

# **Hazardous Substances and New Organisms (Approvals and Enforcement) Amendment Act 2005**

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**Hazardous Substances and New  
Organisms (Approvals and Enforcement)  
Amendment Act 2005**

2005 No 123

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

- (1) This Act is the Hazardous Substances and New Organisms (Approvals and Enforcement) Amendment Act 2005.
- (2) In this Act, the Hazardous Substances and New Organisms Act 1996 is called “the principal Act”.

**2 Commencement**

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

**Part 1  
Amendments to Parts 1, 4, 4A, 5, and 6 of  
principal Act**

**3 Interpretation**

- (1) Section 2(1) of the principal Act is amended by inserting, in their appropriate alphabetical order, the following definitions:

“**environmental medium**,—

“(a) in relation to class 6 substances, means—

“(i) air, water, and soil; or

“(ii) a surface that a hazardous substance may be deposited onto:

“(b) in relation to class 9 substances, means water, soil, or sediment where these are in the natural environment, or a surface that a hazardous substance may be deposited onto

“**exposure limit** means an environmental exposure limit, a tolerable exposure limit, or a workplace exposure standard (as these terms are defined in section 77B(6))

“**local authority** means a territorial authority or a regional council

“**regional council** means a regional council within the meaning of the Local Government Act 2002”.

(2) Section 2(1) of the principal Act is amended by repealing the definition of **research and development**, and substituting the following definition:

“**research and development**, in relation to a hazardous substance, means systematic investigation or experimentation activities that involve the hazardous substance”.

#### **4 Act to bind the Crown**

Section 3 of the principal Act is amended by repealing subsections (4) and (5), and substituting the following subsections:

“(4) The codes of practice developed under subsection (3)—

“(a) must—

“(i) be based on the relevant controls (including any group standard conditions) imposed by the Authority on hazardous substances that have been approved by the Authority (including a deemed approval under section 96E or section 160A) for any purpose under this Act; or

“(ii) meet the relevant requirements prescribed by regulations made in accordance with section 75; and

“(b) may incorporate or adapt any relevant international code of practice.

“(5) The Chief of Defence Force—

- “(a) must ensure that methods of controlling all hazardous substances not contained in any weapons system and controlled by the Minister of Defence—
- “(i) are based on the relevant controls (including any group standard conditions) imposed by the Authority on hazardous substances that have been approved by the Authority (including a deemed approval under section 96E or section 160A) for any purpose under this Act; or
  - “(ii) meet the relevant requirements prescribed by regulations made in accordance with section 75; and
- “(b) may comply with the relevant requirements in paragraph (a) by following the relevant code of practice approved under section 79.”

#### **5 Restriction on Ministerial direction**

Section 17 of the principal Act is amended by inserting, after the expression “Part V”, the words “or Part 6A”.

#### **6 Delegation by Authority**

- (1) Section 19(2)(b) of the principal Act is amended by inserting, after the expression “Part V”, the words “or Part 6A”.
- (2) Section 19(2) of the principal Act is amended by inserting, after paragraph (h), the following paragraph:

“(ha) the power to revoke a test certificate for an approved filler or an approved handler under section 82C to its chief executive:”.

#### **7 New section 20A inserted**

The principal Act is amended by inserting, after section 20, the following section:

##### **“20A Register of exposure limits for substances with toxic or ecotoxic properties**

- “(1) The Authority must keep and maintain a register of all exposure limits set under this Act for substances with toxic or ecotoxic properties.
- “(2) The register must specify—
  - “(a) the type of exposure limit:

- “(b) the value of the exposure limit:
  - “(c) the hazardous substance that the exposure limit will apply to:
  - “(d) if the exposure limit applies to any element or compound making up the hazardous substance, the element or compound that the exposure limit will apply to.
- “(3) Every person has the right to inspect the register during the ordinary office hours of the Authority.”

**8 Fees for local authorities**

Section 23 of the principal Act is amended by omitting the words “territorial authority”, and substituting the words “local authority”.

**9 Prohibition of storage of persistent organic pollutants**

Section 25B(2)(a) of the principal Act is amended by omitting the words “(other than polychlorinated biphenyls)”.

**10 Rapid assessment for importation or manufacture of hazardous substances**

- (1) Section 28A(2) of the principal Act is amended by adding the expression “; or” to paragraph (b), and adding the following paragraph:
- “(c) the substance has been formulated so that 1 or more of its hazardous properties has a lesser degree of hazard than any substance that has been approved under this Act.”
- (2) Section 28A(3) of the principal Act is amended by omitting the words “Section 77 applies”, and substituting the words “Sections 77, 77A, and 77B apply”.

