

Hazardous Substances and New Organisms (Hazardous Substances Assessments) Amendment Bill

Government Bill

Explanatory note

General policy statement

The purpose of this Bill is to amend the Hazardous Substances and New Organisms Act 1996 (the **Act**) to improve the assessment and reassessment of hazardous substances.

Under the Act, the Environmental Protection Authority (the **EPA**) is the regulator responsible for making decisions on whether to approve new hazardous substances and set controls (conditions on how the substance can be used) to manage the risk from, and safeguard people and the environment from, approved hazardous substances. The EPA also reassesses hazardous substances and makes new decisions about whether the controls need to be updated or whether the substance should no longer be approved.

Currently, the assessment and reassessment of hazardous substances in New Zealand can be time-consuming and resource-intensive. Lengthy and costly processes are required, which can mean that beneficial chemicals, including safer alternatives to existing ones, take longer to come into use. Delayed reassessments may also mean the safety and environmental controls may not be fit for purpose but the chemicals continue to be used.

Amendments to the Act are needed to improve the processes for assessing and reassessing hazardous substances, for example, to enable the EPA to make better use of relevant information from international regulators. This amendment should allow the EPA to proceed more quickly and efficiently with assessments rather than having to fully investigate a substance that a comparable international regulator has already reviewed.

The Bill makes changes to the Act in the following 3 main categories:

- enabling the EPA to make better use of information from international regulators:
- making other improvements to the reassessment process:
- making technical amendments.

Improvements to make better use of information from international regulators

The Bill makes improvements so that the EPA can make better use of information from international regulators, including—

- enabling the EPA to apply data, information, assessments, and decisions from international regulators:
- providing a simplified process for the EPA to update hazard classifications of substances and corresponding controls, based on information from international regulators:
- enabling the EPA to temporarily restrict certain uses of a hazardous substance, subject to specific requirements.

Other improvements to EPA's reassessment process

Other improvements to the EPA's reassessment process include—

- enabling the EPA to engage in more targeted consultation during modified reassessments:
- requiring the EPA to develop a publicly available work plan for reassessments:
- providing a simplified process for the EPA to update hazard classifications of substances when the EPA has undertaken a recent assessment of a related hazardous substance:
- enabling the delegation of some decision-making powers in certain situations (such as the simplified process for updating hazard controls, if the EPA decides not to consult):
- enabling the EPA to align the time frames of the assessment and reassessment of related hazardous substances.

Technical amendments to Act

The Bill also makes 3 technical changes to the Act, which are unrelated to the policy of improving assessments but are included in order to correct omissions or ambiguous language. These are not policy changes to the application of the Act.

Section 68: The Bill amends section 68 of the Act, which provides for ministerial call-in. An application that relates to a hazardous substance can only be called-in (which means the application would be determined by the Minister for the Environment rather than the EPA) if it is an application “referred to in section 53”. Currently, there is some ambiguity as to whether the section 68 call-in provisions apply to reassessments, although, on a purposive reading of the Act, publicly notified reassess-

ments would be subject to section 68. The Bill amends the Act to clarify that section 68 applies to all applications to which section 53(4) applies.

References to section 103A: An omission occurred in the 2015 amendments to the Act. In those amendments, section 103A was created (powers of entry for inspection related to hazardous substances). As part of the amendments, references to section 103 in other parts of the Act should have been amended to include section 103A. However, in sections 11(1)(b)(ii) (powers, functions, and duties of Authority) and 137(1)(a) and (b) (emergency powers) this amendment was not made. The Bill corrects this omission.

Section 114: Currently, there is an offence prescribed by section 109(1)(da) of the Act but no corresponding penalty in section 114 (penalties). The Bill amends section 114 to correct the omission.

Departmental disclosure statement

The Ministry for the Environment is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2021&no=54>

Regulatory impact assessment

The Ministry for the Environment produced a regulatory impact assessment in November 2020 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact assessment can be found at—

- <https://environment.govt.nz/publications/regulatory-impact-assessments-on-proposed-amendments-to-the-hazardous-substances-and-new-organisms-act-1996/>
- <http://www.treasury.govt.nz/publications/informationreleases/ria>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. The Bill comes into force on the day after the date on which it receives the Royal assent.

Clause 3 states that the Bill amends the Hazardous Substances and New Organisms Act 1996.

Part 1

Main amendments

Clause 4 inserts *new sections 20B and 20C*. *New section 20B* provides a central requirement for notification of decisions under Parts 5 and 6A. *New section 20C* requires the Environmental Protection Authority (the **Authority**) to develop a work plan that sets the Authority's priorities for the reassessment of hazardous substances.

