OFFICE OF THE MINISTER
FOR REGULATORY REFORM

The Chair
CABINET ECONOMIC GROWTH AND INFRASTRUCTURE COMMITTEE

REGULATORY REVIEW PROGRAMME: IMMEDIATE REMOVAL OF INEFFICIENT AND SUPERFLUOUS REGULATION

PROPOSAL

1 This paper seeks agreement to proposed issues and a process for immediate regulatory reform to remove superfluous and inefficient regulation and for immediate discrete reviews of specific legislative provisions.

2 Poorly designed, outdated and superfluous regulation imposes unnecessary costs on business, restricts innovation and productivity, and ultimately constrains economic growth. The Government's regulatory reform programme will identify and remove inefficient and superfluous regulation in two ways:

a a programme of higher level microeconomic reforms and full regulatory reviews of regimes (discussed in the companion paper entitled: "Regulatory Review Programme: Reviews of Major Regulatory Regimes for 2009 and 2010"); and

b solutions for discrete regulatory issues.

3 This paper sets out a three pronged approach for addressing the second issue – solutions for discrete regulatory issues – that involves:

- legislative fixes that can be included in an annual Omnibus Regulatory Improvement Bill;
- changes to statutory regulations on an as-needed basis; and
- reversal or amendment of previous Cabinet decisions yet to be actioned.

4 The specific proposals for reform set out in this paper involve areas of regulation where immediate reform or review can be undertaken, and should be undertaken, as a matter of priority in the regulatory reform programme. They are the first tranche of actions in what will be an ongoing process of identifying and progressing regulatory improvements for business. The proposals discussed in this paper include areas for immediate legislative change, as well as areas where a broader regulatory review is underway but certain aspects of that work can be "fast-tracked." The proposals identify areas where existing work is ongoing. Specific proposals are to:

- Progress the Regulatory Improvement Bill (refer to Annex One for detail of changes).
- Remove duplication in regulations on raising capital.
- Simplify the dimension and exemption requirements under the Over Dimension Vehicles Rule.
- Repeal the Energy Resource Levy on coal.
- Clarify the requirements for fencing swimming and spa pools.
- Clarify the drinking water standards, and undertake a review of their implementation.
- Clarify Medical Practitioners registration procedures and undertake a review of the rules.
- Review the Credit Contracts and Consumer Finance Act 2003.
- Review the Securities Act prospectus requirements for managed funds and superannuation schemes.
- Review pharmacy ownership restrictions and controls on access to medicines.
- Review shop trading hours (excluding liquor issues).
- Revisit the Vehicle Fuel Economy Standard (VFES).

5 To progress those issues for which regulatory change is recommended, I recommend that relevant departments be invited to report to joint Ministers by 9 April 2009. As part of this report back, departments will be asked to identify an appropriate legislative vehicle to progress their respective reforms, where appropriate. In addition, I recommend that an annual (or lesser frequency as necessary) Omnibus Regulatory Reform Bill be established to provide an efficient and effective vehicle for making timely changes to regulation, and to give effect to the objectives of the Government's regulatory reform programme.

BACKGROUND

6 As a part of the government's Post-Election Action Plan, one of the First Actions on the Economy is to begin a regulatory review programme to identify and remove inefficient and superfluous regulation. The regulatory review programme will progress on two levels:

a a programme of higher level microeconomic reforms and full regulatory reviews of regimes; and

b solutions for discrete regulatory issues.

7 This paper addresses issues in the second level of the regulatory review programme (i.e. solutions for discrete regulatory issues). The first level of the regulatory review programme is the subject of a companion paper prepared by the Minister of Finance entitled "Regulatory Review Programme: Reviews of Major Regulatory Regimes for 2009 and 2010".

8 As the Prime Minister noted in his 4 February 2009 speech announcing the Small Business Relief Package, I have been tasked with "…finding and cutting additional red tape that is holding back business development, reducing investment and depriving New Zealanders of jobs." In achieving this, I intend to address the second level of the regulatory review programme in three key ways:

i Legislative fixes that can be included in an annual (or lesser frequency as necessary) Omnibus Regulatory Improvement Bill (or other suitable legislative vehicle for more significant changes). I expect to bring two to three papers before Cabinet each year identifying issues to be advanced by such omnibus amendments.

ii Changes to statutory regulations, which can be progressed on an as-needed basis as reforms are identified.

iii Reversal or amendment of previous Cabinet decisions which have not yet been actioned. Again, these can proceed on an as-needed basis.

9 The proposals set out in this paper represent the 'first tranche' of solutions to discrete regulatory issues and will result in immediate improvements to the regulatory environment for business. They are the "quick wins" that can be advanced before the full Regulatory Review Programme begins. In addition to these proposals, I intend to report back to Cabinet on a regular basis with further proposals for removing inefficient and superfluous regulation and enhancing business development and investment opportunities.

10 In addition to the work outlined in this paper and the companion paper being progressed as part of the regulatory review programme, existing work programmes addressing other areas of regulatory reform will be ongoing. A number of Departments have identified regulation for which they have responsibility that can be improved. These departments will continue to work on regulatory reform proposals outside of the regulatory review programme.

COMMENT

Collation of issues

11 I directed officials from the Treasury and MED to provide me with a list of immediate regulatory reform possibilities to help raise productivity and help the economy adjust to the international economic crisis.

12 Officials have drawn on issues raised during the Quality Regulation Review, their business networks and knowledge of regulatory hotspots to collate the list.

13 External parties (the public and stakeholders) have also contributed areas for reform. By far the most comment from external parties was on problems with the Building Act and Resource Management and Planning issues. These areas will be the subject of higher level microeconomic reforms and full regulatory reviews of regimes discussed in the paper Regulatory Review Programme: Reviews of Major Regulatory Regimes for 2009 and 2010, so they are not addressed in this paper.

14 It has become apparent that, as well as discrete regulatory issues that are able to be addressed by immediate amendment, there are a number of regulatory provisions that could usefully be the subject of immediate, but broader, regulatory reviews. The issues identified for action in this paper are generally split into these two categories, albeit some issues involve both immediate reforms and reviews of the legislation.

15 From the list of issues collated I have selected a number of issues that should be progressed as a matter of priority, either as amendments to regulation or as discrete reviews.

16 Many of these issues have previously been identified as being pressure points for businesses, particularly SMEs, where immediate practical intervention may improve the business environment.

Issues for immediate regulatory amendment

17 Amendments to legislation and regulations to advance the following issues should be able to be progressed within a twelve-month timeframe, and are all relatively uncontroversial. Some changes in departmental priority or work programmes may be required to ensure the issues can be progressed quickly. Departments will be directed to report back on progressing these issues.

Regulatory Improvement Bill (MED)

Issue / proposal

18 Progress the Regulatory Improvement Bill. The amendments in the Regulatory Improvement Bill are outlined in annex one.

