

Hazardous Substances and New Organisms Amendment Act 2000

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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Hazardous Substances and New Organisms Amendment Act 2000.

- (2) In this Act, the Hazardous Substances and New Organisms Act 1996 is called “the principal Act”.

2 Commencement

This Act comes into force on a date to be fixed by the Governor-General by Order in Council; and 1 or more Orders in Council may be made fixing different dates for different provisions and for different purposes.

3 Interpretation

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

“**approved form** means a form approved by the Authority under section 11(fa)

“**laboratory** means a vehicle, room, building, or any other structure set aside and equipped for scientific experiments or research, for teaching science, or for the development of chemical or medicinal products

“**research and development**, in relation to a hazardous substance, means systematic investigation or experimentation activities that involve innovation or technology transfer for the purpose of gaining knowledge about the properties or uses of that substance.”

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

“**premises** includes a dwelling, building, aircraft, ship, carriage, vehicle, box, receptacle, and place.”

- (3) Section 2(1) of the principal Act is amended by repealing the definition of **public notice**, and substituting the following definition:

“**public notice** means—

- “(a) a method determined by the Authority under section 53A; or
“(b) if section 53A does not apply or no method has been determined under that section, a notice published in 1 or more daily newspapers circulating in the main metropolitan areas together with such other public notice (if any) as the Authority or Minister thinks fit”.

4 Precautionary approach

Section 7 of the principal Act is amended by inserting, after the word “sections”, the expression “28A,”.

5 Powers, functions, and duties of Authority

Section 11 of the principal Act is amended by inserting, after paragraph (f), the following paragraph:

“(fa) approve forms for applications under Part V:”.

6 Delegation by Authority

(1) Section 19(2) of the principal Act is amended by adding the following paragraphs:

“(c) the power to decide any application for permission or other matter under Parts XI to XVI to—

“(i) any employee of the Ministry of Agriculture and Forestry, or of any person specified in section 97, with relevant experience in the subject matter of the application; or

“(ii) if there is no employee with that relevant experience, any other person with that relevant experience, whether or not that person is a member of the Authority:

“(d) the power to conduct a rapid assessment under section 28A to its chief executive:

“(e) the power to hear and decide any application made under section 31 to its chief executive:

“(f) the power to hear and decide an application made under section 83 for approval as a test certifier to any person, whether or not that person is a member of the Authority:

“(g) the power to appoint an enforcement officer under section 99(3)(a) to its chief executive.”

(2) Section 19 of the principal Act is amended by adding the following subsection:

“(6) Every delegation under subsection (2) must be available for public inspection at the office of the Authority during ordinary office hours.”

7 Determination of new organism or hazardous substance

(1) Section 26(1) of the principal Act is amended by adding the words “, or (without limiting any regulations made under sec-

tion 74(b)) whether or not any substance is a hazardous substance”.

- (2) The heading of section 26 of the principal Act is amended by adding the words “or hazardous substance”.

8 Application for approval to import or manufacture hazardous substances

- (1) Section 28(1) of the principal Act is amended by omitting the words “Every person”, and substituting the words “Unless an approval under section 28A or section 29 applies to the importation or manufacture of the substance, every person”.
- (2) Section 28(2) of the principal Act is amended by omitting the words “the prescribed form”, and substituting the words “an approved form”.

9 New section 28A inserted

The principal Act is amended by inserting, after section 28, the following section:

“28A Rapid assessment for importation or manufacture of hazardous substances

- “(1) When the Authority receives an application under section 28 in respect of a hazardous substance, and the applicant has verified the information contained in the application by statutory declaration, the Authority may make a rapid assessment of the adverse effects of importing or manufacturing the substance.
- “(2) The Authority may approve a hazardous substance under this section if the Authority is satisfied that—
- “(a) a substance having a similar composition and similar hazardous properties has been approved; or
 - “(b) the substance has one or more hazardous properties and each hazardous property has the least degree of hazard for that property.
- “(3) Section 77 applies to a hazardous substance approved by the Authority under this section as if the approval had been given under section 29.
- “(4) If the Authority does not approve a hazardous substance under this section the application under section 28 may be determined under section 29.”

10 New section 29A inserted*[Repealed]*

Section 10 was repealed, as from 30 October 2003, by section 16(2) Hazardous Substances and New Organisms Amendment Act 2003 (2003 No 54).

11 Importing hazardous substances in containment

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

“(ba) research and development on any hazardous substance; or.”

12 Application for hazardous substance containment approval

Section 31(2) of the principal Act is amended by omitting the words “the prescribed form”, and substituting the words “an approved form”.

