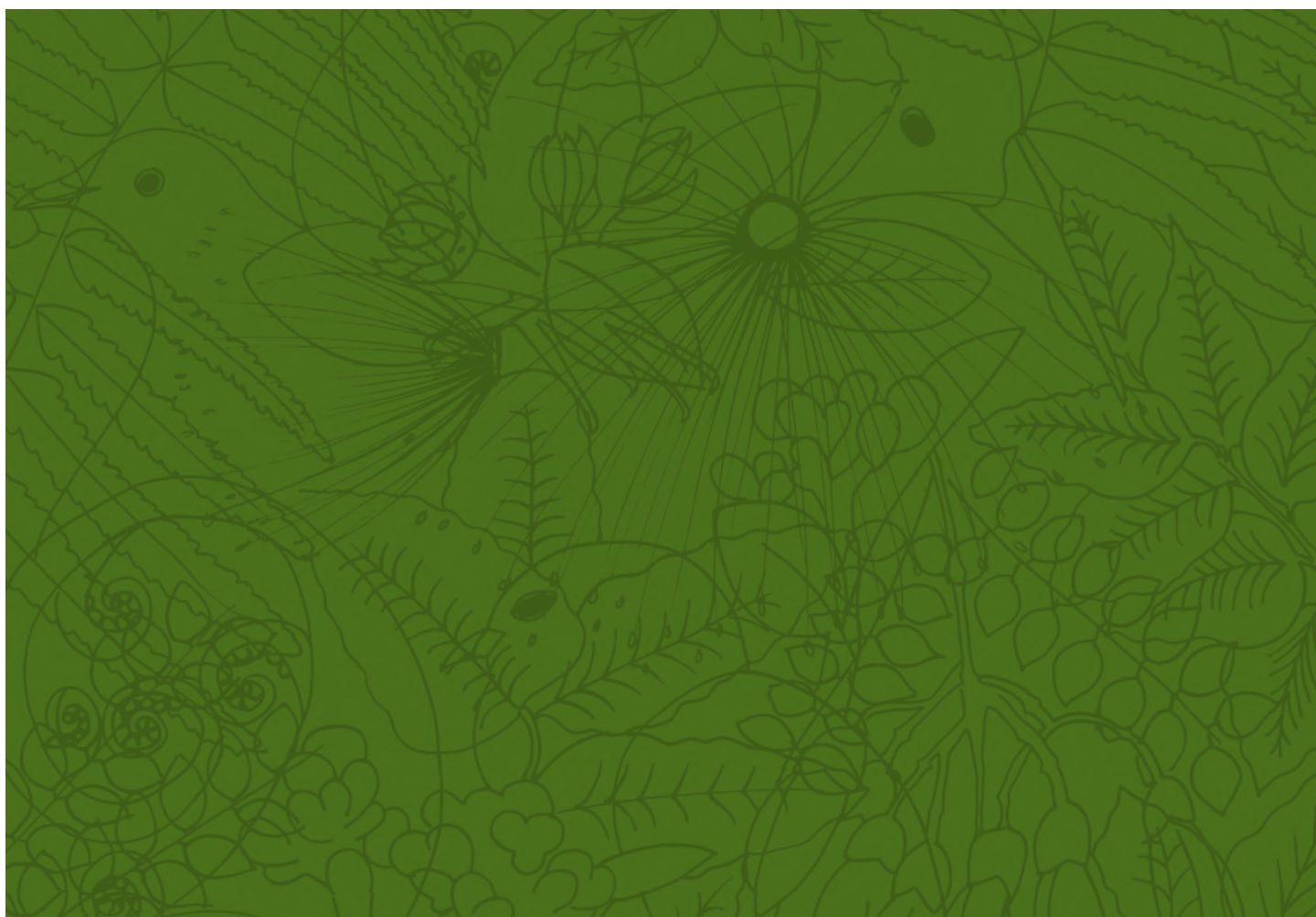


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LEGISLATION GUIDE

USER GUIDE TO LEGISLATION RELATING
TO TERRESTRIAL PEST CONTROL



PRODUCED BY



National Pest
Control Agencies

ABOUT NPCA

This document was published by NPCA (National Pest Control Agencies) which, until part way through 2018, provided a co-ordinating forum for agencies and stakeholders to address vertebrate animal pest control in New Zealand. In 2018 its role was largely taken over by the Ministry for Primary Industries.

PUBLICATIONS

Most of NPCA's publications on animal pest control were partially updated in April 2018 and transferred to the library section of the Ministry for Primary Industries' 'BioNet' online portal. The updates reflect the transfer and also acknowledge the change in the regulatory regime during 2017 and 2018, while not fully incorporating these changes in the interim, pending further reviews of the publications. Written by experienced practitioners, the main titles cover:

- best practice guidelines on controlling and monitoring vertebrate pests; and
- information about relevant regulations.

The transferred publications can be found at www.bionet.nz/library

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National Pest
Control Agencies

LEGISLATION GUIDE

USER GUIDE TO LEGISLATION RELATING TO TERRESTRIAL PEST CONTROL

Published April 2018

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This guide may be updated from time to time, so please check that your version is current by checking the publications section on **www.bionet.nz/library** or contacting info@bionet.nz.

AMENDMENTS IN THIS EDITION

This April 2018 edition has been updated as part of an interim generic review of most NPCA publications. The purpose is twofold.

- » Firstly, to reflect the substantial change in the regulatory regime relating to Health and Safety and use of VTAs (Vertebrate Toxic Agents) in the workplace, which now both sit under the Health and Safety at Work Act 2015, and associated regulations.
- » Secondly, to change links to other NPCA publications and contact details now that NPCA's publications have been transferred to the BioNet portal, run by the Ministry for Primary Industries.

The full nature of the regulatory changes have NOT been fully captured here, and users are directed to the source legislation and website information provided by the various administering agencies.

This interim review is intended to be followed up more fully in due course.

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PART 1 INTRODUCTION

1.1 PURPOSE

This document summarises legislation that is directly related to land-based pest control activities to help contractors and staff of control agencies identify and gain an overview of legislation relevant to their work.

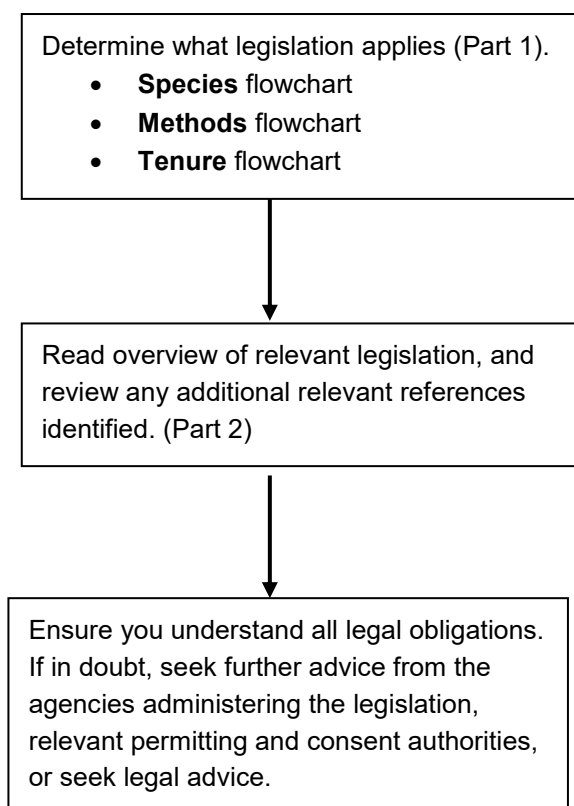
1.2 CAUTIONS

This guide outlines the legislation and is not intended to be a detailed analysis of it.

When working on issues directly related to the legislation mentioned, readers are directed to the legislation itself. Current New Zealand legislation is freely available online at <http://www.legislation.govt.nz>.

While every effort has been made to accurately summarise the statutes and regulations relevant to pest control, no liability is assumed by the authors, publishers or the National Pest Control Agencies, Department of Conservation, Ministry for Primary Industries, Local Government New Zealand, OSPRI, or their employees or agents, to any person relying directly or indirectly on this guide.

