with all necessary modifications.
- (3) A party to an appeal under subsection (1) may appeal to the Court of Appeal or the Supreme Court against a determination of the High Court on a question of law, with the leave of the court appealed to, and subject to section 75 of the Senior Courts Act 2016.
- (4) The Court of Appeal or the Supreme Court hearing an appeal under this section has the same power to adjudicate on the appeal as the High Court had.

Section 154F: inserted, on 18 September 2012, by section 66 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 154F(2): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 154F(2): amended, on 18 October 2016, by section 183(c) of the Senior Courts Act 2016 (2016 No 48).

Section 154F(2)(a): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 154F(3): amended, on 1 March 2017, by section 183(b) of the Senior Courts Act 2016 (2016 No 48).

154G Effect of appeal

An appeal under section 154E or 154F has the following effects:

- (a) the appointer of the inspector or authorised person whose compliance order is appealed against must not cancel the order while the order is the subject of an appeal or while the time for the person's appeal rights is running; and
- (b) the person who appeals must comply with the order if compliance is required as the result of the person exercising the person's appeal rights.

Section 154G: inserted, on 18 September 2012, by section 66 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Pecuniary penalties

Heading: inserted, on 18 September 2012, by section 66 of the Biosecurity Law Reform Act 2012 (2012 No 73).

154H Pecuniary penalty order

- (1) The Director-General may apply to the High Court for an order that a person pay the Crown a pecuniary penalty under this Act.
- (2) The court may make the order if it is satisfied that the person failed to comply with—
 - (a) section 16A:
 - (b) section 16B:
 - (c) section 16C:
 - (d) section 18(1)(b):
 - (e) section 24D(1)(a):
 - (f) section 25(1), (2), (8), or (9):
 - (g) a condition imposed under section 27A:
 - (h) section 29(1):
 - (i) a condition imposed under section 29(2):
 - (j) section 40(6):
 - (k) section 52:
 - (l) section 53:
 - (m) a direction under section 122:
 - (n) section 130(4):
 - (o) section 134(1):
 - (p) regulations made under section 150 that provide that a contravention of them gives rise to civil liability:

- (q) any directions or requirements under Part 7:
- (r) any of the following requirements, if the requirement has been prescribed by regulations as a requirement for which a contravention gives rise to civil liability:
 - (i) a requirement in regulations:
 - (ii) a requirement in a rule.
- (3) The court must not make the order if the person satisfies the Court—
 - (a) that the failure was necessary for the purpose of—
 - (i) saving or protecting life or health, preventing serious damage to property, or avoiding an actual or likely adverse effect on human health or a natural and physical resource; and
 - (ii) the person's conduct was reasonable in all the circumstances; and
 - (iii) the person took steps that were reasonable in all the circumstances to mitigate or remedy the effects of the failure after it occurred; or
 - (b) that the following apply:
 - (i) the failure was due to an event beyond the person's control, including natural disaster, mechanical failure, or sabotage; and
 - (ii) the person could not reasonably have foreseen the event; and
 - (iii) the person could not reasonably have taken steps to prevent the event occurring; and
 - (iv) the person took steps that were reasonable in all the circumstances to mitigate or remedy the effects of the failure after the event occurred; or
 - (c) that the person did not know, and could not reasonably have known, of the failure.
- (4) The standard of proof in proceedings under this section is the standard of proof that applies in civil proceedings.
- (5) The Director-General may apply for an order of the court to obtain discovery and administer interrogatories.

Section 154H: inserted, on 18 September 2012, by section 66 of the Biosecurity Law Reform Act 2012 (2012 No 73).

154I Liability of principals and employers

- (1) Subsections (2) and (3) apply if the person who is liable under section 154H(2) was acting as the agent or employee of another person at the time of the non-compliance.
- (2) The other person is liable under section 154H in the same manner and to the same extent as if he or she had personally failed to comply, if it is proved—

- (a) that the act or omission that constituted the non-compliance took place with his or her authority, permission, or consent; or
 - (b) that he or she knew that the non-compliance was occurring or was to occur and failed to take all reasonable steps to prevent or stop it.
- (3) The liability described in subsection (2) does not affect the liability described in subsection (1).
- (4) A court that makes an order under section 154H against a body corporate may also make an order against every director or person concerned in the management of the body corporate if it is proved—
- (a) that the act or omission that constituted the non-compliance took place with the director or person's authority, permission, or consent; or
 - (b) that the director or person knew that the non-compliance was occurring or was to occur and failed to take all reasonable steps to prevent or stop it.

Section 154I: inserted, on 18 September 2012, by section 66 of the Biosecurity Law Reform Act 2012 (2012 No 73).

154J Amount

- (1) In determining the appropriate amount of a pecuniary penalty under section 154H, the court must have regard to all relevant matters, including—
- (a) the nature and extent of the contravention:
 - (b) the nature and extent of loss or damage caused to a person, human health, or a natural and physical resource as a result of the contravention:
 - (c) the circumstances in which the contravention took place:
 - (d) whether or not the person has been found in previous proceedings under this Act to have engaged in similar conduct:
 - (e) the steps taken by the person to bring the contravention to the attention of the appropriate authority:
 - (f) the steps taken by the person to avoid, remedy, or mitigate the effects of the contravention.
- (2) Subsections (3) to (7) state the limits on the amounts of pecuniary penalty that the court may order.
- (3) For an individual, the limit is \$500,000.
- (4) For a body corporate,—
- (a) subsection (5) states the limit that applies if—
 - (i) the court is satisfied that the contravention occurred in the course of producing a commercial gain; and
 - (ii) the commercial gain can be readily ascertained:
 - (b) subsection (6) states the limit that applies if—

- (i) the court is satisfied that the contravention occurred in the course of producing a commercial gain; and
 - (ii) the commercial gain cannot be readily ascertained:
- (c) subsection (7) states the limit that applies if the court is not satisfied that the contravention occurred in the course of producing a commercial gain.
- (5) For the purposes of subsection (4)(a), the limit is the greater of—
 - (a) \$10,000,000; and
 - (b) 3 times the value of the commercial gain resulting from the contravention.
- (6) For the purposes of subsection (4)(b), the limit is the greater of—
 - (a) \$10,000,000; and
 - (b) 10% of the turnover of the body corporate and all of its interconnected bodies corporate (if any) (**interconnected** and **turnover** having the meanings they have in the Commerce Act 1986).
- (7) For the purposes of subsection (4)(c), the limit is \$10,000,000.

Section 154J: inserted, on 18 September 2012, by section 66 of the Bioresecurity Law Reform Act 2012 (2012 No 73).

154K Other orders instead of or in addition to pecuniary penalty order

In proceedings under section 154H, the court may, instead of or in addition to making a pecuniary penalty order, make—

- (a) an order that the person mitigate or remedy any adverse effects, on persons or a natural and physical resource, that are caused by or on behalf of the person:
- (b) an order that the person mitigate or remedy any adverse effects, on persons or a natural and physical resource, that relate to land owned or occupied by the person:
- (c) an order that the person pay the costs of mitigating or remedying the adverse effects referred to in paragraph (a) or (b).

Section 154K: inserted, on 18 September 2012, by section 66 of the Bioresecurity Law Reform Act 2012 (2012 No 73).

154L Concurrent criminal proceedings and pecuniary penalty proceedings

- (1) This section applies if the same act or omission, or substantially the same act or omission, could give rise to proceedings under section 154H (**pecuniary penalty proceedings**) and proceedings under any of section 154M to 154O (**criminal proceedings**).
- (2) Criminal proceedings may be started whether or not pecuniary penalty proceedings have been started.

- (3) If criminal proceedings are started when pecuniary penalty proceedings have been started but not completed, the pecuniary penalty proceedings are stayed.
- (4) Criminal proceedings may not be started if pecuniary penalty proceedings have resulted in the making of a pecuniary penalty order that remains in place after all appeal rights either have not been exercised at all or have been exercised and abandoned or exhausted.

Section 154L: inserted, on 18 September 2012, by section 66 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Offences

Heading: inserted, on 18 September 2012, by section 66 of the Biosecurity Law Reform Act 2012 (2012 No 73).

154M Section 154M offence

- (1) A person commits an offence against this Act who fails to answer, or gives an incorrect answer to, a question put to the person under section 105E(3).
- (2) The offence is a strict liability offence.
- (3) The prosecution is not required to prove that the defendant intended to commit the offence.
- (4) The defendant has a defence if the defendant proves that, when the defendant was required to answer the question, the defendant honestly and reasonably believed that the answer the person gave was, in all the circumstances, correct at the time.
- (5) The defendant also has a defence if the defendant proves that, when the defendant was required to answer the question, the defendant did not have the information required to answer the question in the person's knowledge, possession, or control.
- (6) The defendant also has a defence if the defendant proves that—
 - (a) the action or event to which the prosecution relates was due to—
 - (i) the act or omission of another person; or
 - (ii) an accident; or
 - (iii) some other cause or circumstance outside the defendant's control; and
 - (b) the defendant took all reasonable precautions and exercised due diligence to avoid—
 - (i) the commission of the particular offence; or
 - (ii) the commission of offences of the same kind.
- (7) The defences in subsections (4) to (6) are available only if the defendant—
 - (a) prepares a written notice for the prosecutor that—
 - (i) states the defendant's intention to rely on the defence; and

- (ii) includes the facts that support the defence; and
- (b) gives the notice to the prosecutor—
 - (i) at least 15 working days before the hearing date; or
 - (ii) within another time that the court allows.

Penalty: section 157(5)

- (8) The penalty for the offence is in section 157(5).

Section 154M: inserted, on 18 September 2012, by section 66 of the Biosecurity Law Reform Act 2012 (2012 No 73).

154N Section 154N offences

Rules for section 154N offences

- (1) The offences in this section are strict liability offences.
- (2) The prosecution is not required to prove that the defendant intended to commit an offence.
- (3) The defendant has a defence if the defendant proves that—
 - (a) the action or event to which the prosecution relates was due to—
 - (i) the act or omission of another person; or
 - (ii) an accident; or
 - (iii) some other cause or circumstance outside the defendant's control; and
 - (b) the defendant took all reasonable precautions and exercised due diligence to avoid—
 - (i) the commission of the particular offence; or
 - (ii) the commission of offences of the same kind.
- (4) The defendant also has a defence if the defendant proves that—
 - (a) the defendant's action was necessary for the purpose of—
 - (i) saving or protecting life or health; or
 - (ii) preventing serious damage to property; or
 - (iii) avoiding an actual or likely adverse effect on a natural and physical resource or human health; and
 - (b) the defendant's action was reasonable in all the circumstances; and
 - (c) the defendant took steps that were reasonable in all the circumstances to mitigate or remedy the effects of the action after it occurred.
- (5) The defences in subsections (3) and (4) are available only if the defendant—
 - (a) prepares a written notice for the prosecutor that—
 - (i) states the defendant's intention to rely on the defence; and
 - (ii) includes the facts that support the defence; and

- (b) gives the notice to the prosecutor—
 - (i) at least 15 working days before the hearing date; or
 - (ii) within another time that the court allows.

Penalty: section 157(3)

- (6) A person commits an offence against this Act who fails to comply with any of sections 16A, 18, 19, 25, 29(1), 30(2), 35(1), (3), (5), and (7), 35A, 40(6), 51(1), and 121B(2).
- (7) A person commits an offence against this Act who fails to comply with a condition imposed under section 27A or 29(2).

Penalty: section 157(4)

- (8) A person commits an offence against this Act who fails to comply with section 134(1)(b) or (1A).
- (9) A person commits an offence against this Act who fails to comply with a reasonable requirement made of him or her in accordance with and for the purposes of this Act by—
 - (a) an official; or
 - (b) an automated electronic system.
- (10) A person commits an offence against this Act who fails to comply with a reasonable direction given to him or her in accordance with and for the purposes of this Act by—
 - (a) an official; or
 - (b) an automated electronic system.
- (11) A person commits an offence against this Act who fails to comply with a compliance order.

Penalty: section 157(5)

- (12) A person commits an offence against this Act who fails to comply with—
 - (a) any of sections 17, 17A, 34, 36, 51(3), 121(2), 121A(3), 132(9), and 141D(5);
 - (b) a requirement imposed under section 100Q(2)(a) or 100ZG(2)(a) by an auditor acting under an authorisation;
 - (c) regulations made under section 165(1) or (2).
- (13) A person commits an offence against this Act who provides false information, if an import health standard requires the person to provide information.
- (14) A person commits an offence against this Act who—
 - (a) fails to make the declaration required by section 24J(b) or 24K(8)(b), if an inspector requires the person to make the declaration;
 - (b) makes a false declaration under section 24J or 24K, if an inspector requires the person to make the declaration.

