REVIEW OF

APIARIES ACT 1969

DISCUSSION DOCUMENT

JUNE 1989

Ministry of Agriculture and Fisheries

FOREWORD

This document reviews intended changes to legislation affecting beekeepers. It is one of a series of such documents which are expected to lead to the drafting of two composite pieces of legislation:

(a) An Agricultural Security Act covering policies aimed at excluding, eliminating, or otherwise controlling organisms which are regarded as pests in the New Zealand environment, and particularly in the primary production sector.

(b) An Agricultural Products Act providing the means to apply quality assurance regulations where this is a market requirement or an industry need.

Each of these Acts will encompass both plants and animals and will draw together legislation currently found in a range of legislation including the Apiaries Act (see fuller account in Section.2).

It is intended that the policy proposals outlined in this document, possibly modified following consideration of submissions, or points made in consultations, form the basis of the apiaries section of drafting instructions for the new Bills.

When commenting on the contents of this document, you are asked to bear in mind that it is the content of the future legislation which is important rather than the particular Act in which it is included.

The timetable is:

August 11, 1989 - Finalisation of Policy
August 25, 1989 - Drafting instructions issued
September 1989 - Target date for introduction of Bill to Parliament.

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SUBMISSIONS

Written submissions on the issues raised in this document should be addressed to:

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Submissions should be received by August 4, 1989.

It would be appreciated if 4 copies of submissions could be forwarded to the above address.

Additional copies of this discussion document can be purchased from the above address at: $10.00 a copy (GST included).

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APIARIES ACT 1969

PART I

INTRODUCTION

1. CURRENT LEGISLATION

The Apiaries Act contains the following provisions:

1.1 KEEPING OF BEES

(a) Apiaries are required to be registered and a registration process is provided (s4); and changes of ownership (s6); and of location (s9) must be notified.

(b) Identification of apiaries is required (s5).

(c) Bees must be kept in frame hives (s7).

(d) Access to hives is to be kept clear to allow inspection (s8).

(e) There is power to deal with abandoned or neglected bees and beehives (s10); and feral hives (s11).

1.2 DISEASE CONTROL

(a) The responsibilities of an owner who suspects an outbreak of First Schedule disease are detailed (s12).

(b) Inspector's power to declare an infected area (s13).

(c) Measures for eradication and control of First Schedule disease (s14).

(d) Compensation for First Schedule Disease outbreaks (s15).

(e) Power to declare disease control areas (s16).

(f) The role of the Bee Disease Advisory Committee (s17).

(g) The responsibilities of an owner who finds an outbreak of a Second Schedule disease are detailed (s18).

(h) Second and Third Schedule diseased bees, to be destroyed or treated (s19).

(i) Prohibitions on dealing in diseased bees and infected honey, etc (s20).

1.3 Importation of Bees, Bee products and Appliances

(a) Minister may appoint ports or airports for importation of bees, bee products and appliances (s21).

(b) Restrictions on importation of bees, bee products and appliances (s22).

(c) Power to seize and deal with bees, etc introduced or attempted to be introduced (s23).

(d) Approval of Quarantine grounds (s24).

(e) Duty of Post Office Officers and Customs Officers to assist in applying rules (s24A).

(f) Responsibility for dispatch of bees, bee products, or appliances to New Zealand (s24B).

1.4 USE OF DRUGS

(a) Prohibition of use of unapproved drugs for bees (s25).

(b) Procuring of samples to detect violations of s25 (s26).

(c) Analysis of samples and certificate of analyst and production of evidence (ss27, 29).

(d) Offence to tamper with sample (s28).

1.5 RESTRICTED AREAS

Sections 30-31 provide controls where honey produced in an area is likely to contain poison.

1.6 MISCELLANEOUS

(a) Appointment of Inspectors (s36).

(b) Powers of Inspectors (s37).

(c) Offence to obstruct an Inspector (s38).

(d) How directions by Inspector are to be given (s39).

(e) Appointment of officers and employees (s39A).

(f) Persons not entitled to compensation for things lawfully done under the Act (s40).

(g) Committees and their expenses (ss41 and 42).

(h) Offences and Penalty (s43).

(i) Onus of Proof of Consent (s44).

(j) Recovery of expenses incurred by Inspectors (s45).

(k) Regulation making powers (s46).

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2. LEGISLATION STRATEGY

2.1 A range of statutes administered by MAFQual share a large proportion of common purposes, principles, powers and procedures.

MAFQual's strategy is to move as quickly as possible to group this legislation into three main Acts. Under these there will be specialist regulations appropriate to the industry and species involved. The Act will also provide for tertiary legislative instruments such as Orders, Codes of Practice, Directions, which can be put in place quickly and thus make the law more flexible and responsive to need.

2.2 The three proposed Acts are:

2.2.1 <u>Agricultural Security Act</u>

The common purpose is the exclusion, control or removal of some pest or disease which is, or has the potential to be a serious menace in the New Zealand environment.

The statutes referred to, all of which are scheduled for review and/or amendment during the term of the current Government, are:

Animals Act 1967 (most)
Plants Act 1970 (most)
Apiaries Act 1969 (considerable part)

Dog Control and Hydatids Act 1982 (Hydatids)
Agricultural Pests Destruction Act 1967 (all)
Noxious Plants Act 1978 (all)

MAFQual's internal structure has been realigned to form a National Agricultural Security Service (NASS) which encompasses, for both animals and plants, the responsibilities of four services viz

- Import Services
- Border Protection
- Disease and pest surveillance nationally
- Emergency response

Additionally, it is appropriate to incorporate:

(a) National schemes for the control or eradication of diseases e.g., tuberculosis, brucellosis, hydatids; and

(b) (Possibly) measures to give effect to policy governing the importation and release in New Zealand of new, including genetically modified, organisms. This policy is currently under review by an inter-agency group under the aegis of the Ministry for the Environment.

(c) The control of pests in general. In this context a pest is any biological entity which is unwanted. Previously pests management measures were spread across all six of the Acts listed above.

This concept has been labelled the "Agricultural Security Bill" for the sake of administrative convenience. The title is negotiable (as is the title of NASS) in acknowledgement that, for example:

(a) Environmental interests are apprehensive about having a title which might be interpreted to convey a bias toward agricultural concerns.

(b) The legislative concept goes beyond the boundaries of NASS.

2.2.2 Primary Products Act

This is intended to provide the basis for quality assurance regulation.

All or part of the following statutes may be involved:

Meat Act 1981 (all)
Dairy Industry Act 1952 (all)
Apiaries Act 1969 (part) (including Honey Export Certification Regulations 1980)
Animals Act 1967 (small part)
Plants Act 1970 (small part)
Winemakers Act 1981

This Act is intended to be neutral in its effect on competitiveness i.e., to avoid distorting free market signals. The regulation will be aimed at providing those quality assurances necessary for consumer protection and market access and competitiveness.

The broad aim is not to impose model controls but to provide a wide array of optional mechanisms which can be applied, in consultation with the industries concerned, to particular commodities, processes, markets etc as appropriate to need and which can be changed with time as circumstances dictate.

2.2.3 Agricultural Compounds Act

The common theme here is the need for consumer, user and environmental protection; market access; and animal welfare in respect of compounds used in the management of plants and animals.

