NZ Plant Producers Inc. submission on Biosecurity Act Amendment Bill

Submitted by:

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Introduction

New Zealand Plant Producers Incorporated (NZPPI) represents businesses engaged in plant propagation and cultivation for various sectors and our members underpin the success of the country's primary industries.

The plant production sector, also known as nursery production, has witnessed rapid growth due to demand in horticulture, wine, forestry, and native plants, which has been further bolstered by government policies encouraging sustainable production systems.

The plant production industry, estimated to be worth around $500 million annually, is a regional success story, offering skilled jobs and career opportunities where they are needed most.

Submission

NZ Plant Producers appreciates the opportunity to provide feedback on the Biosecurity Act 1993 Proposed Amendments.

We have made comments on the sections relevant to the NZ Plant Production Industry, which are:

- Section 2 – System-wide issues

- Section 3 - Funding and Compensation
- Section 4 – Border and imports
- Section 5 - Readiness and response
- Section 6 – Long-term management

2: System-wide issues

Proposal 1 – Insert an overarching purpose clause in the Biosecurity Act

Q 9 - To what extent do you feel that a purpose clause in the Biosecurity Act would help us achieve better biosecurity outcomes?

A purpose clause in the Biosecurity Act could provide direction and assist decision makers with competing objectives.

The purpose statement could help clarify that trade (both imports and exports) is facilitated, and that the system needs to be operationally efficient while balanced with the effective management of risk. Perhaps this could be aligned with some of the principles in the SPS Agreement, which set out that measures should be no more trade-restrictive than necessary to manage risk.

Q10 - What do you think the purpose of the biosecurity system should be? Do you agree with the elements we have set out for proposal one? Is there something that should not be included?

There is an opportunity to include the need for efficiency and balance (protection vs trade) in the system. Years ago, MPI released a publication called 'Balance in Trade' to help address the competing objectives of the biosecurity system, which weren't explicitly stated in the Act itself.

It would be good to include the word 'enabling' in the purpose.

We do not think these elements would constrain decision-making, as there is discretion how these elements would be weighted in different circumstances. Tertiary legislation, procedures and standards are open to interpretation by staff – so setting out a purpose statement would be helpful.

Proposal 2 – Include new purpose clauses, as well as revise existing purpose clauses, for selected parts of the Biosecurity Act

Q8 – Do you agree with our preferred approach to progress proposal 2? Why, or why not?

We agree with the three Parts suggested for revising existing purpose clauses.

For Part 3 – import health standards, we agree there is a need to make operational efficiency a criteria.

Proposal 4 – Enable local knowledge to inform or guide decision making in specific parts of the Biosecurity purpose clauses, for selected parts of the Biosecurity Act

Q14 - How could local knowledge make decision-making more effective?

Local knowledge, including expert knowledge from industry professionals, growers and iwi can be helpful in informing decision making. Practical knowledge, real-world information, and supply-chain intelligence is not typically found in published scientific journals but is needed for balanced decision making.

This has been important in cases like Myrtle Rust & Kauri Dieback where Iwi wanted Matauranga Maori principles to be recognised. This could improve relationships with MPI at a local level, but the proposal has minimal direct impact on nurseries.

Q15 - How could we mitigate the potential delays in the decision-making process where there are differences between local and scientific knowledge?

Delays in decision-making is inevitable and completely acceptable as MPI work to reconcile differences between local and scientific knowledge.

3. Funding and Compensation

Proposal 14 – Amending cost-sharing in the GIA

Option 14A - mandating a periodic review of the cost-shares in the GIA Deed

Option 14B - Set out a cost-share framework in legislation to guide cost-share arrangements with GIA partners

Q34 – Do you agree with our preferred approach to progress option 14B? Why, or why not?

Q35 - What benefits do you see with having a cost share framework in legislation? Do you think this should be set out in the Biosecurity Act or in regulations?

Q36 - How do you think having a cost share framework might impact the GIA Deed? What impacts do you think it might have on GIA negotiations and reconfirming the GIA Deed?

Q37 - What risks do you see with adopting this approach? How will it impact on your participation in the GIA? How would it affect your business?

