

Departmental Disclosure Statement

Hazardous Substances and New Organisms (Hazardous Substances Assessments) Amendment Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry for the Environment.

The Ministry for the Environment certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

30 June 2021.

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Part One: General Policy Statement

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

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

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

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

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

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

Improvements to make better use of information from international regulators:

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

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

Other improvements to EPA's reassessment process:

Other improvements to the EPA's reassessment process include—

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

Technical amendments to Act

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

Section 68: The Bill amends section 68 of the Act, which provides for ministerial call-in. An application that relates to a hazardous substance can only be called-in (which means the application would be determined by the Minister for the Environment rather than the EPA) if it is an application "referred to in section 53". Currently, there is some ambiguity as to whether the section 68 call-in provisions apply to reassessments, although on a purposive reading of the Act, publicly notified 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 but no corresponding penalty in section 114 (penalties). The Bill amends section 114 to correct the omission.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	NO

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p><i>Regulatory Impact Assessments on proposed amendments to the Hazardous Substances and New Organisms Act 1996</i>, Ministry for the Environment, 2020</p> <p>https://environment.govt.nz/publications/regulatory-impact-assessments-on-proposed-amendments-to-the-hazardous-substances-and-new-organisms-act-1996/</p>	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
<p>The Ministry for the Environment’s Regulatory Impact Analysis Panel reviewed this regulatory impact statement (RIS). The panel considered that the RIS partially met the quality assurance criteria. They considered that the RIS “contains required information, and clearly sets out objectives and criteria. There is evidence of consultation on the proposals and consideration of feedback from consultation. The analysis is constrained by a narrow problem definition relating to “trusted regulator” proposals, although this scope is clearly described. A range of impacts have been identified, but may be incomplete. Implementation relies on development of a secondary instrument (Methodology Order), and the [RIS] indicates that further implications will be assessed as part of that process.”</p> <p>We note that this further assessment will not be done as part of the Methodology Order since that is now not happening. We have considered whether any further RIA is needed, but since there is no major policy change we consider that this is not necessary.</p>	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO
<p>There are three additional technical amendments described above but these are not policy issues.</p>	

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	YES
<p>a) The cost benefit analysis estimates low cost and low benefit of under \$10 million to the economy over 10 years, however the estimated benefit does not include non-monetised benefits from improvements to human health, safety and the environment</p> <p>b) No persons were identified as likely to suffer a substantial unavoidable loss of income. The cost of each preferred option on regulated parties was assessed and found to be likely to be low.</p> <p>Please see the Ministry for the Environment's Regulatory Impact Assessment for more information: <i>Regulatory Impact Assessments on proposed amendments to the Hazardous Substances and New Organisms Act 1996, Ministry for the Environment, 2020</i> https://environment.govt.nz/publications/regulatory-impact-assessments-on-proposed-amendments-to-the-hazardous-substances-and-new-organisms-act-1996/</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO
<p>Almost all of the amendments relate to either (1) new/amended processes which the EPA will apply when required or when triggered or (2) requirements the EPA must put in place (eg, the reassessments work plan).</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

The policy to be given effect by this Bill is limited in scope and technical in nature, and the amendments do not affect New Zealand's international obligations.

The Ministry of Foreign Affairs and Trade has been consulted.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

The Ministry for the Environment has assessed the Bill, and considers that the limited scope and technical nature of the Bill means that it is not inconsistent with the principles of the Treaty of Waitangi. In particular, the Bill does not amend section 8 of the Hazardous Substances and New Organisms Act 1996 (*"All persons exercising powers and functions under this Act shall take into account the principles of the principles of the Treaty of Waitangi (Te Tiriti o Waitangi)"*).

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

Advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon the introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website at <https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/>

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:

(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?

YES

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

NO

The Bill creates a new offence for the breach of the new s64A (temporary restriction of a hazardous substance) and a corresponding penalty.

The Bill also creates a new penalty by adding "or paragraph (da)" to section 114(1). This is to correct the omission of not having included a penalty when creating the offence under section 109(da) in the 2015 amendments to the HSNO Act.

3.4.1. Was the Ministry of Justice consulted about these provisions?

YES

The Ministry of Justice was consulted on the proposed new offences and penalties that the Bill will create.

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO
The Bill creates a new application process and collection of personal information through these applications, but usual EPA provisions regarding collection and storage of personal information apply to these new processes.	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	NO

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>In July 2019, Cabinet agreed for MfE to consult on proposed improvements to the HSNO Act for assessments and reassessments of hazardous substances [CAB-19-MIN-0362]. The proposed improvements included proposals for making better use of international information during the assessment and reassessment processes, and other ways to improve reassessments. Public consultation took place in August and September 2019 on MfE's discussion document, <i>Hazardous substances assessments: Improving decision-making</i>. MfE received 44 submissions from a range of individuals and groups, including iwi/ Māori, non-profit organisations, the chemical industry, primary industry sectors, local government and health agencies.</p> <p>Submitters suggested that, in addition to international information, the EPA ought (when conducting assessments and reassessments of hazardous substances) to consider potential impacts on access to some important hazardous substances, financial impacts on industry, impacts on indigenous species and the environment, the importance of Maori knowledge, and obligations in Treaty of Waitangi settlements.</p> <p>Generally, submitters supported initiatives to reduce duplication of work and increase efficiency but also raised concerns about the workability and impacts of the proposals. Some submitters suggested regulatory change was not needed and that the efficiency gains sought could be made if the EPA continued its planned operational improvements. They also sought greater transparency of the EPA's workplan for reassessments, and improved engagement practices.</p> <p>The following agencies and government departments were consulted on the draft Cabinet papers, both at the policy stage and at the draft Bill stage: Department of Internal Affairs, Department of Conservation, Ministry of Business, Innovation and Employment, WorkSafe New Zealand, Ministry of Health, Ministry for Primary Industries, Ministry of Justice, Ministry of Foreign Affairs and Trade, Te Puni Kōkiri, the Treasury and the Department of the Prime Minister and Cabinet.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
The policy details were tested with the EPA by working with them on the draft Bill. As stated above, the EPA is the regulator which will be implementing the relevant provisions of the Bill.	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	YES
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO
<p>The Bill creates an offence and consequent penalty for breach of a new section of the HSNO Act created by this Bill, under which the EPA can temporarily restrict people from using a particular hazardous substance or class of hazardous substances. Where considered necessary, the temporary restriction provision could also be used to put other types of additional controls in place, such as increased buffer zones or reduced application rates.</p> <p>This is a strict liability offence, with a maximum penalty of a fine not exceeding \$50,000 for natural persons and not exceeding \$100,000 for persons other than natural persons.</p>	

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
The Bill does create the power to make a notice, but that notice will not be secondary legislation	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO