Regulatory Impact Statement: Primary Industries Regulatory Systems Amendment Bill

Coversheet

Purpose of Document	
Decision sought:	*Analysis produced for the purpose of informing Cabinet's decision to approve drafting of the proposed Bill.*
Advising agencies:	*Ministry for Primary Industries*
Proposing Ministers:	*Minister of Agriculture*
Date finalised:	

Problem Definition

Legislation the Ministry for Primary Industries (MPI) and its branded business units[1] administers contains minor errors, duplication, gaps, and inconsistencies. These legislative defects can create inefficiencies within government, unrequired costs and delays for regulated parties, confusion around the intent of legislation, and legal risk. While these are not significant enough to warrant specific amendment Bills, they are often unsuitable for Statutes Amendment Bills.

Executive Summary

1. Accumulation of minor errors and out of date regulation reduces the effectiveness and efficiency of the regulatory systems MPI is responsible for. Minor amendments are required to remove impediments to the purpose of the Acts/legislation.
2. Issues of the size considered in this Bill will not cause a major regulatory system failure but will result in sub-optimal performance.
3. The status quo is to continue operating with the operating with the minor issues caused by these defects. Resolution of these issues may eventually come via the inclusion of remedying amendments in bills written for larger amendments to a specific Act. However, many years can elapse between Act-specific amendment bills. Additionally, there is no guarantee that the minor amendments will fit within the scope of major Act-specific amendment bills.
4. The proposed option is a Regulatory Systems Amendment Bill that provides for multiple minor amendments to multiple MPI Acts. The impact of each amendment is small in isolation, but collectively, they will remove administrative burden, reduce risk of localised legislative failure, and make it easier for businesses to operate across the systems MPI is responsible for.

[1] MPI's four branded business units were established on 30 April 2018: Fisheries New Zealand, Forestry New Zealand, Biosecurity New Zealand and New Zealand Food Safety. Another was added in July 2019: Agriculture and Investment Services. MPI is the host agency for these business units.

5. To be eligible for inclusion in the PIRSA Bill, MPI has considered amendments that meet the criteria of being non-contentious, minor or technical, and not significant enough to warrant public consultation in and of themselves.

6. This Regulatory Impact Statement (RIS) directly addresses 25 of the 127 issues identified for legislative amendments[2]. Although minor, MPI considers that these issues have more perceptible policy implications than the remaining issues that are of a more minor or technical nature.

Limitations and Constraints on Analysis

7. Proposed amendments serve to update and repair legislation in line with its original intent and function. Analysis of new policy outcomes was not required.

8. Proposed amendments must be non-contentious, minor or technical, and not significant enough to warrant public consultation.

9. The quality of evidence in developing this proposal is sound. Proposals have originated from officials who either directly encountered or had to confront risk arising from flaws in the legislation.

10. Due to the unusual features of this RIA, (i.e., that it covers 23 minor and distinct changes to a range of different Acts), a full analysis of the costs and benefits of each of the 25 issues is not feasible.

Responsible Manager(s) (completed by relevant manager)

Stephanie Preston

Director Branch Strategy Capability & Support

Ministry for Primary Industries

7 April 2022

[2] See appendix 1 for a full list and description of individual amendments proposed in the Bill.

Quality Assurance (completed by QA panel)	
Reviewing Agency:	MPI
Panel Assessment & Comment:	The MPI Regulatory Impact Analysis Panel (RIAP) has reviewed the Regulatory Impact Statement "Primary Industries Regulatory Systems Amendment Bill" produced by the Ministry for Primary Industries. The review team considers that the RIA partially meets the Quality Assurance criteria. The Quality Assurance panel is satisfied that, due to the minor nature of the proposals, full public consultation was not required, and where necessary, targeted stakeholder consultation was undertaken. In addition, the public will be provided an opportunity to comment through the normal parliamentary process. The RIA is clear and concise. However, the Panel considers the analysis of costs and benefits and the description of monitoring and implementation for each proposal could be developed further. The Panel notes the unique features of this RIA, in that it contains 25 minor and unrelated changes to multiple Acts. This means that, for each of the proposals, a full analysis of all relevant costs and benefits and specific monitoring and implementation arrangements outside general review processes applying for the different underlying Acts may not be possible. Where relevant, costs and benefits and implementation and monitoring arrangements could be analysed more deeply further along the policy process.

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

11. Regulatory Systems Amendment Bills respond to the Productivity Commission's 2014 report 'Regulatory Institutions and Practices' which identified that it is difficult to find time on the Parliamentary calendar to undertake 'repairs and maintenance' on existing legislation. If minor defects to legislation are left to accumulate unrepaired, inefficiencies within government, unwarranted costs and delays for regulates parties, confusion around the intent of legislation, and legal risk will begin to emerge with greater frequency. Regulatory System Bills serve to address the past accumulation of these minor defects.

12. These bills also support government agencies to meet their regulatory stewardship obligations under the Public Service Act 2020.

13. MPI has decided to use Regulatory System Amendment Bills as a vehicle to make minor amendments to the Acts it administers. MPI has identified eligible amendments to the following Acts:

- Agricultural Compounds and Veterinary Medicines Act 1997
- Animal Products Act 1999
- Animal Welfare Act 1999
- Biosecurity Act 1993
- Climate Change Response Act 2002
- Commodity Levies Act 1990
- Dairy Industry Restructuring Act 2001
- Fisheries Act 1996
- Food Act 2014
- Forests Act 1949
- Kaikoura (Te Tai o Marokura) Marine Management Act 2014
- National Animal Identification and Tracing Act 2012
- Walking Access Act 2008
- Wine Act 2003

What is the policy problem or opportunity?

14. Over time small errors in legislation are discovered or emerge with changes to the operational landscape. This in turn causes the legislation to lose efficiency, impede opportunities for regulated parties, and cause confusion around the intent of the legislation. These errors are often too minor to require a dedicated amendment Bill, but significant enough to disqualify them for inclusion in a Statutes Amendment Bill.

15. MPI has identified small errors and opportunities to modernise the legislation it administers which do not fit within the criteria of a Statutes Amendment Bill. These

require fixes that MPI considers are either technical, minor or non-contentious. Addressing these issues will increase the effectiveness and efficiency of the regulatory system.

16. Standing Order 263(a) provides that an omnibus bill to amend more than one Act may be introduced, if the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy. The small errors and opportunities to modernise the legislation exist across legislation, and the PIRSA Bill is the outcome of a policy to undertake the necessary repairs and maintenance to address these errors.

17. With input and advice from other agencies, MPI has identified 25 proposed amendments that warrant being addressed individually through the RIA process. The regulatory impacts of each amendment have been assessed against the following headings:

    a. What is the policy problem or opportunity?
    b. What objectives are sought in relation to the policy problem?
    c. What criteria will be used to compare options to the status quo?
    d. What options are being considered?
    e. How do the options compare to the status quo/counterfactual?
    f. What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?
    g. What are the marginal costs and benefits of the option?
    h. How will the new arrangements be implemented?
    i. How will the new arrangements be monitored, evaluated, and reviewed?

What objectives are sought in relation to the policy problem?

18. The overarching policy objectives are to:

- **Objective 1** - Clarify and update statutory provisions to give effect to the intended purpose of the Act and its provisions and keep the regulatory system up to date and relevant.
- **Objective 2** - Provide a vehicle to maintain the effectiveness and efficiency of regulatory systems and to reduce the chance of regulatory failure.
- **Objective 3** – Ensure the regulatory system produces equitable outcomes for regulated parties.

Section 2: Deciding upon an option to address the policy problem

What criteria will be used to compare options to the status quo?

19. Options will be assessed against three criteria:

Original policy intent

This is the ability to deliver the policy outcomes intended by the legislation. This criterion will consider the interpreted or implied meaning of legislation in relation to its intent. It may also assess the capacity to carry out the original aim of the legislation against its original specifications. For example, the effect of specified communication methods as technological change introduces obsolescence, stymies adoption of newer cheaper technologies, and imposes costs on regulated parties.

Efficiency

Efficiency will be measured by the time and resourcing required to achieve specified outcomes by both government entities and regulated parties. This will be measured by the change in outcomes excluding compliance costs, versus the change in resources required to apply and comply with the regulation. Often the amendments will leave the regulatory outcomes excluding compliance costs for regulated parties unaltered and make the administration less onerous for government or regulated parties. Alternatively, a net benefit to the operating environment for industry will occur with little change to resourcing associated with the regulation. The amendment to the *Agricultural Compounds and Veterinary Medicines Act 1999* is one such example.

Equity

Equity refers to degree in which fair and reasonable outcomes could be achieved by the options. This could include the capacity to deliver just penalty regimes under legislation. It may also assess the risk of undue harm or burden on regulated parties.

What scope will options be considered within?

7. Amendments included in the Bill must be non-contentious, minor or technical, and not significant enough to warrant public consultation.
8. The Bill is a response to the Productivity Commission's July 2014 report, *Regulatory institutions and practices*, and as such, conducts 'repairs and maintenance' of existing legislation. Amendments which would create new or unforeseen parts of legislation, however minor, are out of scope.
9. MPI considers that the scope of all options reflects these constraints.

How will the outcomes of the chosen option be monitored, evaluated, and reviewed?

8. Amendments included in the Bill are minor, technical and MPI considers them non-contentious. Each amendment represents adjustments to existing procedures and the regulatory framework. Options considered in this RIS are not expected to result in significant changes to the operations of regulated parties or regulators. Feedback will be collected as necessary and addressed through normal compliance and monitoring activities.

What options are being considered?

Agricultural Compounds and Veterinary Medicines Act 1999

Proposed Amendment to section 2(2) of the Agricultural Compounds and Veterinary Medicines Act 1999

<table>
<tr><td>Proposal context</td><td colspan="2">Section 2(2) of the Agricultural and Veterinary Medicines Act 1997 empowers additional substances to be declared to be an agricultural compound by Order in Council. Currently it does not clarify that the intended purpose or use of those substances, mixtures of substances, or biological compounds are also to be declared. This is a problem because substances with applications beyond the agriculture sector can be subject to regulations which are not appropriate for their use outside the agriculture sector.</td></tr>
<tr><td>What options are being considered?</td><td colspan="2">Status Quo: The Governor-General has the ability to declare a substance to be an agricultural compound, but not with respect to its purpose or use. This could lead to inappropriate classification of substances with multiple use applications and limits flexibility to regulate in the future new or emerging purposes or uses of a substance.

Option 2: Amend section 2(2) to clarify the ability to declare a substance, mixture of substances or biological compound used or intended to be used on plants or animals by Order in Council in relation to the intended purpose or use.</td></tr>
<tr><td>Analysis of options against criteria. *

* key for qualitative judgements:
++ much better than doing nothing/the status quo/counterfactual
+ better than doing nothing/the status quo/counterfactual
0 about the same as doing nothing/the status quo/counterfactual
- worse than doing nothing/the status quo/counterfactual
- - much worse than doing nothing/the status quo/counterfactual</td><td>Option 1 (Status Quo)

Original policy intent: 0

Maintaining the status quo means that declarations of particular substances can create unforeseen implications beyond the primary sector, as substances can have uses outside of agriculture.

Efficiency: 0

The inability to declare substances with respect to their purpose or use limits the current powers from targeting specific activities directly. It can also lead to unnecessary restrictions on multiple purposes or uses of the same substance.

Equity: 0

Misapplication of agricultural compounds of substances may create undue risk.</td><td>Option 2

Original policy intent: +

Option two reflects the fact that a declaration of substances under the ACVM can be with respect to their purpose or use. The potential diversity of applications for any given substance mean that this could not be otherwise achieved.

Efficiency: +

Enabling declarations of substances as agriculture compounds based on their purpose or use will ensure future flexibility and not inadvertently permit harmful practices.