1.3 USING THIS DOCUMENT



1.4 THE ORDER OF LEGISLATIVE CONTROL

Almost all aspects of pest control are strongly regulated and controlled. This guide aims to assist pest control workers, known as PCBU's under the legislation (Persons Conducting a Business or Undertaking) in directing them to legislation relevant to their work. These controls are imposed at different levels as follows.

Acts of Parliament: sometimes these impose controls directly, for example the Trespass Act 1980 expressly forbids use of toxins or traps without occupier permission. Often, however, the Acts function as a "gateway", enabling controls to be variously imposed at lower orders as follows:

Regulations: made directly under Acts. Many controls on use of toxic agents under the HSNO Act 1996 are imposed by way of regulations (e.g. Tracking Regulations). Acts and regulations are both readily available at www.legislation.govt.nz

Orders, Rules, Notices and Controls: may also be made (either under Acts or under Regulations). In most cases, these can be found on the legislation website (www.legislation.govt.nz), but not always. For example, the Land Transport (Driver Licensing) Rule 1999 is on that website, while the Land Transport Rule 45001/1: Dangerous Goods 2005 is elsewhere. Other controls can be variously communicated. For instance, toxic agent registration conditions imposed by the Ministry for Primary Industries can be found on the product label.

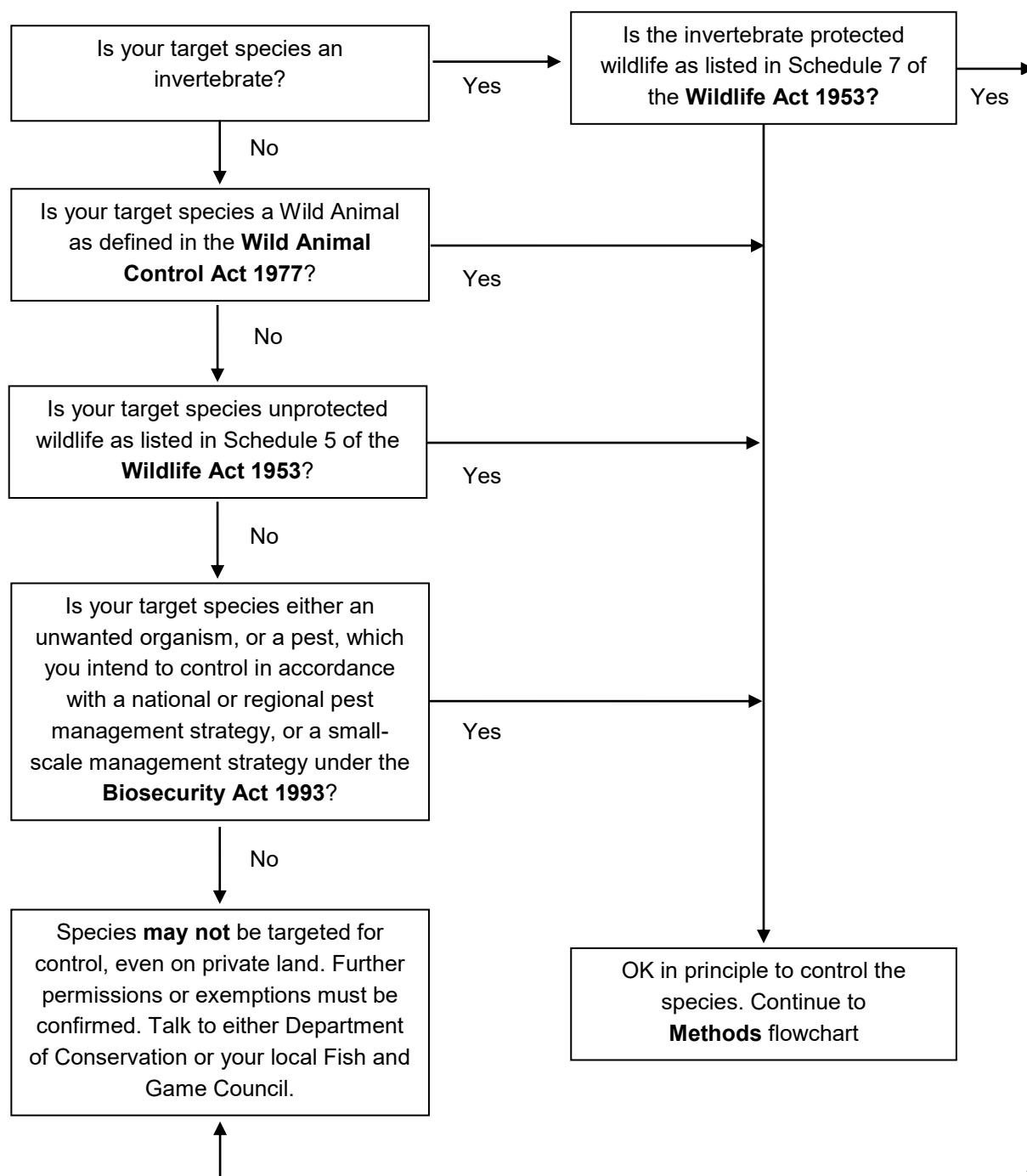
Plans, Strategies, Consents and Permissions: Regional and district plans may be made under the Resource Management Act 1991, pest management strategies under the Biosecurity Act 1993, and conservation management strategies under the Conservation Act 1987. Such documents may vary around the country in terms of controls on pest management activities. At an operational level, statutory consents and permissions may be required and any associated conditions have the force of law. Examples include Medical Officer of Health or Department of Conservation permissions, and resource consents. However, resource consent requirements for 1080, brodifacoum and rotenone have been replaced by alternative requirements under the Resource Management (exemption) Regulations 2017, effective 1 April 2017.

PART 2 WHICH LEGISLATION APPLIES?

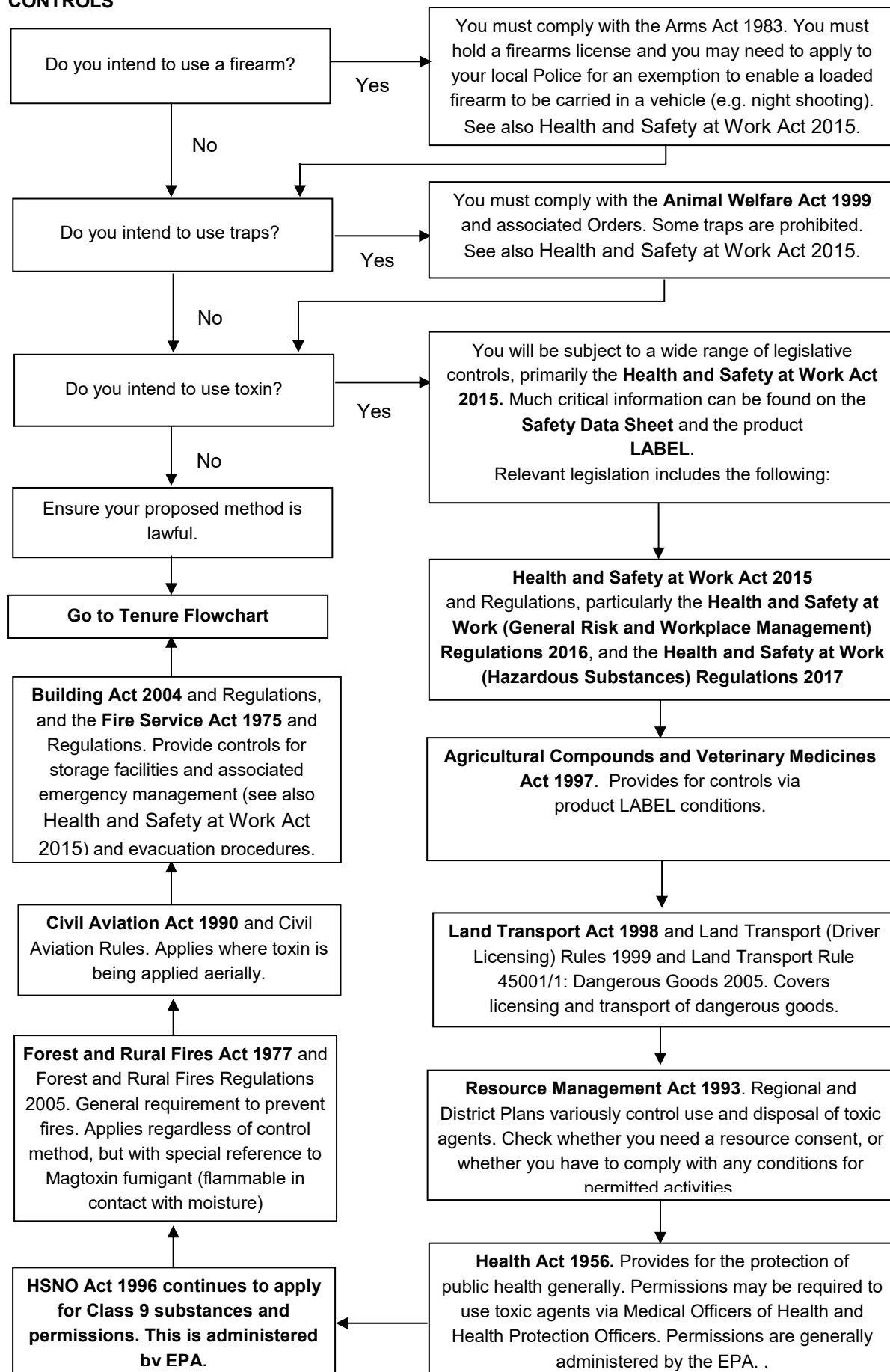
Work through the decision support flowcharts on the next three pages to determine which Acts are likely to apply to your proposed pest control work. The subsequent sections provide further information about those Acts, and any associated lower order controls.

