Regulatory Improvement Bill

Government Bill

Explanatory note

General policy statement

This Bill is introduced under Standing Order 264(a). Standing Order 264(a) provides that a law reform or other omnibus Bill to amend more than one Act may be introduced if the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy. It is intended that the Bill will be divided into separate Bills at the committee of the whole House stage.

This Bill contains a number of amendments to legislation with the broad policy objectives of improving the regulatory framework and reducing the compliance burden on business. These amendments were identified as part of the Quality Regulation Review (the **Review**).

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.

Individually these changes make small gains to improve the quality of specific regulatory environments. Once consolidated into the Regulatory Improvement Bill these many small gains can make a larger overall impact in removing barriers to economic growth. The

choice of the Regulatory Improvement Bill also demonstrates the Government's commitment to promptly addressing regulatory barriers to economic growth and transformation. A single Regulatory Improvement Bill is administratively more efficient to progress uncontroversial but important amendments identified by the Review.

The Bill includes the following amendments.

Companies Act 1993

The purpose of changes to the Companies Act 1993 is to reduce compliance costs and align the obligation for companies to appoint an auditor with recent changes to the Financial Reporting Act 1993.

The Financial Reporting Act 1993 was amended in 2006 so that certain companies with overseas ownership are no longer required to file audited financial statements with the Registrar of Companies. However, these companies are still required to appoint an auditor under the Companies Act 1993, and are prohibited from electing to not appoint an auditor via a unanimous resolution of the shareholders (which most other companies are able to do).

The amendment to section 196 of the Companies Act 1993 provides that these companies may, via a unanimous resolution of shareholders, elect to not appoint an auditor.

Conservation Act 1987

The purpose of the changes to the "concessions" provisions of the Conservation Act 1987 is to reduce cost and administrative burden, and to ensure efficient contestable processes can take place. The Bill—

- amends concessions provisions in section 17Z(2) of the Conservation Act 1987 to allow permits to be granted for a term not exceeding 10 years instead of the current limit of 5 years:
- amends section 17T(4) of that Act to introduce a discretion to not publicly notify the intent to issue licences up to a maximum of 10 years:
- clarifies contestable processes by requiring the Minister of Conservation to decline to consider applications outside a tender or other process initiated by the Minister under section 17ZG(2) of the Act:

- amends section 17R of that Act to provide that a person must not apply for a concession if the Minister has exercised a power under section 17ZG(2)(a) to initiate a process that relates to such a concession.

Designs Act 1953

The purpose of the Designs Act 1953 changes is to ensure the policy intent of the Act can be more efficiently and effectively achieved with minimum necessary compliance costs. This Bill aims to achieve this by allowing for the restoration of lapsed copyright in a registered design in circumstances where the lapse was as a result of an unintended failure to pay the renewal fee or to make the necessary application.

Fisheries Act 1996

The purpose of amendments to the Fisheries Act 1996 is to create a statutory process whereby commercial fishers who have inadvertently incurred deemed value debts can have the debt reviewed. To date this problem can only be resolved through time-consuming administrative procedures, the outcomes of which provide little certainty for fishers. The Bill provides for the chief executive of the Ministry of Fisheries to consider requests from commercial fishers for catch balancing relief provided that set criteria are met.

Gas Act 1992

The purpose of changes to the Gas Act 1992 is to create certainty that any regulations and rules that the Gas Industry Company Limited can recommend under Part 4A of the Gas Act 1992 will cover gas used as a feedstock. This can be achieved by amending section 3 of the Gas Act 1992.

Hazardous Substances and New Organisms (HSNO) Act 1996

The purpose of the HSNO Act 1996 changes is to ensure the policy intent of the Act can be more efficiently and effectively achieved with minimum necessary compliance costs. The Bill—

- enables delegation of technical decision making power to the chief executive of the Environmental Risk Management Authority (**ERMA**), other staff of ERMA, or other persons, while

retaining significant delegations in the form expressly allowed in the Act:

- facilitates rapid assessment of certain classes of applications in line with the Primary Production Committee report on its investigation into plant imports. This is achieved by—
  - enabling applications to import, develop, or field-test non-genetically modified organisms (**non-GMOs**) in containment to be treated consistently with each other and with applications to import or develop low-risk genetically modified organisms in containment (in terms of rapid assessment of low risk organisms and the discretionary notification of other applications); and
  - enabling applications for conditional release of low-risk non-GMOs to be treated consistently with applications for full release of low-risk non-GMOs:
- allows ERMA (a) the discretion to publicly notify hazardous substance release applications that do not otherwise qualify for rapid assessment under section 28A of the HSNO Act, and (b) the ability to delegate non-notified applications to its chief executive:
- provides flexibility to enable test certifiers to issue a conditional test certificate for hazardous substance locations, where on reasonable grounds they consider the non-compliance to be "minor and technical":
- extends the purposes for which an approved person, now including the New Zealand Fire Service, may search the register of test certificates to include emergency response planning purposes for hazardous substances:
- links reassessment and group standard amendments, including a mechanism for minor or technical amendments to group standards:
- empowers Biosecurity New Zealand to recover costs of conditional release compliance and enforcement under the Biosecurity Act 1993:
- removes duplication of reporting requirements in ERMA's statement of intent and annual report and annual monitoring report:

- extends ERMA's power to revoke test certificates, and the grounds for revocation:
- more closely aligns times to lay information for new organism and Biosecurity Act offences, and hazardous substance and Health and Safety in Employment (**HSE**) Act offences, respectively:
- reduces the complexity of the HSNO controls framework and confusion for users arising from material incorporated by reference in various documents under section 141A becoming outdating by allowing changes to the incorporated material to have legal effect on notification in the *Gazette*:
- clarifies the scope of standards that can be incorporated by reference:
- enhances enforcement in respect of hazardous substances by—
    - aligning HSE Act and HSNO Act enforcement responsibilities for aerodromes; and
    - extending the alignment of HSE and HSNO powers of entry and inspection to all agencies with enforcement responsibilities under both Acts for places of work:
- clarifies the provision with regard to incorporation of material by reference in line with common practices in other pieces of legislation by allowing reference to standards, requirements, or recommended practices of national as well as international organisations.

Ministry of Agriculture and Fisheries (Restructuring) Act 1995

The primary purpose of amendments to the Ministry of Agriculture and Fisheries (Restructuring) Act 1995 is to remove the penalty regimes applicable under that Act for non-payment of cost recovery levies as the Fisheries Act 1996 contains an adequate penalty regime. The Bill proposes the removal of the penalty fees and the ability to deduct costs of collecting levies prescribed by sections 18 and 19 respectively of the Ministry of Agriculture and Fisheries (Restructuring) Act 1995.

Reserves Act 1977

The purpose of the Reserves Act 1977 changes is to reduce cost and administrative burden attaching to certain licences issued under the Act. To achieve this the Bill amends section 74(4) of the Reserves Act 1977 to allow for 10-year licences over vested reserves for the purposes in that section.

Weights and Measures Act 1987

The purpose of changes to the Weights and Measures Act 1987 is to resolve the confusion and reduce compliance costs caused by having 2 pieces of legislation (the Weights and Measures Act 1987 and the Gas Act 1992) controlling the supply of LPG, in gaseous form, through pipes for industry consumers and regulators. The Bill proposes to remove the control of LPG in gaseous form from the Weights and Measures Act 1987.

Clause by clause analysis

Clause 1 relates to the Bill's title.

Clause 2 is the commencement clause. Most of the amendments come into force on the day after the date on which the Bill receives the Royal assent. However, most of *Part 3* (which relates to the Designs Act 1953) comes into force on a date to be appointed by the Governor-General by Order in Council. This Part (apart from the new regulation-making powers) will come into force after regulations have been made to give full effect to the changes (for example, to prescribe matters relating to the procedure to be followed in making a request for the restoration of copyright in a registered design).

Part 1
Companies Act 1993

Clause 3 provides that *Part 1* amends the Companies Act 1993.

Clause 4 amends section 196 (which relates to the appointment of auditors). Section 196(2) provides that a company need not appoint an auditor if a unanimous resolution is passed. Currently, section 196(3) prevents certain companies with overseas ownership from passing such a resolution (with the effect that those companies must appoint an auditor). The amendment narrows this exclusion in line

with recent changes to the Financial Reporting Act 1993 so that it only applies to companies that will continue to have filing obligations under that Act. Other companies with overseas ownership will now be able to pass a unanimous resolution that an auditor not be appointed.

Part 2
Conservation Act 1987

Clause 5 provides that *Part 2* amends the Conservation Act 1987.

Clause 6 amends section 17R to provide that a person must not apply for a concession if the Minister has exercised a power under section 17ZG(2)(a) to initiate a process that relates to such a concession, and the application would be inconsistent with the process. *Clause 7* amends section 17T to provide that the Minister must not consider any such application.

