

OFFICE OF THE MINISTER FOR WORKPLACE RELATIONS AND SAFETY

The Chair

Cabinet Economic Growth and Infrastructure Committee

POLICY DECISIONS FOR REGULATIONS TO SUPPORT THE NEW HEALTH AND SAFETY AT WORK ACT

PAPER B: Specific regulatory matters

Proposal

- 1 This paper (along with its companion, *Paper A: Phase one regulation matters of process and content*) seeks agreement to initial policy decisions for phase one regulation to support implementation of the new Health and Safety at Work Act (the new Act).
- 2 These decisions relate to regulatory proposals that either received clear support during public consultation, or have been appropriately amended to address stakeholder feedback.
- 3 Papers A and B need to be read together. This paper covers decisions relating to five specific areas of regulation, while paper A sets the scene and covers decisions about the regulation development process and content relevant across all phase one regulation.
- 4 In addition, the proposals relating to regulation for worker participation, engagement and representation in this paper are contingent on decisions sought in the Cabinet paper *Proposals to improve the Health and Safety Reform Bill* also before this committee, seeking agreement to substantive changes to the Health and Safety Reform Bill (the Bill) to inform the Departmental Report to the Transport and Industrial Relations Committee (the Select Committee).

Executive Summary

- 5 A new regulatory framework is being developed for workplace health and safety to give effect to previous Cabinet decisions [CAB Mins (13) 24/10 and 24/11 refer]. This framework consists of a new Act (to be created by the passage of the Bill) and supporting regulations, codes of practice and guidance.
- 6 Cabinet agreed in May 2014 to the release of the discussion document: *Developing Regulations to support the new Health and Safety at Work Act* [CAB Min (14) 17/10 refers] which outlined phase one regulatory proposals.
- 7 The discussion document focused mainly on specific policy proposals for five areas of regulation, some of which Cabinet has already made high-level decisions about. This paper seeks initial decisions relating to the detail of:
 - a. regulation relating to **general risk and workplace management**, which outlines basic minimum standards to provide the necessary clarity about how to meet the primary duty of care in the new Act. In this respect,

these regulations are critical to the successful implementation of the new regime

- b. regulation outlining process requirements for health and safety representatives and committees, to support more effective **worker participation**. As recommended by the Independent Taskforce on Workplace Health and Safety (the Independent Taskforce), the new Act provides strengthened powers and more explicit functions for health and safety representatives. Regulations that outline who can be a representative, the process by which they become a representative, and the training they need in order to exercise the full range of their powers are therefore critical to ensuring that this type of worker participation works as intended
- c. improving existing regulation relating to work involving **asbestos**, strengthening requirements to bring New Zealand into line with international best practice to reduce occupational disease over the long term. The Canterbury rebuild process has highlighted awareness of the prevalence of asbestos in the built environment and, by necessity, has increased the interaction of workers with asbestos in that region. It is important to ensure adequate controls are in place to protect workers and others in the vicinity where work involving asbestos is being done.
- d. bringing the regulation of workplace use of **hazardous substances** under the new Act from the *Hazardous Substances and New Organisms Act 1996* (HSNO Act), so that the majority of duty holders only need to look to one regulatory regime to know how to manage the full range of hazards present in their workplace. Poorly managed hazardous substances can give rise to personal acute injury and debilitating gradual illness, as well as large-scale events such as fire or explosion affecting multiple people.
- e. introducing regulation covering **major hazard facilities** to fill a serious regulatory gap in New Zealand to manage the risk of catastrophic incidents in workplaces that manufacture, use or store massive amounts of specified hazardous substances.

- 8 There is further work to be done on some aspects of the regulations that require additional stakeholder consultation, and Paper A seeks agreement to an exposure draft process for this purpose. However, the decisions in this paper are needed now to ensure the regulation development process remains on track. Remaining policy decisions on phase one regulations will be sought from Cabinet later this year following the exposure draft processes (if agreed), and final decisions about the making of phase one regulations are made by Cabinet Legislation Committee once the Bill has passed and the regulation-making power is in force.

Background

- 9 Paper A provides a more complete background to the matters in this paper. In brief:
- a. The Bill is currently before the Select Committee and, if enacted, will create a new Act to replace the *Health and Safety in Employment Act 1992* (HSE Act)

- b. the new Act, supporting regulations, codes of practice and guidance together will form the new regulatory framework for workplace health and safety
 - c. the status quo for work health and safety regulation lacks a coherent and logical structure, is weak and outdated in places and contains gaps. This has led to duty holders lacking adequate support and being unclear as to their obligations
 - d. regulations are being developed in parallel to the passage of the Bill to ensure that duty holders understand the full breadth and depth of the new regulatory framework. A phased approach is being taken to develop a suite of regulation that consolidates and clarifies existing requirements in a more logical and coherent manner, and strengthens areas of weakness
 - e. Cabinet agreed in May 2014 to the release of the discussion document: *Developing Regulations to support the new Health and Safety at Work Act* [CAB Min (14) 17/10 refers]. Stakeholders were given ten weeks to consider the proposals and provide feedback
 - f. a total of 180 submissions were received, representing the views of a wide range of businesses, representative organisations and individuals.
- 10 The majority of the discussion document focused on specific policy proposals for five areas of regulation, some of which Cabinet has already made high-level decisions about:
- a. enhancing regulation relating to general risk and workplace management
 - b. introducing regulation outlining process requirements for health and safety representatives and committees, to support more effective worker participation [CAB Min (13) 24/10-11 refers]
 - c. improving existing regulation relating to work involving asbestos
 - d. bringing the regulation of workplace use of hazardous substances under the new Act (from the HSNO Act) [CAB Min (13) 24/13 refers]
 - e. introducing regulation covering major hazard facilities [CAB Min (13) 24/11 refers]
- 11 Following analysis of submissions, we are now in a position to make initial policy decisions, recognising that there is further work to be done on some aspects that require additional stakeholder consultation. It is important to gain agreement to these initial decisions now to allow the majority of the phase one regulations to be made in time to come into force with the new Act.

General risk and workplace management regulations

- 12 I propose general risk and workplace management regulations that support the primary duty in the new Act by prescribing a risk management process that will apply in specified circumstances and providing detail about requirements common across workplaces. The main focus of the general risk and workplace management regulations is on providing and maintaining safe working environments with safe systems of work, and setting minimum standards for things such as the provision of facilities, emergency planning, personal protective

- equipment (PPE), the training and supervision of workers, and the monitoring of workplace conditions.
- 13 The majority of the general risk and workplace management proposals consulted on are a continuation of current HSE requirements with increased clarity and detail based on the Australian Model regulations where appropriate. These proposals were all largely supported by submitters and include requirements for:
- the provision of adequate information, training, instruction and supervision to workers, to ensure they know how to work safely
 - the provision of adequate and accessible general workplace facilities such as toilets, eating and rest areas, seating and lighting
 - first aid facilities
 - the provision and use of PPE
 - managing the risk from airborne contaminants in the workplace, including requirements to control, treat and carry-off airborne contaminants
 - managing the risk of hazardous atmospheres in the workplace, including the management of ignition sources where hazardous atmospheres are present
 - managing the risk of hazardous containers and loose, but enclosed materials
 - duties towards young workers
 - the suitability of workers to work in limited attendance child care services.
- 14 I therefore propose that regulations be drafted to cover these matters. Areas where proposals depart significantly from current regulatory requirements, or introduce something new are described below.

Prescribed risk management process

- 15 A key feature of the general risk and workplace management regulations is the establishment of a prescribed risk management process that is then applied by regulation to specified risks or situations where either:
- a. the additional compliance cost is outweighed by the benefits, and justified due to the high stakes involved (such as for managing risks of asbestos or hazardous substances), or
 - b. there are a range of different ways to effectively control the risk dependent on the particular circumstances, and it is important to allow this flexibility (such as for managing risks for remote and isolated workers, or falling objects).

In these specified instances, the prescribed process provides businesses with a structured method to follow in identifying how best to control work-related risks. In relation to risks or hazards that are not subject to the prescribed risk management process, a general provision in the new Act to eliminate so far as is reasonably practicable or otherwise minimise the risk will apply.

- 16 The benefit of this approach is that it allows duty holders to ‘cut to the chase’ where there is an obvious and widely-accepted method of controlling a particular hazard and move quickly to implementing it, rather than having to follow a fixed process first. In this way, the new regime places emphasis on duty holders taking action to make a situation safer when the solution is clear, rather than focusing on process when there is little additional benefit to be gained by doing so. However, where the nature of the risk warrants additional effort to be applied, the regulations will require that this be done.
- 17 Submissions from union organisations in particular considered that the limited application of the risk management process and its relationship to the general provision in the Bill to manage risk has the potential to cause confusion. Accordingly, these submitters think that the prescribed risk management process should apply in all circumstances, to all risks. While I agree there may be challenges involved in ensuring people understand the new approach so that they can effectively implement it, I consider this is better managed by providing clear information and guidance about risk management rather than extending the scope of the regulations and imposing undue compliance costs. I therefore propose to follow the approach set out in the Australian Model regulations in relation to the detail of the risk management process and how it is applied.

Emergency plans

- 18 I propose that all PCBUs be required to prepare, maintain and implement an emergency plan for their workplace. Cabinet concerns about this proposal during its consideration of the discussion document led to information being specifically sought from submitters on whether a threshold of business size, location or type should apply to this requirement. The overwhelming response from submitters was that all businesses should have an emergency plan, regardless of size or risk profile. Emergency plans must be fit-for-purpose - taking risk, size and location into consideration. For smaller businesses with less risk, emergency plans do not have to be lengthy or complex and can be easily developed using a simple template. The requirement will be drafted to reflect this, and supporting guidance from WorkSafe NZ can illustrate the range of ways to comply to suit the business’ circumstances.
- 19 Businesses operating in larger commercial buildings will already be required to have building evacuation plans under fire safety legislation. Having broader plan for emergencies that outlines what should happen once the building has been evacuated (eg where should staff go, how should they remain in contact with the PCBU if displaced for an extended period of time, how will they find out it is safe to return to work) is a complementary requirement that can be integrated or linked to those existing plans, reducing regulatory burden.

Personal Protective Equipment

- 20 PPE is one of the lowest-level controls available for minimising risk to the health and safety of workers – in many instances it represents the last line of defence. I propose to adopt the definition of PPE used in the Australian Model regulations which includes personal protective clothing, and means anything used or worn by a person to minimise risk to the person’s health and safety. Currently, personal protective equipment and clothing are defined and treated separately in the HSE regime, but in the HSNO regime the definition of PPE is inclusive of both.

Provisions in the HSE Act (that need to be continued in regulation) ensure that workers are able to genuinely and voluntarily choose to provide their own protective clothing for reasons of convenience or comfort - as long as it is of a quality satisfactory to the employer, who would otherwise be required to provide it. Amending the PPE definition would mean that requirement is broadened to include equipment (such as ear muffs or protective visors) as well as clothing.

Remote and/or isolated work

- 21 I propose that a PCBU be required to manage the health and safety risk associated with workers carrying out remote and/or isolated work, based on the provision in the Australian Model regulations. The aim is to help ensure that workers are able to get the help they might need in an emergency. Submissions were supportive of this proposal and many commented that this is standard business practice at their workplace as part of the general requirement in the HSE Act to manage hazards to workers.

Falling objects

- 22 I propose to continue the current requirements regarding the safety of workers under raised objects, but broaden them to include the management of the risk of falling objects, based on the relevant Australian Model regulations. A large majority of submitters were in favour of increased clarity in this area and noted the importance of clear examples and guidance to assist compliance.