Proposal 15 - Cost Recovery from Non-Signatory Beneficiaries of the GIA

Option 15A – Levy non-signatory beneficiaries to build an up-front fund

Option 15B – Levying non-signatory beneficiaries after a response to recover costs

Q38 - For industry readers, how would the options impact your business? For other readers, how would the options affect balance/fairness in cost recovery?

Q39 - If you are a GIA partner, which option do you think is better aligned with the existing GIA cost share arrangement? What benefits do you see with the options?

Proposal 16 - Refining how non-compliance would make a person ineligible for compensation

Proposal 17 - Enabling more detailed compensation entitlements and requirements via regulations

Proposal 18 - Removing restrictions on the ability to vary compensation and enable upfront payment of future losses that have not yet been incurred

Q40 – Do you agree with our preferred approach to progress proposals 16, 17, and 18? Why, or why not?

Q41 - Do you agree with our proposed definition of biosecurity law? Is there anything we should include or should be taken out?

Q42 - Do you think our proposed suite of changes (proposals 16-19) are adaptable enough to cater to different situations and scenarios? Can you think of any situation where the options in this suite may be inadequate?

Q43 - When considering compensation, how much value should be placed on certainty of compensation payments versus the flexibility of the compensation scheme?

Q44 - Is there anything else you would like to provide comments on regarding improvements to the compensation scheme?

Proposal 19 - Codify the operational dispute resolution process

Q45 - What impact would proposal 19 have on dispute resolution?

Proposal 20 – Stating which types of losses are and are not compensable, including removing some or all consequential losses from compensation

Q46 – How do you currently protect against loss?

Q47 - If compensation was limited what alternative would you use to protect yourself or your business?

Q48 - How do you think people's behaviour might change if less compensation was available?

Q 49 - What role does compensation play in helping you recover from an incursion?

Q50 - How critical is it for you to know you could be compensated for something when you are making biosecurity decisions?

4. Border and Imports

Proposal 22 – Enable technical amendments to an IHS without consultation

Formal, public consultation is not practicable or necessary for every amendment to an IHS. The Act currently allows for urgent and minor amendments to be made without public consultation, and we consider that technical amendments are in a similar category.

We think MPI would be better informed by seeking input from affected parties for all urgent, minor and technical amendments, but this could be targeted consultation rather than drawn out, legislated consultation. Some urgent amendments have created major, negative impacts to the nursery industry in the past 8 years – which could have been better managed if MPI had sought information from industry about safer import pathways before applying broad brush-stroke regulation.

Proposal 23 - Enable a rapid amendment process for IHSs during the first year of trade in a good without consultation

Enabling a rapid amendment process for IHSs during the first year of trade would be a practical approach to adjust regulatory measures based on a feedback-loop from verification of trade.

Proposal 24 - Enable the ability to issue one-off or ad hoc permits for goods being imported as a one-off or on a sporadic basis

Enabling one-off or ad hoc permits would be helpful for industries to access plant genetics for trials and evaluation, where import would be infrequent e.g. new street tree cultivars, new crops such as coffee and cranberry.

Permits could be issued without the need for a full IHS and public consultation, however this does reduce transparency which could concern some stakeholders.

We recognise that the Act is unlikely to be prescriptive about the measures for these types of imports, but the purpose statement about balancing and enabling would hopefully direct MPI to keep costs commensurate with risk. For example, we would not see any value in this option for plant imports if MPI policy was to automatically assign imports to the highest level of post-entry quarantine (L3B). The costs of L3B are prohibitive for small, niche, domestic industries, which defeats the purpose of this enabling clause.

We think the scope for risk analysis would be tighter and specific to the circumstances of the export facility/country, which could cut down the amount of time taken for risk analysis. The risk management decision could take into account specific plant production methods offshore, as well as specific onshore risk management circumstances, which would hopefully result in affordability for new genetics to support new Zealand's broader primary industry goals.

Proposal 25 - Enable use of permits to allow trade to continue while a suspended IHS is being reviewed

Similarly to above, permits could be used to allow trade while a suspended IHS is being reviewed. However, given the recent proposal to suspend for than 1400 nursery stock genera, we feel there will be a long queue and backlog for MPI to undertake a review. Perhaps this proposal needs to be worded to allow permits to be used to allow trade (under certain circumstances) for suspended IHSs, even if they are not actively being reviewed.

