

# 10 Enforcement Agency for New Organisms

## 10.1 Summary

The HSNO Act lists persons and agencies responsible for enforcement of the Act in certain situations. These provisions do not differentiate between enforcement for hazardous substances and enforcement for new organisms and no agency is listed as having responsibility for enforcement of new organism provisions in containment, although in practice MAF has been undertaking this role.

This section discusses options for clarifying the agency responsible for new organism enforcement in containment. The preferred option is that MAF be formally identified as the primary agency responsible for that situation.

## 10.2 Current system for enforcing HSNO provisions for new organisms

### 10.2.1 Who is currently responsible?

Section 97 of the HSNO Act lists persons responsible for enforcement of HSNO provisions in certain situations for which they are already responsible in some way; for example, for gas installations, on motor vehicles, or for the protection of public health. ERMA can also appoint enforcement officers, or authorise the chief executives of other agencies to appoint officers and/or enforce the provisions of the HSNO Act as it sees fit. The Act also allows for making other arrangements to ensure effective coverage.

As it stands, however, the Act does not provide explicitly for any agency to have responsibility for new organisms enforcement. One interpretation of the Act is that the Occupational Safety and Health Division of the Department of Labour (OSH) has responsibility, as the chief executive of that department must ensure that the provisions of the Act are enforced in any place of work.

However, the containment of new organisms (at the importation, development and field-testing stages) is currently enforced by MAF, and OSH has queried its responsibility with respect to new organisms enforcement in light of the traditional role MAF has played in this area. The current understanding is that while OSH is technically responsible, it can be satisfied that MAF undertakes enforcement of the containment of new organisms. OSH is considered to be responsible for ensuring that new organism controls are enforced in any work place where no other agency has that responsibility.

## 10.2.2 What problems exist with the current system?

MAF currently undertakes enforcement activities for new organisms under the provisions of the Biosecurity Act rather than under the HSNO Act. While this arrangement works well for imported new organisms and those held in containment facilities, there are gaps where some new organisms are not covered by Biosecurity Act provisions.

An example would be where GMOs are found in New Zealand without an ERMA approval. The Biosecurity Act may not apply because the GMOs may not fall within the definition of 'risk goods' or 'unwanted organisms' considered a risk under that Act. Even though it is an offence under the HSNO Act if an approval from ERMA has not been obtained to develop, import or release those organisms, no agency currently ensures that those approvals are obtained.

If it is accepted that OSH is responsible under the HSNO Act for ensuring the enforcement of new organisms in places of work, this raises issues of:

- OSH's expertise to deal with these situations, given that specialist knowledge might be needed
- the possibility of a duplication in enforcement effort if the provisions of the Biosecurity Act are triggered
- whether there are any non-workplaces where a GMO might be found, thereby leaving an enforcement gap.

## 10.3 What changes are proposed?

It is proposed that MAF's enforcement role for new organisms in containment under HSNO should be formalised. MAF has the expertise in the field for undertaking enforcement of new organisms in containment, and should be given the flexibility to use HSNO provisions in circumstances that do not warrant a Biosecurity Act intervention. Identifying MAF as the primary agency responsible for new organisms enforcement for containment and existing HSNO provisions would remove the uncertainty in this aspect of enforcement and cover the current enforcement gaps. However, this may require an extension of MAF's functions beyond the scope of the Biosecurity Act.

An alternative could be to define OSH's role for areas not covered by MAF. However, this would require careful consideration of how the two agencies could work together to ensure that there were no gaps. It would also require extensive training of OSH personnel to ensure an appropriate level of skill and knowledge. Duties could be contracted out, but some level of expertise would still be required to manage such contractors.

**10a Do you agree with the proposal to formalise MAF as an enforcement agency for new organisms in containment?**

**10b If not, what alternatives do you suggest?**

Please illustrate your comments with examples and refer to the provisions of the HSNO Act where necessary.