HIGH-LEVEL SUMMARY OF KVH's SUBMISSION ON PROPOSED CHANGES TO THE BIOSECURITY ACT

The Biosecurity Act was enacted more than 30 years ago, and it makes sense that the Ministry for Primary Industries (MPI) proposed amendments are extensive.

There are over 70 proposals, all aimed at ensuring the Act supports a resilient biosecurity system that remains effective and adaptable to current and future challenges. KVH supports this goal, and we believe it is crucial for the robustness of the legislation that the changes continue to meet the needs of our industry.

KVH has prepared a detailed submission that covers most of the proposed changes, as they have potential implications on the future operation of the biosecurity system. This submission follows the specific template and guiding questions provided by MPI, to ensure that our views are fully captured and taken into consideration in this consultation process.

We appreciate that this format does make it more challenging for the reader, so we have taken efforts to provide context on the proposals the consultation questions relate to, and links to MPI's supporting documents, as well as a summary below of what we consider to be the key proposals.

The sections of the proposed amendments document that most relevant to KVH and the kiwifruit industry are:

- Section 2 - Funding and compensation
- Section 4 - Readiness and response
- Section 5 - Long-term management

Below is a high-level summary of the proposed changes that are most relevant to our sector, along with our stance on each. This should provide an easier overview of the key points. For more detailed information, please refer to the main document or use the quick links provided below.

Section 1, Proposal 3 - Ministerial 'call-in power'
The Chief Technical Officer (CTO) is currently responsible for making decisions to invoke powers under the Act. This ensures that the use of powers during a biosecurity response is based on risk and science/technical evidence. However, some technical decisions have large consequences beyond biosecurity i.e. social, cultural, environmental, or economic consequences of which the wider government is accountable for. This proposal aims to better define the Minister's/Ministers' power to make important decisions. KVH's view is to retain the status quo with the CTO retaining these powers rather than a Minister.

For more detail on Proposal 3 and KVH's view of the proposal, click here.

Section 2, Proposal 14 - Cost shares in the Government Industry Agreement (GIA)
The GIA deed, signed by KVH in 2014, outlines the cost-sharing arrangement agreed upon in this partnership. MPI's primary goal in pursuing these changes is to ensure that the cost-sharing terms remain fair and equitable for all parties involved. MPI has proposed two changes: the first is to require periodic reviews of the cost-sharing structure within the Act, and the second is to establish a formal framework to better guide these discussions. KVH's position is that we do not support either of these proposals, as we believe they would significantly change the intent behind the original agreement we signed when joining the GIA. We are advocating for maintaining the current arrangement.

For more detail on Proposal 14 and KVH's view of the proposal, click here.

Section 2, Proposal 15 - Cost recovery from Non-Signatory Beneficiaries (NSB's)
Not all industries are signed up the GIA agreement, and as the name suggests, these industries are referred to as NSB's as they can benefit from GIA activity without contributing to their cost. MPI present two options enabling easier cost-recovery from these industries. These include levying NSBs to build an up-front fund, or levying after a response to recover costs. KVH's view is that NSB's should share the cost if benefiting but we do not have a strong view on how this could be achieved, but favour the approach of collecting funds in advance.

For more detail on Proposal 15 and KVH's view of the proposal, click here.

Section 2, Proposals 16-20 - Compensation
The Act currently provides a broad definition of compensation, but as highlighted by the *M. bovis* response, compensation can be expensive, time-consuming, and complex. The proposed changes aim to refine and streamline the compensation process, while also more clearly defining which types of losses are eligible for compensation. KVH's position is that maintaining an appropriate level of compensation is crucial to ensure those affected have access to fair compensation for their losses, enabling them to recover adequately from impacts. Of the proposals to limit compensation liability, KVH favours restrictions on time as opposed to limiting the scope of what is compensable. Rather than the proposed 12-month limit, KVH suggests this limit is set to three years of consequential loses to enable growers to regain organic status if this is lost through use of agrichemicals in a response. A three-year time frame would also support conventional growers to recover from any production disruption in severe incursions.

For more detail on Proposals 16-20 and KVH's view of these proposals, click here.

Section 3, Proposals 22-26 - Import Health Standards (IHS)
IHS are one of the key tools to reduce biosecurity risks getting to New Zealand. However, the current system is struggling to keep up with demand. Proposals 22 – 26 aim to improve speed, efficiency, and responsiveness without compromising risk levels and international obligations. KVH is generally supportive of efficiencies but not where gains are made at the expense of risk management. There are several proposals in this

section and in some cases further detail is required to understand if these would result in an unacceptable increase in risk.

For more detail on Proposals 22-26 and KVH's view of these proposals, click here.

Section 3, Proposal 36 – Modify and grow GIA
This proposal is about broadening GIA to have a wider scope that includes pest management and / or expanded membership. KVH's position is that GIA works well, and we do not support these proposed changes as they offer little benefit and may undermine our existing model.

For more detail on Proposal 36 and KVH's view of this proposal, click here.

Section 4, Proposals 40-42 - Biosecurity practices
Promoting a more consistent uptake of good biosecurity practices would help strengthen our ability to protect our country from biosecurity risks and there is an opportunity to improve biosecurity practices through legislative changes. Proposals including adding a "general biosecurity duty" to the Act and allow for a wider range of risk management requirement to be regulated under the Act. The kiwifruit industry already has a framework for biosecurity practice with our National Kiwifruit Pathway Management Plan and the implementation of a general duty would help address risk presented by other participants in the system, so this is a proposal that KVH supports.

For more detail on Proposals 40-42 and KVH's view of this proposal, click here.

Section 5, Proposals 44-46 and 48-50 - Long-term management
Generally, moving from response to long-term management (and setting up pest and pathway management plans) is time consuming and complex. Proposals 44 – 46 aim to make it easier to set up and fund management plans. Proposals 48 - 50 aim to improve plan governance and decision making. KVH is supportive of these proposals as they will simplify the process and help make such plans more efficient, cost effective and accessible to implement.

For more detail on Proposals 44-46 and 48-50 and KVH's view of the proposals, click here.

KVH is committed to representing the best interests of our industry. We invite feedback from anyone with thoughts on the summary above or any aspect of the full submission.

Please provide your feedback by 5pm Tuesday 10 December so that we can incorporate this into our submission to the MPI consultation process, which closes Friday 13 December.

BIOSECURITY ACT REVIEW

KVH POSITIONS AND DRAFT RESPONSES TO CONSULTATION QUESTIONS

From here, we have provided a title that matches the MPI's consultation sections and specific questions MPI are seeking responses too are numbered and in **bold,** and KVH's responses are in *italics*.

INTRODUCTION

Impact Analysis

A full cost benefit analysis will be completed when final policy proposals are developed following consultation. Final policy proposals will be considered by Cabinet in 2025.

Q6 - What impacts do you expect to see considered in the full cost-benefit analysis?

The Act Review proposes many changes to shift costs away from the Crown or reduce costs or liabilities altogether. While such changes may be needed to ensure long term affordability of the system, the full cost-benefit analysis should take into account how such changes may impact on human behaviours and associated long term outcomes. For example, proposal 20 relates to reducing the scope or timeframe for consequential compensation payments. This could result in significant cost savings for response costs. However, compensation payments are also a significant incentive for good biosecurity practices and compliance when directed to undertake specific practices which support response outcomes. There is a risk that with reduced compensation entitlements response outcomes are less likely to be achieved. The cost-benefit analysis should take this into account given money spent on response activities typically gives an ROI in order of magnitudes higher when considered against impact mitigated to economic, environmental, social, and cultural values.

Objectives of the proposed amendments

The overarching policy objective of the proposed amendments is to ensure biosecurity measures continue to protect our environment and support our economy. As a secondary objective, we want to provide all users of the Act with a fit-for-purpose toolbox that is complete, effective, efficient and future-proof.

If these objectives are delivered, we should see:

- enhanced measures to prevent and manage biosecurity risks – offshore, at the border, and within New Zealand;
- the right behaviours being incentivised, and improved personal responsibility;
- fit-for-purpose legislation with reduced compliance costs;
- appropriate sharing of decision making;
- the facilitation of trade opportunities.

Q7 - Do you agree with the objectives of the proposed amendments? Please explain in detail.

Yes, that makes sense.

SECTION 1: SYSTEM WIDE ISSUES

This section focuses on proposals relating to system-wide issues:

- Purpose provisions in the Biosecurity Act.
- Ministerial involvement in significant decisions.
- Local knowledge in decision-making.
- Biometric information.
- Arrest powers of Police.
- Powers of inspectors during searches.
- Border fines for travellers with 'high risk goods.'
- Regional councils' access to infringement offences for pest and pathway management plans.
- Better compliance options for places of first arrivals.
- Sentencing.
- Compliance options for breaches of a Controlled Area Notice (CAN).

Supporting documents:

- MPI's Discussion Document on System Wide Issues
- MPI's Regulatory Impact Statement on System Wide Issues

What are the big issues and KVH's view of these?