Proposal 26 - Enable consultation on a risk management proposal for a good, rather than on the draft IHS itself

MPI already consult on risk management proposals, ahead of consultation on the draft IHS. We are neutral about the ability to consult on RMPs instead of the draft IHS. This is helpful if it provides enough detail of the actual wording which will appear in the IHS to allow for meaningful engagement with offshore stakeholders.

Q53 - Do you think these proposals would make importing easier? Why, or why not?

Both proposals allow use of permits where there is no IHS in place. We consider MPI are likely to receive a large number of enquiries for these types of permits which could substantially shift the focus of MPIs work from prioritised IHS reviews to import permit risk assessments.

With a targeted risk assessment process and no public consultation, ideally this could make importation easier. HSNO Act approvals and PVR grants have a short window of opportunity for the importer to accrue benefits from these types of applications – a permit process could enable imports to occur faster than through an IHS process. However, to meet an increased demand for permits, MPI may have to prioritise their development, which could just move the queue from IHS request to Permit request. Recently, MPI have declined several permit requests due to finite resources and risk uncertainty. This may be exacerbated by additional permit options.

Potentially, MPI could issue permits which could be used for multiple imports of the same commodity over time. This might benefit importers with limited space in their post-entry quarantine facilities, and who would like to stagger the release of plants to the market.

While permits are less transparent than requirements set out in an Import health standard, several of our trading partners prefer to receive them as it sets out MPI's requirements and specific wording of any required declarations/treatments for the exporting NPPO.

Q54 - On what grounds (if any) do you think one-off permits to import goods should be issued?

One-off permits could be issued on case-by-case basis where the import is likely to be one-off or infrequent. MPI may want to avoid a situation where multiple importers end up requesting permits for the same goods over time, as this could add up to MPI spending more time analysing risks for permit issuance compared to developing an IHS.

It would be a clearer case if the import permit was requested by an industry body, perhaps coordinating the request on behalf of their grower members. The application would then be one-off or ad-hoc.

As mentioned previously, we would not see any value in automatically assigning plant imports to the highest level of post-entry quarantine (L3B). The costs of L3B are prohibitive for small, niche, domestic industries, which defeats the purpose of this enabling clause.

One-off permits would need sufficient exploration of risks and risk management measures by MPI to enable import to be no more trade-restrictive than necessary to manage the risk.

Q55 - Are you aware of any additional barriers to importing contained in the Biosecurity Act? How might these be addressed?

Proposal 27 - Improving efficiency in the import health standard review

Q56 – Do you agree with our preference for option 27D, followed by option 27B? Why, or why not?

We do not agree with the removal of independent review (option 27D). Alternative channels for challenging MPI's IHS development process are likely to have a higher barrier to entry, be more legal costly and time-consuming. We also wonder whether MPI would prefer to resolve these issues within the framework of the IHS review process (using in-house officials) rather than involving external judicial processes, which would politicise the issue.

We consider that a senior, independent public official would improve the efficiency of an independent review process (option 27B) rather than establishing a new independent panel for each section 24 review.

Q57 - What impacts would removing section 24 have on the efficiency of the imports system?

We can only think of two significant IHSs in the past 15 years where MPI's decisions have been challenged and the IHS significantly delayed (imported pork and honey). While unhappy stakeholders could threaten to trigger a review, in most cases we feel it did not substantially delay the issuance of the IHS.

Q58 - Are there other ways to provide checks and balances on MPI's decision-making that would promote an efficient import system?

While public consultation is an important part of transparency in decision making, we wonder whether the IHS decision making process would benefit from more targeted consultation,

perhaps through the use of an advisory panel who could co-design the decision making process.

Proposal 32 – Streamline the legislative framework for transitional and containment facilities

Q64 – Do you agree with our preferred approach to progress proposal 32? Why, or why not?

We agree with the proposal to remove the legislative approval requirement for facility operators under the Biosecurity Act and instead specify this within the standard(s) under which the facility is approved.

Proposal 33 - Enabling third-party verification at transitional facilities

Q67 – Do you agree with our preferred approach to progress proposal 33B? Why, or why not?

