

# **Biosecurity Amendment Act 1997**

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### **An Act to amend the Biosecurity Act 1993**

**BE IT ENACTED by the Parliament of New Zealand as follows:**

#### **1 Short Title and commencement**

- (1) This Act may be cited as the Biosecurity Amendment Act 1997 and is part of the Biosecurity Act 1993 (**the principal Act**).
- (2) Part 11 comes into force on the date of commencement of Schedule 4 of the Hazardous Substances and New Organisms Act 1996.
- (3) Section 106 comes into force on 1 October 1998.
- (4) Except as provided in subsections (2) and (3), this Act comes into force on the day on which it receives the Royal assent.

### **Part 1 Preliminary**

#### **2 Interpretation**

- (1) Section 2(1) of the principal Act is amended by repealing the definitions of the terms **biosecurity control area**, **confine**, **containment facility**, **designated port of entry**, **import health permit**, **import health standard**, **Minister**, **natural resources**, **quarantine facility**, **risk goods**, **transitional facility**, **treatment**, **unauthorised goods**, and **unwanted organism**.

(2) Section 2(1) of the principal Act is amended by inserting in their appropriate alphabetical order the definitions of the following terms:

“**Biosecurity control area** means a place that is—

“(a) Part of a port approved as a place of first arrival in accordance with section 37(1); and

“(b) By written agreement with the port’s operator, under the control of the Director-General for the purposes of this Act:

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

“**Import health standard** means a document issued under section 22

“**Minister** means a Minister of the Crown; and

“(a) In relation to a national pest management strategy, means the Minister who recommended the making of the order under section 68 making the strategy; and

“(b) In relation to a proposal for a national pest management strategy that has been notified, means the Minister who notified the proposal:

“**Natural and physical resources** means—

“(a) Organisms of all kinds; and

“(b) The air, water, and soil in or on which any organism lives or may live; and

“(c) Landscape and land form; and

“(d) Geological features; and

“(e) Structures of all kinds; and

“(f) Systems of interacting living organisms and their environment:

“**Quarantine** means confinement of organisms or organic material that may be harbouring pests or unwanted organisms

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

“(a) Cause unwanted harm to natural and physical resources or human health in New Zealand; or



“(b) Interfere with the diagnosis, management, or treatment, in New Zealand, of pests or unwanted organisms:

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

“**Rule** means a rule included in a pest management strategy in accordance with section 69B or section 80B

“**Small-scale management programme** means a small-scale management programme declared under section 100

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

“**Transitional facility** means

“(a) Any place approved as a transitional facility in accordance with section 39 for the purpose of inspection, storage, treatment, quarantine, holding, or destruction of uncleared goods; or

“(b) A part of a port declared to be a transitional facility in accordance with section 39:

“**Unauthorised goods** means any goods that are—

“(a) Uncleared goods in a place that is not a transitional facility or a biosecurity control area (other than goods that, in accordance with the authority of an inspector, are—

“(i) Proceeding from a transitional facility or a biosecurity control area to a transitional facility, biosecurity control area, or a containment facility; or

“(ii) Being exported from New Zealand); or

“(b) Uncleared goods that are in a transitional facility or a biosecurity control area to which those goods proceeded, other than in accordance with the authority of an inspector, from some other transitional facility, or biosecurity control area, and have not later received the authority of an inspector to remain there; or

“(c) Goods which have been given a biosecurity clearance by an inspector following receipt by that inspector of false, incomplete, or misleading information concerning the goods; or

“(d) A restricted organism in a place that is not a containment facility (other than an organism that,—

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

“**Unwanted organism** means any organism that a chief technical officer believes is capable or potentially capable of causing unwanted harm to any natural and physical resources or human health:.”

- (3) Section 2(1) of the principal Act is amended—
  - (a) By omitting from the definition of the term **New Zealand territory** the word “territory”, and substituting the words “land and the waters”:
  - (b) By adding to the definition of the term **organism**, the following paragraph:
    - “(f) Includes any particle that is a prion:.”
- (4) Section 2(1) of the principal Act is amended by omitting from the definition of the term **pest management strategy**, the word “approved”, and substituting the word “made”.
- (5) Section 2(1) of the principal Act is amended by omitting from the definition of the term **restricted place** the word “premises”, and substituting the word “place”.
- (6) Section 2(1) of the principal Act is amended by adding to the definition of the term **working day**, after paragraph (a), the following paragraph:
  - “(ab) The day observed in the region of a regional council as the anniversary day of the province of which the region forms part; and.”

**3 Land may include parts of boundary roads**

The principal Act is amended by repealing section 6 and substituting the following section:

“6

- (1) Where any pest management strategy applies to land adjoining a road, that strategy may state that the land includes, for the purposes of the strategy, all or any of the portions of road bounded by—
  - “(a) The boundary of that land abutting that road; and
  - “(b) Lines extended from the end of that portion of boundary to the middle line of the road; and
  - “(c) The middle line of the road connecting those extended lines.
- “(2) Any person required or authorised by or under any pest management strategy to do anything on or in relation to land, where the pest management strategy provides that the land includes portions of road in accordance with subsection (1), is also required or authorised to do that thing on those portions of the road.
- “(3) Nothing in subsection (2) authorises any person to damage any road.”

**4 New sections substituted providing for relationships with other enactments**

Section 7 of the principal Act is repealed, and the following sections substituted:

“7 **Relationship with other enactments**

- “(1) Nothing in any enactment specified in this section affects the performance or exercise of any power, function, or duty conferred by Part VII of this Act.
- “(2) Except—
  - “(a) To the extent provided in subsections (1) and (5) of this section and section 7A of this Act; and
  - “(b) To the extent that those enactments are expressly amended by section 168(1) of this Act,—  
this Act must not be construed so as to affect or derogate in any way from the provisions of the Soil Conservation and Rivers Control Act 1941, the Forests Act

1949, the Wildlife Act 1953, the Health Act 1956, the Animals Protection Act 1960, the Wild Animal Control Act 1977, the Reserves Act 1977, the National Parks Act 1980, the Fisheries Act 1983, the Conservation Act 1987, the Trade in Endangered Species Act 1989, or the Resource Management Act 1991.

- “(3) This Act must not be construed so as to affect or derogate in any way from the provisions of the Customs and Excise Act 1996 and, in particular, the provisions of this Act do not affect the obligations of any person under the Customs and Excise Act 1996 in relation to goods.
- “(4) The provisions of this Act in so far as they relate to risk goods must not be construed to take precedence over the powers provided under the Misuse of Drugs Act 1975 in relation to any controlled drug (as defined in section 2(1) of that Act).
- “(5) The provisions of the Wild Animal Control Act 1977 do not apply to the exercise of any powers under the Biosecurity Act 1993 on any land (other than land administered under the Acts listed in the First Schedule of the Conservation Act 1987) when those powers are used in respect of—
- “(a) A pest; or
- “(b) An unwanted organism—  
that may be transmitted by any animal to which the Wild Animal Control Act 1977 applies.

“**7A Relationship with Resource Management Act 1991**

- “(1) Where any action taken in accordance with any provision in Part VI of this Act in an attempt to eradicate any organism would be in breach of the provisions of Part III of the Resource Management Act 1991, the responsible Minister may exempt the actions taken in relation to that organism from the provisions of Part III of the Resource Management Act 1991 for up to 20 working days if that Minister is satisfied that it is likely that—
- “(a) The organism is not established in New Zealand, the organism is not known to be established in New Zealand, or the organism is established in New Zealand but is restricted to certain parts of New Zealand; and

- “(b) The organism has the potential to cause all or any of significant economic loss, significant adverse effects on human health, or significant environmental loss if it becomes established in New Zealand or if it becomes established throughout New Zealand; and
- “(c) It is in the public interest that action be taken immediately in an attempt to eradicate the organism.
- “(2) Before making a decision under subsection (1), the responsible Minister must consult the relevant consent authority (to the extent that is possible in the circumstances), and may consult such other persons as the responsible Minister considers are representative of the persons likely to be affected by the eradication attempt.
- “(3) After making a decision under subsection (1), the responsible Minister must give public notice of the Minister’s decision in such a manner as the Minister thinks fit.
- “(4) The public notice must specify—
- “(a) The organism to be eradicated; and
- “(b) The principal actions that may be taken in the attempt to eradicate the organism; and
- “(c) The areas affected by the action.
- “(5) A failure to comply with the provisions of subsections (2) and (3) does not affect the validity of any exemption given under this section.
- “(6) Where any action has been exempted from Part III of the Resource Management Act 1991 under subsection (1) and the responsible Minister considers that it is necessary to continue action beyond the duration of the exemption to attempt to eradicate the organism, that Minister may recommend that regulations be made continuing the exemption and the Governor-General may from time to time, by Order in Council, make regulations for that purpose.
- “(7) Regulations made under this section come into force on the date of notification in the *Gazette*, or at the time specified in the regulations, whichever is the later, and continue in force until revoked or until a date not later than the day 2 years after the regulations came into force when the regulations expire and are deemed to have been revoked.

- “(8) Where an exemption is granted under subsection (1) or by regulations made under subsection (6), the provisions of Part III of the Resource Management Act 1991 do not apply to the actions taken to eradicate the organism while the exemption is in force.
- “(9) Where an exemption from the provisions of the Resource Management Act 1991 has been granted under subsection (1) or by regulations made under subsection (6) and that exemption has ended (either by the expiry of the exemption under subsection (1) or by the revocation of the regulations, as the case may be), the provisions of the Resource Management Act 1991 then apply and the responsible Minister must remedy or mitigate the adverse effects of any actions taken under Part VI and to which the provisions of the Resource Management Act 1991, but for the exemption under this section, would otherwise have applied.
- “(10) For the purposes of this section, **consent authority** has the same meaning as in section 2(1) of the Resource Management Act 1991.”

## Part 2

### Functions, powers, and duties

#### 5 Powers of responsible Minister

The principal Act is amended by repealing section 9, and substituting the following section:

“9

- (1) The responsible Minister has power to—
- “(a) Perform the functions in section 7A:
  - “(b) Perform the functions specified in section 10 in relation to those national pest management strategies,—
    - “(i) Where the responsible Minister has prepared a proposal under section 56; or
    - “(ii) Where some other person has requested the responsible Minister to notify a proposal:
  - “(c) Recommend to the Governor-General the making of Orders in Council under section 45(3):

- “(d) Recommend to the Governor-General under section 137(1) the making of Orders in Council imposing levies, and perform other functions in relation to levies:
- “(e) Recommend to the Governor-General under section 165 the making of regulations.
- “(2) The responsible Minister must not delegate to any person the exercise of any of the powers specified in subsection (1)(a), (c), (d), and (e).”

## **6 Functions of Ministers in relation to proposed national pest management strategies**

The principal Act is amended by repealing section 10, and substituting the following section:

“10

- (1) Any Minister who prepares a proposal for a national pest management strategy under section 56, or who has been requested to notify a proposal for a national pest management strategy, has the function of—
  - “(a) Publicly notifying the proposed strategy under section 62(1):
  - “(b) Deciding under section 63 whether to appoint a board of inquiry to inquire into and report on the proposed strategy:
  - “(c) Where this Act requires the appointment of a board of inquiry to inquire into and report on the proposed strategy,—
    - “(i) Appointing the board under section 63(1):
    - “(ii) Causing under section 67(3) copies of the report, and all recommendations (if any) on the proposed strategy, made to the Minister by the board under section 67(2), to be sent to every person who made a submission to the board, and every other person or body the Minister thinks appropriate, and to be published:
    - “(iii) Causing public notice to be given under section 67(3) of where and how persons

can obtain copies of the report and recommendations:

- “(iv) Considering under section 69(1)(a)(i) the report made by the board under section 67(2) on the proposed strategy:
  - “(d) Considering whether or not to recommend to the Governor-General under section 68, the making of an Order making the strategy concerned, and if so, doing so:
  - “(e) If an Order under section 68 has been made that makes the proposed strategy,—
    - “(i) Laying a copy before the House of Representatives under section 70; and
    - “(ii) Appointing a management agency in respect of the strategy under section 84(4); and
    - “(iii) Disallowing under section 85(4) the operational plan or any part of that plan; and
    - “(iv) Reviewing the strategy in accordance with this Act; and
    - “(v) Under this Act, amending or revoking the strategy:
  - “(f) Recommending under section 90 the making of Orders in Council imposing levies payable to the management agency that is responsible for implementing the strategy and performing other functions in relation to levies.
- “(2) No Minister may delegate to any person the performance of any of the functions specified in subsection (1)(c)(i), (d), (e), and (f).”

## 7 Other powers of Ministers

The principal Act is amended by repealing section 11, and substituting the following section:

“11

- (1) Any Minister has power to—
  - “(a) Direct the forfeiture of organisms and organic material under section 134(3):



- “(b) Take action under sections 144 and 147 in relation to biosecurity emergencies:
  - “(c) Take action under section 145 in relation to biosecurity emergencies:
  - “(d) Recommend to the Governor-General under section 150(1) the making of biosecurity emergency regulations, and where such regulations are made, the Minister has the duty of laying them before the House of Representatives under section 150(5):
  - “(e) Declare a provisional control programme under section 152(1):
  - “(f) Extend under subsection (3) of section 152 a provisional control programme.
- “(2) A Minister must not delegate to any person the exercise of the powers specified in subsection (1)(b), (d), (e), and (g).”

## **8 Powers of regional councils**

The principal Act is amended by repealing section 13 (as amended by section 2 of the Biosecurity Amendment Act 1994), and substituting the following section:

### **“13**

- (1) Every regional council has, in relation to its region, power to—
- “(a) Cause to be carried out, for the purposes of Part V,—
    - “(i) Monitoring to determine whether or not there are present; and
    - “(ii) Surveillance of—  
pests, pest agents, and unwanted organisms:
  - “(b) Provide, in accordance with relevant pest management strategies, for the assessment and management or eradication of pests:
  - “(c) Prepare proposals for, notify, make, and implement pest management strategies:
  - “(d) If a regional pest management strategy notified by the council has been made under this Act,—

- “(i) Appoint a management agency in respect of the strategy under section 84(4):
  - “(ii) Disallow the operational plan or any part of that plan under section 85(4):
  - “(iii) Review, amend, or revoke a strategy in accordance with this Act:
  - “(e) Declare and implement a small-scale management programme under section 100:
  - “(f) Where the council has, under section 100, agreed or arranged that steps to bring an organism under control should be taken by some person or persons other than the council, to meet (in part or in whole) the costs to that person or those persons of the taking of those steps:
  - “(g) Gather information, keep records, undertake research, or do any other similar thing, if doing so is necessary or desirable to enable it to act effectively under this Act:
  - “(h) Take any action contemplated by or necessary for giving effect to any provision of this Act.
- “(2) Subject to sections 97 and 97A, every regional council has all the powers of a territorial authority under section 14; and every reference in that section to a territorial authority (or territorial authorities) must be read as including a reference to a regional council (or regional councils).”

## **9 Transfer of powers, etc by local authorities**

- (1) Section 15(1) of the principal Act is amended by omitting the words “transfer the operation to the transferee”.
- (2) Section 15(2)(a) of the principal Act is amended by omitting the words “proposing or approving”, and substituting the words “notifying or making”.

### **Part 3**

#### **Importation of risk goods**

**10 Purpose of Part 3**

Section 16 of the principal Act is amended by omitting the words “or introduction”.

**11 Notice of intended arrival of craft in New Zealand**

Section 17 of the principal Act is amended by adding the following subsection:

“(3) For the purposes of this section, **designated port of entry** means—

“(a) A port of entry approved under this Act as a place of first arrival—

“(i) For all craft; or

“(ii) For craft of the kind and description of the craft and, where applicable, arriving for the purposes of the craft; or

“(b) A port approved under section 37A for the arrival of the craft.”

**12 Repeal of provisions relating to import health permits**

The principal Act is amended—

(a) By repealing the heading “*Import Health Permits*”, and substituting the heading “*Import Health Standards*”:

(b) By repealing sections 20, 21, 23, and 24.

**13 Import health standards**

The principal Act is amended by repealing section 22, and substituting the following section:

“22

(1) The Director-General may, following the recommendation of a chief technical officer, issue an import health standard specifying the requirements to be met for the effective management of risks associated with the importation of risk goods before those goods may be imported, moved from a biosecurity control area or a transitional facility, or given a biosecurity clearance; and

may, in a like manner, amend or revoke any import health standard so issued.

- “(2) If an import health standard requires a permit to be obtained from the Director-General before the goods can be imported, moved from a biosecurity control area or a transitional facility, or given a biosecurity clearance, the Director-General may, if he or she thinks fit, issue the permit.
- “(3) Nothing in this Act obliges the Director-General to have an import health standard in force for goods of any kind or description if, in the Director-General’s opinion, the requirements that could be imposed on the importation of those goods would not be sufficient to enable the purpose of this Part to be met if the importation of those goods were permitted.
- “(4) An import health standard issued under this section may apply to goods of a certain kind or description imported from—
- “(a) A country or countries specified in the import health standard; or
  - “(b) Countries of a kind or description specified in the import health standard; or
  - “(c) All countries; or
  - “(d) A location or locations specified in the import health standard.
- “(5) When making a recommendation to the Director-General in accordance with this section, the chief technical officer must have regard to the following matters:
- “(a) The likelihood that goods of the kind or description to be specified in the import health standard may bring organisms into New Zealand:
  - “(b) The nature and possible effect on people, the New Zealand environment, and the New Zealand economy of any organisms that goods of the kind or description specified in the import health standard may bring into New Zealand:
  - “(c) New Zealand’s international obligations:
  - “(d) Such other matters as the chief technical officer considers relevant to the purpose of this Part.

