

Environmental Protection Authority Bill

Government Bill

As reported from the Local Government and
Environment Committee

Commentary

Recommendation

The Local Government and Environment Committee has examined the Environmental Protection Authority Bill and recommends by majority that it be passed with the amendments shown.

Introduction

The Environmental Protection Authority Bill is an omnibus bill that proposes to amend a number of statutes in order to establish a new Environmental Protection Authority (EPA). The EPA would be a Crown agent, and is intended to contribute to the efficient, effective, transparent management of New Zealand's environment and natural and physical resources; and to enable New Zealand to meet its international obligations.

The bill seeks to disestablish the Environmental Risk Management Authority (ERMA) and the existing EPA (a transitional authority set up as a statutory office within the Ministry for the Environment in 2009) and transfer their functions, powers, and staff to the new EPA.

It also seeks to transfer certain functions and duties, and a number of staff, from the Ministry of Economic Development.

The bill proposes establishing a Māori Advisory Committee to replace Ngā Kaihautū Tikanga Taiao, the statutory committee that advises ERMA on Māori issues.

This commentary covers the key amendments that we recommend to the bill. It does not cover minor or technical amendments.

Commencement

We recommend inserting new clause 2(3) so that any provision not brought into force by Order in Council at an earlier date would come into force on 1 December 2012.

Clause 2(2) provides for substantial parts of the bill to be brought into force by the Governor-General by one or more Orders in Council. This provision was intended to allow the various functions and powers of this bill to be transferred at an appropriate time, and to minimise disruption to the administration of the functions that would be transferred to the EPA. The Regulations Review Committee recommended that legislation incorporate a fixed commencement date, and that commencement by Order in Council be used only in rare and exceptional circumstances.

Functions of the EPA

We recommend amendments to clause 12(1) to capture the intention that the EPA should provide technical advice to the Government and Crown entities on any matter relating to its functions under an environmental Act.

We also recommend deleting subclauses 12(1)(c) and (2) as they are unnecessary. They were intended to prevent functions being added to the EPA unless they supported, or were ancillary to, other EPA functions. As a Crown agent, the EPA would be subject to the Crown Entities Act 2004, which already contains such a provision (section 10(1)).

The power to contract

We recommend amending clause 13(1) by inserting a reference to functions of the EPA under an environmental Act, and to clarify that

the EPA must “have regard to” rather than “take into account” the matters outlined in subclause (2). These amendments would promote best practice in relation to all of the EPA’s functions without unnecessarily restricting the authority’s power to authorise people to carry out some of its functions.

Sections 62–72 of the Crown Entities Act provide rules for conflicts of interests, to which the EPA as a Crown agent would be subject. We note that managing the risks associated with purchasing goods and services would be further addressed by the authority developing standard terms and conditions.

Minister’s powers

We recommend amending clause 15 by inserting new subclause (1AA) to clarify that the provision could apply to any Minister delegating to the EPA functions or powers under an environmental Act. The bill as introduced presupposes that the Minister responsible for the authority would be the same Minister responsible for the enactments governing its functions, which might not necessarily be the case.

Māori Advisory Committee

We recommend amending clause 17 by inserting new clause 2A, which would prevent EPA board members being appointed to the Māori Advisory Committee. This would help preserve the independence of the committee’s advice to the board. The proposed Māori Advisory Committee has been modelled on Ngā Kaihautū Tikanga Taiao, and it is our expectation that it would operate similarly.

Committees and subcommittees

We recommend amending new section 18C (as inserted by clause 70) so that committee and subcommittee membership would not be limited to persons with knowledge and experience in the subject matter of a particular application. This amendment would require committees and subcommittees to “collectively” have particular knowledge of, or experience in, the matter to be considered.

The wording as introduced was potentially too restrictive and might hamper EPA committees from referring broader subject matters, such as new organisms, to standing subcommittees.

Environmental permitting functions

We recommend inserting new Parts 5A and 5B and a number of new clauses, including 47B–47D of Part 3, and recommend various consequential amendments. New Part 5A would include the EPA as a potential decision-maker under the Imports and Exports (Restrictions) Act 1988; while the proposed amendments to the Imports and Exports (Restrictions) Prohibition Order (No 2) 2004 in new Schedule 6 would provide for the EPA to be the decision-maker in relation to the export and import of specified chemicals and waste. New Part 5B and new Schedule 7 would transfer to the EPA the permitting and enforcement functions under the Ozone Layer Protection Act 1996 and associated regulations.

The EPA would then be responsible for processing and deciding applications for import and export permits, processing and deciding applications for exemptions, maintaining registries, and some compliance and enforcement. Among the proposed general requirements for permits under the Ozone Layer Protection Act, the EPA could refuse to grant a permit if it were inconsistent with the scheme of the regulations.

These functions are currently carried out by the Ministry of Economic Development and the Ministry for the Environment, and give effect to New Zealand's obligations under a number of international agreements. We understand that transferring these functions to the EPA would have little or no effect on businesses, individuals, or not-for-profit organisations.

The Minister in charge of the bill has previously signalled his intention that the proposed EPA be responsible for these permitting and enforcement functions, which are closely related to proposed EPA functions under the Hazardous Substances and New Organisms Act 1996.

While we do not recommend transferring other specific functions to the EPA, we note that it might acquire more duties and functions over time.

New Zealand Labour Party minority view

Labour created the Ministry for the Environment in 1986 because we believe in the fundamental importance of putting strong environmental policy-making at the heart of Government. Environmental, economic, and social objectives all need to be taken into account in decision-making, and operate in a complementary, not a competitive, manner.

We have been concerned for some time that environmental objectives have not been advocated for strongly when policy is made, and that environmental concerns have been increasingly portrayed as separate from, and opposed to, economic objectives. This is a false portrayal, and represents an irresponsible approach to building New Zealand's future prosperity.

Labour supported sending the Environmental Protection Authority Bill (EPA Bill) to the Local Government and Environment Committee to hear public submissions on it, because we hoped that the legislation might lead to the creation of a strong, independent, influential entity, with a mandate to exercise comprehensive environmental sector leadership.

Regrettably, as a number of submitters have pointed out, the EPA to be created by the bill will not achieve this objective. Having heard public submissions, we have four major concerns about the EPA Bill:

- The functions of the EPA are too narrow to allow it to provide environment sector leadership.
- The EPA's objectives are inadequate, since they do not expressly require the EPA to protect the environment.
- The EPA is not sufficiently independent from its Minister.
- The legislation is confusing as to the need for the EPA to take into account Māori perspectives in its decision-making.

We deal with each of these concerns in turn below.

Functions of the EPA

The EPA is not a comprehensive environmental regulator. It is proposed to give it further functions at a later, unspecified, date, both by additional legislation and by ministerial direction. It would be much better if the EPA Bill were a comprehensive environmental protection statute. It is not, and as a result, the law is left in a confusing and unsatisfactory state. Submitters pointed out that a number of func-

tions should logically to be carried out by the EPA, in addition to the ones that the bill would confer. These include

- the administration of the Waste Minimisation Act 2008, including the many necessary product stewardship schemes that should already have been brought into effect, but have not been
- numerous additional functions under the Resource Management Act 1991 (RMA)
- coastal and marine management, and environmental management in New Zealand's Exclusive Economic Zone
- administration of an "environmental enhancement fund" generated by fines issued by district and regional councils.

We agree. The EPA has been set up in an unsatisfactory fashion, receiving piecemeal transfers of jurisdiction from existing bodies, while the substantive legislation that constitutes those entities will remain in force. This means that, under the regime that the bill will create, it will in future be necessary to read the EPA Act in conjunction with the Hazardous Substances and New Organisms Act 1996 (HSNO Act), the Climate Change Response Act 2002 (CCRA), and the RMA in order to determine how any matter under the jurisdiction of the EPA should be determined. This will put environmental law in New Zealand further beyond the understanding of those who are not advised by experts.

This runs completely contrary to the way that our laws should operate.

In addition, the bill provides the Minister with the power to direct the EPA to carry out additional functions. We have been assured that such functions are likely to be very minor, and ancillary to the current functions of the EPA, with any new substantive functions requiring legislative amendment.

Our unease with this proposal arises chiefly because there is no "bright line" test to differentiate between an ancillary and a substantive function. The Minister will determine that question according to a political judgment. Once that judgment is made and accepted by the Cabinet, the absence of legislation to add new functions will mean that it will never be clear on the face of the statute what powers the EPA may exercise at any time. The potential for confusion, especially for the layperson, as to which body is responsible for

what function in environmental law, is considerably worsened by this provision.

We are told that powers to remedy the regulatory gap in environmental regulation of the Exclusive Economic Zone, originally foreshadowed by the Government as likely to be dealt with in the current bill, will now have to await legislation at some future, unspecified, date. This is most unsatisfactory.

We wonder whether the EPA will survive as a credible institution in light of these deficiencies.

We think that this bill is a classic example of legislation that should have been made to wait until the Minister was truly ready to propose a comprehensive environmental protection law. We are forced to conclude that it is instead being enacted in haste to follow a political imperative to be seen to have legislated on environmental regulation before the end of an electoral cycle.

Objective of the EPA does not expressly include environmental protection

As the bill is currently worded, the objective of the EPA is to undertake its functions in a way that

- contributes to the efficient, effective, and transparent management of New Zealand's environment, and natural and physical resources
- enables New Zealand to meet its international obligations.

A number of submitters commented adversely on the obvious absence of any obligation on the part of the EPA to actually protect the environment. We wholeheartedly agree with this concern.

Under the bill, the EPA will acquire functions under the RMA, the HSNO Act, and the CCRA, and it is intended that it should take on further functions under future enactments or by ministerial direction. Each Act does, and each ministerial direction is likely to, contain different objectives and set out different priorities.

It should be made clear from the outset that the EPA is to deal with these different and potentially conflicting concerns by being true to its name, and to the purpose which the public will ascribe to it—to protect the environment.

It speaks volumes to us that the body to be charged with managing the regulation of New Zealand's environment and natural resources

does not expressly have environmental protection included amongst its objectives. This is a significant, and in our view, a fatal, omission.

EPA's decision-making is not sufficiently independent

The Crown Entities Act provides for three types of statutory entity:

- Crown agents, which must give effect to Government policy when directed under section 103 by the responsible Minister.
- Autonomous Crown entities, which must have regard to Government policy when directed under section 104 by the responsible Minister.
- Independent Crown entities, which are generally independent of government policy, with section 105 preventing directions from the responsible Minister unless specifically provided for in another Act.

Clause 7 of the bill provides that the EPA is to be a Crown entity, and that the Crown Entities Act is to apply to it except to the extent that the bill or any other enactment expressly provides otherwise. The clear intent is that it should function as a Crown agent.

Several submitters recommended that the EPA should instead be established as an autonomous Crown entity. They submitted that this would ensure that its decision-making would be more independent from the political influence of the Ministers who would deal regularly with it.

We agree with these submissions. The majority of the EPA's decision-making powers will (at least initially) be those that it will inherit from the Environmental Risk Management Authority under the HSNO Act. ERMA is at present an autonomous Crown entity. Moving its functions and powers into the EPA, a Crown agent, will by definition move them closer to the Minister. No justification is advanced for this change. We are concerned about any proposal that might increase the influence of the Government over the regulation of new organisms and hazardous substances.

We appreciate that a degree of independence will be maintained by section 17 of the HSNO Act, which expressly prevents the Minister from making a direction to the board on its key decision-making functions under Parts 5 and 6A of the HSNO Act. Clause 78 of the bill may provide a similar protection in respect of the EPA's decision-making under the RMA by expressly preventing the Minis-

ter from making a direction to the board in relation to certificates of compliance.

The problem is that in the administration of public bodies, it is the overall scheme of the empowering legislation, rather than the content of individual statutory provisions, that sets the tone for the manner in which a new entity is likely to operate. This is a particular concern when, as with the EPA establishment board, the chair of the entity has an affiliation to the party that at present leads the Government.

Rather than set up a statutory scheme where the EPA is obliged to give general effect to the objectives of the Minister, with specific exceptions when independence is thought necessary, we would prefer the reverse position—independence, with specific powers of direction only when they are required. This is so for a host of reasons, not least including the need to create and maintain a healthy and transparent operating culture in a new organisation, which many hoped would embark on a much-needed fresh start in strengthening environmental protection in New Zealand.

The failure of the bill to create an EPA which is clearly required to operate free from political influence is another fatal flaw, as far as we are concerned.

Confusing provisions around engagement with Māori

The bill makes provision for a Māori Advisory Committee, to be appointed by the EPA board, to provide advice to the EPA from a Māori perspective on matters relating to policy, process, and decision-making. It also sets a minimum requirement for the Minister to appoint at least one member to the board with knowledge and experience relating to the Treaty and tikanga Māori. Clause 9 also requires the board collectively to have knowledge of and experience related to the Treaty and tikanga Māori. These provisions were generally welcomed by submitters.

But a number of submitters pointed out that, unlike other enactments that deal with environmental matters, such as the Conservation Act 1987, the HSNO Act, the RMA, and the CCRA, the bill contains no statutory requirement for the Government to give effect to the principles of the Treaty of Waitangi.

The EPA will be subject to the (slightly differently worded) Treaty clauses in the existing Acts, which provide for the functions of the

EPA—the RMA, the HSNO Act, and the CCRA. The fact that the Conservation Act also contains a Treaty clause will also be relevant to the EPA’s discharge of its functions. That the EPA Bill should be the only enactment dealing with environmental matters that does not contain such a clause seems unsatisfactory to us.

The obvious danger in the failure to include a Treaty clause in the EPA Bill is that it leaves open the conclusion that, in carrying out its work, the EPA somehow has a less compelling obligation to seek to work constructively with Māori than its predecessors, including ERMA, councils, and the Crown.

Conclusion

Creating the EPA could have been a major opportunity for a new departure in New Zealand’s approach to environmental regulation. The EPA could have been a comprehensive regulator of environmental matters. It could have been a powerful champion at the heart of Government to ensure that environmental issues are seen as complementary to economic and social ones when policy decisions are taken. It could have been respected for its independence, the overarching strength of its environmental protection objectives, and the inevitability of its strong relationships with iwi.

Thanks to the weaknesses inherent in the bill and identified in this minority view, it is a matter of significant regret to Labour members that the EPA will be none of these things. This bill is a missed opportunity for the environment.

Green Party minority view

It has long been our policy to support the idea of an agency that is an independent environmental reporter and advocate, an organisation that can make good decisions and influence other decision-makers with the well-being of the environment in mind. If we fail to maintain a high quality and resilient environment, our economic and social arrangements will collapse in their turn. “No environment, no economy”.

We supported this bill to select committee in the hope that despite an unpromising start the legislation could be amended to ensure the establishment of a genuinely strong, independent, well-resourced body with a mandate to protect and enhance environmental quality and

value. Sadly, the draft legislation remains in a state that gives us no confidence in the usefulness of the authority being established.

Many of the submitters to the select committee also expressed support for the establishment of an authority, but found shortcomings in the structure and organisation being proposed. We do not see within the redrafted bill an adequate response to the concerns expressed by these participants in the process.

Lack of autonomy

The most obvious concern of the bill is the lack of autonomy of the EPA. As a Crown entity for the purposes of section 7 of the Crown Entities Act, the EPA will be constituted as a Crown agency—the least autonomous of the three possibilities listed in that Act. Under section 7(1)(a) of that Act, it “must give effect to Government policy when directed by the responsible Minister”.¹ This puts primary direction of the EPA into the realm of ministry policy. The Minister may then effectively direct the EPA to act in accordance with internal directives with the requirement that it “give effect” to these.

