

Biosecurity Law Reform Bill

Government Bill

As reported from the committee of the whole
House

Biosecurity Law Reform Bill

Key to symbols used in reprinted bill

**As reported from the committee of the whole
House**

text inserted

~~text deleted~~

Hon David Carter

Biosecurity Law Reform Bill

Government Bill

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Consequential amendments and revocations

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Biosecurity Law Reform Act **2010**.

2 Commencement

- (1) **Section 19 and Part 2** come into force on the date appointed by the Governor-General by an Order in Council. 5
- (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

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3 Principal Act amended

This Part amends the Biosecurity Act 1993.

4 Interpretation

- (1) This section amends section 2.
- (2) The following paragraph is added to the definition of **arrive in New Zealand**: 15

- “(d) in relation to goods, means to reach land within New Zealand territory after a flight or voyage originating outside New Zealand territory”.
- (3) The definition of **craft** is repealed and the following definition substituted: 5
- “**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— 10
- “(i) an oil rig; and
- “(ii) a structure or installation that is imported by being towed through the sea”.
- (4) The definition of **exclusive economic zone** is repealed.
- (5) The definition of **import** is repealed and the following definition substituted: 15
- “**import** is defined in **section 2A**”.
- (6) The definition of **import health standard** is repealed and the following definition substituted:
- “**import health standard** has the meaning given to it by **section 22**”.
- (7) The definition of **management agency** is repealed and the following definition substituted:
- “**management agency** means the body specified as the management agency in a pest management plan or a pathway management plan”.
- (8) The definition of **Minister** is repealed and the following definition substituted:
- “**Minister** means a Minister of the Crown”.
- (8A) The definition of **New Zealand territory** is amended by omitting “(as described in section 3 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977)”. 30
- (9) The definition of **organic material** is repealed and the following definition substituted:
- “**organic material** means material to which the following apply: 35
- “(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 5
- “(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 10
- “(c) it—
 “(i) is not cardboard, coal, paper, petroleum oil, a
 substance derived from coal, or a substance de-
 rived from petroleum oil; and
 “(ii) is not material purporting to be organic on the 15
 basis only that it contains cardboard, coal, paper,
 petroleum oil, a substance derived from coal, or
 a substance derived from petroleum oil”.
- (10) The definition of **pest** is amended by omitting “strategy” and
 substituting “plan”. 20
- (11) The definition of “**pest management strategy** and **strategy**”
 is repealed and the following definition substituted:
 “**pest management plan** means a plan to which the following
 apply:
 “(a) it is for the eradication or effective management of a 25
 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”.
- (12) The definition of **rule** is amended by omitting “strategy in ac- 30
 cordance with section 69B or section 80B” and substituting
 “plan or a pathway management plan”.
- (13) The definition of **small-scale management programme** is
 amended by omitting “declared under section 100” and sub-
 stituting “to which **section 100Q** applies”. 35
- (14) The definition of **unauthorised goods** is amended by inserting
 the following paragraphs after paragraph (c):
 “(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 5
“(ii) do not comply with the conditions; or
“(cc) goods that—
“(i) are subject to regulations made under **section 165(4)**; and 10
“(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 15
“(cf) goods in relation to which a person is subject to regulations made under **section 165(4)** and does not comply with the regulations; or” 20
- (15) The following definitions are inserted in their appropriate alphabetical order:
- “**accredited person** means a person currently accredited under section 103(7)
“**appointer** means the person who appoints an inspector or authorised person 25
“**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**
“**automated electronic system** means a system that is the subject of an arrangement under **section 142F** 30
“**biosecurity database** means the database established under **section 142A**
“**biosecurity law** means—
“(a) this Act: 35
“(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

“**compliance order** means an order made under **section 154**

“**craft risk management plan** means a plan approved under **section 24K** 5

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

“**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: 10

“(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 15

“(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 20

“**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 25

“(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 30

“~~**government/industry agreement**~~ has the meaning given to it in **section 400F**

“**law**, in **section 154N**, means—

“(a) this Act: 35

“(b) regulations:

“(c) a pest management plan:

“(d) a pathway management plan:

- “(e) a declaration of emergency under section 144
- “**national policy direction** means the direction approved under **section 57**
- “**official** means—
- “(a) the Director-General: 5
- “(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: 10
- “(g) a person appointed an auditor under **section 105B**
- “**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 15
- “(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: 20
- “(b) it is made under **Part 5**:
- “(c) it is a national pathway management plan or a regional pathway management plan
- “**post-clearance requirements** means requirements that apply after risk goods are given a biosecurity clearance 25
- “**producer**—
- “(a) means a person in the business of ~~1~~ or more of the following:
- “(i) ~~producing animals:~~
- “(ii) ~~producing the products of animals:~~ 30
- “(iii) ~~harvesting animals:~~
- “(iv) ~~harvesting the products of animals:~~
- “(v) ~~producing plants:~~
- “(vi) ~~producing the products of plants:~~
- “(vii) ~~harvesting plants:~~ 35
- “(viii) ~~harvesting the products of plants; and~~
- “(b) includes a person who uses horses in the course of a business

“**readiness or response activity** has the meaning given to it in **section 100T**

“**sector**—

“(a) means a group of producers in the business of—

“(i) producing animals; or 5

“(ii) producing the products of animals; or

“(iii) harvesting animals; or

“(iv) harvesting the products of animals; or

“(v) producing plants; or

“(vi) producing the products of plants; or 10

“(vii) harvesting plants; or

“(viii) harvesting the products of plants; and

“(b) includes a group of persons who use horses in the course of their businesses

“**sector** has the same meaning as it has in **Part 5A** 15

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

“**territorial sea** has the meaning given to it in section 3 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977 20

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

(16) Section 2(2) and (3) are repealed.

5 New sections 2A and 2B inserted 25

The following sections are inserted after section 2:

“**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. 30

“(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— 35

“(i) a person for whom goods are imported; and

- “(ii) the New Zealand agent of an overseas-based person who arranges the importation of goods; and
 “(iii) the New Zealand-based representative of an overseas-based person who arranges the importation of goods; and 5
 “(iv) the New Zealand-based consignee of imported goods.
 “(b) includes a person for whom goods are imported; and
 “(c) includes a New Zealand-based agent who— 10
 “(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; 15
 and
 “(e) includes the New Zealand-based consignee of imported goods.
- “2B **Interpretation of specified in relation to organisms**
 For the purposes of this Act, an organism may be specified by 20
 1 or both of the following:
 “(a) its scientific name:
 “(b) the name of a disease it causes.”
- 6 **Application of Act to syndromes of uncertain origin**
 Section 3(2) is amended by omitting “strategy” and substituting 25
 “plan or a pathway management plan”.
- 7 **Section 4 substituted**
 Section 4 is repealed and the following section substituted:
- “4 **Application of Act in territorial sea** 30
 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.” 35

8 Section 5 substituted

Section 5 is repealed and the following section substituted:

“5 Act binds the Crown

“(1) This Act binds the Crown, except as described in **subsection (2)**. 5

“(2) A regional pest management plan binds the Crown to the extent provided in **section 68(5)** and a regional pathway management plan binds the Crown to the extent provided in **section 86(5)**.”

9 Land may include parts of boundary roads

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(1) Section 6(1) is amended by omitting “any pest management strategy applies to land adjoining a road, that strategy may state that the land includes, for the purposes of the strategy” and substituting “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”. 15

(2) Section 6(2) is amended by omitting “any pest management strategy to do anything on or in relation to land, where the pest management strategy” and substituting “a pest management plan or a pathway management plan to do anything on or in relation to land, when the plan”. 20

10 Powers of responsible Minister

(1) Section 9(1)(b) is repealed.

(2) Section 9(1) is amended by inserting the following paragraphs after paragraph (c): 25

“(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)**: 30

“(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)**: 35

- “(cf) publish notices about industry organisations under **section 100V(2)**:
“(cg) recommend to the Governor-General under **section 100W(1)** the making of Orders in Council imposing readiness and response levies:” 5
- (3) Section 9(2) is amended by omitting “ (a), (c), (d), and (e) ”.
- 11 Section 10 substituted**
Section 10 is repealed and the following section substituted:
- “10 Functions of Ministers in relation to national plans**
- “(1) Any Minister may carry out the functions specified in **Part 5** 10
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 15
an Order in Council making a national pest management plan under **section 65(1)**:
“(c) approving the preparation of a national pathway management plan under **section 82(1)**:
“(d) recommending to the Governor-General the making of 20
an Order in Council making a national pathway management plan under **section 83(1)**:
“(e) appointing a management agency for a plan under **section 96(3)**:
“(f) disallowing an operational plan or part of it under **section 98(4)**: 25
“(g) reviewing, amending, revoking and replacing, or revoking a plan under **section 100**:
“(h) recommending to the Governor-General the making of
an Order in Council imposing a levy under **section 100G(1)**. 30
- “(3) No Minister may delegate the carrying out of the functions in **subsection (2)** to a person other than another Minister.”
- 12 Responsible Minister may require information**
Section 12(1) is amended by omitting “strategy” and substituting “plan or a pathway management plan”. 35

13 New cross headings and sections 12A and 12B inserted

The cross heading after section 12 is repealed and the following sections and cross headings are inserted after section 12:

“Director-General

“12A Director-General provides overall leadership 5

“(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— 10

“(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: 15

“(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. 20

“Local authorities

“12B Regional council provides leadership regionally 25

“(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— 30

“(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: 35

“(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.” 5
- 14 Powers of regional councils**
- (1) Section 13(1)(a) to (f) are repealed and the following paragraphs substituted:
- “(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; 10
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: 15
- “(c) prepare proposals for, make, and implement regional pest management plans and regional pathway management plans: 20
- “(d) appoint a management agency for a plan under **section 96(3)**:
- “(e) disallow an operational plan or part of it under **section 98(4)**:
- “(f) review, amend, revoke and replace, or revoke a plan under **section 100**: 25
- “(fa) declare and implement small-scale management programmes.”
- (2) Section 13(2) is repealed and the following subsection substituted: 30
- “(2) Regional councils have all the powers of territorial authorities set out in section 14.”
- 15 Powers of territorial authorities**
- (1) Section 14(b) is amended by omitting “strategy” and substituting “plan or a pathway management plan”. 35

- (2) Section 14(c) is amended by omitting “any pest management strategy” and substituting “a pest management plan or a pathway management plan”.
- (3) Section 14(d)(i) is amended by omitting “strategy” and substituting “plan or a pathway management plan”. 5
- (4) Section 14(d)(ii) is amended by omitting “strategy” and substituting “plan”.
- (5) Section 14(da) is amended by omitting “any national pest management strategy” and substituting “a national pest management plan or a national pathway management plan”. 10
- (6) Section 14(da) is amended by omitting “that strategy” and substituting “the plan”.

16 Transfer of powers, etc, by local authorities

- (1) Section 15(1)(b) is amended by omitting “strategy” and substituting “plan or a national pathway management plan”. 15
- (2) Section 15(1)(c) is amended by omitting “strategy” and substituting “plan or a regional pathway management plan”.
- (3) Section 15(2)(a) is amended by omitting “notifying or making any regional pest management strategy under Part 5 of this Act” and substituting “making a regional pest management plan or a regional pathway management plan under **Part 5**”. 20

17 Sections 16 to 16C substituted

Section 16 is repealed and the following sections are substituted:

“16 Purpose of Part 3” 25

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.

“16A General duty relating to importation” 30

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.

“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 5

~~“(b) provide an inspector with a declaration in an approved form setting out the steps taken to comply with the standard; if the inspector requires the person to do so.~~

“(b) if required by an inspector, do the following: 10

“(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. 15

“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— 20

“(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.” 25

18 Section 17 substituted

Section 17 is repealed and the following section substituted:

“17 Notice of craft’s intended arrival in New Zealand

“Craft to which section applies” 30

“(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: 5
- “(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. 10

“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: 15
- “(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. 20

“Form and manner of notices

- “(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. 25

“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 30
- “(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. 35

- “(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— 5
- “(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. 10
- “(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 15
- “(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. 20
- “(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. 25
- “*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: 30
- “(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: 35
- “(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—	5
“(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	10
“(iii) the earlier giving of the information is necessary to avoid or mitigate the risk.”	
19 Arrival of craft in New Zealand	15
Section 18 is amended by adding the following subsections:	
“(3) The person is deemed to have an inspector’s permission to discharge ballast water into New Zealand waters if the person has complied with rules made under section 388 of the Maritime Transport Act 1994.	20
“(4) In subsection (3), ballast water and New Zealand waters have the meanings given to them in the Maritime Transport Act 1994.”	
20 Sections 22 to 24K, and cross heading above section 24E, substituted	25
Sections 22 and 22A are repealed and the following sections and cross heading substituted:	
“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.	30
“(2) An import health standard must include pre-clearance requirements, which apply before risk goods may be imported, moved	35

- from a biosecurity control area or a transitional facility, or given a biosecurity clearance.
- ~~“(3) An import health standard may also include post-clearance requirements, which apply after risk goods are given a biosecurity clearance.”~~ 5
- “(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: 10
- “(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: 15
- “(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 20
- “(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 25 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: 30
- “(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 35 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 of a ~~declaration~~ 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: 5
- “(b) ~~on the use of the goods,—~~
- “(i) ~~the use to which they must be put; or~~
- “(ii) ~~the restrictions or conditions on their use:~~
- “(b) the use to which the goods must be put: 10
- “(ba) the restrictions or conditions on the use of the goods:
- “(c) the duration of the requirements:
- “(d) any other matters reasonably necessary for the effective implementation of the requirements.
- “**23 From draft to recommendation** 15
- “(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. 20
- “(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 25
- “(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 30
- “(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: 35
- “(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 5
- “(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: 10
- “(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: 15
- “(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 20
- “(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: 25
- “(i) the direct cost of the requirements on importers:
- “(ii) the direct cost of the requirements on the ~~government~~ Crown:
- “(iii) other economic factors involved in implementing the requirements: 30
- “(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 35
- “(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. 5

“24 **Review**

- “(1) A person consulted under **section 23(3)(b)** may raise with the Director-General the question whether scientific evidence about which the person raised a significant concern received sufficient regard in the development of the standard. 10
- “(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. 15
- “(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 20
 - “(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. 25
- “(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 30
 - “(c) give reasons for the determination.

“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— 35
 - “(a) make a decision on the issue of a standard; and

- ~~“(b) if the decision is to issue the standard, make a decision on the date on which the standard is to come into force.~~
- “(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. 5
- “(1A) 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. 10
- “(2) 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. 15
- “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: 20
- “(b) a proposal to revoke an import health standard.
- “(2) **Subsection (1)** does not apply to the amendment or revocation of an import health standard if a chief technical officer considers that—
- “(a) the standard needs to be amended or revoked urgently; 25
- or
- “(b) a proposed amendment is minor.
- “(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)**. 30
- “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. 35

- “(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* 5
- “(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. 10
- “(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.
- “**24C Publication** 15
- “(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 20
- “(b) on an internet site maintained by or on behalf of the Ministry.
- “**24D Compliance**
- “*Post-clearance requirements* 25
- “(1) A person to whose goods post-clearance requirements in a ~~standard~~ an import health standard apply must—
- “(a) take all reasonable steps to ensure that the goods comply with the requirements; and
- “(b) ~~provide an inspector with a declaration in an approved form setting out the steps taken to comply with the requirements, if the inspector requires the person to do so.~~ 30
- “(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 35

“(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. 5

“Craft risk management standards

“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— 10
- “(a) are associated with the entry of craft into New Zealand territory; 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— 15
- “(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— 20
- “(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— 25
- “(a) entering New Zealand territory:
 - “(b) arriving in New Zealand:
 - “(ba) arriving in the EEZ:
 - “(c) while they remain in New Zealand territory. 30
- “(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: 35

- “(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: 5
 - “(b) the period before the craft’s arrival in New Zealand by which the information must be provided:
 - “(c) the form ~~of a declaration~~ and manner in which the information must be provided. 10
- “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. 15
- “(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 20
 - “(b) any other persons the chief technical officer considers to be representative of the classes of persons having an interest in it. 25
- “(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: 30
 - “(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: 35
 - “(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: 5
- “(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: 10
 - “(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 15
- “(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: 20
 - “(ii) the direct cost of the requirements on the ~~government~~ Crown;
 - “(iii) other economic factors involved in implementing the requirements: 25
 - “(iv) technical and operational factors involved in implementing the requirements; 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. 30

“24G Issue

After receiving the officer’s recommendation under **section 24F(5)**, the Director-General must—

- “(a) make a decision on the issue of a standard; and 35
- “(b) if the decision is to issue the standard, make a decision on the date on which the standard is to come into force.

“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— 5

“(a) decide on the date on which the standard is to come into force; and

“(b) issue the standard with the date in it.

“24H Amendment, revocation, suspension, and reinstatement 10

“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: 15

“(b) a proposal to revoke a craft risk management standard.

~~“(2) **Subsection (1)** does not apply to the amendment or revocation of a craft risk management standard if a chief technical officer considers that—~~

~~“(a) the standard needs to be amended or revoked urgently;~~ 20

~~or~~

~~“(b) a proposed amendment is minor.~~

“(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)**. 25

“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. 30

“(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. 35

“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. 5
- “(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. 10

“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— 15
- “(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.

“24J Compliance 20

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) provide an inspector with a declaration in an approved form setting out the steps taken to comply with the standard, if the inspector requires the person to do so. 25
- “(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 30
- “(ii) provide the inspector with the declaration in an approved manner.

“24K Craft risk management plans

- “(1) This section applies if a person— 35

- “(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. 5
- “(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. 10
- “(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. 15
- “(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— 20
 - “(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 25
 - “(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. 30
- “(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 35

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 5
 - “(b) ~~provide an inspector with a declaration in an approved form setting out the steps taken to comply with the plan, if the inspector requires the person to do so.~~
 - “(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 10
 - “(ii) provide the inspector with the declaration in an approved manner.”
- 22 Goods to be cleared for entry into New Zealand** 15
- Section 25(2) and (3) are repealed and the following subsections substituted:
- “(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. 20
- “(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 25 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 30 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— 35
- “(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: 5
- “(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 10 other persons who come into possession or control of the goods before they are ~~cleared~~ given a biosecurity clearance; and
 - “(c) take all other reasonable steps to ensure that other persons act within its terms. 15
- “(9) A person who comes into possession or control of the goods before they are ~~cleared~~ given a biosecurity clearance and has had the terms of the authorisation communicated under **subsection (8)(b)** must act within the terms.”
- 23 Section 26 substituted** 20

Section 26 is repealed and the following section substituted:
- “**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**. 25
 - “(2) An inspector must not give a clearance for the entry into New Zealand of goods contrary to section 28.”
- 24 Sections 27 and 27A substituted**

Section 27 is repealed and the following sections are substituted: 30
- “**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— 35

- “(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 5
- “(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 10
- “(c) that—
- “(i) the goods are goods to which an import health standard applies; and
- “(ii) the goods comply with the ~~pre-clearance requirements in the standard~~ requirements in the standard for receiving a clearance; or 15
- “(d) that—
- “(i) the goods are goods to which an import health standard applies; and
- “(ii) the goods do not comply with the ~~pre-clearance requirements in the standard~~ requirements in the standard for receiving a clearance; and 20
- “(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 25
- “(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 30 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: 35
- “(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)**: 5
 - “(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 ~~pre-clearance~~ requirements in an applicable import health standard; and 10
 - “(iii) the reasons for giving the clearance.
- “**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. 15
- “(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. 20
- “(4) The conditions may,—
- “~~(a) on the use of the goods, specify—~~
 - “~~(i) the use to which they must be put; or~~
 - “~~(ii) the restrictions or conditions on their use:~~
 - “(a) specify the use to which the goods must be put: 25
 - “(aaa) specify the restrictions or conditions on the use of the goods:
 - “(aa) specify how long a restriction or condition lasts by reference to a period of time, a date, or an event:
 - “(b) specify how the goods must be managed or disposed of: 30
 - “(c) specify the place or area within which the goods must be kept, managed, or used:
 - “(d) require notification of a change in circumstances that affects the goods:
 - “(e) require reporting to an inspector or another specified 35 person in specified circumstances on specified matters:

“(g) deal with any other matters reasonably necessary for the effective management of the risks associated with the goods.”

