



Secondary Briefing to the Incoming Minister: Hazardous substances, new organisms, and international chemical and waste agreements

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Actions sought from ministers		
<i>Name and position</i>	<i>Action sought</i>	<i>Response by</i>
To Hon Penny Simmonds Minister for the Environment		N/A

Actions for Minister's Office staff
Return the signed briefing to Ministry for the Environment (ministerials@mfe.govt.nz) — please send both hard <i>and</i> soft copies to ensure we meet our public record obligations.

Appendices and attachments
Nil

Key contacts at Ministry for the Environment			
<i>Position</i>	<i>Name</i>	<i>Cell phone</i>	<i>First contact</i>
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Minister's comments

Hazardous substances, new organisms, and international chemical and waste agreements

Key messages

1. This briefing is an initial overview of the Ministry's hazardous substances, new organisms, and contaminated land work programmes.
2. The Ministry administers the Hazardous Substances and New Organisms Act 1996 (HSNO). We are responsible for HSNO policy while the Environmental Protection Authority (EPA) is responsible for its operational delivery.
3. Our current hazardous substances work programme has been developed in response to a report from the Parliamentary Commissioner for the Environment (PCE) about the fate of chemicals in our environment. The report included eight recommendations for the Ministry and the EPA. We have developed a joint work programme with the EPA to implement the report's recommendations. We would welcome the opportunity to brief you in more detail about this joint work programme.
4. We acknowledge the intention under the Government's coalition agreements to liberalise genetic engineering laws while ensuring strong protections for human health and the environment. The work will be led by Hon Judith Collins, Minister of Science, Innovation and Technology.
5. Genetically modified organisms (GMOs) are defined as new organisms and are primarily regulated under HSNO. The regulatory settings for GMOs have not been amended for more than 22 years and there is a strong sense that, given the advances in technologies over this time, our GMO regulations risk being out of date. We note, however, that there are both benefits and risks to carefully consider. Undertaking a full and effective review of these provisions would involve a large and multi-disciplinary policy work programme.
6. We have recently completed public consultation on a set of proposals aimed at improving the regulatory settings for genetically modified organisms (GMOs), primarily focusing on laboratory and biomedical research. We would like to discuss how you would like to advance these improvements. You have an option to continue to progress this work or to incorporate it into a broader review.
7. The Contaminated Sites Remediation Fund (CSRF) provides financial assistance to owners of high-risk contaminated sites to remediate or manage their land. It has operated for 20 years and has been successful in assisting with the clean-up of some of New Zealand's most contaminated sites. We would like to discuss with you the potential to expand the scope of the fund to support contaminated and landfill sites that are vulnerable to the effects of climate change.

8. Our work programme has strong linkages to other Ministry work programmes, including the waste and resource efficiency work programme, and through new organisms' regulations, to the science, technology, and innovation agenda.
9. We would welcome the opportunity to discuss your priorities and the waste and resource efficiency work programme with you.

Recommendations

We recommend that you:

- a. **Discuss** the Ministry's hazardous substances, new organisms, and international chemical and waste work programme with officials.

Yes | No

- b. **Indicate** the areas where you would like further detailed briefings and advice.

Yes | No | Discuss

Signatures



Name: Sam Buckle
Deputy Secretary

Date
4/12/2023

Hon Penny Simmonds
**Minister for the
Environment**

Date

Hazardous substances, new organisms, and international chemical and waste agreements

Purpose

1. The purpose of this briefing is to provide you with an initial overview of the Ministry's hazardous substances, new organisms, and the international chemical and waste agreements we have responsibility for.

Overview

2. The Ministry administers the Hazardous Substances and New Organisms Act 1996 (HSNO). We are responsible for the policy in respect of the HSNO Act while the Environmental Protection Authority (EPA) is responsible for its operational delivery.
3. The HSNO Act came into force for new organisms on 29 July 1998 and for hazardous substances on 2 July 2001. A hazardous substance includes any substance that can damage the environment or harm human health and safety. Organisms include microorganisms (including bacteria and viruses), human cells (but not human beings), seeds, plants, fish, and animals. The definition of new organism includes an organism belonging to a species that was not present in New Zealand immediately before 29 July 1998 and genetically modified organisms.
4. Under HSNO, anybody wanting to introduce a hazardous substance or new organism that is not already legally present in New Zealand must apply to the Environmental Protection Authority (EPA) for approval. Hazardous substances including petrol, solvents, explosives, industrial chemicals, fireworks, agrichemicals, and some household cleaners and cosmetics all need to be approved before they can be used in New Zealand. The EPA also assesses the risks and approves the release of new organisms into New Zealand.

