

Hazardous Substances and New Organisms (Transitional Provisions and Controls) Amendment Act 2004

Public Act 2004 No 7
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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Hazardous Substances and New Organisms (Transitional Provisions and Controls) Amendment Act 2004.
- (2) In this Act, the Hazardous Substances and New Organisms Act 1996 is called “the principal Act”.

**Part 1
Preliminary provisions**

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Purpose

The purpose of this Act is—

- (a) to facilitate the smooth transfer of hazardous substances from transitional controls to the appropriate control regime under the principal Act; and
- (b) to enable the Authority to assign cost-effective controls to hazardous substances.

Part 2

Amendments to principal Act and related provisions

4 Delegation by Authority

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

- “(h) the power to decide any application for any permission or licence under Part 6, or the revocation of any permission or licence under that Part, to—
- “(i) any employee of the Ministry of Agriculture and Forestry, any Medical Officer of Health (as defined in section 2(1) of the Health Act 1956), or any employee of any person specified in section 97, or any enforcement officer, with relevant experience in the subject matter of the application or the permission or licence; or
 - “(ii) if there is no employee or enforcement officer with the relevant experience, any other person with the relevant experience, whether or not that person is a member of the Authority:
- “(i) the power to decide any application for any licence under Part 6, or the revocation of any licence under that Part, to any test certifier approved under section 84.”

5 New section 77A inserted

The principal Act is amended by inserting, after section 77, the following section:

“**77A Authority’s power to impose controls and vary specified controls**

- “(1) The Authority may, at the time it approves a substance for any purpose under this Act, impose as controls under this section any obligations and restrictions that the Authority thinks fit.
- “(2) Without limiting anything in subsection (1), the Authority may,—
- “(a) in approving a substance, specify as a control under this section an obligation to obtain a permission under section 95A for general or particular use of the substance:

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- “(b) in approving a substance, specify as a control under this section an obligation to obtain a licence under section 95B for possession of the substance.
- “(3) Obligations and restrictions imposed under this section are controls for the purposes of this Act, and such controls may—
 - “(a) be additional to other specified controls; or
 - “(b) vary other specified controls; or
 - “(c) be in substitution for other specified controls; or
 - “(d) combine other specified controls; or
 - “(e) delete other specified controls.
- “(4) Before imposing a control under this section, the Authority must be satisfied that, against any other specified controls that apply to the substance,—
 - “(a) the proposed control is more effective in terms of its effect on the management, use, and risks of the substance; or
 - “(b) the proposed control is more cost-effective in terms of its effect on the management, use, and risks of the substance; or
 - “(c) the proposed control is more likely to achieve its purpose.
- “(5) In this section, other specified controls means controls imposed by or under any other section of this Act, and includes controls imposed by regulations made under this Act.”

6 New sections 95A and 95B inserted

The principal Act is amended by inserting, after section 95, the following heading and sections:

“Permissions and licences

“95A Permissions

- “(1) This section applies if the Authority approves a substance subject to an obligation referred to in section 77A(2)(a) (namely that, before using the substance, a person must obtain a prior permission under this section for the general or particular use of the substance).
- “(2) An application for a permission under this section must be made in a form approved by the Authority, and must be ac-

accompanied by the appropriate charge (if any) fixed under section 21.

- “(3) In considering an application, the Authority must consider—
 - “(a) the adverse effects involved in the use or uses of the substance to which the application relates; and
 - “(b) the conditions (if any) that it thinks should be imposed as part of the permission.
- “(4) The Authority may grant a permission subject to any conditions it may specify in the permission that are consistent with the approval of the substance.
- “(5) The holder of a permission granted under this section is authorised to use the substance specified in the permission in accordance with the approval of the substance and the holder’s permission.
- “(6) A permission granted under this section must be in writing and in a form approved by the Authority.
- “(7) The Authority may, at any time by notice in writing to the holder of a permission granted under this section,—
 - “(a) add or delete any conditions, or otherwise vary any conditions;
 - “(b) revoke a permission granted to the holder under this section.

“95B Licences

- “(1) This section applies if the Authority approves a substance subject to an obligation referred to in section 77A(2)(b) (namely, that a person must obtain a licence under this section before possessing the substance).
- “(2) An application for a licence under this section must—
 - “(a) be made in a form prescribed by regulations referred to in subsection (4) or (in the absence of such regulations) in a form determined by the Authority; and
 - “(b) be accompanied by the appropriate charge (if any) fixed under section 21.
- “(3) The Authority—
 - “(a) must grant a licence under this section if satisfied that the applicant—

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- “(i) is a fit and proper person to possess the substance concerned; and
 - “(ii) meets the relevant test certification requirements that apply to the substance under section 82; and
 - “(b) may make the licence subject to any conditions it may specify in the licence.
- “(4) Regulations made under section 76 or section 140, or both, may (without limitation)—
- “(a) specify the criteria the Authority must consider in determining whether the applicant is a fit and proper person:
 - “(b) specify any other matters that the Authority may consider in determining whether to grant a licence under this section:
 - “(c) prescribe the form of an application for a licence under this section:
 - “(d) provide for the variation of licences under this section and provide for their revocation:
 - “(e) provide for any other matters necessary for the administration of licences under this section.
- “(5) The holder of a licence granted under this section is authorised to possess the substance specified in the licence in accordance with the approval of the substance and the holder’s licence.”

