rx MO MOIR, R The Toxic Substances Act 1979

REX MOIR

THE TOXIC SUBSTANCES ACT 1979

RESEARCH PAPER FOR LAW AND THE LEGISLATIVE PROCESS

(LAWS 537)

LAW FACULTY

VICTORIA UNIVERSITY OF WELLINGTON

WELLINGTON 1980.

I wish to thank the Director-General of Health for permission to use material recorded in the files of the Department of Health.

The co-operation of officers of the Department, especially that of Michael Bates, Senior Toxicologist, is also appreciated.

CONTENTS

I INTRODUCTION

A The Role of Committees in the Development of Legislation

The development of legislation is a very complex process and no two statutes go through exactly the same steps in their evolution from an idea, to a Bill, to an Act. The exact path, and the time taken to travel it, depends to a great deal on the perceptions of policy-makers and those who influence them. Where a controversial idea is adopted by a political party in Government it may be implemented quickly, with little consultation with other parties, and is likely to be the subject of vigorous debate in Parliament. This is the type of legislation which receives publicity and the partisan debate often colours the public's view of Parliament. On the other hand, much legislation proceeds at a more leisurely pace, receives little publicity, is generally accepted by outside interest, and proceeds through its Parliamentary stages supported by both parties.

The former type of legislation usually has its origins within the political party, whether from the election manifesto, Caucus, Cabinet, or individual Ministers or backbenchers. The role of the government department is to assist in development of the legislation. The latter type usually originates within the department and often takes the form of amendments to earlier legislation administered by the department.

Committees of inquiry also plan a large part of the origin of legislation. These may be set up when a political party has no particular view on an issue, when the department has insufficient information or expertise to advise, and when conflicting views are held by different interest groups. Such committees are able to gather information, consider different views, and recommend a course of action. They may be set up to review a policy which is no longer considered suitable, or where no policy exists. Committees of inquiry are both an efficient way and a democratic way of carrying out this task. They are efficient because they enable all relevant information, ideas and opinions to be collected and examined. They are democratic because they are open to all interested parties in the community. They ensure that the best advice is available.

Committees then, have an important role in the legitimation of policy. Participation of interest groups and members of the public in the development of policy makes it more likely that these groups will support the implementation of the policy in the form of legislation and accept the administration.

B The Toxic Substances Act 1979

This Act was largely a product of the committee process I have described. The committee which originated the legislation and had the greatest influence on its development was the Advisory Committee on Commercial, Household and Agricultural Poisons (known as the CHAP Committee). Other committees also had a part in the development of some parts of the legislation. These include the Commission of Inquiry into the Parnell Civil Defence Emergency, the Advisory Committee on Smoking and Health, and, lastly, the Social Services Select Committee of Parliament. The work of these Committees in shaping the Act, and the other influences on its development help illustrate the place of such legislation in the legislative process.

The Act can also be described as departmental legislation. Both Parliamentary Parties accepted the need for the legislation and it never became the subject of partisan conflict.

In this paper I will discuss the following matters relevant to this legislation:-

What issues prompted the establishment of the CHAP Committee?
How did the Committee work and what recommendations did it make?
What was the contribution of the Department of Health and other organisations to the development of the legislation?
What influence did Parliament and the Select Committee have?
Finally, what can the process this legislation went through tell us about the legislative process?

II BACKGROUND

A History of Toxic Substances Control Legislation

History and classical literature have many references to poisons, usually of vegetable origin and often known only to a limited number of persons and only in the countries where the poison was found. Exploration and trade brought new poisons to European countries and the activities of scientists, although not specifically directed to that end, resulted in the discovery of many new poisons from natural sources, and the synthesis of many new substances which are poisons.

The need for control of poisons came to be generally recognised during the nineteenth century. The first reference in New Zealand Legislation was the Sale of Poisons Act 1866. This Act contained no power to make regulations and it was quickly replaced by the Sale of Poisons Act 1871 under which very brief regulations were made regarding labelling. The Poisons Importation and Carriage Act 1895 required stout packaging, brief but informative labelling, stowage separate from other goods, and in the case of importation, declaration to the Controller of Customs of arsenic and potassium cyanide. Minor amendments were made in 1900 and 1902, and in 1908 the various provisions were consolidated in the Poisons Act 1908.

The legislation remained unchanged until 1934, when the Poisons Act of that year, and subsequent regulations in 1937, endeavoured to bring the legislation into line with that recently enacted in the United Kingdom and to take cognisance of the substantially increased number of poisons that had come into use and the many new uses to which poisons had been put. It was soon recognised that this legislation was inflexible in its effect, and did not do what was intended. Some traditional methods of handling poisons in New Zealand, which had created no undue hazards, were prohibited. There was, however, no way in which different degrees of control could be associated with the hazards of particular substances or their uses.

The Poisons Act 1960 corrected anomalies in the earlier legislation and made substantial changes to the system of classifying poisons, licensing of packers and vendors and the storage of poison. No significant changes were made in the controls on importation and transport. New discretionary powers were given to officers under the Act to enter premises and inspect and segregate poisons.

B Principles of Toxic Substances Control

Although the legislation developed over a century, and many new and more detailed controls were introduced, the basic principles of control remained the same. Stated generally they are:

The protection of human life and health by

- limiting the availability of dangerous poisons to the public and commercial users;
- controlling the sale of poisons by requiring licensing of vendors;
- ensuring proper storage to prevent poisons falling into the wrong hands;
- requiring labelling of containers to warn of dangers;
- stipulating methods of handling which will reduce the risk of accidental poisoning;
- controlling the manufacture, importation and transportation of poisons.

These principles are still contained in the Toxic Substances Act 1979.

III THE CHAP COMMITTEE

A Establishment

Although the 1960 Act was an improvement on the earlier legislation, the new system of classification soon came in for criticism, particularly from the chemical industry. The Act was difficult to understand and it was found that the terms "restricted poison", "poison", and "poisonous substance", used to denote different classes were too ambiguous to give the end user any idea of the likely hazard of a product. The department also experienced difficulty in administering the licensing provisions, especially those relating to hawkers' licences. District registrars had to use their discretion in issuing licences and in imposing conditions on the licences, and this lead to a lack of uniformity throughout the country.

By 1970, a number of factors had come together which prompted a review of the legislation. Under the Act, a Poisons Committee was established to consult with the Minister before any substance was declared a prescription poison. Although this was its primary duty, it was frequently asked to comment on the scheduling on many non-therapeutic substances,including agricultural chemicals. In 1969, Dr. E.G. McQueen, Director of the National Poisons Information Centre (and a member of the Poisons Committee), and the Poisons Committee itself, expressed the view that this Committee was not suitable to act as an advisory body on the scheduling of poisons which were not drugs. The membership of the committee included nominees of the Medical Association of N.Z., and the Pharmacy Board of N.Z., as well as representatives of the Department of Health, but these members were not particularly qualified to advise on poisons other than drugs. Nothing happened until a reorganisation occurred within the department. This separated the administration of drugs from that of other poisons. The Poisons Committee was no longer available to the Division of Public Health for assistance in scheduling poisons. It was, therefore, suggested that a new committee be established for this purpose.

The chemical industry had continued its criticism of the schedules, and this problem became more acute as new developments made the schedules increasingly inconsistent and out-dated. The department considered that the proposed committee would be helpful in dealing with these criticisms and in avoiding any further criticisms. Outside expertise would be useful in revising the schedules, and participation by interested parties in decision-making would make those decisions more acceptable to those affected by them.

The Minister of Health, Hon. D.N. McKay, approved the establishment of the Advisory Committee on Commercial, Household and Agricultural Poisons, on 26 April 1970. Membership included a medical practitioner from the Department of Health as chairman, a pharmacist employed by the department, a toxicologist from the D.S.I.R., a representative of the Agricultural Chemicals Board, Professor McQueen (nominated by the Otago Medical School), and nominees of the N.Z. Retailers Federation and the Agricultural Chemicals and Animal Remedies Manufacturers Federation of N.Z. The terms of reference of the committee were:

1. To advise on the scheduling of poisons affecting their availability to the public and commercial users;
2. To consider and advise on procedures for the regulation of the availability of poisons to public and commercial users; and
3. To consider and advise on any other matters relative to the use and availability of poisons, as these are affected by the Acts and Regulations administered by the Department of Health.

