



# Impact Summary

## Amendment to Regulations to address non-compliance in border pathways

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# Section 1: General information

## 1.1 PURPOSE

Biosecurity New Zealand and the Ministry for Primary Industries are solely responsible for the analysis and advice set out in this Regulatory Impact Summary, except as otherwise indicated. This analysis and advice has been produced for the purpose of informing policy decisions to be taken by Cabinet on a proposed amendment to regulations under the Biosecurity Act 1993 (the Act).

This regulatory impact assessment details the impacts of a proposal to add three infringement offences, and accompanying fees, to the Biosecurity (Infringement Offences) Regulations 2010 (the Regulations).

These infringement offences will support compliance with biosecurity risk management requirements. They will also create a power to issue infringement notices in border pathways where such a power does not currently exist, thereby closing a gap in the suite of compliance and enforcement tools available to Biosecurity New Zealand.

## 1.2 KEY LIMITATIONS OR CONSTRAINTS ON ANALYSIS

### 1.2.1 Biosecurity Act review

Only a narrow and targeted range of infringement offences were considered for this proposal because a broader review of compliance and enforcement provisions will take place as part of the Biosecurity Act review.

A full review of the Act will commence shortly which will review compliance and enforcement provisions, among a range of other topics. However, this review could take up to two years to complete. In the meantime, biosecurity risks are being created or exacerbated by the non-compliant behaviours of biosecurity system participants, creating a need for immediate action.

This proposal focuses on creating infringement offences to target a narrow and specific range of behaviours that cannot be appropriately sanctioned using existing compliance and enforcement tools. The amendments to the Regulations contained in this proposal are likely to endure changes as a result of the Biosecurity Act review.

It is further possible that the Act review process will identify further useful infringement offences. In this case, valuable learnings will be gained from implementation and operation of the infringement offences contained in this proposal.

### 1.2.2 Supporting data

Lack of available data means that exact levels of existing non-compliance are unknown. Therefore, Biosecurity New Zealand has made conservative estimates of how many infringement notices will be issued using the proposed new infringement offences. Specifically:

- a) data on non-compliance in transitional facilities and containment facilities is low quality and not reliable; and
- b) data on non-compliance in the craft pathway is partially available.

## 1.3 RESPONSIBLE MANAGER

Grant Bryden

Biosecurity and Animal Welfare

Policy and Trade

Ministry for Primary Industries

## Section 2: Problem definition and objectives

### 2.1 WHAT IS THE POLICY PROBLEM OR OPPORTUNITY?

#### 2.1.1 Background

Goods and craft (including both aircraft and marine craft) arriving from overseas present biosecurity risks for New Zealand. Under the oversight of Biosecurity New Zealand, these risks are largely managed by marine and cargo industry stakeholders including operators of craft and facilities which receive and hold imported biosecurity risk goods when they arrive. Risk management standards and requirements are established in the Biosecurity Act 1993 (the Act) and associated legislation.

Facilities responsible for receiving and holding biosecurity risk goods when they arrive include transitional facilities and containment facilities:

- a) Transitional facilities are approved by MPI to receive imported goods that may pose a biosecurity risk (e.g. plant, food or animal products). Goods may need to be inspected or treated at the facility before they can be 'cleared' for entry into New Zealand. Every transitional facility must have an MPI-approved facility operator and must meet specific requirements outlined in the relevant facility standard.
- b) Containment facilities are places approved for holding organisms that should not become established in New Zealand (e.g. a laboratory that imports microorganisms for testing). Containment facilities are also required to have an MPI-approved facility operator and meet specific requirements outlined in the relevant facility standard.

When risks are not managed appropriately, there is an increased chance of a biosecurity incursion occurring. Even an unintentional breach of biosecurity can have serious consequences for New Zealand's primary industries, environment, economy and way of life. For example, imported goods may harbour pests such as the Brown Marmorated Stink Bug that can pose a serious threat to New Zealand if not treated appropriately. For this reason, even low-level offending is often of concern to Biosecurity New Zealand.

