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Wahine O Aotearoa

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Submission to the Education and Science Select Committee on the New Organisms and Other Matters Bill

Introduction

The National Council of Women of New Zealand (NCWNZ) is an umbrella organisation representing 42 nationally organised societies. It has 34 branches throughout the country attended by representatives of those societies and some 150 other societies as well as individual members.

NCWNZ is pleased to comment on this Bill as a further development in the Government's approach to biotechnology, and controls on other organisms new to this country. This organisation has taken an interest in the possible impacts of genetically modified organisms on the environment and the ramifications of new organisms' legislation for some years now.
New Zealand's community continues to be polarised by genetic modification and NCWNZ's inability to take an unequivocal position either in favour or against is indicative of this polarisation.

Those areas where NCWNZ has consensus include ensuring the precautionary principle has been applied to the development of this legislation and that there are mechanisms for assigning accountability.

Executive Summary

Whilst some of the members felt encouraged by the statement of public policy objectives and the strong emphasis on environmental protection, other members were less certain that the amendments proposed in the Bill would go so far as to enact or facilitate these objectives. However, it should be stated that NCWNZ is unanimous in the hope that, through the commitment to the protection of the environment, management of negative impacts of genetic modification will be reflected in ERMA's decisions regarding the conditions on the use and development of new organisms.

Some members of NCWNZ support the provision of an intermediate step between general release and containment. Conditional release with enhanced liability, as explained on p19 of the notes, gives greater flexibility to ERMA to take account of possible impacts and deal with these on a case by case basis. This flexibility is also needed to accommodate the varying types of organisms and their individual potential to cause harm to the environment.

Other members support an extension to the moratorium until more information is available about potential adverse impacts of genetic modification, until there is compelling evidence to support the sustainable economic benefits of New Zealand moving towards GM production, particularly when there are doubts surrounding the impact GM may have on existing, growing, lucrative export and domestic markets. The social impact of GM on the rural community is also identified as an area demanding greater assessment. The extension to the moratorium was also supported on the grounds that the recently released Biotechnology Strategy fell short of providing real protection, direction and options for New Zealand.

NCWNZ's submission S00.09 to IBAC on the Economic Implications of a First Release of Genetically Modified Organisms in New Zealand contains within it a direct quote from the discussion document (pg 17), which three years on still remains relevant:

> *"Once a GMO is released, it cannot be contained again. But if a GMO is not released, the opportunity for release in the future has not been lost. Reversibility has an economic value – the value that comes from keeping options open."*

It should also be noted that some members felt that supporting another step between full containment and release is not incompatible with support for continuing the moratorium, i.e. they are not necessarily mutually exclusive.

Some members felt the flexibility in the proposed Bill may instead provide "loopholes" to avoiding obligations, such as using the precautionary approach or operating in a transparent manner.

Specific Comments

Part 1 Preliminary 2. Interpretation Hazardous Substances and New Organisms Act 1996
Some members indicated that the term "unforeseen" needed definition within the Act. This was considered the case should substandard controls be set at the time of approval due to significant "unforeseen" adverse effects arising at a later date. It was also considered the case should "unforeseen" behavioural traits lead to undesirable contamination, for example.
The membership was uncertain as to how "unforeseen" events, effects or behaviour could be qualified. If an "unforeseen" event, effect or behaviour was based on current scientific knowledge then it should be remembered that the scientific community has been split over the genetic modification for a number of years. The debate that raged over horizontal gene transfer provides such an example, where the majority of the scientific community maintained HGT could never happen.

Some within the scientific community would argue that knowledge about behavioural traits provides enough information for well-reasoned extrapolation that whilst a new organism may not display certain behavioural traits initially, over time as seen in other species, this may change. Bacterial conjugation for example provided the necessary evidence for antibiotic resistant bacteria. If this argument is accepted, it begs the question could a defence against liability (124H (2) (c)) based on "*could not have reasonably known of the breach of the Act* as the effect was unforeseen" be fairly and honestly lodged.

Potentially, the lack of consensus within the scientific community stands to be problematic when defending or proving civil liability, or when establishing controls that enact the precautionary principle.

Part 2 Hazardous Substances and New Organisms Act 1996 6 Meaning of new organism (2) (b)
Regarding the "same genetic modification" as it appeared under this clause, the members were concerned that the "substantially equivalent argument" was again being tabled in a slightly different guise. Whilst it is acknowledged that there have been advancements in genetic modification, since for example the Royal Commission on Genetic Modification (RCOGM), there is still an element of randomness in the process used for inserting a genetic sequence into a genome. Furthermore the variations in the new organism may not be readily observable in the short-term. These variations can include physical and behavioural characteristics.