Equity: +

Appropriate use of agricultural compounds of substances reduces the likelihood of the community being subject to undue risk from compounds and substances.</td></tr>
<tr><td>What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?</td><td colspan="2">Option 2 would ensure the Governor-General has the power to declare any substance, mixture of substances or biological compound used or intended to be used on plants or animals by Order in Council in relation to the intended purpose or use of the substance. If the section remains unchanged, the Agriculture Compounds and Veterinary Medicines Act regime will be limited to respond to new or emerging uses of substances and creates risks of substances being used for unsafe purposes, or subject to unnecessary regulation.</td></tr>
<tr><td>What are the marginal costs and benefits of the option?</td><td colspan="2">Costs: Resources allocated to updating procedure.

Benefits: Provides greater flexibility to respond to new or emerging substances and their purpose or use. This is expected to remove some of the regulatory burden on companies trying to use new compounds and substances for productive and safe purposes.</td></tr>
<tr><td>How will the new arrangements be implemented?</td><td colspan="2">No implementation required as the section is an enabling provision.

All changes will be monitored in accordance with MPI's regulatory stewardship obligations, under the review and monitoring processes that already apply for the underlying Act.</td></tr>
</table>

Animal Products Act 1999

Proposed Amendment to the Animal Products Act 1999 to create a new provision about the use of an approved item and empower the approval of that item by a notice AND; create a new provision to empower regulations about approved items

<table>
<tr><td>Proposal context</td><td colspan="2">Currently under section 291(1) of the Food Act 2014, if regulations or notices require the use of a particular document, material, or facility, or persons or classes of persons then the Director-General can approve those matters by notice. Further, section 386 of the Food Act 2014 empowers regulations setting the criteria that the Director-General must take into account before issuing a notice to approve one of the above matters. The equivalent provision does not exist in the Animal Products Act 1999 (APA). Including these amendments would allow MPI to, for example, require the use of an approved document, an approved sampling technique, training course, or approved laboratory. To take one example, in some instances MPI would like to require the completion of a National Micro-organism Database (NMD) sampler training course taught by trainers who are certified to provide this training. Criteria for course composition, those required to obtain the certification, trainer certification etc. would need to be set by regulations. Without the ability for Director-General to approve the use of a training course and the ability to set associated regulations under the Animal Products Act 1999, it has been difficult to mandate such a training course under the existing legislation which does not provide adequate mechanisms to adopt and regulate new items such as training courses.

The current legislation is a problem because, unlike other MPI Acts, it does not provide for the ability to require the necessary documents, material, facility, persons or classes of persons, or other such items in connection to the varied processes regulated by the Animal Products Act 1999. This does not allow for regulations which are suitably adapted to specific processes.</td></tr>
<tr><td>What options are being considered?</td><td colspan="2"><u>Status Quo:</u> The Director-General cannot approve certain documents, material, facilities, persons or classes of persons under the APA meaning there are less regulatory tools available to manage food safety outcomes and respond to the diverse and varied situations under the APA.

<u>Option 2:</u> Create a new provision that allows the Director-General to approve documents, materials, facilities, persons or classes of persons, and empower the approval of those things, and create new provision to empower regulations about approved documents, materials, or facilities, or persons or classes of persons.</td></tr>
<tr><td rowspan="2">Analysis of options against criteria. *

* key for qualitative judgements:
++ much better than doing nothing/the status quo/counterfactual
+ better than doing nothing/the status quo/counterfactual
0 about the same as doing nothing/the status quo/counterfactual
- worse than doing nothing/the status quo/counterfactual
- - much worse than doing nothing/the status quo/counterfactual</td><td>Option 1 (Status Quo)

<u>Original policy intent:</u> 0

It was intended that the Director-General could approve and regulate certain documents, material, facilities, persons or classes of persons. This is necessary to the application of the regulatory system across the Animal Products Sector. Similar powers are granted under the Food Act 2014 and their omission in the APA was an oversight.

<u>Efficiency:</u> 0

The inability to approve and regulate certain documents, material, facilities, persons or classes of persons under the APA means reduced flexibility and tools to respond and manage diverse and varied situations in the food regulatory system, which could lead to inefficient processes being applied.

<u>Equity:</u> 0

Regulated parties may incur losses due to inefficient approval mechanisms.</td><td>Option 2

<u>Original policy intent:</u> +

Option 2 corrects the omission of these powers from the APA. These powers are envisaged in the application of the APA and would make the Act consistent with the Food Act 2014.

<u>Efficiency:</u> +

Option 2 will provide MPI with more regulatory tools to respond to the diverse and varied situations in the food regulatory system.

<u>Equity:</u> 0

Regulated parties will incur fewer losses due to inefficient approval mechanisms.</td></tr>
<tr><td colspan="2">What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?</td><td>Option 2 corrects a drafting oversight and introduces powers envisaged by the food regulatory system. Enabling MPI to approve documents, materials, or facilities, persons or classes of persons provide more regulatory tools to respond to the food system and can remove unnecessary process in the application of existing regulation.</td></tr>
</table>

What are the marginal costs and benefits of the option?	Costs: Resources allocated to updating procedure. Benefits: MPI will have more tools available to manage food safety outcomes and respond to the diverse and varied situations in the food system. There will be reduced delays for businesses caused by less efficient processes that are currently needed to regulate certain documents, material, facilities, persons or classes of persons.
How will the new arrangements be implemented?	No implementation is required as the provisions would be enabling provisions to add more tools to the regulatory toolbox under the APA. Any new regulatory requirements about approved documents, materials, or facilities, persons or classes of persons would undergo usual public consultation processes. All changes will be monitored in accordance with MPI's regulatory stewardship obligations, under the review and monitoring processes that already apply for the underlying Act.

Animal Welfare Act 1999

Withdrawal of services for non-payment of debt owed to MPI under the Animal Welfare Act 1999

<table>
<tr><td>Proposal context</td><td colspan="2">Under the Animal Products 1999 and Food Act 2014, MPI may withdraw services for non-payment of debt owed to MPI. The Animal Welfare Act 1999 does not have equivalent provisions which means MPI must continue to provide services even to those who are in debt to MPI. The problem is that this undermines the disincentive structure around avoidance of financial obligations and leads to inappropriate and wasteful provision of services.</td></tr>
<tr><td>What options are being considered?</td><td colspan="2">Status Quo: MPI remains obliged to provide services to those who do not re-pay debt to MPI.

Option 2: Provide for the ability for MPI to withdraw services for non-payment of debt.</td></tr>
<tr><td>Analysis of options against criteria. *

* key for qualitative judgements:
++ much better than doing nothing/the status quo/counterfactual
+ better than doing nothing/the status quo/counterfactual
0 about the same as doing nothing/the status quo/counterfactual
- worse than doing nothing/the status quo/counterfactual
- - much worse than doing nothing/the status quo/counterfactual</td><td>Option 1 (Status Quo)

Original policy intent: 0

It was not intended for MPI to provide services indefinitely despite outstanding debts.

Efficiency: 0

Resolution of non-payment requires the use of alternatives measures. These may be less effective and require more resourcing on MPI's behalf.

Equity: 0

Appropriate recourse for avoiding obligations is more difficult to achieve.</td><td>Option 2

Original policy intent: +

It was envisaged that MPI have recourse to withhold services for non-payment. This is a necessary measure which is permitted in other legislation under similar circumstances.

Efficiency: +

Without the ability to withhold services for non-payment, MPI must find other ways to incentivise payment. It can also mean that services are provided were there should not be any obligation to do so.

Equity: +

Withdrawal of services for non-payment is necessary to the disincentive structure for financial obligation avoidance. Without this ability, the legislation lacks fairness and equity for those who do comply.</td></tr>
<tr><td>What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?</td><td colspan="2">Option 2 brings the legislation in line with the Animal Products Act 1999 and the Food Act 2014. The ability to withdraw services for non-payment of debt is an implied and assumed business model. Making this power explicit will reduce confusion. Ensuring proportionate punitive measures are available will also ensure that the regulatory system is less exploited and subsequently more equitable.</td></tr>
<tr><td>What are the marginal costs and benefits of the option?</td><td colspan="2">Costs: Cost recovery under the Animal Welfare Act 1999 is provided for under the Animal Welfare (Cost Recovery) Regulations 2015. Activities that are cost-recovered include the issuing of Animal Welfare Export Certificates and the Veterinary Inspector time associated with processing those certificates.

MPI anticipates that option 2 will not incur any additional costs to MPI other than administrative costs associated with notifying an individual as to the withdrawal of services. In instances where the withdrawal of a service incurs a cost to MPI, MPI may recover any reasonable amount for the additional service, function, or costs as a debt due from the person who owns or is responsible for the operation concerned. MPI anticipates that individuals from whom MPI withdraws services may incur additional cost if the withdrawal results in a failure to operate their business and subsequent loss of export revenue.

Benefits: Individuals exporting live animals from New Zealand must meet obligations under the Animal Welfare Act 1999 and Animal Products Act 1999. However, currently MPI is only able to withdraw services for non-payment of fees under the Animal Products Act. The proposal will reduce the likelihood of a legal challenge to any service withdrawal in instances where the Animal Products Act does not apply, e.g., dogs and cats to the USA, and increase the chance of people paying their debts to MPI.</td></tr>
</table>

How will the new arrangements be implemented?	The Animal Products Act (1999) s123(3) and the Food Act (2014) s(217) allow that services may be withdrawn where any fee / levy / charges have not been paid after a person has been given notice. It is anticipated that the arrangements would be implemented in a similar way under the Animal Welfare Act 1999. All changes will be monitored in accordance with MPI's regulatory stewardship obligations, under the review and monitoring processes that already apply for the underlying Act.

Add a new subsection to section 36 (Obligations relating to traps) of the Animal Welfare Act 1999 specifying the maximum fine ($900) a person is liable for on conviction with respect to an offence under section 36(1)

