

Biosecurity and Hazardous Substances and New Organisms Legislation Amendment Bill

Government Bill

As reported from the Primary Production
Committee

Commentary

Recommendation

The Primary Production Committee has examined the Biosecurity and Hazardous Substances and New Organisms Legislation Amendment Bill, and we unanimously recommend that it be passed with the amendments shown.

Introduction

The bill amends the Biosecurity Act 1993 (BSA) and the Hazardous Substances and New Organisms Act 1996 (HSNO Act) to make it explicit that the BSA is the appropriate statute for determining the biosecurity risks from passenger organisms that incidentally arrive in New Zealand. It also makes it explicit that the Ministry of Agriculture and Forestry (MAF) has the legal authority to manage the biosecurity risks from passenger organisms.

New Zealand's island status means that it is imperative that it develop policy and processes to protect its borders and national interest from

biosecurity risks. New Zealand must also maintain its biosecurity standards while meeting our international trade obligations.

We believe that the Court of Appeal's ruling that an approval under the HSNO Act is required for known new organisms which might be incidentally imported is unworkable in practice. The court's ruling has led to MAF, on Crown Law advice, suspending the issuing of import health standards or amending of existing ones. We do not believe that the suspension of the issuing of import health standards is in New Zealand's national interest. Therefore, we unanimously agree that the process for issuing import health standards should be clarified and validated.

Independent review of scientific evidence

We agree with submitters that the process for assessing the evidence should be transparent and trustworthy. We note that most import health standards are developed in cooperation and collaboration with the appropriate sector.

We recommend the insertion of new clause 5A, requiring MAF to develop a process for an independent panel to review whether MAF has had adequate regard to the scientific evidence in cases where significant concerns have arisen during the consultation process on a draft import health standard. The Director-General must, by notice in the *Gazette*, set out a process by which an independent review panel is to be established. We believe that section 22(6) of the BSA adequately sets out those entitled to seek this review process.

The amendment will provide for the review process to be in place by 1 July 2008. The Director-General will be required to respond formally to the recommendations of the review panel and to have regard to those recommendations when making a final decision on the import health standard.

We believe that the establishment of an independent review panel should allay submitters' concerns.

Validation of honey import health standard

While we are sympathetic to the concerns of beekeepers, we have considered the evidence regarding the assessment options for passenger organisms under the HSNO Act. We understand that the HSNO Act is not an appropriate mechanism for assessing passenger organ-

isms. The appropriate mechanism is the BSA. We also believe that the concerns of beekeepers are best addressed through the proposed review process.

We were told that the organism *Paenibacillus alvei* (*P. alvei*), the subject of the Court of Appeal ruling, would not meet the HSNO Act's requirements for a rapid assessment approval process. Furthermore, the full assessment process would have required the importation of *P. alvei* to meet a benefit requirement that was not practicable.

A review process consistent with the process outlined under the bill will be available to the bee industry. We recommend that the import health standard for honey be validated. However, importations of Australian honey be prohibited for a 90-day period from the enactment of the bill to allow the review to take place should the industry seek it. We recommend the insertion of new clause 7A.

Conclusion

We acknowledge that this legislation has been progressed urgently because of the timetable set by the Minister. We further acknowledge that the Crown Law Office strongly advised MAF to cease issuing and amending import health standards, which caused increasing problems for a number of importers.

We recommend validating current import health standards, on Crown Law advice, because of the uncertainty created by the Court of Appeal decision. If in spite of these amendments the problem still exists, further amendments to the BSA may be required.

We unanimously agree that the bill should be passed.

Appendix

Committee process

The Biosecurity and Hazardous Substances and New Organisms Legislation Amendment Bill was referred to the committee on 19 February 2008. The closing date for submissions was 29 February 2008. We received and considered 53 submissions from interested groups and individuals. We heard 15 submissions.

We received advice from the Ministry of Agriculture and Forestry, the Ministry of Foreign Affairs and Trade, the Ministry for the Environment, the Environmental Risk Management Authority, and the Legislation Advisory Committee.

Committee membership

Hon David Carter (Chairperson)

Dr Ashraf Choudhary (Deputy Chairperson)

Phil Heatley

Hon Steve Maharey

Hon Mita Rinui

Katherine Rich

Eric Roy

Hon Dover Samuels

Shane Ardern replaced Phil Heatley for this item of business.

**Biosecurity and Hazardous Substances and
New Organisms Legislation Amendment Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Jim Anderton

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The Parliament of New Zealand enacts as follows:

1	Title This Act is the Biosecurity and Hazardous Substances and New Organisms Legislation Amendment Act 2008 .	
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2	Commencement This Act comes into force on the day after the date on which it receives the Royal assent.	5
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Part 1
Amendments to Biosecurity Act 1993

3	Principal Act amended This Part amends the Biosecurity Act 1993.	10
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4	Interpretation Section 2(1) is amended by inserting the following definition in its appropriate alphabetical order: “ incidentally imported new organism has the same meaning as in section 2(1) of the the Hazardous Substances and New Organisms Act 1996”.	15
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5	Import health standards Section 22 is amended by inserting the following subsection after subsection (1): “(1A) An import health standard issued under this section applies to goods the importation of which involves, or might involve, an incidentally imported new organism.”	20
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5A	<u>New section 22A</u> <u>The following section is inserted after section 22:</u>	25
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“22A Process for independent review panel to be established

