

# The new regulatory framework for work health and safety –

## Where are we at?



MINISTRY OF BUSINESS,  
INNOVATION & EMPLOYMENT  
HĪKINA WHAKATUTUKI

Test Certifier Workshop

8 September 2015

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# Outline

- Health and Safety Reform Bill update
- Health and Safety at Work regulations update
- Revised regulatory framework for hazardous substances
- Health and Safety at Work (Hazardous Substances) Regulations 2016



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# Health & Safety Reform Bill update

- On 27 August 2015 the Health and Safety Reform Bill passed its third reading at Parliament.
- The Bill creates a new Health and Safety at Work Act, which will come into force on **4 April 2016**.
- The HSNO Amendment Bill will come into force on a date appointed by Order in Council



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# Health & Safety at Work (HSW) Regs update

- regulations are being prepared in parallel to development of the new Act
- giving effect to recommendations of Taskforce and Pike River Royal Commission
- 2 phase approach to the task




# Phase 1



- Five areas of regulation:
    - General risk and workplace management;
    - Worker participation, engagement and representation;
    - Work involving asbestos;
    - **Work involving hazardous substances;**
    - Major hazard facilities; plus
  - transferring over recently-made HSE regulations for mining, petroleum exploration and extraction, adventure activities and levy funding
  - enabling the remaining HSE regulations to remain in force until phase 2
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# Phase 1 – work involving hazardous substances



- development of the hazardous substance regulations will proceed on a longer timeframe than other phase 1 regulations
  - given complexity of drafting task and highly technical nature of requirements, we expect it will take 6 months longer than other phase 1 regulations to develop an exposure draft
  - we're aiming to release exposure draft regulations for consultation by November 2015
  - we will seek residual policy decisions from Cabinet and complete drafting in early 2016
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# Phase 1 – work involving hazardous substances



- we expect hazardous substance regulations can be made by April 2016 to come into effect in July 2016
- the other phase 1 regulations will commence on 4 April 2016 in line with the new Health and Safety at Work Act
- EPA Notices (to be made under the HSNO Act) are being developed in parallel with the process to develop the new HSW hazardous substances regulations

# Phase 2



- replacing remaining HSE regulations with regulations covering:
    - Hazardous work
    - Plant and structures
    - Quarries
    - Geothermal operations
    - **further improvements to the Hazardous Substances regulations.**
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# A new regulatory framework for managing hazardous substances

- Regulations made under the HSW Act
- EPA Notices made under the HSNO Act
- New HSW regulations for work involving hazardous substances
  - What continues?
  - What changes?



# Regs made under HSW Act

- continue current workplace use requirements (and variations) prescribed in HSNO regulations, transfer notices, group standards, reassessments, and individual approvals.
- incorporate a small number of changes to codify existing good practice.
- consolidate and simplify these requirements to the extent possible during the drafting process.
- review some of the transferred provisions in Phase 2 to ensure they are fit-for-purpose and to simplify them to the full extent possible



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# EPA Notices made under HSNO Act

- will establish the hazard classification system and approval processes, and prescribe requirements:
  - specifying the allowable limits for the content or properties of any substance or product;
  - for advertising, identification, labelling, packaging, or safety data sheets;
  - for the purposes of controlling the ecotoxic effects of hazardous substances;
  - for the purpose of controlling the adverse effects of hazardous substances on people (outside the workplace); and
  - for the disposal of hazardous substances.



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# New HSW (Hazardous Substances) regs

- What continues?
- What changes?



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# What continues?

- Continue current HSNO requirements for:
  - the workplace use, storage, and handling of hazardous substances
  - the design, manufacture, verification, and testing of compressed gas containers
  - the design and operation of tank wagons and transportable containers
  - the provision and positioning of signage at workplaces
  - the provision and capability of fire extinguishers



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# What continues?

- Continue current HSNO requirements for:
  - the preparation, review, and testing of emergency plans
  - the design, fabrication, and certification of stationary container systems
  - secondary containment systems
  - laboratories where small quantities of hazardous substances are used on a 'non-production' basis
  - the tracking of highly hazardous substances



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# What changes?

- the management and oversight of the test certification regime
- information, instruction, and training
- inventory
- risk assessment
- emergency management
- labelling
- safety data sheets



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# Compliance certification

- WorkSafe will be granted new functions and powers that will enable greater oversight and monitoring of the performance of compliance certifiers and the regime as a whole
- These changes carry through Ministry for the Environment proposals that were agreed to by Cabinet in July 2013
- Key changes relate to:
  - Authorisation of compliance certifiers
  - Issue of compliance certificates
  - Audit of compliance certifiers





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# Compliance certification

- The terms “**compliance certifier**” and “**compliance certificate**” replace “**test certifier**” and “**test certificate**”
- Why change the name?
  - to better represent your primary function in assessing whether locations, equipment, or people comply with prescribed requirements
  - to recognise that this is now a function with revised obligations and checks that operates within the framework of the new health and safety at work legislation



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# Authorisation of compliance certifiers

- Any application for authorisation as a compliance certifier will require WorkSafe to assess whether the applicant is a fit and proper person
  - The criteria that must be taken into account will be very similar to the criteria used for assessing controlled substance licence applicants
  - If WorkSafe declines an application, the applicant may appeal the decision to the District Court