Clause 78 inserts a new section 29A into the RMA, stating that there is a restriction of ministerial direction with regard to the issuing of certificates of compliance for projects of national significance. So the Minister for the Environment may not explicitly direct that a project be approved but, apart from this, ministerial discretion remains strong and the terms of reference of any inquiry will still be defined by Ministry for the Environment policy.

Rather than being an independent protector of the environment, the EPA will be a final legitimising step in the application of ministerial policy rather than statutorily-mandated purposes to national-level environmental decision-making.

Procedural rather than purposive focus

The bill purports to change the regulator rather than the regulations. But the restrictiveness of the terms of the bill in real terms significantly changes the area of inquiry and proper purpose of the regulator.

¹ In contrast to autonomous Crown entities which must only “have regard to” ministerial policy or independent Crown entities which are “generally independent” of ministerial policy (s7(1)(a)).

The focus on an essentially procedural set of objectives (“effective, efficient, and transparent”) under national significance or ministerial call-in applications appears to minimise the centrality of sustainable management or sustainable development, and instead focuses on the efficiency of processing applications. Thus, grounds for review of a decision by the EPA will be restricted unduly to instances in which they can be shown to have been ineffective, inefficient, or lacking in transparency.

The bulk of regulation under the regime of the RMA and the Local Government Act 2002 (LGA) is devolved to local and regional councils. They are required, at least normatively, to consider “sustainable management” (section 5 of the RMA) and “sustainable development” (section 3(d) of the LGA) as central concerns.

It is worth noting that the stronger sustainability prescription of “sustainable development” as stated in the LGA is effectively struck out by not being included in the clause 4 list of “environmental Acts”.

When an application is brought for consideration by the EPA as proposed, the primary focus becomes procedural. If the change in focus requires a consideration of different criteria as in clause 11(1)(a), this is to some extent an effective change in regulation.

The insertion of clause 11(2) is an improvement, but the weighting of the consideration is still questionable. By saying that “when undertaking its particular functions under an environmental Act, the EPA must only comply with any objectives (or purposes) stated in respect of that Act”, it is possible that these priorities may be considered as secondary to (and already considered by the previous bodies) the stated objectives of clause 11(1)(a).

There is still no inclusion of “sustainability” in any of its forms in the objectives of the bill, and as a matter of basic statutory interpretation, this could be taken as giving primacy to the explicitly-stated objectives of “efficient, effective, and transparent management”.

Clause 11(1)(b) should state “enables New Zealand to meet its international obligations”. By leaving the definition broader, a concern is that compliance with international agreements such as the Trans Pacific Partnership Agreement currently being negotiated, and other non-environmental agreements will act restrictively on decision-makers regarding the environment. For instance, if international obligations require that trade or the operation of multi-

nationals in New Zealand be unimpeded, the EPA may be forced to consider those provisions and give economic effects greater weighting than environmental concerns.

The status of the EPA as a Crown agent raises serious concerns as to its ability to act independently of the Minister responsible; and observations of the Regulations Review Committee regarding the extent to which the bill would be enacted by Order in Council also strongly suggest that the EPA as currently proposed would be unduly subject to the whim of the Executive.

The absence of a strongly focused and plainly articulated principle in the bill to guide the authority's decisions (ideally one agreed to by all parties) means that inevitably the body will be subject to the political cycle, especially given the capacity for ministerial influence already alluded to in this minority view.

The Green Party notes the intention that all staff and management of ERMA will be imported into the new entity, presumably bringing along with them the very compliant, permissive culture of that organisation, which has seldom in its history rejected applications, even those that obviously carried significant environmental and social risk and ethical challenges.

Clause 4 of the bill lists a number of Acts which, for the purposes of the bill, are defined as "environmental Acts" and so are subject to the authority's intervention. A genuinely empowered authority would have the capacity to engage with, and influence, all legislative enactments capable of adversely affecting the environment, which was indeed the original template for the agency that became the Ministry for the Environment.

In opposing this bill, we regret the failure to establish a protection authority worthy of the name, and hope that a future Government will make the necessary (and not complex) amendments that would make it fit for purpose.

Appendix

Committee process

The Environmental Protection Authority Bill was referred to the committee on 23 November 2010. The closing date for submissions was 28 January 2011. We received and considered 38 submissions from interested groups and individuals. We heard 19 submissions.

We received advice from the Ministry for the Environment and the Environmental Risk Management Authority. The Regulations Review Committee reported to the committee on the powers contained in clause 2.

Committee membership

Chris Auchinvole (Chairperson)

Brendon Burns (from 9 February 2011)

Dr Cam Calder

Charles Chauvel (until 9 February 2011)

Hon Ruth Dyson (from 9 February 2011)

Hon George Hawkins (until 9 February 2011)

Chris Hipkins (until 9 February 2011)

Rahui Katene

Nikki Kaye

Sue Kedgley

Hon Heather Roy

Phil Twyford (from 9 February 2011)

Louise Upston

Nicky Wagner

Environmental Protection Authority Bill

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

Hon Dr Nick Smith

Environmental Protection Authority Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Environmental Protection Authority Act **2010**.

2 Commencement

- (1) **Parts 1 and 2** of this Act come into force on the day after the date on which it receives the Royal assent.
- (2) The ~~provisions of the~~ rest of this Act ~~come~~ comes into force on a date to be appointed by the Governor-General by Order in Council; and 1 or more orders may be made bringing different provisions into force on different dates. 5
- (3) Any provision that has not earlier been brought into force comes into force on 1 December 2012.

Part 1

10

Preliminary provisions**3 Purpose**

The purpose of this Act is to establish an Environmental Protection Authority and to provide for its functions and operation. 15

4 Interpretation

In this Act, unless the context otherwise requires,—

chief executive means the chief executive of the Environmental Protection Authority appointed under **section 14**

collective agreement has the meaning given to it by **section 21** 20

employee has the meaning given to it by **section 21**

employment agreement has the meaning given to it by **section 21**

environment has the ~~meaning given to it~~ same meaning as in section 2(1) of the Resource Management Act 1991 25

environmental Act means—

(a) the Climate Change Response Act 2002:

(b) the Hazardous Substances and New Organisms Act 1996: 30

(ba) the Imports and Exports (Restrictions) Act 1988:

(bb) the Ozone Layer Protection Act 1996:

(c) the Resource Management Act 1991

Environmental Protection Authority, Authority, or EPA means the Environmental Protection Authority established by **section 6**

Environmental Risk Management Authority or ERMA means the Environmental Risk Management Authority established ~~under~~ by section 14 of the Hazardous Substances and New Organisms Act 1996 5

fees framework means the framework determined by the Government for the classification and remuneration of members of statutory and other bodies in which the Crown has an interest 10

former EPA has the meaning ~~set out in~~ given to it by **section 21**

Māori Advisory Committee means the committee established by **section 17** 15

Minister means the Minister of the Crown who, under authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

natural and physical resources has the ~~meaning given to it~~ same meaning as in section 2(1) of the Resource Management Act 1991 20

Nga Kaihautu Tikanga Taiao means the committee established by section 24A of the Hazardous Substances and New Organisms Act 1996 25

previous employer has the meaning ~~set out in~~ given to it by **section 38(2)**.

5 Act binds the Crown
This Act binds the Crown.

Part 2
Environmental Protection Authority
Establishment of Environmental Protection Authority

- 6 Environmental Protection Authority established** 5
This section establishes the Environmental Protection Authority.
- 7 EPA is Crown entity**
- (1) The Environmental Protection Authority is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004. 10
- (2) The Crown Entities Act 2004 applies to the EPA except to the extent that this Act or any other enactment expressly provides otherwise.
- 8 Board of EPA**
- (1) The Minister must appoint no fewer than 6, and no more than 8, persons as members of the EPA. 15
- (2) The members are the EPA's board for the purposes of the Crown Entities Act 2004.
- (3) The Minister must appoint at least 1 member who has knowledge and experience relating to the Treaty of Waitangi and tikanga Māori (Māori customary values and practices). 20
- 9 Qualifications for appointment to board**
- (1) The Minister must appoint members to the EPA board who collectively have knowledge of, and experience in relation to, matters relevant to the functions of the EPA. 25
- (2) Knowledge and experience that ~~is~~ are relevant includes knowledge of, and experience relating to,—
- (a) governance procedures and organisational change; and
- (b) New Zealand's environmental management system; and 30
- (c) the links between the economy and environmental management; and
- (d) the Treaty of Waitangi and tikanga Māori; and

- (e) administration of environmental and risk management frameworks; and
- (f) central government processes.
- (3) This section does not limit section 29 of the Crown Entities Act 2004. 5

10 Restriction on membership

- (1) The following persons may not be appointed to the EPA board:
 - (a) the chief executive:
 - (b) an employee of the EPA.
- (2) This section does not limit section 30(2) of the Crown Entities Act 2004. 10

Functions of EPA

11 Objective of EPA

- (1) The objective of the EPA is to undertake its functions in a way that— 15
 - (a) contributes to the efficient, effective, and transparent management of New Zealand’s environment and natural and physical resources; and
 - (b) enables New Zealand to meet its international obligations. 20
- (2) When undertaking its particular functions under an environmental Act, the EPA must also act in a way that furthers any objectives (or purposes) stated in respect of that Act.

12 Functions of EPA

- The functions of the EPA are— 25
- (a) to advise the Minister on any matter relating to its functions under this Act or ~~any other enactment~~ an environmental Act;
 - (b) to exercise the powers, and carry out the functions and duties, conferred on it by or under ~~—~~ this Act or an environmental Act: 30
 - ~~(i) an environmental Act;~~
 - ~~(ii) this Act or any other enactment;~~
 - ~~(c) to carry out any additional function consistent with its objective under **section 44** that the Minister directs in~~ 35

- ~~accordance with section 112 of the Crown Entities Act 2004.~~
- (d) if requested by the Minister, to—
- (i) to provide technical advice to the Government and Crown entities on any matter related to its functions under an environmental Act: 5
 - (ii) to provide administrative assistance (including secretarial services) to a person or group of people appointed by the Minister to provide advice or report on any matter ~~connected with the functions of the EPA~~ related to its functions under an environmental Act: 10
 - (iii) to contribute to and co-operate with international forums and carry out international obligations related to its functions under an environmental Act. 15
- (2) ~~A function must not be added under **subsection (1)(c)** unless the function is—~~
- (a) ~~consistent with the EPA's objective under **section 11**; and~~
 - (b) ~~of a similar nature to, and compatible with, other functions performed by the EPA.~~ 20
- 13 Limitation on power to contract**
- (1) Before the EPA enters into a contract authorising a person to carry out a function of the EPA under this Act or an environmental Act, the EPA must ~~take into account~~ have regard to the matters set out in **subsection (2)**. 25
- (2) The matters are—
- (a) whether the function might be more efficiently carried out by the EPA:
 - (b) the desirability of keeping institutional knowledge within the EPA: 30
 - (c) whether entering into the contract would limit the EPA's ability to meet its obligations.
- (3) This section does not limit sections 16 and 17 of the Crown Entities Act 2004. 35

14 Appointment of chief executive

- (1) The EPA must appoint a chief executive to be responsible for the efficient and effective administration of the affairs of the EPA.
- (2) Members of the EPA are not eligible for appointment as the chief executive. 5
- (3) Section 117 of the Crown Entities Act 2004 applies to the appointment of a chief executive.

*Delegation by Minister***15 Delegation of functions or powers of Minister under environmental Acts** 10

- (1AA) In this section, **Minister**, in relation to an environmental Act, means a Minister of the Crown who, under authority of any warrant or with the authority of the Prime Minister, is responsible for the administration of the environmental Act. 15
- ~~(1) This section applies if the Minister delegates a function or power under an environmental Act to the EPA.~~
- (1) This section applies if a Minister delegates to the EPA a function or power under the environmental Act.
- (2) The delegation must be in writing. 20
- (3) The EPA—
- (a) may perform the function or exercise the power in the same manner, subject to the same restrictions, and with the same effect as if it had been conferred on the EPA directly by an enactment and not by delegation, unless the delegation limits the performance or exercise of the power; and 25
- (b) may delegate the function or power only—
- (i) with the prior written consent of the Minister; and
- (ii) subject to the same restrictions, and with the same effect, as if the subdelegate were the EPA. 30
- (4) If the EPA purports to perform a function or exercise a power under a delegation, the EPA—
- (a) is, in the absence of proof to the contrary, presumed to do so in accordance with the terms of the delegation; and 35

- (b) must produce evidence of its authority to do so, if reasonably requested to do so.
- (5) No delegation in accordance with an environmental Act—
 - (a) affects or prevents the performance of any function or the exercise of any power by the Minister; or 5
 - (b) affects the Minister’s responsibility for the actions of the EPA acting under the delegation.

Delegation by EPA

16 EPA’s power of delegation

- (1) The EPA must not delegate its power to— 10
 - (a) appoint a chief executive under **section 14**;
 - (b) appoint the members of the Māori Advisory Committee under **section 17**;
 - (c) appoint a committee under clause 14 of Schedule 5 of the Crown Entities Act 2004. 15
- (2) In other respects, section 73 of the Crown Entities Act 2004 applies.
- ~~(3) This section does not apply to a power of the EPA under an environmental Act.~~

Māori Advisory Committee

20

17 Māori Advisory Committee established

- (1) This section establishes the Māori Advisory Committee.
- (2) The EPA must appoint no fewer than 4, and no more than 8, persons to be members of the committee.
- (2A) The EPA must not appoint one of its own members to be a member of the committee. 25
- (3) The EPA must appoint 1 member of the committee to be the chairperson of the committee.

18 Function of Māori Advisory Committee

- (1) The function of the Māori Advisory Committee is to provide advice and assistance to the EPA on matters relating to policy, process, and decisions of the EPA under an environmental Act or this Act. 30

- (2) The advice and assistance must be given from the Māori perspective and come within the terms of reference of the committee as set by the EPA under **section 19**.

19 Terms of reference of Māori Advisory Committee

- (1) The EPA must set terms of reference for the Māori Advisory Committee. 5
- (2) The EPA must review the terms of reference at intervals of no more than 3 years.

20 Remuneration of Māori Advisory Committee

A member of the Māori Advisory Committee is entitled, in accordance with the fees framework,— 10

- (a) to receive remuneration for services as a member at a rate and of a kind determined by the EPA; and
- (b) to be reimbursed for actual and reasonable travelling expenses incurred in carrying out his or her functions as a member. 15

Part 3

Disestablishment of entities, transfer of functions, and other matters

21 Interpretation 20

In this Part,—

collective agreement has the ~~meaning given to it by same~~ meaning as in section 2 of the State Sector Act 1988

employee does not include a chief executive

employment agreement has the ~~meaning given to it by same~~ meaning as in section 2 of the State Sector Act 1988 25

former EPA means the Environmental Protection Authority established by section 42B of the Resource Management Act 1991.