B Work of the Committee

The Committee held its first meeting on 11 September 1970, and considered a paper prepared by the Chairman proposing separate definition of poisons and drugs, classification into four categories (according to degree of hazard) for the purpose of restricting availability, and new provisions for labelling containers to warn of hazards. These proposals were based on earlier discussions with the chemical industry and the experience of officers of the department administering the legislation. The Committee generally endorsed the proposals and accordingly recommended to the Minister of Health that a major review of the poisons legislation should be carried out. The committee also proposed that as many organisations as possible should be invited to make submissions on amendments.

The Minister agreed to the review and the department made provisions for Amendments to the Act to be included in the 1972 legislative programme. Letters inviting submissions were sent to thirty organisations and government departments known to be interested in the manufacture, use and safety of poisons. The Medical Officers of Health in the department's district offices were also asked for comments. Public notices were inserted in the metropolitan and provincial newspapers, and the Minister's statement announcing the review was also widely reported in the press. (1) Those wishing to make submissions were asked to present them under the following headings:

1. Licensing procedures;
2. Availability of poisons to commercial operators and the general public;
3. Storage and transportation of poisons;
4. Packaging of poisons;
5. Advertising and labelling of poisons;
6. Any other points on the regulation of poisons.

The committee noted that it was not concerned with drugs or poisons in a form or intended for the treatment of humans for any condition. Nor was it concerned with the effect of poisons on the environment : its concern was the prevention of accidental poisoning in humans.

C Recommendations of the Committee

The committee received 32 submissions from organisations and individuals; 13 of these in response to the public notices or Minister's statement in the press. These were considered at a special meeting of the committee in March 1971. (A summary of submissions is contained in Appendix I.)

The committee completed its consideration of submissions by May and its report to the Minister was completed in June, nine months after the first meeting.(2) The report called for wide-ranging amendments to the Act and Regulations, many of them based on matters raised in submissions. The following major recommendations were made:

1. Separation of regulations pertaining to therapeutic substances from those dealing with commercial, household and agricultural poisons. This matter was not specifically raised in submissions but the committee considered this would improve administration and make the legislation easier to understand.
2. Replacement of the system of scheduling poisons according to availability to users, with a system according to toxicity of formulation. Factors such as oral, dermal and respiratory toxicity and the nature, vehicle and modes of use, teratogenicity and carcinogenicity would be considered in classification. Proposed classes, label description and distribution were as follows:

Class	Label Description	Availability
Class 1	Deadly Poison	Approved purchasers
Class 2	Dangerous Poison	Commercial users
Class 3	Poison	Open sale
Class 4	Harmful Substance	Open sale

This system was originally proposed by the Agricultural Chemicals and Animal Remedies Manufacturers Federation before the committee was

established, and it was subsequently endorsed by the large proportion of submissions concerned with this matter from the chemical industry and users of poisons.

3. Clear labels warning of the hazards for different classes, and use of the "death's head" symbol. This matter was raised by the chemical industry as well as commercial users, members of the public, and organisations such as the National Council of Women and the Consumer Council.

4. Simplified procedures for licensing vendors and packers. One licence should enable a licensee to sell either by wholesale or retail. Separate hawkers' licences should be eliminated and unsolicited hawking or distribution of toxic substances banned.
These changes were based largely on administrative experience in the District Offices of the Department of Health, and to meet changed commercial practices. A number of other changes were also recommended in the administration of licensing. These included a requirement that licence-holders be of good character and have adequate knowledge of the hazards of the products being handled. Provision was also recommended for a District Registrar to cancel a licence if subsequent to its issue information was revealed which, if it had been known when the application was made, would have resulted in refusal to issue a licence.

5. Clearer definition of the requirements for storage. A number of submissions from retailers, as well as comments from District Offices, pointed out that provisions in the 1960 Act were ambiguous and were interpreted more restrictively in some parts of the country than in others.

6. Improved information collecting powers so that the department is not required to know that a substance is toxic before requiring information from importers or sellers about its nature, formulation or use. This recommendation was based on advice from the Department's Office Solicitor.

7. Power for the Minister to make interim classification of toxic substances prior to gazetting of regulations. This was in response to many complaints from the chemical industry on the length of time taken for amendments to the regulations to be gazetted.

8. Provision of wider regulation making powers, covering such matters as labelling, advertising, storage and transport. Many of the submissions covered matters dealt with by regulation. Particular concern was expressed about the use of perfumes or flavourings associated with food

or beverages in toxic substances and the use of words or pictures associated with food or drink in the promotion and labelling of these substances. The committee agreed that this practice should be banned. A number of submissions were also concerned with the possibility of contamination of food from chemical leakages during transport and the committee recommended that the transportation of poisons in the same compartment as food be prohibited.

9. The Committee was concerned that a number of individuals and organisations making submissions showed there was an apparent lack of understanding by the public of the current requirements of the legislation. This was borne out by the high number of poisonings. It agreed that it would be very important for the general public to receive full information on the provisions of new legislation and how they will be affected by it. The committee recommended that educational programmes should be arranged to encourage the use of childproof packages, the inclusion of lockable poisons cupboards in homes. Specific provision should also be made in the primary school syllabus for instruction on poisons, their dangers and the need for safe storage and use.

IV DEVELOPMENT OF NEW LEGISLATION

A Role of the Department of Health

The recommendations of the CHAP Committee were generally accepted by the Department of Health and the Minister. The Department went further, however, and proposed a radical amendment and regrouping of all legislation associated in any way with therapeutic substances. A separate 'Medicines Act' would take over the control of therapeutic substances from the Poisons Act and incorporate appropriate 'drug' provisions of the Food and Drug Act 1969. The CHAP Committee had recommended that urgency be given to drafting legislation to encompass its recommendations. The Department informed the Minister that the rationalisation of the law would place considerable strain on the technical and legal resources of the Department and therefore could not be implemented immediately.(3)

The process of developing new legislation along the lines proposed by the Department was indeed long and involved.(4) By March 1974 a draft Bill incorporating the CHAP Committee's recommendations had been prepared and this was circulated to some of the organisations which had originally made submissions to the CHAP Committee. The comments received were generally favourable and only minor changes were suggested. Over the next 2 years consultations continued, mainly with other government departments, including DSIR, Customs, Internal Affairs, and the Ministry of Agriculture and Fisheries. The CHAP Committee continued to meet to consider progress with the Bill and associated Regulations. It was during this period that it was agreed that the legislation should be co-ordinated with the Pesticides Bill which was to replace the Agricultural Chemicals Act 1959. This was necessary because both statutes required labelling of containers and the provisions had to be compatible.

The Bill was placed on the 1976 legislative programme but given Priority III because the Medicines Bill was not ready. In 1977 it was given Priority I but was again deferred for the same reason. The draft Medicines Bill had not been widely circulated and overseas developments had required further consideration to be given to some clauses. Amendments to the Food and Drug Act concurrent with the Medicines Bill also required further consideration.

By 1978 it was apparent that the Medicines Bill was still some way from introduction, but by this time it was becoming difficult to defuse criticism in some quarters of the delay in amending the legislation controlling toxic substances. The problem was eventually resolved by the temporary expedient of introducing a Restricted Drugs Amendment Bill along with the Toxic Substances Bill to retain those provisions of the Poisons

Act relating to drugs. The Poisons Act 1960 was renamed the Restricted Drugs Act 1960.

B Public Interest : The Parnell Fumes Incident

Public interest in the control of chemicals was probably at its greatest in the early 1970s. This was the time of peak interest in environmental issues generally, both in New Zealand and overseas. New legislation was being passed and new organisations set up to ensure that environmental considerations were included in decision-making. In New Zealand a Physical Environment Conference was held in 1970, as an offshoot of the National Development Conference (5), and as a consequence of this conference the Commission for the Environment and Environmental Council was established.

The major environmental concerns relating to chemicals were the effects of non-biodegradable substances on wildlife (especially organochlorine compounds such as DDT and heavy metals such as mercury), and indiscriminate aerial spraying of herbicides. Concern was also changing from the dangers of immediate death or acute damage from poisons or hazardous products. With the increasing number and variety of toxic substances in use, potential hazards from continuing exposure to small amounts of chemicals and the risk of chronic effects was becoming more recognised. The possibility of cancer and mutations had become a significant factor in public attitudes to chemicals. This attitude is reflected in the reaction of some groups and individuals to the qualification by the CHAP Committee excluding environmental effects of chemicals from its inquiries. The New Zealand Clean Air Society protested:

> It is clear that such effects cannot be completely separated from the effects on humans since ultimately the effects on the environment fall back on the human race. (6)

Because of these concerns, chemical spillages received considerable publicity. The best known case in New Zealand was the incident which lead to the establishment of the Commission of Inquiry into the Parnell Civil Defence Emergency.(7) On 26 February 1973, leaking drums containing an insecticide "Merphos", were unloaded from a ship in the port of Auckland and delivered to a storage depot in Parnell. The spread of fumes from the leaking chemical led to a Civil Defence Emergency being declared and a large area of Parnell evacuated. Uncertainty as to the actual nature of "Merphos" and the best way to neutralise it led to the situation becoming much worse than it need have been.(8) The subsequent Commission of Inquiry revealed that there may have been breaches of the Poisons Act 1960, the Customs Act 1966, the Noxious Substances Regulations 1954, and the Traffic Regulations 1956. In addition, the Commission drew

attention to the failure to take simple precautions and carry out established procedures to prevent such incidents occurring.