Policy context	Section 36 (*Obligations relating to traps*) of the Animal Welfare Act 1999 sets out obligations to inspect traps used to catch animals. It requires trappers to inspect their live-capture traps daily to minimise harm to the trapped animal. Failure to inspect a live-capture trap is an infringement offence under section 36(3). The infringement carries a $300 infringement fee under the Animal Welfare (Care and Procedures) Regulations 2018. Unlike all other offences in the Act, this infringement offence does not carry a maximum fine that the courts can impose. All infringement offences must specify a maximum infringement fine. The maximum fine provides guidance to the Court on an appropriate penalty to impose in situations where: • MPI lays charges before the Court instead of issuing an infringement notice; or • a person appeals an infringement notice in Court. The problem is that the absence of this maximum fine restricts a court's ability to apply a penalty for the infringement offence. If a person disputes an infringement or MPI files court proceedings, it is likely that the Court would determine that it did not have the authority to impose a penalty. If the Court is unable to impose a penalty, MPI's ability to take action against offenders is limited.	
What options are being considered?	Status Quo: There remains no maximum fine for offences under this section. Option 2: Specify a maximum fine, consistent with penalties for offences of similar severity under the Animal Welfare Act 1999, that a person is liable for on conviction with respect to an offence under section 36(1). The intention is for a breach of section 36(1) to ordinarily be dealt with as an infringement offence. In this case, the maximum fine amount would be $900. This reflects the categorisation of the offence as one which causes 'mild short-term harm' and would be congruent with the current infringement fee for the offence of $300. It also aligns with other infringement fine levels in the Animal Welfare (Care and Procedures) Regulations 2018.	
Analysis of options against criteria. * *** key for qualitative judgements:** ++ much better than doing nothing/the status quo/counterfactual + better than doing nothing/the status quo/counterfactual 0 about the same as doing nothing/the status quo/counterfactual - worse than doing nothing/the status quo/counterfactual - - much worse than doing nothing/the status quo/counterfactual	Option 1 (Status Quo) Original policy intent: 0 It was assumed that a maximum fine would be specified for offences under this section as is the case for similar infringement offences. The absence of a maximum fine is an unintended drafting error. Efficiency: 0 The absence of this maximum fine could lead to unnecessary time in court and the inability to impose an infringement penalty as intended. Equity: 0 The potential legal dysfunction could allow undue leniency regarding obligations relating to traps.	Option 2 Original policy intent: ++ It is standard procedure throughout the legislation to specify a maximum fine for offences. There was no intent that this offence should be treated differently to others causing 'mild short-term harm' to animals. Efficiency: ++ Establishment of a maximum of $900 ensures the penalty regime functions smoothly and as anticipated. Equity: + The ability to issue fines is a core component of the penalty regime. A functional penalty regime is necessary to ensure those who comply with regulation are not disadvantaged.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?	Specifying a maximum fine of $900 will bring the section in alignment with the original intent. Unlike all other offences in the Act, this infringement offence does not carry a maximum fine that the courts can impose. This is a result of oversight. A maximum fine is required to ensure the court can apply a penalty for the infringement offence and to ensure penalties are proportionate. All infringement offences must specify a maximum infringement fine. Setting the maximum Court imposed fine at three times the infringement fee: - does not deter individuals from challenging the infringement fee in Court out of concern that they could be liable for a substantially higher penalty; and - reflects the relatively low seriousness of offences that are appropriate to be treated as infringement offences.
What are the marginal costs and benefits of the option?	Costs: Prosecuted individuals may incur an increased penalty where they are liable. Benefits: Reduce legal risk around prosecuting offenders under Section 36 (*Obligations relating to traps*) of the Animal Welfare Act 1999.
How will the new arrangements be implemented?	MPI will contact relevant stakeholders to inform them of this change. The arrangements will be enforced as for all other offences under the Animal Welfare Act 1999. All changes will be monitored in accordance with MPI's regulatory stewardship obligations, under the review and monitoring processes that already apply for the underlying Act.

Biosecurity Act 1993

Amend section 105C (Audits) of the Biosecurity Act 1993 to clarifying that audit powers extend to containment facility standards for standards issued under the Hazardous Substances and New Organisms Act 1996 (HSNO)

<table>
<tr><td>Policy context</td><td colspan="2">The audit power contained in section 105C(3)(a) and 105C(3)(b) of the Biosecurity Act 1993 is restricted to audits of standards and compliance with standards issued under the Biosecurity Act 1993 only. MPI also approves containment facilities against containment facility standards issued by the Environmental Protection Authority (EPA) under HSNO. It was envisaged that MPI could audit containment facilities that they have approved against the relevant standards for the containment facility, including those issued by the Environmental Protection Authority (EPA) under HSNO. Auditors appointed under the Biosecurity Act 1993 do not have the power to audit some facilities with standards issued by the EPA under HSNO. The problem is that MPI, as the auditor of containment facilities, to have authority to audit against the relevant standards for the facility.</td></tr>
<tr><td>What options are being considered?</td><td colspan="2">Status Quo: Auditors appointed under the Biosecurity Act 1993 can only audit containment facilities issued under HSNO if it is specifically allowed in the individual standard. In some cases, an auditor must be accompanied by another official as specified by a standard.

Option 2: Amend the Biosecurity Act 1993 to provide for MPI auditors to audit containment facilities against containment facility standards issued by the EPA under HSNO.</td></tr>
<tr><td>Analysis of options against criteria. *

* key for qualitative judgements:
++ much better than doing nothing/the status quo/counterfactual
+ better than doing nothing/the status quo/counterfactual
0 about the same as doing nothing/the status quo/counterfactual
- worse than doing nothing/the status quo/counterfactual
- - much worse than doing nothing/the status quo/counterfactual</td><td>Option 1 (Status Quo)

Original policy intent: 0

The status quo does not allow MPI to audit containment facilities approved against appropriate standards (including those issued by the EPA under HSNO).

Efficiency: 0

The responsibility to approve containment facilities without the ability to audit against the relevant standards forces MPI to find alternative auditing solutions. This adds unnecessary resource burden.

Equity: 0

Slight risk of inconsistent audits unduly affecting facilities.</td><td>Option 2

Original policy intent: +

It was intended that MPI audit containment facilities that have been approved against relevant standards. Under this option, MPI auditors will be able to conduct these audits as intended.

Efficiency: +

Option 2 allows MPI to audit containment facility standards for standards issued under the HSNO without unnecessary use of resources.

Equity: 0

Reduced risk of inconsistent audits unduly affecting facilities.</td></tr>
<tr><td>What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?</td><td colspan="2">Option 2 addresses an acknowledged error in the Biosecurity Act 1993 and ensures harmony of auditing and approval powers. This is an improvement on the status quo, which causes inefficiencies associated with finding alternative auditors.</td></tr>
<tr><td>What are the marginal costs and benefits of the option?</td><td colspan="2">Costs: Update and communicate audit procedure for affected facilities.

Benefits: MPI auditors will be able to conduct audits in more situations where they would be the most efficient and effective option. This will save inefficient use of resources, such as having another official accompany the auditor, as is the case for some facilities under the status quo.</td></tr>
<tr><td>How will the new arrangements be implemented?</td><td colspan="2">No implementation required. Methods to manage the status quo such as having another official accompany the auditor would no longer be used.

All changes will be monitored in accordance with MPI's regulatory stewardship obligations, under the review and monitoring processes that already apply for the underlying Act.</td></tr>
</table>

Aligning powers for Containment Facilities with those for Transitional Facilities in section 39 (Approval and cancellation of approval of transitional facilities and containment facilities) of the Biosecurity Act 1993

<table>
<tr><td>Policy context</td><td colspan="2">The Director-General has powers to specify that a Transitional Facility approval may expire at a specified time or on the occurrence of a specified event. The Director-General also has powers to cancel part of an approval of a Transitional Facility where the Transitional Facility is used for more than one purpose. There are no equivalent powers for Containment Facilities which means MPI is less able to manage biosecurity risks flexibly and effectively at these facilities. The issue is that currently, MPI is forced to issue entire cancellations/approvals as they are required where it might otherwise have been more suitable to have set milestone conditions on the original approvals or cancel the necessary parts of the approval only.</td></tr>
<tr><td>What options are being considered?</td><td colspan="2">Status Quo: The Director-General cannot specify that a Containment Facility approval may expire at a specified time or on the occurrence of a specified event. Nor can the Director General cancel part of an approval of a Transitional Facility where the Containment Facility is used for more than one purpose.

Option 2: Grant the Director-General powers to specify that a Containment Facility approval may expire at a specified time or on the occurrence of a specified event. And for the Director General to cancel part of an approval of a Containment Facility where the Containment Facility is used for more than one purpose. These powers would align with those for Transitional Facilities.</td></tr>
<tr><td rowspan="2">Analysis of options against criteria. *

* key for qualitative judgements:
++ much better than doing nothing/the status quo/counterfactual
+ better than doing nothing/the status quo/counterfactual
0 about the same as doing nothing/the status quo/counterfactual
- worse than doing nothing/the status quo/counterfactual
- - much worse than doing nothing/the status quo/counterfactual</td><td>Option 1 (Status Quo)

Original policy intent: 0

It was not intended that the Director’s powers over Containment Facilities were to be different from those for Transitional Facilities under section 39 of the Biosecurity Act 1993 (Approval and cancellation of approval of transitional facilities and containment facilities). However, under the status quo this is the situation.

Efficiency: 0

Oversight of Containment Facilities is sub-optimal without confirmed access to options for part cancellation and specified expiry under section 39. An absence of these powers means Containment Facilities that need part of their approvals cancelled will need to be cancelled entirely and then reapproved. Temporary Containment facilities will need to be actively cancelled rather than expiring at an appropriate time.

Equity: 0

Operations of Containment Facilities can be unduly hindered by the legislation.</td><td>Option 2

Original policy intent: +

The powers proposed in Option 2 reflect the original intent of the legislation, including the expectation that powers for Containment and Transitional Facilities would align.

Efficiency: +

Powers proposed in option 2 provide more precise oversight of containment facilities. Containment Facilities that need part of their approvals cancelled will not need to be cancelled entirely and then reapproved. Temporary Containment facilities could be approved to expire at a specified time and either reapproved or shutdown if they are intended to be temporary.

Equity: 0

Less undue hinderance of Containment Facilities.</td></tr>
<tr><td>What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?</td><td colspan="2">Option 2 will both be better aligned with policy intent and provide more operational benefits.</td></tr>
<tr><td>What are the marginal costs and benefits of the option?</td><td colspan="2">Costs: Option 2 could potentially result in reduced certainty for Containment facility operators as they currently have approvals that last indefinitely.

Benefits: Option 2 would provide more flexibility and require less resources when manging biosecurity risk through containment facilities. Operators of multi-use facilities would benefit when one part of their approval needs to be cancelled but can still operate under the other existing parts of their approval.</td></tr>
</table>

How will the new arrangements be implemented?	No implementation would be required for part cancellations. Specified expiries would be included as needed in new approvals. All changes will be monitored in accordance with MPI's regulatory stewardship obligations, under the review and monitoring processes that already apply for the underlying Act.

Clarify various provisions and obligations in section 17 (Notice of craft's intended arrival in New Zealand) of the Biosecurity Act 1993

<table>
<tr><td>Policy context</td><td colspan="2">Currently it is not clear who is responsible for complying with the obligations in section 17(6), (7), (9) and (10) (Notice of craft's intended arrival in New Zealand) of the Biosecurity Act 1993 as there is no definition of 'person who is in charge of the craft'. It is also not clear when the offence is committed under s17 or who should be infringed. It is also necessary to clarify the obligations under section 17 (9) and (10) which apply where a craft has entered NZ territory and it becomes impracticable to go to the port stated in the first notice or arrival. The problem is that this leads to difficulty in assigning culpability and raises equity issues for those found to have been in breach of regulations without being able to first establish their obligations from the regulations.</td></tr>
<tr><td>What options are being considered?</td><td colspan="2"><u>Status Quo:</u> A 'person who is in charge of the craft' under s17 will remain ambiguous, resulting in uncertainty and confusion for arriving craft and MPI officials will have difficulty infringing for offences. There will remain uncertainty around when it is necessary for a craft to give notice un s17 (9) and (10).

<u>Option 2:</u> Define who a 'person who is in charge of the craft' refers to under the Act, adding clarity around who the duties under s17 apply to. Clarify the obligations under section 17 (9) and (10) apply where craft has entered NZ territory and it becomes impracticable to go to the port stated in the first notice or arrival.</td></tr>
<tr><td>Analysis of options against criteria. *

* key for qualitative judgements:
++ much better than doing nothing/the status quo/counterfactual
+ better than doing nothing/the status quo/counterfactual
0 about the same as doing nothing/the status quo/counterfactual
- worse than doing nothing/the status quo/counterfactual
- - much worse than doing nothing/the status quo/counterfactual</td><td>Option 1 (Status Quo)

<u>Original policy intent:</u> 0

The original policy intent was for the person in charge of a craft to bear responsibility for the duties under s17. The lack of clarity under the status quo means that it is difficult to enforce compliance with these duties.

The original policy intent was for ss17(9) and (10) to apply in situations where craft has entered NZ territory and it becomes impracticable to go to the port stated in the first notice or arrival. This would remain unclear under the status quo and would be difficult to comply with as an operator of a craft.

<u>Efficiency:</u> 0

The lack of clarity under the status quo means it takes resources to establish who the duties under s17 apply to and then enforce compliance when offences occur.

