

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

Government Bill

Explanatory note

General policy statement

The purpose of this Bill is to improve the workability of the hazardous substances provisions of the Hazardous Substances and New Organisms Act 1996 (**HSNO**). These improvements deliver the longer term changes identified in the hazardous substances strategy (*Strategy for Improving the Workability of Hazardous Substances Provisions of the Hazardous Substances and New Organisms Act*) approved by Cabinet in June 2003. This Bill complements the amendments passed in March 2004 that addressed urgent workability issues related to the transfer of hazardous substances from transitional controls to the appropriate control regime under HSNO. This Bill offers a means to reduce costs to business and the Government and to reduce barriers to innovation while not compromising appropriate management of risks.

The key amendment within this Bill is the provision of a group standards mechanism. This mechanism will enable the Environmental Risk Management Authority (the **Authority**), when it is satisfied that a group standard is an efficient and effective way of managing the risks of the grouped substances, to group substances based on similar type, use, or risks and to set user-friendly conditions for the group. A group standard will create a deemed approval for substances covered by the group standard. New substances will be able to be imported and manufactured without further approval if they are within the group standard. The group standards mechanism is also intended to be able to control hazardous waste materials and articles

that contain hazardous materials that meet the HSNO hazard thresholds. This mechanism will—

- reduce the number of applications businesses need to make to the Authority;
- establish more user-friendly forms of controls;
- provide an efficient pathway to transfer most of the approximately 70 000 notified toxic substances to the full HSNO regime by June 2006;
- create an opportunity to manage hazardous waste materials and articles that have characteristics that meet the hazard thresholds identified in HSNO regulations but are not currently managed under HSNO.

Other key objectives include—

- gaining efficiencies in enforcement activities by including regional councils as an enforcement agency;
- providing greater flexibility in the setting of tolerable exposure limits to protect people and environmental exposure limits;
- extending the rapid assessment process to address substances that are reformulated to have lesser hazardous properties;
- gaining efficiencies by enabling a streamlined reassessment process to focus on specific controls or aspects of the original approval;
- gaining efficiencies by enabling health and safety in employment inspectors to inspect for compliance with HSNO controls when using the powers of entry and inspection of the Health and Safety in Employment Act 1992;
- improving information management by providing for a centralised register of test certificate information;
- strengthening compliance and enforcement by enabling the cancellation of test certificates for approved handlers or approved fillers where incompetence, negligence, or false information is involved;
- improving the relationship with the Customs and Excise Act 1996 by enabling Customs to direct importers to re-export unapproved hazardous substances, and clarifying that a breach of section 54 of that Act, relating to prohibited imports, is a breach of HSNO;

- providing for timely use of hazardous substances needed in emergency situations, for example, clean up of an environmental emergency;
- supporting innovation by enabling sales between exempt laboratories within New Zealand and overseas for the purpose of research and development or teaching;
- supporting innovation by extending the activities of exempt laboratories to allow the use of hazardous substances in any scientific investigations;
- improving monitoring of risks by ensuring all diagnosing medical practitioners report injuries caused by hazardous substances;
- removing unnecessary costs by extending the provision for a containment approval to include hazardous substances imported for the purpose of relabelling, repackaging, or formulating for export;
- addressing specific workability issues for the New Zealand Defence Force.

The focus of this Bill is reducing business compliance costs, reducing barriers to innovation, and reducing costs to Government, particularly in relation to transferring the 70 000 notified toxic substances from transitional controls to the appropriate control regime under the HSNO by June 2006. The amendments will not compromise the purpose of the Act, namely, to protect the environment, and the health and safety of people and communities.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. The 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 of principal Act

Clause 3(1) inserts new definitions into section 2(1) of the principal Act. *Clause 3(2)* amends the definition of **research and development** in section 2(1) of the principal Act.