What we are doing

Current work programme

Hazardous substances policy

5. Our hazardous substances policy work programme in recent years has focused on improvements to HSNO that will enable the EPA to speed up the process for assessing new substances and reassessing existing substances by allowing it to make greater use of information from appropriate overseas regulators. The relevant amendments to the HSNO Act came into force in October 2022. We

acknowledge that some concerns remain about the processing times for assessments and reassessments, but we have not prioritised this policy work while the earlier reforms are still bedding in. We would be happy to discuss this with you further should you wish.

6. Our current and forward work programme has been developed in response to a report from the Parliamentary Commissioner for the Environment (PCE) about the fate of chemicals in our environment. The report highlights shortcomings in New Zealand's chemical management system and provides eight recommendations for the Ministry and the EPA. We have developed a joint work programme with the EPA to enable us to coordinate our efforts in responding to and implementing the recommendations of the report.
7. The report highlighted that of the tens of thousands of chemicals approved for use in New Zealand, only around 200 chemicals are subject to routine monitoring and testing. The PCE's overall assessment was that we have a good scientific basis for chemicals management in New Zealand, but the necessary feedback loops are not working as well as they should. Furthermore, we have many chemicals that have been in use for decades and not subject to scrutiny, during which time the knowledge on their environmental impact could well have changed.
8. The PCE's first recommendation was that all agencies dealing with chemicals, alongside Māori, develop a common framework to better manage the environmental impacts of chemical use. He recommended it should prioritise actions on contaminants that pose the highest risk based on how much a chemical is being used, the potential environmental harm it could cause, and how much of it is being detected in the environment. The Ministry has been developing such a framework, as part of this work programme, and plans to workshop it with relevant agencies in early 2024.
9. Another area where the PCE identified gaps was respect of the information gathered and used by regulatory agencies, and particularly in relation to information on the import, manufacture, and sale of chemicals. The work programme is also addressing this recommendation through the development of an EPA Notice. EPA notices are a form of delegated legislation that are administered by the EPA.
10. We would welcome the opportunity to brief you in more detail about this joint work programme.
11. The EPA and the Ministry have also recently completed consultation on an infringement regime for HSNO. The current range of enforcement tools for hazardous substances is limited to warning letters, compliance orders, or prosecution. An infringement scheme will provide an intermediate enforcement tool. It will let enforcement officers respond to lower-level offences in a way that is more efficient and proportional to the offending. We will be briefing you separately on the outcome of this consultation.

12. For your information, the advertising, sale, and use of fireworks is also controlled under HSNO. We have no work underway to amend the current controls.

New organisms policy

13. The EPA is the authority responsible for the day-to-day implementation of the HSNO Act. Its functions include the assessment and approval of applications for the import, development, field trial and release of GMOs. The Ministry of Primary Industries (MPI) is the agency responsible for compliance monitoring and enforcement of the HSNO Act with respect to new organisms (which include GMOs); its functions include the approval and regular inspection of containment facilities, ensuring that imports have the required approvals under the HSNO Act, and exports of GMOs have the required movement authorisations.
14. Other regulatory participants in the system are Medsafe and the Ministry of Health (MOH). Medsafe is the agency responsible for assessing medicines that are, or contain, GMOs for patient safety, while MOH is the policy lead for health applications of GMOs. Additionally, the assessment and approval of foods derived from GMOs is carried out by Food Standards Australia New Zealand (FSANZ), a trans-Tasman independent statutory agency.
15. The regulatory settings for GMOs have not been amended for more than 22 years, since the Report of the Royal Commission on Genetic Modification in 2001. An overarching recommendation of the Royal Commission was that “we should proceed with caution while preserving opportunities.”
16. We acknowledge the intention under the Government’s coalition agreements to liberalise genetic engineering laws while ensuring strong protections for human health and the environment. The work will be led by Hon Judith Collins, Minister of Science, Innovation and Technology.
17. There have been no new applications for field trials of GMOs for 13 years despite significant advances in technologies, and particularly the development of gene editing technologies that allow for controlled and precise editing of genes. There is a strong sense that our GMO regulations are no longer fit for purpose.
18. An expert panel of the Royal Society Te Apārangi concluded in 2019 that it is time for an overhaul of the GMO regulations and that there is an urgent need for wide discussion about these technologies within and across all New Zealand communities.
19. We agree with these views that the HSNO Act’s new organisms’ provisions are overdue for review. We would note, however, that undertaking a full and effective review of these provisions would involve a large and multi-disciplinary policy work programme.
20. While there are potential benefits from the use of these advanced genetic technologies there are also a range of potential risks, including to our trade and

unique natural environment, that will need to be carefully considered when reviewing our regulatory settings.