Biosecurity New Zealand uses an escalating suite of interventions and tools to encourage and enforce compliance. At a lower level, this includes guidance, assistance, warnings, and notices of direction. Where lower level actions are not effective, or where there is a greater risk to biosecurity, Biosecurity New Zealand can also order treatment or destruction of goods, suspend a facility's approval to operate, or deny a craft permission to enter New Zealand territory or territorial waters.

When other compliance and enforcement actions have failed to address non-compliance, Biosecurity New Zealand can prosecute offenders if their conduct constitutes an offence under the Act.

#### 2.1.2 Problem: Biosecurity New Zealand's tools for managing non-compliance are not suitable for responding to low-level offending

When biosecurity requirements are not met, options for enforcement of legislation are limited and often not suited to low-level offending. This is particularly the case in the cargo and craft pathways.

Currently available enforcement actions are useful in managing biosecurity risk, however they are not suited to dealing with low-level offending because:

- a) several steps may be required before an offender receives a penalty that is linked to their non-compliant behaviour. This can take months or even years and the biosecurity issue or risk may be continuing in the meantime;
- b) delayed consequences of non-compliant behaviour make it difficult to influence industry behaviours around biosecurity requirements and reinforce an understanding of the importance of good biosecurity practices; and
- c) some enforcement actions are overly heavy-handed when dealing with offending that is low-level but still requires a penalty. For example, denying entry to an otherwise compliant craft because the operator failed to provide advance notice of arrival is likely to be perceived as disproportionate to the offence.

Prosecution is also frequently not appropriate as an enforcement tool because:

- a) a prosecution may take months or years to be concluded, during which time, any biosecurity risk that was linked to the offence is likely to continue or grow;
- b) the conduct amounting to the offence is so low-level that it would be unfair to the offender to leave them with a criminal record in the event of a successful prosecution; and
- c) pursuing a prosecution is costly for Biosecurity New Zealand and carries a risk of a negative outcome. Prosecuting low-level offences is unlikely to be in line with all of government policy as it may not meet the public interest test set out in the Solicitor General's Prosecution Guidelines.

Due to the issues outlined above, Biosecurity New Zealand has a gap in available compliance and enforcement tools with respect to the kind of low-level non-compliant behaviour that is most appropriately tackled with an infringement notice. Specific non-compliant behaviours observed as a result of unenforced biosecurity obligations include:

- a) failure to submit paperwork enabling Biosecurity New Zealand to carry out risk assessment on time and in full;
- b) failure to notify Biosecurity New Zealand about operational changes that have an impact on biosecurity risk management; and
- c) failure to uphold MPI and Biosecurity New Zealand standard requirements for biosecurity risk management.

It is becoming increasingly challenging for Biosecurity New Zealand to ensure that industry actors responsible for managing biosecurity risk understand the importance of meeting their biosecurity obligations. Continued lack of access to appropriate enforcement tools will mean that it remains difficult for Biosecurity New Zealand to incentivise compliance. Over time this is likely to increase the risk of a biosecurity incursion as there is a risk that biosecurity requirements could be perceived as not being important enough to be enforced.

## **2.2 WHO IS AFFECTED AND HOW?**

Where Biosecurity New Zealand's tools for managing non-compliance are not suitable for responding to low-level offending, there is an increased risk that regulated parties will fail to observe their biosecurity obligations and will use inadequate biosecurity risk management practices.

This, in turn, increases the risk of a biosecurity incursion occurring, which could have impacts for New Zealand's primary industries, environment, economy and way of life. Therefore, ensuring that Biosecurity New Zealand has appropriate tools to manage non-compliance is a matter of concern for all New Zealanders.

This proposal seeks to influence the behaviour of regulated parties who create or manage biosecurity risks in the cargo and craft border pathways.

## **2.3 ARE THERE ANY CONSTRAINTS ON THE SCOPE FOR DECISION MAKING?**

In response to the biosecurity risks created or exacerbated by low-level non-compliance, the Minister for Biosecurity has indicated a preference to introduce available infringement offences quickly and without requiring an amendment to the Biosecurity Act 1993.

### **2.3.1 Biosecurity Act Review**

A broad review of the Act will commence during 2018. This review will include consideration of accountability, compliance and enforcement matters. Through the review process it is likely that some further useful infringement offences may be identified.