Confusion regarding where obligations under ss17(9) and (10) apply would still remain.

<u>Equity:</u> 0

Uncertainty of obligations increases risk of misallocation of penalties and placement of unfair burdens on some persons on a craft.</td><td>Option 2

<u>Original policy intent:</u> +

The original policy intent was for the person in charge of a craft to bear responsibility for the duties under s17. Clarifying who this applies to means that it will be easier to enforce compliance with these duties.

The original policy intent was for ss17(9) and (10) to apply in situations where craft has entered NZ territory and it becomes impracticable to go to the port stated in the first notice or arrival. This would be clarified under option 2.

<u>Efficiency:</u> +

Clarifying who 'person who is in charge of the craft' refers to means it would take less resources to establish who the duties under s17 apply to, and then enforce compliance when offences occur.

Clarity would be added as to where obligations under ss17(9) and (10) apply, making the system more efficient for all parties.

<u>Equity:</u> +

Reduced risk of misallocation of penalties and placement of unfair burdens on some persons on a craft.</td></tr>
<tr><td>What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?</td><td colspan="2">Option 2 would address the policy issues best, aligning with the original policy intent and making the biosecurity system more efficient.</td></tr>
</table>

What are the marginal costs and benefits of the option?	Costs: Resources allocated to updating procedures. Benefits: MPI would be better able to enforce compliance with s17. Individuals with duties will be more aware of their responsibilities under the Act.
How will the new arrangements be implemented?	Communications material will be developed and distributed to affected parties and arriving craft. All changes will be monitored in accordance with MPI's regulatory stewardship obligations, under the review and monitoring processes that already apply for the underlying Act.

Amend section 162A (Compensation) of the Biosecurity Act 1993 so that there is a less restrictive approach to time limits for persons seeking compensation for losses suffered as a result of the exercise of MPI powers.

Policy context	Section 162A (5)(b) states the time period for making compensation claims where persons have suffered loss due to exercise of MPI powers. The period is within 1 year from the date the claimant has suffered the loss (or could have reasonably determined the loss). A person is only allowed to make a claim outside of the 1-year period if they were unable to make a claim within 1 year because of circumstances beyond their control. MPI would like to adopt a less restrictive approach to time limits. The problem is that the current limit may not be allowing applicants with unrelated pressures adequate time to lodge claims.	
What options are being considered?	Status Quo: Maintain a 1-year time limit for persons to lodge compensation claims for losses due to exercise of MPI powers. Option 2: Accept claims for compensation for losses suffered as a result of the exercise of MPI powers lodged outside the time limit unless the lateness prejudices it in its ability to make decisions. And, include a long stop period of 3 years after which no claims may be lodged.	
Analysis of options against criteria. * *** key for qualitative judgements:** ++ much better than doing nothing/the status quo/counterfactual + better than doing nothing/the status quo/counterfactual 0 about the same as doing nothing/the status quo/counterfactual - worse than doing nothing/the status quo/counterfactual - - much worse than doing nothing/the status quo/counterfactual	Option 1 (Status Quo) Original policy intent: 0 The current time limit reflects a desire to ensure cases are completed in a timely manner. It was also intended to allow those submitting claims adequate time do so, wherever possible. The current 1-year limit may not afford adequate time for many. Efficiency: 0 The 1-year time limit does serve to complete cases quickly. Equity: 0 The current time limit means that some legitimate claimants may not be able to lodge claims due to unrelated time pressures. This is inequitable for those with resourcing constraints.	Option 2 Original policy intent: ++ Option 2 would align the time limit with restrictions accepted with other legislation. It was not intended for these restrictions to deviate from standard time limits. Efficiency: - Relaxing the 1 – year time period for lodging compensation claims will mean that some claims take longer to resolve. Although setting a 3 – year limit will still mean that cases are completed in a reasonably timely manner. Equity: + Option 2 reduces the likelihood of legitimate claims being on account of unrelated pressures on the claimant. This ensures those that have suffered are better able to seek redress.
What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?	This approach would bring the legislation in line with section 53 of the Accident Compensation Act 2001 which provides that ACC must not decline claims lodged outside the time limit unless the lateness prejudices it in its ability to make decisions. This approach provides persons seeking redress a less restrictive timeframe which could otherwise prevent legitimate claims being processed.	

What are the marginal costs and benefits of the option?	Costs: Option 2 could allow some claims to take longer to resolve and require additional resourcing. However, this is not expected to be a significant increase. Also, MPI will likely have to pay out for compensation claims that would have otherwise not been lodged within the current time limit. Benefits: Option 2 will better align with the original policy intent, reducing instances of legitimate compensation claims being refused due to the relative short and restrictive time limit currently in the legislation. It is also much fairer, reducing barriers to legitimate compensation claims being processed.
How will the new arrangements be implemented?	Communications material will be developed and distributed to affected parties. Operational procedures will be updated to reflect the new timeframes. Further changes could be considered for future PIRSA amendments. All changes will be monitored in accordance with MPI's regulatory stewardship obligations, under the review and monitoring processes that already apply for the underlying Act.

Amend section 162A (Compensation) of the Biosecurity Act 1993 to include a time limit of 3 months to submit disputes to arbitration.

Policy context	Section 162A (6) provides that a dispute about eligibility for, or the amount of, compensation must be submitted to arbitration. There is no stipulation of any time limit for the submission. The problem is that outcomes to arbitration cannot be completely resolved and finalised as disputes can be submitted at any point after arbitration proceedings. MPI would like to be able to resolves disputes in a timely manner.	
What options are being considered?	Status Quo: There would continue to be no time limit to submit disputes to arbitration. Option 2: Set a time limit of 3 months to submit disputes about the eligibility for or the amount of compensation for losses suffered as a result of the exercise of MPI Powers to arbitration.	
Analysis of options against criteria. * *** key for qualitative judgements:** ++ much better than doing nothing/the status quo/counterfactual + better than doing nothing/the status quo/counterfactual 0 about the same as doing nothing/the status quo/counterfactual - worse than doing nothing/the status quo/counterfactual - - much worse than doing nothing/the status quo/counterfactual	Option 1 (Status Quo) Original policy intent: 0 It was intended that there would be sufficient time for legitimate disputes to be submitted, but also for cases to be finalised in a timely manner. The status quo currently allows for some disputes to be submitted far from a reasonable time. Efficiency: 0 Dispute submissions will continue to have no time limit and could be submitted far after the event concerned. Equity: 0 The lack of a time limit removes any risk of legitimate disputes not being able to be submitted due to unrelated time pressures.	Option 2 Original policy intent: ++ A time limit of 3 months to submit disputes is more common across New Zealand legislation. It was not intended for arbitration submissions to deviate from standard time limits. Efficiency: + A time limit to submit disputes would allow for faster and more consistent finalising times for cases. Equity: - A time limit does have the potential to prevent some legitimate disputes being lodged due to unrelated time pressures. This would be inequitable for those with resourcing constraints. It is expected that a 3-month limit should allow sufficient time in almost all cases.
What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?	**Option 2.** A time of limit of 3 months to submit disputes is similar to other compensation legislation such as the Accident Compensation Act 2001. This time limit will allow sufficient time for claimants to lodge disputes while ensuring that claims are resolved in a timely manner.	

What are the marginal costs and benefits of the option?	Costs: Some legitimate disputes may not be able to be submitted due to unrelated time pressures. Benefits: Disputes would be submitted and processed faster, with more consistent finalising times for cases. This would improve the efficiency of the disputes system and allow more submissions to be processed.
How will the new arrangements be implemented?	Communications material will be developed and distributed to affected parties. Operational procedures will be updated to reflect the new timeframes. Further changes could be considered for future PIRSA amendments. All changes will be monitored in accordance with MPI's regulatory stewardship obligations, under the review and monitoring processes that already apply for the underlying Act.

Provide the ability in the Biosecurity Act 1993 for officers to request documentation and take copies for the purposes of risk assessment in a biosecurity control area.

Policy context	Currently officers only have the power to take a copy of documents under section 113 (*Power to record information*) when exercising powers under section 111 (*Entry in respect of offences*) or s109 (*Power of inspection*) of the Biosecurity Act. This means that officers cannot require copies or make copies of documents in order to make risk assessments in a biosecurity control area (BCA). Under section 35 (*Duties of persons in biosecurity control areas*) officers can only require and make copies of a passport or other evidence of identity, but no other documentation. Inspectors can ask for goods to be made available for inspection but cannot request or copy documentation that relates to those goods. The problem is that the absence of this power makes verifying goods in a biosecurity control area less efficient. It also hinders record-keeping.	
What options are being considered?	Status Quo: Officers would continue to be restricted in requesting documentation when exercising powers under sections of the act other than 109 and 111. Option 2: Provide the ability for officers to request documentation (beyond identity documents) for the purposes of risk assessment in a biosecurity control area.	
Analysis of options against criteria. * *** key for qualitative judgements:** ++ much better than doing nothing/the status quo/counterfactual + better than doing nothing/the status quo/counterfactual 0 about the same as doing nothing/the status quo/counterfactual - worse than doing nothing/the status quo/counterfactual - - much worse than doing nothing/the status quo/counterfactual	Option 1 (Status Quo) Original policy intent: 0 The inability to request documentation along with goods does not reflect the intended design. Efficiency: 0 Verification of objects must occur without the use of supporting documentation even where available. Equity: 0 Powers remain restricted to requesting of goods and not documentation.	Option 2 Original policy intent: ++ This amendment resolves the issue of officers being unable to require copies/make copies of documents to make risk assessments. It was intended that accompanying documentation could be requested along with goods. Powers to record information are provided under section 113 for related functions but do not apply in Biosecurity Control Areas where procedure and documentation are of particular importance. Efficiency: + Allowing officers to request documentation associated with goods would provide for a faster verification process during inspections. Equity: 0 This will not significantly alter obligations of those being inspected. Documents requested must only relate to the goods requested for inspection.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?	Option 2: Option 2 would address the issue of allowing inspectors to ask for goods but not related documentation. The inability to request documentation causes unnecessary delays in performing inspection services.
What are the marginal costs and benefits of the option?	Costs: Resources allocated to updating procedure. Benefits: Broader powers to record information would provide more efficient verification through Biosecurity Control Areas and make record keeping and compliance processes less resource intensive.
How will the new arrangements be implemented?	Operating procedures will be updated to reflect new powers. Communications materials will be altered to inform passengers of new powers when they are being exercised. Further changes could be considered for future PIRSA amendments. All changes will be monitored in accordance with MPI's regulatory stewardship obligations, under the review and monitoring processes that already apply for the underlying Act.

Make explicit the implied power in the Biosecurity Act 1993 for inspectors to check outer clothing of persons within a biosecurity control area.

