



Process for the Minister for Primary Industries to Assign Responsibility for a Decision on a Harmful Organism or Pathway

Regulatory Impact Statement

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Agency disclosure statement

This regulatory impact statement has been prepared by the Ministry for Primary Industries (MPI).

The statement analyses a series of options for the Minister for Primary Industries (the Minister) to assign decision-making responsibility for a harmful organism or a pathway in order to fill a gap in the present pest management system. The analysis assumes that the Minister may wish to use the statutory power provided for in section 55(1) of the Biosecurity Act 1993 (the Biosecurity Act) to assign responsibility for a decision on specific pest management issues.

The analysis uses information from independent reports produced for MPI, information provided by pest management stakeholders during collaboration with MPI in 2012, and responses from stakeholders received during public consultation in 2013. There were no numerical figures on the number of harmful organisms or pathways that do not have a party responsible for making decisions on their management. There were also information gaps on how much collective action is currently being undertaken by groups of individuals and how much is being coordinated by the Crown.

The analysis assumes that the Minister may wish to exercise the statutory powers provided in s 55(1). Consequently, the other constraints are the content of sections 55(2), 55(3), and 165(5) of the Biosecurity Act:

- Under s 55(2) of the Biosecurity Act, if the Minister decides to assign responsibility for a decision, the process that he or she uses must be set out as regulations.
- Section 55(3) is a constraint to the extent that the Minister's ability to assign responsibility is only legally binding on a department or regional council. While the Minister will have the ability to assign responsibility to central and local government agencies (and set timeframes for a decision), private parties are not legally bound and can decline an invitation from the Minister to be involved.
- Section 165(5) states the minimum requirements for the content of the process.

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Status quo and problem definition

STATUS QUO

New Zealand has robust monitoring and regulatory systems to minimise the chances of pest incursions and to respond to incursions, but there is currently a gap in the post-border management of a number of established pests.

The post border management system relies to a large degree on the voluntary actions of individuals with a common interest in managing a pest. While many pests are addressed through national and regional pest and pathway management plans or small-scale management programmes developed under the Biosecurity Act, there are a number of pests for which there are currently no enforcement or surveillance requirements.

Usually the parties that are adversely affected will voluntarily take responsibility for making decisions on the management of pests, as there is a mutual benefit or a clear incentive in doing so. Where the potential benefits are broader than the individual, those who benefit usually group together and pool their resources to undertake coordinated collective action based on how much they are willing to pay to avoid the costs of the pest. There are no formal figures on how much collective action is being voluntarily undertaken or coordinated by the Crown.

What is a harmful organism and pathway?

The term “harmful organism” is used to describe an organism that may cause harm to New Zealand’s economic wellbeing, environment, human health, enjoyment of the natural environment, or the relationship between Māori, their culture, and their traditions and their ancestral lands, waters, sites, wāhi tapu, and taonga.¹ A “pathway” is used to describe any human activity, intentional or not, which moves pest organisms from one place to another place, anywhere within New Zealand.^{2, 3}

When a harmful organism is identified as newly arrived in New Zealand, MPI makes a decision on whether or not to undertake a response to manage the organism. If MPI decides not to undertake a response (e.g. in situations where eradication is no longer feasible) there is currently no formal mechanism to transfer responsibility to affected agencies or individuals. Without a formal process, potential decision-makers may not come together or agree on what action to manage a harmful organism or pathway.

Evidence supporting the problem definition

Independent reports prepared for MPI noted that while New Zealand’s pest management system is advanced, roles and accountabilities were not sufficiently clear and pests were not

¹ Part 5, 54(a) of the Biosecurity Act 1993, “...may cause harm to New Zealand’s economic wellbeing, environment, human health, enjoyment of the natural environment, or the relationship between Māori, their culture, and their traditions and their ancestral lands, waters, sites, wāhi tapu, and taonga.”

² Definition of a “domestic pathway,” from MPI Technical Paper No: 2010/22, Slowing Pest Spread: Domestic Pathways of Human Mediated Spread and Opportunities for their Management.

³ A pest means an organism specified as a pest in a pest management plan made under Part 5 of the Biosecurity Act 1993.

always being managed in the best way possible.^{4, 5} There was an underlying issue with the allocation of decision-making responsibility for a number of established pests.

The lack of collective and coordinated action has often been caused by the simple fact that no agency, industry body, or other representative group has made a decision on whether the pest is desirable or not. There were often incentives on government agencies to not make decisions, particularly because they were likely to then face the costs of initiating collective action. Costs can also arise where individual action is less cost-effective than collective action or where a delay in action allowed a pest to spread and proliferate, making control more expensive or some control options infeasible.

Constraints – recent regulatory reforms to New Zealand’s pest management system

The 2012 reforms to the Biosecurity Act introduced a discretionary power for the Minister to assign responsibilities for decisions where no one takes lead accountability for a response to a harmful organism or pathway and no decisions have been made on its management. In order for the Minister to use these powers, s 55(2) of the Biosecurity Act requires that the process to assign responsibilities for decisions must be set in regulations.

The analysis in this regulatory impact statement assumes that the Minister would want to assign responsibility for specific pest management issues in the future. Therefore, the analysis assumes that regulations will be made to set the process which the Minister would use to assign responsibility.

It is anticipated that the Minister would use this power in situations where there is debate or delays in parties taking responsibility for a harmful organism or pathway. Delays include situations where no one offers to take the lead within a reasonable timeframe or where it is unclear which party is responsible for its management.

Section 165(5) of the Biosecurity Act sets out the matters that must be included in regulations which set the process for assigning responsibility.

The Governor-General may from time to time, by Order in Council, make regulations setting out the process for assigning responsibility:

- what criteria the Minister must apply in assigning responsibility;
- what kind of consultation the Minister must undertake; and
- how the Minister must communicate the Minister’s decision to the decision-maker and the public.

Section 55(3) of the Biosecurity Act is a constraint to the extent that it limits the ability of the regulatory options to fill the gap in the current risk management system, because the Minister’s assignment of responsibility is only legally binding if it is assigned to a government agency or regional council. Consequently, if the Minister were to assign responsibility to a private party, they would be no more legally bound to make a decision than they currently are under the status quo.

⁴ *The Future of Pest Management in New Zealand* (2008), LECG.

⁵ *The Future of Pest Management: Analysis completed to make a plan of action for better pest management in New Zealand* (2010), MPI.

Examples of situations where the Minister may assign responsibility for decisions

The Minister is likely to assign responsibility on long-standing or established pest management issues. Additionally, there are situations where it may not be practicable to manage a harmful organism or pathway and decisions would be the responsibility of individual land owners and occupiers (e.g. when a harmful organism has spread and established itself and eradication is no longer feasible).

Canada goose

MPI, the Department of Conservation, Environment Canterbury, Federated Farmers, Christchurch Airport, Fish and Game New Zealand, and other groups have an interest in the management of Canada goose. The bird can be a hazard to air traffic control, a pest to pastoral farmers, and the environment. When its status changed from a game bird to non protected wildlife under the Wildlife Act 1953, Fish and Game New Zealand no longer had a statutory responsibility to continue its management plan, which included a culling programme to control numbers. No parties have been willing or able to take lead responsibility for making decisions on a long-term management plan for Canada goose. It is in a situation such as this where the Minister could assign responsibility to a lead party or parties.

Wilding conifers

Wilding conifers are a long standing problem for landowners. No one has voluntarily taken the lead for making coordinated decisions on how to address the spread of these trees throughout the regions. It is a pest management and resource issue that has involved multiple parties who have interests, either as beneficiaries, exacerbators of harm, or both. The problem frequently crosses regional boundaries and some activities would ideally be coordinated across the areas where it is a problem.