Rationale

19 Changes in the Bill address regulatory duplications, gaps, administrative errors and inconsistencies between different pieces of legislation. These proposals were identified by Government departments during the course of the Quality Regulation Review completed in 2007.

20 The Bill provides a vehicle to progress these issues in an efficient and effective manner so that these small fixes do not fall off the legislative agenda.

21 Such a vehicle could be an important component of the ongoing regulatory reform process, and the potential for a recurrent Regulatory Reform Omnibus Bill is discussed further at paragraph 134.

Impact

22 Addressing these issues will remove unnecessary compliance costs and uncertainty for business.

Risks and Departmental views

23 The Bill was introduced on 9 September 2008 and provides a fast-tracking vehicle to progress proposed amendments to legislation with the objective of improving the regulatory framework and reducing the compliance burden on business.

24 The Bill can be easily progressed. This Bill currently has a requested enactment date of October 2009 with the report back from select committee in August 2009.

Duplication in regulations on raising capital (MED)

Issue / proposal

25 Accelerate evaluation of Capital Markets Development Taskforce proposals.

Rationale

26 In November 2008, the CMDT identified several 'easy wins' to help firms raise capital more easily. These relate to prospectus content, exceptions and NZX listing rules.

Impact

27 The proposed changes will allow firms to raise capital more easily, reducing the impacts of the financial crisis. The changes should be possible while still protecting investors.

Risks and Departmental views

28 MED started urgent work on evaluating and developing these proposals before Christmas and a bill goes before the House in February. The Ministry recommends continuing to advance this process as quickly as possible.

Over Dimension Vehicles (NZTA / Ministry of Transport)

Issue / proposal

29 Amend the dimension and mass rule to simplify the dimension and exemption requirements under the rule.

Rationale

30 The Land Transport Rule: Vehicle Dimensions and Mass 2002 restricts the hours during which certain over dimension vehicles (ODVs) are allowed on roads. In particular, certain ODVs cannot travel on roads:

- between 23 December and 3 January inclusive;
- on a national holiday, or after 1600 hours on the day preceding a national public holiday;
- in any province on its provincial anniversary holiday, or after 1600 hours on the day preceding that anniversary holiday.

31 The restricted travel times do not apply to an ODV that doesn't project outside the lane in which the vehicle is travelling, and has been certified as meeting the road space requirements of a maximum size standard vehicle ("swept path").

32 This requires testing, at the operator's cost, of each ODV to determine whether it meets the swept path requirements.

33 Testing has shown that:

- Most ODVs in this category meet the swept path requirements.
- That certain vehicle dimensions equate to a certain swept path.

34 As a result of this testing it is appropriate that an amendment to the current Rule be progressed. It is proposed that the relevant dimensions be put in the Rule and all ODVs (i.e. not just agricultural use ODVs, e.g. cranes etc) within those dimensions will be able to operate without these travel restrictions and the need to seek specific exemptions.

Impact

35 The amendment will:

- Remove a restriction which impedes economic activity during some peak agricultural activity periods.
- Remove an unnecessary cost on operators of ODVs (agricultural vehicles, cranes etc).

36 As a part of the Rule making process there is some scope for consultation to identify any potential negative impacts.

Risks and Departmental views

37 It is anticipated that the amendment will be included as an Omnibus Amendment in the current 08/09 NZTA's Rules Programme. There is a risk however, that if other related changes are required, a stand alone Amendment

Rule may be required which may mean the Rule will not be in place until mid 2010 rather than late 2009.

Energy Resource Levy on coal (MED)

Issue / proposal

38 Confirm the decision to repeal the Energy Resource Levy on coal.

Rationale

39 The Energy Resource Levy (ERL) on coal is intended to maintain price relativities to oil and gas and to achieve climate change objectives. It provides the Crown with approximately $8m p.a. in revenue. Cabinet agreed in 2005 [EDC Min (05) 15/8 refers] that the ERL on coal is superfluous and that it should be removed as its original purposes are now being properly addressed. A Cabinet paper was sent to the Minister of Energy in early August 2008 seeking confirmation of this decision. This paper was not put before Cabinet prior to parliament being dissolved, nor was it agreed how the ERL should be removed.

Impact

40 This will remove an unnecessary and duplicative cost on coal users. There will be a fiscal cost of approximately $8m per annum.

Risks and Departmental views

41 This proposal is relatively straightforward, albeit a legislative vehicle for the reform will need to be found.

Fencing of swimming and spa pools (Department of Building and Housing)

Issue / proposal

42 Clarify fencing requirements for swimming and spa pools under the Fencing of Swimming Pools Act 1987.

Rationale

43 The Fencing of Swimming Pools Act 1987 is intended to promote the safety of young children around swimming pools and spas. Statistics clearly show that while numbers of swimming pools have increased since 1987, drownings have continued to fall.

44 However, ambiguity in the Act has lead to inconsistent interpretation and application between territorial authorities (TAs).

45 The guidelines in NZ Standard 8500:2006 *Safety barriers and fences around swimming pools, spas and hot tubs* clarify the Fencing of Swimming Pools Act 1987, which does not always provide clear enough guidance on pool fencing.

However, the Standard is not referred to in the Act so compliance with the Standard is not necessarily considered compliance with the Act.

46 In addition, there are polarized views on the effectiveness of the Act.

47 The Act is currently being reviewed. Presently the Department of Building and Housing (DBH) is analyzing submissions following consultation.

48 DBH's view is that the Act should be amended in accordance with submissions received, and to allow reference to NZS8500 as a compliance document in the Building Code.

49 Amendments are likely to include the following:

- clarify definition of a 'swimming pool';
- clarify definition of the 'immediate pool area';
- clarify status of boundary fencing.

Impact

50 Clarifying the pool fencing requirements and allowing compliance with NZ Standard 8500:2006 will make the requirements more accessible and understandable, reducing costs for TAs and pool owners.

51 A more consistent approach by TAs may mean that pool owners in some areas where TAs have been lax in their application of the Act may face increased costs (though others living in areas where TAs have been overly strict may enjoy cost reductions).

Risks and Departmental views

52 I consider that those amendments which reduce compliance costs by simplifying and clarifying fencing requirements have merit, but I have concerns about the compliance costs involved with the pool fencing rules. DBH will report back on progressing the clarifying amendments.

Issues for discrete regulatory amendment combined with later broader review

53 These areas merit review to ensure that undue costs are not imposed. In the interim, a number of amendments to improve the operation of the regulation have been identified, and should be progressed. There is no need to wait for broader reviews to progress these changes, as any broader reviews will not impact on these changes.

Drinking Water Standards (Ministry of Health)

Issue / proposal

54 Review implementation of drinking water standards, and make discrete regulatory amendments to the Health Act 1956 to remove unnecessarily onerous and prescriptive provisions relating to drinking water.