Clause 7 also amends section 17T so that the Minister is no longer required to give public notice of the intention to grant a licence with a term (including all renewals) not exceeding 10 years. Instead, the Minister may give public notice if he or she considers it appropriate to do so, having regard to the effects of the licence.

Clause 8 amends section 17Z to increase the term for which a permit may be granted from 5 to 10 years.

Clauses 9 and 10 are transitional provisions.

Part 3
Designs Act 1953

Clause 11 provides that *Part 3* amends the Designs Act 1953.

Clause 12 amends section 12 (which relates to the period of copyright in a registered design) to refer to *new sections 41A to 41F*. These new provisions provide for the restoration of lapsed copyright in a registered design.

Clause 13 inserts *new sections 41A to 41F* into the principal Act.

New section 41A allows the Commissioner to extend the period of copyright in a registered design that has ended by reason of a failure to make an application under section 12(2) or to pay the prescribed fee under section 12(2) (or both) if the Commissioner is satisfied that the relevant failure to comply was unintentional.

New section 41B sets out who may make a request for an order under *new section 41A*.

New section 41C requires a request to be made within the prescribed period. However, the Commissioner may extend the period within which a request may be made if the Commissioner is satisfied that there was no undue delay in making the request.

New section 41D requires the Commissioner to give the person who makes the request a reasonable opportunity to be heard if the Commissioner is not satisfied that a prima facie case has been made out for an order under *new section 41A*. The Commissioner must publish a request in the journal if the Commissioner is satisfied that a prima facie case has been made out for an order under *new section 41A*.

New section 41E allows any person to give notice to the Commissioner of opposition to an order.

New section 41F provides that an order must be made if—

- all unpaid prescribed fees are paid; and
- all other prescribed additional penalties (if any) are paid; and
- either—
  - no notice of opposition is given; or
  - the decision of the Commissioner is in favour of the person who made the request.

Clause 14 amends section 46 to provide for regulations in connection with requests under *new sections 41A to 41F*.

Clause 15 makes a consequential amendment to the Copyright Act 1994.

Part 4
Fisheries Act 1996

Clause 16 provides that *Part 4* amends the Fisheries Act 1996.

Clause 17 amends section 76 in relation to a definition and so that deemed value payments are held on trust while the chief executive decides whether to grant catch balancing relief.

Clause 18 inserts *new sections 76A and 76B* into the principal Act.

New section 76A allows a commercial fisher to apply for catch balancing relief for a specific amount of annual catch entitlement for

a stock for a fishing year. The applicant must meet certain requirements, including that—

- the applicant's reported catch exceeded the applicant's annual catch entitlement for the relevant stock and fishing year; and
- either the applicant believed on reasonable grounds that the specific amount of annual catch entitlement had been transferred to the applicant, or the specific amount would have been transferred to, or owned by, the applicant if not for a mistake made by the applicant or any other person.

The chief executive may grant the relief if certain requirements are met, including all of the requirements for applying, and that it would be unjust to refuse relief.

New section 76B provides for what happens if the chief executive decides to grant catch balancing relief. The chief executive must do certain things, including recalculating the annual deemed value for which the applicant is liable, and remitting any difference from the amount previously calculated. However, the grant of relief cannot end a fishing permit's suspension any earlier than the date relief is granted.

Part 5
Gas Act 1992

Clause 19 provides that *Part 5* amends the Gas Act 1992.

Clause 20 amends section 3 (which relates to the application of the Gas Act 1992). Currently, section 3(2)(d) provides that nothing in the Gas Act 1992 (other than sections 54(1)(n)(ii) and 55) applies to any gas used as a feedstock. The amendment clarifies that Part 4A (which relates to the governance of the gas industry) does apply to gas used as a feedstock.

Part 6
Hazardous Substances and New Organisms Act 1996

Clause 21 provides that *Part 6* amends the Hazardous Substances and New Organisms Act 1996.

Clause 22 amends section 2 to repeal a definition and change another definition.

Clause 23 amends section 19 (which relates to delegation of the functions, powers, or duties of the Environmental Risk Management Authority (**Authority**)). The Authority may now delegate any decision making power it has under the principal Act. The power may be delegated to any person, unless subsection (2) restricts who the delegate may be. Subsection (2) now includes references to the power of rapid assessment under *new sections 38BA and 42C*, the power to decide certain applications under section 28, and the newly extended power to revoke test certificates under section 82C. Under subsection (6), the delegation of a power referred to in subsection (2) must be made available for public inspection.

Clause 24 amends section 38B (which allows an application under section 34 to be treated as an application under section 38A). The amendment clarifies the effect of treating an application in this way.

Clause 25 inserts *new section 38BA* into the principal Act.

New section 38BA relates to applications under section 38A for a conditional release approval to import for release or release from containment a new organism with controls. If the new organism is not genetically modified, the Authority may rapidly assess the application and, if approved, grant a conditional release approval with controls.

Clause 26 amends section 38C (which also relates to applications under section 38A). The amendment provides that, if the application is not approved under *new section 38BA* (by rapid assessment), the Authority may approve the application under section 38C (by full assessment).

Clause 27 amends section 40 (which relates to applications for containment approval for new organisms) so that the required approval extends to field testing as intended.

Clause 28 inserts *new section 42C* into the principal Act.

New section 42C relates to applications under section 40 to import a new organism into containment, or develop or field test a new organism in containment. If the new organism is not genetically modified, the Authority may rapidly assess the application. If the Authority is satisfied that the importation, development, or field testing is low risk (in accordance with regulations made under the new section), it may approve the application and impose certain controls.

Clause 29 amends section 45 (which also relates to applications under section 40). The amendment provides that, if the application is not approved under *new section 42C* (or another rapid assessment provision), the Authority may approve the application under section 45 (by full assessment).

Clause 30 amends section 53 (which requires certain applications to be publicly notified) so that—

- the Authority now has a discretion (rather than being required) to publicly notify an application under section 28 (to import or manufacture a hazardous substance for release), if the application has not been approved by rapid assessment under section 28A:
- the requirement to publicly notify an application under section 38A (for a conditional release approval to import for release or release from containment a new organism with controls) applies only if the application has not been approved by rapid assessment under *new section 38BA* (which applies to a new organism that is not genetically modified):
- the discretion to publicly notify an application under section 40 (to import a new organism into containment, or develop or field test a new organism in containment) applies to—
    - any application in respect of a new organism (other than a genetically modified organism), but only if the application has not been approved by rapid assessment under *new section 42C*:
    - an application to import into containment or develop in containment a genetically modified organism, if the application has not been approved under section 42, 42A, or 42B.

Clause 31 amends section 59 to impose time limits in relation to rapid assessment under *new section 38BA or 42C*.

Clause 32 amends section 62 (which relates to reassessment of a substance or organism) so that a decision under *new section 38BA or 42C* is considered to be an assessment by the Authority.

Clause 33 amends section 63 (which relates to reassessment) so that subsection (2)(c) applies to the reassessment of a new organism in containment approved under any of the relevant sections.

Clause 34 inserts *new section 63B* into the principal Act.

New section 63B applies in certain situations to allow the Authority to consult on (instead of publicly notify) a proposal to issue, amend, or revoke a group standard that applies to a hazardous substance, in the same way as it consults on reassessment of the hazardous substance under section 63A.

Clause 35 amends section 82 (which relates to the issue of test certificates). The amendment allows a test certifier to issue a conditional test certificate for a hazardous substance location if he or she considers, on reasonable grounds, that the failure to meet the relevant requirements is minor or technical in nature. A conditional test certificate provides time for the relevant requirements to be met.

Clause 36 amends section 82A (which relates to the register of test certificates). The amendment requires details of conditional test certificates to be recorded on the register. The amendment also allows an approved person to search the register if necessary to plan for responses to an emergency, and includes the chief executive of the New Zealand Fire Service as an approved person.

Clause 37 amends section 82B to allow the chief executive of the New Zealand Fire Service to delegate the power to search the register of test certificates.

Clause 38 amends section 82C so that the Authority may revoke any test certificate, not just test certificates for approved fillers and approved handlers. The amendment also allows the Authority to revoke a test certificate if satisfied that its holder has not met, or continued to meet, a requirement for which the certificate was issued.

Clause 39 amends section 96C to allow the Authority to amend a group standard without complying with subsections (1) and (2), if the Authority considers that the amendment is minor in effect or corrects a minor or technical error.

Clause 40 amends section 97 to remove the responsibility for enforcing the principal Act at an aerodrome from the Director of the Civil Aviation Authority. Instead, under subsection (1)(a), the chief executive of the department that administers the Health and Safety in Employment Act 1992 is responsible for enforcing the principal Act in a place of work.