The Commission recommended a number of legislative changes. Most were for changes in other Acts and Regulations but in relation to the Poisons Act 1960, the Commission recommended that Section 36 should be widened to cover all poisons which may possibly arrive in New Zealand. This section required the master of a ship or the pilot of an aircraft to notify Customs if certain chemicals were on board the ship or aircraft when it arrived in New Zealand. The section applied only to substances referred to in the Sixth Schedule of the Poisons (General) Regulations 1960.

The CHAP Committee considered this recommendation but considered that it was too wide. The Committee recommended a more limited proposal and as a result clause 43 of the Toxic Substances Bill was extended to include toxic substances specified in published codes made under regulations. In addition a new clause 44 of the Bill was inserted to require notification of any container of a toxic substance that is found or suspected to have leaked. In such a case the container could not be unloaded without the permission of the local Medical Officer of Health.

The Commission also recommended that consideration be given to implementing the recommendations of the CHAP Committee. (A recommendation strongly endorsed by the Committee.) Many of the Commission's other findings also concerned problems that had already been recognised. Its recommendations were therefore able to be quickly implemented in most cases, largely by changes in procedures, better communication of officials, and education of those handling toxic substances. This is reflected in a reduced number of chemical spillages and rapid responses to those which do occur.

This matter had the potential to become a major political issue. That it did not can possibly be attributed to the fact that Government officials were generally aware of the problem and able to react quickly. It helped that legislation was already under preparation to amend the Poisons Act. It is noteworthy that neither major party made any references to toxic substances control in their 1975 election manifestos.

C Overseas Developments : Environmental Effects

The problems of environmental persistence and chronic health effects discussed above were being recognised internationally. A lead in this area was given by the Chemicals Group of the Organisation for Economic Co-operation and Development (OECD). This group prepared international guidelines for anticipating the effect of chemicals on man and the environment.(9) The aim was to encourage member countries to adopt

more stringent protection policies but at the same time ensure that these policies were harmonised thus avoiding non-tariff barriers to trade in chemicals and chemical products. New Zealand, as a member of the OECD, accepted the recommendations and was therefore committed to implementing them.

The work of the OECD was largely anticipated by the passage of the U.S. Toxic Substances Control Act 1976 (ToSCA). This Act requires the U.S. Environmental Protection Agency (EPA) to evaluate the toxicity, persistence, environmental effects, extent and manner of use, etc., for every new chemical before it can be manufactured. The EPA is required to evaluate the data within 90 days of its receipt and issue rules and notices for each chemical. Public comment is invited at every step.

Other members of the OECD have also introduced new toxic substances control laws, or extended powers in earlier legislation.(10) In general, this legislation is designed to do some or all of the following things:

1. To fill the gaps left by other legislation so that action can be taken, whenever necessary, to control any chemical hazard.
2. To provide for the advance assessment of the potential effect of new chemicals.
3. To permit the authorities to obtain from industry whatever information is necessary for them to assess the potential hazards of chemicals.
4. To ensure that environmental concerns are included in the assessment together with the concern for human health protection.

Existing legislation in New Zealand was inadequate for the purpose of controlling the environmental effects of chemicals. The Clean Air Act 1972 controlled the emission of toxic substances to the atmosphere, but it related only to industrial emissions. The Water and Soil Conservation Act 1967 controlled pollution of natural water supplies, but there was no way to control for purely environmental reasons the labelling, storage, transport, availability and use of chemicals, particularly domestic use.

This lack was discovered when consideration was given to controlling the use of fluorocarbon propellants in aerosol spray cans. Fluorocarbons are suspected of destroying the layer of ozone in the stratosphere. This ozone prevents harmful ultra-violet radiation reaching the surface of the Earth and if it were destroyed there would be an increase in the incidence of skin cancer as well as other effects on the environment and climate. Although the continued use of fluorocarbons may have an adverse effect on human health they cannot be controlled under the Poisons Act 1960 because the suspected effect is not one of direct toxicity. The

powers under the Clean Air Act 1972 are not applicable as fluorocarbons are not released to the atmosphere from industrial operations.

The problem was overcome by changing the definition of "toxic substance" in the Bill to include "any other substance that may directly or indirectly adversely affect the environment". It is doubtful that this change brought many additional chemicals under the control of the Toxic Substances Act because virtually all chemicals known or suspected of having adverse environmental effects are also known (or suspected) of being directly harmful to humans. The change enables more consideration to be given to environmental effects in classifying toxic substances, and avoids the need for separate legislation to control environmentally harmful chemicals such as fluorocarbons, non-biodegradable detergents, pesticides and fertilisers. It also enables New Zealand to meet its obligations as a member of the OECD.

D Tobacco

The inclusion of "any tobacco prepared for smoking, chewing or snuffing" in the definition of "toxic substance" in the Bill was to receive strong opposition from the Tobacco Manufacturers' Association. This inclusion was largely a result of the separation of legislation controlling poisons, medicines and foods into three distinct Acts. As well as taking over the therapeutic substances provisions of the Poisons Act 1960, it was intended that the proposed Medicines Bill would take over the drug provisions of the Food and Drug Act 1969. This latter Act enabled regulations to be made controlling tobacco, but as tobacco is not a medicine the Department of Health considered that the most appropriate place for these powers was under the Toxic Substances legislation.

The powers contained in the Toxic Substances Act are considerably wider than those of the Food and Drug Act. These changes were made on the recommendation of the Advisory Committee on Smoking and Health which had been set up by the Minister of Health in 1976. One of the committee's terms of reference was to examine the need for legislation to control tobacco. The committee decided there was such a need and originally considered that it should take the form of amendments to the Food and Drug Act and Regulations. On the advice of the Department of Health, it was agreed that they should be in the Toxic Substances Bill.

The committee made its recommendations to the Minister of Health in April 1978. In March it had asked the Tobacco Manufacturers' for their views on the need for legislation but these views, which were strongly opposed, do not appear to have been taken into account in the committee's recommendations. The manufacturers felt that existing legislation was adequate and that voluntary agreements could be negotiated between the

Government and the industry if further controls were desired. The committee recommended, however, that control should be by regulations.

The committee's recommendations were only partially accepted by the Government. It was agreed that the Toxic Substances Bill should contain stronger powers to regulate tobacco advertising and also include powers to regulate the maximum amounts of tar and nicotine in tobacco. However no such regulations would be made while the manufacturers complied with the voluntary agreements which had been negotiated.

The recommendations of the committee were released to the press and received favourable reaction.(11)

V PARLIAMENTARY STAGES

A First Reading

The Bill was introduced in October 1978 and referred to the Social Services Select Committee along with the Pesticides Bill and the Restricted Drugs Amendment Bill. There was little debate on the introduction as the Opposition generally supported the provisions of the Bill. The only matter on which some concern was expressed was the powers under clause 47 for an officer to enter private dwellings where it was believed there was an imminent danger from toxic substances.(12)

Public reaction to the introduction of the Bill is illustrated by the headline in the N.Z. Herald:

> Five Years on Parnell Emergency Prompt Bill. Long awaited legislation appeared in Parliament yesterday to try to prevent chemical spills like that which caused the Parnell fumes incident in 1973. (13)

B The Select Committee

Twenty-three submissions were made to the committee covering 26 of the 80 clauses of the Bill as introduced. In response to these submissions, the committee made 27 amendments to 16 clauses and inserted a new part dealing with tobacco. A further 22 clauses were amended to cover drafting matters or to provide for additional points raised by the Department of Health and the Customs Department.

The major areas covered by submissions were:

Clause 2	-	definition of toxic substances;
Clause 7	-	classification of toxic substances into different categories for control purposes;
Clauses 11 to 17	-	concerning the Toxic Substances Board;
Clause 23	-	exemptions for the Crown and public authorities;
Clause 32	-	information to be furnished concerning substances;
Clause 36	-	granting of licences;
Clause 42	-	importation of toxic substances;
Clause 47	-	powers of entry;
Clause 74	-	power of the Court to restrict publication of the name of poisons;
Clause 79	-	regulations.