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# Authorisation of compliance certifiers

- WorkSafe will have ability to engage or appoint its own compliance certifiers:
  - will provide cover in areas where only a few compliance certifiers are active
  - the compliance certification regime is particularly vulnerable in these areas if those certifiers stop practising
  - there are generally few new entrants in these markets
  - for those areas of compliance certification where there are an adequate number of certifiers, there should not be a need for WorkSafe to maintain an in-house capability



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# Issue of compliance certificates

- a compliance certifier will not be able to issue a compliance certificate in relation to any matter in an industry in which the certifier is also a PCBU or worker (otherwise than as a compliance certifier)
- a compliance certifier must, within 15 days of issuing a compliance certificate or conditional compliance certificate, enter the certificate in the compliance certificate register



# Audit of compliance certifiers

- WorkSafe will be required to ensure, at least once every 2 years, that an audit is conducted in relation to each compliance certifier's compliance with
  - the new HSW hazardous substance regulations
  - any applicable safe work instruments
  - any applicable performance standards issued by WorkSafe
- A compliance certifier will be required to produce any records, which are required to be kept under the regulations, for inspection within a reasonable amount of time specified by the WorkSafe appointed auditor
- WorkSafe will have the ability to recover the costs of an audit from the compliance certifier



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# Audit of compliance certifiers

- as with any business that provides an independent 3rd party verification service, auditing is an important part of the operation, both to demonstrate quality to customers and to provide assurance to the regulator
- if the regulator were to fund the cost of auditing, it would effectively be providing a subsidy to that business
- a risk-based auditing programme, where certifiers that perform well are audited less frequently than those who are not, introduces a financial incentive
- those who are performing well will benefit from comparatively lower auditing costs



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# Information, instruction, and training

- prescribe a minimum set of matters to be included in any information, instruction, and training that is provided to workers handling hazardous substances
- instruction and training provided to workers should include:
  - the physicochemical and health hazards associated with the hazardous substances the worker uses at work



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# Information, instruction, and training

- the procedures (as relevant) for the safe use, handling, manufacture, or storage of the hazardous substances;
- the plant (including PPE) necessary to manage the hazardous substances
- the actions that the worker should take in an emergency involving the hazardous substances
- require PCBUs to ensure, so far as is reasonably practicable, that instruction and training provided to workers is based on any relevant standards recognised by WorkSafe NZ





# Future of approved handler certification?

- MBIE considers approved handler certification to largely be redundant, in light of the proposed requirements for information, instruction, and training
- discussion document proposed that approved handler certification should be revoked, except for substances that require a controlled substance licence
- there was mixed support for the proposal to revoke approved handler certification
- this proposal will be further tested with key stakeholders during the exposure draft process for the regulations before a policy decision is made by Cabinet



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# Inventory

- a person conducting a business or undertaking (PCBU) must prepare and maintain an inventory of all hazardous substances used, handled, manufactured, or stored at the workplace
- prescribe the matters to be included in the inventory
- inventory must be readily accessible to any emergency service worker attending the workplace, including during an emergency and including if the workplace has been evacuated
- prescribe alternative requirements that apply to transit depots



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# Risk assessment

- PCBUs must manage risks to health and safety associated with the use, handling, manufacture, or storage of hazardous substances in accordance with the prescribed risk management process set out in the general risk and workplace management regulations
- prescribe considerations for managing risks to health and safety associated with hazardous substances that must be taken into account by a PCBU when carrying out a risk assessment



# Emergency management

- Fire Service may review a PCBU's (hazardous substances) emergency plan to assess whether:
  - the role proposed for the service is achievable
  - the role is consistent with the operational policies of the service
  - there is anything that may adversely affect service operations during an emergency
- Fire Service may request further information if it considers that the emergency plan provides insufficient information to enable the service to determine its role in the plan or determine the level or type of resources it may need to deploy to give effect to the plan
- PCBUs must have regard to any recommendation made by the Fire Service



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# Labelling

- simplified requirements for the workplace labelling of hazardous substances if they are transferred or decanted into a portable container and will not be supplied to a person outside the workplace
- simplified requirements for the workplace labelling of hazardous substances if they are manufactured at the workplace and will not be supplied to a person outside the workplace



# Safety data sheets

- PCBUs to:
  - ensure that they obtain the current SDS from the manufacturer, importer, or supplier when the hazardous substance is first supplied for use at the workplace
  - ensure that the current SDS for a hazardous substance, or a condensed version of the key information (e.g. a product safety card), is readily accessible to a worker or any other person who is likely to be exposed to the hazardous substance at the workplace
  - ensure that the current SDS for a hazardous substance is readily accessible to any emergency service worker attending the workplace



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# Safety data sheets

- allow PCBUs to keep SDSs at the primary workplace facility if workers travel between workplaces because their work is carried out at more than one location, so long as those workers (wherever they are) can immediately obtain the key safety information from the safety data sheets in an emergency



# Further testing of certain proposals required

- separation of buildings holding acutely toxic or corrosive substances above specified quantities from protected and public places
- safe storage of toxic or corrosive substances at transit depots
- establish hazardous substance location for any location within a workplace where class 6.1A – 6.1C or 8.2A substances are present above specified quantities
- compliance certificate for the hazardous substance location
- revocation of approved handler certification (except for substances requiring a CSL)