**11 Determination of applications**

Section 29(2) of the principal Act is amended by omitting the expression “section 77”, and substituting the words “sections 77, 77A, and 77B”.

**12 Importing hazardous substances in containment**

Section 30 of the principal Act is amended by inserting, after paragraph (c), the following paragraph:

“(ca) formulating, relabelling, repackaging, or storing any hazardous substance for export to a destination outside New Zealand; or”.

**13 Exemptions from Act for small-scale research on hazardous substances**

(1) Section 33(d) of the principal Act is amended by adding the words “, except as provided for in subsection (2)”.

(2) Section 33 of the principal Act is amended by adding, as subsection (2), the following subsection:

“(2) A hazardous substance, or any substance created from the use of that hazardous substance, referred to in subsection (1) may be sold as a substance or in a product containing or derived from that substance only if it is sold to—

“(a) a laboratory in New Zealand that meets the prescribed requirements:

“(b) a laboratory outside New Zealand, but only if—

“(i) the hazardous substance or the substance has been sold to the laboratory outside New Zealand by a laboratory in New Zealand that meets the prescribed requirements; and

“(ii) the laboratory in New Zealand holds evidence that the hazardous substance or the substance will be used by the laboratory outside New Zealand in research and development or training, and produces that evidence if requested to do so by the Authority.”

**14 New heading and section 49L inserted**

The principal Act is amended by inserting, after section 49K, the following heading and section:

*“Rapid assessment and approval of other  
hazardous substances in special emergencies*

**“49L Rapid assessment and approval of other hazardous substances in special emergencies**

“(1) Sections 49A to 49K apply, with all necessary modifications, to the rapid assessment and approval of other hazardous substances in special emergencies.

“(2) In this section, other hazardous substances means hazardous substances that are not already covered by sections 49A to 49K by virtue of being contained in an agricultural compound or a medicine.”

**15 Applications required to be publicly notified**

Section 53(1) of the principal Act is amended by adding the following paragraph:

“(f) an application under section 96B to issue, amend, or revoke a group standard.”

**16 New section 63A inserted**

The principal Act is amended by inserting, after section 63, the following section:

**“63A Modified reassessment procedure for amendments to approvals of hazardous substances**

“(1) Despite anything to the contrary in this Act, the Authority may, following a decision under section 62(2), reassess a hazardous substance in accordance with this section if the Authority considers that—

“(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

“(b) the amendment is not a minor or technical amendment to which section 67A applies.

“(2) A reassessment under this section—

“(a) may vary the controls that attach to a hazardous substance, or the description of a hazardous substance, or both; but

“(b) may not revoke an approval given to a hazardous substance under this Act to import or manufacture the substance.

“(3) A reassessment under this section is deemed to be an application, and sections 55 to 61 apply with all necessary modifications.

“(4) The Authority may reassess a hazardous substance under this section without publicly notifying the reassessment in accordance with section 53.



- “(5) If the Authority does not publicly notify the reassessment in accordance with section 53, the Authority must—
- “(a) do everything reasonably practicable on its part to consult with all persons who, in its opinion, may be 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.
- “(6) 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
  - “(b) the best international practices and standards for the safe management of hazardous substances.
- “(7) Section 77 applies to any hazardous substance that is approved under this section.
- “(8) Section 65(e) applies, with all necessary modifications, to a reassessment under this section.”

**17 Regulations prescribing hazard classification control**

Section 75 of the principal Act is amended by adding the following subsection:

- “(3) Any regulations made under subsection (1)(e) or (f) may—
- “(a) set, or provide for the setting of, exposure limits within a range of values, or according to a methodology;
  - “(b) set, or provide for the setting of, exposure limits by adopting international values or international methodologies.”

**18 Controls on hazardous substances**

Section 77 of the principal Act is amended by adding the following subsection:

- “(8) The powers under sections 77A and 77B are in addition to the powers conferred by this section.”

