

Hazardous Substances and New Organisms (Approvals and Enforcement) Amendment Bill

Government Bill

As reported from the Education and Science Committee

Commentary

Recommendation

The Education and Science Committee has examined the Hazardous Substances and New Organisms (Approvals and Enforcement) Amendment Bill and recommends that it be passed with the amendments shown.

Introduction

This bill aims to improve the workability of the hazardous substances provisions of the Hazardous Substances and New Organisms Act 1996 (the Act) and to deliver the longer term changes as proposed in the hazardous substances strategy approved by Cabinet in June 2003.¹

The key provision in this bill is a group standards mechanism which will enable the Environmental Risk Management Authority (the Authority) to develop group standards for substances of similar type, nature, and use, and to set user-friendly conditions for managing the risks of each group. The group standards mechanism also serves to control hazardous waste materials and articles that meet the hazardous thresholds set out in the Act and the Regulations.

¹ Strategy for Improving the Workability of Hazardous Substances Provisions of the Hazardous Substances and New Organisms Act, June 2003.

The bill aims to reduce costs to business and the Government and reduce barriers to innovation without compromising the appropriate management of risks.

We make the following recommendations from our consideration of the bill.

Register of exposure limits for substances with toxic or ecotoxic properties

We recommend amending new section 20A(2) as inserted by clause 6 so that it is consistent with the items for which an exposure limit can be set as specified in clause 17, which inserts new section 77B. We consider that an exposure limit should be specified with each substance approval to which such an exposure limit applies. We consider that applicable limits should be part of the compliance information provided by the Authority.

Prohibition of import, manufacture, development, field testing, or release

We recommend that clause 8 be deleted, as its content is covered by new section 96F and proposed new section 96G as inserted by clause 20.

Rapid assessment

As introduced, clause 9 which amends section 28A of the Act, has a circular problem with the use of the term “substance” as the reformulated substance is no longer the original substance, nor is it similar, because one or more hazardous properties have been replaced by less hazardous properties. We recommend an amendment to replace new section 28A(2)(c) with a new provision to ensure clarity.

Importing hazardous substances in containment

Clause 10 amends section 30 of the Act by inserting new section 30(ca). This provides for containment approval for the formulation, re-labelling or repackaging of a hazardous substance for export to a destination outside New Zealand.

We recommend amending new section 30(ca) to include the word “storing” to make it clear that the containment facility will also be holding the substance prior to export.

Grounds for reassessment of a substance or organism

We recommend that clause 13 be omitted. This clause is redundant as a group standard is an approval and can therefore be tested for a reassessment under section 62(4) of the Act.

Modified reassessment procedure

To clarify the effect of a modified reassessment, we recommend that new section 63A as inserted by clause 14 be amended to state that a modified reassessment will not result in an approval being withdrawn. To withdraw an approval requires a full reassessment process.

Accordingly, we recommend new subsection (1A) which provides that a reassessment under new section 63A may:

- vary the controls that attach to a substance
- vary the description of the substance
- not revoke an approval given under this Act to import or manufacture a substance.

We also recommend omitting the words “controls attaching to” from the title for new section 63A. As drafted this phrase does not allow for any change to the definition of substance by the modified reassessment procedure.

We further recommend an amendment to make it clear that only section 65(e) applies to new section 63A as a result of an approval not being revoked. Section 65(e) provides that there can be no compensation for a change in controls resulting from a reassessment.

Controls on hazardous substances

Clause 16 amends section 77 of the principal Act so that the powers under new section 77B as inserted by clause 17 are in addition to the powers conferred by section 77.

Currently, section 29 of the Act limits the Authority, when making a decision on a hazardous substance, to apply only section 77 in the

setting of controls. We believe that the Authority should also be able to apply sections 77A and 77B in the setting of controls and recommend amendments to the clause accordingly. These amendments state that the powers in 77A and 77B are in addition to the powers of section 77.

We further recommend that all references in the Act to section 77 should include references to section 77A and the new section 77B so that the Authority can comply with section 77 by complying with either section 77A or the new section 77B or both.