Policy context	In Biosecurity Control Areas outer clothing is regularly inspected for biosecurity goods (such as observing for fruit-shaped bulges). Currently this is done under the implied powers in section 35 (7) (*Duties of persons in biosecurity control areas*) which states persons in a biosecurity control area must obey all reasonable directions of an inspector in relation to risk goods. The power for Inspectors to check outer clothing at the border is implied rather than explicit. The problem is that this means there is a degree of uncertainty around the legality of this practice. MPI considers that the practice needs to continue without legal uncertainty.	
What options are being considered?	Status Quo: The practice of checking outer clothing continues and the power remains implied. Subsequent legal risk persists. Option 2: The practice of checking outer clothing continues and is made explicit in legislation.	
Analysis of options against criteria. * *** key for qualitative judgements:** ++ much better than doing nothing/the status quo/counterfactual + better than doing nothing/the status quo/counterfactual 0 about the same as doing nothing/the status quo/counterfactual - worse than doing nothing/the status quo/counterfactual - - much worse than doing nothing/the status quo/counterfactual	Option 1 (Status Quo) Original policy intent: 0 Power to check outer clothing at the border was assumed. It is currently implied by the legislation only. Efficiency: 0 The practice of checking outer clothing would remain, but with ongoing legal risk. Equity: 0 The reliance on implied powers may result in reduced ability to address perceived violations on the part of passengers and inspectors.	Option 2 Original policy intent: + Power to check outer clothing at the border was assumed. This option would make the intent explicit in legislation. Efficiency: + The practice of checking outer clothing would remain, but with the legislation explicitly granting and circumscribing powers. Equity: + Making the power to check outer clothing explicit would provide greater protection for both passengers and inspectors

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?	**Option 2:** Making the power explicit would provide greater protection for both passengers and inspectors and reduce legal risk. This is in aligned with the policy intent and would make the border system more efficient.
What are the marginal costs and benefits of the option?	Costs: Resources allocated to updating procedure. Benefits: Legal risk to both passengers and inspectors is reduced, and a common and important verification process is allowed to continue.
How will the new arrangements be implemented?	No implementation is required, the amendment supports an existing practice. Further changes could be considered for future PIRSA amendments. All changes will be monitored in accordance with MPI's regulatory stewardship obligations, under the review and monitoring processes that already apply for the underlying Act.

Expand the power under section 33 of the Biosecurity Act 1993 that allows the seizure of risk goods at the border to include seizure of evidence of offending

Policy context	Currently MPI can seize risk goods but can't seize evidence of the offending. The problem is that this creates both evidential and potential biosecurity risk when evidence of offending cannot be detained at the border. An example would be a suitcase that has been used to conceal risk goods. The suitcase could be needed for evidential purposes, i.e., demonstration of concealment. The suitcase could also present a biosecurity risk as harmful organisms could have been transmitted from the goods to the suitcase.	
What options are being considered?	Status Quo: MPI can continue to seize risk goods but will remain unable to take evidence of the offending if it doesn't represent a biosecurity risk itself. Option 2: Powers are expanded under section 33 which would allow inspectors to seize evidence of offending when the seizure of risk goods occurs.	
Analysis of options against criteria. * *** key for qualitative judgements:** ++ much better than doing nothing/the status quo/counterfactual + better than doing nothing/the status quo/counterfactual 0 about the same as doing nothing/the status quo/counterfactual - worse than doing nothing/the status quo/counterfactual - - much worse than doing nothing/the status quo/counterfactual	Option 1 (Status Quo) Original policy intent: 0 It was intended that Inspectors would be able to seize evidence of offending when the seizure of risk goods occurs. They will continue to be unable to do this under the current legislation. Efficiency: 0 Seizure of potentially contaminated material would continue to be restricted. Prosecutions would continue to be progressed without the aid of evidence that might otherwise be seized at the border. Equity: 0 No expansion of seizure powers would occur under this option.	Option 2 Original policy intent: + It was intended that Inspectors would be able to seize evidence of offending when the seizure of risk goods occurs. These powers would be provided for in the legislation. Efficiency: + Option 2 would allow for relevant evidence to be seized and presented during prosecution procedures, bolstering compliance processes when offences have occurred. Equity: - Option 2 broadens seizure powers to materials beyond the risk good itself. However, this is only the case when a risk has been seized, and there must also be a reason for those materials to be considered as evidence of offending.
What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?	**Option 2** fits the original intent of the legislation. Seizure of evidence is necessary component of preventing and disincentivising risk goods being smuggled through the border.	

What are the marginal costs and benefits of the option?	Costs: People moving through the border may have more of their possessions seized than under the status quo Benefits: Compliance proceedings would be bolstered, requiring less resources when a key non-risk good piece of evidence would make a substantial contribution to a case.
How will the new arrangements be implemented?	Operating procedures will be updated to reflect changes. The use of these powers will be contestable in court proceedings. All changes will be monitored in accordance with MPI's regulatory stewardship obligations, under the review and monitoring processes that already apply for the underlying Act.

Clarify that declarations at the border by passengers include verbal responses to questions asked by inspector

Policy context	Section 154N (21) (*Section 154N offences*) sets out that a person commits an offence if they erroneously declare that they are not in possession of any or all the goods specified in a required declaration. However, it is not clear whether this includes verbal responses to questions asked by an inspector, and whether the person can be infringed if they omit to verbally declare risk goods. This means that verbal declarations are used as part of the risk assessment procedure but must be reflected in the declaration form filled out to constitute erroneous declaration. Additionally, if an erroneous declaration is made during questioning when goods are being inspected through x-ray or inspection then it is unclear if this is enforceable as an erroneous declaration. It is of practical necessity for passengers to be liable for verbal responses to questions asked by an inspector. The problem is that under the current legislation, it is not clear that they are.	
What options are being considered?	Status Quo: Inspectors continue to solicit verbal declarations. Legislation remains unclear on whether the person commits an infringement offence if they make an erroneous verbal declaration. Verbal erroneous declarations will continue to be enforced irregularly due to legal uncertainty. Border processing will rely on written declarations. Option 2: Inspectors continue to solicit verbal declarations. The legislation makes certain that the person commits an infringement offence if they make an erroneous verbal declaration. Both written and verbal erroneous declarations will be enforced regularly as is intended by the policy.	
Analysis of options against criteria. * *** key for qualitative judgements:** ++ much better than doing nothing/the status quo/counterfactual + better than doing nothing/the status quo/counterfactual 0 about the same as doing nothing/the status quo/counterfactual - worse than doing nothing/the status quo/counterfactual - - much worse than doing nothing/the status quo/counterfactual	Option 1 (Status Quo) Original policy intent: 0 The original policy intent is that any erroneous declaration is an offence under the Act and subject to infringements under the relevant regulation. The status quo does not ensure verbal declarations are an offence under the Act. Efficiency: 0 Border processing will rely primarily on written declarations. Erroneous verbal declarations may go unenforced in some situations. Equity: 0 The uncertainty around the treatment of verbal declarations could lead to inconsistent and potentially flawed enforcement.	Option 2 Original policy intent: + The original policy intent is that any erroneous declaration is an offence under the Act and subject to infringements under the relevant regulation. The legislation change would ensure that verbal declarations are an offence under the Act. Efficiency: + Verbal declarations will be able to be regularly enforced which will reduce reliance on written declarations which can be inefficient in some parts of the border. Border processing times may increase slightly as some instances of verbal erroneous declaration are enforced when they otherwise wouldn't have been, but this also constitutes an increase in efficiency in the border system managing biosecurity risk. Equity: + Option 2 would ensure people are liable for misleading verbal responses to inspectors, particularly when undeclared risk goods are found through x-ray or inspection. Verbal responses are preferable for passengers who prefer faster processing methods if possible and can misunderstand the importance of written declarations. Enabling both written and verbal declarations allows passengers to make further declarations as they remember risk goods they may have forgotten.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?	**Option 2:** Clarifying this area of legislation will reduce the chance of regulatory dysfunction. Option 2 would serve to make border processing more efficient and enable more equitable enforcement of biosecurity rules in Border Clearance Areas.
What are the marginal costs and benefits of the option?	Costs: Some passengers that may not have been infringed would now receive an infringement if the evidence of their erroneous declaration is verbal, which could increase border processing times or require more resources. Benefits: Inspectors will have more certainty and flexibility around their ability to enforce compliance in a Border Clearance Area, enabling more effective management of biosecurity risk. Infringement will be more equitable for passengers that make erroneous verbal declarations.
How will the new arrangements be implemented?	Border operating procedures will be updated to reflect changes. Infringements and reasons for infringement are recorded. All changes will be monitored in accordance with MPI's regulatory stewardship obligations, under the review and monitoring processes that already apply for the underlying Act.

Climate Change Response Act 2002 (Forestry Policy)

Amend subsections 181B and 192B in section 272 of the Climate Change (Emissions Trading Reforms) Amendment Act 2020 to clarify that land containing tree weeds as the predominant forest species is not eligible to be offsetting land.

<table>
<tr><td>Policy context</td><td colspan="2">As per the policy intent, land containing tree weeds as the predominant forest species is not to be eligible to be ‘offsetting’ land under the Emissions Trading Scheme. The problem is that the legislation is not explicit about this.

Land containing naturally regenerated tree weeds as the predominant species cannot be registered in the NZ ETS as post-1989 forest land. In the current rules for pre-1990 forest offsetting, the offsetting forest must be planted which would exclude naturally regenerated tree weeds. However, the new provisions relating to offsetting pre-1990 forest land do not explicitly prohibit forest land with tree weeds as the predominant forest species, being used for the offsetting forest.

For post-1989 offsetting land the exclusion applies, but it is not expressly stated.</td></tr>
<tr><td>What options are being considered?</td><td colspan="2">Status Quo: Naturally regenerated tree weeds may not be used for offsetting forest. Once the Amendment Act changes are in place; the legislation will not explicitly prohibit land containing tree weeds as the predominant forest species from being used as pre-1990 offsetting land.

Option 2: Legislation explicitly prohibits land containing tree weeds as the predominant forest species from being used as pre-1990 offsetting land.</td></tr>
<tr><td>Analysis of options against criteria. *

* key for qualitative judgements:

++ much better than doing nothing/the status quo/counterfactual

+ better than doing nothing/the status quo/counterfactual

0 about the same as doing nothing/the status quo/counterfactual

- worse than doing nothing/the status quo/counterfactual

- - much worse than doing nothing/the status quo/counterfactual</td><td>Option 1 (Status Quo)

Original policy intent: 0

The intent to render land containing tree weeds as the predominant forest species ineligible to be used as pre-1990 or post-1989 offsetting land is implied but not explicit. The original policy intent in the Climate Change (Emissions Trading Reform) Amendment Act 2020, is that any post-1989 forest land with tree weeds should be excluded from registration in the NZ ETS (i.e., maintain the current treatment) but an oversight meant that that intent was not explicitly extended to the provisions on offsetting.

Efficiency: 0

There is the potential for ambiguity in the interpretation of the legislation. If forest land predominantly containing tree weeds was to be considered as offsetting land, there may be a risk that removal of tree-weed species could be dis-incentivised, negatively impacting intended land-use outcomes of the Emissions Trading Scheme.

Equity: 0

Perverse incentives for encouraging tree weeds reduces the relative entitlements for good land management.</td><td>Option 2

Original policy intent: +

The intent to render land containing tree weeds as the predominant forest species ineligible to be used as pre-1990 or post-1989 offsetting land is explicit. This original policy intent in the Climate Change (Emissions Trading Reform) Amendment Act 2020, that any post-1989 forest land with tree weeds should be excluded from joining the NZ ETS, is confirmed in the legislation.

Efficiency: +

The potential for ambiguity is removed from the legislation. This will remove any risk that removal of tree-weed species could be dis-incentivised by ambiguity in the legislation and help ensure the intended land-use outcomes of the Emissions Trading Scheme can be met. This option also aligns with the rules which apply up to 31 December 2022 for pre-1990 forest offsetting. It better aligns with the rules for international reporting which specifies that land has to be planted forest to be included in measurements against our international climate change targets.

