

ENVIRONMENTAL RISK MANAGEMENT AUTHORITY
NGĀ KAIWHAKATŪPATO WHAKARARU TĀIAO



Briefing for Incoming Minister

October 2005

1. INTRODUCTION

This paper provides a brief introduction to the Environmental Risk Management Authority (ERMA New Zealand) and the Hazardous Substances and New Organisms Act 1996 (HSNO). Section 1 describes the organisation and the legislation. Section 2 sets out the main issues we are focussing on in the 2005 - 2006 year. Section 3 identifies three major issues that will require attention in the coming months. Also attached for your information is ERMA New Zealand's Statement of Intent for 2005 – 2006.

1.1 What we do

ERMA New Zealand is the body set up to regulate the introduction and use of hazardous substances and new organisms. It deals with a wide range of substances including explosives, poisons, insecticides, and herbicides as well other hazardous substances such as gas and petrol. ERMA New Zealand also decides on the on the importation and use of plants, animals, and other new organisms including genetically modified organisms.

ERMA New Zealand forms part of a web of agencies which make up Hazardous Substance and New Organism regulation and compliance. The relationships between those agencies are crucial in making the HSNO Act work well. In particular, ERMA New Zealand works closely with the **Ministry of Agriculture and Forestry (MAF)** and **Department of Labour (DoL)** who are the two major compliance and enforcement agencies. **Ministry for the Environment (MfE)** provides you with policy advice on all HSNO issues.

ERMA New Zealand is funded partly by the collection of fees and partly by the Crown through the Non-Departmental Output Class "Hazardous Substances and New Organisms Assessment and Management" in Vote: Environment. Crown funding for the current year stands at \$11.7 million (plus GST).

1.2 Who we are and how we are organised

ERMA New Zealand comprises three formal elements: the Authority, Ngā Kaihautū Tikanga Taiao and the Agency, and is supported by an Ethics Advisory Panel.

- **Authority** – eight members appointed by you under the HSNO Act. The Authority is responsible for exercising the statutory functions set out in the legislation. Members of the Authority also comprise the governing body of the Agency (see below). Brief biographies of the Authority Members are included in the Statement of Intent.
- **Ngā Kaihautū Tikanga Taiao** – (up to) eight members appointed by the Authority to act as its Māori Advisory Committee. Ngā Kaihautū is responsible for assisting the Authority to ensure that Māori interests and concerns are fully incorporated in the Authority's decision-making.

- *Agency* – the corporate body established to support the Authority, under the leadership of the Chief Executive, a position with specific statutory powers and functions. The Agency has a staff of around 100.
- *Ethics Advisory Panel* – a non statutory body established by the Authority to assist it in meeting its obligations to consider ethical and spiritual matters in its decision-making. There are three members of the Ethics Advisory Panel.

2 STRATEGIC DIRECTION AND ISSUES

2.1 Strategic direction

The strategic direction for ERMA New Zealand is determined by the statutory functions provided in the HSNO Act and by the desired outcomes the Government has set for the state sector. These are detailed in the Statement of Intent.

2.2 Strategic issues for the current year

Overall

In 2005 - 2006 ERMA New Zealand is focussing on:

- discharging our statutory decision-making responsibilities for hazardous substances and new organisms;
- carrying out our broader functions under the HSNO Act, such as monitoring the overall effectiveness of the legislation and raising public awareness on major HSNO Act issues; and
- strengthening relationships with central and local government, industry and community groups.

The regulatory regime for HSNO is relatively new and in some cases, complicated; hence ERMA New Zealand is consistently working to improve general understanding of the regime, to assist users to comply with its requirements, as well as to improve our efficiency and to reduce costs.

Hazardous substances

While they generally have a low public profile, hazardous substances issues dominate our work programme.

New Zealand has large numbers of hazardous substances which are used in many locations and for a wide variety of purposes. While there are many benefits associated with the use of hazardous substances, this use also creates a complex set of risks requiring active management. The HSNO Act has reformed the law relating to hazardous substances, bringing the management of the risks into an integrated framework.

The HSNO Act requires that we complete the **programme of transfer of existing hazardous substances** (from previous Acts to the HSNO Act) by 1 July 2006. There are approximately 100,000 substances to be transferred. We are intending to bundle many of the substances into groups with similar characteristics and risks rather than face the logistical difficulties of transferring each individually. These bundles are known as Group Standards. The Group Standard pathway will only be possible with the enactment of the HSNO (Approvals and Enforcement) Amendment Bill now in Parliament (see 3.1 below for more detail).

The development of the new **compliance and enforcement regime** is a major focus. The Authority is placing particular emphasis on assisting industry (including SMEs) and other users to understand and comply with the HSNO Act requirements. The outcome of the **current compliance and enforcement funding review** will be of pivotal importance as this activity moves up a gear in the 2006 - 2007 year. Part of the outcome of this review will be a requirement to consider the implications for the Authority of a wider range of responsibilities in these areas (see 3.2 below for more detail).

We continue to work alongside other agencies in implementing the hazardous substances **risk reduction strategy**. As part of this more proactive approach to our responsibilities, we will be co-hosting the meeting of the OECD Pesticide Risk Reduction Steering Group in Wellington in November 2005. We will be extending you an invitation to open this conference.

