

**OFFICE OF THE MINISTER  
OF COMMERCE**

**THE CHAIR**

**CABINET**

**QUALITY REGULATION REVIEW – CONSOLIDATED LEGISLATIVE AMENDMENTS**

**1.1 Proposal**

1. This paper proposes a number of amendments to legislation and regulation consistent with the objectives of the Quality Regulation Review (the Review). The aggregate impact of the proposals will be to improve the quality of the overall regulatory environment and reduce the burden of compliance on business. This paper should be read in conjunction with the Quality Regulation Review – Final Report.

**1.2 Executive Summary**

2. Officials have been asked to identify potential legislative, regulatory and administrative measures that could improve the implementation of regulatory frameworks as an ongoing part of the work programme for the Review.
3. This paper contains legislative and regulatory proposals in addition to those already identified at the time of the Second Milestone Report [CBC Min (07) 8/23] and its companion paper entitled “Quality Regulation Review: First Tranche of Legislative Amendments” [CAB Min (07) 14/1].
4. The consolidated proposals contained in this paper will require amendments to the Fisheries Act 1996, the Ministry of Fisheries Restructuring Act 1995, the Conservation Act 1987, the Marine Mammals Protection Regulations 1992, the Health and Safety in Employment (Pressure Equipment, Cranes and Passenger Ropeways) Regulations 1999, Hazardous Substances and New Organisms (HSNO) Act, and revocation of health and health related regulations.
5. Overall these initiatives address regulatory duplication, gaps, administrative errors and inconsistencies between different pieces of legislation that collectively create unnecessary compliance costs and uncertainty for business. In keeping with the scope of the Review they target poor implementation and administration of various regulatory frameworks.
6. Individually these changes make small gains to improve the quality of specific regulatory environments. Once consolidated into an Omnibus Bill many small gains make a considerable overall impact on the quality of key regulatory environments. The choice of an Omnibus Bill also demonstrates the Government’s commitment to promptly addressing regulatory barriers to economic growth and transformation.

### 1.3 Background

7. Since the Review was announced in May 2006, the identification of a fast tracking vehicle to progress legislative and regulatory amendments as expediently as possible has been a key component of the Review [CAB Min (06) 18/3].
8. Officials have been asked to develop the option of a one-off Omnibus Bill. On that basis, officials were also instructed to identify proposals which could be included in such a bill as the Review progresses. This is consistent with the Review's approach that whenever possible and sensible, solutions to issues will be implemented as they arise, rather than waiting till the end of the review.
9. The first set of proposed legislative amendments as set out in a report entitled "Quality Regulation Review: First Tranche of Legislative Amendments" was agreed to by the Cabinet on 30 April [CAB Min (07) 14/1]. The first set of proposals is contained in Annex 1 to this paper. The Committee also noted that further proposals were expected to be developed prior to the final Review Report [CBC Min (07) 8/23].
10. Following Cabinet's agreement to progress the first set of proposals for an Omnibus Bill, Government agencies were further invited to provide additional details of legislative and regulatory proposals consistent with the objectives of the Review.

#### COMMENT

11. There are three main reasons why regulatory proposals contained in this paper and the previously agreed to proposals (Annex 1) should be consolidated into a one-off Omnibus Bill.
  - a. It will demonstrate the aggregate impact of many proposals to reduce the regulatory load.
  - b. It is administratively more efficient to progress uncontroversial but important amendments identified by the Review through an Omnibus Bill.
  - c. It will provide a clear focus of timeframes for policy work for departments on proposals for addressing these issues.
12. The overall package proposed demonstrates the scope adopted by the Review. This approach can be characterised by its commitment to making many small gains to improve the quality of regulation, particularly where their implementation and administration add unnecessarily to business compliance costs. A detailed discussion on each proposal follows.

## **1.4 Resolving Administrative Errors for Commercial Fishers**

13. Commercial fishers are required to balance their catch with their Annual Catch Entitlement (ACE). Since the introduction of the Quota Management System (QMS) in 2001 a number of ACE transfers due to take place in the last few days of the fishing year had, for various administrative reasons, failed to take place. To date this has resulted in 10 fishers receiving invoices that were unfair. The total debt that the 10 fishers have inadvertently incurred is \$584,728.50, although one client is responsible for over half that amount.
14. However as there is no authority within Fisheries Act 1996 to re-open the register after the end of the fishing year and allow additional ACE transfers to occur there is no way to revoke the invoices. Fishers are required to pay the invoice otherwise their fishing permit will be suspended. In order to maintain their businesses, most fishers have had to pay the debt to avoid having their permit suspended.
15. To date this administrative problem has been resolved via a time-consuming process involving the Minister of Finance and Fisheries jointly approving forgiveness of debt after the Ministry of Fisheries (Mfish) had assessed the request against a set of criteria. Subsequent advice has indicated that, in the absence of a legislative amendment, such cases also require the approval of Cabinet and that an appropriation is necessary.
16. To resolve this administrative error in more appropriate and timely manner it is proposed to amend the Fisheries Act to allow the CEO of Mfish to consider requests by commercial fishers for catch balancing relief. Such an amendment will aid the administration of the QMS and mitigate burdens on firms arising out of legislation.

## **1.5 Removing Duplicated Penalty Regimes for Commercial Fishers**

17. With the introduction of the Fisheries Act 1996 a set of sanctions were imposed on those who did not satisfy their statutory debts. These sanctions have proved successful in managing debt so therefore there is no longer any value in maintaining the Ministry of Agriculture and Fisheries Restructuring Act 1995 penalty fees.
18. It is inappropriate that clients are faced with what amounts to a double penalty given the Fisheries Act contains all the sanctions necessary to ensure that statutory debts are paid. By revoking the sections 18 and 19 of the MAF Restructuring Act 1995 the intent of the penalty regime put in place by the Fisheries Act 1996 will be fully met.

## **1.6 Working Better with Business on the Public Conservation Lands**

### *Amending Current Concessions Provisions*

19. It is proposed to amend 17Z(2) of the Conservation Act 1987 to allow for permits to be granted for a term not exceeding 10 years, and amend 17T(4) to introduce discretion to not publicly notify the intent to issue licences up to a maximum term of 10 years. In both cases the Minister has discretion to require a mid-term (5 year) review of the concession conditions.
20. The current concessions provisions of Part IIIB of the Conservation Act 1987 came into force in 1996. Included were sections that restrict the granting of concessions as permits to a maximum of 5 years, and a requirement that the intent to issue all licences is publicly notified. Any concessionaire wanting a concession term longer than five years must be issued a licence or lease, and the intent to issue this must be publicly notified.
21. The current restriction to five year terms for non-notified applications adds cost and administrative burden to business operators in that they must pay for the re-application process every five years, or undergo cost and time delays (approximately \$2000 and about 6 months) of public notification to get a 10 year term. This adds cost to small concessionaires (they must either pay for the notification and get a longer term, or re-apply at further cost after five years) and tends to reduce incentives to invest in these business opportunities.
22. Additionally, a large proportion of the Department of Conservation (DOC) concession staff resources have been dedicated to processing applications for renewals of 5-year permits without significant adverse effects, at the expense of higher priority activities such as effects monitoring.

## **1.7 Clarifying Contestable Processes**

23. It is also proposed to amend section 17ZG(2) of the Conservation Act 1987 to require the Minister of Conservation to decline to consider other applications for a concession opportunity from the point in time that an invitation process has been launched for the rights to apply for that opportunity.
24. The Act currently requires the Minister of Conservation to process any complete application received, while at the same time allowing the Minister to conduct contestable processes to invite specific concession applications.
25. DOC officials' recognise this as a potential flaw in the contestable process provisions of the Conservation Act 1987, in that an uninvited party could attempt to make an application outside the process. The Department considers that the Minister can currently refuse to process such applications, but considers there is a possibility for an applicant to challenge this position, as the Minister is arguably obliged to process any application received. If

successful, such a challenge would subvert the orderly allocation of the scarce resources.