Rationale

55 The Health Act 1956 was amended by the Health (Drinking Water) Amendment Act 2007, with the amendments entering into force on 1 July 2008. It requires (among other things) suppliers to take all practicable steps to comply with the Drinking-Water Standards for New Zealand. The actual date that suppliers need to comply varies according to the size of the supplier. Larger suppliers (serving 10,000 or more people) need to comply first, on 1 July 2009.

56 In September 2008, the Minister of Health issued Drinking-Water Standards for New Zealand 2005 (Revised 2008) to supersede the Drinking-Water Standards for New Zealand 2005. These changes made the standards more workable and compliance easier.

57 Health officials have completed work to assist suppliers assess affordability, and will be shortly briefing the Minister of Health, prior to making the advice publicly available. This is because the Act provides for the cost of measures needed to comply with the standards, as well as the supplier's ability to pay those costs, to be included as grounds for a particular measure to be considered ' not practicable'. This is intended to reduce the burden of compliance for suppliers.

58 As Health officials develop guidance on compliance with the Act, some provisions are being identified that are felt to be unnecessarily onerous, prescriptive, and create unnecessary compliance costs for industry, local government and central government. Some provisions may also contain errors or ambiguity (for example a requirement to consult for three years on changes to drinking water standards).

59 These discrete regulatory issues can be addressed outside of any wider review of the standards.

Impact

60 The amendments will reduce costs for those who need to comply with the Drinking Water Standards by clarifying requirements under the Standards and removing unnecessary requirements.

Risks and Departmental views

61 Ministry of Health officials recommend that a number of remedial changes to the Health (Drinking Water) Amendment Act 2007 and the Health Act 1956 (as amended by the Health (Drinking Water) Amendment Act 2007) be included in

the Regulatory Improvement Bill, to improve the effectiveness and efficiency of the drinking water legislative regime.

62 In addition, Health officials recommend a separate report back to joint Ministers (including the Ministers of Health, Infrastructure, Finance and Regulatory Reform) on the broader issues with the drinking water legislative framework including the possibility of deferral of compliance with the Drinking Water Standards for New Zealand (as provided for in section 69C of the Health Act 1956) or a return to a voluntary compliance.

63 DIA advises that the implementation of new drinking water standards is a particularly contentious issue with local government. Local government considers that compliance costs will run into the hundreds of millions of dollars over the next decade and will be a significant driver of forecast rate increases in forthcoming council long-term council community plans. Local government wants a more fundamental review of the costs and benefits of complying with the new standards, especially for small communities.

64 I consider it is important that these concerns are fully explored in the Ministry of Health's report back.

Registration of overseas trained Health Practitioners (Ministry of Health)

Issue / proposal

65 Make clarifying amendments to the Health Practitioners Competence Assurance Act 2003 regarding the process for registration for overseas trained practitioners.

Rationale

66 The Health Practitioners Competence Assurance Act 2003 ("HPCAA") provides the framework for regulation of health practitioners. It involves a balance between statutory regulation for the purpose of public protection and professional self regulation. Decisions around scopes of practice, qualifications and clinical issues are left to the regulatory authorities who comprise primarily registered health practitioners. The registration of overseas doctors is therefore not specifically regulated under the HPCAA, so there is no direct way of affecting registration of overseas doctors via changes to regulation. There has recently been an extensive operational review of HPCAA. The policy aspects of the HPCAA were not covered by the recent review because the Act is too recent for such a review to be of great value. Another review, including policy, is recommended to take place in 2012.

67 By clarifying the intent of some provisions regulatory authorities could be encouraged to revisit their current practices, especially where they relate to the recognition of overseas qualifications/experience. This should lead to an easing of workforce constraints.

Clarification around the use of Section 21 to prescribe individual scopes of practice

68 The HPCAA is designed to be flexible so that it is possible to respond to workforce needs as they arise without requiring changes to the law especially when there is a need for a new scope of practice or a different way of working. However, concern has been expressed that:

- Some authorities define scopes of practice too narrowly and by doing so limit workforce flexibility.
- Some authorities are unnecessarily risk averse when accrediting overseas trained practitioners.

69 Section 21 of the Act gives Authorities the power to authorise scopes of practice for individual practitioners. However, it is unclear whether the qualification requirements for health practitioners under section 12 should be fully satisfied prior to invoking section 21. As a result, some Authorities continue to require practitioners to satisfy Section 12 prior to restrictions being allowed.

70 Clarification of Section 21 would be useful to assist Authorities to define individual scopes of practice for practitioners who may not meet the requirements of Section 12. This would enable Authorities to define restricted scopes of practice for individual overseas trained practitioners who do not fully meet the qualification requirements under section 12.

Use of Ministerial powers to audit

71 Section 124 of the Act provides the Minister with the power to audit authorities. Section 125 of the Act requires Authorities to respond to any concerns highlighted by the audit. These provisions could be used to investigate and influence practices around the registration of overseas trained practitioners.

72 The Ministry of Health should report back to joint Ministers on the scope for using these audit powers to bring about changes in the practice of Authorities.

Time taken to process applications

73 Concern has been raised by some practitioners about the time taken to process applications. It is noted that as some assessments are held at designated times, processing times can vary considerably. Whilst assessments are a necessary part of registration, the processing times need to improve to reduce delays in practitioner registration. Authorities could be required to undertake initial assessments within a specified time period and where assessments require examinations and or further interviews; these should ideally be conducted and completed within an extended but specified time period. The intent would be to complete the full application/registration process in a timely manner.

74 Authorities advise that there is a waitlist for most examinations which adds to the time delay. Given that the processing of these applications is based on a

cost recovery basis, Authorities could increase the number of examinations. Currently some examinations are only held twice per annum.

Impact

75 The discrete reforms will clarify the power of Authorities to prescribe scopes of practice, and speed up application processing, which should allow faster action to address practitioner shortages.

Risks and Departmental views

76 A constraint on increasing examination frequency may be the availability of suitable assessors.

77 I note that Occupational Regulation more generally is proposed to be reviewed as part of the first level of regulatory reviews (discussed in the paper Regulatory Review Programme: Reviews of Major Regulatory Regimes for 2009 and 2010) and that the regulation of health practitioners may be reviewed.

78 The proposed amendments should be progressed now. Any wider policy review should be undertaken, as scheduled, in 2012 when more evidence of concerns may be available.

Issues subject to existing review

79 These areas are subject to existing reviews. As long as these reviews address the issues raised, and are carried out with an acknowledgement of compliance cost issues, I consider that no immediate regulatory reform is necessary in these areas.

Sale of Liquor - streamlining licensing (Ministry of Justice)

Issue / proposal

80 Continue to progress liquor licensing issues within the Law Commission's review of liquor licensing laws.

Rationale

81 There have been concerns at the costs imposed by the liquor licensing process on businesses in the hospitality sector.