- (15) A person commits an offence against this Act who fails to keep statements, accounts, or records of leviabale activity carried on by the person sufficient to satisfy the requirements of an order made under any of sections 100L, 100ZB, 137, and 140AA.
- (16) A person commits an offence against this Act who fails to maintain statements, accounts, or records of leviabale activity carried on by the person to a sufficient standard to satisfy the requirements of an order made under any of sections 100L, 100ZB, 137, and 140AA.
- (17) A person commits an offence against this Act in the following circumstances:
 - (a) the person operates or purports to operate a transitional facility or a containment facility; and
 - (b) the person—
 - (i) is not approved as the facility operator of the facility; or
 - (ii) has had the person's approval as the facility operator of the facility suspended; or
 - (iii) operates or purports to operate a facility that does not have a facility approval; or
 - (iv) operates or purports to operate a facility that has had its facility approval suspended; or
 - (v) does not comply with the operating standards for the facility.
- (18) A person commits an offence against this Act who fails to comply with a rule in a national pest management plan or a national pathway management plan that specifies that a contravention of the rule creates an offence against this Act.
- (19) A person commits an offence against this Act who fails to comply with a rule in a regional pest management plan or a regional pathway management plan that specifies that a contravention of the rule creates an offence against this Act.
- (20) A person commits an offence against this Act who—
 - (a) is in a biosecurity control area; and
 - (b) is asked a question by an inspector or an automated electronic system for the purpose of the inspector or the system ascertaining the presence, nature, origin, or itinerary of risk goods; and
 - (c) fails—
 - (i) to answer the question within a reasonable time of its being asked; or
 - (ii) to answer the question completely within a reasonable time of its being asked.

Penalty: section 157(7)

- (21) A person commits an offence against this Act who erroneously declares that he or she is not in possession of any or all of the goods specified in a declaration that the person is required to make about the goods.

Section 154N: inserted, on 18 September 2012, by section 66 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 154N(12)(a): amended, on 24 June 2014, by section 11 of the Biosecurity (Border Processing—Trade Single Window) Amendment Act 2014 (2014 No 11).

Section 154N(15): amended, on 28 May 2015, by section 10 of the Biosecurity Amendment Act (No 2) 2015 (2015 No 56).

Section 154N(16): amended, on 28 May 2015, by section 10 of the Biosecurity Amendment Act (No 2) 2015 (2015 No 56).

154NA Section 154NA offence relating to failure to update information supplied in advance

Application

- (1) This section applies to a person, and to information that the person supplies to the Director-General, the Ministry, or an official, if—
- (a) the person supplies the information for the purposes of an enactment in or made under this Act, and before the deadline prescribed by or under this Act for doing so; and
 - (b) the information becomes erroneous, or misleading in a material particular, after it is supplied but before that deadline and before the person is notified of any decision made in response to the information.

Penalty: section 157(8) and (9)

- (2) The person commits an offence against this Act if the person—
- (a) knows, or ought reasonably to know, that the information has become erroneous or misleading in a material particular; and
 - (b) fails to take all reasonable steps to supply to the Director-General, the Ministry, or an official, as soon as is reasonably practicable, replacement information that is not erroneous, or misleading in a material particular.

Section 154NA: inserted, on 24 June 2014, by section 12 of the Biosecurity (Border Processing—Trade Single Window) Amendment Act 2014 (2014 No 11).

154O Section 154O offences

Penalty: section 157(1)

- (1) A person commits an offence against this Act who fails to comply with any of sections 46, 52, 53, and 134(1)(a).
- (2) A person commits an offence against this Act who threatens, assaults, or intentionally obstructs or hinders an official exercising a power or carrying out a function or duty under a law.

- (3) A person commits an offence against this Act who intentionally obstructs or hinders an automated electronic system doing an action under section 142F(2).
- (4) A person commits an offence against this Act who knowingly damages or impairs an automated electronic system.
- (5) A person commits an offence against this Act who, in connection with the purposes of this Act, makes a statement or gives information that the person knows to be false or misleading in a material particular to—
 - (a) an official; or
 - (b) an automated electronic system.
- (6) A person commits an offence against this Act who wilfully withholds relevant information that the person is required by law to provide in connection with the purposes of this Act from—
 - (a) an official; or
 - (b) an automated electronic system.
- (7) A person commits an offence against this Act who, in connection with the purposes of this Act,—
 - (a) knowingly makes a return that the person is required by law to make that is false or misleading in a material particular; or
 - (b) knowingly makes a declaration that the person is required by law to make that is false or misleading in a material particular; or
 - (c) knowingly gives a certificate that the person is required by law to give that is false or misleading in a material particular.
- (8) A person commits an offence against this Act who personates or falsely represents himself or herself to be—
 - (a) an official; or
 - (b) any other person authorised to exercise a power or carry out a function or duty under law.
- (9) A person commits an offence against this Act who buys, sells, exchanges, or otherwise acquires or disposes of unauthorised goods—
 - (a) knowing that they are unauthorised goods; or
 - (b) knowing that they may be unauthorised goods and reckless as to whether they are or not.
- (10) A person commits an offence against this Act who, knowing that goods are risk goods that have been seized by, or are otherwise under the control of, an inspector, an authorised person, or an automated electronic system,—
 - (a) alters the condition of the goods without the permission of an inspector, an authorised person, or an automated electronic system; or

- (b) alters the condition of the goods with the permission of an inspector, an authorised person, or an automated electronic system but not in the manner required by the permission; or
 - (c) unpacks or repacks the goods without the permission of an inspector, an authorised person, or an automated electronic system; or
 - (d) unpacks or repacks the goods with the permission of an inspector, an authorised person, or an automated electronic system but not in the manner required by the permission.
- (11) A person commits an offence against this Act in the following circumstances:
- (a) risk goods have been seized by, or are otherwise under the control of, an inspector, an authorised person, or an automated electronic system; and
 - (b) the goods are stored in a place where the inspector, authorised person, or automated electronic system has directed that they should be stored; and
 - (c) the person knows the facts in paragraphs (a) and (b); and
 - (d) the person removes the goods from the place—
 - (i) without the permission of an inspector, an authorised person, or an automated electronic system; or
 - (ii) with the permission of an inspector, an authorised person, or an automated electronic system but not in the manner required by the permission.
- (12) A person commits an offence against this Act in the following circumstances:
- (a) risk goods have been seized under this Act; and
 - (b) the person knows the fact in paragraph (a); and
 - (c) the person takes or carries away the goods or otherwise converts them to his or her own use without the permission of an inspector, an authorised person, or an automated electronic system.
- (13) A person commits an offence against this Act in the following circumstances:
- (a) a direction has been given under this Act that the carcass of an organism or risk goods be buried; and
 - (b) the direction has been complied with; and
 - (c) the person knows the facts in paragraphs (a) and (b); and
 - (d) the person exhumes the carcass of the organism or risk goods without the permission of an inspector, an authorised person, or an automated electronic system.
- (14) A person commits an offence against this Act in the following circumstances:
- (a) a notice about a place is in force under section 130(1); and
 - (b) the person knows the fact in paragraph (a); and
 - (c) the person—

- (i) removes an organism, organic material, or risk goods from the place; or
 - (ii) removes from the place any goods that have, while in the place, been in contact with an organism, organic material, or risk goods; or
 - (iii) introduces goods into the place; or
 - (iv) removes, alters, or defaces the identification that an inspector, an authorised person, or an automated electronic system has directed be used to identify an organism, risk goods, or other goods in the place; and
- (d) the person does the action described in paragraph (c) without the permission of an inspector, an authorised person, or an automated electronic system.

Penalty: section 157(2)

- (15) A person commits an offence against this Act who has unauthorised goods in his or her possession or control, knowing that they are unauthorised goods.

Penalty: section 157(3)

- (16) A person commits an offence against this Act who fails to comply with section 41(5).
- (17) A person commits an offence against this Act who fails to comply with section 51(2).
- (18) A person commits an offence against this Act who knowingly fails to comply with a provision of this Act relating to the holding of levy money in trust accounts.

Penalty: section 157(5)

- (19) A person commits an offence against this Act who fails to comply with section 37C(2) or (3).
- (20) A person commits an offence against this Act who fails to inform the ministry, as soon as practicable in the circumstances, of the presence of what appears to be an organism not normally seen or otherwise detected in New Zealand, as required by section 44, if the person knows or could reasonably be expected to know that the organism is not normally seen or otherwise detected in New Zealand.
- (21) A person commits an offence against this Act who—
- (a) is in a biosecurity control area; and
 - (b) is asked a question by an inspector or an automated electronic system for the purpose of the inspector or the system ascertaining the presence, nature, origin, or itinerary of risk goods; and
 - (c) wilfully gives a false or misleading answer.

Section 154O: inserted, on 18 September 2012, by section 66 of the Biosecurity Law Reform Act 2012 (2012 No 73).

155 Proof of permission, etc

Where it is proved in any proceeding under this Act or the regulations that a person has done or omitted to do any act and such person would commit an offence or be liable for a debt or damages unless the act was done or omitted with the permission of a Minister, the Director-General, a chief technical officer, a management agency, or an inspector or authorised person, the onus shall be on the person who did or omitted to do the act to prove that he or she had that permission.

Compare: 1967 No 50 s 105

Section 155: amended, on 26 November 1997, by section 102 of the Biosecurity Amendment Act 1997 (1997 No 89).

156 Liability of principals and agents

- (1) If an offence is committed against any of the provisions of this Act by any person acting as the agent or employee of another person, that other person shall, without prejudice to the liability of the first-mentioned person, be liable under this Act, in the same manner and to the same extent as if he or she had personally committed the offence, if it is proved that the act that constituted the offence took place with his or her authority, permission, or consent, or that he or she knew the offence was to be or was being committed and failed to take all reasonable steps to prevent or stop it.
- (2) Where any body corporate is convicted of an offence against this Act, every person, being a director or a person concerned in the management of the body corporate, shall be guilty of the same offence if it is proved that the act that constituted the offence took place with that person's authority, permission, or consent, or that the person knew the offence was to be or was being committed and failed to take all reasonable steps to prevent or stop it.

157 Penalties

- (1) Every person who commits an offence against any of section 154O(1) to (15) is liable on conviction,—
 - (a) in the case of an individual person, to imprisonment for a term not exceeding 5 years, a fine not exceeding \$100,000, or both:
 - (b) in the case of a corporation, to a fine not exceeding \$200,000.
- (2) Every person who attempts to commit an offence against section 154O(15) is liable on conviction,—
 - (a) in the case of an individual person, to imprisonment for a term not exceeding 5 years, a fine not exceeding \$100,000, or both:
 - (b) in the case of a corporation, to a fine not exceeding \$200,000.

- (3) Every person who commits an offence against any of section 154N(6) or (7) or 154O(16) to (18) is liable on conviction,—
 - (a) in the case of an individual person, to imprisonment for a term not exceeding 12 months, a fine not exceeding \$50,000, or both:
 - (b) in the case of a corporation, to a fine not exceeding \$100,000.
- (4) Every person who commits an offence against section 154N(8) to (11) is liable on conviction,—
 - (a) in the case of an individual person, to imprisonment for a term not exceeding 3 months, a fine not exceeding \$50,000, or both:
 - (b) in the case of a corporation, to a fine not exceeding \$100,000.
- (5) Every person who commits an offence against any of section 154M, 154N(12) to (20), or 154O(19) to (21) is liable on conviction,—
 - (a) in the case of an individual person, to a fine not exceeding \$5,000:
 - (b) in the case of a corporation, to a fine not exceeding \$15,000.
- (6) Every person who commits an offence against any regulations made under this Act is liable on conviction,—
 - (a) in the case of an individual person, to a fine not exceeding \$5,000:
 - (b) in the case of a corporation, to a fine not exceeding \$15,000.
- (7) Every person who commits an offence against section 154N(21) is liable on conviction to a fine not exceeding \$1,000.
- (8) Every person who commits an offence against section 154NA(2), and in doing so under section 154NA(2)(a) ought reasonably to have known that the information had become erroneous or misleading in a material particular, is liable on conviction,—
 - (a) in the case of an individual, to a fine not exceeding \$1,000; or
 - (b) in the case of a body corporate, to a fine not exceeding \$5,000.
- (9) Every person who commits an offence against section 154NA(2), and in doing so under section 154NA(2)(a) knew that the information had become erroneous or misleading in a material particular, is liable on conviction,—
 - (a) in the case of an individual, to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$10,000; or
 - (b) in the case of a body corporate, to a fine not exceeding \$50,000.

Section 157: replaced, on 26 November 1997, by section 103 of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 157(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 157(1): amended, on 18 September 2012, by section 67(1) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 157(2): amended, on 18 September 2012, by section 67(2) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 157(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 157(3): amended, on 18 September 2012, by section 67(3) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 157(4): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 157(4): amended, on 18 September 2012, by section 67(4) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 157(5): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 157(5): amended, on 18 September 2012, by section 67(5) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 157(6): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 157(7): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 157(7): amended, on 18 September 2012, by section 67(6) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 157(7): amended, on 22 April 2010, by section 5 of the Biosecurity Amendment Act 2009 (2009 No 66).

Section 157(8): inserted, on 24 June 2014, by section 13 of the Biosecurity (Border Processing—Trade Single Window) Amendment Act 2014 (2014 No 11).

Section 157(9): inserted, on 24 June 2014, by section 13 of the Biosecurity (Border Processing—Trade Single Window) Amendment Act 2014 (2014 No 11).

158 Fines to be paid to management agency instituting prosecution

[Repealed]

Section 158: repealed, on 18 September 2012, by section 68 of the Biosecurity Law Reform Act 2012 (2012 No 73).

