

In Confidence

Office of the Associate Minister of Health

Chair, Cabinet Social Wellbeing Committee

## **Continuation of prohibition on imports of high-power laser pointers**

### **Proposal**

1. This paper seeks Cabinet agreement to continue with the controls on the importation of high-power laser pointers.

### **Background**

2. High-power laser pointers (the devices) can cause harm through malicious or careless misuse. Although the total power in the beam may be only a few milliwatts (mW), concentrating this power onto a tiny spot creates a point of very high intensity. The main risks are eye injuries or skin burns. There are also aviation safety risks if devices are used to dazzle or distract pilots particularly during take-off and landing. Drivers of motor vehicles, motorcyclists, cyclists, and ships' crew are also at risk if dazzled by the devices.
3. In 2013, a package of regulatory controls was introduced to control the misuse of such devices [CAB Min (13) 43/1 refer]. Regulatory controls were introduced under the Health Act 1956 to restrict the domestic supply and acquisition of the devices to those who have been authorised by the Director-General of Health. Additionally, in 2014, Parliament introduced a further control on the devices by amending the Summary Offences Act 1981, creating an offence to be in possession of a device in a public place without reasonable excuse.
4. The Customs Import Prohibition (High-power Laser Pointers) Order 2013 (the Order) was made under section 54 of the Customs and Excise Act 1996 (the 1996 Act) to restrict the importation of the devices except with the consent of the Director-General of Health. The Order was extended for another three years in 2017 [CAB-16-MIN-0508 refer] by the Customs Import Prohibition (High-power Laser Pointers) Order 2017, which will expire on 29 February 2020.
5. The Customs and Excise Act 1996 has been repealed and replaced by the Customs and Excise Act 2018 (the 2018 Act). Under the 2018 Act, the importation Order does not need to have a limited term.

### **Continuing the existing import control**

6. This paper proposes continuing the current prohibition on the importation of the devices under the Customs and Excise Act 2018. The policy rationale supporting the

continuation of the existing import control remains unchanged since the original Customs Import Prohibition Order was made in 2013 – that is, the protection of public health and safety.

7. Import controls are part of a package of measures needed to help manage health and safety risks posed by these devices, as the devices are not manufactured in New Zealand. Import controls are part of a wider package of controls on the supply chain. While not guaranteeing that every import shipment would be picked up, there is a deterrent effect as any illegally imported items may be detected and seized by Customs.
8. It is necessary to use the statutory vehicle of the Customs and Excise Act 2018 to regulate the importation of the devices because the Health Act 1956 does not provide regulation-making powers in respect of such imports.
9. Section 96 of the Customs and Excise Act 2018 provides for prohibiting the importation and exportation of goods by an Order in Council. A condition for the making of a prohibition order is that the proposed prohibition is necessary in the public interest.
10. The public interest reasons include:
  - 10.1. potential health and safety risks arising from accidental or unsafe use, or malicious misuse of laser pointers e.g. deliberately aiming laser pointers at aircraft or at peoples' eyes. There appears to be a lack of awareness of potential harms from these devices and an inherent difficulty for people to readily distinguish a low-power device from a high-power device
  - 10.2. people can be affected by the misuse of laser pointers even from a distance
  - 10.3. to prevent and reduce the continued incidents, laser strikes on aircraft, cars and ships, including ferries
  - 10.4. to prevent or reduce the use of the devices for unlawful purposes such as during riots and civil unrest and large gatherings of people (for example, being shone on players and spectators during rugby and football games)
  - 10.5. the importance of treating imports and domestic sales/supply of the devices in a consistent manner.
11. The proposed Customs Import Prohibition Order would not affect the continued use and ready availability of lower power laser pointers for legitimate reasons such as presentation aids. The efficient and simple approval system currently in place to enable authorised users to import such devices for justifiable reasons, which has worked well to date, will continue.
12. Since the original Customs Import Prohibition Order came into force on 1 March 2014, Customs have seized 1108 devices. This has mainly involved seizures of a small

number of the devices (one to four items) but also included four large shipments (one of 600 items).