82 Stakeholders have requested:

- That Premises and Manager licensing requirements be simplified.
- Faster progress on changes agreed to by the last government to exempt low-risk wineries from:
  - the obligation to renew their off-licence every three years – they would be granted a "perpetual licence" instead; and

- the requirement to have the manager who supervises the wine sales complete the prescribed training course.

Impact

83 It is considered that reform of the legislation regarding liquor licensing could remove a significant concern and cost on businesses in the hospitality sector.

84 The winemakers proposal arose out of the Quality Regulation Review, following concerns from winemakers about the compliance costs associated with the liquor licensing process. The proposal was designed to reduce compliance costs for winemakers selling their own wine pursuant to an off-licence (i.e. for consumption off the premises). It would not apply to wineries that sell wine pursuant to an on-licence for consumption in an on-site café or restaurant.

Risks and Departmental views

85 The Ministry of Justice advises that compliance costs associated with liquor licensing must be viewed in the context of the significant costs associated with the misuse of alcohol. Misuse of alcohol is associated with criminal offending and health and social problems. It leads to significant costs in the key areas of government expenditure: justice, welfare and health. A 2002 study estimated that the social cost of alcohol-related harm included costs of $760 million for the public health sector, crime-related costs of $280 million, social welfare costs of $232 million, other government spending costs related to alcohol harm of $383 million and lost productivity of $1.353 billion (all amounts expressed in 2008 dollars).

86 The Ministry of Justice advises that the winemakers exemption proposal would affect less than 4% of liquor licensees. According to 2007 figures, New Zealand has 543 wineries, and not all of them will hold an off-licence – some may have an on-licence, and some may not be licensed at all.

87 Liquor licensing is being dealt with in the context of a much broader Law Commission review of the regulatory framework for the sale and supply of liquor. The Law Commission's terms of reference specifically require it to look at how the licensing system should be structured and to ensure that it does not impose unnecessary or disproportionate compliance costs.

88 The Commission expects to release an issues paper for consultation in late 2009 and prepare draft legislation reforming the current regulatory system in 2010. To address concerns about liquor licensing separately from the Law Commission's review would result in duplication of work and would prevent these issues being considered in the wider context of concerns about the cost and harm associated with the misuse of alcohol. It also runs the risk of having changes made now reversed after the Law Commission has reported back, and adding to, rather than reducing, compliance costs for businesses.

89 I consider that rationalisation of the liquor licensing process, including in respect of winemakers, is best addressed through the Law Commission review of the regulatory framework for the sale and supply of liquor.

90 As the previous Government agreed to progress changes to liquor licensing rules for low-risk wineries there may need to be an announcement that the changes will not be progressed outside of the Law Commission's review of liquor licensing. I will discuss this issue with the Minister of Justice and Minister Responsible for the Law Commission.

Credit Contracts and Consumer Finance Act 2003 review (Ministry of Consumer Affairs and Ministry of Justice)

Issue / proposal

91 Review the operation of the CCCFA, in particular provisions that impose compliance costs on financiers for little or no benefit to borrowers and the overlap in regulation of Pawnbrokers under the CCCFA 2003 and the Secondhand Dealers and Pawnbrokers Act 2004.

Rationale

92 A number of areas where technical provisions of the CCCFA impose potentially unnecessary compliance costs on financiers have been raised. For example, the requirement to send all historic paper records to a customer who switches from receiving electronic record to receiving paper records.

93 Pawnbrokers are regulated by both the CCCFA and SDPA. These Acts are designed to achieve different purposes, however there are some overlaps in their coverage of pawnbrokers, such as disclosure requirements and calculation of interest, fees and charges.

94 While there are no legal inconsistencies which would prevent a pawnbroker from complying with both Acts, there are significant difficulties and compliance costs which arise because of the different regulatory approaches under each Act.

Impact

95 Removal of potentially superfluous compliance requirements, and hence a reduction in compliance costs.

Risks and Departmental views

96 The Ministry of Consumer Affairs is currently undertaking a review of high priority issues with the CCCFA, and has advised that these issues will be considered during the review.

Securities Act prospectus requirements (MED)

Issue / proposal

97 Review obligations for managed funds and superannuation schemes to report on their financial position in prospectuses.

Rationale

98 Potential investors looking at managed funds and superannuation schemes may not have the same interest in the current financial position of funds as they do when purchasing equity.

99 Therefore, it might not be necessary to require such funds to issue a new prospectus if fund performance has suffered. Instead, they would be able to extend their existing prospectus for another period of nine months.

100 It might even not be necessary for managed funds' and superannuation schemes' prospectuses to mention their financial position at all.

Impact

101 Changes could make it cheaper for managed funds to attract investment.

102 However, there does appear to be a potential risk to investors' access to relevant information.

Risks and Departmental views

103 MED does not see this as an immediate priority, as the Securities Commission has addressed the short-term issue already by means of exemption 2008-456.

104 However, MED recommends including a consideration of prospectus content requirements for managed funds and superannuation schemes in the wider review of the Securities Act which is anticipated to take place in 2009.

Defer pending government decisions

Pharmacy ownership restrictions and controls on the prescribing of medicines (Ministry of Health)

Issue / proposal

105 Amend controls relating to pharmacy ownership and the prescribing of medicines.

<u>Pharmacy ownership</u>

106 The Medicines Act 1981 restricts ownership of pharmacies such that pharmacists must hold a majority 51% share of a pharmacy. Companies may also operate pharmacies as long as a pharmacist or pharmacists own 51% of the company's share capital. This means that pharmacists must have "effective control" of the company.

107 A pharmacist cannot hold a majority interest in more than five pharmacies, nor can a company operate more than five pharmacies. A pharmacist may own an unlimited number of shareholdings of 49% or less. A minority shareholder has a legitimate right to contribute to the control and direction of the pharmacy to protect their investment and maximise their returns.

108 The Ministry of Health considers removing the ownership restrictions would allow for a more competitive environment, which should result in more innovative and flexible delivery of pharmacy services in the future. Removing the restrictions is likely to be controversial and to be opposed by parts of the pharmacy sector. However, the Ministry does not consider that the ownership restrictions can be substantiated on public health and safety grounds.

Prescribing of medicines

109 The current New Zealand legislation governing medicines, medical devices and related activities such as the prescribing of medicines is in need of reform. Reform proposals already developed include changes to controls on prescribing. Decisions on how to progress therapeutic regulatory reform are awaiting the outcome of discussions on these issues between the New Zealand and Australian Prime Ministers in March 2009. The Ministry of Health will report back to joint Ministers on these discussions.

Impact

110 Removing pharmacy ownership restrictions, and reforming other controls on the prescribing of medicines, should improve the competitive environment, which should result in more innovative and flexible delivery of health services in the future.