**19 New section 77B inserted**

The principal Act is amended by inserting, after section 77A, the following section:

**“77B Exposure limits for substances with toxic or ecotoxic properties**

- “(1) Despite anything to the contrary in this Act, the Authority may, at the time, or at any time after, it approves a substance with toxic or ecotoxic properties for any purpose under this Act,—
- “(a) set exposure limits for the substance or any element or compound making up the substance that the Authority thinks fit; or
  - “(b) provide for the setting of exposure limits for the substance or any element or compound making up the substance.
- “(2) Exposure limits set under subsection (1) may comprise 1 or more of the following:
- “(a) environmental exposure limits:
  - “(b) tolerable exposure limits:
  - “(c) workplace exposure standards.
- “(3) Without limiting anything in subsection (1), the Authority may—
- “(a) provide that all or any of the exposure limits set by it are for guidance only:
  - “(b) set, or provide for the setting of, exposure limits within a range of values or according to a methodology:
  - “(c) set, or provide for the setting of, exposure limits by adopting international values or international methodologies.
- “(4) Exposure limits imposed under this section are controls for the purposes of this Act, and such exposure limits may—
- “(a) be additional to other specified exposure limits; or
  - “(b) vary other specified exposure limits; or
  - “(c) substitute other specified exposure limits; or
  - “(d) combine other specified exposure limits; or
  - “(e) delete other specified exposure limits.
- “(5) Before setting exposure limits under this section, the Authority must—

- “(a) consider the best international practices and standards for the safe management of substances with toxic or ecotoxic properties; and
  - “(b) be satisfied that, against other specified exposure limits that apply to the substance,—
    - “(i) the proposed exposure limit is more effective in terms of its effect on the management, use, and risks of the substance; or
    - “(ii) the proposed exposure limit is more cost-effective in terms of its effect on the management, use, and risks of the substance; or
    - “(iii) the proposed exposure limit is more likely to achieve its purpose; and
  - “(c) do everything reasonably practicable on its part to advise all people who in its opinion may be affected by the proposed exposure limit; and
  - “(d) give those people a reasonable opportunity to make submissions and comments to the Authority on the proposed exposure limit; and
  - “(e) consider all submissions and comments received.
- “(6) In this section,—
- “**environmental exposure limit** means the limit on the concentration of a substance (or any element or compound making up the substance) with ecotoxic properties in an environmental medium as set in accordance with this section or regulations made under section 75
- “**tolerable exposure limit** means the limit on the concentration of a substance (or any element or compound making up the substance) with toxic properties in an environmental medium as set in accordance with this section or regulations made under section 75
- “**workplace exposure standard** means the limit on the concentration of a substance (or any element or compound making up the substance) with toxic properties in air set in accordance with this section or regulations made under section 75 for the purpose of protecting persons in a workplace from the adverse effects of toxic substances.”

**20 Issue of test certificates by test certifiers**

Section 82 of the principal Act is amended by adding the following subsection:

- “(5) A test certifier must, as soon as practicable after issuing a test certificate under this section, forward a copy of that test certificate to the Authority.”

**21 New sections 82A, 82B, and 82C inserted**

The principal Act is amended by inserting, after section 82, the following sections:

**“82A Register of test certificates**

- “(1) The Authority must keep and maintain a register of test certificates issued by test certifiers under section 82.

- “(2) The purpose of the register is to facilitate compliance with, and enforcement of,—

“(a) this Act, the Agricultural Compounds and Veterinary Medicines Act 1997, the Health and Safety in Employment Act 1992, and the Resource Management Act 1991; and

“(b) any regulations or notices in force under those Acts.

- “(3) The register must specify—

“(a) the date on which each test certificate was issued, and the expiry date or (if applicable) the date of the revocation of the test certificate; and

“(b) the name of the test certifier who issued the certificate; and

“(c) the matter for which each test certificate has been issued; and

“(d) details of the prescribed requirements for which each test certificate was issued; and

“(e) in the case of a test certificate issued in respect of a place, the street address of the place; and

“(f) in the case of a test certificate issued in respect of a person,—

“(i) the name of the person; and

“(ii) the name and address of the person’s place of work.

- “(4) A search of the register may be carried out by the Authority, and by the following persons for the following purposes:

- “(a) an individual, or a person with the written consent of the individual, for the purpose of searching for information about that individual in accordance with the Privacy Act 1993:
  - “(b) a test certifier for the purpose of searching for information that the test certifier has provided under section 82(5):
  - “(c) an approved person for a purpose that—
    - “(i) relates to the purpose of the register; or
    - “(ii) is necessary to prevent or lessen a serious and imminent threat to public health, public safety, or the life or health of any person; or
    - “(iii) is necessary to avoid prejudice to the maintenance of the law (including the prevention, detection, investigation, prosecution, and punishment of offences); or
    - “(iv) has been authorised by the Privacy Commissioner under section 54(1) of the Privacy Act 1993.
- “(5) In this section, **approved person** means—
- “(a) the chief executive of the department that is, with the authority of the Prime Minister, for the time being responsible for the administration of the Agricultural Compounds and Veterinary Medicines Act 1997:
  - “(b) a person specified in section 97:
  - “(c) an enforcement officer.