Subpart 1—Disestablishment of
Environmental Protection Authority
established ~~under~~ by Resource Management
Act 1991

- 22** ~~Former~~ **Environmental Protection Authority established by Resource Management Act 1991 disestablished** 5
- The Environmental Protection Authority established by section 42B of the Resource Management Act 1991 is disestablished.
- 23** **Consequences of disestablishment of former Environmental Protection Authority** 10
- (1) On and from the commencement of **section 22**,—
- (a) all information held by the former EPA is held by the EPA; and
- (b) all money payable to or by the former EPA becomes payable to or by the EPA; and 15
- (c) all rights, liabilities, contracts, entitlements, and engagements of the former EPA become the rights, liabilities, contracts, entitlements, and engagements of the EPA; and 20
- (d) all directions to the former EPA in effect immediately before the commencement of this section become directions to the EPA; and
- (e) any delegation to the former EPA by the Minister under section 29(4) of the Resource Management Act 1991 that is in effect immediately before the commencement of this section has effect as if it were a delegation to the EPA; and 25
- (f) anything done, or omitted to be done, or that is to be done, by, or in relation to, the former EPA is to be treated as having been done, or omitted to be done, or to be done, by, or in relation to, the EPA; and 30
- (g) the commencement, continuation, or enforcement of proceedings by or against the former EPA may instead be carried out by or against the EPA without amendment to the proceedings; and 35

- (h) a matter or thing that would, but for this section, have been completed by the former EPA may be completed by the EPA.
- (2) The transfer of information from the former ~~agency~~ EPA to the EPA under **subsection (1)(a)** does not constitute an action that is an interference with the privacy of an individual under section 66 of the Privacy Act 1993. 5
- (3) On and from the commencement of **section 22**, property owned by the Ministry for the Environment solely or principally for the purposes of the former EPA and identified as such by the chief executive of the Ministry is vested in the EPA. 10

24 References to EPA established ~~under~~ by Resource Management Act 1991

Unless the context otherwise requires, in any enactment, agreement, deed, instrument, application, notice, or other document in force immediately before the commencement of **section 22**, every reference to the Environmental Protection Authority or EPA established ~~under~~ by the Resource Management Act 1991 is, on and from that commencement, to be read as a reference to the ~~EPA established under~~ Environmental Protection Authority established by **section 6**. 15 20

Subpart 2—Disestablishment of ~~ERMA~~
Environmental Risk Management Authority
and Nga Kaihautu Tikanga Taiao 25

Disestablishment of ~~ERMA~~ Environmental Risk Management Authority and Nga Kaihautu Tikanga Taiao

25 ~~ERMA~~ Environmental Risk Management Authority disestablished 30

~~ERMA~~ The Environmental Risk Management Authority is disestablished.

- 26 ERMA committees disestablished**
Every committee appointed by ERMA under clause 43 of Schedule 1 of the Hazardous Substances and New Organisms Act 1996 is disestablished.
- 27 Nga Kaihautu Tikanga Taiao disestablished** 5
Nga Kaihautu Tikanga Taiao is disestablished.
- 28 No compensation for loss of office**
The Crown is not liable to make a payment to, or otherwise compensate, any person in relation to the person's ceasing to be a member of ERMA or Nga Kaihautu Tikanga Taiao because of the disestablishment of ERMA or Nga Kaihautu Tikanga Taiao. 10
- Transfer of functions, etc, of ERMA to EPA*
- 29 Transfer of functions, etc, of ERMA to EPA**
- (1) On and from the commencement of **section 25**,— 15
- (a) the functions, duties, and powers of ERMA under any enactment become the functions, duties, and powers of the EPA; and
 - (b) the property belonging to ERMA vests in the EPA; and
 - (c) all information held by ERMA is held by the EPA; and 20
 - (d) all money payable to or by ERMA becomes payable to or by the EPA; and
 - (e) all rights, liabilities, contracts, entitlements, and engagements of ERMA become the rights, liabilities, contracts, entitlements, and engagements of the EPA; and 25
 - (f) all directions to ERMA in effect immediately before the commencement of this section become directions to the EPA; and
 - (g) any delegation by ERMA to the chief executive of ERMA that is in effect immediately before the commencement of this section has effect as if it were a delegation by the EPA to the EPA's chief executive; and 30
 - (h) anything done, or omitted to be done, or that is to be done, by, or in relation to, ERMA is to be treated as

- having been done, or omitted to be done, or to be done, by, or in relation to, the EPA; and
- (i) the commencement, continuation, or enforcement of proceedings by or against ERMA may instead be carried out by or against to EPA without amendment to the proceedings; and 5
 - (j) a matter or thing that would, but for this section, have been completed by ERMA may be completed by the EPA.
- (2) The transfer of information from ERMA to the EPA under **subsection (1)(c)** does not constitute an action that is an interference with the privacy of an individual under section 66 of the Privacy Act 1993. 10
 - (3) This section applies subject to **section 31**.
- 30 Certain delegations continue** 15
- (1) The following delegations continue in effect as if they were made by the EPA:
 - (a) any delegation by ERMA under section 19(2)(b) of the Hazardous Substances and New Organisms Act 1996 to a committee continued under **section 31(2) of this Act and that relates to** for the purposes of an application to which **section 31(1) of this Act** applies; and 20
 - (b) any other delegation by ERMA under section 19(2) of the Hazardous Substances and New Organisms Act 1996 that is in effect immediately before the commencement of **section 25 of this Act**. 25
 - (2) However, a delegation to a member of ERMA or a number of people including a member of ERMA, other than a delegation to which **subsection (1)(a)** applies, is revoked on the commencement of **section 25 of this Act**. 30
 - (3) To avoid doubt, the EPA may revoke a delegation continued under **subsection (1)**.
- 31 Applications to be completed**
- (1) This section applies to—
 - (a) an application made under Part 5 or 6A of the Hazardous Substances and New Organisms Act 1996 that 35

- has not been determined before the commencement of **section 25 of this Act** but for which—
- (i) a hearing date has been fixed under section 59(1)(d) of ~~that Act~~ the Hazardous Substances and New Organisms Act 1996 or a hearing has been commenced or held; or;
 - (ii) a date for consideration of the application has been fixed under section 59(1)(d) of that Act, or consideration has commenced; and
- (b) the committee appointed by ERMA under clause 43 of Schedule 1 of ~~the Hazardous Substances and New Organisms Act 1996~~ that Act to hear and decide the application.
- ~~(2) Despite **sections 25, 26, and 29,**~~
- ~~(a) the application must be decided by the committee and for that purpose only the committee continues in existence as if it were a committee appointed by the EPA; and~~
 - ~~(b) for that purpose the committee continues to have all the necessary powers and functions delegated to it under section 19(2)(b) of Hazardous Substances and New Organisms Act 1996.~~
- (2) Despite **sections 25, 26, and 29 of this Act**, the application must be decided by the committee, and for that purpose only the committee—
- (a) continues in existence as if it were a committee appointed by the EPA; and
 - (b) continues to have all the necessary powers and functions delegated to it under section 19(2)(b) of the Hazardous Substances and New Organisms Act 1996.
- (3) However, if the EPA revokes the delegation referred to in **subsection (2)(b)**, the committee ceases to exist ~~when it receives written notice of the revocation under section 76 of the Crown Entities Act 2004.~~
- (4) The decision of the committee is to be treated as a decision of the EPA.

32 Matters relating to continued committee

- (1) The EPA may appoint additional members to a committee continued under **section 31**.
- (2) A committee continued under **section 31(2)(a)** ceases to exist on the earlier of—
- (a) the day after the date on which the last application to be decided by the committee is decided; or
 - (b) the date on which the ~~EPA revokes the delegation~~ committee receives written notice of the EPA's revocation of the delegation in accordance with section 76 of the Crown Entities Act 2004.
- (3) To avoid doubt, a continued committee need not include a member of the EPA.

33 Final report and accounts of ERMA

- (1) As soon as is reasonably practicable after the ~~date on which~~ section 25 commences ~~commencement of section 25~~, the EPA must arrange for the final report of ERMA to be delivered to the Minister. 15
- (2) The final report must—
- (a) describe ERMA's operations for the period beginning on 1 July 2010 and ending immediately before the date on which **section 25** commences; and 20
 - (b) include financial statements for ERMA, prepared, in accordance with section 154 of the Crown Entities Act 2004, for that period. 25
- (3) Sections 155 and 156 of the Crown Entities Act 2004 apply to the financial statements.
- (4) The Minister must present a copy of the report to the House of Representatives under section 150(3) of the Crown Entities Act 2004. 30

34 References to ERMA

Unless the context otherwise requires, in any enactment, agreement, deed, instrument, application, notice, or other document in force immediately before the commencement of **section 25**, every reference to the Environmental Risk 35

Management Authority or ERMA is, on and from that commencement, to be read as a reference to the EPA.

Subpart 3—Transfer of employees

35 Transfer of certain State services employees to EPA

- (1) The EPA and the chief executive of the Ministry for the Environment may agree to transfer the following employees of the Ministry to the EPA: 5
- (a) an employee whose employment at the Ministry relates to the functions of the former EPA; and
 - (b) an employee whose employment at the Ministry relates to the chief executive's functions under the Climate Change Response Act 2002 that become functions of the EPA on the commencement of **Part 4 of this Act**; and 10
 - (c) an employee whose employment at the Ministry relates to the Minister for the Environment's functions under the Imports and Exports (Restrictions) Act 1988 that become functions of the EPA on the commencement of **Part 5A of this Act**; and 15
 - (d) an employee whose employment at the Ministry relates to the Minister for the Environment's functions under the Ozone Layer Protection Act 1996 that become functions of the EPA on the commencement of **Part 5B of this Act**. 20
- (2) ~~The EPA and the chief executive of the Ministry of Economic Development may agree to transfer from the Ministry to the EPA an employee whose employment at the Ministry relates to the chief executive's functions under the Climate Change Response Act 2002 that become functions of the EPA on the commencement of **Part 4**.~~ 25 30
- (2) The EPA and the chief executive of the Ministry of Economic Development may agree to transfer the following employees of the Ministry to the EPA:
- (a) an employee whose employment at the Ministry relates to the chief executive's functions under the Climate Change Response Act 2002 that become functions of 35

- the EPA on the commencement of **Part 4 of this Act**;
and
- (b) an employee whose employment at the Ministry relates to the Minister of Commerce's functions under the Imports and Exports (Restrictions) Act 1988 that become functions of the EPA on the commencement of **Part 5A of this Act**; and 5
- (c) an employee whose employment at the Ministry relates to the Minister of Commerce's functions under the Ozone Layer Protection Act 1996 that become functions of the EPA on the commencement of **Part 5B of this Act**. 10
- (3) The EPA and the chief executive of the Ministry that employs the employee must consult the employee concerned before deciding whether to transfer an employee from the Ministry to the EPA. 15
- (4) An employee transferred under **subsection (1)(a)** becomes an employee of the EPA on the commencement of **section 22 of this Act**.
- (5) An employee transferred under **subsection (1)(b) or (2)(a)** becomes an employee of the EPA on the commencement of **this section Part 4**. 20
- ~~(6) An employee transferred under **subsection (2)** becomes an employee of the EPA on the commencement of this section.~~
- (6) An employee transferred under **subsection (1)(c) or (2)(b)** becomes an employee of the EPA on the commencement of **Part 5A**. 25
- (7) An employee transferred under **subsection (1)(d) or (2)(c)** becomes an employee of the EPA on the commencement of **Part 5B**. 30
- 36 Terms and conditions of employment of transferred employees**
- (1) This section applies to an employee transferred to the EPA under **section 35**.
- (2) The employee must be employed on terms and conditions no less favourable to the employee than those applying to the em-

ployee immediately before the date of the employee's transfer to the EPA.

- (3) **Subsection (2)** continues to apply to an employee's terms and conditions of employment until the terms and conditions are varied by agreement between the employee and the EPA. 5

37 Transfer of ERMA employees to EPA

- (1) Every person employed by ERMA immediately before the commencement of **section 25** becomes an employee of the EPA on and from that date.
- (2) The terms and conditions of employment of each employee remain the same as the terms and conditions of his or her employment with ERMA immediately before the commencement of **section 25**. 10
- (3) **Subsection (2)** continues to apply to an employee's terms and conditions of employment until the terms and conditions are varied by agreement between the employee and the EPA. 15

38 Continuity of employment

- (+) ~~For the purposes of this Act and every enactment, law, determination, contract, and agreement relating to the employment of an employee transferred to the EPA under **section 35 or 37**, the employee's employment is to be treated as unbroken and—~~ 20
- (a) ~~in relation to an employee transferred under **section 35(1)(a)**; the employee's period of service with the previous employer ending on the close of the day before the commencement of **section 22**; and every other period of service of that employee that is recognised by the previous employer as continuous service; is to be treated as a period of service with the EPA; or~~ 25
- (b) ~~in relation to an employee transferred under **section 35(1)(b) or (2)**; the employee's period of service with the previous employer ending on the close of the day before the commencement of **section 35**; and every other period of service of that employee that is recognised by the previous employer as continuous service; is to be treated as a period of service with the EPA; or~~ 30 35

- (c) ~~in relation to an employee transferred under **section 37**, the employee's period of service with the previous employer ending on the close of the day before the commencement of **section 25**, and every other period of service of that employee that is recognised by the previous employer as continuous service, is to be treated as a period of service with the EPA.~~ 5
- (1) This section applies for the purposes of this Act and every enactment, law, determination, contract, and agreement relating to the employment of an employee transferred to the EPA under **section 35 or 37**. 10
- (1A) The employee's employment is to be treated as unbroken and the employee's period of service with the previous employer ending on the close of the day before the employee is transferred under **section 35 or 37** is to be treated as a period of service with the EPA. 15
- (1B) Every other period of service of the employee that is recognised by the previous employer as continuous service is to be treated as a period of service with the EPA.
- (2) In this section and **sections 39 and 40**, **previous employer** 20 means ERMA or the Ministry for the Environment or the Ministry of Economic Development (as the case may be).
- 39 Employees covered by collective agreement**
- (1) This section applies to an employee of the Ministry for the Environment or the Ministry of Economic Development or ERMA who was covered by a collective agreement with the employee's previous employer immediately before the employee was transferred to the EPA under **section 35 or 37**. 25
- (2) The employee continues to be bound by the collective agreement and may enforce the collective agreement against the EPA. 30
- (3) The EPA is bound by the collective agreement only ~~in relation~~ to the extent that it relates to the employee.
- (4) This section does not apply to a collective agreement to the extent that the EPA and the employee agree otherwise. 35

40 Restriction on compensation for technical redundancy

- (1) An employee is not entitled to receive any payment or other benefit on the ground that ~~his or her~~ the employee's position with ~~the~~ his or her previous employer has ceased to exist, if—
- (a) the employee's position ceases to exist as a result of the transfer of functions from ~~the~~ his or her previous employer to the EPA; and
- (b) in connection with the transfer of functions,—
- (i) the employee is offered equivalent employment ~~in~~ with the EPA (whether or not the employee accepts the offer); or
- (ii) the employee is offered and accepts other employment ~~in~~ with the EPA.
- (2) In **subsection (1)**, employment ~~in~~ with the EPA is equivalent to the employee's employment with ~~the~~ his or her previous employer if the employment ~~in~~ with the EPA is—
- (a) in substantially the same position; and
- (b) in the same general locality; and
- (c) on terms and conditions of employment no less favourable than those that apply to the employee immediately before the offer of equivalent employment (including any service-related, redundancy, and superannuation conditions); ~~and~~
- ~~(d) on terms that treat the period of service with the previous employer ending on the close of day before the commencement of **section 22, 25, or 35** (whichever applies to the employee) and any other period of service recognised by the previous employer as continuous service as if it were continuous service with the EPA.~~

*Superannuation***41 Superannuation or retiring allowance**

- (1AA) This section applies to a person who is an employee transferred to the EPA under **section 35 or 37 of this Act** and who, immediately before becoming an employee of the EPA, was a contributor to the Government Superannuation Fund under Part 2 or 2A of the Government Superannuation Fund Act 1956.