Ministerial involvement in significant decision making – *Proposal 3 is about giving the Minister call in power for significant decisions as opposed to the CTO. While we recognise some benefits of this proposal, we are also concerned about the risks in making decisions popular with voters or other bias that may exist rather than in the long-term best interest of New Zealand. When a CTO makes a decision to use powers, they already consider New Zealand's four biosecurity values economic, environmental, social, and cultural which provides a comprehensive basis for decision making.*

Purpose clause in the Biosecurity Act (Proposals 1&2, Questions 8-10)

#	Proposal
1	Insert an overarching purpose clause in the Biosecurity Act
2	Include new purpose clauses, as well as revise existing purpose clauses, for selected parts of the Biosecurity Act

Q8 – Do you agree with our preferred approach to progress proposal 2? Why, or why not?

Yes, agree. The Biosecurity Act needs a purpose statement and if there is a risk of creating additional complexity in having an overreaching statement then revised purpose statements for specific sections makes sense.

Q9 – To what extent do you feel that a purpose clause in the Biosecurity Act would help us achieve better biosecurity outcomes?

Agree that purpose statements can provide direction and assist decision makers on how they consider competing objectives.

Q10 - What do you think the purpose of the biosecurity system should be? Do you agree with the elements we have set out for proposal one? Is there something that should not be included?

Yes, we agree with the proposal for a statement that includes:

- *A statement about protection.*
- *A statement about giving effect to international agreements.*
- *Clarification that trade (both imports and exports) is facilitated.*
- *Reference to the system being operationally efficient in delivering biosecurity outcomes.*
- *Reference to environmental, economic, social, and cultural values so there is a legislative mandate to consider them in decision-making.*
- *Clarification that the Biosecurity Act is about effective management of biosecurity risks.*

Ministerial involvement in significant decisions (proposal 3, q11-13)

The Biosecurity Act establishes the role of chief technical officers as distinct from the Minister and Director-General. This is to ensure that the use of powers is based on risk and science/technical evidence. It recognises the technical complexity of some biosecurity decisions.

However, some technical decisions have large consequences beyond biosecurity and having an elected official responsible may be appropriate because the person needs to represent New Zealand's overall public interest.

In practice significant biosecurity decisions are currently brought by the Minister for Biosecurity to Cabinet. Cabinet also makes decisions on paying for the costs of significant incursions that cannot be funded from MPI's ordinary funds.

Two options proposed:

#	Proposal
3A	Vest the Minister responsible for the Biosecurity Act with a call in power
3B	Vest the Minister of the portfolio the chief technical officer works in with a call in power

Q 11 - Do you agree with our preferred approach to progress option 3A? Why, or why not?

The role of the CTO to make technical decisions has the distinct benefit in enabling decisions to be apolitical and not influenced by the voting public or any other bias.

If we consider aerial spraying in urban areas, should this be a technical decision that sits with the CTO, or a political decision made a Minister that considers the views of the voting public? The challenge is that outcomes may then be influenced more by politics than technical analysis and therefore be more subjective to time and place (incursions in different parts of New Zealand may result in different outcomes due to subjective decision making rather than technical advice).

Sharing decision making between a CTO and a Minister also risks confusion, and time delays if a decision is required to be deferred to a Minister.

Only when a very high threshold has been met that considers variables over and above the existing biosecurity system values would KVH support delegation of powers to a Minister.

If the above occurred then KVH would support option 3A is preferable to 3B, if a Minister is assigned a call in power under the Biosecurity Act, then it should be the Minister for Biosecurity.

Q12 - Do you agree with the threshold that we have set? Have we missed anything?

The proposal is that decisions would need to meet the following significant criteria before they can call in a decision:

- The decision is likely to have significant environmental risk, national security risk, fiscal risk, trade risk, or risk to property rights.
- The decision is likely to pose significant risk to social and cultural values.
- The decision is likely to involve issues that increase risk to, or complexity for, the liability of the Crown.
- The decision is likely to involve issues that have the potential to seriously affect the Crown's reputation.

The Regulatory Impact Statement (RIS) states that the policy intent is to set a high bar and that the power is for rare and specific events, which we support. However, the criteria listed above are quite extensive and could broadly encompass almost all decisions a CTO makes. As mentioned in our response to the previous question, KVH would only support a Minister calling in powers when there are variables over and above

the existing biosecurity system values, for example national security. The criteria about liability and reputation to the Crown could result in almost any biosecurity response. The threshold should be updated to include only these variables, not the core values of the biosecurity system.

Q13 - What factors suggest that a power is better exercised by an elected official? What factors suggest a power is better exercised by a non-elected official?

The advantage of an elected official exercising power is the ability to consider a wide range of variables beyond the existing biosecurity system values which the CTO considers.

However, this is also the disadvantage in that elected officials may be influenced by views of influential groups or other bias. A non-elected official has the advantage of being able to act in the long-term best interests of New Zealand, even if that decision may be unpopular with certain groups in the short term.

Local knowledge in decision-making (proposal 4, qs 14 & 15)

4	**Enable local knowledge to inform or guide decision-making in specific parts of the Biosecurity Act**

Q14 - How could local knowledge make decision-making more effective?

Local knowledge can play an important in the biosecurity system and we support the Act being more explicit in how local knowledge is considered for biosecurity decision making.

The proposal is to amend two parts of the Act to explicitly enable officers to consider local knowledge in decision making. These two parts of the Act are:

- *Part 3 – Importation of risk goods*
- *Part 4- Surveillance and prevention.*

Local knowledge could enable more effective decision making for surveillance by providing information about the incidence, prevalence, or distribution of an organism (such as taonga species which may be host to the organism of interest).

However, it is difficult to envisage the amendment in Part 3 resulting in more effective decision making for the importation of risk goods where of offshore production systems and risk management forms the basis of phytosanitary measures.

Q15 - How could we mitigate the potential delays in the decision-making process where there are differences between local and scientific knowledge?

The proposed approach of the Chief Technical Officer using their expertise and discretion to analyse and assess the information provided seems like an effective approach to minimise delays in this situation, given they are considering the existing four values of the biosecurity system.

Biometric information (proposal 5, questions 16 & 17)

5	Clarify that the collection, use or storage of information (including personal information) includes biometric information

Q16 - Do you agree with proposal 5? Why, or why not?

KVH supports utilising technology to create efficiencies and better manage risk. However, New Zealand citizens and especially primary producers, also have an expectation that government departments will not overreach in their collection and use of personal information, so the benefits would need to be considered against potential risks and protections in other existing legislation.

Q17 - Are there any additional legislative safeguards that should be included for MPI's use of biometric information?

We are not well placed to comment here other than there is an expectation that data will have sufficient protection, and any proposed uses fully justified considering costs and benefits.

ENFORCEMENT

Powers of inspectors during searches (proposal 6, question 18)

6	Introduce a power of arrest for obstruction during searches

Q18 - What legislative safeguards should the Biosecurity Act have regarding any future powers of arrest for biosecurity inspectors?

No comment.

Border fines for travellers with high-risk goods (proposal 7, q 19,20)

7	Create an additional infringement penalty for higher risk goods

Q19 - Do you prefer a blanket approach to infringements for erroneous declarations at the border, or a scaled approach?

KVH agree that some goods and actions present a higher risk than others and therefore support a scaled approach with higher infringements where appropriate, provided this assessment can be done efficiently.

Q20 - Do you think the infringement fee in this proposal is set at the right level?

Yes, the infringement fee of $800 for erroneous declaration of high-risk goods is appropriate.

Regional council access to infringement offences for pest and pathway management plans (proposal 8, q 21-25)

8	Introduce the ability for regional councils to establish infringement offences in regional pest management plans

Q21 - Do you agree with our preferred approach to progress proposal 8? Why, or why not?

Yes, there should be options available to regional councils for infringements that do not meet the threshold of prosecution.

Q22 - Do you think councils should have the ability to designate infringements for pest and pathway management plans? Why, or why not?

Yes, pest and pathway management plans are created for better biosecurity outcomes for New Zealand and if there are individuals who deliberately do not comply and put others at risk there should be consequences. A prosecution is a significant undertaking with a high threshold for success, so the option of infringement notices makes sense.

Q23 - Do you think the proposed infringement fee is set at the right level? Why, or why not?

Yes, $300 is an appropriate level, although consideration should be given to how this can be increased over time so that the Act is enduring.

Q24 - Do you think the safeguard requiring MPI consultation is sufficient? Why, or why not?

It seems appropriate to require regional councils to consult MPI on which rules within a Regional Pest Management Plan would constitute an infringement offence with the caveat that this consultation should only be required during the implementation of a Regional Pest Management Plan so that it does not become an administrative burden.

Q25 - Do you think the proposed criteria for regional councils to follow when setting an infringement are sufficient? Why, or why not?