The proposed amendments to the Regulations are likely to endure changes as a result of the review. However, the Act review will present an opportunity to review the new infringement offences for lessons, best practices, or adjustments that may be useful.

### **2.3.2 Legislation Guidelines**

The proposed infringements have been analysed against guidelines for creating infringement offences issued by the Legislation Design and Advisory Committee, and the policy framework for new infringements produced by the Ministry of Justice. Biosecurity New Zealand officials have concluded that the proposed offences refer to conduct that is appropriate to be dealt with under an infringement regime in accordance with these guidance documents.

The proposed infringement fees are set at levels lower than the maximum specified in the Act (\$1,000) and at a level where they meet LDAC guidelines. They are also within all of government fee guidelines provided by the Ministry of Justice which provide that infringement fees should usually not exceed \$1000.

### **2.3.3 Alignment with comparable infringement regimes**

Proposed fee amounts are also consistent with infringement fees currently proposed by the New Zealand Customs Service which are likely to come into effect during 2019 and which will impact on the same or similar groups of stakeholders (e.g. cargo importers).



## Section 3: Options identification

### 3.1 WHAT OPTIONS HAVE BEEN CONSIDERED?

We have considered three options and assessed them against the following criteria:

- **Effectiveness:** will this option improve Biosecurity New Zealand's ability to address non-compliance at the border?
- **Influence:** will this option influence the behaviour of biosecurity system participants to deter non-compliance and achieve improved biosecurity risk management?
- **Feasibility:** Is this option operationally feasible and will it make it possible for Biosecurity New Zealand to respond to non-compliance in an appropriate manner?
- **Fairness:** Is this option fair and reasonable to impacted parties?

#### 3.1.1 Status quo

Biosecurity New Zealand already works closely with biosecurity system participants to ensure that they understand and meet their biosecurity requirements and manage biosecurity risk appropriately.

By maintaining the status quo, non-compliance will continue to be dealt with using existing powers under the Biosecurity Act 1993, however enforcement options for low-level offending will remain limited and biosecurity risk will be increased as a result. There will be another opportunity to revisit Biosecurity New Zealand's compliance approach under the Biosecurity Act 1993 as a broad review of the Act will commence during 2018. However, waiting for this review to take place before any infringement offences are introduced is not a preferred option as it is likely to take up to two years before proposals related to the review can be implemented.

#### 3.1.2 Add infringement offences to the Biosecurity (Infringement Offences) Regulations 2010

Power to make regulations specifying infringement offences is contained in section 165(14)(c) of the Biosecurity Act 1993. Using this power to make regulations introducing new infringement offences will encourage compliance with biosecurity requirements and sanction specific types of non-compliance.

The regulatory change being considered proposes:

- a) the addition of three infringement offences to the Regulations, targeting persons operating or purporting to operate transitional facilities or containment facilities, and persons operating craft arriving in New Zealand territory from overseas; and
- b) infringement fees payable for each offence to be set at \$400 where the offender is an individual; and \$800 in any other case (e.g. if an offender is a body corporate).

The first of the three proposed infringement offences will have two parts and will affect transitional facilities or containment facilities, and their approved operators. Conduct captured by this offence will include:

- a) operating a facility where the facility does not have an approved operator (e.g. because the approved operator has changed employment); and
- b) failure to comply with the operating standards for the facility.

The other two infringement offences will affect craft (aircraft and marine craft) arriving in New Zealand from a point outside of New Zealand territory. The proposed offences are:

- a) Failure by a person in charge of a craft, or a person carrying out duties on their behalf, to provide advance notice of a craft's intended arrival in New Zealand from a point outside New Zealand territory.
- b) Failure by an operator, or person in charge, of a craft to which a craft risk management standard, or a craft risk management plan, applies, to provide a declaration setting out the steps taken to comply with the standard, or plan, when required to do so by an inspector.

#### 3.1.3 Implement a framework for enhanced industry self-regulation

Biosecurity New Zealand considered whether improved compliance could be achieved using enhanced industry self-regulation to apply and monitor biosecurity risk management standards and related operational practices.

This option will require the establishment of industry bodies to oversee the operation of all transitional facilities and containment facilities, and separately to oversee all arriving craft in New Zealand. Such bodies can then be issued with guidance from Biosecurity New Zealand on biosecurity requirements, and can disseminate information to their members. The responsible industry body will also take on a monitoring and verification role to ensure that biosecurity obligations are met.