We agree that it would be expedient to allow third-parties to undertake verification activities at transitional facilities. Presumably these activities would be charged/cost-recovered by third parties on a fee-for-service basis, so it would be important to ensure that the service/fee charges are similar to those that would be charged by MPI Inspectors.

Proposal 33B extends this provision to allow the DG to recognise third-parties to undertake specified roles and functions which gives greater flexibility.

It is unclear if these activities would apply to third-party verification or oversight of L2 PEQ facilities. The compliance requirements in running Level 2 post-entry quarantine facilities are quite significant, and operators would benefit from greater training and support for this activity. PEQ Inspectors have limited resource to assist PEQ Operators in this way. We wonder whether there is a role for a third-party in providing capability and coordination for PEQ facility operators, auditing compliance with facility standards as part of industry biosecurity programmes (e.g. Plant Pass) and overall management of plant health and biosecurity.

Q68 - What capabilities should third parties have to demonstrate before undertaking verification under the Biosecurity Act?

In much the same way that MPI enable third-parties to verify exports, third-parties would need to have demonstrable capabilities relevant to biosecurity management of particular goods, supply pathways or commodities. For example, we would expect that MPI Inspectors undertaking verification of facilities or inspecting plants for PEQ purposes would have good plant knowledge, knowledge of the standards they are operating under, as well as an understanding of basic entomology and plant pathology. Third-parties should possess a similar level of competency to undertake these roles.

Q69 - Are there any areas of the Biosecurity Act where third-party verification should not take place? Why?

5. Readiness and response

Proposal 36 - Modify and grow the Government Industry Agreement

Proposal 37 – Create one or more biosecurity focussed cross-industry organisations to build primary sector skill and resilience

Proposal 38 – Amend Part 5A to state that this confers functions on GIA Signatories to make joint decisions under the Deed and Operational Agreements

Q80 - How might a general biosecurity duty improve biosecurity system outcomes?

There are proposals that will place a 'duty' on businesses to manage biosecurity risks, and to have their own risk management plans. This is intended to reduce the cost and impact of incursions if industries are better prepared. This comes from the M bovis incursion where MPI believe that many farmers were unaware & didn't have system in place, which made the crisis worse.

Support in principle.

Aligns with Plant Pass.

Q81 - Should we enhance legislation's role in improving biosecurity practices, or is it better to rely on non-legislative approaches like information and education?

Q82 - How might we incentivise businesses to improve management of biosecurity risk?

Q83 - To what extent might it be costly and difficult to develop a risk management plan for your business?

Proposal 41 – Expand the range of specific risk management requirements that can be set up through regulations under the Act

Proposal 42 – Add provisions in the Act to enable greater use of the risk-based regulatory model where businesses are required to develop their own risk management plan

Proposal 43 – Amend Section 100ZA to add a power for the Minister to "un-recognise" an industry body when a sector withdraws from the GIA

Q72 - To what extent is intervention from MPI required to grow and develop the GIA?

Q73 - Do you think the current scope of the GIA is fit-for-purpose and working? Why?

Q74 - What role do you see industry organisations playing in New Zealand's biosecurity system?

Q75 - Which options do you think would be most useful to grow and develop the GIA?

Q76 - Do you anticipate any problems with establishing industry organisations?

Q77 – Do you agree with our preferred approach to progress proposal 38? Why, or why not?

Q78 - To protect GIA partners from legal liability, which do you think is the better option – amending the Biosecurity Act or the existing Crown indemnity? Why?

6. Long-term management

Proposal 44 – Simplify the process to create national or regional pest and pathway management plans

Proposal 45 – Enable (but not require) integrated national or regional pest and pathway management plans

Proposal 46 – Enable (but not require) the ability to have consolidated levies for national pest and pathway management plans

Proposal 47 – Make it easier for regional councils to create small-scale management programmes

Proposal 48 – Enable management agencies to provide exemptions from rules in national pest or pathway management plans

Proposal 49 – Enable more than one entity to share management agency responsibilities

Proposal 50 – Enable management agencies and regional councils the function of issuing permissions for pests in national and regional pest and pathway management plans

Q84 - Do you agree with our preferred approach to progress proposals 44-51? Why, or why not?
These proposals would make it easy for Councils to implement RPMP's, but with the potential to further complicate the pest management system, we feel this needs to be done with full public consultation.

