



GUIDE TO COMPLETING A CLAIM FOR COMPENSATION—UNDER SECTION 162A OF THE BIOSECURITY ACT 1993

INTRODUCTION

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

Please note this guide does not constitute legal advice and should not be relied upon as such.

This guide provides a summary flow chart of the overall compensation Claim process under section 162A of the Biosecurity Act, followed by answers to the following questions, to inform potential / prospective claimants:

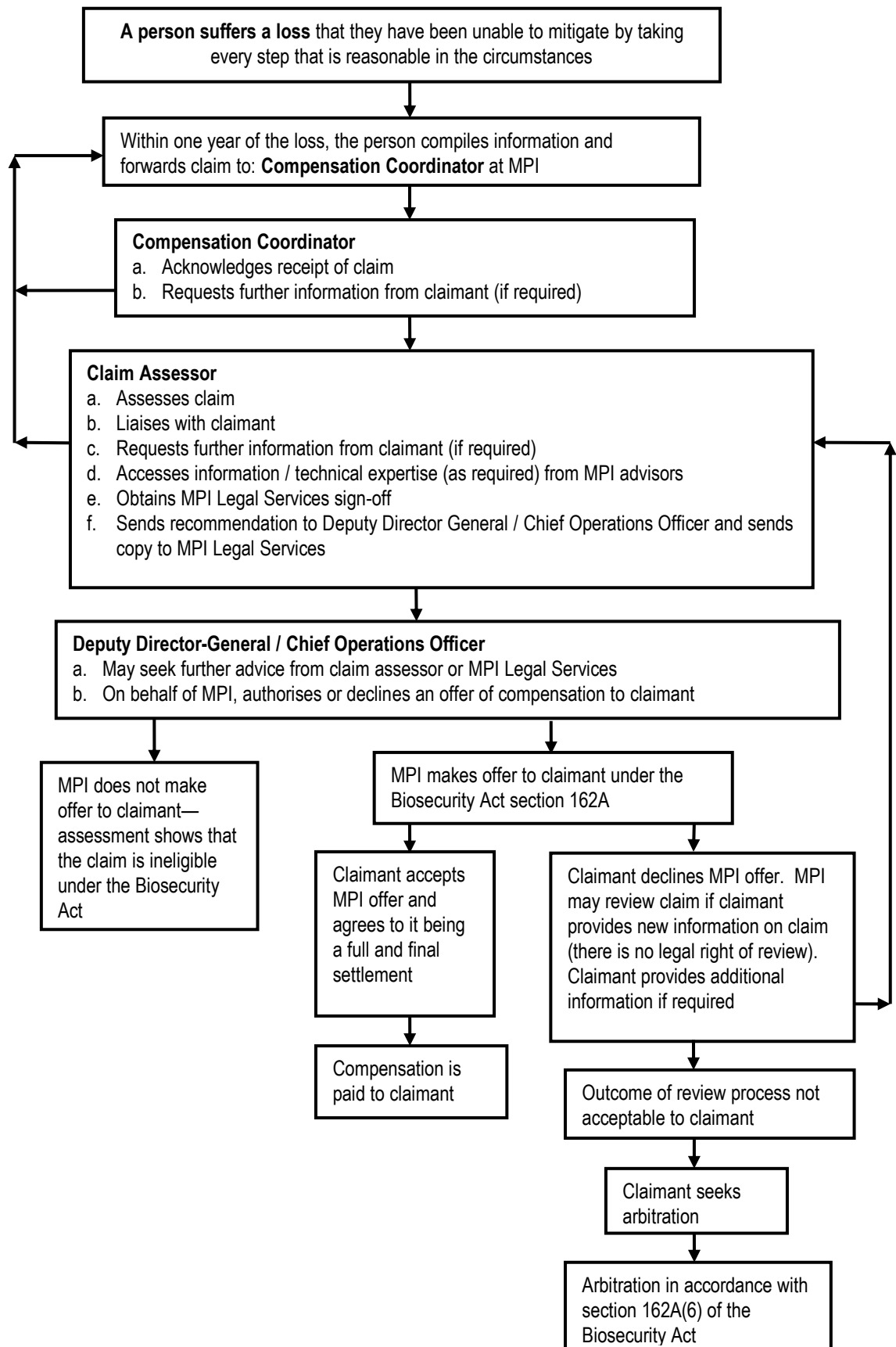
- What are the legal requirements for the payment of compensation?
- How can potential / prospective claimants mitigate their losses?
- What do claimants need to do next?
- What assistance is available to prepare or support a claim?
- How does MPI assess compensation claims?

