# SUBMISSION ON

# Biosecurity Act 1993 Proposed Amendments

13 December 2024

**To:** Ministry for Primary Industries (MPI)
**Name of Submitter:** Horticulture New Zealand
**Supported by:** Citrus NZ, NZ Apples & Pears, NZ Avocado, NZ Tamarillo Growers Assoc., Onions NZ, Potatoes NZ, Summerfruit NZ, Tomatoes NZ, Vegetables NZ Inc.

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# OVERVIEW

## Submission structure

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## Our submission

Horticulture New Zealand (HortNZ) thanks the Ministry for Primary Industries (MPI) for the opportunity to submit on the proposed amendments to the Biosecurity Act 1993. We welcome further discussions our submission and look forward to working with MPI as you continue to develop more fully how the various proposals will work in practice and what their implications are.

The details of HortNZ's submission and decisions we are seeking are outlined below.

PART 1

# HortNZ's Role

## Background to HortNZ

HortNZ represents the interests of approximately 4,200 commercial fruit and vegetable growers in New Zealand who grow around 100 different fruits and vegetables. The horticultural sector provides over 40,000 jobs and is valued at ~$7.48 billion (2023/24).

There are approximately 80,000 hectares of land in New Zealand producing fruit and vegetables for domestic consumers and supplying our global trading partners with high quality food.

It is not just the direct economic benefits associated with horticultural production that are important. Horticulture production provides a platform for long term prosperity for communities, supports the growth of knowledge-intensive agri-tech and suppliers along the supply chain; and plays a key role in helping to achieve New Zealand's climate change objectives.

The horticulture sector plays an important role in food security for New Zealanders. Over 80% of vegetables grown are for the domestic market and many varieties of fruits are grown to serve the domestic market.

HortNZ's purpose is to create an enduring environment where growers prosper. This is done through enabling, promoting and advocating for growers in New Zealand.


**Industry value $7.48bn**

**Total exports $4.67bn**

**Total domestic $2.81bn**

Source: Stats NZ and MPI

## HortNZ's Biosecurity Act 1993 Involvement

On behalf of its grower members, HortNZ takes a significant interest in biosecurity regulations, planning, and operations. As well as advocating on behalf of growers in discussions with MPI and other regulators, HortNZ and other industry groups also work to raise the awareness of fruit and vegetable growers about the roles they can play in helping to keep their farms, orchards and wider New Zealand protected from unwanted pests and diseases.

PART 2

# Executive Summary

## HortNZ is generally supportive of the proposals, subject to the completion of a final impact analysis

HortNZ generally supports the intent of the proposed amendments. We note that many of the proposals have only been developed at a high-level. Further work is required to understand how they will be operationalised and what impacts they will have on biosecurity risk. Further analysis is also needed to assess their financial and economic impact on businesses, sectors and the regions they support.

We also suggest that the financial and economic impacts of these proposals need to be considered in the broader context of changes being imposed/proposed across government. These changes will have a cumulative impact on the horticulture sector.

## Biosecurity is the responsibility of all New Zealanders but has particular impacts on specific sectors

We are supportive of a general-purpose clause for the Act that reflects the 'main' purpose of the biosecurity system to protect human, plant and animal health and the environment.

We would also support 'additional' purposes that reflect that biosecurity is the responsibility of all New Zealanders but has particular impacts on certain sectors. We would recommend the purpose clause recognise that biosecurity is not solely the domain of Government. It should explicitly acknowledge that biosecurity must be delivered in partnership with those who are substantively affected, such as the horticulture sector.

## We support infringement fine proposals but highlight the need for broader modernisation of enforcement provisions

We support increasing infringement fines and differentiation between higher risk behaviour and lower risk behaviour.

We note, however, that more broadly, the penalties appear out of step with modern legislation. We also consider compliance and enforcement would benefit from the introduction of additional tools, such as enforceable undertakings.

Finally, we would like to see MPI take stronger enforcement action against recidivist offenders. The vast majority of growers put a great deal of time and resources into being compliant. Those who repeatedly breach the law need to be held accountable for their behaviour through the courts.

## We have concerns about the proposals relating to GIA

Changes to Government Industry Agreements (GIA's) appear to be shifting additional cost from the Crown to industry. This is likely to result in some sectors stepping away from GIAs. There are both principled and pragmatic arguments why risk exacerbators and the Crown should shoulder the costs of readiness and response activities relating to pests and disease originating at the border, where industry has no control.

Specifically, industry is only 'benefiting' from a response to pests or diseases that originate at the border due to the actions of travellers and traders in bringing those pests and diseases into New Zealand and the inability of MPI to stop them at the border. First and foremost, the horticulture sector is a 'victim' of the actions or inactions of these parties.

HortNZ is also aware of other changes underway that seek to move cost from Government to industry, for example, relating to the approval of agricultural chemicals. As per Treasury Guidelines for *Setting Charges in the Public Sector*, it is important that MPI consider the cumulative impact of proposals across government. Every dollar industry contributes to readiness, response and other Government services over and above taxation, is a dollar not being spent on growing businesses and sectors to support the Government's goal to double New Zealand's exports.

We are also concerned with proposals to expand GIA's in both scope and parties who may be signatories. The proposals risk introducing inefficiency into what is currently a well-functioning arrangement between MPI and industry, potentially hindering timely responses to emerging risks and threats.

## We have mixed views on the compensation proposals

HortNZ is strongly in favour of fair compensation for losses incurred because of the exercising of statutory powers. We also believe that compensation must remain affordable for both the Crown and industry. While we do not favour restricting the types of losses that can be compensated for, we support placing limits on compensation timeframes. These should not be determined on a one-size-fits-all basis, but rather on recognising the specific circumstances of each industry.

## We broadly support IHS proposals with some exceptions

While HortNZ generally endorses the proposed changes to Import Health Standards (IHS), we have several concerns. First, we do not support the removal of consultation on technical amendments. Even limited changes should require targeted consultation with affected parties. Second, we also do not support removal of the independent review panel without provision for an alternative mechanism to enable objections to be raised.

Finally, we believe there are opportunities for MPI to speed up the development of IHS' and would like to work with MPI to explore enabling:

- Those who wish to fund the development and review of an IHS to do so and have that IHS prioritised.
- Parties to develop their own IHS and submit those for assessment and approval by MPI.

- Certifying organisations to develop IHS.

Similar considerations are presently underway in the context of Resource Management reforms and the development of National Environmental Standards. We believe it is timely to consider these ideas within the biosecurity context as well.

## Transitioning from responses to long-term management

HortNZ considers that there is room for improvement in the transition from responses into long-term management. MPI appears strongly incentivised to end responses quickly in order to transfer financial costs and risk. However, this can leave regional councils unprepared to take on the long-term management, even in partnership with industry.

While we do not support regional government becoming signatories to GIAs, we do support their involvement in readiness and response. This approach would help build their capability and better position themselves to implement long-term management plans be required.

