



9(2)(a)

Dear 9(2)(a)

Thank you for your email of 18 July 2021 requesting the following under the Official Information Act 1982 (the Act):

I am seeking information on the Hazardous Substances and New Organisms (Hazardous Substances Assessments) Amendment Bill

Please provide me with:

(a) a list of all the briefings, submissions, aide memoire, or advice provided by the Ministry to the Hon David Parker as the Minister in charge of the Hazardous Substances and New Organisms (Hazardous Substances Assessments) Amendment Bill, including the dates of each document and its title.

(b) a copy of all the briefings, submissions, aide memoire or advice provided by the Ministry to the Minister in charge of the Bill that relate to what should be included or excluded from the Hazardous Substances and New Organisms (Hazardous Substances Assessments) Amendment Bill

Where the Ministry decides to withhold any information from its response to me, please can it also provide me - as required by section 19(a)(ii) of the OIA - the grounds in support of its reason for each item of withheld information. If any document is withheld entirely, I request that the Ministry nevertheless provide me with the title and date of the document.

The Ministry has identified 14 documents in response to part (a) of your request as follows:

- 10 June 2019: Briefing 2019-B-05371 Approval to release a discussion document on proposed improvements to the hazardous substances reassessment process in the Hazardous Substances and New Organisms Act
- 1 July 2019: Briefing 2019-B-05738 Updated discussion document on proposed improvements to assessments and reassessment of hazardous substances
- 6 Sep 2019: Briefing 2019-B-05983 Proactive release Cabinet paper on Approval to release a discussion document on proposed improvements to the hazardous substances reassessment process in the Hazardous Substances and New Organisms Act
- 10 December 2019: Briefing 2019-B-06228 Hazardous substances assessment: summary of submissions and policy advice
- 12 March 2020: Briefing 2020-B-06460 Seeking Cabinet's policy decisions on proposed amendments to the Hazardous Substances and New Organisms Act 1996

- 22 June 2020: Talking Points for the Minister for Environment, Energy and Climate Cabinet Committee
- 28 July 2020: Briefing 2020-B-07013 Proactive release Cabinet paper on Seeking Cabinet's policy decisions on proposed amendments to the Hazardous Substances and New Organisms Act 1996
- 1 Feb 2021: Briefing 2021-B-07511 Improving the processes for assessing and reassessing hazardous substances
- 8 March 2021: Environment Weekly Update – paragraph 4.2
- 19 April 2021: Environment Weekly Update – paragraph 3.1
- 20 May 2021: Briefing 2021-B-07738 Seeking Cabinet's approval to introduce the HSNO (Assessments) Amendment Bill into the House
- 6 July 2021: Talking Points for the Minister for Legislation Cabinet Committee
- Week of 26 July 2021: First Reading Pack provided to the Minister including draft press release, draft speech, draft Summary of the Bill, draft Legislative Statement, draft Commentary on the Bill and draft FAQs.
- 9 August 2021: Briefing BRF-413- Proactive release Cabinet paper Hazardous Substances and New Organisms (Hazardous Substances Assessments) Amendment Bill: Approval for Introduction.

In respect of part (b) of your request, seven documents are being released to you. Some information to be released is contained within documents for which most of the material is out of scope. This information will be released as excerpts under section 16(1)(e) of the Act.

Please note that documents one to four and seven do not have the appendices attached. The appendices are refused under section 18(d) of the Act as the final versions are publicly available.

You will be interested to know that the cabinet paper for the Bill has been proactively released and is available here:

- Committee minute: environment.govt.nz/what-government-is-doing/cabinet-papers/legislation-committee-minute/
- Cabinet paper: environment.govt.nz/what-government-is-doing/cabinet-papers/cabinet-paper-hazardous-substance-and-new-organisms-amendment-bill/

More information regarding the Bill is available here:

- [Hazardous Substances and New Organisms Act 1996 proposed amendments | Ministry for the Environment](#) (2020 Cabinet paper, Cabinet minutes and Regulatory Impact Assessment)
- [Hazardous substances assessments: Improving decision-making – A discussion document on proposed improvements to assessments and reassessments of](#)

[hazardous substances | Ministry for the Environment](#) (2019 Discussion Document and 2020 Summary of Submissions).

- [Approval to release a discussion document on proposed improvements to assessments and reassessments of hazardous substances | Ministry for the Environment](#) (2019 Cabinet paper).

You have the right to seek an investigation and review by the Office of the Ombudsman of my decision to withhold information relating to this request, in accordance with section 28(3) of the Act. The relevant details can be found on their website at: www.ombudsman.parliament.nz.

Please note that due to the public interest in our work the Ministry for the Environment publishes responses to requests for official information on our [OIA responses page](#) shortly after the response has been sent. If you have any queries about this, please feel free to contact our Ministerial Services team: ministerials@mfe.govt.nz.

Yours sincerely



Glenn Wigley
Director - Policy and Regulatory

Document schedule

Document no.	Document date	Content	Decisions	OIA sections applied
1	10 June 2019	Briefing – Approval to release a discussion document on proposed improvements to the hazardous substances reassessment process in the Hazardous Substances and New Organisms Act	Release in full	n/a
2	1 July 2019	Briefing – Updated discussion document on proposed improvements to assessments and reassessment of hazardous substances	Release in full	n/a
3	10 December 2019	Briefing – Hazardous substances assessment: summary of submissions and policy advice	Release in full	n/a
4	12 March 2020	Briefing - Seeking Cabinet's policy decisions on proposed amendments to the Hazardous Substances and New Organisms Act 1996	Release in full	n/a
5	8 March 2021	Environment Weekly Update	Release in part	16(1)(e), out of scope information is redacted
6	19 April 2021	Environment Weekly Update	Release in part	16(1)(e), out of scope information is redacted
7	20 May 2021	Briefing - Seeking Cabinet's approval to introduce the HSNO (Assessments) Amendment Bill into the House	Release in full	n/a



DOCUMENT 2

Updated discussion document on proposed improvements to assessments and reassessments of hazardous substances

Date Submitted:	1 July 2019	Tracking #: 2019-B-05738	
Security Level	In-confidence	MfE Priority:	Non-Urgent. Public consultation on discussion paper

	Action sought:	Response by:
To Hon David Parker, Minister for the Environment	Seek Cabinet's approval to public consultation	17 July 2019
CC Hon Eugenie Sage, Associate Minister for the Environment		

Actions for Minister's Office Staff	Return the signed report to MfE.
Number of appendices and attachments 3	Titles of appendices and attachments: 1. Draft Cabinet paper 2. Draft discussion document 3. Regulatory Impact Assessment
Note any feedback on the quality of the report	

Ministry for the Environment contacts

Position	Name	Cell phone	1 st contact
Principal Author	Vy Nguyen	0224930611	
Responsible Manager	Tim Bennetts	0275055931	
Director	Glenn Wigley	0274917806	✓

Released under the Official Information Act 1982

Updated discussion document on proposed improvements to assessments and reassessments of hazardous substances

1. This briefing provides you updated drafts of the Cabinet paper and discussion document (Appendix 1, and 2 respectively) seeking Cabinet's approval for public consultation on proposed improvements to assessments and reassessments of hazardous substances under the Hazardous Substances and New Organisms Act 1996.
2. We met separately with yourself and Associate Minister Eugenie Sage on 17 June about the draft discussion document on proposed improvements to the hazardous substances reassessment process. You both expressed a preference for the scope of the programme to include both the reassessments of existing hazardous substances and the assessments of new substances.
3. We have worked with the EPA on that basis and updated the Cabinet paper and discussion document. The update mainly focuses on applying the 'trusted regulator' approach to the initial assessment of new substances.
4. We have consulted with agencies on the updated drafts. The Department of Conservation (DoC) has suggested removing Option 3 of the 'trusted regulator' approach, ie adopting a 'trusted regulator' decision without consideration of the New Zealand context because it is not a preferred option. DoC is concerned that this option could result in calls to prohibit the use of 1080 in New Zealand if any overseas 'trusted regulator' bans the product. Because this is not a preferred option, we consider that it can be removed from the discussion document to avoid inviting people to consider this option. However, we still include this option in the Regulatory Impact Assessment (RIA) to demonstrate the whole range of options for applying 'trusted regulators' information and provide evidence on why this option should not be adopted.
5. The Ministry for the Environment's Regulatory Impact Analysis Panel has reviewed the attached RIA (Appendix 3) prepared by the Ministry for the Environment. The Panel considers that the RIA partially meets the quality assessment criteria.
6. The panel considers that the regulatory impact analysis is adequate to support the level of Ministerial decisions being sought in this Cabinet paper, given that consultation has yet to occur. For the post-consultation RIA, more detailed information will be required on the impact of any recommended options to allow the development of a formal cost-benefit analysis, as well as more detail on how the proposals will be monitored and implemented. The RIA provides sufficient evidence of our current understanding of policy problems prior to consultation, and assesses a range of options which have been assessed against several criteria. The Panel considers that any final policy decisions should be informed by consultation responses received from stakeholders in terms of likely costs, impacts and benefits.
7. The Panel also informally reviewed the attached discussion document and considers that the document will facilitate effective consultation and elicit information to further inform Government decisions on the issues.
8. When you have reviewed the updated Cabinet paper and are comfortable with the proposals, we ask that you circulate the paper with your colleagues for comment.
9. We intend that you seek Cabinet approval on 29 July to release the discussion document for public consultation in August.

Recommendations

10. We recommend that you:

a. **Agree** to seek cabinet's approval to release the Discussion document: *Proposed improvements to assessments and reassessments of hazardous substances*

Yes/No

b. **Review** the attached Cabinet paper and when you are comfortable circulate the paper with your colleagues for comment.

Signature



1/7/19.

