Biosecurity law in New Zealand

Tim Storey and Brian Clayton[1]

Introduction

Introduced pests, weeds and diseases pose a serious risk to forestry in New Zealand and biosecurity law should therefore be of key concern to forest owners. This article looks at the main acts responsible for biosecurity in New Zealand, the purpose of these acts, and considers how they may be used to protect forests.

The Acts – an overview

Hazardous Substances and New Organisms Act 1996 (HSNO)

The purpose of HSNO is to protect the environment, and the health and safety of people and communities, by preventing or managing the adverse effects of hazardous substances and new organisms. Hazardous substances are defined as any substance, which on its own, or on contact with air or water, has one or more of the following intrinsic properties:

(a) Explosiveness;
(b) Flammability;
(c) A capacity to oxidise;
(d) Corrosiveness;
(e) Toxicity (including chronic toxicity) or ecotoxicity.

New organisms are defined as any "organism":

(a) Which belongs to a species that was not present in New Zealand immediately before 29 July 1998;
(b) Which belongs to a species, subspecies, infrasubspecies, variety, strain, or cultivar prescribed as a risk species, where that organism was not present in New Zealand at the time of promulgation of the relevant regulation;
(c) For which a containment approval has been given under HSNO;
(d) Is a genetically modified organism; and
(e) Belongs to a species, subspecies, infrasubspecies, variety, strain, or cultivar that has been eradicated from New Zealand.

HSNO prohibits the importation or manufacture of any hazardous substance, and the importation, development, field-testing or release of any new organism, otherwise than in accordance with an approval issued under HSNO. Approvals are issued by the Environmental Risk Management Authority (ERMA).

Environmental Risk Management Authority

ERMA was established under Part 4 of HSNO and has primary responsibility of the control, testing, release, importation, containment and development of hazardous substances and new organisms. Every application to introduce or manufacture hazardous substances, or to import, develop, release or field test new organisms must be considered by ERMA. Public notification must be given by ERMA of the following:

(a) Applications to import or manufacture for release any hazardous substance or new organism;[2]
(b) Applications to release any new organism from containment;

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Brian Clayton

(c) Applications to field test a genetically modified organism; and
(d) Applications to import, release or use a hazardous substance or new organism in an emergency.

Applications to import into containment or develop in containment any new organism, or applications to develop any genetically modified organism in containment, will be notified by ERMA if there is likely to be significant public interest. Any person may make a submission to ERMA on any publicly notified applications. Hearings will be held on an application if ERMA considers it necessary, the applicant has requested a hearing or a submitter wishes to be heard. As at November 2001, there had been no applications under the HSNO Act to release a genetically modified organism.

Following the release of the report of the Royal Commission on Genetic Modification, the Government has announced a two-year moratorium that will prohibit the processing of applications to release genetically modified organisms by ERMA. The moratorium expires in October 2003. Stricter controls on field-testing of genetically modified crops will also be introduced in response to the Royal Commission's report.

Biosecurity Act 1993 (BSA)

The purpose of the BSA is to eradicate and effectively manage unwanted organisms and pests already in the country and to prevent pests and unwanted organisms from entering New Zealand. In addition, the BSA provides for the control of "risk goods", which are defined as any organism, organic material, other thing or substance, that (by reason of its nature, origin, or other relevant factors) it is reasonable to suspect constitutes, harbours, or contains an organism that may:

(a) Cause unwanted harm to natural and physical resources or human health; or
(b) Interfere with the diagnosis, management, or treatment, in New Zealand, of pests or unwanted organisms.

The BSA also provides for the continuous monitoring

[1] *Tim Storey and Brian Clayton are partners with Bell Gully specialising in forestry.*

[2] *Some applications can be advanced without public notification, for example where they relate to a similar substance to one already approved.*

of New Zealand's status in regard to pests and unwanted organisms and for the implementation of pest management strategies. The BSA is administered by the Ministry of Agriculture and Fisheries.

Impact of biosecurity law on forestry

As discussed above, forests in New Zealand are vulnerable to exotic pests and diseases and biosecurity law can therefore have a major impact on forestry. It is important for forest owners to understand this law and how it can be used to protect their assets.