PART 3

# Submission

## 1. General comments

Biosecurity is the responsibility of all New Zealanders, but poor biosecurity practice has a more profound and immediate impact on some sectors of society, such as horticulture, than others.

The cumulative impact of the proposals could have significant consequences for New Zealand's horticulture industry. Many proposals require significant work to understand how they will work in practice and what the implications might be.

The purpose of the biosecurity system and Biosecurity Act is predominantly to mitigate the risks associated with the actions of travellers and traders. The initial principle for funding should be 'risk exacerbator' pays.

**Given the cumulative significance of the proposals, we expect a robust cost benefit analysis to be undertaken to support the final package of reforms.**

Given this significance of the proposals, we expect MPI to work closely with the horticulture sector to finalise a package of amendments. This involves determining:

- How each proposal will work in practice,
- The individual and cumulative implications of proposal,
- The combined impact of other Government actions on the horticulture sector, for example, the review of chemical compounds, and
- The financial and economic impact on the horticulture sector.

This reflects our expectation that biosecurity is delivered in partnership with the horticulture sector and is not the domain of Government alone.

In a full cost-benefit analysis, we would expect to see:

- A clear examination of the financial impact on individual businesses. This could include case studies highlight the cost impacts to a typical grower.
- An assessment of the broader economic impact of these proposals and other proposals being developed across government – such as potential impacts on sector viability – and spillover effects and externalities imposed on regions, such as employment and GDP.
- A cost-benefit analysis informed by data, evidence and rigorous modelling, rather than relying solely on just assumptions, anecdotes or "logical" arguments.

**We broadly agree with the objectives of the proposed amendments. We note, however, that the Biosecurity Act provides the foundation for not just 'what' needs to be achieved but also 'how'.**

We consider amendments to the Act should explicitly recognise the need to deliver biosecurity in partnership with all New Zealanders. In particular, it should work closely with sectors of society, such as horticulture, that are particularly and immediately affected by poor biosecurity outcomes, and therefore are strongly incentivised to support good biosecurity practice.

# 2. System-wide issues proposals

## 2.1. We support an overarching purpose statement and purpose statements for each part of the Act

In shaping an overarching purpose clause, we note the Legislative Design Advisory Committee (LDAC) Guidance pertaining to designing purpose clauses and statements of principle.

We believe a 'policy' purpose clause, rather than a 'legal effect' purpose clause, would best achieve the objective of articulating the outcomes sought from the biosecurity system and the principles that underpin how the system is operationalised.

When developing 'policy' purpose clauses, it is important to:

- Ensure they are consistent with, and do not go further than, the substantive provisions of the legislation (including any objectives of regulators or other entities with functions under it, and decision-making criteria,
- Avoid broad, unsubstantiated statements, which may expose decision-makers to unjustified judicial review risk in the exercise of discretion, create a risk of liability for negligence, or set standards unexpectedly high for administering agencies,
- Maintain clarity and precision, and prevent ambiguity unintended legal effects on interpreting the legislation,
- Ensure that they are overly complex, unrealistic, or unworkable tests for decision-making under the legislation, and
- Ensure that officials and lawmakers do not expect the purpose clause to achieve more by itself than it can (and so under-estimate what is required in terms of substantive provisions).

We believe that adopting a two-part purpose clause, like that in the Financial Markets Conduct Act 2013 to be appropriate. This reflects the scale and complexity of the biosecurity system and multiple outcomes that it aims to achieve. A two-part purpose clause enables articulation of the primary outcomes of the biosecurity system, while also acknowledging additional, secondary outcomes.

We propose a layered approach whereby:

- an overarching purpose clause clarifies the 'main' purpose of the biosecurity system and 'additional' purposes, which speak to how the system will be operationalised.

- dedicated clauses for each part set out how that part ties back to the main purpose and reflects the additional purposes/ways of working as appropriate for the functions contained in that part.

In considering the elements suggested for inclusion in a purpose clause, it is also important to ensure that purpose clauses do not go beyond what the substantive provisions can realistically deliver. Doing so, can result in unrealistic expectations (and disillusion with the legislation) for users further down the track. Our positions in in respect of the elements of a purpose clause proposed are summarised in Table 1.

We also consider there is value in adding or amending purpose clauses for the various parts of the Act. These clauses should demonstrate, with more specificity, how the part will support attainment of the 'main' and 'additional' purposes of the Act. For example, purpose statements for parts relating to biosecurity surveillance, readiness and response would explicitly reflect that the powers, duties and functions provided for in these parts are exercised in partnership with substantively affected parties.

*Table 1. HortNZ's positions on the elements of a proposed purpose clause*

| Proposal or statement | Position | Comments |
|---|---|---|
| A statement about protection. | Agree | The 'main' purpose of the biosecurity system is to protect human, plant and animal health, as well as the environment. |
| A statement about giving effect to international agreements. | Agree | We consider this to be an 'additional' purpose. |
| Clarification that trade (both imports and exports) is facilitated. | Agree | We view this to be an 'additional' purpose. |
| Reference to the system being operationally efficient in delivering biosecurity outcomes. | Disagree | - The term "efficient" risks becoming contested without a clear definition in the Act.<br>- Defining efficiency across all system aspects is highly challenging.<br>- Without benchmarks, this is an 'empty statement' that risks setting unrealistic expectations, as per LDAC guidance.<br>- There is potential for under-investment if efficiency is interpreted as "doing more with less." |
| Reference to environmental, economic, social, and cultural values so there is a legislative mandate to consider them in decision-making. | Agreed | This should be part of the 'main' purpose of the Act, providing a legislative mandate to consider these values. |
| Clarification that the Biosecurity Act is about effective management of biosecurity risks. | Neutral | - We believe it is implicit that New Zealand seeks 'effective' management of biosecurity risks.<br>- While we don't object to including this term in the 'main' purpose, we question how 'effectiveness' would be assessed, similar to concerns about defining 'efficiency.' |
| Societal responsibility | Proposed as an 'additional' purpose | The purpose clause should empower New Zealanders to take responsibility for the biosecurity of New Zealand in achieving the 'main' purpose. |
| Partnership | Proposed as an 'additional' purpose | The purpose clause should acknowledge that the biosecurity system is delivered in partnership with sectors that are substantively impacted by biosecurity risks. This ensures the legislation recognizes their integral role in supporting and delivering the system's objectives. |

## 2.2. We do not support ministerial involvement in significant decisions

Decisions should continue to be based on science and evidence, with the explicit inclusion of local knowledge. In our view, involving Ministers introduces a high risk of political bias and may unnecessarily prolong the decision-making process, particularly if Cabinet approval is required.

Ministerial decision making within the system may also raise questions about funding. For example, if a Ministerial decision overrides a GIA, it is unclear who pays for the consequences of that decision.

Instead, we recommend that responsibility continues to rest with the Chief Technical Officer. We also propose explicit requirements for decisions to be made in partnership with affected parties, where appropriate – such as in post-border functions – to ensure that diverse perspectives are integrated into the process.