Glenn Wigley
Director - Natural and Built Systems

Hon David Parker
Minister for the Environment

Date

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Appendix 3 – Regulatory Impact Assessment

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DOCUMENT 3

Hazardous substances assessments: Summary of submissions and policy advice

Date Submitted:	10/12/2019	Tracking #: 2019-B-06228	
Security Level	In-Confidence	MfE Priority:	Urgent

	Action sought:	Response by:
To Hon David Parker, Minister for the Environment	Note the summary of submissions Direct preferred options for the policy package and next steps	19 December 2019
CC Hon Eugenie Sage, Associate Minister for the Environment		

Actions for Minister's Office Staff	Return the signed report to MfE.
Number of appendices and attachments # 1	Titles of appendices and attachments: 1. Draft report on <i>Hazardous substances assessments: Improving decision-making – Summary of submissions</i>
Note any feedback on the quality of the report	

Ministry for the Environment contacts

Position	Name	Cell phone	1 st contact
Principal Author	Vy Nguyen	0224930611	
Responsible Manager	Amanda Baldwin	0223625798	
Director	Glenn Wigley	0274917806	✓

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Hazardous substances assessments: Summary of submissions and policy advice

Key Messages

1. This briefing provides a summary of submissions on the discussion document *Hazardous substances assessments – Improving decision-making: proposed improvements to the assessments and reassessments of hazardous substances*.¹ It also outlines our advice on preferred options for improvements, and seeks your direction on next steps to obtain Cabinet decisions on the policy package.
2. The policies recommended seek to make the assessment of new substances, and reassessment of substances already in use, more efficient. Currently, many high risk hazardous substances are not reviewed in a timely manner because reassessment can be expensive and time-consuming. Industry may also be reluctant to seek approvals for safer alternative substances because of cost. This risks resulting in poorer human safety and environmental outcomes for New Zealand.
3. Our recommended package includes eight changes to the Hazardous Substances and New Organisms (HSNO) Act 1996. Specifically, we propose to:
 - enable the Environmental Protection Authority (EPA) to apply overseas regulators' scientific information, data, assessments, and decisions with a consideration of the New Zealand context, and with consultation in its discretion (subject to specific requirements)
 - enable the EPA to temporarily restrict certain uses of a substance, subject to specific requirements
 - provide a simplified process for updating hazard classifications of substances and corresponding controls
 - enable more effective targeted consultation during modified reassessment
 - reduce the need for formal justification for reassessment of chemicals identified by the EPA's prioritisation process
 - align the timeframes of the assessments and reassessments of substances containing the same active ingredient in specific situations
 - provide a simplified process for updating controls on existing substances based on a recent EPA assessment of a new substance containing the same active ingredient
 - delegate some decision-making power to the EPA's Chief Executive.
4. The criteria for identifying overseas regulators the EPA can trust (trusted regulators) are proposed to be implemented through changes to the Hazardous Substances and New Organisms (Methodology) Order 1998. These changes will also stipulate how information from trusted regulators can be used. As the Methodology Order is made by regulations, the proposed changes require public consultation, which will provide additional opportunity for stakeholders to be involved in developing the criteria.
5. In addition, we recommend operational improvements and guidance material for collecting

¹ <https://www.mfe.govt.nz/publications/hazards/hazardous-substances-assessments-improving-decision-making-%E2%80%93-discussion>

quality information for reassessments.

6. We also seek your agreement to publish a report on the summary of submissions subject to professional editing (Appendix 1) on the Ministry for the Environment's website.

Background

7. In July 2019, Cabinet agreed for the Ministry for the Environment to consult on proposed improvements to the assessments and reassessments of hazardous substances under the HSNO Act. These included a proposal for making better use of international information during the assessment and reassessment processes [CAB-19-MIN-0362].
8. We consulted during August and September 2019. We received 44 submissions from a range of individuals and groups, including iwi/Māori, NGOs, the chemical industry, primary industry sectors, local government and health agencies.

Key themes emerging from submissions

9. Most submitters supported making better use of international information as outlined in Proposal 1, but also emphasised the importance of the New Zealand context. Submitters suggested in addition to international information, the EPA ought to consider potential impacts on users' access to some vital chemicals, financial impacts on industry, our native species and the unique environment, the importance of Māori knowledge, and obligations in Treaty of Waitangi settlements.
10. Feedback on the seven other proposed improvements to reassessments of hazardous substances were mixed. Generally, submitters supported initiatives to reduce duplication of work and increase efficiency but also raised concerns about the workability and impacts of the proposals. Some submitters suggested regulatory change was not needed and that the efficiency gains sought could be made if the EPA continues its planned operational improvements.² They also requested greater transparency of the EPA's work plan for reassessments and improved engagement practices.

Policy advice

11. We have worked with the EPA on the issues raised by submitters and in preparing advice on the proposed improvements. We have also commissioned a Cost Benefit Analysis (available if you wish) to inform our advice.
12. The following sections provide our advice on each of the proposals (1-8) contained in the discussion document *Hazardous substances assessments – Improving decision-making: proposed improvements to the assessments and reassessments of hazardous substances*.

Proposal 1: Making better use of international information during assessments and reassessments of hazardous substances

Giving the EPA discretion to apply overseas information

13. Currently, the EPA can consider information from overseas regulators during the assessments and reassessments of hazardous substances but it is required under the HSNO Act and the Methodology Order, to carry out assessment of all information from all sources, and decision-making processes, which may include consultation and hearings. In many instances, however, the information from overseas regulators, in combination with the

² The EPA is undertaking a modernisation project to improve the way hazardous substances are managed and regulated in New Zealand by different operational initiatives, including updating and streamlining processes; aligning technologies with international partners, and developing a chemical map in New Zealand.

applicant's information and the EPA's existing databases would be sufficient to make satisfactory decisions. There is currently no simplified process for applying information from overseas regulators that the EPA trusts.

14. In the discussion document, we proposed enabling the EPA to apply different forms of information (scientific information, data, assessments and decisions) from overseas regulators. We indicated that criteria, set out in guidance or regulation, would be needed to identify which overseas regulators to trust and how their information may be used.
15. Submitters generally supported the idea, but were concerned that the New Zealand context needed to be maintained. Some chemical industry and end-users asked to be involved in developing the criteria for selecting trusted regulators and applying their information. Submitters also queried how the EPA might deal with conflicting information from different regulators and if stakeholders would still have an opportunity to submit their feedback during assessment and reassessment processes.

Giving the EPA discretion to not consult

16. Consultation is an important method for obtaining New Zealand and stakeholder specific information but it can also be time-consuming and resource-intensive. Consultation may not be needed if the EPA has already obtained information specific to the New Zealand context from existing databases, and the information from trusted regulators can be applied without any adverse effect to human health, safety, and the environment. We therefore believe that in some circumstances the EPA could be given discretion not to consult.
17. Criteria for instance where consultation is still appropriate, requires further development, but may include instances where:
 - there is new, relevant information available that has not been considered by the trusted regulator
 - there are substantially different assessment approaches taken by trusted regulators, and substantially different assessment conclusions or decisions
 - it is an assessment or reassessment of a substance with high risks to human health, safety, or the environment
 - it is a reassessment of a substance of high importance to New Zealand
 - there are important gaps in the information from trusted regulators because of confidentiality requirements that need to be filled by other sources
 - there are gaps in the information for the New Zealand context
 - the assessment of the New Zealand context raised issues requiring engagement and further analysis.
18. If the EPA decides not to consult, the process of applying a trusted regulator's assessments and decisions could be similar to a rapid assessment under section 28A of the HSNO Act, and the decision-making power would be delegated to the EPA's Chief Executive. If the EPA decides to consult, it could follow the full assessment and reassessment processes.
19. WorkSafe may be involved in these processes, and require data and information to set workplace controls following its own process in accordance with the Health and Safety at Work Act 2015 and its regulations.
20. We propose changes to the Methodology Order to stipulate the criteria and process of identifying trusted regulators, and the process of applying information from trusted regulators, including the parameters of the EPA's discretion over consultation.
21. Amendments to the Methodology Order will require public consultation, which will meet the

desire of some submitters, including industry and end-users, for further engagement and collaboration with us in the development of the criteria and process.

Proposal 2: Applying trusted information to suspend or temporarily restrict an approval

22. Currently section 64 of the HSNO Act allows the EPA to suspend approvals during reassessment if there is reasonable cause to believe that there is significant actual or imminent danger to human health, or safety, or the environment from the continued use of the substance.
23. We asked the public if the threshold for suspending an approval should be lowered to better protect human health, safety, and the environment. We also consulted about the timing of suspension, and whether the EPA could temporarily restrict certain uses of substances during reassessment.
24. Some submitters agreed with the proposal, but industry and end-users strongly opposed it because of potentially significant economic impacts on their businesses, especially where there are no alternatives or the information used for suspension is biased or irrelevant to the New Zealand context. End-users requested compensation if a reassessment later showed that the suspension was unnecessary.
25. We recommend no changes to the threshold of suspension of approvals during reassessment, but instead recommend introducing a new provision into the HSNO Act to enable the EPA to temporarily restrict certain uses of a hazardous substance while it is being reassessed. For this new provision, the threshold would be lower than that in the current section 64 of the HSNO Act. For example, the proposed change could enable the EPA to restrict certain uses of a substance if there is evidence of potential danger to human health, safety, or the environment. The supporting evidence for the temporary restriction could come from either international or domestic sources.
26. The temporary restriction would limit certain uses of substances. It could, for example, limit domestic uses, or uses where there is a high exposure to vulnerable people, to protect human health. Another example could be restricting application rates, intervals or frequencies, or introducing protections against spray drift to protect organisms at risk of exposure.
27. To manage and inform the impacts of a temporary restriction, we suggest the EPA engages with persons who, in its opinion, would likely be directly affected, prior to the decision to temporarily suspend or restrict.
28. Currently, a suspension under section 64 can only be implemented after a public notification of a reassessment application. Given that reassessment applications can be complex and take significant time to produce, we consider it is appropriate to provide an ability to implement a restriction of certain uses of substances after the justification ('grounds'³) for reassessment of that substance has been established. This is to reduce the identified adverse impacts. The restriction should remain in place until the reassessment application has been decided on.
29. To manage the potential impacts of a restriction decision, we recommend that the EPA gives restricted substances the highest priority in its work plan for reassessments.
30. Submitters also raised a concern about the EPA's ability to monitor and enforce a suspension

³ Under Section 62 of the HSNO Act, the EPA may decide that grounds exist to reassess a substance after taking into account new information triggering a reassessment, for example, significant new information relating to the effects of a substance. The process of establishing grounds for reassessment is, hereafter, referred to as a grounds step, which is the first step of a formal reassessment process.

or restriction decision. We recommend that the EPA address this matter as part of its ongoing operational improvement programme.

