



Submission on The Hazardous Substances and New Organisms (Hazardous Substances Assessments) Amendment Bill

To the Environment Committee

1 October 2021

Submitter details

This submission is from the Parliamentary Commissioner for the Environment, Simon Upton.

Phone: 04 471 1669

Email: pce@pce.parliament.nz

The Parliamentary Commissioner for the Environment

The Parliamentary Commissioner for the Environment was established under the Environment Act 1986. As an independent Officer of Parliament, the Commissioner has broad powers to investigate environmental concerns and make recommendations to improve environmental outcomes. The Commissioner is wholly independent of the government of the day. The current Parliamentary Commissioner for the Environment is Simon Upton.

Key Points

- The ability of the EPA to use information from trusted international regulatory bodies is a significant step forward in improving the ability of the EPA to make better decisions more efficiently.
- The EPA's ability to use information from those trusted international regulatory bodies should be widened further than is explicitly proposed in the Bill.
- The EPA's operational policy for how it considers information from trusted international regulatory bodies should be publicly available and easily accessible.
- The EPA's operational policy on how it assesses "significant effects" of a hazardous substance in the New Zealand context when using information from trusted international regulatory bodies should be publicly available and easily accessible.
- A new provision should be included enabling review of trusted international regulatory bodies' status, including a mechanism for removal of such a body if they no longer meet the required criteria.
- The decision not to require mandatory provision of information in advance of a reassessment should be reconsidered.
- The proposed new provisions on publishing a reassessments work plan (new s20C), notification and consultation (new s53AA), and joint processing and decision making (new s59A) are welcome improvements to the legislation.
- The proposed new provision (new s64A) to temporarily restrict the use of a hazardous substance in specified circumstances is a significant improvement that should not be weakened or deleted.



Introduction

Thank you for the opportunity to submit on the Hazardous Substances and New Organisms (Hazardous Substances Assessments) Amendment Bill (the Bill).

The intent of the Bill is to improve assessment and reassessment processes for hazardous substances, primarily by enabling the Environmental Protection Authority (EPA) to make better use of data, assessments, and information from international regulators. This is also known as the “trusted international regulator” approach.

I support this approach. As an OECD member, New Zealand regulators work under protocols that promote consistency in the manner in which risks from harm to human health and the environment are assessed. It makes good sense to avoid duplication of effort where the integrity of the assessment approach adopted by trusted regulatory counterparts can be relied upon. The Bill also endeavours to give appropriate recognition of New Zealand specific considerations, for example for different use patterns, and for effects of particular significance to Māori.

While this Bill, if enacted, would bring in beneficial changes, there are some risks and missed opportunities that I address in this submission.

Improving assessments and reassessments

Achieving efficiencies in progressing priority work

The underlying logic of the changes is to make both assessments and reassessments more efficient so that chemicals with known harms can be better controlled and potentially replaced with newer ‘greener’ substances. The current challenges and importance of improving efficiencies were succinctly expressed in the discussion document as follows:

The Environmental Protection Authority (EPA) approves new chemicals and sets controls over them, and also reassesses chemicals to ensure the existing controls are fit for purpose. Currently, these processes tend to be slow and resource-intensive. If approvals are delayed, beneficial chemicals, including safer alternatives to existing ones or chemicals for urgent use, take longer to get to market. Delayed reassessments can have safety and environmental implications when chemicals, whose controls are not fit for purpose, continue to be used.

Currently, the delays are most notable for reassessments. Like many other OECD countries, New Zealand has a low rate of reassessment. The process is slow, resource-intensive and does not encourage innovation in the industry. Since 2001, the EPA has only been able to complete 51 reassessments, and it has recently identified that a further 39 chemicals are in urgent need of review.

Provision for the EPA to use information from trusted international regulatory bodies is a significant step forward. It would certainly enable improved rapid assessments (modified s28A) and modified reassessments to align classifications and controls (proposed new section 63D) through use of information from trusted international regulatory bodies. It would also speed up the process of establishing *grounds* for reassessment with the inclusion of 62(2)(e) referring to the EPA’s workplan (and their priority list).

However, it is unclear from the Bill’s drafting if the EPA could use information from trusted international regulatory bodies wider than rapid assessments and aligning classifications and



controls. On the face of it, the proposed section 76E (clause 11 of the Bill) limits the use of information from trusted regulators to rapid assessment (s28A) and modified reassessments (proposed section 63D). Although there is nothing in the Bill precluding the use of information from trusted international regulatory bodies in other aspects of the EPA's work, ambiguity on this point is not helpful and could limit the EPA's use of up-to-date international information.

Allowing the EPA to use information from trusted international regulatory bodies in a wider range of its work, particularly reassessments, would improve the effectiveness and efficiency of its work. Not having to reinvent the wheel where good international information already exists would allow the EPA to direct its limited resources towards assessment of the New Zealand context. It would also shorten the time need to conduct a (re)assessment thereby allowing the EPA to move on to other priorities.

Change sought

- The Bill should be amended to make it clear that the EPA is authorised to use information from trusted international regulatory bodies more widely in its work, particularly in respect of reassessments.