## 2.3. We support local knowledge in decision making

HortNZ supports incorporating local knowledge into decision making, as this aligns with our position that the biosecurity system should be carried out in partnership with all New Zealanders, particularly those who are substantively affected.

We believe decisions should, by default, be guided by scientific evidence; however, it is important to acknowledge that science often examines issues in a more generic context. Although it provides a valuable foundation, scientific findings may not always translate directly to specific local environments or circumstances. Therefore, we recommend that the Act should clarify that local knowledge needs to be considered and balanced against the scientific evidence in decision making.

As a substantively affected party, we also believe the horticulture sector should be closely involved in developing the regulations and operational frameworks necessary to implement this proposal in practice.

## 2.4. We support strengthened compliance and infringements

### 2.4.1. CHANGES TO INFRINGEMENT REGIME

We support a scaled approach to infringements. Specifically, we recommend that erroneous declarations pertaining to 'high risk goods' automatically incur the maximum infringement fine of $2,000, while all other goods attract a lower, a universal fine (e.g. $500 or $1,000). We believe this two-tiered model, combined with granting the Director-General authority to identify "high-risk goods," will help mitigate additional administrative burdens.

We also support the proposal allowing Regional Councils to designate infringement offences for breaches of pest and pathway management plans, as this would reinforce a risk-based approach to compliance enforcement.

However, we do not support the proposed infringement fee of $300. A breach of a pest or pathway management plan can result in the establishment or spread of a pest or disease, causing significant economic harm to a region and potentially escalating into a national issue. It is unclear why such a breach should incur a lower penalty than an erroneous declaration. We therefore suggest a maximum infringement fine of $2,000.

Finally, we support the proposals relating to changes to offences and penalties associated with Compliance Advice Notices (CANs).

#### 2.4.2. ENFORCEMENT PENALTIES AND PRACTICE

We also note that, historically, MPI has tended to avoid prosecuting offenders, preferring non-court-imposed penalties. While we fully understand the importance of starting with information, education and warnings, we believe MPI should lower the threshold for a prosecution to be taken and hold recidivist offenders accountable in courts. Taking a stronger stance on recidivist offending will also provide a stronger deterrent effect.

We consider the current penalties of $5,000 for an individual and $15,000 for a company are too low. We recommend that these penalties be aligned with penalties in more recent legislation, such as the Water Services Act 2021.

Finally, we would support the inclusion in the Biosecurity Act of additional enforcement tools such as enforceable undertakings and the inclusion of duties to notify the relevant authority of any breach of the Act or pest management and pathway management plans. We consider such a duty would support the early detection of pests and disease and breaches of plans and CAN's.

# 3. Funding proposals

## 3.1. General comment

The original objective of GIAs was to establish a formal partnership between Government and industry in respect of dealing with biosecurity readiness and response. In exchange for decision making rights, industry recognised that it was appropriate that it contribute towards the resourcing of readiness and response activities.

At the time, Government agreed to fund a 20% share on behalf of risk exacerbators, from general taxation. Taxpayer funds were required given the Biosecurity Act did not enable recovery of post-border costs from risk exacerbators through the Biosecurity Systems Entry Levy or Border Processing Levy. At the time, there was no appetite among Minister's to amend the Act to enable recovery from risk exacerbators, we submit that this review provides that opportunity.

We note from Treasury Guidelines for Setting Fees and Charges in the Public Sector that - "*It will not always be necessary to revisit the policy objectives …. However, a review of a cost recovery regime should be able to demonstrate that the policy objectives are still appropriate …*"

It is clear from the proposals in the discussion document that the Government intends to revisit the policy objectives relating to funding biosecurity readiness and response with the objective of shifting more readiness and response costs onto industry. The argument is that industry 'benefits' from these activities. As Government is seeking to revisit the policy objectives, we believe that a more nuanced view is appropriate.

#### 3.1.1. INCURSIONS WHOSE ORIGINS ARE THROUGH THE BORDER

As noted above, the purpose of the biosecurity system and Biosecurity Act is predominantly to manage risks associated with travellers and traders. As such, the starting principle for funding the system should be 'risk exacerbator' pays.

Most pests and diseases arrive in New Zealand because of the actions of travellers and traders. The failure of MPI to stop pests and disease at the border lead to their entry to

New Zealand. In such circumstances, industry is, first and foremost, the 'victim' of the actions or inactions of travellers, traders and MPI (see Case Study 1). Without these failures, industry would not need to 'benefit' from readiness or response activities.

We consider that when pests and diseases arrive through the border, financial costs associated with readiness and response should be meet entirely by risk exacerbators and the Crown. We consider industry's 'in-kind contribution' to be sufficient to justify industry's continued role in decision-making.

**Case Study 1: The Decline of New Zealand's Tamarillo Industry and Biosecurity's Impact**

The New Zealand tamarillo industry was once a thriving horticultural sector. By 2006, there were up to 175 growers cultivating approximately 200 hectares planted area, producing 800 tonnes of fresh tamarillos annually. Domestically, the industry was worth NZ$3.5M while supplying an established million-dollar export market (~NZ$1M) with opportunities to expand into other global markets.

This flourishing industry was dealt a devastating blow in 2006 with the arrival of the Tomato Potato Psyllid (TPP) and the associated bacterium *Candidatus Liberibacter solanacearum* (CLso). Alongside other solanaceous crops like tomatoes, potatoes, and capsicums, tamarillo production suffered severe losses in both volume and export value due to this biosecurity pest incursion.

**The Immediate Impact of the TPP-CLso Incursion**

Tamarillo trees, being perennial crops, require a minimum of 3-4 years to reach maturity and fruit production at a commercial scale. In the early days of this biosecurity incursion, tamarillo growers needed to remove and replant 70-80% of their crops, and up to 100% in some cases. This resulted in significant delays in production recovery and substantial financial losses.

Following an investigation by MPI, it was concluded that the source of the TPP-CLso incursion was likely to be smuggled (illicitly imported) chili pepper plants from the USA. Despite the biosecurity response, the tamarillo industry faced long-lasting consequences, including the collapse of its export market.

**Subsequent Challenges and Industry Decline**

The industry faced further adversity in the years following the initial incursion:

- **Tamarillo Mosaic Virus (TaMV)**: In 2014, outbreaks of this hard-to-control virus led to temporary export bans, further destabilizing the industry.
- **A Second Wave of TPP-CLso**: In 2020/2021, another severe outbreak resulted in even more growers leaving the industry.
- **Cyclone Gabrielle**: In 2022, this natural disaster caused widespread devastation, compounding the industry's struggles.