The content of these submissions, the view of the Department of Health, and the recommendations of the Select Committee are discussed in more detail below. A summary of the submissions by clauses of the Bill as introduced is contained in Appendix II.

C Second Reading

The Bill received its second reading on 21 June 1979. As already noted there was little debate. The only Opposition speaker was Mr. Terris, M.P. for Western Hutt. The substance of his speech was a support for the submissions of the Commission for the Environment that the Bill did not go far enough to recognise modern concepts of toxic substance management and the need for public involvement in decision-making on toxic substance.

D Committee Stages

Two significant changes were made to the Bill during consideration by the Committee of the Whole. As he noted in the Second Reading, the Minister of Health introduced a supplementary order paper amending sub-clause 12 (3) concerning the secrecy of information supplied to the Board. The new sub-clause required Board members to treat as confidential all information supplied to the Board and all advice tendered to the Minister or Director-General of Health. A new sub-clause 12 (4) deemed it an offence to contravene sub-clause 12 (3).

The other change which was made in sub-clause 12 (2), and clause 33 with consequential amendments to other clauses, made it clear that the Act did not apply to matters which were the concern of the Pesticides Board under the Pesticides Act 1979, or the Animal Remedies Board, under the Animal Remedies Act 1967.

E Third Reading and Royal Assent

The Bill was given its third reading on 10 October 1979, and received the Royal Assent on 19 October. Part II of the Act (relating to the Toxic Substances Board) came into force on 1 January 1980 and the remainder of the Act will come into force when regulations are made on the Board's recommendations. The draft of these regulations was being circulated to interested parties by the Department of Health in September 1980 and it is expected they will come into force in 1981.

VI SUBMISSIONS TO THE SELECT COMMITTEE.(14)

A Limitation of Executive Powers

A feature common to many of the submissions was the need to limit the exercise of executive powers contained in the Bill, protect individual rights and allow public participation in decision-making on toxic substances. There is no doubt that the Bill as introduced provided for wide powers to be exercised by officers of the Crown and gave them considerable discretion in the exercise of these powers. Most of these powers existed under the Poisons Act 1960, but many of the submissions supported the introduction of some safeguards rather than relying on the goodwill and conscience of the officers.

1. Classification of Toxic Substances

The first of these powers mentioned in the Bill relates to the definition of toxic substances and the power for the Governor-General by Order-in-Council to declare these substances to be poisons. ICI (N.Z.) Ltd., and Ivon Watkins-Dow Ltd. (both major chemical companies), were concerned about the wide definition of "toxic substance". As discussed above, this definition had been widened to include environmental effects and ICI considered it "so wide as to be practically meaningless". ICI went on to claim that under this definition together with clause 32, an importer would be "required to carry out an excessive amount of documentation and the Department itself will be faced with the major administrative problem in monitoring the information so provided". Ivon Watkins-Dow considered the definition could lead to anomalies "as it involves a subjective judgment as to what 'injurious to health' means". The company suggested that there should be parameters "to determine if a substance will affect the environment and the degree at which such an effect will be considered undesirable". They also considered there should be parameters laid down for the classification of toxic substances under clause 7. The Law Society also considered there should be "criteria set out in clause 7 to assist persons or commercial organisations interested in or affected by the legislation to evaluate in what category of poison the various toxic substances might fall". The Society was particularly concerned that

> commercial organisations could be disadvantaged in an unjustified way by decisions .... without having any ability to question or challenge those decisions. There is also the possibility that decisions could be made which give an unjustified advantage or relaxation to a particular commercial interest, without the ordinary citizen being able to question them in any meaningful way.

The Department of Health did not agree with these submissions. In its report to the Select Committee it conceded that the definition of "toxic substance" would cover almost all chemical substances and products since all chemicals are toxic to varying degrees. The wide definition was necessary, however, to facilitate the collection of information under clause 32. The Department intended to maintain a computerised registry of all chemicals and chemical products used in New Zealand, to provide a data base for the effective control of toxic substances. It was particularly important that this registry cover all chemicals because new research could lead to those previously considered benign or "non-toxic" falling under suspicion. Only the composition of the substance and the purpose and method of use would be required in most cases and recording this information would not be an excessive burden, as claimed by ICI.

The Department did not consider that parameters could be adequately defined in legislation to cover the term "injurious to health", nor could parameters be used to define the classification of toxic substances. It was felt that these were all matters for expert judgment. The Department did, however, suggest that the definition of toxic substances could be amended by inserting the words, "by reason of its chemical or biochemical properties", before the words, "may directly or indirectly adversely affect the environment", in the definition of toxic substance. It also suggested that the Toxic Substances Board should be consulted on questions of classification of substances to reduce the possibility of abuses such as those raised by the Law Society.

The Select Committee adopted these two suggestions but went further towards meeting the requests contained in the submissions on clause 7. Any Order-in-Council declaring substances to be poisons was to be made on the recommendation of the Toxic Substances Board and the Board, before making such a recommendation, was required to consider the degree of need for controls bearing in mind the toxicity and other chemical and biochemical properties of the substance in question.

2. Exemptions for the Crown and Public Authorities

The Animal Remedies Board, the New Zealand Veterinary Association, and the Law Society objected to the exemption contained in clause 23 which allowed the Crown to sell any deadly poison or dangerous poison without a licence. The Select Committee agreed to these submissions and amended the clause so that only officers under the Act, acting in the course of their official duties, could sell these poisons without a licence.

3. Granting and Cancellation of Licence

The Public and Administrative Law Reform Committee was concerned that there was no provision in clause 36 for a person applying for a licence to be heard in support of his application "as the granting of a licence may be critical to the applicant's livelihood". Nor was there provision for a hearing prior to cancellation of a licence. Clause 67 did allow any person aggrieved by such a decision a right of appeal to the Supreme Court, but the Committee commented that "the existence of a right of appeal is not an adequate substitute for a hearing in the first instance". This submission was supported by the Select Committee.

4. Powers of Entry

Ivon Watkins-Dow Ltd., expressed concern that clause 47 "delegates very wide powers to those administering the Act with very little corresponding risk of civil or criminal liability". The company claimed that past experience showed that some officers lacked the technical competence to carry out their functions and this could result in substantial losses to the companies concerned. The Select Committee accepted the comment of the Department of Health that clause 76, which makes an officer liable if he has "acted in bad faith or without reasonable care", was a sufficient safeguard. The Department also claimed that "officers", as defined in the Bill, would have had sufficient training and experience to carry out their duties. It is noteworthy that the power contained in clause 47 was first inserted in the 1960 Poisons Act, although similar powers existed in the Food and Drugs Act and the Health Act before then. After that Act was passed, the Department advised its officers that it expected they would use these powers with "discrimination and restraint, while being prepared to act promptly and boldly where the occasion warrants".(15)

5. Power of the Court to Restrict Publication of the Name of any Poison

The Law Society was concerned that there were no guidelines indicating the intent of clause 74. The Society argued that this might lead to an over-cautious suppression of information of legitimate public interest. The Department reported to the Select Committee that this clause was identical to the provision in the Poisons Act 1960 as amended the Poisons Amendment Act 1964. The 1960 Act had made illegal the publication of the names of poisons used in criminal cases. In 1964 there was considerable public outcry and criticism of this provision following the death of a student as a result of the administration of a reputed aphrodisiac by her boyfriend. The wide-spread discussion from this case lead to the Act being amended to give the

Court discretion in publication. The Department recommended that no change be made to the provision and this was accepted by the Select Committee.

6. Regulations

ICI expressed concern that the regulatory powers contained in clause 79 were "unacceptably wide", particularly because the Bill provided "no statutory requirement for prior consultation". The Newspaper Publishers were also concerned that there was no requirement in the Bill for prior consultation before the enactment of regulations.

The Select Committee accepted these submissions and amended clause 79 so that regulations are to be made on the recommendation of the Toxic Substances Board.

B Public Participation in Decision-Making : The Toxic Substances Board

The amendments to the Bill made by the Select Committee limiting the powers to classify toxic substances and make regulations, except on the recommendation of the Toxic Substances Board, have already been noted. Part II of the Bill, relating the constitution, functions and procedures of the Board was also the subject of a number of submissions to which the Select Committee gave considerable attention.