Clause 41 amends section 97A, which provides for the principal Act to be enforced in respect of new organisms by the chief executive of the department that administers the Biosecurity Act 1993. The

amendment allows the chief executive to recover the costs of that enforcement as if they were costs of administering the Biosecurity Act 1993.

Clause 42 amends section 97B, which requires an enforcement agency to enforce the principal Act in respect of hazardous substances in a place of work. The enforcement agency is the chief executive of the department that administers the Health and Safety in Employment Act 1992. The amendment extends the meaning of enforcement agency to include, in relation to a particular industry, sector, or type of work, certain agencies designated under section 28B(1) of that Act.

Clause 43 repeals section 109(2), which is being replaced by *new sections 109A and 109B*.

Clause 44 inserts *new sections 109A and 109B* into the principal Act.

New sections 109A and 109B more closely align the requirements for laying an information under the principal Act with the corresponding requirements under the Health and Safety in Employment Act 1992 (in respect of an offence that relates to a hazardous substance) and the Biosecurity Act 1993 (in respect of an offence that relates to a new organism).

Clause 45 amends section 117 to provide that it is a defence to prosecution for certain offences that, at the time of the alleged offence, the defendant held a conditional test certificate that—

- specified, as requirements that had not been met, the controls that it is alleged the defendant failed to comply with:
- had not expired.

Clause 46 amends section 141A, which provides for material to be incorporated by reference in various documents. The amendment allows the documents to incorporate certain material that is from a national organisation or is prescribed in any country or jurisdiction. It also allows changes to the incorporated material to have legal effect as part of the document by publication of a notice in the *Gazette*.

Clause 47 repeals section 147(3) to remove a statutory requirement for the Authority to accompany its statement of intent with a written statement of certain matters.

Clause 48 repeals section 148(b) to remove a statutory requirement for the Authority to include certain matters in its annual report.

Clauses 49 to 53 are transitional provisions.

Part 7
Ministry of Agriculture and Fisheries (Restructuring) Act 1995

Clause 54 provides that *Part 7* amends the Ministry of Agriculture and Fisheries (Restructuring) Act 1995.

Clauses 55 and 56 repeal sections 18 and 19 (which relate to statutory debts under enactments administered by the relevant Ministries and collection of levies under those enactments). The sections are no longer needed because more recent equivalent provisions are available to the Ministry of Agriculture and Forestry and more effective sanction provisions are available to the Ministry of Fisheries.

Clauses 57 and 58 make consequential amendments to the Fisheries Act 1996 and the Pork Industry Board Act 1997.

Clause 59 is a transitional provision.

Part 8
Reserves Act 1977

Clause 60 provides that *Part 8* amends the Reserves Act 1977.

Clause 61 amends section 74 to increase the term for which a licence may be granted from 5 to 10 years.

Clause 62 is a transitional provision.

Part 9
Weights and Measures Act 1987

Clause 63 provides that *Part 9* amends the Weights and Measures Act 1987.

Clause 64 amends section 38. Section 38 provides that nothing in the Weights and Measures Act 1987 applies to the measurement or sale of gas (other than liquefied petroleum gas (**LPG**)) supplied through pipes. The amendment clarifies that the reference to LPG is a reference to LPG that is in liquid form. Therefore, the amendment clarifies that nothing in the Weights and Measures Act 1987 applies to the measurement or sale of LPG that is in gaseous form and supplied through pipes (although the Gas Act 1992 continues to apply).

Regulatory impact statement

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 is adequate according to the adequacy criteria.

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 versus 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 the 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—

- 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:
- 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 (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 Ministry of Agriculture and Fisheries (Restructuring) Act 1995. 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 and Reserves Act 1977

Status quo and problem

The Conservation Act 1987—

(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.

The Conservation Act 1987 applies to the granting of concessions for national parks, conservation areas, reserves vested in the Crown, and reserves controlled and managed by local authorities. However, reserves vested in administering bodies under the Reserves Act 1977 are governed by separate provisions in the Reserves Act 1977. One of those provisions, section 74, enables administering bodies to issue licences for certain purposes for up to 5 years. This imposes an unnecessary cost and administrative burden on both the administering body and the licensee.

Objectives

To ensure that the policy intent of the regulatory frameworks relating to the concession provisions of the Conservation Act 1987 can be implemented and administered in a manner that eliminates unnecessary compliance costs and minimises necessary compliance costs.

Alternative options

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.

The options considered to fix the contestable process problem included changing 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 (sections 17Z(2) and 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 the Department of Conservation (**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 $1,000 plus 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 5 years. The standard fee for each process is around $1,200 plus GST plus the applicant's costs. Under other provisions of the Act, DOC is 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.

Amend the Reserves Act 1977 to allow for 10-year licences over vested reserves for the purposes in section 74(4) of the Reserves Act 1977. The amendment will reduce compliance costs as many businesses, particularly small owner-operators and farmers, will now only have to reapply for their licences every 10 years instead of every five years.

Consultation

The proposals for the Conservation Act 1987 have been discussed in some detail with a wide range of stakeholders (New Zealand Conservation Authority, Ministry of Tourism, Te Puni Kōkiri, 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 clas-

sifying applications as low-impact, and the existence of a discretion to conduct mid-term reviews of concession conditions for 10–year non-notified concessions.

The proposal for amending the Reserves Act 1977 was developed by Local Government New Zealand in conjunction with the Department of Conservation. There has been no formal public consultation on the proposal relating to the Reserves Act 1977. The Ministry of Economic Development and the Department of Internal Affairs were consulted over the Local Government New Zealand proposal and supported it.

Hazardous Substances and New Organisms Act 1996 (HSNO Act)

Status quo and problem

Thirteen problems have been identified with the HSNO Act. These are—

(a) section 19 limits the ability of the Environmental Risk Management Authority (**ERMA**) to delegate its decision making powers to those specified in section 19(2). However, ERMA frequently makes a variety of relatively minor, technical, or administrative decisions that 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; and

(b) there are 3 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; and

(c) an application to import or manufacture a hazardous substance for release under section 28 must be publicly notified under section 53, unless has been rapidly assessed and approved under section 28A. 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; and

(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-compliances may be considered "minor or technical"; and

(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 section 82A(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; and

(f) some substances with Part 5 specific individual approvals may also be controlled under generic group standards. Therefore, reassessment of a Part 5 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 section 67A of the HSNO Act allows ERMA to amend a Part 5 approval of 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; and

(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 1993, because the costs primarily relate to functions empowered by the Biosecurity Act 1993. However, costs associated with controls on newer types of release approvals (outside containment) cannot be recovered under the Biosecurity Act 1993 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; and

(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; and

(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; and

(j) responsibility for enforcement of the HSNO Act requirements for new organisms and hazardous substances falls onto separate agencies (Ministry of Agriculture and Forestry (**MAF**) and primarily Department of Labour (**DoL**), respectively). Considerable efforts have therefore gone into aligning enforcement by these 2 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; and

(k) the HSNO Act provides for incorporation by reference of standards, requirements, or recommended practices of international organisations. It allows the incorporation of standards, requirements or recommended practices of international organisations or documents or other materials that are too large or impractical to be printed as part of the regulations. The material incorporated is "fixed" in the form it was in at the time of incorporation as the Act does not provide for amendments or updates to such material; and

(l) the HSNO Act provides that only HSNO inspectors may inspect for compliance under HSNO. DoL, Maritime New Zealand, and the Civil Aviation Authority (**CAA**) enforce both the Health and Safety in Employment (**HSE**) Act 1992 and the hazardous substances part of the HSNO Act in places of work. The powers of entry and inspection are similar under the 2 Acts, but the differences are enough to create a high risk of compromising any eventual enforcement action (ie, if HSE powers are used for HSNO matters and vice versa). To avoid that risk, HSE inspectors typically make separate visits to the same workplace for HSE and then for HSNO matters; and

(m) the CAA is responsible for enforcement of the hazardous substances part of HSNO for aircraft and for aerodromes. As aerodromes are also the responsibility of DOL under the HSE Act, they face duplicate inspections regarding hazardous substances by DOL under the HSE Act and by CAA under the HSNO Act; and

(n) because of the current wording of the HSNO Act, it is difficult to refer to certain preferred standards of a "national" rather than "international" organisation. It creates unnecessary confusion as certain overseas organisations such as BSI British Standards might be considered a national organisation of the UK.

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 section 19(1)(b), while retaining the specific delegations listed in section 19(2) in their current form (along with the additional delegations proposed below). This will enable ERMA to delegate technical and 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 and administrative decisions is such that their delegation cannot be readily covered by either a generic statement in section 19(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, 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 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 GMOs 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.

(c) 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 section 53(2), ie, whether ERMA considers there is likely to be significant public interest.