The legislation involved includes:

Pesticides Act 1979
Animal Remedies Act 1967
Stock Foods Act 1946
Fertilisers Act 1960
Animals Act 1967 (2 sections)
Apiaries Act 1969 (part)

This legislation will need to be aligned with the hazardous substances control legislation proposed for the protection of the New Zealand environment in general under the Ministry for the Environment-led Resource Management Law Reform process.

2.4 The only remaining Act for which MAFQual is responsible would then be the Animals Protection Act 1960 which is largely social in its aims.

2.5 MAFQual expects that, apart from the usual updating and consolidation which is part of the review of any legislation, this process will result in:

(a) Greater flexibility and responsiveness to the needs of the interests concerned i.e., the legislation will be more market-driven.

(b) Improved co-ordination and therefore cost-effectiveness in the delivery of MAFQual services.

(c) A reduction of regulation to a level considered appropriate by Government (on behalf of New Zealand society) and the industries concerned (relative to marketing needs) bearing in mind that the user pays philosophy will apply.

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3. PUBLIC DISCUSSION

3.1 This document completes a series of public discussion documents on future legislation with some bearing on beekeeping (though very slight in some cases).

3.2 These documents are:-

* "Regulation of Agricultural Compounds" (incorporating the Pesticides Act 1979, the Animal Remedies Act 1967, the Stock Foods Act 1946, and the Fertilisers Act 1960. Contact: Gabrielle Deuss, Agricultural Compounds Unit, MAFQual.

* "Regulation of Pest Management" (incorporating the Agricultural Pest Destruction Act 1967 and the Noxious Plants Act 1978) Contact: John Randall, MAFQual.

* "Review of the Animals Act 1967" (and including the Dog Control and Hydatids Act 1982). Contact: Mike Davidson, MAFQual.

* "Review of the Dairy Industry Act 1952" Contact: Phil Fawcett, MAFQual.

* "Review of the Plants Act 1970". Contact: Tom McLaughlin, MAFQual.

* "Review of Meat Act 1981". Contact: Derek Robinson, MAFQual.

* "Meat Act Review - Summary of Submissions and Tentative Conclusions" Contact: Derek Robinson, MAFQual.

* "Animals Amendment Bill 1989". This deals with new criteria for assessing imports of animals new to New Zealand and is already before the Parliamentary Primary Production Select Committee. Contact: Derek Robinson.

* "Pollution and Hazardous Substances" (Initial Report of Inter-Agency Co-ordinating Committee) Contact: D Burgess, Ministry for the Environment, Wellington.

* "Pesticides: Issues and Options for New Zealand" Contact: D Burgess, Ministry for the Environment, Wellington.

* "Occupational Safety and Health Reform" Contact: Ministry of Labour, Private Bag, Wellington.

* "New Organisms in New Zealand". Contact Nici Gibbs Ministry for the Environment. Submissions were called for and a review of Submissions was published in December 1988. A national hui to determine Maori opinion on the topic was held at Maketu Marae, Kawhia, in December 1988.

3.3 On January 15 1989 another discussion document entitled "National Agriculture Security Policy" was widely distributed to government agencies, research and eduction centres, industry sectors, and the public in general. Contact: Chris Boland MAFQual. The document is MAF's perspective of its responsibilities and accountabilities to protect New Zealand's animal, plant, and human health from exotic diseases and pests.

In the main, it is not a new policy but rather a public statement of present policy. MAF has administered the laws governing agriculture security for many years and the present document simply states the general manner in which MAF will continue to maintain agriculture security and allow beneficiaries and consumers to participate in the process.

The National Agriculture Security Policy is only one part of the greater policy and legislation review task. Each discussion document and policy statement impinges on the others and, at times, may seem redundant. However, this is not the case, since each one is looking at the same issue from a different but critical perspective. The intent of the review process is to consider these distinct perspectives and then develop a comprehensive approach which clearly states where specific responsibilities reside and what the criteria governing decision making are.

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4. IMPLICATIONS FOR APIARISTS

4.1 As explained in section 2 of this document, the intention is to bring the provisions of the Apiaries Act within either

(a) The Agricultural Security Act; or

(b) The Primary Products Act.

4.2 There will be previous consultation with representatives of the industry as to:

(i) Which provisions in each Act need to apply to the beekeeping industry; and

(ii) What special regulations may be necessary under each Act to meet the special needs of the beekeeping industry.

4.3 Therefore, the effect of the changed laws on the legislation which applies to the beekeeping industry will be no different to that which might be expected in a revised Apiaries Act. (See section 7).

4.4 Agricultural Security Act

An extracted version of those parts of the discussion document "Review of the Animals Act 1967" which are relevant to the bee industry is at Annex A of this document.

Submissions on the issues raised, as they affect apiarists, will be welcome.

4.5 Primary Products Act

At Annex B is an outline of the intended shape of the so-called Primary Products Act (the title is negotiable).

The idea is that, apart from any standards that Government may choose to impose in order to protect New Zealand consumers, the Act is in effect a pool of optional control mechanisms from which each industry (in consultation with MAFQual) may draw according to its preferences and needs. The particular requirements of any industry are then covered via specialist regulations.

Again, submissions on this concept, as it affects the bee-keeping industry, would be welcome.

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5. RISKS TO BE MANAGED

Any legislation to replace the Apiaries Act must address the following issues.

(a) Protecting against the admission of foreign diseases, pests and undesirable genetic material.

(b) Action(s) to be taken on the discovery of a foreign disease.

(c) The regulatory control of diseases already present (as desired by the Industry).

(d) Protecting consumers of bee products.

(e) Facilitating market access for bee products.

(f) Control of importation of bees, bee products, and appliances to minimise exotic disease introduction.

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6. NEED FOR CONTINUED LEGISLATION

It is generally accepted that legislation is necessary to protect the interests of the "common good" in preventing the introduction of new animal diseases or parasites, or species of life forms which are potentially damaging to the environment. The national economy is heavily dependent on primary production and protection of that production and maintaining access to overseas markets argues for continued regulation.

To effect these purposes a legislative framework is needed to prescribe how permission for importations can be obtained; a system of protecting our borders against accidental or deliberate introductions of unwanted animals or material; and means of reacting to any such introductions.

In dealing with such problems legislation is necessary to ensure that the wishes of the majority to effect control are not hampered or frustrated by a minority of disaffected or careless people.

Similar considerations obtain when a national programme is created to control any disease which is already present.

All these considerations - protecting the nation from foreign diseases, parasites and pests; and providing for the control of diseases etc introduced or already present, require authorities to be built into suitable legislation to enable designated people to effect its provisions, police observance of restrictions or prohibitions, and deal with any transgressions.

Public health considerations require measures to preclude the occurrence of hazardous levels of harmful substances in bee products. These consideration apply equally overseas and controls may be necessary where there are obligatory market access standards.

REVIEW OF

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PART II

ISSUES AND OPTIONS

BEE DISEASES - SPECIFIC ISSUES

This section is written as though the aim were to revise the existing Apiaries Act (although this is not the case).

The following are proposed changes to the present apiaries legislation however the intention is that they be given effect to via either the Agricultural Security Act or regulations under it (since all the proposed changes are in the disease control area).

Thus this section should be read in conjunction with Annex A.

Definitions

The word "hive" is used in the Act in many places, but neither it nor the similar term "beehive" are defined. It is proposed to provide a definition of "hive" for example:-

"Hive" means an artificial structure for the purpose of housing bees.

The word 'Apiary' needs further definition to allow an Apiary Registration and Inspection Fee to be levied by the beekeeping industry under the Hive Levy Act. This Act adopts the description as used in the Apiaries Act.

