



Increased Penalties for Breach of Biosecurity Bill

132—1

Report of the Primary Production Committee

March 2023

Contents

Recommendation.....	2
About the bill as introduced.....	2
What the Immigration Act currently allows.....	2
Wide powers associated with proposed amendment to Immigration Act.....	3
Proposed changes to Biosecurity Act and regulations.....	3
New Zealand Labour Party view.....	4
New Zealand National Party view.....	6
Appendix.....	7

Steph Lewis
Chairperson

Increased Penalties for Breach of Biosecurity Bill

Recommendation

The Primary Production Committee has examined the Increased Penalties for Breach of Biosecurity Bill and recommends, by majority, that it not be passed. We recommend that the House take note of this report.

About the bill as introduced

This is a Member's bill in the name of Hon Jacqui Dean MP. As introduced, it seeks to amend the Biosecurity Act 1993 (and related regulations) and the Immigration Act 2009. It would increase immediate fines for biosecurity offences from \$400 to \$1,000, and the maximum conviction fine from \$1,000 to \$2,000.

The bill also states that it seeks to give biosecurity officers authority to refuse entry to a holder of a temporary entry class visa who knowingly brings in a biosecurity risk.

We considered various possible amendments to the bill as introduced. Our views are set out below.

The committee supports the efforts of New Zealand's biosecurity and immigration officers. We commend the Ministry for Primary Industries for its work to keep out things that risk this country's biosecurity, and its research into which measures most highly motivate incoming passengers to declare those items.

What the Immigration Act currently allows

Clause 6 of the bill seeks to amend section 109 of the Immigration Act. Section 109 allows the Minister of Immigration or an immigration officer, subject to discretion, to refuse entry permission to a holder of a temporary entry class visa.

The proposed amendments would extend this power so that immigration officers or the Minister could refuse entry if the person had failed to comply with the requirements of the Biosecurity Act, or with any direction or request made by a biosecurity officer. We note, however, that section 109 of the Immigration Act already establishes that decisions about entry into New Zealand by holders of temporary entry class visas are discretionary.

We further note that under sections 109 or 113 of the Immigration Act, immigration officers can already refuse or revoke entry permission in cases of non-compliance with biosecurity obligations. In the Immigration New Zealand Operational Manual, biosecurity is a mandatory consideration for immigration officers.¹ The manual also mandates consideration of other border requirements, such as the requirements to declare goods, and not to smuggle.

¹ [Border entry section of Immigration New Zealand Operational Manual.](#)

The criteria in the operational manual that a person must meet to be eligible for entry are statements of government policy. The proposed amendment would elevate biosecurity compliance to legislation. We were advised that this would set biosecurity compliance apart from other border requirements that are not contained within that Act.

Refusal of entry lies with immigration officers, not biosecurity officers

The bill's general policy statement explains that the bill would "give biosecurity officers a stronger ability to refuse entry into New Zealand to people who knowingly bring in a biosecurity risk when attempting to enter on a temporary class visa". We note, however, that biosecurity officers are not currently responsible for immigration matters, and that the power to refuse entry sits with immigration officers.

As introduced, the bill's proposed amendments would allow immigration officers and the Minister of Immigration to refuse entry, rather than biosecurity officers. It seems that the bill incorrectly states what it would do.

Wide powers associated with proposed amendment to Immigration Act

We note that the new powers that would be conferred by amended section 109(2A)(a) of the Immigration Act are very wide. The proposed section would empower the Minister to refuse entry to the holder of a temporary entry class visa if the person failed to comply with any biosecurity requirement. This power is wider than the stated purpose of the bill, which is to deter people from bringing in illegal biosecurity risks.

The proposed amendment to section 157 (deportation liability of temporary entry class visa holders) would similarly particularise the failure to comply with Biosecurity Act requirements as a basis for deportation. However, deportation liability may already arise if the Minister of Immigration determines there is sufficient reason. "Sufficient reason" is a term that is defined to include criminal offending.