Wilding conifers are estimated to have been expanding at a compounding rate of around 5-6% per annum since the early 1900s. In 2007 the area affected by wilding conifers was estimated at approximately 805,000 hectares in the South Island and 300,000 hectares in the North Island. The area of New Zealand occupied by wilding conifers at varying densities is now estimated to be approximately 1.7 million hectares, almost 6% of New Zealand's total land area. Under the current rate of spread approximately 22 percent of New Zealand will be dominated by wilding conifers within 30 years.

For at least a decade parties could not reach agreement on who was responsible for making a decision on wilding conifers. MPI, the Department of Conservation, Land Information New Zealand, New Zealand Defence, regional councils, forestry companies, and environmental stakeholders have finalised a non-regulatory strategy for the long-term management for wilding conifers. However, parties may change their position on the issue and this could be a situation where the Minister would assign responsibility.

PROBLEM DEFINITION

In order to enable the Minister to assign responsibility for a decision on the appropriate response to an issue relating to a harmful organism or pathway, a process for the Minister to determine which party to assign lead accountability for decisions must be set out as regulations.

Currently, there is no process set out as regulations so the Minister cannot exercise these statutory powers. This means the Minister would not be able to assign responsibilities for decisions. This would not address the gap in the pest management system and would not take the opportunity to improve the effectiveness of the system in situations where no one takes responsibility for specific harmful organisms or pathways. The Minister would not be able to assign responsibility where there is debate or delays involved in making a decision on a harmful organism or pathway.

There are harmful organisms or pathways which no one takes responsibility for

There is a gap in the pest management system as there are harmful organisms or pathways which have no one taking decision-making responsibility for their management. Parties may not willingly take responsibility as the net benefits of managing the harmful organism or pathway might be unclear unless all the affected parties can be coordinated to develop a collective view. Each party may perceive another party as being best placed to promote a coordinated approach.

There are no figures on the number of harmful organisms or pathways that have no one responsible for making decisions on their management. It is estimated that there are very few harmful organisms being left unmanaged as in the majority of cases a party (e.g. a government agency, regional council, or industry organisation) will take responsibility for its management. Those that are not being managed are established pests that have been long-standing issues for communities. It is in these situations where the Minister could assign responsibility.

“Non-decisions” result in pest management not being done where and when it should be

The wider consequences of decisions not being made is that pest management is not done when and where it should be and the costs do not fall equitably. If parties do not perceive there is a net benefit, and in effect make a “non-decision” by not taking action, then a harmful organism will continue to spread and proliferate. It is during these periods of ineffective decision-making that a harmful organism will create further burden and costs. The problem is exacerbated when a harmful organism establishes itself and becomes more difficult and costly to manage. The longer the organism is left unmanaged, the fewer management options are available.

Harmful organisms or pathways could have a greater effect than if a decision had been made

In situations where parties cannot decide who is responsible, management action has either been delayed or has not occurred at all. Without management decisions being made harmful organisms could have a greater adverse effect than if a decision had been made at an earlier stage. Left unmanaged, harmful organisms can cause significant economic and environmental impacts. These include damages to economically important agricultural and horticultural crops and New Zealand’s environment.

Objectives

The objectives have been developed on the basis that the Minister wishes to use statutory powers to assign responsibility (i.e. he or she does want to assign responsibility for making a decision on the appropriate response to a particular pest management issue as provided for in s 55(1) of the Biosecurity Act). As a consequence, s 55(2) is invoked and the process for the Minister to assign responsibility must be set out in regulations.

The primary objective is to fill a gap in the present pest management system by enabling the Minister to use the statutory powers granted under s 55(1) of the Biosecurity Act. The following secondary objectives for the process are ranked in order of importance:

1. Increases the efficiency of decision-making by ensuring that decisions are made on pest management issues.
2. Is comprehensive and transparent and addresses conflicts of interest.
3. Provides direction on the intermediate outcome for the issue.
4. Provides equity to all parties through consultation.
5. Provides for ease of administration of the process by having clear steps to follow.
6. Supports current pest management activities.
7. Can be adapted to take into account emerging biosecurity risks.

Analysis of Options

Four options have been considered as part of this regulatory impact statement and are detailed below.

Option one: Maintain the status quo. Continuation of the voluntary mechanism and no process for the Minister to assign decision-making responsibility.

Option two: A basic regulatory process for the Minister to assign decision-making responsibility. The process contains the minimum requirements set out in s 165(5) of the Biosecurity Act. The process contains the following:

- criteria the Minister must apply in assigning responsibility;
- consultation the Minister must undertake; and
- how the Minister communicates their decision.

Option three (preferred): A comprehensive regulatory process. The process contains the following:

- sets out a six stage process, including application to the Minister, Minister receives preliminary advice, consultation, Minister receives final advice, Minister makes a decision, and public notification of the assignment;
- provides what an application to the Minister should contain;
- sets out how conflicts of interests will be addressed;
- provides an alternative process for urgent issues relating to a harmful organism;
- criteria for the Minister to determine whether to begin the process of assigning responsibility or whether to reject an application;
- criteria for the Minister to determine whether collective action is required; and
- criteria for the Minister to determine who to assign responsibility for decisions.

Option four: A less comprehensive regulatory process, which contains fewer stages than option three. It does not address conflicts of interest, urgent issues relating to a harmful

organism or pathway, and does not have a stage where the Minister is provided preliminary advice. The process includes the following:

- sets out a five stage process, including application to the Minister, consultation, Minister receives final advice, Minister makes a decision, and public notification of the assignment;
- provides what an application to the Minister should contain;
- criteria for the Minister to determine whether to begin the process of assigning responsibility or whether to reject an application;
- criteria for the Minister to determine whether collective action is required; and
- criteria for the Minister to determine who to assign responsibility for decisions.

The options have been assessed against the primary and secondary objectives.

ASSESSMENT OF OPTIONS AGAINST PRIMARY AND SECONDARY OBJECTIVES				
Objectives	Option 1 (status quo): No process is set out in regulations.	Option 2: A process containing the minimum requirements of section 165(5) is set out as regulations.	Option 3 (preferred): A comprehensive process is set out as regulations.	Option 4: A less comprehensive process is set out as regulations.
<u>Primary objective:</u> To fill a gap in the present pest management system by enabling the Minister to use his or her statutory powers granted under s 55(1) of the Biosecurity Act.	X Not setting out a process for the Minister to assign responsibility for pest management decisions would not enable the Minister to use the statutory powers granted under s 55(1) of the Biosecurity Act.	✓ This option would enable the Minister to exercise the statutory powers under s 55(1) of the Biosecurity Act by setting out a process to assign responsibility for a decision on a harmful organisms or pathway as regulations. However, there is still a potential gap if the Minister assigns responsibility to private parties as they will not be legally bound (i.e. their decision is still voluntary which is similar to the status quo).	✓ This option would enable the Minister to exercise the statutory powers under s 55(1) of the Biosecurity Act by setting out a process to assign responsibility for a decision on a harmful organism or pathway as regulations. There is still a potential gap but it is much reduced compared to option two (i.e. if the Minister assigns responsibility to private parties they will not be legally bound, which is similar to the status quo). However, the process in option three is consultative and comprehensive and this will facilitate engagement between all parties, including private parties, to an extent that will likely lessen the potential for private parties opting not to make a decision.	✓ This option would enable the Minister to exercise the statutory powers under s 55(1) of the Biosecurity Act by setting out a process to assign responsibility for a decision on a harmful organism or pathway as regulations. There is still a potential gap (i.e. if the Minister assigns responsibility to private parties they will not be legally bound, which is similar to the status quo). The gap will be less than the process set out in option two but greater than the process set out in option three.
<u>Objective 1:</u> Increase the efficiency of decision-making by ensuring that decisions are made on pest management issues.	X As no process is defined, there continues to be the potential for ineffective and inefficient decision-making on pest management issues. The Minister would not be able to ensure that decisions are made on key pest management issues where no one had made decisions on its management. In the absence of a party voluntarily assuming responsibility,	X This would not increase the efficiency of decision-making. The process would only contain the minimum requirements of s 165(5) of the Biosecurity Act. It would provide three stages for the Minister to follow to determine who to assign responsibility for a decision to. However, as the process contains only the minimum requirements it would not provide steps for addressing potential conflicts of	✓ This option would ensure efficient decision-making by setting out a comprehensive process for the Minister to follow. Rather than decisions being delayed, the Minister can assign responsibility to those who are best placed to make decisions. The six stages and criteria of the process will assist the Minister in determining those parties who are best placed to make decisions on a	✓ This option would ensure efficient decision-making by having a less comprehensive process than what is proposed in option three. The Minister will have five stages and fewer criterions to follow in order to assign responsibility for a decision.