25 Section 28B substituted

Section 28B is repealed and the following section substituted: 5

“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: 10

“(a) section 38BA:

“(b) section 38C:

“(c) section 38I:

“(d) section 48:

“(e) section 49F.” 15

26 Uncleared imports

Section 30(1) is repealed and the following subsections are substituted:

“(1) An inspector may require a person arriving in New Zealand to surrender to an inspector uncleared imported goods that are risk goods that the person has in his or her possession or under his or her control. 20

“(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. 25

“(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: 30

“(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: 35

- “(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: 5
- “(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.” 10

27 Processing unaccompanied goods

Section 30A(2) and (3) are repealed and the following subsections substituted:

- “(2) An inspector may enter a transitional facility or biosecurity control area for the purposes of **subsection (1)**, but must do so— 15
 - “(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— 20
 - “(a) are risk goods; or
 - “(b) contain risk goods; or
 - “(c) are unauthorised goods; or
 - “(d) contain unauthorised goods. 25
- “(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. 30
- “(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. 35
- “(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. 5
- “(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. 10
- “(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 15
- “(b) dispose of the goods as the chief technical officer thinks fit.”

28 Boarding of craft

Section 31(1) is amended by repealing paragraph (d) and substituting the following paragraphs: 20

- “(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 ~~the outside of the hull~~ its exterior surfaces, by an inspector.” 25

28A Risk goods on board craft

- (1) Section 33(1) is amended by inserting “or attached to the outside of” after “on board”.
- (2) Section 33(2)(b) is amended by omitting “and destroy” and substituting “, destroy, or deal with”. 30
- (3) Section 33(3) is amended by inserting “or attached to the outside of” after “on board” in each place where it appears.

29 Sections 35 and 35A substituted

Section 35 is repealed and the following sections are substituted:

“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— 5
- “(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: 10
 - “(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. 15
- “(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. 20
- “(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— 25
 - “(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. 30
- “(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. 35

“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: 5
- “(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— 10
 - “(i) may be applicable to the person; and
 - “(ii) may not be exercised or carried out by an officer present; and 15
 - “(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: 20
 - “(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: 25
 - “(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: 30
 - “(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. 35
- “Definition for this section*
- “(4) In this section, **Act** means the Customs and Excise Act 1996 or the Immigration Act 2009.”

30 Movement of risk goods

Section 36 is amended by omitting “or wants to move”.

30AA Approval of arrival of craft at port not approved as place of first arrival

Section 37A(1) and (2) are repealed and the following subsections substituted: 5

“(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 10

“(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— 15

“(a) the importation of risk goods; and

“(b) the entry of the craft into New Zealand territory. 20

“(2A) The Director-General may give his or her approval subject to the necessary conditions.”

30A New section 38 substituted

Section 38 is repealed and the following section substituted:

“38 Importers’ records” 25

“(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**; 30

“(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: 35

“(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.”

31 Approval of transitional facilities and containment facilities

5

(1) The heading of section 39 is repealed and the heading **Approval and cancellation of approval of transitional facilities and containment facilities** substituted.

(2) Section 39(1) is repealed and the following subsections are substituted:

10

“(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.”

15

(2A) Section 39(2) is amended by inserting “and manner” after “form”.

(3) Section 39 is amended by inserting the following ~~subsection~~ subsections after subsection (3):

20

“(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.”

25

(4) Section 39(7) is amended by omitting “operator of a transitional facility, or a containment facility” and substituting “facility operator”.

30

32 Approval of facility operators

(1) The heading of section 40 is repealed and the heading **Approval and cancellation of approval of facility operators** substituted.

(1A) Section 40(1) is amended by inserting “and manner” after “form”.

35

- (2) Section 40(3) is repealed and the following subsections are substituted:
- “(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— 5
- “(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. 10
- “(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: 15
 - “(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— 20
 - “(i) management control in New Zealand or another country: 25
 - “(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. 30
- “(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 35
 - “(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.” 5

(3) Section 40(4) is amended by inserting “and whether or not the Director-General has suspended the person’s approval under **section 40D**,” after “to a person,” 10

(4) Section 40(6) is repealed and the following subsection substituted:

“(6) A facility operator must comply with—

“(a) all the conditions of the facility approval and the operator approval; and 15

“(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.” 20

33 New sections 40A to 40F inserted

The following sections are inserted after section 40:

“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. 25

“(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. 30

“(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. 35

- “(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. 5
- “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. 10
- “(2) The Director-General must give the notice before the suspension takes effect.
- “(3) The notice must specify— 15
- “(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. 20
- “(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. 25
- “(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 30
- “(d) the steps to be taken to enable the extension to be lifted.
- “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, 35

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. 5

“**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 10
- “(b) the facility operator has committed an offence under **section 154M(18)**.
- “(2) The maximum period of the suspension is 3 months.
- “(3) The Director-General may extend the period of a suspension 15 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 20 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 25 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. 30

“**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. 35

- “(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 5
 - “(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. 10
- “(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 15
 - “(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.
- “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. 20
- “(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.” 25
- 34 Purpose of Part 4**
 Section 42 is amended by omitting “strategies” from each place where it appears and substituting “plans or pathway management plans” in each place. 30
- 35 Notifiable organisms**
 Section 45(3) is amended by omitting “strategy” and substituting “plan”. 35

- 36 Communication of pest or ~~notifiable~~ unwanted organism**
- (2) Section 52(a) is amended by omitting “strategy” and substituting “plan”.
- (3) Section 52(c) is amended by omitting “Minister.” and substituting “Minister; or”. 5
- 37 Parts 5 and 5A substituted**
Part 5 is omitted and the following Parts are substituted:
- “Part 5**
“Pest management
- “54 Purpose of this Part** 10
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 well-being, 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 15 20
- “**(b)** the appropriate distribution of costs associated with the instruments and measures.
- “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. 25
- “**(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,— 30
- “**(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 35

- “(c) the department or regional council must make the decision within the time or extended time.

“Policy direction

“**56 Responsible Minister provides leadership through national policy direction**

5

- “(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.

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“Good neighbour rules

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- “(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 100AA(3)***

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

“Directions

- “(4) The national policy direction may include directions on— 25

- “(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. 30

- “(4A) 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: 35

- “(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: 5
- “(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: 10
- “(h) the relationship between plans and small-scale management programmes:
- “(i) the achievement of appropriate consistency between plans and instruments under other enactments: 15
- “(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. 20
- “(5) Before including a direction under **subsection (4)**, 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: 25
- “(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: 30
- “(f) affect the accountability of decision-makers, including the accountability of local decision-makers to their communities of interest:
- “(g) affect any other matter that the Minister considers relevant. 35

“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— 5
 - “(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 10
 - “(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. 15
- “(3A) 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.
- “(4) The Minister may then— 20
 - “(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.
- “(5) 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. 25
- “(6) The Governor-General in Council may approve the national policy direction. 30
- “(7) As soon as practicable after the Governor-General in Council has approved the national policy direction, the Minister must— 35
 - “(a) publish a notice in the *Gazette* stating that the ~~direction~~ has been approved 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.
- “(8) The national policy direction— 5
- “(a) is a regulation for the purposes of the Regulations (Disallowance) Act 1989; and
- “(b) is not a regulation for the purposes of the Acts and Regulations Publication Act 1989.
- “**58 Process for amending or revoking and replacing national policy direction** 10
- “(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 15
- “(b) apply the process in **section 57(2) to (7)** 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— 20
- “(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 25
- “(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 (7)**.
- “(4) An amendment under **subsection (1) or (2)** or a replacement direction under **subsection (3)**— 30
- “(a) is a regulation for the purposes of the Regulations (Disallowance) Act 1989; and
- “(b) is not a regulation for the purposes of the Acts and Regulations Publication Act 1989. 35

“Pest management plans

“National pest management plans

- “59 **Definitions for sections 60 to 66**
 For the purposes of **sections 60 to 66**,—
 “**management agency** means a management agency responsible for implementing a national pest management plan 5
 “**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. 10
- “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. 15
- “61 **~~Plan initiated by proposal~~ First step: plan initiated by proposal**
 “(1) ~~The making of a plan is initiated by~~ The first step in the making of a plan is a proposal made by—
 “(a) a Minister; or 20
 “(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 25
 “(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: 30
 “(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: 35

- “(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: 5
- “(vi) the reasons why a national plan is more appropriate than a regional plan:
- “(vii) an analysis of the benefits and costs of the ~~pro-~~ ~~posed~~ plan: 10
- “(viii) the extent to which any persons, or persons of a class or description, are likely to benefit from the ~~proposed~~ 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: 15
- “(x) the rationale for the proposed allocation of costs:
- “(xi) if it is proposed that the plan be funded by a levy under **section 100G**, how the proposed levy satisfies **section 100G(5)(d)** and what matters will be specified under **section 100I(1)**: 20
- “(xii) whether any unusual administrative problems or costs are expected in recovering the costs allocated to any of the persons whom the ~~proposed~~ plan requires plan would require to pay the costs: 25
- “(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— 30
- “(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: 35
- “(ii) the marketing overseas of New Zealand products:
- “(f) if the ~~proposed~~ 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: 5
- “(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: 10
- “(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 ~~proposed~~ plan: 15
- “(n) information on the disposal of the proceeds of any receipts arising in the course of implementing the ~~proposed~~ plan:
- “(na) 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: 20
- “(o) whether the ~~proposed~~ 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 anticipated costs of implementing the ~~proposed~~ plan: 25
- “(q) how it is proposed that the costs be funded:
- “(r) the period for which it is proposed the plan be in force:
- “(s) the consultation, if any, that has occurred on the proposal and the outcome of it: 30
- “(sa) 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. 35

~~61A~~ **Next steps**

- “(1) The Minister may act under **section 64** only if the Minister—
- “(a) is satisfied as described in **subsections (2) to (4)**; and

- “(b) has made the decision described in **subsection (5)**.”
- “(2) If the proposal sets out a proposed rule that the Minister is disposed to accept, the Minister must be satisfied that the proposed rule—
- “(a) would assist in achieving the plan’s objectives; and 5
 - “(b) would not trespass unduly on the rights of individuals.
- “(3) The Minister must be satisfied of the general matters in **section 62**.”
- “(4) The Minister must be satisfied of the consultation matters in **section 63**. 10
- “(5) The Minister must decide which body is to be the management agency, applying **section 96**.”
- “62 General matters**
- “(2) The Minister must be satisfied that the proposal— 15
- “(a) is not frivolous or vexatious; and
 - “(b) is clear enough to be readily understood; and
 - “(c) is not inconsistent with the national policy direction; and
 - “(d) has merit as a means of eradicating or effectively managing the subject of the plan, which means— 20
 - “(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 25 or descriptions of organisms proposed to be specified as pests under the plan.
 - “(e) complies with **section 61(2)**.”
- “(3) The Minister must be satisfied that each subject is capable of causing at some time an adverse effect on 1 or more of the following in New Zealand: 30
- “(a) economic wellbeing;
 - “(b) the viability of threatened species of organisms;
 - “(c) the survival and distribution of indigenous plants or animals; 35
 - “(d) the sustainability of natural and developed ecosystems, ecological processes, and biological diversity.

- “(e) soil resources:
- “(f) water quality:
- “(g) human health:
- “(ga) social and cultural wellbeing:
- “(h) the enjoyment of the recreational value of the natural environment: 5
- “(i) the relationship between Maori, their culture, and their traditions and their ancestral lands, waters, sites, waahi tapu, and taonga:
- “(j) animal welfare: 10
- “(4) The Minister must be satisfied that, for each subject,—
 - “(a) the benefits of the proposed plan would outweigh the costs, after taking account of the likely consequences of inaction or other courses of action; and
 - “(b) persons who are required, as a group, to meet directly the costs of implementing the proposed plan— 15
 - “(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 20
 - “(c) there is likely to be adequate funding for the implementation of the proposed plan for the shorter of its proposed duration and 5 years:
- “(5) The Minister must be satisfied that the implementation of the proposed plan would not be contrary to New Zealand’s international obligations: 25
- “(6) The Minister must be satisfied that, if the Minister rejected a similar proposal within the last 3 years, new and material information is now available: 30
- “(7) The Minister must be satisfied that, during the development of the proposal, the process requirements for a proposed plan in the national policy direction, if there were any, were complied with:
- “63 **Consultation matters** 35
 - “(1A) The Minister must be satisfied that, during the development of the proposal,—

- “(a) Ministers whose responsibilities may be affected by the proposed plan were consulted; and
- “(b) local authorities whose responsibilities may be affected by the proposed plan were consulted.
- “(1B) The Minister must be satisfied that, if consultation with tangata whenua or other persons was appropriate during the development of the proposal, sufficient consultation occurred. 5
- “(1) In considering whether the Minister is satisfied as required by **subsection (1B)**, the Minister must have regard to the following: 10
- “(a) the scale of the impacts on persons who are likely to be affected by the proposal;
- “(b) whether the persons likely to be affected by the proposal or their representatives have already been consulted and, if so, the nature of the consultation; 15
- “(c) the level of support for, or opposition to, the proposal from persons who are likely to be affected by it.
- “(2) **Subsections (3) and (4)** apply if the Minister is not satisfied as required by **subsections (1A) and (1B)**:
- “(3) The Minister may require consultation to be undertaken on the proposal. 20
- “(4) 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— 25
- “(a) consultation with persons likely to be affected by the proposal 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; 30
- “(c) public notification of the proposal and the receipt of submissions.
- “(5) The Minister must be satisfied that the Minister has considered the issues raised in all the consultation undertaken on the proposal. 35

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 5
- “(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— 10
- “(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 15
- “(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: 20
- “(i) economic wellbeing:
- “(ii) the viability of threatened species of organisms:
- “(iii) the survival and distribution of indigenous plants or animals: 25
- “(iv) the sustainability of natural and developed ecosystems, ecological processes, and biological diversity:
- “(v) soil resources: 30
- “(vi) water quality:
- “(vii) human health:
- “(viii) social and cultural wellbeing:
- “(ix) the enjoyment of the recreational value of the natural environment: 35
- “(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— 5
- “(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 10
- “(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 15
- “(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 20
- “(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. 25

“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— 30
- “(a) that, if Ministers’ responsibilities may be affected by the plan, the Ministers have been consulted; and 35
- “(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: 5
- “(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 10
- “(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. 15
- “(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— 20
- “(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: 25
- “(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. 30
- “64 Contents of plan Fourth step: approval of preparation of plan and decision on management agency**
- “(1) ~~When the Minister has taken the steps described in **section 61A**, the Minister may approve the preparation of a plan.~~
- “(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 35

take the fourth step in the making of a plan, which is to approve the preparation of a plan.

“(1A) If the Minister approves the preparation of a plan, the Minister must apply **section 96** to decide which body is to be the management agency.

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“Matters to be specified

“(2) 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: 10

“(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: 15

“(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: 20

“(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:

“(ja) 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: 25

“(k) the portions of road, if any, adjoining land covered by the plan and, as authorised by section 6, also covered by the plan: 30

“(l) the plan’s commencement date and termination date:

“(m) any ~~other~~ matters required by the national policy direction.

“Compensation

“(3) A plan— 35

“(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: 5
 - “(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. 10

“*Rules*

- “(4) 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: 15
 - “(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: 20
 - “(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: 25
 - “(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: 30
 - “(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: 35

- “(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: 5
- “(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: 10
- “(o) requiring the destruction of goods if the goods may contain or harbour the pest or otherwise pose a risk of spreading the pest: 15
- “(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: 20
- “(s) prohibiting or regulating the movement of goods that may contain or harbour the pest or otherwise pose a risk of spreading the pest. 25
- “(5) 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: 30
- “(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:
- “(e) specify that a contravention of the rule creates an offence under **section 154M(19)**. 35

“64A 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**,— 5

“(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 10

“(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— 15

“(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 20

“(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 25

“(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.

“65 Making of plan 30

“(1) ~~When the Minister is satisfied with the contents of a plan prepared under **section 64**~~ If the Minister is satisfied of the matters in **section 64A**, the Minister may recommend to the Governor-General that an Order in Council be made making the plan. 35

“(2) 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.

“66 **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. 5

“(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 10

“(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: 15

“(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: 20

“(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. 25

“(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. 30

“(4A) 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. 35

- “(4B) The Minister must determine the period of an exemption that the Minister grants.
- “(5) 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 5
 - “(b) the reasons for the exemption; and
 - “(c) the period of the exemption.
- “(6) The following apply to the extension of the period of an exemption:
- “(a) the Minister may grant an extension of the period; and 10
 - “(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)** 15 more than once; and
 - “(e) extensions of the period of an exemption must be notified in the *Gazette*.
- “(7) Exemptions—
- “(a) are regulations for the purposes of the Regulations (Dis- 20 allowance) Act 1989; and
 - “(b) are not regulations for the purposes of the Acts and Regulations Publication Act 1989.

“Regional pest management plans

- “67 **Definitions for sections 68 to 76** 25
 For the purposes of **sections 68 to 76**,—
- “**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 30
 - “**proposal** means a proposal for a regional pest management plan
 - “**rule** means a rule in a regional pest management plan.

“68 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. 5
- “(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. 10
- “(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. 15

“69 ~~Plan initiated by proposal~~ First step: plan initiated by proposal

- “(1) ~~The making of a plan is initiated by~~ The first step in the making of a plan is a proposal made by—
- “(a) the council; or 20
- “(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 25
- “(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: 30
- “(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: 35
- “(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: 5
- “(vi) the reasons why the plan is more appropriate than relying on voluntary actions:
- “(vii) an analysis of the benefits and costs of the ~~proposed~~ plan:
- “(viii) the extent to which any persons, or persons of a class or description, are likely to benefit from the ~~proposed~~ plan: 10
- “(ix) the extent to which any persons, or persons of a class or description, contribute to the creation, continuance, or exacerbation of the problems 15
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 100G**, how the proposed levy satisfies **section 100G(5)(d)** and what matters will 20
be specified under **section 100I(1)**:
- “(xii) whether any unusual administrative problems or costs are expected in recovering the costs allocated to any of the persons whom the ~~proposed~~ 25
~~plan requires~~ 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, 30
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 ~~proposed~~ plan would affect another pest management plan or a pathway management plan, how it is proposed to co-ordinate the implementation of the plans: 35
- “(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: 5
- “(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: 10
- “(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 ~~proposed~~ plan: 15
- “(o) information on the disposal of the proceeds of any receipts arising in the course of implementing the ~~proposed~~ plan:
- “(p) whether the ~~proposed~~ 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: 20
- “(q) the anticipated costs of implementing the ~~proposed~~ plan:
- “(r) how it is proposed that the costs be funded:
- “(s) the period for which it is proposed the plan be in force: 25
- “(t) the consultation, if any, that has occurred on the proposal and the outcome of it:
- “(ta) any matter that the national policy direction requires be specified in a plan:
- “(u) the steps that have been taken to comply with the process requirements in the national policy direction, if there were any. 30

~~“69A Next steps~~

- ~~“(1) The council may act under **section 72** only if the council—~~
- ~~“(a) is satisfied as described in **subsections (2) to (4)**; and~~ 35
- ~~“(b) has made the decision described in **subsection (5)**.~~

- “(2) If the proposal sets out a proposed rule that the council is disposed to accept, the council must be satisfied that the proposed rule—
- “(a) would assist in achieving the plan’s objectives; and
 - “(b) would not trespass unduly on the rights of individuals. 5
- “(3) The council must be satisfied of the general matters in **section 70**.
- “(4) The council must be satisfied of the consultation matters in **section 74**.
- “(5) The council must decide which body is to be the management agency, applying **section 96**. 10
- “70 General matters**
- “(2) The council must be satisfied that the proposal—
- “(a) is not frivolous or vexatious; and
 - “(b) is clear enough to be readily understood; and 15
 - “(c) 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 20
 - “(iv) any regulations; or
 - “(v) a regional policy statement or regional plan prepared under the Resource Management Act 1991; and
 - “(d) has merit as a means of eradicating or effectively managing the subject of the plan, which means— 25
 - “(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. 30
 - “(e) complies with **section 69(2)**.
- “(3) The council must be satisfied that each subject is capable of causing at some time an adverse effect on 1 or more of the following in the region: 35
- “(a) economic wellbeing;

- “(b) the viability of threatened species of organisms:
- “(c) the survival and distribution of indigenous plants or animals:
- “(d) the sustainability of natural and developed ecosystems, ecological processes, and biological diversity: 5
- “(e) soil resources:
- “(f) water quality:
- “(g) human health:
- “(ga) social and cultural wellbeing:
- “(h) the enjoyment of the recreational value of the natural environment: 10
- “(i) the relationship between Maori, their culture, and their traditions and their ancestral lands, waters, sites, waahi tapu, and taonga:
- “(j) animal welfare: 15
- “(4) The council must be satisfied that, for each subject,—
- “(a) the benefits of the proposed plan would outweigh the costs, after taking account of the likely consequences of inaction or other courses of action; and
- “(b) persons who are required, as a group, to meet directly the costs of implementing the proposed plan— 20
- “(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 25
- “(c) there is likely to be adequate funding for the implementation of the proposed plan for the shorter of its proposed duration and 5 years.
- “(5) The council must be satisfied that, if the council rejected a similar proposal within the last 3 years, new and material information is now available. 30
- “(6) The council must be satisfied that, during the development of the proposal, the process requirements for a proposed plan in the national policy direction, if there were any, were complied with. 35

~~71~~ **Consultation matters**

~~(1A)~~ The council must be satisfied that, during the development of the proposal,—

~~(a)~~ Ministers whose responsibilities may be affected by the proposed plan were consulted; and 5

~~(b)~~ local authorities whose responsibilities may be affected by the proposed plan were consulted; and

~~(c)~~ the tangata whenua of the area who may be affected by the proposed plan were consulted through iwi authorities and tribal runanga. 10

~~(1B)~~ The council must be satisfied that, if consultation with other persons was appropriate during the development of the proposal, sufficient consultation occurred.