Clause 4 amends section 3 of the principal Act, which provides that the Act binds the Crown. The amendment repeals and substitutes subsections (4) and (5). *New subsection (4)* provides that the codes

of practice developed under section 3(3) of the principal Act may also be based on the relevant controls imposed by the Authority on hazardous substances that have been approved by the Authority for any purpose under the principal Act. Similarly, *new subsection (5)* provides that the Chief of Defence Force must ensure that methods of controlling all hazardous substances not contained in any weapons system and controlled by the Minister of Defence are also based on the relevant controls imposed by the Authority on hazardous substances that have been approved by the Authority for any purpose under the principal Act.

Clause 5 amends section 19(2) of the principal Act, which relates to delegations by the Authority. The amendment provides that the Authority may delegate to its chief executive the power to revoke a test certificate for an approved filler or an approved handler under *new section 82C*.

Clause 6 inserts *new section 20A* into the principal Act. *New section 20A* provides that the Authority must keep and maintain a register of exposure limits set under this Act for substances with toxic and ecotoxic properties.

Clause 7 amends section 23 of the principal Act, which relates to fees that may be prescribed by local authorities. Given the additional functions of regional councils, the amendment provides that territorial authorities and regional councils may prescribe fees for the exercise or performance of any power, function, or duty under the principal Act.

Clause 8 amends section 25(1) of the principal Act, which relates to the prohibition of the import or manufacture of hazardous substances and to the prohibition of the development, import, field testing, or release of any new organism. The amendment updates the current reference to “Parts XI to XVI” of the principal Act with a reference to “Part 6A or Parts XI to XV” of the principal Act.

Clause 9 amends section 28A(2) of the principal Act, which relates to the rapid assessment for importation or manufacture of hazardous substances. The amendment provides that the Authority may approve a hazardous substance under section 28A if the Authority is satisfied that 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.

Clause 10 amends section 30 of the principal Act, which relates to importing hazardous substances in containment. The amendment provides that the Authority may approve the manufacture or importation of any hazardous substance in containment for the purpose of formulating, relabelling, or repackaging any hazardous substance for export to a destination outside New Zealand.

Clause 11 amends section 33 of the principal Act, which relates to exemptions from the principal Act for small-scale research on hazardous substances. The amendment provides requirements that must be met before a hazardous substance, or any substance created from the small-scale use of that hazardous substance in research and development or teaching, may be sold to laboratories in or outside of New Zealand.

Clause 12 inserts *new section 49L* into the principal Act. *New section 49L* provides that the provisions in sections 49A to 49K of the principal Act, under the heading “Rapid assessment and approval of agricultural compounds and medicines in special emergencies”, apply to the rapid assessment and approval of other hazardous substances in special emergencies. In *new section 49L*, **other hazardous substances** is defined as meaning any hazardous substances that are not already covered by sections 49A to 49K by virtue of being contained in an agricultural compound or a medicine.

Clause 13 amends section 62(4) of the principal Act, which provides the grounds for reassessment of an approval, by adding a new cross-reference to *new section 96F(2)*.

Clause 14 inserts *new section 63A* into the principal Act. *New section 63A* provides a modified reassessment procedure for limited amendments to specific aspects of approvals of hazardous substances.

Clause 15 amends section 75 of the principal Act, which sets out the purposes for which regulations prescribing controls for each hazard classification may be made. The amendment provides that regulations made for substances with toxic or ecotoxic properties may set, or provide for the setting of, exposure limits—

- within a range of values or according to a methodology;
- by adopting international values or international methodologies.

Clause 16 amends section 77 of the principal Act, which relates to controls on hazardous substances. The amendment provides that the Authority may comply with the requirements of section 77 by complying with section 77A or *new section 77B*, or both.

Clause 17 inserts *new section 77B* into the principal Act. *New section 77B* authorises the Authority to set exposure limits for substances with toxic or ecotoxic properties.

Clause 18 amends section 82 of the principal Act, which relates to the issuing of test certificates by test certifiers. The amendment requires a test certifier to forward a copy of any test certificate issued under section 82 to the Authority.