Membership of boards and committees, especially those dealing with sensitive matters, is sought after by interest groups who thereby hope to have some influence on decisions made in these matters. If all requests for representation were acceded to, committees could become exceedingly large and ponderous. The ideals of efficiency and democracy which committees can usefully promote (as referred to in the Introduction to this paper), are to this extent contradictory.

The Toxic Substances Board was intended to be the successor to the Advisory Committee on Commercial, Household and Agricultural Chemicals (and also to the Industrial Chemicals Committee also set up under the Poisons Act 1960 to advise on the use of chemicals in industry). As well as meeting the need for expert advice on toxic substances control, the Board was set up to "alleviate suspicion in some quarters that the regulation of toxic substances is a secretive, bureaucratic affair which fails to take into account the broader considerations of the community at large".(16)

These concerns were expressed in a number of submissions. The Veterinary Association, the Pharmaceutical Society, Air New Zealand, and the Fruit Growers Federation, all asked for representation of their interests on the Board. ICI suggested that the representation of government departments was too high; they saw no need for representation of the Departments of

Labour or Trade and Industry, nor for the Ministry of Transport. They suggested instead that there be a representative of the importing/ merchanting sector of business (manufacturers were already represented), and that consideration should be given to including a nominee of an environmental organisation, an academic representative, and an administrative officer. The company claimed that a Board with the constitution they recommended "would be able to represent the views of industry, the community, science and the government more equitably".

The Select Committee did not see fit to make any change in the constitution of the Board. The Chairman of the Select Committee, Hon. E.S.F. Holland, noted that:

> The effectiveness of the board will depend very largely on the calibre of individual members. I should not personally be opposed to an additional member with a keen interest in environmental matters, but I think it is wrong to imply that, simply because a person is not a direct appointee or representative of a particular interest, that interest is not given full weight and consideration.(17)

The Committee did, however, change the terms of reference of the Board in response to submissions. ICI and Ivon Watkins-Dow considered the Board should have more than just advisory powers. They considered that the Board should have the power to determine the classification of toxic substances in a similar way to the Pesticides Board in relation to the registration of pesticides. They also suggested that the Board should have the power to initiate inquiries rather than, as set out in clause 12(1), merely "advise the Minister or the Director-General on all such matters as the Minister or Director-General may from time to time refer to the Board". The Commission for the Environment also considered that the Board should be given more responsibility and autonomy. The Commission saw the Board playing an important public relations role "to give the concerned public reason to be convinced that human health is being protected". The Board would "act as a kind of chemicals ombudsman" to consider and advise on all matters relating to the control of chemicals, including the administration of the legislation by government departments and other agencies.

The Chairman of the Select Committee commented in the Second Reading debate "that this view held some initial attraction for me. However, if this line were followed to its logical conclusion it must do little more than lead to the creation of another bureaucratic element when no real need exists".(18)

The Select Committee accepted these submissions only in part. As already noted, the Board was given the responsibility of making recommendations for classification of substances and for regulations. Clause 12(1) was also amended to allow the Board to initiate inquiries and investigations with the consent of the Minister or Director-General and, in addition, it was

given the power to promote research and publish reports and information in relation to toxic substances. This power is also subject to the consent of the Minister or Director-General.

Both the Law Society and the Commission for the Environment criticised sub-clause 12(3), which required Board members to keep secret all information given to them for the purpose of carrying out the Board's functions under the Act. The Commission felt that this would interfere with the development of public confidence in the Board and the provision conflicted with its suggestions that the Board publish reports and hold meetings in public as much as possible. The provision had been included to protect commercial secrets and the Select Committee did not see fit to make any changes apart from the addition of a proviso that it did not apply to the new powers to publish reports and information.

In the Second Reading debate, the Minister of Health, Hon. G.F. Gair,, commented in relation to this sub-clause that he believed:

> the necessary check on the disposal of information that should properly remain confidential can be achieved with a form of words more specific in intent. I will, therefore, during the Committee stage, offer to the House....a suitable suggestion.(19)

C Tobacco

The Tobacco Manufacturers' Association made strong submissions to the Select Committee opposing the inclusion of tobacco in the Bill. As noted above, they had not been consulted on this legislation until shortly before its introduction and their submissions reflected their strong feelings:

> To include tobacco along with insecticides, fungicides, pesticides and herbicides is to broaden the intent of the Bill beyond what is reasonable. The Bill is totally inappropriate for tobacco products, and we submit it should be excluded entirely from its provisions.

They gave examples of what they considered to be the "extraordinary and unrealistic" consequences of applying the provisions of the Bill to tobacco. Sections 33, 34 and Parts V and VI control importation, advertising, and the taking of samples for analysis. The manufacturers claimed that these matters were already adequately covered by voluntary agreements and the provisions of the Food and Drugs Regulations 1973, and therefore there was no need for new powers of enforcement. Section 47 gives "officers", including members of the Police, powers to enter and inspect premises where there are reasonable grounds to believe that there is a toxic substance, and if the toxic substance is found not to comply with the requirements of the Act, it may be impounded. The manufacturers claimed:

> Since there will be few buildings or even private homes within New Zealand which do not contain tobacco, of one sort or another, this section seems to give far wider powers of entry and search than anything previously enjoyed by our Police force.

(The manufacturers had failed to note that sub-clause 47(10) prevents an officer entering a private home unless he has reasonable grounds for believing that an imminent danger to the public or to any person exists. It is hard to conceive of circumstances in which tobacco could provide such grounds, and any officer attempting to exercise this power would be unlikely to be protected by clause 76.)

It was also claimed that clause 7 could be used to declare tobacco a "harmful substance". In that event, various provisions of the Bill would apply, restricting the sale through automatic vending-machines, custody, packaging, and storage of tobacco in ways which "would have the most far-reaching consequences in thousands of retail outlets throughout the country".

The Select Committee was sufficiently impressed by these submissions to include a new Part setting out the provisions of the Bill relating to tobacco. This made it clear that clauses 7 and 33, and Part V (covering importation) did not apply to tobacco. Tobacco was, however, retained in the definition of "toxic substance" and the Food and Drug Act was consequentially amended to delete tobacco from the definition of the term "drug". The provisions relating to advertising and packaging and taking of samples for analysis were also retained, in line with the recommendations of the Advisory Committee on Smoking and Health, as were some of the powers of entry and impoundment related to the enforcement of these provisions. Powers were retained to permit the making of regulations to prescribe methods of testing tobacco and to limit the amounts of tar and nicotine in tobacco.

The Chairman of the Select Committee, Hon. E.S.F. Holland, commented on these matters in the Second Reading dabate on the Bill. He quoted from the report of the Department of Health to the Select Committee that the Department did "not believe that the inclusion of tobacco in the Bill will have any significant effect unless appropriate regulations are made", and "there is no intention of controlling advertisements by legislation at present, (but) it seems appropriate with the new Bill to make provisions for statutory control should the agreement be breached, or should further restriction be desired and not agreed to voluntarily". Mr. Holland commented:

> Certainly you can read more into those remarks than perhaps is intended, but I am very doubtful personally if regulations as proposed in the Bill are the proper way to exercise a kind of discipline over the tobacco industry. If legislation is found to be necessary it should be done through amending legislation in the House, and not by regulations.(20)

D Environmental Considerations

The inclusion in the definition of "toxic substance" of chemicals having an adverse effect on the environment was a major step in defusing criticism of the lack of powers to control such effects. In the view of some environmental organisations, however, the Bill did not go far enough. This is seen by the submissions of the Commission for the Environment and the Environmental Defense Society on clause 32. This clause was included in the Bill primarily to gain information for the establishment of a registry containing basic information on the nature and uses of all chemicals used in New Zealand. Such a registry would be of value in cases where a chemical, previously considered harmless, comes under suspicion because of new research, usually done overseas. It would also provide information which could be used to reassure the public who may be concerned, particularly about substances known only by their trade names, and it would be of great value in emergencies.

The submissions did not disagree about the need for such a registry but rather were concerned with the nature of the information supplied and what is done with it. The major premise of the Society's submission was that New Zealand should develop a comprehensive system of premanufacture or preimportation evaluation along the lines of the U.S. Toxic Substances Control Act 1976 (ToSCA). The Society claimed that exposure to toxic chemicals may have "catastophic results" and it was not known how likely or serious such results would be for many chemicals. Past mistakes had, however, been documented showing the results of releasing chemicals into the environment before their effects were known. In order to avoid such mistakes in future the Society stated: "Extensive pre-market testing of substances should be mandatory and evaluation of chemicals at present in use must be accelerated".