- “(1) The Director-General must, by notice in the *Gazette*, set out the process by which an independent review panel is to be established to review whether, in developing an import health standard, there has been sufficient regard to the scientific evidence about which a person consulted under section 22(6) has raised a significant concern.** 5
- “(2) The notice required by subsection (1) must cover the following matters:**
- “(a) the criteria for setting up an independent review panel; and** 10
- “(b) how the Director-General will appoint an independent review panel, including the knowledge and experience required for appointees; and**
- “(c) the procedures to be followed by—** 15
- “(i) a person eligible to seek a review under **subsection (1)**; and**
- “(ii) an independent review panel, in undertaking its review; and**
- “(d) the reporting requirements for an independent review panel.** 20
- “(3) The Director-General must receive any report from an independent review panel and, as soon as is reasonably practicable, determine the issue in dispute after taking into account the findings and recommendations of the independent review panel, giving reasons for that determination.** 25
- “(4) The Director-General must issue a notice under subsection (1) not later than 1 July 2008.”**

6 Restrictions on giving clearances

Section 28 is amended by inserting the following subsection after subsection (1):

- “(1A) However, subsection (1) does not prohibit an inspector from giving a biosecurity clearance for goods the importation of which involves, or might involve, an incidentally imported new organism.”** 35

- 7 Validation of import health standards**
- (1) Every import health standard issued before the commencement of this Act (including, but not limited to, the *Import Health Standard for the Importation into New Zealand of Specified Bee Products from Australia*, dated 2 August 2006) is, and has always been, as valid and effectual as if this Act had come into force on 29 July 1998. 5
- (2) However, a validation of an import health standard under **subsection (1)** only applies if, and to the extent that, the import health standard is invalid because it applies to goods the importation of which involves, or might involve, an incidentally imported new organism. 10
- 7A Suspension of power to give biosecurity clearance**
Despite **section 7**, no biosecurity clearance may be given under section 26 of the principal Act for any goods to which the *Import Health Standard for the Importation into New Zealand of specified Bee Products from Australia*, dated 2 August 2006 applies, for a period of 90 days from the commencement of this Act. 15
- 8 Validation of biosecurity clearances etc** 20
- (1) Any biosecurity clearances or the exercise of other powers under Part 3 of the principal Act before the commencement of this Act (including, but not limited to, biosecurity clearances given in accordance with the *Import Health Standard for the Importation into New Zealand of Specified Bee Products from Australia*, dated 2 August 2006) are, and always have been, as valid and effectual as if this Act had come into force on 29 July 1998. 25
- (2) However, a validation under **subsection (1)** only applies to a biosecurity clearance or exercise of other power if, and to the extent that, the clearance or exercise of other powers is invalid because it applies to goods— 30
- (a) the importation of which involves, or might involve, an incidentally imported new organism; and
- (b) whose movement and use includes any new organisms incidentally imported while they remain in or on those goods. 35

Part 2
**Amendments to Hazardous Substances
and New Organisms Act 1996**

9 Principal Act amended

This Part amends the Hazardous Substances and New Organisms Act 1996. 5

10 Interpretation

(1) Section 2(1) is amended by repealing the definition of **develop** and substituting the following definition:

“**develop**,— 10

“(a) in relation to organisms other than incidentally imported new organisms,—

“(i) means—

“(A) genetic modification of an organism:

“(B) regeneration of a new organism from biological material of the organism that cannot, without human intervention, be used to reproduce the organism: 15

“(C) fermentation of a micro-organism that is a new organism; but 20

“(ii) does not include field testing; and

“(b) in relation to incidentally imported new organisms,—

“(i) means—

“(A) the activities referred to in **paragraph (a)(i)**; and 25

“(B) the deliberate isolation, aggregation, multiplication, or other use of the organism; but

“(ii) does not include field testing”.

(2) Section 2(1) is amended by inserting the following definitions in their appropriate alphabetical order: 30

“**department** has the same meaning as in section 2 of the State Sector Act 1988

“**incidentally imported new organism** means a new organism that is imported in or on goods, but is not— 35

“(a) an essential or constituent part of those goods:

- “(b) imported in or on the goods with the intention of concealing the presence of the new organism:
- “(c) a genetically modified organism”.

11 Meaning of term new organism

- (1) Section 2A(2A)(b) is amended by adding “; or”. 5
- (2) Section 2A(2A) is amended by adding the following paragraph:
 - “(c) it is an incidentally imported new organism.”

12 Prohibition of import, manufacture, development, field testing, or release

- (1) The heading to section 25 is amended by omitting “**Prohibition**” and substituting “**Restriction**”. 10
 - (2) Section 25 is amended by inserting the following subsections after subsection (1):
 - “(1A) Subsection (1)(b) does not apply to— 15
 - “(a) the importation of an incidentally imported new organism, if it is imported in or on goods lawfully imported under the Biosecurity Act 1993; or
 - “(b) the movement or use of those goods, together with any new organisms incidentally imported while they remain in or on those goods, after their importation. 20
 - “(1B) The department responsible for administering the Biosecurity Act 1993 or its agents, and any other departments recognised by the responsible Minister under section 101(2) of that Act or their agents may, despite subsection (1)(b), isolate, aggregate, multiply, or use an incidentally imported new organism for the purpose of identifying, managing, or eradicating that organism.” 25
 - (3) Section 25(5) is amended by omitting “prohibition” and substituting “restriction”. 30
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**Biosecurity and Hazardous Substances and
New Organisms Legislation Amendment Bill**

Legislative history

12 February 2008

19 February 2008

Introduction (Bill 198–1)

First reading and referral to Primary Production
Committee