We question the criteria that contravention of the rule is likely to occur in high volumes, as low volume isolated contraventions may also create significant risk is some scenarios.

Enhancing compliance options for breach of a controlled area notice (proposal 9, q 26-28)

9	Amend an existing offence, establish a new offence and corresponding infringement

Q26 - Do you agree with our preferred approach to progress proposal 9? Why, or why not?

Yes, the proposal makes sense to differentiate serious and deliberate breaches, from low level breaches that may have occurred unknowingly with minor impacts.

Q27 - Do you think compliance officers enforcing Controlled Area Notices should be able to issue an infringement against an individual breaching a rule in a Notice?

Compliance officers should be able to issue infringements against individuals for medium and low-level offending, but not serious offending which is better dealt with by prosecution through the court system.

Q28 - Do you think the infringement fee in this proposal is set at the right level?

Yes, a medium level breach that results in a negative biosecurity outcome such as spreading an unwanted organism to another area. Therefore, there needs to be a significant deterrent, but is not excessive given this movement may have occurred unknowingly (lacks the proof of a serious offending). Therefore $5000 for an individual and $15,000 for a corporation seems appropriate.

Stronger compliance options at Port of First Arrivals (PoFAs) (proposal 10 &11, questions 29 &30)

10	Enable pecuniary penalties for breaches of PoFA requirements
11	Create a new offence for breaching PoFA conditions of approval with a fine of up to $200,000 and a continuing penalty of $10,000 each day

Q29 - To what extent are these proposals likely to incentivise better compliance?

The consultation documents outline how PoFA requirements can be breached and result in financial gain, and current consequences of revoking a PoFA approval may not be viable as they would result in significant passenger and freight disruptions and wider societal impacts. Therefore, we support the introduction of more practical compliance options to incentivise compliance. However, we are not close to the PoFA environment to provide an opinion on how effective these proposals may be.

Q30 - What alternative tools could be used to incentivise compliance?

No comment.

Arrest powers for police (minor and technical) (proposal 12, no q)

12	Clarify arrest powers of police officers (or authorised biosecurity officers pending current proposal)

No response required, minor technical amendment.

Sentencing (proposal 13, q 31-33)

13	Introduce sentencing guidance into the Biosecurity Act

Q31 - Do you agree with our preferred approach to progress proposal 13? Why, or why not?

Yes, we agree with having sentencing guidance to provide greater clarity and consistency in sentencing.

Q32 - What advantages and disadvantages might there by in including sentencing guidelines in the Biosecurity Act?

The advantage of including sentencing guidelines is the clarity and transparency of how the compliance process operates. Clarity of consequences may result in better compliance and biosecurity outcomes for New Zealand.

Q33 - What specific considerations relevant to the biosecurity system do you think should be given weight in sentencing decisions?

Consideration should be given to the deliberate nature of the action and the magnitude of consequence. Deliberate and knowing actions that have serious impacts to New Zealand biosecurity values should have serious consequences.

SECTION 2: FUNDING AND COMPENSATION

Overview of funding and compensation

The costs of managing biosecurity risks are increasing. MPI is concerned that cost sharing arrangements under the Government Industry Agreement (GIA) and the difficulty in recovering costs from non-signatory beneficiaries (NSBs) under current Biosecurity Act settings means funding of the system is not equitable, transparent, efficient or effective.

These proposed changes to funding and compensation include:

- Cost-sharing arrangements under the GIA.
- Cost recovery from non-signatory beneficiaries.
- Improving the operation of the compensation scheme.
- The scope of compensable losses.
- Compensation and pest and pathway plan compliance.

Supporting documents:

- MPI's Discussion Document on Funding and Compensation
- MPI's Regulatory Impact Statement for Funding and Compensation

What are the big issues and KVH's view of these?

1. ***Proposed amendments to GIA cost shares –*** *This is a fundamental change to GIA that warrants significant discussion. Opening cost shares for debate risks eroding good will of GIA.*
2. ***Cost recovery from NSBs –*** *An important issue with two proposed approaches, neither seems ideal, but don't have a preference or better alternative.*
3. ***Scope of compensable losses –*** *Compensation is an important driver of behaviour however it is also a significant response cost. Options proposed need to balance limiting scope of compensation to reduce liability but avoid impacting desirable behaviours.*

Cost shares under GIA (proposal 14, questions 34- 37)

14A	Mandate a periodic review of the cost shares in the GIA deed.
14B	Set out a cost share framework in legislation to guide cost share arrangements with GIA partners (MPI preferred option).

Under this proposal the Act wouldn't have specific cost shares but rather a framework setting out principles and methods to inform cost share negotiations during periodic reviews of the Deed. An alternative approach would be to set the cost shares out in regulations.

Q34 - Do you agree with our preferred approach to progress option 14B? Why, or why not?

No, we do not agree with either of the proposed approaches and advocate for retaining the status quo (Option 1 in the regulatory impact statement).

Prior to GIA the government bore all response costs, the cost shares outlined in the Deed including the exacerbator share were negotiated to achieve shared decision making and sharing of costs between government and industry. It would be unpalatable and inconsistent with the mandate we achieved from our members to join GIA to reopen these cost share arrangements.

The regulatory impact statement uses fruit fly costs as an example of unequal cost distributions but uses figures from the 2015 Operational Agreement and fails to recognise that these cost shares were revised to be more equitable in 2021. The fruit fly example also highlights why government should cover the exacerbator share given nearly all fruit fly interceptions occur on the passenger pathway of which industry has no control and in other responses it is very normal not to be able to identify a pathway of entry.

The GIA Deed is the overarching agreement which signatories have signed up to and allows for reviews to be undertaken with agreement of all signatories at any time or at least every five years.

Q35 - What benefits do you see with having a cost share framework in legislation? Do you think this should be set out in the Biosecurity Act or in regulations?

The cost share framework has already been agreed in the Deed to which signatories have sought mandate and signed up to. This cannot be changed without significant risk to the membership of GIA. We do not see any benefits associated with this proposal.

Q36 - How do you think having a cost share framework might impact the GIA Deed? What impacts do you think it might have on GIA negotiations and reconfirming the GIA Deed?

The framework cannot contain information which contradicts that of the Deed, given this is the document to which we have signed up to. If the framework only provided guidance that could be useful for negotiations. However, if the framework removed key settings that industry sought mandate on such as the 50% industry cap, or the 20% exacerbator share this would have significant impact on GIA negotiations, membership and the operation of this partnership as a whole, as some signatories may choose to leave GIA which could risk the future of the partnership.

Q37 - What risks do you see with adopting this approach? How will it impact on your participation in the GIA? How would it affect your business?

Many signatories operate in an environment that is substantially different to that when they first sought industry mandate to join GIA. Many industries are facing significant challenges and the re-seeking industry mandate for GIA is likely to be challenging and outcomes uncertain. Even more so given the concessions that were included to incentivise joining the agreement have now expired.

GIA has largely been about acting in good faith and building relationships and such a fundamental change would also erode the good will and relationships between government and industry as well as between industries, that have been built to this point.

Cost recover from non-signatory beneficiaries (proposal 15, questions 38-39)

Non-signatory beneficiaries (NSBs) can benefit from GIA-funded activities without contributing to their cost. This creates inequity in the biosecurity funding regime and has been raised as a concern by GIA partners. While NSBs are typically small sectors, any sector could choose to leave GIA if there was limited value in remaining in the partnership, so it's important to have cost recovery mechanisms.

There are two proposed approaches to cost recover from NSBs:

15A	Levy non-signatory beneficiaries (NSBs) to build an up-front fund.
15B	Levy NSBs after a response to recover costs.

Q38 - For industry readers, how would the options impact your business? For other readers, how would the options affect balance/fairness in cost recovery?

NSBs should pay their share of readiness and response costs. However, how these are collected is complex. Both options presented rely on industry bodies to collect levies from NSBs. This is unlikely to work in practice given the small size and fragmented nature of NSBs currently. Of the options presented, levying in advance to build a fund is the preferred approach.

Q39 - If you are a GIA partner, which option do you think is better aligned with the existing GIA cost share arrangement? What benefits do you see with the options?

Preference is for option 15A to build an up-front fund. Of interest to KVH would be the views of current NSBs on which option is likely to be feasible and whether these would be effective drivers to join GIA. Additionally, if the option to levy NSBs after a response has occurred was implemented, this may prove to be very challenging if the sector in question is suffering significant impacts from the response and therefore under severe financial hardship.

Compensation – improvements to operation of the scheme (proposals 16-19, questions 40-45)

Under the Biosecurity Act, compensation is available when powers are used to help incentive behaviours that are in New Zealand's best interests. However compensation can be a significant response cost, which is cost shareable.

Several changes are proposed to compensation which are looking to achieve a balance in still incentivising behaviour and covering loss, but not to a full extent assuming producers, who now have greater exposure to losses, would seek to mitigate their losses by improving biosecurity practices. This assumes that access to compensation is a significant factor in whether producers have biosecurity practices in place, which we would disagree with.