Clause 19 inserts *new sections 82A, 82B, and 82C* into the principal Act. *New section 82A* requires the Authority to keep and maintain a register of test certificates issued by test certifiers under section 82 of the principal Act.

New section 82B provides that an approved person described in *new 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 *new section 82A(4)*. An approved person is described in—

- *new section 82A(5)(a)* as 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; and
- *new section 82A(5)(b)* as a person specified in section 97 of HSNO (which relates to the persons who must ensure that the provisions of HSNO, including any controls imposed on approvals granted under that Act, are enforced in specific situations).

New section 82C provides for the revocation of test certificates for approved fillers and approved handlers in certain circumstances.

Part 2

New Part 6A inserted in principal Act

Clause 20 inserts *new Part 6A (new sections 96A to 96F)*, which relates to group standards, into the principal Act.

New section 96A provides the purpose of *new Part 6A*, which is to enable the Authority to issue, amend, and revoke standards for groups of hazardous substances 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.

New section 96B is the interpretation provision for *new Part 6A*.

New section 96C provides that the Authority may issue group standards that—

- identify the group of hazardous substances concerned; and
- impose as conditions on the identified group of hazardous substances any obligations and restrictions that the Authority thinks fit.

New section 96D provides the criteria that the Authority must meet before issuing or amending group standards. There are 2 kinds of group standards. For a group standard developed to manage the disposal of substances and articles that are not currently managed under the HSNO, the Authority must assess efficiency and effectiveness for managing the risks and must consider the alternatives, that the benefits of risk reduction outweigh the economic costs of complying, and that the group standard is reasonably necessary to manage their disposal.

New section 96E provides that the Authority must publicly notify its proposal to revoke any group standards in accordance with section 53 of the principal Act.

New section 96F sets out the effect of group standards.

Part 3

Amendments to Parts VII, VIII, X, and XI of principal Act

Clause 21 amends section 97 of the principal Act, which relates to the enforcement of the principal Act. The amendment substitutes a reference to “territorial authority” in paragraph (h)(iii), and adds a *new subsection (2)*, which authorises a chief executive of a regional council to enforce the provisions of the principal Act in certain premises.

Clause 22 inserts *new section 97B* into the principal Act. *New section 97B* enables the enforcement agency to also use its powers under the Health and Safety in Employment Act 1992 to ensure that the provisions of the principal Act are enforced in respect of hazardous substances in a place of work.

Clause 23 amends section 109(1) of the principal Act, which is the offence provision. The amendment inserts *new paragraph (eb)*, which provides that every person commits an offence against the principal Act who fails to comply with a condition imposed under *new section 96C(1)(b)* on an identified group of hazardous substances.

Clause 24 amends section 114(1) of the principal Act, which is the penalties provision. The amendment adds in a reference to *new paragraph (eb)* of section 109(1).

Clause 25 amends section 117(1) of the principal Act, which relates to strict liability and defences. The amendment provides that in any prosecution for an offence specified in *new paragraph (eb)*, it is not necessary to prove that the defendant intended to commit the offence.

Clause 26 substitutes section 121 in the principal Act. *New section 121* provides for the application of the Customs and Excise Act 1996 to hazardous substances imported in breach of the principal Act.

Clause 27 substitutes section 122 in the principal Act. *New section 122* provides a customs officer with the power to require an importer, at the importer's expense, to ensure the hazardous substances leave New Zealand if the customs officer has reasonable cause to believe that the hazardous substance is being, or has been, imported in breach of the principal Act.

Clause 28 amends section 125 of the principal Act, which sets out the cases in which any person directly affected may appeal to the District Court against a decision made by the Authority. *Clause 28(1)* inserts a *new paragraph (da)* into section 125(1). *New paragraph (da)* provides that a person may appeal against a decision made by the Authority in relation to the revocation of a test certificate under *new section 82C*. *Clause 28(2)* inserts a *new subsection (2B)* into section 125 of the principal Act. *New subsection (2B)* provides that an importer who has been directed by a customs officer to cause a hazardous substance to leave New Zealand under *new section 122* may appeal against that decision.