7 Offences

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

“

- “(ea) fails to comply with a condition on a licence or permission granted under section 95A or section 95B; or”.

8 Penalties

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

9 Appeals

Section 125 of the principal Act is amended by inserting, after subsection (1), the following subsection:

- “(1A) A person may appeal to the District Court against—
- “(a) a decision of the Authority, under section 95A,—
 - “(i) about the terms and conditions of a permission held by the person; or
 - “(ii) declining to grant the person a permission or revoking a permission held by the person; or
 - “(b) a decision of the Authority, under section 95B,—
 - “(i) about the terms and conditions of a licence held by the person; or
 - “(ii) declining to grant the person a licence or revoking a licence held by the person.”

10 New section 142A inserted

The principal Act is amended by inserting, after section 142, the following section:

“142A Exemptions from approval requirements

- “(1) Without limiting sections 160 and 160A, the Authority may, from time to time, grant exemptions from any controls that would otherwise attach to a substance on its approval by the Authority under Part 5.
- “(2) The Authority may grant an exemption under subsection (1) only if satisfied that—
- “(a) the adverse effects of the substance are being adequately managed; and
 - “(b) the relevant requirements under Parts 11 to 16 continue to apply.
- “(3) An exemption under subsection (1) may—
- “(a) be granted to or in respect of 1 or more of the following:
 - “(i) any person or persons:
 - “(ii) any premises or class of premises:
 - “(iii) any substance or group of substances:
 - “(b) be expressed to apply either particularly or generally.
- “(4) The Authority must notify an exemption granted under subsection (1) by—
- “(a) specifying the effect, period, and conditions of the exemption in a public notice; and
 - “(b) if the exemption is granted to a person or in respect of any facility, notifying the person or the manager of the facility of the exemption.

- “(5) The Authority may determine the form of public notices and other notifications under subsection (4).
- “(6) This section expires on the expiry of Parts 11 to 16 and Schedule 7 in accordance with section 152, but exemptions granted under subsection (1) that have effect immediately before this section expires continue to have effect according to their tenor.”

11 Exemptions from regulations

- (1) The heading to section 154 of the principal Act is amended by adding the words “and provisions of Parts 11 to 16”.
- (2) Section 154 of the principal Act is amended by adding the following subsections:
- “(4) Without limiting the provisions of subsection (1), the Authority may from time to time grant exemptions from any requirements prescribed by any provision of Parts 11 to 16 that apply to any substance or group of substances.
- “(5) The Authority may grant an exemption under subsection (4) only if satisfied that the risks of the substance or group of substances are being adequately managed.
- “(6) Subsection (3), with the necessary modifications, applies to exemptions granted under subsection (4).
- “(7) The Authority must notify an exemption granted under subsection (1) or subsection (4) in relation to a substance by—
- “(a) specifying the effect, period, and conditions of the exemption in a public notice; and
- “(b) if the exemption is granted to a person or in respect of any facility, notifying the person or the manager of the facility of the exemption.
- “(8) The Authority may determine the form of public notices and other notifications under subsection (7).”

12 New sections 160A and 160B inserted

The principal Act is amended by inserting, after section 160, the following sections:

“160A Notices of transfer relating to transitional matters

- “(1) The Authority may from time to time, by notice in the *Gazette*, issue a notice of transfer relating to a certain substance or

group of substances that are lawfully used for any purpose or purposes.

- “(2) A notice of transfer may do 1 or more of the following:
- “(a) provide that the substance or group of substances are no longer subject to the provisions of Parts 11 to 16:
 - “(b) deem the substance or group of substances to have been assessed and approved by the Authority under section 29 for the purpose or purposes specified in the notice:
 - “(c) deem the substance or group of substances to have the hazard classifications specified in the notice.
- “(3) In every notice of transfer under this section, the Authority must specify 1 or more hazard classifications (as prescribed by regulations made under section 74) for each substance or group of substances concerned after considering the intrinsic properties and degree of hazard of the substance or group of substances.
- “(4) Unless varied under section 160B, the controls prescribed for each substance or group of substances (as so classified) apply to the substance or group of substances.
- “(5) However, if the substance is a compressed gas and the properties of the gas that is compressed are not intrinsically hazardous,—
- “(a) an approval under this Act is not required for the compressed gas; and
 - “(b) the requirement in subsection (3) to specify a hazard classification does not apply to the compressed gas; and
 - “(c) subsection (6)(a) applies as if, for the words ‘hazardous substances’, there were substituted the words ‘compressed gases’; and
 - “(d) unless varied under section 160B, the relevant controls in regulations made under section 140(1)(c) apply to the compressed gas.
- “(6) Before issuing a notice of transfer under this section, the Authority must—
- “(a) consider the best international practices and standards for the safe management of hazardous substances; and
 - “(b) do everything reasonably practicable on its part to advise all persons, who in its opinion may be affected by

the notice of transfer, of the proposed terms of the notice of transfer; and

“(c) give those persons a reasonable opportunity to make submissions and comments to the Authority on the proposed terms of the notice of transfer; and

“(d) consider all submissions and comments received.