- “(6) Before making a recommendation to the Director-General on the issue or amendment of an import health standard, the chief technical officer must, unless the standard needs to be issued or amended urgently, or unless the chief technical officer considers that the amendment is minor, consult with those persons considered by the chief technical officer to be representative of the classes of persons having an interest in the standard.
- “(7) The consultation may be on the import health standard or on a document that analyses or assesses the risks associated with the goods or class of goods to which the goods belong.
- “(8) Before making a recommendation to the Director-General in accordance with this section the chief technical officer must give notice of the intention to make the recommendation to the chief executive of every department of State whose responsibilities for natural resources or human health may be adversely affected by the issue, amendment, or revocation of the relevant standard.
- “(9) The Director-General must maintain a register of the import health standards (as amended from time to time) issued under this section.
- “(10) The register must be available for public information and inspection at the office of the Director-General during normal office hours.”

#### **14 Goods to be cleared for entry into New Zealand**

The principal Act is amended by repealing section 25, and substituting the following section:

“25

- (1) No person may cause or permit any uncleared goods imported on any craft to leave that craft, except to proceed to a transitional facility or a biosecurity control area.
- “(2) No person may cause or permit any uncleared goods that are in a transitional facility or biosecurity control area to leave that facility or area, except—

- “(a) To proceed, in accordance with the authority of an inspector, to another transitional facility, containment facility, or biosecurity control area; or
  - “(b) In accordance with the authority of an inspector, to be exported from New Zealand.
- “(3) Authority to move uncleared goods given by an inspector in accordance with this section, may be given subject to conditions.”

**15 Inspector to be satisfied of certain matters**

Section 27 of the principal Act is amended by repealing paragraph (a), and substituting the following paragraph:

- “(a) That the goods comply with the requirements specified in an import health standard in force for the goods (or goods of the kind or description to which the goods belong); and.”

**16 Restricted organisms to be contained**

The principal Act is amended by repealing section 29, and substituting the following section:

“29

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

**17 Processing unaccompanied goods**

The principal Act is amended by inserting, after section 30, the following section:

**“30A**

- (1) Where any imported goods other than goods inspected, examined, or surrendered in accordance with section 30 or section 35, are in a transitional facility, an inspector may, for the purpose of determining whether the goods are, or contain, risk goods,—
  - “(a) Open any bag, box, parcel, container, or other thing containing the goods:
  - “(b) Inspect the goods.
- “(2) Where any goods in a transitional facility are, or contain, risk goods, section 116 applies to those goods as if the goods were unauthorised goods seized in accordance with that section.
- “(3) For the purposes of this section an inspector may, at any reasonable time or times, enter any transitional facility and the provisions of section 112 apply.”

**18 Movement of risk goods**

Section 36 of the principal Act is amended by omitting the word “controlled”, and substituting the words “biosecurity control”.

**19 New sections inserted relating to ports**

The principal Act is amended by repealing section 37, and substituting the following sections:

**“37 Approval of ports as places of first arrival**

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

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



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

- “(1) The Director-General may approve the arrival of a craft at a port that is not approved under section 37 as a place of first arrival for any craft, for craft of the kind or description of that craft, or for craft arriving for the purpose of that craft, if—
- “(a) A person has requested approval for that craft to arrive in New Zealand at that port; and
  - “(b) The Director-General is satisfied that the risks associated with the importation of risk goods can be managed by imposing conditions on the arrival of the craft at that port.
- “(2) The approval of the Director-General may be given subject to those conditions that the Director-General considers will manage the risks associated with the importation of risk goods.
- “(3) Before taking action under this section, the Director-General must consult in accordance with section 37D.

**“37B Suspension of approval**

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

“(4) Where a decision under this section is made by a person acting under the delegated authority of the Director-General, the port operator is entitled to have the decision reviewed by the Director-General.

**“37C Port operators**

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

“(a) To use or patronise facilities under the operator’s control; or

“(b) To contribute, directly or indirectly, towards the expense of operating facilities under the operator’s control that the user has not used or patronised.

“(2) No operator of a port may wilfully or recklessly represent that the port is an approved place of first arrival for any craft other than craft specified in the approval.

“(3) No operator may wilfully or recklessly represent that the port is an approved place of first arrival where no approval has been given or an approval has been suspended or revoked.

**“37D Director-General to consult chief executives**

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

“(a) The New Zealand Customs Service; and

“(b) The Ministry of Health; and

“(c) The New Zealand Police; and

“(d) The Ministry of Transport; and

“(e) Every other department of State whose operations may, in the Director-General’s opinion, be affected by the action.”

**20 Approval of transitional facilities and containment facilities**

The principal Act is amended by repealing section 39, and substituting the following section:

**“39**

(1) The Director-General may, after consulting with the persons that the Director-General considers to be rep-

representative of the classes of persons likely to have an interest in the proposed standard, approve standards for building, maintaining, or operating transitional facilities or for building, maintaining, or operating containment facilities.

- “(2) Any person may apply in an approved form to the Director-General for the approval of any place as a transitional facility or a containment facility.
- “(3) The Director-General must consider every application made under subsection (2) and—
- “(a) If the application complies with the requirements of this Act; and
- “(b) If the place meets the relevant standards approved under subsection (1),—
- the Director-General may approve the place as a transitional facility for the purpose specified in the approval or as a containment facility, as the case may be.
- “(4) A transitional facility approval given in accordance with this section must, where the approval specifies, expire at a time specified in the approval or upon the occurrence of an event specified in the approval.
- “(5) A transitional facility approval given in accordance with this section may specify the uncleared goods that may be held in the facility.
- “(6) A containment facility approval given in accordance with this section may specify the organisms that may be held in the facility.
- “(7) The Director-General may, by written notice to the operator of a transitional facility, or a containment facility, cancel an approval for a transitional facility, or a containment facility, or a part of an approval relating to one or more uses of a transitional facility, where—
- “(a) The facility no longer complies with the relevant standards; or
- “(b) The Director-General is satisfied that the facility is no longer used for the purpose or one or more of the purposes specified in the approval.

- “(8) In exercising a power under subsection (7), the Director-General must observe the rules of natural justice.
- “(9) The Director-General may, if he or she thinks fit and without an application from any person, declare specified parts of ports approved as places of first arrival to be transitional facilities.”

## **21 Approval of facility operators**

The principal Act is amended by repealing section 40, and substituting the following section:

“40

- (1) Any person may apply, in an approved form, to the Director-General for approval as the operator of a specified transitional facility or specified containment facility.
- “(2) Every application must be accompanied by such further information as the Director-General may require.
- “(3) The Director-General must consider every application made under subsection (1) and, if satisfied—
  - “(a) That the applicant is a fit and proper person to be the operator of the transitional facility or containment facility specified in the application; and
  - “(b) The applicant is able to comply with the operating standards for that facility,—  
may approve the applicant as the operator of that facility.
- “(4) The Director-General may, by written notice to a person, cancel that person’s approval to operate a specified transitional facility or a specified containment facility where—
  - “(a) The person is no longer operating the facility in compliance with the operating standards for the facility; or
  - “(b) The person has ceased to act as operator of the facility; or
  - “(c) The person is no longer a fit and proper person to operate the facility.
- “(5) In exercising a power under subsection (4), the Director-General must observe the rules of natural justice.

- “(6) No person may operate or purport to operate a transitional facility or a containment facility unless the person is approved as an operator of that facility.”

## **Part 4**

### **Surveillance and prevention**

#### **22 Duty to provide information**

Section 43(1)(a) of the principal Act is amended by omitting the words “To provide any information concerning pests, pest agents, or unwanted organisms held by the person”, and substituting the words “To provide any information held by the person concerning pests, pest agents, or unwanted organisms”.

#### **23 Repeal of section 44**

The principal Act is amended by repealing section 44.

#### **24 Repeal of provisions relating to imported risk goods**

Section 47 of the principal Act is repealed.

#### **25 Power to require information**

Section 48 of the principal Act is amended by repealing subsection (1), and substituting the following subsections:

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

held by that person on the incidence, prevalence, or distribution of specified organisms.”

## **26 Identification systems**

(1) Section 50 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

“(1) The Director-General may, from time to time, approve systems administered by specified persons for the purpose of enabling the identification of organisms and their products and associated premises.”

(2) Section 50 of the principal Act is amended by repealing subsection (4), and substituting the following subsections:

“(4) Regulations made under this Act may require persons of any kind or description to use 1 of any 1 or more identification systems approved under this section and notified in the *Gazette* in accordance with subsection (5).

“(5) The Director-General may, by notice in the *Gazette*, specify the identification systems that may be used to comply with regulations made under this Act; and must keep, and make publicly available, a register of all *Gazette* notices made under this section.”

(3) Section 51(3) is consequentially amended by omitting the words “an approved identification system”, and substituting the words “1 of any 1 or more identification systems notified in the *Gazette*”.

## **27 Communication of pest or unwanted organism**

(1) Section 52 of the principal Act is amended by omitting the word “notifiable”, and substituting the word “unwanted”.

(2) Section 52 of the principal Act is amended by adding the following paragraph:

“(d) As permitted either generally or specifically by a chief technical officer.”

## **28 Duties of owners of organisms**

(1) Section 53 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

- “(1) Subject to subsection (2), the owner or person in charge of an organism which that person knows or suspects constitutes, contains, or harbours a pest or unwanted organism must not—
- “(a) Cause or permit that organism to be in a place where organisms are offered for sale or are exhibited; or
  - “(b) Sell or offer that organism for sale; or
  - “(c) Propagate, breed, or multiply the pest or unwanted organism or otherwise act in such a manner as is likely to encourage or cause the propagation, breeding, or multiplication of the pest or unwanted organism.”
- (2) Section 53 of the principal Act is amended by repealing subsection (2), and substituting the following subsections:
- “(2) A chief technical officer may permit an owner or person in charge of an organism to carry out an act otherwise prohibited by this section.
- “(3) Permission given under this section must be given either by notice in the *Gazette* or in writing to the owner or person in charge of an organism.”

## Part 5

### Pest management

#### 29 Purpose of Part 5

The principal Act is amended by repealing section 54, and substituting the following section:

“54

The purpose of this Part is to provide for the effective management or eradication of pests and unwanted organisms.”

#### 30 Powers for purpose of pest management strategy and small-scale management programme

The principal Act is amended by repealing section 55, and substituting the following section:

“55

- (1) The management or eradication of pests must be in accordance with pest management strategies made in accordance with this Part.

- “(2) Every pest management strategy or notice declaring a small-scale management programme must specify which of the powers in Part VI may be exercised in the implementation of that strategy or programme and only those powers may be used to implement the strategy or programme.
- “(3) Where any provision in Part VI confers a power on a management agency, that power may be exercised by a management agency only if it is acting in the implementation of a pest management strategy for which it is the management agency, and that strategy specifies the power as one which may be exercised to implement the strategy.
- “(4) An authorised person may exercise a power conferred on an authorised person by Part VI to implement a pest management strategy or small-scale management programme only if the strategy or notice declaring the programme specifies the power as one which may be exercised to implement the strategy or programme and that authorised person was appointed for the purposes of that strategy or programme.”

### **31 Preparation of national pest management strategy**

The principal Act is amended by repealing section 56, and substituting the following section:

“56

A Minister or any person may prepare a proposal for a national pest management strategy.”

### **32 Notification of proposal by Minister**

(1) Section 57(1) of the principal Act is amended—

- (a) By omitting the words “A Minister shall propose”, and substituting the words “A Minister may notify, in accordance with section 62, a proposal for”:
- (b) By omitting from paragraph (a) the words “the organism concerned”, and substituting the words “each organism to which the strategy would apply”:
- (c) By inserting, after paragraph (b), the following paragraph:



- “(ba) Where funding proposals for the strategy require persons to meet directly the costs of implementing the strategy,—
- “(i) The benefits that will accrue to those persons as a group will outweigh the costs; or
  - “(ii) Those persons contribute to the creation, continuance, or exacerbation of the problems proposed to be resolved by the strategy; and:”
- (d) By omitting from paragraph (c) the word “the” the first time it appears, and substituting the word “each”:
- (e) By omitting, from paragraph (c)(ii), the words “rare or endangered”, and substituting the word “threatened”.
- (2) Section 57(2) of the principal Act is amended—
- (a) By omitting the words “a Minister shall propose”, and substituting the words “a Minister may notify, in accordance with section 62, a proposal for”:
  - (b) By omitting the words “the organism” the first time the words appear, and substituting the words “each organism”.

### **33 Request to notify national proposal**

The principal Act is amended by repealing section 58, and substituting the following section:

“58

- (1) Any person may, by notice in writing to a Minister whose responsibilities might be adversely affected by an organism, request that Minister to notify in accordance with section 62 a proposal for a national pest management strategy in relation to that organism.
- “(2) Where a Minister is requested to notify a proposal in accordance with this section, the Minister must do so unless section 59 applies, and if,—
  - “(a) In the Minister’s opinion, the proposal complies with section 57; and
  - “(b) In the Minister’s opinion, the person making the request has consulted with persons likely to be affected by the strategy, or representatives of persons likely to be affected by the strategy.
- “(3) Where a proposal is notified after a request made in accordance with this section, the Minister may, if he or

she thinks fit, require the person who has given notice in writing to pay all or part of the costs of processing the proposal in accordance with sections 62 to 69, and the strategy may be processed only to the extent that the person meets his or her share of the costs.”

**34 Minister may refuse to notify suggested strategy in certain circumstances**

Section 59 of the principal Act is amended by repealing paragraph (c).

**35 Preparation and contents of proposal for national pest management strategy**

- (1) The principal Act is amended by repealing section 60, and substituting the following section:

“60

A proposal for a national pest management strategy must specify the following matters:

- “(a) The proposer of the strategy:
- “(b) The organism or organisms to which the strategy is to apply and any other organisms intended to be controlled:
- “(c) In relation to each organism to which the strategy would apply, or each class or description of organism to which the strategy would apply, the reasons for the strategy including a description of the adverse effects of the organism, or the class or description of organism:
- “(d) The management agency that is to be responsible for implementing the strategy:
- “(e) The proposed period for which the strategy will remain in force:
- “(f) In relation to each organism to which the strategy would apply, or each class or description of organism to which the strategy would apply, the objectives of the strategy and the principal measures proposed to be taken to achieve those objectives:

- “(g) Any alternative measures that it would be reasonable to take to achieve the objectives of the strategy, and the reasons for preferring the measures specified in accordance with paragraph (f) as the measures proposed to be taken:
- “(h) The intended scope and purpose of each proposed strategy rule, and the rules for which it is proposed that a breach of the rule will be an offence under this Act:
- “(i) Whether any land will include portions of adjoining road for the purposes of the strategy in accordance with section 6, and if so, the portions of road that are proposed to be included:
- “(j) The actual or potential effects, beneficial or detrimental, that the implementation of the strategy might (in the proposer’s opinion) have on the relationship of Maori and their culture and traditions with their ancestral lands, waters, sites, waahi tapu, and taonga:
- “(k) The actual or potential effects, beneficial or detrimental, that the implementation of the strategy might (in the proposer’s opinion) have on—
  - “(i) The environment; and
  - “(ii) The marketing overseas of New Zealand products:
- “(l) An analysis of the benefits and costs of the strategy in relation to each organism to which the strategy would apply, or each class or description of organism to which the strategy would apply, and the reasons why a national strategy is more appropriate than a regional strategy or regional strategies:
- “(m) The anticipated costs of implementing the strategy, how those costs are to be funded, and the funding information required to be included by section 61:
- “(n) The basis, if any, on which compensation is to be paid by the management agency in respect of losses incurred as a direct result of the implemen-

tation of the strategy, and information concerning the disposal of the proceeds of any receipts arising in the course of implementing the strategy:

- “(o) The powers to be used in accordance with section 55 to implement the strategy:
- “(p) Where the proposed strategy would affect another pest management strategy, the proposed means of co-ordination:
- “(q) The proposed means for measuring the extent to which the objectives of the strategy are being achieved:
- “(r) The actions (including the making of contributions towards the costs of implementation) that it is proposed may be taken in relation to the strategy by local authorities, local authorities of a specified kind or description, or specified local authorities.”

- (2) The principal Act is consequentially amended—
  - (a) By repealing Schedule 1:
  - (b) By repealing section 45(1):
  - (c) By omitting, from section 46(1), the words “subsection (1) or”.