Exposure limits for substances with toxic or ecotoxic properties

We recommend amending new section 77B as inserted by clause 17. New section 77B adds a further provision to explicitly enable the setting of exposure limits for substances with toxic and ecotoxic properties. We consider that the new section should clarify the exposure limits that may be set.

We also recommend that the definitions of environmental exposure limits, tolerable exposure limits and workplace exposure standards be moved from clause 3 to appear in new section 77B(5) and be reworked for sense.

Test certificates registration

Clause 19 inserts new sections 82A, 82B and 82C to deal with test certificates registration. We recommend an amendment to clause 19 deleting from new section 82A(3)(c) the phrase “including the name and classification of every hazardous substance relating to the test certificate”. Industrial sites may contain a large number of hazardous substances. The test certificate, therefore, may be for a general compliance for substance classes on that site rather than for each specific substances.

Group standards

New Part 6A as inserted by clause 20 adds group standards as a new approvals mechanism for managing the risks of grouped substances and for setting user-friendly conditions. The new part contains new sections 96A to 96F.

We recommend that new section 96B (Interpretation) be deleted and new section 96C (Group standards) be amended to clarify what

qualifies for inclusion in a group standard. The new definitions of substance and hazardous substance in new section 96B have been expanded to include things which are not substances at all. It is also not clear whether these definitions provide for hazardous substance thresholds.

We propose amending section 96C to provide for the setting of group standards for one or more hazardous substances or products in one or more of the following categories:

- a hazardous substance to which Part 5 of the Act applies
- a hazardous substance to which Parts 11 to 15 of the Act apply
- a hazardous substance to which a notice or regulation made under Part 11 of the Act applies, or a substance that has been approved under Part 5
- a product (including but not limited to a manufactured article, a waste product or a manufacturing by-product) which is, or contains, incorporates or includes a hazardous substance.

We recommend that section 96C(3) be omitted to remove confusion concerning the effect of a group standard regarding substances covered by the transitional provisions in Parts XI to XV.

We recommend the insertion of new section 96C(6). This provision sets out the notification process to be used when a group standard has been issued, amended or revoked. We believe that the public should be able to access freely the group standards.

Issuing or amending group standards

New section 96D refers to the issuing or amending of group standards. In addition to a number of technical amendments to this section we recommend an amendment to ensure that the references to hazardous substances also include products under new section 96C(1A) as products may contain, incorporate or include a hazardous substance.

We also recommend that when proposing a group standard the Authority considers international best practice or international standards to ensure the effective and efficient use of resources.

We further recommend amending clause 5 to insert in section 19(2)(b) after the words “made under Part 5” the words “or Part 6A”. This amendment is to ensure consistency with the provision in

section 19(2)(b) for the Authority to delegate a decision on a Part 5 application to a committee appointed by the Authority in accordance with the Act.

Delegation by Authority of a group standard decision

We consider Part 6A, applications for group standards, should be added to the delegation provisions in clause 43 of Schedule 1 of the Act. We recommend the insertion of new section (1AA) to amend section 19(2)(b) of the Act to include the phrase “or Part 6A”. This will provide consistency with the ability of the Authority to delegate to a committee decisions on Part 5 applications.

Effect of group standards

We recommend that new section 96F be amended. As introduced, a deemed approval under new section 96F(1) ceases if the conditions in a group standard are not complied with. As it is an offence not to comply with a condition, the withdrawal of an approval appears to be unintended. We therefore recommend that the provisions of new section 96F be replaced by the following:

“(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 96C(1A)(a) applies is deemed to have been approved by the Authority under section 29.”

Substances in group standards if Parts 11 to 15 apply

We recommend a further provision, new section 96G. This amendment is to make clear that substances, previously covered by transitional provisions in Parts 11 to 15 which have been transferred into a group standard, are deemed to be approved under the Act.

Enforcement of Act

Clause 21 inserts regional councils as enforcement agencies that may enforce the Act. We recommend that new section 97(2)(a) be

deleted to avoid confusion with the areas specified for enforcement by territorial authorities in section 97(1)(h).