Clause 5 amends section 28A to provide for rapid assessment of substances that are the same as, or similar to, substances that have been authorised by an international regulator recognised under *new section 76E*.

Clause 6 replaces section 53(4) with an amended requirement for the Authority to notify the Minister for the Environment of publicly notified applications that also takes into account *new section 53AA*.

Clause 7 inserts *new section 53AA*, which sets out the core notification and consultation requirements for the Authority in respect of applications under Part 5.

Clause 8 inserts *new section 59A*, which sets out the process for dealing with applications for related chemicals or substances.

Clause 9 inserts *new section 63D*, which provides for the reassessment of a hazardous substance to align a hazard classification or control in specified circumstances.

Clause 10 inserts *new section 64A*, which empowers the Authority to temporarily restrict the use of a hazardous substance in specified circumstances by notice in the *Gazette*.

Clause 11 inserts *new section 76E*, which empowers the Authority to recognise international regulators for the purposes of the Act by notice in the *Gazette*.

Part 2

Consequential and other amendments

Clauses 12 to 30 make amendments consequential to the amendments in *Part 1* and make other minor amendments.

Hon David Parker

Hazardous Substances and New Organisms (Hazardous Substances Assessments) Amendment Bill

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Schedule

New Part 2 inserted into Schedule 7

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Hazardous Substances and New Organisms (Hazardous Substances Assessments) Amendment Act **2021**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Principal Act

This Act amends the Hazardous Substances and New Organisms Act 1996. 5

**Part 1
Main amendments**

4 New sections 20B and 20C inserted

After section 20A, insert:

20B Publication of decisions	10
(1) If the Authority makes a decision under Part 5 or 6A in respect of any application (including a request under section 62), the Authority must—	
(a) give its decision in writing, including reasons for the decision; and	
(b) give written notice of the decision to the applicant and every person who made a submission; and	15
(c) give public notice of the decision as soon as practicable after the decision is made.	
(2) The Authority may withhold any information relating to transshipment applications from a public notice under this section if, in its opinion, the information could pose a risk to national safety and security.	20
20C Reassessments work plan	
(1) The Authority must, within 12 months of the commencement of this section, develop a work plan that sets the priorities for the reassessment of hazardous substances.	
(2) When developing or updating a work plan, the Authority must take into account—	25
(a) Part 2; and	
(b) the criteria set out in section 62(2)(a) to (d) .	
(3) The work plan must include—	
(a) a list of substances or groups of related chemicals or substances to be reassessed; and	30
(b) indicative time frames for the start of work by the Authority to reassess each of the listed substances or groups.	
(4) The Authority must ensure that the work plan—	
(a) gives highest priority to the following:	35

<ul style="list-style-type: none"> <li style="margin-left: 40px;">(i) hazardous substances that are prohibited from use under section 64; <li style="margin-left: 40px;">(ii) hazardous substances that are subject to restriction under section 64A; and (b) is made available, free of charge, on an Internet site maintained by or on behalf of the Authority; and (c) is updated no less than once each calendar year. 	5
5 Section 28A amended (Rapid assessment for importation or manufacture of hazardous substances)	
(1) After section 28A(2)(a), insert:	10
(ab) the use of the same substance or a substance having a similar composition and similar hazardous properties has been lawfully authorised by an international regulator; or	
(2) After section 28A(4), insert:	
(5) An applicant relying on subsection (2)(ab) must provide the Authority with evidence of their right to use the information relied on in the application.	15
(6) The Authority must not make a rapid assessment under subsection (2)(ab) if the Authority considers the application will have—	
(a) significant cultural, economic, environmental, ethical, health, or international effects; or	20
(b) significant effects in an area in which the Authority lacks sufficient knowledge or expertise.	
6 Section 53 amended (Applications required to be publicly notified)	
Replace section 53(4) with:	
(4) The Authority must notify the Minister when it receives an application that—	25
(a) is required to be publicly notified; or	
(b) the Authority decides to publicly notify.	
7 New section 53AA inserted (Notification and consultation for applications under Part 5)	
After section 53, insert:	30
53AA Notification and consultation for applications under Part 5	
(1) The Authority must, when it receives an application made under a provision in Part 5, notify—	
(a) any department or Crown entity that, in the opinion of the Authority, is likely to have an interest in the application; and	35
(b) if the application is an application for approval of a new organism,—	