**“82B Delegation by approved person**

- “(1) An approved person described in section 82A(5)(a) and (b) may, in writing, delegate to any person the approved person’s power to search the register in accordance with section 82A(4).
- “(2) The approved person may delegate the power to search the register on such terms and conditions as the approved person thinks fit.
- “(3) Every decision made in accordance with a delegation under subsection (1) must be treated in all respects as though it were a decision of the approved person.

- “(4) Every person purporting to act under a delegation under this section is presumed to be acting in accordance with its terms in the absence of evidence to the contrary.
- “(5) A delegation under this section is revocable at will and does not prevent the exercise of the power to search the register by the approved person.
- “(6) Every delegation under subsection (1) must be available for public inspection at the office of the relevant approved person during ordinary office hours.

**“82C Revocation of test certificates for approved fillers and approved handlers**

- “(1) The Authority may, at any time and by notice in writing to the person to whom the test certificate was issued (the **certificate holder**), revoke a test certificate issued to an approved filler or an approved handler (as the case may be) if the Authority is satisfied that the certificate holder—
  - “(a) obtained the test certificate by fraud, misrepresentation, or concealment of facts; or
  - “(b) has been negligent as a certificate holder; or
  - “(c) is incompetent to act as a certificate holder.
- “(2) The Authority may not revoke a test certificate under subsection (1) unless the Authority—
  - “(a) has notified the certificate holder in writing of its intention to investigate whether to revoke the test certificate; and
  - “(b) has given the certificate holder reasons in writing for the Authority’s investigation; and
  - “(c) has given the certificate holder a reasonable opportunity to make submissions to the Authority in respect of the investigation; and
  - “(d) has considered all submissions and any other information received; and
  - “(e) is, as a result of the investigation, satisfied that there are grounds for revoking the test certificate under subsection (1).
- “(3) The Authority may seek, receive, or take into account any other information or evidence that the Authority considers relevant for the purposes of this section.

- “(4) If the Authority proposes to take into account any information that is or may be prejudicial to the certificate holder, the Authority must, subject to subsection (5), disclose that information to the certificate holder and give him or her a reasonable opportunity to refute or comment on the information.
- “(5) The Authority is not required to disclose any information under subsection (4) that would be likely to endanger the safety of any person.
- “(6) If the Authority determines not to disclose any information in reliance on subsection (5), the Authority must inform the certificate holder of the fact of non-disclosure, and the following provisions apply:
- “(a) in the case of non-disclosure to an individual of information about the individual,—
    - “(i) the Authority must inform the individual that he or she may, under the Privacy Act 1993, complain to the Privacy Commissioner about that non-disclosure; and
    - “(ii) the provisions of that Act apply to that non-disclosure as if, following a request under that Act for the information withheld, the information had been withheld under section 27(1)(d) of that Act; and
  - “(b) in any other case,—
    - “(i) the Authority must inform the person that the person may seek a review by an Ombudsman of that non-disclosure under the Official Information Act 1982; and
    - “(ii) the provisions of that Act apply to that non-disclosure as if, following a request under that Act for the information withheld, the information had been withheld under section 6(d) of that Act.
- “(7) On completion of the Authority’s investigation, the Authority must notify the certificate holder in writing of—
- “(a) the Authority’s decision; and
  - “(b) the certificate holder’s right of appeal against that decision.

“(8) A test certificate that is revoked under this section is deemed to have expired on the date on which the test certificate was revoked.

“(9) In this section,—

“**approved filler** has the same meaning as in the Hazardous Substances (Compressed Gases) Regulations 2004

“**approved handler** means a person who holds a current test certificate certifying that the person has met the requirements of the Hazardous Substances and New Organisms (Personnel Qualifications) Regulations 2001 in relation to an approved handler for 1 or more hazard classifications or hazardous substances.”