	responsibility may default to central or local government.	interest or determining an intermediate outcome for the issue. There is a risk that the Minister's decision could be challenged.	pest management issue. It will ensure that the Minister makes a fully informed decision that can withstand being challenged.	
<u>Objective 2:</u> Is comprehensive and transparent and addresses conflicts of interest.	X As this option provides no process, it does not provide a comprehensive or transparent way to determine who is accountable for making a decision on a harmful organism or pathway. There would be no pragmatic way of assigning responsibilities and these would continue to operate on a voluntary basis only. The risk is that those who are best placed to make decisions may not volunteer.	X The option is less comprehensive and transparent (than options three and four) due to having the minimum requirements. There is a risk in that there is no mechanism to address conflicts of interest. As the process lacks the additional steps of options three and four, it may be deemed by participants in the pest management system as not being comprehensive enough to address complex and long standing pest management issues.	✓ The process sets out how the Minister will address potential conflicts of interest and provides MPI's draft advice to applicants and a non-MPI body (such as the Biosecurity Ministerial Advisory Committee) for their review and comment before it is provided to the Minister. The six stage process was designed by MPI and stakeholders so that it is comprehensive, transparent, and addresses potential conflicts of interests. It also provides clear steps for consultation with affected parties.	X This process is less comprehensive and transparent than option three. It does not address potential conflicts of interests. It lacks transparency as it does not allow the applicants or a non-MPI body to review MPI's draft advice to the Minister.
<u>Objective 3:</u> Provides direction on the intermediate outcome for the issue.	X The Minister would not provide direction on the intermediate outcome for the issue as there is no process setting out that the Minister should determine this.	X The Minister would not be required to provide direction on the intermediate outcome for the issue.	✓ The Minister will form a view on the likely intermediate outcome that a response to a harmful organism or pathway would be seeking to achieve.	X The Minister would not be required to provide direction on the intermediate outcome for the issue.
<u>Objective 4:</u> Provides equity to all parties through consultation.	X As a non-regulatory process, the Minister would not be able to assign responsibility for decisions or consult with affected parties. There would be no opportunity for affected parties to communicate their views to the Minister on stalled decision-making on a harmful organism or pathway.	✓ Section 165(5) of the Biosecurity Act states that the process must contain details of the consultation that the Minister must undertake on the issue relating to a harmful organism or pathway.	✓ The process includes a step for consultation with affected parties. The Minister, through MPI, will identify and invite affected parties (including the party that may be assigned responsibility for a decision) to comment on the issue. The Minister must consult with Māori in cases where their interests are affected. This may include consulting with a Māori advisory committee , iwi leaders group, or a similar reference group.	✓ Section 165(5) of the Biosecurity Act states that the process must contain details of the consultation that the Minister must undertake on the issue relating to a harmful organism or pathway.

<u>Objective 5:</u> Provides for ease of administration of the process by having clear steps to follow.	X This option does not provide ease of administration. There are no clear steps for the Minister to follow if they did wish to assign responsibility for decisions on a harmful organism or pathway.	X This option does not provide ease of administration. The process lacks the clear structured steps that are provided in options three and four. As a result, there could be a wide range of variables. The Minister would need to determine how to undertake the process when it is triggered. This could be more time consuming than if a process with clear steps was set out as regulations.	✓ This option provides for ease of administration. The process has clear structured steps and criteria. It details what is required of the applicant, the Minister, MPI, and the parties' assigned responsibility.	✓ Provides for ease of administration. The process has clear structured steps and details of what is required of the applicant, the Minister, MPI, and the parties' assigned responsibility.
<u>Objective 6:</u> Supports current pest management activities.	X This option does not address the gap in New Zealand's pest management system and does not take into account the National Policy Direction for pest management plans and programmes (the NPD) or the Government Industry Agreement (GIA).	X The process does not support current pest management activities as does not take into account the NPD or GIA.	✓ This option aligns with current pest management activities, including the NPD and GIA which has been incorporated into specific provisions of the process.	X This option does not align with current pest management activities, including the NPD and GIA, which have not been incorporated into the process.
<u>Objective 7:</u> Can be adapted to take into account emerging biosecurity risks.	✓ This option can be adapted to emerging biosecurity risks as there is no process in place.	✓ This option can be adapted to emerging biosecurity risks as there is a process which can be amended to incorporate issues relating to emerging biosecurity risks.	✓ The process can be amended following a review of its use to incorporate issues relating to emerging biosecurity risks.	✓ The process can be amended following a review of its use to incorporate issues relating to emerging biosecurity risks.

OPTION ONE (STATUS QUO)

Benefits of maintaining the status quo

The benefits of maintaining the status quo are that it would allow participants in the pest management system to continue to self-determine roles, priorities, and responsibilities relating to harmful organisms and pathways. New Zealand would continue to have an adequate pest management system at a minimal monetary cost to the Crown.

Costs of maintaining the status quo

In the absence of an agency or organisation voluntarily assuming responsibility for a harmful organism or pathway there can be potential for the organism to spread and proliferate. This can lead to pest management costing more than it should, if a decision on the management of the harmful organism had been made at an earlier stage.

This option would not address the gap in New Zealand's pest management system and would not take the opportunity to improve the effectiveness of the system in situations where no one takes responsibility for specific harmful organisms or pathways. The Minister would not be able to assign responsibility for a decision where there is debate or delays involved in making a decision on a harmful organism or pathway.

The system would continue to rely on the assumption that parties with an interest in managing a harmful organism or pathway will voluntarily establish coordinated collective action or independent activity to manage a harmful organism or pathway. However, this is not always the case due to a number of factors, namely perceived benefits, differing purposes, and the interests and capabilities of the parties involved.

Conclusion

The status quo is the non-regulatory option. Maintaining the status quo is not preferred as it does not meet the primary and secondary objectives. If a process is not set out as regulations the Minister will be unable to use the statutory powers to assign responsibilities for decisions under s 55(1) of the Biosecurity Act. The consequence of this is that parties could 'opt out' of taking responsibility for decisions on harmful organisms or pathways. Section 55(1) would remain an inactive provision that undermines the integrity of the Biosecurity Act.

OPTION TWO

Benefits of a process which meets the minimum requirements

This option would meet the requirement of s 55(2) of the Biosecurity Act. The process contains the minimum content requirements that are set out in s 165(5) of the Biosecurity Act. This includes criteria the Minister must follow when assigning responsibility, the type of consultation the Minister will undertake, and how the Minister communicates their decision. This process would give the Minister flexibility in determining how he or she would determine who to assign responsibility for a decision to.

Costs of a process which meets the minimum requirements

There is a wide range of variables and ambiguity each time the process is triggered as it lacks clear steps and criteria. Each time the process is undertaken it could have varied steps which undermines the Minister's decision.

Conclusion

This option would meet the primary objective but not the secondary objectives. It would not provide a comprehensive process and as a result there is a risk that the Minister's decision may be challenged in Court. The Minister would not have a mechanism to address conflicts of interest and parties may query what the Minister based his or her decision on.

OPTION THREE (PREFERRED)

In 2012 and 2013, MPI collaborated with stakeholders in the pest management system to develop the proposed content of the process contained in option three. These stakeholders included the Department of Conservation, Federated Farmers, Land Information New Zealand, and regional councils. The result was a proposed process that has two parts:

- a full process (see Appendix 1); and
- a truncated process for addressing urgent issues relating to a harmful organism (see Appendix 2).