21. We have recently completed public consultation on a set of proposals aimed at improving the regulatory settings for genetically modified organisms (GMOs), primarily focusing on laboratory and biomedical research. We are likely to have a summary of submissions ready for your consideration shortly and would welcome the opportunity to discuss these proposals with you further.
22. Our earlier engagement with the research community had highlighted several issues with the current GMO regulatory settings that were likely to be hindering research and innovation to a degree disproportionate to the risks involved. Many say that the regulatory settings are disproportionately restrictive in respect of risk in other parts of the regime also (ie, not just in laboratory settings).
23. We note that Australia's Office of the Gene Technology Regulator (OGTR) has operated successfully for over twenty years. The OGTR is a standalone regulatory agency that operates as an independent office under the Department of Health and Aged Care. Its regulatory responsibility is solely focussed on gene technology-related matters, ranging from risk assessments, and licencing through to compliance monitoring and enforcement activities. This compares with New Zealand's multi-agency approach where GMO regulation is integrated into the EPA's broader environmental protection framework, and MPI has compliance and enforcement responsibilities.
24. We would welcome the opportunity to discuss the issues related to regulatory settings for GMOs and initially your thoughts on the options to advance the improvements to the laboratory and biomedical settings. You have a choice as to whether to continue to progress those targeted reforms or to incorporate them into a broader longer-term review.

Multilateral Environmental Agreements

25. The multilateral environmental agreement (MEA) is the main method available under international law for countries to work together on global environmental issues. There are several MEAs that fall within our responsibilities, as well as one that is currently being negotiated (a global plastics treaty). Our work programme involves working with other agencies eg, the EPA and Customs, and working with the international Secretariats that administer the various MEAs to report on New Zealand's implementation.
26. We would particularly like to discuss the **Minamata Convention on Mercury** with you. It aims to protect human health and the environment from the harmful effects of exposure to mercury. New Zealand signed the convention in 2013, but we are yet to formally ratify it. We are conscious that 128 countries have now ratified the Convention and we would like to discuss the steps needed to ratify the Convention.

27. The other agreements include: New Zealand has obligations under the **Montreal Protocol** on Substances that Deplete the Ozone Layer which is part of the **Vienna Convention** for the Protection of the Ozone Layer. The Montreal Protocol was agreed in 1987. Under the protocol, countries agreed to phase out the production and consumption of certain chemicals that deplete ozone. Phase out of these substances is required by specific deadlines. A report is tabled annually in Parliament on our progress towards these goals.
28. The **Basel Convention** aims to reduce the amount of waste produced by signatories and regulates the international traffic in hazardous wastes. New Zealand ratified this Convention in 1994. From 1 January 2021, new requirements for the trade in certain types of plastic waste under the Basel Convention came into effect globally. This means that importers and exporters need prior consent from the importing country for shipments of certain types of plastic waste.
29. The **Waigani Convention** is a regional agreement under the Basel Convention. It applies the strict controls of the Basel Convention to the South Pacific area and ensures that hazardous waste cannot travel from New Zealand or Australia to another Pacific country, or to Antarctica. New Zealand ratified this Convention on 30 November 2000.
30. The **Rotterdam Convention** relates to a prior informed consent procedure for trade in certain hazardous chemicals. New Zealand ratified this Convention on 23 September 2003. It means that New Zealand needs to ensure that the export of Rotterdam Convention chemicals receive permission in advance from a receiving country that is party to the Convention and must give permission for any proposed import into New Zealand.
31. The **Stockholm Convention** on Persistent Organic Pollutants aims to protect human health and the environment by banning the production and use of some of the most toxic chemicals. The Convention became international law in May 2004. New Zealand ratified the Convention in September 2004. There are 30 chemicals targeted by the Convention including persistent organic pollutants (POPs).
32. **Global Plastics Treaty** (under negotiation) – negotiations on a United Nations legally-binding global plastics treaty are due to conclude by the end of 2024. The Ministry, alongside the Ministry of Foreign Affairs and Trade, is participating in the negotiations and undertaking domestic engagement and policy work. Once countries agree to a treaty text, officials will undertake a National Interest Analysis and present the treaty to the House. To ratify, there could be requirements to amend legislation and implement measures such as targets for recycling, recycled content, reduction of primary plastic polymers; bans on specified plastic products or polymers; implementation of National Action Plans.