Enforcement of Act in respect of workplaces

Clause 22 inserts new section 97B which enables inspectors to inspect for compliance with the Act when using powers of entry and inspection under the Health and Safety in Employment Act 1992. We recommend amending clause 22 by omitting section 97B(3). The intent of this clause is covered by new section 97B(2), which concerns entry for inspection and the separate requirements when gathering evidence for a prosecution.

Power to require hazardous substances to leave New Zealand

We recommend an amendment to new section 122(3) as inserted by clause 27, to include the word “handling” before “storing” in the definition of “cost”. This amendment requires importers to pay for the full cost of re-exporting an unapproved hazardous substance.

Technical amendments

We recommend a number of technical amendments to the bill for clarity and consistency.

Appendix

Committee process

The Hazardous Substances and New Organisms (Approvals and Enforcement) Amendment Bill was referred to the Committee on 17 February 2005. The closing date for submissions was 15 April 2005. We received and considered 26 submissions from interested groups and individuals. We heard 14 submissions. Hearing of evidence took 6 hours and consideration took 35 minutes.

We received advice from the Ministry of the Environment. The Regulations Review Committee reported to the Committee on the powers contained in clause 20.

Committee membership

Hon Brian Donnelly (Chairperson)
Lynne Pillay (Deputy Chairperson)
Dr Ashraf Choudhary
Deborah Coddington
Helen Duncan
Hon Bill English
Bernie Ogilvy
Simon Power
H V Ross Robertson
Metiria Turei (non-voting member)

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

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (unanimous)

Subject to this Act,

Text struck out unanimously

New (unanimous)

Subject to this Act,

Text inserted unanimously

(Subject to this Act.)

Words struck out unanimously

Subject to this Act,

Words inserted unanimously

Hon Marian Hobbs

Hazardous Substances and New Organisms (Approvals and Enforcement) Amendment Bill

Government Bill

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	49L Rapid assessment and approval of other hazardous substances in special emergencies	96A	Purpose of Part
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**Hazardous Substances and New
Organisms (Approvals and
Enforcement) Amendment**

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22	New section 97B inserted 97B Enforcement of Act in respect of hazardous substances in place of work	27	New section 122 substituted 122 Power to require hazardous substance to leave New Zealand
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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 **2004**.
- (2) In this Act, the Hazardous Substances and New Organisms Act 1996¹ is called “the principal Act”.

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¹ 1996 No 30

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 (I, IV, 4A, V, and VI) 1, 4, 4A,
5, and 6 of principal Act**

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3 Interpretation

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

Struck out (unanimous)

“~~environmental exposure limit~~ means a concentration of a substance with ecotoxic properties in an environmental medium as set in accordance with ~~section 77B~~ or regulations made under section 75

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“~~environmental medium,—~~

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

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- “(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, *(or)* a tolerable exposure limit, or a workplace exposure standard (as these terms are defined in **section 77B(5)**)
“**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”.

Struck out (unanimous)

“**tolerable exposure limit** means a concentration of a substance with toxic properties in an environmental medium as set in accordance with **section 77B** or regulations made under section 75”.

- (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 use of)* 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 96F** 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
- “(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— 10
- “(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 96F** or section 160A) for any purpose under this Act; or 15
- “(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.” 20

New (unanimous)

4A Restriction on Ministerial direction

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

5 Delegation by Authority

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New (unanimous)

(1AA) Section 19(2)(b) of the principal Act is amended by inserting, after the expression “Part V”, the words “or **Part 6A**”.

(1) Section 19(2) of the principal Act is amended by inserting, after paragraph (h), the following paragraph:

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

6 New section 20A inserted

The principal Act is amended by inserting, after section 20, the following section: 5

“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. 10

“(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: 15

New (unanimous)

“(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.” 20

7 Fees for local authorities

Section 23 of the principal Act is amended by omitting the words “territorial authority”, and substituting the words “local authority”. 25

Struck out (unanimous)

8 Prohibition of import, manufacture, development, field testing, or release

Section 25(1) of the principal Act is amended by omitting the words “Parts XI to XVI of this Act”, and substituting the words “Part 6A or Parts XI to XV of this Act”. 30