2.1 DECISION SUPPORT FLOWCHARTS

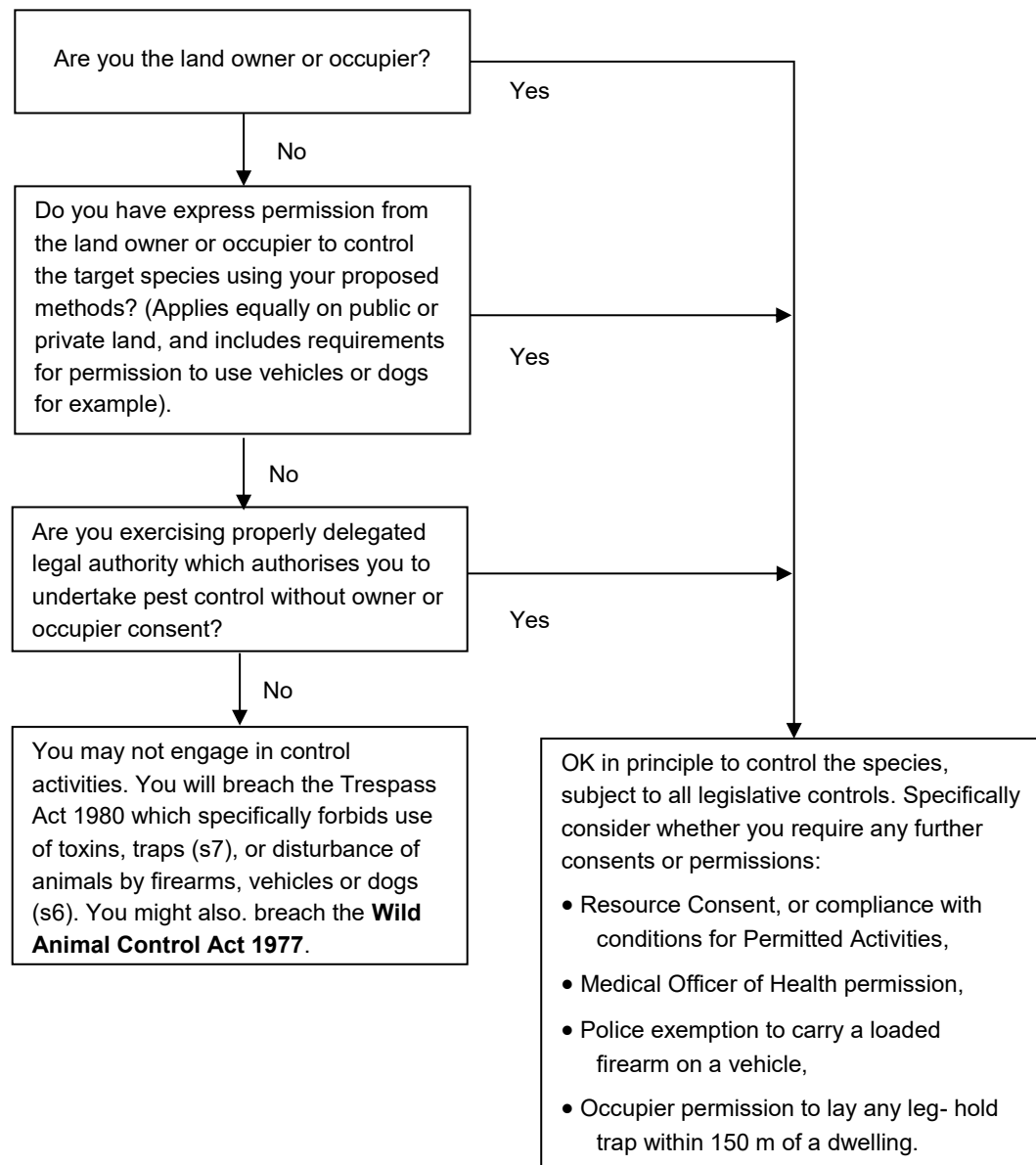
SPECIES



CONTROLS



TENURE AND PERMISSIONS



PART 3 ACTS OF GENERAL RELEVANCE

All Acts and Regulations are freely available www.legislation.govt.nz

3.1 HEALTH AND SAFETY AT WORK ACT 2016

Key Points

- All practicable steps must be taken to ensure safety of workers and others.
- Everyone involved in the work is responsible for ensuring safety.
- Most controls relating to use of VTA's in the workplace have been moved from HSNO and are now managed under the HSW Act and regulations.

Working Safer is aimed at reducing New Zealand's workplace injury and death toll by 25 per cent by 2020. The Act's key emphasis is on everyone in the workplace being responsible for health and safety. The new Act is administered by WorkSafe.

The Act works to focus effort on what matters, based on business risk, control and size:

- It reinforces proportionality – what a business needs to do depends on its level of risk and what it can control
- It shifts from hazard spotting to managing critical risks – actions that reduce workplace harm rather than trivial hazards
- It introduces the “reasonably practicable” concept – focusing attention on what's reasonable for a business to do
- It changes the focus from the physical workplace to the conduct of work – what the business actually does and so what it can control
- It supports more effective worker engagement and participation – promoting flexibility to suit business size and need.

The Health and Safety at Work Act has replaced the Health and Safety in Employment Act 1992.

WorkSafe New Zealand provides information to businesses and workers of the changes on its website.

- Visit WorkSafe New Zealand's website > <https://worksafe.govt.nz/>
- Find the answers to your questions > download PDF (223KB) at <http://www.mbie.govt.nz/info-services/employment-skills/workplace-health-and-safety-reform/document-and-image-library/third-reading-q-a-august-2015.pdf>

3.2 HEALTH AND SAFETY AT WORK (HAZARDOUS SUBSTANCES) REGULATIONS 2017

These new regulations transfer requirements applying under the HSNO regime to the HSWA regime but with some changes aimed at improving the safe management of hazardous substances in the workplace.

However, substances toxic to the environment (Class 9, i.e. including VTA's) will continue to be regulated by the Environmental Protection Authority under the HSNO regime – mostly this will not affect workplace use, as the EPA has aligned its controls as much as practicable with the HSW controls. That means if the controls set under HSW are complied with for Class 6 and 8, say, then the EPA Class 9 requirements will also be met. (For more detail, and a few exceptions, refer section 6.1 – HSNO Act)

And similarly transport requirements remain under the Land Transport Act 1998, while additional label conditions and some separate licensing requirements remain under the ACVM Act.