Proposed changes to Biosecurity Act and regulations

Some of us consider that the bill's proposed amendments to the Biosecurity Act and regulations would not do much to advance its purpose of addressing intentional smuggling. This is because the proposed increases to the infringement fee and maximum conviction fine would only address erroneous declarations at the border.

We heard that New Zealand's border biosecurity system is designed to catch erroneous declarations, which are considered minor offences, along with more serious offences. The Ministry for Primary Industries (MPI) told us that its border staff believe that travellers are already highly motivated by the current infringement fee, along with other measures, to consider their biosecurity obligations.

Proposed increase in infringement fee

We compared the size of the proposed increase of the infringement fee to \$1,000 with fees for other infringement offences and penalties under the Biosecurity Act and the Biosecurity (Infringement Offences) Regulations 2010. We also compared it to border infringements within the Customs and Excise Act 2018. Some of us concluded that the proposed increase would set the fee disproportionately high.

We considered whether the current infringement fee should simply be adjusted for inflation. This would bring it from \$400 to around \$530. However, we were advised that this would not distinctly improve passenger behaviour. We note that the most recent increase of the infringement fee was in May 2010, from \$200 to \$400. MPI told us that the increase did not appear to have a significant deterrent effect on the failure to declare biosecurity risk items on entry to New Zealand.

Proposed increase in maximum conviction fine

As introduced, the bill would increase the maximum conviction fine from \$1,000 to \$2,000. The Ministry of Justice's guidelines on offences and penalties state that a conviction fine should be no more than three times the infringement fee. If the House were to proceed with an amendment to increase the infringement fee from \$400 to \$530 to account for inflation, we believe that the maximum conviction fine should be set no higher than \$1,590, in line with the Ministry of Justice's guidelines.

New Zealand Labour Party view

Limited effectiveness of financial penalties

The New Zealand Labour Party does not support this bill proceeding. We do not consider that any evidence has been provided to demonstrate that increasing financial penalties will deter travellers from erroneously bringing prohibited items into New Zealand.

We agree that it is crucial for New Zealand to have a strong biosecurity system at the border to prevent the incursion of threats to our biodiversity, native ecosystems, and our economy. However, advice provided by MPI showed that increasing financial penalties had a negligible effect on passenger behaviour. MPI advised that education has a far greater effect on preventing items being accidentally brought into New Zealand.

There is already a range of offences and penalties in the Biosecurity Act intended to deter and address biosecurity risks. MPI has advised that in order for the bill to have a significant effect, it would need to be proven that there is a clear or likely relationship between increased penalties and changes in behaviour. We do not consider that this has been demonstrated.

Data collected by MPI comparing the rate of offending during the periods between May 2009 to April 2010 and May 2010 to April 2011 (between which the infringement fee increased from \$200 to \$400), showed that offending decreased by 0.01 percent (from 0.11 percent of arrivals being issued an infringement notice, to 0.10 percent). The increased penalty, therefore, does not appear to have had a significant deterrent effect.

Furthermore, financial penalties were ranked the seventh most effective tool for declaring or disposing of risk goods. According to research conducted by MPI, the three most effective motivators were:

- an understanding of why items are considered a biosecurity risk
- a greater understanding on what must be declared on arrival
- an understanding of how to pass through New Zealand's border more quickly.

MPI proposed alternative options for increasing the fines, including adjusting the existing fines for inflation. We do not support that approach, as it would create an anomaly with other fines in the Biosecurity Act, which are not adjusted for inflation. MPI also advised that increasing the fines would make them disproportionate to the level of offending, and inconsistent with other fines in the Act.

Further, we note that some submitters told us that increasing the fine may be “prohibitively expensive” for someone who had accidentally left an item of food in their bag. This may then affect their impression of New Zealand and their likelihood of recommending New Zealand as a travel destination. It was also noted in MPI’s advice that accidental breaches are often influenced by the stressful nature of travel.

