NEWSLETTER

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Proposed changes to GMO regulations

Earlier this year, the Government released its 'Interim Regulatory Impact Statement: Improving our GMO regulations for laboratory and biomedical research', to obtain feedback on proposed changes to regulations for genetically modified organisms (GMOs).

New Zealand's legislation and regulations for GMOs were set over 20 years ago when this field was still in its early stages, and given the risks associated with GMOs at the time, the stringent regulations set in place reflected that perception. It is now generally considered by our scientific community that given the significant advancements in what we know in the area of biotechnology, it is time to review our regulatory framework for GMOs.

Genetic modification involves the modification of an organism's genetic makeup (such as DNA) resulting in the creation of a GMO. GMOs are primarily regulated under the Hazardous Substances and New Organisms (HSNO) Act 1996, and the changes being considered would require amendments to this act.

The issues being addressed by the proposals set out in the impact statement, came out of work the Ministry for the Environment (MfE) carried out in 2021 when it canvassed stakeholders from the New Zealand research community regarding their experience working with the current GMO regulations. Based on this consultation and further analysis by MfE, the issues identified were the:

- overly stringent requirements for very low risk and lab-dependent GMOs
- over regulation of gene editing technologies (based on their mechanisms of action)
- application, amendment and approval requirements (including for medicines/therapies)

- administrative requirements for laboratory research (especially record-keeping)
- import, export, and transfer/movement requirements
- lack of clarity of the regulatory status of certain biotechnologies
- assessments and approvals for low-risk fermentation
- need for the regulatory framework to be future proof

To address these issues, the impact statement lays out 10 proposals to improve the GMO regulatory framework. The aim of these proposals is to help researchers, universities and businesses by reducing unnecessary regulatory barriers to laboratory and biomedical research that use GMOs.

The Hon David Parker emphasized that "these changes apply only to laboratory settings and for biomedical therapies that use biology and organisms, like cells, to create products that improve human health." He stated "We're not changing the rules that relate to field trials and releases of GMOs into the environment, such as plants or animals." But rather the proposed changes would "remove barriers to research and help foster biotech companies producing high-value products in New Zealand, while retaining a considered approach to GMOs."

One sentiment that comes through is that although the Government wishes to take a cautious approach to updating the regulations, it doesn't want to be left behind in developing technologies in an area that would benefit New Zealanders.

National has developed its own policy that goes further, including allowing for "trials or use of biotech products where these have already been approved by at least two other OECD countries (or the EU and at least one OECD country outside the EU)". The Act Party has also indicated it would liberalise our laws on genetic engineering.

Consultation began on July 3. If you would like to have your say, submissions close 25 August 2023.

Timeframe extended for raising sexual harassment personal grievance

An amendment to the Employment Relations Act was passed in June this year which extends the time available to raise a personal grievance that involves allegations of sexual harassment.

Prior to this amendment, a person experiencing sexual harassment had 90 days to bring a personal grievance, which was the standard time set for a personal grievance of any type.

Now under the Employment Relations (Extended Time for Personal Grievance for Sexual Harassment) Amendment Act 2023 (Amendment Act), a person has within 12 months to bring a grievance for sexual harassment in the workplace. This 12 month period is defined as beginning from the date the alleged sexual harassment occurred, or came to the employee's attention, whichever is later.

Under the Human Rights Act 1993, sexual harassment is defined as any unwelcome or offensive sexual behaviour that is either repeated, or of such a significant nature, that it has a detrimental effect on that person. This includes "by the use of language (whether written or spoken) of a sexual nature, or of visual material of a sexual nature, or by physical behaviour of a sexual nature".

What can be considered as sexual harassment can cover a wide range of actions; both overt and implied. For those wanting to review this area, Employment New Zealand's website provides useful information on the subject, and gives some helpful context, with examples of scenarios and behaviours that may be considered sexual harassment in the workplace.

It is not uncommon for those suffering from sexual harassment to take considerable time to process and act on what has occurred. This delay in coming forward can be due to factors such as embarrassment, lack of understanding of what happened, self-blame, fear of what others will think, shame and if the alleged perpetrator was a manager or employer, there's the fear of risking one's career or livelihood. This Amendment Act recognises this personal process and will allow more time for people who have experienced workplace sexual harassment to consider what has happened to them before deciding whether to raise a personal grievance.

The Amendment Act, however, is not retrospective. The 12 month period applies to events that happened, or came to the notice of the employee, on or after 13 June 2023 (date on which the amendment came into force). For events before this amendment was enacted, the previous 90 day period applies.

For employers, from 13 June 2023, new employment agreements must include the modified time. Although employers are not required to update employment agreements that existed before the Amendment Act came into force, under their good faith obligations, employers should discuss updating the agreements the next time they review them with their employees.