Health monitoring of workers

- 23 Health monitoring of workers in particular circumstances has two main benefits. Firstly, it can identify when a worker has been exposed to a harmful substance at a concentration resulting in an elevated level of that substance in his or her body. The PCBU is then able to determine what remedial action should be taken to reverse or arrest these effects, avoiding more harm to the worker and costly medical treatment down the track. Secondly, health monitoring information helps the PCBU to check that the controls in the workplace to safely manage the substance remain effective over time. If the PCBU becomes aware that the controls are not performing as effectively as intended, it can take action to avoid more serious or widespread effects on the workforce.
- 24 Regulations providing detail about health monitoring of workers support the primary duty of the new Act (which requires that both workers and conditions at the workplace be monitored to ensure health and safety) and help duty holders understand what is required in particular circumstances. The discussion document proposed that hazardous substances regulations should outline requirements covering the health monitoring of workers. I propose that these requirements should instead be located in the general risk and workplace management regulations, because there are substances that are hazardous to workers' health that are not 'hazardous substances' within the defined meaning of the term under the HSN Act. For example, wood, silica and other fine dusts or some metal fumes.
- 25 PCBUs will be required to ensure that health monitoring is provided to workers who may be exposed to a substance hazardous to health, but only when all three of the following circumstances are present:

- a. there is an identifiable disease or health effect related to the exposure

- b. there is a reasonable likelihood that the disease or health effect may occur under the particular conditions of the work being performed, and
- c. there are valid techniques available for detecting indications of the disease or effect.

The regulations will prescribe explicit requirements for the establishment of health monitoring and the reporting and storage of monitoring results, largely based on the Australian Model regulations but with modifications as necessary to take into account the New Zealand context (such as the provisions of the *Privacy Act 1993*).

- 26 There was a broad level of support for this proposal but some concerns were raised in relation to the capacity of occupational health resources in New Zealand to deliver the monitoring services, even though the HSE Act also currently requires health monitoring of workers when a hazard can only be minimised. Concerns of cost were also raised, but businesses currently complying should see no cost increase.
- 27 I consider that the need for better occupational health outcomes in this country merits such a requirement, but I am mindful that the focus needs to remain first and foremost on getting PCBUs to take action to control risks rather than simply measure the extent or effect of their existence. I will be taking an active interest in the detail of these requirements with this aim in mind.

Young workers

- 28 I propose introducing a requirement that prohibits people under the age of 15 from certain work involving hazardous substances. While there are current prohibitions to ensure young people are not performing other types of high-risk work (such as forestry and construction), there is no parallel provision dealing with age limits for the handling of hazardous substances.
- 29 The majority of submissions were in favour of this proposal but wanted clarification about the types of work that would be prohibited. The requirement will only cover manufacturing or work that involves a young person directly using hazardous substances, and not lower-risk work involving the handling of consumer products in enclosed containers (which may contain hazardous substances), such as in a retail environment.

Current regulations not continued and regulatory proposals not progressed

- 30 There are some details in the current HSE regulations regarding the provision of facilities that I propose should not be continued in the general risk and workplace management regulations. I consider that the new Act and relevant provisions of the Australian Model regulations contain higher level requirements that adequately cover these matters, and that some of the detail is better placed in guidance to support duty holders.

Accommodation and general facilities for agricultural workers

- 31 Current HSE regulations include specific requirements about the quality of agricultural accommodation. These requirements were carried into the HSE regime when it was created, having been in place since the early 1900s.

- 32 However, in the new regime, clause 30(5) of the Bill requires any Person Conducting a Business or Undertaking (PCBU) to ensure that accommodation provided to a worker as part of the job is maintained so as to not expose the worker to a risk to their health and safety - regardless of sector. My officials will be advising the Select Committee in the Departmental report that this element of the primary duty of care should be amended to align with the Australian Model law, only applying in circumstances when the occupancy is necessary for the purposes of the worker's engagement because other accommodation is not reasonably available. This duty recognises that, in those circumstances, the accommodation is effectively an integral element of the work, and therefore the PCBU should be responsible for ensuring the accommodation is maintained safely.
- 33 For this reason I do not consider it necessary to continue the current sector-specific requirements in regulation. Furthermore, new guidance for PCBUs about providing worker accommodation to be developed by WorkSafe New Zealand (WorkSafe NZ) will ensure current standards for agricultural workers are not weakened and that workers in other sectors (such as construction) will also be covered.
- 34 The proposal to remove specific requirements regarding accommodation and general facilities for agricultural workers was supported by the majority of public submissions (including Federated Farmers) but has been criticised by the New Zealand Council of Trade Unions (NZCTU). It is concerned that the provision in the Bill only covers the condition of the property as maintained rather than its general suitability for habitation or the types of facilities to be provided within it. It argues that this represents a significant reduction in workers' rights, particularly for vulnerable migrant workers.
- 35 I am also advised that policy work has recently commenced on the possibility of introducing minimum housing tenancy standards through the *Residential Tenancies Act 1986*, which could help to further support workers' rights to suitable accommodation regardless of which sector they work in.

Overcrowding in workplaces, and means to control humidity, air velocity, radiant heat and temperature

- 36 Submissions on the other proposed omissions were somewhat mixed but the majority agree that there will be no negative impacts. The regulations as proposed contain general requirements about the layout and ventilation of workplaces, and that work carried out in extremes of temperature be done so without risks to health and safety. For this reason, I consider the additional detail of the current requirements to be superfluous. A number of submitters requested upper and lower temperature limits, which can be easily provided through guidance alongside other details.

Duties on designers, manufacturers and suppliers of PPE

- 37 I also propose that specific requirements on designers, manufacturers and suppliers of PPE currently in the HSE regulations not be continued in regulation, because the 'substance' of current requirements are already adequately covered in the duties of the Bill on upstream participants in the supply chain.

Storage of flammable substances

- 38 The discussion document proposed that the provision in the Australian Model regulations requiring PCBUs to ensure flammable substances in the workplace are kept at the lowest practicable quantity be adopted. There is currently no specific duty on businesses to actively manage the storage of flammable substances by minimising the on-site inventory, but safe storage is ensured by the general duties of the HSE Act and the requirements of the *Hazardous Substances (Classes 1 to 5 Controls) Regulations 2001*.
- 39 Anecdotally, it appears to be standard business practice to keep inventory levels as low as practicable for cost, efficiency and safety reasons, but some flexibility is required because business needs fluctuate and there may be times of higher usage. Submitters were concerned over potential increased business costs due to low stock levels, and more frequent orders and deliveries.
- 40 While many submitters supported the intent of the proposal, they felt it was too ambiguous and would be open to varying interpretations and manipulation. The majority of submitters questioned whether the requirement could be enforced – it would be difficult for anyone other than those with in-depth knowledge of the business to assess and determine the lowest practicable quantities.
- 41 Accordingly, I do not propose that the regulations contain such a requirement. I consider that the primary duty of care in the new Act alongside the hazardous substances regulatory requirements will be sufficient.

Worker participation, engagement and representation regulations

- 42 I propose worker participation, engagement and representation regulations that outline procedural requirements for health and safety representatives and health and safety committees, to support more effective worker participation. This is one of two new areas of regulation for New Zealand (the other being major hazard facilities), but in some respects replaces the detail currently situated in Part 2 and Schedule 1A of the HSE Act, and also moves provisions that sit at Act level in the Model framework in Australia into regulation.
- 43 Part 3 of the Bill places duties on all PCBUs to engage with workers on matters of health and safety and have effective practices that give workers the opportunity to participate in improving health and safety in the business in an ongoing way. It is important to note, however, that the worker participation, engagement and representation regulations will *only apply to businesses that use health and safety representatives and/or health and safety committees as a way of meeting those duties*.
- 44 More formal worker representation mechanisms such as representatives and committees are particularly effective when the business is large, high-risk or involves a complex operation of some kind. Less formal practices, such as regular toolbox talks or including health and safety as a regular agenda item at team meetings, may well be a sufficient way for staff to raise health and safety concerns in smaller low-risk businesses. Of the 472,600 businesses in New Zealand, most (nearly 70 percent) have no employees, and about a third have 19 or fewer employees. This leaves 13,560 larger businesses employing 20 or more workers. My officials believe it is likely that more formal methods of worker participation, engagement and representation will be chosen by workers or the PCBU in the larger businesses.

- 45 The proposals for these regulations are aligned with and flow on from decisions to improve Part 3 of the Bill sought in the Cabinet paper *Proposals to improve the Health and Safety Reform Bill*, also before this committee. It will mean that some of the regulations as drafted will differ from the regulatory proposals publicly consulted on last year, but stakeholders were informed at that time that the regulations would need to be adjusted to accommodate any changes made to the Bill after introduction.

Decisions about content of exposure draft regulations

- 46 I propose that an exposure draft of the regulations cover the matters below so that further consultation can be undertaken with stakeholders prior to final policy decisions being made:

- a. **Minimum ratio of health and safety representatives to workers where the default workgroup is used.** To address concerns from submitters that the process of negotiating workgroups could be protracted, a default workgroup of the whole business or undertaking has been proposed in the Cabinet paper *Proposals to improve the Health and Safety Reform Bill*. This default workgroup should be straightforward for many businesses, and to support this I propose to prescribe a minimum ratio of one health and safety representative to every fifteen workers when this default workgroup situation applies.
- b. **Determining alternative groupings of workers and numbers of health and safety representatives.** Where a PCBU chooses not to follow the default and group its workers and determine the appropriate number of health and safety representatives in an alternative way, I propose that the PCBU must do so within a reasonable time and take account of certain factors. These factors include the views of workers, the nature of the work that is performed and the way it is arranged by the PCBU, the nature of the employment or contracting arrangements and the nature of any hazards or risks at the workplace. These considerations will help PCBUs to group workers and identify the number of health and safety representatives needed in a way that ensures the accessibility of workers to the health and safety representatives and that the health and safety interests of workers are represented.
- c. **Notification to workers.** Once alternative groupings of workers have been determined, the PCBU must notify the workers and any worker representatives of that determination in a timely manner.
- d. **Varying workgroups when circumstances change.** When the circumstances of the PCBU's business change, such as when the business undergoes a restructure or merger or changes the way it operates, the PCBU should consider varying the groupings of workers to ensure the groupings still meet their purpose. The alternative groupings of workers must still effectively and conveniently enable the interests of workers to be represented and ensure health and safety representatives are still readily accessible to the workers they represent.
- e. **Multiple PCBU groupings of workers.** It is important that the regulations enable (but not require) multiple PCBUs working together on the same site to set up health and safety representatives that span across the

various businesses or undertakings to suit the particular circumstances if the PCBUs wish. For example, in a large shopping mall or on a complex construction site, it may be preferable to determine a grouping that includes workers from more than one PCBU if the workers' interests are generally the same because they work together or in close proximity. The submissions on multiple PCBU workgroups said that the proposals were overly prescriptive and complex. As such, I propose to simplify the process by allowing PCBUs to agree to a multiple PCBU workgroup at one or more workplaces if this is preferred by the PCBUs. In doing so, the PCBUs involved are to consider the same factors used to determine a single PCBU workgroup. If a PCBU withdraws from a multiple PCBU workgroup, that will not affect the validity of the workgroup that remains.