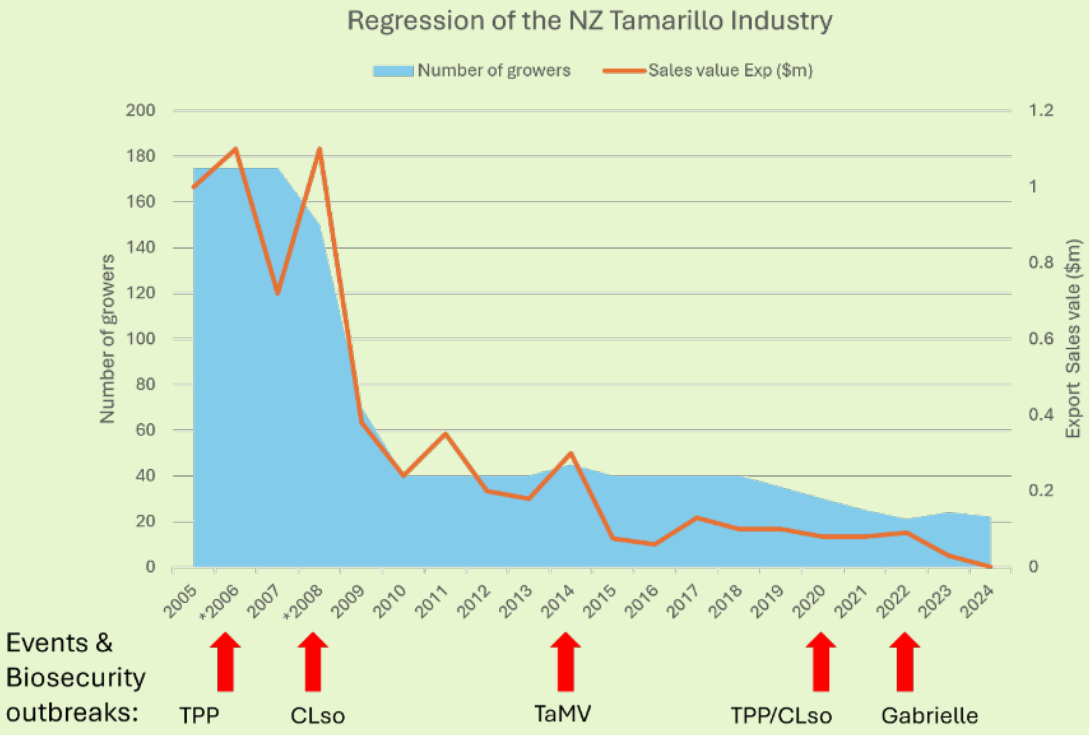
These events exacerbated existing challenges, including uncertainty in production yields and profits, difficulties in pest management, and a lack of accessible solutions.

As a result, the tamarillo industry has undergone a drastic decline, leaving it a shadow of its former self.

Currently the tamarillo industry only counts 22 commercial producing growers covering less than 25% of the industry's production area in 2006 and a residual, highly fluctuating, export market of less than NZ$30.000 (2023).

**Horticulture as a Victim of Biosecurity Incursions**

The collapse of the tamarillo industry demonstrates that horticulture is not a beneficiary of biosecurity responses but often the primary victim. Biosecurity incursions, such as the TPP-CLso outbreak, leave growers to bear the brunt of the economic, environmental, and operational impacts. Despite efforts to address such incursions, the long-term consequences for growers can be devastating, underscoring the need for more proactive and supportive biosecurity strategies to safeguard New Zealand's horticultural sectors.




### 3.1.2. INCURSIONS WHOSE ORIGINS ARE THROUGH NATURE

Some pests and diseases may arrive in New Zealand via natural means (i.e. ocean currents or on the winds). Where this occurs, it is difficult to justify a 'risk exacerbator' contribution. In such instances, it is fair to consider the origin of costs as being to benefit industry. We would therefore submit that costs associated with these responses are shared between the Crown and industry, considering industry's in-kind contribution and the broader public good and economic impact for New Zealand.

### 3.1.3. RECOGNITION OF 'IN-KIND' CONTRIBUTIONS

The focus of consultation is on financial costs of readiness and response. Industry contributes significantly to these activities by way of in-kind contributions (i.e. incurring

on-farm costs, provision of expertise, coordination, destruction of crops, etc). We note that the value of these costs have never been quantified, and as such, it is not possible to fairly determine whether industry's financial contributions, in the case of pests and diseases arriving naturally, are fair.

For example, in the instance where crops are destroyed, the costs to industry can be far more significant than simply establishing new crops. Trees and vines, particularly if root stock has been destroyed, can take years to reach full production. While compensation may assist with these costs, it does not address the significant non-financial costs faced by growers and communities (i.e. mental health, unemployment).

#### 3.1.4. CUMULATIVE IMPACTS OF CHANGES IN FUNDING ARRANGEMENTS ACROSS GOVERNMENT

As per Treasury Guidelines, "*Cost recovery regimes do not operate in isolation. Customers/users will have many other interactions with government services. It is useful to understand what recent or potential changes in government charging arrangements may have an impact on the customer/user base so that your approach and analysis can be adapted accordingly. For example, changes to the border levy and the civil aviation passenger levy will impact on some of the same users (i.e., international air passengers), so changes in one regime can be usefully referenced in advice on the other. This will help in assessing the overall impact to the user from changes across related cost recovery regimes.*"

We are aware of several reviews underway presently, all with similar objectives to see more cost transferred from Government to industry. It is important that, in assessing proposals relating to funding readiness and response, the impacts are understood in the context of implications of other work underway across government. For example, there is a recent proposal for greater cost-recovery associated with agricultural chemical approvals.

## 3.2. We do not support regular reviews of cost-shares in the GIA

While HortNZ agrees that there is benefit to industry associated with readiness and response activities, we do not see that this benefit is likely to change substantively over time. We also note that changes to arrangements, set out in Deeds, would require signatories to seek support from their sectors and re-affirm their commitment. This presents a risk that sectors may conclude it is no longer worthwhile to remain GIA signatories.

## 3.3. We do not support providing a cost-share framework in regulation

Determination of cost share frameworks should be a negotiation on an equal/partnership basis. Ultimately, legislation is the domain of Government. Industry has no certainty that the framework the government develops would be agreed to by industry; yet, this framework would be difficult to change by virtue of being provided for in regulatory instruments.

Cost shares are determined via negotiation, and the principles for establishing these have already been settled. If MPI envisages these principles are to change, GIA signatories would first need to agree. If GIA signatories considered that changes would materially

disadvantage sectors, those sectors may decide re-confirming their commitment to a GIA is not worthwhile.

Changes to GIA arrangements that seek to see industry carry a greater portion of the financial cost burden will divert working capital away from investment in productivity and growth. We do not see how this supports Government's objective to double exports.

We also note that these considerations cannot be undertaken in isolation of other charges and levies in place or planned across government onto industry. Any decisions should consider the 'cumulative' impact on industry associated with various proposals.

## 3.4. We support cost recovery from non-signatory beneficiaries as a starting point

As noted above, we consider the starting point for funding the biosecurity system should be 'risk exacerbator pays'. If this principle is accepted, then risk exacerbators and the Crown would fund biosecurity systems costs where pests and diseases enter via the border. In doing so, this would make the question of non-signatory beneficiaries (NSB) contributions to readiness and responses in this space a moot point.

Where pests and diseases enter naturally and the 'beneficiary pays' principle is adhered to, then we consider it is appropriate that NSB's should pay towards readiness and response as a default.