Summary of the proposed process developed by MPI and stakeholders

The full process has six stages: application, MPI's preliminary advice to the Minister, consultation, MPI's final advice to the Minister, the Minister's assignment of responsibility, and public notification. The process in full detail is provided in Appendix 3. The following paragraphs identify the key aspects of the process.

Any person can trigger the process by making an application to the Minister when no one assumes responsibility or where debate between parties is taking too long to resolve. The Minister can either accept or reject the application. The Minister must then go through each stage of the process to determine the party or parties who are best placed to make a decision. These parties are likely to be those that are directly involved in pest management, including government agencies, regional councils, national pest management agencies, and industry groups.

The process provides guidelines to assist the Minister in:

- determining what the action is seeking to achieve (for example, eradication of a harmful organism and/or management of a high-risk pathway);
- determining whether collective or individual action is required;
- choosing an intermediate outcome for the issue;
- applying criteria to determine which party or parties should be assigned responsibility;
- consulting with affected parties; and
- ensuring an assignment is made and communicated to the party that are assigned responsibility and affected parties.

The Minister must select one or more intermediate outcomes from the National Policy Direction for pest management plans and programmes (when it is issued in 2015) for the issue. The proposed intermediate outcomes include:

- Exclusion: To prevent the establishment of the subject that is present in New Zealand but not yet established in an area.
- Eradication: To reduce the infestation level of the subject to zero levels in an area in the short to medium term.
- Progressive containment: To contain or reduce the geographic distribution of the subject to an area over time.
- Sustained control: To provide for ongoing control of the subject to reduce its impacts on values and its spread to other properties.
- Protecting values in places: The subject that is capable of causing damage to a place is excluded or eradicated from that place, or is contained, reduced, or controlled within the place to an extent that protects the values of that place.
- Pathway programme: For a pathway, in which the intermediate outcome is to reduce the spread of harmful organisms.

Where the Minister decides to assign responsibility to central or local government (s 55(3)), the Biosecurity Act requires them to make a decision on the appropriate response to an issue relating to a harmful organism or pathway within a specified timeframe. The process contained in option three (see Appendix 3) states that where responsibility is assigned to a private party (such as an industry group) they would be invited to make a decision and the Minister would suggest a timeframe for them to make a decision. If the private party rejects the role, the Minister would re-assign the role to those who are next best placed to make a decision. Usually it is in their interest to respond voluntarily and they would not need to be compelled to make a decision.

Benefits of implementing the proposed process as regulations

Setting out the proposed process as regulations will enable the Minister to use the statutory powers granted under s 55(1) of the Biosecurity Act. The Minister will be able to assign responsibility for a decision if they choose to do so. The existence of these powers are likely to drive better behaviours in the pest management system by encouraging parties to voluntarily take responsibility for making decisions on harmful organisms or pathways.

In most situations, lead accountability for a harmful organism or pathway will be identified in a pest or pathway management plan or small-scale management plan that has been developed and implemented under the Biosecurity Act. The Minister's role would encourage coordinated collective action where it is required and will provide leadership for issues that had previously not been addressed.

A positive effect is that established pest management issues that affect communities may be given direction by the Minister. The party assigned responsibility will be expected to make a decision and provide direction on what management action should be taken, such as the development of a pest or pathway management plan or small-scale management programme.

Addressing potential conflicts of interest

There might be a potential conflict of interest with MPI providing advice to the Minister on the issue. This is because MPI may be the party that is best placed to make a decision on a harmful organism or pathway. Conflicts of interest will be addressed by having the applicant and an independent non-MPI body with knowledge of biosecurity matters, such as the Biosecurity Ministerial Advisory Committee, reviewing and commenting on MPI's draft advice before it is provided to the Minister.

Flexibility for specific pest management issues

The proposed process is scalable so it is suitable for addressing pest management issues that vary in complexity and size. Because decisions on these issues can be complex and costly for the parties involved in the process, the process needs to be robust, comprehensive, and transparent. MPI anticipates that the majority of applications will be for established pest management issues that are not currently being addressed.

The process can be tailored to the public interest associated with the issue. For example, full public consultation can be undertaken if the issue is contentious or has impacts on wider communities. Targeted consultation can be undertaken if the issue affects only several individual property owners.

If the Minister considers an urgent issue in relation to a harmful organism or pathway he or she will use the alternative process to expedite stages of the process relating to the preliminary advice and public notification. The Minister will direct either MPI or another government agency or regional council to make a decision in the interim until the Minister has made a final decision on whom to assign responsibility to.

Criteria for applications to the Minister

Allowing the Minister to consider the full suite of pests presents a risk that recent decisions made by central government or regional councils are revisited. Along with this comes the associated disruption and cost of reviewing an existing pest or pathway management plan or small-scale management programme. To lessen this risk, the Minister may reject applications where:

- the harmful organism or pathway is currently subject to a pest or pathway management plan or small-scale management programme under the Biosecurity Act;
- a decision on the harmful organism or pathway has been determined within the last ten years and there is no compelling reason or justification to re-examine the issue;
- the harmful organism or pathway is not yet present in New Zealand; or
- the harmful organism, or organism spread through the pathway, is not considered to cause or be capable of causing significant adverse effects to one or more of the following (as stated in the Biosecurity Act):
 - economic wellbeing;
 - the environment;
 - human health;
 - enjoyment of the natural environment; and
 - the relationship between Māori, their culture, their traditions and their ancestral lands, waters, sites, wāhi tapu, and taonga.

Mitigation of consequences

Intended and unintended consequences of the Minister's assignment of responsibility will be mitigated by facilitating and coordinating the participation of affected parties. These parties will have the opportunity to provide a view on the issue prior to the Minister finalising his or her decision.

The proposed process incorporates specific recognition of Māori perspectives. The Minister must consult with Māori in cases where their interests are affected. The Minister will have discretion in whether he or she consults with a Māori advisory group, an iwi leaders group, or

a similar reference group as the Minister may prefer to consult with a specific iwi or hapū group if the issue relates exclusively to an area or region of New Zealand.

Costs of implementing the proposed process as regulations

Monetary costs to the Crown

There will be minimal monetary costs to the Crown as existing MPI resources will be used to oversee the process when it is triggered. MPI estimates that each time the process is undertaken it will cost the Crown no more than \$100,000. MPI will administer the process on behalf of the Minister, including developing advice, undertaking consultation, and publically notify affected parties.

The Crown would require the services of a non-MPI body to review and comment on MPI's advice to the Minister. As the process is more comprehensive than that set out in options two and four, it could be more time consuming due to the steps that must be followed.

Monetary costs to the parties assigned responsibility

There are potential costs for the parties' assigned responsibility as they would be expected to undertake management action, such as developing and delivering a pest or pathway management plan for the harmful organism or pathway. However, they cannot be coerced into taking management action as section 55 states that they are only required to make a decision.

If a party was not well placed to deliver, because it does not have the resources to do so (people, equipment or information), then it may negotiate with (and potentially sub-contract to) another party that is better placed to undertake management action. Where multiple parties are assigned responsibility, the responsibilities for delivery will need to be discussed between the parties. The parties' do not have statutory powers to compel other parties to undertake management action.

There might be ongoing costs for affected parties depending on subsequent decisions, such as costs associated with rules in plans. However, these plans will only proceed if there is a net benefit in doing so and draft plans are required to consult before they are finalised.

Quality of the Minister's decisions

A risk is that the Minister may not be fully informed and as a result the quality of his or her decision may be inadequate. This will be mitigated by the Minister receiving advice from MPI, the applicants, and a non-MPI body to ensure that the Minister is aware of the intricacies of the issue. Additionally, the Minister must follow each step of the process and take into account the views from affected parties who will be consulted on the issue.

Challenges to the Minister's assignment of responsibility

There is a risk that the Minister's decision would be challenged in Court. This could result in the process having to be repeated which could lead to further delays in responding to a harmful organism or pathway and involve litigation costs. However, any challenge may contribute to better decision-making in future situations.