Clause 29 amends section 143 of the principal Act, which relates to the notification of hazardous substances injuries. *Clause 29(1)* adds a definition of **medical practitioner** which 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. *Clause 29(2)* adds *new subsection (2A)*, which provides that if a medical practitioner finds that a person who is not admitted to a hospital is suffering from any injury caused by a hazardous substance, the medical practitioner must give notice of the injury to the Medical Officer of Health. *Clause 29(3)* inserts a reference to *new subsection (2A)* into section 143(3) of the principal Act.

Clause 30 amends section 160B(2) of the principal Act, which relates to controls that may be imposed for purposes of a notice of transfer. The amendment inserts a reference to *new section 77B*.

Regulatory impact statement

Introduction

Cabinet approved the *Strategy for Improving the Workability of Hazardous Substances Provisions of the Hazardous Substances and New Organisms Act* in June 2003. The strategy identified workability issues with the hazardous substances provisions of the HSNO. These issues created barriers to innovation and sustainable economic growth, and short- and long-term actions were identified to address them. The short-term actions (including changes to HSNO and associated regulations) were completed in early 2004. The current proposals address the longer-term, more complex actions to improve the workability of HSNO.

The key proposals to address the outstanding workability issues are a group standards mechanism, identifying regional councils as agencies that may enforce HSNO controls, and modifying the process for setting tolerable exposure limits and environmental exposure limits. There are also very specific proposals to address workability matters specific to narrower needs of enforcement agencies, businesses, research institutes, and the New Zealand Defence Force.

This regulatory impact statement focuses on the provision of a group standard. The other proposals are seen to be minor and/or unlikely to result in regulatory impacts.

Statement of nature and magnitude of problem and need for Government action

There are 3 workability issues for which amending HSNO to allow group standards is recommended.

Practicalities around transfer of substances

HSNO currently allows for transfer decisions to be applied to groups of substances, but the grouping is currently focused on the hazards posed by substances rather than the more user-friendly every-day grouping by type of product, for example, paints as a group and cosmetics as a group. This means that the Authority is not able to group the approximately 70 000 notified toxic substances in a sufficiently broad manner to enable them to be transferred by the legislative deadline of 1 July 2006. This situation will result in significant costs to the Government and higher compliance costs for businesses needing to be familiar with a greater number of transfer controls for their products.

Unnecessary individual assessments

For new applications, the existing requirements of HSNO are leading importers and manufacturers to define their applications very narrowly to avoid opening the gate for other applicants to gain from their approval. This means that new substances that are similar to previously assessed substances require individual assessments for approval while ending up with basically the same controls being assigned. Such individual applications and assessments for similar substances are resulting in unnecessary costs to both industry, as applicants, and the Authority.

Hazardous wastes

Many wastes, including manufactured articles, have hazardous characteristics that match those recognised within HSNO, namely, they meet thresholds identified in regulations for explosiveness, flammability, capacity to oxidise, corrosiveness, toxicity, and ecotoxicity.

HSNO controls some types of wastes. For example, it can control the disposal of approved hazardous substances and by-products with hazardous properties that result from the manufacture of any substance.

Examples of wastes that HSNO does not control are hazardous by-products from the manufacture of anything other than a substance (for example, electroplating wastes) and manufactured articles that combine a hazardous substance with other components.

The Resource Management Act 1991 (**RMA**) controls the discharge of contaminants. However, the RMA does not sufficiently manage the hazards posed by wastes that meet the HSNO hazard thresholds, particularly during storage and transport of the material. Further the RMA does not provide for the tracking of such materials.

Statement of public policy objective

The public policy objective is to improve the efficient and effective risk management of hazardous substances, including hazardous waste and manufactured articles that contain hazardous materials.