Proposal 3: Applying a trusted regulator's decision to change a hazard classification

31. Currently, change to a hazard classification and corresponding controls of existing hazardous substances must be undertaken through a modified reassessment, which includes the formal justification for reassessment (grounds step) and a reassessment application process with targeted consultation (and hearing if requested). We proposed a simplified processes to apply a trusted regulator's decision to change a hazard classification and corresponding controls. Submitters generally supported the proposal but noted these processes may require targeted consultation.
32. We, therefore, recommend changes to the HSNO Act to allow the EPA to follow a simplified process ('a process of updating substances controls') to make changes to hazard classifications and controls of a substance based on a trusted regulator's decision on changes to a chemical's hazard classifications.
33. This process would not require the formal justification for reassessment (grounds step) to save administrative time and costs. The EPA would also have discretion as to whether to undertake consultation to collect further information, where needed, to ensure the appropriate management of hazardous substances. Consultation may be needed, for example, where:
 - there is new relevant information available that has not been considered by the trusted regulator
 - there are substantial differences in assessment approaches taken by trusted regulators
 - there are substantial differences in formulations⁴ or use scenarios of the chemicals assessed by the trusted regulator and the substances assessed by the New Zealand EPA
 - there is a need for further information to set controls.
34. We do not propose mandatory targeted consultation for this process. This is because such a consultation may not always be necessary where, for example, there are minor changes to a hazard classification, or controls, or where the EPA can obtain sufficient information from the trusted regulator and its own databases to support the change.
35. We also sought feedback on whether the EPA staff should be delegated to make purely technical decisions during a process of updating substances controls. Submitters generally supported the idea but some raised concerns about the definition of 'technical decisions' and asked for a mechanism to appeal the decisions of the EPA's staff.
36. We recommend that, during a process of updating substances controls and where the EPA decides not to undertake a targeted consultation, the decision-making power may be delegated to the EPA's Chief Executive. We consider these reassessments are relatively straightforward, and thus do not require to be decided by a decision-making committee.
37. WorkSafe may be involved in this process, and require data and information to set workplace controls following its own process in accordance with the Health and Safety at Work Act 2015 and its regulations.

⁴ Overseas regulators may assess a chemical while the EPA assesses a substance, which is a formulation of the chemical, already assessed by overseas regulators, as an active ingredient, and other active ingredients or components.

Proposal 4: Collecting quality information for reassessment

38. Currently, after the justification (grounds) for reassessment has been established and before a reassessment application is formally lodged, the EPA can make a "call for information" to industry stakeholders and the public to support a reassessment that the EPA has initiated. Responding to this information request is voluntary.
39. We asked the public if the EPA's informal call for information could be made statutory, and if the EPA should be able to revoke an existing approval if they did not receive enough information to carry out a reassessment.
40. Most submitters agreed that the burden of proof should be primarily placed on industry and end-users. Chemical industry stakeholders and end-users suggested changes to ensure the EPA requests were clear and led to the collection of quality information for reassessment. As some industry data is commercially sensitive, better mechanisms to preserve confidentiality were requested.
41. Submitters considered that the option of revoking an approval because of the lack of information, without undertaking a reassessment process, could inadvertently remove critical products from the market, and create more work to re-establish the approval. Industry and end-users therefore wanted to be engaged when the EPA considers revoking an approval.
42. We believe that these are valid arguments. Instead of the proposed legislative change, we recommend that the EPA implements operational improvements to its call for information and develops guidance on best practice for responding. We also recommend that the EPA works with industry to develop better mechanisms to preserve confidentiality.
43. To ensure ample time for industry to collate information, we recommend that the EPA also publishes a work plan for reassessments on its website.

Proposal 5: Streamlining targeted consultation for modified reassessments

44. Section 63A of the HSNO Act allows the EPA to undertake a modified reassessment where it reviews only one or some specific aspects of an approval, excluding minor or technical amendments. A modified reassessment cannot revoke an approval. The current wording of section 63A requires the EPA to "do everything reasonably practicable on its part to consult with all persons who, in its opinion, may be affected by the reassessment". This effectively means the EPA has to publicly notify modified reassessments in most cases.
45. We proposed minor changes to section 63A to allow flexibility in targeted consultation for modified reassessments. Submitters generally supported a targeted consultation but noted that it may be difficult for the EPA to identify targeted stakeholders.
46. Since the EPA considers that it can identify persons who would likely be directly affected by a reassessment, we propose minor changes to the wording of section 63A of the HSNO Act to lower the threshold for consultation. For example our proposed change could be consulting with all persons who, in the EPA's opinion, may be directly affected by the modified reassessment. Section 63C should also be changed accordingly for consistency.

Proposal 6: Streamlining the early stage of reassessments of priority chemicals

47. The EPA undertakes an on-going prioritisation process using the Flexible Reassessment Categorisation Screening Tool, peer reviewed by two regulatory bodies in Canada and Australia, to identify which chemicals are of concern based on information from international and domestic sources. The outcome is a Priority Chemicals List (PCL). We sought public feedback on whether the chemicals on the PCL still required the EPA to complete a formal

justification for reassessment by carrying out the section 62 'grounds' assessment. Feedback from the public identified that the current screening process only considers the hazard characteristics and exposure pathways, and is not focused on the approvals of the chemicals of concern. The consideration of these approvals is currently being undertaken through the EPA's work on identifying chemicals of current concern based on the screening outcome and other information.

48. We recommend that the HSNO Act is amended to require the EPA to develop a publicly available work plan for reassessments, consisting of chemicals on the PCL, which are also chemicals of current concern. We recommend changes to the HSNO Act so that the EPA is not required to carry out the formal justification for reassessment (grounds step) of the chemicals identified in the work plan. This effectively means that the EPA would have to develop the work plan and our proposed changes would give the work plan a statutory status to automatically meet the grounds criteria.
49. Some submitters asked for engagement during the EPA's screening process. We recommend that the EPA considers the question of engagement when it improves the use of the screening tool and related processes in the future.

Proposal 7: Avoiding duplication during assessments and reassessments of related substances containing the same active ingredient

50. We consulted on ways to reduce duplication of work where there is an application for a new substance with an active ingredient that is already being reassessed. Currently, the EPA is required to process the new application alongside the reassessment. A decision can be made on the new substance even though the reassessment is not complete. The new approval would then likely be reviewed, to reflect the reassessment decision. Generally, submitters agreed there could be duplication of work but felt this would not happen often.
51. To save time and resources, and to manage relevant substances consistently, we propose changes to the HSNO Act to enable the alignment of timeframes for processing and decision-making relating to new and existing substances with the same active ingredient.
52. We consider that the alignment of timeframes will bring benefits of consistency and efficiency that are likely to outweigh any potential costs to the applicant of waiting for a reassessment decision. Without this change the new approval would later need to be reassessed to include any reassessment controls.

Proposal 8: Updating controls on existing substances based on a recent EPA assessment of a related substance containing the same active ingredient

53. We sought feedback on whether the EPA could follow a simplified process to update controls on existing substances, based on a recent EPA assessment of a related, new substance containing the same active ingredient. This proposal was generally supported, although submitters requested there should be a targeted consultation during this process (similar to feedback on Proposal 3).
54. We propose changes to the HSNO Act to enable the EPA to follow a process of updating substances controls for this proposal. Similar to Proposal 3, this process would not require the formal justification for reassessment (grounds step), and the EPA would have discretion over whether it consults during this process. Consultation should be considered where, for example:
 - there is new relevant information available that was not considered when the EPA assessed a new substance

- there are substantial differences in formulations or use scenarios of substances⁵
 - there is a need for further information to set controls.
55. We do not propose a mandatory targeted consultation for this process. This is because in some cases, very minor changes to controls may be required which do not merit consultation, given the work that the EPA has already done for the assessment.
56. Similar to Proposal 3, we also recommend that during this process of updating substances controls and where the EPA decides not to undertake a targeted consultation, the decision-making power may be delegated to the EPA's Chief Executive.
57. Industry was concerned that this proposal may enable the EPA's new assessment approaches or new controls of managing substances to be constantly applied to existing substances. This would create instability to the market. We recommend changes to the HSNO Act to ensure that controls of any approval should not be updated more than once a year, following this simplified process. Decision makers would decide an appropriate transitional time for compliance with updated controls.
58. We also recommend the EPA should keep the public informed about its work plan relating to these updates.