## 3.2 OPTIONS ANALYSIS SUMMARY

The below table provides a summary view of how each option compares with the counterfactual, under each of the criteria set out in section 3.1.

Summary of proposed options	No action / Status quo	Option 1: Add infringement offences to the Regulations	Option 2: Implement framework for industry self-regulation
<b>Effectiveness</b>	<b>0</b> No change.	<b>+</b> Will complement existing compliance and enforcement tools and provide another tool in the compliance and enforcement 'toolbox'. Consistent with the Ministry for Primary Industries' overall approach to compliance, and with the practices of other border agencies (e.g. Customs).	<b>0</b> Unlikely to improve Biosecurity New Zealand's ability to address non-compliance as the agency would continue to rely on existing inadequate enforcement tools. Existing industry bodies represent small minorities of the total group and they lack an ability to take on a monitoring role.
<b>Influence</b>	<b>0</b> No change. Over time stakeholders may perceive some biosecurity requirements as not important enough to be enforced.	<b>++</b> Will influence behaviours to encourage compliance and deter non-compliance by sending a clear message about the importance of biosecurity requirements, and by creating an immediate and proportionate sanction to drive behavioural change.	<b>0</b> May improve biosecurity risk management among a minority of engaged and proactive industry actors, however industry bodies currently in existence represent small minorities of stakeholders and are unlikely to have wide-reaching influence.
<b>Feasibility</b>	<b>0</b> No change. There will be a later opportunity to revisit compliance under the Biosecurity Act 1993 as part of a broad review of the act.	<b>0</b> Operationally feasible using a combination of new and existing systems and processes. The proposal does not alter existing policy and legislative intent. It makes use of an existing power to create infringement offences.	<b>--</b> Implementation of an enhanced framework for industry self-regulation would require the establishment of appropriate industry bodies. The diversity of regulated parties makes this impractical.

<b>Fairness</b>	<p style="text-align: center;"><b>0</b></p> <p>No change.</p>	<p style="text-align: center;"><b>+</b></p> <p>Consistent with the Ministry of Justice’s “Policy Framework for New Infringement Schemes”.</p> <p>Considered fair as or it does not impose new obligations on regulated parties and these parties can avoid infringement fees by complying with the laws in place.</p> <p>Also supports improved fairness by levelling the playing field for regulated parties as it will remove or punish non-compliant methods.</p>	<p style="text-align: center;"><b>0</b></p> <p>Some regulated parties are not in a position to engage with industry groups, either because of location, area of specialisation or limitations on resources. Those parties would be at risk of being disadvantaged by a lack of involvement in the self-regulation process.</p>
<b>Overall assessment</b>	<p style="text-align: center;"><b>0</b></p>	<p style="text-align: center;"><b>++++</b></p>	<p style="text-align: center;"><b>-</b></p>

**Key:**

- ++** much better than doing nothing/the status quo
- +** better than doing nothing/the status quo
- 0** about the same as doing nothing/the status quo
- worse than doing nothing/the status quo
- much worse than doing nothing/the status quo

### 3.3 WHICH OF THESE OPTIONS IS THE PROPOSED APPROACH?

#### 3.3.1 Option 1: Add infringement offences to the Biosecurity (Infringement Offences) Regulations 2010

The proposed approach is the addition of new infringement offences in the Regulations to provide a further enforcement tool to support compliance with biosecurity requirements.

Using infringement offences to manage specific types of low-level non-compliance in border pathways is consistent with the Ministry for Primary Industries' overall approach to compliance, and with the practices of other border agencies (e.g. the New Zealand Customs Service).

Biosecurity New Zealand supports this proposed option as the one that is most likely to deter non-compliant behaviours, and to improve our ability to address non-compliance when it does occur. Implementing new infringement offences is operationally feasible using a combination of new and existing systems and processes. It will enable Biosecurity New Zealand to enforce biosecurity requirements in an administratively simple and proportionate manner, without the burden of lengthy and expensive Court proceedings for both sides.