Key points for potential / prospective claimants:

- **Talk to MPI about how to mitigate a loss**
- **Keep records of successful and unsuccessful requests for movement permits**
- **Collate documents to support claims e.g. receipts, invoices, bank statements**
- **Lodge a claim within one year of a loss occurring.**



OVERALL COMPENSATION CLAIM PROCESS UNDER SECTION 162A OF THE BIOSECURITY ACT





WHAT ARE THE LEGAL REQUIREMENTS FOR THE PAYMENT OF COMPENSATION?

The legal requirements for the payment of compensation are set out in section 162A of the [Biosecurity Act 1993](#). Section 162A states as follows:

- (1) This section applies when—
 - (a) powers under this Act are exercised for the purpose of eradicating or managing an organism; and
 - (b) the powers are not exercised to implement a pest management plan or pathway management plan; and
 - (c) the exercise of the powers causes loss to a person as a result of—
 - (i) damage to or destruction of the person's property; or
 - (ii) restrictions imposed under [Part 6](#) or [7](#) on the movement or disposal of the person's goods; and
 - (d) there is no agreement under [Part 5A](#)¹ that applies to the loss and whose provisions on compensation are expressed to take priority over this section.
- (2) The person is entitled to compensation under this section for loss that—
 - (a) is verifiable; and
 - (b) is loss that the person has been unable to mitigate by taking every step that is reasonable in the circumstances.
- (3) Compensation must not be paid if—
 - (a) the person's loss relates to unauthorised goods or uncleared goods; or
 - (b) the person suffered the loss before the time at which the exercise of the powers began; or
 - (c) the person failed to comply with biosecurity law—
 - (i) in a serious or significant way; or
 - (ii) in a way that contributed to the presence of the organism; or
 - (iii) in a way that contributed to the spread of the organism.
- (4) The amount of compensation paid must put the person to whom it is paid in no better or worse position than a person whose property or goods are not directly affected by the exercise of the powers.
- (5) The period for making a claim for compensation after the date on which the loss suffered by the person ought reasonably to have been verifiable is—
 - (a) within 1 year from the date; or
 - (b) after 1 year from the date, if the person was unable to make a claim within 1 year because of circumstances beyond the person's control.
- (6) If there is a dispute about eligibility for, or the amount of, compensation,—
 - (a) the dispute must be submitted to arbitration; and
 - (b) the arbitration must be conducted under the [Arbitration Act 1996](#).
- (7) Compensation payable by a Minister or a chief executive is payable from money appropriated by Parliament for the purpose.

¹ Part 5A of the Biosecurity Act concerns the Government Industry Agreement for Biosecurity Readiness and Response.



HOW CAN POTENTIAL / PROSPECTIVE CLAIMANTS MITIGATE THEIR LOSSES?

A person is entitled to compensation under section 162A of the Biosecurity Act for loss that:

- is verifiable; and
- is loss that the person has been unable to mitigate by taking every step that is reasonable in the circumstances.

This puts the onus on people who have incurred losses, due to the exercise of Biosecurity Act powers to restrict the movement/disposal of goods, to consider all reasonable mitigation options that may be available to them. For example:

- a person affected by movement controls under a controlled area notice could request a permit from MPI to continue movement of goods (including animals) under certain conditions and retain evidence of their request - MPI will consider requests for such permits on a case-by-case basis; or
- a person who cannot afford to buy extra feed (for stock that cannot be moved) could provide evidence that they requested their bank, or other lending institution or agency, for financial support and/or a loan and were declined.

Potential / prospective claimants should:

- **Talk to MPI about how to mitigate a loss**
- **Keep records of successful and unsuccessful requests for:**
 - **permits to move goods/animals during movement controls; and/or**
 - **financial support/loans to help maintain the viability of their business.**

MPI will assist a person who is subject to the exercise of Biosecurity Act powers to identify options for mitigating their loss wherever possible, if the person requests that MPI do this.

Any final compensation settlement will be based on verifiable loss after agreed mitigation measures have been applied.

WHAT DO CLAIMANTS NEED TO DO NEXT?

A person who considers they are legally entitled to compensation under section 162A of the Biosecurity Act must lodge their claim within a year of their loss, unless circumstances beyond their control prevent them from doing so. A person can make more than one claim for different aspects of their loss.



As soon as a person incurs a loss caused by the exercise of powers under the Act, they should collect original documents to support their claim. The supporting documents might include: invoices; bank statements; receipts from current and preceding years; and written evidence of preceding years' output.

Electronic versions of this Guide to Completing a Claim for Compensation, the Compensation Claim Form, and the Compensation Brochure are available at:

www.biosecurity.govt.nz/biosec/compensation

General assistance about compensation under the Act, and hard copies of this Guide to Completing a Claim for Compensation, the Compensation Claim Form and the Compensation Brochure may be obtained from MPI by contacting the **Compensation Coordinator** by phone, email, fax, or surface mail.

