

In Confidence

Office of the Minister for the Environment

Chair, Cabinet Environment, Energy and Climate Committee

Public consultation on regulatory measures to ratify the Minamata Convention on Mercury

Proposal

1. This paper seeks Cabinet agreement to release the document *Managing the trade in mercury and mercury products: New Zealand's approach to ratifying the Minamata Convention on Mercury* for public comment (Appendix 1). The document proposes to prohibit the manufacture, sale, import and export of certain mercury-containing products, and to require permits for the import and export of mercury.

Executive summary

2. The Minamata Convention on Mercury (the Convention) is a global agreement to protect human health and the environment from the impact of mercury. New Zealand signed the Convention in 2013 (CAB Min (13) 33/6 refers), but has not yet ratified it. The Convention entered into force in 2017 and has now been ratified by 116 countries.
3. Undertaking public consultation on the proposed regulatory amendments will be a significant step towards New Zealand ratifying the Convention. This would enable New Zealand to maintain our reputation as a country committed to addressing practices that are harmful to human health and the environment.
4. Mercury is a highly toxic naturally occurring heavy metal. Exposure to mercury, even in small amounts, is considered unsafe for humans. Mercury exposure causes health impacts to the nervous, digestive and immune systems; lungs, kidneys, skin and eyes. The World Health Organisation considers mercury to be one of the top 10 chemicals of global concern.¹
5. Mercury is already controlled under New Zealand's existing environmental law and does not present a major environmental hazard here. Therefore many of the Convention's controls are largely consistent with existing practices and policies, or primarily target activities not carried out in New Zealand. The Resource Management Act 1991 was amended in October 2019 to make primary mercury mining a prohibited activity (through the Statutes Amendment Act 2019).
6. The key steps covered in the consultation document are:

¹ <https://www.who.int/news-room/fact-sheets/detail/mercury-and-health>

- a prohibition on the manufacture, sale, import and export of certain mercury-containing products
 - a permitting system for trade in mercury.
7. I have identified the following regulatory measures to meet these obligations:
 - amending the Imports and Exports (Restrictions) Prohibition Order (No 2) 2004 (the Imports and Exports Order) under the Imports and Exports (Restrictions) Act 1988
 - creating regulations under the Waste Minimisation Act 2008 (WMA).
 8. The purpose of the consultation is to meet my obligations under the WMA, to gather a more complete understanding from industry and local government of the impact of additional controls on mercury and certain mercury-containing products, and to be assured that the full impact of the proposals are known.
 9. While the Minister of Commerce and Consumer Affairs has responsibility for the Imports and Exports Order, as Minister for the Environment I have the authority to recommend policy changes on his behalf.
 10. The likely effects of these proposals will be minimal. In many cases, mercury-free alternative products exist, and existing industrial facilities in New Zealand will not be affected by the proposed regulations. The Convention allows some exemptions for essential uses. The Environmental Protection Authority (EPA) already operates similar permitting systems under the Imports and Exports Order.
 11. New Zealand is also required to reduce emissions from certain processes which use mercury, and to ensure there are environmental controls for certain mercury emissions sources. Proposals to achieve this are included in a separate work stream to amend the Resource Management (National Environmental Standards for Air Quality) Regulations 2004. Cabinet was expected to discuss this on 24 February 2020.
 12. Ratification requires that domestic law will meet all of the Convention's legally binding obligations by the time they enter into force for New Zealand. I therefore aim to submit New Zealand's instrument of ratification to the United Nations by early 2021 (or sooner if all necessary regulatory amendments have been implemented). The Convention would enter into force for New Zealand 90 days afterwards, at which stage New Zealand would be a Party to the Convention and able to participate in decision-making at the Conference of the Parties.

Background

Overview of the Convention

13. Mercury is a naturally occurring heavy metal which is released into the environment through volcanic and geothermal activity, and from human sources such as industrial activities, or improper disposal of waste containing mercury.
14. Increased mercury in aquatic ecosystems can increase the levels of mercury in the food chain. Humans are primarily at risk when directly in contact with mercury, through food or occupational exposure.

15. The Convention was negotiated due to concerns over the accumulation of mercury from human activities in aquatic ecosystems. It was signed in 2013 by 91 countries, including New Zealand, and entered into force on 16 August 2017. As of 3 February 2020 there are 116 states that are a Party to the Convention.
16. The purpose of the Convention is to protect human health and the environment from releases of mercury and mercury compounds from human activity. The Convention regulates products containing mercury, prohibits primary mercury mining, and restricts industrial processes which can release mercury to land and water. It complements the Basel, Rotterdam and Stockholm Conventions which deal with chemicals and hazardous waste, and which New Zealand has already ratified.