- (1) The person is, for the purpose of the Government Superannuation Fund Act 1956, to be treated as if he or she continues to be employed in the Government service while the person is an employee of the EPA for the purposes of that Act, and that Act applies to the person as if the person's service as an employee of the EPA is Government service. 5
- (1) ~~A person who, immediately before becoming an employee of the EPA, was a contributor to the Government Superannuation Fund under Part 2 or 2A of the Government Superannuation Fund Act 1956 is, for the purpose of that Act, to be treated as if he or she continues to be employed in the Government service while the person is an employee of the EPA for the purposes of that Act, and that Act applies to the person as if the person's service as an employee of the EPA is Government service.~~ 10
- (2) ~~Despite **subsection (1)**, a person may not become a contributor to the Government Superannuation Fund after that person has ceased to be a contributor.~~ 15
- (2) However, if the person ceases to be a contributor to the Government Superannuation Fund after becoming an employee of the EPA, the person may not resume making contributions to the Fund. 20
- (3) For the purpose of applying the Government Superannuation Fund Act 1956 under this section, **controlling authority**, in relation to the person, means the EPA.
- 42 KiwiSaver Act 2006 not to apply to transferred employee** 25
The employment of an employee who becomes an employee of ~~a new employer~~ the EPA under this Act does not constitute new employment for the purposes of the KiwiSaver Act 2006.
- Subpart 4—Matters related to transfer of
functions under Climate Change Response
Act 2002 30
- Cancellation of Registrar's appointment*
- 43 Cancellation of appointment of Registrar**
The appointment of a person holding the office of Registrar under section 11 of the Climate Change Response Act 2002 35

on the day immediately before the commencement of **section 52 of this Act** is cancelled.

Consequences of transfer of climate change functions

- 44 Consequences of transfer of functions under Climate Change Response Act 2002 to EPA** 5
- (1) This section applies to a function of a former agency under the Climate Change Response Act 2002 that is transferred to the EPA as a consequence of the amendment of the Climate Change Response Act 2002 by **Part 4 of this Act**. 10
- (2) On and from the commencement of **section 57 Part 4**,—
- (a) all information that relates solely or principally to the function and that is held by a former agency is held by the EPA; and
- (b) all money payable to or by a former agency in relation to the function becomes payable to or by the EPA; and 15
- ~~(c) all property belonging to a former agency that relates solely to the function vest in the EPA; and~~
- (d) all rights, liabilities, entitlements, and engagements of a former agency in relation to the function become the rights, liabilities, entitlements, and engagements of the EPA; and 20
- (e) all directions to a former agency that relate to the function and that are in effect immediately before the commencement of this section become directions to the EPA; and 25
- (f) anything done, or omitted to be done, or that is to be done, in relation to the function by, or in relation to, a former agency is to be treated as having been done, or omitted to be done, or to be done, by, or in relation to, the EPA; and 30
- (g) the commencement, continuation, or enforcement of proceedings relating to the function by or against a former agency may instead be carried out by or against the EPA without amendment to the proceedings; and 35
- (h) a matter or thing relating to the function that would, but for this section, have been completed by a former agency may be completed by the EPA.

- (3) In this section, **former agency** means the chief executive of the Ministry for the Environment or the chief executive of the Ministry of Economic Development, but does not include the Registrar whose appointment is cancelled under **section 43**.
- (4) On and from the commencement of **Part 4**, property owned by a former agency solely or principally for the purposes of the function and identified as such by the former agency is vested in the EPA. 5
- (5) The transfer of information from a former agency to the EPA under **subsection (2)(a)** does not constitute an action that is an interference with the privacy of an individual under section 66 of the Privacy Act 1993. 10

45 Delegations continued

- (1) This section applies to a delegation—
- (a) by the chief executive of a department with responsibility for the administration of a Part or subpart of the Climate Change Response Act 2002 to the chief executive of another department in force on the day before the date on which **section 57 Part 4 of this Act** commences; and 15 20
- (b) that relates to a function of the department that is transferred to the EPA as a consequence of the amendment of the Climate Change Response Act 2002 by **Part 4 of this Act**.
- (2) Despite the amendment of the Climate Change Response Act 2002 by **Part 4 of this Act**, the delegation continues in effect as if it were a delegation by the EPA to the chief executive of that other department. 25
- (3) To avoid doubt, the EPA may revoke a delegation continued under **subsection (2)**. 30

Transfer of contracts

46 Transfer of contracts to EPA

- (1) This section applies to ~~all contracts~~ a contract (other than an employment agreements) that—
- (a) ~~were was~~ made between the chief executive of the Ministry for the Environment or chief executive of the Min- 35

istry of Economic Development and another person;
and

- (b) ~~relate~~ relates solely to a function or power of the chief executive under the Climate Change Response Act 2002 before **Part 4 of this Act** commences that becomes a function or power of the EPA on the commencement of **Part 4**. 5
- (2) On and from the commencement of this section, the ~~contracts~~ contract must be treated as if the EPA were the party to the contract instead of the chief executive of the Ministry for the Environment or the chief executive of the Ministry of Economic Development, as appropriate. 10
- (3) Unless the context otherwise requires, every reference in a contract to the chief executive of the Ministry for the Environment or the chief executive of the Ministry of Economic Development, or a delegate of the chief executive, is to be read as a reference to the EPA. 15

47 Consequences of transfer of contracts to EPA

- (1) This section applies only in relation to a contract transferred to the EPA under **section 46**. 20
- (2) On and from the commencement of **section 46**,—
- (a) all rights, liabilities, and entitlements of the chief executive of the Ministry for the Environment or the chief executive of the Ministry of Economic Development under the contract become the rights, liabilities, and entitlements of the EPA; and 25
- (b) anything done, or omitted to be done, or that is to be done, by, or in relation to, the chief executive of the Ministry for the Environment or the chief executive of the Ministry of Economic Development is to be treated as having been done, or omitted to be done, or to be done, by, or in relation to, the EPA; and 30
- (c) the commencement, continuation, or enforcement of proceedings by or against the chief executive of the Ministry for the Environment or the chief executive of the Ministry of Economic Development may instead be carried out by or against the EPA without amendment to the proceedings. 35

Continuation of enforcement officers**47A Continuation of enforcement officers**

Despite the amendments made to section 93 of the Climate Change Response Act 2002 by **section 60 of this Act**, a person's appointment as an enforcement officer continues,—

- (a) if the person is also an employee of the Ministry for the Environment, the Ministry of Economic Development, or ERMA who is transferred to the EPA under **section 35 or 37 of this Act**, as if the EPA had appointed the person; or
- (b) if **paragraph (a)** does not apply, as if the EPA had delegated the power to appoint the person as an enforcement officer to the person who made the appointment.

Subpart 5—Matters related to transfer of functions under Imports and Exports (Restrictions) Act 1988 and Ozone Layer Protection Act 1996

47B Consequences of transfer of functions under Imports and Exports (Restrictions) Act 1988 and Ozone Layer Protection Act 1996 to EPA

- (1) This section applies to a function of a Minister under the Imports and Exports (Restrictions) Act 1988 or the Ozone Layer Protection Act 1996 that is transferred to the EPA as a consequence of the amendment of either Act by **Part 5A or 5B of this Act** respectively.
- (2) On and from the commencement of **Part 5A or 5B** (as applicable),—
- (a) all information that relates solely or principally to the function and that is held by a former agency is held by the EPA; and
- (b) all money payable to or by a former agency in relation to the function becomes payable to or by the EPA; and
- (c) all rights, liabilities, entitlements, and engagements of a former agency in relation to the function become the rights, liabilities, entitlements, and engagements of the EPA; and

- (d) all directions to a former agency that relate to the function and that are in effect immediately before the commencement of this section become directions to the EPA; and
- (e) anything done, or omitted to be done, or that is to be done, in relation to the function by, or in relation to, a former agency is to be treated as having been done, or omitted to be done, or to be done, by, or in relation to, the EPA; and 5
- (f) the commencement, continuation, or enforcement of proceedings relating to the function by or against a Minister may instead be carried out by or against the EPA without amendment to the proceedings; and 10
- (g) a matter or thing relating to the function that would, but for this section, have been completed by a former agency may be completed by the EPA. 15
- (3) In this section, **former agency** means the chief executive of the Ministry for the Environment or the chief executive of the Ministry of Economic Development.
- (4) On and from the commencement of **Part 5A or 5B** (as applicable), property owned by a former agency solely or principally for the purposes of the function and identified as such by the former agency is vested in the EPA. 20
- (5) The transfer of information from a former agency to the EPA under **subsection (2)(a)** does not constitute an action that is an interference with the privacy of an individual under section 66 of the Privacy Act 1993. 25

Transfer of contracts

47C **Transfer of contracts to EPA**

- (1) This section applies to a contract (other than an employment agreement) that— 30
- (a) was made between the chief executive of the Ministry for the Environment or the chief executive of the Ministry of Economic Development and another person; and 35
- (b) relates solely or principally to a function or power of a Minister under the Imports and Exports (Restrictions)

Act 1988 or the Ozone Layer Protection Act 1996 before **Part 5A or 5B of this Act** (as applicable) commences that becomes a function or power of the EPA on the commencement of **Part 5A or 5B**.

- (2) On and from the commencement of this section, the contract must be treated as if the EPA were the party to the contract instead of the chief executive of the Ministry for the Environment or the chief executive of the Ministry of Economic Development, as appropriate. 5
- (3) Unless the context otherwise requires, every reference in the contract to the chief executive of the Ministry for the Environment or the chief executive of the Ministry of Economic Development, or a delegate of the chief executive, is to be read as a reference to the EPA. 10

47D Consequences of transfer of contracts to EPA 15

- (1) This section applies only in relation to a contract transferred to the EPA under **section 47C**.
- (2) On and from the commencement of **section 47C**,—
- (a) all rights, liabilities, and entitlements of the chief executive of the Ministry for the Environment or the chief executive of the Ministry of Economic Development under the contract become the rights, liabilities, and entitlements of the EPA; and 20
- (b) anything done, or omitted to be done, or that is to be done, by, or in relation to, the chief executive of the Ministry for the Environment or the chief executive of the Ministry of Economic Development is to be treated as having been done, or omitted to be done, or to be done, by, or in relation to, the EPA; and 25
- (c) the commencement, continuation, or enforcement of proceedings by or against the chief executive of the Ministry for the Environment or the chief executive of the Ministry of Economic Development may instead be carried out by or against the EPA without amendment to the proceedings. 30 35

Part 4
Amendments to Climate Change
Response Act 2002

- 48 Climate Change Response Act 2002 amended**
 This **Part** amends the Climate Change Response Act 2002. 5
- 49 Interpretation**
- (1) Section 4(1) is amended by repealing the definitions of **chief executive** and **chief executive responsible for the administration of this Act** and substituting the following definition:
 “**chief executive** means the chief executive of the department that is, with the authority of the Prime Minister, responsible for the administration of this Act”. 10
- (2) Section 4(1) is amended by inserting the following ~~definition~~ definitions in ~~its~~ their appropriate alphabetical order:
 “**Environmental Protection Authority** or **EPA** means the Environmental Protection Authority established by **section 6 of the Environmental Protection Authority Act 2010**
 “**Registrar** means the person appointed under **section 11**”. 15
- (3) Section 4(1) is amended by repealing the definition of **inventory agency** and substituting the following definition: 20
 “**inventory agency** means the chief executive”.
- (4) Section 4(1) is amended by repealing the definitions of **Minister** and **Minister responsible for the administration of this Act** and substituting the following definition:
 “**Minister** means the Minister who is, under the authority of any warrant or under the authority of the Prime Minister, responsible for the administration of this Act”. 25
- 50 Registrar must give effect to directions of Minister of Finance**
 Section 8 is amended by adding the following subsection as subsection (2): 30
- “(2) To avoid doubt, the Crown Entities Act 2004 does not apply to a direction by the Minister of Finance to the Registrar.”

- 51 New subpart 1A of Part 2 inserted**
The following subpart is inserted after section 9:
“Subpart 1A—Chief executive
- “9A Functions of chief executive** 5
The functions of the chief executive are to—
“(a) advise the Minister; and
“(b) ~~act as~~ be the inventory agency; and
“(c) publish information on the Internet in accordance with this Act.
- “9B Delegation by chief executive** 10
“(1) The chief executive may delegate any of his or her functions, duties, and powers under this Act to the EPA.
“(2) Section 41 of the State Sector Act 1988 applies to a delegation under this section as if the EPA were an employee of the chief executive.” 15
- 52 Section 11 substituted**
Section 11 is repealed and the following section substituted:
- “11 EPA to appoint Registrar** 20
The EPA must appoint an employee of the EPA as the Registrar.”
- 53 Registrar responsible for Registry**
Section 12 is amended by inserting “on behalf of the Crown” after “operation”.
- 54 Regulations relating to Part 2** 25
Section 30G is amended by inserting the following subsection after subsection (3):
“(3A) The amount of fees set under regulations made under subsection (1)(f) must not exceed the amount necessary to enable the recovery of the direct and indirect costs of the Registrar in performing his or her functions under this Part.” 30

- 55 Authorisation of inspectors**
 Section 36(1) is amended by adding “; or” and also by adding
 the following paragraph:
 “(d) employees of the EPA.”
- 56 Subpart 3 heading substituted** 5
 The heading to subpart 3 of Part 4 is repealed and the following
 heading substituted:
 “Subpart 3—Environmental Protection
 Authority”.
- 57 Functions of chief executive** 10
 (1) Section 87 and the heading to section 87 are amended by omit-
 ting “chief executive” in each place where it appears and sub-
 stituting in each case “EPA”.
 (2) Section 87 is amended by adding the following subsection:
 “(3) For the avoidance of doubt, the EPA undertakes the functions 15
described in subsection (1) on behalf of the Crown.”
- 58 New section 87A inserted**
 The following section is inserted after section 87:
“87A Delegation by EPA
~~“(1) Section 73(1) of the Crown Entities Act 2004 applies as if~~ 20
~~paragraph (d) were repealed and the following paragraph sub-~~
~~stituted:~~
~~“(d) a person, or an office holder in a department of the Public~~
~~Service, approved by the entity’s responsible Minister.”~~
 “(1) The EPA must not delegate its power to appoint the Registrar 25
 under **section 11**.
~~“(3) In other respects, section 73 of the Crown Entities Act 2004~~
~~applies:~~
“(2) In all other respects, section 73 of the Crown Entities Act 2004
applies, except that subsection (1) of that section applies as 30
if paragraph (d) were repealed and the following paragraph
substituted:

“(d) a person, or an office holder in a department of the Public Service, approved by the entity’s responsible Minister:”

59 Directions to chief executive

- (1) Section 88(1) and the heading to section 88 are amended by omitting “chief executive” in each place where it appears and substituting in each case “EPA”. 5
- (2) Section 88(1) is amended by omitting “chief executive’s” and substituting “EPA’s”. 10
- (3) Section 88(3)(b) is amended by omitting “department of the chief executive” and substituting “EPA”. 10
- ~~(4) Section 88 is amended by adding the following subsection:~~
- ~~“(4) Section 115(1) of the Crown Entities Act 2004 applies to a direction to be given under subsection (1).”~~
- (4) Section 88 is amended by adding the following subsection: 15
- “(4) Before giving a direction under subsection (1), the Minister must comply with section 115(1) of the Crown Entities Act 2004.”