The submission of the Society failed to consider the difficulties which have been experienced in attempting to administer ToSCA (which is not yet functioning properly), and the differences between the United States and New Zealand.

The US Journal "Science" had outlined in 1978 some of the difficulties so far experienced in that country.(21) It was clear that to function properly ToSCA would require a massive infusion of money and staff and the overcoming of a considerable number of administrative and technical hurdles. The number of chemicals which exist, and which would, therefore, require evaluation, would not decrease on a per capita basis for other countries, only the amounts used will so decrease, and so New Zealand would be faced with the same problems if the Society's submission was accepted.

The second point, which was overlooked by the Society was that New Zealand is not identical to the United States. The latter country has a large chemical manufacturing industry and, therefore, much technical and toxicological expertise. New Zealand, by contrast, imports almost all of the chemicals it uses and does not have the same base of toxicological expertise. Toxicologists, who are in short supply even in major industrialised countries are almost non existent (except for a few in Government and in universities) in New Zealand. If the suggestions of the EDS were incorporated in the Bill then the department would be quite incapable of fulfilling its obligations.

The Department of Health considered that, in the first instance, New Zealand should develop a "response capability". In other words when a chemical falls under a cloud overseas there must be at least sufficient toxicological expertise to perform an evaluation in this country. Secondly, links should be developed with international organisations (such as WHO and OECD) and other national bodies also involved in chemical hazard evaluation. These two, coupled with knowledge of the extent and manner of use gained from a comprehensive registry, should be sufficient for this country to evaluate, respond to, and control those chemicals which are of primary concern internationally.

A further level of protection arose from the fact that New Zealand is principally a small importer of chemicals and tends to use only chemicals widely used overseas. No country would be likely to manufacture a chemical solely to export it to New Zealand and this means that a chemical imported here is likely to be extensively used in the country of origin and to have passed through any pre-manufacture evaluation process existing in that country.

Because of the existing links with overseas bodies and the developing response capability the department considered it extremely unlikely that New Zealand would be used as a "dumping ground" for chemicals unwanted overseas. No incidents were known where such had happened here, though clearly it could happen in under-developed countries with less capabilities.

The Commission for the Environment acknowledged in its submission that a system similar to ToSCA would be impracticable in New Zealand, but it expressed a preference for the flexible arrangement used in Canada. In that country there is a mandatory reporting scheme for chemicals that has been newly marketed, and the public authorities take action when and where they deem it necessary. The Commission considered that the powers contained in clause 32 did not form an adequate basis for developing a successful procedure for anticipating the effects of toxic substances.

The Commission considered that clause 32 should:

> (place) a legal obligation on manufacturers, or importers to ensure that adequate assessment had been made of new toxic substances in terms of their human and environmental toxicological properties. The Government's role would be to ensure that the procedure had been followed adequately and to investigate more thoroughly, or require industry to do so, toxic substances of particular concern.

In order to achieve this objective, the Commission considered that formal guide-lines would be needed, setting out precisely what range of toxicological data was required. The Commission recommended that a new sub-clause be inserted requiring the importer or manufacturer of any toxic substance new to the New Zealand market to supply details of:

> its effectiveness, toxicity, persistency and accumulative tendency and other information necessary for assessing the danger it presents to.....health, or to the environment during its use and handling.

The department considered that clause 32, giving discretionary powers to require more information, contained the flexibility necessary to permit the gradual transition from a "response" to a "pre-market evaluation" capability. Any "spelling out" of detailed mandatory data supply requirements in the legislation would have the twofold effect of inhibiting notifications (particularly from smaller companies, who would not understand what they had to supply) and imposing on the department a great mass of data which it would not have the resources to evaluate.

The department intended to collect information on the nature and composition of chemicals and products and the uses to which they were intended to be put. This would permit the rapid identification, either immediately or at a later stage, of substances known to be of concern. The department could then go immediately to the manufacturer or importer and obtain more information on toxicology, human exposure and extent and nature of use, et. This is permitted under sub-clause 5.

The Select Committee did not accept the submissions of the Environmental Defence Society or the Commission for the Environment. It agreed with the Department of Health that the powers included in clause 32 were adequate to meet the need for control and that additional controls would be too difficult to administer.

E Other Matters

A number of submissions were concerned with the details of administration of the Act. The Animal Remedies Board commented on a number of clauses which related to controls on toxic substances which were also animal remedies. The New Zealand Veterinary Association was also concerned about some of these matters. In general, these submissions were not accepted as it was considered that veterinary drugs were adequately covered by the Bill

where necessary but that controls on these substances was more properly the subject of other legislation.

Air New Zealand and the Auckland Waterfront Liaison Committee made submissions on Part V concerning the importation and carriage of toxic substances. In response to these submissions the clauses in this part were amended by the Select Committee. The requirement for prior notification of the arrival of dangerous goods by air was deleted because of the very fast turn around time of aircraft and the very small quantities of such goods ever transported by air. The obligations of captain of a ship and the pilot of an aircraft in relation to the carriage of toxic substances were also clarified.

VII DISCUSSION

A Role of the Department of Health

The impetus for changes to the Poisons Act 1960 came from the Department of Health. This is a legitimate function of the department: it has the responsibility for administering the legislation. It also has the expertise which enables it to evaluate technological development and where necessary initiate changes in legislation to cater for such developments.

Both these factors were important in the case of the review of the poisons legislation. Problems in administration had shown that the 1960 Act was outdated and inflexible. The department proceeded to review the legislation and for this purpose used the device of establishing a committee. The CHAP Committee was nominally the creation of the Minister of Health but it was set up on the recommendation of the department and was chaired by a departmental official.

The actual development of legislation following the report of the CHAP committee was the responsibility of the department and this proceeded at departmental convenience. The separation of provisions relating to toxic substances, medicines and foods into three distinct pieces of legislation was intended to suit administration within the department. New provisions inserted in the legislation also served the department's purposes. The role of the Toxic Substances Board, for example, was largely determined by the department in order to protect itself from criticism that its decisions on toxic substances control were not in the best interests of the community. On the surface, the role of the Board is to give advice on these matters but it will be largely dependent on the department for information and resources, including secretarial services. The degree of autonomy which the Board achieves in practice, if it achieves any at all, will depend strongly on the individual members of the Board.

The convenience of the department can also be seen in the inclusion in the Act of tobacco and the environmental effects of chemicals. In both cases, separate legislation was avoided. If these matters had not been included, there may have been built up a demand for controls, leading to political initiation of legislation. Such legislation may not have taken a form desired by the department.

Government departments in New Zealand do have a political role. This is especially true in areas such as health where the department has expertise and knowledge not shared by politicians. Where such autonomy exists a department can pursue its own objectives in ways that best meet its own needs. Departments operate, however, within a system which requires them to account to politicians and the general public for their actions and this acts as a safeguard to ensure that these actions are in the public interest.

B Political Influences

As noted above, the control of toxic substances did not become a party political issue. Neither major party referred to the subject in its 1975 and 1978 election manifestos. As the legislation developed, the Minister of Health, and eventually Cabinet, the Select Committee, and Parliament itself, were required to consider the proposed Act, but the records of the Department of Health, and the experience of officers dealing with the legislation, show that none of these bodies had any significant influence on the principles contained in the Toxic Substances Act.

The basic principles of the legislation were of course established long before this Act was introduced, in the legislation introduced last century. The Act does, however, contain significant new provisions, for example those relating to protection for the environment. The review of the legislation gave politicians the opportunity to question established principles but this was not done.

The Select Committee properly considered the details of the legislation and made many amendments. Few of these amendments were made, however, without the support of the Department of Health; the exceptions were the criteria for classifying substances and the controls on tobacco, but even in these cases the department did not oppose the changes made by the Committee.

What, then, is the role of the party system and politicians in legislation such as this? The answer is that they act as a safeguard to ensure that the legislation originated by departments is in the public interest.

C The Role of Interest Groups

Interest groups played an important role in the development of this legislation. While the impetus for change came from the Department of Health, criticism of the Poisons Act 1960 by the chemical industry was significant in influencing the department.

The interestgroups which had the greatest influence on the legislation were those which were "institutionalised" by having representatives on the CHAP oommittee. These were the Agricultural Chemicals and Animal Remedies Manufacturers Federation and the Retailers Federation. Of those groups which made submissions to the committee, the greatest weight was given to the established such as the National Council of Women and Federated Farmers, along with the commercial interests. Private individuals and groups such as the Clean Air Society were given little consideration.