Mercury in New Zealand

17. Mercury is not a significant hazard in New Zealand. A 2018 biomonitoring study² prepared for the Ministry of Health found that none of the study participants had blood mercury concentrations above Health Canada's blood mercury guidance value of 20 µg/L (there currently is no New Zealand blood mercury notification level).
18. The Ministry for the Environment undertook mercury inventories in 2009, 2013 and 2016 to assess the anthropogenic use of mercury in New Zealand and mercury releases to the environment. These inventories found that most human mercury releases in New Zealand are from activities such as waste disposal containing mercury, and the industrial processing of gold and silver.
19. A global inventory of mercury emissions from human sources estimated about 2200 tonnes of mercury is emitted each year to the atmosphere globally, about 580 tonnes to water (excluding artisanal gold), 1220 tonnes from artisanal gold to water and 7000-8000 tonnes to soil.³ New Zealand's 2016 mercury inventory⁴ showed that we emitted 1.82 tonnes of human-made mercury to the atmosphere, 1.63 tonnes to water, 5.14 tonnes to land, and 1.19 tonnes in waste (average figures).
20. Due to New Zealand's geographic isolation, anthropogenic emissions from neighbouring countries are not a significant concern.

Why New Zealand should ratify the Convention

21. New Zealand completed its Parliamentary Treaty Examination process for the Convention in March 2014. The Ministry for the Environment submitted a National Interest Analysis to Parliament which concluded it was strongly in New Zealand's interest to sign and ratify.
22. Overall, the benefits of ratifying remain as relevant today as in 2014, including:

² 't Mannetje A, Coakley J, Douwes J. (2018) *Report of the Biological Monitoring of Selected Chemicals of Concern. Results of the New Zealand biological monitoring programme, 2014-2016*. Technical Report 2017-1. March. Centre for Public Health Research. Massey University. Wellington.

³ UN Environment, 2019. Global Mercury Assessment 2018. UN Environment Programme, Chemicals and Health Branch Geneva Switzerland.

⁴ <https://www.mfe.govt.nz/publications/air/mercury-inventory-new-zealand-2016>.

- decreasing imports of mercury-containing products, reducing the amount of mercury in the waste stream over the longer term
- maintaining our international environmental reputation
- participating in decision-making to ensure our interests are taken into account, including when new mercury sources are considered or new products added to the Convention's controls
- avoiding and mitigating potential future risk of mercury accumulation in Pacific marine fisheries
- helping to protect human health and the environment globally.

23. There are some risks from not ratifying, or from a further delay:

- New Zealand relies on rules-based multilateralism to meet foreign policy, trade and environmental goals that are beyond our capacity to meet alone. Ratifying and actively participating as a Party to the Convention will help maintain our reputation as committed to addressing global environmental challenges.
- Without ratification, New Zealand would not be able to influence the decisions that affect the future implementation of the Convention. ^{s 6(a)}

24. As more countries become Parties to the Convention, New Zealand's status as a non-Party observer is likely to increase the risks above.

Analysis

How New Zealand will meet the Convention's obligations

25. Ratifying the Convention will create obligations for New Zealand to manage mercury through its lifecycle, and to report on implementation. Many of these are consistent with New Zealand's existing treatment of mercury and do not require changes to existing policy settings.

26. There are three elements which need to be reflected in New Zealand law, to enable ratification. The two elements covered in the consultation document relate to:

- a prohibition on the manufacture, sale, import and export of certain mercury-containing products
- a permitting system for trade in mercury.

27. The third element relates to proposals to control industrial emissions of mercury to air and to prohibit the use of mercury and mercury compounds in specific certain industrial processes under the Resource Management (National Environmental Standards for Air Quality) Regulations 2004. On 24 February, Hon Nanaia Mahuta, Associate Minister for the Environment, sought Cabinet approval to publicly consult on a discussion document which sets out a number of proposals to amend the Resource Management (National Environmental Standards for Air

Quality) Regulations 2004, including proposals to meet the Convention's requirements.

28. New Zealand's obligations under the World Trade Organisation (WTO) will be taken into account when implementing the Minamata Convention requirements.