Risks and Departmental views

111 In principle, the Ministry of Health supports the removal of current pharmacy ownership restrictions. While removal of the provisions requires an amendment to the Act, the drafting task is expected to be straightforward. However, the Ministry of Health would prefer to address this within the context of the wider legislative change required to update New Zealand's controls on medicines. This would achieve significant efficiency gains and enable innovative service delivery, particularly in remote communities.

112 In addition to pharmacy ownership reform, other possible areas for reform relate to the prescribing of medicines and include enabling e-prescribing and changes to prescribing rights. It is important to note that overall the Ministry is of the view that current legislation is cumbersome and further piecemeal change is not desirable because it will make interpretation of the legislation more difficult.

113 A more comprehensive review of New Zealand's controls on therapeutic products addressing all concerns with the system is preferable to piecemeal amendment. However, change to pharmacy ownership restrictions could proceed independently of wider legislative reform if desired.

Issues where the Department is in the process of reporting back to Ministers

Shop trading hours (Department of Labour)

Issue / proposal

114 Progress a review of the legislation related to Easter trading, with a view to, where possible, the rationalisation and elimination of regional differences.

Rationale

115 There have been ongoing concerns from some business groups regarding the impact of inconsistencies between the Shop Trading Hours Act Repeal Act 1990, Sale of Liquor Act 1989 and the Holidays Act 2003 relating to trading restrictions with a particular focus on the Easter period and Easter Sunday.

116 Changes requested by some stakeholders include:

- eliminating the regional differences about when businesses can trade. This will involve removing trading restrictions for some or all of the currently restricted holidays;

- rationalising Easter trading rules, in particular aligning, to the extent possible, the rules for shop trading, sale of liquor and holidays.

Impact

117 Reform of the regulations regarding shop-trading legislation could remove the concern of some businesses about the restrictive and inconsistent nature of the current regime.

Risks and Departmental views

118 The Department of Labour advises that previous proposals to liberalise shop trading legislation have drawn polarised views from stakeholders, particularly unions, community, and religious groups. Reform of Easter trading rules has been considered several times since the repeal of the Shop Trading Hours Act in 1990. Historically, suggested legislative changes have been considered through a conscience vote in Parliament.

119 Part of the issue relates to the interface with the Sale of Liquor Act 1989. The Ministry of Justice advises that the Law Commission is undertaking a comprehensive review of the regulatory framework for the sale and supply of liquor. To address trading hours for the sale of liquor separately from that review would result in duplication of work and prevent the issue being considered in the wider context of concerns about the availability of alcohol. The Ministry of Justice also considers that these issues must be addressed in the wider context of the welfare, health and criminal justice concerns associated with the misuse of alcohol. That is best done through the Law Commission review. The Law Commission's terms of reference specifically require it to ensure that the regulatory system for liquor does not impose unnecessary and disproportionate compliance costs. The Commission

expects to release an issues paper for consultation in late 2009 and prepare draft legislation reforming the current regulatory system in 2010.

120 I consider that rationalisation should be progressed to the extent possible without looking at sale of liquor issues. I also note that the Minister of Labour intends to report to Cabinet by the end of March 2009 on options for rationalising shop trading hours without addressing sale of liquor issues.

121 Trading hours for the sale of liquor will be addressed separately by the Law Commission in its review of the regulatory framework for the sale and supply of liquor. I recommend that the Minister Responsible for the Law Commission should invite the Law Commission to take the law relating to shop trading hours into account when developing proposals in relation to trading hours for the sale of liquor.

Vehicle Fuel Economy Standard (Ministry of Transport)

Issue / proposal

122 That Ministry of Transport (MoT) officials obtain the views of the Ministers of Transport and Climate Change on whether a regulated Vehicle Fuel Economy Standard (VFES) should be progressed and report back to Cabinet on these discussions in April 2009 as part of a planned report back.

Rationale

123 In December 2007 Cabinet directed the MoT to consult on options to implement a regulated Vehicle Fuel Economy Standard (VFES). The objective of a regulated VFES is to reduce New Zealand's greenhouse gas emissions by improving the average fuel economy of vehicles entering its fleet, to an average of 170g CO_2/km by 2015 from it current level of 216g CO_2/km (a 20% improvement in fuel economy).

124 After a first round of consultation in the first half of 2008 Ministers requested further consultation and cost-benefit analysis on the options that were developed. The matter was not considered by Cabinet during 2008 and no decisions were made as to whether a VFES would be implemented, or if it was, how it would be applied.

Impact

125 The VFES (if progressed) would have existed in the context of, and supplemented, the Emissions Trading Scheme on fuels and other climate change initiatives. Therefore the VFES cannot be viewed or assessed in isolation.

Risks and Departmental views

126 The Motor Industry Association (which represents the main vehicle importer brands) has invested quite a lot of time and effort in developing their own proposals to ensure that a VFES could be implemented, and their expectations will need to be managed.

127 The Ministry of Transport continues to work towards providing advice on the need for a VFES and on possible options to maximise the benefits and minimise any direct costs.

PROCESS FOR REFORM

Next steps

128 Relevant departments, where appropriate, should be directed to progress discrete regulatory issues for immediate amendment, and the discrete regulatory provision reviews. Departments will be required to report back to their relevant portfolio Minister, the Minister of Finance and the Minister for Regulatory Reform on the process for reform or review within two months.

129 The report should outline risks, timeframes within which any amendments or reviews could be progressed, and whether a suitable legislative vehicle exists for any amendments.

Vehicles for reform

130 Technical, short, and non-controversial amendments, such as the amendments relating to drinking water, might be inserted in the existing Regulatory Improvement Bill by way of Supplementary Order Paper. This Bill currently has a requested enactment date of October 2009 with the report back from select committee in August 2009.

131 Adding items to the current Regulatory Improvement Bill does, however, run the risk of slowing down the progress of the bill.

132 As a part of their report backs, departments will note whether their issues would be appropriate (under Standing Orders) for insertion in a Regulatory Reform Bill in the future.

133 Departments have identified bills currently on the Order Paper that amendments might be able to be inserted into (for example by way of Supplementary Order Paper), but firm proposals for legislative vehicles will be included in departments' report backs to Ministers on progressing the issues.

Regulatory Reform Bill

134 As noted above, an annual Regulatory Reform Bill would enable regulatory improvements to be easily made without departments duplicating resources on legislation bids. It could be an important component of the ongoing regulatory reform process to ensure smaller regulatory fixes do not fall off the legislative agenda. I consider that there should be an annual (or lesser frequency as necessary) Regulatory Reform Omnibus Bill to provide an effective legislative vehicle for regulatory reform. Such a vehicle could provide further encouragement and opportunity for regulatory reform across a broader range of portfolios.

Timeframes

135 Departments will generally report back with an assessment of how to progress their issues within two months, by 9 April 2009. To meet the goal of finding and immediately cutting red tape that is holding back New Zealand, it is expected that substantive work on these issues should be progressed within a roughly one year timeframe, and Departments will provide comment on the practicalities of meeting this timeframe (i.e. work programme impacts, whether legislative vehicles have the appropriate priority) in their report backs.