### **36 Funding information required in proposal**

The principal Act is amended by repealing section 61, and substituting the following section:

“61

A proposal for a national pest management strategy must specify, in relation to each organism to which the strategy would apply, or in relation to each class or description of organism to which the strategy would apply, the following matters:

- “(a) The extent to which any persons, or persons of any class, kind, or description are likely to benefit from the strategy:
- “(b) The extent (if any) to which any persons, or persons of any class, kind, or description by their activities or inaction contribute to the creation, continuance, or exacerbation of the problems pro-

posed to be resolved by the pest management strategy:

- “(c) The rationale for the proposed allocation of costs, including, where it is proposed that the strategy should be funded by a levy in accordance with sections 90 to 96,—
  - “(i) The matters required to be specified in accordance with section 93(1); and
  - “(ii) How the proposed levy will comply with section 92(1)(d), (e), (f), and (g):
- “(d) Whether any unusual administrative problems or costs are expected in recovering the costs allocated to any of the persons who are to be required to pay.”

### **37 Notification of proposed national pest management strategy**

- (1) Section 62(1) of the principal Act is amended—
  - (a) By omitting the words “Minister of Agriculture” in both places where the words appear, and substituting the words “responsible Minister”:
  - (b) By inserting, after paragraph (a), the following paragraph:
    - “(aa) Publishing a notice in 1 or more daily newspapers circulating in the major metropolitan areas; and.”
- (2) Section 62 of the principal Act is amended by repealing subsection (2), and substituting the following subsections:
  - “(2) Every notice under this section must include—
    - “(a) A description of the proposed strategy:
    - “(b) A statement that submissions on the proposed strategy may be made in writing to the Minister by any person:
    - “(c) A closing date for submissions (which must not be earlier than 20 working days after notification under this section):
    - “(d) A statement that every submission should state—
      - “(i) Those aspects of the proposed strategy that the submission supports; and
      - “(ii) Those aspects of the proposed strategy that the submission opposes; and

- “(iii) The reasons for the support and opposition identified; and
  - “(iv) Any specific alternatives to the proposed strategy that the person making the submission wishes to recommend; and
  - “(v) Whether the person making the submission wishes to be heard in respect of that submission if an inquiry is held:
  - “(e) A list of the places where a copy of the proposal for the strategy may be obtained or inspected:
  - “(f) An address for submissions.
- “(3) Any person may make a submission to the Minister about a proposed national pest management strategy notified in accordance with this section, and every submission must contain the matters specified in subsection (2)(d).”
- (3) Sections 64 and 65 of the principal Act are consequentially repealed.

### **38 Board of inquiry**

- (1) Section 63 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:
- “(1) The Minister must appoint a board of inquiry to inquire into and report on every proposal for a pest management strategy notified in accordance with section 62, unless, after having regard to the submissions made to the Minister, the Minister is satisfied that there is no significant body of persons who—
- “(a) Would be affected by the implementation of the proposed strategy; and
  - “(b) Are opposed to a significant element of the proposed strategy.”
- (2) Section 63 of the principal Act is amended by inserting, after subsection (2), the following subsection:
- “(2A) Where the Minister appoints a board of inquiry in accordance with subsection (1), the Minister must forward all submissions received under section 62 to that board.”

### **39 Summary of submissions, notification, and conduct of hearing**

Section 66 of the principal Act is amended—

- (a) By omitting the words “proposing Minister”, and substituting the words “proposer of the strategy”:
- (b) By omitting the expression “65”, and substituting the expression “62”.

#### **40 Making of national pest management strategy**

The principal Act is amended by repealing section 68, and substituting the following section:

“68

- (1) Subject to section 69, the Governor-General may, by Order in Council made on the recommendation of a Minister, make a national pest management strategy.
- “(2) The Order in Council made under this section must include all the matters required in a national pest management strategy by section 69A.
- “(3) The strategy rules in an order made under this section are deemed to be regulations for the purposes of the Regulations (Disallowance) Act 1989.”

#### **41 Duties of Ministers in relation to proposed national pest management strategies**

Section 69 of the principal Act is amended—

- (a) By inserting, after subsection (1), the following subsection:
  - “(1A) Where the proposed strategy has not been considered by a board of inquiry, the Minister must not recommend the making of a strategy if that strategy differs significantly in its effect from the relevant provisions in the proposal notified in accordance with section 62.”
- (b) By omitting the word “approving” wherever it appears, and substituting the word “making”:
- (c) By repealing subsection (2)(c).

#### **42 New sections inserted relating to national pest management strategies**

The principal Act is amended by inserting, after section 69, the following sections:

**“69A Contents of national pest management strategy**

A national pest management strategy must specify the following matters:

- “(a) The pest or pests to be managed or eradicated:
- “(b) The objectives of the strategy:
- “(c) The management agency that is responsible for implementing the strategy:
- “(d) The period for which the strategy will remain in force:
- “(e) The powers to be used in accordance with section 55 to implement the strategy:
- “(f) The strategy rules, if any, made in accordance with this Act:
- “(g) The portions of road, if any, that are included as adjoining land, in accordance with section 6, for the purposes of the strategy:
- “(h) The basis, if any, on which compensation is to be paid by the management agency in respect of losses incurred as a direct result of the strategy:
- “(i) The sources of funding for the implementation of the strategy, and the limitations, if any, on how the funds collected from those sources may be used to implement the strategy:
- “(j) The actions (including the making of contributions towards the costs of implementation) that may be taken in relation to the strategy by local authorities, local authorities of a specified kind or description, or specified local authorities.

**“69B Strategy rules**

- “(1) A national pest management strategy made by Order in Council under section 68, may include rules made for all or any of the following purposes:
  - “(a) Requiring any person to take specified actions which will enable the management agency to determine or monitor the presence or distribution of the pest or any pest agent:
  - “(b) Requiring any person to keep records of actions taken in accordance with rules made under this section and to



send specified information based on those records to the management agency:

- “(c) Requiring the identification of specified goods:
- “(d) Prohibiting or regulating specified methods that may be used in the management of the pest:
- “(e) Prohibiting or regulating activities which may affect measures taken to implement the strategy:
- “(f) Requiring audits or inspections of specified actions:
- “(g) Specifying, for the purposes of section 52(a), the circumstances in which the pest may be communicated, released, or otherwise spread:
- “(h) Requiring the occupier of any place to take specified actions to control or eradicate the pest or a specified pest agent on that place:
- “(i) Requiring the occupier of any place to take specified actions to control or eradicate the habitat of the pest or the habitat of a specified pest agent on that place:
- “(j) Prohibiting or regulating specified activities by the occupier of a place where those activities will promote the habitat of the pest on that place:
- “(k) Requiring the occupier of a place to carry out specified activities to promote the presence of organisms that assist in the control of the pest on that place:
- “(l) Prohibiting or regulating specified activities by the occupier of a place, which deter the presence on that place of organisms that assist in the control of the pest:
- “(m) Requiring the occupier of any place to carry out specified treatments or procedures to assist in preventing the spread of the pest:
- “(n) Requiring the owners or persons in charge of goods to carry out specified treatments or procedures to assist in preventing the spread of the pest:
- “(o) Requiring the destruction of goods in circumstances where the goods may contain or harbour the pest, or otherwise pose a risk of spreading the pest:
- “(p) Prohibiting or regulating specified uses of goods that may promote the spread or survival of the pest:
- “(q) Prohibiting or regulating the holding or disposal of organic material:

- “(r) Prohibiting or regulating the use of specified practices in the management of organisms that may promote the spread or survival of the pest:
  - “(s) Prohibiting or regulating the movement of goods that may contain or harbour the pest or otherwise pose a risk of spreading the pest.
  - “(2) A Minister must not recommend the making of an Order in Council under section 68 unless the Minister has had regard to—
    - “(a) The extent to which each rule included in the strategy is likely to assist in achieving the objectives of the strategy; and
    - “(b) The extent to which each rule included in the strategy is likely to restrict the rights of individuals.
  - “(3) A rule may specify that a breach of the rule creates an offence under section 154(q).
  - “(4) A rule may provide that no exemptions from any requirement of the rule may be granted under section 69D.
  - “(5) A rule may—
    - “(a) Apply generally throughout New Zealand or within a specified part or parts of New Zealand:
    - “(b) Apply generally or with respect to different classes of persons, places, goods, or other things:
    - “(c) Apply generally or at any specified time of each year.
  - “(6) Where a rule applies to a specified part or parts of New Zealand, other rules relating to the same subject matter may be made for other specified parts of New Zealand.
  - “(7) So far as the bylaws of any local authority are inconsistent with or repugnant to any rule made under this Act in force in the same locality, the bylaws must be construed subject to the rules.
- “**69C Incorporation by reference**
- “(1) Any written material or document that, in the opinion of the Minister, is too large or otherwise impractical to be printed as part of a rule included in a pest management strategy may be incorporated by reference.

- “(2) Any material incorporated by reference under this section is deemed for all purposes to form part of the rule, but any amendment to the material by the person or organisation originating it does not come into force as a rule until a rule to that effect has been made under this Act.
- “(3) All material incorporated by reference under this section must be available at the office of the management agency for that strategy and copies of that material must be available for purchase for a reasonable charge.

**“69D Exemption power of Minister**

- “(1) The Minister may, upon such conditions as he or she considers appropriate, exempt any person from any requirement in any rule included in a national pest management strategy made under this Act.
- “(2) Before granting an exemption under this section, the Minister must be satisfied in the circumstances of each case that—
- “(a) The requirement has been substantially complied with and that further compliance is unnecessary; or
  - “(b) The action taken or provision made in respect of the matter to which the requirement relates is as effective or more effective than actual compliance with the requirement; or
  - “(c) The prescribed requirements are clearly unreasonable or inappropriate in the particular case; or
  - “(d) Events have occurred that make the prescribed requirements unnecessary or inappropriate in the particular case,—  
and that the granting of the exemption will not significantly prejudice the attainment of the objectives of the strategy.
- “(3) The Minister may, upon such conditions as he or she thinks fit, exempt all persons, or any specified class of persons, persons in any specified place, or persons responsible for specified goods or things from any requirement in any rule included in a national pest management strategy made under this Act, if the Minister is satisfied that events have occurred that make the prescribed requirements unnecessary or inappropriate.

- “(4) The number and nature of exemptions granted under this section must be notified as soon as practicable in the *Gazette*.
- “(5) Nothing in this section applies in any case where any rule specifically provides that no exemptions are to be granted.”

#### **43 Preparation of regional pest management strategy**

The principal Act is amended by repealing section 71, and substituting the following section:

“71

A regional council or any other person may prepare a proposal for a regional pest management strategy.”

#### **44 Notification of proposal by regional council**

(1) Section 72(1) of the principal Act is amended—

- (a) By omitting the words “A regional council shall propose”, and substituting the words “A regional council may notify, in accordance with section 78 of this Act, a proposal for”:
- (b) By omitting from paragraph (a) the words “the organism concerned”, and substituting the words “each organism to which the strategy would apply”:
- (c) By inserting after paragraph (b), the following paragraph:

“(ba) Where funding proposals for the strategy require persons to meet directly the costs of implementing the strategy—

“(i) The benefits that will accrue to those persons as a group will outweigh the costs; or

“(ii) Those persons contribute to the creation, continuance, or exacerbation of the problems proposed to be resolved by the strategy; and:”

(d) By omitting from paragraph (c) the word “the” the first time it appears, and substituting the word “each”:

(e) By omitting, from paragraph (c)(ii), the words “rare or endangered”, and substituting the word “threatened”.

(2) Section 72 of the principal Act is amended by repealing subsections (2) and (3).

**45 Request to notify regional proposal**

The principal Act is amended by repealing section 74, and substituting the following section:

“74

- (1) Any person may, by notice in writing to a regional council, request that council to notify a proposal for a regional pest management strategy under section 78.
- “(2) Where a regional council is requested to notify a proposal in accordance with this section, the council must do so unless section 75 applies, and if,—
  - “(a) In the opinion of the council, the proposal complies with the provisions of section 72; and
  - “(b) In the council’s opinion, the person making the request has consulted with persons likely to be affected by the strategy, or representatives of persons likely to be affected by the strategy.
- “(3) Where a proposal is notified after a request made in accordance with this section, the regional council may, if it thinks fit, require the person who has given notice in writing to pay all or part of the costs of processing the propose in accordance with sections 78 to 79F, and the strategy may be processed only to the extent that the person meets his or her share of the costs.”

**46 Council may refuse to notify suggested strategy in certain circumstances**

Section 75 of the principal Act is amended—

- (a) By omitting the word “suggested” the first time the word appears, and substituting the words “proposal for a”:
- (b) By repealing paragraph (c):
- (c) By omitting paragraph (d)(i), and substituting the following paragraph:
  - “(i) At a time within the 3 years before the proposal for the strategy was submitted to the council, an inquiry was completed into a proposal for a regional pest management strategy whose substance was broadly the same as its substance; and.”

**47 Preparation and contents of proposal for regional pest management strategy**

Section 76 of the principal Act is amended by repealing subsections (1) and (2), and substituting the following subsection:

“76

1A proposal for a regional pest management strategy must specify the following matters:

- “(a) The proposer of the strategy:
- “(b) The organism or organisms to which the strategy is to apply and any other organisms intended to be controlled:
- “(c) In relation to each organism to which the strategy would apply, or each class or description of organism to which the strategy would apply, the reasons for the strategy, including a description of the adverse effects of the organism, or the class or description of organism:
- “(d) The management agency that is to be responsible for implementing the strategy:
- “(e) The proposed period for which the strategy will remain in force:
- “(f) In relation to each organism to which the strategy would apply, or each class or description of organism to which the strategy would apply, the objectives of the strategy and the principal measures proposed to be taken to achieve those objectives:
- “(g) Any alternative measures that it would be reasonable to take to achieve the objectives of the strategy and the reasons for preferring the measures specified in accordance with paragraph (f) as the measures proposed to be taken:
- “(h) Each proposed strategy rule, an explanation of each proposed rule, and, if it is proposed that a breach of the rule will be an offence under this Act, a statement to that effect:

- “(i) Whether land will include portions of adjoining road for the purposes of the strategy in accordance with section 6, and if so, the portions of road that are proposed to be included:
- “(j) The actual or potential effects, beneficial or detrimental, that the implementation of the strategy might (in the proposer’s opinion) have on the relationship of Maori and their culture and traditions with their ancestral lands, waters, sites, waahi tapu, and taonga:
- “(k) The actual or potential effects, beneficial or detrimental, that the implementation of the strategy might (in the proposer’s opinion) have on—
  - “(i) The environment; and
  - “(ii) The marketing overseas of New Zealand products:
- “(l) An analysis of the benefits and costs of the strategy (including the reasons why the strategy is more appropriate than relying on the voluntary actions of persons) in relation to each organism to which the strategy would apply:
- “(m) The anticipated costs of implementing the strategy, how those costs are to be funded, and the funding information required to be included by section 77:
- “(n) The basis, if any, on which compensation is to be paid by the management agency in respect of losses incurred as a direct result of the implementation of the strategy, and information concerning the disposal of the proceeds of any receipts arising in the course of implementing the strategy:
- “(o) The powers to be used in accordance with section 55 to implement the strategy:

- “(p) Where the proposed strategy would affect another pest management strategy, the proposed means of co-ordination:
- “(q) The proposed means for measuring the extent to which the objectives of the strategy are being achieved:
- “(r) The actions (including the making of contributions towards the costs of implementation) that it is proposed may be taken in relation to the strategy by local authorities, local authorities of a specified kind or description, or specified local authorities.”

#### **48 Funding information required in proposal**

The principal Act is amended by repealing section 77 (as amended by section 3 of the Biosecurity Amendment Act 1996), and substituting the following section:

“77

A proposal for a regional pest management strategy must specify, in relation to each organism or in relation to each class or description of organism to which the strategy would apply, the following matters:

- “(a) The extent to which any persons or persons of any class, kind, or description are likely to benefit from the strategy:
- “(b) The extent (if any) to which any persons or persons of any class, kind, or description by their activities or inaction contribute to the creation, continuance, or exacerbation of the problems proposed to be resolved by the pest management strategy:
- “(c) The rationale for the proposed allocation of costs, including, where it is proposed that the strategy should be funded by a levy in accordance with sections 90 to 96,—
  - “(i) The matters required to be specified in accordance with section 93(1); and
  - “(ii) How the proposed levy will comply with section 92(1)(d), (e), (f), and (g):



- “(d) Whether any unusual administrative problems or costs are expected in recovering the costs allocated to any of the persons who are to be required to pay.”

**49 Notification of proposed regional pest management strategy**

- (1) Section 78 of the principal Act is amended by repealing subsections (1) and (2), and substituting the following subsections:
  - “(1) A regional council must publicly notify a proposed regional pest management strategy—
    - “(a) By publishing a notice in 1 or more daily newspapers circulating within the council’s region; and
    - “(b) By giving such further notice, if any, as the regional council considers appropriate having regard to the nature and distribution of the organism concerned and the persons likely to have an interest in the proposal.
  - “(2) Every notice under this section must include—
    - “(a) A description of the proposed strategy:
    - “(b) A statement that submissions on the proposed strategy may be made in writing to the regional council by any person:
    - “(c) A closing date for submissions (which must not be earlier than 20 working days after notification under this section):
    - “(d) A statement that every submission should state—
      - “(i) Those aspects of the proposed strategy that the submission supports; and
      - “(ii) Those aspects of the proposed strategy that the submission opposes; and
      - “(iii) The reasons for the support and opposition identified; and
      - “(iv) Any specific alternatives to the proposed strategy that the person making the submission wishes to recommend; and
      - “(v) Whether the person making the submission wishes to be heard in respect of that submission:

- “(e) A list of the places where a copy of the proposed strategy may be obtained or inspected:
  - “(f) An address for submissions.
- “(2A) Any person may make a submission to the regional council about a proposed regional pest management strategy notified in accordance with this section, and every submission must contain the matters specified in subsection (2)(d).”
- (2) Section 78 of the principal Act is amended by omitting the words “Minister of Agriculture” from subsection (3), and substituting the words “responsible Minister”.
  - (3) Section 78 of the principal Act is amended by omitting the words “prepared by it” from subsection (4), and substituting the words “that it has notified”.

