

The Biosecurity Act 1993 - Notes on the Powers for Public Health Unit Staff

The Public Health Officials who are Inspectors or Authorised Persons (AP's) are designated by the Ministry of Health's Chief Technical Officer, (CTO) and can be granted a limited range of Powers under the BSA 1993. These Powers provide Authorised Persons (APs) or inspectors the authority to carry out a range of duties, powers or functions. Note that the restricted powers do not include the more robust enforcement ones such as contained in Sections [111](#), [114a](#), [116](#), and [117](#), [117a](#), [118](#) & [120](#).

TABLE 1 – GUIDE TO THE BIOSECURITY ACT 1993

Sect	Power	Remarks – What does this mean for me?
S 43 (1)	<p>Duty to provide Information</p> <p>a. An AP or Inspector may require anyone to provide any information concerning pests, pest agents, unwanted organisms, or risk goods</p> <p>b. to provide reasonable assistance to enable or facilitate the acquisition, collection, and recording such information</p>	<p>Hardcopy or electronic files. The request might be for cargo manifests, shipping information to identify where risk goods may have been sent to, type of conveyances used, other operators in the supply chain. The most common request might be for the manifest</p> <p>Note also S 113 which grants similar powers</p>
S101	<p>Chief Technical Officer (CTO)</p> <p>(1) The Director-General shall appoint a CTO for the purposes of this Act, being in each case a person with appropriate experience, technical competence, and qualifications</p> <p>(3) A CTO appointed under subsection (2) may exercise all the powers and perform all the functions and duties conferred on a CTO by this Act</p>	<p>The CTO is responsible for the strategic delivery of the Ministry's biosecurity policies</p> <p>The CTO has all the powers necessary under the Act to ensure the Ministry's Biosecurity policies are delivered</p> <p>The CTO/DCTO must be employed under the State Sector Act 1988.</p>
S102	<p>Deputy Chief Technical Officers (DCTO)</p> <p>...a deputy chief technical officer (DCTO) shall have ... all of the powers, duties, and functions of a CTO under this Act,</p>	<p>- the DCTO can do anything the CTO does. It is probable that the most frequent channel between the Ministry and the PHU's AP's and accredited persons will be through the DCTO</p>
S 103	<p>Inspectors, authorised persons, and accredited persons</p> <p>(1)A CTO appointed as such by the Director-General may from time to time appoint authorised persons or inspectors for the purposes of administering and enforcing the provisions of this Act:</p> <p>(5)AP's appointed under this section may be persons employed under the State Sector Act 1988</p> <p>(7) A CTO or the principal officer of a region may accredit persons for the purposes of performing particular functions—</p> <p>a) that are consequential upon the exercise of powers under this Act by an inspector or AP</p> <p>b) that may be conferred on or may be performed by accredited persons under regulations made under this Act;-</p> <p>but may not accredit a person for a particular function unless satisfied that the person has appropriate experience, technical competence, and qualifications relevant to the function.</p> <p>(8) Every AP, and accredited person shall use his or her best endeavours to comply with and give effect to any relevant performance or technical standards.</p>	<p>The legal instrument that determines the appointment of AP's, Inspectors and accredited persons. The CTO sets the parameters for HPO's to qualify to become AP's and for technical officers to become accredited persons.</p> <p>You must be authorised or accredited by the CTO</p> <p>You must have attended the relevant training as directed by the CTO</p> <p>You must carry out your duties in accordance with the detailed performance and/or technical standards</p>