Ban the manufacture, sale, import and export of certain products

29. Under the Convention, the manufacture, import and export of specific mercury-added products will be prohibited from 1 January 2021. I therefore propose to:

- create new regulations under the WMA to prohibit the manufacture and sale of certain mercury-containing products
- amend the Imports and Exports Order under the Imports and Exports (Restrictions) Act 1988 so that the import and export of mercury-containing products will not be permitted, except in certain limited circumstances.

30. These restrictions will not apply to the existing use of products.

31. The proposed ban on the sale of mercury-containing products will ensure that goods that are prohibited for import are also prohibited for sale. This will create a workable enforcement mechanism to support the imports and exports prohibition.

32. The impact of implementation is expected to be low as New Zealand does not manufacture these products, and products would be phased down in any case as global production will decrease.

Permits for trade in mercury

33. The Convention seeks to reduce the global supply of mercury and to prevent surplus mercury from being used in activities that are harmful to human health and the environment. It specifies rules for the import and export of mercury.

34. I therefore propose to amend the Imports and Exports Order to restrict the import and export of mercury in limited circumstances. The main aims are to ensure that:

- mercury use is limited to those uses allowed under the Convention
- mercury use is from a source allowed by the Convention
- exports have the prior informed consent of the importing Party or non-Party.

35. The impact of implementation is expected to be low, as the process aligns with existing permitting systems under the Imports and Exports Order. These administrative costs will apply regardless of whether New Zealand ratifies the Convention, as the Convention's prior informed consent rules also apply to non-Parties.

Consultation

36. Public comment was previously sought by the Foreign Affairs, Defence and Trade Select Committee when it examined the National Impact Analysis and completed Parliamentary Treaty Examination of the Convention in 2014. Overall, public responses to the Committee supported ratifying the Convention and regulating mercury. Since this time, the Ministry undertook engagement with industry in 2016 on the potential sale and trade implications of the proposed restrictions. Feedback

from industry indicated the majority of the proposed provisions will not impact them.

37. The Energy Efficiency and Conservation Authority, the Environmental Protection Authority, the Ministry of Business, Innovation and Employment, the Ministry of Foreign Affairs and Trade, the Ministry of Health, the Ministry for Primary Industries, and New Zealand Customs Service have been consulted on the proposals outlined in this paper, and agree with the recommended approach. The Treasury and the Department of Prime Minister and Cabinet have been informed.

Financial implications

38. We anticipate that ratifying the Minamata Convention will incur minor costs on industry and government.
39. Enforcement of regulations under the WMA will be by enforcement officers who are appointed by the Secretary for the Environment. A ban on the sale and manufacture of mercury-containing products would likely require additional compliance, monitoring and enforcement resource. The Ministry for the Environment is currently considering options for resourcing these functions.
40. The EPA has advised that it will incur new costs in setting up the permitting system (estimated at 4FTE) and approximately 0.8FTE once operational.

Legislative implications

41. Following public consultation, I intend to seek Cabinet approval by June 2020 on final policy proposals and to issue drafting instructions to the Parliamentary Counsel Office. After final policy decisions have been made by Cabinet, regulations will be made by Order in Council under the Waste Minimisation Act 2008 and the Imports and Exports (Restrictions) Act 1988.

Regulatory impact analysis (RIA)

42. The RIA requirements apply to these proposals. A Regulatory Impact Statement (RIS) has been prepared (Appendix 2).
43. The Ministry for the Environment's internal RIA Panel has reviewed the RIS "Ratification of the Minamata Convention on Mercury" and considers that it **meets** the Quality Assurance criteria for this stage of the process, and is likely to facilitate effective consultation on the proposals. The consultation will provide information on the likely impacts of the proposals, to inform a RIA on the final proposal.

Human rights

44. The proposal in this paper and the attached consultation document are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Gender implications

45. There are no gender implications in this proposal.

Disability perspective

46. There are no specific implications from a disability perspective in this proposal.

Publicity

47. Should Cabinet agree to the recommendations in this paper, the attached consultation document *New Zealand's approach to ratifying the Minamata Convention on Mercury* will be released on the Ministry for the Environment's website for public comment, accompanied by a media release. The Ministry's officials will offer to meet stakeholders with an interest in the proposal.