**50 New sections inserted relating to regional pest management strategies**

- (1) The principal Act is amended by repealing section 80, and substituting the following sections:

**“79A Summary of submission, notification, and conduct of hearing**

Every proposal for a regional pest management strategy must be subject to an inquiry, the Second Schedule applies in respect of that inquiry as though the inquiry were undertaken by a board of inquiry, and every person who made a submission on that proposed regional pest management strategy has the right to be heard at the inquiry.

**“79B Regional matters to be considered and regional council’s report**

- “(1) In considering a proposed regional pest management strategy, a regional council—
  - “(a) Must have regard to—
    - “(i) All submissions; and
    - “(ii) All relevant provisions of this Part; and
    - “(iii) A report on the proposed regional pest management strategy made to it by its principal officer; and

- “(iv) Any report and any recommendations of a hearings commissioner; and
- “(b) Where the strategy includes provision for funding, the strategy in accordance with section 97 must have regard to—
  - “(i) The extent to which the proposal for the pest management strategy gave notice of the intention to provide in the strategy for wholly or partially funding the strategy in accordance with section 97; and
  - “(ii) The extent of consultation with the occupiers of the properties on which the rate or rates is or are likely to be levied and the views of those occupiers; and
  - “(iii) All views expressed to the regional council by any other person concerning the proposal to fund the strategy in accordance with section 97; and
  - “(iv) All other relevant matters known to the council; and
- “(c) Must be satisfied on reasonable grounds of the matters in section 72(1).
- “(2) On completion of its consideration, the council must prepare a written report on the proposed regional pest management strategy and the matters raised by the submissions, and must give its decision which must include the regional pest management strategy and the reasons for accepting or rejecting any submissions or group of submissions.
- “(3) The decision of the regional council may include any consequential alterations arising out of submissions and any other relevant matters it considered relating to matters raised in submissions.
- “(4) The regional council must give public notice of the decision and the pest management strategy.

**“79C Notification of decision**

At the same time as a regional council gives public notice of its decision, it must serve on every person who made a submission on a provision, a copy of its decision on that provision.

**“79D Reference of decision on submissions to Environment Court**

- “(1) Any person who made a submission on a proposed regional pest management strategy may refer to the Environment Court—
- “(a) Any provision included in the proposed regional pest management strategy, or a provision which the decision on submissions proposes to include in the regional pest management strategy; or
  - “(b) Any matter excluded from the proposed regional pest management strategy, or a provision which the decision on submissions proposes to exclude from the regional pest management strategy,—  
if that person referred to that provision or matter in that person’s submission on the proposed regional pest management strategy.
- “(2) Any reference to the Environment Court under this section must be lodged with the Environment Court within 15 working days of service of the decision of the regional council and must state—
- “(a) The reasons for the reference and relief sought; and
  - “(b) The address for service of the person who made the reference; and
  - “(c) Any other matters required by regulations.
- “(3) A person who makes a reference to the Environment Court under this section must serve a copy of the notice within 5 working days after the reference is lodged with the Environment Court, on—
- “(a) The regional council; and
  - “(b) Every person who made a submission on that provision or matter.

**“79E Hearing by Environment Court**

- “(1) The Environment Court must hold a public hearing into any provision or matter referred to it.
- “(2) Where the Environment Court holds a hearing into any provision or matter of a proposed regional pest management strategy, that reference is an appeal and the Environment Court

may confirm, or direct the regional council to modify, delete, or insert, any provision or matter which is referred to it.

**“79F Final consideration of regional pest management strategy**

- “(1) A regional council must make a regional pest management strategy once it has made the amendments as directed by the Environment Court.
- “(2) A strategy must be made under this section by affixing the seal of the regional council to the document.
- “(3) The regional council must provide 1 copy of each regional pest management strategy made by the council to every public library in its area.”
- (2) Section 97A of the principal Act (as inserted by section 4 of the Biosecurity Amendment Act 1996) is consequentially repealed.

**51 New sections inserted**

The principal Act is amended by inserting, after section 80, the following sections:

**“80A Contents of regional pest management strategy**

A regional pest management strategy must specify the following matters:

- “(a) The pest or pests to be managed or eradicated:
- “(b) The objectives of the strategy:
- “(c) The management agency that is responsible for implementing the strategy:
- “(d) The period for which the strategy will remain in force:
- “(e) The powers to be used in accordance with section 55 to implement the strategy:
- “(f) The strategy rules, if any, made in accordance with this Act:
- “(g) The portions of road, if any, that are included as adjoining land, in accordance with section 6, for the purposes of the strategy:
- “(h) The basis, if any, on which compensation is to be paid by the management agency in respect of losses incurred as a direct result of the strategy:

- “(i) The sources of funding for the implementation of the strategy, and the limitations, if any, on how the funds collected from those sources may be used to implement the strategy:
- “(j) The actions (including the making of contributions towards the costs of implementation) that may be taken in relation to the strategy by local authorities, local authorities of a specified kind or description, or specified local authorities.

**“80B Strategy rules**

- “(1) A pest management strategy made under section 79F may include rules for all or any of the following purposes:
  - “(a) Requiring any person to take specified actions which will enable the management agency to determine or monitor the presence or distribution of the pest or any pest agent:
  - “(b) Requiring any person to keep records of actions taken in accordance with rules made under this section and to send specified information based on those records to the management agency:
  - “(c) Requiring the identification of specified goods:
  - “(d) Prohibiting or regulating specified methods that may be used in the management of the pest:
  - “(e) Prohibiting or regulating activities which may affect measures taken to implement the strategy:
  - “(f) Requiring audits or inspections of specified actions:
  - “(g) Specifying, for the purposes of section 52(a), the circumstances in which the pest may be communicated, released, or otherwise spread:
  - “(h) Requiring the occupier of any place to take specified actions to control or eradicate the pest or a specified pest agent on that place:
  - “(i) Requiring the occupier of any place to take specified actions to control or eradicate the habitat of the pest or the habitat of a specified pest agent on that place:
  - “(j) Prohibiting or regulating specified activities by the occupier of a place where those activities will promote the habitat of the pest on that place:

- “(k) Requiring the occupier of a place to carry out specified activities to promote the presence of organisms that assist in the control of the pest on that place:
  - “(l) Prohibiting or regulating specified activities by the occupier of a place, which deter the presence on that place of organisms that assist in the control of the pest:
  - “(m) Requiring the occupier of any place to carry out specified treatments or procedures to assist in preventing the spread of the pest:
  - “(n) Requiring the owners or persons in charge of goods to carry out specified treatments or procedures to assist in preventing the spread of the pest:
  - “(o) Requiring the destruction of goods in circumstances where the goods may contain or harbour the pest, or otherwise pose a risk of spreading the pest:
  - “(p) Prohibiting or regulating specified uses of goods that may promote the spread or survival of the pest:
  - “(q) Prohibiting or regulating the holding or disposal of organic material:
  - “(r) Prohibiting or regulating the use of specified practices in the management of organisms that may promote the spread or survival of the pest:
  - “(s) Prohibiting or regulating the movement of goods that may contain or harbour the pest or otherwise pose a risk of spreading the pest.
- “(2) A rule may provide that no exemptions from any requirement of the rule may be granted under section 80D.
- “(3) A rule may—
- “(a) Apply generally throughout the region or within a specified part or parts of the region:
  - “(b) Apply generally or with respect to different classes of persons, places, goods, or other things:
  - “(c) Apply generally or at any specified time of each year.
- “(4) Where a rule applies to a specified part or parts of the region, other rules relating to the same subject matter may be made for other specified parts of the region.
- “(5) So far as the bylaws of the regional council or a territorial authority are inconsistent with or repugnant to any rule made

under this Act in force in the same locality, the bylaws must be construed subject to the rules.

- “(6) In the event of an inconsistency between regulations made under this or any other Act or the rules in a national pest management strategy, and the rules in a regional pest management strategy, the regulations or rules in a national pest management strategy prevail.
- “(7) A rule may specify that a breach of the rule creates an offence under section 154(r).
- “(8) Notwithstanding any rule of law to the contrary, a strategy rule may not be declared invalid for unreasonableness.

**“80C Incorporation by reference**

- “(1) Any written material or document that, in the opinion of the regional council, is too large or otherwise impractical to be printed as part of a rule included in a pest management strategy may be incorporated by reference.
- “(2) Any material incorporated by reference under this section is deemed for all purposes to form part of the rule but any amendment to the material by the person or organisation originating it does not come into force as a rule until a rule to that effect has been made under this Act.
- “(3) All material incorporated by reference under this section must be available at the office of the management agency for that strategy, and copies of that material must be available for purchase for a reasonable charge.

**“80D Exemption power of regional council**

- “(1) The regional council may, if the regional council considers it appropriate and upon such conditions as the regional council considers appropriate, exempt any person from any specified requirement in any rule included in a regional pest management strategy in accordance with this Act.
- “(2) Before granting an exemption under this section, the regional council must be satisfied in the circumstances of each case that—
- “(a) The requirement has been substantially complied with and that further compliance is unnecessary; or



- “(b) The action taken or provision made in respect of the matter to which the requirement relates is as effective or more effective than actual compliance with the requirement; or
  - “(c) The prescribed requirements are clearly unreasonable or inappropriate in the particular case; or
  - “(d) Events have occurred that make the prescribed requirements unnecessary or inappropriate in the particular case,—  
and that the granting of the exemption will not significantly prejudice the attainment of the objectives of the strategy.
- “(3) The regional council may, upon such conditions as it thinks fit, exempt all persons or any specified class of persons, persons in any specified place, or persons responsible for specified goods or things, from any requirement in any rule included in a regional pest management strategy made under this Act if the regional council is satisfied that events have occurred that make the prescribed requirements unnecessary or inappropriate.
- “(4) The number and nature of exemptions granted under this section must be recorded by the regional council in a register; and the register must be available for public inspection during the normal office hours of the regional council.
- “(5) Nothing in this section applies in any case where any rule specifically provides that no exemptions are to be granted.”

## **52 Regional council may delegate powers**

*[Repealed]*

Section 52 was repealed, as from 1 July 2003, by section 266 Local Government Act 2002 (2002 No 84). See sections 273 to 314 of that Act as to the savings and transitional provisions.

## **53 Councils may act jointly**

Section 83 of the principal Act is amended—

- (a) By omitting from subsection (1) the words “propose and approve”, and substituting the words “notify and make”:
- (b) By omitting the word “proposed” from subsection (1)(b):

- (c) By omitting the word “approved” wherever it occurs in subsection (1), and substituting the word “made”.

#### **54 Operational plans**

- (1) Section 85(1) of the principal Act is amended by omitting the word “approved”, and substituting the word “made”.
- (2) Section 85(3) of the principal Act is amended—
  - (a) By repealing paragraph (b), and substituting the following paragraph:  
“(b) In the case of a national pest management strategy, the Minister who recommended the Order in Council making the pest management strategy; and:”
  - (b) By omitting from paragraph (c) the word “approved”, and substituting the word “made”.
- (3) Section 85 of the principal Act is amended by repealing subsection (4), and substituting the following subsection:  
“(4) The Minister who recommended the making of the Order in Council making the strategy (in the case of a national pest management strategy) and the regional council that made the strategy (in the case of a regional pest management strategy) may,—
  - “(a) At any time before being notified under subsection (3) of the preparation or amendment of an operational plan; or
  - “(b) Not later than 20 working days after being so notified,— give the management agency written notice that the Minister or the regional council (as the case may be) intends to disallow the plan or any part of the plan on the grounds that the Minister or the regional council believes that the plan or that part of the plan is inconsistent with the strategy.”
- (4) Section 85 of the principal Act is amended by repealing subsection (5), and substituting the following subsection:  
“(5) Unless the Minister or regional council later gives the management agency concerned written notice that the Minister or regional council is now prepared to allow the plan, or a part of a plan, in respect of which the Minister or the regional council gave the agency notice under subsection (4), the plan or part of a plan is of no effect.”

**55 Duration and review of pest management strategies**

The principal Act is amended by repealing section 88, and substituting the following section:

“88

(1) In this section, a reference to **the Minister or regional council** is a reference to the Minister or regional council, as the case may require, who notified the proposal for the pest management strategy.

“(2) A pest management strategy ceases to have effect—

“(a) When the Minister or regional council declares by public notice that the purpose of the strategy has been achieved; or

“(b) After the expiry of the period specified in the strategy; or

“(c) When, following a review carried out in accordance with this section, the strategy is revoked,— whichever event occurs first.

“(3) The Minister or a regional council may review a pest management strategy in accordance with this section at any time—

“(a) If the Minister or regional council has reason to believe that the strategy is failing to achieve its purposes; or

“(b) If the Minister or regional council has reason to believe that relevant circumstances have changed to a significant extent since the strategy commenced; or

“(c) If the strategy is due to expire in less than 12 months and—

“(i) Any person requests the Minister or regional council to notify a proposal to extend the duration of the strategy; or

“(ii) The Minister or regional council proposes to extend the duration of the strategy— and may, following the review, amend or revoke the strategy in accordance with this section, or leave the strategy unchanged.

“(4) Where the review of a pest management strategy has commenced in accordance with this section and that

strategy would otherwise expire in accordance with the terms of the strategy during the review, that strategy continues in force until amended or revoked on completion of the review, including the completion of any rights of appeal.

- “(5) Where any person requests the Minister or regional council to notify a proposal to extend the duration of a strategy in accordance with subsection (3)(c)(i)—
- “(a) The Minister or regional council may refuse to notify a proposal if the provisions of sections 59 or 75 (as the case may be) apply:
- “(b) The review may be processed only so far as the costs of the review are met by that person.
- “(6) Where a pest management strategy has been in force for 5 years or more and it is more than 5 years since the strategy has been reviewed in accordance with this section, the Minister or regional council must proceed to review the strategy in accordance with this section and may, following the review, amend or revoke the strategy in accordance with this section, or leave the strategy unchanged; and this review is a cost of the strategy.
- “(7) A review of a national pest management strategy is commenced by a proposal notified in accordance with section 62 and the provisions of sections 63 to 70 apply to that review with any necessary modifications.
- “(8) A review of a regional pest management strategy is commenced by a proposal notified in accordance with section 78 and the provisions of sections 79 to 83 apply to that review with any necessary modifications.
- “(9) A proposal must state whether it is proposed that the strategy be amended or revoked or left unchanged, the proposed amendments, if any, in full, and the reasons for the proposed result of the review.
- “(10) Every notification of a proposal for a review must—
- “(a) Describe the proposed result of the review; and
- “(b) State where the proposal can be inspected; and
- “(c) Include a statement that submissions on the proposal may be made in writing by any person to

the Minister or regional council, as the case may be; and

“(d) Include a closing date for submissions (which is not earlier than 20 working days after public notice of the proposal is given); and

“(e) Include a statement that every submission should state whether the person making the submission wishes to be heard in respect of that submission if an inquiry is held.

“(11) On completion of the review the Governor-General may, by Order in Council made on the recommendation of a Minister, amend or revoke a national pest management strategy; and in that event the Minister must present a copy of the order, and where appropriate the strategy as amended, to the House of Representatives.

“(12) An order made under this section is deemed to be a regulation for the purposes of the Regulations (Disallowance) Act 1989.

“(13) On completion of the review a regional council may, by affixing the common seal of the council, amend or revoke a regional pest management strategy.

“(14) The regional council must provide one copy of each amended regional pest management strategy made by the regional council to every public library in its area.”

## 56 Minor changes to strategy

The principal Act is amended by inserting, after section 88, the following section:

### “88A

(1) Subject to subsection (4), a national pest management strategy may be amended from time to time, on the recommendation of the Minister, by the Governor-General by Order in Council without a review of the strategy under section 88.

“(2) An order made under this section is deemed to be a regulation for the purposes of the Regulations (Disallowance) Act 1989.

- “(3) Subject to subsection (4), a regional pest management strategy may be amended from time to time by a regional council by resolution without a review of the strategy in accordance with section 88.
- “(4) A strategy may be amended in accordance with this section only if the Minister or regional council is satisfied that the amendment will not have any significant effect on the rights and obligations (including obligations to contribute to the costs of the strategy) of any person.
- “(5) In this section, a reference to **the Minister or regional council** is a reference to the Minister or regional council, as the case may require, who notified the proposal for the pest management strategy.”

**57 Strategy may impose levy**

Section 90 of the principal Act is amended by omitting from subsection (1) the words “the responsible Minister”, and substituting the words “a Minister”.