Consultation and Collaboration

59. We have worked with the EPA on submission analysis and in preparing this advice. We also refer to the Cost Benefit Analysis (available if you wish) prepared by NZIER, who undertook further consultation with industry, end-users, an overseas regulator and WorkSafe.
60. We talked to the Ministry of Health because it indicated an interest in the proposals. The Ministry of Health was supportive of the trusted regulator proposal to address the backlog of reassessment, and to give timely approvals for products being used in Government programmes, instead of going through an emergency process, given the products have been approved by international agencies.

Risks and mitigations

61. A more dynamic assessment system is desirable but could also pose risks of inappropriate withdrawal of vital substances, or of new high-risk substances entering the New Zealand market without a thorough assessment. Industry and end-users requested for engagement where the EPA make decisions that may have an impact on their businesses.
62. Iwi/Māori, NGOs, and individuals were also concerned that they were under-resourced to engage during assessments and reassessments of hazardous substances.
63. There may be a perceived risk of mistakes or misuse of power when the EPA is provided with discretion over consultation in Proposal 1, 3 and 8, and where decision-making power is delegated to the EPA's Chief Executive rather than a decision-making committee in those three proposals. We will set parameters to ensure the discretion is properly used. We will continue to work on them before seeking Cabinet decisions.
64. Particularly, the parameters for discretion over consultation where the EPA applies information from trusted regulators (Proposal 1) will be stipulated in detail through the

⁵ Existing substances must contain the same active ingredient with the new substance assessed by a recent EPA assessment, but may also be formulated with other active ingredients or components that need a thorough reassessment, including targeted consultation, to set appropriate controls

regulatory process of amending the Methodology Order.

65. In addition, the decisions of the EPA are subject to judicial review proceedings, which can consider a decision made under statutory powers. An affected party could also potentially seek an injunction through the courts if their business or undertaking was likely to be substantially impacted by an EPA decision and there were grounds for such a proceeding.
66. We will continue to work on the interactions of these proposals, and any unintended consequences before seeking Cabinet decisions on the policy package.
67. Compliance, monitoring and enforcing under the HSNO Act were raised as an issue that needs more work on in different work programmes.

Legal issues

68. No legal issues have been identified in respect of the proposals in this briefing.

Financial, regulatory and legislative implications

69. The Cost Benefit Analysis estimates small cost and small benefit of less than \$10 million to the economy over 10 years from these proposals, provided effective engagement would be in place to ensure appropriate management of hazardous substances. This benefit does not include unqualified benefit from improvements to human health, safety, and the environment. The analysis emphasises that a more dynamic system could bring about benefits if there are transparency in the policy approach and effective engagement with the public.
70. The analysis identifies three key features of assessments that may limit possible benefits from changes. They are the relatively low number of assessments and reassessments, the relatively high fixed costs of the processes, and the high level of expertise required.
71. WorkSafe may be involved in the EPA's assessments and reassessments, and may need to initiate its own process to introduce or make changes to a Safe Work Instrument, to set workplace controls in accordance with the Health and Safety at Work Act 2015 and its regulations. This would have some impacts on the potential benefits of these proposals.
72. The analysis does not provide specific costs for identifying trusted regulators and establishing the trusted relationships because the trusted regulator approach and preferred options in the discussion document were not finalised. The lack of an example model to refer to also created some uncertainty. The analysis also does not estimate the costs of amending the HSNO Act and the Methodology Order.
73. We will consult with the Treasury about these costs.
74. With your approval we aim to obtain Cabinet decisions in March 2020 so that instructions to the Parliament Counsel Office could be finalised in April 2020. This is to enable the Bill to be introduced in July 2020.

Next Steps

75. Subject to your direction on preferred options for each proposal, we will draft a Cabinet paper and an updated Regulatory Impact Assessment. We will consult with other government agencies on the policy package in February 2020.
76. We will report back to you and seek Cabinet decisions in March 2020.

Recommendations

77. We recommend that you:

- a. **Note** the Hazardous substances assessments: Improving decision-making – Summary of submissions

Yes/No

- b. **Agree** to the following proposals for changes to the HSNO Act for inclusion in a draft Cabinet paper, to be prepared by officials:

1. changes to the HSNO Act to enable the EPA to apply scientific information, data, assessments, and decisions from trusted regulators with a consideration of the New Zealand context, and with consultation at its discretion (subject to specific requirements)

Yes/No

2. changes to the HSNO Act to enable the EPA to temporarily restrict certain uses of a substance after the formal justification for reassessment of that substance (grounds) has been established, with a lower threshold than that in section 64 of the HSNO Act, to react to potential danger to human health, safety, or the environment

Yes/No

3. changes to the HSNO Act to enable the EPA to make changes to hazard classifications and corresponding controls, based on a trusted regulator's decision, following a process of updating substances controls without the need to formally justify the reassessment (no grounds step) and with discretion over consultation

Yes/No

4. minor changes to the wording of section 63A and section 63C to enable more effective targeted consultation

Yes/No

5. changes to the HSNO Act to require the EPA to develop a publicly available work plan for reassessments, and to not require a formal justification for reassessment ('grounds step') of chemicals on the EPA's publicly available work plan for reassessment, consisting chemicals on the EPA's Priority Chemicals List, which are also chemicals of current concern

Yes/No

6. changes to the HSNO Act to align the timeframes of the assessment and reassessment of related substances containing the same active ingredient

Yes/No

7. changes to the HSNO Act to enable the EPA to update controls on existing substances, based on a recent EPA's assessment of a related substance containing the same active ingredient, following a process of updating

substances controls without the need to formally justify the reassessment (no grounds step) and with discretion over consultation

Yes/No

8. changes to the HSNO Act to delegate decision-making power to the EPA's Chief Executive during a process of updating substances controls where the EPA decides not to consult in Proposal 3 and 8

Yes/No

- c. **Agree** to propose changes to be made to the Methodology Order to stipulate the criteria and process for identifying trusted regulators, and the process of applying information from trusted regulators, including the parameters for the EPA's discretion over consultation mentioned in Proposal 1

Yes/No

- d. **Note** that there will be further engagement with some submitters, including industry and end-users, about the trusted regulator approach under Proposal 1 through the regulatory process of amending the Methodology Order

Yes/No

- e. **Agree** to non-regulatory solutions to collect quality information for reassessment

Yes/No

- f. **Agree** to the publication of a report on the summary of submissions on the Ministry for the Environment's website

Yes/No

Signature



Glenn Wigley
Director Natural and Built System

10/12/19.

Hon David Parker
Minister for the Environment

Date

Appendix 1: Draft report on *Hazardous substances assessments: Improving decision-making* – Summary of submissions

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the Official Information Act 1982

Released under the provision of
the Official Information Act 1982



DOCUMENT 4

2020-B-06460 – Seeking Cabinet’s policy decisions on proposed amendments to the Hazardous Substances and New Organisms Act 1996

Date Submitted	12-03-2020	Tracking #: 2020-B-06460
Security Level	In-confidence	MfE Priority: Non-Urgent. Seeking Cabinet’s policy decisions

	Action sought:	Response by:
To Hon David Parker, Minister for the Environment	Seek Cabinet’s policy decision	27 March 2020
CC Hon Eugenie Sage, Associate Minister for the Environment		

Actions for Minister’s Office Staff	Return the signed briefing to MfE.
Number of appendices and attachments 1	Titles of appendices and attachments: 1. Draft Cabinet paper

Ministry for the Environment contacts

Position	Name	Cell phone	1 st contact
Principal Author	Vy Nguyen	0224930611	
Responsible Manager	Amanda Baldwin	0223625798	
Director	Glenn Wigley	0274917806	✓

Key messages

1. Currently, the assessment and reassessment of hazardous substances in New Zealand can be time-consuming and resource-intensive. The consequence of slow and costly processes is inadequate incentives for the introduction of new, beneficial hazardous substances, and for the replacement of old, harmful ones.
2. This briefing provides a draft Cabinet paper (Appendix 1) seeking Cabinet’s approval to issue drafting instructions for proposed amendments to the Hazardous Substances and New Organisms (HSNO) Act 1996, and to begin a regulatory process to amend the Hazardous Substances and New Organisms (Methodology) Order 1998 to give effect to these amendments.

Advice

3. In December 2019, we provided you with a summary of submissions and our advice on preferred options for proposed amendments to the HSNO Act [2019-B-06228]. Following your directions at our meeting (with Minister Eugenie Sage) on 18 December 2019, we worked closely with the EPA to prepare the attached Cabinet paper to propose eight

amendments to the HSNO Act:

Making better use of international information

- a. enabling the EPA to apply data, information, assessments, and decisions from trusted regulators with a consideration of the New Zealand context (with consultation at its discretion, except in particular circumstances)
- b. enabling the EPA to make changes to hazard classifications and corresponding controls, based on a trusted regulator's assessment and decision to change the hazard classifications, following a simplified process of updating hazardous substances controls without the need to formally justify the reassessment (no grounds step) and with discretion over consultation (subject to specific requirements)
- c. enabling the EPA to temporarily restrict certain uses of a hazardous substance after the formal justification for reassessment of that hazardous substance (grounds) has been established, where there is evidence of potential actual or imminent danger to human health, safety, or the environment (subject to specific requirements)

Other improvements to the reassessment process

- d. enabling more targeted consultation during modified reassessments by amending the consultation requirements in section 63A and section 63C
- e. requiring the EPA to develop a publicly available work plan for reassessments, with items on this work plan deemed to meet the reassessment criteria (grounds)
- f. enabling the EPA to align the timeframes of the assessment and reassessment of related hazardous substances if an application of a new hazardous substance is made while a reassessment of related hazardous substances is already happening
- g. enabling the EPA to update controls on existing hazardous substances following a process of updating hazardous substances controls without the need to formally justify the reassessment (no grounds step) and with discretion over consultation (subject to specific requirements), in a situation where the EPA has undertaken a recent assessment of a related hazardous substance
- h. delegating decision-making power to the EPA's Chief Executive on applications where the EPA decides not to consult, or is not required to consult when applying information from trusted regulators or from a recent EPA assessment (in proposals a, b, and g).