60 Appointment of enforcement officers

- (1) Section 93(1) and (3) are amended by omitting “chief executive” and substituting in each case “EPA”. 20
- (2) Section 93(2) is repealed:
- (3) Section 93(6) is repealed and the following subsection substituted:
- ~~“(6) If the EPA delegates the power to appoint a person as an enforcement officer to the chief executive of a department of the Public Service, the chief executive of the department must employ the person under the State Sector Act 1988.”~~ 25
- (4) The appointment of an enforcement officer under section 93 before the commencement of this section continues despite the amendments made to section 93 by this section until the appointment is terminated by the person who appointed the enforcement officer. 30
- (5) Despite the amendments made to section 93 by this section, a person’s appointment as an enforcement officer continues, 35

- (a) ~~if the person is also an employee of the Ministry for the Environment, the Ministry of Economic Development, or ERMA who is transferred to the EPA under **section 35 or 37**; as if the EPA had appointed the person; or~~
- (b) ~~if **paragraph (a)** does not apply, as if the EPA had delegated the power to appoint the person as an enforcement officer to the person who made the appointment.~~ 5

60 Appointment of enforcement officers

(1) Section 93 is amended by repealing subsections (1), (2), and (3) and substituting the following subsections: 10

“(1) The EPA may appoint 1 or more persons who are employees of the EPA as enforcement officers to exercise 1 or more of the powers and perform the functions conferred on enforcement officers under this Part.

“(2) If the EPA delegates the power to appoint a person as an enforcement officer to the chief executive of a department of the Public Service, the chief executive of the department may appoint a person as an enforcement officer only if the person is employed by a government department, in which case the chief executive must employ the person under the State Sector Act 1988. 15 20

“(3) The EPA must supply each enforcement officer with a warrant of authorisation that clearly states the powers and functions of the officer.”

(2) Section 93(6) is repealed. 25

61 Obligation to maintain confidentiality

(1) Section 99(1) is amended by repealing paragraph (a) and substituting the following paragraph:

“(a) to the chief executive, the EPA, ~~any~~ an enforcement officer, and any other person who performs functions or exercises powers of the chief executive, the EPA, or an enforcement officer under this Part and Part 5; and” 30

(2) Section 99(2)(b)(iii) is amended by inserting “or for the administration of this Act” after “this Part”.

(3) Section 99(2)(b) is amended by inserting the following paragraph after paragraph (iii): 35

- “(iia) for the purposes of, or in connection with, reporting requirements of the Public Finance Act 1989; or”.
- (4) Section 99(4) is amended by inserting “or the EPA” after “chief executive” in each place where it appears. 5
- 62 New section 138A**
The following section is inserted after section 138:
- “138A Penalties to be paid into Crown account**
The EPA must pay the amount of all excess emissions penalties and interest on the penalties received from a person in accordance with section 134, 136, or 137 into a Crown Bank Account.” 10
- 63 Regulations relating to methodologies and verifiers**
- (1) Section 163(1)(ab), (c), (d), and (e)(v) are amended by omitting “chief executive” and substituting in each case “EPA”. 15
- (2) Section 163(1)(e)(vii) is amended by omitting “for recognition of” and substituting “to enable the recovery of the direct and indirect costs of the EPA in recognising”.
- (3) Section 163(4)(b) is amended by omitting “department of the chief executive” and substituting “EPA”. 20
- 64 Minor amendments**
The Act and the Climate Change Response (Emissions Trading) Amendment Act 2008 are amended in the manner set out in **Schedule 1**.

Part 5

25

Amendments to Hazardous Substances and New Organisms Act 1996

- 65 Hazardous Substances and New Organisms Act 1996 amended**
This **Part** amends the Hazardous Substances and New Organisms Act 1996. 30

- 66 Interpretation**
The definition of **Authority** in section 2 is repealed and the following definition substituted:
“**Authority** or **EPA** means the Environmental Protection Authority established ~~under~~ by section 6 of the Environmental Protection Authority Act 2010”.
- 67 Powers, functions, and duties of Authority**
Section 11(1)(g) is amended by omitting “or any other enactment”.
- 68 Part 4 heading substituted** 10
The Part 4 heading is repealed and the following heading substituted:

**“Part 4
Administrative provisions”**.
- 69 Sections 14, 15, 16, and 18 repealed** 15
Sections 14, 15, 16, and 18 are repealed.
- 70 New sections 18 to 18C inserted**
The following sections are inserted after section 17:
- “18 EPA may appoint committees** 20
“(1) A committee must include at least 1 member of the EPA.
“(2) A person must not be appointed as a member of a committee unless the Minister has approved the appointment.
“(3) Clause 14 of Schedule 5 of the Crown Entities Act 2004 applies to the EPA subject to subsection (2).
- “18A Committee may appoint and delegate functions to subcommittee** 25
“(1) A committee appointed by the EPA under clause 14 of Schedule 5 of the Crown Entities Act 2004 may appoint a subcommittee to hear and decide an application to which section 19(2)(b) applies. 30

- “(2) For the purpose of **subsection (1)**, the committee may delegate a power delegated to the committee under section 19(2)(b) to the subcommittee.
- “(3) A subcommittee is a committee for the purposes of clause 15 of Schedule 5 of the Crown Entities Act 2004. 5
- “**18B Composition of subcommittee**
- “(1) The majority of members of a subcommittee appointed under **section 18A** must be members of the committee that appointed the subcommittee.
- “(2) The subcommittee need not include a member of the EPA. 10
- “**18C Qualification for appointment to committee or subcommittee**
- A committee or subcommittee appointed for the purpose of section 19(2)(b) must consist of persons who collectively have ~~with~~ particular knowledge of, and expertise in, the subject matter of the application before the committee.” 15
- 71 Delegation by Authority**
- (1) Section 19(2)(b) is amended by omitting “Schedule 1” and substituting “the Crown Entities Act 2004”.
- (2) Section 19(7) is amended by omitting “Authority” and substituting “Authority’s functions, powers, or duties under this Act”. 20
- 72 Part 4A repealed**
- Part 4A is repealed.
- 73 Schedule 1 repealed** 25
- Schedule 1 is repealed.
- 74 Minor amendments**
- The Act is amended in the manner set out in **Schedule 2**.

Part 5A
Amendments to Imports and Exports
(Restrictions) Act 1988

- 74A Imports and Exports (Restrictions) Act 1988 amended** 5
This **Part** amends the Imports and Exports (Restrictions) Act 1988.
- 74B Interpretation**
- (1) This section amends section 2.
- (2) Subsection (1) is amended by inserting the following definitions in their appropriate alphabetical order: 10
“**decision-maker** means the person authorised by an Order in Council to grant a licence or permit, being—
“(a) the Minister; or
“(b) the Minister for the Environment; or
“(c) the Environmental Protection Authority; or 15
“(d) a prescribed person
“**Environmental Protection Authority** or **EPA** means the Environmental Protection Authority established by **section 6 of the Environmental Protection Authority Act 2010**
“**goods** means all kinds of movable property, including animals, organisms, chemicals, and waste” 20
“**permit** means a permit to import or export goods provided for under section 3 or 3A
“**register** means the Imports and Exports (Restrictions) Register required by **section 3BD**”. 25
- (3) The definition of **Ministry** in subsection (1) is repealed.
- (4) The definition of **prescribed** in subsection (1) is amended by omitting “chief executive of the Ministry” and substituting “decision-maker”.
- (5) Subsection (2) is amended by omitting “**goods**,”. 30
- 74C Prohibition of imports**
- Section 3(3) is repealed and the following subsections are substituted:
- “(3) A conditional prohibition allows the importation of goods subject to— 35

- “(a) the grant of a licence or permit by the decision-maker on terms and conditions specified in the licence or permit; or
“(b) prescribed conditions.
- “(4) A conditional prohibition may require payment of consideration to the decision-maker in respect of the application for, or the granting of, a licence or permit. 5
- “(5) A licence or permit authorising the importation of goods may be granted before or after the goods have been imported.”
- 74D Conditional prohibition of exportation** 10
- (1) Section 3B(1)(a) is amended by omitting “Minister or a prescribed person” and substituting “the decision-maker”.
- (2) Section 3B(3) is amended by omitting “Crown” and substituting “decision-maker”.
- 74E New headings and sections 3BA to 3BF inserted** 15
- The following headings and sections are inserted after section 3B:
- “Application to Environmental Protection Authority for permits*
- “3BA General requirements for permits** 20
- “(1) This section and **sections 3BB and 3BC** apply if an Order in Council made under section 3 or 3A allows the importation or exportation of goods under the authority of a permit granted by the Environmental Protection Authority.
- “(2) Any person may apply to the Environmental Protection Authority for a permit. 25
- “(3) An application for a permit must be in the prescribed form.
- “(4) The Environmental Protection Authority may revoke a permit if the Authority is satisfied that the holder of the permit has—
- “(a) failed to comply with a condition of the permit; or 30
- “(b) made a false declaration or statement or provided incorrect information in the holder’s application for the permit; or
- “(c) been convicted of an offence against this Act or an offence involving a convention chemical or waste. 35

“(5) The Order in Council may specify the process and requirements for applying for a permit.

“(6) In this section and **section 3BC convention chemical or waste** means a chemical or waste in relation to which an Order in Council has been made under section 3 or 3A to give effect to an international obligation. 5

“3BB Conditions on permits

“(1) The Environmental Protection Authority may impose conditions that address the following matters on a permit allowing the importation of goods: 10

“(a) the use to which the goods will be put in New Zealand:

“(b) the provision of information to the Authority concerning the movement and location of the goods:

“(c) insurance requirements relating to the importation of the goods and their presence in New Zealand: 15

“(d) the labelling, packaging, handling, storage, transport, processing, or disposal of the goods:

“(e) liability for the goods if they cannot be used for the purpose for which they were imported.

“(2) The Environmental Protection Authority may impose conditions that address the following matters on a permit allowing the export of goods: 20

“(a) the provision of information to the Authority concerning the movement and location of the goods:

“(b) insurance requirements relating to the export of the goods: 25

“(c) the labelling, packaging, handling, storage, transport, processing, or disposal of the goods:

“(d) liability for the goods if they cannot be used for the purpose for which they were exported. 30

“3BC Refusal of permits

The Environmental Protection Authority may refuse to grant a permit if the Authority is satisfied that—

“(a) the person who applied for the permit has been convicted of an offence against this Act or an offence involving a convention chemical or waste; or 35

“(b) the information provided by the person to the Authority is incorrect.

“Imports and Exports (Restrictions) Register

“3BD Register

“(1) The Environmental Protection Authority, on behalf of the Crown, must keep a register called the Imports and Exports (Restrictions) Register. 5

“(2) The register may be kept in the form of information stored electronically.

“(3) The Crown owns all information contained in the register. 10

“3BE Information to be included in register

“(1) The register must record—

“(a) the details of a permit granted by the Environmental Protection Authority under an Order in Council made under section 3 or 3A; and 15

“(b) any other information required to comply with New Zealand’s international obligations that is prescribed by regulations.

“(2) In relation to a permit, the register must specify—

“(a) the name and address of the person to whom the permit was granted; and 20

“(b) the goods to which the permit relates; and

“(c) the amount of the goods that the permit allows to be imported or exported; and

“(d) the terms and conditions on which the permit was granted; and 25

“(e) any other information required by regulations.

“(3) The register may record any other information that the Environmental Protection Authority considers appropriate.

“3BF Environmental Protection Authority to allow New Zealand Customs Service access to the register 30

The Environmental Protection Authority must provide the New Zealand Customs Service with access to the register.

“Miscellaneous provisions”.**74F Forms**

(1) Section 3C(1) is amended by omitting “chief executive of the Ministry” and substituting “decision-maker”.

(2) Section 3C(2)(a) is amended by omitting “the chief executive of the Ministry” and substituting “or on behalf of the decision-maker”. 5

(3) Section 3C(3) is repealed and the following subsection substituted:

“(3) A court must take judicial notice of the signature by or on behalf of the decision-maker of a prescribed form or an extract or copy of a prescribed form.” 10

74G Order in Council not invalid

(1) Section 3D(a) is amended by omitting “Minister or another person” and substituting “decision-maker”. 15

(2) Section 3D(b) is repealed and the following paragraph substituted:

“(b) it authorises the decision-maker to issue a licence or permit subject to conditions imposed by the decision-maker.” 20

74H Section 5 repealed

Section 5 is repealed.

74I Transitional provision

Despite **this Part** and **section 87 of the Environmental Protection Authority Act 2010**, an application for a permit made before the commencement of this section must be determined by the Minister responsible for the administration of the Imports and Exports (Restrictions) Act 1988 as if **this Part** and the **Environmental Protection Authority Act 2010** had not been passed. 25
30

Part 5B
Amendments to Ozone Layer Protection
Act 1996

- 74J** **Ozone Layer Protection Act 1996 amended** 5
This **Part** amends the Ozone Layer Protection Act 1996.
- 74K** **Interpretation**
- (1) Section 2(1) is amended by inserting the following definitions in their appropriate alphabetical order:
- “**approved form** means a form approved under **section 12A**
- “**Environmental Protection Authority** means the Environmental Protection Authority established by **section 6 of the Environmental Protection Authority Act 2010** 10
- “**Minister** means the Minister of the Crown who, under authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act 15
- “**register** means the Ozone Layer Protection Register required by **section 12B**”.
- (2) The definition of **code of practice** in section 2(1) is amended by omitting “for the Environment”. 20
- (3) Paragraph (a) of the definition of **officer** in section 2(1) is amended by omitting “Ministry of Economic Development” and substituting “Environmental Protection Authority”.
- 74L** **Exemptions** 25
Section 8(1) is amended by omitting “The Minister of Commerce may, at his or her discretion,” and substituting “The Environmental Protection Authority may”.
- 74M** **New section 8A inserted**
- The following section is inserted after section 8:
- “8A** **Application for exemption** 30
An application for an exemption must be made in the approved form.”

74N Consideration of application for exemption

Section 9 is amended by omitting “The Minister of Commerce shall,” and substituting “The Environmental Protection Authority must.”.

74O New heading and sections 9A to 9D inserted

5

The following heading and sections are inserted after section 9:

*“Permits***“9A General requirements for permits**

“(1) This section applies if regulations made under section 16 allow the importation or exportation of substances or goods under the authority of a permit granted by the Environmental Protection Authority.

10

“(2) Any person may apply to the Environmental Protection Authority for a permit.

15

“(3) An application for a permit must be in the approved form.

“(4) The regulations may specify the process and requirements for applying for a permit.

“9B Refusal of permit to import a substance

“(1) This section and **sections 9C and 9D** apply if regulations made under section 16 allow the importation of substances or goods under the authority of a permit granted by the Environmental Protection Authority.

20

“(2) The Environmental Protection Authority may refuse to grant a permit if the Authority considers—

25

“(a) after considering the matters set out in **section 9C**, that granting the permit would be inconsistent with the scheme of the regulations; or

“(b) that the person who applied for the permit has been convicted of an offence against this Act or an offence that involves an ozone-depleting substance; or

30

“(c) that the information in the application is incorrect.

- 9C** **Consideration of application for permit to import substance**
The Environmental Protection Authority must, in considering an application for a permit, have regard to the following matters to the extent that they are relevant: 5
- “(a) the amount of the substance that is available for allocation:
 - “(b) the total amount of the substance for which applications have been received:
 - “(c) the importance of the use to which the substance will be put: 10
 - “(d) whether there is a viable alternative to the use of the substance that would be less harmful to the environment.
- 9D** **Conditions on permits to import a substance**
If the regulations authorise the Environmental Protection Authority to impose conditions on the grant of a permit, the conditions may address the following matters: 15
- “(a) the use to which the substance will be put in New Zealand:
 - “(b) restriction or prohibition on transfer of an entitlement arising from a permit: 20
 - “(c) the provision of information (including photographs) to the Environmental Protection Authority concerning the identification, movement, and location of the substance and compliance with conditions: 25
 - “(d) the insurance requirements relating to the importation of the substance and its presence in New Zealand:
 - “(e) control and ownership of the substance:
 - “(f) restriction or prohibition on the grant of a security interest in the substance: 30
 - “(g) the labelling, packaging, handling, storage, transport, processing, or disposal of the substance:
 - “(h) liability for the substance if it cannot be used for the purpose for which it was imported.”
- 74P** **Codes of practice** 35
Section 10(1) is amended by omitting “for the Environment”.