26. The legislative changes would be supported by amendments to the DOC “Concessions Processing Standard Operating Procedure” to provide more guidance for decision makers around such matters as triggers for public notification and improved descriptions of thresholds for classifying various types of concession.
27. Both amendments are designed to result in efficiencies and lower costs for both business and DOC regulators/administrators. Businesses will be able to plan ahead with more certainty and are also more likely to make better long term investments. Resources will be re-directed to higher priority areas such as monitoring. Both outcomes are likely to contribute to improved conservation outcomes.

## **1.8 Changes to the Marine Mammals Protection Regulations 1992**

28. It is proposed to amend regulation 12(4) and related consequential amendments to these regulations to ensure that an existing marine mammal operator is not required to advertise its intention to renew its existing permit where existing conditions and terms are not substantially different. This proposal clarifies long standing DOC practice which operates on the basis that applicants for permit renewals should be processed expeditiously when no substantive change is envisaged. [...]. This proposal to the Marine Mammals Protection Regulations therefore aims to clarify this regulatory ambiguity so ensuring continued regulatory certainty for operators.

## **1.9 Health and Safety in Employment (Pressure Equipment, Cranes and Passenger Ropeways) Regulations 1999 (PECPR Regulations) – Resolving Coverage Issues**

29. In order to resolve two coverage issues in these regulations it is proposed to amend Schedule 2 of the Health and Safety in Employment (Pressure Equipment, Cranes and Passenger Ropeways) Regulations 1999 (PECPR Regulations), specifically to replace the reference to the Dangerous Goods (Class 2 – gases) Regulations 1980 with a reference to the Hazardous Substances (Compressed Gas) Regulations 2004; and exclude low hazard aerosols and cartridges.
30. Currently, the PECPR Regulations cover compressed gas cylinders in a place of work. This should fall within the jurisdiction of the Hazardous Substances and New Organisms (HSNO) Act as Parliament intended, following the revocation of the Dangerous Goods Regulations in 2006.
31. The control of compressed gas cylinders previously fell under the Dangerous Goods (Class 2 – gases) Regulations 1980, enacted under the Dangerous Goods Act 1974.

32. When enacted in 1999, the PECPR Regulations specifically excluded cylinders that fell under the Dangerous Goods (Class 2 – gases) Regulations. These regulations were revoked in 2006 by the HSNO Act and replaced by the Hazardous Substances (Compressed Gas) Regulations (Compressed Gas Regulations).
33. There was no consequential amendment to expressly update the PECPR Regulations to reflect this replacement. This means that the PECPR Regulations could be seen as covering items that were not intended because:
- a. the PECPR Regulations do not specifically exclude cylinders which fall under the Compressed Gas Regulations. Compressed gas cylinders are therefore covered under the PECPR Regulation's wide definition, and
  - b. the Compressed Gas Regulations state that most parts of the Compressed Gas Regulations do not apply to anything that falls under the PECPR Regulations.<sup>1</sup>
34. For the sake of clarity and transparency, this coverage issue should be corrected. Applying the Interpretation Act 1999 means that the reference to the Dangerous Goods (Class 2 – gases) Regulations could be read as the Compressed Gas Regulations that replaced them. This would mean that the coverage issue does not matter in practice as the Interpretation Act would apply. However, the Interpretation Act should not be relied on if the situation is able to be fixed through the regulations themselves.
35. Additionally, when the PECPR Regulations were enacted, they did not specifically exclude low hazard aerosols and cartridges. The Compressed Gas Regulations however, specifically exclude low hazard aerosols and cartridges. As low hazard aerosols and cartridges are caught by the wide definition of the PECPR Regulations, they are unintentionally covered.
36. This means that low hazard items are covered by the requirements of the PECPR Regulations. The Compressed Gas Regulations or the PECPR Regulations should not cover these types of items, due to their minimal hazards. For the sake of clarity this problem should be corrected.

### **Additional Hazardous Substances and New Organisms Act 1996 Amendment Proposals**

- 37 Ten further proposals to amend the Hazardous Substances and New Organisms (HSNO) Act 1996 have been identified in addition to the three amendments already approved.

*Flexibility in delegating decision-making powers for relevant matters.*

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<sup>1</sup> Regulation 4(2) of the Compressed Gas Regulations states that except for certain parts of the Regulations (reference temperatures and compatibility, charging cylinders and emergency management), the Compressed Gas Regulations do not apply to pressure equipment that falls under the PECPR Regulations.

- 38 It is proposed to provide greater flexibility for the Environmental Risk Management Authority (ERMA) to delegate its decision-making powers. Currently the HSNO Act limits such delegations to those expressly stated in the Act. However, many decisions of ERMA (e.g. technical decisions of an administrative nature, particularly those required in regulations or deemed regulations such as the 'Transfer' Gazette Notices) arguably involve the exercise of decision-making powers. Examples are approvals granted for compliance plans, cylinder designs, separation distances, etc. Significant administrative costs and time delays are involved. These decisions may be made more efficiently if they were able to be delegated, primary to the Chief Executive of ERMA, but also to other appropriate ERMA staff, or to HSNO test certifiers. Further, these proposed delegations cannot be readily covered by a generic statement in the delegations section in the Act, nor is it feasible to list them in a schedule to the delegations section.
- 39 It is therefore proposed that the specific limitation on the delegation of "decision-making powers" in s19(1)(b) be removed. However, the specific delegations listed in 19(2) would be retained in their current form and the additional delegations proposed below would be included. In this way, the significant delegations would remain in the form expressly allowed in the Act but lesser delegations of a technical / administrative nature would be enabled at the discretion of ERMA. Such amendment will enable greater efficiencies for both ERMA and industry.

*Rapid assessment of applications:*

- (a) *to import or develop low-risk non-GMO (non-genetically modified organisms) in containment;*
  - (b) *to field-test low-risk non-GMOs in containment, but to give ERMA the discretion to publicly notify applications to field-test other non-GMOs in containment; and*
  - (c) *for the conditional release of low-risk non-GMOs.*
- 40 This proposal will improve consistency in how applications are processed:
- by enabling applications to import, develop, or field-test non-GMOs in containment to be treated consistently with each other and with applications to import or develop low-risk GMO in containment (in terms of rapid assessment of low risk organisms and the discretionary notification of other applications); and
  - by enabling applications for conditional release of low-risk non-GMOs to be treated consistently with applications for full release of low-risk non-GMOs.

The proposal will reduce application costs and shorten application times for industry, where pre-determined conditions set in the Act or in regulations are met.

- 41 Some distinction will remain between non-GMO and GMO field tests. Rapid assessment is not available for any GMO field test applications and all GMO field-test applications must be publicly notified. The proposed enabling of discretionary notification of other higher risk non-GMO field-test applications (not possible at present) will be on the same statutory basis as other discretionary notifications i.e. that they are likely to be significant public interest. Enabling such discretionary notification will tighten the requirements for higher risk non-GMO field tests although it will still be less stringent as requirements for GMO field tests.
- 42 Rapid assessment is possible for applications for the full release (without any controls) of a non-GMO but not for conditional release with control. The proposal will allow rapid assessment of these conditional release applications, where the statutory test for rapid assessment of a full release is met by the imposition of controls.

*Discretion to notify and ability to delegate hazardous substance release applications*

43. Experience has shown that many hazardous substance release applications under s28 of the HSNO Act are routine and attract very few public submissions. However, public notification is mandatory and related submission processes result in delay and unnecessary cost to business. The regulatory cost is disproportionate to the risks posed or the benefits of public participation.
44. To ensure a more responsive regulatory approach it is proposed that ERMA be given (a) the discretion to publicly notify release applications that do not otherwise qualify for rapid assessment under s28A of the HSNO Act, and (b) the ability to delegate non-notified applications to its Chief Executive. Notification would still occur when the current statutory test for notification is met (i.e when ERMA considers that there is likely to be significant public interest in the application).