159 Proceedings for infringement offences other than border infringement offences

- (1) This section does not apply to border infringement offences.
- (1A) This section applies when—
 - (a) an inspector has reason to believe that a defendant has committed an infringement offence:
 - (b) an authorised person has reason to believe that a defendant has committed an infringement offence that the authorised person may deal with within his or her terms of appointment under section 103(1)(b), (2), or (3).
- (1B) Proceedings may be taken against the defendant by filing a charging document under section 14 of the Criminal Procedure Act 2011.
- (1C) Alternatively, the inspector or the authorised person may issue an infringement notice to the defendant. In that case,—

- (a) proceedings for the offence may be commenced in accordance with section 21 of the Summary Proceedings Act 1957; and
 - (b) section 21 of that Act applies with all necessary modifications.
- (2) Any inspector (not necessarily the inspector who issued the notice), the authorised person (the authorised person who issued the notice), or an authorised person appointed by the same appointer as appointed the authorised person who issued the notice—
- (a) may deliver it (or a copy of it) to the defendant personally; or
 - (b) may send it (or a copy of it) to the defendant by post addressed to the defendant's last known place of residence or business; and in that case it (or the copy) shall be deemed to have been served on the defendant when it was posted.
- (3) Every infringement notice shall be in a form prescribed by regulations made under this Act; and shall specify—
- (a) sufficient details to inform the defendant fairly of the time, place, and nature of the offence alleged; and
 - (b) the amount of the infringement fee for the offence; and
 - (c) where the fee may be paid; and
 - (d) the time within which the fee may be paid; and
 - (e) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957; and
 - (f) that the defendant has the right to request a hearing; and
 - (g) a statement of what will happen if the defendant neither pays the fee nor requests a hearing; and
 - (h) any other matters prescribed in that behalf.

Section 159 heading: replaced, on 22 April 2010, by section 6(1) of the Biosecurity Amendment Act 2009 (2009 No 66).

Section 159 heading: amended, on 18 September 2012, by section 69(1) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 159(1): replaced, on 18 September 2012, by section 69(2) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 159(1A): inserted, on 18 September 2012, by section 69(2) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 159(1B): inserted, on 18 September 2012, by section 69(2) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 159(1B): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 159(1C): inserted, on 18 September 2012, by section 69(2) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 159(2): amended, on 18 September 2012, by section 69(3) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 159(2)(b): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 159(3)(b): replaced, on 22 April 2010, by section 6(3) of the Biosecurity Amendment Act 2009 (2009 No 66).

159A Accelerated infringement notice procedure for border infringement offences

- (1) This section applies when an inspector has reason to believe that a defendant has committed a border infringement offence.
- (1A) Proceedings may be taken against the defendant by filing a charging document under section 14 of the Criminal Procedure Act 2011.
- (1B) Alternatively, the inspector may issue an infringement notice to the defendant. In that case,—
 - (a) proceedings for the offence may be commenced in accordance with section 21 of the Summary Proceedings Act 1957; and
 - (b) section 21 of that Act applies with all necessary modifications.
- (2) Any employee of the Ministry (not necessarily the inspector who issued the notice)—
 - (a) may deliver an infringement notice (or a copy of it) to the defendant personally; or
 - (b) may send it (or a copy of it) to the defendant by post addressed to the defendant's last known place of residence or business.
- (3) For the purposes of subsection (6), an infringement notice sent to a person by post is deemed to have been served on the defendant when it was posted.
- (4) An infringement notice under this section must be in the prescribed form, and must specify—
 - (a) sufficient details to inform the defendant fairly of the time, place, and nature of the offence alleged; and
 - (b) the amount of the infringement fee for the offence; and
 - (c) where the fee may be paid; and
 - (d) the time within which the fee may be paid; and
 - (e) how and where payment may be made under subsection (5); and
 - (f) a summary of how the provisions of section 21(10) of the Summary Proceedings Act 1957 apply to the offence alleged; and
 - (g) that the defendant has a right to request a hearing; and
 - (h) a statement of the consequences if the defendant neither pays the fee nor requests a hearing; and
 - (i) such other particulars as are prescribed by regulations made under this Act.

- (5) If the infringement notice is served by delivering it to a person at a port approved under section 37 or section 37A, that person may choose to pay immediately the infringement fee in the manner specified in the notice.
- (6) The Ministry may provide particulars of an infringement notice in accordance with section 21(4) and (4A) of the Summary Proceedings Act 1957, after a period of 14 days from the date of service of the infringement notice, or a copy of the infringement notice, if—
 - (a) the infringement fee for the offence has not by then been paid to the Ministry at the address specified in the notice (or immediately under subsection (5)); and
 - (b) the Ministry has not by then received at that address a notice requesting a hearing in respect of that offence.
- (7) If an infringement notice has been issued and served under this section, the Summary Proceedings Act 1957 applies as if that notice were a reminder notice served under section 21(2) of that Act, and the provisions of that Act apply, with all necessary modifications, to the alleged offence as if—
 - (a) the reference in section 21(1)(b) to providing particulars of a reminder notice under that section were a reference to providing particulars of the infringement notice under subsection (6) of this section; and
 - (b) subsection (6) were in the place of section 21(3); and
 - (c) the reference in section 21(3A) to the particulars of a reminder notice not having been provided under section 21(3) were a reference to the particulars of the infringement notice not having been provided under subsection (6) of this section; and
 - (d) every reference in section 21(4), (4A), and (4B) to particulars of a reminder notice were a reference to the particulars of an infringement notice and every reference to the contents of a reminder notice were a reference to the contents of an infringement notice; and
 - (e) the reference in section 21(4)(a) to parts of the reminder notice were a reference to parts of the infringement notice; and
 - (f) the reference in section 21(4C) to particulars of a reminder notice were a reference to particulars of an infringement notice; and
 - (g) the reference in section 21(4C) to the reminder notice were a reference to the infringement notice; and
 - (h) the reference in section 21(5) to the verification of particulars of a reminder notice provided under section 21(3) were a reference to the verification of particulars of an infringement notice provided under subsection (6) of this section; and
 - (i) the reference in section 21(6)(b) and in section 21(10)(a) to a period of 28 days after the service of a reminder notice were a reference to the period of 14 days after the service of the infringement notice; and

- (j) each reference in section 21A and section 78B to a reminder notice were a reference to an infringement notice and each reference in section 21A and section 78B to the reminder notice were a reference to the infringement notice; and
 - (k) the references to reminder notices in the definition of defendant in section 2(1), and in section 212, and in any other relevant provisions of that Act or regulations made under that Act, were references to the infringement notice.
- (8) *[Repealed]*
- (9) Despite section 203(1) of the Summary Proceedings Act 1957, an infringement notice under this section may be issued and served on a Sunday.
- Section 159A: inserted, on 7 May 1999, by section 4 of the Biosecurity Amendment Act 1999 (1999 No 29).
- Section 159A heading: replaced, on 22 April 2010, by section 7(1) of the Biosecurity Amendment Act 2009 (2009 No 66).
- Section 159A(1): replaced, on 18 September 2012, by section 70 of the Biosecurity Law Reform Act 2012 (2012 No 73).
- Section 159A(1A): inserted, on 18 September 2012, by section 70 of the Biosecurity Law Reform Act 2012 (2012 No 73).
- Section 159A(1A): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).
- Section 159A(1B): inserted, on 18 September 2012, by section 70 of the Biosecurity Law Reform Act 2012 (2012 No 73).
- Section 159A(4)(b): replaced, on 22 April 2010, by section 7(3) of the Biosecurity Amendment Act 2009 (2009 No 66).
- Section 159A(6): replaced, on 1 March 2007, by section 31 of the Summary Proceedings Amendment Act 2006 (2006 No 13).
- Section 159A(7): replaced, on 1 March 2007, by section 31 of the Summary Proceedings Amendment Act 2006 (2006 No 13).
- Section 159A(8): repealed, on 1 March 2007, by section 31 of the Summary Proceedings Amendment Act 2006 (2006 No 13).

160 Who gets payments of fines, fees, and pecuniary penalties

Fine: prosecution by Ministry

- (1) Subsection (2) applies when—
 - (a) a person is convicted of an offence under this Act; and
 - (b) the court imposes a fine; and
 - (c) the charging document for the offence was filed on behalf of the Ministry.
- (2) If the court considers that the act or omission that constituted the offence was a material cause of a need to undertake a response activity, the court must order that all or part of the fine be paid to the departmental bank account of the Ministry.

Fine: prosecution by management agency

- (3) Subsections (4) and (5) apply when—
 - (a) a person is convicted of an offence under this Act; and
 - (b) the court imposes a fine; and
 - (c) the charging document for the offence was filed on behalf of a management agency.
- (4) The court must—
 - (a) order that the fine be paid to the management agency; and
 - (b) state in the order the amount of the fine that is compensation for loss or damage, if any of it is.
- (5) The registrar receiving the fine must credit 10% of the part of it that is not compensation for loss or damage to the Crown Bank Account.

Infringement fee

- (6) Infringement fees received under section 159 must be paid as follows:
 - (a) if the infringement notice was issued by an inspector, to the Crown Bank Account;
 - (b) if the infringement notice was issued by an authorised person on behalf of a management agency, to the management agency;
 - (c) if the infringement notice was issued by an authorised person on behalf of a regional council, to the regional council.
- (7) Infringement fees received under section 159A must be paid into the Crown Bank Account.

Pecuniary penalty

- (8) Subsection (9) applies when the court makes a pecuniary penalty order.
- (9) If the court considers that the failure to comply for which the court imposed the order was a material cause of a need to undertake a response activity, the court must order that all or part of the pecuniary penalty be paid to the departmental bank account of the Ministry.

Registrar's authority

- (10) This section provides sufficient authority for a registrar receiving a fine, fee, or pecuniary penalty to which this section applies to deal with it in the manner required by this section.

Ministry's use of amount paid to it

- (11) The Ministry must use the amount paid to its bank account under subsection (2) or (9) in meeting the costs of undertaking the response activity.

Definition for this section

- (12) In this section, **response activity** has the meaning given to it in section 100Y(3).

Section 160: replaced, on 18 September 2012, by section 71 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 160(1)(c): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 160(3)(c): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

160A Procedure for certain declaration offences

[Repealed]

Section 160A: repealed, on 7 May 1999, by section 4 of the Biosecurity Amendment Act 1999 (1999 No 29).

161 Evidence in proceedings

- (1) In any proceedings for an offence against this Act or against any regulations made under this Act, a certificate that complies with subsection (4) and to which subsection (2) applies—
 - (a) is admissible in evidence; and
 - (b) is, in the absence of proof to the contrary, sufficient evidence of the matters stated in it.
- (2) This section applies to any certificate of 1 or more of the following kinds:
 - (a) a certificate purporting to be signed by the principal officer of a regional council stating that a document attached to the certificate is—
 - (i) a regional pest management plan or a regional pathway management plan made by the council; or
 - (ii) an amendment to such a plan:
 - (b) a certificate purporting to be signed by the Director-General stating that a person specified in the certificate is—
 - (i) a chief technical officer appointed under section 101(1); or
 - (ii) a deputy chief technical officer appointed under section 102:
 - (c) a certificate purporting to be signed by the chief executive of a department stating that a person specified in the certificate is—
 - (i) a chief technical officer appointed under section 101(2); or
 - (ii) a deputy chief technical officer appointed under section 102:
 - (d) a certificate purporting to be signed by a chief technical officer appointed under section 101(1) stating that the person specified in the certificate is—
 - (i) an inspector or authorised person appointed under section 103(1)(a); or
 - (ii) an authorised person appointed under section 103(1)(b) in relation to the national pest management plan or national pathway management plan described in, or attached to, the certificate; or

- (iii) a person accredited for a particular function under section 103(7):
- (e) a certificate purporting to be signed by a chief technical officer appointed under section 101(2) stating that the person specified in the certificate is—
 - (i) an inspector or authorised person appointed under section 103(2)(a); or
 - (ii) an authorised person appointed under section 103(2)(b) in relation to the national pest management plan or national pathway management plan described in, or attached to, the certificate; or
 - (iii) a person accredited for a particular function under section 103(7):
- (f) a certificate purporting to be signed by the principal officer of a regional council stating that a person specified in the certificate is—
 - (i) an authorised person appointed under section 103(3) in relation to a regional pest management plan or a regional pathway management plan or a small-scale management programme specified or described in, or attached to, the certificate; or
 - (ii) a person accredited for a particular function under section 103(7):
- (g) a certificate purporting to be signed by any person authorised by this Act, the State Sector Act 1988, or the Local Government Act 2002 to delegate to any person (or people of any kind or description) the exercise or performance of any power or function under this Act stating that—
 - (i) the person has delegated the exercise or performance of the power or function under this Act specified in the certificate to the person specified in the certificate; or
 - (ii) the person has delegated the exercise or performance of the power or function under this Act specified in the certificate to people of a kind or description specified in the certificate, and that a person specified in the certificate is a person of that kind or description:
- (h) a certificate purporting to be signed by the Director-General stating that a place specified in the certificate is—
 - (i) a biosecurity control area; or
 - (ii) a transitional facility approved for use or uses specified in the certificate; or
 - (iii) a containment facility:
- (i) a certificate purporting to be signed by a chief technical officer or the chief executive of a management agency stating that—
 - (i) an area specified in the certificate is an area controlled for the purposes of section 131; and
 - (ii) the movement into, within, or from the controlled area of the organisms, organic material, risk goods, or other goods specified in

- the certificate is restricted, regulated, or prohibited, in the manner, to the extent, and subject to the conditions specified in the certificate; and
- (iii) the organisms, organic material, risk goods, or other goods specified in the certificate are subject to the treatment and procedures specified in the certificate:
- (j) a certificate purporting to be signed by the Director-General stating that an action was done by an automated electronic system.
- (3) The production of a document purporting to be a certificate to which subsection (2) applies is prima facie evidence that it is such a certificate, without proof of the signature of the person purporting to have signed it.
- (4) A certificate to which subsection (2) applies is not admissible in evidence unless—
- (a) at least 14 days before the hearing at which the certificate is to be tendered, a copy is served, by or on behalf of the prosecutor, on the defendant or the defendant's agent or counsel, and that person is at the same time informed in writing that the prosecutor does not propose to call the person who signed the certificate as a witness at the hearing; and
- (b) the court has not, on the application of the defendant made not less than 7 days before the hearing, ordered, not less than 4 days before the hearing (or such lesser period as the court in the special circumstances of the case thinks fit), that the certificate should not be admissible as evidence in the proceedings.
- (5) The court must not make an order under subsection (4)(b) unless it is satisfied that there is a reasonable doubt as to the accuracy or validity of a certificate.