~~(1)~~ In considering whether the council is satisfied as required by **subsection (1B)**, the council must have regard to the following: 15

~~(a)~~ the scale of the impacts on persons who are likely to be affected by the proposal;

~~(b)~~ whether the persons likely to be affected by the proposal or their representatives have already been consulted and, if so, the nature of the consultation; 20

~~(c)~~ the level of support for, or opposition to, the proposal from persons who are likely to be affected by it.

~~(2)~~ **Subsections (3) and (4)** apply if the council is not satisfied as required by **subsections (1A) and (1B)**. 25

~~(3)~~ The council may require consultation to be undertaken on the proposal.

~~(4)~~ 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— 30

~~(a)~~ consultation with persons likely to be affected by the proposal 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; 35

~~(c)~~ public notification of the proposal and the receipt of submissions.

“(5) The council must be satisfied that it has considered the issues raised in all the consultation undertaken on the proposal.

“70 **Second step: satisfaction on requirements**

If the council is satisfied that **section 69** 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— 5

“(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 10

“(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 15

“(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— 20

“(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 25

“(d) that each subject is capable of causing at some time an adverse effect on 1 or more of the following in the region: 30

“(i) economic wellbeing;

“(ii) the viability of threatened species of organisms;

“(iii) the survival and distribution of indigenous plants or animals; 35

“(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 5
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 10
- “(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 15
group, to meet directly any or all of the costs of imple-
menting the plan—
 - “(i) would accrue, as a group, benefits outweighing
the costs; or
 - “(ii) contribute, as a group, to the creation, continu- 20
ance, or exacerbation of the problems proposed
to be resolved by the plan; and
- “(g) that, for each subject, there is likely to be adequate fund-
ing for the implementation of the plan for the shorter of
its proposed duration and 5 years; and
- “(h) that each proposed rule— 25
 - “(i) would assist in achieving the plan’s objectives;
and
 - “(ii) would not trespass unduly on the rights of indi-
viduals; and
- “(i) that the proposal is not frivolous or vexatious; and 30
- “(j) that the proposal is clear enough to be readily under-
stood; 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. 35

“71 Third step: satisfaction with consultation or requirement of more consultation

- “(1) If the council is satisfied of the matters in **section 70**, 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—** 5
- “(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** 10
- “(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:** 15
- “(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** 20
- “(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 72**.** 25
- “(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—** 30
- “(a) consultation with persons likely to be affected by the plan or with their representatives;** 35
- “(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.
- “72 Contents of plan Fourth step: approval of preparation of plan and decision on management agency 5**
- “(1) ~~When the council has taken the steps described in **section 69A**, the council may approve the preparation of a plan.~~
- “(1) If the council is satisfied as required by **section 71(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. 10
- “(1A) If the council approves the preparation of a plan, the council must apply **section 96** to decide which body is to be the management agency. 15
- “Matters to be specified*
- “(2) A plan must specify the following matters:
- “(a) the pest or pests to be eradicated or managed: 20
 - “(b) the plan’s objectives: 20
 - “(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: 25
 - “(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: 30
 - “(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: 35

- “(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 ~~other~~ matters required by the national policy direction. 5
- “*Compensation*
- “(3) A plan—
- “(a) may provide for the payment of compensation for losses incurred as a direct result of the implementation of the plan: 10
- “(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: 15
- “(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. 20
- “*Rules*
- “(4) 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: 25
- “(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: 30
- “(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: 35
- “(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: 5
 - “(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: 10
 - “(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: 15
 - “(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: 20
 - “(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: 25
 - “(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: 30
 - “(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. 35
- “(5) 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: 5
- “(e) specify that a contravention of the rule creates an offence under **section 154M(20)**. 10

“72A Fifth step: satisfaction on contents of plan and requirements

- If the council is satisfied that **section 72** 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 72**,— 15
- “(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 20
 - “(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 25
 - “(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— 30
 - “(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 35

“(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 5

“(ii) will not trespass unduly on the rights of individuals.

“73 Decision on plan Sixth step: decision on plan

“(1) When the council is satisfied ~~with the content of a plan prepared under **section 72** of the matters in **section 72A**~~, the council must prepare a written report on the plan. 10

“(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 15

“(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 20

“(b) stating where the plan resulting from the council’s decision can be read.

“74 Application to Environment Court about plan

“(1) This section applies to the plan resulting from the council’s decision under **section 73(3)**. 25

“(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: 30

“(c) whether the process requirements for a ~~proposed~~ plan in the national policy direction, if there were any, were complied with.

“(2A) If consultation on the proposal for the plan was undertaken by way of public notification of the proposal and the receipt of submissions, ~~the following persons may make an application~~ 35

- ~~to the Environment Court: a person who made a submission on the proposal may make an application to the Environment Court.~~
- ~~“(a) a person who participated in consultation during the preparation of the proposal: 5~~
- ~~“(b) a person who made a submission on the proposal: 5~~
- “(2B) 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: 10
- “(a) a person who participated in consultation during the preparation of the proposal and whose views were provided or recorded in writing: 10
- “(aa) a person who participated in consultation on the proposal and whose views were provided or recorded in writing: 15
- “(b) 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.
- “(3) The application must be made within 15 working days after the date of the public notice. 20
- “(4) The application is made under section 291 of the Resource Management Act 1991 and regulations made under the Resource Management Act 1991.
- “(5) The court must hold a public hearing on the application. 25
- “(6) 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.
- “**75 Making of plan** 30
- “(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 74**, the council must make the plan.
- “(3) If a person makes an application under **section 74**, the council must— 35

- “(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: 5
- “(a) ~~if the matter dealt with in the application is severable from the rest of the plan, the council must—~~
 - “(i) ~~make the plan without the matter in it; and~~
 - “(ii) ~~if the Environment Court gives a direction under **section 74(6)(b)**, comply with the direction:~~ 10
 - “(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 applica- 15
tion under **section 74(6)(a)**, make the part of the plan that deals with the matter:
 - “(ii) if the Environment Court gives a direction under **section 74(6)(b)**, comply with the direction be- 20
fore 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 74(6)(a)**, the council must make the plan: 25
 - “(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 74(6)(b)**, the council must comply with the direction before making the plan.
- “(5) The council must give public notice of— 30
- “(a) the making of the plan; and
 - “(b) ~~the plan’s commencement date:~~
 - “(b) the plan’s commencement date or dates, as follows:
 - “(i) the commencement date of a plan made in the 35
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 40
made in the circumstances described in **subsec-**

tion (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. 5

“76 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. 10
- “(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 15
- “(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: 20
- “(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: 25
- “(iii) the requirement is clearly unreasonable or inappropriate in the particular case: 25
- “(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. 30
- “(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. 35
- “(4A) 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.

“(4B) The council must determine the period of an exemption that the council grants.

“(5) The council must provide a register that— 5

“(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— 10

“(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.

“(6) The following apply to the extension of the period of an exemption: 15

“(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 20

“(d) the council may exercise the power in **paragraph (a)** more than once.

“Pathway management plans

“National pathway management plans 25

“77 **Definitions for sections 78 to 84**

For the purposes of **sections 78 to 84**,—

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

“**plan** means a national pathway management plan 30

“**proposal** means a proposal for a national pathway management plan

“**rule** means a rule in a national pathway management plan.

“78 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. 5

“79 Plan initiated by proposal First step: plan initiated by proposal

- “(1) ~~The making of a plan is initiated by~~ The first step in the making of a plan is a proposal made by—
- “(a) a Minister; or 10
- “(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: 15
- “(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: 20
- “(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: 25
- “(vi) the reasons why a national plan is more appropriate than a regional plan:
- “(vii) an analysis of the benefits and costs of the ~~pro-~~ posed plan: 30
- “(viii) the extent to which any persons, or persons of a class or description, are likely to benefit from the ~~proposed~~ 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: 35

- “(x) the anticipated costs of implementing the ~~pro-~~
~~posed~~ 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 5
under **section 100G**, how the proposed levy satisfies **section 100G(5)(d)** and what matters will be specified under **section 100I(1)**:
- “(xiv) whether any unusual administrative problems or 10
costs are expected in recovering the costs allocated to any of the persons whom the ~~proposed~~
~~plan requires~~ 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 15
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: 20
- “(e) if the ~~proposed~~ 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 imple- 25
ment 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 30
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: 35
- “(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 ~~proposed~~ plan:

- “(m) information on the disposal of the proceeds of any receipts arising in the course of implementing the ~~pro-~~posed plan:
- “(ma) 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: 5
- “(n) whether the ~~proposed~~ 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 period for which it is proposed the plan be in force: 10
- “(p) the consultation, if any, that has occurred on the proposal and the outcome of it:
- “(pa) any matter that the national policy direction requires be specified in a plan:
- “(q) the steps that have been taken to comply with the process requirements in the national policy direction, if there were any. 15

~~“79A~~ **Next steps**

- “(1) The Minister may act under **section 82** only if the Minister—
- “(a) is satisfied as described in **subsections (2) to (4)**; and 20
- “(b) has made the decision described in **subsection (5)**:
- “(2) If the proposal sets out a proposed rule that the Minister is disposed to accept, the Minister must be satisfied that the proposed rule—
- “(a) would assist in achieving the plan’s objectives; and 25
- “(b) would not trespass unduly on the rights of individuals:
- “(3) The Minister must be satisfied of the general matters in **section 80**:
- “(4) The Minister must be satisfied of the consultation matters in **section 81**: 30
- “(5) The Minister must decide which body is to be the management agency, applying **section 96**:

~~“80~~ **General matters**

- “(2) The Minister must be satisfied that the proposal—
- “(a) is not frivolous or vexatious; and 35
- “(b) is clear enough to be readily understood; and

- “(c) is not inconsistent with the national policy direction; and
- “(d) has merit as a means of managing the subject of the plan, which means the pathway or pathways; and
- “(e) complies with **section 79(2)**.” 5
- “(3) The Minister must be satisfied 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:
 - “(a) economic wellbeing;
 - “(b) the viability of threatened species of organisms; 10
 - “(c) the survival and distribution of indigenous plants or animals;
 - “(d) the sustainability of natural and developed ecosystems, ecological processes, and biological diversity;
 - “(e) soil resources; 15
 - “(f) water quality;
 - “(g) human health;
 - “(ga) social and cultural wellbeing;
 - “(h) the enjoyment of the recreational value of the natural environment; 20
 - “(i) the relationship between Maori, their culture, and their traditions and their ancestral lands, waters, sites, waahi tapu, and taonga;
 - “(j) animal welfare.
- “(4) The Minister must be satisfied that, for each subject,— 25
 - “(a) the benefits of the proposed plan would outweigh the costs, after taking account of the likely consequences of inaction or other courses of action; and
 - “(b) persons who are required, as a group, to meet directly the costs of implementing the proposed plan— 30
 - “(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 35
 - “(c) there is likely to be adequate funding for the implementation of the proposed plan for the shorter of its proposed duration and 5 years.

- “(5) The Minister must be satisfied that the implementation of the proposed plan would not be contrary to New Zealand’s international obligations.
- “(6) The Minister must be satisfied that, if the Minister rejected a similar proposal within the last 3 years, new and material information is now available. 5
- “(7) The Minister must be satisfied that, during the development of the proposal, the process requirements for a proposed plan in the national policy direction, if there were any, were complied with. 10
- “81 Consultation matters**
- “(1A) The Minister must be satisfied that, during the development of the proposal,—
- “(a) Ministers whose responsibilities may be affected by the proposed plan were consulted; and 15
- “(b) local authorities whose responsibilities may be affected by the proposed plan were consulted.
- “(1B) The Minister must be satisfied that, if consultation with tangata whenua or other persons was appropriate during the development of the proposal, sufficient consultation occurred. 20
- “(1) In considering whether the Minister is satisfied as required by **subsection (1B)**, the Minister must have regard to the following:
- “(a) whether the persons likely to be affected by the proposal or their representatives have already been consulted and, if so, the nature of the consultation; 25
- “(b) the scale of the impacts on persons who are likely to be affected by the proposal;
- “(c) the level of support for, or opposition to, the proposal from persons who are likely to be affected by it. 30
- “(2) **Subsections (3) and (4)** apply if the Minister is not satisfied as required by **subsections (1A) and (1B)**.
- “(3) The Minister may require consultation to be undertaken on the proposal.
- “(4) If the Minister requires consultation to be undertaken, the Minister must determine the way or ways in which the consulta- 35

tion must be undertaken, including, but not limited to, ways such as—

“(a) consultation with persons likely to be affected by the proposal 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: 5

“(c) public notification of the proposal and the receipt of submissions:

“(5) The Minister must be satisfied that the Minister has considered the issues raised in all the consultation undertaken on the proposal: 10

“80 Second step: satisfaction on requirements

If the Minister is satisfied that **section 79** 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— 15

“(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 20

“(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: 25

“(i) economic wellbeing;

“(ii) the viability of threatened species of organisms;

“(iii) the survival and distribution of indigenous plants or animals: 30

“(iv) the sustainability of natural and developed ecosystems, ecological processes, and biological diversity;

“(v) soil resources: 35

“(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: 5
“(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— 10
“(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 15
“(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 20
“(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 25
“(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 30
“(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.
- “81 **Third step: satisfaction with consultation or requirement of more consultation** 35
“(1) If the Minister is satisfied of the matters in **section 80**, 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 5
- “(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: 10
- “(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 15
- “(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 82**. 20
- “(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— 25
- “(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: 30
- “(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. 35

- “82 Contents of plan Fourth step: approval of preparation of plan and decision on management agency**
- “(1) ~~When the Minister has taken the steps described in section 79A, the Minister may approve the preparation of a plan.~~**
- “(1) If the Minister is satisfied as required by section 81(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.** 5
- “(1A) If the Minister approves the preparation of a plan, the Minister must apply section 96 to decide which body is to be the management agency.** 10
- “Matters to be specified*
- “(2) A plan must specify the following matters:**
- “(a) the pathway or pathways to be managed:** 15
- “(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:** 20
- “(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:** 25
- “(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:** 30
- “(ja) 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:**
- “(k) the portions of road, if any, adjoining land covered by the plan and, as authorised by section 6, also covered by the plan:** 35
- “(l) the plan’s commencement date and, if there is one, its termination date:**

“(m) any ~~other~~ matters required by the national policy direction.

“*Compensation*

“(3) A plan—

“(a) may provide for the payment of compensation for losses incurred as a direct result of the implementation of the plan: 5

“(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: 10

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

“*Rules*

15

“(4) 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: 20

“(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: 25

“(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: 30

“(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: 35

- “(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: 5
- “(k) prohibiting or regulating the use of specified practices in the management of organisms that may promote the spread of organisms through the pathway.
- “(5) A rule may—
- “(a) apply generally or to different classes or descriptions of persons, places, goods, or other things: 10
- “(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: 15
- “(e) specify that a contravention of the rule creates an offence under **section 154M(19)**.
- “**82A Fifth step: satisfaction on contents of plan and requirements** 20
- If the Minister is satisfied that **section 82** 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 82**,— 25
- “(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 30
- “(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 35

- “(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 5
- “(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 10
- “(f) that the implementation of the plan is not contrary to New Zealand’s international obligations.
- “**83 Making of plan**
- “(1) ~~When the Minister is satisfied with the content of a plan prepared under **section 82**~~If the Minister is satisfied of the matters in **section 82A**, the Minister may recommend to the Governor-General that an Order in Council be made making the plan. 15
- “(2) The order—
- “(a) is a regulation for the purposes of the Regulations (Disallowance) Act 1989; and 20
- “(b) is a regulation for the purposes of the Acts and Regulations Publication Act 1989.
- “**84 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 (1A)**:
- “(a) the New Zealand Defence Force;
- “(b) a Civil Defence Emergency Management Group established under the Civil Defence Emergency Management Act 2002: 30
- “(c) the New Zealand Police;
- “(d) the New Zealand Fire Service;
- “(e) the National Rural Fire Authority;
- “(f) rural fire authorities: 35
- “(g) DHBs, as defined in section 6 of the New Zealand Public Health and Disability Act 2000.

- “(1A) 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: 5
 - “(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. 10
- “(2) The Minister may exempt a person from a requirement in a rule, without conditions or on conditions that the Minister considers appropriate. 15
- “(3) The Minister may grant an exemption under **subsection (2)** only if—
- “(a) the Minister is satisfied that granting the exemption will not significantly prejudice the attainment of the plan’s objectives; and 20
 - “(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: 25
 - “(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: 30
 - “(iv) events have occurred that make the requirement unnecessary or inappropriate in the particular case.
- “(4) 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. 35

- “(5) The Minister may grant an exemption under **subsection (4)** only if the Minister is satisfied that events have occurred that make the requirement unnecessary or inappropriate.
- “(5A) 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. 5
- “(5B) The Minister must determine the period of an exemption that the Minister grants.
- “(6) As soon as practicable after granting an exemption, the Minister must publish a notice in the *Gazette* giving— 10
- “(a) a description of the exemption; and
 - “(b) the reasons for the exemption; and
 - “(c) the period of the exemption.
- “(7) The following apply to the extension of the period of an exemption: 15
- “(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 20
 - “(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*. 25
- “(8) Exemptions—
- “(a) are regulations for the purposes of the Regulations (Disallowance) Act 1989; and
 - “(b) are not regulations for the purposes of the Acts and Regulations Publication Act 1989. 30

“Regional pathway management plans

- “**85 Definitions for sections 86 to 94**
 For the purposes of **sections 86 to 94**,—
- “**council** means a regional council
 - “**management agency** means a management agency responsible for implementing a regional pathway management plan 35
 - “**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.