*Flexibility to enable test certifiers to issue a provisional location test certificate, subject to specified conditions*

45. Where locations are not in full compliance with the relevant HSNO requirements, a location test certificate cannot be issued under any circumstances. This may result in substantial additional expenses to business, even when the non-compliance may be considered minor or technical, including operations being suspended while the non-compliances are resolved.
46. It is proposed that test certifiers have the discretion to issue a location test certificate on a 'provisional' (or conditional) basis where they consider the non-compliance to be 'minor or technical'. The provisional certificate would state the outstanding matters, the time within which they would need to be rectified, and the manner of evidence required to demonstrate rectification. A normal location test certificate would then be issued once the test certifier is satisfied that the matters are no longer outstanding. This would allow operations to continue lawfully while action is taken to ensure full compliance.

*Official access to the test certificate register for emergency response planning purposes*

47. The HSNO Act requires ERMA to keep and maintain a register of test certificates issued by test certifiers under the Act. Access to the register is restricted by the Act to certain purposes. While s82A(4) expressly allows searches of the database where necessary to prevent or lessen a serious and imminent threat to public or individual health and safety, searches cannot be readily undertaken by the Fire Service (not an enforcement agency under the Act), or by an HSNO enforcement agency, for emergency and response planning purposes.
48. It is proposed that the purposes for which an approved person may search the register be extended to include emergency and response planning purposes. The Fire Service would be able to search the register for that purpose, under delegation from an approved person, as would HSNO enforcement agencies, including those local authorities that have enforcement roles as per s97. This would improve the ability to achieve the objective of preventing or lessening serious threats to public health and safety.

*Linking reassessment and group standard amendments, including a mechanism for minor or technical amendments to group standards*

49. Some hazardous substances are regulated by both specific individual approvals and generic group standards. However, specific approvals and groups standards are amended by separate and different processes. These differences create additional costs, potential confusion and inconsistencies for affected substances. Furthermore, in s67A, the Act allows ERMA to amend a specific approval on its own motion if it considers that the alteration is minor in effect or corrects a minor or technical error. There is no equivalent for group standards.
50. To address these issues, it is proposed to (a) enable joint consideration of common changes to a specific approval and a group standard, adapting the group standard process to the approval reassessment process, as appropriate, and (b) provide for a s67A equivalent for minor and technical amendments to group standards.

*Empower Biosecurity New Zealand to recover costs of conditional release compliance and enforcement under the Biosecurity Act*

51. The Ministry of Agriculture and Forestry (MAF) is the enforcement agency for new organisms under the HSNO Act (s97A). MAF can recover the costs associated with HSNO containment approvals under the Biosecurity Act, because the costs primarily relate to functions empowered by the Biosecurity Act. However, due to a technicality, costs associated with controls on newer types of HSNO approvals outside containment (conditional release, release of qualifying organisms, and for releases in special emergencies) cannot be recovered under the Biosecurity Act without that being empowered under the HSNO Act. Filling this legislative gap will provide the right business incentives to develop an efficient monitoring system, in that cost-recovery encourages

the holders of approvals for various releases of new organisms with controls to: change behaviour or the risks that give rise to the need for monitoring; assess whether the benefits of monitoring outweigh the costs; influence whether the system is being provided in the most efficient manner.

52. To improve regulatory practice it is proposed to amend s97A of the HSNO Act to enable MAF to use the cost recovery provisions of the Biosecurity Act, including the cost options (s135), levies (s137) and regulations (s165(1)(s)). The existing Biosecurity (Costs) Regulations 2006, with any necessary amendments, could then be used for cost recovery.

*Remove additional duplicative reporting requirements*

53. The HSNO Act specifies additional matters that ERMA must include its statement of intent (SOI) and annual report. Experience has shown that two of these requirements involve significant repetition of information already provided elsewhere in the SOI or in ERMA's annual monitoring report, which is a requirement of the annual Output Agreement with the Minister, and is publicly available.
54. These requirements add to unnecessary compliance costs on regulatory agencies. It is proposed to remove the two additional reporting requirements in sections 147(3) and 148(b) of the HSNO Act, which relate to the effectiveness of the Act. This removal will improve the administrative efficiency of the SOI and reporting processes, by reducing duplication, without adversely impacting on their quality.

*Extend ERMA's power to revoke test certificates, and the grounds for revocation*

1. Test certificates are issued by test certifiers, who in turn are approved by the Authority. The Authority's power of revocation exists as a back-up, enabling it to act where, for example, the test certifier is no longer in business, and/or the issue of non-compliance has come to light through an enforcement officer.
2. ERMA is currently empowered to revoke test certificates issued to approved fillers and approved handlers where there has been fraud, negligence, or incompetence. However the Authority cannot revoke other types of test certificates – primarily location test certificates and stationary container test certificates or revoke certificates when the holder of test certificate no longer meets the criteria for which the certificate was met.
3. It is proposed to extend ERMA's power to revoke test certificates to all test certificates and extend the grounds for revocation under the HSNO Act to include where the criteria for which the certificate was issued are no longer met by the holder of the test certificate.

*Improve consistency between HSNO Act and Biosecurity Act offences, and HSNO Act and Health and Safety in Employment (HSE) Act offences*

58. The Ministry of Agriculture and Forestry is the enforcement agency for new organisms and the Department of Labour is the primary enforcement agency for hazardous substances. While considerable official effort has gone into

aligning the enforcement provisions of the HSNO and Biosecurity Acts (for new organisms) and HSNO and Health and Safety in Employment (HSE) Acts (for hazardous substances, some inconsistencies remain, namely in the statutory timeframes for laying information (charges) for offences under the respective Acts.

59. *It is proposed to amend the HSNO Act:*

- a For offences involving hazardous substances provisions, to change the current time to lay charges from 120 working days to 6 months (from when the offence became known), and allow the District Court to extend the time to lay charges – consistent with the HSE Act
- b For offences involving new organisms, to change the time to lay charges from 120 working days from when the offence became known to 2 years from the time “when the matter of the information arose” – consistent with the Biosecurity Act.

## **1.10 Health Sector Revocations**

60. The Omnibus Bill provides an opportunity for the health sector to tidy up unused and unneeded regulations, orders in council, notices or bylaws. All of the proposed revocations are for law which is now redundant due to the passing of new laws in recent years.

61. The regulations no longer represent best practice within the health sector and left in place raise the potential for inconsistency in the application of the law. Revoking the regulations would provide consistency and clarity and reduce compliance costs and uncertainty for business. Proposed revocations are:

### *Chiropractors Order 2002 and 2003*

62. These orders amended the First Schedule of the Chiropractors Act 1982, since repealed by the Health Practitioners Competence Assurance Act 2003. The Schedule lists recognised qualifications that are recognised for the purposes of registration as a chiropractor.

### *Medicines (Deferral of Expiry of part 7A) Order 2003*

63. This order deferred by 2 years (until 2006) the expiry of Part 7A of the Medicines Act 1981 (which imposes restrictions on germ-cell genetic procedures, xenotransplantation, and cloning procedures). This Order was superseded by the Medicines (Deferral of Expiry of part 7A) Order 2006 which deferred the expiry of Part 7A of the Medicines Act to 31 December 2008.

### *Toxic Substances Act Commencement Orders 1979 and 1983*

64. This Order could be revoked as the Act has been repealed.

### *Medical Practitioners Amendment Act Commencement Order 1996 (SR 1996/115)*

65. This Order brought the Medical Practitioners Amendment Act 1994 into force on 1 July 1996, which was the same day the Medical Practitioners Act 1995 came into force. The Medical Practitioners Act 1995 repealed the Medical Practitioners Amendment Act 1994. By some oversight this Order was not revoked at the time.