Section 161: replaced, on 26 November 1997, by section 105 of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 161(2)(a)(i): amended, on 18 September 2012, by section 72(1) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 161(2)(a)(ii): amended, on 18 September 2012, by section 72(2) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 161(2)(d)(i): amended, on 26 March 2015, by section 8(1) of the Biosecurity Amendment Act 2015 (2015 No 8).

Section 161(2)(d)(ii): amended, on 26 March 2015, by section 8(1) of the Biosecurity Amendment Act 2015 (2015 No 8).

Section 161(2)(d)(ii): amended, on 26 March 2015, by section 8(2) of the Biosecurity Amendment Act 2015 (2015 No 8).

Section 161(2)(d)(ii): amended, on 18 September 2012, by section 72(3) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 161(2)(d)(iii): inserted, on 26 March 2015, by section 8(3) of the Biosecurity Amendment Act 2015 (2015 No 8).

Section 161(2)(e)(i): amended, on 26 March 2015, by section 8(1) of the Biosecurity Amendment Act 2015 (2015 No 8).

Section 161(2)(e)(ii): amended, on 26 March 2015, by section 8(1) of the Biosecurity Amendment Act 2015 (2015 No 8).

Section 161(2)(e)(ii): amended, on 26 March 2015, by section 8(4) of the Biosecurity Amendment Act 2015 (2015 No 8).

Section 161(2)(e)(ii): amended, on 18 September 2012, by section 72(4) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 161(2)(e)(iii): inserted, on 26 March 2015, by section 8(5) of the Biosecurity Amendment Act 2015 (2015 No 8).

Section 161(2)(f): replaced, on 26 March 2015, by section 8(6) of the Biosecurity Amendment Act 2015 (2015 No 8).

Section 161(2)(g): amended, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

Section 161(2)(j): inserted, on 18 September 2012, by section 72(6) of the Biosecurity Law Reform Act 2012 (2012 No 73).

162 Time for filing charging document for certain offences

- (1) This section applies to—
 - (a) an offence against any of sections 154M, 154N(8) to (21), and 154O(19) to (21):
 - (b) an offence against any regulations made under this Act.
- (2) The limitation period for the offence ends on the date that is 2 years after the date on which the offence was committed.
- (3) Section 25 of the Criminal Procedure Act 2011 does not apply to the offence.

Section 162: replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Part 8A Exclusive economic zone

Part 8A: inserted, on 18 September 2012, by section 73 of the Biosecurity Law Reform Act 2012 (2012 No 73).

162AA Definitions for this Part

- (1) In this Part, **exclusive economic zone** or **EEZ** means the zone described in section 9 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977 as the exclusive economic zone.
- (2) In this Part, and in provisions modified by this Part, **arrive in the EEZ** means to anchor in, berth in, or operate in the EEZ for the purpose of exploring or exploiting resources in the EEZ, or in preparation or support for such a purpose, after a voyage originating beyond the outer limits of the EEZ.

Section 162AA: inserted, on 18 September 2012, by section 73 of the Biosecurity Law Reform Act 2012 (2012 No 73).

162AB Application of Act in EEZ

- (1) The provisions of this Act apply in the EEZ—

- (a) to the extent to which they are relevant; and
 - (b) to the extent to which their language permits; and
 - (c) with the modifications made by this Part.
- (2) A modification made by this Part to a provision also applies to—
- (a) regulations for which the modified provision is the parent provision; and
 - (b) instruments under this Act that apply generally for which the modified provision is the parent provision.
- (3) A provision in this Act that applies in the EEZ must be interpreted in a way that preserves the rights of other states, including the freedoms of navigation and overflight, as set out in the United Nations Convention on the Law of the Sea of 10 December 1982.

Section 162AB: inserted, on 18 September 2012, by section 73 of the Biosecurity Law Reform Act 2012 (2012 No 73).

162AC Application of Act to fish and mammals taken in EEZ

- (1) Fish and marine mammals taken in the EEZ and carried on board a foreign licensed vessel, a vessel registered under the Fisheries Act 1996, or a vessel operated by the Crown are treated for the purposes of this Act as if they were not imported goods.
- (2) In subsection (1),—
- fish** has the meaning given to it by section 2 of the Fisheries Act 1996
- marine mammal** has the meaning given to it by section 2 of the Marine Mammals Protection Act 1978.

Section 162AC: inserted, on 18 September 2012, by section 73 of the Biosecurity Law Reform Act 2012 (2012 No 73).

162AD Interpretation

The definition of **craft** in section 2 applies as if “is imported by” read “arrives in the EEZ after”.

Section 162AD: inserted, on 18 September 2012, by section 73 of the Biosecurity Law Reform Act 2012 (2012 No 73).

162AE Purpose of Part 3

Section 16 applies as if paragraph (b) read “craft that arrive in the EEZ”.

Section 162AE: inserted, on 18 September 2012, by section 73 of the Biosecurity Law Reform Act 2012 (2012 No 73).

162AF Notice of intended arrival of craft in EEZ

- (1) Section 17 applies as if “New Zealand” and “New Zealand territory” read “the EEZ”.
- (2) Section 17 applies as if “approved port” and “port or destination” read “approximate location”.

- (3) Section 17(2), (6)(b)(ii), (7), (9)(c)(ii), and (10) do not apply.

Section 162AF: inserted, on 18 September 2012, by section 73 of the Biosecurity Law Reform Act 2012 (2012 No 73).

162AG Arrival of craft in EEZ

- (1) Section 18(1) applies as if “craft that arrives at a place in New Zealand” read “craft that arrives in the EEZ”.
- (2) Section 18(1)(a)(ii) applies as if “port or destination” read “approximate location”.
- (3) Section 18(3) applies as if “or the EEZ” appeared after “New Zealand waters”.

Section 162AG: inserted, on 18 September 2012, by section 73 of the Biosecurity Law Reform Act 2012 (2012 No 73).

162AH Persons in charge of certain craft to obey directions of inspector or authorised person

- (1) Section 19 applies as if “New Zealand” read “the EEZ”.
- (2) Section 19(2)(a)(ii) applies as if “or the disembarkation of crew or passengers from the craft” did not appear.
- (3) Section 19(2)(c) applies as if “cargo, crew, passengers, stores, or” did not appear.

Section 162AH: inserted, on 18 September 2012, by section 73 of the Biosecurity Law Reform Act 2012 (2012 No 73).

162AI Boarding of craft

Section 31 applies as if paragraph (b) read “any craft, used for the transportation of people or goods, or both, by sea, that is within the EEZ for the purposes of exploring or exploiting resources in the EEZ, or in preparation or support for such a purpose, after a voyage originating beyond the outer limits of the EEZ—”.

Section 162AI: inserted, on 18 September 2012, by section 73 of the Biosecurity Law Reform Act 2012 (2012 No 73).

162AJ Powers relating to craft

- (1) Section 32(1) applies as if “or the EEZ for the purpose of exploring or exploiting resources in the EEZ, or in preparation or support for such a purpose, after a voyage originating beyond the outer limits of the EEZ” appeared after the first reference to “New Zealand territory”.
- (2) Section 32(1)(a) applies as if “or the EEZ” appeared after “New Zealand territory”.
- (3) Section 32(1)(b) applies as if “New Zealand territory” read “the EEZ, but only if there is no feasible alternative to managing the biosecurity risks posed by the craft and if the movement directed is only to the extent reasonably necessary to manage the biosecurity risks posed by the craft”.

Section 162AJ: inserted, on 18 September 2012, by section 73 of the Biosecurity Law Reform Act 2012 (2012 No 73).

162AK Risk goods on board craft

- (1) Section 33(1) applies as if “or that has arrived in the EEZ” appeared after the second reference to “New Zealand territory”.
- (2) Section 33(1)(a) applies as if “or the EEZ” appeared after “New Zealand territory”.
- (3) Section 33(1)(b) applies as if it read “move the craft outside New Zealand territory or the EEZ or move the craft into New Zealand territory from the EEZ (immediately, or within a period specified by the inspector), but only if there is no feasible alternative to managing the biosecurity risks posed by the craft and if the movement directed is only to the extent reasonably necessary to manage the biosecurity risks posed by the craft; or”.
- (4) Section 33(2)(a) applies as if “or the EEZ” appeared after “New Zealand territory”.

Section 162AK: inserted, on 18 September 2012, by section 73 of the Biosecurity Law Reform Act 2012 (2012 No 73).

162AL Duty to provide information

Section 43(1)(a) applies as if “or the EEZ” appeared after “New Zealand”.

Section 162AL: inserted, on 18 September 2012, by section 73 of the Biosecurity Law Reform Act 2012 (2012 No 73).

162AM General duty to inform

Section 44(1) applies as if “or the EEZ” appeared after “New Zealand”.

Section 162AM: inserted, on 18 September 2012, by section 73 of the Biosecurity Law Reform Act 2012 (2012 No 73).

162AN Duty to report notifiable organisms

Section 46(1)(a) applies as if “or the EEZ” appeared after “New Zealand”.

Section 162AN: inserted, on 18 September 2012, by section 73 of the Biosecurity Law Reform Act 2012 (2012 No 73).

162AO Second step: satisfaction on requirements

Section 62(d) applies as if “or the EEZ” appeared after “New Zealand”.

Section 162AO: inserted, on 18 September 2012, by section 73 of the Biosecurity Law Reform Act 2012 (2012 No 73).

162AP Fourth step: approval of preparation of plan and decision on management agency

Section 64(6)(c) applies as if “or the EEZ” appeared after “New Zealand” in all places.

Section 162AP: inserted, on 18 September 2012, by section 73 of the Biosecurity Law Reform Act 2012 (2012 No 73).

162AQ Second step: satisfaction on requirements

Section 82(d) applies as if “or the EEZ” appeared after “New Zealand”.

Section 162AQ: inserted, on 18 September 2012, by section 73 of the Biosecurity Law Reform Act 2012 (2012 No 73).

162AR Fourth step: approval of preparation of plan and decision on management agency

Section 84(6)(c) applies as if “or the EEZ” appeared after “New Zealand” in all places.

Section 162AR: inserted, on 18 September 2012, by section 73 of the Biosecurity Law Reform Act 2012 (2012 No 73).

162AS Definitions for Part 5A

Section 100Y applies as if “New Zealand” read “the EEZ”.

Section 162AS: inserted, on 18 September 2012, by section 73 of the Biosecurity Law Reform Act 2012 (2012 No 73).

162AT Declaration of controlled area

Section 131(2) applies as if “(which may be the whole or any specified part or parts of New Zealand)” read “(which may be any specified part or parts of the EEZ)”.

Section 162AT: inserted, on 18 September 2012, by section 73 of the Biosecurity Law Reform Act 2012 (2012 No 73).

162AU Declaration of biosecurity emergency

Section 144(1) applies as if “or the EEZ” appeared after “New Zealand” in all places.

Section 162AU: inserted, on 18 September 2012, by section 73 of the Biosecurity Law Reform Act 2012 (2012 No 73).

162AV Emergency powers

Section 145(2) applies as if “anywhere in New Zealand” read “anywhere in New Zealand or the EEZ”.

Section 162AV: inserted, on 18 September 2012, by section 73 of the Biosecurity Law Reform Act 2012 (2012 No 73).

162AW Provisional control action

Section 152(1) applies as if “or the EEZ” appeared after “New Zealand”.

Section 162AW: inserted, on 18 September 2012, by section 73 of the Biosecurity Law Reform Act 2012 (2012 No 73).

162AX General provisions as to regulations

Section 166(1) applies as if “or the EEZ” appeared after “New Zealand”.

Section 162AX: inserted, on 18 September 2012, by section 73 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Part 9

Miscellaneous provisions

162A Compensation

- (1) This section applies when—
 - (a) powers under this Act are exercised for the purpose of eradicating or managing an organism; and
 - (b) the powers are not exercised to implement a pest management plan or pathway management plan; and
 - (c) the exercise of the powers causes loss to a person as a result of—
 - (i) damage to or destruction of the person's property; or
 - (ii) restrictions imposed under Part 6 or 7 on the movement or disposal of the person's goods; and
 - (d) there is no agreement under Part 5A that applies to the loss and whose provisions on compensation are expressed to take priority over this section.
- (2) The person is entitled to compensation under this section for loss that—
 - (a) is verifiable; and
 - (b) is loss that the person has been unable to mitigate by taking every step that is reasonable in the circumstances.
- (3) Compensation must not be paid if—
 - (a) the person's loss relates to unauthorised goods or uncleared goods; or
 - (b) the person suffered the loss before the time at which the exercise of the powers began; or
 - (c) the person failed to comply with biosecurity law—
 - (i) in a serious or significant way; or
 - (ii) in a way that contributed to the presence of the organism; or
 - (iii) in a way that contributed to the spread of the organism.
- (4) The amount of compensation paid must put the person to whom it is paid in no better or worse position than a person whose property or goods are not directly affected by the exercise of the powers.
- (5) The period for making a claim for compensation after the date on which the loss suffered by the person ought reasonably to have been verifiable is—
 - (a) within 1 year from the date; or
 - (b) after 1 year from the date, if the person was unable to make a claim within 1 year because of circumstances beyond the person's control.
- (6) If there is a dispute about eligibility for, or the amount of, compensation,—
 - (a) the dispute must be submitted to arbitration; and

- (b) the arbitration must be conducted under the Arbitration Act 1996.
- (7) Compensation payable by a Minister or a chief executive is payable from money appropriated by Parliament for the purpose.