It is proposed to define an 'Apiary' as a grup of hives, separated from another group of hives or appliances by a distance of not less than 100 metres and owned by the same owner.

PART I: Keeping of bees

7.3.1 The aim is to remove anomalies which existed in the 1969 Act, and introduce specific measures required for a disease monitoring programme.

7.3.2 The distinction between permanent and seasonal apiaries (1969 section 4 (5)) now has little meaning. An increase in the amount of migratory beekeeping has resulted in most apiaries becoming seasonal. Beekeepers don't readily understand the difference between the two classifications, and the distinction is of little use to MAF.

7.3.3 The section on transferring hives and apiaries (1969 section 6) is really just part of apiary registration and should be combined with the provisions of section 4.

7.3.4 The requirement to make an annual statement of hive inspection (1969) section 18 (2 & 3) should also be brought into part I, because the principal purpose of this is to update the apiary register.

7.3.5 A significant deficiency in the 1969 Act (section 5) is that many beekeepers now keep bees in apiary districts other than where they reside, and MAF practice is for them to use only one apiary identification number. (This is the only practicable requirement, given the interchange of hive equipment).

The Act distinguishes between a "code number" and the letter for the district in which an apiary is situated, so in theory a Bay of Plenty beekeeper with the code number D123 issued by Tauranga would have to use C123 for apiaries registered in the Waikato (1969 section 5 (2)). This probably wasn't the intention of the 1969 Act, and is impracticable anyway.

The aim is to provide for an "identification code", which would be a combination of a letter and numbers issued by an office and used by the beekeeper in all districts.

7.3.6 Identification of apiaries is very important and will become even more so under proposed cost recovery schemes. MAF's concerted campaign to get beekeepers identifying their apiaries has been successful to the point where hive equipment that has changed hands is likely to bear several different codes. This begins to undermine the usefulness of this requirement.

It is therefore proposed to make it unlawful for beekeepers to have on their hive equipment any code number which is not theirs, and require them to erase or deface old codes.

7.3.7 Access to hives must be kept unimpeded to allow for inspection. Additional power (1969, s8) is needed to allow inspectors to undo or cut straps. A clause is also needed to absolve inspectors of blame if hives can't be restrapped.

7.3.8 **Abandoned or neglected hives**

At present MAF's only option here is to instruct a beekeeper (where he can be found) to destroy abandoned or neglected hives. In practice it is usual to tell a beekeeper that if the hives are not restored to a workable condition within a certain time they will be declared abandoned or neglected.

In some cases MAF will destroy perfectly saleable hive equipment, because a beekeeper is not traceable, and MAF does not have the power to sell the hives.

It is proposed to give MAF the power to direct a beekeeper to restore hives, and to impound hives prior to sale (following standard notification). There is a parallel with local authorities selling wandering stock or abandoned vehicles. The powers would also apply to hive equipment in unidentified apiaries.

7.4 PART II: Disease Control

7.4.1 It is intended to:-

- Classify scheduled diseases according to the threat they pose to the beekeeping industry.
- Relate powers and obligations under the act to that classification.
- Align powers and obligations relating to exotic diseases to MAF's emergency response procedures.

7.4.2 The following classification of bee diseases and threats to the beekeeping industry is proposed:-

(a) **First schedule**

Exotic diseases and undesirable genotypes which would have a very serious effect on the beekeeping industry if they became endemic. Compensation should be payable to support an eradication programme.

(b) **Second schedule**

Serious exotic diseases which would be eradicated if feasible. If they became endemic the industry could cope through management changes and drug feeding.

(c) **Third Schedule**

Serious endemic disease, with requirement for annual statement of hive inspection and immediate notification if found.

(d) Other diseases would not be covered on the grounds that neither MAF and the industry have an interest in these being controlled under statute.

SCHEDULES (revised)

Serious diseases of bees and undesirable strains of honey bees for which compensation may be payable.

Parasitic mites (Varroa spp.)
Parasitic mites (Tropilaelaps spp.)
African honey bee (Apis mellifera scutellata and its hybrids).

SECOND SCHEDULE

Serious diseases of bees.

European foulbrood (Melissococcus pluton)
tracheal mite (Acarapis woodi)
bee louse (Braula coeca).

THIRD SCHEDULE

American foulbrood (Bacillus larvae).

7.5 Eradication and control measures are also different for exotic (s14) and endemic diseases (s15). The intention is to give MAF the power to eradicate or control exotic diseases without first having to declare an "infected area".

7.6 The policy of using advisory committees will continue eg (1969, section 17) allows for an advisory committee to be set up for any exotic disease. The criterion for co-opted members to be owners of more than 30 hives needs to be changed, as it is considered that the best people for the job should be chosen (these might, for instances, be retired beekeepers).

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8. BEE PRODUCT QUALITY

8.1 The provisions of the Apiaries Act which would not be covered in an Agricultural Security Act are

(a) sections 25-29 on use of drugs

(b) sections 30-31 on restricted areas.

8.2 These provisions are aimed at preventing harmful substances occurring in bee products including ensuring access to overseas markets.

8.3 These principles are discussed in detail in the discussion document "Review of the Meat Act 1981" which includes discussion of tracing and preventing defects in products at source. Drugs and chemicals are a parallel problem in all other foods produced via animals. Environmental poisons present similar problems (to those faced by beekeepers) in the (wild) game and shellfish industries.

8.4 Annex B outlines the proposed shape of an Primary (or Agricultural) Products Act aimed at providing systems to fit

the needs of each industry. The aim would be to have specialist Apiary Regulations under that Act.

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9. BEE PROTECTION

9.1 The significance of:-

(a) Environmental chemicals for beekeepers; and

(b) The beekeeping industry for the horticultural industry; and

(c) The economic value of the beekeeping industry is fully recognised in the legislation reviews.

9.2 Control of pesticides and other chemicals used in agriculture is under active review under two separate (but closely linked) projects leading to the proposal:

(a) Agricultural Compounds Act (by MAF); and

(b) Resource Management Act - with associated hazardous substance control - by Ministry for the Environment.

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10. REVIEW OF HIVE LEVY ACT

10.1 As a separate exercise from the review of the Apiaries Act, a review is in progress of all statutes dealing with levying of primary producers.

10.2 A discussion paper on this subject has previously been circulated and is reproduced at Annex B for the benefit of readers of this document.

10.3 It is too late to make submissions on the discussion paper at Annex B because the process of drafting the law is already under way.

10.4 The Minister of Agriculture expects to be able to introduce the resultant Commodities Levies Bill into Parliament some time in July. The Bill will then pass to the Primary Production Select Committee who will doubtless ask for submissions from interested parties in the usual way.

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ANNEX A

EXTRACTED FROM REVIEW OF ANIMALS ACT 1967
(DISCUSSION DOCUMENTS JUNE 1989)

(GENERAL) ISSUES AND OPTIONS

Any new legislation must address the following issues:

1 Importation

1.1 Decision Making Processes

1.1.1 How is the importation of animals, animal products, microorganisms or material or equipment which may be contaminated with disease-causing organisms, or carrying parasites or undesirable pests, to be controlled?

1.1.2 What systems should be in place to prohibit or restrict importation of animals, including invertebrates, which have the potential to be environmentally damaging? What, if any, special measures are needed to deal with genetically modified organisms? Is the proposed Agricultural Security Act the place to address this issue or should it be the subject of separate legislation perhaps administered by another Department?