Overlap with the Government Industry Agreement

The Government Industry Agreement (GIA) provides a coordinated approach to planning and response activities for incursions of risk organisms that are not established in New Zealand. There is a possibility that there will be an overlap between the planning and response activities of GIA activities and pest management. For example, the GIA proposes to respond to harmful organisms that are newly arrived or have established in New Zealand where there are new ways of eradicating or containing the organism, or the organism is behaving in new ways and can be eradicated.

In cases where the GIA Governance Group has decided that a response to an established organism would be better managed as part of pest management, they could either:

- discuss if any of the GIA parties, including MPI, would be best placed to make a decision on the organism; or
- if no parties wish to make a decision on the organism, request that the process for the Minister to assign responsibility for a decision be triggered; or
- if all parties could agree that no coordinated collective action is required and management is best left to individuals.

When a harmful organism has transitioned from an incursion being managed under the GIA to an organism that is to be managed as a pest management issue, the Minister may decide to assign responsibility for a decision on the management of the organism at that time.

Conclusions

This option would allow the Minister to exercise the statutory powers granted under s 55(1) of the Biosecurity Act. Enacting this section of the Biosecurity Act will address a gap in New Zealand's pest management system by ensuring that all significant pest management issues have a party that is responsible for undertaking decisions on their management.

Consideration of alternatives

MPI and stakeholders examined a number of options for who could assign accountability for decisions. These included a statutory committee, an independent party, or MPI's Director-General.

It was agreed that a statutory committee or independent party may not fully understand the breadth or specifics of the pest management issue. It is unusual for a committee or independent party to have statutory powers for determining accountability. It would have greater monetary costs for the Crown and may have resulted in less timely decisions because of the added complexity of working with a multi-party group. Having MPI's Director-General assign responsibility would not address the potential conflict of interest with MPI possibly being best placed to make a decision on the issue.

MPI and stakeholders recommended that the Minister, with advice from those with knowledge of biosecurity matters, would provide greater assurances in relation to potential conflicts of interest and consideration of the issue. It was also seen as a suitable fit with the Minister's role of providing leadership for the coordinated implementation of the Biosecurity Act.

OPTION FOUR

This option proposes a less comprehensive process for the Minister to assign responsibility for decisions as regulations. As with options two and three, setting out this process as regulations would enable the Minister to use the statutory powers granted under s 55(1) of the Biosecurity Act.

Benefits of implementing a less comprehensive process

This process would have fewer stages than the process set out in option three. The requirement for MPI to provide preliminary advice to the Minister will be removed so only final advice would be provided to the Minister. MPI's advice would not be provided to the applicant or a non-MPI body with knowledge of biosecurity matters for review or comment, which it would be in the process set out in option three. The main advantages are administrative efficiencies in that the process would be less time consuming for the Minister, MPI officials, and affected parties.

Costs of implementing a less comprehensive process

The removal of the step where the applicant and a non-MPI body review MPI's advice would not address potential conflicts of interest (where MPI is potentially a party that could be assigned responsibility). This was raised as an issue by submitters during public consultation on the proposed process set out in option three. It could lead to the Minister making a decision that is not fully informed by the affected parties or having advice that is biased. Additionally, the advice may not fully consider the potential impacts of a decision.

Conclusion

Although the process would fulfil the requirements of s 55(2) of Biosecurity Act, there is a risk with implementing a less comprehensive process that does not address conflicts of interest. This process also does not fulfil all of the secondary objectives and would not address urgent issues relating to a harmful organism or pathway.

Consultation

In 2013, MPI publically consulted on the proposed process for the Minister to assign responsibility for decisions that is set out in option three. A public consultation document entitled *Proposed Process for the Minister for Primary Industries to Assign Responsibility for a Decision on a Harmful Organism of Pathway* and a media release notifying of the consultation were published on MPI's website. Stakeholders were notified of the consultation via email. In addition, MPI held two meetings with submitters, which included government agencies, Federated Farmers, Forest and Bird, Horticulture NZ, Kiwifruit Vine Health, Kiwirail, and regional councils, to receive feedback on the process.

MPI received eleven submissions from organisations and individuals, including regional councils and unitary authorities, the Department of Conservation, the Ministry of Health, Kiwifruit Vine Health, TBFree New Zealand, Te Runanga o Ngāi Tahu, and Crown research institutes. All the submitters supported the proposed role for the Minister and the process to assign responsibility with minor to moderate amendments to its content.

Conflicts of interest were identified

The Department of Conservation, Kiwifruit Vine Health, the New Zealand Plant Protection Society, and regional councils raised the potential conflict of interest with MPI's advice to the Minister. Submitters stated that in some cases MPI may be the party best placed to make a decision on a harmful organism or pathway and this could present a conflict of interest when advising the Minister on the issue relating to a harmful organism or pathway.

MPI acknowledged that there was a potential conflict of interest and proposed to address it in two ways. The first is allowing the applicant to review and comment on MPI's advice prior to it being provided to the Minister. The second is requiring the Minister to address perceived conflicts of interest, which may include an independent review to ensure MPI's advice is balanced and fair. However, submitters did not consider these measures sufficient and MPI has made further proposals and strengthened them. The conflict of interest statement will be moved to an earlier stage of the process and includes a provision stating that a non-MPI body with knowledge of biosecurity matters, such as the Biosecurity Ministerial Advisory Committee, will review MPI's advice to the Minister.

MPI thought it was the appropriate body to monitor, evaluate and review the process for the Minister to assign responsibilities for decisions. Submitters suggested that a non-MPI body with knowledge of the biosecurity system would be more appropriate for the role. MPI agreed that a non-MPI body with knowledge of biosecurity matters, such as the Biosecurity Ministerial Advisory Committee, will be responsible for monitoring, evaluating and reviewing the process to ensure that it is functioning as intended.

Urgent issues relating to a harmful organism or pathway

Landcare Research, the Ministry of Health, and Te Runanga o Ngāi Tahu suggested that urgent issues relating to a harmful organism or pathway may need to be considered. They suggested that decision-making powers are assigned to a party in the interim until the Minister could assign responsibility for a decision on a more permanent basis.

In situations where the Minister considers that a pest or pathway management issue requires an urgent decision, the Minister will use an alternative process and will be allowed to expedite stages of the process. Where a harmful organism or pathway requires an urgent issue, the Minister will direct either MPI or another central or local government agency to make a decision on how to respond in the interim until the Minister has made a final decision on whom to assign responsibility to.

Responsibility assigned to private parties

Aquaculture New Zealand, Landcare Research, the Ministry of Health, and Te Runanga o Ngāi Tahu wanted private parties to be held to the same level of accountability as central or local government. If it is in a private party's interest to respond to a pest then they would do so voluntarily, therefore they usually do not need to be compelled to make a decision about what the appropriate management action is. However, there are situations where the party that is best placed to make a decision would be an industry organisation such as Kiwifruit Vine Health. Therefore, the Minister should still have the option to assign responsibility to a private party.

Conclusions and recommendations

Option one is a non-regulatory option. It is not seen as desirable, as the Minister would not be able to exercise his or her statutory powers to assign responsibility for a decision on a harmful organism or pathway.

Options two, three, and four are regulatory options. Each option sets out a process with varying steps and criteria. These options would enable the Minister to exercise statutory powers under s 55(1) and the Minister will be able to assign responsibility for a decision on a harmful organism or pathway if he or she chooses to do so.

All the options were assessed against the primary and secondary objectives and benefits and costs of each option. Based on this assessment, option three is preferred as the proposed process because it provides the most suitable content, fulfils the primary and secondary objectives, and fulfils sections 55(2) and 165(5) of the Biosecurity Act. The result is a comprehensive process that will enable the Minister to make an informed decision on who is best placed to make a decision on a harmful organism or pathway.