13 Decision on application

Section 32 of the principal Act is amended by repealing subsection (2), and substituting the following subsection:

“(2) An approval under this section—

“(a) must include controls that provide for each of the applicable matters specified in the Third Schedule; and

“(b) may include controls that provide for any other matters in order to give effect to the purpose of this Act.”

14 New section 33 substituted

The principal Act is amended by repealing section 33, and substituting the following section:

“33 Exemptions from Act for small-scale research on hazardous substances

Nothing in this Act applies to any small-scale use of hazardous substances in research and development or teaching if—

“(a) the use occurs in a laboratory that meets the prescribed requirements; and

“(b) the use does not create or involve a hazardous substance for which any application for approval has been declined under this Act; and

- “(c) the importation, storage, and transportation of the hazardous substances each meets the prescribed requirements; and
- “(d) No such hazardous substance, nor any substance created from that use, is sold as a substance or in a product containing or derived from that substance.”

15 Application for approval to import or release

Section 34(2) of the principal Act is amended by omitting the words “the prescribed form”, and substituting the words “an approved form”.

16 Application for containment approval for new organisms

Section 40(2) of the principal Act is amended by omitting the words “the prescribed form”, and substituting the words “an approved form”.

17 Determination of application

Section 45 of the principal Act is amended by repealing subsection (2), and substituting the following subsection:

- “(2) An approval under this section—
 - “(a) must include controls that provide for each of the applicable matters specified in the Third Schedule; and
 - “(b) may include controls that provide for any other matters in order to give effect to the purpose of this Act.”

18 Application for approval to use a hazardous substance or new organism in an emergency

Section 47(2) of the principal Act is amended by omitting the words “the prescribed form”, and substituting the words “an approved form”.

19 Applications required to be publicly notified

- (1) Section 53(1)(a) of the principal Act is amended by adding the words “, if the application has not been approved under section 28A”.
- (2) Section 53 of the principal Act is amended by repealing subsection (2), and substituting the following subsection:

- “(2) The Authority may, if it considers that there is likely to be significant public interest, publicly notify any application under section 40 to—
- “(a) import into containment any new organism or develop any new organism (other than a genetically modified organism) in containment; or
 - “(b) develop any genetically modified organism in containment, if that application has not been approved in accordance with section 42.”

20 New section 53A inserted

The principal Act is amended by inserting, after section 53, the following section:

“53A Method of public notification

- “(1) The Authority may, if it thinks fit, determine a method of public notification of the applications referred to in section 53.
- “(2) The method must, in the Authority’s opinion, be a means of providing effective public notification at reasonable cost.
- “(3) Before determining a method of public notification under subsection (1), the Authority must—
- “(a) publicly notify the method it proposes to determine; and
 - “(b) allow the period of time that the Authority thinks fit for any person who may be affected by the proposed method to comment in writing to the Authority on whether the proposed method is reasonable; and
 - “(c) consider any comments made in accordance with paragraph (b).
- “(4) The Authority must, as soon as practicable after determining a method of public notification in accordance with this section, publicly notify the method in accordance with paragraph (b) of the definition of **public notice** in section 2(1).”

21 Further information

- (1) Section 58 of the principal Act is amended by inserting, after subsection (1), the following subsection:
- “(1A) Any report, advice, or other information obtained under subsection (1) may be considered at any hearing conducted by the Authority.”

- (2) Section 58(2) of the principal Act is amended by omitting the expression “15”, and substituting the expression “10”.

22 Time limits and waivers

- (1) Section 59(1) of the principal Act is amended by inserting, before the expression “35” in each place where it occurs, the words “28A or section”.
- (2) Section 59(1)(d) of the principal Act is amended by omitting the expression “25”, and substituting the expression “30”.
- (3) Section 59(4) of the principal Act is amended by inserting, after the word “extend”, the words “or reduce”.
- (4) Section 59(5) of the principal Act is amended by inserting, after the word “extend”, the words “or reduce”.

23 Provisions relating to hearings

Section 61(5) of the principal Act is amended by omitting the words “the prescribed form”, and substituting the words “an approved form”.

24 Grounds for reassessment of a substance or organism

Section 62(4) of the principal Act is amended by inserting, after the words “any of sections”, the expression “28A,”.

25 Reassessment

Section 63(2)(a) of the principal Act is amended by inserting, after the word “under”, the words “section 28A or”.

26 New section 67A inserted

The principal Act is amended by inserting, after section 67, the following section:

“67A Minor or technical amendments to approvals

The Authority may, of its own motion, amend any approval given by it under this Part if it considers that the alteration is minor in effect or corrects a minor or technical error.”