1.1.3 There is a constant demand for importations of live animals from not only traditional sources but increasingly, new species, strains or breeds from countries from which we have not previously imported animals. Two recent examples are goats from Zimbabwe and camelids from Chile.

1.1.4 With both types of source countries, traditional and otherwise, increasing knowledge and technology suggests new solutions to old problems which would enable wider sources of animals to be tapped and with arguably better assurances of health status than was available in the past.

1.1.5 Nevertheless there are reservations held by many people about what seems to them to be unnecessary

risk-taking either in relation to disease or environment.

1.1.6 There needs to be some agreement as to how decisions will be taken.

1.1.7 It is already MAF policy to consult affected groups before issuing import permits. Such a policy does not necessarily require legislation. It could be handled as an administrative policy.

1.1.8 It may nevertheless be helpful if a new Act was to spell out a little more fully the criteria which should be used in approving or declining permission to import. (The Animals Amendment Bill 1989 presently before Parliament has this as its purpose)

1.2 Extent of Controls

1.2.1 There is probably little dispute that reasonable measures be taken to ensure that no foreign diseases are introduced with animal importations. From time to time however the past (and present) MAF policy of ensuring imported animals are free from important diseases which already occur here is challenged.

1.2.2 The issue here is whether MAF should be acting "paternalistically" (as some might see it) in the interests of individual importers or the established industry.

1.2.3 On the other hand where there is an on-going disease control scheme which has had investment poured into it over many years, imported disease would add unnecessarily to the costs of that scheme.

1.2.4 A new approach being advocated in Europe could be considered. With the formulation of one market in 1992 there is a need to rationalise intra-community and therefore also third country import quarantine rules. It has been recommended that diseases already present in Europe and not subject to official control programmes be excluded completely from any quarantine conditions.

1.3 New Organisms

1.3.1 A policy to cover the assessment of organisms new to New Zealand including the creation, testing, and release of genetically modified organisms (GMOs) in New Zealand, is being developed.

1.3.2 This need arose from a recognition that the existing legislation relating to the environmental and economic assessment of new organisms is deficient in that:

(a) The development and use of GMOs in New Zealand (as opposed to their importation) is not covered;

(b) There is a lack of clarity as to the considerations to be taken into account by the decision-maker in determining whether to issue an import permit;

(c) There is a perception on the part of some interested groups that inadequate attention has been paid to environmental considerations; and

(d) Possible Maori concerns are not mentioned.

1.3.3 Policy development work for GMOs in New Zealand was initiated with the establishment of the Advisory Committee on Novel Genetic Techniques (ACNGT) in 1978. The ACNGT currently deals with contained uses of GMOs in the public sector and is administered by the Department of Scientific and Industrial Research (DSIR). In anticipation of potential problems with field testing and release into the environment of GMOs, the Field Release Working Party (FRWP) was set up. In February 1987 the FRWP published its "Recommendations for the Field Testing and Release of Genetically Modified Organisms in New Zealand".

1.3.4 The Ministry for the Environment (MFE) then took up the policy development process for both GMOs and new species of imported animals, plants and microorganisms (together referred to as "new organisms"). The New Organisms Steering Group was established in early 1988 to assist the Ministry in its policy recommendations to Government. The

Steering Group is convened by MFE and its members consist of representatives of various government departments and non-government interests. An Interim Assessment Group for field testing and release of GMOs was established in October 1988, and the experience of this group has contributed to the policy development process.

1.3.5 The objectives of the New Organisms Policy (and any legislation or procedures deriving from it) are:

- To take advantage of the economic environmental benefits which may be obtained from imported organisms and the development and use of genetically modified organisms.

- To safeguard the New Zealand environment.

- To safeguard people physically (health), economically and culturally including taha wairua.

- To provide an equitable, effective, efficient and open assessment process which provides a forum in which beneficial use can be identified and assessed in relation to environmental risk and the public interest, and a resolution reached.

1.3.6 In practical terms, these objectives define the role the permit-granting agency to "determine where the public interest lies for each new organism importation or release by balancing the probability of risk of importing or releasing new organisms with adverse consequences against the probability of creating a beneficial new population".

1.3.7 The policy development process has now reached a stage where decisions can be taken as to the final form of the assessment process and which agency should administer it.

1.3.8 In most cases now other countries are managing the control of GMOs and new organisms entirely within their importation legislation rather than under separate stand-alone legislation. Experience gained by them to date has shown this approach to be logical and effective.

1.3.9 If MAFQual is to combine administration of the new organisms assessment policy with pest and disease assessments then the necessary legislation will be included within the Agricultural Security Act. Otherwise it will be covered under separate legislation and intending importers of new organisms will need two approvals.

1.4 Quarantine

1.4.1 Once they arrive many animals need to be held for observation and tested for disease etc. This is true quarantine (as distinct from containment for experimental purposes for example).

1.4.2 MAF's basic responsibilities are to set standards of quarantine and see that they are maintained because in the end MAF bears a liability to the nation for effective quarantine.

1.4.3 Traditionally, quarantine has been in government owned and operated facilities where there is no problem in maintaining standards.

1.4.4 In recent years private facilities have been allowed and nearly always the operator has also been the importer. Despite their being subject to MAF requirements difficulties are sometimes experienced in obtaining compliance. This is not surprising as there is almost always some degree of conflict of interest between the importers and MAF. (Quarantine costs money!)

1.4.5 A halfway house is allowing commercially-run quarantine stations where the operator is not the importer.

1.4.6 The options then are:

1 All quarantine must be in premises directly controlled by MAF.
2 Importers may operate quarantine stations.
3 Importers may not operate quarantine stations, and their animals must go to MAF stations or those operated by commercially neutral people.

1.4.7 Perhaps the new Act should specify quite clearly who can manage quarantine grounds?

1.4.8 A practical problem which could arise is the management and disposal of animals in quarantine should either the operator (if it is a private sector operator) or the importer default in any way. In particular, financial failures are of concern.

1.4.9 There are two paramount problems to be addressed - the maintenance of quarantine and the physical well-being of the animals. Another issue is recovery of costs for quarantine.

2. Disease Prevention

2.1 Control of disease-carrying material

2.1.1 Many serious diseases which have been introduced into countries previously free from them have been the result of local animals being exposed to food, of animal origin, originating in countries where those diseases occur regularly.

2.1.2 A requirement common to all those potential chinks in our quarantine armour is the ability to take pre-cautionary measures, check for such events, police illegal introductions and take remedial action.

2.1.3 Any new Act would have to have similar provisions.

2.1.4 Amended regulations may be necessary to take account of recent public sector restructuring to ensure that, for instance, airport companies and regional governments assuming control of airports and ports also assume responsibilities for disease prevention.

2.2 Pre-emptive Measures

2.2.1 Another facet of disease prevention (in relation to exotic disease) is to institute preventive measures where it seems likely that occurrence of such a disease is imminent. For instance, if a widespread epidemic of foot and mouth disease were to occur in Australia, a range of preventive

measures may be prudent eg banning of garbage-feeding of pigs, banning of public sales of livestock, inspection of livestock before transfer to new farms, prohibition of inter-island movement of livestock etc. Such measures would ameliorate any subsequent outbreak of the disease here.

2.2.2 Any new Act should perhaps contain provision for such measures.

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3. Disease Introduction - Actions

3.1 If a disease-causing agent slips through the filters of legal importations and secondary checks and causes a disease previously unknown in the country there should be a mechanism for dealing with it.