The content of the process was developed by MPI and stakeholders. As a result of this collaborative approach, both MPI and stakeholders are supportive of the proposed process set out in option three.

Setting out the process as regulations will not guarantee an outcome (as the Minister may decide not to assign responsibility; or the party assigned responsibility may not be legally obliged to undertake management action – i.e. the are a private entity). However, participants in the pest management system will have an incentive to make a decision on a harmful organism or pathway rather than having responsibilities imposed on them.

Implementation

The process for the Minister to assign responsibility for a decision on a harmful organism or pathway will be implemented as regulations under s 55(2) of the Biosecurity Act. The Minister will recommend the introduction of regulations to implement the new process. MPI anticipates that the regulations will be in place by mid 2015.

As noted previously, there are minimal monetary costs to the Crown associated with implementing the preferred option. It is anticipated that the Minister will rarely choose to assign responsibility for a decision as in the majority of cases a party or parties will have voluntarily taken responsibility for a harmful organism or pathway.

Once the regulations come into effect, MPI will be responsible for implementing and managing the process. MPI will also keep a public register of the Minister's decisions and subsequent decisions made by the party or parties that are assigned responsibility.

MPI will develop an implementation plan that will include providing appropriate support to the applicants and potentially affected parties (including the party or parties that may be assigned responsibility). This will include explaining the statutory responsibility of the assignment and the stages that the Minister will undertake as part of the process.

MPI will hold workshops with pest management stakeholders (if there is sufficient interest) to explain the process and will publish the process and supporting information on MPI's website. Both the regulations and MPI's website will detail what information needs to be included in an application to the Minister.

There are no substantive issues regarding the timing, transitioning, or phasing in of the regulations as they do not result in significant changes to other legislative instruments.

Monitoring, evaluation, and review

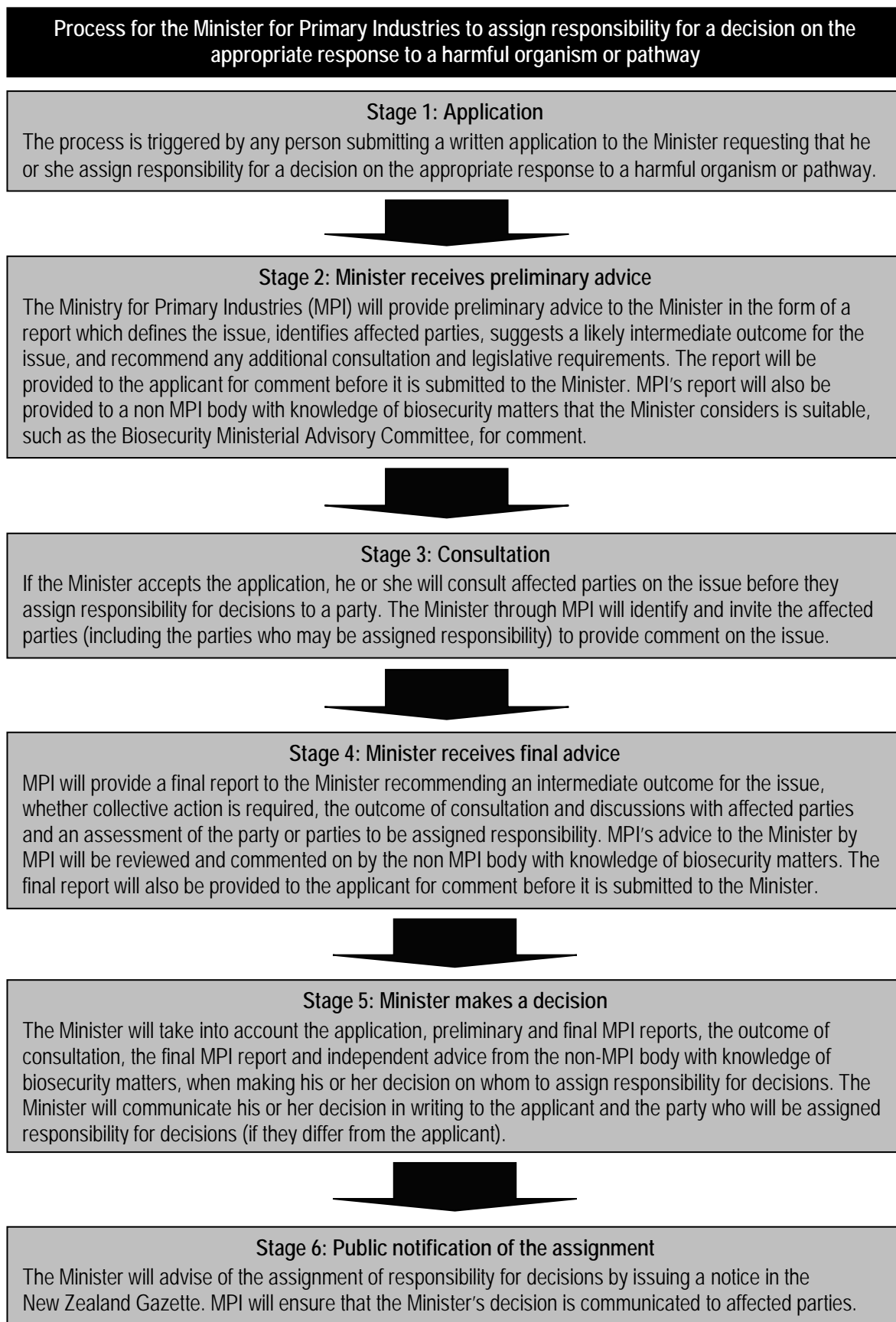
MPI will oversee and monitor the process once it is triggered by a successful application to the Minister. A non-MPI body with knowledge of biosecurity matters will be responsible for monitoring, evaluating, and reviewing the process to ensure it is functioning as intended. This may include a formal review to evaluate the process periodically, for example a review every three to five years.

MPI would work with the non-MPI body on the review. The review could be in the form of a report to the Minister evaluating whether the process achieves measurable success factors, including:

- whether the role and the process for the Minister fulfils its primary objective of ensuring that there is always a party that is responsible for making decisions on the management of a harmful organisms or pathway;
- whether responsibility for making decisions is assigned to those who are best placed to make a decision on the management of a harmful organism or pathway; and
- whether the process has given pest management participants certainty regarding which parties are responsible for lead accountability for pest management issues.

The review may also assess whether the process meets its primary and secondary objectives. The review could also assess various options to improve the process and include recommendations for fine-tuning the process to ensure that it continues to meet its objectives.

Appendix 1 – Summary of the full process in option three



Appendix 2 – Summary of the truncated process for urgent issues in option three

Process for the Minister for Primary Industries to assign responsibility for an urgent issue relating to a harmful organism or pathway

Stage 1: Application

The process is triggered by any person submitting a brief written application to the Minister requesting that he or she assign responsibility for a decision on a response to an urgent pest management issue. The applicant will need to state why the application should be considered as an urgent issue.



Stage 2: Minister assigns temporary responsibility

The Minister will direct either the Ministry for Primary Industries (MPI) or another suitable central or local government agency to make a decision on how to respond to the harmful organism or pathway of a harmful organism in the interim until the Minister has made a final decision on whom to assign responsibility to.



Stage 3: Consultation

If the Minister accepts the application, he or she will consult with affected parties on the issue before he or she assigns responsibility for decisions to a party. The Minister, through MPI, will identify and invite the affected parties (including the parties who may be assigned responsibility) to provide comment on the issue.



Stage 4: Minister receives advice

MPI will provide advice to the Minister on a likely intermediate outcome for the issue, whether collective action is required, the outcome of targeted consultation, comment from the applicant and a recommendation on the party or parties that are best placed to be assigned responsibility. The advice provided to the Minister by MPI is to be reviewed and commented on by a non MPI body with knowledge of biosecurity matters that the Minister considers is suitable, such as the Biosecurity Ministerial Advisory Committee.