As indicated by Treasury Guidelines, there may be reasons to depart from this default principle. Administrative efficiency has been identified as one. We also consider factors such as 'ability to pay' should be a consideration. This is because, for small sectors, financial contributions to readiness and responses may either make sectors unviable or could have economic impacts on sectors that outweigh the desirability of adhering to the default principle.

We propose that an alternative solution to either post-event cost-recovery or pre-event insurance is to adjust the eligibility criteria for establishing a GIA. There are some product groups that would sign up to a GIA but are unable to do so as they do not have a peak representative body. While this may not completely address the issue at hand, it may contribute to reducing the scale of the issue.

## 3.5. We consider the development of an up-front levy to be a form of 'insurance' and not 'cost recovery'

A variation of proposal 15A – *levy non-signatory beneficiaries to build an up-front fund* was considered by MPI at the time the GIA framework was being developed. It was identified that such a proposal is not supported by empowering provisions in the Biosecurity Act and would require legislative amendment.

More fundamentally, however, the proposal is not 'cost recovery'. Rather, it is proposing a form of 'insurance'. We also do not consider this proposal complies with the Office of the Auditor-General – *Setting and administering fees and levies for cost recovery: Good practice guide*, relating to the principle of 'justifiability' [refer 2.21-2.23].

We recognise that upfront recovery enables costs to be spread over time and is administratively efficient. However, the proposal needs to be re-positioned and re-

consulted on as the introduction of an 'insurance' scheme and not progressed under the guise of cost recovery.

As noted above, the establishment of a levy to build a pool of funds in advance of response activities was considered at the time GIA's were initially being developed. We would encourage MPI to review that work prior to moving forward with this proposal.

Given the above, we would support proposal 15B, in principle, with the caveats that before a levy was imposed, consideration was given to the impact on NSB sector sustainability and growth associated with levying costs.

Finally, we do not support the proposal within 15A that levies be collected by the industry organisation as the collection agent. We accept that, as with the collection of the border processing levy, building consent levies and the natural hazards levy, provision can be made for administrative costs associated incurred by the collection agent.

However, in each of the levies sighted above, the collection agents (i.e. airlines, local government, private insurance companies) are not also 'representatives' on behalf of their customers. We consider requiring industry organisations to collect the levies on behalf of the Crown could be seen as a conflict of interest in the eyes of our growers and may undermine their trust and confidence in us.

# 4. Improvements to the operation of compensation schemes

Adequately compensating growers that have been adversely impacted by response operations is critically important. The timely provision of appropriate levels of compensation increases the probability of successfully achieving the response objectives, ameliorates the adverse impacts of a response, and enables producers to maintain business viability.

## 4.1. General comment

### 4.1.1. BENEFITS OF PROVIDING ADEQUATE COMPENSATION

Along with the immediate and longer-term economic impacts that put their businesses and the livelihoods of their family, staff and wider community in jeopardy, there are also significant psycho-social impacts. The timely provision of compensation cannot magically erase these impacts, but it does ameliorate them.

Compensation provides affected growers with the means to recover their businesses, which sustains the sector, prevents the long-term loss of export dollars, and maintains domestic food supply.

### 4.1.2. RISKS OF NOT PROVIDING ADEQUATE COMPENSATION

Early reporting of the presence of unwanted pests and diseases is a critical success factor for New Zealand's biosecurity surveillance programmes. Removing compensation provisions would disincentivise growers from reporting possible unwanted pests and diseases in their crops.

Biosecurity responses are immensely traumatising for rural communities. No one wants to go through the experience of MPI invading their property, issuing a movement control notice, destroying crops, and threatening the financial viability of their business. Affected growers and their families are hugely impacted, and that stress spreads to their friends and neighbours who witness what is happening and the impacts it has. The temptation not to report early signs of pests and diseases on your own property is entirely understandable from a human psychological perspective.

The provision of financial compensation cannot take away the direct stresses of having your business operations disrupted and crops destroyed, but it does offer hope that you can rebuild your business again. Settings that detract from this hope would likely reduce cooperation and compliance and directly decrease the effectiveness of surveillance programmes both in peacetime (i.e. the early detection of the entry of an unwanted pest or disease) and during the response to an already identified incursion.

A lack of early reporting would render many surveillance programmes ineffective as the pest or disease is more likely to be able to spread at a faster speed than the surveillance program can detect them. The results of this would be a larger scale, longer duration and more expensive response that may not be able to achieve the initial objectives of successful management or eradication of the pest or disease.

#### 4.1.3. FINANCIAL VIABILITY AND SUSTAINABILITY OF COMPENSATION

While the provision of compensation is indispensable, we recognise that a well-considered review of the compensation system is required. The economic costs of the current compensation system have had a significant impact on the affordability of recent responses, and a large compensation bill has direct impacts on the industry GIA signatories cost-sharing under an operational agreement.

We request that government and industry work closely together to assess the options and find the appropriate balance between providing adequate compensation to support response success and industry recovery, while maintaining the long-term financial viability of the post-border biosecurity system.

#### 4.1.4. WHO FUNDS WHAT COMPENSATION?

As noted above, there is justification for non-signatory beneficiaries contributing in-kind resources but there may not to justification for contribution to the direct financial costs.

However, we do not consider this extends to the provision of compensation as this would result in a clear and direct instance of cross-subsidisation, which is not empowered by the Biosecurity Act. This is particularly the case for non-horticulture sectors who may seek compensation, such as tourism.

### 4.2. We partially support refining the ineligibility for compensation

We support the provision of clearer definitions of "biosecurity law" and "serious or significant breaches" of that law within the Act.

We do not support, and seek further discussion about, MPI's suggestion that the only serious non-compliances with biosecurity law that would render someone ineligible for compensation were those that were linked to the response.

Growers who are complying with biosecurity law would strongly object to funding compensation for people who had committed serious breaches of that law in any way, whether those serious breaches were directly related to the response or not.

The burden of compliance on growers has been rising exponentially in the last two decades. Every part of a growing business is now locked down in a seemingly impenetrable web of government compliance. It is inappropriate and inequitable to expect the majority, who are making substantial efforts to comply to the best of their abilities, fund the recovery of those who are not putting in similar efforts to be compliant and maybe even knowingly flouting the law.

## 4.3. We partially support enabling more detailed compensation entitlements and requirements via regulations

We support amending the Act to enable the development of secondary legislation to provide clarity about compensation entitlements and eligibility.

We do not support regulations specifying compensation rates. While this may work for some sectors, we consider it would be administratively costly to implement for horticulture. Horticulture consists of some 20 product groups, with many groups (i.e. applies, kiwifruit, etc) producing products with varying values (e.g. gold versus green kiwifruit). We consider that keeping regulations up to date with the constant changes in the value of the vast variety of horticultural products would be unworkable.

We do not support writing those secondary regulations without careful consideration of the potential repercussions of different options.