“**86 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. 5

“(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. 10

“(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. 15

“**87 Plan initiated by proposal First step: plan initiated by proposal**

“(1) ~~The making of a plan is initiated by~~ The first step in the making of a plan is a proposal made by— 20

“(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: 25

“(c) for each subject,—

“(i) a description of the actual or potential risks associated with it:

“(ii) the reasons for proposing a plan: 30

“(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 35

measures are preferable as a means of achieving the objectives:

- “(vi) an analysis of the benefits and costs of the ~~proposed~~ plan:
- “(vii) the extent to which any persons, or persons of a class or description, are likely to benefit from the ~~proposed~~ plan: 5
- “(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: 10
- “(ix) the rationale for the proposed allocation of costs:
- “(x) if it is proposed that the plan be funded by a levy under **section 100G**, how the proposed levy satisfies **section 100G(5)(d)** and what matters will be specified under **section 100I(1)**: 15
- “(xi) whether any unusual administrative problems or costs are expected in recovering the costs allocated to any of the persons whom the ~~proposed plan requires~~ plan would require to pay the costs: 20
- “(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: 25
 - “(ii) the marketing overseas of New Zealand products:
- “(e) if the ~~proposed~~ plan would affect another pathway management plan or a pest management plan, how it is proposed to co-ordinate the implementation of the plans: 30
- “(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: 35
- “(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 ~~proposed~~ plan: 5
- “(m) information on the disposal of the proceeds of any receipts arising in the course of implementing the ~~proposed~~ plan: 10
- “(n) whether the ~~proposed~~ 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 ~~proposed~~ plan: 15
- “(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:
- “(ra) any matter that the national policy direction requires be specified in a plan: 20
- “(s) the steps that have been taken to comply with the process requirements in the national policy direction, if there were any.
- “**87A Next steps** 25
- “(1) The council may act under **section 90** only if the council—
- “(a) is satisfied as described in **subsections (2) to (4)**; and
- “(b) has made the decision described in **subsection (5)**:
- “(2) If the proposal sets out a proposed rule that the council is disposed to accept, the council must be satisfied that the proposed rule— 30
- “(a) would assist in achieving the plan’s objectives; and
- “(b) would not trespass unduly on the rights of individuals:
- “(3) The council must be satisfied of the general matters in **section 88**: 35
- “(4) The council must be satisfied of the consultation matters in **section 89**:

~~“(5) The council must decide which body is to be the management agency, applying **section 96**.~~

~~“88 **General matters**~~

- ~~“(2) The council must be satisfied that the proposal—~~
- ~~“(a) is not frivolous or vexatious; and 5~~
 - ~~“(b) is clear enough to be readily understood; and~~
 - ~~“(c) is not inconsistent with—~~
 - ~~“(i) the national policy direction; or~~
 - ~~“(ii) any other pathway management plan or pest management plan; or 10~~
 - ~~“(iii) any regulations; or~~
 - ~~“(iv) a regional policy statement or regional plan prepared under the Resource Management Act 1991; and~~
 - ~~“(d) has merit as a means of managing the subject of the plan, which means the pathway or pathways; and 15~~
 - ~~“(e) complies with **section 87(2)**.~~
- ~~“(3) The council must be satisfied 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: 20~~
- ~~“(a) economic wellbeing;~~
 - ~~“(b) the viability of threatened species of organisms;~~
 - ~~“(c) the survival and distribution of indigenous plants or animals;~~
 - ~~“(d) the sustainability of natural and developed ecosystems, ecological processes, and biological diversity; 25~~
 - ~~“(e) soil resources;~~
 - ~~“(f) water quality;~~
 - ~~“(g) human health;~~
 - ~~“(ga) social and cultural wellbeing; 30~~
 - ~~“(h) the enjoyment of the recreational value of the natural environment;~~
 - ~~“(i) the relationship between Maori, their culture, and their traditions and their ancestral lands, waters, sites, waahi tapu, and taonga; 35~~
 - ~~“(j) animal welfare;~~
- ~~“(4) The council must be satisfied that, for each subject,—~~

- “(a) the benefits of the proposed plan would outweigh the costs, after taking account of the likely consequences of inaction or other courses of action; and
- “(b) persons who are required, as a group, to meet directly the costs of implementing the proposed plan— 5
- “(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 10
- “(c) there is likely to be adequate funding for the implementation of the proposed plan for the shorter of its proposed duration and 5 years.
- “(5) The council must be satisfied that, if the council rejected a similar proposal within the last 3 years, new and material information is now available. 15
- “(6) The council must be satisfied that, during the development of the proposal, the process requirements for a proposed plan in the national policy direction, if there were any, were complied with. 20
- “89 Consultation matters**
- “(1A) The council must be satisfied that, during the development of the proposal,—
- “(a) Ministers whose responsibilities may be affected by the proposed plan were consulted; and 25
- “(b) local authorities whose responsibilities may be affected by the proposed plan were consulted; and
- “(c) the tangata whenua of the area who may be affected by the proposed plan were consulted through iwi authorities and tribal runanga. 30
- “(1B) The council must be satisfied that, if consultation with other persons was appropriate during the development of the proposal, sufficient consultation occurred.
- “(1) In considering whether the council is satisfied as required by **subsection (1B)**, the council must have regard to the following. 35

- “(a) whether the persons likely to be affected by the proposal or their representatives have already been consulted and, if so, the nature of the consultation:
- “(b) the scale of the impacts on persons who are likely to be affected by the proposal: 5
- “(c) the level of support for, or opposition to, the proposal from persons who are likely to be affected by it.
- “(2) **Subsections (3) and (4)** apply if the council is not satisfied as required by **subsections (1A) and (1B)**:
- “(3) The council may require consultation to be undertaken on the proposal. 10
- “(4) 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— 15
 - “(a) consultation with persons likely to be affected by the proposal 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: 20
 - “(c) public notification of the proposal and the receipt of submissions.
- “(5) The council must be satisfied that it has considered the issues raised in all the consultation undertaken on the proposal.
- “**88** **Second step: satisfaction on requirements** 25

If the council is satisfied that **section 87** 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 30
 - “(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; 35
 - 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 5
- “(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: 10
- “(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: 15
- “(v) soil resources:
- “(vi) water quality:
- “(vii) human health:
- “(viii) social and cultural wellbeing: 20
- “(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: 25
- “(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— 30
- “(i) would accrue, as a group, benefits outweighing the costs; or
- “(ii) contribute, as a group, to the creation, continu- 35
ance, 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; 5
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 10
- “(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.
- “89 Third step: satisfaction with consultation or requirement of more consultation 15**
- “(1) If the council is satisfied of the matters in **section 88**, 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 20
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 25
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: 30
- “(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, 35
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 90**.
- “(4) If the council is not satisfied as required by **subsection (1)**, the council may require consultation to be undertaken on the proposal. 5
- “(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; 10
- “(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. 15
- “(6) After the consultation required by the council has been undertaken, the council must apply **subsection (1)** again.
- “90 Contents of plan Fourth step: approval of preparation of plan and decision on management agency** 20
- “(1) When the council has taken the steps described in **section 87A**, the council may approve the preparation of a plan.
- “(1) If the council is satisfied as required by **section 89(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. 25
- “(1A) If the council approves the preparation of a plan, the council must apply **section 96** to decide which body is to be the management agency. 30
- “Matters to be specified*
- “(2) 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. 35

- “(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: 5
- “(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: 10
- “(k) the portions of road, if any, adjoining land covered by the plan and, as authorised by section 6, also covered by the plan: 15
- “(l) the plan’s commencement date and, if there is one, its termination date:
- “(m) any ~~other~~ matters required by the national policy direction. 20

“*Compensation*

- “(3) A plan—
- “(a) may provide for the payment of compensation for losses incurred as a direct result of the implementation of the plan: 25
- “(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: 30
 - “(ii) loss suffered by a person who fails to comply with the plan.

“*Rules*

- “(4) A plan may include rules for all or any of the following purposes: 35
- “(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: 5
- “(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: 10
- “(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: 15
- “(i) prohibiting or regulating specified uses or movement of goods that may promote the spread of organisms through the pathway: 20
- “(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. 25
- “(5) 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: 30
- “(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:
- “(e) specify that a contravention of the rule creates an offence under **section 154M(20)**. 35

“90A Fifth step: satisfaction on contents of plan and requirements

If the council is satisfied that **section 90** 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 90**,—

5

“(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 10

 “(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 15

“(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— 20

 “(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 25

“(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 30

 “(ii) will not trespass unduly on the rights of individuals.

“91 Decision on plan Sixth step: decision on plan

“(1) When the council is satisfied with the content of a plan prepared under **section 90** of the matters in **section 90A**, the council must prepare a written report on the plan. 35

“(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. 5
- “(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.
- “92 Application to Environment Court about plan 10**
- “(1) This section applies to the plan resulting from the council’s decision under **section 91(3)**.
- “(2) The following matters may be the subject of an application to the Environment Court:
- “(a) any aspect of the plan: 15
- “(b) whether the plan is inconsistent with the national policy direction:
- “(c) whether the process requirements for a ~~proposed~~ plan in the national policy direction, if there were any, were complied with. 20
- “(2A) If consultation on the proposal for the plan was undertaken 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 person who made a submission on the proposal may make an application to the Environment Court. 25
- ~~“(a) a person who participated in consultation during the preparation of the proposal:~~
- ~~“(b) a person who made a submission on the proposal:~~
- “(2B) 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: 30
- “(a) a person who participated in consultation during the preparation of the proposal and whose views were provided or recorded in writing: 35

- “(aa) a person who participated in consultation on the proposal and whose views were provided or recorded in writing:
- “(b) 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
- “(3) The application must be made within 15 working days after the date of the public notice.
- “(4) The application is made under section 291 of the Resource Management Act 1991 and regulations made under the Resource Management Act 1991. 10
- “(5) The court must hold a public hearing on the application.
- “(6) 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. 15
- “93 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 92**, the council must make the plan. 20
- “(3) If a person makes an application under **section 92**, the council must—
- “(a) decide whether the matter dealt with in the application is severable from the rest of the plan; and 25
- “(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—~~ 30
- ~~“(i) make the plan without the matter in it; and~~
- ~~“(ii) if the Environment Court gives a direction under **section 92(6)(b)**, comply with the direction:~~
- “(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: 35

- “(i) if the Environment Court dismisses the application under **section 92(6)(a)**, make the part of the plan that deals with the matter:
- “(ii) if the Environment Court gives a direction under **section 92(6)(b)**, comply with the direction before making the part of the plan that deals with the matter: 5
- “(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 92(6)(a)**, the council must make the plan: 10
- “(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 92(6)(b)**, the council must comply with the direction before making the plan. 15
- “(5) The council must give public notice of—
- “(a) the making of the plan; and
- “(b) ~~the plan’s commencement date:~~
- “(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: 20
- “(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. 25 30
- “94 **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 (1A)**: 35
- “(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) the New Zealand Fire Service: 5
 - “(e) the National Rural Fire Authority:
 - “(f) rural fire authorities:
 - “(g) DHBs, as defined in section 6 of the New Zealand Public Health and Disability Act 2000.
- “(1A) An emergency is,— 10
- “(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: 15
 - “(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. 20
- “(2) The council may exempt a person from a requirement in a rule, without conditions or on conditions that the council considers appropriate. 25
- “(3) The council may grant an exemption under **subsection (2)** only if—
- “(a) the council is satisfied that granting the exemption will not significantly prejudice the attainment of the plan’s objectives; and 30
 - “(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: 35

- “(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
- “(4) 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. 10
- “(5) The council may grant an exemption under **subsection (4)** only if the council is satisfied that events have occurred that make the requirement unnecessary or inappropriate.
- “(5A) 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. 15
- “(5B) The council must determine the period of an exemption that the council grants.
- “(6) The council must provide a register that— 20
- “(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— 25
- “(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.
- “(7) The following apply to the extension of the period of an exemption: 30
- “(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 35
- “(d) the council may exercise the power in **paragraph (a)** more than once.

“Implementation of plans

“95 Definitions for sections 96 to 100B

For the purposes of **sections 96 to 100B**,—

“**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 5

“**operational plan** means a plan for the implementation of—

“(a) a national pest management plan: 10

“(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: 15

“(b) a regional pest management plan:

“(c) a national pathway management plan:

“(d) a regional pathway management plan.

“96 Management agencies

“(1) The management agency specified in a plan must be 1 of the following bodies: 20

“(a) a department:

“(b) a council:

“(c) a territorial authority:

“(d) a body corporate. 25

“(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— 30

“(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. 35

- “(2A) **Subsection (3)** 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 5
 - “(c) ceases to exist.
- “(3) The Minister or council must, as soon as practicable,—
- “(a) appoint another body to be the management agency; and
 - “(b) publicly notify the appointment.
- “**97 Powers in Part 6** 10
- “(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. 15
- “(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 20
 - “(c) the plan specifies the power as one to be used to implement that plan.
- “**98 Operational plans**
- “(1) A management agency must—
- “(a) prepare an operational plan within 3 months after the commencement date specified under **section 64(2)(l), 72(2)(m), 82(2)(l), or 90(2)(l)**; and 25
 - “(b) review the operational plan annually; and
 - “(c) decide on appropriate amendments to the operational plan, if necessary; and 30
 - “(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— 35

- “(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— 5
- “(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. 10
- “(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. 15
- “(5) A notice under **subsection (4)**— 20
- “(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 25
- “(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.
- “99 **Duration of plans** 30
- 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: 35
- “(c) the plan is revoked following a review under **section 100**.

“100 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 5
 - “(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 10
 - “(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; 15
 - 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— 20
- “(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. 25
- “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, 30
 - 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 35
 - 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, 69, 79, or 87** to the extent to which the sections are relevant and reading in any necessary modifications; and 5
 - “(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* 10
- “(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 66**, for a national pest management plan: 15
 - “(b) **sections 67 to 76**, for a regional pest management plan:
 - “(c) **sections 77 to 84**, for a national pathway management plan:
 - “(d) **sections 85 to 94**, for a regional pathway management plan. 20
- “Action after review*
- “(8) 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 25
 - “(c) the revocation of the plan or part of the plan; or
 - “(d) the leaving unchanged of the plan or part of the plan.
 - “(9) 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 (8)**. 30
- “Consequence of not complying with section*
- “(10) A plan does not cease to be in force only because it is not reviewed as required by this section. 35

“100AA Review of plans after national policy direction made approved, amended, or revoked and replaced

- “(1) This section applies when the national policy direction is—
- “(a) ~~made approved by the Governor-General~~ under **section 57**: 5
- “(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 ~~made approved by the Governor-General~~, amended, or replaced. 10
- “(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; ~~if there are any~~.
- “(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 100B** and must do so within the timing requirements in the direction, if there are any. 15
- “(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,— 20
- “(a) the Minister or council must initiate a review to address the inconsistency under **section 100(4)** within the timing requirements in the direction, if there are any; and 25
- “(b) **section 100(5) to (10)** apply.

“100A 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 100(3) or 100AA**. 30
- “(2) A person may apply to the Environment Court ~~for a declaration of 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. 35

- “(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— 5
 - “(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)**. 10

“**100B 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 100**, if the Minister is satisfied that the amendment— 15
 - “(a) does not have a significant effect on any person’s rights and obligations; and 20
 - “(b) is not inconsistent with the national policy direction.
- “(2) The Governor-General may make the order.
- “(3) The order — 25
 - “(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.

“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 100**, if the council is satisfied that the amendment— 30
 - “(a) does not have a significant effect on any person’s rights and obligations; and 35
 - “(b) is not inconsistent with the national policy direction.

“Councils’ powers and duties relating to regional plans

“100C Councils’ powers and duties

- “(1) This section applies to—
- “(a) a regional pest management plan: 5
 - “(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 10
 - “(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. 15
- “(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: 20
 - “(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,— 25
 - “(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: 30
 - “(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. 35

“Compensation

“100D Compensation

- “(1) This section applies to a pest management plan.
- “(2) **Subsection (3)** applies when—
 - “(a) a person owns— 5
 - “(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 10
 - “(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. 15
- “(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: 20
 - “(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. 25
- “(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. 30

“Funding of implementation of plans

“100E Definitions for sections 100F to 100N

- For the purposes of **sections 100F to 100N**, **plan** means—
- “(a) a national pest management plan:
 - “(b) a regional pest management plan: 35
 - “(c) a national pathway management plan:
 - “(d) a regional pathway management plan.

“100F 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.

“Funding from levy

5

“100G 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. 10
- “(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— 15
- “ (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; 20
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 25
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 30
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 35

- “(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. 5
- “(6) A levy order may be made from time to time.
- “(7) 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. 10

- “**100H 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. 15

- “**100I Contents of order**
 - “(1) A levy order must specify—
 - “(a) how the levy may be spent; and 20
 - “(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,— 25
 - “(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 30
 - “(iv) how the management agency must set the actual rate or rates of levy; and
 - “(i) 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 35
 - “(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 5
 - “(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 10
 - “(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,— 15
 - “(i) the appointment of arbitrators; and
 - “(ii) the procedures to be followed by arbitrators; and
 - “(iii) the remuneration of arbitrators; and 20
 - “(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 25
 - “(vii) any other matters relating to the resolution of disputes; and
 - “(l) the remuneration payable to an auditor appointed under **section 100K**.
 - “(2) A levy order may specify— 30
 - “(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: 35

- “(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: 5
- “(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. 10
- “(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.
- “**100J 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. 15
- “(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. 20
- “(3) A person responsible for collecting the levy must— 25
 - “(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 30
 - “(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 35

- “(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. 5
- “(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. 10
- “(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. 15
- “(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 20
- “(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.
- “100K Compliance audits for levy**
- “(1) This section applies while a levy order is in force. 25
- “(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: 30
- “(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: 35

- “(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: 5
- “(d) the extent to which appropriate amounts of the 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: 10
- “(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. 15
- “(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. 20
- “(6) A person is qualified for appointment as an auditor only if the person is—
 - “(a) a chartered accountant within the meaning of the New Zealand Institute of Chartered Accountants Act 1996; or 25
 - “(b) a member, fellow, or associate of an association of accountants that is—
 - “(i) constituted in a Commonwealth country outside New Zealand; and
 - “(ii) approved to audit company financial statements by the Minister of the Crown responsible under a warrant or as authorised by the Prime Minister for the administration of the Companies Act 1993; and 30
 - “(iii) named as approved under **subparagraph (ii)** in a notice published in the *Gazette* and current at the time of the appointment. 35
- “(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. 5
- “100L Power of auditors to require production of documents**
- “(1) This section applies to an auditor appointed under **section 100K**.
- “(2) The Minister may authorise the auditor, for the purposes of conducting an audit, to— 10
- “(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— 15
 - “(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 20
 - “(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 25
 - “(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. 30
- “(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 100K(3) or (5)**:
 - “(b) to a Minister: 35
 - “(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.
- “**100M Management agency to account for levy** 5

 - “(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: 10
 - “(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— 15
 - “(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 the 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. 20
 - “(2) The management agency must ensure that the statements are audited within 5 months after the end of the year.
- “**100N Orders to be confirmed** 25

 - “(1) **Subsection (2)** applies to a levy order that—
 - “(a) is made on or after 1 January and before 1 July in the same year; and
 - “(b) is not revoked with effect before or on 1 July in the next year; and 30
 - “(c) is not stopped from having effect before or on 1 July in the next year by the application of section 5 of the Regulations (Disallowance) Act 1989; and
 - “(d) will not be stopped from having effect before or on 1 July in the next year by the application of section 5 of 35 the Regulations (Disallowance) Act 1989.

- “(2) The order is deemed to have been revoked at the close of 30 June in the next year unless it has been confirmed by an Act of Parliament passed before or on that day.
- “(3) **Subsection (4)** applies to a levy order that—
- “(a) is made on or after 1 July and before or on 31 December 5
in the same year; and
 - “(b) is not revoked with effect before or on 1 January in the
year after the next year; and
 - “(c) is not stopped from having effect before or on 1 Janu- 10
ary in the year after the next year by the application of
section 5 of the Regulations (Disallowance) Act 1989;
and
 - “(d) will not be stopped from having effect before or on 1
January in the year after the next year by the applica- 15
tion of section 5 of the Regulations (Disallowance) Act
1989.
- “(4) The order is deemed to have been revoked at the close of 31 December in the year after the year in which it was made unless it has been confirmed by an Act of Parliament passed before or on that day. 20

“Funding from rates

“**1000 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. 25
- “(2) In making the decision, the council must have regard to—
- “(a) the extent to which the plan relates to the interests of the 30
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 in-
direct benefits from the implementation of the plan: 35
 - “(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: 5
- “(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. 10

“100P National pest management plan or national pathway management plan

Section 1000 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— 15

- “(a) national pest management plans; or
- “(b) national pathway management plans; or 20
- “(c) small-scale management programmes.