Stage 5: Minister makes a decision

The Minister will take into account the application, the outcome of consultation, MPI's advice, and any independent advice from a non-MPI body that the Minister considers is suitable, when making his or her decision on whom to assign responsibility for the urgent pest management issue. The Minister will communicate his or her decision to the applicant and the party who will be assigned responsibility for decisions (if they differ from the applicant).

Appendix 3 – Full process and truncated process set out in option three

STAGE ONE: APPLICATION

The process will be triggered by any person submitting an application in writing to the Minister responsible for administering the Biosecurity Act 1993 (the Minister) requesting that he or she assign responsibility for a decision on a harmful organism or pathway.

The following information must be included in an application to the Minister:

- a. information about the applicant(s), including name(s) and contact details;
- b. identification of and information on the risks posed by the harmful organism or pathway;
- c. a brief explanation of:
 - i. the issue and the current state of the harmful organism or pathway;
 - ii. why there are grounds for the Minister to assign responsibility for a decision on a response to the harmful organism or pathway;
 - iii. the likely intermediate outcome for the issue, being one of the intermediate outcomes from the National Policy Direction for Pest Management Plans and Programmes;
 - iv. how collective action could improve the final outcome of the issue;
 - v. the parties who are affected or potentially affected by the harmful organism or pathway;
 - vi. a summary of any discussion that the applicant(s) may have had with affected or potentially affected parties on the issue;
 - vii. a list or attached copies of useful documents that could be used to inform the Minister; and
- d. The applicant(s) may suggest a party or parties that they think is best placed to be assigned the responsibility for making a decision on a harmful organism or pathway if they are not applying for the responsibility themselves.

If the initial application does not provide adequate information, the Minister will write to the applicant requesting that additional information is provided to ensure that an informed decision can be made.

STAGE TWO: MINISTER DETERMINES WHETHER TO PROGRESS THE APPLICATION

The Minister will receive advice from the Ministry for Primary Industries (MPI) on whether the Minister should begin the process of assigning responsibility or whether the Minister should reject the application based on the criteria set out below.

As a means of making an informed decision on whether to progress the application, the Minister will also form a view on:

- a. the likely intermediate outcome that a response to an issue relating to a harmful organism or pathway would be likely to seek to achieve; and
- b. whether collective action to manage the harmful organism or pathway could result in a better outcome than individuals acting alone.

Potential conflicts of interest

To address potential conflicts of interest where MPI is involved either as an applicant or as a potential recipient of the assignment the applicants will be provided with MPI's preliminary and final advice to the Minister for their review and comment and their views will be included in the advice. In addition, the preliminary and final advice provided to the Minister by MPI will be reviewed by a non-MPI body with knowledge of biosecurity matters that the Minister considers is suitable, such as the Biosecurity Ministerial Advisory Committee.

Criteria for the Minister to determine whether to begin the process of assigning responsibility or whether to reject an application for assigning responsibility

The Minister may reject an application to assign responsibility for a decision on a harmful organism or pathway where:

- a. the harmful organism or pathway is currently subject to a formal management plan or programme under the Biosecurity Act or other legislation;
- b. statutory responsibility for decision making on the harmful organism or pathway is already set out in legislation;
- c. the harmful organism is subject to a Government Industry Agreement made under Part 5A of the Biosecurity Act;
- d. a decision on the harmful organism or pathway has been determined within the last ten years and there is no compelling reason or justification to re-examine the issue;
- e. the harmful organism or pathway is not yet present in New Zealand; or
- f. the harmful organism, or organism spread through the pathway, is not considered to cause or be capable of causing significant adverse effects to one or more of the following:
 - i. economic wellbeing;
 - ii. the environment;

- iii. human health;
- iv. enjoyment of the natural environment; and
- v. the relationship between Māori, their culture, their traditions and their ancestral lands, waters, sites, wāhi tapu, and taonga.

Minister makes a preliminary assessment of the likely intermediate outcome

When considering a likely intermediate outcome for the issue, the Minister will have regard to whether the outcome would:

- a. be cost effective; and
- b. lead to a fair distribution of costs.

The Minister must select one or more of any intermediate outcomes from the National Policy Direction for Pest Management Plans and Programmes and options available under the Biosecurity Act. These options include developing a pest or pathway management plan or small-scale management programme. For a pathway for the potential spread of the organism, the harmful organism is the organism that is being spread by the pathway.

The party that is assigned responsibility for making a decision on a harmful organism or pathway will not be legally bound to adopt the intermediate outcome chosen by the Minister for their decision-making.

Urgent issues relating to a harmful organism or pathway

In situations where the Minister considers a pest or pathway management issue that requires due urgency, the Minister will be able to expedite stages of the process (refer to page eight, the process for the Minister to assign responsibility for an urgent issue relating to a harmful organism or pathway). For an urgent issue the Minister will direct either MPI or another government agency or local authority to make a decision on how to respond to the harmful organism in the interim until the Minister has made a final decision on whom to assign responsibility to.

Criteria for the Minister to determine if collective action is required

The Minister must apply appropriate criteria to determine whether collective action is the preferred option and that a party should be assigned responsibility for decisions on a harmful organism or pathway. Collective action refers to pest management activities that are undertaken with coordinated actions by more than one party, and may have a regulatory framework or formal agreement to ensure that each party contributes as intended.

The Minister will apply the following criteria against the likely intermediate outcome to determine whether collective action would result in better outcomes for an issue relating to a harmful organism or pathway:

- a. whether exclusion, eradication, progressive containment, or sustained control, protecting values in places or a pathway programme could be a feasible and desirable objective;

- b. whether the impacts of not intervening are likely to be irreversible and therefore there is a strong case for intervention, even when benefits only marginally outweigh costs;
- c. whether collective action would result in significantly increased efficiency of management;
- d. whether individual actions would result in an unfair distribution of costs; and
- e. whether effective management would require legal powers, such as powers under the Biosecurity Act.

MPI provides preliminary advice to the Minister

The Minister will receive preliminary advice from MPI in the form of a report which will:

- a. define the issue;
- b. identify, if possible, why the issue has not been resolved, and any systemic issues;
- c. identify the affected or potentially affected parties;
- d. identify potential funding for management action, including any funding constraints;
- e. set out a consultation process for the issue;
- f. inform the Minister of any legislation which affects pest management activities, other legislative requirements⁶ (such as the Crown's obligations to Māori under any of the Treaty Claims Settlement Acts), or any international agreements that need to be taken into account;
- g. provide advice on:
 - i. the likely intermediate outcome for a response to the harmful organism or pathway; and
 - ii. whether collective action is potentially desirable to manage the harmful organism or pathway.

MPI's preliminary report will be provided to the applicant(s) for review and comment before it is submitted to the Minister. The applicant(s) may provide further information to clarify any matters raised in MPI's report to the Minister.

The Minister will decide whether to progress or reject the application following consideration of the likely intermediate outcome for the issue, whether collective action is desirable, MPI's preliminary advice, and additional information from the applicant. The Minister will notify the applicant as to whether their application has been accepted or rejected.

⁶ Includes legislation which potentially affects the planning, execution, and criminal investigation of biosecurity responses, such as: the Biosecurity Act 1993, Hazardous Substances and New Organisms Act 1996, Resource Management Act 1991, Agricultural Compounds and Veterinary Medicines Act 1997, Animal Welfare Act 1999, Animal Products Act 1999, Conservation Act 1987, Reserves Act 1977, National Parks Act 1980, Marine Reserves Act 1971, Environment Act 1986, Fisheries Act 1996, Forests Act 1949, Health Act 1956, Health and Safety in Employment Act 1992, Local Government Act 2002, Wild Animal Control Act 1977, Wildlife Act 1953, Ngāi Tahu Claims Settlement Act 1998, and other Treaty Settlement Acts that have been passed into law.

STAGE THREE: CONSULTATION

If the Minister decides to progress the application he or she will be required to undertake consultation with the affected parties on the assignment of responsibility for a decision on a harmful organism or pathway.