- (i) the Department of Conservation; and
 - (ii) any local authority if, in the opinion of the Authority, the local authority is likely to have an interest in the application; and
 - (c) if the application is an application for approval of a hazardous substance, WorkSafe. 5
- (2) **Subsections (3) to (6)** apply to all applications under sections 63A, 63C, and **63D**.
- (3) The Authority may reassess an application under section 63A, 63C, or **63D** without publicly notifying the reassessment in accordance with section 53.
- (4) The Authority must consult in accordance with **subsection (5)** if the Authority— 10
- (a) does not publicly notify an application in accordance with section 53; and
 - (b) considers that the application will have— 15
 - (i) significant cultural, economic, environmental, ethical, health, or international effects; or
 - (ii) significant effects in an area in which the Authority lacks sufficient knowledge or expertise.
- (5) The Authority must— 20
- (a) do everything reasonably practicable on its part to consult all persons who, in its opinion, are likely to be directly affected by the reassessment; and
 - (b) give those persons a reasonable opportunity to make submissions and comments to the Authority on the reassessment; and
 - (c) consider all submissions and comments received before approving or declining the application. 25
- (6) If the Authority is not required to consult by **subsection (4)**, the Authority may consult any person before approving or declining the application.

8 New section 59A inserted (Joint processing and decision making on related applications) 30

After section 59, insert:

59A Joint processing and decision making on related applications

- (1) This section applies if— 35
 - (a) the Authority receives related applications; and
 - (b) at least 1 of the applications is publicly notified in accordance with section 53 or required to be consulted on by **section 53AA(4)**; and
 - (c) the Authority considers that decisions on the applications should be made on the same date.

- (2) The Authority may extend a time period that applies to the processing of the related applications to ensure that—
- (a) they are heard (if more than 1 application is to be heard) at the same time and place; and
 - (b) decisions on the applications are made on the same date. 5
- (3) However, the Authority may not extend the time period beyond the latest date that applies to the related applications.
- (4) In this section, **related applications** means applications in respect of hazardous substances (whether or not they have been approved or deemed to be approved) that are, or include, related chemicals or substances. 10
- Compare: 2012 No 72 s 44

9 New section 63D inserted (Modified reassessment to align classifications)

After section 63C, insert:

63D Modified reassessment to align classifications

- (1) Despite anything to the contrary in this Act, the Authority may reassess a hazardous substance in accordance with this section if the Authority is satisfied that— 15
- (a) a reassessment of the hazardous substance under section 63 is not appropriate because the reassessment will involve only a specific aspect of the approval; and 20
 - (b) the amendment is not a minor or technical amendment to which section 67A applies; and
 - (c) the reassessment is necessary to change a hazard classification or control to align with—
 - (i) the equivalent of a hazard classification or control that has been set by an international regulator; or 25
 - (ii) a hazard classification or control of a related substance that was the subject of an Authority decision after the hazardous substance was approved by the Authority. 30
- (2) A reassessment under this section— 30
- (a) may vary 1 or more of the following:
 - (i) the EPA controls that attach to a hazardous substance:
 - (ii) the description of a hazardous substance:
 - (iii) the hazard classification of a hazardous substance; but
 - (b) may not revoke an approval given to import or manufacture a hazardous substance under this Act. 35

- (3) A reassessment under this section is treated as an application, and **sections 53AA** and 55 to 61 apply with all necessary modifications.
- (4) The Authority may approve or decline an application for reassessment under this section as it considers appropriate after taking into account—
 - (a) all the effects associated with the reassessment; and 5
 - (b) the best international practices and standards for the safe management of hazardous substances.
- (5) Section 65(e) applies, with all necessary modifications, to a reassessment under this section.
- (6) Sections 77, 77A, and 77B apply to any hazardous substance that is approved under this section and, for the purposes of this section, controls previously imposed under section 77A have effect as other specified controls under that section. 10
- (7) This section does not limit the operation of section 77(2)(a).
- (8) An applicant relying on **subsection (1)(c)(i)** must provide the Authority with evidence of the right to use the information relied on in the application. 15
- (9) The Authority must not reassess a hazardous substance under this section more than once in a 12-month period.