74Q Industry may be required to prepare draft accreditation schemes

Section 12(1) is amended by omitting “for the Environment”.

74R New headings and sections 12A to 12D inserted

The following headings and sections are inserted after section 12: 5

“Forms

“12A EPA may approve forms

The EPA may approve forms for the purposes of this Act.

“Register

10

“12B Register

“(1) The Environmental Protection Authority, on behalf of the Crown, must keep a register called the Ozone Layer Protection Register.

“(2) The register may be kept in the form of information stored electronically. 15

“(3) The Crown owns all information contained in the register.

“12C Information to be included in register

“(1) The register must record—

“(a) the details of permits granted under regulations; and 20

“(b) the details of exemptions granted under section 8; and

“(c) the terms and conditions on which the permit was granted; and

“(d) any other information required to comply with New Zealand’s international obligations and that is prescribed by regulations. 25

“(2) In relation to a permit, the register must specify—

“(a) the name and address of the person to whom the permit was granted; and

“(b) the substance or goods to which the permit relates; and 30

“(c) the amount of the substance or goods that the permit allows to be imported, exported, manufactured, or sold; and

“(d) any other information required by regulations.

- “(3) In relation to an exemption, the register must specify—
“(a) the name and address of the person to whom the exemption was granted; and
“(b) the substance or goods to which the exemption relates; and 5
“(c) the amount of the substance or goods that the exemption allows to be imported, exported, manufactured, or sold; and
“(d) the reason for granting the exemption; and
“(e) the terms and conditions on which the exemption was granted; and 10
“(f) any other information required by regulations.
- “(4) The register may record any other information that the Environmental Protection Authority considers appropriate.
- “12D Environmental Protection Authority to allow New Zealand Customs Service access to register 15
The Environmental Protection Authority must allow the New Zealand Customs Service to have access to the register.”
- 74S Regulations
Section 16(1) is amended by— 20
(a) omitting “for the Environment”; and
(b) inserting the following paragraph after paragraph (d):
“(da) prescribing the particulars of permits and exemptions to be shown in the Ozone Layer Protection Register.”.
- 74T Consultation requirements before regulations made 25
Section 17(1) and (5) are amended by omitting “for the Environment”.
- 74U Additional requirement before regulations made
Section 18 is amended by omitting “for the Environment shall” and substituting “must”. 30

<u>74V</u>	<u>Retention of property seized</u>	
	<u>Section 25(2) is amended by omitting “Ministry of Economic Development,” and substituting “Environmental Protection Authority”.</u>	
<u>74W</u>	<u>Return or forfeiture of property seized</u>	5
	<u>Section 26(3) is amended by omitting “for the Environment”.</u>	
<u>74X</u>	<u>Review of reduction timetables</u>	
	<u>Section 27 is amended by omitting “The Minister of Commerce and the Minister for the Environment shall” and substituting “The Minister must”.</u>	10
<u>74Y</u>	<u>Annual report</u>	
(1)	<u>Section 30(1) is amended by omitting “The Minister of Commerce and the Minister for the Environment shall,” and substituting “The Minister must,”.</u>	
(2)	<u>Section 30(2) is amended by omitting “The Minister of Commerce shall” and substituting “The Minister must”.</u>	15
<u>74Z</u>	<u>Transitional provision</u>	
	<u>Despite this Part and section 87 of the Environmental Protection Authority Act 2010, an application for a permit or exemption made before the commencement of this section must be determined by the Minister responsible for the administration of the Ozone Layer Protection Act 1996 as if this Part and the Environmental Protection Authority Act 2010 had not been passed.</u>	20
	Part 6	25
	Amendments to Resource Management Act 1991	
75	Resource Management Act 1991 amended	
	This Part amends the Resource Management Act 1991.	

76 Interpretation

Section 2(1) is amended by repealing the definition of **Environmental Protection Authority** or **EPA** and substituting the following definition:

“**Environmental Protection Authority** or **EPA** means the Environmental Protection Authority established ~~under~~ by section 6 of the Environmental Protection Authority Act 2010”.

77 Delegation of functions by Ministers

Section 29(4) is amended by omitting “Part 6AA” and substituting “section 24(f), Part 6AA,”.

78 New section 29A inserted

The following section is inserted after section 29:

“29A Restriction on Ministerial direction

The Minister may not give a direction under section 103 of the Crown Entities Act 2004 that relates to the exercise of the EPA’s functions under section 42C(c).”

79 Section 42B repealed

Section 42B is repealed.

80 Functions of EPA

(1) Section 42C is amended by inserting the following paragraph before paragraph (a):

“(aa) to make recommendations to the Minister under **section 144A** in relation to a matter to which section 142(1) applies:”.

(2) Section 42C is amended by inserting the following paragraph after paragraph (b):

“(ba) to receive matters under section 149B(2):”.

(3) Section 42C(d) is repealed and the following paragraph substituted:

“(d) to provide secretarial and support services to—
 “(i) a board of inquiry appointed under section 149J;
 “(ii) a special tribunal appointed under section 202:”.

- (4) Section 42C is amended by inserting the following paragraph after paragraph (d):
 “(da) to provide technical advice to the Minister on the development of a national environmental standard.”
- 81 Section 42D repealed** 5
 Section 42D is repealed.
- 82 Minister may call in matter that is or is part of proposal of national significance**
- (1) Section 142 is amended by repealing subsection (3) and substituting the following subsection: 10
- “(3) In deciding whether a matter is, or is part of, a proposal of national significance, the Minister may have regard to—
- “(a) any relevant factor, including whether the matter—
- “(i) has aroused widespread public concern or interest regarding its actual or likely effect on the environment (including the global environment); or 15
- “(ii) involves or is likely to involve significant use of natural and physical resources; or
- “(iii) affects or is likely to affect a structure, feature, place, or area of national significance; or 20
- “(iv) affects or is likely to affect or is relevant to New Zealand’s international obligations to the global environment; or
- “(v) results or is likely to result in or contribute to significant or irreversible changes to the environment (including the global environment); or 25
- “(vi) involves or is likely to involve technology, processes, or methods that are new to New Zealand and that may affect its environment; or
- “(vii) is or is likely to be significant in terms of section 8; or 30
- “(viii) will assist the Crown in fulfilling its public health, welfare, security, or safety obligations or functions; or
- “(ix) affects or is likely to affect more than 1 region or district; or 35

- “(x) relates to a network utility operation that extends or is proposed to extend to more than 1 district or region; and
- “(b) any advice provided by the EPA.”
- (2) Section 142(4) is amended by adding “; and” and also by adding the following paragraph: 5
- “(c) the recommendations of the EPA.”
- (3) Section 142 is amended by adding the following subsection:
- “(7) To avoid doubt, the Minister may make a direction under subsection (2) that differs from the direction recommended by the EPA under **section 144A**.” 10

83 New section 144A inserted

The following section is inserted after section 144:

- “**144A EPA to advise and make recommendations to Minister in relation to call-in** 15
- “(1) The Minister may request the EPA to advise him or her on whether a matter is, or is part of, a proposal of national significance.
- “(2) **Section 142(3)(a)** applies to the EPA as if the reference to the Minister were a reference to the EPA. 20
- “(3) The EPA must provide advice under **subsection (1)** no later than 20 working days after receiving the Minister’s request.
- “(4) The EPA’s advice must include its recommendation that the Minister—
- “(a) call the matter in and make a direction to refer it to a board of inquiry for a decision; or 25
- “(b) call the matter in and make a direction to refer it to the Environment Court for a decision; or
- “(c) not call the matter in.
- “(5) The EPA must serve a copy of its recommendation on the applicant and the local authority. 30
- “(6) The 20-working-day time frame specified in **subsection (3)** applies subject to section 149(5) and (6).”

84 EPA may request further information or commission reports 35

- (1) Section 149(5) is amended by—

- (a) omitting “section 146” and substituting “**section 144A** or 146”; and
- (b) omitting “section 146(1)” and substituting “**section 144A(3)** or 146(1)”.
- (2) Section 149(6) is amended by— 5
- (a) omitting “section 146” and substituting “**section 144A** or 146”; and
- (b) omitting “section 146(1)” and substituting “**section 144A(3)** or 146(1)”.
- 85 Right of objection in relation to imposition of additional charges or recovery of costs** 10
- (1) Section 357B is amended by inserting the following paragraph after paragraph (a):
- “(aa) for a person required by the EPA to pay costs under section 149ZD(2) or (3), to the EPA in respect of that requirement.” 15
- (2) Section 357B(b) is amended by omitting “section 149ZD(2) to (4)” and substituting “section 149ZD(4)”.

Part 7

Minor and consequential ~~Consequential~~ amendments 20

- 86 Consequential amendments**
- (1) The Acts listed in **Schedule 3** are amended in the manner set out in that schedule.
- (2) The regulations made under the Climate Change Response Act 2002 listed in **Schedule 4** are amended in the manner set out in that schedule. 25
- (3) The regulations made under the Hazardous Substances and New Organisms Act 1996 listed in **Schedule 5** are amended in the manner set out in that schedule. 30
- 87** **Minor amendments to Imports and Exports (Restrictions) Prohibition Order (No 2) 2004**
The Imports and Exports (Restrictions) Prohibition Order (No 2) 2004 is amended in the manner set out in **Schedule 6**.

88 **Minor amendments to Ozone Layer Protection
Regulations 1996**

**The Ozone Layer Protection Regulations 1996 are amended in
the manner set out in **Schedule 7.****

Schedule 1**s 64****Minor and consequential amendments to
climate change legislation****Climate Change Response Act 2002 (2002 No 40)**

Section 2B(3)(a): omit “chief executive responsible for the administration of Parts 4 and 5 of this Act” and substitute “EPA”. 5

Section 2C(5)(b): omit “chief executive” and substitute “EPA”.

Section 3(3): omit “a Minister or chief executive with powers and functions under this Act” and substitute “the Minister or the EPA”.

Section 3A(i): omit “responsible for the administration of this Act”. 10

Section 14: omit “or chief executive authorised to give such direction in accordance with a provision in Part 4 or 5 of this Act” and substitute “authorised to give such directions in accordance with a provision in Part 4 or 5 of this Act or the EPA”.

Section 17A(1): insert “by the EPA or” after “employed”. 15

Section 18B(2), (6), and (7): omit “chief executive” in each place where it appears and substitute in each case “EPA”.

Section 18CA(3) and (4): omit “chief executive of the department responsible for the administration of Part 4” and substitute in each case “EPA”. 20

Section 18CD(2)(b) and (3)(a) and (b): omit “chief executive of the department responsible for the administration of Part 4” and substitute in each case “EPA”.

Section 21(1): omit “a Minister or chief executive authorised to give the direction under a provision of this Act” and substitute “the Minister authorised to give the direction under a provision of this Act or the EPA”. 25

Section 21(1)(c)(ii)(A): omit “chief executive” and substitute “the EPA”.

Section 21(2)(c)(i): omit “chief executive” and substitute “the EPA”. 30

Section 21(3)(d)(i): omit “chief executive” and substitute “the EPA”.

Section 21AA(1): omit “by a Minister or chief executive authorised to give the direction under a provision of this Act” and substitute “by a Minister authorised to give the direction under a provision of this Act or the EPA”. 35

Climate Change Response Act 2002 (2002 No 40)—*continued*

Section 21AA(1)(c)(ii)(A): omit “chief executive” and substitute “the EPA”.

Section 21AA(2)(c)(i): omit “chief executive” and substitute “the EPA”.

Section 21AA(3)(d)(i): omit “chief executive” and substitute “the EPA”.

Section 21A: omit “a Minister or chief executive” and substitute “the Minister or the EPA”.

Section 24(1): omit “a Minister or chief executive” and substitute “the Minister or the EPA”.

Section 25(1)(a): repeal and substitute:

- “(a) the Minister or the EPA who gave the direction, if the Registrar registered the transaction following receipt of a direction from the Minister or the EPA; or”.

Section 30: omit “chief executive” in each place where it appears and substitute in each case “EPA”.

Section 49: omit “responsible for the administration of this Act”.

Section 54(5): omit and substitute:

- “(5) The EPA must ensure that the registers, or the information contained in the registers, kept for the purposes of section 56 or 57 are open for public inspection, without fee, on the EPA’s Internet site and in any other form the EPA considers appropriate.”

Section 56: omit “chief executive” in each place where it appears and substitute in each case “EPA”.

Section 57: omit “chief executive” in each place where it appears and substitute in each case “EPA”.

Section 58: omit “chief executive” in each place where it appears and substitute in each case “EPA”.

Section 59: omit “chief executive” in each place where it appears and substitute in each case “EPA”.

Section 62: omit “chief executive” in each place where it appears and substitute in each case “EPA”.

Section 63(2): omit “chief executive” and substitute “EPA”.

Section 64: omit “chief executive” in each place where it appears and substitute in each case “EPA”.

Climate Change Response Act 2002 (2002 No 40)—*continued*

- Section 65(1): omit “chief executive” and substitute “EPA”.
- Section 67(1): omit “chief executive” and substitute “EPA”.
- Section 68(4)(b): omit “the department of the chief executive responsible for the administration of this Act” and substitute “the EPA”.
- Section 69(4): omit “the department of the chief executive responsible for the administration of this Act” and substitute “the EPA”. 5
- Section 77(8)(c): omit “the department of the chief executive responsible for the administration of this Act” and substitute “the EPA”.
- Section 77(10): omit “chief executive” and substitute “EPA”.
- Section 83(3) and (6): omit “chief executive” in each place where it appears and substitute in each case “EPA”. 10
- Section 84(1)(c) and (2): omit “chief executive” in each place where it appears and substitute in each case “EPA”.
- Section 84(2)(c): omit “chief executive’s” and substitute “EPA’s”.
- Section 86(1) and (2)(c): omit “chief executive” and substitute “EPA”. 15
- Section 86B: omit “chief executive” in each place where it appears and substitute in each case “EPA”.
- Section 86B(1)(b) and (3)(a): omit “chief executive’s” and substitute in each case “EPA’s”. 20
- Section 86B(5)(b): omit “the department of the chief executive responsible for the administration of this Act” and substitute “the EPA”.
- Section 86C: omit “chief executive” in each place where it appears and substitute in each case “EPA”. 25
- Section 86C(1): omit “chief executive’s” and substitute “EPA’s”.
- Section 86D: omit “chief executive” in each place where it appears and substitute in each case “EPA”.
- Section 86E and the heading to section 86E: omit “Minister or chief executive” in each place where it appears and substitute in each case “Minister or EPA or chief executive”. 30
- Section 89 and the heading to section 89: omit “chief executive” in each place where it appears and substitute in each case “EPA”.
- Section 90 and the heading to section 90: omit “chief executive” in each place where it appears and substitute in each case “EPA”. 35

Climate Change Response Act 2002 (2002 No 40)—*continued*

Section 90(2): omit “the department of the chief executive” and substitute “the EPA”.