**58 Restrictions on levies**

Section 92 of the principal Act is amended by omitting from subsection (1) the words “the responsible Minister”, and substituting the words “a Minister”.

**59 Contents of levy provisions in strategy**

- (1) Section 93(1) of the principal Act is amended by omitting the words “pest management strategy”, and substituting the words “order under section 90”.
- (2) Section 93(1) of the principal Act is amended by repealing paragraphs (g) and (h), and substituting the following paragraphs:
- “(g) Whether the levy is to be paid at a single rate or 2 or more different rates; and if at different rates, the places, goods, or other things to which the different rates may apply; and
- “(h) In respect of each rate of levy, the maximum rate of levy; and
- “(ha) How the management agency is to set the actual rate or rates of levy; and”.

- (3) Section 93(2) of the principal Act is amended by omitting the words “A pest management strategy”, and substituting the words “An order under section 90”.
- (4) Section 93(2) of the principal Act is amended by adding the following paragraph:
  - “(d) The holding of funds from which payments of levy are to be made, on trust in separate accounts.”

**60 Trust accounts for levy money payable to management agency**

The principal Act is amended by inserting, after section 93, the following section:

**“93A**

- (1) Where an order under section 90 provides that funds from which payments of levy are made are to be held on trust in separate accounts, the persons responsible for collecting the levy must each keep a bank account (in this section referred to as a trust account) at a registered bank within the meaning of the Reserve Bank of New Zealand Act 1989; and
  - “(a) Ensure that the account is so named as to identify that it is a trust account kept by the person responsible for collecting the levy for the purposes of the order; and
  - “(b) Take all practicable steps to ensure that—
    - “(i) The account is used only for holding amounts required to be deposited by subsection (3); and
    - “(ii) The balance in the account on any day is not less than the amount outstanding to the management agency on that day by the person responsible for collecting the levy.
- “(2) For the purpose of this section, the amount outstanding to the management agency by a person responsible for collecting the levy on any day is the remainder obtained by subtracting—
  - “(a) The total of all amounts of levy paid by that person to the management agency before that

day calculated on the basis specified in the order under section 90; from

- “(b) The total of all amounts required by subsection (3) to be deposited in the trust account by the person responsible for collecting the levy not later than a day before that day.
- “(3) Where a person is responsible for collecting a levy that person must deposit an amount equal to the levy calculated on the basis provided for in the order under section 90 in the trust account on the day or days specified in that order or on a day or days calculated in accordance with that order.
- “(4) There is deemed to be held on trust for the management agency as levy money—
  - “(a) The amount outstanding to the management agency by the person responsible for collecting the levy held in the trust account specified in the order under section 90; or
  - “(b) Where the amount held in the account is less than the amount outstanding, all the money in the account.
- “(5) Money deemed by subsection (4) to be held on trust—
  - “(a) Is not available for the payment of; and
  - “(b) Is not liable to be attached or taken in execution at the instance of—
    - any creditor of the person responsible for collecting the levy (other than the management agency).
- “(6) A person who ceases to be a person responsible for collecting a levy must continue to maintain the trust account referred to in this section until all the levy money payable to the management agency in respect of the period during which that person was responsible for collecting the levy has been paid.
- “(7) Nothing in subsection (6) limits or affects any obligation or liability under this Act of any person who has become responsible for collecting the levy.”



**61 Effect of levy**

Section 94 of the principal Act is amended by adding the following paragraph:

- “(c) The levy may be spent by the management agency only for those purposes set out in the levy order made under section 90.”

**62 New provisions for audit of levies**

The principal Act is amended by inserting, after section 95, the following sections:

**“95A Orders to provide for statements, accounts, and records to be kept**

For the purpose of ascertaining whether or not an order under section 90 is being complied with, the order must provide for—

- “(a) The keeping of statements, accounts, and records of specified classes or descriptions by the management agency, persons responsible for collecting the levy, and persons responsible for paying the levy concerned, or any of them; and
- “(b) Any such statements, accounts, or records to be retained for a specified period.

**“95B Compliance audits**

- “(1) While an order under section 90 is in force, the Minister who recommended its making may, at the request of the management agency, appoint 1 or more Auditors to conduct an audit of the affairs of all or any of the following:
- “(a) Some or all of the persons responsible for collecting the levy:
- “(b) Some or all of the persons responsible for paying the levy.
- “(2) While an order under section 90 is in force, the Minister who recommended its making may, if an arbitrator has been appointed to resolve a dispute, appoint an Auditor to conduct an audit of all or any of the persons involved in the dispute.
- “(3) No person is qualified for appointment as an Auditor unless the person is a chartered accountant (within the meaning of section 19 of the Institute of Chartered Accountants of New Zealand

Act 1996) or a member, fellow, or associate of an association of accountants constituted in some part of the Commonwealth outside New Zealand, and for the time being approved for the purpose of the audit of company financial statements by the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of the Companies Act 1993, by notice published in the *Gazette*.

- “(4) No officer or employee of any of the following persons or organisations may be appointed an Auditor:
- “(a) Any management agency:
  - “(b) Any person responsible for collecting the levy under the order concerned:
  - “(c) Any person responsible for paying the levy under the order concerned.
- “(5) Every person appointed as an Auditor is entitled to remuneration (paid by the management agency concerned) as provided in the relevant levy order.
- “(6) For the purposes of sections 95C and 95D, **Auditor** means a person for the time being appointed under subsection (1) or subsection (2).

“**95C Purpose of compliance audits**

- “(1) The purpose of an audit conducted by an Auditor appointed under section 95B(1) is (so far as is practicable) to ascertain in respect of the affairs of the persons whose affairs are to be audited, and report to the Minister responsible for the pest management strategy, on as many of the following matters as are relevant to those affairs:
- “(a) The extent to which persons responsible for paying the levy concerned are doing and have done so:
  - “(b) The extent to which appropriate amounts of the levy concerned are being and have been paid:
  - “(c) The extent to which appropriate amounts of the levy concerned are being and have been collected:
  - “(d) The extent to which appropriate amounts of the levy concerned are being and have been paid over to the management agency by persons collecting it:

- “(e) The extent to which statements, accounts, and records are being and have been kept:
  - “(f) The extent to which statements, accounts, and records that are being and have been kept are being and have been properly kept.
- “(2) The purpose of an audit conducted by an Auditor appointed under section 95B(2) is (so far as is practicable) to ascertain in respect of the affairs of the parties to the dispute, and report to the arbitrator concerned, the Minister responsible for the pest management strategy, and those parties, on the matters of fact that are in dispute.

**“95D Power of Auditors to require production of statements, accounts, and records**

- “(1) For the purposes of conducting an audit, any Auditor specifically or generally authorised in writing in that behalf by a Minister may from time to time require any person (being a management agency, a person responsible for collecting levies, a person responsible for paying levies, or any employee or officer of a management agency or of any such person) to produce for inspection within a reasonable period specified by the Auditor any statements, accounts, and records in the possession or under the control of that person (being statements, accounts, or records that are required to be kept under this Act or by an order), and may take copies of or extracts from any such document.
- “(2) Every authorisation under subsection (1) must contain—
- “(a) A reference to this section; and
  - “(b) The full name of the Auditor; and
  - “(c) A statement of the powers conferred on the Auditor by subsection (1).
- “(3) Subject to section 95C(2), except in respect of a prosecution under this Act or an action for the recovery of any amount due under this Act, no Auditor who exercises powers under this section may disclose to any other person (other than a Minister or a person authorised in that behalf by a Minister) any information obtained by the Auditor as a result of the exercise of the power.

“(4) Notwithstanding subsection (3), the Official Information Act 1982 applies in respect of any information held by a Minister that was obtained pursuant to this section.”

### **63 Resolution of disputes**

- (1) Section 96 of the principal Act is amended by omitting the words “pest management strategy”, and substituting the words “Order under section 90”.
- (2) Section 96 of the principal Act is amended by omitting the word “mediators” every time the word appears, and substituting the word “arbitrators”.
- (3) Section 96 of the principal Act is amended by omitting the word “mediation” from paragraph (d), and substituting the word “arbitration”.

### **64 Limitation on expenditure**

The principal Act is amended, by inserting after section 99A, the following section:

#### **“99B**

A management agency must not spend funds to meet the costs of implementing a pest management strategy in contravention of the limitations, if any, imposed on the expenditure of funds by the strategy.”

### **65 New sections inserted relating to exercise of powers**

The principal Act is amended by repealing section 100, and substituting the following sections:

#### **“100 Regional council may without pest management strategy undertake small-scale management of unwanted organisms**

- “(1) If satisfied that—
  - “(a) An unwanted organism that is present in the region could cause serious adverse and unintended effects unless early action to control it is taken; and
  - “(b) The organism can be eradicated or controlled effectively by small-scale measures within 3 years of commencing measures to control the organism, because—
    - “(i) Distribution of the organism is limited; and

- “(ii) Technical means to control the organism are available; and
  - “(c) The taking of all the measures (including the payment of any amount to a person for the purpose of compensating that person for a loss) is likely to cost less than an amount for the time being prescribed for the purposes of this section by the Governor-General by Order in Council; and
  - “(d) The taking of those measures is unlikely to result in significant monetary loss to any person, other than a person who has contributed to the presence or spread of the organism by failing to comply with this Act or any pest management strategy,—  
a regional council may, by giving such public notice as the regional council thinks fit having regard to the distribution of the unwanted organism and the persons likely to be affected by the measures taken, declare a small-scale management programme.
- “(2) Every public notice declaring a small-scale management programme must specify—
- “(a) The unwanted organism that is the subject of the small-scale management programme; and
  - “(b) The objectives of the small-scale management programme; and
  - “(c) The powers to be exercised in accordance with section 55 to implement the small-scale management programme.
- “(3) Before any powers to enter a place and carry out work are exercised in accordance with a small-scale management programme, a notice specifying the matters in subsection (2) and the work to be carried out on the place must be given to the occupier of the place not less than 5 working days before the work is carried out.
- “(4) Subsection (3) does not apply where the regional council is satisfied that there are reasonable grounds to believe that the unwanted organism may spread beyond the place before the expiry of 5 working days.
- “(5) A small-scale management programme ceases to have effect—

- “(a) When the regional council declares by public notice that the programme is failing to control the organism; or
- “(b) When the regional council declares by public notice that the organism has been eradicated or brought under control; or
- “(c) After the expiry of 5 years from the declaration of the programme.

**“100A Exercise of powers in respect of unwanted organism**

- “(1) The powers under Part VI in relation to an unwanted organism may be exercised by—
- “(a) The Director-General;
  - “(b) A chief technical officer appointed by the Director-General, or the chief executive of any department;
  - “(c) An inspector or authorised person appointed under section 103(1)(a);
  - “(d) An inspector or authorised person appointed under section 103(2)(a);
- “(2) Where a small-scale management programme has been declared under section 100 by a regional council in respect of an organism, that declaration does not prevent the exercise of Part VI powers by the persons specified in subsection (1) in relation to that organism.”

## **Part 6**

### **Administrative provisions**

**66 Chief technical officers**

Section 101 of the principal Act is amended by repealing subsection (2), and substituting the following subsections:

- “(2) The chief executive of a department recognised by the responsible Minister as having responsibilities for natural and physical resources or human health that could be adversely affected by an organism may appoint chief technical officers for the purposes of this Act, being in each case a person with appropriate experience, technical competence, and qualifications relevant to the area of responsibilities allocated by the chief executive to that person.

“(3) A chief technical officer appointed under subsection (2) may exercise all the powers and perform all the functions and duties conferred on a chief technical officer by this Act except those powers conferred under sections 103(1), 116, 126, and 127.”

**67 Deputy chief technical officers**

Section 102 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

“(1) The Director-General and the chief executive of any other department may appoint, in respect of any chief technical officer appointed by the Director-General or that chief executive, 1 or more deputy chief technical officers who must in each case be a person with appropriate experience, technical competence, and qualifications relevant to the area of responsibilities allocated by the chief executive to that person.”

**68 Inspectors, authorised persons, and accredited persons**

(1) Section 103 of the principal Act is amended by repealing subsections (1) and (2), and substituting the following subsections:

“(1) A chief technical officer appointed as such by the Director-General may from time to time—

“(a) Appoint inspectors and authorised persons for the purposes of administering and enforcing the provisions of this Act:

“(b) Appoint authorised persons for the purposes of a national pest management strategy.

“(2) A chief technical officer appointed as such by the chief executive of a department may from time to time—

“(a) Appoint inspectors and authorised persons for the purposes of administering and enforcing all or any of the provisions of this Act except the provisions of Part III:

“(b) Appoint authorised persons for the purposes of a national pest management strategy.”

(2) Section 103 of the principal Act is amended—

(a) By adding to subsection (3) the words “or any small-scale management programme declared by the council for that region, or to ascertain the presence or distribution of any pest, pest agent, or unwanted organism”:

- (b) By omitting from subsection (6) the words “the regulations, or a pest management strategy”, and substituting the words “or the regulations”.

**69 Authorised persons to comply with instructions**

The principal Act is amended by repealing section 104 and substituting the following section:

**“104**

- (1) All authorised persons appointed by a chief technical officer must comply with any lawful direction or instruction given by a relevant chief technical officer in relation to the exercise and performance of the powers, duties, and functions conferred or imposed on authorised persons by this Act.
- “(2) All authorised persons appointed by a principal officer must comply with any lawful direction or instruction given by that officer in relation to the exercise and performance of the powers, duties, and functions conferred or imposed on authorised persons by this Act.
- “(3) For the purposes of this section, **relevant chief technical officer** means any one or more of the chief technical officers appointed by the chief executive who appointed the chief technical officer responsible for the appointment of the authorised person.”

**70 Delegation to authorised persons**

Section 105(1) of the principal Act is amended—

- (a) By inserting, before the words “A Minister”, the words “Subject to sections 9, 10, and 11,”;
- (b) By repealing paragraphs (b), (d), and (e).

**71 Power to require assistance**

Section 106 of the principal Act is amended by adding the following subsection:

- “(2) A person employed or requested to assist an inspector or authorised person has the same powers as that inspector or authorised person while that person is under the immediate direction and control of that inspector or authorised person.”



**72 Power of inspectors to detain people**

Section 107 of the principal Act is amended by omitting the word “controlled” wherever it appears, and substituting the words “biosecurity control”.

**73 Power of inspection**

Section 109 of the principal Act is amended—

- (a) By inserting in subsections (1) and (2), after the word “enter” wherever it occurs, the words “and inspect”:
- (b) By omitting from subsection (1)(a) the words “authorised in writing by the Director-General to exercise the powers of inspection conferred by this paragraph”:
- (c) By omitting subparagraphs (iii) and (iv) from subsection (1)(a), and substituting the following subparagraph:  
“(iii) Any risk goods.”:
- (d) By omitting from subsection (1)(b) the words “authorised in writing (by the Director-General, other chief executive, or principal officer, by whom the inspector or authorised person was appointed) to exercise the powers of inspection conferred by this paragraph”:
- (e) By omitting from subsection (2)(b) the expression “110(1)”, and substituting the expression “110”:
- (f) By omitting from subsection (3) the expression “110(1)”, and substituting the expression “110”:
- (g) By inserting in subsection (4), after the words “powers of”, the words “entry and”.

**74 Warrant to inspect dwellinghouse, marae, etc**

Section 110 of the principal Act is amended—

- (a) By omitting the words “duly authorised Justice”, and substituting the words “Justice of the Peace”:
- (b) By omitting the expression “(v)”, and substituting the expression “(iii)”:
- (c) By inserting, after the word “enter”, the words “and inspect”.

**75 Entry in respect of offences**

- (1) Section 111 of the principal Act is amended by inserting, after the word “inspector” wherever it occurs, the words “or authorised person”.
- (2) Section 111 of the principal Act is amended by omitting from subsection (1) the words “duly authorised Justice”, and substituting the words “Justice of the Peace”.

**76 Duties on exercising power of entry**

The principal Act is amended by repealing section 112, and substituting the following section:

**“112**

- (1) An inspector, authorised person, or member of the Police, exercising a power of entry conferred by sections 30A, 109, 111, or 126—
  - “(a) Must have with him or her—
    - “(i) Evidence of his or her identity and appointment as an inspector, authorised person, or member of the Police; and
    - “(ii) In the case of entry under section 109 to a place that is a dwellinghouse, a marae, or a building associated with a marae, the warrant under section 110 or in the case of entry under section 111, the warrant authorising the entry; and
  - “(b) Must produce them to any person appearing to be in charge of the place entered—
    - “(i) On entering the place (if such a person is then present); and
    - “(ii) At any reasonable time thereafter, if asked to do so by the person; and
  - “(c) If there is no person appearing to be in charge of the place at any time between the time of entry and the time the inspector, authorised person, or member of the Police leaves the place, must, as soon as is practicable upon leaving the place, give an occupier or person in charge of the place written notice stating that the place has been entered, and specifying the following matters:

- “(i) The time and date of entry:
- “(ii) The circumstances and purpose of entry:
- “(iii) The name, office or position, and employer of every person entering:
- “(iv) If entry was under warrant, the principal contents of the warrant:
- “(v) Every thing that has been seized, or that nothing has been seized, and every action taken, or that no action has been taken.