Section 162A: replaced, on 18 September 2012, by section 74 of the Biosecurity Law Reform Act 2012 (2012 No 73).

163 Protection of inspectors and others

An inspector, authorised person, accredited person, or other person who does any act or omits to do any act in pursuance of any of the functions, powers, or duties conferred on that person by or under this Act or a pest management plan or a pathway management plan shall not be under any civil or criminal liability in respect of that act or omission, unless the person has acted, or omitted to act, in bad faith or without reasonable cause.

Compare: 1967 No 50 s 10; 1970 No 151 s 23; 1978 No 15 s 45; 1982 No 42 s 82

Section 163: amended, on 18 September 2012, by section 75 of the Biosecurity Law Reform Act 2012 (2012 No 73).

164 Liability for goods

The Crown shall not be under any civil liability in respect of any loss or damage to any goods suffered—

- (a) while those goods are in the custody of the Crown by reason of the exercise, in good faith and with reasonable care, of authority under this Act; or
- (b) as a result of or in the course of any treatment, handling, or quarantine of those goods undertaken or required in good faith and with reasonable care by an inspector or any other person acting in the exercise of authority under this Act.

Compare: 1967 No 50 s 10

164A Procedure for giving directions or making requirements

- (1) A direction may be given or a requirement made under this Act by a written notice delivered—
- (a) to a natural person,—
- (i) by delivering the notice to the person; or
 - (ii) by delivering the notice to the person's usual or last known place of residence or business; or
 - (iii) by sending the notice by pre-paid post to the person at the usual or last known place of residence or business of the person; or
 - (iv) by sending the notice by fax or email to the person's fax number or email address:
- (b) to a body (whether incorporated or not),—
- (i) by delivering the notice to an officer of the body; or

- (ii) by delivering the notice to the usual or last known place of residence or business of an officer of the body; or
 - (iii) by sending the notice by pre-paid post to an officer of the body at the usual or last known place of residence or business of that person; or
 - (iv) by delivery of the notice to the registered office of the body; or
 - (v) by sending the notice by pre-paid post addressed to the body at the registered office of the body; or
 - (vi) by sending the notice by fax or email to the fax number or email address of the body's registered office:
- (c) to a partnership,—
- (i) by delivering the notice to any one of the partners; or
 - (ii) by delivering the notice to the usual or last known place of residence or business of any one of the partners; or
 - (iii) by sending the notice by pre-paid post to any one of the partners at the usual or last known place of residence or business of that person; or
 - (iv) by delivery of the notice to the usual or last known place of business of the partnership; or
 - (v) by sending the notice by pre-paid post addressed to the usual or last known place of business of the partnership; or
 - (vi) by sending the notice by fax or email to the partnership's fax number or email address:
- (d) to a Minister of the Crown,—
- (i) by personal delivery to the chief executive of the appropriate department; or
 - (ii) by delivery to the head office of the appropriate department; or
 - (iii) by sending the notice by pre-paid post addressed to the head office of the appropriate department; or
 - (iv) by sending the notice by fax or email to the fax number or email address of the head office of the appropriate department.
- (2) Where reasonable attempts have been made to find the occupier of a place and no occupier can be found, a written notice under this section may be delivered to the occupier of that place by affixing the notice in some conspicuous location in or on the place.
- (3) Where a written notice is delivered in accordance with this section by post, the direction or requirement contained in the notice is deemed to be given or made at the time at which the notice would have been delivered in the ordinary course of the post in the absence of evidence to the contrary.

Section 164A: inserted, on 26 November 1997, by section 107 of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 164A(1)(a)(iv): amended, on 18 September 2012, by section 76(1) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 164A(1)(b)(vi): amended, on 18 September 2012, by section 76(2) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 164A(1)(c)(vi): amended, on 18 September 2012, by section 76(3) of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 164A(1)(d)(iv): amended, on 18 September 2012, by section 76(4) of the Biosecurity Law Reform Act 2012 (2012 No 73).

164B Application of section 164A

Section 164A—

- (a) may, if the provisions of that section are consistent with a procedure specified in this Act for giving a direction or making a requirement, apply in addition to that procedure:
- (b) may apply where this Act does not specify any procedure for giving any direction or making any requirement:
- (c) does not require any direction to be given or requirement to be made in accordance with that section.

Section 164B: inserted, on 26 November 1997, by section 107 of the Biosecurity Amendment Act 1997 (1997 No 89).

164C Registration of unwanted organisms

- (1) Where a chief technical officer has formed the belief that makes an organism an unwanted organism, that chief technical officer must notify the Director-General that the organism is an unwanted organism.
- (2) The Director-General must keep a register of all organisms notified to the Director-General in accordance with subsection (1).
- (3) The register must be available for public information and inspection at the office of the Director-General during normal office hours.
- (4) Where a chief technical officer fails to notify the Director-General in accordance with this section, that failure does not invalidate the chief technical officer's belief that makes the organism an unwanted organism.

Section 164C: inserted, on 26 November 1997, by section 108 of the Biosecurity Amendment Act 1997 (1997 No 89).

164D Consultation about regulations

- (1) Subsection (2) applies before the responsible Minister makes a recommendation for the purposes of section 165.
- (2) The responsible Minister must consult the persons who the Minister has reason to believe are representative of interests likely to be substantially affected by the regulations, to the extent to which consultation is reasonably practicable having regard to the circumstances of the particular case.

Section 164D: inserted, on 18 September 2012, by section 77 of the Biosecurity Law Reform Act 2012 (2012 No 73).

165 Regulations

Part 3 matters

- (1) The Governor-General may from time to time, by Order in Council, make regulations for the purposes of section 17(11).
- (1A) The Governor-General may from time to time, by Order in Council, make regulations for the purposes of section 17A(2), (3), (7), and (9).
- (2) The Governor-General may from time to time, by Order in Council, make regulations on any or all of the following matters relating to the giving of notice of goods' intended arrival in New Zealand:
 - (a) requiring that the notice be given to the Director-General:
 - (b) specifying the class or description of importer who must give the notice:
 - (c) specifying the class or description of goods of which notice must be given:
 - (d) requiring that the notice contain any or all of the following information about the goods:
 - (i) when and where, approximately, they will arrive in New Zealand:
 - (ii) their nature:
 - (iii) details of their journey, including their place of origin:
 - (iv) the craft they are on:
 - (v) the basis on which the importer believes that they are eligible to receive a biosecurity clearance under section 26:
 - (e) specifying the length of time before the goods arrive in New Zealand at which the notice must be given:
 - (f) requiring importers giving notices—
 - (i) to give different information about the matters depending on the class or description of the goods:
 - (ii) to give the information at different times depending on the class or description of the goods:
 - (g) providing for the Director-General to require the giving of the notice earlier than the times specified in the regulations if—
 - (i) an emergency or an urgent situation has arisen; and
 - (ii) the emergency or the urgent situation creates a risk of significant harm to human health, the environment, or the economy; and
 - (iii) the earlier giving of the notice is necessary to avoid or mitigate the risk:
 - (h) specifying the form and manner in which the notice must be given.

- (3) The Governor-General may from time to time, by Order in Council, make regulations on any or all of the following for the purpose of managing risks associated with goods after the goods have received a biosecurity clearance:
- (a) the class or description of goods to which the regulations apply:
 - (b) the class or description of persons to whom the regulations apply:
 - (c) the places or areas in New Zealand in which the regulations apply:
 - (d) the use to which the goods must be put:
 - (e) the restrictions or conditions on the use of the goods:
 - (f) requirements when ownership or possession of the goods is transferred:
 - (g) requirements to label the goods:
 - (h) requirements to report on or monitor the goods:
 - (i) requirements to keep records:
 - (j) requirements to notify the Director-General of matters:
 - (k) the duration of requirements in the regulations:
 - (l) a system for auditing and verifying compliance with the requirements in the regulations:
 - (m) any other matters reasonably necessary for the effective implementation of the requirements in the regulations.
- (4) The Governor-General may from time to time, by Order in Council, make regulations for the purposes of section 38.

Part 5 matters

- (5) The Governor-General may from time to time, by Order in Council, make regulations setting out the process for assigning responsibility under section 55, which must cover at least the following:
- (a) what criteria the Minister must apply in assigning responsibility:
 - (b) what kind of consultation the Minister must undertake:
 - (c) how the Minister must communicate the Minister's decision to the decision-maker and the public.
- (6) The Governor-General may from time to time, by Order in Council, make regulations about proposals for pest management plans or pathway management plans, prescribing procedures on—
- (a) preparation:
 - (b) notification:
 - (c) consultation:
 - (d) submissions:
 - (e) hearings:
 - (f) the protection of sensitive information.

- (7) The Governor-General may from time to time, by Order in Council, make regulations—
- (a) prescribing procedures to be followed and standards to be met by management agencies and persons acting on behalf of management agencies in implementing pest management plans or pathway management plans:
 - (b) requiring reporting on the achievement of objectives in pest management plans or pathway management plans and on other aspects of performance relating to pest management plans or pathway management plans.

Part 6 matters

- (8) The Governor-General may from time to time, by Order in Council, make regulations—
- (a) prescribing standards of technical competence, experience, and qualifications relating to—
 - (i) the appointment of inspectors and authorised persons:
 - (ii) the accreditation of accredited persons:
 - (b) prescribing procedures relating to—
 - (i) the appointment of inspectors and authorised persons:
 - (ii) the accreditation of accredited persons.
- (9) The Governor-General may from time to time, by Order in Council, make regulations prescribing procedures to be followed and standards to be met by—
- (a) inspectors:
 - (b) authorised persons:
 - (c) persons involved in the handling of diseased or pestiferous organic material:
 - (d) other persons involved in the exercise of a power or the carrying out of a function or duty under this Act.
- (10) The Governor-General may from time to time, by Order in Council, make regulations specifying audits for the purposes of section 105C(3).
- (11) The Governor-General may from time to time, by Order in Council, make regulations for the purposes of section 121A prescribing articles or substances that may be left on any place.
- (12) The Governor-General may from time to time, by Order in Council, make regulations prescribing the following matters relating to costs:
- (a) the matters for which they are recoverable under—
 - (i) this Act:
 - (ii) regulations:
 - (iii) pest management plans:
 - (iv) pathway management plans:

- (b) their amounts:
 - (c) the method by which they must be assessed:
 - (d) the persons liable for their payment:
 - (e) the circumstances in which their recovery may be wholly or partly waived or remitted.
- (12A) This section does not authorise the making of regulations prescribing fees and charges to recover the costs of processing travellers to which the Airports (Cost Recovery for Processing of International Travellers) Act 2014 applies.
- Part 8 matters*
- (13) The Governor-General may from time to time, by Order in Council, make regulations prescribing methods of implementing and enforcing standards prescribed under this Act.
- (14) The Governor-General may from time to time, by Order in Council, make regulations on the following matters relating to offences:
- (a) prescribing offences committed by contravening a regulation made under this Act:
 - (b) prescribing offences committed by contravening a lawful direction or requirement under a regulation made under this Act:
 - (c) prescribing the offences against or under this Act that are infringement offences:
 - (d) prescribing the form of an infringement notice for an infringement offence:
 - (e) prescribing any additional particulars required in an infringement notice for an infringement offence:
 - (f) prescribing an infringement fee no greater than \$1,000 payable for each infringement offence:
 - (g) specifying that an infringement offence is a border infringement offence if it is committed—
 - (i) in a biosecurity control area at a port approved under section 37; or
 - (ii) at a port approved under section 37A:
 - (h) prescribing the form of an infringement notice for a border infringement offence:
 - (i) prescribing any additional particulars required in an infringement notice for a border infringement offence.
- (15) The Governor-General may from time to time, by Order in Council, make regulations specifying requirements in regulations or rules whose contravention gives rise to liability for the purposes of section 154H(2)(r).

Risk goods, waste, organic material, and pest-ridden places

- (16) The Governor-General may from time to time, by Order in Council, make regulations regulating or controlling the holding, disposal, and treatment of risk goods.
- (17) The Governor-General may from time to time, by Order in Council, make regulations about garbage and other waste organic material,—
- (a) prohibiting or controlling its disposal:
 - (b) providing for controls to prevent access to it by animals.
- (18) The Governor-General may from time to time, by Order in Council, make regulations about organic material,—
- (a) requiring its identification:
 - (b) prohibiting, regulating, or controlling its use:
 - (c) prohibiting or regulating organic material as food for organisms.
- (19) The Governor-General may from time to time, by Order in Council, make regulations about places that are particularly liable to harbour pests or unwanted organisms, or are difficult to monitor, or may serve as an active source of pests or unwanted organisms,—
- (a) providing for their registration:
 - (b) prescribing technical standards for their construction, equipping, maintenance, and operation:
 - (c) prescribing standards for their operators.

