

# **Summary of Submissions:**

## **Targeted Stakeholder Engagement on Proposed Amendments to the Biosecurity (Infringement Offences) Regulations 2010**

### **Purpose**

This document provides a summary of submissions for stakeholder engagement on the proposal contained in “Biosecurity Infringement Offences – Proposed Amendment to Regulations to Address Non-Compliance in Border Pathways,” (Sub 18-0111).

This summary document includes:

- Background
- Engagement Process
- Summary of Responses: New Infringement Offences
  - Guidance Documents to be Provided
- Summary of Responses: Change to Prescribed Form
- Conclusion

### **Background**

The Minister for Biosecurity is proposing amendments to the Biosecurity (Infringement Offense) Regulations 2010. The amendments would:

- Specify three new infringement offences:
  - Operating or purporting to operate a transitional facility or a containment facility when the person is not approved as the operator of the facility; or the person does not comply with the operating standards for the facility.
  - Failure to provide advance notice of a craft’s intended arrival in New Zealand from a point outside New Zealand territory; and
  - Failure to provide a declaration setting out the steps taken to comply with an applicable craft risk management standard or craft risk management plan.
- Set infringement fees of \$400 where an offender is an individual natural person and \$800 in any other case (e.g. if an offender is a body corporate).
- Remove the current requirement for a serving officer’s full name to be provided on an infringement notice and replace it with a requirement for the officer’s ‘name or identifying number.’

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

Due to the narrow impact of this proposal, and in accordance with the Minister for Biosecurity’s requirements under section 164D of the Biosecurity Act, officials engaged with a targeted group of stakeholders on the proposed new infringements, rather than conducting a full public consultation. The opinions and concerns of impacted parties have been heard and incorporated into the proposal.

## **Engagement Process**

In August 2018 a letter was sent to over 4,000 unique impacted stakeholders, outlining the proposed changes and inviting engagement with Biosecurity New Zealand by:

- Email,
- Meeting or phone call, and
- Open stakeholder forums in Auckland on 28 August and in Christchurch 19 September, 2018

MPI received over 100 submissions through email and one-on-one meetings. A further approximately 260 industry representatives attended open stakeholder meetings on this proposal and other topics of interest to the cargo industry.

The proposal received broad support as a necessary and appropriate move to enforce biosecurity requirements at the border. About 86% of responses expressed support or were neutral on the proposals. Questions and concerns focused primarily on implementation details, and were responded to by the Border and Biosecurity Systems Policy team.

Targeted Consultation period: 17 <sup>th</sup> Aug – 19 <sup>th</sup> Sep 2018		
104 submissions: <ul style="list-style-type: none"><li>• 85 by email</li><li>• 17 by meetings</li></ul> And 2 meetings, attended by approximately 260 stakeholders	Submissions From: <ul style="list-style-type: none"><li>• Transitional Facility Operators</li><li>• Containment Facility Operators</li><li>• Cargo industry groups</li><li>• Cruise lines and industry groups</li><li>• Quarantine Officer Unions</li><li>• Others</li></ul>	Responses: <ul style="list-style-type: none"><li>• Positive/Support changes: ~38%</li><li>• Neutral/Ask questions: ~48%</li><li>• Negative/Express concerns only: ~14%</li></ul>

## **Summary of Responses: New Infringement Offences**

### **Support Provided**

Approximately 38% of responses received were exclusively supportive of the proposal for new biosecurity infringement offences. This feedback focused on three points:

1. **Biosecurity is important for New Zealand**

Many responses submitted expressed an understanding and agreement that strengthening biosecurity is an important goal.

2. **Transitional and containment facilities have an important role in the Biosecurity System**

Respondents also acknowledged their industry's role in the Biosecurity System, noting that transitional and containment facilities can present risks which should be managed effectively.

3. **The risk of an infringement would be effective at deterring non-compliance**

Stakeholders agreed that an ability for Biosecurity New Zealand to issue infringement notices would be an effective tool for encouraging compliance.