The most significant application expected to be received in 2005 - 2006 is the reassessment of the **vertebrate poison 1080**. This application is likely to be the most controversial and high profile consideration we have undertaken and may prove the most significant test yet of the overall decision-making process.

New organisms

Some applications for new organisms, particularly those involving genetically modified organisms (GMO's), generate considerable public debate. It is useful to note that most of the applications that ERMA New Zealand receives for GMO's are for laboratory work, which is usually aimed at developing new treatments for disease. The remainder involve outdoor development and field trials.

No application has yet been received for GMO release into the environment and it seems unlikely that any full or conditional release GMO application will be submitted in 2005 - 2006. We will nonetheless continue with **preparatory work** so that we are in a position to consider any such application.

We continue to work with the Ministries for the Environment (MfE) and Agriculture and Forestry (MAF) to propose a way forward to resolve the tension between the provisions of the Biosecurity Act 1993 and the HSNO Act that deal with **inadvertent arrivals of new organisms** at New Zealand's border (see 3.3 below for more detail).

A particular focus of our engagement with industry at present is helping innovative **plants industries** to handle the HSNO Act.

There are indications of significantly **increased numbers of full or conditional release applications for biological control organisms** in the coming year.

Strengthening Māori participation and understanding

We are continuing to strengthen Māori engagement in HSNO Act processes through a range of initiatives covering awareness, capability development, relationship development and networking.

Improving public awareness and enhancing the credibility of the HSNO Act regime

We are putting an emphasis on clear, open communication and strong engagement with all stakeholders, focussing on earning the public's trust so as to achieve a high level of acceptance of our decisions.

We are putting further effort into **streamlining our decision-making processes** to avoid creating unnecessary barriers to innovation. This involves being more selective as to the amount of process required for different types of applications as well as streamlining our processes, improving our efficiency, and reducing application fees.

3. CURRENT ISSUES FOR MINISTERIAL ATTENTION

3.1 Enactment of the Hazardous Substances (Approvals and Enforcement) Amendment Bill 2005

In 2003 Cabinet adopted the *Strategy for Improving the Workability of Hazardous Substances Provisions of the Hazardous Substances and New Organisms Act* (known as the Hazardous Substances Strategy). A principal component element of this was the necessary legislative amendment to the HSNO Act. One amendment has already been enacted in 2004.

A key element to completing the Strategy is the enactment of a second amendment in the form of the Hazardous Substances (Approvals and Enforcement) Amendment Bill (colloquially known as the Macropatch amendment). This Bill is currently before the House awaiting its second reading, having been referred back by the Education and Science Select Committee in June 2005.

The Macropatch amendment will enable the transfer of the approximately 100,000 existing hazardous substances in New Zealand via the new Group Standards approvals mechanism. Given the detailed technical work involved and the need for public consultation, a significant lead-in period is required following enactment of the Bill for transfer to be achieved.

Unfortunately, the legislation was not enacted before the previous Parliament was dissolved, which means that:

1. **an extension to the transitional provisions will be required** (a further legislative amendment, possibly through a Supplementary Order Paper at the 2nd reading of the reported back Bill), and
2. **completion of the work will spill over into the 2006 - 2007**, year whereas transfer funding currently ends at the end of this (2005 - 2006) financial year.

3.2 Compliance and enforcement regime for hazardous substances

ERMA New Zealand is involved with MfE, DoL and other agencies in the Hazardous Substances Compliance and Enforcement Funding Review.

The review is looking at three primary areas:

- redefining institutional arrangements for enforcement,
- improving the co-ordination and monitoring of compliance activity, and
- identifying longer term funding requirements.

Effective compliance is critical to managing the risks from hazardous substances. The proposals envisage a widening of the responsibilities for ERMA New Zealand in co-ordinating and monitoring the activities of all the agencies involved.

A three year programme of interim funding provided through Vote: Environment in 2003 has been used to contract local authorities and other bodies to assist DoL with enforcement and compliance activities. That funding ceases in July 2006 by which time other arrangements (or an extension of the existing arrangement) will need to be in place. **It is important that decisions are taken on on-going responsibility and funding for these activities in time for the 2006 - 2007 budget to be finalised.**

3.3 Biosecurity Act – HSNO Act interface

Since 1998 a number of incidents have occurred involving the adventitious presence of new organisms in or on imported goods. These issues have been complicated by the overlap between the Biosecurity Act and the HSNO Act.

The interface between the Acts needs to be redefined to make both pieces of legislation work together in a more practical way. It seems clear that legislative action will be required.

An officials group comprising ERMA New Zealand, MAF and MfE have reached a collective view on the most appropriate solution to this problem.

In essence, officials consider that the **HSNO Act is best suited to manage the deliberate import, development or release of new organisms** into New Zealand. The **Biosecurity Act is best suited to manage the risks of organisms (including new organisms) that may be unintentionally introduced or otherwise become established** in New Zealand. Clarifying the situation is likely to require legislative change. The particular issue of inadvertent GMO presence (e.g. in corn seed) will need to be looked at.