- f. **Cost sharing.** Where PCBUs agree to a multiple PCBU workgroup, it is proposed that, as a default, those parties should equally share the costs associated with the health and safety representative performing the functions and powers, as well as any costs associated with training. Alternatively, the parties can agree to split the costs in another way. This provides flexibility to account for different circumstances. For example, the parties might agree that the PCBU whose worker is the health and safety representative should meet all (or the majority of) the associated costs, because the worker will be continuing as a representative in that PCBU's business once the cross-PCBU project has concluded.

Exclusion for small, low-risk business

- 47 I also propose that the exposure draft regulations contain an exclusion for small businesses (those with fewer than twenty workers) that operate in low-risk sectors from having to respond to a request by workers to either hold an election for health and safety representatives or establish a health and safety committee (as provided for in the Bill).
- 48 As noted in the Cabinet paper *Proposals to improve the Health and Safety Reform Bill* also before this committee, this exclusion is aimed at simplifying compliance in businesses where it is difficult to justify the cost of having more formal worker participation practices due to the type of work being undertaken and the business' size. For this reason it is important that the regulations express the exclusion in a way that is easy for businesses to identify whether or not it applies to them.
- 49 My officials will need to work with Parliamentary Counsel Office to determine the most effective way to achieve this end, but I consider it should probably involve specifying the much smaller number of high risk sectors and stating that the exclusion applies to any small business *not* operating in those sectors. Low-risk businesses cannot necessarily identify which industry sector they fall into, but they invariably know when they are not operating in the well-publicised higher risk sectors such as mining, construction or manufacturing. Those sectors have been identified as higher risk due to their persistently high fatality and serious injury records.
- 50 Preliminary modelling on this basis is outlined in Table 1. Sectors identified as high risk (based on information about work-related fatality, serious injury and

occupational health risk provided by WorkSafe NZ) are shaded in grey. Remaining sectors would, by definition, be low-risk and subject to the exclusion.

Table 1 Modelling risk profile of businesses with 1-19 employees

Industry grouping	No. of businesses with 1-19 employees	No. of employees in those businesses	Total high risk 1-19 businesses	Total employees in high risk 1-19 businesses
A Agriculture, forestry & fishing	20,030	71,655		
B Mining	207	989		
C Manufacturing	9,268	51,123		
D Electricity, gas, water & waste	384	1,653		
E Construction	17,505	67,040	47,394	192,460
F Wholesale trade	7,178	35,370		
G Retail trade	12,821	60,104		
H Accommodation & food services	10,960	66,280		
I Transport, postal & warehousing	4,152	17,495	4,152	17,495
J Information media & telecommunications	1,057	4,391		
K Financial & insurance services	2,589	8,741		
L Rental, hiring & real estate services	5,367	17,280		
M Professional scientific, & technical services	13,989	54,910		
N Administrative & support services	4,753	19,025		
O Public administration & safety	448	2,484		
P Education & training	3,562	27,440		
Q Health care & social assistance	6,648	33,884		
R Arts & recreation services	2,755	12,485		
S Other services	11,408	45,190		
Totals	135,081	597,539	51,546	209,955

- 51 Based on this modelling, more than 83,000 small and low-risk businesses (such as those in the retail or administration sectors) would benefit from the reduced compliance cost associated with this exclusion. More than 50,000 small businesses in high-risk areas (such as forestry and construction crews) would be required to respond to requests from workers for more formal methods of worker participation.
- 52 There may be a need to further refine the scope of the exclusion to ensure it covers all the businesses we intend but does not become overly complicated as a result. For example, there is evidence of 'pockets' of high risk work within the health care and social assistance sector and I may need to take a more nuanced approach. Feedback from stakeholders during the exposure draft process will be valuable in this regard, before final decisions are made.

Decisions about content of regulation following stakeholder feedback

53 The following regulatory proposals unaffected by subsequent changes to Part 3 of the Bill received broad support during the consultation process. I therefore propose that regulations cover these aspects, including:

Health and safety representatives

- a. **The eligibility criteria for health and safety representatives.** Most submitters agreed that a health and safety representative should be both willing and work sufficiently regularly for a sufficient time to carry out their role effectively. There were differing views on whether eligibility to be a health and safety representative should be limited to workers from the workgroup that the health and safety representative would represent. Some submitters were concerned that it may be difficult to find workers who want to be a health and safety representative in each workgroup. Health and safety representatives need to be able to understand the health and safety issues that arise and be readily accessible to represent the workers' particular interests. This is one of the main reasons for forming workgroups in the first place, ensuring that the health and safety representative is familiar with the work their workgroup undertakes, and the issues that arise. If workers from that workgroup are not willing to take on the role of health and safety representative, then the PCBU should consider whether it has grouped its workers in a way that meets the duties under the new Act, or whether having health and safety representatives is the right mechanism for effective participation by those particular workers. I propose that a health and safety representative must be a worker from the workgroup that he or she would represent.
- b. **The process of electing health and safety representatives.** Submitters supported the proposal that all workers in the workgroup are given an opportunity to nominate people for the role of health and safety representative and are able to vote in the election. They also support allowing the PCBU and workers to agree how to go about electing health and safety representatives, and that the PCBU should facilitate this process. This provides parties with flexibility to conduct elections with only the level of formality that is necessary to suit their situation. For example, for some businesses a quick show of hands may be all that is needed for the parties to elect a health and safety representative. However, if any party (a candidate, worker eligible to vote, or PCBU) requests that a secret ballot be conducted as part of the election process, then a secret ballot is mandatory. Workers will need one person who is responsible for telling the relevant PCBUs when the election will be held, in order to give the PCBU time to organise the resources, facilities and assistance needed for the election. If the majority of the workers agree, a worker representative (such as a support person or advocate, a union or legal representative) can help the workers to organise the election.
- c. **The term of office for health and safety representatives.** Three years, unless an alternative term is agreed by the health and safety representative and PCBU. The original proposal has been amended to address concerns of some submitters that the three year term may be too long and could deter potential candidates.

- d. **Situations when someone ceases to be a health and safety representative.** These are when the health and safety representative resigns from the role, ceases to be a member of the workgroup they represent, or if the majority of the workers no longer want that person to represent them. It is important that regulations provide this additional detail, given the strengthened statutory role of health and safety representatives.
- e. **Developing and displaying a list of health and safety representatives at the workplace.** This is to ensure that workers are aware of who to contact if necessary, and also provides important information to health and safety inspectors when visiting a workplace

Health and safety committees

- f. **The membership of health and safety committees.** There was broad agreement that at least half of the committee membership must be made up of workers not appointed by the PCBU, and that the PCBU must appoint at least one person to the committee who has delegated authority to make decisions on health and safety matters
- g. **The frequency of health and safety committee meetings.** Most submitters agreed that health and safety committees need to meet regularly in order to be effective – at least every three months, or sooner if a simple majority of the committee requests.
- h. **Issue resolution.** Most submitters supported the PCBU or workers being able to get a final decision from the regulator on matters relating to the membership of the health and safety committee, when they have exhausted the issue resolution process. As such, I propose that a health and safety inspector can decide the membership of the health and safety committee or that a health and safety committee should not be established.

Health and safety representative training

- 54 The final group of matters to be covered in regulation relate to the training of health and safety representatives.

Annual business cap for training

- 55 The Cabinet paper *Proposals to improve the Health and Safety Reform Bill*, also before this committee, proposes to continue the current two day annual entitlement for a health and safety representative to attend health and safety training in the Bill.

- 56 Some submitters were concerned that there could be an influx of health and safety representatives all needing to be trained within a short period of time, and that the cumulative costs of health and safety representative training in those circumstances would be overly burdensome. I propose that the current training cap in section 19F of the HSE Act be placed into regulation, with the necessary modifications, to ensure that the entitlement of individual health and safety representatives to receive training is balanced against the financial capabilities of business to bear the cumulative costs. The training cap will set a maximum total number of days paid leave that the PCBU is required to allow per year based on

the number of workers that the PCBU has. Further consultation on the detail of the cap will need to occur via the exposure draft process to ensure it works for business.

Initial health and safety representative training

- 57 The regulations need to specify the requirements for appropriate health and safety representative training. Although training is not compulsory, only health and safety representatives who have completed appropriate training are able to issue Provisional Improvement Notices and direct unsafe work to cease, as provided for in the Bill.
- 58 My officials have worked with business and worker representative organisations and training providers to determine the relevant requirements, and also sought feedback from stakeholders during the public consultation process. There was strong support for both course content and training provider competency to be quality assured. Most submitters suggest this is best delivered by the New Zealand Qualifications Authority (NZQA) and many highlighted the need for training to offer assessment-based credentials in order for health and safety representatives to signal that they hold the competencies necessary for their role.
- 59 The initial health and safety representative training can be delivered in two days. The remaining four days' entitlement arising from the (usually) three year term of office for a representative will be able to be used for other training that is prescribed by regulations. I propose to use the exposure draft process to consult with stakeholders on what courses are appropriate for health and safety representatives to use the remainder of their entitlement for, and how these can be recognised by the regulations.

Quality assurance

- 60 I propose that the regulations establish the NZQA as the provider of quality assurance for initial training provided to health and safety representatives for undertaking the role and using their legislative powers. My officials have worked closely with NZQA in developing this proposal. Quality assurance is necessary to instil confidence in the quality of health and safety representative training, and protect those investing in the training from inferior and non-relevant training.
- 61 There is a cost involved in requiring quality assurance, regardless of which agency conducts the activity. This cost falls on the agency (cost of maintaining capability and capacity to provide quality assurance services), on training providers (the time, effort and money cost of complying with the quality assurance requirements), and on businesses (PCBUs are required to fund health and safety representative training). Part of NZQA's core role is to provide independent quality assurance of training providers. The choice of NZQA as quality assurance provider therefore takes advantage of this already established system, avoiding the fiscal cost of separately establishing this function and any duplication of government effort (which would be created should an alternative provider such as WorkSafe NZ be required to establish quality assurance of training functions).
- 62 I am confident that the benefits of providing quality assurance outweigh the costs. Quality assurance provides confidence for businesses in the quality of the training provided; ensures clear training standards are maintained evenly across

a range of training providers; and competencies are seen as easily portable across industries.

Core competencies and unit standards

- 63 Assessment (leading to certification) is a highly desirable aspect for training because it enables a measure of verification that the outcomes sought from the training have been achieved by the learner.
- 64 I propose that the regulations require that to be considered trained for the purposes of the new Act, health and safety representatives must achieve the relevant unit standards. I further propose that training schemes established to provide initial training to health and safety representatives be required to be developed based on either the unit standards or the core competencies which I will list by notice in the *New Zealand Gazette*. This is similar to the existing regulatory approach – the new core competencies update and build on the existing competencies listed in the *Gazette*. These core competencies will also be reflected in the relevant unit standards.
- 65 These arrangements for assessment ensure that learners can verify they have achieved relevant outcomes from training and are competent to use the powers available under the legislation for trained health and safety representatives, and competencies developed through training can be seen as easily transferable between different industries or workplaces.
- 66 These arrangements also provide the flexibility for training to be able to be offered by training providers or by a PCBU providing its own training ‘in-house’. Both methods will be subject to quality assurance requirements. Education organisations wanting to deliver training must have consent to assess against standards from the NZQA, and a PCBU can deliver its own training and assess against unit standards only if it works together with an Industry Training Organisation (ITO). Under both methods moderation is conducted by an ITO to ensure consistency of assessment decisions, and candidates who achieve the standards gain credits which are recorded on the centrally managed Record of Achievement.
- 67 Although it is not clear how many organisations will take up the opportunity to provide training in-house, several respondents to the discussion document indicated they are offering training this way currently (for example the District Health Boards), and/or they want the system to allow in-house training in future.
- 68 NZCTU opposes in-house training offered by organisations, because in their view the quality assurance requirements on training providers are more onerous, PCBUs are not independent and would not offer training free from bias; and the ability of workers to choose their training would be undermined in cases where the PCBU is offering in-house training.
- 69 The regulations will moderate against this by making it clear that even when the PCBU offers in-house training, a worker can still request to attend a different course, and by enabling the regulator to intervene where parties cannot agree on training as outlined below. The arrangements I have proposed allow PCBUs flexibility in how training is funded and delivered, and this may be beneficial particularly to large organisations. Although it may or may not be a lower cost option for those choosing to do it, it does enable PCBUs to ensure training is

specifically tailored to the business' needs (as opposed to purchasing the mostly generic training offered by training providers).