“Small-scale management programmes

“100Q Regional council may declare small-scale management programme

- “(1) A regional council may declare a small-scale management programme consisting of— 25
 - “(a) small-scale measures to eradicate or control an unwanted organism; and
 - “(b) provisions for compensation for losses caused by the programme. 30
- “(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 5
- “(ba) the programme is not inconsistent with the national policy direction; and
- “(bb) the process requirements in the national policy direction for declaring the programme, if there were any, were complied with; and 10
- “(c) 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
- “(d) 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. 15
- “(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 20
 - “(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. 25
- “(5) The public notice must specify—
- “(a) the unwanted organism that is the subject of the programme; and 30
 - “(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: 35
- “(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.

“100R 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. 5

“(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 10

“(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: 15

“(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. 20

“Part 5A

“Government/industry agreement for readiness or response 25

“100S Purpose of Part 5A

The purpose of this Part is to provide a framework that enables the government and industry to achieve the best possible outcomes from readiness or response activities by agreeing to— 30

“(a) work together to make joint decisions on the activities; and

“(b) jointly fund the costs of the activities in shares based on the public benefits and industry benefits that the activities deliver. 35

“100S 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—

5

“(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.

“100T Definitions for Part 5A

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“(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 100U**

15

“**industry organisation** means an organisation described in **section 100V**

“**payee** means the person to whom the levy is payable under **section 100X(2)**

“**readiness or response activity** means a readiness activity or a response activity

20

“**readiness or response levy order** means an Order in Council made under **section 100W**

“**sector** means a group made up of businesses—

“(a) that are engaged in 1 or more of the following activities:

25

“(i) producing animals:

“(ii) producing animal products:

“(iii) harvesting animals:

“(iv) harvesting animal products:

“(v) producing plants:

30

“(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

35

- “(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. 5
- “(3) A **response activity** means an activity undertaken—
- “(a) after an event described in **subsection (3A)**; and
- “(b) for a purpose described in **subsection (3B)**. 10
- “(3A) 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: 15
- “(c) the development of new control methods that could make it possible to eradicate an unwanted organism known to be present in New Zealand.
- “(3B) The purposes are— 20
- “(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: 25
- “(d) to reduce the geographical distribution of the unwanted organism;
- “(e) to eradicate the unwanted organism.
- “(4) A response activity ends when—
- “(a) the unwanted organism is confirmed to be eradicated; 30
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, 35
on the unwanted organism.

“100U 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 consists of—~~ 5

“(a) ~~a deed between the Director-General and 1 or more industry organisations; and~~

“(b) ~~1 or more operational arrangements, made under the deed, between the Director-General and 1 or more of the other parties to the deed.~~ 10

“(2) The agreement is made by deed between the Director-General and 1 or more industry organisations.

“(2A) 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: 15

“(b) for a party to the deed that does not make an operational agreement with the Director-General, the deed.

“(3) The agreement may include provisions on 1 or more of the following matters: 20

“(a) the unwanted organisms against which the parties wish to undertake readiness or response activities:

“(aa) readiness or response activities that the parties have agreed to undertake:

“(b) joint decision-making on the readiness or response activities that the parties wish to undertake: 25

“(c) 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: 30

“(ii) the methods by which each party will provide its share of the costs:

“(iv) ~~whether a cap will be imposed on a party’s liability to meet costs:~~ 35

“(iv) whether or not an industry party will limit its liability to meet costs by setting a fiscal cap:

“(d) the variation of the compensation provisions in **section 162A**, subject to the restriction that the Director-Gen-

- eral 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 cooperation with readiness or response activities: 5
- “(da) how the parties will engage on issues relating to parts of the biosecurity system other than readiness or response activities:
- “(e) any other matter that the parties agree on.
- “(4) The exercise of a statutory power under this Act cannot be challenged on the ground that it was the result of a joint decision under the agreement. 10
- “(4) **Subsection (5)** applies to the exercise of a statutory power under—
- “(a) this Act; or 15
- “(b) any other Act that confers powers to carry out readiness or response activities as defined in this Act.
- “(5) The exercise of the power cannot be challenged on the ground that it was the result of a joint decision under the agreement.
- “**100V Industry organisation** 20
- “(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. 25
- “(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: 30
- “(a) whether membership of the organisation is open to all producers who comprise the sector that the organisation claims to represent: 35
- “(b) the proportion of the producers who comprise the sector that are members of the organisation:

- “(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: 5
- “(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: 10
- “(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 15
- “(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. 20
- “(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. 25
- “(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. 30

~~“100W~~ Readiness or response levy orders

- “(1) ~~The Governor-General may impose a levy for the purpose of wholly or partly funding an industry organisation’s commitments under the agreement.~~
- “(2) ~~The levy may be imposed on a sector represented by an industry organisation that is a party to the agreement.~~ 35
- “(3) ~~A levy may be imposed only by Order in Council.~~

- ~~“(4) A levy order may be made only on the recommendation of the responsible Minister.~~
- ~~“(5) A levy order may be made from time to time.~~
- ~~“(6) A levy order~~
- ~~“(a) is a regulation for the purposes of the Regulations (Dis-allowance) Act 1989; and~~ 5
- ~~“(b) is a regulation for the purposes of the Acts and Regulations Publication Act 1989.~~

“100W 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. 10
- “(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. 15
- “(4) A levy may be imposed on a sector specified in a *Gazette* notice under **section 100V**.
- “(5) In addition, the levy may be imposed on persons outside a sector specified in a *Gazette* notice under **section 100V** if—
- “(a) the Minister is satisfied that— 20
- “(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 25
- “(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 30
- “(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 35

- “(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. 5
- “(7) For the purposes of **subsection (6)**, the Minister may be satisfied by consultation undertaken under **section 100V(6)**.
- “(8) A levy order may be made from time to time.
- “(9) A levy order— 10
- “(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.
- “100X Effect of order** 15
- “(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. 20
- “(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. 25
- “100Y 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 30
- “(c) the persons, if any, exempt from paying the levy; and
- “(ca) the basis on which the amount of levy must be calculated or ascertained; and
- “(d) on the rate of levy,—
- “(i) whether there is to be a single rate or 2 or more 35
different rates; and

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- “(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
 - “(v) the setting of the actual rate by the payee so that the industry organisation can meet its commitments under the agreement; and 5
 - “(vi) 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 10
 - “(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 15
 - “(j) 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 20
 - “(ii) the retention of the accounts, statements, or records for a specified period; and 25
 - “(k) 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 30
 - “(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 35
 - “(vii) any other matters relating to the resolution of disputes; and

- “(1) the remuneration payable to an auditor appointed under **section 100ZA**.
- “(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: 5
 - “(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: 10
 - “(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: 15
 - “(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 20
 - “(b) provide for a rate or rates to be set at zero.
- “**100Z 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. 25
- “(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. 30
- “(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 35

- “(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 5
- “(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. 10
- “(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— 15
- “(a) on the day or days specified in the order; or
- “(b) on a day or days calculated as specified in the order. 20
- “(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. 25
- “(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. 30
- “100ZA Compliance audits for levy**
- “(1) This section applies while a readiness or response levy order is in force. 35
- “(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: 5
- “(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: 10
- “(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: 15
- “(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. 20
- “(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. 25
- “(6) A person is qualified for appointment as an auditor only if the person is—
- “(a) a chartered accountant within the meaning of the New Zealand Institute of Chartered Accountants Act 1996; 30
or
- “(b) a member, fellow, or associate of an association of accountants that is—
- “(i) constituted in a Commonwealth country outside New Zealand; and 35
- “(ii) approved to audit company financial statements by the Minister of the Crown responsible under a warrant or as authorised by the Prime Minis-

- ter for the administration of the Companies Act 1993; and
- “(iii) named as approved under **subparagraph (ii)** in a notice published in the *Gazette* and current at the time of the appointment. 5
- “(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. 10
- “(8) A person appointed as an auditor is entitled to receive from the payee the remuneration provided for in the order.
- “**100ZB Power of auditors to require production of documents**
- “(1) This section applies to an auditor appointed under **section 100ZA**. 15
- “(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— 20
- “(i) are accounts, statements, or records; and
- “(ii) are required to be kept by this Act or a levy order; and 25
- “(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— 30
- “(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. 35
- “(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 100ZA(3) or (5)**:

“(b) to a Minister:

“(c) to a person authorised by a Minister to receive it: 5

“(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. 10

“100ZC Orders to be confirmed

“(1) **Subsection (2)** applies to a readiness or response levy order that—

“(a) is made on or after 1 January and before 1 July in the same year; and 15

“(b) is not revoked with effect before or on 1 July in the next year; and

“(c) is not stopped from having effect before or on 1 July in the next year by the application of section 5 of the Regulations (Disallowance) Act 1989; and 20

“(d) will not be stopped from having effect before or on 1 July in the next year by the application of section 5 of the Regulations (Disallowance) Act 1989.

“(2) The order is deemed to have been revoked at the close of 30 June in the next year unless it has been confirmed by an Act of Parliament passed before or on that day. 25

“(3) **Subsection (4)** applies to a readiness or response levy order that—

“(a) is made on or after 1 July and before or on 31 December in the same year; and 30

“(b) is not revoked with effect before or on 1 January in the year after the next year; and

“(c) is not stopped from having effect before or on 1 January in the year after the next year by the application of section 5 of the Regulations (Disallowance) Act 1989; and 35

“(d) will not be stopped from having effect before or on 1 January in the year after the next year by the applica-

tion of section 5 of the Regulations (Disallowance) Act 1989.

“(4) The order is deemed to have been revoked at the close of 31 December in the year after the year in which it was made unless it has been confirmed by an Act of Parliament passed before or on that day.” 5

38 Inspectors, authorised persons, and accredited persons

- (1) Section 103(1)(b) is amended by omitting “strategy” and substituting “plan or a national pathway management plan”. 10
- (2) Section 103(2)(b) is amended by omitting “strategy” and substituting “plan or a national pathway management plan”. 10
- (3) Section 103(3) is amended by omitting “strategy” and substituting “plan or a regional pathway management plan”. 10
- (4) Section 103(7) is amended by omitting “(to be known as accredited persons)”. 15

39 New sections 105A to 105F inserted

The following sections are inserted after section 105:

“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. 20
- “(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— 25
 - “(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. 30
- “(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: 35

- “(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— 5
- “(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: 10
- “(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: 15
- “(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— 20
- “(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. 25
- “(5A) 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. 30
- “(6) 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 35
- “(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.

“(7) 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’. 5

“**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. 10

“(3) Auditors may, but need not, be persons who are employed under the State Sector Act 1988 or by a regional council.

“**105C Audits**

“(1) The Director-General must set terms of reference for audits.

“(2) Audits include examinations, investigations, and reviews. 15

“(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: 20

“(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: 25

“(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: 30

“(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: 35

- “(i) any other class or description of audit specified in regulations.

“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. 5
- “(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. 10
- “(3) The auditor must conduct the audit within the terms of reference.

“105E Auditors’ powers

- “(1) An auditor may exercise the powers in this section for the purposes of an audit. 15
- “(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. 20
- “(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— 25
- “(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. 30
- “(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: 35

- “(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: 5
 - “(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. 10
- “(7) This section does not override the privilege against self-incrimination.
- “**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. 15
 - “(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 20
 - “(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— 25
 - “(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— 30
 - “(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)**. 35

- “(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— 5
- “(a) leave a notice stating that—
- “(i) the auditor has taken a document, article, or thing; and 10
- “(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.”
- 40 Sections 107 to 107B substituted** 15
Section 107 is repealed and the following sections are substituted:
- “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). 20
- “(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: 25
- “(aa) use the force that is reasonably necessary to detain the person:
- “(b) use the force that is reasonably necessary to stop the person if he or she is moving: 30
- “(c) 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— 35

- “(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: 5
- “(c) use the force that is reasonably necessary to stop the person if he or she is moving.

“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— 10

- “(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. 15

“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 20
- “(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 25
 - “(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 30
 - “(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 35
 - “(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 5
“(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 10
“(xiv) is endangering, or threatening to endanger, the life, health, or safety of a person or group of persons. 15
- “(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 20
“(b) allow the constable, bailiff, or employee or agent of a department to do what is necessary of the following:
“(i) question the person: 25
“(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. 30
- “(4) Reasonable force may be used, if necessary, to keep the person in the area for the period directed under **subsection (2)**.”
- 40A Power to search people**
Section 108(1) is amended by omitting “107(1)” wherever it appears and substituting “**107**” in each place. 35

41 Power of inspection

- (1) Section 109(1)(b) is amended by omitting “Managing or eradicating” and substituting “eradicating or managing”.
- (2) Section 109(1)(c) is amended by omitting “~~strategy this Act, the regulations, or any pest management strategy~~” and substituting “plan or a pathway management plan biosecurity law”. 5

42 Section 114 substituted

Section 114 is repealed and the following section substituted:

“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— 10

- “(a) eradicate or manage a pest or unwanted organism on the place: 15
- “(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.”

43 New section 117A inserted 20

The following section is inserted after section 117:

“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)**. 25
- “(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: 30
 - “*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: 35

- “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: 5
- “(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: 10
- “(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— 15
- “(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 20 goods, a notice stating 1 of the following:
- “(a) that the goods have been given a biosecurity clearance; or
- “(b) that the goods— 25
- “(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.
- “(6) ~~Section 199 of the Summary Proceedings Act 1957 applies with any necessary modifications to goods or documents detained under this section.~~” 30

44 Power to seize abandoned goods

Section 119(1) is amended by omitting “any restricted goods (where necessary disabling or killing them first), or any abandoned organism,” and substituting “any abandoned organism (where necessary disabling or killing it first)”. 35

45 Section 120 substituted

Section 120 is repealed and the following section substituted:

“120 Power to intercept risk goods

- “(1) This section applies to an inspector or authorised person who believes on reasonable grounds that— 5
 - “(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. 10
- “(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)**.” 15

46 Power to examine organisms

(1) Section 121(1) is repealed and the following ~~subsection~~ subsections substituted:

- “(1) An inspector or authorised person may exercise any or all of the powers in **subsection (1B)** on— 20
 - “(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— 25
 - “(a) taxonomical identification of an organism:
 - “(b) diagnosing a disease:
 - “(c) determining whether imported goods may be given a biosecurity clearance: 30
 - “(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— 35
 - “(a) autopsy:
 - “(b) destroy:

- “(c) examine:
“(d) inspect:
“(e) sample:
“(f) section:
“(g) take specimens: 5
“(h) test:
“(i) apply any other treatment or procedure.”
- (1A) Section 121(2) is amended by omitting “subsection (1)” and substituting “**subsection (1A)**”.
- (2) Section 121(4)(a) is repealed and the following paragraph substituted: 10
“(a) exercise any or all of the powers in **subsection (1B)**; and”.
- (3) Section 121(4)(b)(i) is amended by omitting “actions to be taken (or taken” and substituting “powers to be exercised (or exercised” 15
- 47 Power to apply article or substance to place**
Section 121A(1) is amended by omitting “manage or eradicate” and substituting “eradicate or manage”.
- 48 Prohibition or control of certain tests** 20
- (1) Section 121B(1)(a) is amended by omitting “effective management or eradication” and substituting “eradication or effective management”.
- (2) Section 121B(4) is amended by omitting “section 121(1)” and substituting “**section 121(1A)**”. 25
- 49 Power to give directions**
Section 122 is amended by adding the following subsection:
“(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.” 30

50 Inspection of and intervention in transitional facilities and containment facilities

- (1) Section 126(1) is amended by inserting “or section 11(1)(fc) of the Hazardous Substances and New Organisms Act 1996” after “section 39”. 5
- (2) Section 126(1) is amended by omitting “operator under section 40” and substituting “facility operator”.
- (3) Section 126(2)(a) is amended by omitting “type” and substituting “kind”.
- (4) Section 126(2)(b) is amended by omitting “operator of a transitional facility or containment facility” and substituting “facility operator”. 10
- (5) Section 126(3)(a) is amended by omitting “operator of the transitional facility or containment facility” and substituting “facility operator”. 15
- (6) Section 126(6) is amended by omitting “operator of the transitional facility or containment facility” and substituting “facility operator”.

50A Power to act on default

Section 128(1) is repealed and the following subsections are substituted: 20

“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: 25
 - “(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— 30
 - “(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.” 35

51 Road blocks, cordons, check-points, etc

- (1) Section 132(2)(a) is amended by omitting “manage or eradicate” and substituting “eradicate or manage”.
- (2) Section 132(2)(d) is amended by omitting “management or eradication” from each place where it appears and substituting “eradication or management” in each place. 5
- (3) Section 132(8B) is amended by omitting “management or eradication” and substituting “eradication or management”.

52 Options for cost recovery

Section 135(1) is amended by omitting “strategy” and substituting “plan or pathway management plan”. 10

53 Levies

Section 137 is amended by adding the following subsection:

- “(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: 15
- “(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 ~~represented by an industry organisation that is a party to the government/industry agreement~~ specified in a *Gazette* notice under **section 100V**.” 20

54 Power of auditors to require production of statements and records

The following subsection is added to section 141D: 25

- “(5) A person who is the subject of a requirement of an auditor under subsection (1) must comply with the requirement.”

55 New cross headings and sections 142A to 142S inserted

The following cross headings and sections are inserted after section 142: 30

*“Biosecurity database***“142A Establishment**

- “(1) The Director-General may establish and maintain a biosecurity database containing information about land for the purposes of this Act. 5
- “(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 10
 - “(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: 15
 - “(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. 20
- “(5) The information in the database may come from any source, such as—
- “(a) information in the public domain:
 - “(b) information provided voluntarily for inclusion in the database by a person to whom the information relates or by the person’s agent: 25
 - “(c) information provided or made available to the Director-General or the Ministry under this Act or any other enactment. 30
- “(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 aspect of the handling of the information under the other enactment provisions in the other enactment relating to the handling of the information. 35

“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 5
- “(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 10
- “(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 15 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. 20

“142C Access, use, or disclosure*“Public domain*

“(1) For information in the biosecurity database that comes from the public domain, the Director-General may—

- “(a) access, use, or disclose it for any lawful purpose: 25
- “(b) authorise other persons to access and use it for any lawful purpose.

“Other sources

“(2) For information in the biosecurity database that comes from any other source, the only rights that the Director-General has 30 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 35 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 (2A) or (2B)**: 5
 - “(f) to authorise other persons to access and use it in accordance with a permission of a kind described in **subsection (2A) or (2B)**.
- “(2AA) 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. 10
- “(2A) For information in the biosecurity database that comes from any other source, 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. 15
- “(2B) For information in the biosecurity database that comes from any other source, the person to whom the information relates or the person’s agent may give an oral permission to which the following apply: 20
- “(a) it must be for 1 or all of access to the information, use of the information, or disclosure of the information; and 25
 - “(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 30
 - “(ii) it has not been withdrawn.
- “*Register of relevant enactments*
- “(3) The Director-General must—
- “(a) establish and maintain a register that lists all enactments of the following kinds: 35
 - “(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.
- “**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.
- “**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.
- “Automated electronic systems*
- “**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: 5
 - “(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 10
 - “(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. 15
- “(3) The persons are—
- “(a) the Director-General:
 - “(b) inspectors:
 - “(c) chief technical officers: 20
 - “(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— 25
- “(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. 30
- “(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. 35

“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— 5
 “(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— 10
 “(a) is treated as an action done properly by the appropriate person referred to in **section 142F(3)**; and 15
 “(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)**. 20

*“Risk profiling***“142H Retention and use of information for risk profiling**

- “(1) **Subsections (2) and (3)** apply to information— 25
 “(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— 30
 “(a) an assessment of the risk that ~~goods or persons~~ 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. 35

“(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)**.