Section 91: omit “chief executive” in each place where it appears and substitute in each case “EPA”.

Section 92(1) and (3): omit “chief executive” and substitute in each case “EPA”. 5

Section 94: omit “chief executive or an enforcement officer” in each place where it appears and substitute in each case “EPA, the chief executive, or an enforcement officer”.

Section 94(1)(b): omit “chief executive should” and substitute “EPA or the chief executive, as appropriate, should”. 10

Section 95: omit “chief executive may” and substitute “EPA or the chief executive may”.

Section 95(1)(a) and (2): omit “chief executive” in each place where it appears and substitute in each case “EPA, or the chief executive,”. 15

Section 96(1): omit “chief executive, if the chief executive” and substitute “EPA or the chief executive, if the EPA or the chief executive, as appropriate,”.

Section 96(2)(a)(i) and (3): omit “chief executive” and substitute in each case “the EPA, the chief executive,”. 20

Section 98: repeal and substitute:

“98 Expenses in relation to inquiries

The EPA or the chief executive may pay, or a District Court Judge may order the EPA or the chief executive to pay, to any person who has appeared before the EPA, or the chief executive, or an enforcement officer under section 95 or the District Court Judge under section 96 the sum that in the EPA’s, or the chief executive’s, or the Judge’s opinion, as the case may be, is reasonable in respect of that person’s travelling and other expenses.” 25
30

Section 101(1): omit “chief executive” and substitute “EPA”.

Section 107(1) and (3): omit “chief executive” in each place where it appears and substitute in each case “EPA”.

Section 108 and the heading to section 108: omit “chief executive” in each place where it appears and substitute in each case “EPA”. 35

Climate Change Response Act 2002 (2002 No 40)—*continued*

- Section 108(2)(g): omit “chief executive’s” and substitute “EPA’s”.
- Section 109(1): omit “chief executive” in each place where it appears and substitute in each case “EPA”.
- Section 110: omit “chief executive” and substitute “EPA”.
- Section 111: omit “chief executive” in each place where it appears and substitute in each case “EPA”. 5
- Section 112 and the heading to section 112: omit “chief executive” in each place where it appears and substitute in each case “EPA”.
- Section 113(1) and (2): omit “chief executive” in each place where it appears and substitute in each case “EPA”. 10
- Section 114(1)(d): omit “chief executive” and substitute “EPA”.
- Heading to section 115: omit “**chief executive**” and substitute “**EPA**”.
- Section 116(2): omit “chief executive” in each place where it appears and substitute in each case “EPA”. 15
- Section 117(1) and (2) and the heading to section 117: omit “chief executive” and substitute in each case “EPA”.
- Section 118(1)(a), (2), and (4)(a)(i): omit “chief executive” and substitute in each case “EPA”.
- Section 119: omit “chief executive” in each place where it appears and substitute in each case “EPA”. 20
- Section 120 and the heading to section 120: omit “chief executive” in each place where it appears and substitute in each case “EPA”.
- Section 121: omit “chief executive” in each place where it appears and substitute in each case “EPA”. 25
- Section 123: omit “chief executive” in each place where it appears and substitute in each case “EPA”.
- Section 124 and the heading to section 124: omit “chief executive” in each place where it appears and substitute in each case “EPA”.
- Section 125(1): omit “chief executive” and substitute “EPA”. 30
- Section 126(2) and (3): omit “chief executive” in each place where it appears and substitute in each case “EPA”.
- Section 127: omit “chief executive” in each place where it appears and substitute in each case “EPA”.

Climate Change Response Act 2002 (2002 No 40)—continued

Section 128: omit “chief executive” in each place where it appears and substitute in each case “EPA”.

Section 129(1)(b): omit “chief executive” in each place where it appears and substitute in each case “EPA”.

Section 131(1)(a) and (b): omit “chief executive” and substitute in each case “EPA”. 5

Section 132(1)(da) and (f): omit “chief executive” and substitute in each case “EPA”.

Section 133(1)(ba), (d), and (e): omit “chief executive” and substitute in each case “EPA”. 10

Section 134: omit “chief executive” in each place where it appears and substitute in each case “EPA”.

Section 135: omit “chief executive” in each place where it appears and substitute in each case “EPA”.

Section 136: omit “chief executive” in each place where it appears and substitute in each case “EPA”. 15

Section 137: omit “chief executive” in each place where it appears and substitute in each case “EPA”.

Section 137(5): omit “chief executive’s” and substitute “EPA’s”.

Section 138: omit “chief executive” in each place where it appears and substitute in each case “EPA”. 20

Section 143(1)(a): omit “by the chief executive, or by a delegate of the chief executive” and substitute “by a delegate of the EPA”.

Section 144: omit “chief executive” in each place where it appears and substitute in each case “EPA”. 25

Section 145(1): omit “chief executive” and substitute “EPA”.

Section 147 and the heading to section 147: omit “chief executive” in each place where it appears and substitute in each case “EPA”.

Section 148(1) and the heading to section 148: omit “chief executive” and substitute in each case “EPA”. 30

Section 148(2)(b)(i): repeal and substitute:

“(i) give the notice to the EPA at the office of the EPA.”.

Section 150: omit “chief executive” in each place where it appears and substitute in each case “EPA”. 35

Climate Change Response Act 2002 (2002 No 40)—*continued*

- Section 150(5): omit “chief executive’s” and substitute “EPA’s”.
- Section 151: omit “chief executive” in each place where it appears and substitute in each case “EPA”.
- Section 151(3): omit “chief executive’s” and substitute “EPA’s”.
- Section 151A: omit “chief executive” in each place where it appears and substitute in each case “EPA”. 5
- Section 151A(3): omit “chief executive’s” and substitute “EPA’s”.
- Section 152(3) and (4): omit “chief executive” in each place where it appears and substitute in each case “EPA”.
- Section 153(3): omit “chief executive” and substitute “EPA”. 10
- Section 155: omit “chief executive” in each place where it appears and substitute in each case “EPA”.
- Section 156A: omit “chief executive” in each place where it appears and substitute in each case “EPA”.
- Section 156A(3): omit “chief executive’s” and substitute “EPA’s”. 15
- Section 157(2): omit “chief executive” in each place where it appears and substitute in each case “EPA”.
- Section 157A: omit “chief executive” in each place where it appears and substitute in each case “EPA”.
- Section 157A(2)(b): omit “chief executive’s” in each place where it appears and substitute in each case “EPA’s”. 20
- Section 160: omit “responsible for the administration of this Act” in each place where it appears.
- Section 161: omit “responsible for the administration of this Act” in each place where it appears. 25
- Section 164(a): omit “chief executive” and substitute “EPA”.
- Section 167(2) and (4): omit “chief executive” in each place where it appears and substitute in each case “EPA”.
- Section 168(1)(ca) and (f): omit “chief executive” and substitute in each case “EPA”. 30
- Section 178: omit “chief executive” in each place where it appears and substitute in each case “EPA”.
- Section 179(3): omit “chief executive’s” and substitute “EPA’s”.
- Section 179(3): omit “chief executive” and substitute “EPA”.

Climate Change Response Act 2002 (2002 No 40)—*continued*

Section 180(1) and (2): omit “chief executive” and substitute in each case “EPA”.

Section 183: omit “chief executive” in each place where it appears and substitute in each case “EPA”.

Section 184: omit “chief executive” in each place where it appears and substitute in each case “EPA”. 5

Section 187(2)(a): omit “chief executive” and substitute “EPA”.

Section 188: omit “chief executive” in each place where it appears and substitute in each case “EPA”.

Section 189(7)(d) and (8)(d)(ii): omit “chief executive” and substitute in each case “EPA”. 10

Section 191(1)(a): omit “chief executive” and substitute “EPA”.

Section 192(3), (6), and (7): omit “chief executive” in each place where it appears and substitute in each case “EPA”.

Section 192(6)(d): omit “chief executive’s” and substitute “EPA’s”. 15

Section 194(1): omit “chief executive” and substitute “EPA”.

Section 195(1): omit “chief executive” in each place where it appears and substitute in each case “EPA”.

Section 196(5) and (7): omit “chief executive” and substitute in each case “EPA”. 20

Section 198: omit “chief executive” in each place where it appears and substitute in each case “EPA”.

Section 199 and the heading to section 199: omit “chief executive” in each place where it appears and substitute in each case “EPA”.

Section 200: omit “chief executive” in each case where it appears and substitute in each case “EPA”. 25

Section 209: omit “chief executive” in each place where it appears and substitute in each case “EPA”.

Section 210 and the heading to section 210: omit “chief executive” in each place where it appears and substitute in each case “EPA”. 30

Section 211: omit “chief executive” in each place where it appears and substitute in each case “EPA”.

Section 213: omit “chief executive” in each place where it appears and substitute in each case “EPA”.

Section 217(2)(b): omit “chief executive” and substitute “EPA”. 35

Climate Change Response Act 2002 (2002 No 40)—*continued*

Section 218: omit “chief executive” in each place where it appears and substitute in each case “EPA”.

Section 222C(1)(b) and (2)(a) and (b): omit “chief executive” and substitute in each case “EPA”.

Section 222D: omit “chief executive” in each place where it appears and substitute in each case “EPA”. 5

Section 222E(2): omit “chief executive” in each place where it appears and substitute in each case “EPA”.

Section 222H: omit “chief executive” in each place where it appears and substitute in each case “EPA”. 10

Section 224: omit “responsible for the administration of this Act” in each place where it appears.

Section 225(1) and (3): omit “responsible for the administration of this Act”.

Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85) 15

Section 50: new section 182: omit “chief executive” in each place where it appears and substitute in each case “EPA”.

Schedule 2**s 74****Minor amendments to the Hazardous Substances and New Organisms Act 1996****Definition of approved form in section 2(1)**

Omit “section 11(fa)” and substitute “section 11(1)(fa)”. 5

Section 17

Omit “104” and substitute “103”.

Section 19(2)(c)

Repeal.

Section 43

10

Paragraph (a): omit “40(1)(b) to genetically modify an organism” and substitute “40 to genetically modify an organism in containment”.

Paragraph (b): omit “40(1)(b)” and substitute “40 to develop a new organism in containment”. 15

Section 44

Omit “40(1)(a) or (c), shall” and substitute “40 to import a new organism into, or field test a new organism in, containment, must”.

Section 45(1)(a)(ii)

Repeal and substitute: 20

- “(ii) after taking into account all the effects of the organism and any inseparable organism, including, but not limited to, the effects on the matters in section 43 (for application to develop a new organism in containment) or the matters in section 25 44 (for applications to import a new organism into, or field test a new organism in, containment), the beneficial effects of having the organism in containment outweigh the adverse effects of the organism and any inseparable organism; 30 and”.

Section 62(1)

Omit “or where Parts 11 to 16 apply to that substance or organism”.

Section 63(1)

Omit “62(3)” and substitute “62(2)”.

Section 97(1)

5

Paragraph (f): omit “Maritime Transport” and substitute “Maritime New Zealand”.

Paragraph (h)(iv): repeal.

Section 141(1)

Section 141(1): omit “or section 160(1)(b), (c), or (d),”.

10

Schedule 3

s 86(1)

Amendments to other Acts consequential
on disestablishment of ERMA**Agricultural Compounds and Veterinary Medicines Act ~~1998~~
1997 (1997 No 87)** 5

Section 13(1)(b): omit “Environmental Risk Management Authority” and substitute “Environmental Protection Authority established by **section 6 of the Environmental Protection Authority Act 2010**”.

Biosecurity Act 1993 (1993 No 95) 10

Definition of **Authority** in section 2: ~~omit repeal~~ and substitute:

“**Authority** means the Environmental Protection Authority established ~~under~~ by **section 6 of the Environmental Protection Authority Act 2010**”.

Civil Aviation Act 1990 (1990 No 98) 15

Section 34(1)(b)(ii): ~~omit repeal~~ and substitute:

“(b ii) ~~consult~~ the Environmental Protection Authority, established ~~under~~ by **section 6 of the Environmental Protection Authority Act 2010**, about the contents of any rules that relate to the transportation of hazardous substances as defined in section 2(1) of the Hazardous Substances and New Organisms Act 1996.” 20

Crown Entities Act 2004 (2004 No 115)

Part 1 of Schedule 1: insert in its appropriate alphabetical order: 25

Name	Exemption from acquisition of securities, borrowing, guarantee, and derivative rules				Exemption from section 165 (net surplus payable to Crown)
	S 161	S 162	S 163	S 164	

Environ-
mental Pro-
tection Au-
thority

Part 2 of Schedule 1: omit the item relating to the Environmental Risk Management Authority.

Fire Service Act 1975 (1975 No 42)

Section 21(1): omit “Environmental Risk Management Authority” and substitute “Environmental Protection Authority”.

Section 21(4A): omit and substitute:

“(4A) Before making any recommendation under subsection (4) that relates to hazardous substances, the Commission must consult the Environmental Protection Authority established ~~under~~ by section 6 of the Environmental Protection Authority Act 2010.” 5

Food Act 1981 (1981 No 45)

Section 42(2A): omit “shall consult with the Environmental Risk Management Authority established under the Hazardous Substances and New Organisms Act 1996” and substitute “must consult the Environmental Protection Authority established ~~under~~ by section 6 of the Environmental Protection Authority Act 2010”. 10 15

Gas Act 1992 (1992 No 124)

Section 54(6): omit “shall consult with the Environmental Risk Management Authority established under the Hazardous Substances and New Organisms Act 1996” and substitute “must consult the Environmental Protection Authority established ~~under~~ by section 6 of the Environmental Protection Authority Act 2010”. 20

Health Act 1956 (1956 No 65)

Section 122(6): omit “shall consult with the Environmental Risk Management Authority established under that Act” and substitute “must consult the Environmental Protection Authority established ~~under~~ by section 6 of the Environmental Protection Authority Act 2010”. 25

Health and Safety in Employment Act 1992 (1992 No 96)

Section 20(12): omit “Environmental Risk Management Authority established under the Hazardous Substances and New Organisms Act 1996” and substitute “Environmental Protection Authority established ~~under~~ by section 6 of the Environmental Protection Authority Act 2010”. 30

Health and Safety in Employment Act 1992 (1992 No 96)—*continued*

Section 21(3): omit “shall consult with the Environmental Risk Management Authority established under the Hazardous Substances and New Organisms Act 1996” and substitute “must consult the Environmental Protection Authority established ~~under~~ by section 6 of the **Environmental Protection Authority Act 2010**”.

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Medicines Act 1981 (1981 No 118)

Definition of **ERMA** in section 2: ~~omit repeal~~ and substitute:

“**EPA** means the Environmental Protection Authority established ~~under~~ by section 6 of the **Environmental Protection Authority Act 2010**”.

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Section 20(6A): omit “Environmental Risk Management Authority established under the Hazardous Substances and New Organisms Act 1996” and substitute “EPA”.

Section 24A(b): omit “ERMA” and substitute “the EPA”.

Section 24B: omit “ERMA” in each place where it appears and substitute in each case “the EPA”.

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Ombudsmen Act 1975 (1975 No 9)

Schedule 1, Part 2: omit “The Environmental Risk Management Authority” and substitute “The Environmental Protection Authority”.

Radiation Protection Act 1965 (1965 No 23)

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Section 12(2A): omit “shall be given to the Environmental Risk Management Authority established under that Act” and substitute “must be given to the Environmental Protection Authority established ~~under~~ by section 6 of the **Environmental Protection Authority Act 2010**”.

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Terrorism Suppression Act 2002 (2002 No 34)

Definition of **duly authorised military device** in section 4: omit “Environmental Risk Management Authority” and substitute “Environmental Protection Authority established by section 6 of the **Environmental Protection Authority Act 2010**”.

