

Compensation Claims – User guide



Please read this guide to help you when filling in your Compensation claims form

Important Note:

This document is intended as general guidance for claimants and is not to be regarded as legal advice. Claimants may wish to seek their own independent advice.

The document contains a summary of the legal requirements. While MPI has taken reasonable care to ensure this document is accurate, it is not responsible to any person for any error or omission or any loss caused as a result of relying on this document.

What is the claims form and process all about? What can I claim for?

The Ministry for Primary Industries (MPI) has developed this guide to help people complete claims for compensation under the Biosecurity Act 1993 (the Act) in relation to the Bonamia Ostreae 2017 response.

The Act (section 162A¹) provides that in certain circumstances a person or business is entitled to compensation where MPI has exercised powers² and a loss has resulted:

- *You have had property damaged or destroyed.*
- *Restrictions have been imposed on the movement or disposal of your goods, which have caused you loss.*

Losses must be verifiable, and reasonable steps must have been taken to mitigate any ongoing losses.

The information provided in the compensation claim form will help MPI to evaluate your claim – **supporting documentation must be submitted with the claim form.**

Submitting your form and for further information

Completed forms should be sent via email, post or fax to the **Compensation Coordinator**, who can also provide general information about the claims process to MPI staff and claimants. Note, however, MPI is unable to provide legal advice to claimants.

Who should complete the form?

The claims form is to be completed by the legal owners of:

- Property which was destroyed, and/or
 - Goods which were affected by the movement restrictions,
- following the exercise of powers under the Biosecurity Act 1993.

You may choose to authorise an agent to prepare and submit your claim – if so, please ensure that the agent's details are recorded.

What are my responsibilities when submitting a compensation claim?

The claims form requires that a statutory declaration be made. This means that any information you provide must be true and correct and once you have signed it, it becomes a legal document.

Please provide all relevant evidence to support your claim.
Claims must be lodged within one year of a loss occurring.

1. Details of **section 162A of the Biosecurity Act 1993** can be found at the website www.legislation.govt.nz

2. **“Exercise of powers under the Act”** could be via a Restricted Place notice (RP), Notice of Direction (NOD) or a Controlled Area Notice (CAN).

What can I not claim for?

Compensation cannot be paid if:

1. You **failed to comply** with Biosecurity Law in a serious or significant way.
2. The loss was **caused by the unwanted organism** which led to the biosecurity response.
3. The loss was suffered **before** the exercise of powers began.
4. The loss is related to **unauthorised or uncleared goods** (i.e. Imported Goods not yet cleared).

Additionally, actions taken by the claimant beyond the scope of any directions given by MPI cannot be compensated. Claimants who are not directly affected by the exercise of powers may not be able to claim under the Act.

Response “services” costs - these are separate to compensation claimable under section 162A

If you have been directed or contracted by MPI to assist with a response in order to contain, control and/or eradicate an unwanted organism, you may be eligible to claim-back these costs e.g. labour to remove and destroy oysters, mussels, ropes and cages.

In these cases, please submit an itemised GST invoice to the response team or compensation coordinator.

Losses from destruction of Property – See section 2 of the form

Where MPI has exercised powers that has resulted in the damage or destruction of property (e.g. plants, equipment, ropes, cages etc.) the person owning those goods may be entitled to claim compensation for their value.

The compensation offered is determined by the amount of loss incurred as a direct result of MPI’s exercise of powers – typically, this includes healthy or economically viable stock, and any equipment or other property destroyed as directed by MPI to limit the spread of the unwanted pest or disease.

MPI may have assessed certain market process to establish default values for some elements of compensation. We are satisfied they are representative and robust, and will be used where more accurate information is not available. If you feel these values are not accurate for your situation, please provide your own evidence and we will discuss this with you.

NOTE: All business claims are to be made on a GST exclusive basis. All wholesale sales prices are to be supplied on a GST exclusive basis.

Example

Description	Quantity - Number, or weight (kg)	Date destroyed	Estimated wholesale or replacement price (\$ Excl. GST)
Product A			
<i>e.g. metal cage for 8mm spat,</i>			
<i>plastic cage for 15mm oysters</i>			
<i>Ropes – type & quantity (metres)</i>			

You are required to provide verifiable evidence to support your claim, such as sales figures from previous years’ harvests, asset schedule details, photographic evidence etc.

NOTE: The Act does not compensate for the effects of the disease itself, only the loss resulting from our actions of exercising the powers. This means that diseased stock will not be eligible for compensation, and any other loss that did not result because of the exercise of powers will also not be covered, such as the regular background mortality rate associated with commercial fishing.

Ongoing and consequential losses – See section 3 of the form

During the time period that the powers are exercised, you may be required to make some changes to your normal business practices.

Example: *If the Notice of Direction (NOD) stops you farming one specific product, you can still farm other alternative products.*

The Act **requires you to take all reasonable steps to mitigate your loss in gross profit** for this transitional period – i.e. to operate your business as profitably as you can via alternative methods during this period.

However, if, as a direct consequence of the exercise of powers, you still make a loss in gross profit you may be able to claim compensation for the resulting **“loss in gross profit”**.

Examples:

- *If you sell Product B at a lower gross profit than you usually would for Product A this might be included as part of your mitigated profits and losses.*

If you are claiming as a Businesses, you should provide detailed and complete Financial Statements with your claim, showing your 'business-as-normal' sales volumes and gross profit for similar periods over the past three years, compared to sales and gross profit for the time you were affected by MPIs exercise of powers.