The Minister through MPI will:

- a. identify and invite affected or potentially affected parties (including the party that may be assigned responsibility for a decision) to provide comment on the issue; and
- b. provide information and timeframes on the consultation process and maintain a written record of all consultation carried out.

The Minister may decide to set up a working group of selected individuals to provide comment on the issue if he or she considers that the situation requires such a group to be established to consider and advise the Minister on the matter. Consultation with any working group may be done on a case-by-case basis depending on the nature of the issue.

The Minister, through MPI, must consult with Māori in cases where Māori interests are affected. This may include consulting with a Māori advisory committee, an iwi leaders group, or a similar reference group.

STAGE FOUR: MINISTER RECEIVES FINAL ADVICE

The Minister will receive final advice from MPI in the form of a report which will:

- a. recommend a likely intermediate outcome for the issue;
- b. recommend whether collective action is required to effectively manage the harmful organism or pathway;
- c. inform the Minister of the outcome of consultation with affected parties, and summarise the views expressed during consultation, including any discussions held with affected parties, working groups, advisory committees, iwi leaders groups, or similar reference groups that were conducted as part of stage three of the process; and
- d. provide an assessment and recommendation on the party or parties that is best placed to make a decision on the appropriate response to the harmful organism or pathway.

MPI's final report will be provided to the applicant(s) for review and comment before it is submitted to the Minister. In addition, final advice provided to the Minister by MPI will be reviewed by a non MPI body with knowledge of biosecurity matters that the Minister considers is suitable, such as the Biosecurity Ministerial Advisory Committee.

Criteria for the Minister to determine who to assign responsibility for decisions

The Minister will have regard to the following criteria to determine which party or parties are best placed to make decisions on a harmful organism or pathway:

- a. which party or parties are best placed to achieve the potential intermediate outcomes for the harmful organism or pathway;

- b. which party or parties are accountable to the parties that are affected or potentially affected by the harmful organism or pathway, and/or which party or parties would benefit from its management;
- c. which party or parties has access, or can gain access, to any necessary regulatory powers and whether these can be delegated;
- d. which party or parties are best placed to make a sound decision about intervention; and
- e. any other matters that the Minister considers relevant.

Where a partnership approach is required for the issue, the Minister will determine whether a lead decision maker or joint leads would be accountable for making decisions on the appropriate response to the harmful organism or pathway.

STAGE FIVE: MINISTER MAKES A DECISION

The Minister will take into account the application, the preliminary and final reports from MPI, the outcome of any consultation with affected parties, comments from the applicant(s) on MPI's reports, and any independent advice from a non-MPI body with knowledge of biosecurity matters that the Minister considers is suitable.

The Minister must communicate his or her decision in writing to the applicant(s) and the party that will be assigned responsibility a decision (if it differs from the applicant).

Assignment of responsibility to a government agency or regional council

Where the Minister assigns responsibility for decisions to a government agency or regional council, the Minister's decision will be legally binding and the agency or council cannot re-assign the role to another party. The Minister may specify a timeframe in which the party must make a decision on the issue.

The government agency or regional council must provide formal notification to the Minister in writing of their decision on the harmful organism and pathway and the nature of the proposed management programme if the decision is that action is required.

Assignment of responsibility to a private party

If the Minister assigns responsibility for decisions to a private party, such as an industry organisation, they are not legally bound to make a decision.

If responsibility is assigned to a private party the Minister will write to the party or parties:

- a. inviting them to be the lead decision maker/s for the issue regarding the harmful organism or pathway and suggesting a timeframe for decisions; and
- b. requesting that the party or parties indicate whether they will accept or reject the role and the timeframe for when they must notify the Minister of this.

If the private party disagrees with the Minister's assignment, they may request that the Minister re-assign the role to another party.

STAGE SIX: PUBLIC NOTIFICATION OF THE ASSIGNMENT

The Minister will advise of the assignment of responsibility for a decision on a harmful organism or pathway by issuing a notice in the New Zealand Gazette. MPI will also notify the assignment by other means it considers appropriate and effective.

As MPI is the government agency that is responsible for facilitating national coordination and communication amongst those involved in pest management they will ensure that:

- a. the decisions made by the Minister are communicated to the affected parties; and
- b. a public register is made available of all the Minister's decisions and subsequent decisions made by the party or parties that are assigned responsibility is made available.

Process for the Minister responsible for administering the Biosecurity Act to assign responsibility for an urgent issue relating to a harmful organism or pathway

In situations where it is necessary for the Minister to consider an urgent issue relating to a harmful organism or pathway of a harmful organism, the process set out below will be used.

STAGE ONE: APPLICATION

The process will be triggered by any person submitting a brief written application to the Minister requesting that he or she assign responsibility for a decision on a response to an urgent pest management issue.

The process for an urgent issue relating to a harmful organism or pathway takes into account the same criteria set out in the process for the Minister to determine whether to begin the process of assigning responsibility or whether to reject an application for assigning responsibility.

The applicant will need to in their application to the Minister explain why the application should be considered as an urgent pest management issue, and the information set out in step a, b, and c i, ii, iv, and v. The following is a list of the information to be given under these steps:

- a. information about the applicant(s), including name(s) and contact details;
- b. identification of and information on the risks posed by the harmful organism or pathway;
- c. a brief explanation of:
 - i. the issue and the current state of the harmful organism or pathway;

- ii. why there are grounds for the Minister to assign responsibility for a decision on a response to the harmful organism or pathway;
- iii. how collective action could improve the final outcome of the issue; and
- iv. the parties who are affected or potentially affected by the harmful organism or pathway;

The applicant can also provide information set out in d. below:

- d. The applicant(s) may suggest a party that they think is best placed to be assigned the responsibility for making a decision on a harmful organism or pathway if they are not applying for the responsibility themselves.

If the initial application does not provide adequate information, the Minister will write to the applicant requesting that additional information is provided to ensure that an informed decision can be made.

STAGE TWO: MINISTER ASSIGNS TEMPORARY RESPONSIBILITY

This differs from the full process where the Minister determines whether to progress the application. For an urgent issue relating to a harmful organism or pathway, the Minister will direct either MPI or another suitable government agency or local authority to make a decision on how to respond to the harmful organism or pathway of a harmful organism in the interim until the Minister has made a final decision on whom to assign responsibility to. The Minister will use criteria to decide on whom to assign temporary responsibility to.

STAGE THREE: CONSULTATION

If the Minister accepts the application, he or she will conduct a targeted consultation process which will include consultation with affected parties on the issue before the Minister assigns responsibility for decisions to a party. In this stage the Minister, through MPI, will identify and invite the affected parties (including the parties who may be assigned responsibility) to provide comment on the urgent issue for a harmful organism or pathway.

STAGE 4: MINISTER RECEIVES ADVICE

MPI will provide advice to the Minister on a likely intermediate outcome for the urgent issue, whether collective action is required, the outcome of targeted consultation, comment from the applicant and a recommendation on the party or parties that are best placed to be assigned responsibility. This differs from the standard process where MPI provides advice in two stages, preliminary advice and final advice. For an urgent issue relating to a harmful organism or pathway, MPI will provide only final advice to the Minister. MPI's advice will be provided to the applicant for review and comment before it is submitted to the Minister. MPI's final advice is to be reviewed by a non-MPI body with knowledge of biosecurity matters that the Minister considers is suitable, such as the Biosecurity Ministerial Advisory Committee.

STAGE 5: MINISTER MAKES A DECISION

The Minister will take into account the application, the outcome of consultation, MPI's advice, and any independent advice from a non-MPI body that the Minister considers is

suitable, when making his or her decision on whom to assign responsibility for the urgent pest management issue. The Minister will communicate his or her decision to the applicant and the party who will be assigned responsibility for decisions (if they differ from the applicant).

The Minister will advise of the assignment of responsibility for a decision on a harmful organism or pathway by issuing a notice in the New Zealand Gazette. MPI will also notify the assignment by other means it considers appropriate and effective.