The proposals are:

16	Refining how non-compliance would make a person ineligible for compensation.
17	Enabling more detailed compensation entitlements and requirements via regulation
18	Removing restrictions on the ability to vary compensation and enable upfront payment of future losses that have not yet been incurred.
19	Codify the operational dispute resolution process.

Q40 - Do you agree with our preferred approach to progress proposals 16, 17, and 18? Why, or why not?

16 – While there is logic in not paying compensation to those who do not follow rules, the major challenge with this approach is the disincentive it creates for industry, central or local government to create any additional biosecurity requirements, as failure to comply with these would remove eligibility for compensation. As a result, this could make consultation and implementation of any new requirements more difficult, which is contrary to other parts of this review which seek to make implementation of tools easier.

This change would also create a disincentive for industry to be proactive in their approach to biosecurity risk management as it increases the opportunity that they would be ineligible for compensation, despite being more proactive in biosecurity risk management. A possible mitigation would be for a Minister to determine during the development of a plan if failure to comply would jeopardize compensation, so that it is clear and could remove this disincentive for proactive approaches such as pathway plans.

However, if these concerns can be addressed (such as with the definition of in a serious or significant way) then we support this approach as an incentive for good biosecurity practice.

17 – We cannot envisage it would be practical to have a compensation scheme that sets out compensation rates, this would be too difficult to develop and maintain. For example, what would the value of a kiwifruit orchard be? And how would this change year to year and account for regional variations.

18 - This option makes sense, and early payment would reduce hardship and improve efficiency. We support this.

19 – We agree with this approach for the Biosecurity Act to set out three steps in the dispute process graduating up to arbitration.

Q41 - Do you agree with our proposed definition of biosecurity law? Is there anything we should include or should be taken out?

Yes, we agree with this definition, but there should be the option when creating secondary legislation to consider whether a breach would result in loss of compensation. This would remove the disincentive of proactive approaches. So, definition then could read "selected secondary legislation".

Q42 - Do you think our proposed suite of changes (proposals 16-19) are adaptable enough to cater to different situations and scenarios? Can you think of any situation where the options in this suite may be inadequate?

See points above for scenarios such as the disincentive for proactive producers.

Q43 - When considering compensation, how much value should be placed on certainty of compensation payments versus the flexibility of the compensation scheme?

There needs to be a balance between certainty and flexibility. However, we think retaining flexibility would be more important given that there is huge diversity among claimants and nuances which need to be allowed for situations. It seems that MPI's compensation team has made significant progress in improving process in recent years and care should be taken not to undo this.

Q44 - Is there anything else you would like to provide comments on regarding improvements to the compensation scheme?

No.

Q45 - What impact would proposal 19 have on dispute resolution?

Codifying the disputes resolution process will provide clarity of process to all parties involved.

Proposal 20 – stating which types of losses are and are not compensable, including removing some or all consequential losses from compensation (qs 46-50)

This proposal considers how to reduce the cost of compensation by reducing either the scope of what is eligible for compensation (removing some consequential losses) or providing time frames to reduce liability exposure.

Options presented are:

20A	Income and professional fees payable
20B	All consequential losses payable for the first year a producer is affected by the exercise of government powers
20C	All consequential losses are payable for the first six months a producer is affected by the exercise of powers
20D	Professional fees are payable
20E	No consequential losses are payable

Q46 - How do you currently protect against loss?

Speaking on behalf of growers that we represent – protection against losses comes in a variety of ways such as – insurance where possible (hail), industry mechanisms to average losses across a wider group. But for many events the only protection is to have a financial buffer from the good years to carry one through tough times and unexpected events.

Q47 - If compensation was limited what alternative would you use to protect yourself or your business?

We don't think compensation is a significant factor in kiwifruit growers contingency planning as history would show that biosecurity incursions carry long lasting impacts, and only a few are eligible for compensation in the past. It doesn't serve as an insurance policy but rather an incentive to do the right thing.

For example, in the Psa response, compensation was limited to the first few growers who cut out their orchards, but once eradication was no longer feasible this was stopped. However, for all the remaining growers cut out and re-graft with a new cultivar was still the right option and brought with it years with no or low income. Compensation itself wasn't an income protection mechanism but was an incentive to get the initial growers to start removing orchards.

The expectation for other incursions such as BMSB, a similar course of action might be followed, where compensation is available for the use of powers where spraying is directed, but beyond this there would be no compensation but still widespread impacts throughout the industry if BMSB established and had to be managed long term. Therefore, majority of growers will not receive compensation and don't factor this into contingency planning.

Q48 - How do you think people's behaviour might change if less compensation was available

Compensation is useful to drive behaviours for the wider good, rather than the individual. Without compensation behaviours will revert to what is best for them, because financially they may not have an alternative. Reporting is probably the biggest issue - what is the incentive to be the first to report if it will make you financially worse off?

Q49 - What role does compensation play in helping you recover from an incursion?

Compensation for affected businesses is an incentive to undertake desired practices for the wider good and enables the business to continue to operate through the immediate challenge of the incursion and into recovery when a steady state and long-term plan has been established.

For a pest like BMSB, if a grower was directed to spray with agrichemicals that prevent fruit being harvested, compensation incentives this action and enables them to continue to operate until the next crop.

Q50 - How critical is it for you to know you could be compensated for something when you are making biosecurity decisions?

For decisions where the immediate impact to an individual is not apparent, and the potential financial impacts are significant, knowledge that compensation is available is very significant.

Compensation and pest and pathway plan compliance (minor and technical) (proposal 21, question 51)

If a person suffers losses during implementation of a pest management plan or pathway management plan, different provisions of the Biosecurity Act apply from those discussed in the previous section (Section 6 – Compensation).

Instead, when developing a regional pest or pathway management plan, Part 5 of the Biosecurity Act states that a plan itself may provide for compensation if losses occur as a result of the plan being implemented.

For example, the Biosecurity (National Bovine Tuberculosis Pest Management Plan) Order 1998 makes compensation available under section 100I of the Biosecurity Act.

However, Part 5 of the Biosecurity Act also requires that a plan must not provide compensation for losses relating to a person who did not comply with the requirements of the plan.

In other words, even if a regional council opted to make compensation available in a regional management plan, the council would not be able to compensate losses relating to non-compliance with that plan.

Under the National Kiwifruit Pathway Management Plan no compensation is available for losses resulting from implementation of the Plan.

Two proposed changes which are considered minor and technical:

21A	Make excluding compensation optional in the event of non-compliance with a pest or pathway plan
21B	Differentiate how non-compliance affects compensation between pest management plans and pathway management plans.

21A – Enables regional councils or management agencies to determine if compensation should be payable even when there is non-compliance which leaves discretion but puts burden on regional councils or the management agency. This wouldn't apply to KVH as we don't have compensation available, but if we did this would create a burden given it is our own members to whom we are deciding if compensation is payable.

21B – This seems to recognise that pathway plans are proactive and deal with known and unknown biosecurity threats, and therefore should have a higher threshold where non-compliance results in ineligibility for compensation.

Q51 - What impacts could it have on you if you were dealing with different compensation requirements for pest, and for pathway management plans? How will it affect your understanding if you must deal with different compensation pathways?

We believe this would be a significant issue. Pest and pathway plans already have the ability to state if compensation will be available when the plan is developed. In the case of the pest and pathway plans that have been implemented for the kiwifruit industry, compensation for use of powers was not available for either. This was largely because the plans were funded by grower levies and therefore compensation would be redirection of funds from growers to another, and that was not the direction that the industry sought.

However, we support option 21B that recognises that plans deal with known and unknown biosecurity threats and therefore only serious or significant non-compliance should affect compensation entitlements.

SECTION 3: BORDER AND IMPORTS

Overview of border and imports

Risk is managed offshore wherever possible, by requiring specific rules and treatments before commodities, goods, and craft can arrive at the border. The import health standard system in is an example of managing biosecurity risk offshore. Then, risk is managed at the border to the greatest extent possible, by screening all incoming goods, passengers, mail, and craft at the border.

The proposed changes to Border and Imports section are as follows.

- the development of import health standards;
- the independent review process in section 24 related to import health standards;
- the border clearance system for cruise craft passengers;
- biofouling removal in the exclusive economic zone;
- limiting food volumes in the air passenger pathway;
- the legislative framework for containment and transitional facilities; and
- providing biosecurity information to incoming passengers on commercial craft.

Supporting Documents:

- MPI's Discussion Document on Border and Imports
- MPI's Regulatory Impact Statement on Border and Imports

What are the big issues and KVH's view of these?