Infringement fee amounts of \$400 for individuals and \$800 in any other case are proposed because:

- a) they are within all of government fee guidelines provided by the Ministry of Justice which provide that infringement fees should usually not exceed \$1000;
- b) the individual amount is consistent with existing infringement fees under the same Regulations, for an infringement offence of comparable seriousness;
- c) the higher fee for offenders other than individual natural persons will mainly impact on body corporates and therefore reflects the higher penalties for body corporates for the equivalent criminal offences contained in the Biosecurity Act 1993. It will also reduce the risk that an infringement fee could be viewed as a 'cost of doing business', rather than acting as a deterrent;
- d) Biosecurity New Zealand further considers that identical fees are appropriate across all three proposed infringement offences, as the equivalent criminal offences all have identical penalties; and
- e) setting one fee is administratively simple. The offence and the nature of the offender is all it takes to determine the penalty and issue the infringement.

Estimated amounts of infringement notices that will be issued under this proposal add up to a total of 350 infringement notices per year across all three offences. This includes:

- a) 180 infringement notices per year issued against transitional facilities or containment facilities. This estimation is based on 267 audits of transitional facilities completed during December 2017 to February 2108. Further to these audits, 91 facilities were suspended as a result of non-compliance with requirements in the Biosecurity Act 1993. If we make an assumption that 50% of these suspensions were for either failure to have an approved operator, or failure to comply with the applicable operating standard, then that would amount to 45 infringeable offences per quarter.
- b) 70 infringement notices per year issued against craft who fail to provide advance notice of arrival before entering New Zealand territory. This estimation is based on data showing that between 2015 and 2017, an average of 80 marine craft per year arrived in New Zealand having failed to provide advance notice of arrival. Each of these 80 craft could not be risk-assessed prior to arrival and could have carried a wide range of biosecurity risk organisms including Queensland Fruit Fly and Asian Gypsy Moth (in food or food waste on board), or Zebra Mussels (as biofouling on the hull). We have allowed for a small number of exceptions in our estimation.
- c) 100 infringement notices per year issued against craft who fail to provide a declaration regarding compliance with an applicable craft risk management standard. There is no data available in this category. Based on previous rates of craft found to not meet applicable craft risk management standards, we are estimating an average of 25 incidences of non-compliance per quarter.

## Section 4: Impact Analysis (Proposed approach)

### 4.1 SUMMARY TABLE OF COSTS AND BENEFITS

Affected parties	Comment:	Impact
Additional costs of proposed approach, compared to taking no action		
<b>Revenue</b>		
Regulated parties	Payment of issued infringement notices: <ul style="list-style-type: none"> <li>- Estimate 350 infringement notices per year, with two thirds of offenders being individuals</li> </ul>	\$0.19 million per year to the Crown account
<b>Expenses</b>		
Regulators	Implementation costs will be met using funding from Biosecurity New Zealand's baseline allocation.  Ongoing operational costs will also be met using funding from Biosecurity New Zealand's baseline allocation.	\$0.05 million initial cost  \$0.02 million ongoing system costs per year
Wider government	Adjudication and fines enforcement costs (District Court) <ul style="list-style-type: none"> <li>- Estimate 2% of infringement notices result in disputes submitted each year</li> <li>- Estimate 5% unpaid infringement notices submitted each year to become fines for collection</li> <li>-</li> </ul>	\$0.004 million
Other parties	-	\$0
<b>Total Monetised Cost</b>	Revenue, minus Expenses	+\$0.116 million in the first year +\$0.166 million per year thereafter
<b>Non-monetised costs</b>	-	\$0

Expected benefits of proposed approach, compared to taking no action		
Regulated parties	Improved compliance with biosecurity requirements will strengthen overall biosecurity risk management. This approach offers protection for all New Zealanders.  For non-compliers, receiving a fine is expected to be preferable to prosecution or other harsh penalties.	Medium
Regulators	As above, the ability to issue infringement offences will provide another tool to achieve better compliance with biosecurity requirements	Medium to high. Once the tool starts being used, word of mouth among regulated parties is expected to generate momentum for compliant behaviour.
Wider government	-	-
Other parties	-	-
<b>Total Monetised Benefit</b>		
<b>Non-monetised benefits</b>	Improved compliance with biosecurity requirements leading to enhanced biosecurity risk management	<i>High</i>
	Level playing field for industry (non-compliant methods removed; additional costs imposed on non-compliant actors)	<i>Medium</i>
	Entities issued infringement notices avoid the costs of more costly actions such as prosecutions (e.g. legal fees)	<i>Medium</i>