WorkSafe provides guidance, information and tools to help organisations understand their obligations, all of which is available on their website. The following are useful starting points.

- The Worksafe home page <https://www.worksafe.govt.nz/>
- The Hazardous Substances Toolbox and calculator <https://www.hazardoussubstances.govt.nz/>
- A guide to the key changes in 2017 <https://worksafe.govt.nz/topic-and-industry/hazardous-substances/guidance/interpretive-guides/>
- A practical guide to working safely with hazardous substances <https://worksafe.govt.nz/topic-and-industry/hazardous-substances/guidance/your-practical-guide/>

While most new provisions are effective now (as of 2017), there are transitional timeframes allowed for implementing some of the new requirements. Some key points to note follow (for comprehensive guidance refer the regulations and the WorkSafe website).

- ▶ **NOW** – As of December 2017 most controls in these new regulations apply, largely similar to the previous controls under HSNO. However, controls relating to inventory and labelling for hazardous waste have changed. Your organisation's practices should be reviewed to ensure ongoing compliance.
- ▶ **SOON** – By 1 June 2018 additional training and associated record keeping requirements need to be met. There are also additional storage controls for substances which were previously below the "Hazardous Substance Location" threshold – Storage procedures need to be reviewed to ensure ongoing compliance.
- ▶ **LATER** – 1 June 2019 new requirements for storage and handling of hazardous waste, and "Hazardous Substance Location" requirements for Class 6 and 8 Substances are to be met. And by 1 December 2019 compliance certificates for "Hazardous Substance Locations" must be obtained.

3.2.1 Other related legislation

- Health and Safety at Work (General Risk and Workplace Management) Regulations 2016

- Health and Safety at Work (Hazardous Substances) Regulations 2017

3.2.2 Where to get help

- ▶ www.worksafe.govt.nz

3.3 TRESPASS ACT 1980

Key Points

- You must have permission of the occupier before carrying out pest control work
- Permission is required both on public and private land.

Key points relevant to pest control:

- Use of poisons or traps without occupier permission is forbidden.
- Gates should be left as they are found
- Domestic animals should not be disturbed (e.g. by firearms, vehicles or dogs).
- Only those working under express statutory authority (e.g. under Biosecurity Act 1993, or Wild Animal Control Act (1977) can undertake pest control on land occupied by others without their consent.

3.4 FOREST AND RURAL FIRES ACT 1977

Key Points

- Avoid starting or causing fires and take all precautions necessary to prevent a fire.
- Obtain any permits necessary to light a fire in an open season.
- Dial 111 in an emergency.

3.4.1 Key points relevant to pest control

The purpose of this Act is to prevent fires in forests and rural areas and to take fire suppression measures if a fire occurs.

The Act is administered by Rural Fire Authorities, which include the Department of Conservation, Territorial Authorities (district councils), a Rural Fire Committee and the NZ Defence Force.

3.4.2 Key responsibilities

Operators must

- Avoid starting or causing fires and take all precautions necessary to prevent a fire.
- Obtain any permits necessary to light a fire in an open season
- Monitor fire season status and observe the Rural Fire Authority fire season restrictions i.e. permit required to light a fire in the open during a restricted fire season and absolutely no fires in the open during a prohibited season (or total fire ban)
- If the operation is fire hazardous, check with the local Rural Fire Authority before commencing the operation. Fire hazardous operations relevant to pest control may include use of firearms, vehicles, campfires, Magtoxin fumigant, or phosphorus paste. The RFA will advise on what fire suppression equipment will be required and precautions to take. Such fire equipment must be readily accessible and convenient to use and to maintain it in good repair.
- Extinguish any fires started by the operator.
- If the operator becomes aware of any fire, take reasonable steps to try to put the fire out.
- Notify the RFA of fires, (phone 111 in an emergency situation) follow their directions and provide them with assistance.
- Not undertake any activity prohibited during periods of extreme fire danger.
- Not enter land, if entry is prohibited for fire prevention purposes.
- Not use spark hazardous engines without approved spark arrestors in any rural fire district, state area, forestry area, fire safety margin, or during restrictive or prohibited fire seasons, or contrary to any warning or order in periods of extreme fire danger period.
- Not use trail motorcycles in forestry or Department of Conservation lands without the permission of the organisation; comply with conditions imposed.

Control agencies must

- Have regard to fire hazards in designing and implementing pest control programmes.
- Consult with fire authorities to identify special fire hazards.

3.4.3 Where to get help

- ▶ Rural Fire Authority <http://www.nrfa.org.nz>
- ▶ Forest and Rural Fires Regulations 2005
- ▶ Department of Conservation for public conservation land.

3.5 CONSERVATION ACT 1987, NATIONAL PARKS ACT 1980, NEW ZEALAND WALKWAYS ACT 1990, RESERVES ACT 1977

Key Points

- Clearly identify any land managed by DoC, and public walkways.
- Clearly identify any Reserves or Walkways managed by local councils.
- Always get permission before doing any pest control, and comply with all conditions imposed.

The Department of Conservation (DoC) administers all these Acts.

The **Conservation Act** sets the framework for the administration of public conservation land by the Minister and Department of Conservation. Management must be undertaken in accordance with the Act, Ministerial policies, conservation management strategies and conservation management plans.

The purpose of the **National Parks Act** is to preserve national parks in their natural state, including the eradication of introduced animals. Biological controls may be used in national parks as a pest control method, with Ministerial consent.

The **Reserves Act** sets the legal framework for management of public reserves. There are several kinds of reserve - recreation, historic, scenic, nature, scientific, government purpose, and local purpose. The Act is administered by the Department of Conservation, territorial local authorities, and other organisations appointed as administering bodies of reserves.

- Ministerial consent is required for possum control work in scenic, historic, nature and scientific reserves.
- The consent of the relevant administering body is required for pest control work in recreation, government purpose and local purpose reserves.
- Biological control organisms may be used if authorised by the Minister.

The purpose of the **New Zealand Walkways Act** is to establish public walking tracks. The Minister of Conservation may appoint controlling authorities for walkways. Poisoning and shooting on or in the vicinity of walkways is prohibited, unless by the owner or occupier, or someone authorised by the owner or occupier.

3.5.1 Key points relevant to possum control

- Control of possums on Crown land must be undertaken in accordance with Ministerial policies and any conservation management strategies or plans.
- Possum control programmes may also be undertaken by other persons with the consent of DOC, and the permission of any occupier.
- Any conservation area, or part of it, may be closed, for public safety or in accordance with a conservation management strategy or plan.

- Biological controls may be used on the public conservation land with Ministerial consent.

3.5.2 Who it applies to

- DoC (or controlling authorities for reserves or walkways) – approving possum control operations on conservation land, reserves and walkways.
- Control Agencies – planning operations in cooperation with DoC.
- Operators – obtaining licences, following requirements and protecting the environment.

3.5.3 Key responsibilities

Operators must:

- have permits from DoC for possum control work on public conservation land and for
- DoC-managed reserves and walkways;
- carry out work in accordance with conditions set by DoC and in a manner that is compatible with the status and values of the area;
- avoid damage to, or destruction of, natural and physical resources in public conservation land;
- ensure that public are not at risk.

Control agencies must:

- clearly identify whether land is on public conservation land or walkway;
- cooperate with DoC to plan and gain consents for possum control operations;
- identify the status and values of the area;
- consider the provisions of any Ministerial policy, conservation management strategy or plan;
- ensure control programmes are consistent with any DoC policies and consent requirements, and are compatible with the status and values of the conservation area.

3.5.4 Where to get help

- Department of Conservation <http://www.doc.govt.nz>

PART 4 ACTS RELATING TO SPECIES

All Acts and Regulations are freely available <http://www.doc.govt.nz>

4.1 WILD ANIMAL CONTROL ACT 1977

Key Points

- When living in a wild state (not farmed), Wild Animals include any deer, chamois, thar or goat.
- Anyone may hunt or kill wild animals, with the permission of the owner, occupier or person in charge, subject to the requirements of other legislation.

The Department of Conservation (DoC) administers this Act.