3.2 A first decision which has to be made is whether there should be any response, and if so, what?

3.3 It has long been assumed that a disease such as foot-and-mouth disease warrants some sort of immediate response with the objective of its eradication. Not all introduced diseases however need necessarily be treated in the same way.

3.4 One concept is that new diseases can be broadly grouped into two classes; those warranting an immediate, or emergency-type response, and those warranting a more measured response.

3.5 "Emergency" diseases, that is diseases which are economically serious and/or which require fast responses in order to contain them, are relatively few in number. This being so, it is relatively easy to prepare quite detailed contingency plans to deal with them. It is already MAF policy to discuss such plans with affected industries so that there is prior agreement to the strategies and procedures which will be used.

3.6 There are, however other exotic diseases which would not have serious economic effects and/or which do not warrant immediate action for their containment or eradication. A "measured" response is more appropriate in these cases. This would involve consultation with the industry involved in deciding how to deal with the disease and how any control measures which might be agreed are to be funded.

3.7 In the case of "emergency" diseases, it may be wise to ensure that no injunction action can be taken by owners which would prevent immediate response to the situation.

3.8 An exotic disease may become endemic because of inability or impracticality of eradication.

3.9 Thus at some stage the disease will have to be recognised as having become endemic and any special measures which applied to it as an exotic disease would cease. This applies also to compensation (see paragraph 4 below). The new Act must be able to accommodate such a development.

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4. Funding the Control of Exotic Diseases

4.1 The traditional concept of funding control of exotic diseases is for the State to pay all direct costs (labour, equipment hire, consumable stores, accommodation and transport of personnel involved, etc) and in addition, compensation to farmers whose stock have to be slaughtered to control the disease. Consequential losses caused to individuals, ranging from loss of income of farmers whose stock are slaughtered, quarantined, or whose normal commercial activities are curtailed by necessary restrictions for disease control, to service industries supporting or depending on rural economy (transport firms; stock and station agents; garages; agricultural contractors; etc) are not compensated.

4.2 Many might feel the Government should compensate for such indirect losses, but clearly there are massive problems of

assessment and delimitation -where would one stop paying compensation?

4.2.1 In this contest it is worth noting that few if any other countries have provision for compensating consequential losses, for this very reason.

4.2.2 This is not to say that Government could not make provision for assistance to affected groups as part of the recovery phase of a national disaster.

4.3 A major omission in the present Act is the question of compensation for damage or necessary destruction of buildings, equipment or fittings etc during the course of decontaminating such objects.

4.4 It should be noted that there is no significant amount of money in Vote: Agriculture set aside for compensation payments for exotic disease. At present, Parliament would have to appropriate money specially for this purpose (and probably also for other costs associated with eradication procedures particularly if the outbreak was extensive in nature).

4.5 Should compensation be payable for animals which have died from an exotic disease before eradication measures commence? The current Act allows compensation only for animals slaughtered during eradication procedures.

4.6 The basis of compensation in any event must be defined. In most countries, this is based on "market value", and this is the term used in the current Act. It is probable that the courts would give a liberal interpretation to the term "market value" to include the productive value of the animal at the time as if it was not affected with disease.

4.6.1 The market value basis for compensation can be interpreted in different ways. The market value of animals at the beginning of an epidemic could be less than at the end of the epidemic because of greater demand for replacement stock. On the other hand, if overseas meat markets are denied to us because of the presence of the disease, the reverse might be true.

Options are:

(i) to use valuations on the day the animals are killed

(ii) set fixed values for the duration of the epidemic (ministerial prerogative?)

(iii) use valuations on the day and Government to assist post-epidemic recovery of individuals by way of special grants or subsidies, perhaps contingent on a prior declaration of a national emergency (see paragraph 8 for a further discussion of emergency provisions).

4.6.2 Using market values also answers problems of equity which otherwise occur with other bases for compensation. If the owner receives cash for animals destroyed in the course of disease control, then he is free to use that money in whichever way he wishes. This would often be to replace the animals, but he may for example choose to diversify into other fields, or leave farming and invest the money.

4.6.3 For the same reasons the "accounting approach" inherent in market value compensation overcomes many of the arguments for consequential losses, at least as far as the animal owners are concerned.

4.7 In contrast to the traditional concept of taxpayer indemnity of costs, a different view of funding exotic disease control might be that the responsibility lies with the industry involved, either collectively by means of some levy, or individually by means of commercial insurance, or a combination of these.

4.7.1 Obviously there is the option for some mix of taxpayer and producer funding.

4.7.2 Industry or private insurance may be one answer to "consequential losses".

4.8 It would be wise to have provision for reduction or total elimination of compensation payments where the wilful action of an individual caused or exacerbated an outbreak of exotic disease (or any other compensatable disease for that matter) eg by administering the causal agent of a disease to susceptible animals; or defying reasonable and lawful directions from an authorised officer, etc.

4.9 There would have to be provision for arbitration in the case of disputed valuations for compensation (as is the case in the present Act).

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5. Disease Control (Diseases already present)

5.1 There exists several diseases which can be controlled by some sort of voluntary co-ordinated scheme, funded by industry, to the ultimate benefit of individual producers by means of increased productivity of their animals and enhanced sale value of their stock. Examples are Aujeszky's disease, Brucella ovis, caprine encephalitis arthritis - all presently the subject of voluntary schemes - and enzootic bovine leucosis and equine viral arteritis are potential candidates.

5.2 It is important to note that not all of these diseases are covered by the present Act. This illustrates that it is perfectly possible for there to be a cooperative approach to endemic (locally-occurring) diseases between MAF and industry, without the need for recourse to statutory provisions.

5.3 The need for statutory provisions for endemic disease control schemes only arises when, and if, Government policy requires compulsory adherence by all owners of appropriate animals; or possibly if industry groups require some form of Government accreditation of voluntary schemes for trade purposes.

5.4 Consideration should also be given as to who may apply diagnostic tests in any "planned" control scheme. MAF officers only? Or should this authority be more general?

5.5 The question of compensation for animals (or material) destroyed during a compulsory control programme for any endemic disease must also be determined.

- should there be any?
- how is it to be funded?
- how is the quantum to be decided?

5.5.1 There are several options, but the basic ones appear to be:

(i) The Act specifying a formula - this could be the same as for emergency disease

(ii) The Act permitting compensation to be paid, but the quantum or formula to be prescribed by regulations specific to the programme.

5.5.2 As already mentioned it would be sensible to provide for reduction of compensation where wilful action caused or exacerbated the incidence of disease eg. by defying a reasonable direction from an authorised officer.

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6 Control of Diseases in General

Any new Act must provide for the investigation, diagnosis, containment, control or eradication of important diseases.

6.1 Necessary Authorities

6.1.1 The new Act would need to provide authorities such power as to:

- enter property or any land or water whether in private or trust ownership or national park, etc
- direct reasonable measures necessary to deal with disease be taken
- quarantine land to prevent movement off the land of people animals and things
- isolate affected groups of animals,
- apply diagnostic tests and post-mortem examinations and take specimens
- prohibit, restrict or control the movement of animals within into or out of an area
- question people and search records (for tracing of infection etc)

- obtain relevant documents
- in the case of "emergency" diseases, allow for commandeering of equipment and services of deal expeditiously with the situation (see also paragraph 8)
- medicate or treat animals either therapeutically or prophylactically
- destroy in contact and affected animals to prevent the spread of disease
- clean and disinfect equipment, buildings, vehicles etc or destroy them if necessary
- to use reasonable force as necessary to carry out the functions
- recover costs in circumstances where owners have contributed to the problem.

