

# 7 Grounds for Ministerial Call-in

## 7.1 Summary

The Minister for the Environment is able to 'call-in' and decide on applications on the grounds that she considers they will have significant effects. The Royal Commission recommended that the HSNO Act be extended to include significant cultural, ethical and spiritual issues as grounds for the Minister's call-in powers. The Government agreed to include significant cultural, ethical and spiritual effects as grounds for call-in of an application.

It is proposed that the call-in grounds be amended to include significant cultural effects and that 'cultural' be defined in the Act to include 'ethical or spiritual'. This would allow the Minister to make a decision on an application that she considers to have significant cultural, ethical and spiritual effects after considering advice from ERMA.

## 7.2 Call-in powers

The call-in provisions in the HSNO Act are based on the Resource Management Act 1991 and have the same purpose: to enable the Minister for the Environment to decide on an application that may have significant national implications. However, unlike the call-in provision in the Resource Management Act, which allows the Minister to call-in a proposal that she considers has 'national significance', the equivalent provision in the HSNO Act sets out an exclusive list of the matters that can be called in. Currently the Minister for the Environment may call-in and decide an application if she considers it will have:

- significant economic effects or
- significant environmental effects or
- significant international effects or
- significant health effects or
- significant effects in an area in which ERMA lacks sufficient knowledge or experience.

If the Minister decides to call-in an application, she could appoint any person or any body with relevant knowledge to sit with ERMA and consider the application. ERMA would then report (including recommendations and reasons) on the application to the Minister having regard to all relevant matters under the HSNO Act and the Minister's reasons for calling in the application. It is important to note that even though the Minister makes the decision on a called-in application, it is not a political decision but one that must be made according to the provisions set out in the HSNO Act.

Call-in powers are rarely used. There has been one application called in under the Resource Management Act since its enactment in 1991, and none have been called in under the HSNO Act. Extending the grounds for call-in as recommended by the Royal Commission may result in requests to call-in an application on cultural, ethical or spiritual grounds. This does not necessarily increase the likelihood that applications would be called in. However, it would allow the Minister to make a decision on an application that she considers to have significant cultural, ethical and spiritual effects after considering advice from ERMA.

## **7.3 Proposed amendment**

### **7.3.1 Is the proposed amendment necessary?**

The Royal Commission commented in its report that in ERMA's determination of applications on a case-by-case basis the ethical, cultural and spiritual dimensions of genetic modification were almost impossible to deal with, and that a broader, contextual approach was required.

Section 68 sets out a specific list of 'effects' that justify an application being called in. The section is consistent with the HSNO Act's purpose and the matters relevant to the purpose (sections 5 and 6). However, while economic, international and health matters are referred to in section 68 as well as in the purpose sections, section 68 does not mention 'cultural' matters (although this term is mentioned in sections 5 and 6). An argument that 'culture' is included in 'environmental effects' in section 68(1)(b) (given the definition of 'environment' in section 2) is not particularly strong as the section 2 definition also refers to 'economic', which is specifically referred to in section 68. Further, although the Minister in exercising her call-in power would be required to take into account the principles of the Treaty of Waitangi (section 8), because there is no specific reference to the Treaty in the list of call-in matters section 8 would not provide a basis by itself for a call-in. That said, 'cultural' interests are broader than section 8 considerations.

Accordingly, section 68, as it is presently enacted, does not permit the Minister to call-in an application on the grounds of 'cultural' effects. Some amendment is therefore necessary.

### **7.3.2 Implications of including 'cultural, ethical and spiritual effects' in section 68**

Difficulties may arise if section 68 is amended to include significant cultural, ethical and spiritual effects. There may be some interpretation difficulties given that the word 'cultural' is used in the purpose provisions of the Act, but 'spiritual' and 'ethical' are not used elsewhere. If all three words were used in section 68, an issue that would arise would be whether all three matters would have to be satisfied before the Minister could call-in an application, or whether it would be possible for an application to be called in if just one of the three matters was satisfied. This issue could be resolved by referring to 'significant cultural, or ethical, or spiritual effects'.

However, the term ‘cultural’ can be defined broadly so as to make it clear that it covers ‘ethical’ and ‘spiritual’. Accordingly, the Royal Commission’s recommendation could be given effect to if section 68 was amended to refer to ‘significant cultural effects’. Such an amendment would be consistent with the purpose provisions in the Act. To avoid any ambiguity or doubt, section 2 would be amended to include a definition of ‘cultural’ that includes (but is not limited to) ‘spiritual’ and ‘ethical’.

### **7.3.3 ‘Effects’ or ‘issues’**

As noted earlier, the Royal Commission recommended that “cultural, ethical and spiritual *issues*” be included as grounds for call-in, while the Government’s direction referred to “cultural, ethical and spiritual *effects*” (emphasis added).

The use of ‘effects’ is consistent with the scheme of the legislation (for instance, sections 2, 4 and 68 refer to effects), whereas ‘issues’ is a more nebulous term and would be likely to create confusion, as it is not used elsewhere in the Act. Accordingly, ‘effects’ could be used in section 68 (consistent with the other grounds for call-in listed in the section).

### **7.3.4 Proposed amendment**

It is therefore proposed that section 68 be amended to include ‘significant cultural effects’, and that ‘cultural’ be defined in section 2 to include ‘ethical and/or spiritual’.

**7a Do you agree or disagree with this proposal?**

Please give your reasons.