CONSULTATION

136 The following Departments have been consulted on the proposals in this paper: Department of Corrections; Department of Building and Housing; Department of Internal Affairs; Department of Labour; Ministry of Health; Ministry of Justice; Ministry of Economic Development; Ministry of Transport, the New Zealand Transport Authority and the Treasury. Their views are reflected in the comments on each issue. DPMC have been informed, as has the Ministry for the Environment.

137 Wider consultation with stakeholders and other interested departments has not been possible because of the timeframes involved, but responsible departments should carry out targeted consultation with key stakeholders as a part of the development of advice on progressing their issues. Departments will have previously had interaction with stakeholders on many of these issues and will be familiar with their views and the risks involved in addressing each of the issues.

138 I do not envisage full public consultation on all of the issues where legislation is to be advanced immediately.

FISCAL IMPLICATIONS

139 Detailed estimates for each proposal will be provided by responsible departments in their reports on progressing the issues. As an indication, the removal of the Energy Resource Levy will have a cost of approximately $8m per annum.

HUMAN RIGHTS

140 There are no Human Rights issues raised by these proposals.

LEGISLATIVE IMPLICATIONS

141 There are no legislative implications at this stage. Responsible departments will include proposals for legislative vehicles in reports back to Ministers on progressing issues.

REGULATORY IMPACT ANALYSIS

142 A Regulatory Impact Statement (RIS) exists for the initial Cabinet decision to repeal the Energy Resource Levy in 2005, but this may need to be updated.

RISs are not required at this stage for the other issues in this paper, and responsible departments will provide RISs should further work result in recommendations for change.

PUBLICITY

143 The Minister of Finance and I intend to announce the beginning of regulatory review programme, with specifics around particular regulations being considered carefully to take into account likely sensitivities and expected public interest.

144 There may need to be an announcement that the changes to liquor licensing rules for low-risk wineries agreed to by the previous Government will not be progressed outside of the Law Commission's review of liquor licensing. I will discuss this issue with the Minister of Justice and Minister Responsible for the Law Commission.

RECOMMENDATIONS

145 It is recommended that the Committee:

1 **Note** that as a part of the government's Post-Election Action Plan, one of the First Actions on the Economy is to begin a regulatory review programme to identify and remove inefficient and superfluous regulation;

2 **Note** that the proposals in this Paper represent the first steps in an ongoing process of regulatory reforms;

3 **Note** that this Paper is being considered alongside the companion Paper Regulatory Review Programme: Reviews of Major Regulatory Regimes for 2009 and 2010;

4 **Note** that the Regulatory Improvement Bill, which addresses regulatory duplications, gaps, administrative errors and inconsistencies between different pieces of legislation, is able to be progressed;

5 **Note** that MED is progressing work on amendments suggested by the Capital Markets Development Taskforce to help firms raise capital more easily and that a bill to advance these amendments is planned to be introduced in February 2009;

6 **Invite** the Minister of Transport to amend the Land Transport Rule: Dimension and Mass 2002 to simplify the dimension and exemption requirements under the rule, and include in the current Land Transport Rules Programme;

7 **Direct** the Ministry of Economic Development to report to the Minister of Energy and Resources, Minister of Finance and Minister for Regulatory Reform by 9 April 2009 on confirming the repeal of the Energy Resource Levy;

8 **Direct** the Department of Building and Housing to report to the Minister for Building and Construction, Minister of Finance and Minister for Regulatory Reform by 9 April 2009 on clarifying the requirements for swimming and spa pool fencing under the Fencing of Swimming Pools Act 1987;

9 **Direct** the Ministry of Health to report to the Minister of Health, Minister for Infrastructure, Minister of Finance and Minister for Regulatory Reform by 9 April 2009 on:

9.1 possible amendments to the Health Act 1956 to remove unnecessarily onerous and prescriptive provisions relating to drinking water quality; and

9.2 carrying out a review of the implementation of drinking water standards.

10 **Direct** the Ministry of Health to report to the Minister of Health, Minister of Finance and Minister for Regulatory Reform by 9 April 2009 on:

10.1 possible amendments to the Health Practitioners Competence Assurance Act 2003 to clarify the powers of Authorities to prescribe individual scopes of practice;

10.2 the use of Ministerial Audit powers;

10.3 options for increasing the speed of processing for applications for registration by overseas trained health practitioners; and

10.4 carrying out a review of the registration practices for overseas trained health practitioners under the Health Practitioners Competence Assurance Act 2003.

11 **Note** that issues with the compliance costs imposed by the liquor licensing process were raised by the hospitality and winemaking sectors during the Quality Regulation Review;

12 **Note** that the Law Commission is undertaking a comprehensive review of the regulatory framework for the sale and supply of liquor, and that:

12.1 an Issues Paper is proposed to be released for consultation in 2009;

12.2 legislative amendments should be ready to be advanced in 2010;

12.3 note that exemptions for winemakers selling their own wine pursuant to an off-licence, agreed to by the previous Government, will not be progressed outside of the Law Commission review;

12.4 the Law Commission's terms of reference specifically require it to ensure that any licensing system does not impose unnecessary or disproportionate compliance costs.

13 **Note** that it is therefore inappropriate to reform the liquor licensing system, either generally or specifically in relation to winemakers, separately from the Law Commission's review;

14 **Note** that the Ministry of Consumer Affairs is undertaking a review of the operation of the Credit Contracts and Consumer Finance Act 2003 which will include consideration of provisions that impose compliance costs on financiers for little or no benefit to borrowers and the overlap in regulation of Pawnbrokers under the Credit Contracts and Consumer Finance Act 2003 and the Secondhand Dealers and Pawnbrokers Act 2004;

15 **Note** that Securities Commission exemption 2008-456 has addressed the short-term issue regarding obligations for managed funds and superannuation schemes to report on their financial position in prospectuses, but that the issue should be included in the upcoming wider review of the Securities Act;

16 **Defer** further consideration of a review of controls relating to pharmacy ownership and the prescribing of medicines until decisions have been made on the preferred approach to improving the regulation of therapeutic products;

17 **Direct** the Ministry of Health to report to the Minister of Health, Minister of Finance and Minister for Regulatory Reform by 31 May 2009 on controls relating to pharmacy ownership and the prescribing of medicines, in the context of government's preferred approach to improving the regulation of therapeutic products;

18 **Note** that concerns have been expressed about inconsistencies between the Shop Trading Hours Act Repeal Act 1990, the Holidays Act 2003 and the Sale of Liquor Act 1989;

19 **Note** that it is not appropriate to address trading hours for liquor separately from the Law Commission's comprehensive review of the regulatory framework for the sale and supply of liquor, which is looking at trading hours for the sale of liquor in the context of wider concerns about the availability of alcohol;

20 **Note** that the Department of Labour will report to the Minister of Labour, Minister of Justice, Minister of Finance and Minister for Regulatory Reform by 31 March 2009 on options for rationalising shop trading hours without addressing sale of liquor issues;

21 **Agree** that the Minister Responsible for the Law Commission will invite the Law Commission to have regard to regulation concerning general shop trading hours when formulating its proposals in relation to trading hours for the sale of liquor;

22 **Agree** that the Ministry of Transport obtain the views of the Ministers of Transport and the Climate Change Minister on whether a regulated Vehicle Fuel Economy Standard (VFES) should be progressed and report back to Cabinet on these discussions in April 2009;

23 **Agree** that there be an annual (or lesser frequency as necessary) Regulatory Reform Omnibus Bill to provide an effective legislative vehicle for regulatory reform;

24 **Note** that, where relevant, departments will include comment in their report backs to joint Ministers on the appropriate legislative vehicle for any amendments, and whether any amendments are appropriate for inclusion in an omnibus Regulatory Reform Bill.