“(7) Section 141A, with the necessary modifications, applies for the purposes of a notice of transfer under this section.

“(8) A notice of transfer 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.

“160B Controls may be imposed for purposes of notice of transfer

“(1) Before giving a notice of transfer under section 160A, the Authority may exercise the powers conferred by subsection (2) to enable it to address the risks that the Authority considers relevant.

“(2) For the purpose of subsection (1), the provisions of sections 77 and 77A are deemed to be incorporated in this section and, subject to subsection (4), apply—

“(a) with the necessary modifications; and

“(b) as if every reference in those sections to ‘substance’ included a group of substances.

“(3) Before varying or deleting any controls for the purpose of subsection (1), the Authority must consider the effects of the variation or deletion on all users and in doing so must have regard to the desirability of controlling substances consistently for all users.

“(4) Section 77A(4) does not apply for the purpose of subsection (1) if—

“(a) the control being varied on transfer relates to a previous management practice; or

“(b) the control being deleted on transfer existed under Parts 11 to 16 but did not apply to the substance concerned, or did not exist under those Parts.”

13 Other amendments to principal Act

The principal Act is amended in the manner set out in the Schedule.

Schedule

s 13

Other amendments to principal Act

Section 2(1)

Omit from the definition of **place of work** the expression “(2A)” and substitute the expression “(3)”.

Section 20(2)(e)

Add the words “, including any associated permissions granted under section 95A and any associated licences granted under section 95B”.

Section 62(4)

Omit the expression “160(1)(a)” and substitute the expression “160A”.

Section 77

Insert, after subsection (2):

“(2A) If regulations referred to in subsection (2)(a) are made, then, unless the Authority otherwise determines, the regulations do not affect any variations made by the Authority under subsections (3) to (5) before the commencement of the regulations.”

Section 82(1)

Insert, after paragraph (a):

“(aa) any approval granted by the Authority under this Act; or”.

Section 99

Add:

“(4) In this section, **hazardous substance** includes compressed gases, whether intrinsically hazardous or not.”

Section 140

Add to subsection (1)(c) the words “, whether intrinsically hazardous or not”.

Add:

“(5) Regulations made under subsection (1)(c) may prescribe or provide for controls on any compressed gases, whether or not the properties of any gas that is compressed are intrinsically hazardous, and those compressed gases must all be treated as hazardous substances for the purposes of Part 7 regardless of their properties.”

Section 142

Omit from subsection (2) the words “any regulations made under this Act” and substitute the words “with regulations and notices of transfer made under this Act”.

Omit from subsection (3) the words “this Act or regulations made under this Act” and substitute the words “or under this Act”.

Section 152

Insert, after subsection (3):

“(3A) In the case of regulations made under section 160(1)(a), subsection (3) of this section applies despite the repeal of section 160(1)(a), (2), and (3) by section 13 of the Hazardous Substances and New Organisms (Transitional Provisions and Controls) Amendment Act 2004.

“(3B) Notices of transfer made under section 160A continue in force following the expiry of Parts 11 to 16 and Schedule 7.”

Section 154(1)

Insert, after the expression “section 160”, the words “or section 160A”.

Section 160

Repeal subsections (1)(a), (2), and (3).

Section 164(3)

Omit the words “section 160(1)(a) or (c) of this Act” and substitute the words “section 160(1)(c) or section 160A”.

Section 180(1)(b)

Omit the words “section 160(1)(a) or (c) of this Act” and substitute the words “section 160(1)(c) or section 160A”.

Section 183(2)(c)

Insert, after the expression “section 160”, the words “or section 160A or section 160B”.

Section 184(3A)

Omit the expression “160(1)(a)” and substitute the expression “160A”.

Section 184(4)

Omit the words “section 160(1)(a) or (c) of this Act” and substitute the words “section 160(1)(c) or section 160A”.

Section 210(2)

Omit the words “section 160(1)(a) or (c) of this Act” and substitute the words “section 160(1)(c) or section 160A”.

Section 224(2)

Omit the words “section 160(1)(a) or (c) of this Act” and substitute the words “section 160(1)(c) or section 160A”.

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Legislative history

6 November 2003	Introduction (Bill 84-1)
18 November 2003	First reading and referral to Education and Science Committee
27 February 2004	Reported from Education and Science Committee (Bill 84-2)
4 March 2004	Second reading
17 March 2004	Committee of the whole House
18 March 2004	Third reading