Access to training

- 70 I propose that the regulations allow the health and safety representative to choose which training course meeting the prescribed requirements they would like to attend, in consultation with the PCBU about the course date and location. The PCBU must allow the health and safety representative to attend the health and safety representative training course as soon as practicable, and within three months of the request (subject to the business-wide training cap outlined earlier). PCBUs must pay course costs and any reasonable costs associated with attending the health and safety representative training course.
- 71 Most submitters supported the PCBU or the health and safety representative being able to get a final decision from the regulator on matters relating to the location and timing of the health and safety representative training course, when they have exhausted the issue resolution process. As such, I propose that a health and safety inspector can decide the timing and location of the course the health and safety representative will attend, and/or the reasonable costs associated with attending the course.

Transitional training

- 72 In June 2014, the Ministers of Finance and Labour agreed that a total of \$690,000 be put toward procuring transitional training for health and safety representatives who have previously completed approved training for their role under the HSE Act. The transitional training will ensure health and safety representatives are able to understand the concepts of the new Act, their role within the system, and exercise their powers and functions in the new regime. Transitional training will support continued worker participation in businesses, allowing existing health and safety representatives to continue to represent their fellow workers. This training will be made available at no cost to currently trained health and safety representatives for two months on either side of the commencement date of the new Act.
- 73 The regulations will therefore need to clarify that people who are considered trained health and safety representatives under section 46A of the HSE Act and who have completed this transitional training are to be treated as trained for the purposes of the new Act.

Working with asbestos

- 74 I propose regulations for work involving asbestos based on the Australian Model regulations that aim to reduce the long-term burden of asbestos-related disease by strengthening existing duties, processes and standards. The regulations are premised on two key requirements:
- a. work with asbestos is prohibited unless it is of a type authorised by the regulations, and meets the requirements set out in the regulations; and
 - b. that people's exposure to airborne asbestos in a workplace is eliminated to the extent that it is reasonably practicable.
- 75 Submissions received on the policy proposals offered strong support for the proposed new regulations as a package. There was almost unanimous support

from submitters for the overall approach of the regulations – the two key duties, and the adoption of the approach in the Australian Model regulations. Compliance costs were noted by several large employers and asset owners, but were generally considered reasonable because of the health hazard presented by asbestos.

- 76 I am advised that the regulations proposed, together with the Bill, would allow New Zealand to ratify International Labour Organization (ILO) convention 162 (1986) *Concerning Safety in the Use of Asbestos*.

New requirement for businesses to maintain an asbestos register

- 77 While businesses are currently required to systematically assess and then address hazards presented by asbestos, *the incidence and location of asbestos in the built environment is not clear*. This creates difficulties in holding businesses' management of hazards associated with asbestos to account, which, coupled with a lack of information, restricts peoples' ability to incorporate asbestos-related health risks in their decision making. For example, maintenance workers are generally not trained in asbestos, meaning they often do not recognise it on a worksite and may unknowingly expose themselves and others. People are also working in buildings where there is asbestos that is deteriorating. In these situations, asbestos may be inappropriately managed.
- 78 For these reasons, I propose that the regulations require PCBU to identify all existing asbestos in workplaces and record it on a register that is available to workers, contractors and others in the workplace, and people carrying out demolition etc. Where asbestos is present, a PCBU with management or control of a workplace must also prepare and maintain an asbestos management plan. Residential premises will be exempt from this requirement, but PCBUs working in or on residential premises must still identify and manage any asbestos present.
- 79 There was very clear support for the requirement for PCBUs to maintain an asbestos register and asbestos management plans where asbestos is present in a workplace. The discussion document asked whether there was a date from which it can be assumed that asbestos is not present in a building or structure. Submissions, and subsequent engagement with industry experts, suggest that there is no conclusive date, but that from the date of 1 January 2000 it could be assumed that asbestos is not present, unless there is evidence otherwise. On balance, I think this date provides a suitable balance between the risks to worker and public health and the compliance burden for business, and I propose that the regulations are framed accordingly.
- 80 Some submitters were opposed to the exclusion of residential premises from the requirement to maintain a register, particularly where the premises are owned by an agency such as Housing New Zealand and city councils with extensive housing stocks to manage. I am satisfied that the alternative requirement for PCBUs working in or on residential premises will provide adequate coverage of these situations. Large residential property ownership agencies such as Housing New Zealand are aware of the requirements and will put in place systems and processes to ensure their contractors and others meet them.
- 81 The Regulatory Impact Statement provides a description of the Ministry of Business, Innovation and Employment's estimate of the numbers of buildings and the compliance burden to be expected from the new requirement. I am advised

that the number of buildings involved is between 30,000 and 40,000 in total. WorkSafe NZ will be publishing extensive guidance for owners and occupiers on how to survey and monitor asbestos in workplaces, and there will be sufficiently trained and experienced experts available to assist when required.

- 82 As noted in Paper A, transitional arrangements will be identified in exposure drafts for further consultation before final policy decisions are made. I propose that a transitional period of five years should apply to the requirement for workplaces to have an asbestos register, unless structural or other work is to be done to the building in the meantime. In these circumstances, a register would be required prior to work being undertaken.

Strengthened licensing and competency requirements for asbestos removal

- 83 I propose that licensing, competency requirements, exposure standards, and standards for asbestos removal work be strengthened to broadly align with those in Australia. There was clear acceptance from submitters of the need to improve standards in the asbestos removal sector, with some references to the need to build infrastructure and capacity. Submitters confirmed that the Australian unit standards and technical standards will form a suitable basis for adaptation into the New Zealand regime, and there was also clear support for the proposed health monitoring requirements for asbestos removal workers.

- 84 There was clear support for the proposed system of Class A (friable or high-risk) and Class B (for example, bonded asbestos-containing materials) licensing. Detailed submissions were made on the competency requirements that would be needed in support of the regulations. There was particular emphasis on the need for sufficient competent people who are able to complete asbestos surveys for PCBUs in order to meet their requirement to maintain a register, and also on the need for competent “assessors” who can provide clearance certificates after asbestos removal work has been done.

- 85 I consider these licensing requirements to be achievable, but propose that regulations allow for transitional provisions of up to three years to allow the development of training and licensing infrastructure. As noted in Paper A, the exposure draft process (if agreed) would be used to test the detail of these transitional provisions before final policy decisions are made.

- 86 There was clear agreement from submitters that WorkSafe NZ should administer the licensing and competency regime. I propose that the regulations reflect this, with provision for the delegation of specific functions by WorkSafe NZ to suitably trained person or organisations, should it prove appropriate in the future.

Tighter controls on asbestos-related work

- 87 Current regulations do not cover numerous types of maintenance, removal and repair work that involves contact with asbestos by tradespeople and other workers. I propose that the new regulations will cover these activities and impose tighter controls.

- 88 The discussion document proposed an exemption from the requirement to use a licensed asbestos removalist for the removal of less than 10m² of bonded/‘non-friable’ asbestos, as is the case in the Australian Model regulations. It asked for alternatives in light of feedback from Australian regulators that some PCBUs are

- 'gaming' the exemption by splitting larger removal jobs into smaller, notionally discrete ones.
- 89 Most submitters accepted the need for an exemption of smaller quantities, but noted the potential for this exemption to act as a 'loophole'. No satisfactory alternative exemption was proposed, but I propose that the drafting of the exemption be tightened to avoid removal jobs being notionally broken up in the way described.
- 90 The consultation document proposed the tightening of requirements for a range of activities involving work with asbestos, termed 'asbestos-related work' which is often carried out for shorter durations and in a way that is ancillary to other work such as electrical or mechanical engineering. There was support for this, with various sectors submitting on common tasks in their sector where there are currently gaps in coverage and variations in standards. The electrical supply industry provided a number of examples, as did the construction sector.
- 91 Numerous submitters said there was a need to add tighter controls on the transport and disposal of asbestos waste. This is likely because the Australian Model regulations have been framed to align with specific waste disposal requirements in other Australian law which have no equivalent requirements in New Zealand. Some expert submitters suggested including a threshold value from which it could be assumed that soil was contaminated with asbestos to a level that could lead to airborne exposure.
- 92 Several experts submitted that the regulations should contain a soil contamination threshold and soil remediation provisions. My officials have consulted the Ministry for the Environment on this suggestion and the Ministries agree that this matter is best dealt with under the proposed Health and Safety at Work Asbestos regulations. This is because the hazard of airborne asbestos dust from contaminated soil is distinct from other contaminants dealt with under the regime established by the *Resource Management Act 1991*.
- 93 I therefore propose that the regulations retain requirements for containment, transport and burial of asbestos waste contained in the current 1998 regulations, and include a soil contamination standard and the elements of a process to remediate asbestos contaminated soil.
- 94 NZCTU suggested regulations should outline a second exposure limit applying in workplaces other than where work involving asbestos is taking place. NZCTU felt it was important to clarify that the exposure limit applying to asbestos workers (who are performing work with full knowledge of the risk, and taking the required precautions) is not acceptable for other types of worker who may be incidentally exposed to asbestos that exists in their work environment. I do not consider this necessary, as the regulations will contain a requirement that no person is exposed to airborne asbestos in those situations. The presence of respirable fibres at above 'trace' levels will exceed the acceptable level and require removal of the hazard.

Work involving hazardous substances

- 95 I propose regulations to reduce both injury and disease arising from work involving hazardous substances by consolidating existing HSNO requirements into one place, along with some general provisions from the Australian Model regulations. Levels of knowledge about and compliance with current

- requirements are very low, and integrating these requirements into the new regime alongside other sources of work health and safety risk will simplify the process for business and should lead to higher levels of compliance.
- 96 Minor and/or technical changes will be made to the existing HSNO requirements in order to simplify them to the extent possible in the short-term. More substantive review of these requirements will need to be carried out within two years of the new regulations coming into force, to ensure requirements are fit-for-purpose and to simplify them for users to the full extent possible.
- 97 The regulations will also incorporate changes to codify existing good practice, in some cases based on the provisions of the Australian Model regulations. For example, establishing and maintaining an inventory of all hazardous substances present at the workplace, and substance-specific considerations that need to be taken into account by a PCBU when carrying out the risk management process prescribed by the general risk and workplace management regulations.
- 98 There was broad support from submitters for the proposals outlined in the discussion document, with comments largely directed at the details.