Proposal 58 – Clarifying in the Biosecurity Act how unwanted organism status can be removed and making this process more efficient

Proposal 59 - Include a new transitional provision for all unwanted organisms to expire after five years

Q96 - Do you think the transitional provision with a one-off five-year transitional period to remove unwanted organisms is an appropriate mechanism to refine the unwanted organism register?

We agree that a five-year transitional period would enable refinement of the unwanted organism register. We understand this was significantly expanded to include thousands of 'new to New Zealand' organisms when the HSNO Act came into force and may not meet a biosecurity threshold for being made 'unwanted'.*

**In the opinion of a chief technical officer, the harm caused by an organism no longer warrants the use of relevant powers under the Biosecurity Act.*

Q97 - Do you think the right checks and balances are in place in the process for removing and monitoring unwanted organism status? Are there any ways this process could be improved?

Yes, we feel the right checks and balances are in place.

Proposal 61 – Changing the name of the term "Unwanted Organism" to controlled organisms (minor and technical)

Q98 - Is the current definition of an unwanted organism fit-for-purpose? What improvements can be made to ensure that designating an organism as unwanted is proportionate to the potential harm it may cause?

We consider it is very problematic for organisms declined under the HSNO Act to become automatically 'unwanted'. We think a chief technical officer should determine whether the potential harm caused by an organism warrants the use of relevant powers under the Biosecurity Act.

Q99 - Do you have a view on changing the name "unwanted organism" to "controlled organism"? If so, let us know why.

We do not foresee any issues with changing the name to 'controlled organism'.

Q100 - Are there any other term/s in the Biosecurity Act that are problematic? If so, tell us the term/s, what the issue is, and how a change might solve the issue.

The use of the word pest in the current Act appears only in relation to pest management plans. The SPS Agreement defines it more broadly as an animal or plant that is harmful or destructive to the health of humans, animals, or plants, or that is otherwise troublesome or annoying. In this broader context, it can also be applied to pest management for imports and exports.

Proposal 62 – Definitions related to unauthorised goods

Q101 - Do you agree with our preferred approach to progress proposals 62A, B and D? Why, or why not?

Yes, we agree with the preferred approach however there are several complications with the HSNO Act.

If it is possible to determine that the plants have been imported illegally, then all New Zealand born progeny can be captured under the 'unauthorised goods' definition.

However there is a bit of a grey area with plant species not listed on the PBI, but likely present in New Zealand for some time without sufficient evidence to apply for section 26 determination under the HSNO Act to recognise this 'not new' status. This would need some careful thought.

Q102 - Would a definition for "New Zealand-born progeny" be useful for you? Why, or why not?

Q103 - If the proposal to define "New Zealand-born progeny" was progressed, how should it be defined? Should there be a 'cut-off' in terms of the number of generations of progeny it applies to?

Q104 - Do you currently deal with progeny goods? What impact would classifying progeny goods as either risk goods or unauthorised goods have on you?

Progeny goods are part and parcel of the nursery industry, which propagates plants for New Zealanders. As previously stated, there are many plant species not listed on the PBI which were in the country prior to 1998. The SFFF funded project 'Taking Stock' sought to clarify the legal status of hundreds of these species, however in some of these species, it was not possible to find multiple records of evidence to satisfy a section 26 determination.

We think that progeny should be considered "unauthorised goods" only if there is a reasonable likelihood that the parent plants were smuggled into New Zealand. NZPPI completed a Full Release application for 12 houseplants in 2023, comprising 9 species which were already in the country and 3 that were new to New Zealand. Two of the new species had been recently released to the international market overseas. Both species appeared in the online market in NZ (Trade Me & Facebook online platforms) while we were making our HSNO application, so it was clear that they had not been imported legally.

Classifying these goods as unauthorised goods would mean that MPI could take action to remove the plants for sale, without having to find the original smuggler and the parent plant.

It would also be helpful in cases where there is a breach under licensing arrangements for supply of particular crops in NZ. For example, an importer obtained sole licensing arrangements to propagate and release a particular cultivar into the New Zealand market. The particular cultivar was found offered for sale via social media platforms, and it was suspected these had been smuggled into the country.