<p>S 104</p>	<p>Authorised Persons to comply with instructions All AP's or inspectors appointed by a CTO must comply with any lawful direction given by the CTO in relation to the exercise and performance of the powers, duties, and functions conferred or imposed on AP's</p>	<p>This allows the CTO or DCTO to direct the AP to carry out a task that his employer (i.e. DHB) might want to quibble about. Tip if you are uncomfortable with complying with the CTO's directions follow up verbal instructions with text messages that then will give a good audit trail of your responses</p>
<p>S 106</p>	<p>Power to require assistance (1) An AP or inspector may employ any person or request any person to assist that AP in carrying out the provisions of this Act, the regulations, & any directions or instructions issued by a CTO (2) A person employed or requested to assist an Inspector or AP has the same powers as that Inspector or AP while that person is under the immediate direction and control of that inspector or AP</p>	<p>Some possible scenarios: Requesting a Fork Lift Driver if you want a pallet moved. Requesting the Port Company that you want some sumps cleared Requesting a copy of the manifest from the Ships executive officer</p>
<p>S 109</p>	<p>Power of Inspection (1) (a) an INSPECTOR may, at any reasonable time enter and inspect any place for the purpose of— confirming the presence, former presence, or absence, of any pest, pest agent, or unwanted organism or any unauthorised goods or any risk goods. (b) an Inspector OR authorised person may at any reasonable time enter and inspect any place for the purpose of – (i) confirming the presence, former absence, or absence, of any pest, pest agent or unwanted organism or (ii) eradicating or managing any pest, pest agent, or unwanted organism: (c) an AP or inspector may, at any reasonable time or times, enter and inspect any place for the purpose of determining whether or not any person is complying with biosecurity law.</p>	<p>Reasonable time is basically during working hours. Many businesses operate 24/7 or similar so it is not unreasonable to enter a POE or a Transitional facility at midnight during a public holiday if that business is operating then. For entry into Dwelling houses the AP/Inspector should request permission from the occupier for entry. Only if that is denied then entry will need the application for a warrant which is not the AP/Inspectors right to do</p>
<p>S 112</p>	<p>Duties on exercising powers of entry An AP, Inspector, or constable exercising a power of entry conferred by S109, must have with him or her- (i) the evidence of their identity and their appointment as such. If there is no person appearing to be in charge of the place at any time between the time of entry and the time the AP leaves the place, must, as soon as is practicable upon leaving, give an occupier or person in charge of the place written notice stating that the place has been entered, and specifying the following matters: (i) the time and date of entry: (ii) the circumstances and purpose of entry: (iii) the name, office or position, and employer of every person entering: (v) everything that has been seized, or that nothing has been seized, and every action taken, or that no action has been taken.</p>	<p>Note Occupiers of a Marae or Dwelling can refuse entry. In this case a Warrant has to be served by an Inspector, (not an AP). This is outside the scope of a PHU AP</p> <p>What does this mean for me? If you enter premises which is unoccupied it is essential, that you fulfil the reporting requirements for the visit. Tip -take plenty of photos to provide evidence of your activities. Ensure that all times you carry your essential documentation, ID Card, Business cards so you won't be embarrassed. A good knowledge of the BSA powers you have is also essential</p>
<p>S 113</p>	<p>Power to Record information A person lawfully exercising the powers conferred by S109 may make or take copies of any document or any information recorded or stored in a computer or other device, and for that purpose may take possession of and remove any document, tape, or disc from the place where it is kept for such period of time as is reasonable in the circumstances, or may</p>	<p>A simple requirement for collection of records of any transactions relevant to the risk goods. See also S43</p>

	require a person to reproduce, or assist the inspector or authorised person to reproduce, in usable form information recorded or stored in a computer or other device	
S 114	<p>General powers</p> <p>An Inspector or AP who has lawfully entered a place under S109 may do anything in, on, or in relation to the place that the inspector or authorised person considers necessary or expedient to—</p> <p>(a) eradicate or manage an unwanted organism on the place;</p> <p>(b) prevent the spread of the unwanted organism from or to the place;</p> <p>(c) avoid, remedy, or mitigate any effect on the place of non-compliance with a pathway management plan</p>	This is a “catch all” section that gives wide discretion to carry out a wide range of activities that will ensure the risk organism is contained, controlled and eradicated
S 115	<p>Use of dogs or devices</p> <p>Any person lawfully exercising a power under any of S109, 111, 113, 114, or 120 may— be accompanied by a dog; or (b) bring and use anything, to assist in the exercise of the power.</p>	This could be used to say bring equipment such as detection traps onto a site. Also see S121a which has similar provisions
S 119	<p>Power to seize abandoned goods</p> <p>(1) An Inspector or AP may seize and may treat or dispose of any abandoned organism (where necessary disabling or killing it first) or any abandoned conveyance, craft, or goods that are reasonably suspected of containing or harbouring any pest or unwanted organism.</p> <p>(2) An AP is entitled to regard as abandoned any organism/goods that appear to have been abandoned or to have no identifiable owner, after making such inquiries as are reasonable in the circumstances.</p>	A possible scenario – items that were not manifested were left inside the POE. Subsequently the conveyance they arrived on has left NZ. The “offending” item(s) are discovered to be infested with exotic mosquitoes. This section gives you the powers to deal with the risk goods despite there being no apparent owner or accountable occupier
S 121	<p>Power to Examine organisms</p> <p>(1) An inspector or AP may exercise any or all of the powers in subsection (1B) on—</p> <p>(a) organisms, (b) organic material (c) any other goods or material.</p> <p>(1A) The purposes for which the inspector or authorised person may exercise the powers are—</p> <p>(a) taxonomical identification of an organism, (b), diagnosing a disease, (c) determining whether imported goods may be given a biosecurity clearance:</p> <p>(d) ascertaining the presence or absence of any pest or unwanted organism or (e) making an assessment of measures taken to eradicate or manage any pest or unwanted organism.</p> <p>(1B) The powers are to— (a) autopsy, (b) destroy, (c) examine, (d) inspect, (e) sample, (f) section, (g), take specimens, (h) test, (i) apply any other treatment or procedure</p>	Self-explanatory. This means the owner or occupier cannot object to requests for items to be examined to ascertain if there are unwanted organisms even though the process of examination may damage, alter or destroy the “suspect” goods
S 121A	<p>Power to apply article or substance to a place</p> <p>(1) An inspector or AP may, for the purpose of ascertaining the presence or absence of any pest or unwanted organism, or of assessing measures taken to eradicate or manage any .. unwanted organism bring onto and leave for a reasonable time at any place, any article or substance.</p> <p>(2) An article or substance brought onto or left at any place must have a volume no greater than 1 cubic metre....</p>	This section gives the AP the power to place items such as detection equipment (Adult or Larval Traps) Note this is at any place so such an “article” could be placed outside the POE or transitional facility. For example, might be when the monitoring plan requires traps to be set out from the index site up to several hundred meters away

