



# Cabinet

CAB Min (03) 4/3

## Minute of Decision

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Minister for the Environment

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 Chief Parliamentary Counsel  
 Legislation Coordinator  
 Secretary, CBC

## Government Response to the Royal Commission on Genetic Modification: Legislative Changes for New Organisms: Paper 4: Conditional Release and Enforcement

On 10 February 2003, Cabinet:

### Conditional release

- 1 **noted** that the Hazardous Substances and New Organisms (HSNO) Act currently only provides for approval to release a new organism without conditions at which time that organism is no longer subject to the Act;
- 2 **agreed** that conditional release is a key element of the government's overall strategy of "proceeding with caution while preserving opportunities";
- 3 **agreed** to amend the HSNO Act to provide for conditional release as a new category of approval for the release of new organisms (including genetically modified organisms) and that such organisms remain new organisms subject to the Act;

- 4 **agreed** that the procedures used for evaluating conditional release applications will follow those specified in the Act for the approval of release of a new organism;
- 5 **agreed** that while conditional release is a separate intermediate category, it will not be a compulsory stage required for approval to release a new organism;
- 6 **noted** that paragraphs 3-5 above mean that the Act will not require any particular sequence of approvals and that applications can be made for the category of approval (conditional or general) most appropriate for the particular organism at the time;
- 7 **agreed** that any change in the conditions imposed on a conditionally released organism [other than those referred to in paragraph 13 below], including where this would result in the organism being generally released, will use the reassessment procedures already provided for in the HSNO Act;

### **Minimum standards and decision-making**

- 8 **noted** that as part of the requirements for deciding on release of new organisms, the HSNO Act currently provides minimum standards and requires that the Environmental Risk Management Authority (ERMA) decline an application if the standards are not met;
- 9 **agreed** that when considering applications and before granting approvals for conditional release, ERMA must consider whether the new organism could be recovered or eradicated if desired, and must take into account conditions and their likely effectiveness when determining whether the minimum standards are met;

### **Level of legislative direction to ERMA**

#### ***Criteria for conditions and level of prescription***

- 10 **agreed** that ERMA be given broad discretion to impose appropriate conditions on a new organism which it approves for conditional release, and that the conditions imposed may include, but are not limited to, provisions to address any matter from the list in paragraph 12 below;
- 11 **noted** that ERMA, in imposing conditions on conditionally released organisms remains subject to Part 2 of the HSNO Act;
- 12 **agreed** that, without limiting the broad discretion in paragraph 10 above, a list of matters that may be covered by conditions on a new organism considered for conditional release be included in the Act, and that the list cover, but not be limited to, the following matters:
  - 12.1 the extent and purposes for which organisms could be used;
  - 12.2 the nature of any monitoring, auditing, reporting and record-keeping requirements;
  - 12.3 the possible obligation to comply with relevant codes of practice or standards (e.g. to meet particular coexistence requirements);
  - 12.4 requiring contingency plans in the event of incidents;
  - 12.5 requirements to limit the dissemination or persistence of the organism or its genetic material in the environment;

- 12.6 requirements for disposal of any organisms or genetic material;
- 12.7 limiting proximity to other organisms, including those which could be at risk from the conditionally released organism;
- 12.8 requirements to be met in terms of any material derived from the organism;
- 12.9 obligations on the user of an approval including levels of training or knowledge, limits on the numbers of users who may hold an approval and the persons that they could deal with in respect of the organism;
- 12.10 specifying a duration of the approval or a condition before review was required and the nature of any such review;

***Review provisions***

- 13 **agreed** that ERMA may, in consultation with relevant government agencies (including the Department of Conservation) and without a full publicly notified reassessment, review conditions on conditional release approvals:
  - 13.1 where the review is to amend a condition so it better meets the objective of the condition; or
  - 13.2 where the condition included a review requirement, specifying the circumstances in which the condition would be reviewed (the trigger) and the potential consequences of the review;
- 14 **noted** that the present HSNO Act requires that decisions (including conditions imposed) are made public, and that this would also be the case for any changes to conditions made as a result of the review procedures in paragraph 13 above;