4.1.1 Who it applies to

DoC staff: the Act empowers DoC staff (and agents and contractors) to undertake pest control activities on Crown land and, with the consent of the owner/occupier/person in charge or, in the absence of consent with Ministerial approval, control work on any other land.

Regional Councils require:

- the Minister of Conservation's approval for pest management strategies which control wild animals;
- DoC approval for pest control activities on Crown Land.

Operators require:

- permits for control of Wild Animals on Crown Land.

4.1.2 Key responsibilities

Warranted officers appointed under the Conservation Act may:

- carry out possum control work on land administered by the Department of Conservation;
- require the removal of livestock to carry out pest control operations;
- on occupied Crown land carry out inspections for wild animals, subject to 28 days' notice to the occupier (the inspection may be brought forward or delayed at the occupier's request);
- on any other land, if authorised by the Minister, carry out wild animal inspection and control work with the consent of the owner, occupier or person in charge. If a written request to carry out wild animal inspection or control work is refused, with the authorisation of the Minister, a warranted officer may carry out wild animal inspection or control work after giving at least twenty-eight days' notice. A notice is subject to a right of appeal to the Minister;

and they must

- before inspecting occupied Crown-owned land, give at least twenty-eight days' notice of entry for inspection; the length of notice may be adjusted at the occupier's request;
- supervise control operations undertaken in default of an occupier of Crown land;
- where consent has been refused, before entering any other land for inspection or wild animal control purposes;
 - have the written authorisation of the Minister;
 - have consent of, or give at least twenty-eight days' notice, to the owner, occupier or person in charge;
 - have the written authorisation of the Director-General to use vehicles, equipment or animals for inspection or pest-control operations.

Control agencies must:

- identify land status and tenure;
- consult with controlling authorities of Crown-owned land;
- seek DOC consent for pest control operations on the Conservation Estate.

Operators must

Have the written consent of the occupier or owner before entry; or appropriate authorisations under the Wild Animal Control Act or Biosecurity Act to enter land without the consent of the occupier or owner.

4.1.3 Other related legislation

The Wild Animal Control Act and the Biosecurity Act sit side by side. When implementing a pest management strategy or small-scale pest management programme, powers of entry, inspection and works should be exercised either by consent of the occupier, or by using the administrative powers in Part VI of the Biosecurity Act that have been expressly adopted in the strategy or programme.

4.1.4 Where to get help

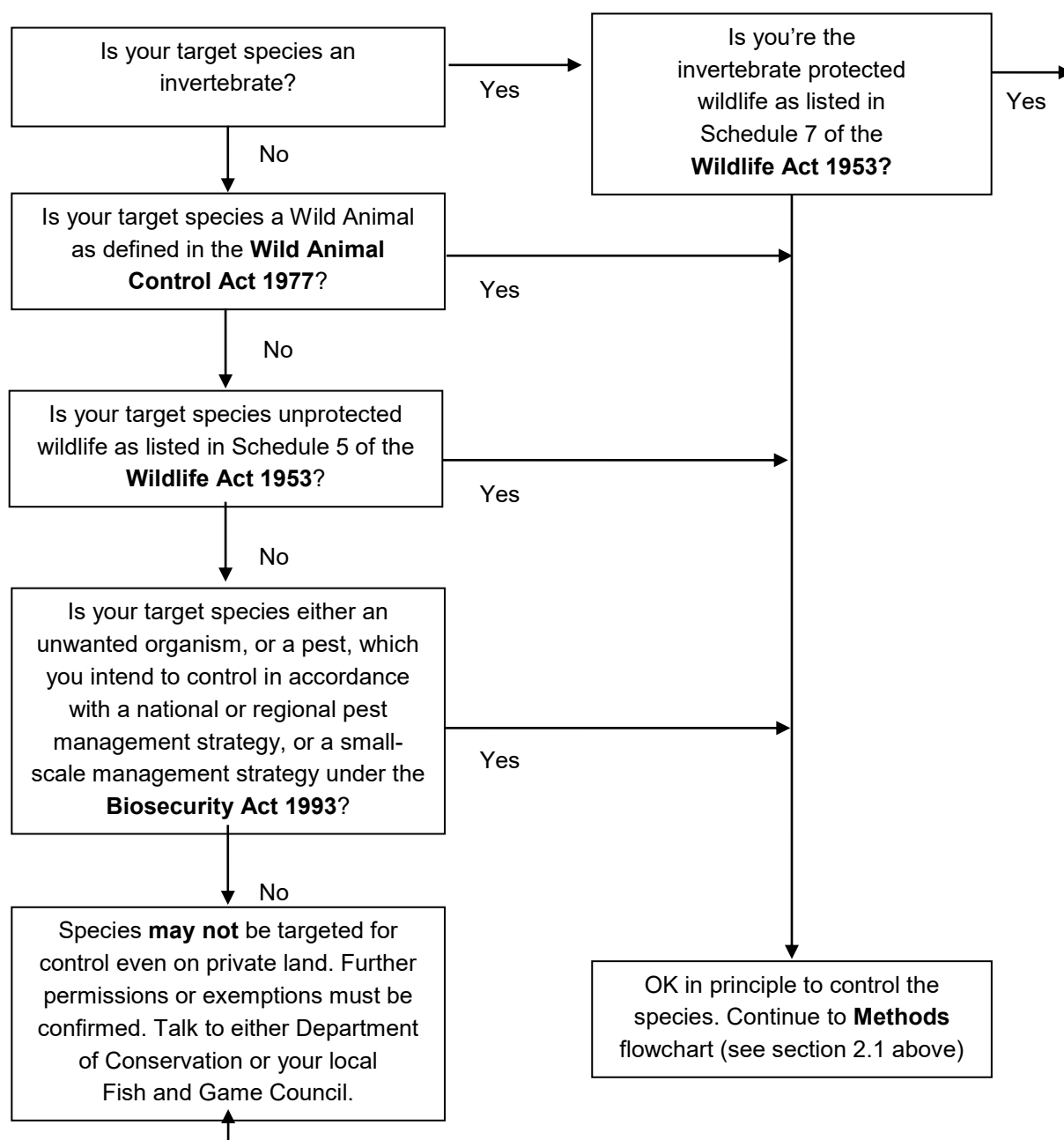
- Department of Conservation <http://www.doc.govt.nz>

4.2 WILDLIFE ACT 1953

Key Points

- All vertebrate wildlife is protected by default. But some vertebrate species are expressly excluded from protection, and may be controlled.
- Invertebrate species are not protected, except for some species which are expressly protected.
- Make sure you are legally allowed to control your target species. See the diagram below.

SPECIES



Operators must not:

- target protected wildlife for control.

4.2.1 Where to get help

- ▶ Department of Conservation <http://www.doc.govt.nz>

4.3 BIOSECURITY ACT 1993

Key Points

- Pests and unwanted organisms may be controlled only in accordance with a pest management strategy, or a small-scale management programme.

4.3.1 Key points relevant to pest control

The Ministry for Primary Industries administers this Act.

This Act authorises pest management through national and regional pest management strategies and small-scale programmes. It sets out the powers of regional councils to:

- carry out surveillance and monitoring of pests, pest agents and unwanted organisms;
- prepare proposals for, make, notify and implement pest management strategies;
- provide for the assessment, management or eradication of pests through pest management strategies;
- appoint a management agency in respect of the strategy;
- declare and implement small-scale pest management programmes;
- review, amend and revoke small-scale pest management strategies;
- gather information and conduct research;
- fund pest management strategies through rates.

Organisms may be designated either as **an unwanted organism** by declaration of a chief technical officer of a government department, or as a pest by being included in any pest management strategy.

Regional Councils can only undertake pest management in accordance with a pest management strategy, or by notice of a small-scale management programme targeting an unwanted organism under section 100 of the Act.

A regional council principal officer can appoint authorised persons for the purposes of a regional pest management strategy. For a national strategy, the appointments must be made by a chief technical officer (a central government appointment). Authorised persons have broad powers including to:

- inspect land and buildings;
- manage or eradicate any pest/pest agent¹;
- direct a person to comply with a Regional Pest Management Strategy;
- require assistance.