It is significant that most of the matters raised in submissions to the CHAP committee by established groups were not subject to submissions to the Select Committee. In contrast many of the concerns of others were later raised with the Select Committee. The submission of the N.Z. Medical

Association to the CHAP committee is an interesting example. This Association was a political organisation of doctors; in 1971 the professional organisation was called the Medical Association of New Zealand. The Association's submission called for an autonomous authority to administer legislation on harmful substances, free of political control, with the broadest representation of available expertise and accountable to the community. It also noted that the proliferation of chemicals used in modern life necessitated a powerful and flexible control apparatus to consider the known and suspected effects of chemicals on the community, including long-term effects on humans and the environment. Many of the concerns expressed in this submission were later to be covered in submissions to the Select Committee by the Commission for the Environment and others, especially those on the role of the Toxic Substances Board and environmental effects of chemicals.

The submissions to the Select Committee did have a significant effect on the details of the legislation. This was summed up by the Chairman of the Committee in his Second Reading speech:

> I welcome the Bill: It has been returned to the House with many amendments. That shows the value of Select Committee hearings for Bills of this type. Interested parties can make relevant submissions, although some cannot be accepted, nor should they be. Many of the amendments are of a minor drafting nature, but a number of significant changes have been made. .....In my view the changes represent a willingness by the Government and the Select Committee to listen to what was said about the Bill. That represents the best aspects of public involvement in the legislative process.(22)

D The Place of Committees

Committees play an important part in government.(23) They enable interest groups, independent experts, and public officials to interact, express their different viewpoints, uncover facts and discard fantasies, and therefore build a consensus on which a decision can be made. Such consensus building is a key process in democratic government.

The CHAP committee is a good example of a committee of inquiry set up to investigate a problem (in this case the need for changes in poisons legislation). It included representatives of the major interests concerned with control of poisons and it proceeded to seek submissions from a wide range of other interests. But was the formation of a committee necessary in this case? The Department of Health already had contacts with the established interest groups and the major problems with the legislation were already known. Most of the new matters raised in the submissions to the committee could just as easily have been raised in submissions addressed to the department.

The value of using a committee lies largely in the publicity generated by its establishment and in the belief that its considerations will be fair

and unbiased. Publicity means that more interested organisations and individuals will be made aware of the existence of an inquiry. It is possible that such interests may not wish to make submissions to a government department: they may doubt the independence and impartiality of such a body. A committee comprising representatives of different interests is less likely to have a particular bias. Thus public confidence in decisions is increased, especially in contentious areas. Even if individuals disagree with the decisions they are more likely to abide by them if they believe that all relevant matters have been considered. Committees, therefore, have a major role in the legitimation of policies.

The importance with which committees are viewed was expressed in a number of submissions both to the CHAP committee and the Select Committee. The result of these submissions was the creation of a Toxic Substances Board which will have considerable power to influence decisions on toxic substances control. The Board will not, however, be given final responsibility in this area and it would have been inappropriate to have given it such responsibility. Advisory committees play a useful part in decision-making but by their nature they have a fairly limited view of their subject. Final decisions must be made considering social, economic and political factors as well as technical matters. The Board must be accountable in some way to the public interest and, under New Zealand's political system, the only way to achieve this is by making the Board responsible to a Minister of the Crown.

E Public Participation and Protection of Individual Rights

The Act includes a number of new provisions allowing public involvement in decision-making. The principal one is through the Toxic Substances Board which is required to consult with other interested bodies before making its recommendations. Other amendments were made as the result of submissions to ensure that individual rights were protected from excessive zeal on the part of officials.

The Act still contains broad powers which would enable many common chemicals and and products to be controlled by regulation. In the past, changes in regulations have provoked opposition when such substances have been removed from open sale. It is often easier to regulate rather than educate or rely on the commonsense of persons using poisons.

The acceptance of some accountability of officials to the general public is a departure from the established principles of Ministerial responsibility referred to above. It is important, however, to recognise the different nature of such accountability and responsibility. If members of the public and interest groups are aggrieved with the actions and decisions of the Department of Health or the Toxic Substances Board, and are unable to obtain satisfaction from direct contact or legal appeals, the proper action

for them to take is through the political system. If sufficient public concern can be generated, then politicians can exercise their responsibility.

F Protection of the Environment

The Act includes provisions which will enable more consideration to be given to long term effects of chemicals on human health and the environment. Submissions from environmental interests claimed these provisions did not go far enough because no requirement was placed on the department and the Board to consider these matters. Ultimately, decisions on what risks are acceptable must be made by the community. Experts can give advice, and point out the benefits and hazards from using any particular chemical, but final decisions must take into account other factors.

This matter did not become a major political issue when the Bill was considered, but it is unlikely that environmental interests will be satisfied with the present provisions. Continual pressure could lead to a further review of this legislation. Whether this occurs will depend largely on the actions and decisions of the department and the Board. This scrutiny of official actions is a valid role for pressure groups.

G Tobacco

The most controversial matter covered by the Act was the control of tobacco. The Select Committee ensured that these controls were limited but considerable powers are still available to restrict advertising of tobacco. The comments of the Chairman of the Select Committee illustrate the role of politicians in such matters. If there is a public demand for controls, these should be introduced in a way that enables full debate rather than on the decision of a government department and Cabinet.

VIII CONCLUSION

The Toxic Substances Act 1979 represents a significant advance on its predecessor, the Poisons Act 1960. Administration has been smoothed in response to changed circumstances; the legislation has been made more flexible to allow for further changes in future; and provisions have been included to allow greater public involvement in decisions. It is inevitable, however, that any complex piece of legislation such as this Act will contain some flaws, errors or omissions, which will show up as time proceeds. Unanticipated developments may also make provisions inadequate or unwieldy.

The involvement of interest groups in developing such legislation, can help to minimise such problems arising. The use of committees in developing legislation is, therefore, valuable. The Select Committees of Parliament are effectively the last to allow such a contribution.

Continuing consultation among interest groups, politicians and public officials is an important part of our democratic system and this is facilitated by the use of formal mechanisms such as boards and committees.

N O T E S

(1) See, for example, the Evening Post (19 November 1970).

(2) First Report of the Advisory Committee on Commercial, Household and Agricultural Poisons (June 1971)

(3) Those of the CHAP committee's recommendations which did not require amendments to the Poisons Act were effected in 1977 by the 12th amendment to the Poisons Regulations 1964.

(4) The Medicines Bill has yet to be introduced in Parliament as at September 1980.

(5) The Physical Invironment Conference 1970, Reports, Papers and Proceedings (1970).

(6) Submission to the CHAP Committee (1969).

(7) Report of the Commission on Inquiry into the Parnell Civil Defence Emergency (1973)

(8) Subsequent information revealed that "Merphos" was not particularly toxic. The symptoms reported by those admitted to hospital were not typical of poisoning by this type of chemical but were similar to those induced by fear.

(9) OECD, Guidelines for Anticipating the Effects of Chemicals on Man and the Environment (1978).

(10) These laws are Canada's Environmental Contaminants Act 1975; Japan's Chemical Substances Control Act 1973; Sweden's Act on Products Hazardous to Man or the Environment 1973; Switzerland's Law on Trade in Toxic Substances 1969; the United Kingdom's Health and Safety at Work Act 1974, together with section 100 of the Control of Pollution Act 1974; the United States' Toxic Substances Control Act 1976; Norway's Product Control Act 1977; and France's Act on the Control of Chemicals 1978.

(11) The Evening Post included editorial comments supporting controls on tobacco advertising on 28 July and 24 August 1978.

(12) Toxic Substances Bill, First Reading, (October 1978) (1978) 421 NZPD 4134

(13) N.Z. Herald (5 October 1978)

(14) Reference to this section are to submissions to the Social Services Select Committee, unless otherwise noted.

(15) Department of Health, Circular memorandum to District Health Offices, October 1971.

(16) Hon. G.F. Gair (1979) 423 NZPD 942

(17) (1979) 423 NZPD 947

(18) (1979) 423 NZPD 947

(19) (1979) 423 NZPD 944

(20) (1979) 423 NZPD 948

(21) "Toxic Substances Legislation : How Well are Laws Being Implemented", (29 September 1978) 201 Science 1198-1199; and "EPA and Toxic Substances Law : Dealing with Uncertainty" (10 November 1978) 202 Science 598-602.

(22) (1979) 423 NZPD 946

(23) See Wheare, K.C., Government by Committee, (1955), for a discussion based on United Kingdom experience and "The Place of Committees in Administration", (September 1957) 20 N.Z.J.P.A. 25-86, for an adaptation of Wheare's analysis to the New Zealand situation.