	(3) No person may without reasonable excuse move or interfere with any article or substance left at a place by an AP	
S 122	<p>Power to Give directions</p> <p>(1) An AP may, whenever that AP considers it necessary, direct the occupier of any place or the owner or person in charge of any organism or risk goods—</p> <p>(a) to treat any goods, water, place, equipment, fitting, or other thing that may be contaminated with unwanted organisms; or</p> <p>(b) to destroy any pest or unwanted organism or any organism or organic material or thing that there are reasonable grounds to believe harbours a pest or unwanted organism; or</p> <p>(c) to take steps to prevent the spread of any unwanted organism.</p>	<p>These powers are probably the go to “tool” for the AP to use to manage risk goods, contaminated conveyances, infested sites and potential reservoirs for vertebrate or invertebrate harbourage and breeding.</p>
S 163	<p>Protection of inspectors and others</p> <p>An AP, accredited person, or other person who does any act or omits to do any act in pursuance of any of the functions, powers, or duties conferred on that person by this Act..... shall not be under any civil or criminal liability in respect of that act or omission, unless the person has acted, or omitted to act, in bad faith or without reasonable cause.</p>	<p>- an important section since it should give you the assurance to carry out your Biosecurity duties without being concerned that you might have some personal liability for the risk goods you have treated/destroyed.</p> <p>A possible scenario might be that you direct the treatment of risk goods and as a consequence the material applied to the goods damages them. Alternatively, it might be that whilst carrying out your inspection you may have damaged some item. The test is that you acted at the time in the sincere belief that the information you had was compelling enough to make you initiate the action to remedy the problem. The presence of live organisms, (larvae or adults) that need urgent treatment might lead you to initiating immediate action. Best advice always confirm with NZBEL/CTO/management for input into your decision-making.</p> <p>As always keep detailed records of your activities so there is a good audit trail</p>

Definitions Acronyms and Other Diversions

<p>authorised person (AP) means a person for the time being appointed an authorised person under section 103</p>	<p>quarantine means confinement of organisms or organic material that may be harbouring pests or unwanted organisms</p>
<p>accredited person means a person currently accredited under section 103(7)</p>	<p>risk goods mean any organism, organic material, or 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—cause unwanted harm tohuman health in New Zealand</p>
<p><i>Bacillus thuringiensis israelensis</i> (Bti) is used as biological control agents for larvae stages of certain dipterans. The major advantages of <i>Bti</i> products is that they are thought to affect few nontarget species. Bti may be used as a quick response treatment product</p>	<p>S-methoprene (1-methylethyl (<i>E,E</i>)-11- methoxy-3,7,11-trimethyl- 2,4-dodecadienoate) An insect growth Regulator used for invertebrate control. S-methoprene is used in larval monitoring traps to ensure that any larvae that hatch in them are not allowed to breed through to an adult</p>
<p>chief technical officer (CTO) means a person appointed a chief technical officer under section 101</p>	<p>transitional facility means: any place approved as a transitional facility in accordance with section 39 for the purpose of inspection, storage, treatment, quarantine, holding, or destruction of uncleared goods</p>
<p>conveyance includes any craft, truck, cargo container, horse-box, wagon, cart, dray, cage, kennel, or vehicle that is or has been used for the conveyance of, or has come into contact with, any organism or organic material</p>	<p>unwanted organism means any organism that a CTO believes is capable or potentially capable of causing unwanted harm to... human health</p>
<p>marae includes the area of land on which all buildings such as the wharenuī (meeting house), the wharekai (dining room), ablution blocks, and any other associated buildings</p>	<p>working day means any day except— a Saturday, a Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign’s birthday, and Waitangi Day and the anniversary day of the province</p>
<p>Inspectors - means a person who is appointed an inspector under section 103</p>	<p>Deployment of an Inspector - For situations where there is wilful non-compliance and a need for the forceful exercise of the powers. The MoH will appoint an Inspector to execute such tasks as entry warrants and seizure of goods.</p>