Organisms are not unwanted organisms or pests in terms of the Biosecurity Act 1993 only by virtue of being declared as 'pests' under any other legislation (e.g. Wild Animal Control Act 1977). Furthermore, pest status under the Biosecurity Act does not affect other legal requirements. If a pest is also a wild animal in terms of the Wild animal Control Act 1977, for example, then that Act will apply and therefore the consent of the Minister of Conservation (which is delegated to Conservators) is required.

4.3.2 Responsibilities of authorised persons

Authorised Persons must:

- carry out work in accordance with any relevant pest management strategy or s.100 (of the Biosecurity Act) programme;
- if entering any property or exercising powers under the Biosecurity Act, have and produce written proof of appointment as an authorised person and proof of identity;
- if, at the time of entry, the occupier is present, obtain the occupier's consent to enter buildings etc, or have and produce evidence of identity and appointment as an authorised person with power to enter land; the warrant must also be produced at any other time on request;
- if entering any house, marae or building associated with a marae, have the occupier's consent or have and produce a warrant issued by a District Court Judge, Justice of the Peace, Community Magistrate or Registrar (not being a member of the police), and be accompanied by a Police Officer;
- if, at the time of entry, the occupier is absent, leave the occupier written notice of entry including details of anything done on the property.

4.3.3 Other related legislation

The provisions of the Wild Animal Control Act 1977 do not apply in the exercise of any powers under the Biosecurity Act 1993 on any land other than land administered under Acts listed in the First Schedule of the Conservation Act 1987 (including National Parks, conservation areas and reserves) when those powers are used in respect of:

- a) a pest, or
- b) an unwanted organism

that may be transmitted by any animal to which the Wild Animal Control Act applies.

The use of powers of entry to land, under the Biosecurity Act, to control wild animals, other than in their capacity as vectors of disease, would be a breach of the Wild Animal Control Act 1977.

¹ Pest agent' is defined as any organism capable of (a) helping a given pest to replicate, spread, or survive; or (b) interfering with the management of the given pest.

4.3.4 Where to get help

- ▶ Ministry for Primary Industries (MPI) www.mpi.govt.nz
- ▶ Local Government New Zealand – Biosecurity Managers Group (contact your regional council).

PART 5 ACTS RELATING TO SHOOTING AND TRAPPING

All Acts and Regulations are freely available www.legislation.govt.nz

5.1 ARMS ACT 1983

Key Points

- You must hold a firearms license to use a firearm.
- You must have permission of the occupier to use firearms on any land.
- Talk to the Police for a dispensation if you need to carry a loaded firearm on a vehicle (night shooting), or you intend to discharge a firearm where that is not normally permitted (e.g. urban areas and parks).

5.1.1 Key points relevant to pest control

This Act regulates the possession and use of firearms. It is administered by the Police.

Professional pest control operators may require special dispensation from the police to carry a loaded firearm on a vehicle (night shooting). Contact your local police.

5.1.2 Key responsibilities

Operators must:

- hold a current firearms licence, if using firearms;
- keep firearms locked and immobilised when not in use;
- not leave a firearm in an unattended vehicle;
- notify a Police arms office of any change in address;
- report loss, theft, or destruction of firearms to the Police;
- report injuries caused by firearms to Police;
- supply name, address and date of birth to Police on request;
- remain alcohol and drug free while in charge of a firearm;
- repair firearms if required by Police.

Control agencies must:

- ensure operators using firearms are licensed.

5.1.3 Other related legislation

- Health and Safety at Work Act 2015 and regulations
- Civil Aviation Act 1990.

5.1.4 Where to get help

- ▶ New Zealand Police <http://www.police.govt.nz>

5.2 ANIMAL WELFARE ACT 1999

Key Points

- All practical steps should be taken to ensure pest control activities are humane.
- Some leg-hold traps, and all glue board traps, are prohibited.
- Live capture traps must be checked within 12 hours of sunrise.
- You must have express permission of the householder if trapping within 150m of a house (even if that house is on a neighbouring property).
- You must not set traps where they are likely to catch pets.

5.2.1 Key points relevant to pest control

The purpose of this Act is to promote the obligations owners and persons in charge have towards animals. It is administered by the Ministry for Primary Industries.

Specific types of traps or devices are either prohibited or their use restricted. See:

- Animal Welfare (leg-hold traps) Order 2007
<http://www.legislation.govt.nz/regulation/public/2007/0353/latest/DLM1034976.html>
- Animal Welfare (glue-board traps) Order 2009
<http://www.legislation.govt.nz/regulation/public/2009/0316/latest/DLM2439749.html> .

Nothing in the Act makes it unlawful to hunt or kill any wild animal or pest being controlled in accordance with the Wildlife Act 1953, Wild Animal Control Act 1977, Conservation Act 1987, Biosecurity Act 1993 or any other Act.

5.2.2 Key responsibilities

Operators must:

- not use prohibited traps. For detailed requirements, refer to the Animal Welfare Orders cited below. Essentially, lanes-ace long spring traps and all double-coil spring traps size 1 ½ or larger are prohibited (except the commercially manufactured 1 ½ soft jaw). Glue boards for catching rodents are prohibited but with various exemptions;

- inspect traps within 12 hours after sunrise each day they remain set if the trap has been set to capture live pests. Note that there is no obligation to inspect kill traps;
- remove or kill trapped pests without undue delay and in such a manner as to minimise pain and distress or properly attend to the care of any animal if not intending to kill it immediately;
- obtain the express permission of the occupier before using any leg-hold trap within 150 metres of a dwelling (even if that happens to be on a neighbouring property);
- not use any leg-hold trap where there is a probable risk of catching a pet animal.

5.2.3 Other related legislation

- Health and Safety at Work Act 2015 and regulations

5.2.4 Where to get help

- ▶ Ministry for Primary Industries (MPI) www.mpi.govt.nz

PART 6 ACTS RELATING TO TOXINS

All Acts and Regulations are freely available www.legislation.govt.nz

6.1 HAZARDOUS SUBSTANCES AND NEW ORGANISMS ACT (HSNO) 1996

6.1.1 Key points relevant to pest control

The purpose of this Act is to protect the environment, communities and people by preventing and managing the adverse effects of hazardous substances and new organisms. It is administered by the Environmental Protection Authority.

Over recent years, the regulations for managing hazardous substances were reformed to further protect New Zealanders from harm. The changes mean that the EPA and WorkSafe New Zealand work together to ensure these substances are managed safely. Most responsibilities for controls on VTA use are now under the HSW legislation and WorkSafe NZ is, in any case, the enforcement agency.

However, the EPA still establishes controls for VTA's which pose environmental risk - i.e. Class 9 (ecotoxic). Controls for Class 9 VTA's are set under the Hazardous Substances (Hazardous Property Controls) Notice 2017.

In most cases the EPA controls are designed to mirror controls under the HSW Act. Therefore, if a PCBU is meeting the controls for Class 6 and/or 8 substances under the HSW Act (and regulations), then by and large the EPA Class 9 controls will also be met. However, there are several exceptions/additions to this arrangement, as follows.

- 1/ Substances are to be used in the workplace, so a PCBU may not use these substances at home or otherwise for private purposes (section 13 Hazardous Substances (Hazardous Property Controls) Notice 2017).
- 2/ Record of use requirements are much the same as under HSW regulations, however, there is one additional requirement. Your record of use under HSW must also have the additional information required under Hazardous Substances (Hazardous Property Controls) Notice 2017 48(3)(g) *other measures taken to ensure there are no significant adverse effects beyond the boundary of the application area*:
- 3/ Clauses 59 to 66 (qualifications for application of ecotoxic substances) require that application of ecotoxic substances is carried out by suitably certified persons, and/or other persons under their direct control and supervision only AFTER they have been given proper guidance/training.
- 4/ Other requirements of the HPC notice do not come into effect until the substance approvals are re-issued. At the time of writing this document, no VTA approvals have been re-issued.
- 5/ Most other previous requirements relating to permissions, e.g. such as the aerial 1080 communications guidelines (<https://www.epa.govt.nz/assets/Uploads/Documents/Hazardous-Substances/Guidance/1080-Communications-Guidelines.pdf>), use and formulation of

baits, notifying EPA of any proposed change to use or formulation of baits, will still need to be complied with. In any case, product label requirements must be followed.