- 9 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: 5
- “(c) the substance has been formulated (*to have a lesser degree of hazard for any 1 or more hazardous properties than the substance, or a similar substance, had when it was approved*) 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.” 10
- New (unanimous)**
- (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”.
- 9A Determination of applications** 15
- Section 29(2) of the principal Act is amended by omitting the expression “section 77”, and substituting the words “sections 77, 77A, and **77B**”.
- 10 Importing hazardous substances in containment** 20
- Section 30 of the principal Act is amended by inserting, after paragraph (c), the following paragraph:
- “(ca) formulating, relabelling, (or) repackaging, or storing any hazardous substance for export to a destination outside New Zealand; or”.
- 11 Exemptions from Act for small-scale research on hazardous substances** 25
- (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: 30
- “(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— 5

“(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 10
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.” 15

12 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* 20

“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. 25

“(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.”

Struck out (unanimous)

13 Grounds for reassessment of a substance or organism 30

Section 62(4) of the principal Act is amended by inserting, before the expression “section 160A”, the words “**section 96F(2)** or”.

14 New section 63A inserted

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

**“63A Modified reassessment procedure for amendments to
(controls attaching to) approvals of hazardous substances 5**

“(1) Despite anything to the contrary in this Act, the Authority may, following a decision under section 62(~~3~~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 10
- “(b) the amendment is not a minor or technical amendment to which section 67A applies.

New (unanimous)

“(1A) A reassessment under this section— 15

- “(a) may vary—
 - “(i) the controls that attach to a hazardous substance; or
 - “(ii) the description of a hazardous substance; or
 - “(iii) both; but 20
- “(b) may not revoke an approval given to a hazardous substance under this Act to import or manufacture the substance. 20

“(2) A reassessment under this section is deemed to be an application, and sections 55 to 61 apply with all necessary modifications. 25

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

“(4) If the Authority does not publicly notify the reassessment in accordance with section 53, the Authority must— 30

- “(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.
- “(5) 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.
- “(6) Section 77 applies to any hazardous substance that is approved under this section.
- “(7) (*Sections 64 to 66 apply*)Section 65(e) applies, with all necessary modifications, to a reassessment under this section.”
- 15 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.”
- 16 Controls on hazardous substances**
- Section 77 of the principal Act is amended by adding the following subsection(—):
- Struck out (unanimous)**
- “(8) The Authority may comply with the requirements of this section by complying with section 77A or **section 77B**, or both.”
- New (unanimous)**
- “(8) The powers under sections 77A and **77B** are in addition to the powers conferred by this section.”

17 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** 5
- “(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 10
- “(b) provide for the setting of exposure limits for the substance or any element or compound making up the substance. 15

New (unanimous)

- “(1A) Exposure limits set under **subsection (1)** may comprise of 1 or more of the following:
- “(a) environmental exposure limits:
- “(b) tolerable exposure limits:
- “(c) workplace exposure standards. 20
- “(2) 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: 25
- “(c) set, or provide for the setting of, exposure limits by adopting international values or international methodologies.
- “(3) Exposure limits imposed under this section are controls for the purposes of this Act, and such exposure limits may— 30
- “(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 35
- “(e) delete other specified exposure limits.

- “(4) 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 5
 - “(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 10
 - “(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 15
 - “(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 20
 - “(e) consider all submissions and comments received.

Struck out (unanimous)

- “(5) In this section, **other specified exposure limits** means exposure limits imposed by or under any other section of this Act, and includes exposure limits imposed by regulations made under this Act.” 25

New (unanimous)

- “(5) 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 30

New (unanimous)

“**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

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“**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.”

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18 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.”

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19 New sections 82A, 82B, and 82C inserted

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

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“**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,—

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“(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;

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

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“(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, *including the name and hazard classification of every hazardous substance relating to the test certificate*; and 5
 - “(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 10
 - “(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. 15
 - “(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; 20
 - “(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— 25
 - “(i) relates to the purpose of the register;
 - “(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:
 - “(iii) is necessary to avoid prejudice to the maintenance of the law (including the prevention, detection, investigation, prosecution, and punishment of offences); 30
 - “(iv) has been authorised by the Privacy Commissioner under section 54(1) of the Privacy Act 1993. 35
 - “(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** 5
- “(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. 10
- “(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. 15
- “(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. 20
- “(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** 25
- “(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— 30
- “(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— 35

- “(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 5
- “(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 10
- “(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. 15
- “(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. 20
- “(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: 25
- “(a) in the case of non-disclosure to an individual of information about the individual,— 30
- “(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 35
- “(b) in any other case,— 40

- “(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. 5
- “(7) On completion of the Authority’s investigation, the Authority must notify the certificate holder in writing of— 10
- “(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. 15
- “(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.” 20 25

New (unanimous)

19A 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**”.