Standards, permits, registrations, approvals, and exemptions

- (20) The Governor-General may from time to time, by Order in Council, make regulations prescribing standards for places that are required to be designated, registered, or approved—
- (a) under this Act; or
 - (b) under regulations.
- (21) The Governor-General may from time to time, by Order in Council, make regulations about permits, registrations, approvals, and exemptions under this Act,—
- (a) prescribing the manner and content of applications for them:
 - (b) prescribing procedures for the assessment, consideration, approval, and refusal of applications for them:
 - (c) prescribing conditions that must or may be attached to them:
 - (d) regulating their issue, transfer, amendment, suspension, revocation, cancellation, or withdrawal:
 - (e) requiring their holders to—
 - (i) keep records; and

- (ii) provide copies of the records to the Director-General or any other chief executive, whenever the holders are asked and wherever the records are held; and
- (iii) provide copies of any other information to the Director-General or any other chief executive, whenever the holders are asked and wherever the information is held.

Record-keeping

- (22) The Governor-General may from time to time, by Order in Council, make regulations requiring persons engaged in prescribed activities to—
- (a) keep records; and
 - (b) provide copies of the records to the Director-General or any other chief executive, whenever the holders are asked and wherever the records are held; and
 - (c) provide copies of any other information to the Director-General or any other chief executive, whenever the holders are asked and wherever the information is held.

Manner in which information to be provided

- (23) The Governor-General may from time to time, by Order in Council, make regulations specifying the manner in which information that must be provided under this Act must be provided.

Contemplated or necessary matters

- (24) The Governor-General may from time to time, by Order in Council, make regulations providing for matters that are contemplated by this Act or necessary to give it full effect or necessary for its administration.

Section 165: replaced, on 18 September 2012, by section 78 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 165(1A): inserted, on 24 June 2014, by section 14 of the Biosecurity (Border Processing—Trade Single Window) Amendment Act 2014 (2014 No 11).

Section 165(12A): inserted, on 15 February 2014, by section 21(1) of the Airports (Cost Recovery for Processing of International Travellers) Act 2014 (2014 No 3).

165A Regulations relating to definition of Ministry-related border management function in section 41A(1)

The Governor-General may, by Order in Council, make regulations specifying any Act to be an Act for the purposes of the definition of **Ministry-related border management function** in section 41A(1).

Section 165A: inserted, on 6 April 2012, by section 5 of the Biosecurity Amendment Act 2012 (2012 No 26).

Section 165A heading: amended, on 24 June 2014, by section 15(1)(a) of the Biosecurity (Border Processing—Trade Single Window) Amendment Act 2014 (2014 No 11).

Section 165A heading: amended, on 24 June 2014, by section 15(1)(b) of the Biosecurity (Border Processing—Trade Single Window) Amendment Act 2014 (2014 No 11).

Section 165A: amended, on 24 June 2014, by section 15(2)(a) of the Biosecurity (Border Processing—Trade Single Window) Amendment Act 2014 (2014 No 11).

Section 165A: amended, on 24 June 2014, by section 15(2)(b) of the Biosecurity (Border Processing—Trade Single Window) Amendment Act 2014 (2014 No 11).

166 General provisions as to regulations

- (1) Any regulation made under this Act may apply generally or may apply or be applied from time to time by the Minister by notice in the *Gazette* within any specified district or region of any local authority or within any specified part of New Zealand or may apply to any specified category or categories of persons.
- (2) *[Repealed]*
- (3) Any regulations made under this Act may confer power to issue directions, orders, requirements, permits, or notices for the purposes of this Act on all or any of the following:
 - (a) all Ministers, Ministers of a specified kind or description, or any specified Minister or Ministers:
 - (b) all chief executives, chief executives of a specified kind or description, or any specified chief executive or chief executives:
 - (c) all principal officers, principal officers of a specified kind or description, or any specified principal officer or principal officers:
 - (d) all chief technical officers, chief technical officers of a specified kind or description, or any specified chief technical officer or chief technical officers:
 - (e) all inspectors, or inspectors of a specified kind or description:
 - (f) all authorised persons, or authorised persons of a specified kind or description.
- (4) Regulations made under this Act may authorise the Director-General to exempt—
 - (a) any conveyance; or
 - (b) conveyances of any kind or description; or
 - (c) any other place; or
 - (d) other places of any kind or description; or
 - (e) any person; or
 - (f) persons of any kind or description,—from any requirement of those regulations, or any other regulations made under this Act, if satisfied that, in the circumstances, the imposition of the requirement on that conveyance, those conveyances, that place, those places, that person, or those persons, is not necessary.

Compare: 1967 No 50 s 107

Section 166(2): repealed, on 18 September 2012, by section 79 of the Biosecurity Law Reform Act 2012 (2012 No 73).

167 Repeals and revocations

- (1) The enactments specified in Schedule 3 are hereby repealed.
- (2) All Orders in Council and notices made under the Stock Act 1908 not specified in Schedule 7 are hereby revoked.
- (3) The Orders in Council specified in Schedule 6 are hereby revoked.
- (4) The Dog Control and Hydatids Regulations 1985 are hereby revoked, with effect on 1 July 1996.

168 Enactments amended

- (1) The enactments specified in Schedule 4 are hereby amended in the manner indicated in that schedule.
- (2) The regulations specified in Schedule 5 are hereby amended in the manner indicated in that schedule.

Part 10
Savings and transitional provisions

169 Savings of Animals Act 1967 for limited administrative purposes

[Repealed]

Section 169: repealed, on 29 July 1998, by section 133 of the Biosecurity Amendment Act 1997 (1997 No 89).

170 Savings of Plants Act 1970 for limited administrative purposes

Notwithstanding section 167(1) of this Act, the Plants Act 1970 shall continue in full effect to the extent necessary for the proper administration of sections 15 and 16 of that Act in relation to the export of plants.

Section 170: amended, on 29 July 1998, by section 134 of the Biosecurity Amendment Act 1997 (1997 No 89).

171 Savings of Apiaries Act 1969 for limited administrative purposes

[Repealed]

Section 171: repealed, on 1 November 1999, by section 60(1)(a) of the Animal Products (Ancillary and Transitional Provisions) Act 1999 (1999 No 94).

172 Transition of emergency proclamations

- (1) If a declaration of an animal disease emergency made by the Governor-General by Proclamation is in force on the commencement of this Act, the Proclamation and sections 30 and 31 of the Animals Act 1967 shall, notwithstanding the repeal of those sections by section 167(1), continue in effect for so long as the Proclamation remains in force.

- (2) If a declaration of a plant disease emergency made by the Governor-General by Proclamation is in force on the commencement of this Act, the Proclamation and sections 12 and 13 of the Plants Act 1970 shall, notwithstanding the repeal of those sections by section 167(1) of this Act, continue in effect for so long as the Proclamation remains in force.

173 Transitional continuance of regulations

Every regulation specified in Schedule 7 made under an enactment repealed by section 167(1) that is in force at the close of 30 June 1993 shall, so far as it is not inconsistent with this Act, be deemed to have been lawfully made by the Governor-General in Council under this Act and shall continue in force until it is revoked by regulation made under this Act or until the expiry of 2 years after that day whichever is the earlier, and shall then expire.

174 Transitional provision concerning inspectors, etc

- (1) Every person duly appointed and holding office as an inspector under the Ministry of Agriculture and Fisheries Act 1953, the Animals Act 1967, the Apiaries Act 1969, the Poultry Act 1968, or the Plants Act 1970, at the close of 30 September 1993 shall be deemed to have been appointed an inspector under and for the purposes of this Act.
- (2) Every person duly appointed and holding office as a noxious plants officer under the Noxious Plants Act 1978 at the close of 30 September 1993 shall be deemed to have been appointed an authorised person under section 103(3) by the principal officer by whom that inspector was then employed.
- (3) Every person duly appointed and holding office as an inspector under the Agricultural Pests Destruction Act 1967 at the close of 30 September 1993 shall be deemed to have been appointed an authorised person under section 103(3) by the principal officer by whom that inspector was then employed.

Section 174(1): amended, on 1 October 1993, by section 2(1)(a) of the Biosecurity Amendment Act 1993 (1993 No 129).

Section 174(1): amended, on 1 October 1993, by section 2(1)(b) of the Biosecurity Amendment Act 1993 (1993 No 129).

Section 174(2): amended, on 1 October 1993, by section 2(2) of the Biosecurity Amendment Act 1993 (1993 No 129).

Section 174(3): inserted, on 28 September 1993, by section 2(3) of the Biosecurity Amendment Act 1993 (1993 No 129).

175 Transition of quarantine appointments

On 1 July 1993, the following shall be deemed to have been registered as a quarantine facility and to be subject in all respects to the provisions of section 39:

- (a) any land set apart and defined as a quarantine ground under section 11 of the Animals Act 1967; and

- (b) any land declared to be a special quarantine ground under section 11A of the Animals Act 1967; and
- (c) any land defined or approved as a quarantine ground under section 24 of the Apiaries Act 1969; and
- (d) any land declared to be a quarantine station under section 4 of the Plants Act 1970.

176 Transition of import permits and exemptions

[Repealed]

Section 176: repealed, on 26 November 1997, by section 115(2) of the Biosecurity Amendment Act 1997 (1997 No 89).

177 Transition of notices under section 13A of Animals Act 1967

Notwithstanding the repeal of section 13A of the Animals Act 1967, every notice under that section that is in force at the close of 30 September 1993 shall continue in force for the time specified in that notice and shall have effect and may be enforced in all respects as if that section had not been repealed.

Section 177: amended, on 1 October 1993, by section 4 of the Biosecurity Amendment Act 1993 (1993 No 129).

178 Transitional control of brucellosis and tuberculosis in cattle and tuberculosis in deer

- (1) Every direction, notice, or requirement given or made by the Director-General under section 53, 53A, 53AA, 53C, 53E, or 53H of the Animals Act 1967 that is in force at the close of 30 June 1993 shall continue in force after 30 June 1993 and shall have effect and may be enforced in all respects as if those sections had not been repealed.
- (2) Where the Director-General has directed the slaughter of any animals under section 53AA or 53E of the Animals Act 1967 by a direction that is in force at the close of 30 June 1993, sections 53AB and 53F of the Animals Act 1967 shall, notwithstanding their repeal by section 167(1), continue in force after 30 June 1993 in relation to every animal which the Director-General has directed should be slaughtered.

179 Transitional control of agricultural pests

[Expired]

Section 179: expired, on 1 October 1998, by regulation 5(1) of the Biosecurity (Transition and Savings) Regulations 1996 (SR 1996/123).

180 Compensation for certain slaughtered animals

[Expired]

Section 180: expired, on 1 October 1998, by regulation 5(1) of the Biosecurity (Transition and Savings) Regulations 1996 (SR 1996/123).

181 Transitional control of plant pests

[Expired]

Section 181: expired, on 1 October 1998, by regulation 5(1) of the Biosecurity (Transition and Savings) Regulations 1996 (SR 1996/123).

182 Transitional control of bee diseases

[Expired]

Section 182: repealed, on 1 November 1999 (after expiring on 1 October 1998), by section 60(1)(a) of the Animal Products (Ancillary and Transitional Provisions) Act 1999 (1999 No 94).

183 Transitional control of hydatids

[Expired]

Section 183: expired, on 1 July 1996, by regulation 5(2) of the Biosecurity (Transition and Savings) Regulations 1996 (SR 1996/123).

184 Designated ports of entry

- (1) Subject to subsection (2), between the commencement of Part 3 and 1 July 1995 the Director-General shall under subsection (1) of section 37 be deemed to have designated as places of first arrival of craft arrived in New Zealand the ports specified in Schedule 8; but the Director-General shall not be required under subsection (2) of that section to publish or make available a notice specifying the matters referred to in paragraph (a) of that subsection.
- (2) Subject to section 37(7), the Director-General may at any time suspend or revoke any port's deemed designation under subsection (1); and it shall then cease to be deemed to have been designated as a place of first arrival of craft arriving in New Zealand.