4. To implement those amendments to the HSNO Act, changes to the Hazardous Substances and New Organisms (Methodology) Order 1998 will be needed to:

- a. set the criteria and process for identifying international regulators whom the EPA can trust (trusted regulators)
- b. specify the assessment and reassessment processes when the EPA applies information from trusted regulators
- c. specify other requirements on the way the EPA applies information from trusted regulators
- d. set the criteria for the EPA's discretion over consultation in simplified processes
- e. require the EPA to be more transparent about its work plan and decisions.

5. To facilitate your conversations with colleagues, we asked the EPA for actual examples

where a restriction of certain uses of hazardous substances could be used. We were advised that during the development of a reassessment application of chlorothalonil, a fungicide to control fungal leaf diseases in vegetables, turf and ornamental crops, the EPA had significant concern about its domestic uses. The concern was triggered following an EPA declined approval for a related substance and the overseas prohibition of domestic uses of chlorothalonil. A temporary restriction before the reassessment was completed would have provided earlier protections to human health, safety, and the environment.

6. You asked us about how the new restriction processes might influence sodium fluoroacetate (1080), glyphosate or neonicotinoids. Hypothetically speaking, new international information may emerge about one of these substances. If the information met the criteria of evidence of "potential actual or imminent danger to human health, safety, and the environment" the EPA would initiate an internal assessment to consider the information. The EPA would also be required to engage with directly affected parties before making a decision on restriction. The EPA have advised that they are not currently aware of international information that would trigger a restriction of those substances.
7. It is difficult to predict the outcome of the EPA's consideration for any particular hazardous substance. However, it is likely that the EPA would be under more pressure to consider information from trusted regulators to restrict certain uses of hazardous substances.
8. These proposed amendments to the HSNO Act and the Methodology Order are part of a broader work programme to better regulate and manage hazardous substances in New Zealand. That programme includes the EPA's chemical modernisation programme, which is updating the hazardous substances classification system and upgrading the EPA's hazardous substances database. The EPA has also sought budget funding to support its assessment and reassessment programme in Budget 2020.
9. In addition, an independent Technical Working Group reported in 2019 on its evaluation of the hazardous substances compliance system in New Zealand. MfE and the EPA are working on the recommendations of the report. One of the report's recommendations was to pursue the introduction of a trusted regulator mechanism.
10. We consulted the following agencies on the paper: Department of Internal Affairs, Department of Conservation, Ministry of Business, Innovation and Employment, WorkSafe New Zealand, Ministry of Health, Ministry for Primary Industries, Ministry of Justice, Ministry of Foreign Affairs and Trade, Te Puni Kōkiri, and Treasury.
11. The Department of Prime Minister and Cabinet has been informed of the contents of this paper.
12. We received support from agencies for the policy package.
13. The Ministry for the Environment's Regulatory Impact Assessment Panel has reviewed the attached updated Regulatory Impact Assessment (RIA) of the proposals. The panel considers that it partially meets the quality assurance criteria. The panel states "the RIA contains required information, and clearly sets out objectives and criteria. There is evidence of consultation on the proposals and consideration of feedback from consultation. The analysis is constrained by a narrow problem definition relating to "trusted regulator" proposals, although this scope is clearly described. A range of impacts have been identified, but may be incomplete. Implementation relies on development of a secondary instrument (Methodology Order), and the RIA indicates that further implications will be assessed as part of that process."

Next steps

14. When you have reviewed the Cabinet paper and are comfortable with the proposals, we ask that you circulate the paper to your colleagues for comment.
15. We suggest that you submit the paper for the Cabinet Economic Development Committee

meeting on 8 April.

16. After changes to the HSNO Act are made, a regulatory process to amend the Methodology Order will be initiated by a Minister for the Environment's letter to invite the EPA to undertake consultation on the proposed changes to the Methodology Order, and to advise on best international practice and standards for the safe management of hazardous substances (section 9 of the HSNO Act).
17. To maintain momentum, we will work with the EPA to prepare proposed changes to the Methodology Order before a Bill is sent to a Select Committee. Note that the proposed changes to the Methodology Order will need to be revised and consulted on after final changes to the HSNO Act are made.

Recommendations

18. We recommend that you:

- a. **Agree** to seek Cabinet's approval to issue drafting instructions for the following proposed amendments to the Hazardous Substances and New Organisms Act 1996:
 1. enabling the EPA to apply data, information, assessments, and decisions from trusted regulators with a consideration of the New Zealand context (with consultation at its discretion, except in particular circumstances)
 2. enabling the EPA to make changes to hazard classifications and corresponding controls, based on a trusted regulator's assessment and decision to change the hazard classifications, following a simplified process of updating hazardous substances controls without the need to formally justify the reassessment (no grounds step) and with discretion over consultation (subject to specific requirements)
 3. enabling the EPA to temporarily restrict certain uses of a hazardous substance after the formal justification for reassessment of that hazardous substance (grounds) has been established, where there is evidence of potential actual or imminent danger to human health, safety, or the environment (subject to specific requirements)
 4. enabling more targeted consultation during modified reassessments by amending the consultation requirements in section 63A and section 63C
 5. requiring the EPA to develop a publicly available work plan for reassessments, with items on this work plan deemed to meet the reassessment criteria (grounds)
 6. enabling the EPA to align the timeframes of the assessment and reassessment of related hazardous substances if an application of a new hazardous substance is made while a reassessment of related hazardous substances is already happening
 7. enabling the EPA to update controls on existing hazardous substances following a process of updating hazardous substances controls without the need to formally justify the reassessment (no grounds step) and with discretion over consultation (subject to specific requirements), in a situation where the EPA has undertaken a recent assessment of a related hazardous

substance

8. delegating decision-making power to the EPA's Chief Executive on applications where the EPA decides not to consult, or is not required to consult when applying information from trusted regulators or from a recent EPA assessment (in recommendations a.1, a.2, and a.7).

Yes/No

- b. **Agree** to seek Cabinet's approval to begin a regulatory process to amend the Hazardous Substances and New Organisms (Methodology) Order 1998 to give effect to these amendments.

Yes/No

- c. **Note** that we will work with the EPA to prepare proposed changes to the Methodology Order before a Bill is sent to a Select Committee.

- d. **Circulate** the paper to your colleagues for comment.

Yes/No

- e. **Agree** that this briefing and appendices will be released proactively on the Ministry for the Environment's website with the Cabinet paper following Cabinet decisions.

Yes/No

Signature



Glenn Wigley
Director
Natural Resources and Built System

12/3/20.

Hon David Parker
Minister for the Environment

Date

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the Official Information Act 1982



DOCUMENT 7

Seeking Cabinet's approval to introduce the HSNO (Assessments) Amendment Bill into the House

Date Submitted:	20 May 2021	Tracking #: 2021-B- 07738	
Security Level	In Confidence	MfE Priority:	Non-Urgent

To Hon David Parker, Minister for the Environment	Lodge the attached Cabinet for consideration by the Legislation Cabinet Committee	Response by: 3 June
CC Hon Phil Twyford, Associate Minister for the Environment		

Actions for Minister's Office Staff	Return the signed report to MfE.
Number of appendices and attachments: Three	Titles of appendices and attachments (ie separate attached documents): <ol style="list-style-type: none"> Draft Cabinet paper: <i>Approval to Introduce the Hazardous Substances and New Organisms (Assessments) Amendment Bill into the House</i> Draft Departmental Disclosure Statement Draft Bill

Ministry for the Environment contacts

Position	Name	Cell phone	1 st contact
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Responsible Manager	Amanda Baldwin	022 362 5798	
Director	Glenn Wigley	027 491 7806	✓

Seeking Cabinet's approval to introduce the Hazardous Substances and New Organisms (Assessments) Amendment Bill into the House

Key Messages

1. The purpose of this briefing is to provide you with a draft Cabinet paper seeking Cabinet's approval to introduce the Hazardous Substances (Assessments) Amendment Bill (the Bill) into the House. The purpose of the Bill is to amend the Hazardous Substances and New Organisms Act 1996 (HSNO Act) to improve the assessment and reassessment of hazardous substances.
2. The Environmental Protection Authority (EPA) and the Ministry for the Environment (MfE) have been working on proposals to improve the efficiency of assessment and reassessment of hazardous substances. Public consultation took place in 2019.
3. Amendments to the HSNO Act are needed to improve the processes for assessing and reassessing hazardous substances, for example to enable the EPA to make better use of relevant information from international regulators.
4. The proposals were agreed by Cabinet in June 2020 [ENV-20-MIN-0020; CAB-20-MIN-0312]. The changes which Cabinet agreed to last year were a package of eight main changes to the HSNO Act to enable making better use of information from comparable international regulators, and other improvements to the reassessment process.
5. Cabinet also agreed to associated changes to the Hazardous Substances and New Organisms (Methodology) Order 1998 (the Methodology Order) to implement those changes to the Act. Recently you agreed (in response to MfE Weekly Update of 19 April) that the changes that were going to be put into the Methodology Order be put into the HSNO Act instead. You also agreed that the EPA list the international regulators it can rely on in a notice.
6. Following your agreement on this, officials worked with the EPA to develop a process and criteria for issuing the notice and for the stepped consultation process. As these were to be developed as part of the amendments to the Methodology Order, we propose that you seek Cabinet agreement on these matters.
7. Three technical amendments to correct omissions or clarify language in the current HSNO Act have also, with your agreement (MfE Weekly Updates of 8 March and 19 April 2021), been added to the draft Bill.
8. As part of the drafting process a number of minor policy and technical details were refined. Cabinet authorised you to "make minor or technical changes to the proposals ... during the drafting process that are consistent with the agreed policy" [point 9, ENV-20-MIN-0020]. We consider the following matters fall within the remit of this delegation, and therefore seek your agreement to include these in the draft Bill (further details are provided in paragraph 30, below):
 - A new global provision (section 20B) requiring the EPA to give public notice of its decisions on assessment applications of hazardous substances, new organisms and group standards.
 - Including a pre-requisite for the new rapid assessment process (added to existing s28A) for when the EPA could grant an approval under the new assessment process based on information from international regulators.
 - Changing the terminology for the new empowering provision of the Act under which the EPA can temporarily restrict a substance from "...where there is evidence of potential, actual or imminent danger to human health, safety or the environment" to "...evidence of

actual or likely danger ...”. This change was made as the latter wording gives better effect to the policy intent.