39% Trust Tax Rate

On 18 May 2023, the government introduced the Taxation (Annual Rates for 2023-24, Multinational Tax, and Remedial Matters) Bill. The Bill includes draft legislation that will see the trust tax rate increase from 33% to 39% from 1 April 2024, thereby aligning it with the top personal marginal tax rate.

Between 2000 and 2010, the top personal marginal tax rate was also set at 39%. Throughout that period, the trust tax rate remained at 33%. The government has cited the recent re-introduction of the 39% top personal tax rate as the reason for the increase in the trust tax rate. The commentary to the bill states:

“Aligning the trustee and top personal tax rates at 39% would help ensure that trusts cannot be used to circumvent the top personal tax rate. This would improve the fairness and progressivity of the tax system, protect the revenue base from erosion, and improve the Government’s ability to raise revenue.”

Much like when the top personal marginal tax rate increased to 39%, taxpayers will no doubt consider ways to minimise their exposure to the 39% rate. However, unlike the top personal rate, the 39% trust rate will apply from the first dollar a trust derives. This means the scope of the change is likely to be broader without active planning. We are likely to see a significant increase in beneficiary distributions. It is common for trusts to distribute income to their beneficiaries to utilise their lower marginal tax rates. However, because the 39% personal tax rate doesn’t apply until $180,000, trusts could commence making large distributions to beneficiaries. When we consider that trusts often distribute to children, we could see many young adults receive distributions of up to $180,000. This will have flow on effects to student loan and provisional tax obligations.

Between now and the new rate coming into effect, there is still the outcome of the general election to be decided. This is likely to mean most people will wait until the outcome is known. However, if the new trust rate does come into effect, large dividends are likely to be declared to extract retained earnings from companies owned by trusts, at a rate of 33%, sheltering them from having to pay the 39% rate on these earnings in the future. A similar trend was seen prior to when the 39% personal marginal rate came into effect.

Some taxpayers will question whether this change disqualifies trusts as a viable structuring option. However, the reality is that the asset protection and succession planning advantages still exist, irrespective of the tax treatment.

Snippets

Retention money amendment

Legislation has recently been passed that will strengthen the protection subcontractors have that they will receive retention money owed to them should the head contractor become insolvent.

Retention money relates to money owed to a subcontractor that is retained by a head contractor, usually a percentage of the contract value, to ensure work is completed as per the contract. This retention would then be paid out on completion of the work or warranty period.

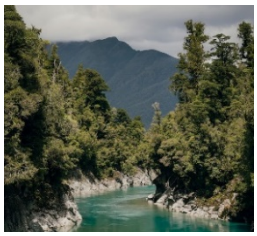
Minister for Building and Construction Megan Woods stated that the Construction Contracts (Retention Money) Amendment Act 2023 (Act), will “provide important protections for subcontractors so they can be certain their payment is kept safe, can’t be used for any other purpose, and will be paid out should the head contractor’s business fail.”

Under the Act, retention money will be required to be held on trust by the head contractor, and must be held separate from other money or assets; and hence not available for use as working capital. The head contractor must keep accounting and other records (as specified in the Act) of all retention money held for each party. This information must be made available for them to inspect and be provided as a report at least once every 3 months.

The Act also introduces penalties for non-compliance with fines for each offence of up to $50,000 for directors and up to $200,000 for companies. The Ministry of Business, Innovation and Employment, which will monitor and enforce compliance, will have the power to obtain information and apply for search warrants to carry out its function.

The new requirements come into force from 5 October 2023, and will apply to new commercial construction contracts entered into, or contracts renewed, after the Act commences.

Mining ban voted down



Hon Eugenie Sage's members Bill, Crown Minerals (Prohibition of Mining) Amendment Bill (Bill) failed at its first reading; being voted down by Parliament in late June this year. The intent of the Bill was "to prohibit new exploration, prospecting and mining activity on conservation lands and waters to protect the landscapes, natural features, indigenous plants and wildlife, and scientific, cultural and recreational values on public conservation land." With the backdrop of one third of New Zealand's land being in the conservation state, this would have presided over a significant portion of our land mass.

In addition, the Bill would have prohibited the granting of permits for new coal mines or the expansion of existing mines, after 1 January 2025, on any land, "to protect the climate from the greenhouse gas emissions generated by burning coal."

At its first reading, Labour MP Angela Roberts initially reconfirmed Labour's commitment to no new mines on conservation land – a commitment that goes back to the then Prime Minister Jacinda Ardern's 2017 Speech from the Throne. However, she went on to say that although Labour supported the intent of the bill, "it goes beyond our commitment to no more mines on conservation land", in that it does not provide for the "process" to make sure we get this right. She voiced concerns that the Bill included significant assumptions about Treaty relationships that may have been impacted, and as such would pre-empt "a true engagement in partnership with iwi about the implications for them."

We will have to watch this space to see how and if Labour will be able deliver on their commitment.

If you have any questions about the newsletter items, please contact us, we are here to help.