6.1.2 The present Act contains many of these authorities.

6.2 Diseases subject to the Act

6.2.1 The present Act provides for measures to be taken against only nominated diseases which are listed in schedules of the Act. These schedules can have diseases added or removed by Order-in-Council.

6.2.2 There seems no doubt that the replacement Act will have to have either the same arrangement, ie a schedule of nominated diseases attached to the Act, or a similar option.

6.2.3 An alternative option might be to word the Act in such a way that it applies only to diseases which have been gazetted. The diseases could be gazetted by the Minister or Director-General or Chief Veterinary Officer.

The advantage of gazette notice is that it is less cumbersome than an order-in-council and the decision can be made by one person (Minister, Director-General or Chief Veterinary Officer) instead of the Executive Council.

The advantage of having the Minister with authority to gazette diseases is that political accountability for the administration of the Act is retained; the advantage of the Chief Veterinary

Officer having the authority is speed of reaction; that of the Director-General having the authority is a clearer separation of policy decision from actioning responsibility.

6.2.4 An issue which needs to be considered particularly in relation to diseases which are zoonotic (transmissible to man) but which cause little or no problem to the animal industry eg psittacosis, is whether the Act should provide for dealing with these diseases (as the present Act does). The Health Act already has powers to deal with this type of disease.

6.2.5 Whatever method is adopted there must be provision for essential authorities in the Act to be put into effect when an apparently serious disease occurs and whilst a diagnosis, even a suspect diagnosis, has not yet been made.

6.2.6 These essential authorities are of the type outlined in paragraph 6.1.

6.3 Notifiable Diseases

6.3.1 The current Act requires that the diseases listed in its schedules are also notifiable - that is that their presence must be notified to MAF authorities.

6.3.2 The concept of notifiable disease is almost universal and is the basis of action being taken to contain or eradicate specific diseases when these are drawn to the attention of the administering authority by members of the public or veterinary profession. This concept has its firm roots in the 19th Century and though in many respects still valid today, needs considerable re-interpretation in light of 20th Century technology.

6.3.3 Nowadays many "diseases" are "discovered" by laboratory detection in clinically normal animals -whereas the traditional trigger for action was the expression of clinical disease.

6.3.4 A similar situation arises with the discovery of mild or non-pathogenic strains of disease, other

strains of which cause clinical disease. Does one bring all the authority of the Act to bear on a virus which causes no harm?

6.3.5 The aetiology (cause) of some diseases may not always be established beyond doubt and in the case of many diseases, many factors contribute in their aetiology eg the presence of a microbiological agent alone may not cause disease unless environmental conditions are favourable to it or unfavourable to the host animal.

6.3.6 Thus the definition of what is and what is not a "disease" becomes increasingly difficult with advances in technology.

6.3.7 Some diseases are virtually indistinguishable one from the other in their clinical expressions, and depend on laboratory tests. This makes it unrealistic for the person reporting the clinical disease to nominate a specific disease, even if that person is trained in clinical veterinary medicine.

6.3.8 If the professional administrators have difficulties with the situation, spare a thought for the animal owners who have a legal responsibility at present to notify scheduled diseases to the administrators. A large part of the concept is based on the assumption that the animal owner will recognise clinical forms of disease. But is it reasonable to expect owners to recognise or even suspect specific diseases with which they have not had any experience; and when they are not trained in their diagnosis; and when the disease may well present in other than classical form?

6.3.9 Arguably then, it is unreasonable to put a legal obligation to notify <u>specific</u> diseases on to animal owners and perhaps the new Act should take account of this.

6.3.10 On the other hand qualified persons and other specialists eg in clinical practice, universities, laboratories or in MAF itself can be expected to have such an obligation.

6.4 Surveillance

6.4.1 New Zealand is obligated by international treaty to report the occurrence of certain diseases (to the International Office of Epizootics - OIE) but that fact in itself does not require that our Act reproduces the OIE list - only that a system be in place (ie surveillance) to detect the diseases.

6.4.2 One specific requirement that may be necessary in this respect is that there is authority to apply diagnostic tests to live animals or to material submitted to laboratories for other purposes.

6.4.3 This is already done as a matter of policy but the contention could be made that MAF has no authority to carry out such examination without the authority of the owner of the animals.

6.5 Separation of Notifiable Disease and Diseases subject to the Act

6.5.1 Possibly the new Act should have the facility to separate the diseases, parasites and pests within its scope into two categories:

- notifiable diseases, parasites or pests
- other diseases, parasites or pests subject to the Act.

6.5.2 Examples of notifiable diseases would be those where, when and as their occurrence is observed, some action follows:

"Action" could vary from the extremes of emergency response on the one hand; to merely recording its occurrence for other purposes on the other.

6.6 Reporting Disease

6.6.1 To address the issue raised in 6.3 the new Act could contain provisions complementary to the traditional one of merely listing diseases which must be reported.

6.6.2 One option could be to require animal owners to report the presence of any unhealthy conditions (other than injury) with which he is not familiar, to MAF.

report the presence of any unhealthy conditions (other than injury) with which he is not familiar, to MAF.

6.6.3 A development of the first option would be to require the owner to consult a MAF officer about any unfamiliar condition in his stock. It would then be the responsibility of the MAF officer to report to the CVO if he suspected a notifiable disease.

6.6.4 The notification process itself could be part of specific regulations or tertiary legislation promulgated under the Act which could also outline the procedures to be followed for a specific disease; groups of diseases; or even syndromes.

6.6.5 As already touched upon in paragraphs 2 and 5 above, actionable diseases occur in two categories, exotic and endemic and can require one of three responses ie "emergency" or "measured" or "planned". Thus there are a number of combinations each of which warrants a different approach.

6.6.6 These different approaches and the specific characteristics of the disease at issue can then form the basis of regulations which could vary from detailed sets to simple requirements designed to contain a situation whilst a diagnosis is made in a suspected exotic disease situation.

6.6.7 An indicative series of regulations might be:

- Authority to quarantine properties until an unusual, potentially serious disease has been diagnosed.

- Obliging owners to consult a MAF officer if he/she observes certain clinical signs and prevent movement on or off the property until the MAF officer arrives.

- Outlining responsibilities and authority of owners, and MAF personnel in planned control schemes for endemic diseases.

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ANNEX B

March 1989

DISCUSSION PAPER

Bill Enabling Levies on Primary Producers: Proposed Substance of Bill

1 Bill enables Regulations to be made allowing participants in primary production industries to levy themselves for the general development of their industry or group. (Will not cater for processed products - eg wine, fruit juices, venison salami but could cater for the produce to be processed - eg grapes for wine, fruit for processing, or venison.)