Deterrence policies already in place

Incoming passengers arriving in New Zealand are required to declare all food, animal products, plants, and other risk goods. MPI has a communications programme that follows passengers during their journey to New Zealand. The ministry also uses research to ensure that the most effective tools are used to target different groups of travellers, and that these tools remain effective.

The importance of biosecurity is promoted to travellers through digital advertising on popular online booking platforms. Key biosecurity compliance information is published on Immigration New Zealand’s website and online application portals. Further, Immigration New Zealand sends targeted emails containing biosecurity information to visitors two weeks before their visa commences. It also distributes physical information at visa processing centres for those not applying online. Additional measures to encourage compliance with biosecurity rules include ample airport signage and amnesty bins.

We note that the Biosecurity (Information for Incoming Passengers Amendment) Act 2022, which comes into effect in October 2023, will require all operators of commercial craft to provide incoming passengers with information about New Zealand’s biosecurity arrangements. We consider that the Act strives to deter people bringing in items by providing the education which MPI advised is more effective than fines.

The approaches outlined above aim to foster positive attitudes towards desired behaviours. For example, giving visitors guidance around leaving risk items at home, and the tools to assist in declaring correctly on arrival, has increased visitors’ perceived level of control over their own actions and, therefore, their likelihood to comply with the law.

Power to deny entry

We also do not support the bill’s proposal to enable MPI officers to have the power to deny a traveller entry, or to revoke their temporary visa. We consider that power should remain with immigration officers. We also note that deporting a traveller who accidentally leaves food in their bag is not proportionate to the level of offending, and would be inconsistent with penalties in other Acts.

New Zealand National Party view

The New Zealand National Party would prefer that the penalties remain as proposed in the bill as introduced, with infringement fees for failing to declare a biosecurity risk item upon entry to New Zealand increased from \$400 to \$1,000, and conviction fines for the same offence increased from \$1,000 to \$2,000. We believe it is important to have as many safeguards as possible to protect our border from offenders bringing in illegal biosecurity risks items such as fruit or other food, and that these penalty increases for breaching the Biosecurity Act would contribute to a more robust border control system.

It is our view that the recommended penalty amendments are insignificant given the serious threats that undeclared goods may pose to our biodiversity, ecosystem, and economy. Among those threats is foot-and-mouth disease. While New Zealand has never had an outbreak, it only takes a few particles of the disease to arrive on legitimate goods, and that risk increases exponentially when the goods are prohibited.

Should the disease arrive in New Zealand, it would decimate trade for our farmers and the impacts to our economy would be monumental. We note that consideration should be given to the fact that New Zealand, along with the rest of the world, is facing a climate and biodiversity crisis. Increasing the penalties for undeclared or prohibited goods brought into New Zealand that represent a threat to our national biodiversity reflects the importance of protecting our taonga and biodiversity for future generations.

The National Party believes that the bill should proceed as introduced.

Appendix

Committee procedure

The Increased Penalties for Breach of Biosecurity Bill was referred to the committee on 21 September 2022. The closing date for submissions was 3 November 2022. We received and considered written submissions from eight interested groups and individuals. We heard oral evidence from one submitter.

We received advice on the bill from the Ministry for Primary Industries. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office was available to assist with legal drafting.

Committee members

Steph Lewis (Chairperson)

Jo Luxton (Chairperson and member until 8 February 2023)

Mark Cameron

Anna Lorck

Nicola Grigg

Barbara Kuriger (until 19 October 2022)

Tim van de Molen (until 8 February 2023)

Joseph Mooney (from 8 February 2023)

Todd Muller

Soraya Peke-Mason (from 8 February 2023)

Angela Roberts

Ian McKelvie participated in some of this item of business.

Advice and evidence received

The documents that we received as advice and evidence are available on the Parliament website, www.parliament.nz.