The Principles of the Act are to recognise and provide for:

- the safeguarding of the life-supporting capacity of air, water, soil, and ecosystems;
- the maintenance and enhancement of the capacity of people and communities to provide for their own economic, social and cultural wellbeing, and for the reasonably foreseeable needs of future generations.

PCBU's must obtain permission from delegated officers (i.e. Health Protection Officers) for the use of VTAs in a catchment area from which water is drawn for human consumption or in any other area where a risk to public health may be created (refer section 19(2)(h) and 95A of the HSNO Act).

6.1.2 Other Resources

NPCA Guidelines document, *Vertebrate Toxic Agents, Minimum Requirements for the safe use and handling of vertebrate toxic agents*, available at <https://www.bionet.nz/library/>.

6.1.3 Other related legislation

- Agricultural Compounds and Veterinary Medicines Act 1997
- Resource Management Act 1991
- Health and Safety at Work Act 2015
- Land Transport Act 1998.

6.1.4 Where to get Help

- ▶ Environmental Protection Authority (EPA) www.epa.govt.nz
- ▶ EPA has a free call line for enquiries: 0800 376 234.

6.2 AGRICULTURAL COMPOUNDS AND VETERINARY MEDICINES ACT (ACVM) 1997

Key Points

- There may be controls and conditions of use imposed in addition to HSW controls.
- These conditions will be explicitly stated on the label, and must be complied with.

This Act is administered by the Ministry for Primary Industries (MPI). The Act requires registration of trade name products with appropriate conditions (controls) to manage the use

of the product in relation to the risks mentioned below. Registered trade name products must be used in accordance with any conditions imposed when registered.

6.2.1 Key points relevant to pest control

The purpose of this Act is to ensure the provision of sufficient consumer information about agricultural compounds, and prevent or manage risks associated with the use of agricultural compounds, being:

- risks to trade in primary produce; and
- risks to animal welfare; and
- risks to agricultural security;
- risks to food standards (specifically, to ensure that the use of agricultural compounds does not result in breaches of domestic food residue standards)

An end user needs to know about the ACVM Act because it sets requirements for the use of VTA's to manage the above risks, which are not necessarily covered under the HSW Act. For end users requiring a Controlled Substances Licence (CSL) to use certain VTAs, the CSL is issued on the basis that the user understands both the ACVM and HSW Acts, understands the controls placed on the relevant VTA products, and that the user is a fit and proper person.

6.2.2 Key responsibilities

Operators must:

- Hold a compliance certificate (Certified Handler) and Controlled Substance Licence as required.
- Comply with controls applicable to the VTA (these are on the label).

6.2.3 Other Resources

NPCA Guidelines document, *Vertebrate Toxic Agents, Minimum Requirements for the safe use and handling of vertebrate toxic agents*, available at <https://www.bionet.nz/library/>.

6.2.4 Other related legislation

- Health and Safety at Work Act 2015
- Hazardous Substances and New Organisms (HSNO) Act.

6.2.5 Where to get Help

- ▶ The Ministry for Primary Industries (MPI) www.mpi.govt.nz

6.3 HEALTH ACT 1956

Key Points

- You must avoid creating nuisances or conditions likely to be injurious to health.
- You must not contaminate water supplies.
- You may need permission from the Medical Officer of Health (via Public Health Protection Officers) to use certain VTA's in specific places.

The purpose of this Act is to improve, promote and protect public health. It is administered by the Ministry of Health

6.3.1 Key points relevant to pest control

The Director-General of Health may designate Medical Officers of Health and Health Protection Officers or other officers to exercise the functions, duties and powers in accordance with any direction of the Director General of Health. Under the Health Act, territorial authorities (TAs) have responsibilities to improve, promote and protect public health within the district. TAs are required to appoint environmental health officers and other officers as necessary to carry out their functions.

6.3.2 Key responsibilities

Operators must:

- avoid creating nuisances or conditions that are offensive or likely to be injurious to health;
- keep work premises and work sites clean and free of health hazards, both for workers and for the public;
- avoid contamination of water supplies;
- remove carcasses from positions where they are offensive or hazardous to health.

Control agencies must:

- design programmes that do not create danger to public health or conditions which may be offensive or injurious to health;
- consult public health services and the environmental health officers of territorial local authorities when designing programmes;
- include in pest control contracts, obligations on operators to protect public health and comply with delegated officers (i.e. Medical Officer of Health or Health Protection Officer).

Medical Officers of Health and Territorial Local Authorities may:

- prosecute those causing or maintaining conditions that may be offensive or injurious to public health;
- remove health hazards in an emergency;
- apply to the Court for orders to remove health hazards in other situations;
- stop the use of contaminated water.

6.3.3 Other related legislation

- ▶ The Hazardous Substances and New Organisms Act (HSNO) requires, in some cases, delegated officer (i.e. Medical Officer of Health or Health Protection Officer) permission prior to control measures commencing. If in doubt, ask a Health Protection Officer.

6.3.4 Where to get help

- ▶ Health Protection Officers at your local District Health Board.

Key Points

- You have a general obligation to avoid or manage adverse effects on the environment.
- Regional and District Plans have specific provisions relevant to storage, use and disposal of hazardous or dangerous things.
- You may need to obtain resource consent, or ensure you comply with any conditions of a permitted activity before you proceed.

6.4 RESOURCE MANAGEMENT ACT 1991

6.4.1 Key points relevant to pest control

The Act creates a general obligation to avoid, remedy or mitigate adverse effects of human activities on the environment.

All persons exercising functions under the Act shall take account of other considerations directly relevant to pest control and its effects including the principles of the Treaty of Waitangi.

Regional plans, made by Regional or Unitary Councils, may control discharges to air, land and water and the disposal of wastes.

Importantly, there has been a significant change in 2017, with applications of 1080, brodifacoum and rotenone no longer requiring resource consent subject to certain conditions. For more information refer Resource Management (exemption) Regulations 2017.

District plans, made by district and city councils, control land use and may include provisions relating to the use, storage and disposal of hazardous substances.

Regional and district plans may designate:

- permitted activities (not requiring consents);
- discretionary, controlled activities and non-complying activities for which a resource consent is required;
- prohibited activities for which no resource consent can be granted.

6.4.2 Key responsibilities

Control agencies should:

- be aware of the status of pest control activities under both district and regional plans:
 - whether specific types of pest control are permitted or are restricted activities;
 - restrictions relating to the storage of toxins;
 - restrictions relating to the disposal of toxins, including toxin containers;
 - consent requirements;
 - reporting requirements in the event of a breach or accident;
- inform operators of their requirements;
- ensure that the necessary consents are obtained;
- check that operators comply with consent requirements.

Operators must:

- be aware of the status of pest control activities under both district and regional plans
- (see points above) and their obligations to obtain consents;
- ensure that consent requirements are complied with;
- ensure that conditions for permitted activities are complied with;
- avoid or remedy adverse effects on the environment.

6.4.3 Where to get help

- ▶ Regional councils, district councils and city councils.
- ▶

6.5 BUILDING ACT 2004 AND REGULATIONS

Key Points

- Your storage facility for hazardous or dangerous things must meet the standards required by your local council.

6.5.1 Key points relevant to pest control

The purpose of this Act is to make buildings safe. The Act is administered principally by territorial local authorities.

Its application to animal pest control is to ensure that building standards are consistent with the safe storage and processing of hazardous substances. A subsidiary objective is to ensure that buildings used for the storage and processing of hazardous substances are not at risk.

6.5.2 Key responsibilities

Operators must:

Ensure buildings used for the preparation, handling and storage of hazardous substances have:

- restrictions to prevent unauthorised access;
- safeguards to prevent hazardous substances from getting into sewers and drains;
- means for the harmless escape of pressure if there is a risk of explosion;
- protection of ignition sources, if flammable or explosive goods are stored;
- adequate means of ventilation;
- impervious and easily cleaned surface finishes;
- signs for directing people to escape routes.