Part 4 Environmental Risk Management Authority
16. Eligibility for appointment as member of Authority (HSNO Act 1996)
NCWNZ believes this section in the HSNO Act in its current form should be amended to ensure more information is made available when assessing the suitability of an appointment. NCWNZ recently wrote a submission to ERMA on the Review of ERMA's Operations (SO3.05), in which we stated:

> *"NCWNZ strongly believes that it should be mandatory for senior staff and members of the Authority to declare any relevant commercial interests, political party relationship or affiliation with any organisation advocating in this area."*

9 Delegation by Authority
NCWNZ would not support ERMA delegating the assessment or powers of approval to other bodies. Rather, we support ERMA receiving the necessary funding and resources to undertake the management of hazardous substances and new organisms

Part 4 A Nga Kaihautu Tikanga Taiao 24 D Review of terms of reference
NCWNZ supports the three year review in the long term, just not in the initial establishment phase. We believe that a three year interval for reviewing of the terms of reference is too lengthy a period to wait. We would recommend that this review be undertaken after the first year of operation, followed by a two year period for the next review.

38C Determination of applications to import or release new organisms with controls (1) (a) – section 36.
Some members indicated their support for the inclusion of "cause adverse economic impact" as a minimum standard for declining an application. Furthermore, some members thought that this should be assessed from the perspectives of both the user and non-user of the new organism, to protect, for example, luxury goods producers like some of the wineries in Martinborough exporting to select niche markets.

It has been frequently argued that economic gains and remaining competitive are the benefits that New Zealand stands to loose should we not remove existing barriers to the progression of genetic modification. Such barriers include the moratorium. If these arguments are accepted, then ensuring genetic modification does not adversely impact on the New Zealand economy needs to be accepted as a minimum standard for assessing applications.

38D Controls (1) (f)
It was suggested that "genetic element" could be substituted for "genetic material", particularly as it has been interpreted under the Act and it specifically includes, under that definition, "heritable material".

38G Review of controls on conditional release approval (2)
In its current form, NCWNZ disagrees with 38 G (2) (b) (i) as it demonstrates little regard to public interest, opting for interdepartmental consultation only. NCWNZ believes that there would be occasions when the review of controls should be subject to public consultation. If further controls need to be introduced as a result of complaints by the public, or if there is an aggrieved party, or if the adjustment of controls are identified as being in the public interest then the opportunity for public input should be preserved.

38H Assessment of applications for release of qualifying organisms (3) (b)
It was suggested that this clause as it stood did not take into account the precautionary approach. NCWNZ members considered the potential for a qualifying organism to form an undesirable self-sustaining population was in itself cause for concern, irrespective of whether this population then went on to give rise to significant adverse effects as listed under (i) – (v). Some members felt that if an organism displayed this type of behaviour then adoption of the precautionary principle required consideration be given to adverse effects that are not immediately detectable, which is frequently the case. The use of the "and would" in this clause expressly implies known certainty. Furthermore, the population may not be readily observable as "undesirable" or in some manner threatening.

It was suggested that 38H (3) (b) be amended as follows:
"…it is highly improbable that (b) the qualifying organism could form a self-sustaining population"
"…it is highly improbable that (c) any self-sustaining population may give rise to significant adverse effects on (i) – (v)"

A suggestion was also made that approval of an application should be declined if the applicant, whether an individual or organisation, had on several occasions in the past been formally found in breach of the Act, when undertaking similar work, research or projects. The membership wished to convey that the Act should make provision to cautiously guard against organisations or individuals with the capacity to "buy their way out" of an offence under the Act, being able to operate in such a manner.

124H Defences to liability under section 124G (2) (c)
The membership supported 124H (2) (a) (i) (A) – (C) and (ii) – (iii) and (b) (i) – (ii).
There was some concern directed at *(c) that the defendant did not know, and could not reasonably have known, of the breach*, which on the surface at least, suggested that ignorance provided a reasonable excuse in the eyes of the law which is contrary to the Crimes Act[1].

Conclusion
NCWNZ appreciates the opportunity to comment on this Bill.

Beryl Anderson
National President

[1] Crimes Act 1961 Clause 25 Ignorance of law
The fact that an offender is ignorant of the law is not an excuse for any offence committed by him.