184A Designated as approved, or approved, ports

- (1) For the ports specified in Part A of Schedule 9, the following provisions apply:
 - (a) for the period between 1 July 1995 and 25 November 1997, each port is treated as having been designated as approved under section 37; and
 - (b) for the period between 26 November 1997 and the date after 26 November 1997 on which the Director-General approves the port under section 37, each port is treated as having been approved under section 37; and
 - (c) for the period between 1 July 1995 and the date after 1 July 1995 on which the Director-General approves a port under section 37, every requirement of section 37 concerning the port is treated as having been satisfied.
- (2) The effect of subsection (1) is that a biosecurity control area existed at each port specified in Part A of Schedule 9 for the time to which both the following apply:

- (a) the time occurred in the period between 1 July 1995 and the date after 1 July 1995 on which the Director-General approves the port under section 37; and
 - (b) throughout the time, the port had a place that—
 - (i) was part of the port; and
 - (ii) was, by written agreement with the port's operator, under the control of the Director-General for the purposes of this Act.
- (3) For the ports specified in Part B of Schedule 9, the following provisions apply for the period between 25 May 1998 and the date after 25 May 1998 on which the Director-General approves each port under section 37:
 - (a) each port is treated as having been approved under section 37; and
 - (b) every requirement of section 37 concerning the port is treated as having been satisfied.
- (4) The effect of subsection (3) is that a biosecurity control area existed at each port specified in Part B of Schedule 9 for the time to which both the following apply:
 - (a) the time occurred in the period between 25 May 1998 and the date after 25 May 1998 on which the Director-General approves the port under section 37; and
 - (b) throughout the time, the port had a place that—
 - (i) was part of the port; and
 - (ii) was, by written agreement with the port's operator, under the control of the Director-General for the purposes of this Act.
- (5) The ports specified in Schedule 9 are treated as having been designated as approved, or approved, under section 37—
 - (a) for all kinds of aircraft, for each airport; and
 - (b) for all kinds of vessels, for each other port.
- (6) The following provisions apply to a designation or an approval to which this section applies:
 - (a) after consulting under section 37D, the Director-General may suspend or revoke the designation or approval under section 37B; and
 - (b) the designation or approval ceases to have effect in the manner and at the time stated in the suspension or revocation.
- (7) Subsections (1) to (6)—
 - (a) do not apply in civil proceedings commenced before 13 December 2005; and
 - (b) apply in civil proceedings commenced on or after 13 December 2005; and

- (c) do not apply to conduct that—
 - (i) resulted or could result in the entry of a conviction or the entry of a conviction and the imposition of a sentence; and
 - (ii) occurred at a port before or in the period described for the port in subsection (8); and
 - (d) apply to conduct that occurs at a port after the period described for the port in subsection (8).
- (8) The periods are,—
- (a) for each port specified in Part A of Schedule 9, the period that starts on 1 July 1995 and ends on the earlier of the following dates:
 - (i) the date after 1 July 1995 on which the Director-General approves the port under section 37; and
 - (ii) the date on which the Biosecurity (Status of Specified Ports) Amendment Act 2005 receives the Royal assent; and
 - (b) for each port specified in Part B of Schedule 9, the period that starts on 25 May 1998 and ends on the earlier of the following dates:
 - (i) the date after 25 May 1998 on which the Director-General approves the port under section 37; and
 - (ii) the date on which the Biosecurity (Status of Specified Ports) Amendment Act 2005 receives the Royal assent.

Section 184A: inserted, on 13 December 2005, by section 4 of the Biosecurity (Status of Specified Ports) Amendment Act 2005 (2005 No 124).

185 Expiration of sections 179 to 183

- (1) Sections 179 to 182 shall expire with the close of 30 September 1998.
- (2) Section 183 shall expire with the close of 30 June 1996.

Section 185: replaced, on 27 June 1996, pursuant to regulation 5(3) of the Biosecurity (Transition and Savings) Regulations 1996 (SR 1996/123).

185A Organisms illegally present in New Zealand at commencement of Hazardous Substances and New Organisms Act 1996

- (1) Where, at the date of commencement of the Hazardous Substances and New Organisms Act 1996, any organism is present in New Zealand in contravention of the Animals Act 1967 or the Plants Act 1970, that organism is deemed to be uncleared goods for the purposes of this Act.
- (2) Where, at the date of commencement of the Hazardous Substances and New Organisms Act 1996, a genetically modified organism is present in New Zealand and section 257 of the Hazardous Substances and New Organisms Act 1996 does not apply to that organism, that organism is deemed to be uncleared goods for the purposes of this Act.

- (3) Where section 259 of the Hazardous Substances and New Organisms Act 1996 applies to a culture of micro-organisms and no application has been made in respect of that culture of micro-organisms within 1 year of the date of commencement of that Act, that culture of micro-organisms is, at the expiry of that year, deemed to be uncleared goods for the purposes of this Act.
- (4) Nothing in this section applies to the organism known as rabbit haemorrhagic disease virus, or rabbit calicivirus.

Section 185A: inserted, on 29 July 1998, by section 129 of the Biosecurity Amendment Act 1997 (1997 No 89).

Section 185A(4): inserted, on 29 July 1998, by section 4 of the Biosecurity (Rabbit Calicivirus) Amendment Act 1998 (1998 No 12).

Schedule 1
**Matters for consideration in the preparation of proposals for pest
management strategies**

[Repealed]

ss 60(2), 76(2)

Schedule 1: repealed, on 26 November 1997, by section 35(2)(a) of the Biosecurity Amendment Act 1997 (1997 No 89).

Schedule 2
Board of inquiry procedure

[Repealed]

ss 66, 80(1)

Schedule 2: repealed, on 18 September 2012, by section 80 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Schedule 3 Enactments repealed

s 167(1)

Agricultural Pests Destruction Act 1967 (1967 No 147) (RS Vol 19, p 65)

Agricultural Pests Destruction Amendment Act 1968 (1968 No 65) (RS Vol 19, p 148)

Agricultural Pests Destruction Amendment Act 1971 (1971 No 74) (RS Vol 19, p 149)

Agricultural Pests Destruction Amendment Act 1974 (1974 No 62) (RS Vol 19, p 150)

Agricultural Pests Destruction Amendment Act 1975 (1975 No 59) (RS Vol 19, p 151)

Agricultural Pests Destruction Amendment Act 1979 (1979 No 62) (RS Vol 19, p 151)

Agricultural Pests Destruction Amendment Act 1980 (1980 No 80) (RS Vol 19, p 153)

Agricultural Pests Destruction Amendment Act 1982 (1982 No 141) (RS Vol 19, p 156)

Agricultural Pests Destruction Amendment Act 1986 (1986 No 135) (RS Vol 19, p 156)

Agricultural Pests Destruction Amendment Act 1988 (1988 No 174)

Animals Act 1967 (1967 No 50) (RS Vol 21, p 73)

Amendment(s) incorporated in the Act(s).

Animals Amendment Act 1969 (1969 No 50) (RS Vol 21, p 151)

Animals Amendment Act 1974 (1974 No 17) (RS Vol 21, p 152)

Animals Amendment Act 1976 (1976 No 52) (RS Vol 21, p 154)

Animals Amendment Act 1977 (1977 No 142) (RS Vol 21, p 155)

Animals Amendment Act 1980 (1980 No 98) (RS Vol 21, p 156)

Animals Amendment Act 1981 (1981 No 14) (RS Vol 21, p 156)

Animals Amendment Act 1982 (1982 No 150) (RS Vol 21, p 158)

Animals Amendment Act 1983 (1983 No 34) (RS Vol 21, p 160)

Animals Amendment Act 1990 (1990 No 55)

Animals Amendment Act 1991 (1991 No 95)

Apiaries Act 1969 (1969 No 53) (RS Vol 21, p 163)

Amendment(s) incorporated in the Act(s).

Apiaries Amendment Act 1971 (1971 No 82) (RS Vol 21, p 190)

Apiaries Amendment Act 1973 (1973 No 49) (RS Vol 21, p 190)

Apiaries Amendment Act 1978 (1978 No 87) (RS Vol 21, p 191)

Apiaries Amendment Act 1980 (1980 No 61) (RS Vol 21, p 192)

Dog Control and Hydatids Act 1982 (1982 No 42)

Amendment(s) incorporated in the Act(s).

Ministry of Agriculture and Fisheries Act 1953 (1953 No 7)

Amendment(s) incorporated in the Act(s).

Noxious Plants Act 1978 (1978 No 15)

Noxious Plants Amendment Act 1981 (1981 No 82)

Noxious Plants Amendment Act 1982 (1982 No 88)

Noxious Plants Amendment Act 1988 (1988 No 204)

Plants Act 1970 (1970 No 151) (RS Vol 21, p 735)

Amendment(s) incorporated in the Act(s).

Poultry Act 1968 (1968 No 13) (RS Vol 18, p 605)

Poultry Amendment Act 1975 (1975 No 55) (RS Vol 18, p 619)

Rating Powers Act 1988 (1988 No 97)

Amendment(s) incorporated in the Act(s).

Wild Animal Control Act 1977 (1977 No 111)

Amendment(s) incorporated in the Act(s).

Schedule 4 Enactments amended

s 168(1)

Animal Remedies Act 1967 (1967 No 51) (RS Vol 21, p 11)

Amendment(s) incorporated in the Act(s).

Animals Act 1967 (1967 No 50) (RS Vol 21, p 73)

Amendment(s) incorporated in the Act(s).

Dog Control and Hydatids Act 1982 (1982 No 42)

Amendment(s) incorporated in the Act(s).

Environment Act 1986 (1986 No 127)

Amendment(s) incorporated in the Act(s).

Local Government Act 1974 (1974 No 66) (RS Vol 25, p 1)

Amendment(s) incorporated in the Act(s).

Meat Act 1981 (1981 No 56)

Amendment(s) incorporated in the Act(s).

Ombudsmen Act 1975 (1975 No 9) (RS Vol 21, p 657)

Amendment(s) incorporated in the Act(s).

Public Finance Act 1989 (1989 No 44)

Amendment(s) incorporated in the Act(s).

Rating Powers Act 1988 (1988 No 97)

Amendment(s) incorporated in the Act(s).

Summary Proceedings Act 1957 (1957 No 87) (RS Vol 9, p 583)

Amendment(s) incorporated in the Act(s).

Trade in Endangered Species Act 1989 (1989 No 18)

Amendment(s) incorporated in the Act(s).

Wild Animal Control Act 1977 (1977 No 111)

Amendment(s) incorporated in the Act(s).

Wildlife Act 1953 (1953 No 31) (RS Vol 7, p 819)

Amendment(s) incorporated in the Act(s).

Schedule 5
Regulations amended

s 168(2)

Meat Regulations 1969 (SR 1969/192)

Amendment(s) incorporated in the regulations.

Schedule 6 Orders in Council and notices revoked

s 167(3)

Agricultural Pest Destruction Boards Accounting Regulations 1981 (SR 1981/74)

Agricultural Pest Destruction Boards (Chairmen's Allowances) Notice 1981 (SR 1981/79)

Agricultural Pests Destruction Amendment Act Commencement Order 1981 (SR 1981/73)

Agricultural Pests (Exemption of Domestic Rabbits) Order 1985 (SR 1985/97)

Agricultural Pests (Exemption of Domestic Rabbits) Order 1985, Amendment No 1 (SR 1991/289)

Animals Diseases Order 1976 (SR 1976/213)

Animals Diseases Order 1978 (SR 1978/168)

Animals Diseases Order 1981 (SR 1981/256)

Animals Diseases Order 1992 (SR 1992/246)

Animals (Equine Viral Arteritis) Order 1989 (SR 1989/240)

Animals (Fish) Diseases Order 1980 (SR 1980/165)

Apiaries Amendment Act Commencement Order 1983 (SR 1983/63)

Dannevirke Borough Noxious Weeds Bylaw 1976 (*Gazette* 1977, Vol 1, p 86)

Introduction and Quarantine of Plants Regulations 1973 (SR 1973/109)

Introduction and Quarantine of Plants Regulations 1973, Amendment No 4 (SR 1987/349)

Pest Destruction Board Postal Voting Regulations 1971 (SR 1971/166)

Pests of Local Importance Order 1968 (*Gazette* 1968, Vol 2, p 1120)

Pests of Local Importance Order 1974 (*Gazette* 1974, Vol 3, p 2070)

Pests of Local Importance Order 1976, No 1 (*Gazette* 1976, Vol 1, p 288)

Pests of Local Importance Order 1976, No 2 (*Gazette* 1976, Vol 1, p 288)

Pests of Local Importance Order 1986 (*Gazette* 1986, Vol 5, p 4843)

Pheasant Farming Regulations 1976 (SR 1976/148)

Revocation of Deer Farming Regulations (SR 1979/108)

Revocation of Sale of Honey (Export Control) Regulations (SR 1982/131)

Revocation of the Grape Vine Disease Regulations (SR 1985/169)

Revocation of the Nursery Registration Regulations 1981 (SR 1981/101)

Revocation of the Potato Cyst Nematode Regulations 1974 (SR 1989/153)

Revocation of the Sausage Casing Importation Regulations (SR 1985/306)

Schedule 7
Regulations and orders continuing in force

[Spent]

s 173

Schedule 7: spent, on 29 July 1998, pursuant to section 136(c) of the Biosecurity Amendment Act 1997 (1997 No 89).

Schedule 8
Approved places of first arrival in New Zealand

s 184

Airports

Auckland International Airport
Whenuapai Airport (Royal New Zealand Air Force Base)
Ohakea Airport (Royal New Zealand Air Force Base)
Wellington International Airport
Christchurch International Airport

Other ports

Whangarei
Opuia
Auckland
Onehunga
Taharoa
Gisborne
Napier
New Plymouth
Wellington
Picton
Nelson
Lyttelton
Westport
Timaru
Dunedin
Port Chalmers
Bluff

Schedule 9
Designated as approved, or approved, ports

s 184A

Schedule 9: inserted, on 13 December 2005, by section 5 of the Biosecurity (Status of Specified Ports) Amendment Act 2005 (2005 No 124).

Part A

Airports

Auckland International Airport
Christchurch International Airport
Ohakea Airport (Royal New Zealand Air Force Base)
Wellington International Airport
Whenuapai Airport (Royal New Zealand Air Force Base)

Other ports

Auckland
Bluff
Dunedin
Gisborne
Lyttelton
Napier
Nelson
New Plymouth
Onehunga
Opuia
Picton
Port Chalmers
Taharoa
Timaru
Wellington
Westport
Whangarei

Part B

Airports

Dunedin Airport
Hamilton Airport
Invercargill Airport
Palmerston North Airport
Queenstown Airport

Other ports

Tauranga

Biosecurity Amendment Act (No 2) 2008

Public Act	2008 No 21
Date of assent	8 April 2008
Commencement	see section 2

1 Title

This Act is the Biosecurity Amendment Act (No 2) 2008.