27 Controls on hazardous substances

Section 77(1) of the principal Act is amended by inserting, before the expression “29”, the words “28A or section”.

28 Codes of practice

Section 78 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

- “(1) The Authority may from time to time issue, amend, approve, or revoke any code of practice for hazardous substances for the purpose of implementing any requirement included in controls or in regulations in force under this Act.”

29 Codes may be approved by Authority

- (1) Section 79(2)(b) of the principal Act is amended by inserting, after the word “revocation”, the words “or who have advised the Authority in writing that they wish to be consulted”.
- (2) Section 79 of the principal Act is amended by repealing subsection (4).

30 Availability of codes

- (1) Section 80 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:
- “(1) If the Authority approves a code of practice, the Authority must ensure that, so long as the code remains in force, copies of that code, and of all amendments to that code, are available—
- “(a) for inspection by members of the public free of charge; and
 - “(b) for purchase by members of the public at a reasonable price.”
- (2) Section 80(2) of the principal Act is amended by adding the words “and purchase”.

31 Processing applications for approval as test certifier

Section 84 of the principal Act is amended by repealing subsection (7), and substituting the following subsection:

- “(7) An approval expires on the earlier of the following dates:
- “(a) 5 years after the date on which it is given;
 - “(b) the date of expiry (if any) specified by the Authority in the approval.”

32 Co-ordination of inspection

Section 98 of the principal Act is amended by repealing subsection (4).

33 Powers of entry for inspection

- (1) Section 103(1)(a) of the principal Act is amended by inserting, after the word “premises”, the words “(excluding dwellings)”.
- (2) Section 103(2) of the principal Act is amended by repealing paragraph (c), and substituting the following paragraph:
“(c) take photographs and measurements and make sketches and recordings; and”.
- (3) Section 103(2) of the principal Act is amended by inserting, after paragraph (e), the following paragraphs:
“(ea) require that any place or thing specified by the enforcement officer is not disturbed for a reasonable time pending any examination, test, inquiry, demonstration, or inspection; and
“(eb) require the making of statements by the person in charge of the premises, in any form or manner specified by the enforcement officer, about conditions, material, or equipment relevant to the purpose of the inspection; and”.
- (4) Section 103 is amended by repealing subsection (6), and substituting the following subsection:
“(6) An enforcement officer may take any person with relevant experience or expertise on to the premises to assist the officer with the inspection.”

34 Regulations

- (1) Section 140(1) of the principal Act is amended by repealing paragraph (g), and substituting the following paragraph:
“(g) prescribing requirements to be met by a laboratory, and during the storage, importation, or transportation of any hazardous substance, for the purposes of section 33:”.
- (2) Section 140 of the principal Act is amended by adding the following subsection:
“(4) Any regulations made under subsection (1) may require any person to obtain a test certificate at any specified time certifying that a specified requirement has been met.”

35 New section 141A inserted

The principal Act is amended by inserting, after section 141, the following section:

“141A Incorporation of material by reference

- “(1) The following material may be incorporated by reference into any regulations or code of practice:
- “(a) standards, requirements, or recommended practices of international organisations;
 - “(b) any document or other material that, in the opinion of the Minister (in the case of regulations) or the Authority (in the case of a code), is too large or impractical to be printed as part of the regulations or code.
- “(2) Any such material may be so incorporated in regulations or a code of practice either in whole or in part, and either unmodified or with such additions or variations as are specified in the regulations or code.
- “(3) Any material incorporated in regulations or a code of practice by reference under subsection (1) (as it existed on the date of the inclusion but with such additions or variations (if any) as are specified in the regulations or code) is to be regarded for all purposes as forming part of the regulations or code.
- “(4) If any material is incorporated in regulations or a code of practice by reference under subsection (1), the Minister (in the case of regulations) or the Authority (in the case of a code) must ensure that, so long as the material remains so incorporated, copies of the material are available—
- “(a) for inspection by members of the public free of charge; and
 - “(b) for purchase by members of the public at a reasonable price—
at such place or places as the Minister or the Authority appoints.”