We have concerns that developing too structured of a compensation scheme at the primary or secondary legislation level would lead to a prescriptive and inflexible system that would be unable to deliver in all circumstances.

While we understand that every response is unique, and it is hard to find a one-size-fits-all approach to compensation, it would be impractical to implement a system that required bespoke compensation schemes to be developed for every situation.

The risks of an overly bespoke compensation system would include slowing down decision making due to uncertainty about compensation availability. Pests and diseases do not wait for decision makers to find certainty. For a response to successfully meet its objectives, wise decisions must be made quickly.

This is another area where we urge MPI to work closely with industry partners to optimise the compensation system.

## 4.4. We partially support the removal of varying compensation and enabling upfront payment for future losses

We support the removal of restrictions on the ability of GIA to vary compensation, when this is genuinely required. However, as far as we can see, the current primary legislation does not appear to contain any such restrictions.

We support the idea of making legislative amendments that would enable upfront payment of inevitable future losses. However, we can see non-legislative impediments to this being implementable during a response.

## 4.5. We support a framework that enables consideration of the differences between sectors and industries

Compensating for consequential losses is important for affected businesses and the sector to enable recovery quickly. The current status quo is understood and accepted and conveys a sense of equity between different affected sectors. The status quo incentivizes good biosecurity practices from a majority and fosters a good response outcome.

However, we consider a better framework would consider differences between sectors and industries as well as the nature or the incursion/response and decisions made for assessing and predicting consequential losses is desirable. We prefer a mechanism that also protects the primary producer/GIA-member industries from financially overcommitting.

The current compensation payout is considered largely disproportionate to the wider public good (including NSB). GIA members primarily want to support other GIA members. GIA members should not be expected to subsidise consequential losses, especially in non-GIA industries and sectors. These should be covered by the Crown on the basis of public benefit.

Compensating for consequential losses should be assessed on a case-by-case basis, a decision made jointly through the GIA system.

## 4.6. We support time limits for consequential compensation payments

Compensation for consequential losses on the basis of limiting the timeframe covering future losses appears to be a more equitable option if restrictions must be imposed to reduce response cost. This option limits the financial liability for GIA members and enables better planning and budgeting.

A one-size-fits-all timeframe used for all sectors is inadequate to cover the high diversity and needs of all different horticulture sectors and risks a disproportionate distribution of compensation. For example, some sectors with higher production flexibility, such as arable crops, can recover quickly and might be fully compensated within a short period of time. Other non-annual crops (e.g. fruit trees, forestry) require a longer time to establish plants and produce crops and have a longer production cycle.

Industry would require a flexible compensation system that allows and considers differences in the industry's needs and nature.

# 5. Border and imports proposals

## 5.1. We do not support removal of consultation for minor technical amendments

We broadly support proposals relating to IHS. However, we do not support proposals to remove consultation for minor technical amendments. We agree that full public consultation is unwarranted. However, even minor and technical changes can impact on the horticulture sector. For this reason, we would recommend the Act provide for targeted consultation with affected parties. In practice, this could occur by way of a briefing to affected parties followed by a specified period to enable comment.

## 5.2. We propose a more efficient approach to the development of import health standards

Due to resource constraints and the publicly funded nature of IHS, timely development is a challenge for the horticulture sector (see Case Study 2). We consider that there are opportunities for MPI to improve systems efficiency while maintaining effective risk management by enabling greater industry involvement in IHS development. This could occur by:

- **Exploring charging for IHS development** to enable those who wish to fund an IHS to be developed to have this progressed as a priority. This is consistent with the approach to funding National Environmental Standards currently being explored by the Ministry for the Environment.

- **Enabling industry or private individuals to develop their own IHS** for assessment and approval by MPI. This would transfer the cost to the primary beneficiary of the IHS while still enabling MPI to assure the IHS effectively manages risk.

- **Certifying private entities, such as HortNZ, to develop IHS** would create a centre of excellence that could focus on IHS development priorities for the industry while still maintaining effective risk management.

We would appreciate the opportunity to further explore how these approaches could be effectively operationalised.

**Case Study 2. The lack of variety in the New Zealand kumara industry**

**New Zealand's Unique Conditions Require Tailored Kumara Varieties**

Kumara growers rely on four varieties; however, more suitable and in-demand varieties are available overseas which our growers cannot access due to blockages in import system.

Many sectors within New Zealand's horticulture industry increasingly rely on importing suitable germplasm to ensures varieties to maintain domestic and global market competitiveness.

**Lengthy and Rigid Processes for Introducing New Varieties**

Growers must carefully select suitable varieties, import and trial them before commercial production. This process often requires years of planning and preparation, as well as substantial costs.

For example, after starting the import process in 2014, the industry was finally able to import a few 'new' varieties in 2023, roughly 20 years after the last importation. However, that was ultimately only possible after the CTO provided an exemption to import because the relevant IHS for *Ipomoea batatas* (kumara) was considered outdated.

Early in the importation process, the importer needed to book space in MPI's post-entry quarantine facility at Level 3B (L3B PEQ) more than 5 years in advance due to high demand.

In addition to the six months period in PEQ and vigorous testing to ensure freedom of quarantine pests, the imported kumara varieties will require an additional growing season to test growing suitability for the New Zealand climate conditions before entering the commercial production cycle possibly in the year 2025.

**Addressing PEQ Expansion and IHS Gaps: Ensuring Business Continuity and Growth in Horticulture**

The recent expansion of MPI's PEQ provided additional bookable space and a level of relief. The lack of available valid IHS's is still a barrier that causes lengthy delays, which adversely impacts the supply of new varieties, increasing import and production costs and stifling the ability to contribute to the long-term goal of doubling export value.

While growers try to anticipate and plan some years in advance, changes in consumer preference, resilience to pests and climatic adaptation require a quicker access and importation process to sustain domestic supply and international competitiveness. This means that importation of new germplasm must be available every year, consistently and sustainably.

The proposal to enable 'ad-hoc permits' for 'one-off' importation is a useful interim step. However, it does not resolve the cause of the significant delays, being the inability of MPI to keep up with the development and updating of IHS's.

## 5.3. We do not support the removal of independent review panels

We do not support the proposal to remove the independent review panel. Presently the Panel is the only avenue for the industry to object to proposals. If the Panel is removed, we would expect alternative mechanism to be established to enable such reviews.

# 6. Readiness and response proposals

## 6.1. Government Industry Agreement

**We consider the current scope of GIAs is fit for purpose. However, there is room to improve operational practice.**

We do not support regional councils or other parties becoming signatories to GIA's. Too many parties with decision-making rights may complicate responses, slowing decision making and comprising the effectiveness of a response.

We support effective and efficient transition from a response into long-term management. This can present challenges for regional councils who may not have been adequately involved in the response and may not immediately have the capability or capacity to support a plan. Therefore, we consider other parties who are materially or financially impacted during a response or because of transitioning to a long-term plan should be involved in the response for the purposes of enabling effective and efficient transition where required.