1. ***Development of import health standards –*** *The current system for developing IHSs is too cumbersome, resulting in a large backlog of new IHS requests and out-of-date standards. KVH supports those proposals that will reduce the administration burden within the system without compromising risk management.*
2. ***Section 24 independent review panel –*** *Independent reviews can be timely and costly to MPI but to ensure we retain robustness within the system, having the ability to call an independent review based in evidence, is necessary. KVH does not support removing this option from the Act but agree that some more detail around what constitutes invoking a review could help refine the system and avoid unnecessary costs.*

Development of import health standards (proposals 22-26, questions 52-55)

22	Enable technical amendments to an IHS without consultation
23	Enable a rapid amendment process for IHSs during the first year of trade in a good without consultation
24	Enable the ability to issue one-off or ad hoc permits for goods being imported as a one-off or on a sporadic basis
25	Enable use of permits to allow trade to continue while a suspended IHS is being reviewed
26	Enable consultation on a risk management proposal for a good, rather than on the draft IHS itself

Q52 - If each proposal was implemented, how would it impact you or your business?

Proposal 22 – This would reduce administrative burden for both MPI and industry organisations but there would need to be a clear definition of what constitutes a "technical amendment". There is a risk for our industry that this could be set quite broad and result in what we would consider to be significant changes without consultation. But we acknowledge the need for a more flexible and efficient process.

Proposal 23 – This makes sense provided risk management practices could only be increased as needed in the one-year period, and not reduced without consultation. Some clarification on what "level" of amendment would be acceptable without consultation.

Proposal 24 - This approach makes sense as the status quo seems overly bureaucratic. However, MPI would need good oversight and only enable the movement of low-risk products with appropriate measures in place.

Proposal 25 - If an IHS has been suspended for a non-technical reason, i.e. the IHS has not been used and is outdated, then issuance of a permit to allow import of goods should only be considered after a thorough risk assessment has taken place and appropriate measures have been identified that are equivalent to the level of protection

applied on similar pathways. If an IHS has been suspended due to pathway concerns, then these will need to be addressed before trade should be allowed to recommence.

Proposal 26 – It is unclear what the benefit of this change would be as it does not appear to improve the efficiency of the standard development time so unsure why this change would be made.

Q53 - Do you think these proposals would make importing easier? Why, or why not?

Yes, all the proposals indicate that importing should be easier. Noting that there may be challenges around transparency for importers, industry and the general public of possible changes without consultation. While these proposals may make importing easier, they could compromise management of risk.

Q54 - On what grounds (if any) do you think one-off permits to import goods should be issued?

For low-risk goods, where there are significant benefits to allowing these importations, these could be issued. But not for higher risk goods where there is limited benefit in allowing the trade.

Q55 - Are you aware of any additional barriers to importing contained in the Biosecurity Act? How might these be addressed?

No.

Section 24 - Independent review panels (Proposals 27 A, B, C, D, Questions 56-58)

27	Improving efficiency in the import health standard review
27A	Amend the Biosecurity Notice 2015 and work on cost recovery
27B	Amend section 24 so the review is undertaken by a senior public official rather than by establishing an independent review panel
27C	Amend section 24 so that the review must only be about new evidence
27D	Remove section 24 from the Biosecurity Act

Q56 - Do you agree with our preference for option 27D, followed by option 27B? Why, or why not?

No, 27D is proposing to remove the option of an independent review all together, which we strongly opposed too as this process builds fairness and integrity into the system, and option 27B does not have sufficient independence to achieve the purpose of an independent review.

Therefore, proposal 27A is probably the most favoured approach, retaining this mechanism but implementing a user pays process, which would help ensure that only significant issues are dealt with. However, costs should be set at a level that is not prohibitive for smaller sectors.

Q57 - What impacts would be removing section 24 have on the efficiency of the imports system?

Removing section 24 might make the import system more efficient but would remove an important step in the risk management process, as submitters may have sound grounds for concern.

Q58 - Are there other ways to provide checks and balances on MPI's decision-making that would promote an efficient import system?

Given there are no shared decision making in the pre-border and border space it is important to have sufficient consultation on proposed changes and pathways to appeal where there are concerns that evidence may not have been appropriately considered. I don't think a shared decision-making model would be more efficient.

Border clearances for cruise craft passengers (Proposal 28, Questions 59)

28	Create additional powers and duties in the Biosecurity Act enabling inspectors to process passengers disembarking a vessel but who have already arrived in New Zealand

Q59 - Do you agree with our preferred approach to progress proposal 28? Why, or why not?

Yes, Port of Tauranga is often the second port of arrival, located in the heart of our kiwifruit production region. This proposal would better manage risk of passengers who have previously arrived in Auckland but may still present a biosecurity risk.

Better Management of biofouling removal in New Zealand's Exclusive Economic Zone (Proposal 29 A and B, Questions 60, 61)

29A	Amend the Biosecurity Act to clarify that MPI has the power to regulate biofouling removal in relation to all vessels' arrival in the EEZ with a clearly stated intention of arriving in NZ
29B	Amend EEZ Act to enable MPI to regulate biofouling removal under specific regulations

Q60 - Do you agree with our preferred approach to progress proposal 29A? Why, or why not?

Not applicable.

Q61 - Are there any reasons that our preferred approach would not be an efficient tool to manage biofouling removal in New Zealand? If so, what are they?

Not applicable.

Limiting volumes of food in the air passenger pathway (Proposal 30-31, Questions 62-63)

30	Amend purpose section of Part 3 (Importation of risk goods) of the Biosecurity Act to include improving operational efficiencies
31	Enable the Director-General to impose a limit on the volume of a class of food moving through the air passenger pathway

Q62 - Should "operational efficiencies" justify the limitation of food in the air passenger pathway? Why, or why not?

Yes, bringing large volumes of food into New Zealand on this pathway slows the process and redirects biosecurity officers from other passengers, which could increase risk unintentionally.

Q63 - If this proposal proceeds, what sort of exemptions might be required and why?

*Amounts of food that fall under personal consumption category, rather than bulk should be permitted in addition to food for medical, religious, or special dietary needs***.**

Containment and transitional facilities (Proposal 32-33, Questions 64- 69)

32	Streamline the legislative framework for transitional and containment facilities
33	Enabling third-party verification at transitional facilities

Q64 - Do you agree with our preferred approach to progress proposal 32? Why, or why not?

Yes, removing the requirements from primary legislation and moving these to sit within secondary legislation will allow for a more adaptable and flexible approach to facilities risk management.

Q65 - Do you think this proposal would deliver a more enduring and efficient system for regulating and approving facilities? Why, or why not?

Yes, biosecurity risk is always changing so this will allow for facilities, which play a major part within the New Zealand biosecurity system, to quickly adapt to these changes as needed.

Q66 - If you are a facility owner or operator, how do you anticipate this option would impact your business?

Not applicable.

Q67 - Do you agree with our preferred approach to progress proposal 33B? Why, or why not?

It makes sense to have the flexibility to engage third-party providers for activities that fall within their areas of expertise. New Zealand boasts a world-class biosecurity system, offering numerous pathways for managing biosecurity. However, this extensive system can sometimes lead to bottlenecks and resource limitations for MPI in staying current with verification activities and other tasks. By leveraging appropriately trained and experienced external parties to manage these activities, the system can remain up to date and compliant.

Q68 - What capabilities should third parties have to demonstrate before undertaking verification under the Biosecurity Act?

This seems very dependent on the type of verification being sought. But at its basis, they need to show basic competence of both auditing/verification activities and biosecurity risk management. An audit the auditor process should be put in place to ensure any third-party provider that MPI accredits to undertake verification is trained to do so effectively.

Q69 - Are there any areas of the Biosecurity Act where third-party verification should not take place? Why?

Yes, third-party verification activities should be allotted to lower risk areas of the biosecurity system. High risk areas must be allocated to MPI officials to ensure that the riskiest pathways are appropriately managed. MPI is ultimately responsible to managing the system components, so these higher risk areas should fall directly with them to manage in their entirety.

Providing biosecurity information to incoming passengers on commercial craft (Proposal 32-33, Questions 64- 69)

34A	Remove the general duty under section 17AA of the Biosecurity Act and its supporting regulations to provide biosecurity information to incoming passengers
34B	Include a requirement for carriers of a commercial craft to provide notice to the Director-General of MPI that biosecurity information has been provided to incoming passengers

Q70 - Do you think the duty established under section 17AA and its associated regulations is effective or necessary? Why, or why not?

It is necessary to highlight to passengers the importance of biosecurity, which otherwise might not be understood, given cultural or language barriers. While there are other opportunities for this messaging such as pre-boarding, and in the port of first arrival, having this message played while on the journey enables time for sufficient consideration to ensure appropriate behaviour and compliance follows.

Q71 - Do you think that the regulations should include a requirement for carriers of commercial craft to notify the Director-General of MPI that biosecurity information has been provided to passengers? If so, how do you think this notification should be verified and communicated to the Director-General?

If this improves the ability to verify compliance, then that is a good thing. An arrangement between carriers of commercial craft and MPI should be put in place at the business to government level with periodic compliance checking by MPI to provide the DG confidence that compliance is met.