*Practising Opticians Notice 1955*

66. The effect of this notice is that a registered optician may describe himself, in any notice or advertisement permitted by the Practising Opticians Regulations 1942, as an optometrist, as well as using any other description that he is entitled to use under those regulations or under the earlier resolutions of the Board referred to in clause 3 of this notice. With the passage of the Health Practitioners Competence Assurance Act 2003, this notice is no longer required and should be revoked.

*The Noxious Substances Notices 1958 (SR 1958/83) and 1959 (SR 1959/84)*

67. Under these respective Notices, the following substances were declared to be noxious substances (and inserted in the Schedule to the Noxious Substances Regulations 1954): Endrin; Potassium arsenite; Sodium arsenite; Fluoroacetic acid and its derivatives; Fluoroacetamide and its derivatives Methyl bromide; Chloropicrin; Aldrin, except in preparations containing 1% or less of aldrin; Dieldrin, except in preparations containing 1% or less of dieldrin.
68. The intent of these Notices is effectively replaced by current legislation, namely the HSE and HSNO Acts and related regulations and guidance material.

*Mental Hospitals Road Traffic Bylaws 1960*

69. This Order could be revoked as it is outdated and relates to repealed legislation (the Transport Act 1949.)

*Porirua Hospital Traffic Bylaws 1969*

70. This Order could be revoked as it is outdated. It was made under the Transport Act 1962 which is to be repealed in 2009.

## **1.11 Consultation**

71. The following agencies have developed the legislative and regulatory proposals and obtained the approval of their respective Ministers for inclusion in the Omnibus Bill: The Departments of Labour and Conservation, The Ministries of Fisheries and Health, and the Ministry for the Environment in conjunction with ERMA New Zealand.
72. The following agencies have been provided with a copy of the paper for comment: The Treasury, Department of Building and Housing, the Ministries of, Agriculture and Forestry, Justice, ERMA New Zealand, Biosecurity New Zealand and the Companies Office. No significant concerns have been

raised. A copy of the paper has been forwarded to the Department of Prime Minister and Cabinet.

## **1.12 Fiscal Implications**

73. There are no financial implications arising from these proposals.

## **1.13 Human Rights**

74. There are no human rights implications arising from these proposals.

## **1.14 Legislative Implications**

75. The consolidated proposals contained in this paper and attached Annex will require amendments to the Fisheries Act 1996 the Ministry of Fisheries Restructuring Act 1995, the Conservation Act 1987, the Health and Safety in Employment (Pressure Equipment, Cranes and Passenger Ropeways) Regulations 1999, The Health and Safety Act in Employment Act 1992, the Hazardous Substances and New Organisms (HSNO) Act 1996, the Companies Act 1993, Design Act 1953, Gas Act 1992, and Weights and Measures Act 1987.

## **1.15 Regulatory Impact Analysis**

76. The Ministry of Economic Development confirms that the principles of the Code of Good Regulatory Practice and the regulatory impact analysis (RIA) requirements, including the consultation RIA requirements, have been complied with. An aggregated RIS was prepared and the MED considers the analysis and the RIS to be adequate. The final RIS was circulated with the Cabinet paper for departmental consultation.

## **1.16 Publicity**

77. I propose to release a press statement marking the Final Report of the Quality Regulation Review. The overview paper for the Review, also considered by this Committee, will be published on the website of the Ministry of Economic Development, subject to any appropriate withholdings that may be required in accordance with the Official Information Act 1982, including the removal of any legally privileged advice.

## 1.17 Recommendations

78. It is recommended that the Committee:

### *Background*

- 1 **Note** that a companion paper entitled "Quality Regulation Review: Final Report" outlining policy and other non-legislative solutions to regulatory burdens to economic transformation identified by the Review should be read in conjunction with this paper.
- 2 **Note** that on 30 April 2007 Cabinet confirmed the "Quality Regulation Review – First Tranche of Legislative Amendments" that set out the first set of proposed legislative amendments for inclusion in a possible Omnibus Bill [CAB Min (07) 14/1].
- 3 **Note** Annex 1 to this paper which lists the First Tranche of Legislative Amendments agreed to by Cabinet on 30 April 2007 [CAB Min (07) 14/1].
- 4 **Note** that on 23 April 2007 Cabinet Business Committee noted that further proposals are expected to be developed prior to the final Review Report as solutions to issues identified to date are developed by departments [CBC Min (07) 8/23].

### *Resolving Administrative Errors for Commercial Fishers*

- 5 **Agree** to amend the Fisheries Act 1996 to provide ability for fishers to make a request to the CEO of Mfish for catch balancing relief and a set of criteria that must be met before such a request can be approved.

### *Removing Duplicated Penalty Regimes for Commercial Fishers*

- 6 **Agree** to revoke sections 18 and 19 of the MAF Restructuring Act 1995 to fully realise the intent of the penalty regime put in place by the Fisheries Act 1996.

### *Concessions to Business Operators on the Conservation Estate*

- 7 **Agree** to amend the Conservation Act 1996 to extend the limit on term duration for non-notified permits and licences from 5 to 10 years, with a Ministerial discretion retained to publicly notify if, having regard to the effects of the permit or licence, the Minister considers it appropriate to do so.
- 8 **Agree** to amend the Conservation Act to clarify that the Minister of Conservation must refuse to consider applications outside a tender (or other process) initiated by the Minister under s17ZG(2) of the Conservation Act.

*Proposal to amend the Marine Mammals Protection Regulations 1992*

- 9 **Agree** to amend regulation 12(4) Marine Mammals Protection Regulations 1992 and make any necessary consequential amendments to those Regulations so that an applicant for permit renewal is not required to advertise its intention to do so if the proposed renewal of permit involves conditions and terms that are not substantially different from those in the expired permit.

*Health and Safety in Employment (Pressure Equipment, Cranes and Passenger Ropeways) Regulations 1999 (PECPR Regulations) Amendments*

- 10 **Agree** to amend Schedule 2 of the Health and Safety in Employment (Pressure Equipment, Cranes and Passenger Ropeways) Regulations 1999, specifically to replace the reference to the Dangerous Goods (Class 2 – gases) Regulations 1980 with a reference to the Hazardous Substances (Compressed Gas) Regulations 2004; and exclude low hazard aerosols and cartridges.

*Hazardous Substances and New Organisms (HSNO) Act 1996 Amendments*

- 11 **Agree** to amend the HSNO Act to provide greater flexibility for the Environmental Risk Management Authority (ERMA) to delegate its decision-making powers by removing the specific limitation on the delegation on "decision-making powers" in s19(1)(b) while retaining the specific delegations listed in s19(2) in their current form.
- 12 **Agree** to amend:
- a the HSNO Act to enable the rapid assessment of applications to import into containment, develop in containment, field-test in containment, and conditionally release low-risk non-genetically modified new organisms, including the ability to delegate these rapid assessments (consistent with existing rapid assessments), and provision or development of the appropriate criteria for rapid assessment; and
  - b section 53 of the Act to give ERMA the discretion to publicly notify any application to field-test a non-genetically modified new organism and to not be required to notify an application to conditionally release a non-genetically modified new organism, when that application has been rapidly assessed.
- 13 **Agree** to amend section 53 of the HSNO Act to give ERMA the discretion to publicly notify those hazardous substances applications under section 28 that do not otherwise qualify for rapid assessment under section 28A, and the ability under section 19(2) to delegate those applications that are not publicly notified (or rapidly assessed) to its Chief Executive.
- 14 **Agree** that the HSNO Act be amended to give test certifiers the discretion to issue a location test certification on a provisional basis until full compliance with HSNO requirements is achieved, where they consider

the non-compliance to be minor or technical, and to provide for the appropriate matters to be addressed in a provisional certificate.