6.5.3 Other related legislation

- Fire Safety and Evacuation of Buildings Regulations 2006.
- HSW Act 2015

6.5.4 Where to get help

- ▶ District or city councils.
- ▶ Fire Service

6.6 FIRE SERVICE ACT 1975, FIRE SAFETY AND EVACUATION OF BUILDINGS REGULATIONS 2006

Key Points

- Your storage facility for hazardous or dangerous things must meet the standards required by the Fire Service.

6.6.1 Key points relevant to pest control

The Fire Service has power to deal with:

- the preparation, handling and storage of hazardous substances;
- hazardous substance incidents;
- approval of evacuation plans for buildings used to store or process hazardous substances.

The Fire Service can now undertake a formal review of your Emergency Management plan and procedures under the HSW Act 2015.

6.6.2 Key responsibilities

Operators must:

- have approved evacuation schemes for buildings used for the storage or processing of hazardous substances;
- contact the Fire Service if leakage, spill or other hazardous incident occurs; allow the
- Fire Service access, provide assistance and comply with its directions;
- permit the Fire Service access to the site to plan hazardous substance emergency response;
- assist the Fire Service to investigate the incident.

The Fire Service may:

- require the owner of a building that is used wholly or partly for the storage and processing of hazardous substances to prepare and submit for approval an evacuation scheme;
- undertake pre-incident planning;
- deal with hazardous substances emergencies;
- carry out post-incident investigation.

6.6.3 Where to get help

- ▶ Fire Service.

6.7 LAND TRANSPORT ACT 1998

The legislation is administered by the Land Transport Safety Authority and the Police.

Key Points

- You must hold the correct driver's licence for your class of vehicle.
- If you are transporting any quantity of hazardous or dangerous things for hire or reward (i.e. commercial transport), then your licence must have a DG (Dangerous Goods) endorsement.
- If you are transporting certain limited quantities of hazardous or dangerous things in the course of your work ("Tools of Trade"), then you do not need a DG
- Endorsement. If you carry more than the prescribed threshold quantity then you will need a DG endorsement.
- In any case, you must always comply directly with *the Land Transport Rule: Dangerous Goods 2005*. Get a copy.
- Talk to the Police for a dispensation if you need to carry a loaded firearm on a vehicle (night shooting).

6.7.1 Key points relevant to pest control

- Information about the Dangerous Goods 2005 Rule is available at <http://nzta.govt.nz/resources/factsheets/64/docs/64-dangerous-goods.pdf>
- The Dangerous Goods 2005 Rule regulates the transportation of explosives and hazardous substances. The rule sets standards for the packaging, labelling and marking, accompanying documentation, segregation, transport procedures, emergency procedures and training.
- Commercial transport operators must always be DG endorsed.
- Limited quantities can be carried by operators in the course of their work ("tools of trade"), dependant on the Packing Group (PG) shown on the label as follows:
 - PGI – 5 kg or litres (e.g. 1080 stock solution);
 - PGII - 50 kg or litres (e.g. explosives, 0.15% w/w 1080 pellets);
 - PGIII - 250 kg or litres (e.g. small arms cartridges, 0.08% w/w 1080 pellets).
- Regardless of quantity, the Dangerous Goods Rule 2005 must always be observed.

6.7.2 Key responsibilities

Operators must:

- If carrying more than "tools of trade" quantities of dangerous goods, either:
 - engage carriers with dangerous goods endorsements and equipment, or
 - hold dangerous goods endorsements on drivers' licences.

- If carrying less than “tools of trade” quantities, be a certified handler or hold a Controlled Substance Licence as required for the VTA (refer HSW Act).

Drivers and carriers must:

- ensure that dangerous goods are labelled and marked in accordance with the Land Transport Rule Dangerous Goods 2005;
- carry dangerous goods documents;
- record delivery and collection of dangerous goods;
- carry emergency response information to avoid hazards;
- segregate goods from other dangerous goods with which they might react dangerously, and food items which may become contaminated;
- display placards identifying the dangerous goods carried in the vehicle;
- load and unload safely, secure loads and not overload;
- ensure packaging is fit for its purpose;
- stop when required by police or other enforcement officers;
- provide dangerous goods documents on request;
- be able to demonstrate knowledge of the hazards associated with the dangerous goods, ensure safe practice relevant to the activities carried out, and know and be practised in emergency procedures;
- not continue if packages leak.

6.7.3 Other related legislation

- HSW Act 2015 and regulations. HSW controls must be met in addition to the requirements of the Dangerous Goods Rule 2005.

6.7.4 Where to get help

- ▶ Land Transport Authority NZ www.landtransport.govt.nz

6.8 CIVIL AVIATION ACT 1990

Key Points

- The Civil Aviation Rules impose detailed controls relating to aerial pest control activities.

6.8.1 Key points relevant to pest control

This Act sets up the framework for the management of civil aviation to promote safety. General obligations are set out in the Act with the detailed operational requirements contained in the Civil Aviation Rules. Detailed provisions for aerial pest control are found in the Rules.

The Act is administered by the Civil Aviation Authority (CAA).

6.8.2 Key responsibilities

Commercial Agricultural Aircraft Operators must:

- hold all necessary documents, and follow all procedures, required by the Act and Rules;
- have Chemical Liability Insurance;
- hold a current Part 137 Certificate from CAA for agricultural aircraft operations;
- when using a remote base for a period of 14 or more consecutive nights, appoint a base pilot with current agricultural and chemical ratings to be responsible for operations at that base, arranging work rosters and maintaining records;
- ensure maximum safety for persons and property on the ground;
- document operations over congested areas in accordance with Part 137, sub-part E of the Civil Aviation Rules, implement that plan and give public notice of the operation;
- fit out aircraft with the instruments and equipment required by Part 137, sub-part F, Civil Aviation Rules.

Pilots must:

- apply agricultural chemicals only for their registered use and only in accordance with their labels;
- ensure maximum safety for persons and property on the ground;
- observe all Civil Aviation requirements;
- notify CAA of all accidents and all incidents.

and hold:

- current agricultural ratings;
- chemical ratings;
- controlled Substance License (if the substance normally requires a CSL);
- a Grade 1 agricultural rating, if the pilot is in command of aircraft carrying out an operation that creates a hazard to any third party;
- if the holder of a Grade 1 agricultural pilot's rating, the pilot must log at least 25 hours flight time in the type of aircraft being used, of which 10 hours must have been logged in the immediately preceding 12 months.

and maintain:

- agricultural ratings by demonstrating competency annually;
- chemical ratings by attending refresher courses every three years;
- current Commercial Pilot Licence;
- valid Class 1 Medical Certificate.

Operators must:

- when selecting aerial subcontractors, select ones who comply with these requirements;
- when planning operations, involve the aerial subcontractor in the planning of landing strips and flight paths, discuss any risks specific to the operation and agree plans and procedures to manage them;
- give the pilot copies of permissions relating to the operation.

6.8.3 Further Resources

- A code of practice has been prepared by the Agricultural Aviation Association (*Code of Practice for the Aerial Application of Vertebrate Toxic Agents*). The Code is part of the NZAAA (Agricultural Aviation Association) Accreditation programme (see www.nzaaa.co.nz)
- Civil Aviation Rules www.caa.govt.nz/rules/rules.

6.8.4 Where to get Help

- ▶ Civil Aviation Authority www.caa.govt.nz
- ▶ NZ Agricultural Aviation Association www.nzaaa.co.nz

APPENDIX I: ABBREVIATIONS

1080	Sodium fluoroacetate
ACVM	Agricultural Compounds and Veterinary Medicines Act 1997
CSL	Controlled Substances License
DG	Dangerous Goods
DOC	Department of Conservation
EPA	Environmental Protection Authority
HPC	Hazardous Property Controls
HSNO	Hazardous Substances and New Organisms Act
HSW or HSWA	Health and Safety at Work Act
NPCA	National Pest Control Agencies (winding up in 2018)
NZAAA	Agricultural Aviation Association
PCBU	Person Conducting a Business or Undertaking
VTA	Vertebrate Toxic Agent

c/- info@bionet.nz



National Pest
Control Agencies