2. Regulations shall specify:

(a) the representative industry organisation which is being granted powers to levy an industry;

(b) the item that is to be subject to a levy, and how it is to be measured - eg a volume of weight of product, an area of orchard, an individual producer, a number of live animals, the number or weight of slaughtered animals, a number of hives (Will depend on the purpose of the levy - eg eradication of fruit tree diseases (on an orchard area basis), administration (per individual producer), research and development (on a volume of product output basis), market research or development of access (on number of live animals basis);

(c) how the recipient organisation is to determine the specific purposes for which the levy is to be spent (eg a draft budget approved at an annual meeting of representatives elected on a ward basis), including, if necessary, the mechanism by which the industry will determine its desired rate of levy (eg allocation of votes on a production basis);

(d) the organisation that is the recipient of the levy, (and whether it can be paid to any subsidiary organisations eg regional branches);

(e) one of the following options for setting the actual levy rate:

(i) increases in the levy rate:

I a maximum levy rate, below which the organisation may set the actual levy rate;

II the actual levy rate;

III the Minister to approve the initial levy rate and any annual increases by the organisation to be limited to no more than the rates of increase specified in the Regulations (except with the approval of the Minister); or

IV the Minister to approve the annual levy rate annually on the recommendation of the organisation;

(ii) decreases in the levy rate:

I the organisation may approve the levy rate;

(f) how the levy is to be notified (gazetted or published by the Minister upon recommendation of the organisation, gazetted or published by the actual organisation itself, and/or best endeavours by the organisation to provide written notification to both the levy payers and the levy collectors.) Levy to be notified 14 (or 28?) days before it comes into effect;

(g) the method of collection of the levy (from persons primarily liable directly, or via other parties, eg processors, auctioneers, MAF);

(h) the amount or rate of collection fee, if any, to be collected by the levy collectors, being an amount agreed between the organisation and an organisation representing the levy collectors;

(i) the financial year over which the levy rate is assessable;

(j) the frequency of levy payment (may be annual, monthly, or periodic (if levy collected with sales of a product)), and the due and latest dates by which the levy must be collected.

3 Regulations may specify:

(a) the general purpose(s) for which the levy is to be spent;

(b) any maximum and minimum amounts per individual;

(c) the scope of the levy over the total industry participants (eg only orchardists with areas over 4000 sqm, only growers of the fruits, vegetables or flowers specified in an attached schedule, only domestic producers, only producers of winegrapes);

(d) whether imports of a leviable item are to be levied, and the conditions under which they are to be levied (the rate of levy on the imported item must be no higher than the rate of levy on the domestic item).

4 Conditions to be met before Regulations made:

(a) organisation representing persons to be primarily liable for the levy has requested the Minister that regulations be made; and

(b) a draft plan of how the levy money is to be spent in the first year that the compulsory levy will operate is supplied to the Minister; and

(c) the organisation has provided information and evidence so that the Minister is satisfied that:

(i) there has been sufficient consultation with interested parties likely to be affected by the imposition of the levy; and

(ii) a clear majority of the persons that will be primarily liable for the levy are in support of the proposal. Further, if production is to be levied, these persons must produce a clear majority of the production to be levied. If the area of their properties is to be levied these persons must have a clear majority of the area to be levied. If eg hives, embryos, or livestock are to be levied, these person must have a clear majority in those items; and

(iii) opposing parties have had the opportunity to present their views; and

(iv) there will be net benefits from imposing the levy; and

(v) there must be a close relation between the persons primarily liable for the levy, what the levy is to be on, the organisation representing the levy payers, the uses to which the levy is to be put, and the beneficiaries of the levy; and

(vi) if imports of the leviable items are to be levied:

I the owners of the imported items will benefit from its imposition; and

II the imposition of the levy on the imported items will not be contrary to New Zealand's international trade obligations; and

(vii) organisation is sufficiently representative of the persons to be primarily liable for paying the levy; and

(viii) the organisation receiving and spending the levy has adequate systems in place by which it will account to the persons primarily liable to pay the levy for the receipt and expenditure of the levy money, and particularly the uses to which the levy money is put; and

(ix) the organisation is sufficiently large to warrant regulation (if organisation represents only a small number, may not need compulsory levy powers, should be able to persuade the members instead, and for an emerging industry, a small organisation could be misused as a barrier to potential entrants); and

(x) other organisations representing the persons to be primarily liable for the levy have had the opportunity to present their views; and

(xi) there are no other major matters.

5 Provisions for the Regulations to be amended. There would be no amendments to the Regulations made unless the conditions set out in section 4 are met.

6 Provisions for revocation of the Regulations. Conditions to be met before revocation of the regulations made:

either:

(a) organisation representing persons primarily liable to pay the levy has gone out of existence; or

(b) Minister has information and evidence such that she/he is satisfied that the organisation is not receiving and spending levy money raised in accordance with the levy regulations; or

(c) Minister has information and evidence such that she/he is satisfied that the organisation is no longer able or suitable to carry out a compulsory levying function; or

(d) (i) Organisation representing persons primarily liable for the levy has requested the Minister that revocation be made; and

(ii) the organisation has provided information and evidence so that the Minister is satisfied that:

I there has been sufficient consultation with interested parties likely to be affected by the revocation of the levy; and

II a clear majority of the persons that will be primarily liable for the levy are in support of the proposal to revoke the regulations. Further, if production is being levied, these persons must produce a clear majority of the production being levied. If the area of their properties is being levied these persons must have a clear majority of the area being levied. If eg hives, embryos, or livestock are being levied, these person must have a clear majority in those items; and

III opposing parties have had the opportunity to present their views; and

IV there will be net benefits from revoking the levy regulations; and

V organisation is sufficiently representative of the persons primarily liable for paying the levy; and

VI other organisations representing the persons to be primarily liable for the levy have had the opportunity to present their views; and

VII there are no other major matters.

7 A sunset clause at five years, but provision for the organisation to request the renewal of the regulations. There would be no renewal of the regulations unless the conditions in Section 4 were met.

8 Financial Provisions

(a) Bank accounts specifically for the levy funds.

(b) The accounts to be operated only by the organisation's trustees.

(c) Withdrawals from these bank accounts to be made only to fulfil purposes for which levy to be expended.

(d) Levies to be recoverable as a debt.

9 Annual Report and Statement of Accounts

(a) Organisation to prepare as soon as practicable after the end of each financial year:

(i) statements of the organisation's financial position at the end of the financial year;

(ii) statements of cash flows during the year;

(iii) statements of the organisations revenue and expenditure during the year; and

(iv) all other statements necessary to show fully the organisation's financial position and the financial results of its activities during the year (ie must show what the levy funds were used for - as per the specific purposes agreed by the organisation).

(b) accounts must be audited;

(c) annual report and statement of accounts to be presented to the Minister who must place them before Parliament;

10 Accountability to Producers - organisation to make best endeavours to circulate to the persons primarily liable for the levy:

(a) copy of the (draft? or final?) plans for how levy moneys are to be spent;

(b) copy of the annual report and statement of accounts.

11 Regulations may prescribe offenses and the penalties for such offenses.

12 Confirming Act to be brought before Parliament in the session in which any Regulations are made for debate.

Appendix I

FRAMEWORK: PRIMARY PRODUCTS BILL
(Draft 3)

1. OBJECTIVE

The objective is to provide to the extent determined by -

(a) Government, on behalf of New Zealand consumers and in the national interest

(b) Each specified industry on behalf of its members' shared interests, a system of Government assured standards in relation to specified primary products which delivers:

(a) Consumer protection in relation to food safety and wholesomeness, and truth in labelling.

(b) Means of access for New Zealand produce to foreign markets with import conditions.

(c) Competitiveness in international trading.

2. PRINCIPLES

The principles for construction and implementation of the system shall include the following:

2.1 The provisions of the Act shall be applied to each specified industry to the extent agreed between the Director-General and those recognised by the Director-General as representing the industry concerned, except where Government after consulting with industry, decides to impose any requirement(s) in the public interest (see 1a).