10 New section 64A inserted (Temporary restriction of use during reassessment) 20

After section 64, insert:

64A Temporary restriction of use during reassessment

- (1) The Authority may, by notice in the *Gazette*, restrict the use of a hazardous substance in accordance with this section if—
 - (a) a decision under **section 62(2)** that grounds exist to reassess the hazardous substance has been publicly notified; and 25
 - (b) the Authority has not approved or declined a reassessment application relating to the decision under **section 62(2)**, or no application for reassessment has been made; and
 - (c) the Authority has reasonable cause to believe that there is actual or likely danger to human health or safety or the environment from the use of the substance; and 30
 - (d) the Authority has consulted the persons who the Authority considers are likely to be directly affected by the restriction of use.
- (2) The notice— 35
 - (a) may prohibit the use of a hazardous substance in specified circumstances or places, or by specified classes of persons; but
 - (b) must not prohibit the use of the hazardous substance generally.

- (3) The notice—
- (a) must identify the nature of the restriction, including any conditions, on the use of the hazardous substance; and
 - (b) remains in force until the earliest of the following:
 - (i) the date on which the Authority approves or declines a reassessment application relating to the hazardous substance: 5
 - (ii) the date on which the applicant withdraws a reassessment application relating to the hazardous substance:
 - (iii) the date that is 1 year after the date of notification in the *Gazette* if no reassessment application relating to the grounds decision under **section 62(2)** has been lodged with the Authority for the substance by that date. 10
- (4) The Authority must publish the notice on an Internet site maintained by or on behalf of the Authority as soon as practicable after the notice has been published in the *Gazette*. 15

11 New section 76E inserted (Authority may recognise overseas bodies as international regulators)

After section 76D, insert:

- 76E Authority may recognise overseas bodies as international regulators**
- (1) The Authority may, by notice in the *Gazette*, recognise 1 or more overseas bodies as international regulators for the purposes of sections 28A and **63D**. 20
 - (2) Before recognising an overseas body, the Authority must—
 - (a) publicly notify its intention to issue the notice; and
 - (b) give interested persons a reasonable time, which must be specified in the notification published under **paragraph (a)**, to make submissions on the proposal; and 25
 - (c) consult any persons, representative groups within the hazardous substances industry or elsewhere, government departments, WorkSafe, and Crown entities whom the Authority considers appropriate in each case. 30
 - (3) The Authority must not recognise an overseas body unless the Authority has considered whether—
 - (a) the body operates in a manner comparable to the Authority in regulating hazardous substances; and
 - (b) the legislative regime regulating hazardous substances in which the body operates is comparable to this Act; and 35
 - (c) the information from the body is readily accessible by the Authority.

Part 2 Consequential and other amendments

- 12 Section 2 amended (Interpretation)**
- (1) In section 2(1), replace the definition of **EPA notice** with:
- EPA notice** means a notice issued in the *Gazette* by the Authority under Part 6, or under any provision of this Act that applies section 76C, except a notice issued under **section 76E** 5
- (2) In section 2(1), insert in their appropriate alphabetical order:
- international regulator** means an overseas body recognised by a notice issued under **section 76E** 10
- related chemicals or substances** means chemicals or substances with the same or very similar active ingredients
- 13 Section 3A replaced (Transitional and savings provisions relating to amendments to Act)**
- Replace section 3A with: 15
- 3A Transitional, savings, and related provisions**
- The transitional, savings, and related provisions set out in Schedule 7 have effect according to their terms.
- 14 Section 11 amended (Powers, functions, and duties of Authority)**
- In section 11(1)(b)(ii), after “section 103”, insert “or 103A”. 20
- 15 Section 19 amended (Delegation by Authority)**
- (1) After section 19(1)(ab), insert:
- (ac) the issuing of a notice under **section 76E**; and
- (2) After section 19(2)(cb), insert:
- (cc) the power to decide any application under **section 63D**, if it is not publicly notified under section 53(2) or required to be consulted on by **section 53AA(4)**, to its chief executive: 25
- 16 Section 29 amended (Determination of applications)**
- Repeal section 29(3).
- 17 Section 32 amended (Decision on application)** 30
- Repeal section 32(3).
- 18 Section 38 amended (Determination of applications to import or release)**
- Repeal section 38(5).