## 4.2 WHAT OTHER IMPACTS IS THIS APPROACH LIKELY TO HAVE?

### 4.2.1 Potential impacts on the justice system:

As noted in section 4.1, some portion of all infringement notice issued can be expected to enter the District Court as either:

- a) disputes, as to liability or penalty, to be adjudicated; or
- b) unpaid infringement notices, to be collected by the fines enforcement system in the District Court.

## Section 5: Stakeholder views

### 5.1 WHAT DO STAKEHOLDERS THINK ABOUT THE PROBLEM AND THE PROPOSED SOLUTION?

The proposed infringements will impact a narrow and specific group of regulated parties in the biosecurity system. These are persons who operate or purport to operate transitional facilities or containment facilities, and persons who operate craft arriving in New Zealand territory from overseas.

Due to the narrow impact of this proposal, and in accordance with the Minister for Biosecurity's requirements under section 164D of the Biosecurity Act, officials engaged with a targeted group of stakeholders on the proposed new infringements, rather than conducting a full public consultation.

Biosecurity New Zealand considers that the lack of formal public consultation on the proposed regulations does not represent a material constraint on its analysis. The opinions and concerns of impacted parties have been heard and incorporated into this proposal.

#### 5.1.1 Targeted engagement with key stakeholders, industry representatives and other interested parties

Officials found widespread recognition among stakeholders of a need to 'lift the bar' on biosecurity risk management standards. There was agreement that existing enforcement tools are not suitable for responding to low-level offending, and that some individuals and companies are cutting corners in their operations and failing to prioritize biosecurity as a result.

Stakeholders expressed early support and wide acceptance of the proposal to introduce infringement offences impacting the cargo and craft pathways. They agreed that an ability for Biosecurity New Zealand to issue infringement notices would be effective in deterring non-compliance.

Industry representatives asked for clear rules and consistent application of infringements to identified behaviours.

*MPI response: To aid transparency and consistency, as part of the implementation process Biosecurity New Zealand will develop internal operational guidelines for staff, to aid compliance and enforcement decisions, and to illustrate clearly how the new infringement offences will sit alongside and complement existing enforcement tools.*

Industry representatives also questioned whether new infringement offences would risk being perceived as 'revenue raising'.

*MPI response: Any monies collected via infringement fees are Crown revenue which is returned to the government and does not form part of Biosecurity New Zealand's budget or operational funding.*

#### 5.1.2 Government Agencies

The following agencies were consulted and concur with the contents of this paper: the Treasury, the Ministry of Justice, the Ministry of Business, Innovation and Employment (immigration, tourism, small business), the New Zealand Customs Service, the Ministry of Transport, the Department of the Prime Minister and Cabinet (policy advisory group), and Tourism New Zealand.

The Ministry of Justice (MoJ) noted that the ratio between the infringement fee and the infringement fine proposed in this paper are not consistent with the MoJ's guidelines.

The proposed infringement fee for these offences is \$400 for an individual and \$800 in any other case. However, if a charging document is laid with the court, or if they contest the fee and are subsequently found guilty of the infringement offence, an offender may be liable for a fine of \$5,000 for an individual, \$15,000 for a body corporate. MoJ guidance is that the maximum fines that can be imposed for an infringement offence should be no more than two to three times the value of the infringement fee. This guidance is designed to ensure people are not unduly deterred from challenging an infringement fee.

MoJ is aware that changing the amount of the relevant fines will require legislative change, which is not proposed at this time. However, it will be possible for MPI to address the matter as part of the Biosecurity Act review which is commencing later in 2018. In light of the upcoming review, MoJ support proceeding as proposed.

## Section 6: Implementation and operation

### 6.1 HOW WILL THE NEW ARRANGEMENTS BE GIVEN EFFECT?

The creation of the proposed infringement offences will be given effect via regulations made under section 165(14)(c) of the Biosecurity Act 1993. These regulations will amend the Biosecurity (Infringement Offences) Regulations 2010 and will specify the relevant requirements for which failure to comply constitutes an infringement offence. They will also prescribe the associated infringement fees (as outlined in this document).