Hon Rodney Hide
Minister for Regulatory Reform

Date signed: _____

Annex One

The Regulatory Improvement Bill

Background

1 The Bill is a result of the Quality Regulation Review that was completed in September 2007. The Review investigated ways of eliminating duplication, inconsistencies and uncertainty where multiple regulatory frameworks intersect; and looked at improving the government's own processes for assessing and monitoring the impact of regulations. Several businesses have been closely involved in the Review process. A final report for the Review was released in September 2007.

2 The majority of proposed legislative amendments were identified during the Review by business and agencies consistent with the objective of improving the regulatory frameworks and reducing compliance burden on business.

3 Overall these changes address regulatory duplications, gaps, administrative errors and inconsistencies between different pieces of legislation. Collectively they create unnecessary compliance costs and uncertainty for business.

4 The Bill provides a vehicle to progress these issues in an efficient and effective manner so that these small fixes do not fall off the legislative agenda.

Main Provisions

Companies Act 1993 (Clause 3 – 4)

5 Currently section 196 (2) prevents two classes of companies with overseas ownership from passing a unanimous resolution not to appoint an auditor. However, the requirements for these two classes of companies to file audited annual reports were removed in 2006 from the Financial Reporting Act 1993.

6 Clause 4 of the Bill will narrow the exclusion in line of the change to the Financial Reporting Act, and enable these companies, via unanimous resolution, elect not to appoint an auditor.

Conservation Act 1987 (Clause 5 – 10)

7 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 tendering process and any application would be inconsistent with the process. Clause 7 (1A) amends section 17T so that the Minister must not consider such an application. These amendments will provide greater certainty that a tender process will not be derailed by applicants outside the process once it is already initiated. It will save cost and time for those who are actually committed to the process.

8 Clause 7 (2) & (3) and Clause 8 amend section 17T and 17Z to increase the terms for which permit may be granted from 5 to 10 years and to remove the requirement to publicly notify the intention to grant a license, the expense of

which is paid by applicants. However, the Minister may still give public notice if he or she considers it appropriate to do so, having regard to the effects of the license. The amendments will reduce compliance costs on applicants.

Designs Act 1953 (Clause 11 – 15)

9 The amendments will insert new sections 41A to F into the Designs Act. The new sections will provide for restoration of lapsed copyright in a registered design, if the lapse is due to unintentional failure to make an application or pay the prescribed fee or both. The Bill sets out the process for applying to the Commissioner of Designs to do so. It also allows any person to give notice of opposition to an order to extend the copy right period to the Commissioner and for the Commissioner to consider such notices. The provisions will reduce compliance costs on copyright holders who wish to restore their copyright in registered designs.

Fisheries Act 1996 (Clause 16 – 18)

10 Since the introduction of the Annual Catch Entitlement (ACE) regime in 2001, there have been a number of cases where for various administrative reasons, the end-of-year ACE transfers had not occurred as planned by some commercial fishers. These failures only surface after the ACE register has closed, at which stage fishers are precluded from making additional transfers to rectify the problem. As a result these commercial fishers have incurred an annual deemed value debt even though they have intended to comply with the requirement.

11 Currently there is no provision in the Fisheries Act to allow this type of situation to be rectified. Instead, the Minister of Fisheries has progressed requests from commercial fishers to seek relief, via a complicated administrative process.

12 The provisions in this Bill will provide a more efficient and effective process for granting relief to commercial fishers under this type of situation by delegating the decision making power to the Chief Executive to the Ministry of Fisheries. Clause 18 inserts new sections 76A and 76B into the Act which sets out the processes, criteria and requirements for applications for relief and the Chief Executive's consideration of such applications.

Gas Act 1992 (Clause 19 – 20)

13 Clause 20 amends section 3 of the Gas Act to clarify that Part 4A applies to any gas used as a feedstock. This means that all industry participants will be included in the governance regime provided under Part 4A. It will reduce the uncertainty for the gas industry and ensure all participants will be treated fairly.

Hazardous Substances and New Organisms Act 1996 (Clause 21 – 53)

14 Clause 23 (1) – (3) allows technical or administrative decision making power of the Environmental Risk Management Authority to be delegated to the Chief Executive, other agency staff or other persons. Currently the Act provides for delegation to persons specified in section 19 (2). This approach is too limited

for a variety of minor, technical and administrative decisions that the ERMA must make. Allowing more flexibility in delegation will reduce costs and time-delay in making such decisions. Clauses 23 (4) – (7) are subsequent amendments arising out of other changes discussed below.

15 Clause 24 – 33 establishes a rapid assessment regime for low-risk non-genetically modified organisms (non-GMOs), in line with the Primary Production Committee's recommendations in May 2007[1]. The new regime will address three issues, which gives rise to inconsistencies and unnecessary compliance burden:

(a) currently the HSNO Act provides no rapid assessment regime – and thus delegation of decision making power – for non-GMOs as it does for genetically modified organisms (GMOs). The amendments will address this inconsistency.

(b) there is inconsistency in the treatment of field test of non-GMOs in containment on one hand, and developments and imports of non-GMOs in containment on the other. The former applications cannot be publicly notified while the latter two categories of applications may be notified if the ERMA considers there is likely to be sufficient public interest in the application. This is inconsistent with the fact that field testing often poses higher risk than development or import of non-GMOs in containment.

(c) while rapid assessment is possible for full release (without controls) of non-GMOs, it is not possible for conditional release (with controls) of them. The latter arguably poses less risk than the former.

The Bill will enable low-risk non-GMOs to be rapidly assessed, via delegation to the ERMA. It will also enable public notification of field test of non-GMOs consistent with the requirements for development and import in containment. Finally it will allow rapid assessment of conditional release of non-GMOs with control. The Bill sets out the criteria for rapid assessment, including for delegation of decision making power, and public notification for these new processes in line with existing rapid assessment regimes.