Māori rights and interests

33. Māori have an interest in hazardous substances, new organisms, and contaminated land in respect to their communities but also more broadly. Several Treaty of Waitangi settlements include specific provisions in respect of engagement on these issues.

How our work connects to the bigger picture

34. Our work programme has strong linkages to other Ministry work programmes, including the waste and resource efficiency work programme, but also, through new organisms regulations, to the science and technology agenda and innovation to address climate emissions.

Next steps

35. We would welcome the opportunity to discuss your HSNO Act priorities with you.

Hazardous substances, new organisms, and international chemical and waste agreements

Sam Buckle – Deputy Secretary

Context

- The Ministry administers the Hazardous Substances and New Organisms Act 1996 (HSNO).
- We are responsible for HSNO policy while the Environmental Protection Authority (EPA) is responsible for its operational delivery.
- Hazardous substance - any substance that can damage the environment or harm human health and safety.
- New organism - an organism belonging to a species that was not present in New Zealand immediately before 29 July 1998 and genetically modified organisms.
- Anybody wanting to introduce a hazardous substance or new organism that is not already legally present in New Zealand must apply to the EPA for approval.
- The EPA also assesses the risks and approves the release of new organisms into New Zealand

Hazardous substances policy

Work programme

- Current and forward work programme is in response to a report from the Parliamentary Commissioner for the Environment (PCE) about the fate of chemicals in our environment.
- The report highlights shortcomings in New Zealand's chemical management system and provides eight recommendations for the Ministry and the EPA.
- Have a joint work programme with the EPA to implement the recommendations of the report.
- EPA and the Ministry have also recently completed consultation on an infringement regime for HSNO. We will be briefing you separately on the outcome of this consultation.

To discuss

- We would welcome the opportunity to brief you in more detail about this joint work programme.

New organisms' policy

Regulatory settings are outdated

- The regulatory settings for GMOs have not been amended for more than 22 years. No new applications for field trials for 13 years despite significant advances in technologies, and particularly the development of gene editing technologies that allow for controlled and precise editing of genes.
- Acknowledge intention under coalition agreements to liberalise genetic engineering laws while ensuring strong protections for human health and the environment. Work will be led by Hon Judith Collins, Minister of Science, Innovation and Technology.
- Recently completed public consultation on a set of proposals aimed at improving the regulatory settings for genetically modified organisms (GMOs), primarily focusing on laboratory and biomedical research. Will have a summary of submissions to discuss these proposals with you further.
- Other agencies are involved in the regulatory system. The Ministry of Primary Industries (MPI) is responsible for compliance monitoring and enforcement. Medsafe and the Ministry of Health (MOH) are involved in health applications.

To discuss

- It would be good to hear your views about your ambitions for regulatory review and discuss the options to engage with other ministers with new organism system responsibilities.

International chemical and waste agreements

Global environmental agreements on chemicals and waste

- The multilateral environmental agreement (MEA) is the main method available under international law for countries to work together on global environmental issues.
- There are several MEAs that fall within our responsibilities, for chemicals and waste, as well as one that is currently being negotiated (a global plastics treaty).
- One of the most successful MEAs is the Montreal Protocol on Substances that Deplete the Ozone Layer, agreed in 1987. Under the protocol, countries agreed to phase out the production and consumption of certain chemicals that deplete ozone. A report is tabled annually in Parliament on our progress towards these goals.

To discuss

- We would like to discuss the Minamata Convention on Mercury with you. It aims to protect human health and the environment from the harmful effects of exposure to mercury. New Zealand signed the convention in 2013, but we are yet to formally ratify it (128 countries have ratified). We would like to discuss the steps needed to ratify the Convention.

Upcoming decisions and opportunities

Date	Priorities and decisions



Ministry for the
Environment
Manatū Mō Te Taiao