- Providing for an offence and consequent penalty for breach of the above temporary restriction.
- Detailing some matters that the EPA workplan for reassessments must include.
- Clarifying as to when the EPA should notify the Minister for the Environment and other government agencies in relation to applications for assessment or reassessment.
- Aligning the processes for the two new modified reassessment processes, as there is no policy reason for these to be different.
- Including transitional provisions.
- Other minor drafting matters, such as referring to ‘international regulators’ rather than ‘trusted regulators’.

Recommendations

9. We recommend that you:

- a. **Note** that you agreed to the following changes, in response to MfE Weekly Updates of 8 March and 19 April 2021, and that these have been included in the attached draft Cabinet paper for Cabinet noting (point 1 below) or approval (points 2 and 3 below):
 1. Putting the changes that were going to be made to the Methodology Order into the HSNO Act instead.
 2. Requiring and enabling the EPA to list the international regulators it will rely on in a notice.
 3. Three technical amendments to correct omissions in the HSNO Act or clarify language.
- b. **Note** that we consider the change in approach of not using the Methodology Order to be within your delegated power which Cabinet gave you last year to “make minor or technical changes to the proposals ... during the drafting process that are consistent with the agreed policy.”
- c. **Agree** that the following changes, which also fall into your delegated power to make minor drafting changes, be made to the draft Bill:
 1. A new global provision (section 20B) requiring the EPA to give public notice of its decisions on assessment applications of hazardous substances, new organisms and group standards.

Yes/No

2. A pre-requisite for the new rapid assessment process (added to existing s28A) for when the EPA could grant an approval under the new assessment process based on information from international regulators. This pre-requisite matches the consultation criteria and requires that the EPA must not make a rapid assessment if the EPA considers the application will have:
- i. significant cultural, economic, environmental, ethical, health, or spiritual effects; or
 - ii. significant effects in an area in which the EPA lacks sufficient knowledge or expertise.
- Yes/No
3. Changing the terminology for the new empowering provision of the Act under which the EPA can temporarily restrict a substance from "...where there is evidence of potential, actual or imminent danger to human health, safety or the environment" to "...evidence of actual or likely danger ...". This change was made as the latter wording gives better effect to the policy intent.
- Yes/No
4. Providing for an offence and consequent penalty for breach of the above temporary restriction. This is proposed to be a strict liability offence, with a maximum penalty of three months' imprisonment or a fine of \$500,000, and if the offence is a continuing one, a further fine not exceeding \$50,000 for every day or part of a day during which the offence has continued.
- Yes/No
5. Detailing matters the EPA workplan for reassessments must include:
- i. a list of substances or groups of related chemicals or substances to be reassessed;
 - ii. indicative timeframes to begin work for a reassessment.
- Yes/No
6. Clarifying as to when the EPA should notify the Minister for the Environment and other government agencies in relation to applications under Part 5 of the HSNO Act (applications for assessment or reassessment).
- Yes/No
7. Aligning the processes for the two new modified reassessment processes, as there is no policy reason for these to be different.
- Yes/No
8. Including transitional provisions.
- Yes/No
9. Other minor drafting matters, such as referring to 'international regulators' rather than 'trusted regulators'.
- Yes/No
- d. **Note** that there are additional proposed amendments to the HSNO Act that go beyond your delegated powers to make minor changes to drafting.

- e. **Note** that, whilst the change in approach to make changes to the HSNO Act rather than the Methodology Order falls within your delegation from the 2020 Cabinet agreement, the substance of what will be put in the HSNO Act rather than the Methodology Order still needs to be agreed by Cabinet.
- f. **Agree** to the following changes (which would originally have gone into the Methodology Order but will now go into the HSNO Act) and refer them to Cabinet for Cabinet approval:

- 1. The consultation pathway for the new modified reassessment processes will be that:
 - i. the EPA may decide to publicly notify the application under section 53;
 - ii. if the EPA does not publicly notify the application, the EPA must consult if it considers that the application will have—
 - 1. significant cultural, economic, environmental, ethical, health, or spiritual effects; or
 - 2. significant effects in an area in which the Authority lacks sufficient knowledge or expertise.
 - iii. if the EPA consults it must—
 - 1. do everything reasonably practicable on its part to consult with all persons who, in its opinion, are likely to be directly affected by the reassessment; and
 - 2. give those persons a reasonable opportunity to make submissions and comments to the Authority on the reassessment; and
 - 3. consider all submissions and comments received before approving or declining the application. If the Authority is not required to consult, the Authority may consult with any person before approving or declining the application.

Yes/No

- 2. The consultation requirements for the existing modified rapid assessment processes (sections 63A and 63C) will be slightly modified to match the new consultation pathways for the new reassessment processes (new section 63D). This is in addition to the amendments agreed to by Cabinet to allow for a more targeted consultation requirements in these existing processes.

Yes/No

- 3. The criteria for choosing international regulators are that:
 - i. the international regulator operates in a manner comparable to the EPA in regulating hazardous substances; and
 - ii. the legislative regime regulating hazardous substances that the international regulator operates in is comparable to the HSNO Act; and

iii. the information from the international regulator is readily accessible by the EPA.

Yes/No

g. **Agree** that the notice listing the international regulators will be an administrative instrument which will not be secondary legislation, and refer this point to Cabinet for Cabinet approval.

Yes/No

h. **Agree** that the Cabinet paper be lodged for consideration by the Cabinet Legislation Committee.

Yes/No

Signature



Glenn Wigley
Director – Policy and Regulatory
Waste and Resource Efficiency

Hon David Parker
Minister for the Environment

Date

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Seeking Cabinet's approval to introduce the Hazardous Substances and New Organisms (Assessments) Amendment Bill into the House

Supporting material

Purpose

10. The purpose of this briefing is to provide you with a draft Cabinet paper seeking Cabinet's approval to introduce the Hazardous Substances (Assessments) Amendment Bill (the Bill) into the House. The purpose of the Bill is to amend the Hazardous Substances and New Organisms Act 1996 (HSNO Act) to improve the assessment and reassessment of hazardous substances.
11. We also wish to advise you on some proposed minor changes to the draft Bill.

Context

Cabinet agreement

12. In June 2020, Cabinet agreed to amend the HSNO Act to improve the efficiency of assessment and reassessment of hazardous substances [ENV-20-MIN-0020; CAB-20-MIN-0312]. The amendments were a package of eight main changes to the HSNO Act, with associated changes to the Hazardous Substances and New Organisms (Methodology) Order 1998 (the Methodology Order) to implement those changes to the Act.
13. The agreed changes to the HSNO Act can be grouped into changes to enable making better use of information from comparable international regulators, and other improvements to the reassessment process:

Making better use of information from international regulators:

- Enabling the EPA to apply data, information, assessments and decisions from international regulators.
- Providing a simplified process for the EPA to update hazard classifications of substances and corresponding controls, based on information from international regulators.
- Enabling the EPA to temporarily restrict certain uses of a hazardous substance, subject to specific requirements.

Other improvements to the reassessment process:

- Enabling the EPA to engage in more targeted consultation during modified reassessments.
- Requiring the EPA to develop a publicly available work plan for reassessments.
- Enabling the EPA to align the timeframes of the assessment and reassessment of related hazardous substances.
- Providing a simplified process for the EPA to update hazard classifications of substances when the EPA has undertaken a recent assessment of a related hazardous substance.

- Delegating some decision-making power to the EPA's Chief Executive (as opposed to the EPA Board) in certain situations (such as the simplified process for updating hazard controls, if the EPA decides not to consult).

Analysis and Advice

Further policy development since Cabinet decisions

14. Last year, Cabinet authorised you to "make minor or technical changes to the proposals ... during the drafting process that are consistent with the agreed policy" [Point 9, ENV-20-MIN-0020].
15. During the last few months, there have been changes proposed which fall within this remit, and hence would not need further Cabinet agreement, but are summarised in the draft Cabinet paper and noted in its recommendations. There have also been other changes proposed which fall outside this remit and therefore will need further Cabinet agreement, as set out in the draft Cabinet paper.
16. The most significant changes have been agreed with you by way of MfE's Weekly Update, however there are some less significant changes that we have not yet had the opportunity to seek your agreement on.
17. When considering all of the proposed changes, there are four main categories:
 - A change in approach whereby rather than using the Methodology Order to implement certain changes to the HSNO Act, all of those changes be made to the Act itself. You have agreed to this (in response to MfE's Weekly Update of 19 April). The decision to change approach in this way falls within your delegation from the 2020 Cabinet agreement, however the substance of what will be put in the Act rather than the Methodology Order still needs to be agreed by Cabinet. The attached draft Cabinet paper therefore seeks Cabinet's agreement on the substantive details.
 - A proposal that the EPA be enabled to issue a notice listing the international regulators it can rely on. You agreed to this proposal (in response to MfE's Weekly Update of 19 April). Since then, we have discussed this further with the Parliamentary Counsel Office (PCO) and recommend that this should be an administrative notice which will not be classed as secondary legislation as it is different to other EPA notices. We have put an "agree" recommendation in the draft Cabinet paper relating to the notice and the criteria and procedure the EPA will follow for the notice.
 - A number of less significant drafting changes, consistent with the agreed policy, which we have not yet had the opportunity to seek your approval of. These are set out in paragraph 30 below.
 - Three 'technical' changes to the HSNO Act to correct omissions or ambiguous language, described in paragraphs 31 to 35 below; they are not policy changes to the application of the HSNO Act. We consider it appropriate to use the Bill as an opportunity to make these amendments. These amendments were agreed with you by way of MfE's Weekly Updates of 8 March and 19 April 2021.

