

SUBMISSION ON: INCREASED PENALTIES FOR BREACH OF BIOSECURITY BILL

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To: The Primary Production Committee

Name of Submitter: Horticulture New Zealand

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Our submission

Horticulture New Zealand (HortNZ) thanks the Primary Production Committee for the opportunity to submit on the Increased Penalties for Breach of Biosecurity Bill.

The horticulture sector welcomes any opportunity to continue to engage with the Primary Production select committee on this Bill. HortNZ would like to be heard in support of our submission.

This submission is being made by Horticulture New Zealand and is supported by the following organisations:

- Kiwifruit Vine Health
- New Zealand Apples & Pears Inc
- New Zealand Asparagus Council
- Strawberry Growers New Zealand Inc
- Summerfruit New Zealand
- Tomatoes NZ

HortNZ's Role

Background to HortNZ

Horticulture New Zealand (HortNZ) advocates for and represents the interests of approximately 5,500 commercial fruit and vegetable growers in New Zealand. These growers supply fresh and processed fruit and vegetables to domestic consumers, as well as exporting crops to discerning consumers overseas. The horticulture industry is valued at \$7b with \$4.6b in exports annually.

The national and regional economic benefits associated with horticultural production are important. The industry employs more than 40,000 people and provides critical regional development opportunities in Northland, Auckland, Bay of Plenty, Waikato, Hawke's Bay, Gisborne, Manawatu, Marlborough, Nelson, Canterbury and Central Otago. The rural economy supports local communities and primary production defines much of the rural landscape.

HortNZ's purpose is to create an enduring environment where growers thrive. This is done through enabling, promoting and advocating for growers in New Zealand.



Submission

1. Comments on the importance of border biosecurity

1. A robust biosecurity system is critically important to the horticulture sector. The arrival of a new pest, pathogen or weed species has the potential to jeopardise the current and future success of our \$7 billion sector.
2. While HortNZ's preference is to keep biosecurity risk offshore wherever possible, we acknowledge that the border is our next line of defence. Strong pre-border and border biosecurity are critical parts of the system.
3. HortNZ supports efforts to increase passenger compliance with New Zealand's strict biosecurity requirements. Our sector faces potentially significant economic losses if unwanted pests, pathogens, or weeds arrive inadvertently with incoming passengers.
4. There are many exotic pests and diseases that we want to keep out of New Zealand. Examples of some that are particularly high priority for horticulture are:
 - Fruit flies such as Queensland fruit fly and Mediterranean fruit fly. It is paramount that that passengers know that they must declare or dispose of any fresh fruit or vegetables as there is a risk that these could be infested with exotic fruit fly eggs or larvae.
 - Brown Marmorated Stink Bug. This pest moves into homes and sheds overseas to overwinter and can inadvertently be packed by passengers if insects are hidden in clothes, tents, equipment or other items.
 - Exotic fungal pathogens that can be transported in soil on footwear and equipment are also of concern.

2. Comments on the Bill

2.1. Amendment to the Biosecurity (Infringement Offences) Regulations 2010

5. HortNZ is supportive of initiatives that reduce the biosecurity risk associated with the passenger pathway.
6. The Bill intends to increase the immediate fine at the border from \$400 to \$1000 if a person makes "*...an erroneous declaration that he or she is not in possession of specified goods*" (section 154N(21) in schedule 1: infringement offences and fees, Biosecurity (Infringement Offences) Regulations 2010; section 154N(21) in the Biosecurity Act 1993). This fine is applicable for incoming passengers who fail to declare any risk goods (listed on the on-arrival biosecurity card) in their luggage or on their person.
7. The increased fee is likely to be a disincentive for false, incomplete or misleading biosecurity declarations, and therefore HortNZ is partially supportive. This support is

contingent on completion of a Regulatory Impact Statement and analysis of previous interception data (see point 8). If these analyses indicate that higher fines are likely to result in increased compliance, HortNZ is supportive of the proposed increase.

8. HortNZ understands that the instant biosecurity fine was doubled in 2009 from \$200 to \$400 (Carter, 2009). HortNZ request that an analysis is undertaken of interceptions records before and after the fine was doubled to determine whether the increased fine resulted in greater compliance.
9. Similarly, if the fine rises from \$400 to \$1000, HortNZ requests that an analysis of interceptions is undertaken. This analysis will help us to understand if the disincentive is improving passenger compliance and reducing biosecurity border interceptions. If increased fees do not improve compliance, HortNZ recommends exploring alternative approaches and tools, that are supported by evidence, to obtain improved national biosecurity.

2.2. Amendment to the Biosecurity Act 1993

10. The Increased Penalties for Biosecurity Bill seeks to raise the maximum fine from \$1,000 to \$2,000. HortNZ supports this increase. HortNZ would like to see tougher penalties for repeat offenders. For those passengers who genuinely accidentally forget to declare a biosecurity risk item, having to pay a \$1000 fine is likely to be a memorable event. A second accidental omission on a biosecurity declaration form seems unlikely. Therefore, HortNZ believe that repeated non-compliance over multiple trips to New Zealand should result in the maximum fine.
11. HortNZ understand that deliberate smuggling is covered by a separate offence and corresponding penalty: *“154O(15) A person commits an offence against this Act who has unauthorised goods in his or her possession or control, knowing that they are unauthorised goods”* (Biosecurity Act 1993). Those convicted of this offence face a fine of up to NZD\$100,000 and up to 5 years in prison. We highlight this as it is important to know that much tougher penalties exist for deliberate smuggling, as they should.