- 15 **Agree** that section 82A of the HSNO Act be amended so that the purposes for which an approved person may search the register of test certificates issued by test certifiers under the Act include for emergency and response planning purposes.
- 16 **Agree** that the HSNO Act be amended to enable joint consideration of common changes to Part V hazardous substance approvals and group standard approvals established under Part 6A, including the option of adapting the group standard amendment process to the Part V reassessment process, as appropriate to the extent of the change.
- 17 **Agree** to amend Part 6A of the HSNO Act to enable minor or technical amendments to group standards in a manner equivalent to section 67A, which allows ERMA on its own motion to amend a Part V approval given by it if it considers that the alternation is minor in effect or corrects a minor or technical error.
- 18 **Agree** to amend section 97A of HSNO Act to enable the Ministry of Agriculture and Forestry to use the cost recover provisions of the Biosecurity Act, including cost options, levies and regulations.
- 19 **Agree** to amend the HSNO Act to remove the additional reporting requirements in sections 147(3) and s148(b), which involved significant repetition of information already provided elsewhere in ERMA's Statement of Intent and Annual Monitoring Report.
- 20 **Agree** to amend section 82C of the HSNO Act to extend ERMA's power to revoke test certificates to all test certificates and extend the grounds for revocation to include where the criteria for which the certificate was issued are no longer met by the holder of the test certificate.
- 21 **Agree** to amend the HSNO Act to improve consistency between between the HSNO Act and the Health and Safety in Employment (HSE) Act in regard to the statutory timeframe within which information in relation to an offence involving a hazardous substance offence can be laid; i.e. by making the time 6 months from when the offence became known and enabling the District Court to grant an extension in the case of exceptional circumstances, consistent with the provisions in the HSE Act.
- 22 **Agree** to amend the HSNO Act to change the time for offences involving new organisms to 2 years from the time "when the matter of the information arose", consistent with the Biosecurity Act.

#### *Revoking Outdated Health and Health Related Regulations*

- 23 **Agree** to revoke the following outdated health regulations:

- 23.1 Chiropractors Orders 2002 and 2003;
- 23.2 Medicines (Deferral of Expiry of part 7A) Order 2003;
- 23.3 Medical Practitioners Amendment Act Commencement Order 1996 (SR 1996/115);
- 23.4 Practicing Opticians Notice 1955;
- 23.5 The Noxious Substances Notices 1958 (SR 1958/83) and 1959 (SR 1959/84);
- 23.6 Mental Hospitals Road Traffic Bylaws 1960;
- 23.7 Porirua Hospital Traffic Bylaws 1969;

*Further Work*

- 24 **Invite** the Minister of Commerce to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above decisions, notwithstanding the absence of a legislative vehicle on the 2008 Legislation Programme at this time;
- 25 **Agree** that this paper be publicly released on the website of the Ministry of Economic Development, subject to any appropriate withholdings that may be required in accordance with the Official Information Act 1982, including the removal of any legally privileged advice.

Hon Lianne Dalziel  
**Minister of Commerce**

Dated \_\_\_\_\_

## **1.18 Annex 1: First Tranche of Legislative Amendments agreed to Cabinet in April 2007**

The amendments proposed to date and previously agreed to by Cabinet for the Omnibus Bill relate to:

- i the process for renewing design registrations under the Designs Act 1953;
- ii the ability to update material incorporated by reference in regulations, a group standard, or a code of practice under the Hazardous Substances and New Organisms (HSNO) Act 1996;
- iii aligning inspections under the HSNO Act and the Health and Safety in Employment Act 1992;
- iv the revocation of outdated health and safety regulations;
- v the co-regulatory arrangements under the Gas Act 1992 as applies to gas used for feedstock;
- vi the treatment of liquid petroleum gas (LPG) under both the Weights and Measures Act 1987 and Gas Act 1992; and
- vii the audit requirements for certain classes of New Zealand subsidiaries of overseas-incorporated companies and companies that have 25% or more overseas ownership under the Companies Act 1993.

[CAB Min (07) 14/1]

## REGULATORY IMPACT STATEMENT

### 1.19 Executive summary

An ongoing part of the work programme for the Quality Regulation Review (the Review) is to identify potential legislative, regulatory and administrative measures that could improve the implementation of regulatory frameworks. This aggregated regulatory impact statement identifies a range of areas where there are high compliance costs without commensurate benefits. It contains additional amendments to legislation and regulation to reduce these compliance costs.

#### **Adequacy Statement**

The Ministry of Economic Development has compiled this aggregated regulatory impact statement and confirms that it meets the adequacy criteria for regulatory impact analysis.

#### **Fisheries Act 1996**

##### *Status quo and problem*

Commercial fishers are required to balance their catch with Annual Catch Entitlement (ACE), as part of the Quota Management System (QMS). If, at the end of a fishing year, they have not acquired enough ACE to balance against their catch they will incur a debt in the form of an invoice for annual deemed values. End of year balancing (comparison of catch vs ACE) occurs approximately 20 days after the end of the fishing year. On the 15th day after the end of a fishing year however the ACE register is closed, meaning that fishers are no longer able to transfer ACE and their ACE holdings at that point in time become fixed.

The majority of fishers manage to balance their catch within the required timeframes. However, since the introduction of the ACE balancing regime in 2001 there have been a number of cases where, for various administrative reasons, planned ACE transfers have failed to take place. In these cases, such failures only surface after the ACE register has closed, at which stage fishers are precluded from making additional ACE transfers to rectify the errors. The fishers have then incurred an annual deemed value debt even though they had intended to comply with the law. In this type of situation most fishers have to pay the debt so as to prevent their commercial fishing permit from being suspended. Currently there are no provisions in the Fisheries Act 1996 (the Act) to allow this type of situation to be rectified.

In absence of statutory authority, the Minister of Fisheries has progressed requests from fishers to seek relief from the position in which they have found themselves. For a case to be progressed the request for catch balancing relief must meet a set of criteria jointly approved by the Ministers of Finance and Fisheries. However, this is a protracted and cumbersome administrative process.

### *Objectives*

To ensure that the catch balancing regime is fair, efficient and effective.

### *Preferred option*

The preferred option is to amend the Act to allow requests from commercial fishers for catch balancing relief to be considered by the Chief Executive of the Ministry of Fisheries.

### *Amendments to the Act would put in place:*

- i. a limited ability for fishers to make a request to the Chief Executive for catch balancing relief and for the ACE transfer to be recognised after the 15th day following the end of a fishing year.
- ii. A set of criteria that must be met before the Chief Executive can approve such a request

Upon approval, commercial fishers would be considered to have balanced their catch against ACE despite the requirement for all ACE transfers to be registered before the close of the 15th day after the end of a fishing year.

These changes would remove the perception that the Government is revenue gathering by taking advantage of minor administrative errors and would introduce an element of fairness to situations where invoices for debts have been issued although the sustainability of a stock has not been threatened. It would mitigate the burdens of firms arising out of legislation.

### *Consultation*

The New Zealand Seafood Industry Council and Commercial Fisheries Services Limited have both indicated their support for the proposal.

## **Ministry of Agriculture and Fisheries Restructuring Act 1995**

### *Status quo and problem*

Under the Ministry of Agriculture and Fisheries (MAF) Restructuring Act 1995, the Ministry of Fisheries is required to charge all clients a penalty fee of 10% when they fail to pay their statutorily incurred debt within the time provided by the relevant enactment. This provision overlaps with the sanctions provided by the Fisheries Act 1996 when the same debt is not satisfied in the timeframe set by that Act.

The sanctions provided by the Fisheries Act 1996 in regard to unpaid levies (for example suspension of commercial fishing permit) have proven to be a greater incentive for levy payers to pay their debts within the required timeframes than the penalty fee provisions. Continuing to operate a double penalty regime is both inappropriate and unnecessary.

*Objectives*

To ensure that legislative frameworks are consistent and efficient.