Equity: 0

Reducing unintended incentives for owning land containing tree weeds as the predominant forest species ensures there is a fairer incentive for good practice.</td></tr>
<tr><td>What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?</td><td colspan="2">Option 2 - This would ensure that the ineligibility of land containing tree weeds as the predominant forest species to be used for offsetting, is explicit. This clarification is consistent with the original policy intent in the Climate Change (Emissions Trading Reform) Amendment Act 2020, that any post-1989 forest land with tree weeds should be excluded from joining the NZ ETS and advances the aims of the Emissions Trading Scheme. This option also aligns with the rules which apply up to 31 December 2022 for pre-1990 forest offsetting and better aligns with the rules for international reporting which specifies that land has to be planted forest to be included in measurements against our international climate change targets.</td></tr>
</table>

What are the marginal costs and benefits of the option?	Costs: Costs are expected to be limited to communication with affected parties about the rule clarification. This amendment is not expected to have a significant impact on the Crown's day-to-day regulatory functions (refer to Climate Change Response Act 2002 - Permanent-Forests and Operational Improvements Regulatory Impact Statement (p64)). Benefits: Reduction in pre-1990 land with tree weeds as the predominant forest species and consequential improvement in NZ ETS land use outcomes.
How will the new arrangements be implemented?	Applications for offsetting are relatively few at the moment, so we do not expect there to be many affected participants. As the offsetting process takes several years for implementation, there will ongoing signalling and communicating of the treatment of tree-weeds which will enable landowners to incorporate this into their planning. More broadly, the rule clarification will be implemented through the relevant operational policies and systems developed by Te Uru Rākau. All changes will be monitored in accordance with MPI's regulatory stewardship obligations, under the review and monitoring processes that already apply for the underlying Act.

Publication location of the recommendations of Tribunals of the Māori Land Court (MLC).

Policy context	Significant time and financial resources are spent publishing reports and recommendations of a Tribunal consisting of a Judge of the Māori Land Court (MLC) convened to hear submissions on a proposed taiāpure-local fishery in the New Zealand Gazette. Much of the cost associated with publishing in the Gazette could be alleviated if the gazette notice could notify that these are available to be viewed on the Fisheries New Zealand website. The problem is that the legislation specifies publication requirements which are costly and unnecessary given alternative options.	
What options are being considered?	Status Quo: Reports and recommendations of the Tribunal convened to hear submissions on a proposed taiāpure-local fishery are published in the New Zealand Gazette. Option 2: Notifications of reports and recommendations of the Tribunal convened to hear submissions on a proposed taiāpure-local fishery are published in the New Zealand Gazette. Reports are made available to be viewed on the Fisheries New Zealand website.	
Analysis of options against criteria. * *** key for qualitative judgements:** ++ much better than doing nothing/the status quo/counterfactual + better than doing nothing/the status quo/counterfactual 0 about the same as doing nothing/the status quo/counterfactual - worse than doing nothing/the status quo/counterfactual - - much worse than doing nothing/the status quo/counterfactual	Option 1 (Status Quo) Original policy intent: 0 The status quo maintains good public accessibility of reports and recommendations of the Tribunal as intended by the publication requirements. Efficiency: 0 Publication in the Gazette requires higher financial and time costs compared to publication on other platforms. Equity: 0 Necessary access to information retained.	Option 2 Original policy intent: 0 The change of publication location in option 2 fulfils the original policy intent by preserving the level of public accessibility of reports and recommendations of the Tribunal. Efficiency: + A notification in the Gazette of a report published on the Fisheries New Zealand Website removes most of the resourcing requirements associated with full publication on the Gazette without significantly reducing accessibility of the report. Equity: 0 Necessary access to information retained.
What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?	**Option 2:** This option maintains the functionality of the legislation, namely, to make the reports accessible, while significantly reducing time and financial resources associated with publishing in the New Zealand Gazette.	
What are the marginal costs and benefits of the option?	Costs: Resources allocated to updating procedure. Benefits: Resources associated with full publication of reports and recommendations of the Tribunal in the Gazette would be retained. The last invoice for full publication was approximately $4,000. The cost of notifications in the Gazette would be a small fraction of this amount.	
How will the new arrangements be implemented?	Gazette notice will notify publication of reports and recommendations on FNZ website. FNZ currently provides updates to consultations on its website. The Proposal to reopen the Kaikōura Marine Area to pāua fishing is a recent example. Similar methodology can be used to publish reports and recommendations of the Tribunal on proposed taiāpure-local fisheries. This will enable all documents related to one proposed taiāpure-local fishery to be located on one webpage, instead of in various Gazettes. The change of process will be communicated to Iwi Fisheries Forums. All changes will be monitored in accordance with MPI's regulatory stewardship obligations, under the review and monitoring processes that already apply for the underlying Act.	

Add a regulation making power to section 297 regulate marine and freshwater fish farming (including biosecurity management)

Policy context	While marine fish farms are managed under the Fisheries Act, land-based fish farms are managed under the Freshwater Fish Farming Regulations 1983 (the Freshwater Regulations). The Aquaculture Reform (Repeals and Transitional Provisions) Act 2004 (the Reform Act) was enacted to repeal the Freshwater Regulations and bring the land-based regime into the Fisheries Act to provide for one system for aquaculture. This requires section 33 of the Reform Act to be brought into force. The problem is that Section 33 has not yet been brought into force because it was thought that with the repeal of the Freshwater Regulations, biosecurity would not be adequately provided for as the necessary powers (tied to the Freshwater Regulations) would be lost. Moreover, it is also a problem that it is unclear from the existing wording of section 297 of the Fisheries Act, if regulations can be made regarding biosecurity management for marine fish farms. The amendments sought to the Fisheries Act will ensure we have the regulatory framework necessary to adequately manage biosecurity risks associated with all aquaculture as well as finally bring into force section 33 of the 2004 Reform Act.	
What options are being considered?	Status Quo: Continue to refrain from bringing section 33 of the Reform Act into force and continue to regulate land-based fish farms separately under the Freshwater Regulations. Option 2: Amend section 297 of the Fisheries Act to clarify the availability of regulation making powers to adequately regulate all fish farming (including biosecurity management). This brings marine and land-based fish farming together under the Fisheries Act and will enable bringing section 33 of the Reform Act into force.	
Analysis of options against criteria. * *** key for qualitative judgements:** ++ much better than doing nothing/the status quo/counterfactual + better than doing nothing/the status quo/counterfactual 0 about the same as doing nothing/the status quo/counterfactual - worse than doing nothing/the status quo/counterfactual - - much worse than doing nothing/the status quo/counterfactual	Option 1 (Status Quo) Original policy intent: 0 Ministers Parker and O'Connor previously agreed to make technical amendments to the Fisheries Act and bring into force section 33 of the Reform Act (B21-0023 refers). The status quo does not fulfil this agreement. Efficiency: 0 Keeping the powers in the Freshwater Regulations away from other Aquaculture legislation is unnecessary, reduces legislative clarity and creates procedural complexity. Continued lack of clarity on whether regulations under section 297 of the Fisheries Act can be made regarding biosecurity management for marine fish farms. Equity: 0 N/A. The rights of fish farming operators will not be significantly affected by the options. The changes don't effect any change in the real world – there are no new obligations, requirements or consequences as a result of the proposed amendments. A proper regulatory process would still need to be run to use them (i.e., create regulation).	Option 2 Original policy intent: + Option 2 fulfils the agreements signed by Ministers Parker and O'Connor to make technical amendments to the Fisheries Act and bring into force section 33 of the Reform Act (B21-0023 refers). These technical amendments will set up the legislative framework to enable on-farm biosecurity plans for aquaculture farms. With respect to the regulation making powers to be provided for in the Fisheries Act, amending section 297 would clarify that regulations relating to marine and land-based aquaculture, including biosecurity management, can be made. The amendments would conserve the existing powers in the Freshwater Regulations and bring it under the Fisheries Act together with marine fish farms. Efficiency: + Option 2 would bring the land-based freshwater farm regulatory regime into the Fisheries Act to provide for one system for aquaculture. This would enable more consistency and usability across the aquaculture regulatory system. There is clarity on the applicability of regulation making powers in regard to all aquaculture, including biosecurity management. Equity: 0 N/A. The rights of fish farming operators will not be significantly affected by the options. The changes don't effect any change in the real world – there are no new obligations, requirements or consequences as a result of the proposed amendments. A proper regulatory process would still need to be run to use them (i.e., create regulation).

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?	**Option 2:** Option 2 fulfils the agreements signed by Ministers Parker and O'Connor to make technical amendments to the Fisheries Act and bring into force section 33 of the Reform Act. Bringing marine and freshwater fish farming together under the Fisheries Act would provide a comprehensive vehicle for enabling on-farm biosecurity across all aquaculture and would ensure biosecurity is adequately provided for.
What are the marginal costs and benefits of the option?	Costs: there are no immediate costs to either option. Option 2 simply clarifies that regulation making powers apply to the management of aquaculture, including biosecurity management. In other words, there are no real changes that will occur from this legislative change – the power would still need to be applied which requires a full and separate regulatory process. Benefits: improved legislative systems, and greater clarity and certainty about the regulation making power in section 297.
How will the new arrangements be implemented?	To bring into force section 33 of the Reform Act, a separate Order in Council process will take place. That work is already underway, the completion of which is pending on the passage of the PIRSA Bill. There is also work going into aquaculture biosecurity – the Aquaculture Biosecurity Programme - that would rely on section 297. That work is already underway in anticipation of the passage of the PIRSA Bill. All changes will be monitored in accordance with MPI's regulatory stewardship obligations, under the review and monitoring processes that already apply for the underlying Act.

Remove the requirement in section 178(2) for a taiāpure proposal to be notified in the Gazette

<table>
<tr><td>Policy context</td><td colspan="2">Section 178(2) requires that a taiāpure proposal to be notified in the Gazette. The problem is that this process currently incurs time and costs which do not significantly assist the accessibility and communication of the proposal.</td></tr>
<tr><td>What options are being considered?</td><td colspan="2">Status Quo: Keep the requirement to publish a notice of a taiāpure proposal in the Gazette.

Option 2: Remove the requirement to publish a notice of a taiāpure proposal in the Gazette. Fisheries New Zealand would rely on s179(1) to notify a taiāpure proposal in newspapers, and other communication channels including providing details on its website and social media pages, as well as directly notifying potentially interested stakeholders, and using the all-of-government web portal.</td></tr>
<tr><td>Analysis of options against criteria. *

* key for qualitative judgements:
++ much better than doing nothing/the status quo/counterfactual
+ better than doing nothing/the status quo/counterfactual
0 about the same as doing nothing/the status quo/counterfactual
- worse than doing nothing/the status quo/counterfactual
- - much worse than doing nothing/the status quo/counterfactual</td><td>Option 1 (Status Quo)

Original policy intent: 0

The status quo upholds the policy intent to inform stakeholders about the proposals by requiring use of a recognised avenue for communication.

Efficiency: 0

Publication in the Gazette incurs significant time and cost. It is unlikely that this process reaches any stakeholders who have not otherwise been informed of the process through other, cheaper means. Resourcing associated with this process is not expected to return any value.

Equity: 0

Necessary access to information retained</td><td>Option 2

Original policy intent: 0

Option 2 upholds the policy intent to inform stakeholders about the proposals. This would be done through channels other than publication in the Gazette.

Efficiency: +

Option 2 is expected to reach the same stakeholders as the status Quo but forgoes the resourcing associated with publishing a notification in the Gazette.

Equity: 0

Necessary access to information retained</td></tr>
<tr><td>What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?</td><td colspan="2">Option 2: Option 2 fulfils the communication outcomes of the original policy intent while delivering them in a more efficient manner.</td></tr>
<tr><td>What are the marginal costs and benefits of the option?</td><td colspan="2">Costs: Resources allocated to updating procedure.