19B 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**”.

New (unanimous)

19C 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

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New Part 6A inserted in principal Act

20 New Part 6A inserted

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

“Part 6A

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“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 (V) 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.

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Struck out (unanimous)

“96B Interpretation

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“(1) In this Part, unless the context otherwise requires, **substance** means—

“(a) any element, defined mixture of elements, compound, or defined mixture of compounds, either naturally occurring or produced synthetically, or any mixture of these substances:

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“(b) any isotope, allotrope, isomer, congener, radical, or ion of an element or compound that has been declared by the Authority, or by notice in the *Gazette*, to be a different substance from that element or compound:

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“(c) any mixtures or combinations of anything described in **paragraphs (a) and (b)**:

Struck out (unanimous)

- “(d) any manufactured article containing, incorporating, or including any hazardous substance with 1 or more of the following intrinsic properties:
- “(i) explosiveness: 5
 - “(ii) flammability: 5
 - “(iii) a capacity to oxidise: 5
 - “(iv) corrosiveness: 5
 - “(v) toxicity (including chronic toxicity): 5
 - “(vi) ecotoxicity, with or without bioaccumulation. 5
- “(2) In this Part, **hazardous substance** incorporates the meaning that **substance** has under **subsection (1)**. 10
- “(3) Section 2(2) applies to the definition of **substance** in **subsection (1)**. 10

“96C Group standards

- “(1) The Authority may, by notice in the *Gazette*, issue group standards that— 15
- “(a) identify the group of hazardous substances or products (described in **subsection (1A)**) concerned; and
 - “(b) impose as conditions under this section any obligations and restrictions that the Authority thinks fit on *(that)* the identified group of hazardous substances or products. 20

New (unanimous)

- “(1A) 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: 25
 - “(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. 30

“(2) The Authority may, by notice in the *Gazette*, amend or revoke group standards that are issued under **subsection (1)**.

Struck out (unanimous)

“(3) Without limiting anything in **subsection (1)**, group standards may provide that all or any of the hazardous substances included in the identified group are no longer subject to the provisions of Parts XI to XV.

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“(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.

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“(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.

New (unanimous)

“(6) As soon as practicable after issuing, amending, or revoking a group standard, the Authority must do the following:

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“(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

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“(c) give public notice of where the group standard, amendment, or revocation can be inspected or purchased.”

“96D When group standards may be issued or amended

“(1) Before issuing or amending group standards under **section 96C**, the Authority must,—

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“(a) in the case of any hazardous substance (*that, if it were not subject to Parts XI to XV or to a deemed approval under section 160A, would require an approval under Part V*) to which **section 96C(1A)(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

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the identified group than the approval process under Part (V) 5; and

New (unanimous)

- “(ab) in the case of any hazardous substance to which **section 96C(1A)(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 5
- “(ac) in the case of any hazardous substance to which **section 96C(1A)(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 10

- “(b) in the case of any (*hazardous substance*) product to which (*paragraph (a) does not apply*) **section 96C(1A)(d)** applies, be satisfied that— 15
- “(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 (*hazardous substances*) products in the identified group, having considered matters including alternative methods of managing those risks; and 20 25
- “(iii) the group (*standards are*) standard is only applied to the extent that it is reasonably necessary to manage the risks (*relating to the disposal*) of the (*hazardous substances*) products; and

Struck out (unanimous)

- “(c) be satisfied that all the hazardous substances in the identified group have a similar nature, are of a similar 30

Struck out (unanimous)

type, or have similar circumstances of use, such that the risks of the group of hazardous substances can be effectively managed by 1 set of conditions; and

New (unanimous)