16 Clause 30 (2) (c) will provide ERMA the discretion to publicly notify applications to import or manufacture a hazardous substance for release, which do not otherwise qualify for rapid assessment under s28A of the HSNO Act. The decision making power is delegated to the Chief Executive of the ERMA in such cases. Currently the Act requires such applications to be publicly notified, but these applications are often routine and attract very few public submissions. Mandatory notification requirements can cause delays and costs to applicants which are disproportionate to the risks posed or the benefits of public participation. A better balance can be achieved by delegating the decision making power to the Chief Executive.

[1] Primary Production Committee Restrictions on the importation of plant germplasm 1.11A

17 Clause 34 inserts new section 63B which allows joint consideration of common changes to the Part 5 hazardous substances approvals and Part 6 group standards. Some substances which require Part 5 substances approvals may also be controlled under generic group standards. However, currently these two processes are carried out separately. To make a consequential amendment to the Part 6 group standards on similar grounds with corresponding Part 5 changes would therefore require a full separate process of reassessment and public notification. The Bill will align these two processes and therefore reduce time, confusions and certainties for businesses who require Part 5 approvals.

Furthermore, Clause 39 will insert a new subsection under section 96C in order to enable the ERMA to amend group standards for minor and technical matters. Under the current section 96C, unlike changes to the Part 5 standards, the ERMA is not allowed to make 'minor or technical' alterations to Part 6 group standards on its own motion. Such alterations will have to be made through a full assessment and consultation process. The Bill therefore will improve the efficiency and flexibility when making such changes.

18 Clause 35 will amend section 82 of the Act to empower test certifiers to issue 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. The conditional test certificate will specify the requirements that have not been met and a date for rectification. Currently full compliance with specified requirements is needed before a test certificate can be issued. Introducing the conditional test certificate will avoid undue delay or interruption for businesses due to minor problems.

19 Clause 36 (2) – (3) will amend section 82A (4) – (5) to allow agencies, in particular, the New Zealand Fire Service to search the register of test certificates for emergency and response planning purposes. Currently the specific grounds provided by section 82A (4) do not extent to such purposes. The new provision therefore will enhance the utilisation of the test certificate register for emergency and response planning and therefore to minimise threats to public health and safety in a more efficient and proactive manner.

20 Clause 38 empowers the ERMA to evoke all test certificates on certain grounds including when their conditions are no longer met. Currently section 82C of the Act only provides for revocation of filler and handlers certificates on certain grounds, as provided by section 82C(1). These grounds do not include situations when requirements for which test certificate was issued are no longer met. These provisions create potential inconsistencies in its treatment of other test certificates and potential loopholes which reduce its effectiveness. These problems will be addressed by the extended scope and grounds for revocation under the Bill.

21 Clause 40 amends section 97 (1) (e) and removes the responsibility of the Civil Aviation Authority (CAA) in enforcing the HSNO Act in aerodromes. Instead, such responsibility will be vested in the Department of Labour which already has the responsibility to enforce the Health and Safety in Employment

Act in a place of work, including aerodromes. The Bill therefore will reduce the number of visits and thus costs to businesses operating in around 160 aerodromes.

22 Clause 41 establishes a cost recovery regime for enforcement of the HSNO Act in respect of new organisms. Under the limited cost recovery provisions of the current HSNO Act, these costs related to new organisms enforcement cannot be recovered by MAF Biosecurity New Zealand as the enforcement agency. Neither can MAF Biosecurity New Zealand access the cost recovery provision of the Biosecurity Act without being empowered under the HSNO Act. Costs are currently met through departmental baseline funding. Although this provision may increase costs for some business, it will close a legislative gap and improve the fairness and quality of the regulatory frameworks as a whole.

23 Clause 42 amends section 97B(3) which limits inspection for compliance under the HSNO Act to HSNO inspectors. It creates problems for agencies which have responsibilities for the enforcement of both the HSE Act and the HSNO Act due to the differences, for instance, in the power of entry and inspection. This means that inspectors typically make separate visits to the same workplaces for HSE related then for HSNO related enforcement matters. The Bill will allow HSE inspectors who are also HSNO inspectors to inspect for compliance under both Acts during the same visit to a work place. This will reduce the number of visits necessary and therefore compliance burden on businesses under both Acts.

24 Clause 43 – 44 replace section 109 (2) with new sections 109 A & B. The new sections more closely align the requirements for laying information under the HSE Act (in respect of an offence that relates to a hazardous substance) and the Biosecurity Act (in respect of an offence that relates to a new organism). This provision is part of an larger programme to align chemical and organism enforcement under the HSNO Act, the Biosecurity Act and the HSE Act. The Bill therefore will facilitate more effective enforcement and contribute to reducing inconsistencies at different regulatory interfaces and improving the quality of regulatory frameworks.

25 Clause 46 (1) amends section 141A(1)(a) to allow references to standards, requirements or recommended practices of national (as well as international) organisations. The current wording of the Bill, which refers to ‘international organisations’ only, creates some confusion when referring to certain overseas organisations, such as the British Standards Institute, which may be considered a ‘national’ organisation in the UK. The amendments will clarify this matter and allow incorporation by references to be carried out in a more efficient and timely manner.

26 Clause 46 (2) – (4) also amend section 141A to allow amendments to or updates of material incorporated b reference to take effect on notification in the Gazette. The current Act does not provide for updates or amendments to incorporated material, which is ‘fixed’ at the time of incorporation. The Bill will facilitate more efficient updates and amendments, reduce confusions and

therefore improve the utilisation of these standards by businesses and regulators.

27 Section 47 – 48 remove the statutory requirements for ERMA to report on certain matters which are already covered elsewhere in its Statement of Intent and annual monitoring report. The Bill will therefore reduce unnecessary costs on the ERMA.

Ministry of Agriculture and Fisheries (Restructuring) Act 1995 (Clause 54 – 59)

28 Clause 55 – 56 repeal sections 18 and 19 of the Act. The sanctions provided by these sections are no longer necessary given the more effective penalties already provided by the Fisheries Act. The double penalty regime is both inefficient and unfair.

Reserves Act 1977 (Clause 60 – 62)

29 Clause 61 amends section 74 to increase the terms for which a license to occupy reserves vested in local authorities from 5 to 10 years. This will reduce the costs associated with application and public notification for businesses operating on these reserves.

Weights and Measures Act 1987 (Clause 63 – 64)

30 Clause 64 amends section 38. The supply arrangements for LPG is currently controlled by both the Weights and Measures Act and the Gas Act because the Acts do not distinguish different forms in which LPG may be supplied. The requirements of these two Acts differ and will result in restrictively tighter controls being in place for LPG than any other gas sold by the same means, despite the intention of the Weights and Measures Act to exclude measurement of gas reticulated through pipes. Moreover, New Zealand currently does not 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 will therefore incur substantial compliance costs. The amendment will clarify 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 will continue to apply.