New requirement for businesses to prepare and maintain an inventory

- 99 The first step in managing risks associated with hazardous substances involves identifying all the substances that are used, handled, manufactured, or stored at a workplace.
- 100 I propose that the regulations require PCBUs to prepare and maintain an inventory of all hazardous substances used, handled, manufactured, or stored at the workplace, and outline its availability to emergency service workers. There was very clear support for this proposal from submitters.
- 101 Small, one-off costs are expected to be associated with the establishment of the inventory and ongoing costs associated with its maintenance, although most submitters indicated that they already have an inventory. These costs are expected to be outweighed by the benefits to the PCBU and emergency service organisations in the event of an incident, by knowing the quantity, classification, and location of hazardous substances at the workplace.

Managing risks to health and safety associated with hazardous substances

- 102 I propose that the regulations require PCBUs to manage risks to health and safety associated with hazardous substances in accordance with the risk management process set out in the regulations for general risk and workplace management (see paragraph 15), and that the regulations prescribe considerations — for the safe management of hazardous substances — to be taken into account by a PCBU when carrying out a risk assessment.
- 103 A number of submitters questioned the application of the proposed risk management process to retailers, given the comparatively lower levels of exposure risk. I agree, and therefore propose that a PCBU should not be required to carry out a risk assessment for a hazardous substance, if: the PCBU is a retailer and the hazardous substance is a consumer product and intended for supply to other premises; or the hazardous substance is a consumer product and will be used at the workplace only in quantities, and in a way, that is consistent with household use.

- 104 I also propose that the regulations prescribe circumstances that would trigger a review of any control measures implemented by the PCBU to manage the risks associated with hazardous substances present at the workplace. There was clear support for this requirement.
- 105 This proposal is not expected to impose additional costs on most PCBUs, because they are already required to manage significant hazards in accordance with sections 8 – 10 of the HSE Act.

Provision of information, instruction, training, and supervision

- 106 I propose that the regulations prescribe a minimum set of matters to be included in any information, instruction, and training provided to workers that use, handle, manufacture, or store hazardous substances in accordance with the requirements for the provision of information, instruction, and training in the general risk and workplace management regulations.
- 107 In relation to the provision of information to workers handling hazardous substances, I propose that a PCBU must ensure that information includes: any operations in a workers area of work where hazardous substances are present; the location and availability of safety data sheets; and the sections of the safety data sheets that provide information about the hazards, emergency measures, and storage and handling.
- 108 In relation to the provision of instruction and training to workers handling hazardous substances, I propose that a PCBU must ensure that the instruction or training includes: the physicochemical and health hazards associated with the hazardous substances the worker uses at work; 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; and the actions that the worker should take in an emergency involving the hazardous substances.
- 109 I also propose that the regulations require PCBUs to ensure that instruction and training provided to workers is based on any relevant standards recognised by WorkSafe NZ.
- 110 Compliance with these requirements would be checked by compliance certifiers before issuing or renewing a location compliance certificate for a workplace. A PCBU is currently required to obtain a location compliance certificate if they have certain classes of hazardous substances on-site above specified threshold quantities. This would provide a greater level of coverage than monitoring by health and safety inspectors alone.
- 111 There was clear support for the introduction of requirements to ensure that all workers handling hazardous substances receive an appropriate level of information, instruction, training and supervision. This proposal is not expected to impose additional costs on PCBUs that currently comply with training requirements under section 13 of the HSE Act.
- 112 I also propose that the exposure draft regulations revoke the current HSNO requirement to ensure that one or more workers are trained and certified as an approved handler if the workplace uses, handles, or stores certain hazardous substances above specified quantities. It is considered that approved handler

certification largely duplicates the proposed training requirements. Approved handler certification would however be retained for explosives, vertebrate toxic agents, and fumigants that require a controlled substance licence.

- 113 There was mixed support for the proposal to revoke approved handler certification. Consequently, I intend to further test this proposal with key stakeholders during the exposure draft process and I will seek final policy decisions on this matter before the regulations are made.

Emergency management

- 114 I propose that the regulations allow for the review of (hazardous substance) emergency plans by the New Zealand Fire Service (NZFS). The scope of any review by NZFS will be limited to assessing whether the role proposed for the NZFS is achievable, whether the role is consistent with the operational policies of NZFS, and whether there is anything in the plan that may adversely affect NZFS operations during an emergency. There was clear support for this proposal.
- 115 The discussion document proposed that PCBUs should revise their emergency plan in accordance with any written recommendation made by NZFS. A number of submitters were of the view that there should not be a mandatory requirement to implement any recommendation made by the NZFS on the basis that the service has limitations in resources and expertise and may not take into account all relevant factors. Consequently, I now propose that the regulations should require PCBUs *to have regard to* any recommendation made by NZFS about the content or effectiveness of an emergency plan.
- 116 This proposal is not expected to impose additional costs on PCBUs that already have effective emergency plans in accordance with their current obligations under the *Hazardous Substances (Emergency Management) Regulations 2001*.

Labelling and packaging hazardous substances

- 117 Following feedback on the proposals about labelling and packaging in the discussion document, I propose that the regulations will prescribe simplified requirements for the labelling and packaging of hazardous substances if they are transferred or decanted into a portable container, which has a capacity of 40L or less, and will not be supplied to a person outside the workplace. A number of submitters were of the view that the onus for proper labelling and packaging should be placed on the supplier, importer, or manufacturer of the hazardous substances (via the HSNO regime) rather than end-user businesses, and that requirements under this regime should focus instead on labelling and packaging of hazardous substances where they are decanted by end-user businesses into portable containers for use within the workplace.
- 118 I also propose that the regulations will prescribe simplified requirements for the labelling of hazardous substances: if they are manufactured in a workplace and will not be supplied to a person outside the workplace; or if the original label is no longer legible.
- 119 This proposal will reduce current compliance obligations on end-user businesses.

PCBUs to obtain and give access to safety data sheets

- 120 I propose that the regulations require PCBUs to ensure they have current safety data sheets (SDS) for hazardous substances and the SDS are accessible to workers, emergency service workers, and anyone else likely to be affected by the substance that asks for it. However, this requirement would not apply: if the hazardous substance is in transit; if the PCBU is a retailer and the hazardous substance is a consumer product and intended for supply to other premises; or if the hazardous substance is a consumer product and will be used at the workplace only in quantities and in a way that is consistent with household use.
- 121 This proposal is not expected to impose additional costs on most PCBUs, because they are already (in most cases) required to obtain and give access to the current safety data sheet for the hazardous substance in accordance with the *Hazardous Substances (Identification) Regulations 2001*.

Management of risk associated with explosive, flammable, and oxidising substances

- 122 There was very clear support for the proposal to carry through relevant HSNO requirements for the management of risk associated with explosive, flammable, and oxidising substances, consolidating and simplifying where possible. However, a number of submitters identified problems with the ability of certain types of business operations to comply with some of these current requirements, and I consider it important to address those issues where possible.
- 123 The agricultural aviation sector raised concerns about the ability to comply with current compliance certification requirements in relation to their mobile refuelling tankers. Similarly, port operating companies raised concerns about their ability to strictly meet all current requirements relating to prescribed separation distances, secondary containment, and segregation requirements.
- 124 My officials have worked through possible options to address these issues and develop alternative proposals, but further testing and consultation with stakeholders will be required. I therefore propose that the exposure draft regulations should:
- a. outline alternative storage and handling requirements for farms where mobile fuel tankers are being used to refuel aircraft carrying out agricultural aviation operations, exempting the PCBU with management or control of that workplace from the requirement to obtain a compliance certificate
 - b. allow ports, excluding the part of the port facility that is used to store hazardous substances beyond the 72 hour transit depot limit, to comply with the *International Maritime Dangerous Goods Code (IMDG Code)* as an alternative to the regulations in relation to the storage of hazardous substances, excluding explosives
 - c. exempt ports, excluding the part of the port facility that is used to store hazardous substances beyond the 72 hour transit depot limit, from compliance with secondary containment requirements.
- 125 Following the exposure draft process and feedback from stakeholders, I will seek Cabinet agreement. My officials consider that the standards in the IMDG Code are appropriate and responsible for managing hazardous substances (excluding

explosives) in a port environment, given the lower level of risk associated with hazardous substances that are in transit where they are generally not opened or handled and only remain in the workplace for limited periods.

Management of risk associated with toxic and corrosive substances

- 126 Some of the discussion document proposals in relation to toxic and corrosive substances received clear support from submitters in principle, subject to the specific detail being tested further. These include:
- a. controls for the segregation of toxic and corrosive substances with incompatible substances
 - b. separation distances from areas of high intensity land use and public places
 - c. controls for the safe storage of toxic and corrosive substances at transit depots
 - d. controls for the safe application of toxic substances (agricultural in particular) and the management of both on-site and off-site effects
 - e. requiring a PCBU to establish a hazardous substance location at a workplace where highly toxic or corrosive substances are present
 - f. requiring a PCBU to obtain a compliance certificate for a hazardous substance location where highly toxic or corrosive substances are present.
- 127 Consequently, I propose that the exposure draft regulations should be drafted to reflect these matters so they can be further tested with key stakeholders during the exposure draft process. I will seek final policy decisions on these matters before the regulations are made.

Management of risk associated with hazardous waste

- 128 There is currently uncertainty around the application of controls prescribed under the HSNO Act to waste products containing hazardous substances. I propose that the regulations will apply to a waste product if it is reasonably likely that the waste product is a substance that meets the classification criteria for substances with explosive properties, flammable properties, oxidising properties, toxic properties, or corrosive properties (hazardous waste). I propose that the regulations will prescribe simplified requirements for the labelling of containers that are used to store hazardous waste. I also propose that the regulations will prescribe a simplified list of matters to be included in safety data sheets for hazardous waste, consistent with the Australian Model regulations.
- 129 This proposal is not expected to impose additional costs on the majority of PCBUs handling hazardous waste that already comply with the current prescribed controls.

Design, manufacture, verification, and testing of compressed gas containers

- 130 Currently under the *Hazardous Substances (Compressed Gases) Regulations 2001*, gas cylinder testing can only be undertaken by an individual with periodic tester certification. I propose that the regulations will allow a gas cylinder testing station to be certified as a periodic tester, rather than the individual workers

employed by the testing station. This change will reduce costs for the approximately 80 cylinder testing stations nationwide, by removing the certification requirement for individual workers.

- 131 There was clear support for this proposal when it was consulted on by the Environmental Protection Authority (EPA) in 2011, but it was not progressed in the 2012 amendments to the HSNO regulations.

Additional requirements

- 132 The EPA is responsible (under HSNO) for approving hazardous substances before they can be manufactured in, or imported into, New Zealand. As part of this approval process, the EPA may currently impose controls (including workplace use controls) on a substance in addition to those outlined in HSNO regulations. Placing additional controls on some (higher risk) hazardous substances ensures that the risks associated with the substance do not outweigh the anticipated benefits, thus enabling the substance to be approved and the benefits realised.
- 133 EPA will continue to assess and approve the introduction of hazardous substances under HSNO in the future. However, during the EPA process to approve or reassess an application to import or manufacture a substance, it will be WorkSafe NZ that sets any new or different workplace use controls required to ensure that substance is safely managed, using a Safe Work instrument.
- 134 Consequently, I propose that the regulations require PCBUs to comply with the additional, or varied, conditions set in any Safe Work instrument for a hazardous substance.

Other technical proposals

- 135 **Appendix 1** sets out proposals that are of a more technical nature. These proposals were either identified through the consultation process or are necessary to improve the clarity of existing HSNO provisions that are being carried through to the regulations.