These proposals will simplify and improve the efficiency of the assessment process for appropriate applications to import or manufacture hazardous substances.

(d) 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 mat-

ters, 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.

(e) 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 section 82B), as would all HSNO enforcement agencies, including those local authorities that have enforcement roles as per section 97. 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.

(f) It is proposed to enable joint consideration of common changes to Part 5 hazardous substance approvals and group standard approvals established under Part 6A, including the option of adapting the group standard amendment process to the Part 5 reassessment process, as appropriate to the extent of the change, and to provide an equivalent to section 67A 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, the potential for inconsistencies, and the potential confusion for industry.

(g) It is proposed to amend section 97A 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 1993, including the cost options (section 135), levies (section 137), and regulations (section 165(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 contain-

ment 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.

(h) It is proposed to remove the 2 additional reporting requirements in sections 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.

(i) It is proposed to—

(i) extend ERMA's power to revoke test certificates to all test certificates; and

(ii) extend the grounds for revocation under the HSNO Act to include where the criteria for which the certificate was issued are no longer met.

(j) It is proposed—

(i) 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

(ii) 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 1993.

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

(k) It is proposed to allow for amendments to or updates of material incorporated by reference to take effect on notification in the *Gazette*. Regular updating of material incorporated by reference in the Act will reduce the complexity of the HSNO controls framework and the resulting confusion for users. This should allow ERMA to reduce efforts to accommodate revisions to such material and increase its efforts to advise and assist users on actual compliance with the HSNO controls.

(l) It is proposed to provide that HSE inspectors who are also HSNO inspectors may inspect for compliance under both Acts during the same visit to a workplace. This will reduce compliance costs for business by enabling 1 visit from 1 inspector under both Acts. There will also be efficiency gains to Government by enabling 1 inspector to carry out 2 enforcement roles.

(m) It is proposed to remove the responsibility of the CAA for enforcing the HSNO Act in aerodromes, so that aerodromes become the responsibility of DOL as places of work under both the HSE and HSNO Acts (the CAA will retain responsibility for aircraft). This will provide clarity and consistency for businesses and mean fewer visits, which will reduce compliance costs for business. An estimated 160 aerodromes are affected. There will also be efficiency gains to government from combined inspection visits.

(n) It is proposed to amend section 141A of the HSNO Act to allow reference to standards, requirements or recommended practices of national (as well as international) organisations.

Consultation

All the HSNO amendment proposals were developed in consultation with ERMA and the respective agencies. The consultation in relation to each of the preferred options above is set out below.

(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. To the extent that low-risk criteria are stated in regulations, consultation on the criteria for low risk non-GMO imports, developments, and field-tests would occur during the development of those low-risk regulations.

(c) This proposal is based on practical experiences of ERMA.

(d) This proposal is in response to concerns raised by both test certifiers and businesses.

(e) This proposal is based on practical experiences of ERMA.

(f) This proposal is based on the practical experience of ERMA and concerns expressed by industry as to the relationship between Part 5 approvals and group standards.

(g) The purpose of this proposal is simply to empower the use of the Biosecurity Act 1993 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.

(h) This proposal is based on the practical experience of ERMA.

(i) This proposal is based on the practical experience of ERMA.

(j) This proposal is supported by DoL and MAF.

(k) There has been no formal consultation, but industry has frequently expressed concerns over material incorporated by reference being out of date.

(l) The Ministry for the Environment (**MfE**) consulted on the inspection proposal as part of the public consultation process for the Hazardous Substances and New Organisms (Approvals and Enforcement) Amendment Bill. Thirty submitters commented on it, 63% in favour and 37% opposed. Those in favour noted the proposal's simplification, consistency, and efficiency gains. Those opposed were concerned about the misuse of powers of entry, or preferred 1 piece of legislation or 1 enforcement body only.

(m) There has been no formal public consultation, but a working group including business representatives considered this proposal in 2005 and recommended to MfE that this transfer occur.

(n) The issue is identified based on recent experience of MfE with regulatory amendments.

Design Act 1953

Status quo and problem

If design registration renewal fees are not paid within the time prescribed under the Design Act 1953, the registration lapses and the design passes into the public domain. The Act does not provide for the lapsed registration to be restored. A design cannot be reapplied for when its registration lapses as the design will no longer be novel (novelty is a criterion for registration of a design). This can cause undue hardship where the design owner intended to pay the renewal fee, but through some error or omission the fee was not paid.

Objectives

The public policy objective is to ensure that the policy intent of the regulatory frameworks relating to design registration requirements can be implemented and administered in a manner that eliminates unnecessary compliance costs and minimises necessary compliance costs.

Preferred option

Amend the Design Act 1953 to provide that where a design registration has lapsed due to an unintentional non-payment of a renewal fee, the design registration can be restored on payment of the registration fee. The main impact will be that it will ensure that owners of registered designs have an opportunity to restore their design rights if they have lapsed through errors or oversights, which must be taken within the period prescribed in regulations. They will therefore not lose the exclusive rights to exploit a design that are granted by the registration of a design right, and will have a greater chance of recovering their investment in developing the design. Those holders of design registrations who apply to restore their registrations will incur compliance costs in making the application, which are not considered to be substantial.

Consultation

Consultation has been undertaken with the New Zealand Institute of Patent Attorneys, which is supportive.

Gas Act 1992

Status quo and problem

Feedstock gas is gas used as a raw material in a manufacturing process, such as the production of methanol. Section 3(2)(d) of the Gas Act 1992 specifies that nothing in the Gas Act applies to "any gas used as a feedstock, excluding any gas being reformed for use as a gaseous fuel". This wording was intended to exempt feedstock gas from the Act's safety provisions, as safety of feedstock gas was covered under the Health and Safety in Employment Act 1992.

Part 4A of the Gas Act was added in 2004 to provide for the effective governance of the gas industry. The Gas Industry Company Limited is the industry body that can recommend regulations and rules under Part 4A to the Minister of Energy. As section 3(2)(d) was not altered at the time, it could be interpreted as exempting all users of feedstock gas from any rules or regulations made under Part 4A. There is no evidence of any intention to exclude feedstock gas from the governance regime. Significant consequences of such an exclusion could include that it may not be possible to enforce the terms of a gas emergency management plan against industry participants using feedstock gas, which would impact upon security of gas supply and the generation of electricity. Also, some industry participants may be treated differently than others in respect of such things as open access to pipelines, consultation, and liability to pay the Gas Industry Company Limited's levy. The resulting lack of clarity could create unnecessary uncertainty for some gas industry participants.

Objectives

The objective is to create certainty that any regulations and rules that the Gas Industry Company Limited can recommend under Part 4A of the Gas Act 1992 will cover gas used as a feedstock, which, in turn, will ensure various Government objectives for the gas industry are achieved.

Preferred option

Amend the Gas Act 1992 to clarify that feedstock gas is covered by the gas governance regime in Part 4A. This would avoid any ambiguity around whether users of feedstock gas are subject to rules

and regulations made under Part 4A, while retaining sufficient flexibility to exempt feedstock gas from those rules and regulations if required. The initial policy intention of section 3(2)(d) would be unaffected from a safety perspective, because safety of feedstock gas would continue to be covered by the Health and Safety in Employment Act 1992. The Gas Industry Company Limited would benefit from certainty in regard to many of the regulations and rules that it can recommend on various arrangements, especially those related to gas emergency arrangements.

Consultation

No formal consultation with the industry has been undertaken. The Gas Industry Company Limited brought this issue to the attention of the Minister of Energy. MED officials have been working closely with the Gas Industry Company Limited on the matter. The Gas Industry Company Limited's understanding is that all gas industry participants, including those that take gas for feedstock purposes, consider themselves to be bound by any regulations or rules made under Part 4A of the Gas Act 1992. Therefore, it is expected that the likely response from the industry would be supportive of this amendment because it provides certainty across the industry.

Weights and Measures Act 1987

Status quo and problem

Liquefied Petroleum Gas (**LPG**) is supplied in 3 forms:

- sold by weight in liquid form, in pressurised LPG cylinders (eg, in large (45 kg) cylinders delivered to consumers by truck or dispensed to smaller cylinders for barbecues, etc, or in small disposable canisters); and
- sold by volume in liquid form (eg, through dispensers to motor vehicles); and
- sold by energy content (or possibly by volume) in gaseous form (eg, in low pressure LPG distribution networks—referred to as reticulated gas).

The Ministry of Consumer Affairs was approached by a gas retailer regarding proposed new arrangements for supply of LPG from cylinders through pipes to consumers, the third of the forms listed above.

It was intended that the quantity supplied would be measured by a meter set in the system and the consumer invoiced on the energy content of the LPG—the same approach as is used for reticulated natural gas.