SUMMARY OF SUBMISSIONS TO THE CHAP COMMITTEE ON THE POISONS ACT 1960 AND REGULATIONS

1 National Council of Women

Classification; storage, containers and labelling; education.

2 N.Z. Veterinary Association

Removal of animal remedies from poisons legislation.

3 Ivon Watkins-Dow Ltd.

Availability to qualified and licensed operators; classification; containers and labelling. Need for a permanent committee.

4 Agricultural Pests Destruction Council

Licensing procedures, availability to persons with adequate knowledge. Packaging of experimental poisons. Administration of pesticides control by Agricultural Chemicals Board.

5 N.Z. Jaycees

Warning labels, locking caps on containers.

6 Agricultural Chemicals and Animal Remedies Manufacturers Federation

Classification; containers and labelling.

7 N.Z. Clean Air Society

Aerial spraying; labelling of bulk containers; disposal of used containers.

8 N.Z. Deerstalkers' Association

Pesticide philosophy and ecological damage. Need for controls on experimental use of pesticides.

9 N.Z. Contractors' Federation (Chemical Applicators Section)

Terminology of poisons to promote care in handling.

10 N.Z. Stock and Station Agent's Association
N.Z. Grain, Seed, and Produce Merchants Federation
Agricultural Seedsmens' Association

Storage; packaging.

11 N.Z. Paint Manufacturers' Association

No change to existing relation with National Poisons Information Centre.

12 Arthur Yates and Co. Ltd.

Licensing. Liability of wholesaler to ensure retailer has licence.

13 Ivory Spray Chemicals Ltd.

Classification; storage; packaging; advertising. Need for standing committee. Delays in declaring substances poisons.

14 N.Z. Medical Association

Packaging; advertising.
Consolidation of all harmful substances legislation.
Administration by autonomous authority, open to the public.

15 N.Z. Fruit Growers' Association

Licensing; terminology of poisons; storage and transport; packaging; advertising.

16 Fruitgrowers' Chemical Co. Ltd.

Storage and transport.

17 Dr. R.G. Park

Labelling for dermatitis risk.

18 Dr. H.G. Daellenbach

Child-proof packaging; warning labels.

Aerial spraying; bulk transport; disposal of used containers; environmental effects.

19 Agricultural Chemicals Board

Classification; availability; labelling. Permanent committee.

Separation of agricultural chemicals from pharmaceutical and industrial chemicals.

20 Mr. K. Rowling

Licensing.

21 Mrs. M. Oakley

Small containers for home gardeners.

22 Mrs. M. Molloy

Use of food perfumes or flavours in household poisons.

23 Mrs. J.R. Holm

Child-proof packaging; warning labels; storage and transport to avoid food contamination.

24 Mr. and Mrs. D.W. King

Packaging; warning labels; storage and transport with foods.

Need to use only biodegradable poisons; environmental effects.

25 Huntly District Veterinary Club

Licensing of veterinary drugs.

26 Medical Officer of Health, Dunedin

Standing committee.

27 Federated Farmers

Classification; packaging; labelling.

28 Animal Remedies Board

Storage and transport; labelling; education. Exclusion of animal remedies from Act.

29 Medical Officers of Health (Combined)

Licensing.

30 Consumer Council

Storage; packaging; advertising and labelling.

31 Medical Officer of Health, Auckland

Licensing.

32 N.Z. Forest Service

Deadly Poisons Regulations 1960.

SUMMARY OF SUBMITTIONS TO THE SOCIAL SERVICES SELECT COMMITTEE

BY CLAUSES OF THE BILL AS INTRODUCED

Clause 2. Interpretation

"Animal"

Animal Remedies Board

"Toxic Substance"

ICI New Zealand Ltd.

Ivon Watkins-Dow Ltd.

Tobacco Manufacturers' Association

Commission for the Environment.

Clause 7. Power to declare substance to be poisons, etc.

Ivon Watkins-Dow Ltd.

Law Society.

Clause 8. Advisory and Technical Committees

New Zealand Veterinary Association

New Zealand Federation of Labour.

Clause 11. Constitution of Board

Animal Remedies Board

N.Z. Veterinary Association

Pharmaceutical Society of N.Z.

Air New Zealand

N.Z. Fruit Growers Federation

ICI N.Z. Ltd.

Clause 12. Function of Board

Animal Remedies Board

ICI N.Z. Ltd.

Ivon Watkins-Dow Ltd.

Commission for the Environment

Law Society

Clause 15. Meetings of Board

Ivon Watkins-Dow Ltd.

Clause 17. Board may appoint committees

Public and Administrative Law Reform Committee

Clause 19. Restrictions on sale of deadly poisons and dangerous poisons

Animal Remedies Board

N.Z. Veterinary Association

Clause 23. Exemption for Crown and Public Authorities
- Animal Remedies Board
- N.Z. Veterinary Association
- Law Society

Clause 26. Containers
- Animal Remedies Board
- N.Z. Fruit Growers Federation

Clause 30. Packing of poisons and harmful substances
- Animal Remedies Board

Clause 32. Information to be furnished concerning substances
- Animal Remedies Board
- Commission for the Environment
- Environmental Defense Society
- Auckland Waterfront Liaison Committee

Clause 33. Powers of Minister to prohibit import, etc., of toxic substances
- Tobacco Manufacturers' Association.

Clause 34. Control of advertisement
- Tobacco Manufacturers' Association
- N.Z. Fruit Growers Federation

Clause 36. Grant of Licences
- Public and Administrative Law Reform Committee

Clause 42. Packing of imported toxic substances
- Tobacco Manufacturers' Association
- Air New Zealand
- N.Z. Bureau of Importers and Exporters

Clause 43. Notice to be given of imported toxic substances
- Air New Zealand
- Auckland Waterfront Liaison Committee

Clause 44. Special provisions in cases of leakage
- Air New Zealand
- Auckland Waterfront Liaison Committee

Clause 45. Evaluation of goods not allowed to land
- Air New Zealand

Clause 46. Sending, carrying or importing toxic substances under false description
- Auckland Waterfront Liaison Committee

Clause 47. Power of entry, inspection and segregation

Ivon Watkins-Dow Ltd.

Tobacco Manufacturers' Association

Clause 48. Powers in respect of contaminated premises, etc.

Law Society

Air New Zealand

Clause 73. Statement by Director-General as to toxic substances

Ivon Watkins-Dow Ltd.

Clause 74. Power of Court to restrict publication by name of poison

Law Society

Clause 78. Abetting offence against corresponding law of another country

Law Society

Clause 79. Regulations

ICI N.Z. Ltd.

Auckland Waterfront Liaison Committee

Newspaper Publishers Association

Miscellaneous

Poisons Regulations 1964

N.Z. Paint Manufacturers Association

Fluoridation

Mrs. K. Wilcock

Responsibility of industry

Commission for the Environment

General

N.Z. Clean Air Society

CHAIRMAN AND MEMBERS OF THE TOXIC SUBSTANCES BOARD

Ian Lawrence Baumgart, BA, BSC., nominee of the Minister of Health as Chairman; (Former Commissioner for the Environment);

Harry McEwen Stone, M.SC.(N.Z.), C.O.P., nominee of the Minister of Science; (Member of CHAP Committee);

Alan Charles Ruffell, nominee of the Minister of Labour; (Asst. Secretary of Labour);

Mervyn Richard Morrison, nominee of the Minister of Trade Industry; (Director, Industries B Division, D.T.I.);

Leonard Errol Millar, B.COM., nominee of the Minister of Transport;

Ian Kenneth Walker, M.SC., D.SC.(N.Z.), nominee of the Minister for the Environment; (retired Asst. Director-General, DSIR);

Anthony George Slark, M.B., B.S., D.OBST., R.C.O.G., D.P.H., D.I.H., M.R.C.G.P., nominee of the New Zealand Medical Association;

Frederick Noel Fastier, M.SC., D.SC.(N.Z.), D.PHIL.(OXON), F.R.I.C., HON.M.P.S.(N.Z.Q.) nominee of the Consumer Council; (retired Professor of Pharmocology, Otago University);

Gordon Shirley Hodson, B.SC., nominee of the Manufacturers' Federation of New Zealand;

Liam Robert Butland Mann, M.SC, PH.D. nominee of the New Zealand Federation of Labour; (Director, Environmental Defense Society);

Stuart Withiel Thomas, M.I. FIRE E., nominee of the New Zealand Fire Service Commission.