Major Hazard Facilities

- 136 I propose major hazard facilities regulations that aim to prevent and mitigate the effects of major accidents that could cause significant harm to people, the environment, and the wider economy. Cabinet has previously agreed that this serious regulatory gap needs to be addressed [CAB Min (13) 24/11 refers] to ensure facilities other than the traditionally regulated high hazard sectors such as mining and petroleum are subject to the same level of regulatory attention.
- 137 Facilities that store and process large quantities of dangerous substances have the potential to generate catastrophic events similar to those seen around the world in the chemical manufacturing industry, yet there are no specific regulations in New Zealand that cover this situation. As the Independent Taskforce identified, the public need confidence and assurance that the risks associated with these major hazard facilities are being adequately controlled by operators, monitored and regulated.
- 138 The number of operations subject to the major hazard facilities regulations is relatively small. As previously agreed by Cabinet, the regulations will outline upper and lower site thresholds for particular substances, and set different

regulatory requirements for businesses based on which thresholds are met [CAB Min (13) 24/11 refers]. Landscape mapping by WorkSafe NZ has identified there are likely to be 30-50 businesses meeting the upper thresholds, and an additional 180 businesses meeting the lower thresholds. Upper threshold sites are required by the regulations to have a safety case approved by WorkSafe NZ in order to operate, while lower threshold sites are required to have a safety management plan. International benchmarking indicates that 4-7 of these lower tier sites may be considered a high risk and therefore be designated by WorkSafe NZ as being subject to the upper threshold requirements.

- 139 The regulatory proposals that were publicly consulted on built on the high-level features of the regulations already agreed to by Cabinet. They were developed in conjunction with WorkSafe NZ, looking to the Australian Model regulations, the current regime operating in Victoria, the European Union regime and the United Kingdom's *Control of Major Hazards Regulations 2015* (COMAH). I consider that our proposed regulations reflect international best practice in a manner that fits with our business and legislative environment.
- 140 Generally, submitters broadly supported major hazard facilities being regulated; many operators of facilities that would be covered by the proposed regulations already have systems in place to prevent a major accident and consider the proposed regulations a necessary part of their risk management procedures.

WorkSafe NZ Major Hazard Facilities

- 141 The WorkSafe NZ Major Hazard Facilities (MHF) team has been set up to administer the incoming regulations and all major hazard facilities throughout New Zealand. The MHF team has made contact with all the potential upper tier sites and have instigated a programme of site visits in advance of the regulations. These visits will identify common issues with process safety and safety management systems, ensure that operators will be prepared for the proposed regulations and demonstrates the proactive and engaged strategy of the MHF team. There is overall acceptance by industry of the proposed regulations; the MHF team has already received draft safety cases from some operators.

International alignment

- 142 I propose that the regulations will follow the structure of the Australian Model regulations and will include requirements that have since been refined in COMAH. The table of specified substances and associated thresholds will align with that set under the EU 2012 Seveso III Directive and will follow the United Nations Globally Harmonised System of Classification¹. The classification system will therefore remain aligned with the new HSNO classifications, as proposed by EPA in December last year.

Information

- 143 Information provided to WorkSafe NZ by any party is subject to the provisions of both the *Privacy Act 1993* and the *Official Information Act 1982* (OIA). The OIA provides protections for withholding commercial and security sensitive information when balanced against public interest, while the Privacy Act protects personally-identifying information. I do not propose that the major hazard facility

¹ Australian regulators have indicated that the thresholds and substances set in their MHF regulations will progressively be amended to align with Seveso III and the EC and GHS classification systems

regulations prescribe anything that would override the provisions of either Act. However, I do propose that the regulations specify core (non-sensitive and non-personally identifying) information provided by MHFs to WorkSafe NZ that must be made publicly available on the WorkSafe NZ website. This would provide assurance to the public that operators are complying with their responsibilities and that WorkSafe NZ is actively monitoring their activities.

Land use planning relationships

- 144 The regulations for major hazard facilities will not provide WorkSafe NZ with any regulatory powers or controls in relation to land-use planning, and I consider this appropriate. However, submissions received highlighted the complex relationship between land-use planning and major hazard facilities and noted that it is important that land use planning minimises exposure of people close to a major hazard facility. In conjunction with the Ministry for the Environment, the Department of Internal Affairs and local authorities, the MHF team at WorkSafe NZ is developing guidance material to ensure that local authorities have a good understanding of the nature and extent of risks associated with a major hazard facility. The WorkSafe NZ MHF team is also developing good relationships with local authorities and is encouraging early and proactive engagement with local authorities.

Next steps

- 145 I propose that this Cabinet paper and its associated Cabinet minute be published on the Ministry of Business, Innovation and Employment website as soon as practicable. This is important to give stakeholders confidence that the regulation development process is progressing, and also to provide further clarity for duty holders about the likely final shape of the regulations.
- 146 Subject to Cabinet's agreement sought in Paper A, I will instruct Parliamentary Counsel Office to draft regulations according to the recommendations of both papers, preparing exposure drafts ready for consultation to occur from March 2015. I envisage this will be a staged process as the various drafts become ready. Remaining policy decisions on phase one regulations will be sought from Cabinet following the exposure draft process.
- 147 Once the Bill has been passed and the regulation-making power is in effect (intended to be the day after Royal Assent), Cabinet Legislation Committee approval to make phase one regulations can be sought so that they are ready to come into effect at the same time as the new Act.

Consultation

- 148 The following agencies have been consulted on this paper and their views have been taken into account: Accident Compensation Corporation; Civil Aviation Authority; Department of Corrections; Department of Internal Affairs; Environmental Protection Authority; Maritime New Zealand; Ministry of Defence; Ministry of Education; Ministry for the Environment; Ministry of Health; Ministry of Justice; Ministry of Pacific Island Affairs; Ministry of Primary Industries; Ministry of Transport; New Zealand Customs Service; New Zealand Defence Force; New Zealand Fire Service; New Zealand Police; New Zealand Qualifications Authority; New Zealand Transport Agency; Office of the Privacy Commissioner; Parliamentary Counsel Office; State Services Commission; Te Puni Kōkiri;

Treasury; and WorkSafe New Zealand. The Department of Prime Minister and Cabinet has been informed of the contents of this paper.

- 149 Public consultation on most of the regulatory proposals in this paper occurred in May-August 2014. If agreed, further consultation via an exposure draft process will occur to test the remaining proposals.

Financial Implications

- 150 There are no financial implications arising from the proposals in this paper. Cabinet has already agreed to appropriations necessary for the regulator to implement the full package of *Working Safer* reforms, including the new regulatory framework [CAB Min (13) 24/10 refers]. Cabinet also directed the Ministry of Business, Innovation and Employment to report back to the Economic Growth and Infrastructure Committee by 30 November 2015 after reviewing funding for WorkSafe NZ [CAB Min (13) 24/10 refers].

Human Rights

- 151 The proposals in this paper appear consistent with the *New Zealand Bill of Rights Act 1990* and the *Human Rights Act 1993*.

Legislative Implications

- 152 Regulations are required to implement the proposals in this paper.

Regulatory Impact Analysis

- 153 A Regulatory Impact Statement has been prepared in respect of the initial decisions of both this paper and Paper A, and is attached to Paper A.

Gender Implications

- 154 The regulatory proposals in this paper have no gender implications.

Publicity

- 155 The Ministry of Business, Innovation and Employment will publish Cabinet papers (A and B) and the associated Cabinet minutes on its website and let key stakeholder groups know this has occurred. Other than this, I do not consider any further publicity necessary at this stage.

Recommendations

The Minister for Workplace Relations and Safety recommends that the Committee:

1. **note** that a suite of regulation that consolidates and clarifies existing requirements in a more logical and coherent manner and strengthens areas of weakness is required to support the new Health and Safety at Work Act
2. **note** that there is strong stakeholder support for regulation development being done in two phases, and that this paper seeks initial policy decisions about the content of five areas of phase one regulation

General risk and workplace management

3. **agree** that regulations for general risk and workplace management should:
 - 3.1. broadly follow the approach taken in the Australian Model regulations (with amendments necessary to fit the NZ context) in respect of:
 - 3.1.1. prescribing a risk management process that applies only to situations or activities specified elsewhere in the regulations where the additional compliance cost is outweighed by the benefits
 - 3.1.2. the provision of information, training, instruction and supervision
 - 3.1.3. the provision of adequate and accessible general workplace facilities
 - 3.1.4. the provision of first aid facilities in the workplace
 - 3.1.5. requirements for workplace emergency planning
 - 3.1.6. the definition of personal protective equipment (PPE) to include personal protective clothing and mean anything used or worn by a person to minimise risk to the person's health and safety
 - 3.1.7. managing risks to the health and safety of workers carrying out remote and/or isolated work
 - 3.1.8. requirements for health monitoring of workers
 - 3.1.9. managing the risk from airborne contaminants in the workplace, including requirements to control, treat and carry-off airborne contaminants
 - 3.1.10. managing the risk of hazardous atmospheres in the workplace, including managing ignition sources
 - 3.1.11. managing the risk of falling objects
 - 3.1.12. the provision and use of PPE
 - 3.2. carry over the status quo (not explicitly covered in the Australian regulations) in respect of:
 - 3.2.1. the absolute nature of the requirement to provide and use PPE, and the ability for workers (other than members of the Armed Forces) to genuinely choose to provide their own PPE in particular circumstances
 - 3.2.2. requirements for hazardous containers
 - 3.2.3. requirements for loose but enclosed materials

- 3.2.4. ensuring the safety of young people in the workplace, but with changes made as necessary to reflect the introduction of the PCBU concept
- 3.2.5. requirements for ensuring workers in limited attendance child care services are suitable for that role
- 3.3. specify a requirement preventing young people from undertaking work that involves the use of hazardous substances, to address an identified gap in the existing young worker provisions
- 4. **agree** that the general risk and workplace management regulations should not continue the detail currently in the HSE regulations regarding:
 - 4.1. overcrowding in workplaces
 - 4.2. means of controlling humidity, air velocity, radiant heat and temperature in workplaces
 - 4.3. accommodation and general facilities for agricultural employees
 - 4.4. requirements on designers, manufacturers and suppliers of PPE

Worker participation, engagement and representation

- 5. **agree** that an exposure draft of the worker participation, engagement and representation regulations contain the following provisions, to allow further consultation before final policy decisions are made:
 - 5.1. specify a minimum ratio of health and safety representative to workers where the default workgroup is used of fifteen workers to one health and safety representative
 - 5.2. outline that where a PCBU chooses to group their workers in an alternative way to the default, they must do so within a reasonable time, and have regard to the following factors:
 - 5.2.1. The number of workers working in the business or undertaking
 - 5.2.2. The views of workers in relation to the determination and variation of workgroups
 - 5.2.3. The areas, places and time each type of work is carried out
 - 5.2.4. The nature of the work that is performed and the way it is arranged by the PCBU
 - 5.2.5. The number of different places of work for the workers and the distance between them
 - 5.2.6. The diversity of workers and their work
 - 5.2.7. The nature of any hazards or risks at the workplace(s)
 - 5.2.8. The nature of the employment arrangements or contracting arrangements, including the extent and regularity of employment or engagement of temporary workers
 - 5.2.9. The extent to which any worker must move from place to place while at work