Establishment of biosecurity control area in PoFA (minor and technical) (Proposal 35)

35	Make explicit the ability for a PoFA standard to establish a biosecurity control area

Technical amendment – no consultation questions.

SECTION 4: READINESS AND RESPONSE

Overview of Readiness and Response

This discussion paper is part of a consultation package containing proposals to change the Biosecurity Act 1993.

It focuses on proposals relating to readiness and response. These proposals relate to:

- the Government/industry Agreement (GIA).
- liability protection for GIA partners.
- faster emergency declarations.
- biosecurity practices.

Several issues that are directly relevant for the GIA are contained in Paper Three: Funding and compensation, including options for cost-shares for the GIA, and how costs are recovered from non-signatory beneficiaries (industry groups who have not signed up to the GIA, but who benefit from GIA-funded activities).

Supporting Documents:

- MPI's Discussion Document on Readiness and Response
- MPI's Regulatory Impact Statement on Readiness and Response

What are the big issues and KVH's view of these?

Proposal 36 Modify and grow GIA – *The Government Industry Agreement is how government and industry work together on biosecurity readiness and response. The proposals to modify this agreement are significant and are outlined in detail below.*

Government Industry Agreement GIA (proposal 36 & 37, Q72-76)

The GIA Deed has been signed by 23 industry sectors, representing 94 percent of primary production in New Zealand. The GIA continues to evolve and develop.
The consultation documents outline the following issues relating to readiness and response.

- Industry parties cannot always agree on decisions that relate to readiness and response activities.
- MPI cannot always effectively represent the interests of some stakeholders and partners (for example, iwi, regional councils, and other Crown agencies).
- The GIA limits cost-sharing, decision-making, and compensation to readiness and response activities. This may limit or skew investment in other areas of the biosecurity system such as pest management, pathway management, and on-farm biosecurity.
- Industry organisations require biosecurity expertise to represent their industry's interests in the GIA. This expertise is often interchangeable between industry and industry groups. This creates inefficiencies in the duplication of resources that often puts smaller industries at a disadvantage.

Two proposals have been put forward

36	Modify and grow the GIA
37	Create one or more biosecurity focussed organisations

36 – Expand scope

To include pest management

There is a current need to be able to transition more effectively from response to long term management, however KVH does not support expanding the scope of GIA to include pest management, however other tools such as removing barriers to enable better access to pest and pathway plans might be a better solution.

The consultation docs state that on-farm biosecurity is outside of the scope of GIA and that expansion of scope might help address this issue. This problem statement is not entirely accurate as on-farm biosecurity practices can be a key readiness activity for specific or generic threats in which case they do fall under GIA.

Under the current state KVH is involved in two proactive on-orchard biosecurity schemes under GIA as a readiness activity:

1. *Plant Pass to manage biosecurity risk associated with the movement of plants;*
2. *A traceability project which aims to provide a digital tool for more efficient tracing of plant material.*

If we consider KVH's 5 step on-orchard biosecurity plan, all five of these steps have other mechanisms that can be used to increase uptake without expansion of GIA scope.

Step	Role of the Act / Does GIA expansion help?
1. Be aware of potential risks	No role of legislation, rather education of industry and govt initiatives, GIA minimum commitment
2. Agree what must happen on site	Proposed general duty? Otherwise, contracts with staff or contractor
3. Check and clean (tools, equipment)	Proposed general duty could implement a rule here about cleaning high risk equipment between properties (i.e. secateurs)
4. Source clean plant material	GIA scheme exists with Plant Pass. Proposed General Duty could help with the likes of traceability
5. Report the unusual	General Duty and existing obligations to report unwanted organisms.

Furthermore, KVH is the management agency of the National Kiwifruit Pathway Management Plan, which is the framework and legal basis for our industry on-orchard biosecurity practices. KVH has staff and budget dedicated to managing implementation of this plan and run an agile and industry focused model. It is unclear to us how bringing these activities under GIA would improve biosecurity for our industry and there is a risk that joint decision making would only make us slower and less agile. Moreover, the kiwifruit industry does not support extending decision making to government in the pest management space.

To include more members

GIA is a partnership between industry and government, and this should remain as the core focus given the direct impact associated with exotic pests and disease responses.

There are members of the biosecurity community who are largely absent from GIA conversations, such as DOC and Māori, and their involvement could improve biosecurity outcomes. However, this does not mean we need to legislate for changing a working model and should instead consider other options for involvement, such as observer status and considering requesting MPI (as the Crown representative to the GIA partnership) clarifies their relationships with other regional and central government agencies, as well as Māori under their Te Tiriti o Waitangi obligations.

Combine levies

The only benefit we see of this approach is the ability to consolidate our two existing industry levies (GIA and Pathway Plan). While the operation of two separate levies and need to account for associated expenditure is frustrating, we do not consider the benefits of this approach to outweigh the negatives of a broadened scope for GIA.

More than one Deed

It is unclear what the benefits of a separate plant and animal deed would be but inclusion in the Act to retain an option for the future and preserve flexibility could make sense.

We do see a potential risk that this would create an added layer of bureaucracy in both developing and administering multiple deeds.

37 – Create one or more focused biosecurity organisations

See response below Q74.

Q72 - To what extent is intervention from MPI is required to grow and develop the GIA?

We believe this may not be the right question to be asking. MPI intervention wouldn't be required to grow and develop GIA, the Act could enable this, and signatories (incl. MPI and industry) could drive this, facilitated by the GIA Secretariat. However, there is an ongoing need for MPI to increase their transparency in how they work with and invest funding in GIA readiness and response activities, especially with regard to prioritisation among numerous industry partners.

Q73 - Do you think the current scope of the GIA is fit-for-purpose and working? Why?

GIA is working, the partnership has brought parties together for shared decision making in readiness and response activities and there is a long list of wins that can be attributed to this agreement.

In the primary sector, pest management has been the domain of industry. What would including this under GIA offer other than the ability to use a single levy for readiness, response, and long-term management? Under GIA the Crown would have obligations to work in partnership, and we envisage this could create resourcing challenges and slow decision making, while providing limited obvious benefits.

Q 74 - What role do you see industry organisations playing in New Zealand's biosecurity system?

Industry has a significant role in the biosecurity system from managing on-orchard and on-farm biosecurity, pathway risks, identifying emerging risks, outlining readiness activities to prepare for these threats, shared costs and decision making in responses, and supporting industry recovery and long-term management. It is unclear what role centralised industry organisations would have in the biosecurity system in addition to the existing industry organisations – possibly to provide services that are applicable across multiple sectors and reduce duplication while still enabling sector specific organisations to underwork work specific to that sector.

It is also unclear what role the Act needs to play in creating these organisations, as we have already seen sector groups consolidating for efficiency – such as Horticultural Executive Services Limited (HESL), and KVH who both represent multiple product groups in GIA conversations.

Q75 - Which options do you think would be most useful to grow and develop the GIA?

Expanding GIA to include other areas such as pest management and pathway management would enable the use of a single levy, but this is probably the only positive. It is difficult to envisage how the Crown would share costs or decision making for these activities, we do not support expanding GIA.

The creation of multiple deeds could be a good thing, certainly we have seen issues with a one size fits all deed. Even if there is no immediate need enabling for this in the Act may would preserve this option for the future.

Q76 - Do you anticipate any problems with establishing industry organisations?

The concept risks adding an additional layer which just creates more distance between industry and government which is not what GIA intended to achieve.

Another risk is the loss of biosecurity expertise across sector organisations and instead have these concentrated in a single organisation. While this may have benefits, the risk is the concentration of views into a single voice and losing diversity of thought and expertise.

Liability protection for GIA partners (proposal 38, Q77,78)

One proposal in this section:

38	Amend Part 5A to state that this confers functions on GIA signatories to make joint decisions under the Deed and Operational Agreements

Q77 - Do you agree with our preferred approach to progress proposal 38? Why, or why not?

Yes – liability protection is needed for GIA partners, and this seems like a simple approach to achieve it that is more efficient and provides greater long-term certainty than the status quo.

Q78 - To protect GIA partners from legal liability, which do you think is the better option – amending the Biosecurity Act or the existing Crown indemnity? Why?

Amending the Act, as per comment above.

Faster Emergency Declarations (proposal 39, Q79)

39	Change the decision maker for a biosecurity emergency from the Governor General to the Minister for Biosecurity

Q79 - Do you agree that the Minister for Biosecurity should be the decision maker for an emergency response under the Biosecurity Act? If not, who do you think would be the best decision maker?

Yes, this makes sense. The Minister would be the most informed and presumably under the status quo the Governor General would look to them for advice.

Biosecurity Practices (Proposal 40-42, Q 80-83)

Individuals, businesses, and communities have a part to play in preventing and managing biosecurity risks. Observing good biosecurity practices helps protect the primary sector from pests and diseases, which in turn boosts productivity and protects the environment.

There is an opportunity to improve biosecurity practices through legislative changes. Promoting a more consistent uptake of good biosecurity practices would help strengthen our ability to protect our country from biosecurity risks.