Manufacture and use of pesticides

Where pesticides fall within the definition of hazardous substance, they are subject to HSNO and consent from ERMA will be required to their import, manufacture, use and sale. Where a pesticide was notified, licensed, or permitted under the Pesticides Act 1979, however, the 1979 Act will, by virtue of HSNO's transitional provisions, continue to apply. The transitional provisions also provide, in the case of pesticides registered or permitted under the 1979 Act, that:

(a) Such pesticides must be sold in a container that has a label on it approved by ERMA;
(b) A person may not import, sell, or apply the pesticide unless they are the registered proprietor or the importation, sale, or application is authorised by an experimental use permit;
(c) Pesticides subject to restricted use under the 1979 Act, may only be used by a registered chemical applicator or by a person approved for that purpose by ERMA; and
(d) ERMA may review the registration of such pesticides and may revoke the registration if required.

The transitional provisions also provide for the creation of a public register containing details of all persons who have obtained registered pesticides.

Pest Management Strategies

As noted above, the management and eradication of pests in New Zealand is governed by the BSA, which sets the criteria for developing national and regional pest management strategies.

A Minister of the Crown may notify a proposal for a national pest management strategy if he or she believes that the net benefits and objectives of the strategy outweigh the costs and the pest or organism is capable of causing serious adverse effects to certain concerns. These concerns include:

(a) Economic well-being;
(b) Soil resources or water quality; and
(c) Human health or enjoyment of recreational values.

The responsible Minister must notify the public of the proposed strategy and it may be inquired into and reported on by an appointed board of inquiry.

A regional council or any other person may prepare and implement a proposal for a regional pest management strategy, on similar grounds to those listed above. Prior to implementing a regional strategy, the council is required to consult with the Ministers affected, other local authorities and tangata whenua. Every proposal for a regional pest management strategy must be publicly notified and be subject to an inquiry.

Pest management strategies often include various rules, which may significantly impact upon forestry owners. Such rules may:

(a) Prohibit or regulate specified activities, which promote the habitat of the pest;
(b) Require a forestry owner to carry out specified activities, which promote the presence of organisms that assist in controlling the pest;
(c) Prohibit or regulate specified activities that deter the presence of organisms that assist in controlling the pest;
(d) Require a forestry owner or persons in charge of forestry products to carry out specified treatments or procedures to assist in preventing the spread of the pest;
(e) Require the destruction of goods that may contain or harbour the pest or otherwise pose a risk of spreading the pest;
(f) Prohibit or regulate certain uses of forestry products that may promote the spread or survival of the pest;
(g) Prohibit or regulate the movement of forestry products that may contain or harbour the pest or pose a risk of spreading the pest.

Failure to comply with a rule imposed in a pest management strategy, may constitute a breach of the Act.

Funding Pest Management Strategies

In addition to imposing rules, on the recommendation of the relevant minister, a levy can be imposed on landowners for the purpose of wholly or partially funding the implementation of a national pest management strategy. The minister cannot make such a recommendation unless satisfied (among other things) that:

(a) The person on whom the levy is being imposed has been consulted in regard to the proposed strategy;
(b) The use to which the levy is put will be closely related to the interests of the person paying it; and
(c) The overall benefit to the person paying the levy will outweigh the costs to them.

Regional pest management strategies may be funded (in whole or in part), by the imposition of a rate on local occupiers. In determining the extent to which a regional pest management strategy should be funded by the imposition of a rate, the council must have regard to:

(a) The extent to which the strategy impacts upon the interests of the occupiers of the properties on which the rate is to be levied;
(b) The extent to which the direct and indirect benefits of the rate are likely to accrue to the occupiers of properties on which the rate is to be levied;
(c) The collective benefits from the strategy to the occupiers; and
(d) The extent to which the characteristics of the properties on which the rate is to be levied contributes to the presence or prevalence of the pest or pests concerned.