- 5.3. require the PCBU to notify any affected workers and any worker representatives of the determination of any workgroups in a timely manner
- 5.4. specify that where a PCBU has grouped their workers in an alternative way to the default, the PCBU may decide how many health and safety representatives are necessary in order to meet their duties under the Bill
- 5.5. specify that when circumstances of a PCBU change, the PCBU needs to consider whether the alternative groupings of workers that it has determined still meet the purpose of grouping workers as outlined in the Bill
- 5.6. specify that workgroups may be determined by agreement between 2 or more PCBUs for workers carrying out work for 2 or more PCBUs at one or more workplaces. In deciding the workgroup(s), the PCBUs' must take into account the prescribed factors (as in 5.2 above)
- 5.7. specify that, where there is a multiple PCBU workgroup, if a PCBU withdraws this does not affect the validity of the workgroup with any remaining PCBUs
- 5.8. specify health and safety training courses (other than the initial health and safety representative course needed in order for health and safety representatives to fully exercise their powers under the new Act) able to be attended by health and safety representatives as part of the annual training entitlement they have under the new Act
6. **agree** that the exposure draft of the worker participation, engagement and representation regulations should exclude small businesses (those with fewer than twenty workers) operating in low-risk sectors from responding to a worker request for an election for health and safety representatives or a health and safety committee
7. **note** that the exclusion will need to be expressed in a way that is simple for businesses to identify whether or not it applies to them, and this is likely to involve specifying high risk sectors and stating that the exclusion applies to any small business not operating in those sectors
8. **note** that preliminary modelling identifying high-risk sectors (based on information about fatality, serious injury and occupational health risk) shows that more than 83,000 small and low-risk businesses (such as those in the retail or administration sectors) would benefit from the reduced compliance cost associated with this exclusion. More than 50,000 small businesses in high-risk areas (such as forestry and construction crews) would be required to respond to requests from workers for more formal methods of worker participation
9. **agree** that regulations for worker participation, engagement and representation should:
 - 9.1. outline that a worker is eligible to be a health and safety representative if they:
 - 9.1.1. are a worker of the grouping of workers they represent
 - 9.1.2. are willing to be a health and safety representative
 - 9.1.3. work sufficiently regularly and for a sufficient time to carry out their role effectively
 - 9.2. specify that the PCBU and workers may decide the process for electing the health and safety representative. However:

- 9.2.1. all workers in the workgroup are given an opportunity to nominate and vote in the election
- 9.2.2. if the number of candidates for election as a health and safety representative equal the number of vacancies, the election need not be conducted and each candidate is to be taken to have been elected as a health and safety representative for the workgroup
- 9.2.3. if the majority of the workers agree, the election may be conducted with the assistance of a worker representative
- 9.2.4. workers must appoint someone to carry out the election (including another organisation), and the person appointed will be responsible for notifying the relevant PCBUs of the date of election as soon as practicable to give the PCBU time to organise the resources, facilities and assistance needed to conduct the election. This person must inform all relevant persons of the outcome of the election
- 9.2.5. if one party (the PCBU, a candidate or worker eligible to vote) requests that a secret ballot be conducted as part of the election process, then a secret ballot will be mandatory
- 9.2.6. the PCBU must provide the resources, facilities and assistance reasonably necessary to conduct the election
- 9.3. specify that a PCBU at a workplace must not unreasonably delay the election of a health and safety representative
- 9.4. specify that a health and safety representative shall have a term of office of three years unless the PCBU and health and safety representative agree to a different term. A health and safety representative may be re-elected at the end of the term
- 9.5. specify that a person ceases to hold office as a health and safety representative if:
 - 9.5.1. the person resigns as a health and safety representative by written notice given to the PCBU
 - 9.5.2. the person ceases to be a worker in the grouping of workers he or she represents
 - 9.5.3. the person is removed from that position by a majority of the workers he or she represents
 - 9.5.4. the person is removed from the position by the regulator
- 9.6. require a PCBU to develop and keep up to date a list of all health and safety representatives. A copy of the list is to be displayed in a manner that is readily accessible to the relevant workers
- 9.7. allow the PCBU and the workers to agree on the membership of the health and safety committee, but:
 - 9.7.1. at least half of the members of the health and safety committee must be workers who are not nominated by the PCBU

- 9.7.2. where there is a health and safety representative at the workplace, and he or she consents, that representative will be a member of the health and safety committee
- 9.7.3. if there are two or more health and safety representatives at a workplace, either one or all who consent may be members of the health and safety committee
- 9.7.4. the PCBU must appoint one person to the health and safety committee who has the delegated authority to make decisions on health and safety matters
- 9.8. specify that the health and safety committee must meet on a regular basis as agreed by the health and safety committee. However the health and safety committee must meet at least:
 - 9.8.1. every three months; or
 - 9.8.2. at any reasonable time at the request of a simple majority of the committee
- 9.9. specify that where the PCBU and workers cannot reach an agreement on the membership of the health and safety committee, the regulator can be asked to appoint a health and safety inspector to decide the membership of the committee, or that the committee should not be established

Health and Safety representative training

- 9.10. specify a training cap of a maximum total number of days that a PCBU is required to allow for health and safety representatives to attend a health and safety representative training course prescribed by regulations in a year based on the number of workers the PCBU has at that date, based on current section 19F of the HSE Act
- 9.11. specify that the health and safety representative may attend the health and safety representative training course meeting the prescribed requirements of their choice, in consultation with the PCBU
- 9.12. require the health and safety representative to provide their PCBU with details of the approved health and safety representative training course that they wish to undertake. The health and safety representative must consult with the PCBU about the date and location of the training
- 9.13. require the PCBU to:
 - 9.13.1. as soon as practicable, but within three months after the request is made, allow the health and safety representative time off work to attend the health and safety representative training course
 - 9.13.2. pay the course fees and any other reasonable costs associated with the health and safety representative's attendance at the health and safety representative training course
- 9.14. require that, where the health and safety representative represents a multiple PCBU workgroup, the PCBUs must pay an equal proportion of the costs of the representative exercising powers and performing functions under the Bill and any fees and costs associated with a health and safety representative

attending health and safety representative training course prescribed by regulations, unless they agree to split the fees and costs in another way

- 9.15. specify that where the PCBU and the health and safety representative cannot agree on either the time or location of a health and safety representative training course prescribed by regulations, either party can ask the regulator to appoint a health and safety inspector to decide either the time or location, or the reasonable costs associated with attending the course specify that, to be considered trained for the purposes of the new Act, health and safety representatives need to achieve the relevant unit standard(s)
 - 9.16. specify that a person is to be treated as a trained health and safety representative for the purposes of the new Act if that person meets the definition of a trained health and safety representative under s46A(1) of the Health and Safety in Employment Act 1992 AND has completed a specified transitional training course that covers the additional elements of the representative role in the new regime
 - 9.17. specify training schemes for initial health and safety representative training be either based on a NZ Gazette notice listing the core competencies of a trained health and safety representative or the relevant unit standard
10. **note** that basing the training arrangements on unit standards enables training to be provided by PCBUs in-house and that NZCTU is opposed to this

Work involving asbestos

11. **agree** to regulations for work involving asbestos that:
- 11.1. introduce a prohibition on all work activities involving asbestos and asbestos-containing materials unless they comply with the regulations or are exempted by the regulations
 - 11.2. exempt the following types of work activities from the prohibition:
 - 11.2.1. genuine research and analysis
 - 11.2.2. sampling and identification in accordance with the regulations
 - 11.2.3. maintenance of, or service work on, non-friable asbestos or asbestos-containing material, in accordance with the regulations
 - 11.2.4. removal or disposal of asbestos or asbestos-containing material, including demolition, in accordance with the regulations
 - 11.2.5. the transport and disposal of asbestos or asbestos waste in accordance with the regulations
 - 11.2.6. demonstrations, education or practical training in relation to asbestos or asbestos-containing material
 - 11.2.7. firefighting and emergency response where asbestos may be present at the site of the emergency
 - 11.2.8. display, or preparation or maintenance for display, of an artefact or thing that is, or includes, asbestos or asbestos-containing material

- 11.2.9. management in accordance with the regulations of *in situ* asbestos that was installed or fixed in structures before 1 January 1990
- 11.2.10. work that disturbs asbestos during mining operations that involve the extraction of, or exploration for, a mineral other than asbestos and is in accordance with the regulations; and
- 11.2.11. laundering asbestos-contaminated clothing in accordance with the regulations
- 11.3. introduce a requirement for PCBUs to ensure that, as far as is reasonably practicable, no person at a workplace is exposed to airborne asbestos
- 11.4. set the airborne exposure standard for all forms of asbestos, including chrysotile, at 0.1 fibres per millilitre of air (and is aligned with that in place in Australia and the United Kingdom)
- 11.5. require all PCBUs with management or control of a workplace that is a plant or structure built before 1 January 2000 (other than a home) to identify any asbestos or asbestos-containing material present, record it in a register and, where asbestos is present, maintain an Asbestos Management Plan
- 11.6. place a higher level of controls on the removal of all “friable” asbestos
- 11.7. set explicit requirements for the health monitoring of workers carrying out licensed asbestos removal work, or asbestos-related work
- 11.8. impose competency standards for supervisors of class A and class B licensed asbestos removal work, and contain training requirements for asbestos removal work or asbestos-related work
- 11.9. require containment or suppression at source of asbestos dust generated from cutting or water blasting activities
- 11.10. contain duties for the containment, transport and disposal of asbestos waste
- 11.11. define what is ‘asbestos contaminated soil’ and prescribe a process for the assessment and remediation of such soils
- 11.12. set controls on demolition and refurbishment work on buildings or plant in workplaces that contains asbestos, requiring:
 - 11.12.1. disclosure of the asbestos register to the contractor, or inspection by a qualified person
 - 11.12.2. review of the register by the person completing the work
 - 11.12.3. prior removal of asbestos that is likely to be disturbed by demolition
 - 11.12.4. a control plan to be prepared for the work
- 11.13. set controls for the assessment and removal of asbestos from any demolition or refurbishment workplaces that are also domestic premises
- 11.14. contain a duty for a PCBU that commissions the removal of asbestos to only use a licensed asbestos removalist

- 11.15. contain an exemption from the requirement to use a licensed asbestos removalist for:
 - 11.15.1. the removal of less than 10 square metres of “non-friable”/bonded asbestos as part of a contract for services or the ongoing maintenance of a workplace or
 - 11.15.2. the removal of small quantities of asbestos dust that is not associated with asbestos removal work
- 11.16. prescribe a regime for asbestos removal that requires:
 - 11.16.1. a Class A licence for the removal of friable asbestos
 - 11.16.2. a Class B licence for the removal of other forms of asbestos
 - 11.16.3. appointment of an asbestos removal supervisor for Class A and Class B work
 - 11.16.4. training removal workers for specific types of work, with records kept of training
 - 11.16.5. access to the asbestos register for the workplace where removal work is occurring
 - 11.16.6. preparation and maintenance of an asbestos removal control plan for the work
 - 11.16.7. notification to WorkSafe NZ of the removal work
 - 11.16.8. informing the PCBU with management or control of the workplace, or the occupier, owner or others connected with residential premises of the work and when it will be completed
 - 11.16.9. providing signage and information to specified persons
 - 11.16.10. maintaining decontamination facilities and ensuring disposal of the asbestos removed
 - 11.16.11. obtaining a clearance inspection and certificate from a licensed assessor for class A removal work, or an independent competent person for all other removal work.
- 11.17. prescribe processes for the issuing, renewal, suspension or cancellation of licences by WorkSafe NZ (or a delegated authority) for:
 - 11.17.1. class A asbestos removal (to PCBU only)
 - 11.17.2. class B asbestos removal (to PCBU only)
 - 11.17.3. asbestos assessor (individual only)
- 11.18. set minimum standards for asbestos-related work that is allowed under the regulations, including for:
 - 11.18.1. analysis of samples by IANZ accredited laboratories
 - 11.18.2. information for workers
 - 11.18.3. separation of work areas