*Preferred option*

The preferred option is to revoke section 18 of the MAF Restructuring Act. This would ensure that the penalty regime of the Fisheries Act 1996 achieves the legislative intent as clearly defined by that Act in a more efficient and fair manner.

*Consultation*

Treasury has been consulted on this proposal. It is also supported by Commercial Fisheries Services Limited.

**Conservation Act 1987***Status quo and problem*

The Conservation Act 1987 (CA):

- a. restricts the granting of concessions as permits to a maximum of 5 years without public notification, and requires that the intent to issue all licences is publicly notified. The notification process is expensive and time-consuming, and paid for by the applicant. In practice, many low-impact and small scale business proposals must be publicly notified in order to gain tenure longer than 5 years, or if a licence activity is involved.
- b. does not explicitly state that the Minister of Conservation will decline to consider applications made for a concession while that concession opportunity is being tendered or is subject to other processes. From time to time the Minister tenders the right to apply for certain concession opportunities (or initiates other specified processes to invite or encourage applications). There is potential for parties to undermine the objectives of such processes, by applying while they are underway.

*Objectives*

To ensure that the policy intent of the regulatory frameworks relating to the concession provisions of the Conservation Act can be implemented and administered in a manner that eliminates unnecessary compliance costs and minimises necessary compliance costs.

*Alternative options*

- a. Options considered for resolving the duration and notification problem included

- Seeking more resources for additional processing capacity. This option would probably divert resources from higher priority work and would not address the underlying causal factors of this problem.
  - Raising processing costs to enable the purchase of additional resources. This would add cost to applicants and would only have a marginal impact on processing times or backlogs.
  - Using very simple consideration processes to speed up application processes. While this would speed up processes, it would also risk insufficient effects consideration and poor decision-making.
  - Changing the legislation to allow for permits and licences to be issued for periods up to 10 years without public notification. This is the preferred option.
- b. Options considered to fix the contestable process problem included:
- Change the legislation to require the Minister not to consider uninvited applications once a contestable process has commenced. This is the preferred option

*Preferred option*

*Amend the Conservation Act 1987 to:*

- a. allow permits to be granted for a term not exceeding 10 years, and so that licences up to 10 years duration are not notified unless the Minister considers the effects make notification appropriate (Section 17Z(2) and section 17T(4)). The Minister is able to impose a condition on the concession requiring a review of conditions during the term in both cases.

The duration and notification proposal will mainly affect activities without significant adverse effects such as some guiding operations. With respect to licences, the primary area of effect will be long-standing grazing licences. The amendments will enable DOC to transfer resources from repeated processing of short-term concessions into management planning and environmental monitoring. Small-scale, low-impact business proposals will be able to receive terms of up to 10 years without incurring the expense and additional time delays relating to public notification which can cost in excess of \$1000 + GST. Businesses will receive greater certainty of investment. The proposal will reduce compliance costs as many businesses, particularly small owner-operator ones and farmers, will now only have to re-apply for their concessions every 10 years instead of every five. The standard fee for each process is around \$1200 + GST plus the applicant's costs. Under other provisions of the Act, DOC will be able to review concessions and make changes if circumstances change, including a change in a management plan or strategy, or where significant effects become apparent over time.

- b. clarify that the Minister of Conservation will decline to consider applications for a concession from the point in time that a tender (or other) process has been launched. Both the Minister and tender applicants will benefit from greater

certainty by knowing that third-party applicants are not possible once a tender (or other process) has commenced. Precluding the possibility of a process being derailed by applicants outside that process will protect the tenderers' investment of time and money.

### *Consultation*

The proposals have been discussed in some detail with a wide range of stakeholders (NZ Conservation Authority, Ministry of Tourism, Te Puni Kokiri, Tourism Industry Association, Maori Tourism Council, Forest & Bird, Federated Mountain Clubs, Federated Farmers and Te Runanga o Ngai Tahu).

There is a general consensus of support for the proposals. In the case of the duration and notification issue this support is subject to the development of improved guidance to decision-makers around classifying applications as low-impact, and the existence of a discretion to conduct mid-term reviews of concession conditions for 10 year non-notified concessions.

Local Government New Zealand does not oppose the proposals, but has requested that DOC investigate the "term" proposal with a view to extending it to reserves vested in local authorities. DOC and LGNZ will be investigating this proposal further. Further Cabinet approval will be sought, if necessary, to extend the "term" proposal to vested reserves.

## **Marine Mammals Protection Regulations 1992**

### *Status quo and problem*

Commercial operators who wish to seek to come into contact with marine mammals must obtain a permit to do so. Permits can be granted for up to 10 years. The process for renewing marine mammal operator permits under the Marine Mammals Protection Regulations is ambiguous. It does not state whether a person seeking to renew a permit must advertise his/her intention and comply with the advertising process as if it were a new permit, or if they can dispense with advertising if the proposed renewal involves conditions and terms that are not substantially different from the expired permit. The renewal process is time-consuming (involving potentially months of delay), and where no substantive change is proposed the criteria used for new permit applications are largely unnecessary for holders of newly expired permits. The average processing cost for recent new applications is estimated to be \$600 plus GST and for a non-advertised renewal \$300 plus GST.

### *Objectives*

The public policy objective is to ensure that the permit renewal process is clear and does not cause any unnecessary cost and/or delay.

### *Preferred option*

Amend the Regulations to make it clear that an applicant for permit renewal is not required to advertise its intention to renew its permit if the proposed renewal of permit involves conditions and terms that are not substantially different from those in the expired permit. This will streamline the permit renewal process for permit holders

seeking to renew permits, and remove uncertainty. Permit renewal processing costs to both the applicants and the Department will be minimised. Compliance costs will be reduced, as the cost of advertising in public newspapers would be dispensed with and there would be no submission process for operations where no substantive change to the business is proposed.

### *Implementation and Review*

The Department of Conservation will notify its administrative staff (who process applications for renewal of marine mammal operator permits) about the process, and also those who hold such permits. The Department does not need a specific enforcement strategy for the proposal or to monitor and evaluate it.

### *Consultation*

[...]. Te Puni Kokiri has been consulted and is supportive of the proposal.

## **Health and Safety in Employment (Pressure Equipment, Cranes and Passenger Ropeways) Regulations 1999**

### *Status quo and problem*

Currently, the Health and Safety in Employment (Pressure Equipment, Cranes and Passenger Ropeways) Regulations 1999 (PECPR Regulations) cover compressed gas cylinders in a place of work. This should fall within the jurisdiction of the Hazardous Substances and New Organisms (HSNO) Act as Parliament intended, following the revocation of the Dangerous Goods Regulations in 2006. This situation creates potential confusion over the coverage of regulations.

However, applying the Interpretation Act means that the reference in the PECPR Regulations to the Dangerous Goods (Class 2 – gases) Regulations could be read as the Compressed Gas Regulations that replaced them. This would mean that the coverage issue does not matter in practice as the Interpretation Act would apply.

Additionally, low hazard aerosols and cartridges are caught by the wide definition of the PECPR Regulations, so they are unintentionally covered. Due to their minimal hazards, these should not be covered by the PECPR Regulations. However, the practical consequence of covering low hazard aerosols and cartridges is nil, as the hazard analysis applied to these items will lead to them not requiring certification or inspection.

### *Objectives*

To ensure that compliance with the regulations is clear, certain and simple to follow. And to ensure that regulations do not cover matters unintended by Parliament.

### *Preferred option*

The preferred option is to amend the PECPR Regulations to:

- replace the reference to the Dangerous Goods (Class 2 – gases) Regulations 1980 in schedule 2 with a reference to the Hazardous Substances (Compressed Gas) Regulations 2004; and
- specifically exclude low hazard aerosols and cartridges

These amendments would improve the clarity and transparency of the RECPR Regulations. They would remove the need for recourse to the Interpretation Act and would improve clarity over what regulations provide compliance for certain items. There are no business compliance costs arising from the proposal.