## Other Areas of Support

Select additional feedback is included below, with the number of respondents submitting each sentiment in parenthesis.

- “Fees work” as an incentive (5)
- The proposal is “fair” (4) and a good/“great idea” (4)
- Additional measures that could be taken, including for example:
  - Offering continuous improvement training opportunities for Accredited Persons,
  - Increasing monitoring for subsequent shipments after a non-compliance event, and
  - Revoking operator approval as a result of non-compliance

## **Concerns Expressed**

Almost half of the responses received were neutral to the proposal and requested further information or guidance about implementing the new enforcement measure. The third group of responses, approximately 14%, expressed concern or dissatisfaction about the proposal and almost all asked questions about how it would work.

Among respondents, three primary concerns were expressed. They focused on the single theme of regulatory certainty; that is, industry participants want to know what to expect.

### 1. Clarity is needed on what non-compliance would result in an infringement fee

The primary question asked was which behaviours would result in an infringement fee. It is important to stakeholders that they know which behaviours will result in a fee, and they therefore asked for clear rules be communicated to them.

Some submitters expressed concern over an initial case of minor non-compliance resulting in a fee, which is deemed to be a disproportionate enforcement measure. However, support was expressed for fees resulting from more serious non-compliance, and particularly repeated events of non-compliance.

### 2. Assignment of liability should be defined

Submitters were interested in who would be liable for an infringement offence. For example, in the case of a transitional or containment facility, whether an infringement would be issued to the Approved Operator or to the organisation that owns the facility. Submitters also asked if all of their staff could be liable, as opposed to the Approved Operator only.

### 3. Application of infringement fees should be consistent

Some submitters expressed concern about different officers applying the proposed infringement offences consistently. They sought assurance that fees will not be arbitrarily applied and that they will know what to expect from quarantine officers during verification inspections so they can adequately prepare.

## Other Concerns

A small minority of submissions expressed concerns about other matters. Some are unrelated to the proposal. Oppositions raised relevant to the proposal are below, with the number of respondents submitting each sentiment in parenthesis.

- The proposed fees are too low (6) or too high (2)

- The proposal has a disproportionate impact on small businesses (3)
- Individuals (e.g. Accredited Operators) should not be liable for actions taken on behalf of their employer (3)
- Fees do not work to influence behaviour (1)

### **Guidance Documents to be Provided**

As a result of the targeted stakeholder engagement conducted, Biosecurity New Zealand will develop a set of guidance documents taking into account stakeholder feedback.

One guidance document will contain internal operational guidelines for staff, to aid compliance and enforcement decisions, and to illustrate clearly how the new infringement offences will sit alongside and complement existing enforcement tools.

Additional guidance documents will be provided to transitional facility operators in the near term and to containment facility operators in the future. Intended implementation is consistent with the way stakeholders suggest the proposal be applied, for example targeting fees towards critical, major, and repeated minor non-compliance.

Infringement notices will be one tool added to the current enforcement toolbox, rather than a blanket way to address any and all issues. Communicating these plans to industry stakeholders is expected to relieve the majority of concerns communicated by submitters.

The guidance documents will address a number of questions demonstrated to be of concern to stakeholders, such as:

1. For what infringement offences is a fee likely to be issued?
2. When is an infringement offence likely to be attributed to an individual and when to the organisation?
3. How do the infringement offences fit into the current enforcement process?
4. What defences and appeal processes are available?
5. How will consistent application be supported?

### **Summary of Responses: Change to Prescribed Form**

Three responses were received from stakeholders affected by the change proposed to the prescribed form for infringement notices, including the New Zealand Public Services Association and the Border Ops Association. All responses were in favour of the change.

Additional related areas of consideration were also raised in these submissions, highlighting associated non-regulatory changes to ensure the privacy and safety of Biosecurity New Zealand's front line staff is protected.

### **Conclusion**

The high level of engagement on this proposal highlights the participatory relationship that has been developed between Biosecurity New Zealand and regulated parties. The targeted engagement process successfully reached impacted stakeholders and resulted in meaningful communication.