Providing for all changes in the HSNO Act (rather than amending the Methodology Order)

18. Last year, Cabinet agreed to the proposal that the following changes be made to the Methodology Order, in order to implement the changes to the HSNO Act:
 - Setting the criteria and process for identifying the appropriate international regulators.

- Specifying the assessment and reassessment processes when the EPA applies information from international regulators.
- Specifying other requirements on the way the EPA applies information from international regulators.
- Setting the criteria for the EPA's discretion over consultation in certain processes.
- Requiring the EPA to be more transparent about its workplan and decisions.

19. Cabinet also noted that after changes to the HSNO Act were made, the EPA would be invited to undertake a consultation on these proposed changes to the Methodology Order. After that consultation, the changes proposed would have been brought back to Cabinet for approval.

20. However, further to advice from PCO, we recommended, and you agreed, to all these changes being put into the HSNO Act. It had originally been planned that the EPA undertake a subsequent consultation as part of the process of amending the Methodology Order, and as a result some of the details of these changes were not consulted on in the 2019 public consultation. However, there will still be opportunity for public submissions during the select committee process.

Cabinet approval on the substance of what will now be in the HSNO Act rather than the Methodology Order

21. Last year Cabinet agreed to a process whereby the EPA would consult on changes to the Methodology Order, and after that Cabinet would have approved the proposed changes to the Methodology Order. Since these changes are now proposed to be in the Act, the attached draft Cabinet paper seeks Cabinet approval on them.

22. However, the specifics of what the Cabinet paper seeks Cabinet agreement on are slightly different to the list in paragraph 18 above. The list in paragraph 18, which Cabinet had agreed to, was at that stage very high-level and needed working through further. Through the drafting process it became clear that on some of the points in that paragraph there were no further details that would have gone into the Methodology Order.

23. How these issues are being dealt with is broadly as set out in this table:

Changes to the Methodology Order which Cabinet agreed to in 2020	What is being put into the HSNO Act instead	Recommendation in the attached draft Cabinet paper
Setting the criteria and process for identifying the appropriate international regulators	<ul style="list-style-type: none"> • Criteria and process for choosing international regulators are to be in the HSNO Act • A notice will list the particular regulators 	Recommendation 9
Specifying the assessment and reassessment processes when the EPA applies information from international regulators.	<ul style="list-style-type: none"> • The specific additional rapid pathways that will be triggered by the availability of information from international regulators will be included in the HSNO Act. 	Recommendation 7
Specifying other requirements on the way the EPA applies information from international regulators.	<ul style="list-style-type: none"> • The drafting of the Bill specifies how we are using the information, such as triggering a rapid pathway and enabling the short cut assessment as well as requiring consideration of the NZ context. 	This is not in a specific Recommendation as it covers a number of different aspects of the draft Bill.

	<ul style="list-style-type: none"> In order to benefit from the new rapid pathways applicants will need to either own the safety studies they are submitting or have a letter of access or other evidence of the right to use the information relied on. 	
Setting the criteria for the EPA's discretion over consultation in certain processes.	The Bill amends the HSNO Act to set the criteria for consultation in these various processes.	Recommendations 6 and 7
Requiring the EPA to be more transparent about its workplan and decisions.	<p>The Bill amends the HSNO Act to require the EPA to develop a publicly available workplan for reassessments. The EPA workplan must include:</p> <ul style="list-style-type: none"> a list of substances or groups of related chemicals or substances to be reassessed; indicative timeframes to begin work for a reassessment. 	No specific Recommendation on transparency, but several of the Recommendations are around issues of transparency.

24. The criteria and process by which the EPA chooses the international regulators it will rely on will now be in the HSNO Act rather than the Methodology Order.

25. The list of regulators is proposed to be in an administrative notice. The notice will not be secondary legislation. The draft Bill inserts a new section into the HSNO Act which will enable the EPA to prescribe international regulators by way of notice in the Gazette.

26. The EPA will only be able to prescribe international regulators once it has publicly notified its intention to issue the above notice, giving interested parties a reasonable time to make submissions on the proposal, and ensuring the EPA has consulted with appropriate stakeholders and government agencies. The EPA must also, prior to issuing such a notice, consider whether:

- the international regulator operates in a manner comparable to the EPA in regulating hazardous substances; and
- the legislative regime regulating hazardous substances that the international regulator operates in is comparable to the HSNO Act; and
- the information from the international regulator is readily accessible by the EPA.

27. The 2020 Cabinet paper provided for a stepped consultation process for the new modified reassessment processes (provided for in the new section 63D). Details of the consultation criteria for these new processes were to be provided for in the amended Methodology Order.

28. We recommend the following consultation pathway be included in the HSNO Act for the new modified reassessment processes:

- The EPA may decide to publicly notify the application under section 53;
- If the EPA does not publicly notify the application, the EPA must consult if it considers that the application will have—
 - significant cultural, economic, environmental, ethical, health, or spiritual effects; or

- ii. significant effects in an area in which the Authority lacks sufficient knowledge or expertise.
- If the EPA consults it must—
 - i. do everything reasonably practicable on its part to consult with all persons who, in its opinion, are likely to be directly affected by the reassessment; and
 - ii. give those persons a reasonable opportunity to make submissions and comments to the EPA on the reassessment; and
 - iii. consider all submissions and comments received before approving or declining the application.
- If the EPA is not required to consult, the EPA may consult with any person before approving or declining the application.

29. In addition, we recommend that the consultation requirements for the existing modified rapid assessment processes (sections 63A and 63C) are slightly modified to match the new consultation pathways for the new reassessment processes (new section 63D). This is in addition to the amendments agreed to by Cabinet to allow for a more targeted consultation in these existing processes.

Proposed minor changes consistent with the agreed policy

30. There are a number of proposed minor changes, within the agreed policy, which we have not yet the opportunity to seek your agreement on:

- A new global provision (section 20B) requiring the EPA to give public notice of its decisions on assessment applications of hazardous substances, new organisms and group standards. This new section would also require a written decision, including reasons, which would be provided to the affected parties. The 2020 Cabinet paper noted that the amendments would “require that the EPA’s Chief Executive give reasons for their decision and that these will be published on the EPA website”¹. This was in relation to the new modified reassessment process of updating hazardous substances controls when a trusted regulator decides to change the hazard classifications of a related chemical. However, since it reflects the requirement to give public notification of decisions across the other processes in Parts 5 and 6A (and clause 36 of the Methodology Order, which relates to applications under Part 5), the new provision draws all these requirements into the global provision. The only difference in the application of the policy initially agreed to is that the requirement is only to give public notice that the decision has been made, and not necessarily publish the decision as a whole. We understand that in practice the EPA does usually publish the whole decision, including reasons, on its website.
- Including a pre-requisite for the new rapid assessment process (added to existing s28A) for when the Authority could grant an approval under the new assessment process based on information from international regulators. This pre-requisite matches the consultation criteria and requires that the Authority must not make a rapid assessment if the Authority considers the application will have:
 - significant cultural, economic, environmental, ethical, health, or spiritual effects;
 - or

¹ Paragraph 34(v) of the 2020 Cabinet paper, *Policy Approval for proposed amendments to the Hazardous Substances and New Organisms Act 1996*. (The quoted statement is not in the corresponding Recommendations (Recommendations 4.2 and 4.7) of that paper.)

- significant effects in an area in which the Authority lacks sufficient knowledge or expertise.
- Changing the terminology for the new empowering provision of the Act under which the EPA can temporarily restrict a substance from "...where there is evidence of potential, actual or imminent danger to human health, safety or the environment" to "evidence of actual or likely danger". This change was made to give better effect to the policy intent.
- Providing for an offence and consequent penalty for breach of the above temporary restriction. This is proposed to be a strict liability offence, with a maximum penalty of three months' imprisonment or a fine of \$500,000, and if the offence is a continuing one, a further fine not exceeding \$50,000 for every day or part of a day during which the offence has continued. This is similar to existing offences and penalties under the HSNO Act. The Ministry of Justice's current advice on best practice for offences and penalties is that strict liability offences should not have a penalty of imprisonment. It also does not consider continuing liability offences to be best practice. However, the Ministry of Justice notes that this proposed offence and penalty is consistent with what is currently set out under the HSNO Act.
- Detailing that the EPA workplan for reassessments must include:
 - a list of substances or groups of related chemicals or substances to be reassessed;
 - indicative timeframes to begin work for a reassessment.
- Clarifying as to when the EPA should notify the Minister for the Environment and other government agencies in relation to applications under Part 5 of the HSNO Act (applications for assessment or reassessment).
- Aligning the processes for the two new modified reassessment processes as there is no policy reason for these to be different.
- Including transitional provisions.
- Other minor drafting matters, such as referring to 'international regulators' rather than 'trusted regulators'.