48. The consultation will begin on 19 March and close on 30 April 2020.

Proactive Release

49. I propose to proactively release this Cabinet paper and the Regulatory Impact Statement at the same time as the consultation document. The documents will be redacted as appropriate under the Official Information Act 1982.

Recommendations

The Minister for the Environment recommends that the Committee:

1. **note** that New Zealand signed the Minamata Convention on Mercury in 2013 and New Zealand's Parliamentary Treaty Examination of the Convention was concluded in 2014
2. **note** some legislative amendments are required prior to ratification:
 - 2.1. amending the Imports and Exports (Restrictions) Prohibition Order (No 2) 2004 under the Imports and Exports (Restrictions) Act 1988 to introduce a permitting system for international trade in mercury, and to restrict the import and export of certain mercury-containing products
 - 2.2. creating regulations under the Waste Minimisation Act 2008 to prohibit the manufacture and sale of certain mercury-containing products
3. **agree** to a public consultation on the above regulatory proposals in order to meet the statutory requirements under the Waste Minimisation Act 2008
4. **approve** the document *Managing the trade in mercury and mercury products: New Zealand's approach to ratifying the Minamata Convention on Mercury* for this public consultation
5. **agree** to delegate authority to the Minister for the Environment to approve minor technical and editorial changes to the discussion document prior to its public release
6. **invite** the Minister for the Environment to return to Cabinet following public consultation for final policy decisions
7. **note** that further regulatory amendments relating to mercury air emissions that are necessary for New Zealand to ratify the Convention will be progressed through the work stream to amend the Resource Management (National Environmental Standards for Air Quality) Regulations 2004, which will be advanced by Hon Nanaia Mahuta, Associate Minister for the Environment
8. **note** that in order to ratify the Convention, New Zealand must comply with all the legally binding obligations before they enter into force for New Zealand and some legislative amendment is required prior to ratification.

Authorised for lodgement.

Hon David Parker

Minister for the Environment

Appendix 1.

Draft Discussion Document on ***Managing the trade in mercury and mercury products: New Zealand's approach to ratifying the Minamata Convention on Mercury***

Appendix 2.

Regulatory impact summary: Ratification of the Minamata Convention on Mercury



Cabinet Environment, Energy and Climate Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Regulatory Measures to Ratify the Minamata Convention on Mercury: Public Consultation

Portfolio Environment

On 12 March 2020, the Cabinet Environment, Energy and Climate Committee (ENV):

- 1 **noted** that New Zealand signed the Minamata Convention on Mercury in 2013 and New Zealand's Parliamentary Treaty Examination of the Convention was concluded in 2014;
- 2 **noted** that some legislative amendments are required prior to ratification:
 - 2.1 amending the Imports and Exports (Restrictions) Prohibition Order (No 2) 2004 under the Imports and Exports (Restrictions) Act 1988 to introduce a permitting system for international trade in mercury, and to restrict the import and export of certain mercury-containing products;
 - 2.2 creating regulations under the Waste Minimisation Act 2008 to prohibit the manufacture and sale of certain mercury-containing products;
- 3 **agreed** to a public consultation on the above regulatory proposals in order to meet the statutory requirements under the Waste Minimisation Act 2008;
- 4 **approved** the document *Managing the trade in mercury and mercury products: New Zealand's approach to ratifying the Minamata Convention on Mercury* attached to the paper under ENV-20-SUB-0008 (the discussion document) for public consultation;
- 5 **authorised** the Minister for the Environment to approve minor technical and editorial changes to the discussion document prior to its public release;
- 6 **invited** the Minister for the Environment to report to ENV following public consultation for final policy decisions;
- 7 **noted** that further regulatory amendments relating to mercury air emissions that are necessary for New Zealand to ratify the Convention will be progressed through the work stream to amend the Resource Management (National Environmental Standards for Air Quality) Regulations 2004, which will be advanced by the Associate Minister for the Environment (Hon Nanaia Mahuta);

- 8 **noted** that in order to ratify the Convention, New Zealand must comply with all the legally binding obligations before they enter into force for New Zealand and some legislative amendment is required prior to ratification.

Vivien Meek
Committee Secretary

Present:

Rt Hon Winston Peters
Hon David Parker (Chair)
Hon Nanaia Mahuta
Hon James Shaw
Hon Eugenie Sage

Officials present from:

Office of the Prime Minister
Officials Committee for ENV

Hard-copy distribution:

Minister for the Environment
Associate Minister for the Environment (Hon Nanaia Mahuta)