Requests to notify a Pest Management Strategy

Any person may request the relevant authority to

notify a proposal for a pest management strategy. The relevant authority must notify the proposal as requested unless:

(a) The proposal does not comply with the provisions of the BSA;
(b) The person making the request has failed to consult with persons likely to be affected by the request; or
(c) The proposal has little or no merit, or is frivolous or vexatious.

Where a proposal is notified following a request, the person who gave notice may be required to pay all or part of the cost.

Other relevant legislation

Reserves Act 1977

The provisions of HSNO apply to the introduction of any new organism for biological purposes. Subject to this, under the Reserves Act 1977, biological control organisms may be introduced to control wild animals, animal pests or plant pests, in any reserve vested in the Crown or in any other reserve if requested to do so by the administering body. Any introduction of a biological control organism must be authorised by the Minister of Conservation who must, prior to granting authority:

(a) Consult the New Zealand Conservation Authority;
(b) Have regard to whether any introduced organism will itself become a problem, adversely affect any other indigenous organisms, or have a negative impact on any ecosystem; and
(c)Ensure any authorisation granted is consistent with any other Act applicable to the import, genetic modification, or use of the organism or organisms concerned and any conservation management strategy or other management plan approved for the reserve.

National Parks Act 1980

This Act provides for the establishment of national parks in areas where the scenery is of such distinctive quality, or the natural features or ecological systems so important scientifically, that their preservation is in the national interest. Introduced plants and animals are to be exterminated as far as possible as determined by the New Zealand Conservation Authority.

This Act also makes provision for the authorisation by the Minister of Conservation of a biological control organism, providing the authority is not inconsistent with general policy for parks adopted by the New Zealand Conservation Authority, any conservation management strategy or any other legislation applicable to the import, genetic modification or use of the organisms concerned.

Wild Animal Control Act 1977

This purpose of this Act is to make better provision for the control of harmful species of introduced wild animals, so as to achieve concerted action and effective wild animal control. Provision is made for the eradication of wild animals locally where necessary and practicable, as dictated by proper land use.

The Act gives the Minister the power to prepare wild animal control plans and conduct surveys and research concerning the incidence of wild animals and means of controlling them. The Minister may prohibit the hunting of certain species of wild animal for specified periods of time where this would interfere with investigation or research under the Act. Under the Act all wild animals are the property of the Crown, but subject to the restrictions in the Act become the property of the owner or occupier of the land on which the animal is present when they are hunted or killed by the owner or occupier by lawful means.

book review

A very useful guide to some of the more common diseases affecting trees and forests in New Zealand

Reviewed by Paul Bradbury

An Introduction to the Diseases of Forest and Amenity Trees in New Zealand. G.S Ridley and M.A Dick. Bulletin 220. Published in 2001 by Forest Research, Rotorua, New Zealand. ISSN 1174-5096.

The perennial challenge facing scientists and experts in all fields is how to disseminate technical information in a useful way to wide audience. *An Introduction to the Diseases of Forest and Amenity Trees in New Zealand* co-authored by two of New Zealand's foremost forest pathology researchers goes a long way toward meeting this challenge. This colourful publication is primarily focused on diseases affecting exotic trees in New Zealand, but would be useful to anyone interested in tree health generally.

The first chapter allows the reader to become comfortable with the fundamentals of plant pathology and provides enough information on the various types of pathogenic agents and their associated symptoms for the reader to have a go at a DIY diagnosis. In subsequent chapters the authors deal with some specific tree diseases and provide detailed descriptions of symptoms, disease development, distribution, economic impact and control. Relevant research data, such as the growth losses associated with disease-induced ill health, have been incorporated throughout. The text is also well supported by colour photographs, which play an essential part in making this book a useful reference to non-experts in the plant pathology field.

An Introduction to the Diseases of Forest and Amenity Trees in New Zealand brings together information from a variety of sources not readily accessible to most and presents it in an attractive, easy-to-read format. The book is targeted at 'tree people' such as foresters, arborists, gardeners and farm foresters who may have an interest in why their trees look unthrifty or even die from time-to-time. The $65.00 price tag is no doubt a consequence of a limited print run, but the financial outlay is more than compensated for by the book's usefulness and its distinction of being the only New Zealand tree disease reference of its type.