**We do not support the proposal of creating one or more biosecurity focused cross-industry organisations.**

HortNZ is a well-established pan-horticulture industry organisation which plays an important coordination and communication role, having direct, trusted relationships and networks with affected growers. We consider existing structures should be used to support communication and capability building.

We do not consider a further 'biosecurity focused cross-industry organisation' is required. This is likely to only complicate an already crowded horticulture landscape. Instead, the utilisation of existing organisations, such as HortNZ, would be a more effective and efficient means of building industry skills and resilience.

**We support the Minister for Biosecurity being the decision maker for emergency responses.**

We consider enabling Ministers other than the Minister for Biosecurity to make decisions may create confusion and ultimately slow decisions.

## 6.2. Biosecurity practices

**We support a general biosecurity duty.**

As noted above, we support a general biosecurity duty. This recognises the point made earlier in our submission that all New Zealanders are responsible for biosecurity. We consider a general duty will help to re-enforce this point.

**We support the use of legislation to improve biosecurity practice where necessary.**

We agree with the proposal to enhance legislation's role in improving biosecurity practice. However, this is caveated with the expectation that legislation should be used to ensure consistency in application of best practice as determined in partnership between industry and government. This reflects the horticulture sector's experience that Government often

imposes regulation based on mitigating 'perceived' risk, in the absence of evidence, based on anecdote and assumption, leading to over-regulation and unnecessary cost.

# 7. Long-term pest management proposals

## 7.1. Pest and pathway management and small-scale management

We generally support efforts that aim to reduce administrative complexity, remove unnecessary duplication and increase efficiency in legislative processes through simplification without reducing the ability for industry or the public to contribute. Therefore, we support all proposals 44 – 51, which enable simplification of processes and plans while maintaining the same level or increase biosecurity outcomes.

We support the simplification, reduction of administrative barriers, extensive timeframes and costs through efficiently streamlining the development process of pest and pathway management plans. A faster development and implementation of pest and pathway management plans enables a faster transition from a biosecurity response situation to efficient long-term management. This supports effective management of biosecurity threats. While it is important to remove unnecessary steps and administrative duplication, it is essential that changes do not impede on provisions for consultation with sufficient timeframes. Consultations function as checks and balances on legal instruments.

We support the idea for primary legislation to enable, but not require, integrated pest and pathway management plans to consolidate efforts and setting of long-term pest management to achieve more efficient and effective biosecurity outcomes (Proposal 45). With the current settings of separation between pest and pathway management plans, the responsible lead agencies are unnecessarily burdened with additional administrative processes and barriers for implementation. Consolidation of both plans, where appropriate, can substantially improve coordination among different programmes, build consistency for long-term management efforts and further support wider biosecurity readiness and preparedness programmes and activities.

Regarding this, we also support proposal 46 for legislative chances to enable, but not require, the ability to consolidate levies, where appropriate, to fund National Pest and Pathway management plans. The legislative separation of pest and pathway management plans requires lead agencies to seek approval to achieve sufficient funding separately. In practice, this is often challenging, especially for industry-specific or industry-led biosecurity programmes and plans, due to overwhelming requests to levy payers, as well as an additional burden for levy collecting agencies. This is often seen as duplication and unnecessarily bureaucratic.

It is sensible to make it easier for regional councils to create small-scale management programmes (Proposal 47) as this will enable quicker development of these programmes, supporting more efficient pest management.

In principle, we support Proposal 48 to enable management agencies to provide exemptions from rules set out in national pest and pathway management plans, if sufficient and appropriate reasoning support such an exemption. Given that the relevant management agencies hold the expertise and accountability for a given plan, those agencies should be enabled to make decisions on exemptions to that plan. However, we expect that such exemption requests are assessed and possibly granted following a

thorough case-by-case basis by the lead management agency. The rational to an exemption must be supported by sufficient evidence.

We see benefits in enabling more than one legal entity to share management agency responsibilities (Proposal 49) to drive more effective biosecurity outcomes. However, we like to see provisions added that if multiple entities must coordinate efforts, a single agency is selected as primary lead that will drive that collaboration.

We support the proposed changes to enable management agencies and regional councils the function of issuing permits and remove exemptions for pests in NPMP's or RPMP's (Proposal 50) as this enable more efficient management of plans. More flexibility for managing agencies through issuance of permits (Proposal 51) allows quicker adaptability to implement and manage regulatory tools. The entity that assessed and eventually granted an exemption to any rule under a regional pest or pathway management plan should also have the ability to revoke that exemption if the criteria and conditions set out in that exemption are not met or have been violated. This enables consistent implementation and administration of the plans while providing the necessary flexibility for future management.

## 7.2. Alignment of long-term management outcomes

In principle, we support efforts to make processes efficient and align long-term management outcomes. Therefore, we support MPI's proposals outlined in Proposals 52, 53 and 54B.

We support legislative changes to enable the establishment of multiple national policy directions (NPD's) for pest management (Proposal 52) to include and streamline more details, actions and requirements to specific pests. However, care should be given to details in developing the NPD's to prevent misalignment or contradictions among different NPD's.

We support motions to align national pest management objectives across regions and the creation of consistent national programmes that support efficient pest management outcomes (Proposal 53). This common baseline approach can foster cohesion and coordination across regions and councils while provide the necessary consistency in pest management strategies and objectives to the industry.

We support Proposal 54B (Option 54B) to simplify and streamline processes by removal of unnecessary steps and/or duplication.

## 7.3. Management of unwanted and notifiable organisms

Any term used in the Biosecurity Act, or any legislation, must be clearly defined and described. Therefore, we support Proposal 55 to amend section 52 and clearly define the term 'communicate' as it relates to section 52 and section 53 of the Act. Clear definitions are necessary to prevent ambiguity and inadvertent violations of rules set out in the Act and must enable everyone to meet these criteria indiscriminately. The term 'communicates' has caused ambiguity and must be better defined to provide clarity.

We support Proposal 56 to enable the CTO to tailor the applications of section 52 and section 53 when declaring an unwanted organism. This will enable more flexibility and

timely decision making, as quickly declaring the status of an organism to inform. Enabling quick actions is particularly important in the early stages of a biosecurity response.

We support Proposal 57 of aligning permissions for exemptions as set out in section 52 and section 53(2) to improve clarity and consistency of this application. Alignment of section 52 and 53 will align with efforts to remove duplications and unnecessary steps.

We support Proposal 58 to set out provisions that enable a clear process to remove or revoke an 'Unwanted Organism' status. However, we do not necessarily see the need for a detailed process being included into the primary legislation. We would suggest primarily legislation require these processes to be developed and notified.

We **do not** support Proposal 59 to enable a new transitional provision for all unwanted organisms to expire after five years, even if this option is proposed to be a one-off provision. While we support a substantial reduction of organism listed as unwanted organisms if these do not meet the necessary criteria, we consider the inclusion of a legislative revocation process to the Act to remove the unwanted organism status based on clear criteria and thorough risk assessment as sufficient to effectively do that work.

