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BILLS DIGEST

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Biosecurity Amendment Bill 2009

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Select Committee:	As at 08 September, 1st Reading not held.
Published: 08 September 2009 Prepared by John McSoriley BA LL.B, Barrister Legislative Analyst P: (04) 471-9626 (Ext. 9626) F: (04) 471-1250	Caution: This Digest was prepared to assist consideration of the Bill by members of Parliament. It has no official status. Although every effort has been made to ensure accuracy, it should not be taken as a complete or authoritative guide to the Bill. Other sources should be consulted to determine the subsequent official status of the Bill.

Purpose

The main aims of this Bill are to amend the Biosecurity Act 1993 (the Act) to:

- increase the maximum fine on summary conviction for the offence of making an erroneous declaration concerning possession of risk goods from \$400 to \$800;
- enable the amount of infringement fees to be increased (to a maximum of \$1,000) in regulations rather than by amendment to the Act; and
- enable the detail of the infringement offence regime in the Biosecurity Act 1993 to be prescribed in regulations made under the Act rather than specified in the Act itself.

Background

The Biosecurity Act 1993 makes provision for two infringement offences, each with a different procedure as follows:

- the standard procedure under the Summary Proceedings Act 1957; and
- an accelerated procedure tailored for offences committed by people arriving in New Zealand.

The Bill enables new infringement offences to be specified in regulations and provides for different procedures for "ordinary infringement offences" (standard procedure) and "border infringement offences" (accelerated procedure).

Main Provisions

Penalty increased for erroneous declaration relating to the possession of certain goods

Section 154(s) of the Act provides that every person commits an offence against the Biosecurity Act 1993 who " ... 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".

The Bill increases the penalty on summary conviction for a breach of this provision from \$400 to \$800 (*Clause 5*).

"Standard" infringement notice procedure

Section 154(p) of the Act provides that every person commits an offence against the Biosecurity Act 1993 who having (while in a biosecurity control area) been asked by an inspector to answer any question that is necessary for the inspector to ascertain the presence, nature, origin, or itinerary, of any risk goods:

- fails or refuses to answer it within a reasonable time of its being asked; or
- fails or refuses to answer it completely within a reasonable time of its being asked; or
- wilfully gives a false or misleading answer.

Section 159 of the Act provides that where an inspector has reason to believe that a defendant has committed an offence against Section 154(p) of the Act that defendant may be proceeded against for the alleged offence under the Summary Proceedings Act 1957 or the inspector may issue an infringement notice in respect of the alleged offence.

An inspector may deliver it (or a copy of it) to the defendant personally or may send it (or a copy of it) to the defendant by post addressed to the defendant's last known place of residence or business; and in that case it (or the copy) is deemed to have been served on the defendant when it was posted.

Section 159 goes on to provide that every infringement notice must be in a form prescribed by regulations made under the Act and must specify:

- sufficient details to inform the defendant fairly of the time, place, and nature of the offence alleged;
- that the infringement fee is \$100;
- where the fee may be paid;
- the time within which the fee may be paid;
- a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957;
- that the defendant has the right to request a hearing;
- a statement of what will happen if the defendant neither pays the fee nor requests a hearing; and
- "any other matters prescribed in that behalf".

The Bill amends Section 159 so that instead of applying only to offences against section 154(p), Section 159 applies to all offences prescribed as infringement offences (other than border infringement offences) (*Clause 6*).

"Accelerated" infringement notice procedure

The Bill amends the Act so that an accelerated procedure for an infringement offence against Section 154(s) (described above) committed by people arriving in New Zealand, instead of just applying to offences against that section, will apply to all infringement offences specified as border infringement offences) (*Clause 7*).

Comment

The accelerated procedure differs from the standard procedure in a number of ways, including that the notice may be served by any employee of the Ministry instead of an inspector. If the infringement notice is served by delivering it to a person at a port approved under Section 37 or Section 37A of the Act, that person may choose to pay immediately the infringement fee in the notice. The infringement notice is as prescribed in regulations (this is not the case in the standard procedure). The Summary Proceedings Act 1957 applies as if that notice were a reminder notice served under Section 21(2) of that Act, and provision is made for various provisions of that Act to apply with any necessary modifications.

Regulations

The Bill amends the regulation-making power in Section 165(1) of the Act to allow regulations to be made that:

- prescribe offences as infringement offences and specify infringement offences that are committed at the border to be border infringement offences (*new paragraphs (va) and (vb)*);
- prescribe the infringement fees payable for the infringement offences (*new paragraph (vc)*);
- prescribe the form of the infringement notices for infringement offences and border infringement offences and any particulars additional to those specified in sections 159 and 159A that must be included in the forms (*new paragraph (vd)*) (*Clause 8*).

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