Additional 'technical' amendments to the HSNO Act

31. Three proposed 'technical' amendments which fall outside of the scope of the policy were agreed with you by way of MfE's Weekly Updates (Weekly Updates of 8 March and 19 April 2021). These are all technical amendments to the HSNO Act to correct omissions or ambiguous language; they are not policy changes to the application of the Act. We consider it is appropriate to use the Bill as an opportunity to make these amendments.
32. Currently, there is an offence prescribed by section 109(1)(da) of the HSNO Act, but no corresponding penalty. We recommend that section 114, the penalties section of the Act, be amended to add "or paragraph (da)" to section 114(1). This is a technical 'fix' to the Act to correct the omission of not having included a penalty when creating the new offence section 109(da) in the 2015 amendments to the HSNO Act.
33. Another omission occurred in those 2015 amendments to the HSNO Act. In those amendments section 103A was created (*Powers of entry for inspection related to hazardous substances*). As part of the amendments, references to section 103 in other parts of the Act should have been amended to include section 103A. However, in sections 11(1)(b)(ii), *Powers, functions, and duties of Authority*, and 137(1)(a) and (b), *Emergency powers*, this amendment was not made. We recommend that the current Bill be used to correct this omission.

34. We also recommend an amendment to section 68 of the HSNO Act, which is the Ministerial call-in section. An application that relates to a hazardous substance can only be called-in (which means the application would be determined by the Minister rather than the EPA) if it is an application “referred to in section 53”. Currently there is some ambiguity as to whether the section 68 call-in provisions apply to reassessments, although on a purposive reading of the HSNO Act, publicly-notified reassessments would be subject to section 68. We recommend an amendment to clarify that section 68 applies to applications to which section 53 applies.
35. While these three technical amendments were not part of the 2019 public consultation undertaken by MfE, there will be the opportunity for public submission during the select committee process.

Regulatory Impact Assessment

36. A regulatory impact assessment was prepared, reviewed by MfE’s Regulatory Impact Analysis Panel (which considered that it partially met the quality assurance criteria), and submitted at the time that Cabinet committee approval of the policy relating to the Bill was sought last year [ENV-20-MIN-0020; CAB-20-MIN-0312].
37. The RIA panel also stated that “implementation relies on development of a secondary instrument (Methodology Order), and the RIA indicates that further implications will be assessed as part of that process”. We note that this further assessment will not be done as part of the Methodology Order since that is now not happening. We have considered whether any further RIA is needed, but since there is no major policy change we consider that this is not necessary.

Consultation and Collaboration

38. We have consulted with the EPA in preparing this briefing.
39. In preparing the attached Cabinet paper we have consulted with the EPA, the Department of Internal Affairs, the Department of Conservation, the Ministry of Business, Innovation and Employment, WorkSafe New Zealand, the Ministry of Health, the Ministry for Primary Industries, the Ministry of Justice, the Ministry of Foreign Affairs and Trade, Te Puni Kōkiri, the Treasury and the Department of the Prime Minister and Cabinet.

Risks and mitigations

40. A potential risk is that we have not consulted on the changes that had originally been agreed to be put into the Methodology Order, but which are now proposed to be put into the HSNO Act. However, this risk is mitigated by the opportunity for public engagement during the select committee process.

Legal issues

41. MfE and EPA Legal teams have provided input and reviewed this briefing and the attached Cabinet paper, in addition to working closely with PCO on the drafting of the Bill.
42. There are no additional legal issues other than those discussed above.

Financial, regulatory and legislative implications

43. The Bill will amend the HSNO Act.
44. The HSNO Act already binds the Crown, except as provided for in section 3 of that Act. We consider that there are no good reasons why the Crown should not be bound by the legislative change to be progressed through this bill to amend the HSNO Act.

45. We note that the paper *Hazardous Substances and New Organisms (Assessments) Amendment Bill: Request for Priority in the 2021 Legislative Programme*, which Cabinet recently considered [CAB-21-MIN-0144] stated that “It is likely to be recommended that the changes included in the Bill will be partially binding on the Crown in the same way as the HSNO Act currently is. That is, being binding on the Crown except for an exclusion for the Minister of Defence. The implications for government departments of these potential amendments will be minimal as the HSNO Act already binds the Crown in this way. Additional costs to the Crown are unlikely to be significant.”
46. Cabinet has given the Bill a category 3 priority on the 2021 Legislation Programme (to be passed if possible within the year) [CAB-21-MIN-0144 refers].

Next Steps

47. The next steps are for the Government caucus to be consulted, and for the Cabinet paper to be lodged on 24 June for the Legislation Cabinet Committee meeting of 1 July.

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the Official Information Act 1982

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Environment Weekly Update

For the week starting 8 March 2021

Environment Ministers Joint Meeting, Tuesday 9 March 8.30-9.45am

Hon David Parker, Minister for the Environment

Hon James Shaw, Associate Minister for the Environment

Hon Kiritapu Allan, Associate Minister for the Environment

Hon Phil Twyford, Associate Minister for the Environment

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Out of Scope

Out of Scope

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the Official Information Act 1982

4.2. Hazardous Substances and New Organisms (Assessments) Amendment Bill

Following Cabinet approval last year, work is continuing to amend the Hazardous Substances and New Organisms Act 1996 (the HSNO Act) to improve the processes for

assessing and reassessing hazardous substances. We have now received the first draft of the HSNO (Assessments) Amendment Bill (the Bill) back from the Parliamentary Counsel Office.

We would recommend adding in two additional changes to the HSNO Act that are not related directly related to this project, but which we consider are sufficiently within the scope of the Bill:

- An amendment to section 114 of the HSNO Act, which is the penalties section. Currently section 109(1)(da) prescribes an offence (for failing to comply with any requirements in an EPA notice made under section 76A(d) or (f) of the HSNO Act), but there is no attached penalty in section 114. We would like to add “or paragraph (da) [of section 109(1)]” to section 114(1). This is a technical “fix” to the Act, to correct the omission of not having included a corresponding penalty when creating the new s109(da) offence in the 2015 amendments to the HSNO Act. As this corrects what the 2015 amendments intended to achieve, we consider that consultation is not needed.
- An amendment to section 68 of the HSNO Act, which is the Ministerial call-in section. An application that relates to a hazardous substance can only be called-in if it is an application “referred to in section 53”. Currently there is some ambiguity as to whether the s68 call-in provisions apply to reassessments, although we consider that on a purposive reading of the HSNO Act, publicly-notified reassessments would be subject to s68. We suggest an amendment to clarify that s68 also applies to deemed applications under s53. As this is clarifying an ambiguity, we consider that consultation is not needed.

Do you agree to have the proposed amendments to section 114 and section 68 included in the draft Hazardous Substances and New Organisms (Assessments) Amendment Bill?

Yes/No

Signature

Date

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Environment Weekly Update

For the week starting 19 April 2021

Environment Ministers Joint Meeting Monday 19 April 3.00-4.15pm

Hon David Parker, Minister for the Environment

Hon Kiri Allan, Associate Minister for the Environment

Hon Phil Twyford, Associate Minister for the Environment

Hon James Shaw, Associate Minister for the Environment

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the Official Information Act 1982

3.1. **Hazardous Substances and New Organisms (Assessments) Amendment Bill**

Following Cabinet approval last year, work is continuing to amend the Hazardous Substances and New Organisms Act 1996 (the HSNO Act) to improve the processes for assessing and reassessing hazardous substances. Last year Cabinet had agreed that in addition to changes to the HSNO Act, a regulatory process be initiated to amend the relevant secondary legislation, the Hazardous Substances and New Organisms (Methodology Order) 1998 (the Methodology Order) to set the criteria and process for identifying international regulators whom the Environmental Protection Authority (EPA) can “trust” and other requirements on the way the EPA applies information from trusted regulators. Note the amendments only relate to hazardous substances and not the new organism provisions of the HSNO Act.

We are currently working with Parliamentary Counsel Office (PCO) on drafting of the HSNO (Assessments) Amendment Bill. PCO have recommended putting more of the substantive detail of the amendments into the HSNO Act rather than into secondary legislation. We have been discussing the practicalities of this with the EPA and now jointly recommend that all changes originally intended for the Methodology Order be put into the HSNO Act. PCO have indicated that they need your (Minister Parker) approval for this additional drafting.

We consider the proposal is within the scope of the policy decisions already made for the drafting instructions. Whilst the criteria for choosing trusted regulators has not been consulted on previously, there will still be opportunity for public submissions during the select committee process.

The EPA has also recommended that a new EPA Notice be made setting out the list of overseas regulators whose decisions the EPA can rely on. We agree that listing the overseas regulators in an EPA Notice rather than just informally would provide greater certainty for stakeholders. The EPA would consult on the proposed notice later this year. Note that the EPA Board makes decisions on such notices; it is not a Cabinet decision process.

In addition to the above, there is a further minor and technical change to the HSNO Act which is not related directly to this project, but which we consider is sufficiently within the scope of the Bill. This minor change is an amendment regarding section 103A, Powers of entry for inspection related to hazardous substances. Section 103A was put into the HSNO Act in 2017, and at that date the references to section 103 in other parts of the Act should have been amended to include section 103A, however in sections 11(1)(b)(ii), Powers, functions, and duties of Authority, and 137(1)(a) and (b), Emergency powers, this amendment was not made. We suggest that the current Bill be used to correct this omission. As this corrects what the 2017 amendments intended to achieve, we consider that consultation is not needed.

Could you please confirm whether you agree with the proposal to amend the HSNO Act rather than the Methodology Order

Yes/No

Could you please confirm that you are comfortable for the EPA to proceed with an EPA Notice for listing compatible overseas regulators

Yes/No

Could you please confirm whether you agree with the proposal to amend the HSNO Act s11(1)(b)(ii) and in s137(1)(a) and (b) to refer to s103A as well as s103

Yes/No

Out of Scope

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