“Disclosure of personal information

“**142I Disclosure of personal information in New Zealand** 5

- “(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. 10
- “(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: 15
 - “(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: 20
 - “(e) the protection of public revenue:
 - “(f) the maintenance of border security:
 - “(g) the achievement of the purposes of this Act.
- “(2A) 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 (2B)** applies. 25
- “(2B) The arrangement—
 - “(a) must be in writing; and
 - “(b) must state criteria for the disclosure of information under it; and 30
 - “(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 35

- “(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 5
- “(e) may state—
- “(i) the form in which the information may be disclosed:
- “(ii) the method by which the information may be disclosed; and 10
- “(f) may be varied.
- “(3) This section does not apply to information in the biosecurity database.
- “142J Disclosure of personal information outside New Zealand**
- “(1) This section applies to personal information— 15
- “(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. 20
- “(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: 25
- “(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: 30
- “(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— 35
- “(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 5
 - “(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— 10
 - “(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 15
 - “(e) may state—
 - “(i) the form in which the information may be disclosed: 20
 - “(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 25
 - “(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,— 30
 - “(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. 35

“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 5
 - “(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 10
 - “(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— 15
- “(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— 20
 - “(i) the persons to whom the overseas person may disclose it; and
 - “(ii) the extent to which the overseas person may disclose it; and 25
 - “(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 30
 - “(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. 35
- “(6) This section does not apply to information in the biosecurity database.

“Incorporation by reference

“142L Definitions for sections 142M to ~~142F~~ 142S

In **sections 142M to ~~142F~~ 142S**,—

“biosecurity document means—

- “(a) regulations: 5
- “(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 10

“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: 15
- “(aa) part of the original material:
- “(ab) the original material with modifications, additions, or variations:
- “(b) the original material with amendments incorporated:
- “(c) material that amends the original material: 20
- “(d) 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: 25
- “(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.

“142M Incorporation in biosecurity documents 30

“(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: 35

- “(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: 5
- “(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: 10
- “(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: 15
- “(g) a register established by or under this Act.
- “(3) Material incorporated in a biosecurity document has legal effect as part of the document. 20

“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: 25
- “(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: 30
- “(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: 35

- “(d) making copies of the material available for purchase.
- “(2A) 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)**. 5
- “(3) 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 10
- “(iii) public comment on the proposal to incorporate the material may be made to the responsible body; and 15
- “(b) allow a reasonable opportunity for the public to comment on the proposal; and
- “(c) consider any comments made.
- “(3A) 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. 20
- “(3B) If the material is material as described in **section 142M(1)(f)**, the specific edition must be used.
- “(3C) 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. 25
- “(5) Failure to comply with this section does not invalidate a biosecurity document that incorporates material.
- “**142O Effect of amendments to, or replacement of, material incorporated** 30
- “(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)**. 35
- “(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. 5
- “(4) **Subsection (1)** does not apply to the material described in any of **section 142M(1)(e) to (g)**.
- “142P Proof of material incorporated**
- “(1) A copy of material incorporated in a biosecurity document must be— 10
- “(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. 15
- “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)**. 20
- “(2) The responsible body may publish a notice in the *Gazette* that— 25
- “(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. 30
- “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: 35

- “(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— 5
- “(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: 10
- “(d) making copies of the material available for purchase.
- “(1A) 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)**. 15
- “(2) The responsible body must give notice in the *Gazette* stating that—
- “(a) the material is incorporated in the biosecurity document; and 20
- “(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. 25
- “142S Effect of other enactments**
- “(1) The Acts and Regulations Publication Act 1989 does not apply to material incorporated in a biosecurity document.
- “(2) In relation to the Regulations (Disallowance) Act 1989,— 30
- “(a) it applies to regulations that incorporate material; and
- “(b) its section 4 does not require material incorporated in regulations to be presented to the House of Representatives.
- “(3) Sections 22 to 25 of the Standards Act 1988 are not affected by **sections 142L to 142R.**” 35

56 Purpose of Part 7

Section 143 is amended by omitting “management, or eradication” and substituting “eradication, or management”.

57 Declaration of biosecurity emergency

- (1) Section 144(1)(a)(iv) is amended by omitting “strategy” and substituting “plan”. 5
- (2) Section 144(1)(b) is amended by omitting “manage, or eradicate” and substituting “eradicate or manage”.
- (3) Section 144(1)(b) is amended by omitting “effectively managed, or eradicated” and substituting “eradicated or effectively managed”. 10
- (4) Section 144(6) is amended by omitting “or revoke a Proclamation under this section and the Minister shall publish notice of an amendment or revocation” and substituting “, extend, or revoke a proclamation under this section and the Minister must publish notice of the amendment, extension, or revocation”. 15

58 Emergency powers

- (1) Section 145(1) is amended by omitting “managing, or eradicating” and substituting “eradicating or managing”.
- (2) Section 145(2) is amended by omitting “eradicating, or limiting” and substituting “eradicating or limiting”. 20

59 Section 146 substituted

Section 146 is repealed and the following section substituted:

“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. 25
- “(2) Before a declaration ceases to have effect, it may be extended by— 30
- “(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. 35

- “(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.
- “(5A) A resolution revoking a declaration has effect from the time of the resolution or a later time specified in the resolution. 5
- “(6) An extension under **subsection (2)(b)** or a revocation under **subsection (5)(b)** must be published as provided in section 10 of the Regulations (Disallowance) Act 1989.”
- 59A New section 147 substituted** 10
- Sections 147 and 148 are repealed and the following section substituted:
- “147 House of Representatives must be informed**
- “(1) The Minister must inform the House of the making of a proclamation under section 144. 15
- “(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. 20
- “(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. 25
- “Definition for this section*
- “(5) In this section, **House** means the House of Representatives.”
- 60 Biosecurity emergency regulations** 30
- Section 150 is amended by omitting “management, or eradication” from each place where it appears and substituting “eradication or management” in each place.

61 Sections 154 to 154N substituted and cross headings inserted

Section 154 is repealed and the following cross headings and sections are substituted:

“Compliance orders” 5

“154 Scope

“(1) An inspector or authorised person may make a compliance order against a person.

“(3) 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 10

“(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 15

“(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 20

“(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 25

“(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. 30

“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 35

“(c) the requirement or prohibition in **section 154(3)** 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 5
 - “(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 10
- “(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.

“**154B Service** 15

- “(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: 20
 - “(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. 25
- “(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: 30
 - “(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. 35

“**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. 5

“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. 10
- “(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— 15
 - “(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: 20
 - “(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 25
 - “(b) must give the person against whom the order was made written notice of the cancellation.

“154E Appeal to District Court

- “(1) The following persons may appeal to a District Court: 30
 - “(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* 35
- “(2) The appeal does not operate as a stay of the compliance order.

- “(2A) The person may apply to the court for a stay of the compliance order pending the court’s decision on the appeal.
- “(2B) The court must consider the application for a stay as soon as practicable after the application for it is lodged.
- “(2C) The court must consider— 5
- “(a) whether to hear—
- “(i) the person:
- “(ii) the appointer of the inspector or authorised person whose compliance order is appealed against; and 10
- “(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 15
- “(d) any other matters that the court thinks fit.
- “(2D) The court may grant or refuse a stay and may impose any terms or conditions that the court thinks fit.
- “(2E) 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. 20
- “(2F) The stay remains in force until the District Court orders it lifted.
- “District Courts Rules apply*
- “(2G) The rules of procedure under the District Courts Act 1947 apply to the making of an appeal and an application for a stay. 25
- “Powers of District Court*
- “(3) The District Court may confirm, change, or cancel the order appealed against.
- “**154EA Appeal to High Court, Court of Appeal, or Supreme Court** 30
- “(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 and sections 74 to 78 of the District Courts Act 1947 apply to an appeal under **subsection (1)**— 35

- “(a) as if it were an appeal under section 72 of the District Courts Act 1947; 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 14 of the Supreme Court Act 2003. 5
- “(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. 10

“**154F Effect of appeal**

An appeal under **section 154E or 154EA** 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 15
- “(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. 20

“Pecuniary penalties

“**154G 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. 25
- “(2) The Court may make the order if it is satisfied that the person failed to comply with—
- “(a) **section 16A**;
- “(b) **section 16B**; 30
- “(ba) **section 16C**;
- “(c) section 18(1)(b);
- “(d) **section 24D(1)(a)**;
- “(e) section 25(1), (2), **(8), or (9)**;
- “(f) a condition imposed under **section 27A**; 35
- “(g) section 29(1);

- “(h) a condition imposed under section 29(2):
- “(i) **section 40(6):**
- “(j) section 52:
- “(k) section 53:
- “(ka) a direction under section 122: 5
- “(l) section 130(4):
- “(m) section 134(1):
- “(n) regulations made under section 150 that provide that a contravention of them gives rise to civil liability:
- “(o) any directions or requirements under Part 7: 10
- “(p) 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. 15
- “(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 20
 - “(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 25
 - “(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 30
 - “(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 35
 - “(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. 5
- “154H Liability of principals and employers**
- “(1) **Subsections (2) and (3)** apply if the person who is liable under **section 154G(2)** was acting as the agent or employee of another person at the time of the non-compliance. 10
- “(2) The other person is liable under **section 154G** 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 15
- “(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)**. 20
- “(4) A court that makes an order under **section 154G** 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— 25
- “(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. 30
- “154I Amount**
- “(1) In determining the appropriate amount of a pecuniary penalty under **section 154G**, the Court must have regard to all relevant matters, including— 35
- “(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: 5
- “(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: 10
- “(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. 15
- “(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 20
 - “(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 25
 - “(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. 30
- “(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. 35
- “(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. 5

“**154J Other orders instead of or in addition to pecuniary penalty order**

In proceedings under **section 154G**, the Court may, instead of or in addition to making a pecuniary penalty order, make— 10

“(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: 15

“(c) an order that the person pay the costs of mitigating or remedying the adverse effects referred to in **paragraph (a) or (b)**.

“**154K Concurrent criminal proceedings and pecuniary penalty proceedings** 20

“(1) This section applies if the same act or omission, or substantially the same act or omission, could give rise to proceedings under **section 154G (pecuniary penalty proceedings)** and proceedings under any of **section 154L to 154N (criminal proceedings)**. 25

“(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. 30

“(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. 35

“Offences

“154L Section 154L 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)**. 5
- “(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. 10
- “(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. 15
- “(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— 20
 - “(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— 25
 - “(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— 30
 - “(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— 35
 - “(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).

“154M Section 154M offences

“Rules for section 154M offences

- “(1) The offences in this section are strict liability offences. 5
- “(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— 10
- “(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— 15
- “(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— 20
- “(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 25
- 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 30
- 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— 35
- “(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. 5
- “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). 10
- “Penalty: section 157(4)
- “(9) A person commits an offence against this Act who fails to comply with section 134(1)(b) or (1A).
- “(10) 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— 15
 - “(a) an official; or
 - “(b) an automated electronic system.
- “(11) 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— 20
 - “(a) an official; or
 - “(b) an automated electronic system.
- “(12) A person commits an offence against this Act who fails to comply with a compliance order. 25
- “Penalty: section 157(5)
- “(13) A person commits an offence against this Act who fails to comply with— 30
 - “(a) any of **sections 17, 34, 36, 51(3), 121(2), 121A(3), 132(9), and 141D(5)**:
 - “(b) a requirement imposed under **section 100L(2)(a) or 100ZB(2)(a)** by an auditor acting under an authorisation:
 - “(c) regulations made under **section 165(2) or (3)**. 35

- “(14) A person commits an offence against this Act who provides false information, if an import health standard requires the person to provide information.
- “(15) 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: 5
 - “(b) makes a false declaration under **section 24J or 24K**, if an inspector requires the person to make the declaration.
- “(16) A person commits an offence against this Act who fails to keep statements, accounts, or records of leviable activity carried on by the person sufficient to satisfy the requirements of an order made under any of **sections 100G, 100W**, and 137. 10
- “(17) A person commits an offence against this Act who fails to maintain statements, accounts, or records of leviable activity carried on by the person to a sufficient standard to satisfy the requirements of an order made under any of **sections 100G, 100W**, and 137. 15
- “(18) A person commits an offence against this Act in the following circumstances: 20
- “(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 25
 - “(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 30
 - “(v) does not comply with the operating standards for the facility.
- “(19) 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. 35

- “(20) 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.
- “(21) A person commits an offence against this Act who— 5
- “(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 10
- “(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. 15
- “Penalty: section 157(7)*
- “(22) 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. 20
- “154N Section 154N 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. 25
- “(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)**. 30
- “(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— 35
- “(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 a law to provide in connection with the purposes of this Act from— 5
- “(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 a law to make that is false or misleading in a material particular; or 10
- “(b) knowingly makes a declaration that the person is required by a law to make that is false or misleading in a material particular; or 15
- “(c) knowingly gives a certificate that the person is required by a 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— 20
- “(a) an official; or
- “(b) any other person authorised to exercise a power or carry out a function or duty under a law.
- “(9) A person commits an offence against this Act who buys, sells, exchanges, or otherwise acquires or disposes of unauthorised goods— 25
- “(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,— 30
- “(a) alters the condition of the goods without the permission of an inspector, an authorised person, or an automated electronic system; or 35
- “(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 5
- “(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: 10
- “(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 15
- “(c) the person knows the facts in **paragraphs (a) and (b)**; and
- “(d) the person removes the goods from the place— 20
- “(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. 25
- “(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 30
- “(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: 35
- “(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. 5
- “(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 10
- “(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 15
- “(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 20 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. 25
- “*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)* 30
- “(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 35 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.”

62 Penalties

- (1) Section 157(1) is amended by omitting “paragraphs (f), (g), (h), (i), (j), (k), (l), or (m) of section 154” and substituting “**section 154N(1) to (15)**”.
- (2) Section 157(2) is amended by omitting “section 154(f)” and substituting “**section 154N(15)**”.
- (3) Section 157(3) is amended by omitting “paragraphs (a), (b), (c), (n), or (t) of section 154” and substituting “**section 154M(6) or (7) or 154N(16) to (18)**”.
- (4) Section 157(4) is amended by omitting “paragraph (d) or paragraph (e) of section 154 ” and substituting “**section 154M(9) to (12)**”.
- (5) Section 157(5) is amended by omitting “Subject to section 159, every person who commits an offence against any of paragraphs (ma), (o), (p), (q), (r), (u), or (v) of section 154” and substituting “Every person who commits an offence against any of **section 154L, 154M(13) to (21), or 154N(19) to (21)**”.
- (6) Section 157(7) is amended by omitting “Subject to section 159A, every person who commits an offence against para-

graph (s) of section 154” and substituting “Every person who commits an offence against **section 154M(22)**”.

62A Section 158 repealed

Section 158 is repealed.

63 Proceedings for infringement offences

5

(1A) The heading to section 159 is amended by adding “**other than border infringement offences**”.

(1) Section 159(1) is repealed and the following subsections are substituted:

“(1) This section does not apply to border infringement offences. 10

“(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). 15

“(1B) Proceedings may be taken against the defendant under the Summary Proceedings Act 1957.

“(1C) Alternatively, the inspector or the authorised person may issue an infringement notice to the defendant. In that case,— 20

“(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.” 25

(2) Section 159(2) is amended by inserting “, 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” after “notice”. 30

64 Accelerated infringement notice procedure for border infringement offences

Section 159A(1) is repealed and the following subsections are substituted:

- “(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 under the Summary Proceedings Act 1957.
- “(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.”

64A New section 160 substituted

Section 160 is repealed and the following section substituted:

- “160 Who gets payments of fines, fees, and pecuniary penalties**
- “Fine: prosecution by Ministry”* 15
- “(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 information for the offence was laid on behalf of the Ministry.
- 20
- “(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”* 25
- “(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 information for the offence was laid on behalf of a management agency.
- 30
- “(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.
- 35

- “(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: 5
- “(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: 10
- “(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. 15
- “*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. 20
- “*Registrar’s authority* 25
- “(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. 30
- “*Definition for this section*
- “(12) In this section, **response activity** has the meaning given to it in **section 100T(3)**.” 35

65 Evidence in proceedings

- (1) Section 161(2)(a)(i) is amended by omitting “strategy” and substituting “plan or a regional pathway management plan”.
- (2) Section 161(2)(a)(ii) is amended by omitting “strategy” and substituting “plan”. 5
- (3) Section 161(2)(d)(ii) is amended by omitting “strategy” and substituting “plan or national pathway management plan”.
- (4) Section 161(2)(e)(ii) is amended by omitting “strategy” and substituting “plan or national pathway management plan”.
- (5) Section 161(2)(f) is amended by omitting “strategy” and substituting “plan or a regional pathway management plan”. 10
- (6) Section 161(2) is amended by adding the following paragraph:
 “(j) a certificate purporting to be signed by the Director-General stating that an action was done by an automated electronic system.” 15

66 New Part 8A inserted

The following new Part is inserted after section 162:

“Part 8A

“Exclusive economic zone

“162AA Definitions for this Part 20

- “(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. 25

“162AB Application of Act in EEZ 30

- “(1) ~~The provisions of this Act apply in the EEZ to the extent to which their language permits and with the modifications made by this Part.~~
- “(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— 5
- “(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. 10
- “162AC Application of Act to fish and mammals taken in EEZ 15**
 “(1) Fish and marine mammals taken in the EEZ and carried on board a foreign licensed vessel, a vessel registered under the Fisheries Act ~~1983~~ 1996, or a vessel operated by the Crown are treated for the purposes of this Act as if they were not imported goods. 20
- “(2) In **subsection (1)**,—
- “**fish** has the meaning given to it by section 2 of the Fisheries Act ~~1983~~ 1996
 “**marine mammal** has the meaning given to it by section 2 of the Marine Mammals Protection Act 1978. 25
- “162ACA Interpretation**
The definition of **craft** in section 2 applies as if ‘is imported by’ read ‘arrives in the EEZ after’.
- “162AD Purpose of Part 3**
Section 16 applies as if paragraph (b) read ‘craft that arrive in the EEZ’. 30
- “162AE 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.

“**162AF Arrival of craft in EEZ** 5

“(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’.

“**162AG 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.

“~~**162AH Craft risk management standards and plans**~~

~~A craft risk management standard made under **section 24G** may specify requirements for craft that arrive in the EEZ.~~ 20

“**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—’. 25

“**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’.

“162AK Risk goods on board craft 10

“(1) ~~Section 33(1) applies as if ‘or attached to the outside of the craft, including the hull,’ appeared after ‘on board a craft’.~~

“(2) Section 33(1) applies as if ‘or that has arrived in the EEZ’ appeared after the second reference to ‘New Zealand territory’.

“(3) Section 33(1)(a) applies as if ‘or the EEZ’ appeared after ‘New Zealand territory’.

“(4) 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’.

“(5) Section 33(2)(a) applies as if ‘or the EEZ’ appeared after ‘New Zealand territory’.

“(6) ~~Section 33(2)(b) applies as if it read ‘seize, destroy, or deal with the risk goods concerned’.~~

“(7) ~~Section 33(3) applies as if ‘or attached to the outside of the craft, including the hull,’ appeared after ‘on board a craft’.~~ 30

“162AL Duty to provide information

Section 43(1)(a) applies as if ‘or in the EEZ’ appeared after ‘New Zealand’.

“162AM General duty to inform

~~Section 44~~ Section 44(1) applies as if ‘or in the EEZ’ appeared after ‘New Zealand’.

“162AN Duty to report notifiable organisms

Section 46(1)(a) applies as if ‘or in the EEZ’ appeared after ‘New Zealand’.

“162AO General matters

“(1) Section 62(3) applies as if ‘or in the EEZ’ appeared after ‘New Zealand’.

“(2) Section 62 applies as if it did not contain **subsection (5)**: 10

“162AP Contents of plan

Section 64(5)(c) applies as if ‘or the EEZ’ appeared after ‘New Zealand’ in all places.

“162AO Second step: satisfaction on requirements

Section 62(d) applies as if ‘or the EEZ’ appeared after ‘New Zealand’.

“162AP Fourth step: approval of preparation of plan and decision on management agency

Section 64(5)(c) applies as if ‘or the EEZ’ appeared after ‘New Zealand’ in all places. 20

“162APA Second step: satisfaction on requirements

Section 80(d) applies as if ‘or the EEZ’ appeared after ‘New Zealand’.

