

Legislative Statement: Hazardous Substances and New Organisms (Hazardous Substances Assessments) Amendment Bill – Third Reading

Presented to the House of Representatives under Standing Order 272

Overview

This legislative statement supports the third reading of the Hazardous Substances and New Organisms (Hazardous Substances Assessments) Amendment Bill (the Bill).

The Bill amends the Hazardous Substances and New Organisms Act 1996 (the HSNO Act) to improve the assessment and reassessment of hazardous substances.

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

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

Why the amendments are needed

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

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

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

How the Bill amends the HSNO Act

The following briefly describes the substantive changes in the Bill:

Improvements to make better use of information from international regulators:

The Bill enables the EPA to, by notice in the Gazette, recognise overseas regulators as “international regulators”. Before doing so, the EPA must consider whether the overseas regulator:

- operates in a manner comparable to the EPA in regulating hazardous substances
- operates in a legislative regime regulating hazardous substances that is comparable to the HSNO Act
- has information which is readily accessible by the EPA.

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

- enabling the EPA to apply information from international regulators by providing for a new rapid assessment pathway for hazardous substances if certain requirements are met
- providing a simplified process for the EPA to update hazard classifications of substances and corresponding controls, based on information from international regulators.
- enabling the EPA to temporarily restrict certain uses of a hazardous substance subject to specific requirements, including that:
 - the EPA has publicly notified that grounds exist to reassess the substance; and
 - the EPA has reasonable cause to believe that there is actual or likely danger to human health or safety or to the environment from the use of the substance.

This new power to temporarily restrict a substance could be based on information from an international regulator or from domestic information (such as an EPA assessment of a related substance or peer reviewed tests). The Bill creates a strict liability offence for breach of this new provision, and a corresponding penalty of a fine not exceeding \$50,000 for a natural person (ie an individual) or a fine not exceeding \$100,000 for a person other than a natural person (such as a company).

Other improvements to EPA's reassessment process:

Other improvements to the EPA's reassessment process include—

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

Technical amendments to Act

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

Section 68: The Bill amends section 68 of the Act, which provides for ministerial call-in. An application that relates to a hazardous substance can only be called-in (to be determined by the Minister for the Environment rather than the EPA) if it is an application “referred to in section 53”. Currently, there is some ambiguity as to whether the section 68 call-in provisions apply to reassessments, although on a purposive reading of the Act, publicly notified reassessments would be subject to section 68. The Bill amends the Act to clarify that section 68 applies to all applications to which section 53(4) applies.

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

Section 114: currently there is an offence prescribed by section 109(1)(da) of the Act (failure to comply with the requirements of an EPA Notice) but no corresponding penalty, which was also an error in the 2015 amendments to the Act. This offence is not a strict liability offence (ie, it is necessary to prove the intention to commit the offence). The Bill creates a corresponding penalty (which is modelled on existing penalties) of imprisonment for a term not exceeding 3 months or a fine not exceeding \$500,000 and, if the offence is a continuing one, to a further fine not exceeding \$50,000 for every day or part of a day during which the offence has continued.

Conclusion

The Bill seeks to improve the assessment and reassessment of hazardous substances by both improving efficiency (eg by enabling better use of international information) and where possible increasing transparency (eg by requiring the EPA to publish a workplan for reassessments).