2.3. Amendments to Immigration Act 2009

12. HortNZ does not support the Minister or an immigration officer having the ability (at their discretion) to refuse entry for holders of a temporary entry class visa in *any* instance where the person has failed to comply with the requirements of the Biosecurity Act 1993.
13. HortNZ believes that this is a serious penalty that should apply for significant, listed breeches, rather than at an officer’s discretion. HortNZ believe that this penalty should apply for intentional smuggling. Visitors who *intentionally* flout New Zealand’s biosecurity rules and jeopardize our flora, fauna, economy and way of life should not be automatically entitled to enter the country.
14. HortNZ believes that amending the Immigration Act to include *‘(b) the person has failed to comply with any direction or request made by a biosecurity officer’* (Increased Penalties for Breach of Biosecurity Bill) is duplication. The Biosecurity Act 1993 addresses this issue in Section 154O (2) *“A person commits an offence against this Act who threatens, assaults, or intentionally obstructs or hinders an official exercising a*

power or carrying out a function or duty under a law” (Biosecurity Act 1993). It is therefore unnecessary to include this clause in the Immigration Act 2009.

15. The general policy statement for this Bill notes that it will “give biosecurity officers a stronger ability to refuse entry into New Zealand” (Increased Penalties for Breach of Biosecurity Bill). However, the amendment to the Immigration Act refers only to immigration officers having this ability. HortNZ would appreciate clarification about the interaction between powers under the Biosecurity Act and powers under the Immigration Act i.e. the role of biosecurity officers versus immigration officers in enacting these powers.

2.4. Implementation

16. HortNZ believe that it is imperative that a significant public awareness campaign accompanies any increase in penalties. HortNZ expect that every opportunity will be taken to inform and remind incoming passengers about New Zealand’s biosecurity requirements.
17. Travellers need repeated, accessible, and easy to understand information about the expected behaviour (declaration of risk goods) and the possible penalties for non-compliance. The information needs to be available in multiple languages and multiple formats (e.g. visual, written, oral etc).
18. HortNZ believes that this public awareness component is critical to improve education, increase compliance and decrease biosecurity risk on the passenger pathway, and to ensure well-meaning passengers don’t find themselves with a significant fine to pay because they did not understand or simply forgot.
19. HortNZ believe that this Bill fits well with the Biosecurity Information for Incoming Passengers Bill that has been progressing through parliament. Requiring carriers to provide clear and easy to understand biosecurity information on incoming craft should help to minimise undeclared biosecurity risks on the passenger pathway.
20. HortNZ are keen to understand what the money from the increased fines will be used for. Will it go into increasing biosecurity awareness and compliance on the pathway?

3. Summary table of HortNZ positions

Legislation	Proposed amendment	HortNZ position
Biosecurity (Infringement Offences) Regulations 2010	In Schedule 1, item relating to section 154N(21) of the Biosecurity Act 1993, replace “400” with “1,000”.	Partial support. HortNZ support for this change is contingent on completion of a Regulatory Impact Statement and analysis of interception data before and after the 2009 fine increase. If these indicate that higher fines are likely to

		result in increased compliance HortNZ is supportive.
Biosecurity Act 1993	In section 157(7), replace “\$1,000” with “\$2,000”.	Support.
Immigration Act 2009	After section 109 (2), insert: (2A) The Minister or an immigration officer may, in his or her discretion, refuse the holder of a temporary entry class visa entry permission if – (a) the person has failed to comply with the requirements of the Biosecurity Act 1993; or (b) the person has failed to comply with any direction or request made by a biosecurity officer.	<p>Partial support.</p> <p>HortNZ does not support this penalty being applied subjectively. HortNZ believe that this penalty should apply for intentional smuggling.</p> <p>Suggest:</p> <p>The Minister or an immigration officer may, in his or her discretion, refuse the holder of a temporary entry class visa entry permission if –</p> <p>(a) the person has failed to comply with the requirements of the committed an offence under Section 154O (15) of the Biosecurity Act 1993</p> <p>HortNZ does not support 109 (2) (b) and suggest it is removed:</p> <p>(b) the person has failed to comply with any direction or request made by a biosecurity officer.</p>

4. Conclusion

21. HortNZ supports penalties for breaches of the Biosecurity Act 1993 that are proportionate to the breach and are demonstrated to result in the desired behaviours.
22. Well publicised penalties will show visitors and those returning home that New Zealand takes biosecurity seriously.
23. HortNZ welcomes the opportunity to discuss the points raised in this submission.

References

- Biosecurity Act 1993
- Biosecurity (Infringement Offences) Regulations 2010
- Increased Penalties for Breach of Biosecurity Bill
- Carter. D (2009) Instant Biosecurity Fine Raised to \$400. Accessed online: <https://www.beehive.govt.nz/release/instant-biosecurity-fine-raised-400>