*Statement of feasible options (regulatory and/or non-regulatory)
that may constitute viable means for achieving desired objective*

Status quo

The current situation is described above and can be summarised as follows:

- transfer decisions can be applied to groups of substances but the grouping must focus on the hazards posed by the substances rather than more user-friendly every-day grouping by type of product—this is placing at risk the transfer of approximately 70 000 notified toxic substances from transitional controls to the appropriate control regime under the HSNO; and
- neither HSNO nor the RMA manages the risks of some forms of hazard waste materials and articles that contain hazardous materials.

This is not considered an appropriate option as it does not meet the policy objectives.

Preferred regulatory option: amend HSNO

The preferred option is to amend HSNO to enable the Authority to set group standards with controls (conditions) for the group rather than for individual substances. Possible examples may be a standard set of controls for adhesives, another for paints or cleansers, and so on. An application would not be necessary in order for the Authority to set the standards.

Grouping would be based on substances being of a similar nature or type, or having similar circumstances of use. Accordingly, the risks

posed by substances within a group could be managed by 1 set of controls.

The particular group and the circumstances covered would be defined in each group standard. A group standard would exclude substances of a similar nature or type that posed a significantly greater risk.

The conditions would be legally enforceable and would provide generally prescriptive requirements that implement the controls. The Authority would be able to establish a standard provided it was satisfied that the standard will be efficient and effective in managing the risks of the substances covered.

To establish a standard, the Authority would prepare the proposal, including the assessment of efficiency and effectiveness, and publicly notify the proposal. The Authority would receive submissions and have hearings as necessary, before making a decision to adopt the standard and put it in place by a *Gazette* notice. For a standard developed to manage the disposal of substances and articles not currently managed under the HSNO, the Authority must assess efficiency and effectiveness for managing the risks and must consider the alternatives, that the benefits of risk reduction outweigh the economic costs of complying, and that the standard is reasonably necessary to manage their disposal.

This group standards option also includes provision for hazardous waste materials and manufactured articles that contain hazardous materials to be controlled by group standards if they meet the hazard thresholds identified in the HSNO regulations. Group standards would offer the ability to identify groups of hazardous wastes (similar in nature and type) and recognise and control these under HSNO. Conditions applying to these group standards would be able to address tracking, reporting, and cost recovery needs.

Alternative option

An alternative similar to the group standard mechanism discussed above was tested during the development of this policy. This alternative involved establishing a single low risk group where anything not in this group required a full application and assessment, and substances in the low risk group would be assigned 1 set of conditions. There were significant difficulties in refining this approach. For example, to be able to offer 1 set of conditions, the defined group

would have had to have a lower risk threshold, thus limiting the number of substances within the group. Further, a grouping based on low risk offers less opportunity for the public to recognise what substances would be controlled by the low risk group conditions, that is, grouping would not be based on user-friendly every-day product types.

While this alternative went some way to meeting the policy objective, it was discarded because of the difficulties of implementation.

Statement of net benefit of proposal, including total regulatory costs (administrative, compliance, and economic costs) and benefits (including non-quantifiable benefits) of proposal, and other feasible options

Government

The benefits and costs associated with the standards mechanism will only apply if the Authority creates a group standard, therefore, the costs and benefits discussed here are potential costs and benefits only.

The Authority will need to be able to fund the development of group standards, since such standards shift the cost of an approval from the applicant to the Government.

With respect to the cost of transferring approximately 70 000 notified toxic substances from transitional controls to the appropriate control regime under the HSNO, the Authority has estimated that the standards mechanism will save the Government approximately \$2.0 million.

Further benefits include removing the need for applications and current government subsidies of associated fees.

The group standards mechanism aligns HSNO with Australian legislation that deals with substances of low regulatory concern. This alignment enhances the opportunity for mutual recognition under the Trans Tasman Mutual Recognition Agreement Chemicals Cooperation Programme.