Benefits: Resources not required to organise publication in the Gazette.</td></tr>
<tr><td>How will the new arrangements be implemented?</td><td colspan="2">Removal of unnecessary process. Change of process communicated to Iwi Fisheries Forums.
All changes will be monitored in accordance with MPI’s regulatory stewardship obligations, under the review and monitoring processes that already apply for the underlying Act.</td></tr>
</table>

<table>
<tr><td>Policy context</td><td colspan="2">A recent Court of Appeal decision (D'Esposito v MPI [2018] NZCA 9 has highlighted drafting issues in the Act with respect to offending by company directors and managers, and consequently the penalties that are available to be imposed upon sentence. The Court of Appeal held that section 246 of the Act creates a separate and distinct offence, not a deemed liability provision for directors and managers. The problem is that as section 246 is not included in section 252 which provides penalties for offences under the Act, no penalty is prescribed for those who hold such positions. This also has the effect that company directors and managers convicted of fisheries offending cannot be prohibited from fishing under s257, despite the longstanding policy intent that repeat offenders under the Act will be eligible for banning from fishing activity, because eligibility is limited to those offences currently included in s252.</td></tr>
<tr><td>What options are being considered?</td><td colspan="2"><u>Status Quo:</u> Keep the legislation as is currently written. Penalties are not prescribed under section 252 for directors and managers of companies in breach of section 246. Directors and managers who commit offences under section 246 are also ineligible for prohibition from fishing when convicted of repeated fisheries offending.

<u>Option 2:</u> Ensure that directors and managers who commit offences under section 246 are prescribed penalties under section 252 and are eligible for prohibition from fishing when convicted of repeated fisheries offending.</td></tr>
<tr><td>Analysis of options against criteria. *

* key for qualitative judgements:
++ much better than doing nothing/the status quo/counterfactual
+ better than doing nothing/the status quo/counterfactual
0 about the same as doing nothing/the status quo/counterfactual
- worse than doing nothing/the status quo/counterfactual
- - much worse than doing nothing/the status quo/counterfactual</td><td>Option 1 (Status Quo)

<u>Original policy intent:</u> 0

It was intended that that directors and managers who commit offences under section 246 (Liability of directors and managers) would be prescribed penalties under section 252 and be eligible for prohibition from fishing when convicted of repeated fisheries offending. This option does not fulfil this requirement.

<u>Efficiency:</u> 0

Imposing adequate penalties on directors and managers who commit repeat offences under section 246 is difficult without repeat offending provisions. Behaviour change may be slower without these provisions.

<u>Equity:</u> 0

Managers and directors who commit offences under section 246 may be unduly sheltered from penalty provisions under 252 and repeat offending provisions under the Act.</td><td>Option 2

<u>Original policy intent:</u> +

Option 2 responds to the decision of the Court of Appeal in D'Esposito in linking s246 to the penalty provision in section 252. This will also have the effect that repeat offending by company directors or managers will trigger prohibition under section 257, as the Act intends, unless the Court orders otherwise.

<u>Efficiency:</u> +

The legislation would provide an efficient tool to impose adequate penalties on directors and managers who commit repeat offences under section 246. Availability of repeat offending provisions will have the effect of hastening behaviour change.

<u>Equity:</u> +

Option 2 will enable liability for proven offending by corporate entities or their agents to be able to be attributed to corporate directors or managers, and appropriate penalties applied, including the availability of prohibition in the event of repeated convictions at a level of seriousness commensurate with a significant penalty.

Given that company directors and managers hold positions that influence and drive compliance, this will mean that the penalty regime will more equitably apply across participants in the event of repeated non-compliance.</td></tr>
<tr><td>What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?</td><td colspan="2">Option 2: Option 2 amends the legislation to meet the original intent of the relevant provisions. It will also increase the overall equity of the penalty regime by ensuring appropriate penalties are applied, including the availability of prohibition, for corporate directors or managers in breach of section 246.</td></tr>
</table>

What are the marginal costs and benefits of the option?	Costs: Resources allocated to update legislation. Benefits: By adding section 246 to the list of penalties in section 252, the immediate benefit of making this change is that it meets the original intent of the relevant provisions. By doing so, this will enable liability for proven offending by corporate entities or their agents to be able to be attributed to corporate directors or managers, and appropriate penalties applied, including the availability of prohibition in the event of repeated convictions at a level of seriousness commensurate with a significant penalty – section 257.
How will the new arrangements be implemented?	Implementation would be guided by the Solicitor General Prosecution Guidelines and the justice system. Judicial precedent and related case law will be one of the means through which the new arrangements will become established. All changes will be monitored in accordance with MPI's regulatory stewardship obligations, under the review and monitoring processes that already apply for the underlying Act.

Creation of an additional pathway for approval of a Taiāpure-local fishery application that does not require the involvement of a tribunal chaired by a Māori Land Court Judge under specified circumstances

Policy context	The Act currently provides for a public inquiry to be conducted for every taiāpure-local fishery application. The inquiry is held by a tribunal consisting of a Judge of the Māori Land Court. A tribunal consisting of a Judge of the Māori Land Court is a lengthy process which may be dissuading taiāpure-local fishery application. The issue is that with the introduction of the Fisheries (Kaimoana Customary Fishing) Regulations 1998 (the K Regs) and the Fisheries (South Island Customary Fishing) Regulations 1999 (the SICF Regs), the involvement of tribunal consisting of a Judge of the Māori Land Court is a duplication of effort, for those areas where tangata have been confirmed. The K Regs and the SICF Regs contain mechanisms for tangata whenua and their area/rohe moana to be confirmed (see reg 9(2)(c) of the K Regs, and reg 9(1) of the SICF Regs).	
What options are being considered?	Status Quo: Keep the requirement for an inquiry to be held by a tribunal consisting of a Judge of the Māori Land Court for every taiāpure-local fishery application Option 2: Retain the option to conduct an inquiry held by a tribunal consisting of a Judge of the Māori Land Court for a taiāpure-local fishery application. And create an additional pathway that does not require the involvement of the Māori Land Court under specified circumstances; (a) The proposed taiāpure area is entirely within one or more confirmed rohe moana; and (b) All of the relevant tangata whenua agree that a tribunal hearing is not needed; and (c) The proposed taiāpure applicant agrees that a tribunal hearing is not needed.	
Analysis of options against criteria. * *** key for qualitative judgements:** ++ much better than doing nothing/the status quo/counterfactual + better than doing nothing/the status quo/counterfactual 0 about the same as doing nothing/the status quo/counterfactual - worse than doing nothing/the status quo/counterfactual - - much worse than doing nothing/the status quo/counterfactual	Option 1 (Status Quo) Original policy intent: 0 The status Quo delivers on the original policy intent to conduct a sufficiently thorough inquiry into every Taiāpure-local fishery application Efficiency: 0 With the introduction of the customary regulations, the involvement of the Māori Land Court is a duplication of effort, for those areas where tangata whenua have been confirmed. Equity: 0 Due diligence on Taiāpure-local fishery applications is retained. The capacity for input into applications from effected stakeholders is preserved.	Option 2 Original policy intent: 0 Option 2 delivers the necessary due diligence on Taiāpure-local fishery applications intended by the original policy. This option provides for the ability to make use of previous confirmations of rohe moana under the K Regs and the SICF Regs which were introduced after the original requirement for a tribunal consisting of a Judge of the Māori Land Court. Efficiency: + Option 2 allows for the tribunal consisting of a Judge of the Māori Land Court to be bypassed where it is unnecessary and unwanted by all of the relevant tangata whenua and the applicant. This saves significant resources without reducing the integrity of the application assessment. Equity: 0 Due diligence on Taiāpure-local fishery applications is retained. The capacity for input into applications from effected stakeholders is preserved.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?	**Option 2:** Option two preserves the goals of the inquiry requirements, whilst updating the legislation to avoid duplication of process.
What are the marginal costs and benefits of the option?	Costs: Resources allocated to updating procedure. Benefits: • Reduction of resources associated with procuring a Judge e.g., the Judge's support personal, venue, travel and accommodation costs etc, and submitters appearing before the tribunal. • Reduced timeframe to establish a taiāpure for those circumstances where a tribunal in unnecessary and unwanted. • A more accessible process for potential applicants of Taiāpure-local fishery (with the option for the applicant to request a tribunal).
How will the new arrangements be implemented?	Change in process communicated to Iwi Fisheries Forums. All changes will be monitored in accordance with MPI's regulatory stewardship obligations, under the review and monitoring processes that already apply for the underlying Act.

Food Act 2014

Provide for the ability to adopt a temporary food standard, as anticipated in the Agreement between the Government of Australia and the Government of New Zealand Concerning a Joint Food Standards System (Food Treaty)

Policy context	Part 5 Subpart 5 of the Food Act empowers the Minister to adopt joint food standards. The intention of subpart 5 is to give effect to the Australia-New Zealand Joint Food Standards Agreement. However, the Food Treaty resulting from that Agreement anticipates Member states (such as New Zealand) will issue temporary food standards under domestic legislation to respond to issues affecting public health, safety and environmental conditions where urgent action is required, and where circumstances do not enable action under the Joint Food System. Despite this, the ability to adopt temporary food standards was left out of the Food Act 2014. The problem is that this limits the Minister's ability to address urgent issues that could impact on the well-being of New Zealanders.	
What options are being considered?	Status Quo: Leave the Food Act 2014 as is, without a provision to adopt a temporary food standard. Option 2: Amend the Act to provide for the ability to adopt a temporary food standard.	
Analysis of options against criteria. * *** key for qualitative judgements:** ++ much better than doing nothing/the status quo/counterfactual + better than doing nothing/the status quo/counterfactual 0 about the same as doing nothing/the status quo/counterfactual - worse than doing nothing/the status quo/counterfactual - - much worse than doing nothing/the status quo/counterfactual	Option 1 (Status Quo) Original policy intent: 0 It was anticipated in the Agreement between the Government of Australia and the Government of New Zealand Concerning a Joint Food Standards that the Minister would have the ability to issue temporary food standards using domestic law. Powers to adopt temporary food standards were omitted from the Food Act 2014. This omission does not meet the original policy intent and restricts the Minister's ability to act to address urgent matters related to public health, safety, and environmental conditions. Efficiency: 0 Adoption of a temporary standard setting would rely on less efficient mechanisms outside the Food Act 2014. Equity: 0 Retaining the Status Quo could mean violating the Food Treaty to respond to urgent concerns. This would mean acting ultra vires even if such measures were anticipated. The status quo represents a risk to equity of Treaty Partners by restricting the ability of the Food Minister to act to address urgent domestic public health, safety, and environmental harms under prescribed exceptional circumstances envisaged under the Food Treaty. This places New Zealand at a disadvantage vis a vis other partners (Australian States) in the Joint Food System and presents equity issues for New Zealand industry and consumers.	Option 2 Original policy intent: ++ Providing the Minister with the power to issue temporary food standards under the Food Act 2014 would allow the intended terms of the Australia-New Zealand Food Treaty to be met and for the New Zealand Food Safety Minister to act promptly to address urgent issues related to public health, safety and environmental conditions that would have negative impacts on New Zealanders' wellbeing. Efficiency: + The provision improves efficiency by enabling the Food Minister to proceed with temporary standard setting in a more expeditious way pending longer term action by the Joint Food System. Equity: + The ability to adopt temporary food standards to respond to urgent domestic issues affecting public health, safety, and environmental harms ensures that member states, including New Zealand, can respond without the need to take action that could violate the Australia-New Zealand Food Treaty. It places New Zealand on an equal footing with other partners in the Joint Food System. It improves equity in relation to New Zealanders by ensuring that the Food Minister may move quickly to address potential harms to public health, safety and environmental conditions under circumstances prescribed by the Food Treaty.
What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?	**Option 2:** would allow the Australia-New Zealand Joint Food Standards Agreement to function as intended in regard to temporary food standards without being in breach of legislation.	