### *Consultation*

There has been no formal public consultation on the proposal relating to the amendment of the PECPR Regulations. ERMA NZ and MfE have agreed that the PECPR Regulations should be amended.

### **Hazardous Substances and New Organisms Act 1996**

Ten problems with the Hazardous Substances and New Organisms Act 1996 (HSNO) Act have been identified:

- a. Section 19 limits the ability of the Environmental Risk Management Authority (ERMA) to delegate its decision making powers to those specified in s19(2). However, ERMA frequently makes a variety of relatively minor technical or administrative decisions which arguably involve an exercise of the ‘decision-making power’. Without the ability to delegate, significant administrative costs and time delays are involved for both businesses and regulators in making these decisions.
- b. There are three issues associated with the assessment of non-genetically modified new organisms (non-GMOs):
  - Currently the HSNO Act does not distinguish between low-risk and other non-genetically modified new organisms as it does for genetically modified organisms (GMOs). As a result, the Act does not allow for rapid assessment (and delegation to “any person”) of any application to import low-risk non-GMOs into containment, or develop them in containment, whereas it does so for applications to develop or import low-risk GMOs.
  - A different situation exists for field tests in containment. Instead of allowing non-GMO field test applications to be rapidly assessed (and so delegated), these applications cannot be notified. However, non-GMO developments and imports into containment (both arguably less likely to be of significant public interest than a field-test) may be notified if ERMA, in accordance with the HSNO Act, “considers that there is likely to be significant public interest” in the application.

- Applications for conditional release (with controls) of low-risk non-GMOs are not treated consistently with applications for full release (without any controls) of low-risk non-GMOs, which may be rapidly assessed if certain statutory conditions are met. Applications for conditional release (with control) however cannot be rapidly assessed even though the concerns around the risks of such releases could be satisfactorily met by the imposition of control.
- c. An application to import or manufacture a hazardous substance 'for release' under s28 must be publicly notified under s53, unless has been rapidly assessed and approved under s28A. However, experience has shown that many hazardous substance 'release' applications that do not meet the criteria for rapid assessment are routine and attract very few public submissions. Mandatory public notification can result in delays and costs to the applicant that are disproportionate to the risks posed or the benefits of public participation.
  - d. Section 82(4) requires a test certifier to refuse to issue a test certificate where he or she considers on reasonable grounds that any matter does not comply with the relevant requirement. Therefore, where locations are not in full compliance with the relevant HSNO requirements, a location test certificate cannot be issued until a test certifier revisits the premises and reassesses the outstanding compliance matters. This may result in substantial additional expenses to businesses, including operations being suspended while the non-compliances are resolved, even when the non-compliance may be considered 'minor or technical'.
  - e. Section 82A(1) requires ERMA to keep and maintain a register of test certificates issued by test certifiers under the Act. The Act restricts access to the register to certain purposes. However, while s82A(4) expressly allows searches where necessary to prevent or lessen a serious and imminent threat to public or individual health and safety, searches cannot be readily undertaken by the Fire Service in particular (not an enforcement agency under the Act), or by any HSNO enforcement agency, for emergency and response planning purposes.
  - f. Some substances with Part V specific individual approvals may also be controlled under generic group standards. Therefore, reassessment of a Part V approval may also impact on a group standard. At present there is no mechanism to account for these affected group standards, other than conducting a separate full group standard amendment process. Under the current provisions, this would require separate reassessment and group standard consultation processes with the consequent cost, potential confusion and inconsistencies.

Furthermore, while s67A the Act allows ERMA to amend a Part V approval on its own motion if it considers that the alteration is 'minor or technical', there is no equivalent provision for group standards. Such alterations to a group standard therefore require the full amendment process which is excessive for these situations.

- g. The HSNO Act contains limited cost recovery provisions. The Ministry of Agriculture and Forestry, the enforcement agency for new organisms under the HSNO Act, can recover the costs associated with HSNO Act containment approvals under the Biosecurity Act, because the costs primarily elate to functions empowered by the Biosecurity Act. However, costs associated with controls on newer types of release approvals (outside containment) cannot be recovered under the Biosecurity Act without recovery being empowered under the HSNO Act. As a result such costs are currently recovered by MAF's baseline funding. This legislative gap does not provide any incentives to develop an efficient monitoring system for the holders of the approvals for various releases of new organisms to minimise these costs they incur.
- h. Sections 147(3) and 148(b) provide for additional matters relating to the effectiveness of the HSNO Act that ERMA must include in its Statement of Intent (SOI) and annual report. Experience has shown that this involves significant repetition of information already provided in a more comprehensive way elsewhere in the SOI or in ERMA's annual monitoring report, which is a requirement of the annual output agreement with the Minister and is publicly available. The duplication required by these sections results in unnecessary costs being incurred for no additional value, and diverts scarce resources away from other regulatory activities.
- i. Under section 82C, ERMA is currently empowered to revoke on certain grounds approved filler and handler test certificates issued by test certifiers. However the Authority cannot revoke other types of test certificates, primarily location and stationary container test certificates, or revoke certificates when criteria for which the certificate was issued are no longer met by the certificate holder.
- j. Responsibility for enforcement of the HSNO Act requirements for new organisms and hazardous substances falls onto separate agencies (MAF and primarily DoL, respectively). Considerable efforts have therefore gone into aligning enforcement by these two agencies under the HSNO and Biosecurity Acts, and under the HSNO and Health and Safety in Employment Acts, respectively. However, inconsistencies remain in the respective statutory timeframes to lay information under these pair of Acts. These inconsistencies create problems in the use of the enforcement provisions of these Acts, leading to the HSNO enforcement provisions being underused.

### *Objectives*

The overall policy objective is to ensure that the policy intent of the HSNO regulatory frameworks can be implemented and administered in an efficient manner that eliminates unnecessary compliance costs and minimises necessary compliance costs.

### *Preferred Options*

- a. It is proposed to remove the specific limitation on the delegation of “decision-making powers” in s19(1)(b), while retaining the specific delegations listed in 19(2) in their current form (along with the additional delegations proposed below). This will enable ERMA to delegate technical/administrative decision-making powers to its Chief Executive, other agency staff or other persons, while retaining significant delegations in the form expressly allowed in the Act. The variety of technical/administrative decisions is such that their delegation cannot be readily covered by either a generic statement in s19(2) or a list in a Schedule of delegations. In accordance with standard legal principles, ERMA would still retain the ultimate responsibility for any delegation. It would therefore have to take all the usual precautions when considering when, to whom, and on what conditions, a delegation should be made, and would also continue to monitor the delegations it makes.

Such amendment will provide ERMA with greater flexibility and will enable greater efficiencies for both it and industry in making decisions on these matters.

- b. It is proposed to:
- (i) amend the HSNO Act to enable the rapid assessment of applications to import into containment, develop in containment into containment, field-testing in containment, and conditionally release low-risk non-genetically modified new organisms, including the ability to delegate these rapid assessments (consistent with existing rapid assessments), and the provision or development of the appropriate criteria for rapid assessment; and
  - (ii) amend section 53 of the Act to give ERMA the discretion to publicly notify any application to field-test a non-genetically modified new organism and to not be required to notify an application to conditionally release a non-genetically modified new organism, when that application has been rapidly assessed.

This option will improve consistency in how applications are processed by enabling applications to import, develop, or field-test non-GMOs in containment to be treated consistently with each other and with applications to import or develop low-risk GMO in containment (in terms of rapid assessment of low risk organisms and the discretionary notification of other applications); and by enabling applications for conditional release of low-risk non-GMOs to be treated consistently with applications for full release of low-risk non-GMOs.

The proposal will reduce application costs and shorten application times for industry, where pre-determined conditions set in the Act or in regulations are met. In doing so, these amendments will ensure the extent of assessment and the balance between risk and cost/benefits is appropriate for different application types and match the risks posed by non-GMOs, thereby ensuring sufficient assessment while minimising any unnecessary regulation.