The arrangement for the supply and metering of LPG through pipes to consumers currently falls under the jurisdiction of both the Weights and Measures Act 1987 and the Gas Act 1992. The requirements of these Acts are different and would result in restrictively tighter controls being in place for LPG gas than any other gas sold by the same means. There is no logical reason for this tighter control.

New Zealand does not currently have a type approval or initial verification capability for gas meters that would meet the requirements of the Weights and Measures Act 1987. Industry adherence to this Act for LPG meters would therefore incur substantial compliance costs.

The intention of the Weights and Measures Act 1987 was that the measurement of gas reticulated through pipes was to be excluded. The proposed new arrangement for the supply of LPG was not considered at the time this Act was written.

Having 2 pieces of legislation controlling this supply arrangement has created confusion for the industry.

Objectives

The public policy objective is to resolve the confusion and reduce compliance costs caused by having 2 pieces of legislation control the supply of LPG in gaseous form, through pipes for industry, consumers, and regulators.

Preferred option

Amend the Weights and Measures Act 1987 to remove the control of LPG in gaseous form. This realigns the Act with its original intended jurisdiction.

The main impact will be reduced compliance costs and decreased uncertainty for LPG suppliers. The proposal will reduce business compliance costs by eliminating the need for the LPG industry to comply with the requirements of 2 Acts when supplying LPG, in the gaseous form, through pipes. It also eliminates the requirements under the Weights and Measures Act 1987 for type approval and initial verification of gas meters in addition to the requirements of the Gas Act

1992. Together, this represents a substantial reduction of business compliance costs while maintaining appropriate standards and control.

The jurisdiction of the 2 Acts will be clarified for the regulatory agencies involved in their administration.

Implementation and review

The Weights and Measures Act 1987 is reviewed on an ongoing basis, as issues arise.

Consultation

The problem was identified as the result of an inquiry from an LPG supply company, which supports the proposal. The Energy Safety Service (which administers the Gas Act 1992) and the Measurement and Product Safety Service (which administers the Weights and Measures Act 1987) jointly developed the proposal. Consultation has been undertaken with the LPG Association of New Zealand, which supports the proposal. No formal public consultation has been completed because the proposed amendment is of a minor nature and will have no perceivable effect on the general public.

Companies Act 1993

Status quo and problem

In 2006 the requirement for 2 classes of companies to file audited financial statements with the Registrar of Companies was removed from the Financial Reporting Act 1993. The 2 classes of company are—

- companies that have 25% or more overseas ownership, providing they do not exceed at least 2 of the following 3 criteria: annual revenue of $20 million, total assets of $10 million, and 50 full-time equivalent employees; and
- New Zealand incorporated companies that are subsidiaries of a New Zealand incorporated company that is an immediate subsidiary of an overseas incorporated company.

The intention was to remove the requirement for these companies to have their financial statements audited. It is not clear whether this has

been achieved, as the Companies Act 1993 requires such companies to appoint an auditor. Requiring these companies to have their financial statements audited would impose an unnecessary cost, as there is no rationale to have entities' filing and auditing requirements out of alignment.

Objectives

To ensure that the policy intent of the audit and filing requirements in the Financial Reporting Act 1993 and the Companies Act 1993 can be implemented in a manner that eliminates unnecessary compliance costs.

Preferred option

Amend the Companies Act 1993 to make it clear that the 2 classes of company are not required to appoint an auditor or have their financial statements audited. The 2 classes of company will benefit from no longer being required to incur the cost of having their financial statements audited.

Consultation

A number of lawyers and accountants requested that this amendment be made and have been consulted on it.

Hon Lianne Dalziel

Regulatory Improvement Bill

Government Bill

Contents

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Regulatory Improvement Act **2008**.

2 Commencement

(1) **Part 3** (apart from **section 14**) comes into force on a date to be appointed by the Governor-General by Order in Council.

(2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

Part 1
Companies Act 1993

3 Principal Act amended

This Part amends the Companies Act 1993.

4 Appointment of auditors

(1) Section 196 is amended by repealing subsection (3) and substituting the following subsection:

"(3) Nothing in subsection (2) applies to a company—

"(a) to which section 19 of the Financial Reporting Act 1993 applies; or

"(b) that is an issuer within the meaning of section 4 of that Act."

(2) Section 196(8) is repealed.

Part 2
Conservation Act 1987

5 Principal Act amended

This Part amends the Conservation Act 1987.

6 Applications for leases, licences, etc

Section 17R is amended by adding the following subsection as **subsection (2)**:

"(2) However, a person must not apply to the Minister for a concession if—

"(a) the Minister has exercised a power under section 17ZG(2)(a) to initiate a process that relates to such a concession; and

"(b) the application would be inconsistent with the process."

7 Process for complete application

(1) Section 17T is amended by inserting the following subsection after subsection (1):

"(1A) However, the Minister must not consider an application made in breach of **section 17R(2)**."

(2) Section 17T(4) is amended by omitting "Before granting any lease or licence" and substituting "Before granting any lease, or any licence with a term (including all renewals) exceeding 10 years,".

(3) Section 17T(5) is amended by—

(a) omitting "Before granting any permit or easement" and substituting "Before granting any licence with a term (including all renewals) not exceeding 10 years, or any permit or easement,"; and

(b) omitting "the permit" and substituting "the licence, permit,".

8 Term of concession

Section 17Z(2) is amended by omitting "5" and substituting "10".

9 Transitional provision for application for licence with term not exceeding 10 years or permit

(1) This section applies to an application made under Part 3B of the principal Act, before the commencement of **this Part**, for—

(a) a licence with a term (including all renewals) not exceeding 10 years; or

(b) a permit.

(2) The application must be dealt with—

(a) as if **this Part** had not been enacted if, before the commencement of **this Part**, the Minister publicly notified his or her intention to grant the licence or permit:

(b) in accordance with the principal Act as amended by **this Part** in all other cases.

10 Transitional provision for application for concession if process initiated

(1) This section applies if, before the commencement of **this Part**, the Minister exercised a power under section 17ZG(2)(a) to initiate a process that relates to any concession.

(2) The principal Act, as amended by **this Part**, applies to the process, and any application for a concession to which the process relates, which is made or proposed to be made on or after the commencement of **this Part**, must be dealt with accordingly.

Part 3
Designs Act 1953

11 Principal Act amended

This Part amends the Designs Act 1953.

12 Period of copyright

Section 12 is amended by adding the following subsection:

"(3) Subsection (2) is subject to **sections 41A to 41F** (which provide for the restoration of lapsed copyright in a registered design)."

13 New heading and sections 41A to 41F inserted

The following heading and sections are inserted after section 41:

"*Restoration of lapsed copyright in registered design*

"**41A Restoration of lapsed copyright in registered design**

"(1) This section applies if the period of copyright in a registered design has ended by reason of a failure to make an application under section 12(2) or to pay the prescribed fee under section 12(2) (or both).

"(2) The Commissioner must, on a request made in the prescribed manner and in accordance with **sections 41B to 41F**, by order extend the period of copyright in a registered design for a second or third period of 5 years as provided for in section 12(2) if the Commissioner is satisfied that the relevant failure to comply with section 12(2) was unintentional.

"(3) A request for an order under this section must contain a statement that fully sets out the circumstances that led to the relevant failure to comply with section 12(2).

"(4) The Commissioner may require the person who makes the request to provide any further evidence that the Commissioner thinks fit.

"(5) An appeal to the Court may be made from any decision of the Commissioner under this section or **sections 41B to 41F**.

"**41B Persons who may make request for restoration of copyright**

"(1) A request for an order under **section 41A** may be made by the person who is the registered proprietor or, if that person is deceased, by that person's personal representative.

"(2) If there are 2 or more registered proprietors, the request for an order under **section 41A** may, with the leave of the Commissioner, be made by 1 or more of them without joining the others.

"41C When request for restoration of copyright may be made

"(1) A request for an order under **section 41A** may only be made within the prescribed period.

"(2) However, the Commissioner may extend the period within which a request may be made if the Commissioner is satisfied that there was no undue delay in making the request.

"(3) The person who makes the request must, for the purposes of **subsection (2)**, provide the Commissioner with a statement that fully sets out the circumstances that caused the delay and the reasons why the delay is not undue.

"(4) The Commissioner may require that person to provide any further evidence that the Commissioner thinks fit.

"41D Commissioner's consideration of whether prima facie case has been made out for restoration

"(1) The Commissioner must, after considering a request made in accordance with **sections 41A to 41C**, give the person who made the request a reasonable opportunity to be heard if the Commissioner is not satisfied that a prima facie case has been made out for an order under **section 41A**.

"(2) The Commissioner must publish a request made in accordance with **sections 41A to 41C** in the journal if the Commissioner is satisfied that a prima facie case has been made out for an order under **section 41A**.