Three proposals for consideration:

40	Add a general duty to the Biosecurity Act
41	Expand the range of specific risk management requirements that can be set up through regulations under the Act
42	Add provisions in the Act to enable greater use of the risk-based regulatory model where businesses are required to develop their own risk management plan

40 - This proposal would involve a general duty being added into the Act. The duty would state what is expected of people who are dealing with risk goods or engaged in activities that may pose biosecurity risks. This proposal would set a clear expectation in legislation for individuals and sectors to “do the right thing” when it comes to biosecurity. Implementation of a general biosecurity duty would not require new resources or the development of new functions.

41 - This proposal would amend the Act to expand regulation-making powers to allow for specific risk management rules to be put in place to promote good biosecurity practices. These expanded regulation making powers would allow MPI to fill any gap in good biosecurity practices that is not covered by existing regulation making provisions.

42 – This proposal would enable businesses and industries to determine the risk management plan that best works for them. This is because businesses and industries are best placed to identify and manage biosecurity risks stemming from their operations -similar to the approach used for risk management plans in the Pathway Plan.

Q80 - How might a general biosecurity duty improve biosecurity system outcomes?

A voluntary approach to biosecurity practice only takes us so far and we would expect to see a wide range of practices. Those who choose to not employ any biosecurity practice can present a weakness in the system and put others at risk.

Therefore, implementing a general duty to provide the basis for interventions to address poor practices is a good initiative.

The kiwifruit industry already has a framework for biosecurity practice with our National Kiwifruit Pathway Management Plan and one would expect that tool to be used to address poor practice within our own industry, and the implementation of a general duty would help address risk presented by other participants in the system.

Q81 - Should we enhance legislation's role in improving biosecurity practices, or is it better to rely on non-legislative approaches like information and education?

An educative approach is the preferred approach to improving biosecurity practices so that participants understand why they are implementing such practices and are motivated to do so. However, the biosecurity system is only as strong as the weakest link and there needs to be legislation to fall back on where there is poor performance.

The proposal to enable risk management rules to be put in place promoting good biosecurity practice would be extremely useful particularly where an industry has no pest or pathway plan in place. For example, sourcing clean plants and maintaining traceability records are fundamental biosecurity practices in horticulture, and while these are requirements under the National Kiwifruit Pathway Management Plan, in other sectors there are no such requirements. While many producers will operate to a high standard regardless of rules, some operators will not which can create vulnerabilities in the system. For both sourcing clean plants and traceability there are schemes available to manage risk, which have low uptake under the current voluntary model.

This tool should only be used to fill gaps, and care would be needed to avoid inconsistencies with pest or pathway plans.

Q82 - How might we incentivise businesses to improve management of biosecurity risk?

New Zealand could adopt a biosecurity certification scheme that would recognise businesses who are working towards biosecurity risk management – similar to B corp certification for sustainability and environmental impact. The scheme could build off work done by the Biosecurity Business Pledge and be promoted to the public.
Or what can we learn off climate initiatives and how businesses are incentivised here?

Q83 - To what extent might it be costly and difficult to develop a risk management plan for your business?

Developing a biosecurity risk management plan would be relatively easy and templates could be provided. The challenge would be to ensure these plans are implemented. Who would oversee this, and what would be the incentive or disincentive for business to do this?

SECTION 5: LONG-TERM MANAGEMENT

Overview of Long-term management

Long-term management of pests is a critical component of New Zealand's biosecurity system. It relies on legislation that is modern and fit-for-purpose, and on efficient coordination between MPI and other key stakeholders.

The Biosecurity Act provides a legislative framework to support the long-term management of pests in New Zealand, such as establishing pest and pathway management plans within Part 5 of the Act.

In the consultation documents MPI outlines the following key issues for long term management

- long-term management tools are difficult to access and costly to develop;
- there is a need for greater flexibility in the Act for long-term management;
- the Act is not always clear in relation to long-term management; and
- the Act could better provide for regional councils' leadership role.

Supporting Documents:

- MPI's Discussion Document on Long Term Management
- MPI's Regulatory Impact Statement on Long Term Management

What are the big issues and KVH's view of these?

Proposals 44, 45 and 46 are about simplifying the process to create national pest and pathway management plans and enabling a more integrated approach to these activities and how they are funded. KVH is pleased to see these proposals included in the documents as it is something we have advocated for based off our own experiences in the implementation of the National Psa-V Pest Management Plan and the National Kiwifruit Pathway Management Plan.

Pest and Pathway management and small-scale management programmes (Proposal 44 -51, Questions 84-88)

Six proposals for consideration:

44	Simplify the process to create national or regional pest management plans
45	Enable (but not require) integrated pest and pathway management plans
46	Enable (but not require) the ability to have consolidated levies for NPMPs
47	Make it easier for regional councils to create small scale management programmes (SSMPs)
48	Enable management agencies to provide exemptions from rules in NPMPs
49	Enable more than one legal entity to share management agency responsibilities
50	Enable management agencies and regional councils the function of issuing permits for pests in NPMPs or RPMPs.
51	Enable regional councils to remove exemptions from a regional pest or pathway management plan rule before the end of the original time frame

Q84 - Do you agree with our preferred approach to progress proposals 44-51? Why, or why not?

44 – Developing management plans is a lengthy and costly process, as KVH has experienced having developed a National Psa-V Pest Management Plan (2013) and a National Kiwifruit Pathway Management Plan (2022). Given these are legal instruments it is appropriate to have sufficient safeguards in place however we support the proposed changes that will remove duplication and unnecessary steps which will make these plans more efficient to develop.

45 – Effective control of domestic biosecurity risks typically requires a mix of integrated pest and pathway management. Pathway management is a key part of preparedness, and contributes to preventing establishment of new threats, cost-effective eradication (including preserving response options), and minimising spread and impacts where a threat cannot be eradicated cost-effectively. Addressing new and emerging risks is now a routine and regular challenge and the value of doing this in a proactive way is increasingly recognised by the key agencies and GIA partners. The current separation of pest and pathway plans is a barrier to uptake, and we support the proposal for the Act to allow for a more integrated approach to pest and pathway plans.

46 – KVH supports the ability to have consolidated levies for national pest and pathway plans. Multiple, segmented levies under the Biosecurity Act represents a barrier to achieving effective funding for industry biosecurity programmes.

Industry bodies need to fund a range of biosecurity activities that span across the system, including post-border readiness and response, and post-border pest and pathway management activities. Currently, industry bodies can fund readiness and response activities through a GIA levy and must fund pest management plans through a

separate levy. Convincing a grower or farmer to pay one biosecurity levy is challenging. Convincing them to fund multiple levies is exceptionally challenging if not problematic for most industries. Administering multiple levies is also less efficient (higher transaction costs).

An opportunity for a more flexible levy mechanism whereby a single Biosecurity Act levy could be used for different specified purposes would be helpful. For KVH this would enable us to fund both our GIA readiness and response activities and National Kiwifruit Pathway Management Plan activities with the same levy, at no additional cost to growers, with less administration.

47 – KVH supports making it easier for regional councils to create small-scale management programmes as there needs to be mechanisms to deal with small issues more easily.

48 – KVH supports this proposal for management agencies to be able to issue exemptions to pest and pathway plans as there may be genuine reasons why a rule cannot be met, with no increase in risk and therefore should be managed at an agency level rather than through Ministerial involvement. However, it would not be expected that exemptions would be issued often.

49 – KVH supports this proposal for the Act to allow for multiple entities to share management agency responsibilities. While a single agency with a clear lead and accountability may still be the preferred option, it may be useful in certain scenarios that this model is allowed for in the Act.

50 – KVH supports this proposal to allow for issuance of permits under plans to allow future flexibility in use of regulatory tools.

51 – KVH supports, this proposal to allow regional councils to be able to revoke exemptions under plans where the conditions of this exemption have not been met.

Q85 - Are there additional areas in long-term management that could be streamlined, removed, or changed?

No, nothing further to add.

Q86 - How much of a difference might these proposals make to more efficient and effective long-term management?

Reducing barriers to pest and pathway management tools may make these options more attractive to a wider range of participants, they may also result in a shorter implementation time frame, both of which result in better long term management outcomes.

Q87 - What will be the impacts of enabling pest and pathway management plans to be combined? What risks do you anticipate?

A combined approach results in broader risk management. A management agency that currently has a pest management plan has limitations in how pathway risks are managed, and likewise a pathway plan has limitations in managing pest specific issues.

An integrated approach will remove these limitations.

A risk is ensuring that there is clear alignment between pest and pathway plans such as the use of powers, offences, and penalties, etc.

Q88 - Do you think the right checks and balances for decision-making are in place with respect to the changes we are proposing? Why or why not?

Yes, most of the safeguards would be retained within the Act, but changes would result in efficiencies.