What are the marginal costs and benefits of the option?	Costs: Nil except for the cost of developing a temporary domestic standard outside of the Joint System. Capability within MPI exists to undertake this function. Benefits: Currently the Food Act does not empower the Food Minister to enact a domestic standard under New Zealand law. This impediment would be removed, enabling New Zealand to respond more promptly to address 'urgent' public health and safety issues or environmental conditions within the framework envisaged by the Food Treaty.
How will the new arrangements be implemented?	No new implementation systems would be required. Specialist capability exists within MPI. Temporary Standards are intended to be enacted only under exceptional circumstances prescribed under the Food Treaty and would be prioritised within existing BAU. All changes will be monitored in accordance with MPI's regulatory stewardship obligations, under the review and monitoring processes that already apply for the underlying Act.

Amend section 404 (Minister may issue domestic food standards) to provide for domestic food standards when no standard has been adopted

Policy context	The Food Act 2014 section 404 empowers the Minister to issue domestic food standards in circumstances where (i) New Zealand has chosen to opt out (and meets the Food Treaty opt out requirements), and (ii) a Joint Standard has been or is being developed. The problem is that there is currently no provision for domestic standards to be enacted in circumstances where no standard is or has been under development by the Joint System. In such cases the "opt out" does not apply. However, the Food Treaty clearly envisages that in certain circumstances it may be appropriate for New Zealand to enact domestic food standards on labelling and compositional matters when different conditions in Australia and NZ necessitate.	
What options are being considered?	Status Quo: The Minister may issue domestic food standards when New Zealand has chosen to opt out of standards under grounds prescribed by the Food Treaty that have been or are being developed under the Joint System for inclusion in the Australia New Zealand Food Standards Code. This may occur when it is considered inappropriate for New Zealand on exceptional health, safety, or environmental grounds. Option 2: The proposed amendment to section 404 would allow New Zealand to enact domestic food standards when no food standard has been adopted, is under development or is going to be developed in the foreseeable future. On this premise, there has been no opt out under the prescribed grounds of the Food Treaty as there is no joint food standard in existence.	
Analysis of options against criteria. * *** key for qualitative judgements:** ++ much better than doing nothing/the status quo/counterfactual + better than doing nothing/the status quo/counterfactual 0 about the same as doing nothing/the status quo/counterfactual - worse than doing nothing/the status quo/counterfactual - - much worse than doing nothing/the status quo/counterfactual	Option 1 (Status Quo) Original policy intent: 0 The Food Treaty anticipated circumstances when it would be necessary for New Zealand to enact domestic food standards on labelling and compositional matters when different conditions in Australia and NZ necessitate. The Food Act 2014 does not accommodate this understanding. Efficiency: 0 Without the ability under the Food Act 2014 to provide for domestic food standards when no standard has been adopted by the Joint System, less efficient legislative mechanisms would have to be employed. Or there may be an inability to address certain domestic public health issues. Equity: 0 The Food Treaty must not override the capacity for New Zealand to uphold domestic policy regarding certain food standards and prevent undue damage to its domestic Industries and consumers. For example, enactment of a domestic sugar labelling standard would be ultra vires under the Food Act 2014.	Option 2 Original policy intent: + Option 2 provides for domestic food standards on labelling and compositional matters when different conditions in Australia and NZ when circumstances necessitate as intended by the Food Treaty. Efficiency: + Increased efficiencies in addressing domestic public health issues would result from a legislative provision to enable the enactment of domestic standards. Equity: + Option 2 would allow New Zealand to uphold its policy regarding certain food standards and prevent undue damage to its domestic Industries and consumers without violating domestic legislation.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?	**Option 2:** The Food Treaty envisages that in certain circumstances it is appropriate for NZ to enact domestic food standards on labelling and compositional matters when different conditions in Australia and NZ necessitate. Such provisions are necessary for reasonable and equitable treatment of Treaty Members. There would be a clear net benefit in respect to New Zealand's ability to act to advance domestic public health and safety objectives. Option 2 ensures that the necessary legislative powers are in place to do so.
What are the marginal costs and benefits of the option?	Costs: Nil, other than the operational costs of developing and implementing a new standard. Capability already exists within MPI to do so. Benefits: The Minister for Food Safety would be empowered to enact domestic food composition and labelling standards when conditions necessitate without being held back whilst waiting for a joint food standard to be enacted where this is not a priority for Australia within the Joint System.
How will the new arrangements be implemented?	The development of domestic standards would be undertaken by MPI under existing structures and processes. Policy and specialist capability already exists. No dedicated new arrangements would be necessary. All changes will be monitored in accordance with MPI's regulatory stewardship obligations, under the review and monitoring processes that already apply for the underlying Act.

Wine Act 2003

Approval and Regulation of approved documents, materials, or facilities, or persons or classes of persons.

Policy context	Currently under section 291(1) of the Food Act 2014, if regulations or notices require the use of a particular document, material, or facility, or persons or classes of persons then the Director-General can approve those matters by notice. Further, section 386 of the Food Act 2014 empowers regulations setting the criteria that the Director-General must take into account before issuing a notice to approve one of the above matters. The equivalent provision does not exist in the Wine Act 2003. These amendments would allow MPI to, for example, require the use of an approved document, an approved sampling technique or approved laboratory. For example, in some instances, MPI would like to require the completion of a National Micro-organism Database (NMD) sampler training course taught by trainers who are certified to provide this training. Criteria for course composition, those required to obtain the certification, trainer certification etc. would need to be set by regulations. The issue is that without the ability for Director-General to approve the use of a training course and the ability to set associated regulations under the Wine Act 2003, it has been difficult to mandate such a training course under the existing legislation which does not provide adequate mechanisms to adopt and regulate new items such as training courses. The current legislation is a problem because, unlike other MPI Acts, it does not provide for the ability to require the necessary documents, material, facility, persons or classes of persons, or other such items in connection to the varied processes regulated by the Animal Products Act 1999. This does not allow for regulations which are suitably adapted to specific processes.	
What options are being considered?	Status Quo: The Director General cannot approve certain documents, material, facilities, persons or classes of persons under the Wine Act meaning there are less regulatory tools available to manage food safety outcomes and respond to varied situations under the Wine Act. Option 2: Create a new provision that allows the Director General to approve documents, materials, facilities, persons or classes of persons, and empower the approval of those things, and create new provision to empower regulations about approved documents, materials, or facilities, or persons or classes of persons.	
Analysis of options against criteria. * *** key for qualitative judgements:** ++ much better than doing nothing/the status quo/counterfactual + better than doing nothing/the status quo/counterfactual 0 about the same as doing nothing/the status quo/counterfactual - worse than doing nothing/the status quo/counterfactual - - much worse than doing nothing/the status quo/counterfactual	Option 1 (Status Quo) Original policy intent: 0 It was intended that the Director General could approve and regulate certain documents, material, facilities, persons or classes of persons. This is necessary to the application of the regulatory system across the Wine Sector. Similar powers are granted under the Food Act 2014 and their omission in the Wine Act 2003 was an oversight. Efficiency: 0 The inability to approve and regulate certain documents, facilities, persons or classes of persons under the Wine Act 2003 means reduced flexibility and tools to respond and manage diverse and varied situations in the food regulatory system, which could lead to inefficient processes being applied. Equity: 0 Regulated parties may incur losses due to inefficient approval mechanisms.	Option 2 Original policy intent: + Option 2 corrects the omission of these powers from the APA. These powers are envisaged in the application of the Wine Act and would make the Act consistent with the Food Act 2014. Efficiency: + Option 2 will provide MPI with more regulatory tools to respond to the diverse and varied situations in the food regulatory system. Equity: 0 Regulated parties will incur fewer losses due to inefficient approval mechanisms.
What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?	**Option 2:** Option 2 corrects a drafting oversight and introduces powers envisaged by the food regulatory system. Enabling MPI to approve documents, materials, or facilities, persons or classes of persons provide more regulatory tools to respond to the food system and can remove unnecessary process in the application of existing regulation.	

What are the marginal costs and benefits of the option?	Costs: Resources allocated to update procedure. Benefits: MPI will have more tools available to manage food safety outcomes and respond to the diverse and varied situations in the food system. There will be reduced delays for businesses caused by less efficient processes that are currently needed to regulate certain documents, material, facilities, persons or classes of persons.
How will the new arrangements be implemented?	No implementation is required as the provisions would be enabling provisions to add more tools to the regulatory toolbox under the Wine Act. Any new regulatory requirements about approved documents, materials, or facilities, persons or classes of persons would undergo usual public consultation processes. All changes will be monitored in accordance with MPI's regulatory stewardship obligations, under the review and monitoring processes that already apply for the underlying Act.

Generic across multiple Acts

Align powers across MPI legislation for the making, issuing, amending, consolidating, publishing, and general administration, of delegated instruments drafted outside of PCO (i.e., tertiary legislation)

Policy context	MPI manages the issuing or amending of more than 200 delegated instruments each year across 49 different Acts, from detailed requirements to administrative controls (e.g., notices, standards, specifications, and codes). There are administrative issues (such as an inability to consolidate) to be resolved, and the opportunity to modernise and align processes where practicable for administrative efficiency gains. Deliberate individualisation of different regimes, or democratic safeguards such as consultation or decision-making criteria is out of scope. The problem is that the current misalignment of powers within delegated instruments of similar function generates unnecessary complexity and increases the risk of officials assuming the existence of powers which are not ubiquitous across delegated instruments.	
What options are being considered?	Status Quo: Do not systematically amend legislation to address administrative issues (such as an inability to consolidate) and modernise and align processes for administrative efficiency gains with respect to the making, issuing, amending, consolidating, publishing, and general administration, of delegated instruments drafted outside of PCO. Option 2: Amend legislation to address administrative issues and modernise and align processes for administrative efficiency gains with respect to the making, issuing, amending, consolidating, publishing, and general administration, of delegated instruments drafted outside of PCO.	
Analysis of options against criteria. * *** key for qualitative judgements:** ++ much better than doing nothing/the status quo/counterfactual + better than doing nothing/the status quo/counterfactual 0 about the same as doing nothing/the status quo/counterfactual - worse than doing nothing/the status quo/counterfactual - - much worse than doing nothing/the status quo/counterfactual	Option 1 (Status Quo) Original policy intent: 0 Not undertaking to identify and remedy administrative issues and modernise and align processes would allow the instruments to maintain their current policy function. Efficiency: 0 Processes and powers for delegated instruments drafted outside of PCO would continue to be disparate. Unnecessary complexity in their administration would remain. Equity: 0 Levels of equity inherent in the application of these instruments would be retained.	Option 2 Original policy intent: 0 Amending legislation to address administrative issues and modernise and align processes for administrative efficiency gains would not change the policy function of the instruments. Efficiency: + The administrative efficiency of delegated instruments drafted outside of PCO would be improved. Potential for confusion around the powers and application of delegated instruments would be reduced. Officials involved in the application of delegated instruments would be better able to understand instruments across MPI rather than in a few specific domains. Equity: 0 Levels of equity inherent in the application of these instruments would be retained. Functionality would remain similar between the Status Quo and Option 2.
What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?	Option 2: Option 2 would allow for improvements to the making, issuing, amending, consolidating, publishing, and general administration, of delegated instruments drafted outside of PCO, without changing their individual regulatory function. There is little cost and down-side risk with these amendments.	
What are the marginal costs and benefits of the option?	Costs: Time and resources taken to updating instruments. Familiarisation of officials with any changes to instruments occurring in the process of standardisation. Benefits: Procedures and application of instruments will be more familiar and predictable across MPI. This would increase the capacity to meet MPI resourcing needs through internal staff movement.	

How will the new arrangements be implemented?	Instruments that can be standardised will be identified and powers will be harmonised. Any minor adjustments to these powers will be communicated to officials and any affected parties. All changes will be monitored in accordance with MPI's regulatory stewardship obligations, under the review and monitoring processes that already apply for the underlying Act.