2 Commencement

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

8 Validation of import health standards

- (1) Every import health standard issued before the commencement of this Act (including, but not limited to, the *Import Health Standard for the Importation into New Zealand of Specified Bee Products from Australia*, dated 2 August 2006) is, and has always been, as valid and effectual as if this Act had come into force on 29 July 1998.
- (2) However, a validation of an import health standard under subsection (1) only applies if, and to the extent that, the import health standard is invalid because it applies to goods the importation of which involves, or might involve, an incidentally imported new organism.

9 Suspension of power to give biosecurity clearance

Despite section 8, no biosecurity clearance may be given under section 26 of the principal Act for any goods to which the *Import Health Standard for the Importation into New Zealand of Specified Bee Products from Australia*, dated 2 August 2006 applies, until the Director-General has—

- (a) received a report from an independent review panel set up in consultation with the National Beekeepers Association of New Zealand to consider the scientific evidence in dispute in relation to that import health standard; and
- (b) determined whether any amendment to that import health standard is necessary to achieve the purpose of Part 3 of the principal Act; and
- (c) publicly notified that determination.

10 Validation of biosecurity clearances, etc

- (1) Any biosecurity clearances or the exercise of other powers under Part 3 of the principal Act before the commencement of this Act (including, but not limited to, biosecurity clearances given in accordance with the *Import Health Standard for the Importation into New Zealand of Specified Bee Products from Australia*,

dated 2 August 2006) are, and always have been, as valid and effectual as if this Act had come into force on 29 July 1998.

- (2) However, a validation under subsection (1) only applies to a biosecurity clearance or exercise of other power if, and to the extent that, the clearance or exercise of other powers is invalid because it applies to goods—
- (a) the importation of which involves, or might involve, an incidentally imported new organism; and
 - (b) whose movement and use includes any new organisms incidentally imported while they remain in or on those goods.

Biosecurity Law Reform Act 2012

Public Act	2012 No 73
Date of assent	17 September 2012
Commencement	see section 2

1 Title

This Act is the Biosecurity Law Reform Act 2012.

2 Commencement

- (1) Section 19 and Part 2 come into force on the date appointed by the Governor-General by Order in Council.
- (2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

Part 1

Amendments to Biosecurity Act 1993

3 Principal Act amended

This Part amends the Biosecurity Act 1993.

81 Transitional provision on import health standards

- (1) In this section,—
 - section 20** means section 20 of this Act
 - section 22** means section 22 of the principal Act as it was immediately before being repealed by section 20
 - section 22A** means section 22A of the principal Act as it was immediately before being repealed by section 20
 - sections 23 to 24A** mean sections 23 to 24A of the principal Act as substituted by section 20.
- (2) Subsection (3) applies when the process of making an import health standard under section 22 and section 22A is underway on the day on which this section commences.
- (3) If the process is to continue, it must continue from the provision in sections 23 to 24A that most accurately describes the stage that the process reached under section 22 or section 22A.

83 Transitional provision on pest management

- (1) A national pest management strategy in force on the day on which this section commences is deemed to be a national pest management plan.

- (2) A regional pest management strategy in force on the day on which this section commences is deemed to be a regional pest management plan.
- (3) A reference to a strategy rule in a national pest management strategy or regional pest management strategy to which subsection (1) or (2) applies is deemed to be a reference to a rule.
- (4) A reference in a document existing on the day on which this section commences to a pest management strategy is deemed to be a reference to the pest management plan that subsection (1) or (2) deems the strategy to be.
- (5) The references in clause 10(i) and (iii) in Schedule 2 of the Waitutu Block Settlement Act 1997 to a pest management strategy are deemed to be references to a pest management plan.
- (6) Consultation on a proposed national policy direction undertaken before the commencement of this section that is substantially the same as the consultation required by section 57 of the principal Act as substituted by section 39 of this Act, fulfils the requirement for consultation in section 57 of the principal Act as substituted by section 39 of this Act.
- (7) In subsections (8) to (20),—
 - (a) references to sections 62, 68, 78, 79B, and 88 mean those sections of the principal Act as they were immediately before being repealed by section 39 of this Act; and
 - (b) references to sections 100D, 100E(3), 100E(5), and 100G mean those provisions of the principal Act as substituted by section 39 of this Act; and
 - (c) references to Part 5 mean that Part of the principal Act as substituted by section 39 of this Act.

Dates and processes for reviews of existing strategies

- (8) Subsections (9) to (12) apply when section 88 requires that a national pest management strategy or a regional pest management strategy that is in force on the day on which this section commences be reviewed in the period starting with the date on which this section commences (which is a fixed date) and ending with the date on which the Minister or council makes a determination under section 100E(3) (which is not a fixed date).
- (9) The Minister or council must choose whether to conduct the review or to wait to see whether the determination under section 100E(3) requires a review under section 100E(5).
- (10) If the Minister or council chooses to conduct the review, the review must be conducted under section 100D, which applies with all necessary modifications.
- (11) If the Minister or council chooses to wait to see whether the determination under section 100E(3) requires a review under section 100E(5), and the determination does require a review, the review required by section 88 and the re-

view required by section 100E(5) must be conducted together under section 100D.

- (12) If the Minister or council chooses to wait to see whether the determination under section 100E(3) requires a review under section 100E(5), and the determination does not require a review, the review required by section 88 must be conducted under section 100D, which applies with all necessary modifications.
- (13) Subsections (14) and (15) apply when section 88 requires that a national pest management strategy or a regional pest management strategy that is in force on the day on which this section commences be reviewed on or after the date on which the Minister or council makes a determination under section 100E(3) (which is not a fixed date).
- (14) If the determination requires a review under section 100E(5), the Minister or council may decide that the review required by section 88 and the review required by section 100E(5) will be conducted together under section 100D and, if that decision is made, must apply section 100E(5)(a).
- (15) If the determination does not require a review under section 100E(5), the review required by section 88 must be conducted under section 100D, which applies with all necessary modifications.

Process for existing proposals

- (16) Subsection (17) applies if, on the day on which this section commences, the Minister has not yet acted under section 68 on a proposal notified under section 62 or a council has not yet acted under section 79B on a proposal notified under section 78.
- (17) Part 5 applies with the modification that, for all plans, the first, second, and third steps are deemed to have been taken.

Process for strategy due to expire

- (18) Subsections (19) and (20) apply if a national pest management strategy or a regional pest management strategy that is in force on the day on which this section commences is due to expire in the period starting with the date on which this section commences (which is a fixed date) and ending with the date on which the Minister or council makes a determination under section 100E(3) (which is not a fixed date).
- (19) If the Minister or council wishes to extend the expiry date without a review under section 100D, the Minister or council must—
 - (a) apply section 100G to make the extension; and
 - (b) set a new expiry date that is within 12 months of the existing expiry date.
- (20) The Minister or council may exercise the power in subsection (19) as many times as needed before the Minister or council makes a determination under section 100E(3).

- (21) Section 69(5) of the principal Act as substituted by section 39 of this Act, has no effect for a particular regional pest management plan until—
- (a) the national policy direction has been approved by the Governor-General under section 57 of the principal Act as substituted by section 39 of this Act; and
 - (b) the plan—
 - (i) has been the subject of a determination by the council under section 100E(3); and
 - (ii) if the determination was that the plan was inconsistent with the direction, has been amended under section 100E(4) or following a review under section 100E(5); and
 - (c) either—
 - (i) the time in section 76(5) of the principal Act as substituted by section 39 of this Act, has ended with no application to the Environment Court having been made; or
 - (ii) an application under section 76 of the principal Act as substituted by section 39 of this Act has been made and determined and either all appeals have been determined or the time for appealing has ended.
- (22) During the period in which section 69(5) of the principal Act as substituted by section 39 of this Act has no effect, as described in subsection (21), section 87(2) of the principal Act as it was immediately before it was repealed by section 39 of this Act continues to apply.
- (23) A small-scale management programme declared under section 100 of the principal Act in force on the day on which this section commences is deemed to have been made under section 100V as substituted by section 39 of this Act.

84 Transitional provision on import health standards on ballast water or biofouling

- (1) The import health standard entitled “Importing Ballast Water from all Countries”, and any import health standard issued under the principal Act that relates to biofouling, is valid until replaced by an appropriate craft risk management standard made under section 24G of the principal Act as inserted by section 20 of this Act.
- (2) The import health standards referred to in subsection (1) apply to craft that arrive in the EEZ until replaced by an appropriate craft risk management standard made under section 24G of the principal Act as inserted by section 20 of this Act.
- (3) In subsection (2), **arrive in the EEZ** has the meaning given to it by section 162AA(2) of the principal Act as inserted by section 66 of this Act.

85 Saving of provision on compensation

Section 162A of the principal Act, as it was immediately before its repeal by section 74 of this Act, applies in the case of a person whose eligibility for compensation under it arose before the commencement of this section.

Part 3**Related amendments to other enactments****92 Transitional provision on wallabies and possums**

- (1) The organism wallaby (family Macropodidae) is deemed to be an unwanted organism within the meaning in the Biosecurity Act 1993 for 2 years from the day on which this section commences.
- (2) The Governor-General may, by Order in Council, extend the period referred to in subsection (1).
- (3) The order—
 - (a) is a regulation for the purposes of the Regulations (Disallowance) Act 1989; and
 - (b) is a regulation for the purposes of the Acts and Regulations Publication Act 1989.
- (4) Subsections (5) to (7) apply to a permit, licence, or other authority (**permission**) that—
 - (a) was issued under the Wild Animal Control Act 1977; and
 - (b) relates to a wallaby (family Macropodidae) or possum (family Phalangeridae); and
 - (c) exists on the day on which this section commences.
- (5) A permission continues in force according to its tenor.
- (6) A reference in a permission to the Director-General of Conservation or to any other office or officer of the Department of Conservation or to the Minister of Conservation is deemed to be a reference to the Director-General as defined in the Biosecurity Act 1993.
- (7) The Director-General, as defined in the Biosecurity Act 1993, may exercise any or all of the powers under the Wild Animal Control Act 1977 to amend, suspend, revoke, or renew a permission.

Reprints notes

1 *General*

This is a reprint of the Biosecurity Act 1993 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Fire and Emergency New Zealand Act 2017 (2017 No 17): section 197

District Court Act 2016 (2016 No 49): section 261

Senior Courts Act 2016 (2016 No 48): section 183(b), (c)

Legislation (Confirmable Instruments) Amendment Act 2015 (2015 No 120): section 14

Standards and Accreditation Act 2015 (2015 No 91): section 45(1)

Biosecurity Amendment Act (No 2) 2015 (2015 No 56)

Biosecurity Amendment Act 2015 (2015 No 8)

Te Urewera Act 2014 (2014 No 51): section 138

Food Act 2014 (2014 No 32): section 447

Biosecurity (Border Processing—Trade Single Window) Amendment Act 2014 (2014 No 11)

Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102): section 126

Airports (Cost Recovery for Processing of International Travellers) Act 2014 (2014 No 3): section 21(1)

Companies Amendment Act 2013 (2013 No 111): section 14

Game Animal Council Act 2013 (2013 No 98): section 41(2)

Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Act 2013 (2013 No 19): section 8

Legislation Act 2012 (2012 No 119): section 77(3)

Biosecurity Law Reform Act 2012 (2012 No 73): Part 1

Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (2012 No 72): sections 169, 170

Biosecurity Amendment Act 2012 (2012 No 26)

Search and Surveillance Act 2012 (2012 No 24): section 203

Criminal Procedure Act 2011 (2011 No 81): section 413
Environmental Protection Authority Act 2011 (2011 No 14): section 53(1)
Biosecurity Amendment Act 2009 (2009 No 66)
Policing Act 2008 (2008 No 72): section 116(a)(ii)
Biosecurity Amendment Act (No 2) 2008 (2008 No 21)
Biosecurity Amendment Act 2008 (2008 No 6)
Biosecurity Amendment Act 2007 (2007 No 41)
Summary Proceedings Amendment Act 2006 (2006 No 13): section 31
Biosecurity (Status of Specified Ports) Amendment Act 2005 (2005 No 124)
Biosecurity Amendment Act 2005 (2005 No 91)
Biosecurity Amendment Act 2004 (2004 No 106)
Biosecurity Amendment Act 2003 (2003 No 38)
Local Government Act 2002 (2002 No 84): section 262
Local Government (Rating) Act 2002 (2002 No 6): section 137(1)
Animal Welfare Act 1999 (1999 No 142): section 194
Animal Products (Ancillary and Transitional Provisions) Act 1999 (1999 No 94): section 60(1)(a)
Biosecurity Amendment Act 1999 (1999 No 29)
Biosecurity (Rabbit Calicivirus) Amendment Act 1998 (1998 No 12)
Biosecurity Amendment Act 1997 (1997 No 89)
Biosecurity Amendment Act (No 2) 1996 (1996 No 78)
Customs and Excise Act 1996 (1996 No 27): section 289(1)
Biosecurity (Transition and Savings) Regulations 1996 (SR 1996/123): regulation 5
Chatham Islands Council Act 1995 (1995 No 41): section 36
Biosecurity Amendment Act 1994 (1994 No 24)
Biosecurity Amendment Act 1993 (1993 No 129)