13. Public consultation was undertaken in 2012 when developing the current regulatory controls. The Ministry of Health has not undertaken further public consultation on whether the Order should be continued as the original policy rationale for making the new Customs Import Prohibition Order under the current Customs and Excise Act 2018 has remain unchanged.

### **Other options**

14. The other two options considered in regards to the control over the importation of the devices are:
  - 14.1. Letting the existing Customs Import Prohibition Order lapse: this is not considered a good option as it is not in the public interest, is inconsistent with the policy objective of protecting the health and safety of the public, and is contrary to the Government's policy position.
  - 14.2. Amending the Health Act 1956 to allow for the making of regulations to control the importation of the devices similar to that currently provided by the Customs Import Prohibition Order. This option remains a preferred option in the medium term, as it brings key supply chain controls under the same statute, and may proceed in the future alongside a review of the Health Act 1956.

### **Consultation**

15. The following agencies were consulted in the development of this Cabinet paper: New Zealand Customs Service; Ministry of Transport; Civil Aviation Authority; New Zealand Transport Agency; Maritime New Zealand; New Zealand Police; Ministry of Defence; New Zealand Defence Force; The Treasury; Ministry of Business, Innovation and Employment; Ministry of Foreign Affairs and Trade; Ministry of Justice; Ministry of Social Development; Accident Compensation Corporation; Parliamentary Counsel Office; and Department of the Prime Minister and Cabinet.

### **Financial Implications**

16. There are no financial implications from the proposals in this paper. All costs of administering the Customs Import Prohibition Order will continue to be met from within existing budgets.

### **Legislative Implications**

17. The proposal in this paper will require the making of an Order in Council under section 96 of the Customs and Excise Act 2018 to prohibit the importation of high-power laser pointers, except with the consent of the Director-General of Health.

## **Impact Analysis**

18. The proposal to extend the import control is in line with current government policy. The Treasury Regulatory Quality Team has determined that the decisions sought in this paper are exempt from the Regulatory Impact Analysis (RIA) requirements on the basis that the relevant issues have been addressed by the RIA "*Controlling the import and supply of high-power laser pointers*" in 2013. This RIA is available on the Ministry of Health website <https://www.health.govt.nz/about-ministry/legislation-and-regulation/regulatory-impact-statements/controlling-import-sale-and-supply-high-power-laser-pointers>.

## **Human Rights**

19. Proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

## **Gender Implications**

20. There are no gender implications arising from this paper.

## **Disability Perspective**

21. The implications of this policy is that it may prevent someone from having a life-changing, long term disability which impacts on their life.

## **Publicity**

22. The extension of the import control will be publicised on the laser pointers section of the Ministry of Health's website and existing Customs' business publication.

## **Proactive Release**

23. The Associate Minister of Health proposes that this paper be proactively released in whole within 30 business days of the final decision being taken by Cabinet.

## **Recommendations**

The Associate Minister of Health recommends that the Committee:

1. **note** the Customs Import Prohibition (High-power Laser Pointers) Order 2017 currently prohibits the import of high-power laser pointers, unless consent to do so has been granted by the Director-General of Health;
2. **note** the Customs Import Prohibition (High-power Laser Pointers) Order 2017 will expire on 29 February 2020;

3. **note** that the Customs Import Prohibition (High-power Laser Pointers) Order 2017 is part of an existing package of regulatory controls on such devices that also includes controls on the domestic supply, acquisition, and possession of high-power laser pointers;
4. **agree** that continuing the import prohibition is in the public interest as it prohibits the unauthorised importation of high-power laser pointers and supports other domestic supply chain regulatory controls;
5. **agree** to continue with the import prohibition of high-power laser pointers, currently provided by the Customs Import Prohibition (High-power Laser Pointers) Order 2017, by making a new Customs Import Prohibition (High-power Laser Pointers) Order under the Customs and Excise Act 2018;
6. **invite** the Minister of Customs to issue drafting instructions to the Parliamentary Counsel Office to draft an Order in Council to give effect to the continued prohibition on importation of high-power laser pointers.

Authorised for lodgement

Hon Julie Anne Genter

Associate Minister of Health