“(2) An inspector, authorised person, or member of the Police exercising a power of entry conferred by sections 30A, 109, 111, or 126 in relation to a marae or a building associated with a marae must have regard to the kawa of the marae.”

#### **77 General powers**

The principal Act is amended by repealing section 114, and substituting the following section:

#### **“114**

An inspector or authorised person who has lawfully entered a place under section 109 or section 111 may do on or in respect of that place all such acts and things as appear to the inspector or authorised person to be necessary or expedient for eradicating or managing a pest or unwanted organism on the place or preventing the spread of a pest or unwanted organism from or to the place.”

#### **78 Application of articles or substances from aircraft**

The principal Act is amended by inserting, after section 114, the following section:

#### **“114A**

- (1) A chief technical officer or principal officer may, by notice in writing, give approval for a specified person or any specified class of persons to apply any article or substance to any place from the airspace above that place for the purposes of—
- “(a) Eradicating or managing any pest or unwanted organism; or

- “(b) Ascertaining the presence or absence of any pest or unwanted organism.
- “(2) An approval given under subsection (1) may be given subject to any conditions that the chief technical officer or principal officer thinks fit.
- “(3) Any person specified in an approval or person of the class specified in an approval given in accordance with subsection (1) may, after public notice has been given in accordance with this section, act in accordance with that approval.
- “(4) Nothing in this section derogates from any provision of the Civil Aviation Act 1990 or any rule or regulation made under that Act.
- “(5) For the purposes of this section, public notice is given by publishing, at least 2 weeks before the intended date when the article or substance is to be applied, in a newspaper circulating in the area in which the place is situated, a notice specifying the following information:
- “(a) The date on which, or as soon as practicable after which, it is intended to apply the article or substance:
- “(b) The article or substance to be applied:
- “(c) A clear description by reference to its boundaries (including districts, roads, and other commonly known features) of the place to which the article or substance is to be applied:
- “(d) The name and address of the person or body responsible for the application of the article or substance.”

**79 Assistance in exercising powers**

Section 115(b) of the principal Act is amended by omitting the words “machine or device”, and substituting the word “thing”.

**80 Power to seize and dispose of unauthorised goods**

The principal Act is amended by repealing section 116, and substituting the following section:

**“116**

- (1) Any inspector lawfully exercising a power under any of sections 19(2), 31, 34(5), 109, 111, 113, 114, or 120 may seize—
  - “(a) Any unauthorised goods:
  - “(b) Any goods where an inspector has reasonable grounds to suspect—
    - “(i) Those goods are in contact with, or have been in contact with, unauthorised goods; and
    - “(ii) Pests or unwanted organisms could have been transmitted from the unauthorised goods to those goods.
- “(2) A chief technical officer may, either generally or in any particular case, give any reasonable directions as to the disposal of, the treatment of, or any other dealing with, any goods seized in accordance with subsection (1); and any person may dispose of, treat, or otherwise deal with any such goods accordingly.
- “(3) A chief technical officer may offer the importer or owner of any goods imported into New Zealand and seized under subsection (1) the option of exporting or returning the goods to their place of origin provided that the importer or owner undertakes the payment of any costs associated with the export or return of the goods.
- “(4) A chief technical officer may permit goods seized under this section to be held in the custody of the Director-General for so long as is necessary for the importer to obtain a biosecurity clearance and in such a case the estimated costs and expenses of the custody and maintenance of the goods must be paid in advance to the Director-General.
- “(5) If an organism seized in accordance with subsection (1) is an endangered species, as defined in section 3 of the Trade in Endangered Species Act 1989, a chief technical officer must, after consulting the Director-General of Conservation concerning the disposal of the organism, dispose of it as he or she thinks fit.

- “(6) In exercising the powers of a chief technical officer in accordance with subsections (2), (3), and (4), a chief technical officer must, so far as is practicable while achieving the purpose of Part III, act in a manner that is consistent with avoiding or minimising loss to the importer or owner of goods seized in accordance with subsection (1).”

### **81 Power to apply article or substance to place**

The principal Act is amended by inserting, after section 121, the following section:

#### **“121A**

- (1) An inspector or authorised person may, for the purpose of ascertaining the presence or absence of any pest or unwanted organism, bring onto and leave for a reasonable time at any place, any article or substance.
- “(2) An article or substance brought onto or left at any place must have a volume no greater than 1 cubic metre unless the article or substance is specified in regulations made under this Act.
- “(3) No person may, without reasonable excuse, move or interfere with any article or substance left at a place by an inspector or authorised person pursuant to this section.”

### **82 Prohibition or control of certain tests**

The principal Act is amended by inserting, after section 121A (as inserted by section 81), the following section:

#### **“121B**

- (1) The Governor-General may by Order in Council, prohibit any test, or control the use of any test by making that test subject to conditions imposed by a chief technical officer if the prohibition or control of that test is necessary for—
- “(a) The effective management or eradication of any pest or unwanted organism; or
- “(b) The provision of assurances and certificates in relation to exports of organisms and their products.

- “(2) No person may—
- “(a) Carry out any test prohibited by an Order in Council made under this section:
  - “(b) Carry out any test controlled by an Order in Council made under this section other than in accordance with the conditions imposed by a chief technical officer.
- “(3) No person may act in a manner that the person knows or suspects is likely to alter a response to a controlled test.
- “(4) For the purposes of this section **a test** means a test carried out for any of the purposes specified in section 121(1).
- “(5) An order made under this section is deemed to be a regulation for the purposes of the Regulations (Disallowance) Act 1989.”

### **83 Power to give directions**

The principal Act is amended by repealing section 122, and substituting the following section:

#### **“122**

- (1) An inspector or authorised person may, whenever that inspector or authorised person considers it to be necessary, direct the occupier of any place or the owner or person in charge of any organism or risk goods—
- “(a) To treat any goods, water, place, equipment, fitting, or other thing that may be contaminated with pests or unwanted organisms; or
  - “(b) To destroy any pest or unwanted organism or any organism or organic material or thing that there are reasonable grounds to believe harbours a pest or unwanted organism; or
  - “(c) To take steps to prevent the spread of any pest or unwanted organism.
- “(2) An inspector or authorised person may, by notice in writing, direct any person who has failed to comply with a rule included in a pest management strategy to comply with that rule.”

**84 Transitional facility direction**

Section 125 of the principal Act is amended by omitting the words “quarantine facility”, and substituting the words “transitional facility”.

**85 Inspection of and intervention in transitional facilities and containment facilities**

The principal Act is amended by repealing section 126, and substituting the following section:

“126

- (1) An inspector authorised in writing by the Director-General may at any reasonable time enter a transitional facility or a containment facility for the purpose of confirming that the facility complies with the standards set in accordance with section 39 or that the operator is approved as the operator under section 40 for that facility, and the provisions of section 112 apply to any such entry.
- “(2) An inspector may exercise a power described in subsection (3) if (and only if) the inspector has reasonable grounds to suspect that—
  - “(a) A transitional facility or containment facility does not comply with the standards approved for a facility of that type; or
  - “(b) The operator of a transitional facility or containment facility is not complying with the standards approved for operating that facility; or
  - “(c) The terms upon which an organism is confined to the facility are not being complied with.
- “(3) An inspector may—
  - “(a) Give a direction in writing to the operator of the transitional facility or containment facility specifying the suspected failure to comply or unsatisfactory circumstances, stating what the operator is required to do to remedy the situation and specifying the time within which the direction must be complied with; or
  - “(b) If a chief technical officer considers that emergency or other special circumstances so require,



intervene summarily in the management or operation of the transitional facility or containment facility to ensure—

- “(i) Compliance with the standards for that facility; or
  - “(ii) Compliance with the terms upon which the organism is confined to the facility.
- “(4) A direction given under this section may be cancelled or varied by a subsequent notice in writing.
- “(5) If a direction given under this section is not complied with within the time specified in the notice, an inspector may take such action as the inspector considers necessary to give effect to the requirements of the notice.
- “(6) The costs and expenses reasonably incurred by an inspector in intervening summarily under subsection (3) or an inspector taking action under subsection (5) may be recovered from the operator of the transitional facility or containment facility as a debt due to the Crown.”

## **86 Destruction of imported organisms**

Section 127 of the principal Act is amended by—

- (a) Omitting the words “quarantine facility” wherever the words appear, and substituting the words “transitional facility”;
- (b) Omitting, from subclause (1), the word “quarantine” the second time the word appears, and substituting the words “that facility”.

## **87 Power to act on default**

Section 128 of the principal Act is amended—

- (a) By inserting in subsection (1), after the words “a chief technical officer”, the words “, a principal officer”;
- (b) By inserting in subsection (3), after the words “chief technical officer”, the words “, principal officer”.

**88 Liens**

Section 129 of the principal Act is amended by inserting, after the words “recoverable by a”, the words “chief technical officer, principal officer, or”.

**89 Declaration of restricted place**

(1) Section 130 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

“(1) If an inspector or authorised person believes or suspects on reasonable grounds that a pest or unwanted organism is or has been in a place, the inspector or authorised person may, by notice given in accordance with subsections (2) and (3), declare that place and any other place in the neighbourhood the inspector or authorised person considers necessary to be a restricted place.”

(2) Section 130(2) of the principal Act is amended by inserting, after the words “a chief technical officer”, the words “, a principal officer,”.

(3) Section 130 of the principal Act is amended by inserting, after subsection (4), the following subsection:

“(4A) Where the agent or employee of an occupier to whom a notice has been given under subsection (1) acts in breach of subsection (4), that action is deemed to be an action of the occupier unless the occupier had given a copy of the notice under subsection (1) to that agent or employee before the agent or employee breached subsection (4).”

**90 Declaration of controlled area**

Section 131(3) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:

“(b) The organisms, organic material, risk goods, or other goods within the controlled area that are specified in the notice, must be subject to such treatment and procedures as are specified in the notice.”

**91 Road blocks, cordons, check-points, etc**

(1) Section 132 of the principal Act is amended by repealing subsection (2), and substituting the following subsection:

- “(2) A District Court Judge may, on the written application (made on oath) of a chief technical officer, issue a warrant authorising the establishment of controls in relation to a place or area, if the District Court Judge is satisfied that—
- “(a) Attempts are being made to manage or eradicate a pest or unwanted organism; and
  - “(b) There are reasonable grounds to suspect that the pest or unwanted organism is present within the place or area; and
  - “(c) The pest or unwanted organism is not known to be present in the places or areas that are adjacent to the place or area; and
  - “(d) It is necessary to establish controls in order to—
    - “(i) Prevent or limit the risk of the pest or unwanted organism spreading beyond the place or area if any spread of the organism would significantly affect the likely success of the management or eradication of the pest or unwanted organism; or
    - “(ii) Otherwise avoid significant prejudice to the management or eradication of the pest or unwanted organism.”
- (2) Section 132 of the principal Act is amended by omitting from subsection (7), the words “power of inspection”, and substituting the word “powers”.
- (3) Section 132 of the principal Act is amended by repealing subsection (8), and substituting the following subsections:
- “(8) A member of the Police who has stopped or detained a vehicle, conveyance, or craft under subsection (7) may—
- “(a) Enter and search that vehicle, conveyance, or craft; and
  - “(b) Open any box or receptacle in that vehicle, conveyance, or craft; and
  - “(c) Seize—
    - “(i) Any organism that is the pest or unwanted organism in respect of which the warrant concerned was issued; or
    - “(ii) Any thing that may harbour or contain the pest or unwanted organism in respect of which the warrant concerned was issued; or

- “(iii) Any thing that, if moved beyond the control, would be moved in breach of section 130(4); or
- “(iv) Any thing that, if moved beyond the control, would be moved in breach of section 134(1)(b).
- “(8A) A chief technical officer may, either generally or in any particular case, give any reasonable directions as to the disposal of, the treatment of, or any other dealing with, any organism or other thing seized in accordance with subsection (8); and any person may dispose of, treat, or otherwise deal with any such organism or thing accordingly.
- “(8B) In exercising the powers of a chief technical officer in accordance with subsection (8A), a chief technical officer must, so far as is practicable without significantly prejudicing the successful management or eradication of the pest or unwanted organism concerned, act in a manner that is consistent with avoiding or minimising loss to the owner or person in charge of the organism or other thing that was seized.”

## **92 Enforcement of area controls**

- (1) Section 134 of the principal Act is amended by inserting, after subsection (1), the following subsection:
- “(1A) Every owner or person in control of an organism, organic material, risk goods, or other goods in respect of which treatment and procedures are specified by a notice under section 131(3) must carry out the treatment and procedures specified in the notice.”
- (2) Section 134(2) of the principal Act is amended by omitting the words “and other risk goods”, and substituting the words “risk goods, or other goods”.
- (3) Section 134(3) of the principal Act is amended—
- (a) By omitting the words “the Minister”, and substituting the words “a Minister”;
- (b) By omitting the words “or other risk goods”, and substituting the words “risk goods, or other goods”.

## **93 Contents of levy order**

Section 140(2) of the principal Act is amended by adding the following paragraph:

“(d) The holding of funds from which payments of levy are to be made, on trust in separate accounts.”

**94 Trust accounts for levy money payable to Director-General**

The principal Act is amended by inserting, after section 140, the following section:

**“140A**

(1) Where an order under section 137 provides that funds from which payments of levy are made are to be held on trust in separate accounts, the persons responsible for collecting the levy must each keep a bank account (in this section referred to as a trust account) at a registered bank within the meaning of the Reserve Bank of New Zealand Act 1989; and—

“(a) Ensure that the account is so named as to identify that it is a trust account kept by the person responsible for collecting the levy for the purposes of the order; and

“(b) Take all practicable steps to ensure that—

“(i) The account is used only for holding amounts required to be deposited by subsection (3); and

“(ii) The balance in the account on any day is not less than the amount outstanding to the Director-General on that day by the person responsible for collecting the levy.

“(2) For the purpose of this section, the amount outstanding to the Director-General by a person responsible for collecting the levy on any day is the remainder obtained by subtracting—

“(a) The total of all amounts of levy paid by that person to the Director-General before that day calculated on the basis specified in the order under section 137; from

“(b) The total of all amounts required by subsection (3) to be deposited in the trust account by the person responsible for collecting the levy not later than a day before that day.

- “(3) Where a person is responsible for collecting a levy, that person must deposit an amount equal to the levy calculated on the basis provided for in the order under section 137 in the trust account on the day or days specified in that order or on a day or days calculated in accordance with that order.
- “(4) There is deemed to be held on trust for the Director-General as levy money—
- “(a) The amount outstanding to the Director-General by the person responsible for collecting the levy held in the trust account specified in the order under section 137; or
- “(b) Where the amount held in the account is less than the amount outstanding, all the money in the account.
- “(5) Money deemed by subsection (4) to be held on trust—
- “(a) Is not available for the payment of; and
- “(b) Is not liable to be attached or taken in execution at the instance of—
- any creditor of the person responsible for collecting the levy (other than the Director-General).
- “(6) A person who ceases to be a person responsible for collecting a levy must continue to maintain the trust account referred to in this section until all the levy money payable to the Director-General in respect of the period during which that person was responsible for collecting the levy has been paid.
- “(7) Nothing in subsection (6) limits or affects any obligation or liability under this Act of any person who has become responsible for collecting the levy.”

**95 New provisions for auditing levies payable to Director-General**

The principal Act is amended by inserting, after section 141, the following sections:

**“141A Orders to provide for records to be kept for****Director-General’s levy**

For the purpose of ascertaining whether or not an order under section 137 is being complied with, the order must provide for—

- “(a) The keeping of statements, accounts, and records of specified classes or descriptions by the Director-General, persons responsible for collecting the levy, and persons responsible for paying the levy concerned, or any of them; and
- “(b) Any such statements, accounts, or records to be retained for a specified period.

**“141B Compliance audits for Director-General’s levy**

- “(1) While an order under section 137 is in force, the Minister may, at the request of the Director-General, appoint one or more Auditors to conduct an audit of the affairs of all or any of the following:
  - “(a) Some or all of the persons responsible for collecting the levy:
  - “(b) Some or all of the persons responsible for paying the levy.
- “(2) While an order under section 137 is in force, the Minister may, if an arbitrator has been appointed to resolve a dispute, appoint an Auditor to conduct an audit of all or any of the persons involved in the dispute.
- “(3) No person is qualified for appointment as an Auditor unless the person is a chartered accountant (within the meaning of section 19 of the Institute of Chartered Accountants of New Zealand Act 1996) or a member, fellow, or associate of an association of accountants constituted in some part of the Commonwealth outside New Zealand, and for the time being approved for the purpose of the audit of company financial statements by the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of the Companies Act 1993, by notice published in the *Gazette*.
- “(4) No officer or employee of any of the following persons or organisations may be appointed an Auditor:

- “(a) The Director-General:
  - “(b) Any person responsible for collecting the levy under the order concerned:
  - “(c) Any person responsible for paying the levy under the order concerned.
- “(5) Every person appointed as an Auditor is entitled to remuneration (paid by the Director-General) as provided in the relevant levy order.
- “(6) For the purposes of sections 141C and 141D, **Auditor** means a person for the time being appointed under subsection (1) or subsection (2) of this section.