**22 Authority to recommend establishment**

Section 88(a) of the principal Act is amended by omitting the expression “section 77”, and substituting the words “sections 77, 77A, and 77B”.

**23 Transferable permit scheme and variation of controls**

Section 89(1) of the principal Act is amended by omitting the expression “section 77”, and substituting the words “sections 77, 77A, and 77B”.

**24 Report on environmental user charges**

Section 96(1) of the principal Act is amended by omitting the expression “section 77”, and substituting the words “sections 77, 77A, and 77B”.

**Part 2**

**New Part 6A inserted in principal Act**

**25 New Part 6A inserted**

The principal Act is amended by inserting, after Part 6, the following Part:



**“Part6A**  
**“Group standards**

**“96A Purpose of Part**

The purpose of this Part is to enable the Authority to issue, amend, and revoke standards (known as group standards) for groups of hazardous substances (whether these are subject to Part 5 or not) that have a similar nature, are of a similar type, or have similar circumstances of use, so that the risks of the grouped hazardous substances can be effectively managed by 1 set of conditions.

**“96B Group standards**

- “(1) The Authority may, by notice in the *Gazette*, issue group standards that—
- “(a) identify the group of hazardous substances or products (described in subsection (2)) concerned; and
  - “(b) impose as conditions under this section any obligations and restrictions that the Authority thinks fit on the identified group of hazardous substances or products.
- “(2) A group standard may apply to 1 or more of the following hazardous substances or products:
- “(a) a hazardous substance to which Part 5 applies;
  - “(b) a hazardous substance to which Parts 11 to 15 apply;
  - “(c) a hazardous substance to which a notice or regulation under Part 11 applies, or a hazardous substance that has been approved under Part 5;
  - “(d) a product (including, but not limited to, a manufactured article, a waste product, or a manufacturing by-product) that is, contains, incorporates, or includes a hazardous substance.
- “(3) The Authority may, by notice in the *Gazette*, amend or revoke group standards that are issued under subsection (1).
- “(4) The Authority may issue, amend, or revoke group standards under this section—
- “(a) on its own initiative; or
  - “(b) on application by any person.
- “(5) A notice issued under this section is a regulation for the purposes of the Regulations (Disallowance) Act 1989, but is not

a regulation for the purposes of the Acts and Regulations Publication Act 1989.

- “(6) As soon as practicable after issuing, amending, or revoking a group standard, the Authority must do the following:
- “(a) publish the group standard, amendment, or revocation in a publication relevant to affected persons; and
  - “(b) make the group standard, amendment, or revocation available to be inspected free of charge and purchased at a reasonable price; and
  - “(c) give public notice of where the group standard, amendment, or revocation can be inspected or purchased.

**“96C When group standards may be issued or amended**

- “(1) Before issuing or amending group standards under section 96B, the Authority must,—
- “(a) in the case of any hazardous substance to which section 96B(2)(a) applies, be satisfied that issuing or amending (as the case may be) group standards is a more efficient and effective way of managing the risks of all the hazardous substances in the identified group than the approval process under Part 5; and
  - “(b) in the case of any hazardous substance to which section 96B(2)(b) applies, be satisfied that issuing or amending (as the case may be) group standards is a more efficient and effective way of managing the risks of all the hazardous substances in the identified group; and
  - “(c) in the case of any hazardous substance to which section 96B(2)(c) applies, be satisfied that issuing or amending (as the case may be) group standards is a more efficient and effective way of managing the risks of all the hazardous substances in the identified group; and
  - “(d) in the case of any product to which section 96B(2)(d) applies, be satisfied that—
    - “(i) the benefits associated with a reduction of environmental and health risks outweigh the economic costs associated with complying with the group standard; and
    - “(ii) the issuing or amending (as the case may be) of group standards is the most efficient and effective

- way of managing the risks of all the products in the identified group, having considered matters including alternative methods of managing those risks; and
- “(iii) the group standard is only applied to the extent that it is reasonably necessary to manage the risks of the products; and
- “(e) where a group standard applies—
- “(i) to 1 hazardous substance or product (described in section 96B(2)), be satisfied that the risks of the hazardous substance or product can be effectively managed by 1 set of conditions; or
  - “(ii) to more than 1 hazardous substance or product (described in section 96B(2)), be satisfied that all the hazardous substances or products in the identified group have a similar nature, are of a similar type, or have similar circumstances of use, such that the risks of the group of hazardous substances or products can be effectively managed by 1 set of conditions; and
- “(f) consider the best international practices and standards for the safe management of hazardous substances and products (described in section 96B(2)); and
- “(g) consider the types of controls appropriate for the group in accordance with sections 77, 77A, and 77B; and
- “(h) in accordance with section 53, publicly notify—
- “(i) the proposal to issue or amend (as the case may be) group standards; and
  - “(ii) its assessment of the matters required under subsection (1)(a), (b), (c), (d), and (e) in relation to the group standards as proposed to be issued or amended.
- “(2) Where the Authority proposes to issue, amend, or revoke group standards on its own initiative, sections 53 to 61 apply, with all necessary modifications, for the purposes of this section, as if the proposal were an application.