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Terrorism Suppression Act 2002 (2002 No 34)—*continued*

Section 13B(3)(a): omit “Environmental Risk Management Authority” and substitute “Environmental Protection Authority established by **section 6 of the Environmental Protection Authority Act 2010**”.

Transport Act 1962 (1962 No 135)

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Section 199(8): omit “shall consult with the Environmental Risk Management Authority established under the Hazardous Substances and New Organisms Act 1996” and substitute “must consult the Environmental Protection Authority established ~~under~~ by **section 6 of the Environmental Protection Authority Act 2010**”.

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Schedule 4**s 86(2)****Consequential amendments to regulations
under Climate Change Response Act 2002**

Climate Change (Agriculture Sector) Regulations 2010 (SR 2010/335)	5
Regulation 4 and the heading to regulation 4: omit “chief executive” in each place where it appears and substitute in each case “EPA”.	
Climate Change (Emissions Rulings: Fees and Charges) Regulations 2010 (SR 2010/213)	
Regulation 6: omit “chief executive” in each place where it appears and substitute in each case “EPA”.	10
Regulation 7: omit “chief executive” and substitute “EPA”.	
Regulation 8: omit “chief executive” in each place where it appears and substitute in each case “EPA”.	
Regulation 9: omit “chief executive” and substitute “EPA”.	15
Regulation 10: omit “chief executive” in each place where it appears and substitute in each case “EPA”.	
Climate Change (Forestry Sector) Regulations 2008 (SR 2008/355)	
Regulation 6: omit “chief executive” and substitute “EPA”.	20
Regulation 7 and the heading to regulation 7: omit “chief executive” in each place where it appears and substitute in each case “EPA”.	
Regulation 8: omit “chief executive” in each place where it appears and substitute in each case “EPA”.	
Regulation 10: omit “chief executive” in each place where it appears and substitute in each case “EPA”.	25
Regulation 12: omit “chief executive” in each place where it appears and substitute in each case “EPA”.	
Regulation 18: omit “chief executive” and substitute “EPA”.	
Forms 1 and 2 of Schedule 3: omit “(chief executive)” and substitute in each case “(authorised signatory)”.	30
Heading to Schedule 5: omit “ chief executive ” and substitute “ EPA ”.	

Climate Change (Liquid Fossil Fuels) Regulations 2008 (SR 2008/356)

Definition of **unique emissions factor** in regulation 3(1): omit “chief executive” and substitute “EPA”.

Regulation 3(2): omit “chief executive” and substitute “EPA”. 5

Climate Change (Stationary Energy and Industrial Processes) Regulations 2009 (SR 2009/285)

Definition of **chief executive** in regulation 3(1): revoke.

Definition of **unique emissions factor** in regulation 3(1): omit “chief executive” and substitute “EPA”. 10

Regulation 3(5): omit “chief executive” and substitute “EPA”.

Regulation 5 and heading to regulation 5: omit “chief executive” in each place where it appears and substitute in each case “EPA”.

Climate Change (Unique Emissions Factors) Regulations 2009 (SR 2009/286) 15

Definition of **chief executive** in clause 3(1): revoke.

Regulation 4: omit “chief executive” in each place where it appears and substitute in each case “EPA”.

Regulation 5 and heading to regulation 5: omit “chief executive” in each place where it appears and substitute in each case “EPA”. 20

Regulation 6: omit “chief executive” in each place where it appears and substitute in each case “EPA”.

Regulation 7(1): omit “chief executive” and substitute “EPA”.

Regulation 9(1): omit “chief executive” and substitute “EPA”.

Regulation 13(1): omit “chief executive” and substitute “EPA”. 25

Regulation 14(1): omit “chief executive” and substitute “EPA”.

Regulation 18(1): omit “chief executive” and substitute “EPA”.

Regulation 25: omit “chief executive” in each place where it appears and substitute in each case “EPA”.

Regulation 26 and heading to regulation 26: omit “chief executive” and substitute in each case “EPA”. 30

Regulation 27: omit “chief executive” and substitute “EPA”.

Regulation 28: omit “chief executive” in each place where it appears and substitute in each case “EPA”.

**Climate Change (Unique Emissions Factors) Regulations 2009
(SR 2009/286)—continued**

Regulation 29: omit “chief executive” in each place where it appears and substitute in each case “EPA”.

Regulation 30: omit “chief executive” in each place where it appears and substitute in each case “EPA”.

Regulation 31: omit “chief executive” in each place where it appears and substitute in each case “EPA”. 5

Regulation 32: omit “chief executive” in each place where it appears and substitute in each case “EPA”.

Regulation 33: omit “chief executive” in each place where it appears and substitute in each case “EPA”. 10

Regulation 34: omit “chief executive” in each place where it appears and substitute in each case “EPA”.

Climate Change (Unit Register) Regulations 2008 (SR 2008/357)

Regulation 6A(1) and (3): omit “chief executive” and substitute in each case “EPA”. 15

Heading to regulation 13: omit “**chief executive**” and substitute “**EPA**”.

Regulation 13: omit “chief executive responsible for Part 2 of the Act” and substitute “EPA”.

Climate Change (Waste) Regulations 2010 (SR 2010/338) 20

Regulation 5(1): omit “chief executive” in each place where it appears and substitute in each case “EPA”.

Schedule 5

s 86(3)

**Consequential amendments to regulations
under Hazardous Substances and New
Organisms Act 1996**

Hazardous Substances and New Organisms (Methodology) Order 1998 (SR 1998/217)	5
Clause 1 of Schedule: omit “under clause 43 of Schedule 1 of the Act” and substitute “by the Authority”.	
Clause 6 of Schedule: revoke and substitute:	
<u>6(1) The Authority may appoint a committee under clause 14 of Schedule 5 of the Crown Entities Act 2004 to advise it on any matter relating to its responsibilities under Part 5 of the Act.</u>	10
<u>(2) The Authority may seek the advice of the Māori Advisory Committee established by section 17 of the Environmental Protection Authority Act 2010 on issues that may arise in taking into account the matters referred to in sections 6(d) and 8 of the Act.”</u>	15
Hazardous Substances (Compressed Gases) Regulations 2004 (SR 2004/43)	
Definition of Authority in regulation 3: omit and substitute:	20
“ Authority means the Environmental Protection Authority established under <u>by</u> section 6 of the Environmental Protection Authority Act 2010 ”.	
Hazardous Substances (Emergency Management) Regulations 2001 (SR 2001/123)	25
Definition of Authority in regulation 3(1): omit and substitute:	
“ Authority means the Environmental Protection Authority established under <u>by</u> section 6 of the Environmental Protection Authority Act 2010 ”.	

Hazardous Substances (Fireworks, Safety Ammunition, and Other Explosives Transfer) Regulations 2003 (SR 2003/176)

Definition of **Authority** in regulation 3: omit and substitute:

“**Authority** means the Environmental Protection Authority established ~~under~~ by section 6 of the **Environmental Protection Authority Act 2010**”.

Schedule 6
Amendments to Imports and Exports
(Restrictions) Prohibition Order (No 2)
2004

s 87

Regulation 4

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Insert in its appropriate alphabetical order:

“Act means the Imports and Exports (Restrictions) Act 1988”.

Definition of Minister: revoke.

Regulation 7

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Revoke and substitute:

“7 **When Stockholm chemical other than waste may be exported**

“(1) A person may export a Stockholm chemical (other than waste) from New Zealand if the EPA grants the person a permit authorising the export of the chemical.

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“(2) The EPA must grant a permit authorising the exportation of the Stockholm chemical if—

“(a) the chemical is exported to—

“(i) a State that is a Stockholm Party and that is permitted to use the chemical under Annex A or B of the Stockholm Convention; or

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“(ii) a State that is not a Stockholm Party and that has provided an annual certification to New Zealand; and

“(b) the chemical is exported in accordance with New Zealand’s obligations under the Stockholm Convention.

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“(3) Despite subclause (2), the EPA may refuse to grant a permit if **section 3BC of the Act** applies.”

Regulation 9

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Subclauses (1) and (3): omit “Minister has consented to” and substitute “EPA grants a permit authorising”.

Subclauses (2) and (4): omit “Minister may” and substitute “EPA must”.

Regulation 9—*continued*Add:

“(5) Despite subclauses (2) and (4), the EPA may refuse to grant a permit if **section 3BC of the Act** applies.”

Regulation 10

Subclause (1): omit “Minister has consented to” and substitute “EPA grants a permit authorising”. 5

Subclause (2): omit “Minister may” and substitute “EPA must”.

Add:

“(3) Despite subclause (2), the EPA may refuse to grant a permit if **section 3BC of the Act** applies.” 10

Regulation 11Subclause (1): revoke and substitute:

“(1) A person may export hazardous waste or household waste (including waste that is, or contains, a Stockholm chemical) from New Zealand if the EPA grants the person a permit authorising the export of the waste.” 15

Subclause (2): omit “Minister may consent to the exportation of any hazardous waste or household waste if—” and substitute “EPA must grant the permit if—”.

Subclause (3): omit “Minister may consent to” and substitute “EPA must grant a permit authorising”. 20

Add:

“(5) Despite subclauses (2) and (3), the EPA may refuse to grant a permit if **section 3BC of the Act** applies.”

Regulation 13

25

Subclause (1): revoke and substitute:

“(1) A person may import hazardous waste or household waste if the EPA grants a permit authorising the importation.”

Subclause (2): omit “Minister may consent to” and substitute “EPA must grant a permit authorising”. 30

Regulation 13—*continued*

Add:

“(3) Despite subclause (2), the EPA may refuse to grant a permit if **section 3BC of the Act** applies.”

Schedule 7**s 88****Amendments to Ozone Layer Protection
Regulations 1996****Regulation 2**

Insert in its appropriate alphabetical order:

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“EPA means the Environmental Protection Authority established by **section 6** of the **Environmental Protection Authority Act 2010**”.

Definition of **Minister**: revoke.**Regulation 5**

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Revoke and substitute:

“5 Conditional prohibition on importation of methyl bromide

“(1) The importation into New Zealand of methyl bromide is prohibited.

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“(2) Despite subclause (1), methyl bromide may be imported into New Zealand if it is imported—

“(a) from a party or a complying country; and

“(b) under the authority of a quarantine and pre-shipment permit granted under regulation 7.”

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Regulation 6Revoke.**Regulation 7**Subclause (1): revoke and substitute:

“(1) A wholesaler may apply to the EPA in the approved form for a permit to import methyl bromide for quarantine or pre-shipment applications.”

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Subclause (2)(b): omit “Minister” and substitute “EPA”.Subclause (4)(b): omit “Minister” and substitute “EPA”.**Regulation 8**

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Revoke and substitute:**“8 Conditional prohibition on importation of HCFCs**

“(1) The importation into New Zealand of HCFCs is prohibited.

Regulation 8—*continued*

“(2) Despite subclause (1), an HCFC may be imported into New Zealand if it is imported—

“(a) from a party or a complying country; and

“(b) under the authority of—

“(i) a base year permit granted under regulation 9; or 5

“(ii) a special permit granted under regulation 9A; or

“(iii) a wholesaler permit granted under regulation 11.”

Regulation 9

Subclause (1): revoke and substitute:

“(1) A person may apply to the EPA on the approved form for a base year permit to import HCFCs.” 10

Subclause (3): omit “Minister” and substitute “EPA”.

Regulation 9A

Subclause (1): revoke and substitute:

“(1) A person may apply to the EPA in the approved form for a special permit to import HCFCs.” 15

Subclause (2)(e): revoke and substitute:

“(e) evidence of adverse economic or social impacts (if any) that may occur if the EPA does not grant a special permit for HCFCs to the applicant.” 20

Regulation 10

Revoke.

Regulation 11

Subclauses (1) and (2): revoke and substitute:

“(1) This regulation applies to a wholesaler who distributes HCFCs throughout New Zealand. 25

“(1A) The wholesaler may apply to the EPA in the approved form for a wholesaler permit to import HCFCs.

“(1B) The application must be made no later than 1 December in any year for a permit for the following year. 30

Regulation 11—*continued*

“(2) The EPA may issue wholesaler permits not exceeding a total of 2.5 ODP tonnes of HCFCs in a year, divided as far as practicable as the EPA considers fair among the applicants for the permits.”

Regulation 12(2)

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Omit “Minister” and substitute “EPA”.

Regulation 13

Subclause (1): revoke and substitute:

“(1) The EPA may grant a permit subject to terms and conditions.”

Subclauses (2), (2A), (3), and (4): omit “Minister” and substitute in each case “EPA”. 10

Regulation 14(2) and (3)

Omit “Minister” and substitute in each case “EPA”.

Regulation 17(1) and (2)

Omit “The Minister may, in his or her discretion,” and substitute in each case “The EPA may”. 15

Regulation 18

Revoke and substitute:

“18 Re-allocation of entitlement

“(1) This regulation applies if a person’s entitlement to a permit is cancelled or reduced under regulation 17. 20

“(2) The EPA may reallocate the entitlement to another person subject to terms and conditions.

“(3) Any person may apply in the approved form for an allocation of the entitlement.” 25

Regulation 22

Omit “methyl bromide,” and substitute “methyl chloroform,”.

Regulation 23

Subclause (3): revoke and substitute:

“(3) A person may apply to the EPA in the approved form for an export permit for a bulk controlled substance other than a substance specified in regulation 22.”

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Subclauses (5) and (6): omit “Minister” and substitute in each case “EPA”.

Regulation 28(1)

Omit “Minister” and substitute “EPA”.

Regulation 29

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Omit “Minister” and substitute “EPA”.

Regulation 30

Omit “Minister” and substitute “EPA”.

Regulation 31

Omit “Minister” in each place where it appears and substitute in each case “EPA”.

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Regulation 33

Subclause (1): omit “Every application for an exemption shall be made in writing to the Minister and shall—” and substitute “An application for an exemption must be made to the EPA in the approved form and must—”.

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Subclauses (1)(d) and (2): omit “Minister” and substitute in each case “EPA”.

Regulation 34(2)(a)

Omit “Minister’s” and substitute “EPA’s”.

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Regulation 35(2)

Revoke and substitute:

“(2) The EPA may revoke an exemption if it is satisfied that—
“(a) the holder of the exemption has made a false declaration or statement, or provided false or incorrect information,

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Regulation 35(2)—*continued*

- to the EPA in relation to the holder’s application for an exemption; or
- “(b) the holder of the exemption has not used the exempted substances or goods for the purpose for which the exemption was given; or 5
- “(c) the reason for granting the exemption no longer applies.”

Regulation 37

Omit “Minister” and substitute “EPA”.

Regulation 38(3)(b)

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Omit “Minister” and substitute “EPA”.

Regulation 39

Omit “for the Environment”.

Regulation 40

Omit “Minister” in each place where it appears and substitute in each case “EPA”. 15

Subclause (4)(b)(i): omit “Minister’s” and substitute “EPA’s”.

Regulation 41(1)

Omit “Minister” and substitute “EPA”.

Regulation 42

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Subclause (2)(a) and (b): omit “Minister” and substitute “EPA”.

Regulation 43

Heading: omit “Minister” and substitute “EPA”.

Subclause (1): omit “Minister appealed against under regulation 41 shall continue” and substitute “EPA appealed against under regulation 41 continues”. 25

Environmental Protection Authority Bill

Legislative history

16 November 2010	Introduction (Bill 246–1)
23 November 2010	First reading and referral to Local Government and Environment Committee