- 19 Section 45 amended (Determination of application)**
Repeal section 45(3).
- 20 Section 48 amended (Determination of applications)**
Repeal section 48(3).
- 21 Section 62 replaced (Grounds for reassessment of a substance or organism)** 5
Replace section 62 with:
- 62 Grounds for reassessment of substance or organism**
- (1) Any person (including the chief executive of the Authority) may at any time request the Authority to decide whether there are grounds for reassessing any of the following where the organism or substance has previously been assessed by the Authority: 10
- (a) any new organism in containment:
 - (b) any conditionally released new organism:
 - (c) any qualifying organism released with controls: 15
 - (d) any hazardous substance.
- (2) If a request has been made under **subsection (1)**, the Authority may decide that grounds exist to reassess the organism or substance after taking into account—
- (a) that significant new information relating to the effects of the organism or substance has become available; or 20
 - (b) any change in controls under the Health and Safety at Work Act 2015; or
 - (c) that another substance with similar or improved beneficial effects and reduced adverse effects has become available; or
 - (d) that information showing a significant change of use, or a significant change in the quantity manufactured, imported, or developed, has become available; or 25
 - (e) whether the substance has been included in the reassessments work plan required by **section 20C**.
- (3) For the purposes of **subsection (1)**, **assessed by the Authority** means a decision under any of sections 28A, 29, 32, 38BA, 38C, 38I, 42, 42A, 42B, 42C, 45, and 48 or a decision by the Minister under section 73, or a deemed assessment under section 160A. 30
- 22 Section 63 amended (Reassessment)**
Replace section 63(1) with: 35

- (1) Any person (including the chief executive of the Authority) may request the Authority to proceed with a reassessment following a decision under **section 62(2)**.
- 23 Section 63A amended (Modified reassessment procedure for amendments to approvals of hazardous substances)** 5
- (1) In section 63A(3), replace “sections 55 to 61” with “**sections 53AA** and 55 to 61”.
- (2) Repeal sections 63A(4) and (5).
- 24 Section 63C amended (Modified reassessment to change controls in other cases)** 10
- (1) In section 63C(3), replace “sections 55 to 61” with “**sections 53AA** and 55 to 61”.
- (2) Repeal sections 63C(4) and (5).
- 25 Section 65 amended (No compensation following reassessment)**
- (1) In section 65, replace “section 63, 63A, or 63C” with “section 63, 63A, 63C, or **63D**, or a restriction is imposed under **section 64A**,” 15
- (2) After section 65(e), insert:
- (f) imposes a restriction under **section 64A**.
- 26 Section 68 amended (Minister’s power to call in applications with significant effects)** 20
- In section 68(1A), replace “the application is one referred to in section 53” with “the application is one to which **section 53(4)** applies”.
- 27 Section 109 amended (Offences)**
- After section 109(1)(e)(vi), insert:
- (vii) any restriction imposed on the use of a hazardous substance under **section 64A**; or 25
- 28 Section 114 amended (Penalties)**
- (1) In section 114(1), replace “paragraph (e)”, with “paragraph (da) or paragraph (e)(i) to (vi)”.
- (2) After section 114(1), insert: 30
- (1A) Every person who commits an offence against section **109(1)(e)(vii)** is liable on conviction,—
- (a) in the case of a natural person, to a fine not exceeding \$50,000:
- (b) in the case of a person other than a natural person, to a fine not exceeding \$100,000. 35

29 Section 137 amended (Emergency powers)

- (1) In section 137(1)(a), replace “section 103 or section 119” with “section 103, 103A, or 119”.
- (2) In section 137(1)(b), after “section 103”, insert “or 103A”.

30 Schedule 7 amended

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- (1) Replace the Schedule 7 heading with:

Schedule 7
Transitional, savings, and related provisions

s 3A

- (2) In Schedule 7, before clause 1, insert:

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Part 1
Provisions relating to Hazardous Substances and New Organisms
Amendment Act 2015

- (3) In Schedule 7,—
 - (a) insert the Part set out in the Schedule of this Act as the last Part; and
 - (b) make all necessary consequential amendments.
- (4) In Schedule 7, repeal clause 9.

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Schedule
New Part 2 inserted into Schedule 7

s 30

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Part 2	
Provisions relating to Hazardous Substances and New Organisms (Hazardous Substances Assessments) Amendment Act 2021	
10	Interpretation
	In this Part, commencement date means the day on which this Part comes into force.
11	Application of requirements in section 53AA
	Section 53AA(2) to (6) applies only in respect of applications for reassessment lodged on or after the commencement date.
12	Pre-enactment action relating to notice made under section 76E
	Subsections (2) and (3) of section 76E are satisfied in relation to a notice if the Authority took action of the kind described in those subsections before their commencement (including before their enactment) for the purpose of facilitating the issue of the notice.
13	Penalty in respect of section 109(1)(da)
	A person is not liable to the penalty under section 114(1) in respect of an offence committed against section 109(1)(da) before the commencement date.

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