- “(c) where a group standard applies—
- “(i) to 1 hazardous substance or product (described in **section 96C(1A)**), 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 96C(1A)**), 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
- “(d) consider the best international practices and standards for the safe management of hazardous substances and products (described in **section 96C(1A)**); and
- “(e) consider the types of controls *(that would have been imposed under section 77 as well as the matters that would have been considered in imposing those types of controls, if the hazardous substances could have been approved under Part V)* appropriate for the group in accordance with sections 77, 77A, and **77B**; and
- “(f) in accordance with section 53, publicly notify—
- “(i) *(its)* the proposal to issue or amend (as the case may be) group standards; and
 - “(ii) its assessment of the matters required under **sub-section (1)(a), (ab), (ac), (b), and (c)** in relation to the group standards as proposed to be issued or amended.
- “(2) Sections 54 to 61 apply, with all necessary modifications, for the purposes of this section.

“96E Revocation of group standards

- “(1) Before revoking group standards under **section 96C**, 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. 5

Struck out (unanimous)**“96F Effect of group standards**

- “(1) A hazardous substance that is included in an identified group for which there are group standards must be used in compliance with those standards, unless it is used in compliance with an approval (other than a deemed approval) issued under this Act. 10
- “(2) A hazardous substance to which **section 96D(1)(a)** applies that is included in a group for which there are group standards is deemed to have been assessed and approved by the Authority under section 29 as long as the group standards are complied with.” 15

New (unanimous)**“96F 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. 20
- “(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 96C(1A)(a)** applies is deemed to have been approved by the Authority under section 29. 25

New (unanimous)

“96G 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 96C** 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.”

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Part 3

Amendments to Parts (VII, VIII, X, and XI) 7, 8, 10, and 11 of principal Act

21 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—

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Struck out (unanimous)

“(a) enforce the provisions of this Act in or on any premises situated in the region of the regional council other than those premises specified in subsection (1):

“(b) 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:

“(c) enforce the provisions of this Act in or on those premises specified in subsection (1)(a) to (g) if the function,

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power, or duty is transferred to the regional council in accordance with section 98.”

22 New section 97B inserted

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

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“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.

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“(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.

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Struck out (unanimous)

“(3) A person who may exercise the powers of an inspector under the Health and Safety in Employment Act 1992 may also exercise those powers under that Act in respect of hazardous substances in a place of work whether or not the person is appointed as an enforcement officer under this Act.

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“(4) 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.”

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23 Offences

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

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

- 24 Penalties**
Section 114(1) of the principal Act is amended by inserting, after the words “or paragraph (ea)”, the words “or **paragraph (eb)**”.
- 25 Strict liability and defences** 5
Section 117(1) of the principal Act is amended by inserting, after the words “or paragraph (e)”, the words “or **paragraph (eb)**”.
- 26 New section 121 substituted** 10
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.” 15
- 27 New section 122 substituted** 20
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,— 25
“(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 30
“(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 35

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. 5
- “(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** has the same meaning as in section 2(1) of the Customs and Excise Act 1996.” 10

28 Appeals

- (1) Section 125(1) of the principal Act is amended by inserting, after paragraph (d), the following paragraph: 15
- “(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.” 20

New (unanimous)

28A 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, or code of practice”. 25
- (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 or code”; and
- (b) omitting the words “regulations or code”, and substituting the words “regulations, group standard, or code”. 30
- (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, or a code of practice”; and

New (unanimous)

- (b) omitting the words “regulations or code”, and substituting the words “regulations, group standard, 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, or a code of practice”; and 5
 - (b) omitting the words “regulations or code” in both places where they appear, and substituting in each case the words “regulations, group standard, or code”.
- (5) Section 141A(4) of the principal Act is amended by— 10
 - (a) omitting the words “regulations or a code of practice”, and substituting the words “regulations, a group standard, or a code of practice”; and
 - (b) omitting the words “a code”, and substituting the words “a group standard or code”. 15

29 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 20
 - “**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.” 25
- (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.” 30

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

30 Controls may be imposed for purposes of notice of transfer 5

Section 160B(2) of the principal Act is amended by omitting the (*expression “and 77A”, and substituting the expression “to **77B**”*) 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