Please note that MPI is unable to provide legal advice to claimants.

Contact details for the **Compensation Co-ordinator** at MPI are:

Telephone: 0800 00 83 33
E-mail: compensationcoordinator@mpi.govt.nz
Fax: 04-8940720
Postal Address: Ministry for Primary Industries
PO Box 2526
WELLINGTON 6140

A claimant must scan and email, or fax, or post a completed Compensation Claim Form, together with attached supporting documents, to the **Compensation Coordinator** using the above contact details.

The more evidence that a claimant can provide to support their claim, the faster their claim can be processed. A claimant should also keep, and hold on file, copies of all their supporting documents that they send to MPI, until a final decision is made on the claim.

WHAT ASSISTANCE IS AVAILABLE TO PREPARE OR SUPPORT A CLAIM?

General assistance about compensation under section 162A of the Biosecurity Act may be obtained by contacting the **Compensation Coordinator** using the above contact details.

Professional legal, accounting or secretarial assistance will not normally be critical to the preparation of a successful claim. The cost of engaging such services lies with the claimant and is not compensable.

The cost of commissioning any independent technical reports and collecting or recording of evidence of damage or loss lies with the claimant.

MPI will assign a compensation assessor to each claim.

MPI may make additional assistance available to claimants to help them lodge their claims during a larger biosecurity response.



HOW DOES MPI ASSESS COMPENSATION CLAIMS?

Each claim is assessed against the criteria in section 162A of the Biosecurity Act. MPI may request additional information from the claimant or other parties where necessary.

An MPI Deputy Director-General or the MPI Chief Operations Officer authorises or declines an offer of compensation to the claimant after considering officials' advice.

MPI will make every effort to settle claims fairly and within a reasonable timeframe. Where claims are more complex, MPI will seek expert advice before an offer of compensation is made.

The Biosecurity Act provides for arbitration where eligibility for, or the amount of, compensation is disputed—however claimants can first request that MPI reconsiders their claim for compensation.

Compensation under section 162A of the Act is applicable for loss that:

- is caused by the exercise of powers under the Act for the purpose of eradicating or managing an organism; and
- results from damage to, or destruction of, the person's property; or from restrictions placed on the movement or disposal of the person's goods.

Note that in the Act, "person" includes the Crown, a corporation sole, and a body of persons (whether corporate or unincorporate).

Damage caused by the organism itself cannot be compensated for under section 162A.

While every claim for compensation will be considered on its merits, section 162A of the Act provides that compensation must not be paid to a person if:

- their loss related to unauthorised goods or uncleared goods; or
- their loss was suffered before the time at which the exercise of powers under the Act commenced; or
- they failed to comply with biosecurity law:
 - in a serious or significant way; or
 - in a way that contributed to the presence or spread of the organism.



NOTES ON COMPLETING THE MPI COMPENSATION CLAIM FORM

Please ensure that all sections of the Compensation Claim Form relevant to your claim are completed.

If completing the form in handwriting, please ensure it is easy to read.

Part 1: General information and contact details

Part 1A of the Compensation Claim Form requires details about the owner of the damaged or destroyed property or goods affected by the exercise of powers under the Act. Please fill in as many of the fields as you can.

In Part 1B, details of the owner's authorised agent are not required if you are the owner and wish to be the person contacted in relation to the claim.

Parts 2 & 3: Loss-mitigation details, and the cause and value of the loss

In Part 2, please supply as much detail as possible about loss-mitigation options you identified, investigated, considered, or actioned. In Part 3, the summary information you provide in tables A and B, and additional comments you provide, are important to help MPI understand the nature of your claim.

To avoid confusion about the nature, quality, or quantity of property or goods affected, descriptions should be as precise and complete as possible. For example, if the sale of your goods has been affected, please provide copies of sale receipts from previous years. If your productivity has been affected, please provide evidence of previous years' output.

Please indicate the date or period of time in which each loss was incurred.

Part 4: List of supporting documents

Please supply any relevant supporting documents necessary to verify your claim. The type of documentation necessary will differ depending on the nature of the claim.

To help MPI keep track of all your supporting documents, it is recommended that you number the front page of each document in sequence. Please ensure the number you put on the front page matches the number recorded for that document in the list of supporting documents you provide in Part 4.

Part 5: Privacy Act notice and declaration

Part 5 of your completed Compensation Claim Form must be signed and dated by you in the presence of a Justice of the Peace, or a Barrister and Solicitor, or any other person authorised by law to administer an oath. Please read the Privacy Act notice and declaration in Part 5 of the form, and the important notes in Part 6, before you sign.