**“96D Revocation of group standards**

- “(1) Before revoking group standards under section 96B, the Authority must publicly notify its proposal to revoke group standards in accordance with section 53.
- “(2) Sections 54 to 61 apply, with all necessary modifications, for the purposes of this section.

**“96E Effect of group standards**

- “(1) If a group standard applies to a hazardous substance or product, the substance or product must comply with the group standard.
- “(2) However, in the case of a hazardous substance, if the hazardous substance also has an approval given under this Act, the substance may instead comply with the approval.
- “(3) A hazardous substance to which section 96B(2)(a) applies is deemed to have been approved by the Authority under section 29.

**“96F Hazardous substances in group standards if Parts 11 to 15 apply**

If Parts 11 to 15 apply to a hazardous substance and a group standard is made under section 96B that applies to the substance,—

- “(a) Parts 11 to 15 do not apply to that hazardous substance on and from the date on which the group standard comes into force; and
- “(b) the hazardous substance is deemed to have been approved by the Authority on the date that the group standard comes into force.”

**26 Pre-commencement consultation on group standards**

Consultation on group standards completed in accordance with sections 53 to 61 of the Hazardous Substances and New Organisms Act 1996 is to be treated as complying with those sections even though some or all of the consultation occurred before the commencement of this Act

**Part 3**  
**Amendments to Parts 7, 8, 10, and 11 of principal Act**

**27 Enforcement of Act**

- (1) Section 97(h)(iii) of the principal Act is amended by omitting the words “local authority”, and substituting the words “territorial authority”.
- (2) Section 97 of the principal Act is amended by adding, as subsection (2), the following subsection:
  - “(2) The chief executive of a regional council may—
    - “(a) enforce the provisions of this Act in or on those premises specified in subsection (1)(a) to (g) if the regional council is in or on those premises for the purposes of enforcing the provisions of the Resource Management Act 1991:
    - “(b) enforce the provisions of this Act in or on those premises specified in subsection (1)(a) to (g) if the function, power, or duty is transferred to the regional council in accordance with section 98.”

**28 New section 97B inserted**

The principal Act is amended by inserting, after section 97A, the following section:

**“97B Enforcement of Act in respect of hazardous substances in place of work**

- “(1) The enforcement agency must ensure that the provisions of this Act are enforced in respect of hazardous substances in a place of work.
- “(2) For the purpose of complying with subsection (1), the enforcement agency may appoint enforcement officers in accordance with this Act who may exercise the powers of inspectors under the Health and Safety in Employment Act 1992, and the provisions of that Act apply with all necessary modifications.
- “(3) In this section,—  
“**enforcement agency** means the chief executive of the department of State responsible for the administration of the Health and Safety in Employment Act 1992

“**inspector and place of work** have the same meanings as in section 2(1) of the Health and Safety in Employment Act 1992.”

**29 Offences**

Section 109(1) of the principal Act is amended by inserting, after paragraph (ea), the following paragraph:

“(eb) fails to comply with a condition imposed under section 96B(1)(b) on an identified group of hazardous substances; or”.

**30 Penalties**

Section 114(1) of the principal Act is amended by inserting, after the words “or paragraph (ea)”, the words “or paragraph (eb)”.

**31 Strict liability and defences**

Section 117(1) of the principal Act is amended by inserting, after the words “or paragraph (e)”, the words “or paragraph (eb)”.

**32 New section 121 substituted**

The principal Act is amended by repealing section 121, and substituting the following section:

**“121 Application of Customs and Excise Act 1996 to hazardous substance imported in breach of this Act**

A hazardous substance that is being, or has been, imported in breach of this Act is a prohibited import under section 54 of the Customs and Excise Act 1996, and the provisions of that Act (including, for the avoidance of doubt, section 209 of that Act) apply accordingly.”