“**141C Purpose of compliance audits for Director-General’s levy**

- “(1) The purpose of an audit conducted by an Auditor appointed under section 141B(1) is (so far as is practicable) to ascertain in respect of the affairs of the persons whose affairs are to be audited, and report to the Minister responsible for the order on, as many of the following matters as are relevant to those affairs:
- “(a) The extent to which persons responsible for paying the levy concerned are doing and have done so:
  - “(b) The extent to which appropriate amounts of the levy concerned are being and have been paid:
  - “(c) The extent to which appropriate amounts of the levy concerned are being and have been collected:
  - “(d) The extent to which appropriate amounts of the levy concerned are being and have been paid over to the Director-General by persons collecting it:
  - “(e) The extent to which statements, accounts, and records are being and have been kept:
  - “(f) The extent to which statements, accounts, and records that are being and have been kept are being and have been properly kept.
- “(2) The purpose of an audit conducted by an Auditor appointed under section 141B(2) is (so far as is practicable) to ascertain in respect of the affairs of the parties to the dispute, and report to the arbitrator concerned, the Minister responsible for



the order, and those parties, on the matters of fact that are in dispute.

**“141D Power of Auditors to require production of statements and records**

- “(1) For the purposes of conducting an audit, any Auditor specifically or generally authorised in writing in that behalf by a Minister may from time to time require any person (being the Director-General, a person responsible for collecting levies, a person responsible for paying levies, or any employee or officer of the Director-General, or any such person) to produce for inspection within a reasonable period specified by the Auditor any statements, accounts, and records in the possession or under the control of that person (being statements, accounts, or records that are required to be kept under this Act or by an order), and may take copies of or extracts from any such document.
- “(2) Every authorisation under subsection (1) must contain—
- “(a) A reference to this section; and
  - “(b) The full name of the Auditor; and
  - “(c) A statement of the powers conferred on the Auditor by subsection (1).
- “(3) Subject to section 141C(2), except in respect of a prosecution under this Act or an action for the recovery of any amount due under this Act, no Auditor who exercises powers under this section may disclose to any other person (other than a Minister or a person authorised in that behalf by a Minister) any information obtained by the Auditor as a result of the exercise of the power.
- “(4) Notwithstanding subsection (3), the Official Information Act 1982 applies in respect of any information held by a Minister that was obtained pursuant to this section.”

**96 Resolution of disputes**

- (1) Section 142 of the principal Act is amended by omitting the word “mediators” every time the word appears, and substituting the word “arbitrators”.

- (2) Section 142 of the principal Act is amended by omitting the word “mediation” from paragraph (d), and substituting the word “arbitration”.

## **Part 7**

### **Exigency actions**

#### **97 Declaration of biosecurity emergency**

- (1) Section 144(1) of the principal Act is amended by omitting the words “the Minister”, and substituting the words “a Minister”.
- (2) Section 144(1)(b) of the principal Act is amended—
- (a) By omitting the word “prevent,”:
  - (b) By omitting the word “prevented,”.

#### **98 Emergency powers**

Section 145 of the principal Act is amended by omitting the word “preventing,” wherever the word occurs.

#### **99 Biosecurity emergency regulations**

Section 150 of the principal Act is amended by omitting the word “prevention” wherever the word occurs.

#### **100 Provisional control action**

The principal Act is amended by repealing section 152, and substituting the following section:

“152

- (1) If a Minister suspects on reasonable grounds that a pest or unwanted organism may be present in New Zealand but is unable to confirm the suspicion until further information is available to enable identification of the organism and consideration of the appropriate means of eradicating or managing the organism, and the Minister believes on reasonable grounds that sufficient powers are not otherwise available under this Act to prevent the spread or development of the organism, the Minister may by written notice to a chief technical officer declare a provisional control programme.

“(2) A notice given under subsection (1) must—

- “(a) Specify the steps that the Minister believes are necessary or desirable to provisionally control the spread or development of the suspected organism; and
  - “(b) Authorise the chief technical officer to direct any inspector or authorised person to carry out the steps specified in the notice in such a manner as the chief technical officer thinks fit, and the inspector or authorised person may act accordingly.
- “(3) A provisional control programme declared in accordance with this section may remain in force for such period not exceeding 60 days as the Minister believes on reasonable grounds to be necessary and the Minister may extend the programme for 1 further period not exceeding 60 days.”

## Part 8

### Enforcement, offences, and penalties

#### 101 Offences

- (1) Section 154(n) of the principal Act is amended by omitting the expression “and 51(2)”, and substituting the expression “51(2) and 121B(2)”.
- (2) Section 154 of the principal Act is amended by repealing paragraph (o), and substituting the following paragraph:
  - “(o) Fails or refuses to comply with any of sections 19, 34, 35, 36, 37C, 40(6), 43, 48, 51(3), 121(2), 121A(3), and 132(9):”.
- (3) Section 154 of the principal Act is amended by adding the following paragraphs:
  - “(q) Without reasonable excuse, fails to comply with a strategy rule included in a national pest management strategy where that rule specifies that a breach of the rule creates an offence under this paragraph:
  - “(r) Without reasonable excuse, fails to comply with a strategy rule included in a regional pest management strategy where that rule specifies that a breach of the rule creates an offence under this paragraph:
  - “(s) Erroneously declares, in circumstances where that person is required to make a declaration in relation to goods specified in

that declaration, that he or she is not in possession of any or all of those goods:

- “(t) Knowingly fails to comply with any provision of this Act relating to the holding of levy money in trust accounts:
- “(u) Fails to keep or properly maintain statements, accounts, or records of any leviable activity carried on by that person sufficient to satisfy the requirements of any order made under section 90 or section 137:
- “(v) Refuses or fails, without reasonable excuse, to comply with any requirement made under section 95D(1) or section 141D(1).”

### **102 Proof of permission**

Section 155 of the principal Act is amended by omitting the words “authorised officer”, and substituting the words “authorised person”.

### **103 Penalties**

The principal Act is amended by repealing section 157, and substituting the following section:

#### **“157**

- (1) Every person who commits an offence against any of paragraphs (f), (g), (h), (i), (j), (k), (l), or (m) of section 154 is liable on conviction on indictment,—
  - “(a) In the case of an individual person, to imprisonment for a term not exceeding 5 years, a fine not exceeding \$100,000, or both:
  - “(b) In the case of a corporation, to a fine not exceeding \$200,000.
- “(2) Every person who attempts to commit an offence against section 154(f) is liable on conviction,—
  - “(a) In the case of an individual person, to imprisonment for a term not exceeding 5 years, a fine not exceeding \$100,000, or both:
  - “(b) In the case of a corporation, to a fine not exceeding \$200,000.
- “(3) Every person who commits an offence against any of paragraphs (a), (b), (c), (n), or (t) of section 154 is liable on summary conviction,—

- “(a) In the case of an individual person, to imprisonment for a term not exceeding 12 months, a fine not exceeding \$50,000, or both:
  - “(b) In the case of a corporation, to a fine not exceeding \$ 100,000.
- “(4) Every person who commits an offence against paragraph (d) or paragraph (e) of section 154 is liable on summary conviction,—
- “(a) In the case of an individual person, to imprisonment for a term not exceeding 3 months, a fine not exceeding \$50,000, or both:
  - “(b) In the case of a corporation, to a fine not exceeding \$100,000.
- “(5) Subject to section 159, every person who commits an offence against any of paragraphs (o), (p), (q), (r), (u), or (v) of section 154 is liable on summary conviction,—
- “(a) In the case of an individual person, to a fine not exceeding \$5,000:
  - “(b) In the case of a corporation, to a fine not exceeding \$15,000.
- “(6) Every person who commits an offence against any regulations made under this Act is liable on summary conviction,—
- “(a) In the case of an individual person, to a fine not exceeding \$5,000:
  - “(b) In the case of a corporation, to a fine not exceeding \$15,000.
- “(7) Subject to section 160A, every person who commits an offence against paragraph (s) of section 154 is liable on summary conviction to a fine not exceeding \$400.”

#### 104 Procedure for certain declaration offences

The principal Act is amended by inserting, after section 160, the following section:

##### “160A

- (1) Where an offence against section 154(s) is alleged to have been committed by any person (in this section referred to as **the defendant**), an inspector (in this section

referred to as **the informant**) may prepare a notice of prosecution in respect of the alleged offence in accordance with section 20A(2) of the Summary Proceedings Act 1957.

- “(2) The notice prepared under subsection (1) must specify the matters set out in section 20A(3) of the Summary Proceedings Act 1957 and, in addition, must notify the defendant of the defendant’s ability to elect to pay an instant fine in accordance with subsection (6).
- “(3) The informant must serve a copy of the notice on the defendant.
- “(4) Where a notice of prosecution is served on a defendant in accordance with subsection (3), the notice is deemed, for the purposes of section 20A(2) of the Summary Proceedings Act 1957, to have been filed at the nearest District Court and to have been served on the defendant in accordance with section 20A(4) of that Act.
- “(5) The informant must, as soon as practicable after serving the notice of prosecution on the defendant, file a copy of the notice in the nearest District Court.
- “(6) Where a defendant has been served with a notice of prosecution under subsection (3), the defendant may forthwith elect to pay an instant fine of \$200.
- “(7) Where a defendant elects to pay an instant fine in accordance with subsection (6), the payment has effect as if the defendant had pleaded guilty to the offence and had been dealt with by the Court.
- “(8) If the defendant does not elect to pay an instant fine in accordance with subsection (6), section 20A of the Summary Proceedings Act 1957 applies with all necessary modifications; and section 20A(5) is to be read as if the reference to ‘28 days’ is a reference to ‘14 days’.”

### **105 Evidence in proceedings**

The principal Act is amended by repealing section 161, and substituting the following section:

**“161**

- (1) In any proceedings for an offence against this Act or against any regulations made under this Act, a certificate that complies with subsection (4) and to which subsection (2) applies—
  - “(a) Is admissible in evidence; and
  - “(b) Is, in the absence of proof to the contrary, sufficient evidence of the matters stated in it.
- “(2) This section applies to any certificate of 1 or more of the following kinds:
  - “(a) A certificate purporting to be signed by the principal officer of a regional council stating that a document attached to the certificate is—
    - “(i) A regional pest management strategy made by the council; or
    - “(ii) An amendment to such a strategy:
  - “(b) A certificate purporting to be signed by the Director-General stating that a person specified in the certificate is—
    - “(i) A chief technical officer appointed under section 101(1); or
    - “(ii) A deputy chief technical officer appointed under section 102:
  - “(c) A certificate purporting to be signed by the chief executive of a department stating that a person specified in the certificate is—
    - “(i) A chief technical officer appointed under section 101(2); or
    - “(ii) A deputy chief technical officer appointed under section 102:
  - “(d) A certificate purporting to be signed by a chief technical officer appointed under section 101(1) stating that the person specified in the certificate is—
    - “(i) An inspector or authorised person appointed by that chief technical officer under section 103(1)(a); or
    - “(ii) An authorised person appointed by that chief technical officer under section

- 103(1)(b) in relation to the national pest management strategy described in, or attached to, the certificate:
- “(e) A certificate purporting to be signed by a chief technical officer appointed under section 101(2) stating that the person specified in the certificate is—
    - “(i) An inspector or authorised person appointed by that chief technical officer under section 103(2)(a); or
    - “(ii) An authorised person appointed by that chief technical officer under section 103(2)(b) in relation to the national pest management strategy described in, or attached to, the certificate:
  - “(f) A certificate purporting to be signed by the principal officer of a regional council stating that a person specified in the certificate is an authorised person appointed by that principal officer under section 103(3) in relation to a regional pest management strategy or small-scale management programme specified or described in, or attached to, the certificate:
  - “(g) A certificate purporting to be signed by any person authorised by this Act, the State Sector Act 1988, or the Local Government Act 1974 to delegate to any person (or people of any kind or description) the exercise or performance of any power or function under this Act stating that—
    - “(i) The person has delegated the exercise or performance of the power or function under this Act specified in the certificate to the person specified in the certificate; or
    - “(ii) The person has delegated the exercise or performance of the power or function under this Act specified in the certificate to people of a kind or description specified in the certificate, and that a person



- specified in the certificate is a person of that kind or description:
- “(h) A certificate purporting to be signed by the Director-General stating that a place specified in the certificate is—
    - “(i) A biosecurity control area; or
    - “(ii) A transitional facility approved for use or uses specified in the certificate; or
    - “(iii) A containment facility:
  - “(i) A certificate purporting to be signed by a chief technical officer or the chief executive of a management agency stating that—
    - “(i) An area specified in the certificate is an area controlled for the purposes of section 131; and
    - “(ii) The movement into, within, or from the controlled area of the organisms, organic material, risk goods, or other goods specified in the certificate is restricted, regulated, or prohibited, in the manner, to the extent, and subject to the conditions specified in the certificate; and
    - “(iii) The organisms, organic material, risk goods, or other goods specified in the certificate are subject to the treatment and procedures specified in the certificate.
- “(3) The production of a document purporting to be a certificate to which subsection (2) applies is prima facie evidence that it is such a certificate, without proof of the signature of the person purporting to have signed it.
- “(4) A certificate to which subsection (2) applies is not admissible in evidence unless—
- “(a) At least 14 days before the hearing at which the certificate is to be tendered, a copy is served, by or on behalf of the prosecutor, on the defendant or the defendant’s agent or counsel, and that person is at the same time informed in writing that the prosecutor does not propose to call the per-

son who signed the certificate as a witness at the hearing; and

“(b) The Court has not, on the application of the defendant made not less than 7 days before the hearing, ordered, not less than 4 days before the hearing (or such lesser period as the Court in the special circumstances of the case thinks fit), that the certificate should not be admissible as evidence in the proceedings.

“(5) The Court must not make an order under subsection (4)(b) unless it is satisfied that there is a reasonable doubt as to the accuracy or validity of a certificate.”

## **Part 9**

### **Miscellaneous provisions**

#### **106 Compensation**

(1) The principal Act is amended by inserting, at the beginning of Part 9, before section 163, the following section:

#### **“162A**

(1) Where—

“(a) Powers under this Act are exercised for the purpose of the management or eradication of any organism; and

“(b) The exercise of those powers causes verifiable loss as a result of—

“(i) The damage to or destruction of a person’s property; or

“(ii) Restrictions, imposed in accordance with Part VI or Part VII, on the movement or disposal of a person’s goods,—

that person is entitled to compensation for that loss.

“(2) The compensation payable under this section must be of such an amount that the person to whom it is paid will be in no better or worse position than any person whose property or goods are not directly affected by the exercise of the powers.

- “(3) Compensation payable by a Minister or by a chief executive is payable from money appropriated by Parliament for the purpose.
  - “(4) Compensation must not be paid under this section to any person—
    - “(a) In respect of a loss in relation to unauthorised goods or uncleared goods; or
    - “(b) In respect of a loss suffered before the time when the exercise of the powers commenced; or
    - “(c) Who has failed to comply with this Act or regulations made under this Act and whose failure has been serious or significant or has contributed to the presence of the organism or to the spread of the organism being managed or eradicated.
  - “(5) Any dispute concerning the eligibility for, or amount of, compensation must be submitted to arbitration and the provisions of the Arbitration Act 1996 apply.
  - “(6) Nothing in this section applies to any loss suffered by any person as a result of the exercise of powers under this Act to implement a pest management strategy.”
- (2) Sections 127(3), 149, 150(3)(c), (d), and (e), and 153 are consequentially repealed.

#### **107 New sections inserted**

The principal Act is amended by inserting, after section 164, the following sections:

#### **“164A Procedure for giving directions or making requirements**

- “(1) A direction may be given or a requirement made under this Act by a written notice delivered—
  - “(a) To a natural person,—
    - “(i) By delivering the notice to the person; or
    - “(ii) By delivering the notice to the person’s usual or last known place of residence or business; or
    - “(iii) By sending the notice by pre-paid post to the person at the usual or last known place of residence or business of the person; or

- “(iv) By sending the notice by facsimile to the person’s usual or last known place of residence or business:
- “(b) To a body (whether incorporated or not),—
  - “(i) By delivering the notice to an officer of the body; or
  - “(ii) By delivering the notice to the usual or last known place of residence or business of an officer of the body; or
  - “(iii) By sending the notice by pre-paid post to an officer of the body at the usual or last known place of residence or business of that person; or
  - “(iv) By delivery of the notice to the registered office of the body; or
  - “(v) By sending the notice by pre-paid post addressed to the body at the registered office of the body; or
  - “(vi) By sending the notice by facsimile to the registered office of the body:
- “(c) To a partnership,—
  - “(i) By delivering the notice to any one of the partners; or
  - “(ii) By delivering the notice to the usual or last known place of residence or business of any one of the partners; or
  - “(iii) By sending the notice by pre-paid post to any one of the partners at the usual or last known place of residence or business of that person; or
  - “(iv) By delivery of the notice to the usual or last known place of business of the partnership; or
  - “(v) By sending the notice by pre-paid post addressed to the usual or last known place of business of the partnership; or
  - “(vi) By sending the notice by facsimile to the usual or last known place of business of the partnership:
- “(d) To a Minister of the Crown,—
  - “(i) By personal delivery to the chief executive of the appropriate department; or
  - “(ii) By delivery to the head office of the appropriate department; or

- “(iii) By sending the notice by pre-paid post addressed to the head office of the appropriate department;  
or
  - “(iv) By sending the notice by facsimile to the head office of the appropriate department.
- “(2) Where reasonable attempts have been made to find the occupier of a place and no occupier can be found, a written notice under this section may be delivered to the occupier of that place by affixing the notice in some conspicuous location in or on the place.
- “(3) Where a written notice is delivered in accordance with this section by post, the direction or requirement contained in the notice is deemed to be given or made at the time at which the notice would have been delivered in the ordinary course of the post in the absence of evidence to the contrary.