"41E Notice of opposition and reasonable opportunity to be heard

"(1) Any person may, within the prescribed period, give notice to the Commissioner of opposition to an order being made under **section 41A** on either or both of the following grounds:

"(a) that the relevant failure to comply with section 12(2) was not unintentional:

"(b) if the period within which a request for an order under **section 41A** may be made is extended under **section 41C**, that the delay in making the request was undue.

"(2) The Commissioner must notify the person who made the request if a person has given notice under **subsection (1)**.

"(3) The Commissioner must give the person who made the request and the opponent a reasonable opportunity to be heard before the Commissioner decides the case.

"41F Order to be made on payment of unpaid fees

"(1) If the Commissioner has published a request under **section 41D**, he or she must make an order under **section 41A** in accordance with the request after the prescribed period for giving notice of opposition if—

"(a) all unpaid prescribed fees are paid; and

"(b) all other prescribed additional penalties (if any) are paid; and

"(c) either—

"(i) no notice of opposition is given within the prescribed period; or

"(ii) the decision of the Commissioner is in favour of the person who made the request (in the case of a notice of opposition having been given within the prescribed period).

"(2) An order for the extension of the period of copyright in a registered design—

"(a) may be made subject to a condition requiring the registration of any matter if the provisions of this Act concerning entries in the register of designs have not been complied with; and

"(b) must contain, or be subject to, the provisions that are prescribed for the protection or compensation of persons who availed themselves, or took definite steps by way of contract or otherwise to avail themselves, of the design between the date when the period of copyright ended and the date on which the request is published under **section 41D**; and

"(c) may be made subject to any other conditions that the Commissioner thinks fit.

"(3) If any condition of an order under this section is not complied with by the registered proprietor, the Commissioner may revoke the order and give any directions that are consequential on the revocation that the Commissioner thinks fit.

"(4) The Commissioner must, before the Commissioner makes a decision under **subsection (3)**, give the registered proprietor a reasonable opportunity to be heard."

14 Regulations

Section 46(2) is amended by inserting the following paragraph after paragraph (c):

"(ca) for regulating the procedure to be followed in connection with a request to the Commissioner under **sections 41A to 41F** (including providing when and how requests must be made, the period for giving notice of opposition, penalties payable under **section 41F**, and the matters referred to in **section 41F(2)(b)**):".

15 Consequential amendment to Copyright Act 1994

(1) This section amends the Copyright Act 1994.

(2) Section 74 is amended by adding the following subsection:

"(4) If the registered protection in New Zealand of a design that has ceased to have effect is restored by an order made under **section 41A** of the Designs Act 1953, nothing done under subsection (1) in the period beginning with the day on which the protection ceased to have effect and ending with the close of the day on which the order is made constitutes an infringement of copyright in any literary or artistic work or copy of the work forming part of the design."

Part 4
Fisheries Act 1996

16 Principal Act amended

This Part amends the Fisheries Act 1996.

17 Catch to be counted against annual catch entitlement

(1) Section 76(1) is amended by inserting "**76A**," after "In this section and sections".

(2) Section 76(6) is amended by inserting the following paragraph after paragraph (a):

"(ab) 5 working days after the chief executive gives written notice to a commercial fisher under **section 76A(6)** of

the chief executive's decision to grant or refuse catch balancing relief; or".

18 New sections 76A and 76B inserted

The following sections are inserted after section 76:

"**76A Application for catch balancing relief**

"(1) In this section and **section 76B**,—

"**close of registration**, in relation to a stock, means the close of the 15th day after the end of the fishing year for the stock

"**original owner** means the person who, at the close of registration, owned the specific amount of annual catch entitlement for which the chief executive grants catch balancing relief under this section

"**specific amount** means the specific amount of annual catch entitlement for which the chief executive grants relief.

"(2) A commercial fisher may, at any time before the close of the 15th day of the third month after the end of a fishing year, apply to the chief executive for catch balancing relief for any amount of annual catch entitlement for a stock for the fishing year.

"(3) The chief executive may grant an applicant catch balancing relief for any specific amount of annual catch entitlement that is equal to or less than the amount for which the applicant applied.

"(4) The chief executive may grant catch balancing relief for a specific amount of annual catch entitlement only if he or she is satisfied that—

"(a) the applicant has received written notice from the chief executive that, at the close of registration, the applicant's reported catch for the stock for the fishing year exceeded the applicant's annual catch entitlement for the stock for the fishing year by at least the specific amount; and

"(b) at the close of registration, the original owner owned at least the specific amount of annual catch entitlement; and

"(c) either—

"(i) the applicant believed on reasonable grounds that at least the specific amount of annual catch entitlement had been transferred to the applicant before the close of registration; or

"(ii) at least the specific amount of annual catch entitlement would have been transferred to, or owned by, the applicant before the close of registration, if not for a mistake made by the applicant or any other person; and

"(d) at the close of registration, the original owner's annual catch entitlement for the stock for the fishing year exceeded the original owner's reported catch for the stock for the fishing year by at least the specific amount; and

"(e) the original owner has consented in writing to the applicant being treated as the owner of at least the specific amount of annual catch entitlement on and from the close of registration; and

"(f) it would be unjust to refuse to grant the applicant catch balancing relief for the specific amount of annual catch entitlement; and

"(g) if an amount of additional annual catch entitlement has been allocated to the original owner under section 67A, but would not have been allocated if the original owner had not owned the specific amount of annual catch entitlement on the close of registration, adequate arrangements have been made to transfer that amount of additional annual catch entitlement to the Crown.

"(5) In considering whether to grant an applicant catch balancing relief, the chief executive may request and consider any information that he or she thinks relevant, such as—

"(a) information about transfers of annual catch entitlement to or from the applicant or the original owner, or about other transactions involving the applicant or the original owner:

"(b) information about the applicant's usual arrangements for acquiring annual catch entitlement to balance the applicant's reported catch:

"(c) any submissions by the applicant that it would be unjust to refuse catch balancing relief.

"(6) The chief executive must give written notice, to the applicant and the original owner, of the chief executive's decision to grant or refuse catch balancing relief.

"(7) Any deemed value amount demanded by the chief executive that may be affected by an application for catch balancing relief remains payable despite the application having been made.

"76B Effect of granting catch balancing relief

"(1) If the chief executive decides to grant an applicant catch balancing relief for a specific amount of annual catch entitlement under **section 76A**, the chief executive must—

"(a) recalculate the annual deemed value amount (if any) for which the applicant is liable, by performing the comparison and calculations referred to in section 76(1B) and (2A) as if the applicant had owned the specific amount of annual catch entitlement at the close of registration; and

"(b) include in the written notice given to the applicant under **section 76A(6)** notice of the annual deemed value amount, recalculated under **paragraph (a)**, for which the applicant is liable; and

"(c) remit to the applicant the difference between the annual deemed value amount previously calculated and the amount recalculated under **paragraph (a)**.

"(2) For the purpose of section 79(1),—

"(a) any reduction in the annual deemed value amount owed by an applicant that results from the recalculation under **subsection (1)(a)** takes effect on the date that written notice of the recalculated amount is given under **subsection (1)(b)**; and

"(b) if a fishing permit ceases to be suspended because of the recalculation, the suspension ends no earlier than the date the written notice of the recalculated amount is given."

Part 5
Gas Act 1992

19 Principal Act amended

This Part amends the Gas Act 1992.

20 Application

Section 3 is amended by adding the following subsection:

"(3) Despite subsection (2)(d), that paragraph does not apply in relation to Part 4A and, accordingly, Part 4A applies to any gas used as a feedstock."

Part 6
Hazardous Substances and New Organisms Act 1996

21 Principal Act amended

This Part amends the Hazardous Substances and New Organisms Act 1996.

22 Interpretation

(1) The definition of **aerodrome** in section 2(1) is repealed.

(2) Section 2(1) is amended by repealing the definition of **conditional release approval** and substituting the following definition:

"**conditional release approval** means an approval under section **38BA** or 38C".

23 Delegation by Authority

(1) Section 19(1) is amended by inserting "whether or not that person is a member of the Authority," after "delegate to any person,".

(2) Section 19(1) is amended by repealing paragraph (b) and substituting the following paragraph:

"(b) any power that may be delegated under subsection (2); and".

(3) Section 19(2) is amended by inserting "in writing" after "The Authority may delegate".

(4) Section 19(2)(a) is amended by omitting "sections 35, 42, 42A, or 42B" and substituting "sections 35, **38BA**, 42, 42A, 42B, or **42C**".

(5) Section 19(2) is amended by inserting the following paragraph after paragraph (ca):

"(cb) the power to decide any application under section 28, if it is not publicly notified under section 53(2), to its chief executive:".

(6) Section 19(2)(ha) is amended by omitting "for an approved filler or an approved handler".