**33 New section 122 substituted**

The principal Act is amended by repealing section 122, and substituting the following section:

**“122 Power to require hazardous substance to leave New Zealand**

- “(1) If a customs officer has reasonable cause to believe that a hazardous substance is being, or has been, imported in breach of this Act, the customs officer may,—
- “(a) in the case of a hazardous substance that is being imported in breach of this Act, direct that the importer of the hazardous substance cause the hazardous substance to remain on the ship or aircraft and leave New Zealand at the importer’s own cost and in accordance with the directions of the customs officer; or
  - “(b) in the case of a hazardous substance that has been imported in breach of this Act and has been unloaded from a ship or aircraft, direct that the importer of the hazardous substance cause the hazardous substance to leave New Zealand at the importer’s own cost and in accordance with the directions of the customs officer.
- “(2) Subsection (1)(b) applies only to hazardous substances that are goods that are subject to the control of the Customs in accordance with section 20 of the Customs and Excise Act 1996.
- “(3) In this section,—
- “**cost**, in relation to a hazardous substance that has been imported in breach of this Act, includes the costs of handling, storing, and transporting the hazardous substance
  - “**importer** importer has the same meaning as in section 2(1) of the Customs and Excise Act 1996.”

**34 Appeals**

- (1) Section 125(1) of the principal Act is amended by inserting, after paragraph (d), the following paragraph:
- “(da) revokes a test certificate under section 82C; or”.
- (2) Section 125 of the principal Act is amended by inserting, after subsection (2A), the following subsection:
- “(2B) If a customs officer directs in accordance with section 122 that an importer of a hazardous substance is to cause the hazardous substance to leave New Zealand, the importer may appeal against that direction to the District Court.”

**35 Incorporation of material by reference**

- (1) Section 141A(1) of the principal Act is amended by omitting the words “regulations or code of practice”, and substituting the words “regulations, group standard, notice of transfer, or code of practice”.
- (2) Section 141A(1)(b) of the principal Act is amended by—
  - (a) omitting the words “a code”, and substituting the words “a group standard, notice of transfer, or code” ; and
  - (b) omitting the words “regulations or code”, and substituting the words “regulations, group standard, notice of transfer, or code”.
- (3) Section 141A(2) of the principal Act is amended by—
  - (a) omitting the words “regulations or a code of practice”, and substituting the words “regulations, a group standard, a notice of transfer, or a code of practice” ; and
  - (b) omitting the words “regulations or code”, and substituting the words “regulations, group standard, notice of transfer, or code”.
- (4) Section 141A(3) of the principal Act is amended by—
  - (a) omitting the words “regulations or a code of practice”, and substituting the words “regulations, a group standard, a notice of transfer, or a code of practice” ; and
  - (b) omitting the words “regulations or code” in both places where they appear, and substituting in each case the words “regulations, group standard, notice of transfer, or code”.
- (5) Section 141A(4) of the principal Act is amended by—
  - (a) omitting the words “regulations or a code of practice”, and substituting the words “regulations, a group standard, a notice of transfer, or a code of practice” ; and
  - (b) omitting the words “a code”, and substituting the words “a group standard, notice of transfer, or code”.

**36 Notification of hazardous substances injuries**

- (1) Section 143 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:  
“(1) In this section,—



“**hospital means** a hospital care institution within the meaning of section 58(4) of the Health and Disability Services (Safety) Act 2001

“**medical practitioner** means a health practitioner who is, or is deemed to be, registered with the Medical Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medicine.”

(2) Section 143 of the principal Act is amended by inserting, after subsection (2), the following subsection:

“(2A) If a medical practitioner finds that a person who is not admitted to a hospital is suffering from an injury caused by a hazardous substance, the medical practitioner must give notice of the injury to the Medical Officer of Health.”

(3) Section 143(3) of the principal Act is amended by inserting after the expression “subsection (2)”, the words “or subsection (2A)”.

### **37 Controls may be imposed for purposes of notice of transfer**

Section 160B(2) of the principal Act is amended by omitting the words “sections 77 and 77A”, and substituting the words “sections 77, 77A, and 77B”.

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#### **Legislative history**

31 January 2005	Introduction (Bill 244-1)
17 February 2005	First reading and referral to Education and Science Committee
11 July 2005	Reported from Education and Science Committee (Bill 244-2)
13 December 2005	Second reading, committee of the whole House, third reading

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