36 Expiry of transitional provisions

- (1) Section 152 of the principal Act is amended by repealing subsection (1), and substituting the following subsections:
- “(1) Parts XI to XVI and the Seventh Schedule expire on the later of the following dates:

- “(a) the date that is 3 years after the commencement of those Parts:
 - “(b) the date specified in the most recent Order in Council (if any) made under subsection (1A).
- “(1A) The Governor-General may, by Order in Council made at any time or times before the date that Parts XI to XVI and the Seventh Schedule expire in accordance with subsection (1), specify a date on which those Parts and that Schedule expire, but that date must not be more than 5 years after the commencement of those Parts.”
- (2) Section 152 of the principal Act is amended by repealing subsection (4), and substituting the following subsection:
- “(4) The regulations referred to in section 161 are revoked on the expiry of Parts XI to XVI and the Seventh Schedule.”

37 Regulations relating to transitional provisions

- (1) Section 160(1)(a)(iii) of the principal Act is amended by omitting the words “under section 77 of this Act”.
- (2) Section 160 of the principal Act is amended by repealing subsection (2), and substituting the following subsections:
- “(2) A regulation made under subsection (1)(a) must provide 1 or more hazard classifications (as prescribed in regulations made under section 74) for the substance concerned in accordance with the intrinsic properties and degree of hazard of the substance; and, unless varied under subsection (3), the controls prescribed for each such hazard classification attach to the substance.
- “(3) A regulation made under subsection (1)(a) may substitute, delete, or add controls for the purpose of continuing, to the extent and with such modifications as are appropriate, the requirements that applied to the substance under—
- “(a) any enactment repealed by this Act; or
 - “(b) any regulations made under any enactment repealed by this Act; or
 - “(c) the Transport Act 1962, or the Land Transport Act 1998, or any regulations made under either of those Acts; or
 - “(d) the Animal Remedies Act 1967 or any regulations made under that Act.”

38 Transitional provisions - pesticides

The principal Act is amended by inserting, after section 164, the following section:

“164A Protection of information

The protection given to information by Part IIIA of the Pesticides Act 1979 continues for the period specified in that Part as if that Act had not been repealed by this Act, and during that period, any information protected by that Part may not be used for the purposes of determining whether to grant an application under this Act.”

39 Application of this Part

Section 184 of the principal Act is amended by inserting, after subsection (3), the following subsection:

“(3A) Any toxic substance which, before the date of commencement of this Act was the subject of a notification under section 32 of the Toxic Substances Act 1979, may continue to be imported or manufactured by any person under this Part until regulations made under section 160(1)(a) apply to that substance.”

40 Transitional provisions - toxic substances

The principal Act is amended by inserting, after section 184, the following section:

“184A Protection of information

The protection given to information by Part IIA of the Animal Remedies Act 1967 in respect of animal remedies that are toxic substances continues for the period specified in that Part as if that Act had not been repealed by the Agricultural Compounds and Veterinary Medicines Act 1997, and during that period any information protected by that Part may not be used for the purposes of determining whether to grant an application under this Act.”

41 Schedule 3

Schedule 3 of the principal Act is amended by omitting from the heading to Part 1 the words “Development and Field Testing of”, and substituting the words “importing, developing, or field testing”.

42 Schedule 4

Schedule 4 of the principal Act is amended by repealing all items relating to the Building Act 1991.

43 Schedule 7

Schedule 7 of the principal Act is amended by omitting from class 6 of Part D the words “*Division 3: Any ammunition which contains its own means of ignition and is not included in division 1*”, and substituting the following words:

“The term **safety cartridge** means a cartridge for small arms—

“(a) the case of which can be extracted from the small arm after firing; and

“(b) that is closed in order to prevent an explosion in 1 cartridge being communicated to other cartridges.

“The term **safety fuse** means a fuse for blasting which—

“(a) burns and does not explode; and

“(b) burns under all conditions of practical use at an approved even average rate; and

“(c) does not contain its own means of ignition; and

“(d) is of such strength and construction and contains an explosive in such quantity that the burning of the fuse will not communicate laterally to other like fuses.

“The term **containing its own means of ignition**, as applied to ammunition, means having an arrangement, whether attached to it or forming part of it, which is adapted to explode or fire it by friction or percussion.

“This class is in 3 divisions, namely—

“*Division 1: This division consists of percussion caps, railway fog signals, safety cartridges, safety fuses, and other devices of a similar nature not capable of explosion en masse.*

“*Division 2: Any ammunition which does not contain its own means of ignition and is not included in division 1.*

“*Division 3: Any ammunition which contains its own means of ignition and is not included in division 1.*”

Legislative history

5 October 1999	Introduction, first reading, second reading and referral to Transport and Environment Committee (Bill 330-1)
18 September 2000	Reported from Local Government and Environment Committee (Bill 330-2)
19 October 2000	Consideration of report
14 November 2000	Committee of the whole House (Bill 330-3)
15 November 2000	Third reading