2.2 The required standard to be achieved is to be uniformly applied as a minimum requirement in the industry concerned. The means of achieving the required standard will generally be at the participant's discretion and MAF inspection may also vary in response to participant performance. The system will specify the means of achieving the required standards only where the methods used are significant to achieving the required standard or are an industry requirement.

2.3 Each industry member is expected to ensure it has a quality management programme sufficient to achieve the required standards and to accept responsibility for the effectiveness of that programme.

2.4 Where necessary, agreed standard requirements will be constructed to ensure that the raw materials used are of sufficient quality to enable the required standard for the final product to be achieved.

2.5 The system must be able to respond expeditiously to the changing requirements of New Zealand consumers, international trade and the industries concerned.

2.6 Where the Minister or Director-General has any discretionary power in relation to any industry under this Act, the exercise of the power shall be consistent with the objectives of the Act and subject to

(a) prior notification of intention and consultation with representatives of affected interests

(b) consideration of representations made by such representatives

(c) notification of his intended decision with reasons

(d) provision of the opportunity for affected parties to make further representations.

2.7 Subject to meeting the objectives, the other principles of this Act, and the required standards, the system shall not have the effect of restricting free competition in relation to:

(a) entry to the industry

(b) competition within the industry

(c) competition in the provision of inspection, audit and analytical services.

2.8 Government involvement shall be at the lowest cost which is consistent with meeting the objectives of this Act, and efficiently implementing the system.

3. APPLICATION

This part of the Act will define what falls within the system.

3.1 Specified industries

The specified industries are:

Export dairy products
Liquid milk
Export meat
Game
Game meat (farmed venison)
Export live animals
Domestic meat
Export animal byproducts
Export meat byproducts
Pet food
*Export fish
*Poultry
*Wine
Kiwifruit
Pipfruit
Horticulture general — eg. berry, stone, subtropical fruits; vegetables, cut flowers, nursery stock.
Bee products

(list may not be complete).

*signifies negotiations with Department of Health and/or the industry concerned are incomplete.

3.2 Products

The range of products and byproducts to which the system applies in each industry.

3.3 Premises

The various uses of premises for specified purposes in relation to specified products:

- list for each industry based on the significance of premises standards

- for required standards in the chain from producer to market.

3.4 Processes

The processes (activities) in relation to specified products which are significant for required standards in the chain from producer to market:

- list for each industry.

3.5 Markets

The system for any specified industry may be applied to export only or to both domestic and export markets.

The standards for each may be a single New Zealand standard and may include special export standards, eg imposed by a foreign government.

3.6 Sources

Where these have a significant impact on meeting/failing required standards in a particular industry.

3.7 Imports

This will require evidence that imported produce meets any standards required under this Act in respect of produce for sale in New Zealand.

3.8 Areas of New Zealand

The system for an industry, where justifiable, may apply differently to different parts of New Zealand.

3.9 Exemptions

A method of exempting any of the above where there is valid justification.

eg Experimental
Trade samples
Personal use
Denatured product
Negotiated (negligible risk).

3.10 Prohibitions

There will be few of these because they involve interfering with the free market. There are some though:

eg Animal welfare grounds
Environmental
Deer/stock separation (if this policy continues)
Negotiated

4. REGISTRATION

4.1 Registration, i.e. identification and recognition, of elements in the system;

- premises (by use).
- people, eg alternative services, itinerant slaughtermen, exporters.
- laboratories.
- programmes.

In each case there will be:

- a prior assessment of capability and suitability
- registration identification
- operating standards or codes of practice
- audits of performance
- review (variable, depending on exposure to audit and risk).

4.2 For registration of new premises there will be a requirement for an undertaking (approval of proposals) prior to commencement of work.

5. SOURCE, PROCESS, PRODUCT (ETC) REQUIREMENTS

5.1 As appropriate, criteria to be met by product entering trade may be established in relation to:

source, i.e. raw materials
premises, i.e. stages gone through
process or treatment
product
inspection or analysis
certification or marking
exporter (where controlled).

5.2 Disposal options may be established for product not meeting the criteria.

5.3 Approval of ingredients, substances, appliances, materials, processes (etc) to avoid risks to ability to meet criteria.

5.4 Accreditation of alternative systems where this is consistent with achieving the required standards.

5.5 Policy on availability of uninspected meat; custom meat premises; itinerant slaughtermen.

5.6 Pet food policy.

6. VERIFICATION

6.1 <u>Certificates</u>

Certification may be discretionary or mandatory or a mix of the two, at the option of the industry concerned, provided this is consistent with the required standards.

6.2 Official marks

These are methods of identifying the status of product. Rules may be established to cover:

Meaning (or minimum criteria) of marks.
Control of marks.

7. ADMINISTRATION

7.1 Official analysts, inspectors and auditors

- Appointment by Director-General
- Conditions of appointment (purpose, powers, time period etc)
- Control by Director-General
- Powers to inspect product, premises and processes; take information; take samples and analyse; seize, condemn or forbid removal of product; forbid use of equipment or premises, order defects to be remedied.
- Obstruction is an offence
- No liability except for negligence.

7.2 Offences and penalties

Two categories of penalties:

(a) Penalties for non-compliance by participants in the system (registered entities).

(b) Penalties for non-participants.

Penalties may include:

Expulsion/deregistration
Suspension
Non certification
Increased audit/sampling/testing
Bonds
Product detention/seizure
Consequential costs
Forbidding use
Penalty charges
Fines (non participants).

7.3 Arbitration

(a) Choice of arbitrator
(b) Powers of arbitrator
(c) The following matters shall be subject to arbitration:

- Charges
- Application of sanctions or penalties
- Conflict of interest.

(d) In each case the arbitrator shall consider whether:

- the Director-General or the Minister has taken all relevant facts into consideration

- the Director-General or the Minister has followed the agreed procedures.

7.4 Cost recovery

Allow for a choice (as appropriate to the cost to be recovered) between:

(a) A form of contract with industry, based on costing of the service and allocating the means and method of recovery, and establishing this via a contract for each premises. Example - routine inspection.

(b) Flexible system, based on costing of all inputs in each case and resulting in a variable charge. Example - registration charges may include hourly rates for assessment.

(c) Flat fees (ie cross subsidisation via standardisation). Example - certificates.

7.5 Levies

Some may be carried over to the Primary Products Bill but it is intended that eventually all levies will be included in the proposed Commodities Levies Act.

7.6 Regulation-making powers

The aim is to provide the detail of the mandatory aspect of the system for each industry via specialist regulations. To maintain flexibility to respond to future change it is hoped to make the regulation-making powers broad rather than particular.

7.8 Tertiary legislation

The aim here is to provide a mechanism which:

(a) Enables prompt amendment to the system in response to change irrespective of the Act or Regulation. This power would necessarily have to be hedged with safeguards to prevent abuse and would also have a time limit during which the law would have to be changed or the amendment would lapse.

(b) Authorises some of the technical mandatory requirements which are too detailed for regulations and are presently included in manuals. The latter would need to clearly distinguish between instructions (mandatory) and advice (discretionary).

8. ALIGNMENT WITH OTHER LAWS

eg Food Act, Health Act.

9. TRANSITIONAL PROVISIONS

10. CONSEQUENTIAL REVOCATIONS