Call for information being mandatory for specified information

Making better decisions more efficiently requires good information to be available to the EPA. The need for better availability of information and improved environmental research is a consistent point I have made in many of my investigations to date. It will feature again in my forthcoming investigation on the extent to which our regulatory system takes into account the environmental fate of chemicals approved for us. The review will, amongst other issues, look into the availability to regulators of data on the quantities of chemicals imported, sold and released into the New Zealand environment.

While the 'trusted regulator' approach will improve the EPA's ability to use international information in its assessments and modified reassessments, the EPA also needs better New Zealand-specific information.

Currently, in advance of a reassessment, the EPA carries out a call for information process to understand how a chemical is currently used within New Zealand. Responding to this process is currently voluntary, and there is no incentive for industry to do so. This means, in practice, that the EPA receives incomplete information that can provide, at best, a cloudy picture of current volumes and patterns of use and its effects in the New Zealand context.

The discussion document, *Hazardous Substances Assessments: Improving Decision-Making* proposed an option of making response to a call for information a mandatory step in the reassessment process. However, this has not been taken up in the Bill.

This is a missed opportunity. The chance to reassess a hazardous substance arises infrequently, and it is critical that the regulator has the most up to date, accurate information at its disposal to inform its decision making, at a minimum for the current use volumes and practices associated with the hazardous substance in question. The information gathered would be valuable for assessing the similarity and differences in New Zealand use compared to overseas use patterns, and therefore being able to gauge how applicable overseas regulators' decisions are.



Change sought

- Include a provision to make response to a Call for Information mandatory with respect to specified information. The scope of this specified information should include, at a minimum, current use volumes and practices of a hazardous substance.

Improving transparency

Transparency of process for determining significant effects

The Bill inserts a new Rapid Assessment pathway (clause 5 - proposed section 28A(2(ab))) to enable the EPA to rapidly assess and approve a substance if it has a similar composition and hazardous properties to those approved by an international regulator. But they must not do this if they consider that the application will have “*significant cultural, economic, environmental, ethical, health or international effects, or significant effects in an area in which the authority lacks sufficient knowledge*”.

The Bill also enables a modified reassessment to be conducted based on international regulator information without notification unless it has one of the significant effects described above.

At present it is unclear *how* the EPA would apply its judgement to determine whether there are significant effects. Given the extent of the discretion that is proffered under the proposed provisions, it would be appropriate to have more transparency around what the EPA considers to be significant effects and therefore how the “New Zealand lens” (as described in the Discussion Document) is intended to be applied in practice.

Change sought

- The EPA should be required to publish its detailed operational policy on how it makes its assessment of significant effects (similar to the requirement to publish its reassessments workplan under proposed new section 20C).

Transparency of process for considering differences between trusted international regulatory bodies

The ability of the EPA to use information from trusted regulators is a significant step in improving the efficiency and effectiveness of the EPA’s decision-making processes. There will be times where different trusted international regulatory bodies have taken different approaches or used different information in their assessments.

The EPA will need to develop policies and procedures for considering any such differences and how they will apply the information to the EPA’s decision-making process. For the public to have confidence in the EPA’s use of information from trusted international regulatory bodies, the EPA should be transparent about how it will deal with differences between the different bodies.

Change sought

- The EPA should be required to publish its operational policy on how it will deal with differences between ‘international trusted regulators’ in the EPA’s process.



Review of trusted international regulatory bodies

Clause 11 (inserting a new s76E) sets out a process for the EPA to recognise overseas bodies as trusted international regulatory bodies. However, the Bill does not set out any way for the EPA to review this decision once an overseas regulator has been recognised as a trusted body, or remove an international regulator from the list, if appropriate. This appears to be an oversight that should be addressed in the Bill.

A mechanism should be added to review the decision to recognise an overseas body as a trusted international regulatory body. If the EPA becomes aware that any of the mandatory considerations – set out in the proposed s 76E(3) – it looked at when considering the inclusion of the organisation have materially changed, the EPA should review whether the criteria to be a trusted international regulator are still met. Ideally, this review should be on a regular periodic basis, for example at a three-year interval.

There also needs to be an explicit mechanism to enable an international regulatory body to be removed from the list of trusted international regulatory bodies if it no longer meets one or more criteria in clause 76E.

Change sought

- A provision should be inserted to enable the review, including regular periodic review, of the list of trusted international regulatory bodies, and a mechanism to remove a body from the list if it no longer meets one or more criteria set out in proposed s76E(3).

Other Improvements

The Amendment Bill also proposes a number of other improvements to the EPA's process. I support the proposed new provisions: publishing a reassessments work plan (new s20C); notification and consultation (new s53AA); and joint processing and decision making (new s59A). These changes should make the EPA's work more efficient and transparent.

I would like to draw the Committee's attention to clause 10 to insert a new provision (new s64A) to empower the EPA to temporarily restrict the use of a hazardous substance in specified circumstances. This is an important additional safeguard that provides a middle ground when the high threshold ("significant actual or imminent danger to human health or safety or the environment") to suspend an approval set out in s64 is not met, yet there is new evidence of harm to human health or the environment. I would not want to see this new provision s64A weakened or removed.