“162APB Fourth step: approval of preparation of plan and decision on management agency

Section 82(5)(c) applies as if ‘or the EEZ’ appeared after ‘New Zealand’ in all places. 25

“162APC Definitions for Part 5A

Section 100T applies as if ‘New Zealand’ read ‘the EEZ’.

“162APD 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)’.

“162AQ Declaration of biosecurity emergency

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Section 144(1) applies as if ‘or the EEZ’ appeared ~~after ‘New Zealand’~~ after ‘New Zealand’ in all places.

“162AR Emergency powers

Section 145(2) applies as if ‘anywhere in New Zealand’ read ‘anywhere in New Zealand or the EEZ’ .

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“162AS Provisional control action

Section 152(1) applies as if ‘or the EEZ’ appeared after ‘New Zealand’.

“162AT Offences

~~“(1) Section 154M is modified in that only the following of its offence provisions apply in the EEZ:~~

~~“(a) section 154M(1) to (5):~~

~~“(b) section 154M(6); so far as it applies to sections 18 and 19:~~

~~“(c) section 154M(10) to (12):~~

20

~~“(d) section 154M(13); so far as it applies to section 17:~~

~~“(e) section 154M(15):~~

~~“(f) section 154M(19):~~

~~“(2) Section 154N is modified in that only the following of its offence provisions apply in the EEZ:~~

25

~~“(a) section 154N(1); so far as it applies to sections 46, 52, and 53:~~

~~“(b) section 154N(2):~~

~~“(c) section 154N(3):~~

~~“(ca) section 154N(4):~~

30

~~“(d) section 154N(5):~~

~~“(e) section 154N(6):~~

~~“(f) section 154N(7):~~

~~“(g) section 154N(8):~~

~~“(h) section 154N(20):~~

~~“162AU Regulations~~

~~Section 165 is modified in that only the following of its regulation-making powers apply in the EEZ:~~

~~“(a) section 165(2):” 5~~

~~“(b) section 165(6):~~

~~“(d) section 165(14) to (17):~~

~~“(e) section 165(19):~~

~~“(f) section 165(21):~~

~~“(g) section 165(23)” 10~~

~~“(h) section 165(24):~~

“162AV General provisions as to regulations

Section 166(1) applies as if ‘or the EEZ’ appeared after ‘New Zealand’.”

67 Section 162A substituted 15

Section 162A is repealed and the following section substituted:

“162A Compensation

“(1) This section applies when—

“(a) powers under this Act are exercised for the purpose of eradicating or managing an organism; and 20

“(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— 25

“(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 ~~government/industry agreement~~ agreement under Part 5A that applies to the loss and whose provisions on compensation are expressed to take priority over this section. 30

“(2) The person is entitled to compensation under this section for loss that— 35

“(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 un-cleared goods; or 5
- “(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 10 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 15 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— 20
- “(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, 25 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 ~~by the Director-General~~ at a chief executive is payable from money appropriated by Parliament for the purpose.” 30

68 Protection of inspectors and others

Section 163 is amended by omitting “strategy” and substituting “plan or a pathway management plan”. 35

68A Procedure for giving directions or making requirements

(1) Section 164A(1)(a)(iv) is amended by omitting “facsimile to the person’s usual or last known place of residence or business” and substituting “fax or email to the person’s fax number or email address”. 5

(2) Section 164A(1)(b)(vi) is amended by omitting “facsimile to the registered office of the body” and substituting “fax or email to the fax number or email address of the body’s registered office”.

(3) Section 164A(1)(c)(vi) is amended by omitting “facsimile to the usual or last known place of business of the partnership” and substituting “fax or email to the partnership’s fax number or email address”. 10

(4) Section 164A(1)(d)(iv) is amended by omitting “facsimile to the head office of the appropriate department” and substituting “fax or email to the fax number or email address of the head office of the appropriate department”. 15

69 New section 164D inserted

The following section is inserted after section 164C:

“164D Consultation about regulations” 20

“(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.” 25

70 Section 165 substituted

Section 165 is repealed and the following section substituted:

“165 Regulations” 30

“Part 3 matters

“(2) The Governor-General may from time to time, by Order in Council, make regulations for the purposes of **section 17(11)**.

“(3) The Governor-General may from time to time, by Order in Council, make regulations on any or all of the following mat- 35

ters 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: 5
- “(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: 10
 - “(i) when and where, approximately, they will arrive in New Zealand:
 - “(ii) their nature:
 - “(iii) details of their journey, including their place of origin: 15
 - “(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: 20
- “(f) requiring importers giving notices—
 - “(i) to give different information about the matters depending on the class or description of the goods: 25
 - “(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— 30
 - “(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 35
 - “(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.

- “(4) 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: 5
 - “(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: 10
 - “(d) ~~on the use of the goods,—~~
 - “(i) ~~the use to which they must be put; or~~
 - “(ii) ~~the restrictions or conditions on their use:~~
 - “(d) the use to which the goods must be put:
 - “(da) the restrictions or conditions on the use of the goods: 15
 - “(e) requirements when ownership or possession of the goods is transferred:
 - “(f) requirements to label the goods:
 - “(g) requirements to report on or monitor the goods:
 - “(h) requirements to keep records: 20
 - “(i) requirements to notify the Director-General of matters:
 - “(j) the duration of requirements in the regulations:
 - “(k) a system for auditing and verifying compliance with the requirements in the regulations:
 - “(l) any other matters reasonably necessary for the effective 25 implementation of the requirements in the regulations.
- “(4A) 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: 30
- “(a) what criteria the Minister must apply in assigning responsibility: 35
 - “(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: 5
 - “(b) notification:
 - “(c) consultation:
 - “(d) submissions:
 - “(e) hearings:
 - “(f) the protection of sensitive information. 10
- “(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: 15
 - “(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. 20
- “*Part 6 matters*
- “(9) 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— 25
 - “(i) the appointment of inspectors and authorised persons:
 - “(ii) the accreditation of accredited persons:
 - “(b) prescribing procedures relating to— 30
 - “(i) the appointment of inspectors and authorised persons:
 - “(ii) the accreditation of accredited persons.
- “(10) 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— 35
- “(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.
- “(11) The Governor-General may from time to time, by Order in Council, make regulations specifying audits for the purposes of **section 105C(3)**. 5
- “(12) 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 ~~for the purpose of ascertaining the presence or absence of a pest or unwanted organism.~~ 10
- “(13) 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: 15
 - “(ii) regulations:
 - “(iii) pest management plans:
 - “(iv) pathway management plans:
 - “(b) their amounts:
 - “(c) the method by which they must be assessed: 20
 - “(d) the persons liable for their payment:
 - “(e) the circumstances in which their recovery may be wholly or partly waived or remitted.
- “*Part 8 matters*
- “(14) 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. 25
- “(15) The Governor-General may from time to time, by Order in Council, make regulations on the following matters relating to offences: 30
- “(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: 35
 - “(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: 5
- “(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 10
- “(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
- “(15A) 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 154G(2)(p)**.
- “*Risk goods, waste, organic material, and pest-ridden places* 20
- “(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,— 25
- “(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,— 30
- “(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 35

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: 5
- “(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— 10

- “(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,— 15

- “(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: 20
- “(d) regulating their issue, transfer, amendment, suspension, revocation, cancellation, or withdrawal:
- “(e) requiring their holders to—
 - “(i) keep records; and 25
 - “(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 30
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— 35

- “(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. 5

“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 to the ~~Ministry~~ Ministry under this Act must be provided. 10

“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.” 15

71 General provisions as to regulations

Section 166(2) is repealed.

72 Schedule 2 repealed

Schedule 2 is repealed. 20

72AA 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** 25

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**. 30

(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.

72A Saving of independent review panel *Gazette* notice

- (1) This section applies to the Biosecurity (Process for Establishing Independent Review Panel) Notice 2008 (*Gazette* 2008, p 2765). 5
- (2) The notice is unaffected by the repeal of section 22A of the principal Act by **section 20** of this Act.
- (3) The notice may be amended, revoked and replaced, or revoked as if section 22A of the principal Act had not been repealed by **section 20** of this Act. 10

73 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. 15
- (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. 20
- (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 a ~~pest management plan~~ the pest management plan that **subsection (1) or (2)** deems the strategy to be. 25
- (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. 30
- (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 37** of this Act, 35

fulfils the requirement for consultation in **section 57** of the principal Act, as substituted by **section 37** of this Act.

- (7) The following provisions apply to the review of a national pest management strategy, or a regional pest management strategy, in force on the day on which this section commences, in the period before the national policy direction is approved by the Governor-General under **section 57** of the principal Act, as substituted by **section 37** of this Act: 5
- (a) the date for the next review of the strategy remains as required by section 88 of the principal Act as it was before being repealed by **section 37** of this Act: 10
 - (b) the review may or may not be conducted:
 - (c) if conducted, the review must be conducted under **section 100** of the principal Act as substituted by **section 37** of this Act, which applies with all necessary modifications: 15
- (7A) The following provisions apply to the review of a national pest management strategy, or a regional pest management strategy, in force on the day on which this section commences, in the period after the national policy direction is approved by the Governor-General under **section 57** of the principal Act, as substituted by **section 37** of this Act: 20
- (a) the date for the next review of the strategy is the earlier of the following: 25
 - (i) the date required by section 88 of the principal Act as it was before being repealed by **section 37** of this Act:
 - (ii) the date required by the national policy direction:
 - (b) the review must be conducted:
 - (c) the review must be conducted under **section 100** of the principal Act as substituted by **section 37** of this Act, which applies with all necessary modifications: 30
- (8) A national pest management plan or regional pest management plan that has been reviewed as described in **subsection (7A)** is deemed to be not inconsistent with the national policy direction, but a court may declare that it is inconsistent: 35
- (7) In **subsections (8) to (8L)**,—
- (a) references to sections 62, 68, 78, 79B, and 88 mean those sections of the principal Act as they were immedi-

ately before being repealed by **section 37** of this Act;
and

(b) references to **sections 100, 100AA(3), 100AA(5), and 100B** mean those provisions of the principal Act as substituted by **section 37** of this Act; and

(c) references to **Part 5** mean that Part of the principal Act as substituted by **section 37** of this Act.

Dates and processes for reviews of existing strategies

(8) **Subsections (8A) to (8D)** 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 100AA(3)** (which is not a fixed date).

(8A) The Minister or council must choose whether to conduct the review or to wait to see whether the determination under **section 100AA(3)** requires a review under **section 100AA(5)**.

(8B) If the Minister or council chooses to conduct the review, the review must be conducted under **section 100**, which applies with all necessary modifications.

(8C) If the Minister or council chooses to wait to see whether the determination under **section 100AA(3)** requires a review under **section 100AA(5)**, and the determination does require a review, the review required by section 88 and the review required by **section 100AA(5)** must be conducted together under **section 100**.

(8D) If the Minister or council chooses to wait to see whether the determination under **section 100AA(3)** requires a review under **section 100AA(5)**, and the determination does not require a review, the review required by section 88 must be conducted under **section 100**, which applies with all necessary modifications.

(8E) **Subsections (8F) and (8G)** 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

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the Minister or council makes a determination under **section 100AA(3)** (which is not a fixed date).

- (8F) If the determination requires a review under **section 100AA(5)**, the Minister or council may decide that the review required by section 88 and the review required by **section 100AA(5)** will be conducted together under **section 100** and, if that decision is made, must apply **section 100AA(5)(a)**. 5
- (8G) If the determination does not require a review under **section 100AA(5)**, the review required by section 88 must be conducted under **section 100**, which applies with all necessary modifications. 10

Process for existing proposals

- (8H) **Subsection (8I)** 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. 15
- (8I) **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 20

- (8J) **Subsections (8K) and (8L)** 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 100AA(3)** (which is not a fixed date). 25
- (8K) If the Minister or council wishes to extend the expiry date without a review under **section 100**, the Minister or council must— 30
- (a) apply **section 100B** to make the extension; and
 - (b) set a new expiry date that is within 12 months of the existing expiry date.
- (8L) The Minister or council may exercise the power in **subsection (8K)** as many times as needed before the Minister or council makes a determination under **section 100AA(3)**. 35

- (9) **Section 68(5)** of the principal Act, as substituted by **section 37** 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 37** of this Act; and 5
 - ~~(b) the regional pest management plan has been reviewed as described in **subsection (7A)** of this section; and~~
 - (b) the plan—
 - (i) has been the subject of a determination by the council under **section 100AA(3)**; and 10
 - (ii) if the determination was that the plan was inconsistent with the direction, has been amended under **section 100AA(4)** or following a review under **section 100AA(5)**; and 15
 - (c) either—
 - (i) the time in **section 74(3)** of the principal Act, as substituted by **section 37** of this Act, has ended with no application to the Environment Court having been made; or 20
 - (ii) an application under **section 74** of the principal Act, as substituted by **section 37** of this Act, has been made and determined and either all appeals have been determined or the time for appealing has ended. 25
- (10) During the period in which **section 68(5)** of the principal Act as substituted by **section 37** of this Act has no effect, as described in **subsection (9)**, section 87(2) of the principal Act as it was immediately before it was repealed by **section 37** of this Act continues to apply. 30
- (11) 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 100Q** as substituted by **section 37** of this Act.
- ~~(12) On the day on which this section commences, the following provisions apply:~~ 35
- ~~(a) if a proposal has been notified under section 62 and the Minister has not yet acted under section 68, Part 5 applies (meaning section 62, section 68, and Part 5 as they~~

were on the day immediately before the day on which this section commences):

- (b) if a proposal has been notified under section 78 and the council has not yet acted under section 79F, Part 5 applies (meaning section 78, section 79F, and Part 5 as they were on the day immediately before the day on which this section commences): 5

74 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 **sections 24G and 162AH** of the principal Act, as respectively substituted and inserted by **sections 20 and 66 section 24G** of the principal Act as inserted by **section 20** of this Act. 10 15
- (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 **sections 24G and 162AH** of the principal Act, as respectively substituted and inserted by **sections 20 and 66 section 24G** of the principal Act as inserted by **section 20** of this Act. 20
- (3) In **subsection (2)**, **arrive in the EEZ** has the meaning given to it by **section 162AA(1) section 162AA(2)** of the principal Act, as inserted by **section 66** of this Act. 25

75 Transitional provision on compensation

Section 162A(5) of the principal Act, as substituted by **section 69** of this Act, applies to loss suffered after the commencement of this section. 30

75 Saving of provision on compensation

Section 162A of the principal Act, as it was immediately before its repeal by **section 67** of this Act, applies in the case of a person whose eligibility for compensation under it arose before the commencement of this section. 35

Part 2

Amendments relating to ballast water

76 Amendments to Maritime Transport Act 1994

- (1) This section amends the Maritime Transport Act 1994.
- (2) Section 2(1) is amended by inserting the following definition 5
in its appropriate alphabetical order:

“**ballast water** has the meaning given to it in **section 246A(1)**”.

- (3) The following section is inserted after section 197:

“197A Regulations may impose ballast water management levy 10

- “(1) The Governor-General may from time to time, by Order in Council, make regulations imposing a ballast water management levy on ships, as defined in **section 246A(3)(a)**, that discharge ballast water from outside New Zealand waters into New Zealand waters or the exclusive economic zone. 15

- “(2) The purpose of the levy is to wholly or partly fund administration, inspection, and enforcement services relating to the control and management of ballast water.

- “(3) Sections 191(3) to 197 apply with all necessary modifications to regulations made under this section.” 20

- (3A) The definition of **marine protection product** in section 225 is amended by inserting “or ballast water” after “harmful substance” wherever it appears.

- (4) The following new Part is inserted after section 246:

“Part 19A 25

“Protection of marine environment from ballast water

“246A Meaning of ballast water, convention, and ship

- “(1) **Ballast water** means water with its suspended matter taken on board a ship to control the ship’s trim, list, draught, stability, or stresses. 30

- “(2) **Convention** means the International Convention for the Control and Management of Ships’ Ballast Water and Sediments, 2004, in—

“(a) this section; and 35

“(b) **sections 271(2)(ca), 272(1)(aa), and 388(n)**.

- “(3) **Ship**—

- ~~“(a) means a ship within the meaning of the convention, in—~~
~~“(i) subsection (4); and~~
~~“(ii) sections 197A, 246B to 246D, 271(2)(ca), 388(n), 396(3)(aa), 397(2)(ca), and 397(3):~~

“(a) means a ship within the meaning of the convention, in 5
sections 197A, 246B to 246D, 271(2)(ca), 388(n), 396(3)(aa), 397(2)(ca), and 397(3):

“(b) includes a ship within the meaning of the convention, 10
 in sections 396(1)(c) and (3)(c) and 397(1) and (2)(d) to (g).

“246B Discharge from ships

“(1) Ballast water may be discharged from a ship only in accordance with the applicable marine protection rules.

“(2) **Subsection (1)** applies to—

“(a) a ship in— 15
 “(i) the territorial sea of New Zealand; or
 “(ii) the internal waters of New Zealand; or
 “(iii) the exclusive economic zone of New Zealand;
 and

“(b) a ship that is a New Zealand ship in the sea beyond 20
 the outer limits of the exclusive economic zone of New Zealand.

“246C Offence

“(1) This section applies if ballast water is discharged from a ship 25
 in breach of **section 246B**.

“(2) The master or owner of the ship commits an offence.

“(3) A person who is not the master or owner of the ship and who 30
 causes intentional damage resulting in the discharge of the ballast water commits an offence.