Alignment of long-term management outcomes (proposals 52-54C, Questions 89-91)

52	Enable multiple National Policy Directions for Pest management to be made
53	Enable new regulations to be made to create nationally consistent baseline objectives, policies or rules for pest management.
54A	Strengthen section 55 by requiring that the party that is assigned responsibility must take action to manage the harmful organism or pathway.
54B	Streamline the process set out in the regulations to remove unnecessary steps or duplication.
54C	Repeal section 55 of the Act and revoke its associated regulations.

Q89 - Do you agree with our preferred approach to progress proposals 52, 53 and 54B? Why, or why not?

52 – KVH supports enabling multiple National Policy Directions (NPDs) for pest management as this would enable more detail for specific pests to be included and therefore make the document more useful. The benefit of multiple NPDs rather than a single more detailed NPD is to enable amendments and associated consultation to occur on specific parts rather than on the entire NPD on each occasion.

53 – KVH agrees with this proposal, it will help to bring consistency across national programmes run by the regional councils and supported by MPI for pests like wilding pines, Caulerpa, wallabies etc.

54B – KVH agrees with this proposal, we strongly support any proposal to simplify and streamline processes and 54B seems the best approach for section 55 of the Act.

Q90 - Do you think nationally consistent baseline objectives, policies or rules for long-term management would be helpful? Why, or why not?

Yes, however our concern would be that they are flexible enough to allow for local solutions to national issues, e.g. some tools, methods, and rules that suit one region may not suit another region due to climate, environment, culture, proximity to populations etc. Consistency with some flexibility would be good.

Q91 - What is the best way to achieve national consistency of baseline objectives, policies or rules for long-term management?

1) *Prompt and clear communication from central government.*
2) *Funding to bring all regions up to an even playing field with each other.*
3) *Frequent inter-region/national collaboration and networking.*
4) *Designated staff for liaison between regional and national levels.*

Management of unwanted and notifiable organisms (Proposals 55-60, Questions 92-98)

55	Amend section 52 to define "communicate" in relation to a pest or unwanted organism.
56	Enable a chief technical officer to tailor the application of sections 52 and 53 when declaring an unwanted organism.
57	Align the permissions for exemptions contained in section 53(2) with those in section 52.
58	Clarifying in the Biosecurity Act how unwanted organism status can be removed and making this process more efficient.
59	Include a new transitional provision for all unwanted organisms to expire after five years.
60	Improve the management of notifiable organisms.

Q92 - Do you agree with our preferred approach to progress proposals 55-60? Why, or why not?

55 – KVH agrees, the term communicate is not widely understood and we support changes that will provide greater clarity and prevent unintended breaches.

56 – KVH agrees with this proposal because we know being able to make timely decisions, such as declaring an unwanted organism, in the early stages of a response is essential. By having the broad-brush approach of automatically applying s52 and s53 when declaring an unwanted organism can lead to delays which can be costly to the success of a response. A more adaptable approach to allow for legitimate activities to continue without compromising the biosecurity risk seems like an appropriate approach.

57 – KVH agrees with this proposal as aligning exemptions during the permission stage, makes it clearer and more transparent while also reducing administrative burden for supply exemptions under two sections.

58 – KVH agrees, steps to make this process easier and more efficient. There are many examples of organisms that are believed to be of concern and may have an unwanted organism status but are then found to exist in New Zealand and be widespread. At this stage, the unwanted organism status can hinder research through unnecessary restrictions while stakeholders wait for the unwanted organism status to be removed.

59 – KVH is supportive of this approach to reduce the list to a more manageable size with the understanding that this is a one-time occurrence, after which organisms remaining on the list will be there in perpetuity. Our expectation is that there would be a process to determine which organisms are of relevance to industry and should remain on the revised list going forward.

60 – KVH agrees with this proposal as it provides clarity for users of the Act around notifiable vs unwanted and also allows for a more efficient and timely updates to the notifiable organism schedules which supports our "country freedom" status to trading partners.

Q93 - If the term "communicate" is retained in section 52 of the Biosecurity Act, should it have a very broad meaning (i.e., to include moving a single specimen of the organism from one place to another) or a narrower meaning focussed on transmitting a disease or pest from one organism to another? Why?

Given the wide range of unwanted organisms to which this term could apply a broad definition would be more appropriately to a wider range of potential scenarios that could be encountered.

Q94 - What impacts do you anticipate from the proposed process of enabling a chief technical officer to tailor the application of sections 52 and 53 for unwanted organisms?

The document defines the problem with current state being that a CTO may need to move quickly in a response to declare an organism unwanted in order to access appropriate powers, but in some scenarios the application of sections 52 and 53 can delay this process.

Delays in response actions can have significant implications in some scenarios so we support solutions to address this, and this proposal makes sense, but we are not close enough to comment on potential impacts that might result.

Q95 - What impacts do you anticipate as a consequence of the proposed process for removing unwanted organism status?

We support pragmatic approaches to enable removal of unwanted organism status once all consequences have been considered, and do not anticipate impacts provided the process is transparent and well communicated.

Q96 - Do you think the transitional provision with a one-off five-year transitional period to remove unwanted organisms is an appropriate mechanism to refine the unwanted organism register?

This proposal may be an effective approach to reduce the current list which appears to be too large to manage with over 15,000 organisms registers as unwanted. However, during this five-year transition appropriate resource would need to be given to ensuring all the significant high risk unwanted organisms are confirmed and timely signalling of removal/retention to industry of organisms relevant to their sectors, otherwise we may have a period of vulnerability at the end of the 5-year transition.

Q97 - Do you think the right checks and balances are in place in the process for removing and monitoring unwanted organism status? Are there any ways this process could be improved?

This is largely an MPI process that we have little visibility of however the diagram on p24 of the discussion document shows that there is transparency and communication associated with this process and requires CTO designation.

Q98 - Is the current definition of an unwanted organism fit-for-purpose? What improvements can be made to ensure that designating an organism as unwanted is proportionate to the potential harm it may cause?

The current definition of an unwanted organism is not easily found in the Act, so this could be considered.

The discussion document defines and unwanted organism as:
An unwanted organism is any pest that a chief technical officer believes is capable or potentially capable of causing unwanted harm to any natural and physical resources of human health. Unwanted organisms also include any new organism that the Environmental Protection Authority has declined an approval to import, and the prohibited organisms listed in Schedule 2 of the Hazardous Substances New Organisms Act 1996.

The reference to human health in this definition is unusual and makes this difficult to understand. A clearer definition might simply refer to potential harm to social, cultural, economic and environmental values.

Minor and technical (Proposal 61, Q99 & 100)

61	Changing the name of the term “Unwanted Organisms” to “Controlled Organisms”

Q99 - Do you have a view on changing the name “unwanted organism” to “controlled organism”? If so, let us know why.

Unwanted makes it clear that we don’t want the organism here. Controlled can be interpreted as meaning the organism has established here and now it is being controlled, which is not the case. This change would create confusion, we do not support this.

Q100 - Are there any other term/s in the Biosecurity Act that are problematic? If so, tell us the term/s, what the issue is, and how a change might solve the issue.

No, not in KVH’s view.

Definitions related to unauthorised goods (Proposals 62)

62A	Provide a definition for ‘New Zealand-born progeny’ in section 2 of the Biosecurity Act
62B	Amend the definition of “goods” in section 2 of the Biosecurity Act to include planted trees or plants alongside moveable personal property.
62C	Amend the definition of “risk goods’ in section 2 of the Biosecurity Act to include the New Zealand-born progeny of unauthorised goods.
62D	Amend the definition of “unauthorised goods” to include the New Zealand-born progeny of unauthorised goods.

Q101 - Do you agree with our preferred approach to progress proposals 62A, B and D? Why, or why not?

KVH agrees with these proposals. If unauthorised goods are brought into New Zealand, and progeny derived from these goods, then these progeny should also be considered unauthorised.

Q102 - Would a definition for “New Zealand-born progeny” be useful for you? Why, or why not?

New Zealand born progeny seems to be a definition in itself, however if MPI is concerned that this may be open to multiple possible interpretations then it should be more tightly defined.

Q103 - If the proposal to define “New Zealand-born progeny” was progressed, how should it be defined? Should there be a ‘cut-off’ in terms of the number of generations of progeny it applies to?

Retaining some flexibility may be appropriate here to enable a risk-based approach to be applied to different scenarios. We would want to avoid a scenario where we find plant lines that are well established over many years have been derived from unauthorised goods, and the Act doesn't provide flexibility for a risk-based approach.

Q104 - Do you currently deal with progeny goods? What impact would be classifying progeny goods as either risk goods or unauthorised goods have on you?

This is not expected to have a direct impact on the kiwifruit industry.

Section 6 – Surveillance interfaces with DOC administered legislation

This section is about changes that interface with other legislation such as:

- Freshwater Fisheries Regulations
- Marine Mammals Protection Act
- Wild Animal Control Act

No proposals are of significance to KVH or the kiwifruit industry.