Claim value = consequential loss in gross profit

Resulting loss in gross profits (\$)	=	“Business as usual” gross profits (\$)	-	Mitigated gross profits (\$)
\$				

When, and how often, can I claim?

There are a number of stages in a Biosecurity incursion response (e.g. immediate actions, destruction of goods, alternative business arrangement and mitigations, recovery etc.) and you may be entitled to claim for eligible loss incurred at any of these points.

Depending on your individual circumstances, you may want to submit a final claim, or alternatively you can submit separate claims at different stages throughout the process if you wish.

Please note: Claims must be received by MPI with 12 months of the loss occurring.

What information do I need to provide to support my claim?

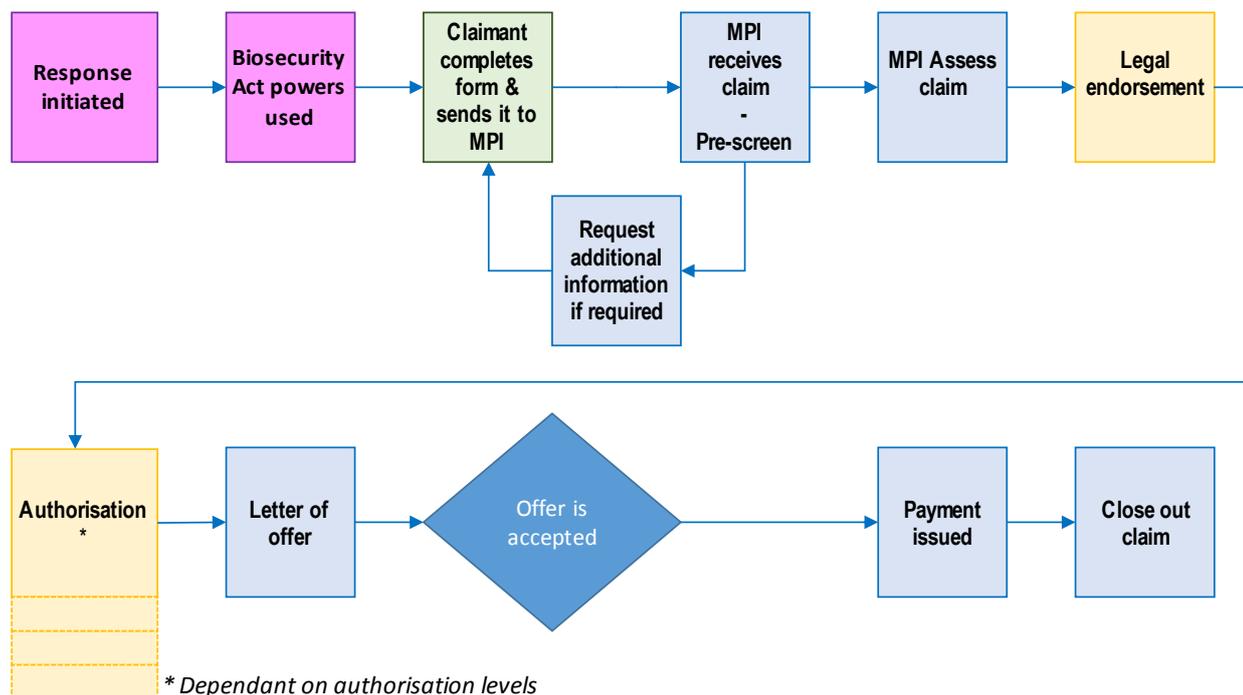
The more complete the information and supporting documentation you provide with your claim to verify your loss, the easier and quicker it will be for MPI to assess your claim.

If information is missing or unclear, MPI may have to come back to you for clarification and/or request additional evidence to support your claim. This may also hold up the processing of your claim.

For any losses you claim, MPI must be able to verify this – please include detailed supporting documents along with your claim form.

Once I submit my form, what happens next?

Once MPI has received your claim, we will go through a process of firstly verifying what you have claimed for, assessing your claim, then seek approval to make an offer of compensation.



The time it takes to assess and authorise your claim will depend on a number of different factors:

- **Claim Type** – e.g. direct loss due to destruction of Property, consequential losses incurred later etc.
- **Verification** – the more information and evidence that you provide to support your claim, the easier it will be for MPI to assess the value and validity of the claim.
- **Value** – there are set levels in the Act as to who can authorise an offer of compensation. Higher value claims may need to go the Minister or Cabinet for approval.

How and where do I submit the form?

Please complete the claims form and send it, via scan & email, fax or post, along with any supporting documents, to the MPI Compensation Coordinator - see contact details below.

Checklist

To help us assess your claim as quickly and smoothly as possible, check you have completed all sections of the form, signed the Statutory declaration in front of an official witness, and provided suitable evidence to support your claim.

For further information

For general information about claiming compensation, please contact the MPI **Compensation Coordinator**.

NOTE: MPI is unable to provide legal advice to claimants.

Contact details for the Compensation Coordinator are:

Phone: 04 894 0055

E-mail: compensationcoordinator@mpi.govt.nz

Fax: 04 894 0720

Postal Address: Ministry for Primary Industries

PO Box 2526 WELLINGTON 6140