***Potential additional safeguards***

- 15 **agreed** that the HSNO Act be amended to explicitly provide for the addition of organisms, or groups of organisms displaying specific risk characteristics, to Schedule 2 (Prohibited new organisms), by Order in Council following the existing processes in the Act for promulgating Orders in Council;
- 16 **agreed** that the HSNO Act be amended to enable removal by Order in Council of organisms (or groups of organisms) from the prohibited list in Schedule 2 (Prohibited new organisms);
- 17 **noted** that paragraphs 15 and 16 will not impact on the decisions relating to changes to Schedule 2 outlined in paper 7 (Operational matters) [CAB (03) 23, CBC Min (03) 3/18];
- 18 **agreed** to amend the HSNO Act to provide for the chief executives of both the Ministry for the Environment and ERMA to have the powers, obligations and protections afforded to enforcement officers under the Act;
- 19 **noted** that it is expected that the powers in paragraph 18 above will only be used in exceptional circumstances where it would be difficult for actions to be undertaken using normal enforcement mechanisms because of considerations such as timing or scope of the action required;

- 20 **agreed** that the HSNO Act be amended to extend the present power to make regulations to avoid or mitigate the adverse effects of hazardous substances on the chemical, or physical nature of the environment or to avoid or mitigate damage to the environment or harm to people, to include conditionally released new organisms;

### **Offences and penalties**

- 21 **noted** that the HSNO Act contains both a comprehensive set of inspection powers for enforcement officers, and offences and significant penalties for breaches of the Act (including the release of unapproved new organisms) or of conditions, and that these provisions can be applied to the enforcement of conditions imposed on released new organisms;
- 22 **noted** that Paper 5: Liability Issues contains proposals to reinforce compliance with the Act, including compliance with conditions under conditional release [CAB (03) 21, CBC Min (03) 3/16];
- 23 **agreed** that offences and penalties under the Act be extended to include breach of conditions placed on conditionally released new organisms;

### **Enforcement responsibilities**

- 24 **noted** that new organism enforcement under the HSNO Act can be considered in three parts:
- 24.1 conditions on conditionally released organisms;
  - 24.2 in containment (currently undertaken by the Ministry of Agriculture and Forestry (MAF));
  - 24.3 unauthorised releases;

### **Enforcement of conditions on conditionally released organisms**

- 25 **agreed** that effective enforcement of conditions on conditionally released new organisms is essential to meet the objective of proceeding with caution;
- 26 **agreed** to amend the HSNO Act to specify that MAF be responsible for enforcement in respect of conditions imposed on any conditionally released new organism;
- 27 **noted** that effective enforcement for conditional release will require adequate resourcing of the enforcement activity;

### **Enforcement of new organisms in containment**

- 28 **agreed** to amend the HSNO Act to specify that MAF be responsible for enforcement of controls on new organisms in containment or as part of an approved field test;

## Enforcement of unauthorised releases (i.e. organisms not approved under the HSNO Act)

- 29 **noted** that current agencies will remain responsible for enforcement in respect of unauthorised new organisms that are unwanted organisms under the Biosecurity Act 1993;
- 30 **agreed** that MAF be responsible for enforcement in respect of all unauthorised new organisms that are not unwanted organisms under the Biosecurity Act;
- 31 **agreed** that Biosecurity Act powers be able to be used for enforcement actions taken for all unauthorised new organisms (including genetically modified organisms) and to amend either the Biosecurity Act or the HSNO Act or both accordingly;
- 32 **agreed** that MAF be responsible to the Minister for Biosecurity for enforcement in respect of:
- 32.1 conditions on conditionally released organisms;
  - 32.2 new organisms in containment (currently undertaken by MAF);
  - 32.3 unauthorised releases;

## Funding

- 33 **agreed** that MAF prepare a bid for funding for enforcement activities in respect of unauthorised new organisms and of conditions imposed on conditionally released organisms as part of the 2003 Budget process;
- 34 **Withheld** under Section 9(2)(f)(iv) of the Official Information Act

## Consultation

- 35 **noted** that the Minister for the Environment indicates that the Labour Caucus has been consulted and that other parties in Parliament will be consulted.