Industry

When in place, the standards would reduce the following compliance costs for business:

- costs of assembling and providing information and fees to be paid by those businesses applying to import or manufacture new substances; and
- costs and time for importers, manufacturers, suppliers, retailers, and users to understand the vast number of controls assigned to the various substances.

The reductions in compliance costs are expected to occur after the transfer of notified toxic substances from transitional controls to the appropriate control regime under HSNO, assumed to be in June 2006, and will be ongoing.

Society and environment

The proposed group standards mechanism will provide an opportunity to manage wastes and articles that have characteristics that meet the hazard thresholds identified in HSNO regulations but are not currently managed by the HSNO or RMA regimes. This will potentially result in health and environmental benefits.

No environmental, social, or cultural costs have been identified.

Consultation undertaken

The following parties and departments have been consulted and support the group standard mechanism: Business New Zealand, Department of Conservation, Department of Labour (Occupational Safety and Health Service), Environmental Risk Management Authority, industry representatives, Local Government New Zealand, New Zealand Customs, Ministry of Economic Development, Ministry of Health, New Zealand Association for Animal Health and Crop Protection, New Zealand Chemical Industry Council, New Zealand Food Safety Authority, Resource Management Law Association of New Zealand, and the Treasury.

A discussion document on the amendment proposals, including the group standard mechanism, attracted 78 submissions from industry, local authorities, and the public. Industry submissions supported the group standard mechanism.

The Ministry for the Environment has consulted with industry and local government on the legislative framework for hazardous waste as part of the New Zealand Waste Strategy. Industry accepts the

need for uniform standards for managing the risks posed by hazardous waste. Regional council chief executives have subsequently given general support for the use of the standards mechanism for managing hazardous wastes. The specific requirements for controlling any particular hazardous waste would be consulted on as part of the group standard process.

Hon Marian Hobbs

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

Government Bill

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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”. 5

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 of principal Act 10

3 Interpretation

- (1) Section 2(1) of the principal Act is amended by inserting, in their appropriate alphabetical order, the following definitions:
 - “**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 15
 - “**environmental medium**,—
 - “(a) in relation to class 6 substances, means—
 - “(i) air, water, and soil; or 20

“(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:	5
“ exposure limit means an environmental exposure limit or a tolerable exposure limit	
“ local authority means a territorial authority or a regional council	10
“ regional council means a regional council within the meaning of the Local Government Act 2002	
“ 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”.	15
(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”.	20
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:	25
“(4) The codes of practice developed under subsection (3)—	
“(a) must—	
“(i) be based on the relevant controls 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	30
“(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.	35

- “(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 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 comply with the relevant requirements in **paragraph (a)** by following the relevant code of practice approved under section 79.”
- 5 Delegation by Authority**
- 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:”.
- 6 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.
 - “(3) Every person has the right to inspect the register during the ordinary office hours of the Authority.”

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”.	
8	Prohibition of import, manufacture, development, field testing, or release	5
	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”.	
9	Rapid assessment for importation or manufacture of hazardous substances	10
	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 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.”	15
10	Importing hazardous substances in containment	
	Section 30 of the principal Act is amended by inserting, after paragraph (c), the following paragraph:	20
	“(ca) formulating, relabelling, or repackaging 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)	“(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.”

12 New heading and section 49L inserted

The principal Act is amended by inserting, after section 49K, 15 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.”

13 Grounds for reassessment of a substance or organism

Section 62(4) of the principal Act is amended by inserting, before the expression “section 160A”, the words “**section 96F(2)** or”. 30

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

- “(1) Despite anything to the contrary in this Act, the Authority may, following a decision under section 62(3), 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 is deemed to be an application, and sections 55 to 61 apply with all necessary modifications.
- “(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—
- “(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, with all necessary modifications, to a reassessment under this section.”

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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.”

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16 Controls on hazardous substances

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

- “(8) The Authority may comply with the requirements of this section by complying with section 77A or **section 77B**, or both.”