The regulations will come into force as soon as possible, 28 days after promulgation in the Gazette.

The new infringement offences will become part of Biosecurity New Zealand's enforcement toolbox when dealing with relevant non-compliance. To ensure consistency in application and effective operation, Biosecurity New Zealand will develop internal operational guidelines for staff, to aid compliance and enforcement decisions, and to illustrate clearly how the infringement offences will complement existing enforcement tools.

This guidance will cover the issues raised by stakeholders during consultation including:

- a) How will infringement notices be used to enforce the individual rules contained in facility operating standards?
- b) What will happen when both an infringement notice and another enforcement tool could be used? 'Give-way' rules will be specified.
- c) Will more than one infringement be issued when multiple infringement offences of the same type or different types are detected arising from the same event?

These guidelines will be developed and prepared in consultation with affected parties and other government agencies as appropriate.

Biosecurity New Zealand's ability to issue the new infringement offences, and detail on how and when they will be used, will be communicated to impacted parties through existing channels, both for MPI's compliance activities generally, and as part of targeted communications to operators of transitional facilities and containment facilities, and operators of craft. This will include direct emails to impacted parties, information in stakeholder newsletters and on MPI's website.

Biosecurity New Zealand will be responsible for ongoing operation and enforcement of infringement offences. Quarantine officers currently interact with the affected parties in their operational procedure. Implementing new infringement offences during these interactions will not be a significant change for quarantine officers.

Implementing and operating the new infringement offences will require some supporting systems and processes to be put into place. The final design for some of these has yet to be finalised but some of the broad decisions already made are listed below:

- a) all Biosecurity New Zealand quarantine officers will have the power to issue infringement notices;
- b) there will be a review prior to the issue of the infringement (by a peer/supervisor) during the initial months of implementation; and
- c) Biosecurity New Zealand will have an internal review process (by someone other than the issuing officer) if a person issued with an infringement wishes to challenge it – this is in line with existing processes.

Biosecurity New Zealand will continue to be the only agency whose officers are empowered to issue infringement notices under the Biosecurity Act 1993. No other agency will be directly involved in issuing these infringement notices.

In implementing any new infringement offences, Biosecurity New Zealand will have the advantage of being able to draw on learnings from the previously completed implementation of infringements in the passenger pathway. This will help us to ensure that proposals are operationally feasible and to identify potential roadblocks early on.



## **Section 7: Monitoring, evaluation and review**

### **7.1 HOW WILL THE IMPACT OF THE NEW ARRANGEMENTS BE MONITORED?**

Because the records for infringement offences must be available in the event of a legal dispute, records of infringement offences are maintained. Going forward, statistics will be comparable across years and the impact of the infringement offences on border biosecurity behaviour will be evident in the data.

System-level monitoring and evaluation is in place for the border biosecurity system. Annual statistical reports are released, for example, highlighting performance during peak seasons and comparing statistics to those of previous years.

### **7.2 WHEN AND HOW WILL THE NEW ARRANGEMENTS BE REVIEWED?**

A broad review of the Act will commence during 2018. This review will include consideration of accountability, compliance and enforcement matters. Through the review process it is likely that some further useful infringement offences may be identified.

The proposed amendments to the Regulations are likely to endure changes as a result of the review. However, the Act review will present an opportunity to review the new infringement offences for lessons, best practices, or adjustments that may be useful at that time.

In addition, a dedicated review of the implementation and functioning of the changes proposed in this regulatory impact assessment will be conducted three years after implementation. This interval is considered appropriate for an effective measure of the impact to be determinable.

This review is likely to include:

- effectiveness of the infringement offences from the perspective of Biosecurity New Zealand staff and key stakeholders;
- areas of improvement for the fair and consistent application of infringement notices;
- numbers of reviews, appeals and levels of non-payment;
- an assessment of the actual cost of administering the scheme, and what are the benefits;
- whether infringement fees are an appropriate level to encourage compliance; and success of the scheme as a deterrent for non-compliance.