Some distinction will remain between non-GMO and GMO field tests. Rapid assessment is not available for any GMO field test applications and all GMO field-test applications must be publicly notified. The proposed discretionary notification of other higher risk non-GMO field-test applications (not possible at present) will be on the same statutory basis as other discretionary notifications – “likely to be significant public interest”. Enabling such discretionary notification will tighten the requirements for higher risk non-GMO field tests – in recognition of the range of possible non-GMO field-test applications, although not to the extent already required for GMO field-tests.

This option is consistent with the recent recommendation of the Primary Production Committee.

- (i) It is proposed that ERMA be given both the discretion to publicly notify those hazardous substance applications under section 28 that do not otherwise qualify for rapid assessment and the ability to delegate the applications that are not publicly notified (or rapidly assessed) to its Chief Executive. The discretion to publicly notify will be exercised on the same basis as existing provisions for certain new organism applications in s53(2), i.e., whether ERMA considers there is likely to be significant public interest.
- (ii) These proposals will simplify and improve the efficiency of the assessment process for appropriate applications to import or manufacture hazardous substances.
- (iii) It is proposed that test certifiers have the discretion to issue a location test certificate on a ‘provisional’ (or conditional) basis where they consider the non-compliance with the relevant HSNO requirements to be due to minor or technical issues. The provisional certificate would state the outstanding matters, the time within which they would need to be rectified, and the manner of evidence required to demonstrate rectification. A normal location test certificate would then be issued once the test certifier is satisfied that the matters are no longer outstanding. This proposal will allow operations to continue lawfully while action is taken to ensure full compliance.
- (iv) It is proposed that the purposes for which an approved person may search the register be extended to include emergency and response planning purposes. The Fire Service would be able to search the register for that purpose, under delegation from an approved person (in accordance with s82B), as would all HSNO enforcement agencies, including those local authorities that have enforcement roles as per s97. These provisions will enable relevant parties to fully utilise the test certificate register as an efficient means of minimising potential threats to public health and safety in a more timely and effective manner.
- (v) It is proposed to enable joint consideration of common changes to Part V hazardous substance approvals and group standard approvals established under Part 6A, including the option of adapting the group standard amendment process to the Part V reassessment process, as

appropriate to the extent of the change, and to provide an equivalent to s67A for minor or technical changes to group standards. These proposals will remove the need for separate reassessment and group standard processes and reduce the consequent cost, potential for inconsistencies, and the potential confusion for industry.

- (vi) It is proposed to amend s97A of the HSNO Act to enable the enforcement agency responsible for the enforcement of the new organisms provisions of the HSNO Act (MAF) to use the cost recovery provisions of the Biosecurity Act, including the cost options (s135), levies (s137) and regulations (s165(1)(s)) to recover costs of performing HSNO functions in regard to new organism releases. The existing Biosecurity (Costs) Regulations 2006, with any necessary amendments, could then be used for cost recovery. This will be consistent with existing recovery of costs for performing HSNO functions in regard to new organism containment approvals. This cost recovery model is more appropriate to the development of an efficient monitoring system for the holders of the approvals for various releases of new organisms, as the costs are more readily identified.
- (vii) It is proposed to remove the two additional reporting requirements in section 147(3) and 148(b). This proposal will improve the cost and administrative efficiency of the statement of intent and annual report processes by reducing duplication, without adversely impacting on their quality, and enable more efficient use of resources for other regulatory activities.
- (viii) It is proposed to:
  - (a) Extend ERMA's power to revoke test certificates to all test certificates; and
  - (b) Extend the grounds for revocation under the HSNO Act to include where the criteria for which the certificate was issued are no longer met.
- (ix) It is proposed:
  - (a) for offences involving hazardous substances, to change the current time to lay charges from 120 working days to 6 months (from when the offence became known), and allow the District Court to extend the 6 month period, consistent with the HSE Act, and
  - (b) for offences involving new organisms, to change the time to lay charges to 2 years from when "the matter of the information arose", consistent with the Biosecurity Act.

These measures will help integrate the use of the enforcement provisions of these Acts, leading to the HSNO enforcement provisions being fully used.

All the HSNO amendment proposals were developed in consultation with ERMA New Zealand and the respective agencies.

- a. This proposal is based on the practical experience of ERMA and informal comment by industry.
- b. The Primary Production Select Committee, in the report on its investigation into plant imports, recommended allowing the Authority “to delegate its power to conduct rapid assessments relating to the importation into containment of low risk [here non-GM (genetically modified) new plant] organisms”. This was based on submissions to the Committee by a range of stakeholders in the plant import industry.
- c. To the extent that low-risk criteria are stated in regulation, consultation on the criteria for low risk non-GMO imports, developments and field-tests would occur during the development of those low-risk regulations.
- d. This proposal is based on the practical experience of ERMA and informal comment by industry.
- e. This proposal is in response to concerns raised by both test certifiers and businesses.
- f. This proposal is based on the practical experience of ERMA and concerns expressed by industry as to the relationship between Part V approvals and group standards.
- g. This proposal was initiated by concerns expressed by the New Zealand Fire Services and some regional councils.
- h. The purpose of this proposal is simply to empower the use of the Biosecurity Act cost-recovery tools. This proposal is consistent with a Cabinet direction to MAF to report on how HSNO-related costs might be recovered (POL Min (04) 24/10 refers). Consultation over specific proposals for cost-recovery would be undertaken as those proposals are developed.
- i. This proposal is based on the practical experience of ERMA.
- j. This proposal is based on the practical experience of ERMA.
- k. This proposal is supported by the Department of Labour and the Ministry of Agriculture and Forestry.

## **Health Sector Revocations**

### *Status quo and problem*

The following regulations are identified as redundant:

- *Chiropractors Order 2002 and 2003*

These orders amended the First Schedule of the Chiropractors Act 1982, which lists recognised qualifications for chiropractor registration, since repealed by the Health Practitioners Competence Assurance Act 2003.

- *Medicines (Deferral of Expiry of part 7A) Order 2003*  
This order deferred by 2 years (until 2006) the expiry of Part 7A of the Medicines Act 1981 (which imposes restrictions on germ-cell genetic procedures, xenotransplantation, and cloning procedures). This Order was superseded by the Medicines (Deferral of Expiry of part 7A) Order 2006 which deferred the expiry of Part 7A of the Medicines Act to 31 December 2008.
- *Toxic Substances Act Commencement Orders 1979 and 1983*  
The Act referred to in this Order has been repealed.
- *Medical Practitioners Amendment Act Commencement Order 1996 (SR 1996/115)*  
The Act referred to in the Order has been repealed.
- *Practicing Opticians Notice 1955*  
The matter addressed in this notice is covered by the Health Practitioners Competency Assurance Act 2003
- *The Noxious Substances Notices 1958 (SR 1958/83) and 1959 (SR 1959/84)*  
These two notices identify substances as noxious substances which are inserted in the Schedule to the Noxious Substances Regulations 1954.
- *Mental Hospitals Road Traffic Bylaws 1960*  
This bylaw is outdated and relates to the Transport Act 1949 which has been repealed.
- *Porirua Hospital Traffic Bylaws 1969*  
This order is outdated and relates to the Transport Act 1962, to be repealed in 2009.

These regulations are either unused or unneeded. They do not represent best practices and may potentially create inconsistency in application of law.

#### *Objectives*

Ensure that the legislative framework is efficient, up to date and consistent.

#### *Preferred Options*

To revoke all regulations listed above in the proposed Omnibus Bill, as it is administratively more convenient to include them in the Omnibus Bill, than revoking them separately. As these are entirely redundant regulations, there are no impacts of the proposed changes.

#### *Consultation*

There has been internal Ministry of Health consultation.