**“164B Application of section 164A**

Section 164A—

- “(a) May, if the provisions of that section are consistent with a procedure specified in this Act for giving a direction or making a requirement, apply in addition to that procedure:
- “(b) May apply where this Act does not specify any procedure for giving any direction or making any requirement:
- “(c) Does not require any direction to be given or requirement to be made in accordance with that section.”

**108 Registration of unwanted organisms**

The principal Act is amended by adding, after section 164B (as inserted by section 107), the following section:

**“164C**

- (1) Where a chief technical officer has formed the belief that makes an organism an unwanted organism, that chief technical officer must notify the Director-General that the organism is an unwanted organism.
- “(2) The Director-General must keep a register of all organisms notified to the Director-General in accordance with subsection (1).

- “(3) The register must be available for public information and inspection at the office of the Director-General during normal office hours.
- “(4) Where a chief technical officer fails to notify the Director-General in accordance with this section, that failure does not invalidate the chief technical officer’s belief that makes the organism an unwanted organism.”

### 109 Regulations

- (1) Section 165 of the principal Act is amended—
  - (a) By omitting the words “made on the recommendation of the Minister after consulting such persons as the Minister has reason to believe are representative of interests affected by the regulations”:
  - (b) By omitting the word “licences” from paragraph (b).
- (2) Section 165 of the principal Act is amended by repealing paragraph (k), and substituting the following paragraph:
  - “(k) Requiring the identification of, and prohibiting, regulating, or controlling the use of organic material including the prohibition or regulation of organic material as food for organisms:”.
- (3) Section 165 of the principal Act is amended by inserting, after paragraph (r), the following paragraph:
  - “(ra) Prescribing articles or substances which may be left on any place for the purpose of ascertaining the presence or absence of any pest or unwanted organism:”.
- (4) Section 165 of the principal Act is amended by adding the following subsection:
  - “(2) Before making any recommendation for the purposes of subsection (1), the responsible Minister must consult to the extent that is reasonably practicable, having regard to the circumstances of the particular case, such persons as the responsible Minister has reason to believe are representative of interests likely to be substantially affected by the regulations.”
- (5) Section 165 of the principal Act is amended—
  - (a) By inserting in paragraph (s), after the words “the regulations”, the words “and any pest management strategy”:
  - (b) By repealing paragraph (u).

**110 Amendment to Local Government Act 1974**

Section 710(5) of the Local Government Act 1974 is amended by adding the following paragraph:

- “(c) Any inspector or authorised person acting under any power conferred by the Biosecurity Act 1993.”

**Part 10****Savings and transitional provisions****111 Saving of section of Apiaries Act 1969**

*[Repealed]*

Sections 111 and 113 were repealed, as from 1 November 1999, by section 60(b) Animal Products (Ancillary and Transitional Provisions) Act 1999 (1999 No 94).

**112 Saving of New Zealand Grown Fruit and Vegetables Regulations 1975**

- (1) The regulations in subsection (2), continued in force by section 173 of the principal Act, regulation 4, and Schedule 2 of the Biosecurity (Transition and Savings) Regulations 1996 are, except for regulation 18A, regulation 37, and so much of Schedule 2 of the regulations as relates to certification fees, are continued in force until revoked, and may be amended or revoked by regulations made under section 16 of the Plants Act 1970.
- (2) The regulations are—
  - (a) The New Zealand Grown Fruit and Vegetables Regulations 1975 (SR 1975/57):
  - (b) The New Zealand Grown Fruit and Vegetables Regulations 1975, Amendment No 3 (SR 1977/209):
  - (c) The New Zealand Grown Fruit and Vegetables Regulations 1975, Amendment No 4 (SR 1978/261):
  - (d) The New Zealand Grown Fruit and Vegetables Regulations 1975, Amendment No 5 (SR 1985/266):
  - (e) The New Zealand Grown Fruit and Vegetables Regulations 1975, Amendment No 8 (SR 1991/115):
  - (f) The New Zealand Grown Fruit and Vegetables Regulations 1975, Amendment No 9 (SR 1992/218).
- (3) The following regulations are revoked:

- (a) Regulation 18A of the New Zealand Grown Fruit and Vegetable Regulations 1975 (as inserted by regulation 4(1) of the New Zealand Grown Fruit and Vegetables Regulations 1975, Amendment No 8):
- (b) Regulation 4(1) of the New Zealand Grown Fruit and Vegetable Regulations 1975, Amendment No 8:
- (c) Regulation 37 of the New Zealand Grown Fruit and Vegetable Regulations 1975 (as inserted by regulation 4 of the New Zealand Grown Fruit and Vegetable Regulations 1975, Amendment No 5):
- (d) Regulation 4 of the New Zealand Grown Fruit and Vegetable Regulations 1975, Amendment No 5:
- (e) So much of Schedule 2 of the New Zealand Grown Fruit and Vegetable Regulations 1975 as relates to certification fees (as inserted by regulation 2 and the Schedule of the New Zealand Grown Fruit and Vegetable Regulations 1975, Amendment No 9):
- (f) So much of the Schedule of the New Zealand Grown Fruit and Vegetable Regulations 1975, Amendment No 9 as relates to certification fees.

### **113 Saving of Honey Export Certification Regulations 1980**

*[Repealed]*

Sections 111 and 113 were repealed, as from 1 November 1999, by section 60(b) Animal Products (Ancillary and Transitional Provisions) Act 1999 (1999 No 94).

### **114 Revocation of Biosecurity (Organisms) Order 1997**

The Biosecurity (Organisms) Order 1997 (SR 1997/17) is revoked.

### **115 Transition of import health permits**

- (1) Every import health permit issued under section 20 of the principal Act and in force at the commencement of this Act is continued in force—
  - (a) For 1 year from the date of commencement of this Act; or
  - (b) Until the permit expires in accordance with its terms; or
  - (c) Until the permit is revoked,—



whichever is the earliest, as though sections 20, 21, 23, and 24 had not been repealed; and no inspector may give a biosecurity clearance under section 26 of the principal Act for goods to which the permit applies, unless the inspector is satisfied that the goods comply with the requirements of that permit and section 27(b), (c), (d), and (e) of the principal Act.

- (2) Section 176 of the principal Act (as amended by section 3 of the Biosecurity Amendment Act 1993) is repealed.

#### **116 Transition of approval of ports**

Every designation of a port as an approved place of first arrival under section 37 of the principal Act and in force at the commencement of this Act, continues in force, as though the designation of the port had been the approval of the port as a place of first arrival under section 37 of the principal Act (as substituted by section 19 of this Act), without limitation as to the kind or description of craft or the purpose of the arrival,—

- (a) Until such time as the Director-General, after consultation with the chief executives specified in section 37D of the principal Act (as so substituted), issues a new approval under section 37 of the principal Act (as so substituted); or
- (b) Until such time as the Director-General revokes the port's approval in accordance with section 37B of the principal Act (as so substituted); or
- (c) Until the expiry of 6 months from the date of coming into force of this Act,—

whichever is the earliest.

#### **117 Transition for transitional facilities**

- (1) Every registration of a place as a quarantine facility under section 39 of the principal Act in force at the commencement of this Act, continues in force as though the place had been approved as a transitional facility, under section 39 of the principal Act (as substituted by section 20 of this Act), for the purposes of quarantine of the species and categories of organisms specified in the registration, and the provisions of section 39 of the principal Act (as so substituted) apply accordingly.

- (2) Every registration of a place as a containment facility under section 39 of the principal Act in force at the commencement of this Act, continues in force as though the place had been approved as a containment facility, under section 39 of the principal Act (as substituted by section 20 of this Act), for the purposes of containment of the species and categories of organisms specified in the registration, and the provisions of section 39 of the principal Act (as so substituted) apply accordingly.
- (3) Where, at the commencement of this Act, a place is used with the approval of the Director-General for the inspection, treatment, storage, or destruction of uncleared goods, the Director-General may, within 1 month of the date of commencement of this Act and at the request of the occupier of the place, approve the place as a transitional facility under section 39 of the principal Act (as substituted by section 20 of this Act) for the use specified in the approval, and the provisions of that section apply accordingly.

#### **118 Transition of facility operators**

- (1) Every registration of a person as a quarantine operator under section 40 of the principal Act in force at the commencement of this Act, continues in force as though the person had been approved as the operator of the facility specified in the registration under section 40 of the principal Act (as substituted by section 21 of this Act), and the provisions of that section apply accordingly.
- (2) Every registration of a person as a containment operator under section 40 of the principal Act in force at the commencement of this Act, continues in force as though the person had been approved as the operator of the facility specified in the registration under section 40 of the principal Act (as substituted by section 21 of this Act), and the provisions of that section apply accordingly.
- (3) Where a person is the operator of a place used for the purpose of inspection, treatment, storage, or destruction of uncleared goods, and that place has been approved as a transitional facility in accordance with section 117(3) of this Act, the Director-General may, within 1 month of the date of the approval given in accordance with section 117(3) of this Act and at the

request of that person, approve the person as the operator of that facility under section 40 of the principal Act (as substituted by section 21 of this Act), and the provisions of section 40 of the principal Act (as so substituted) apply accordingly.

**119 Transition for notified pest management strategies**

- (1) Where, before the commencement of this Act, a proposal for a pest management strategy has been notified in accordance with section 62 or section 78 of the principal Act, and the strategy has not been approved in accordance with section 68 or section 80 of the principal Act, the Minister or regional council, as the case may be, may process that proposal under Part 5 of the principal Act as though Part 5 of this Act had not been enacted, except that, where the provisions of subsection (2) of this section apply, rules may be included in the approved strategy.
- (2) Rules made for any of the purposes in section 69B or section 80B of the principal Act (as substituted by sections 42 and 51 of this Act) may be included in a national pest management strategy or a regional pest management strategy, as the case may be, processed in accordance with this section if—
  - (a) The proposal for the strategy included material that the Minister or regional council now considers appropriate to include in the strategy as strategy rules; and
  - (b) Persons likely to be affected by the strategy rules and all persons likely to have any interest whatsoever in the strategy rules have had an opportunity to make their views known on the relevant material in the proposal.
- (3) This section does not apply to the proposals for pest management strategies listed in section 120.

**120 Transition for specified notified pest management strategies**

- (1) The provisions of Part 5 of the principal Act as amended by Part 5 of this Act apply to the proposals for pest management strategies listed in subsection (2) from the date this Act comes into force as though the proposals had been notified in accordance with section 62 or section 78 of the principal Act (as amended by this Act).

- (2) The proposals for pest management strategies referred to in this section are:
- (a) The Animal Health Board's proposal for a national pest management strategy for bovine tuberculosis (*Mycobacterium bovis*) notified in the *Gazette* on 16 November 1995:
  - (b) The National Beekeepers' Association of New Zealand Inc's proposal for a national pest management strategy for American foulbrood (*Bacillus larvae*) notified in the *Gazette* on 3 July 1997.

### **121 Transition for approved pest management strategies**

- (1) Where a pest management strategy is in force at the commencement of this Act or approved in accordance with section 119 of this Act, that strategy continues in force as if made under the principal Act (as amended by this Act)—
- (a) Until reviewed in accordance with subsection (2); or
  - (b) Until the expiry of 5 years from the date the strategy was approved,—
- whichever is the sooner, and the provisions of the principal Act (as amended by this Act) apply with any necessary modifications.
- (2) A pest management strategy continued in force under this section, may be reviewed by the Minister or regional council (as the case may be) in accordance with section 88 of the principal Act (as substituted by section 55 of this Act) at any time before the expiry of the strategy and the Minister or regional council (as the case may be) may amend the strategy to specify all the matters provided for in section 69A or section 80A of the principal Act (as substituted by sections 42 and 51 of this Act).

Subsection (1) was amended, as from 7 May 1999, by section 5(1) Biosecurity Amendment Act 1999 (1999 No 29) by substituting the expression "section 119" for the expression "section 120".

### **122 Transition for small-scale management of unwanted organisms**

Where, before the commencement of this Act, a Minister or a regional council has commenced action under section 100 of

the principal Act, the Minister or regional council may continue and complete that action as though section 65 of this Act had not been enacted.

Section 122 was amended, as from 7 May 1999, by section 5(2) Biosecurity Amendment Act 1999 (1999 No 29) by substituting the expression “section 65” for the expression “section 59”.

**123 Transition for chief technical officers**

Every appointment of a chief technical officer under section 101(2) of the principal Act in force at the time of commencement of this Act continues in force as though the chief technical officer had been appointed under section 101(2) of the principal Act (as substituted by section 66 of this Act), and the provisions of that subsection apply accordingly.

**124 Transition for inspectors and authorised persons**

Every appointment of an inspector or authorised person under section 103(1) of the principal Act in force at the time of commencement of this Act continues in force as though the inspector or authorised person had been appointed under section 103(1)(a) of the principal Act (as substituted by section 68 of this Act), and the provisions of that section apply accordingly.

**125 Transition for provisional controls**

Where, before the commencement of this Act, a Minister has commenced action under section 152 of the principal Act, the Minister may continue and complete that action as though section 100 of this Act had not been enacted.

**126 Amendments to Schedule 2**

Schedule 2 of the principal Act is amended—

- (a) By omitting the words “publicly notify” from clause 1, and substituting the words “in respect of a regional pest management strategy by publishing a notice in 1 or more daily newspapers circulating within the council’s region, or, in respect of a national pest management strategy, by publishing a notice in 1 or more of the daily newspapers circulating in the main metropolitan areas, publicly notify—”:

- (b) By omitting paragraph (b) from clause 2, and substituting the following paragraph:
- “(b) Publicly notify the dates, times, and places, where hearings will be held for a regional pest management strategy by publishing a notice in 1 or more of the daily newspapers circulating within the council’s region, or, in respect of a national pest management strategy, by publishing a notice in 1 or more of the daily newspapers circulating in the main metropolitan areas; and.”

### **127 Enactments amended**

- (1) The Hazardous Substances and New Organisms Act 1996 is amended—
- (a) By repealing so much of Schedule 4 as relates to the Biosecurity Act 1993:
- (b) By repealing so much of Schedule 6 as relates to the Hamster Importation and Control Regulations 1972.
- (2) The Summary Proceedings Act 1957 is hereby amended by inserting in Part 2 of Schedule 1, in its appropriate alphabetical order, the following item:

The Biosecurity Act 1993	154(f), (g), (h), (i), (j), (k), (l), (m)	Offences relating to dealings with goods in contravention of the Biosecurity Act 1993 and failure to comply with specified provisions of that Act
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## **Part 11**

### **Matters relevant to Hazardous Substances and New Organisms Act 1996**

### **128 Interpretation**

- (1) Section 2(1) of the principal Act is amended—

- (a) By repealing the definition of the term **restricted organism**; and
  - (b) By repealing the definition of the term **unwanted organism** (as inserted by section 2).
- (2) This subsection inserted the definitions of the terms **Authority**, **New organism**, **Restricted organism** and **Unwanted organism** in s 2(1) of the principal Act.

**129 Organisms illegally present in New Zealand at commencement of Hazardous Substances and New Organisms Act 1996**

This section inserted s 185A of the principal Act.

**130 New sections inserted**

This section substituted s 28 and inserted s 28A of the principal Act.

**131 Approval of transitional facilities and containment facilities**

(1)

- (a) This paragraph amended s 39(1) of the principal Act.
- (b) This paragraph amended s 39(3) of the principal Act.
- (c) This paragraph amended s 39(3) of the principal Act.

- (2) This subsection inserted s 39(2A) of the principal Act.

**132 Notifiable organisms**

This section inserted s 45(5) of the principal Act.

**133 Saving of Animals Act 1967 for limited administrative purposes**

This section repealed s 169 of the principal Act.

**134 Saving of Plants Act 1970 for limited administrative purposes**

This section amended s 170 of the principal Act.

**135 Revocation of regulations**

- (1) The Hamster Importation and Control Regulations 1972 (SR 1972/214) continued in force by section 173 of the principal Act, regulation 4, and Schedule 2 of the Biosecurity (Transition and Savings) Regulations 1996 are revoked.
- (2) So much of Schedule 2 of the Biosecurity (Transition and Savings) Regulations 1996 as relates to the regulations in subsection (1) is revoked.

**136 Schedules amended**

- (a) This paragraph amended Schedule 3 of the principal Act.
- (b) This paragraph amended Schedule 3 of the principal Act.
- (c) This paragraph amended Schedule 7 of the principal Act.