Parliamentary Commissioner for the Environment
Te Kaitiaki Taiao a Te Whare Pāremata

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Hon Penny Simmonds
Minister for the Environment
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26 March 2024

Dear Penny,

I am writing to you as the Minister responsible for the Hazardous Substances and New Organisms Act 1996 (HSNO). The Act seeks to prevent or manage the adverse effects of hazardous substances including chemicals. The use of chemicals is permitted, provided their impacts on the health of people and the environment are assessed to be acceptable. I have recently reviewed the way in which New Zealand is managing chemicals in a report entitled *Knowing what's out there: Regulating the environmental fate of chemicals* and gained some insights into the way the system is operating.[1]

As a result, I was interested to learn of recent criticism by the chemicals industry and some politicians of the time it is taking the Environmental Protection Authority (EPA) to assess HSNO applications. Applicants seeking to introduce new chemicals into New Zealand are facing lengthy delays, with a pre-application median wait time of 336 days as of November 2023.

That statistic is, on the face of it, concerning. The question arises, however, whether the industry's or the Government's expectations of the EPA are realistic. A report commissioned by the EPA from Sapere, showed that New Zealand is an outlier internationally in that we expect our EPA to operate far faster and with fewer resources than many comparable jurisdictions.[2] For example, comparing New Zealand with Australia in the 2021/22 financial year, New Zealand spent (on a GDP-adjusted basis) 45% of what Australia did on assessing hazardous substances and only recovered 14% of the cost of assessments from applicants (through application fees).

By way of comparison, Australia's two main chemical regulators recovered between 89% and 127% through fees and levies in the 2021/22 financial year. Similarly, the statutory timeframes the EPA works under (which exclude wait times prior to formal receipt) of 100 days are significantly less than the 18 to 25 months of the Australian Pesticides and Veterinary Medicines Authority.

[1] PCE, 2022. Knowing what's out there: Regulating the environmental fate of chemicals. https://pce.parliament.nz/publications/regulating-the-environmental-fate-of-chemicals.

[2] Sapere, 2023. The EPA's role and performance in assessing hazardous substances. https://www.epa.govt.nz/assets/RecordsAPI/Briefing-to-the-Incoming-Minister-for-the-Environment-December-2023-The-EPAs-role-and-performance-in-assessing-hazardous-substances.pdf.

In the course of my review of the chemical regulatory system, I came to the view that the EPA carries out its responsibilities professionally, diligently, and as effectively as it can within the resources allocated to it. My review identified deficiencies in the tools and resources available to the EPA to perform their chemical regulatory functions and the system as a whole. My findings and recommendations to your predecessor remain unactioned and I invite you to seek a detailed briefing on them.

To give you a sense of what is lacking you might care to ask about my recommendation concerning the modelling capability of the EPA in ecotoxicology. If New Zealand had more up-to-date modelling capabilities it would allow faster and more informed decisions about chemical risk. At present we risk controls that are either insufficient or overly restrictive on account of modelling that is not up to scratch. Given that outdated models are a factor in slowing processing times for the EPA, additional specific funding to improve modelling capabilities would help to bring the EPA in line with comparable international regulators. This is an area that requires urgent attention.

Knowing what's out there provides you with a basis for asking hard questions about prioritising regulatory effort within a highly complex regime. It also draws attention to some of the tools and data regulators need so they can respond in an agile way both to innovation in the chemical industry and to emerging environmental risks. While there is a case for some public funding of assessments, there are also large commercial and private benefits that accrue to industry from the assessment process. By international comparison, industry is paying very little, with the taxpayer subsidising the rest. The case for the current level of subsidy is not clear to me.

On the other hand, a properly resourced EPA would be able to give the chemical industry greater certainty around the timing of assessment processes and controls that are reliably proportionate to the risks. The public at large would benefit from a regulatory system that is robust and manages environmental and health risks at an acceptable cost both to commercial applicants and to taxpayers.

This is an issue I will continue to watch with interest. Given the work I have done in this area, I would be happy to help as you consider the appropriate regulatory settings for hazardous substances.

Yours sincerely,

Simon Upton

Parliamentary Commissioner for the Environment
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