A broad-brush removal of all unwanted organisms risks unintended consequences, particularly for organisms that have not been thoroughly considered during the process. Rushed actions could compromise the appropriate level of protection against pests and diseases. For example, an organism that meets all criteria might inadvertently be reclassified as no longer "unwanted" through an automated process, simply because its risk has not been reassessed within the provisional five-year period. This oversight could increase the risk posed by that organism to New Zealand, particularly to the horticulture industry. Instead, we support the implementation of a rapid assessment process that enables MPI to promptly evaluate potential risks and revoke the "unwanted organism" status when it is no longer warranted.

We support the proposed improvements to the management of notifiable organisms (Proposal 60). Enabling the CTO to classify an organism as 'notifiable' will enable more efficient and timely management and response activities. The CTO has the technical expertise and support to make these decisions confidently and can update trading partners quicker and more efficiently. This will free up time and resources of the ministerial process to other objectives.

We **do not** support Proposal 61 to change the name of the term 'Unwanted Organism' to 'controlled organism'. Despite the ambiguity around the term unwanted organism, this term is widely used in the primary legislation as well as in any subsequent secondary legislation, regulatory processes and communications. Therefore, the term 'Unwanted Organism' is generally accepted and understood for any organisms that are undesirable for New Zealand. Any term used in the Biosecurity Act, 'Unwanted Organism' must be clearly defined and described including criteria that classifies an organism as 'unwanted', how can an organism be classified as 'unwanted', and how such a status can be revoked. There should also be a clear definition what separates other classifications for organisms to 'unwanted organisms', which include 'notifiable organism'. Further, the term 'controlled organisms' can be easily confused with any control actions required through a national and regional pest and pathway management plan.

## 7.4. Definitions related to unauthorised goods

We support Proposal 62 and MPI's preferred options for implementing option 62A, 62B and 62D. As stated above, all terms used in the Biosecurity Act 1993 must be clearly defined and described, which includes introduction of the term 'New Zealand-born progeny'. We support that more clarity is provided to terms used in the Act or introduced into the Act to prevent ambiguity and enable compliancy.

We agree that Proposal 62C, amending the definition of 'risk goods' to include the New Zealand-born progeny of unauthorised goods may not meet the criteria of a 'risk good', based on the definition of that term.

# 8. Surveillance and interfaces with other administered legislation

## 8.1. The problem: regulatory barriers impeding rapid biosecurity responses

We would like to highlight an issue not specifically addressed in the discussion documents or the proposed amendments to the Biosecurity Act 1993 which significantly hinders rapid response to an incursion of an unwanted organism. The issue lies at the interface between the Resource Management Act (RMA) and the Biosecurity Act, creating regulatory barriers that delay critical actions.

In the event of an incursion of an unwanted organism the response may require actions that are managed under the RMA. For instance:

- Burying of infected material,
- Burning infected material,
- Spraying areas where there is infected material, and
- Clearing vegetation, including indigenous vegetation and in riparian areas.

Where there is regional or district plan rules that regulate these activities, the activity may require a resource consent to be undertaken. Examples of rules include:

- Earthwork controls on size of excavations that can be undertaken,
- Limits on the size and nature of outdoor burning, and in some situation limitations on time of year,
- Agrichemical application rules which restrict the nature of agrichemical applications, particularly aerial applications, and
- Restrictions on clearance of vegetation, including indigenous vegetation. This may be generally or in specific areas, such as public places, riparian areas or Significant Natural Areas (SNA's).

Breaching any such rules for a biosecurity response would require a resource consent for the activity. Given the need for rapid response, the time required to obtain a resource consent is a constraint and impediment in responding to the incursion.

Only when a biosecurity emergency is declared by the Governor-General on the recommendation of a Minister (s144 BA), can the Biosecurity Act 1993 override the RMA provisions (s7A BA).

In other situations, a Chief Technical Officer can notify the MPI Director-General of an incursion of an unwanted organism, but the biosecurity response mechanisms are subject to RMA plan controls, as section 7A (BA) only applies to actions by the Minister.

With such a declaration, the regional and district plan rules still need to be met regarding the disposal or treatment of infected material. Given the urgency required in such a situation, it is not practical to obtain resource consent.

The RMA has section 330 which provides for emergency works and powers to take preventive or remedial actions, but this is limited in its scope and application. Resource consent is required to be applied for retrospectively.

The effects of a biosecurity incursion are not just limited to rural production. Such incursions can also affect wider biodiversity and indigenous flora and fauna.

Through RMA advocacy, HortNZ has sought that provisions are included in regional, and district plans to enable response to an incursion of unwanted organisms. However, this requires getting provisions included in all regional air, land and water plans and all district plans across the country. This is not considered to be an effective or efficient mechanism to address the issue (see case study 3).

**Case Study 3: The PSA incursion in the kiwifruit industry**

This issue emerged during the PSA incursion that crippled the kiwifruit industry. At the time of the event, it was evident that regional and district plans can unintentionally be regulatory hurdles to rapid response through provisions such as limiting earthworks for burying infected material or clearance of infected vegetation.

In that instance, infected material had to be buried, and the earthworks required exceeded permitted activity thresholds in the district plan, so resource consent was required. Some disposal occurred on public land, so approvals were needed for this to occur. There were several district councils involved – Western Bay, Whakatane and Opotiki. Bay of Plenty Regional Council was also involved in facilitating the response. The district councils enabled s330 of the RMA to be used in this instance, but there was a time lag while appropriate response mechanisms were being agreed and activated.

There was also an issue of removal of infected wilding kiwifruit vines which were found in riparian and public areas and so subject to vegetation removal controls under the RMA. Agreement and consents were needed with the councils regarding removal of such material.

## 8.2. Our proposed solution: strengthening the interface between the RMA and Biosecurity Act

To address these barriers, we propose the following solutions:

**1. Amend the Biosecurity Act**

Expand Section 7A of the Biosecurity Act to apply not only to Ministerial declarations but also to declarations made by the Chief Technical Officer (CTO). This would allow urgent biosecurity responses to override RMA requirements when necessary.

**2. Incorporate Emergency Provisions in RMA Replacement Legislation**

Ensure the new RMA replacement laws explicitly provide for emergency biosecurity actions during a declared biosecurity emergency or CTO declaration under the Biosecurity Act. This would streamline permissions for critical response activities, such as:

- Disposal or treatment of infected materials.
- Vegetation clearance in sensitive areas.
- Aerial spraying or other agrichemical applications.

**3. Proactively Address Regulatory Barriers**

Advocate for specific provisions in regional and district plans to facilitate biosecurity responses. While this is being pursued, it is not an efficient or comprehensive solution due to the variability and time required to align plans nationwide.

Amending the interface between the RMA and Biosecurity Act is essential to support rapid and effective biosecurity responses. Without these changes, delays caused by regulatory barriers will continue to endanger New Zealand's rural economy, biodiversity, and efforts to combat biosecurity threats.

If an incursion of an unwanted organism is unable to be appropriately managed due to regulatory barriers, it could have a significant impact on the rural economy and an appropriate response.