“(4) A person who commits an offence under this section is liable 30
 to—

“(a) imprisonment for a term not exceeding 2 years; or

“(b) a fine or fines as follows:

“(i) a fine not exceeding \$200,000; and

- “(ii) if the offence is a continuing one, a further fine not exceeding \$10,000 for every day or part of a day during which the offence is continued.
- “(5) Section 246 applies as if the reference to section 237 were a reference to this section. 5

“246D Defences

- “(1) This section sets out defences to proceedings for an offence against **section 246C**.
- “(2) The defendant has a defence if the defendant proves that the discharge— 10
 - “(a) was for the purpose of saving life; and
 - “(b) was a reasonable step to take to achieve the purpose.
- “(3) The defendant has a defence if the defendant proves that the discharge— 15
 - “(a) was for the purpose of securing the safety of a ship; and
 - “(b) was a reasonable step to take to achieve the purpose.
- “(4) The defendant has a defence if the defendant proves that—
 - “(a) the ballast water escaped as a consequence of damage to— 20
 - “(i) a ship or its equipment; or
 - “(ii) apparatus other than a ship used in connection with marine operations; or
 - “(iii) a pipeline; and
 - “(b) the damage did not result from the defendant’s negligence or deliberate act; and 25
 - “(c) as soon as practicable after the damage occurred, all reasonable steps were taken—
 - “(i) to prevent the escape; or
 - “(ii) if the escape could not be prevented, to minimise the escape. 30

“246E Director’s powers

- “(1) The Director may investigate a discharge or escape of ballast water.
- “(2) For the purposes of carrying out the investigation, the Director may— 35

- “(a) make inquiries of a person who the Director has reason to believe is in possession of information that may assist in establishing the cause of the discharge or escape:
- “(b) issue a summons requiring a person to—
- “(i) attend at the time and place specified in the summons: 5
- “(ii) give evidence: 10
- “(iii) produce documents or things in his or her possession or control that are relevant to the subject of the investigation: 10
- “(c) remove a document from the place where it is kept and take possession of it for a period of time that is reasonable in the circumstances:
- “(d) require a person to reproduce in a usable form information recorded or stored on a document, electronically or otherwise, or allow the Director to reproduce it: 15
- “(e) prohibit or restrict access by persons or classes of persons to the site of the discharge or escape to which the investigation relates, if the Director believes on reasonable grounds that prohibiting or restricting access is necessary to— 20
- “(i) preserve or record evidence; or
- “(ii) prevent any thing involved in the discharge or escape being tampered with, altered, mutilated, or destroyed: 25
- “(f) seize, detain, remove, preserve, protect, or test any thing that the Director believes on reasonable grounds may assist in establishing the cause of the discharge or escape.
- “(3) The Director may authorise a person to carry out an action described in **subsection (2)**. 30
- “(4) Section 5 of the Commissions of Inquiry Act 1908 applies to a summons under this section.
- “Definition for this section*
- “(5) In this section, **document** means a document in any form, electronic or otherwise. 35

“246F Person subject of exercise of Director’s powers

- “(1) A person required to do anything under **section 246E(2)** has the same privileges and immunities as a person giving evidence before a commission of inquiry has under section 6 of the Commissions of Inquiry Act 1908. 5
- “(2) A person required to do anything under **section 246E(2)** who fails, without reasonable cause, to do it commits an offence and is liable to a fine not exceeding \$1,000.”
- (4A) Section 271(2) is amended by inserting the following paragraph after paragraph (c): 10
- “(ca) for a document issued under the convention, the ship cannot discharge ballast water without presenting a threat of harm to the environment, human health, property, or resources (**convention** and **ship** having the meanings given to them in **section 246A(2)** and **(3)(a)**); or”. 15
- (4B) Section 272(1) is amended by inserting the following paragraph after paragraph (a):
- “(aa) suspend the recognition by the Director as a marine protection document of any document issued under the convention, or impose conditions on recognition, if he or she considers the action necessary in the interests of protecting the environment, human health, property, or resources (**convention** having the meaning given to it in **section 246A(2)**); or”. 20 25
- (4C) Section 276(2)(a) is amended by inserting “or ballast water” after “sea from harmful substances”.
- (4D) Section 276(2)(b) is amended by inserting “or ballast water” after “harmful substances”.
- (5) Section 388 is amended by adding the following paragraph: 30
- “(n) prescribing requirements and procedures relating to the control and management of ballast water for the purposes of the convention, including, but not limited to, provision for the Director to issue guidelines that allow for exemptions from the requirements and procedures for ships complying with the guidelines.” 35

- (5A) Section 395(2)(c) is repealed and the following paragraph substituted:
- “(c) the granting of the exemption will not significantly increase the risk of harm,—
 - “(i) for a marine protection rule on ballast water, to the environment, human health, property, or resources; or 5
 - “(ii) for any other marine protection rule, to the marine environment.”
- (5B) Section 396(1) is amended by omitting “harm” and substituting “harm or protecting the environment, human health, property, or resources from harm from ballast water”. 10
- (5C) Section 396(2) is amended by omitting “harm” and substituting “harm or protecting the environment, human health, property, or resources from harm from ballast water”. 15
- (6) Section 396(3) is amended by inserting the following paragraph after paragraph (a):
- “(aa) for a ship, as defined in **section 246A(3)(a)**, require the person to—
 - “(i) allow the Director to take a sample of the ship’s ballast water: 20
 - “(ii) demonstrate to the Director the familiarity of the master or crew with essential procedures for the prevention of harm to the environment, human health, property, or resources from ballast water:” 25
- (7) Section 397(2) is amended by inserting the following paragraph after paragraph (c):
- “(ca) in relation to ballast water, and ships as defined in **section 246A(3)(a)**,— 30
 - “(i) there is an existing discharge from the ship of ballast water in breach of this Act; or
 - “(ii) there is likely to be a discharge from the ship of ballast water in breach of this Act; or
 - “(iii) ships of a particular class are likely to give rise to a discharge of ballast water in breach of this Act; or” 35

- (8) Section 397(3) is amended by inserting “or essential procedures on a ship, as defined in **section 246A(3)(a)**, for the prevention of harm to the environment, human health, property, or resources from ballast water” after “pollution”.

77 Amendments to Maritime Transport (Marine Protection Conventions) Order 1999 5

Clause 3 of the Maritime Transport (Marine Protection Conventions) Order 1999 is amended by inserting the following paragraph after paragraph (d):

- “(da) International Convention for the Control and Management of Ships’ Ballast Water and Sediments, 2004.”. 10

78 Amendments to Resource Management (Marine Pollution) Regulations 1998

Clause 14(2) of the Resource Management (Marine Pollution) Regulations 1998 is amended by adding “or in contravention of **section 246B** of the Maritime Transport Act 1994 or rules made under that Act”. 15

Part 3

Related amendments to other enactments

79 Amendment to Ombudsmen Act 1975 20

Part 2 of Schedule 1 of the Ombudsmen Act 1975 is amended by inserting “Management agencies under Biosecurity Act 1993, if they are corporate bodies, in their role under pest management plans or pathway management plans” after “~~The Legal Services Agency Learning State Limited~~”. 25

80 Amendments to Wild Animal Control Act 1977

- (1) This section amends the Wild Animal Control Act 1977.
- (2) The definition of **wild animal** in section 2(1) is amended by omitting “, tahr, wallaby, or possum (*Trichosurus vulpecula*)” from paragraph (a)(ii) and substituting “or tahr”. 30
- (2) The definition of **wild animal** in section 2(1) is amended by omitting “, tahr, wallaby, or possum (*Trichosurus vulpecula*)” from paragraph (a)(ii) and substituting “or tahr”.

- (3) Section 12(5)(a) is amended by omitting “, chamois, possum, or wallaby” and substituting “or chamois”.

81 Amendments to Wildlife Act 1953

- (1) This section amends the Wildlife Act 1953.
- (2) Part 4 is repealed. 5
- (3) Section 72(2)(o) is repealed.
- (4) Schedule 5 is amended by—
- (a) inserting “Possum (family Phalangeridae)” after “Polecat (family Mustelidae)”; and
 - (b) inserting “Wallaby (family Macropodidae)” after “Stoat (family Mustelidae)”. 10
- (5) Schedule 6 is amended by omitting “Possum (family Phalangeridae)” and “Wallaby (family Macropodidae)”.

82 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. 15
- (2) The Governor-General may, by Order in Council, extend the period referred to in **subsection (1)**. 20
- (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. 25
- (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 30
 - (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 35

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. 5

83 Consequential amendments and revocations

The enactments in the Schedule are amended or revoked as indicated in the Schedule.

Schedule
Consequential amendments and
revocations

s 83

Amendments to Acts**Animal Products Act 1999 (1999 No 93)**

5

Section 161(5)(f): omit “strategies” and substitute “plans or pathway management plans”.

Climate Change Response Act 2002 (2002 No 40)

Section 184(9)(a): omit “strategy” and substitute “plan”.

Section 187(4)(b): omit “strategy” and substitute “plan”.

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Section 188(1)(c)(ii): omit “strategy” and substitute “plan”.

Criminal Procedure Act 2011 (2011 No 81)

Schedule 3, Part 1: omit the item relating to section 158(1) of the Biosecurity Act 1993.

Schedule 3, Part 1: omit the item relating to section 159(1)(a) of the Biosecurity Act 1993 and substitute:

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“**Section 159(1B)**: replace ‘under the Summary Proceedings Act 1957’ with ‘by filing a charging document under section 14 of the Criminal Procedure Act 2011’.”

Schedule 3, Part 1: omit the item relating to section 159A(1)(a) of the Biosecurity Act 1993 and substitute:

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“**Section 159A(1A)**: replace ‘under the Summary Proceedings Act 1957’ with ‘by filing a charging document under section 14 of the Criminal Procedure Act 2011’.”

Schedule 3, Part 1: insert the following items relating to the Biosecurity Act 1993:

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“**Section 160(1)(c)**: omit ‘information for the offence was laid’ and substitute ‘charging document for the offence was filed’.

“**Section 160(3)(c)**: omit ‘information for the offence was laid’ and substitute ‘charging document for the offence was filed’.”

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Criminal Procedure Act 2011 (2011 No 81)—continued

Schedule 3, Part 1: omit new section 162 of the Biosecurity Act 1993 and substitute:

“162 Time for filing charging document for certain offences

“(1) This section applies to—

“(a) an offence against any of **sections 154L, 154M(9) to (22), and 154N(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.”

Schedule 3, Part 4: omit the item relating to the Biosecurity (Forms) Regulations 1995 (SR 1995/129).

Dog Control Act 1996 (1996 No 13)

Section 2: definition of **working dog**: omit “strategy” from paragraph (b)(iv) and substitute “plan”.

Hazardous Substances and New Organisms Act 1996 (1996 No 30)

Section 46(1): omit “strategy” and substitute “plan”.

Section 46(1): omit “strategy has been approved under section 68” and substitute “plan has been approved under **section 65**”.

Walking Access Act 2008 (2008 No 101)

Section 54(4): omit “strategy” and substitute “plan”.

Amendments to regulations**Agricultural Compounds and Veterinary Medicines (Exemptions and Prohibited Substances) Regulations 2011 (SR 2011/327)**

Regulation 7(g): omit “strategy” and substitute “plan”.

Biosecurity (American Foulbrood—Apiary and Beekeeper Levy) Order 2003 (SR 2003/283)

Clause 3: definition of **National American Foulbrood Pest Management Strategy**: omit “**Strategy** means the strategy” and substitute “**Plan** means the plan”. 5

Clause 15: omit “Strategy” and substitute “Plan”.

Clause 19: omit “section 95B” and substitute “**section 100K**”.

Biosecurity (Bovine Tuberculosis—Cattle Levy) Order 1998 (SR 1998/457)

Clause 11(2)(b): omit “strategy” and substitute “plan”. 10

Clause 3: omit “Strategy” and substitute “Plan”.

Clause 16: omit “Strategy” and substitute “Plan”.

Clause 20: omit “section 95B” and substitute “**section 100K**”.

Biosecurity (Bovine Tuberculosis—Otago Land Levy) Order 1998 (SR 1998/442) 15

Clause 2: omit “Strategy” in all the definitions in which it appears and substitute “Plan” in each case.

Clause 3: omit “Strategy” and substitute “Plan”.

Clause 16: omit “section 95B” and substitute “**section 100K**”.

Biosecurity (Deer and Other Testing Costs) Regulations 1998 (SR 1998/458) 20

Regulation 3(1)(a): omit “section 121(1)” and substitute “**section 121(1) to (1B)**”.

Biosecurity (Forms) Regulations 1995 (SR 1995/129)

Form D: omit “Strategy” and substitute “plan or a pathway management plan”. 25

Regulation 3(d): omit.

Form D: omit.

Biosecurity (Infringement Offences) Regulations 2010 (SR 2010/67)

Schedule 1: revoke and substitute:

Schedule 1			rr 3, 5
Infringement offences and fees			5
Provision of Biosecurity Act 1993	General description of offence	Infringement fee (\$)	
s 154M(21)	Having, while in a biosecurity control area, been asked a question by an inspector <u>or an automated electronic system</u> , failing to answer within a reasonable time or failing to answer completely within a reasonable time	100	
s 154M(22)	Making an erroneous declaration that the person is not in possession of specified goods	400	

Biosecurity (National American Foulbrood Pest Management Strategy) Order 1998 (SR 1998/260)

Clause 1(1): omit “Strategy” and substitute “Plan”.

Clause 2(1): definition of **authorised person**: omit “strategy” and substitute “plan”.

Omit cross heading “*Strategy*” and substitute “*Plan*”.

Clause 3: omit “**Strategy**” from the heading and substitute “**Plan**”.

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Biosecurity (National American Foulbrood Pest Management Strategy) Order 1998 (SR 1998/260)—continued

- Clause 3: omit “Strategy” and substitute “Plan”.
- Clause 4: omit “strategy” and substitute “plan”.
- Clause 5: omit “**strategy**” from the heading and substitute “**plan**”.
- Clause 5: omit “strategy” from each place where it appears and substitute “plan” in each place. 5
- Clause 6: omit “strategy” and substitute “plan”.
- Clause 7: omit “strategy” and substitute “plan”.
- Clause 8: omit “**strategy**” from the heading and substitute “**plan**”.
- Clause 8: omit “strategy” from each place where it appears and substitute “plan” in each place. 10
- Clause 9: omit “**strategy**” from the heading and substitute “**plan**”.
- Clause 9: omit “strategy” and substitute “plan”.
- Clause 10(4): omit “, without reasonable excuse, is an offence under section 154(q)” and substitute “is an offence under **section 154M(19)**”. 15
- Clause 11(3): omit “, without reasonable excuse, is an offence under section 154(q)” and substitute “is an offence under **section 154M(19)**”.
- Clause 13(2): omit “, without reasonable excuse, is an offence under section 154(q)” and substitute “is an offence under **section 154M(19)**”. 20
- Clause 14(3): omit “, without reasonable excuse, is an offence under section 154(q)” and substitute “is an offence under **section 154M(19)**”.
- Clause 15(2): omit “, without reasonable excuse, is an offence under section 154(q)” and substitute “is an offence under **section 154M(19)**”. 25
- Clause 16(2): omit “, without reasonable excuse, is an offence under section 154(q)” and substitute “is an offence under **section 154M(19)**”. 30
- Clause 20(4): omit “, without reasonable excuse, is an offence under section 154(q)” and substitute “is an offence under **section 154M(19)**”.

Biosecurity (National American Foulbrood Pest Management Strategy) Order 1998 (SR 1998/260)—continued

Clause 21(3): omit “, without reasonable excuse, is an offence under section 154(q)” and substitute “is an offence under **section 154M(19)**”.

Clause 22(2): omit “, without reasonable excuse, is an offence under section 154(q)” and substitute “is an offence under **section 154M(19)**”. 5

Clause 23(2): omit “strategy” and substitute “plan”.

Clause 24(4): omit “, without reasonable excuse, is an offence under section 154(q)” and substitute “is an offence under **section 154M(19)**”. 10

Clause 26(2): omit “, without reasonable excuse, is an offence under section 154(q)” and substitute “is an offence under **section 154M(19)**”.

Clause 27(3): omit “, without reasonable excuse, is an offence under section 154(q)” and substitute “is an offence under **section 154M(19)**”. 15

Clause 29(4): omit “, without reasonable excuse, is an offence under section 154(q)” and substitute “is an offence under **section 154M(19)**”.

Clause 31(4): omit “, without reasonable excuse, is an offence under section 154(q)” and substitute “is an offence under **section 154M(19)**”. 20

Clause 32(5): omit “, without reasonable excuse, is an offence under section 154(q)” and substitute “is an offence under **section 154M(19)**”. 25

Clause 33(2): omit “, without reasonable excuse, is an offence under section 154(q)” and substitute “is an offence under **section 154M(19)**”.

Clause 40(1)(a): omit “strategy” and substitute “plan”.

Clause 41: omit “strategy” from the heading and substitute “plan”. 30

Clause 41: omit “strategy” and substitute “plan”.

Clause 42: omit “strategy” and substitute “plan”.

Biosecurity (National Bovine Tuberculosis Pest Management Strategy) Order 1998 (SR 1998/179)

Clause 1(1): omit “Strategy” and substitute “Plan”.

Clause 2(1): definition of **authorised person**: omit “strategy” and substitute “plan”. 5

Clause 2(1): definition of **common costs**: omit “strategy” and substitute “plan”.

Clause 2(1): insert the following definition in its appropriate alphabetical order:

“**plan** means the National Bovine Tuberculosis Pest Management Plan made by this order”. 10

Clause 2(1): revoke the definition of **strategy**.

Clause 3: omit “**Strategy**” from the heading and substitute “**Plan**”.

Clause 3: omit “Strategy” and substitute “Plan”.

Clause 4: omit “strategy” and substitute “plan”. 15

Clause 5: omit “**strategy**” from the heading and substitute “**plan**”.

Clause 5: omit “strategy” from each place where it appears and substitute “plan” in each place.

Clause 5A: omit “**strategy**” from the heading and substitute “**plan**”.

Clause 5A: omit “strategy” and substitute “plan”. 20

Clause 6: omit “strategy” and substitute “plan”.

Clause 7: omit “**strategy**” from the heading and substitute “**plan**”.

Clause 7: omit “strategy” and substitute “plan”.

Clause 8: omit “**strategy**” from the heading and substitute “**plan**”.

Clause 8: omit “strategy” from each place where it appears and substitute “plan” in each place. 25

Clause 9: omit “**strategy**” from the heading and substitute “**plan**”.

Clause 9: omit “strategy” and substitute “plan”.

Clause 10(2): omit “, without reasonable excuse, is an offence under section 154(q)” and substitute “is an offence under **section 154M(19)**”. 30

Clause 11(2): omit “, without reasonable excuse, is an offence under section 154(q)” and substitute “is an offence under **section 154M(19)**”.

Biosecurity (National Bovine Tuberculosis Pest Management Strategy) Order 1998 (SR 1998/179)—continued

Clause 12(3): omit “, without reasonable excuse, is an offence under section 154(q)” and substitute “is an offence under **section 154M(19)**”.

Clause 12A(2): omit “, without reasonable excuse, is an offence under section 154(q)” and substitute “is an offence under **section 154M(19)**”.

Clause 12B(6): omit “, without reasonable excuse, is an offence under section 154(q)” and substitute “is an offence under **section 154M(19)**”.

Clause 12C(3): omit “, without reasonable excuse, is an offence under section 154(q)” and substitute “is an offence under **section 154M(19)**”.

Clause 12D(3): omit “, without reasonable excuse, is an offence under section 154(q)” and substitute “is an offence under **section 154M(19)**”.

Clause 12E(3): omit “, without reasonable excuse, is an offence under section 154(q)” and substitute “is an offence under **section 154M(19)**”.

Clause 13(4): omit “, without reasonable excuse, is an offence under section 154(q)” and substitute “is an offence under **section 154M(19)**”.

Clause 14(4): omit “, without reasonable excuse, is an offence under section 154(q)” and substitute “is an offence under **section 154M(19)**”.

Clause 14A(4): omit “, without reasonable excuse, is an offence under section 154(q)” and substitute “is an offence under **section 154M(19)**”.

Clause 14B(2): omit “, without reasonable excuse, is an offence under section 154(q)” and substitute “is an offence under **section 154M(19)**”.

Clause 15(2): omit “, without reasonable excuse, is an offence under section 154(q)” and substitute “is an offence under **section 154M(19)**”.

Biosecurity (National Bovine Tuberculosis Pest Management Strategy) Order 1998 (SR 1998/179)—continued

Clause 15A(8): omit “, without reasonable excuse, is an offence under section 154(q)” and substitute “is an offence under **section 154M(19)**”.

Clause 16(3): omit “, without reasonable excuse, is an offence under section 154(q)” and substitute “is an offence under **section 154M(19)**”.

Clause 17(3): omit “, without reasonable excuse, is an offence under section 154(q)” and substitute “is an offence under **section 154M(19)**”.

Clause 17A(3): omit “, without reasonable excuse, is an offence under section 154(q)” and substitute “is an offence under **section 154M(19)**”.

Clause 18(1): omit “section 86 of the Act and this strategy” and substitute “**section 100D** of the Act and this plan”.

Clause 19: omit “**strategies**” from the heading and substitute “**plans**”.

Clause 19: omit “strategy” and substitute “plan”.

Clause 19(a): omit “section 92” and substitute “**section 100G(5)**”.

Clause 19(a): omit “section 90” and substitute “**section 100G(1)**”.

Clause 19(h): omit “section 92” and substitute “**section 100G(5)**”.

Clause 19(h): omit “section 90” and substitute “**section 100G(1)**”.

Clause 20: omit “strategy” and substitute “plan”.

Clause 21: omit “strategy” and substitute “plan”.

Biosecurity (Small Scale Organism Management) Order 1993 (SR 1993/324)

Clause 2: omit “section 100(1)(c)” and substitute “**section 100Q(2)(c)**”.

Climate Change (Forestry Sector) Regulations 2008 (SR 2008/355)

Clause Regulation 26(1)(a): omit “strategy” and substitute “plan”.

Clause Regulation 26(2): omit “strategy”.

Biosecurity Law Reform Bill

Revocation of regulations

Biosecurity (National (South Island) Varroa Pest Management Strategy) Order 2005 (SR 2005/17)

Revoke.

Biosecurity (Varroa (South Island) Beekeeper Levy) Order 2005 (SR 2005/49)

Revoke.

Legislative history

25 November 2010	Introduction (Bill 256–1)
9 December 2010	First reading and referral to Primary Production Committee
30 June 2011	Reported from Primary Production Committee (Bill 256–2)
16 August 2011	Second reading
18, 19 July 2012	Committee of the whole House
31 July 2012	Reported from the committee of the whole House (Bill 256–3)