17 New section 77B inserted

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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) 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:

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- “(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—
“(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.
- “(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
“(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.
- “(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.”

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.”

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

The principal Act is amended by inserting, after section 82, 5
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. 10
- “(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; 15
“(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 20
“(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 25
“(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 30
“(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. 35
- “(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) ;	5
“(c) an approved person for a purpose that— “(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); “(iv) has been authorised by the Privacy Commissioner under section 54(1) of the Privacy Act 1993.	10 15
“(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.	20 25
“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) .	30
“(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.	35

- “(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. 5
- “(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** 10
- “(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— 15
- “(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. 20
- “(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 25
- “(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)**. 30
- “(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. 35

- “(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
- “(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 15
- “(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 20
- “(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 25
- “(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. 30
- “(7) On completion of the Authority’s investigation, the Authority must notify the certificate holder in writing of—
- “(a) the Authority’s decision; and 35
- “(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. 40

“(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.”

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Part 2

New Part 6A inserted in principal Act

20 New Part 6A inserted

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

“Part 6A

“Group standards

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“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 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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“96B Interpretation

“(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;

“(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;

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

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“(d) any manufactured article containing, incorporating, or including any hazardous substance with 1 or more of the following intrinsic properties:	
“(i) explosiveness;	
“(ii) flammability;	5
“(iii) a capacity to oxidise;	
“(iv) corrosiveness;	
“(v) toxicity (including chronic toxicity);	
“(vi) ecotoxicity, with or without bioaccumulation.	
“(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) .	
“96C Group standards	
“(1) The Authority may, by notice in the <i>Gazette</i> , issue group standards that—	15
“(a) identify the group of hazardous substances concerned; and	
“(b) impose as conditions under this section any obligations and restrictions that the Authority thinks fit on that identified group of hazardous substances.	20
“(2) The Authority may, by notice in the <i>Gazette</i> , amend or revoke group standards that are issued under subsection (1) .	
“(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.	25
“(4) The Authority may issue, amend, or revoke group standards under this section—	
“(a) on its own initiative; or	30
“(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.	35

“96D When group standards may be issued or amended

- “(1) Before issuing or amending group standards under **section 96C**, the Authority must,—
- “(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, 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 V; and 5
 - “(b) in the case of any hazardous substance to which **paragraph (a)** does not apply, 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 15
 - “(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 in the identified group, having considered matters including alternative methods of managing those risks; and 20
 - “(iii) the group standards are only applied to the extent that it is reasonably necessary to manage the risks relating to the disposal of the hazardous substances; and 25
 - “(c) be satisfied that all the hazardous substances 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 can be effectively managed by 1 set of conditions; and 30
 - “(d) consider the best international practices and standards for the safe management of hazardous substances; 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; and 35
 - “(f) in accordance with section 53, publicly notify— 40

- “(i) its 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), and (c)** in relation to the group standards as proposed to be issued or amended.” 5
- “(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.” 10
- “(2) Sections 54 to 61 apply, with all necessary modifications, for the purposes of this section.
- “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.” 15
“(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.” 20
- Part 3**
Amendments to Parts VII, VIII, X, and XI 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”. 30
(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 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) 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) if the function, 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:
- “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) 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.
“(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.”

23 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 96C(1)(b)** on an identified group of hazardous substances; or.”

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24 Penalties

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

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25 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)**”.

26 New section 121 substituted

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

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“121 Application of Customs and Excise Act 1996 to hazardous substances 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.”

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27 New section 122 substituted

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

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“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

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- 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 storing and transporting the hazardous substance

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

28 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.”

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

- “**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.” 5
- (2) Section 143 of the principal Act is amended by inserting, after subsection (2), the following subsection: 10
- “(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)**”.
- 30 Controls may be imposed for purposes of notice of transfer** 15
- Section 160B(2) of the principal Act is amended by omitting the expression “and 77A”, and substituting the expression “to **77B**”.