(7) Section 19(3) is amended by omitting "subsection (2) of".

24 Application under section 34 may be treated as application under section 38A

Section 38B is amended by adding ", and sections 38A, **38BA**, 38C, and 53(1)(ab) apply accordingly".

25 New section 38BA inserted

The following section is inserted after section 38B:

"**38BA Rapid assessment of risk for importation or release of new organisms with controls**

"(1) If the Authority receives an application under section 38A in respect of a new organism (other than a genetically modified organism), the Authority may make a rapid assessment of the adverse effects of importing the organism for release or releasing the organism from containment.

"(2) The Authority may approve the application and grant a conditional release approval with controls if the Authority is satisfied that—

"(a) the organism is not an unwanted organism as defined in the Biosecurity Act 1993; and

"(b) after the controls are imposed, the organism will comply with section 35(2)(b)."

26 Determination of applications to import or release new organisms with controls

Section 38C(1) is amended by omitting "The Authority may approve an application made under section 38A and grant a

conditional release approval with controls, but only if the Authority determines that,—" and substituting "If an application made under section 38A is not approved under **section 38BA**, the Authority may approve the application and grant a conditional release approval with controls if the Authority determines that,—".

27 Application for containment approval for new organisms

Section 40 is amended by repealing subsection (1) and substituting the following subsection:

"(1) Every person intending to import any new organism into containment, or develop or field test any new organism in containment, must apply to the Authority for approval to do so before importing, developing, or field testing the organism."

28 New section 42C inserted

The following section is inserted after section 42B:

"**42C Rapid assessment of adverse effects for development in containment, etc, of certain new organisms**

"(1) If the Authority receives an application under section 40 in respect of a new organism (other than a genetically modified organism), the Authority may make a rapid assessment of the adverse effects of importing the organism into containment, or of developing or field testing the organism in containment.

"(2) If the Authority is satisfied that the importation, development, or field testing is low-risk, in accordance with regulations made under **subsection (3)**, the Authority may approve the application and impose controls providing for each of the matters specified in Part 2 of Schedule 3 as the Authority thinks fit.

"(3) The Governor-General may, by Order in Council, make regulations specifying the circumstances in which there is a low risk of adverse effects from—

"(a) importing a new organism (other than a genetically modified organism) into containment; or

"(b) developing or field testing a new organism (other than a genetically modified organism) in containment."

29 Determination of application

Section 45(1) is amended by omitting "section 42 or section 42A or section 42B" and substituting "section 42, 42A, 42B, or **42C**".

30 Applications required to be publicly notified

(1) Section 53(1) is amended by repealing paragraph (a).

(2) Section 53(1)(ab) is amended by adding ", if the application has not been approved under **section 38BA**".

(3) Section 53 is amended by repealing subsection (2) and substituting the following subsection:

"(2) The Authority may, if it considers that there is likely to be significant public interest, publicly notify—

"(a) an application under section 40 in respect of a new organism (other than a genetically modified organism), if the application has not been approved under **section 42C**; or

"(b) an application under section 40 to import into containment or develop in containment a genetically modified organism, if the application has not been approved under section 42, 42A, or 42B; or

"(c) an application under section 28, if the application has not been approved under section 28A."

31 Time limits and waivers

Section 59(1)(b) is amended by omitting "38I, 42, 42A, or 42B" and substituting "**38BA**, 38I, 42, 42A, 42B, and **42C**".

32 Grounds for reassessment of a substance or organism

Section 62(4) is amended by—

(a) inserting "**38BA**," after "32,"; and

(b) inserting "**42C**," after "42B,".

33 Reassessment

Section 63(2)(c) is amended by omitting "section 45" and substituting "section 42, 42A, 42B, **42C**, or 45".

34 New section 63B inserted

The following section is inserted after section 63A:

"**63B Proposal for group standard may be consulted on in same way as reassessment**

"(1) This section applies if the Authority—

"(a) decides to reassess a hazardous substance under section 63A without publicly notifying the reassessment in accordance with section 53; and

"(b) proposes to issue, amend, or revoke (under section 96B) a group standard that applies to the hazardous substance, on similar grounds to the grounds for deciding to reassess the substance.

"(2) The Authority may consult on the following matters, in accordance with section 63A(5), as if they were part of the reassessment:

"(a) the proposal to issue, amend, or revoke the group standard: and

"(b) its assessment of the matters referred to in section 96C(1)(h)(ii).

"(3) If the Authority consults in accordance with **subsection (2)**, then the public notice requirements of sections 96C(1)(h) and (2) and 96D do not apply."

35 Issue of test certificates by test certifiers

(1) Section 82(4) is amended by inserting ", unless a conditional test certificate is issued under **subsection (4A)**," after "he or she shall".

(2) Section 82 is amended by inserting the following subsections after subsection (4):

"(4A) A test certifier may issue a conditional test certificate for a hazardous substance location if he or she considers, on reasonable grounds, that the failure to meet the relevant requirements for the hazardous substance location is minor and technical in nature.

"(4B) A conditional test certificate must—

"(a) specify the requirements that have not been met; and

"(b) specify the date by which the requirements must be met; and

"(c) state that the certificate expires on the close of the day specified under **paragraph (b)** if the requirements have not been met by then.

"(4C) A conditional test certificate expires on the close of the day specified under **subsection (4B)(b)** if the requirements specified under **subsection (4B)(a)** have not been met by then.

"(4D) In all other respects, a conditional test certificate is a test certificate for the purposes of this Act.

"(4E) In **subsection (4A)**, **hazardous substance location** has the same meaning as in regulation 3 of the Hazardous Substances (Classes 1 to 5 Controls) Regulations 2001."

36 Register of test certificates

(1) Section 82A(3) is amended by adding "; and" and also by adding the following paragraph:

"(g) in the case of a conditional test certificate issued for a hazardous substance location,—

"(i) details of the hazardous substance location; and

"(ii) the relevant requirements for the hazardous substance location that have not been met; and

"(iii) the date by which the requirements must be met."

(2) Section 82A(4)(c) is amended by adding "; or" and also by adding the following subparagraph:

"(v) is necessary to plan for responses to any emergency (as defined in section 46)."

(3) Section 82A(5) is amended by inserting the following paragraph after paragraph (b):

"(ba) the chief executive of the New Zealand Fire Service:".

37 Delegation by approved person

Section 82B(1) is amended by omitting "section 82A(5)(a) and (b)" and substituting "section 82A(5)(a), (b), or (ba)".

38 Revocation of test certificates for approved fillers and approved handlers

(1) The heading to section 82C is amended by omitting "**for approved fillers and approved handlers**".

(2) Section 82C(1) is amended by omitting "issued to an approved filler or an approved handler (as the case may be)".

(3) Section 82C(1) is amended by adding "; or" and also by adding the following paragraph:

"(d) has not met, or continued to meet, any requirement for which the test certificate was issued."

(4) Section 82C(9) is repealed.

39 When group standards may be issued or amended

Section 96C is amended by adding the following subsection:

"(3) However, the Authority may, on its own initiative, amend a group standard under section 96B without complying with subsections (1) and (2) of this section, if it considers that the amendment is minor in effect or corrects a minor or technical error."

40 Enforcement of Act

Section 97(1)(e) is amended by omitting "in, on, or at any aircraft or aerodrome" and substituting "in or on any aircraft".

41 Enforcement of Act in respect of new organisms

Section 97A is amended by inserting the following subsection after subsection (4):

"(4A) The enforcement agency's costs of enforcing this Act in respect of new organisms are to be treated as if they were costs of administering the Biosecurity Act 1993, and—

"(a) may be recovered in accordance with section 135 of that Act; and

"(b) may be funded by a levy imposed under section 137 of that Act; and

"(c) may be prescribed, in regulations made under section 165(1)(s) of that Act, as costs that are recoverable."

42 Enforcement of Act in respect of hazardous substances in place of work

Section 97B(3) is amended by repealing the definition of **enforcement agency** and substituting the following definition:

"**enforcement agency**—

"(a) means the chief executive of the department responsible for the administration of the Health and Safety in Employment Act 1992; and

"(b) includes, in relation to a particular industry, sector, or type of work, the chief executive of an agency designated under section 28B(1) of that Act to administer that Act for the particular industry, sector, or type of work".

43 Offences

Section 109(2) is repealed.

44 New sections 109A and 109B inserted

The following sections are inserted after section 109:

"**109A Time for laying information**

"(1) An information in respect of an offence against this Act that relates to a hazardous substance may be laid by any person at any time within 6 months after the earlier of—

"(a) the date when the incident, situation, or set of circumstances to which the offence relates first became known to the person; or

"(b) the date when the incident, situation, or set of circumstances to which the offence relates should reasonably have become known to the person.

"(2) An information in respect of an offence against this Act that relates to a new organism may be laid by any person at any time within 2 years after the time when the matter of the information arose.

"(3) **Subsection (1)** is subject to **section 109B**.

"**109B Extension of time for laying information**

"(1) The District Court may, on application by any person, extend the time for the person to lay an information under **section 109A(1)**.

"(2) The application must be made within the 6-month period that applies to the person under **section 109A(1)**.

"(3) The court must not grant an extension unless it is satisfied that—

"(a) the person reasonably requires longer than the 6-month period to decide whether to lay an information; and

"(b) the reason for requiring the longer period is that the investigation of the events and issues surrounding the alleged offence is complex or time-consuming; and

"(c) it is in the public interest in the circumstances that an information is able to be laid after the 6-month period expires; and

"(d) laying the information after the 6-month period expires will not unfairly prejudice the proposed defendant in defending the charge.

"(4) The court must give the following persons an opportunity to be heard:

"(a) the person seeking the extension:

"(b) the proposed defendant."

45 Strict liability and defences

Section 117 is amended by adding the following subsection:

"(4) It is a defence to prosecution for any offence specified in section 109(1)(e)(ii) or (iii) that, at the time of the alleged offence, the defendant was the holder of a conditional test certificate issued under **section 82(4A)** that—

"(a) specified, as requirements that had not been met, the controls that it is alleged that the defendant failed to comply with; and

"(b) had not expired under **section 82(4C)**."

46 Incorporation of material by reference

(1) Section 141A(1) is amended by repealing paragraph (a) and substituting the following paragraphs:

"(a) standards, requirements, or recommended practices of national or international organisations:

"(ab) standards, requirements, or recommended practices prescribed in any country or jurisdiction:".

(2) Section 141A is amended by repealing subsection (3) and substituting the following subsections:

"(3) Material has legal effect as part of the regulations, group standard, notice of transfer, or code of practice in which the material is incorporated by reference.

"(3A) An amendment to, or replacement of, material has legal effect as part of the regulations, group standard, or code of practice in which the material is incorporated by reference only if a notice is published in the *Gazette*—

"(a) stating that the amendment or replacement has legal effect as part of the relevant regulations, group standard, or code of practice; and

"(b) specifying the date of the notice, or a later date, as the date on which the amendment or replacement has legal effect.

"(3B) If material ceases to have effect, it ceases to have legal effect as part of the regulations, group standard, or code of practice in which the material is incorporated by reference only if a notice is published in the *Gazette*—

"(a) stating that the material ceases to have legal effect as part of the relevant regulations, group standard, or code of practice; and

"(b) specifying the date of the notice, or a later date, as the date on which the material ceases to have legal effect.

"(3C) An amendment to, or replacement of, material does not have legal effect as part of a notice of transfer in which the material is incorporated by reference.

"(3D) Material that ceases to have effect does not cease to have legal effect as part of a notice of transfer in which the material is incorporated by reference.

"(3E) The following persons may publish a notice in the *Gazette* stating or specifying the matters referred to in **subsection (3A) or (3B)**:

"(a) the Minister, in the case of material incorporated in regulations:

"(b) the Authority, in the case of material incorporated in a group standard or code of practice."

(3) Section 141A(4) is amended by—

(a) inserting "by reference" after "If any material is incorporated"; and

(b) omitting "by reference under subsection (1)".

(4) Section 141A is amended by adding the following subsection:

"(5) If material is incorporated by reference, with legal effect, under this section, the material forms part of the relevant regulations, group standard, notice of transfer, or code of practice for all purposes, but—

"(a) the Acts and Regulations Publication Act 1989 does not apply to the material; and

"(b) section 4 of the Regulations (Disallowance) Act 1989 does not apply to the material."

47 Additional matters to be included in statement of intent

Section 147(3) is repealed.

48 Additional reporting requirements

Section 148(b) is repealed.

49 Transitional provision for applications

(1) This section applies to an application under section 28, 34, 38A, or 40 of the principal Act received by the Authority before the commencement of **this Part**.

(2) The application must be dealt with as if **this Part** had not been enacted.

50 Transitional provision for reassessment of hazardous substance

(1) This section applies if, before the commencement of **this Part**,—

(a) the Authority decided to reassess a hazardous substance under section 63A of the principal Act; and

(b) the Authority proposed to issue, amend, or revoke, under section 96B of the principal Act, a group standard that applied to the hazardous substance, on similar grounds to the grounds for deciding to reassess the substance.

(2) The decision and proposal must be dealt with as if **this Part** had not been enacted.

51 Transitional provision for aerodromes

Anything done, before the commencement of **this Part**, in enforcing the principal Act in relation to an aerodrome may be completed as if **this Part** had not been enacted.

52 Transitional provision for cost recovery

(1) This section applies to any costs of enforcing the principal Act in respect of a new organism incurred by the enforcement agency (as defined by section 97A of the principal Act).

(2) The costs—

(a) must be dealt with as if **this Part** had not been enacted, if they were incurred before the commencement of **this Part**; or

(b) may be recovered in accordance with the principal Act as amended by **this Part**, if they were incurred on or after the commencement of **this Part**, regardless of when the enforcement to which the costs relate occurred.

53 Transitional provision for laying information

(1) **Subsection (2)** applies to an information in respect of an offence against the principal Act that relates to a hazardous substance.

(2) The information must be laid—

(a) as if **this Part** had not been enacted, if the incident, situation, or set of circumstances to which the offence relates occurred before the commencement of **this Part**; or

(b) in accordance with the principal Act as amended by **this Part** in all other cases.

(3) **Subsection (4)** applies to an information in respect of an offence against the principal Act that relates to a new organism.

(4) The information must be laid—

(a) as if **this Part** had not been enacted, if the matter of the information arose before the commencement of **this Part**; or

(b) in accordance with the principal Act as amended by **this Part** in all other cases.

Part 7
Ministry of Agriculture and Fisheries (Restructuring) Act 1995

54 Principal Act amended

This Part amends the Ministry of Agriculture and Fisheries (Restructuring) Act 1995.

55 Section 18 repealed

Section 18 is repealed.

56 Section 19 repealed

Section 19 is repealed.

57 Consequential amendments to Fisheries Act 1996

(1) This section amends the Fisheries Act 1996.

(2) Section 268(1) is amended by repealing paragraph (a) and substituting the following paragraph:

"(a) the person is liable to pay a levy imposed under section 264; and".

(3) Section 268(1)(b) is amended by omitting "or additional amount".

(4) Section 268(1) is amended by repealing paragraph (c) and substituting the following paragraph:

"(c) payment of the outstanding levy has not been waived under section 267(2)."

(5) Section 268(3)(a) is amended by omitting "(including an additional amount payable under section 18 of the Ministry of Agriculture and Fisheries (Restructuring) Act 1995)".

(6) Section 269(1) is amended by repealing paragraph (a) and substituting the following paragraph:

"(a) the person is liable to pay a levy imposed under section 264; and".

(7) Section 269(1)(b) is amended by omitting "or additional amount".

(8) Section 269(1) is amended by repealing paragraph (c) and substituting the following paragraph:

"(c) payment of the outstanding levy has not been waived under section 267(2)."

(9) Section 269(6)(a) is amended by omitting "(including any additional amount payable under section 18 of the Ministry of Agriculture and Fisheries (Restructuring) Act 1995)".

58 Consequential amendment to Pork Industry Board Act 1997

(1) This section amends the Pork Industry Board Act 1997.

(2) Section 37 is amended by repealing subsection (6) and substituting the following subsection:

"(6) All levy money received by the Director-General must be accounted for in full to the Board, subject to section 17(2) and (3) of the Ministries of Agriculture and Forestry (Restructuring) Act 1997."

59 Transitional provision

Any amount that is payable under section 18 of the principal Act immediately before the commencement of **this Part** remains payable as if that section had not been repealed.

Part 8
Reserves Act 1977

60 Principal Act amended

This Part amends the Reserves Act 1977.

61 Licences to occupy reserves temporarily

Section 74(4) is amended by omitting "5" and substituting "10".

62 Transitional provision for application for licence

(1) This section applies to an application made before the commencement of **this Part** for a licence under section 74 of the principal Act.

(2) The application must be dealt with—

(a) as if **this Part** had not been enacted if, before the commencement of **this Part**, public notice of the proposed

licence was given under section 74(3) of the principal Act:

(b) in accordance with the principal Act as amended by **this Part** in all other cases.

Part 9
Weights and Measures Act 1987

63 Principal Act amended

This Part amends the Weights and Measures Act 1987.

64 Act not to apply to water, electricity, or gas

Section 38(c) is amended by inserting "that is in a liquid form" after "liquefied petroleum gas".

Wellington, New Zealand:
Published under the authority of the New Zealand Government—2008