- 11.18.4. air monitoring
 - 11.18.5. decontamination facilities
 - 11.18.6. labelling and signage
 - 11.18.7. PPE
12. **note** that the Ministry of Business, Innovation and Employment consulted on whether there was a date after which plant or structures were built, or installed in workplaces should be excluded from all or any of the regulations. It concluded that buildings and structures built after 1 January 2000 could be assumed to be free of asbestos unless there is evidence to suggest otherwise, and exempt from the requirement to maintain an asbestos register, and exempted from the proposed controls on demolition and refurbishment
13. **note** that the Ministry of Business, Innovation and Employment and WorkSafe NZ are completing further work on the inclusion of an appropriate soil contamination standard for asbestos, and process for remediation of soils and that this will be included in the exposure draft regulations for consultation with stakeholders
14. **note** that agencies, including the Ministry of Health, Ministry for the Environment and the Ministry of Business, Innovation and Employment will complete further work on whether there should be an ongoing ban on the importation of asbestos-containing materials

Work involving hazardous substances

15. **agree** to regulations for work involving hazardous substances that:
- 15.1. continue requirements relating to the workplace use, storage and handling of hazardous substances – consolidating and simplifying as appropriate during the drafting process – currently prescribed in the HSNO regime by:
 - 15.1.1. *Hazardous Substances (Classes 1 to 5 Controls) Regulations 2001, Hazardous Substances (Classes 6, 8 and 9 Controls) Regulations 2001, Hazardous Substances (Fireworks, Safety Ammunition, and Other Explosives Transfer) Regulations 2003, Hazardous Substances (Chemicals) Transfer Notice 2006, Hazardous Substances (Dangerous Goods and Scheduled Toxic Substances) Transfer Notice 2004, Hazardous Substances (Pesticides) Transfer Notice 2004, Hazardous Substances (Fumigants) Transfer Notice 2004, Hazardous Substances (Sodium Fluoroacetate) Transfer Notice 2005, Hazardous Substances (Veterinary Medicines) Transfer Notice 2005, Hazardous Substances (Vertebrate Toxic Agents) Transfer Notice 2004, Hazardous Substances (Timber Preservatives, Antisapstains, and Antifouling Paints) Transfer Notice 2004, and relevant group standard approvals (including incorporated material), outlining requirements for the management of risk associated with explosive, flammable, oxidizing, toxic, and corrosive substances*
 - 15.1.2. *Hazardous Substances (Compressed Gases) Regulations 2001, outlining requirements for the design, manufacture, verification, and testing of compressed gas containers*

- 15.1.3. *Hazardous Substances (Tank Wagons and Transportable Containers) Regulations 2004*, outlining requirements for the design and operation of tank wagons and transportable containers
- 15.1.4. regulation 29 of the *Hazardous Substances (Identification) Regulations 2001*, outlining alternative labelling requirements that apply to stationary containers and bulk transport containers
- 15.1.5. regulations 51 and 52 of the *Hazardous Substances (Identification) Regulations 2001* and regulation 42 of the *Hazardous Substances (Emergency Management) Regulations 2001*, outlining the requirements for the provision and positioning of signage at a workplace
- 15.1.6. regulation 49 of the *Hazardous Substances (Identification) Regulations 2001*, outlining alternative documentation requirements that apply to hazardous substances being transported by land, sea, or air
- 15.1.7. regulations 21 to 23 of the *Hazardous Substances (Emergency Management) Regulations 2001*, outlining requirements for the provision of fire extinguishers but simplifying the requirements for the capability of fire extinguishers
- 15.1.8. regulations 27 to 34 of the *Hazardous Substances (Emergency Management) Regulations 2001*, outlining requirements for the preparation, review, and testing of emergency plans
- 15.1.9. sections 82 – 86 of the *Hazardous Substances and New Organisms Act 1996*, outlining requirements for the management and oversight of the compliance certification regime
- 15.1.10. regulation 11 of the *Hazardous Substances and New Organisms (Personnel Qualifications) Regulations 2001*, outlining qualifications for compliance certifiers
- 15.1.11. Schedule 8 of the *Hazardous Substances (Dangerous Goods and Scheduled Toxic Substances) Transfer Notice 2004*, outlining requirements for the design, fabrication, and certification of stationary container systems
- 15.1.12. Schedules 9 and 10 of the *Hazardous Substances (Dangerous Goods and Scheduled Toxic Substances) Transfer Notice 2004* and regulations 35 – 41 of the *Hazardous Substances (Emergency Management) Regulations 2001* (including the standard variation applied to regulation 36 in all HSNO substance approvals), outlining requirements for secondary containment systems
- 15.1.13. the *Hazardous Substances (Exempt Laboratories) Regulations 2001*, outlining requirements for laboratories where small quantities of hazardous substances are used on a 'non-production' basis
- 15.1.14. the *Hazardous Substances (Tracking) Regulations 2001* and any variations provided for in Transfer Notices, outlining requirements for the tracking of highly hazardous substances
- 15.2. prescribe requirements for the safe transshipment of explosive substances through New Zealand

- 15.3. require PCBUs to prepare and maintain at the workplace an inventory of all hazardous substances used, handled, manufactured, or stored at the workplace
- 15.4. prescribe the matters to be included in the inventory of hazardous substances
- 15.5. require PCBUs to ensure that the inventory is readily accessible to any emergency service worker attending the workplace, including during an emergency and including if the workplace has been evacuated
- 15.6. prescribe alternative requirements that apply to a workplace that is a transit depot
- 15.7. specify that any hazardous substance that is a consumer product and is used at the workplace only in quantities and in a way that is consistent with household use is not required to be included on the inventory
- 15.8. require PCBUs to manage risks to health and safety associated with the use, handling, manufacture, or storage of hazardous substances in accordance with the risk management process to be prescribed in the regulations for general risk and workplace management
- 15.9. 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
- 15.10. prescribe circumstances that would trigger a review of any control measures implemented to control risks in relation to a hazardous substance at the workplace
- 15.11. specify that the requirement for a PCBU to carry out a risk assessment would not apply if: the PCBU is a retailer and the hazardous substance is a consumer product and intended for supply to other premises; or the hazardous substance is a consumer product and will be used at the workplace only in quantities, and in a way, that is consistent with household use
- 15.12. prescribe a minimum set of matters to be included in any information, instruction, and training that is provided to workers handling hazardous substances in accordance with the regulations covering general risk and workplace management
- 15.13. require PCBUs to ensure that information provided to workers handling hazardous substances includes: any operations in a workers area of work where hazardous substances are present; the location and availability of safety data sheets; and the sections of the safety data sheets that provide information about the hazards, emergency measures, and storage and handling
- 15.14. require PCBUs to ensure that instruction and training provided to workers handling hazardous substances includes: the physicochemical and health hazards associated with the hazardous substances the worker uses at work; 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; and the actions that the worker should take in an emergency involving the hazardous substances
- 15.15. require PCBUs to ensure that instruction and training provided to workers is based on any relevant standards recognised by WorkSafe NZ

- 15.16. require third party compliance certifiers, approved by WorkSafe NZ, to check compliance with the proposed information, instruction, and training requirements before issuing or renewing a location compliance certificate for a workplace
- 15.17. prescribe requirements for the supervision of workers handling hazardous substances
- 15.18. specify that any emergency plan prepared for a workplace under the regulations applying to major hazard facilities, the petroleum exploration and extraction sector, or the mining and quarrying sector will be deemed to comply with the requirements for the preparation, review, and testing of emergency plans made under the hazardous substance regulations
- 15.19. limit the scope for any review of a (hazardous substances) emergency plan that may be carried by the New Zealand Fire Service to an assessment of 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
- 15.20. enable the New Zealand Fire Service to request further information from the PCBU 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
- 15.21. require PCBUs to have regard to any recommendation made by the New Zealand Fire Service about the contents or effectiveness of an emergency plan
- 15.22. prescribe 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
- 15.23. prescribe 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
- 15.24. prescribe simplified requirements for the workplace labelling of hazardous substances if the original label is no longer legible and the hazardous substances will not be supplied to a person outside the workplace
- 15.25. require PCBUs to:
 - 15.25.1. ensure that they obtain the current safety data sheet for a hazardous substance from the manufacturer, importer, or supplier of the hazardous substance when the hazardous substance is first supplied for use at the workplace
 - 15.25.2. ensure that the current safety data sheet for a hazardous substance is readily accessible to a worker or any other person who is likely to be exposed to the hazardous substance at the workplace
 - 15.25.3. ensure that the current safety data sheet for a hazardous substance is readily accessible to any emergency service worker attending the workplace, including during an emergency and including if the workplace has been evacuated

- 15.25.4. ensure that the current safety data sheet for the hazardous substance is readily accessible to a person at the workplace if the person is likely to be affected by the hazardous substance and asks for the safety data sheet
- 15.26. allow PCBUs to keep safety data sheets at the primary workplace facility if workers travel between workplaces because their work is carried out at more than one geographical location, as long as those workers (wherever they are) can immediately obtain the key safety information from the safety data sheets in an emergency
- 15.27. specify a PCBU would not be required to obtain and give access to the current safety data sheet for the hazardous substance, if: the hazardous substance is in transit; or (if the PCBU is a retailer) the hazardous substance is a consumer product, and intended for supply to other premises, and not intended to be opened on the retailers premises; or the hazardous substance is a consumer product and will be used only in quantities, and in a way, that is consistent with household use
- 15.28. prescribe alternative requirements for farms where mobile fuel tankers, with a capacity of 10,000L or less, are being used to refuel aircraft carrying out agricultural aviation operations and exempt the PCBU with management or control of that workplace from the requirement to obtain a compliance certificate
- 15.29. allow ports, excluding the part of the port facility that is used to store hazardous substances beyond the 72 hour transit depot limit, to comply with the International Maritime Dangerous Goods Code as an alternative to the regulations for the storage of hazardous substances, excluding explosives
- 15.30. exempt ports, excluding the part of the port facility that is used to store hazardous substances beyond the 72 hour transit depot limit, from compliance with secondary containment requirements
- 15.31. clarify application of the regulations to any waste product that is a substance that meets the classification criteria for substances with explosive properties, flammable properties, oxidising properties, toxic properties, or corrosive properties
- 15.32. prescribe simplified requirements for the workplace labelling of containers that are used to store any waste product that is, or contains, a substance that meets the classification criteria for substances with explosive properties, flammable properties, oxidising properties, toxic properties, or corrosive properties
- 15.33. prescribe a simplified list of matters to be included in safety data sheets for any waste product that is, or contains, a substance that meets the classification criteria for substances with explosive properties, flammable properties, oxidising properties, toxic properties, or corrosive properties
- 15.34. allow a gas cylinder testing station to be certified as a periodic tester
- 15.35. require PCBUs to comply with any additional (workplace) requirements on any substance, or variations to existing (workplace) requirements, as set out in a safe work instrument
16. **agree** to the other technical proposals for the regulation of work involving hazardous substances as set out in Annex 1 of this paper

17. **note** that the regulations will also include amendments to the compliance certification regime that were agreed to by Cabinet on 15 July 2013 [CAB Min (13) 24/13 refers]
18. **agree** that the exposure draft regulations concerning work involving hazardous substances should:
 - 18.1. prescribe requirements for the segregation of toxic and corrosive substances with incompatible substances
 - 18.2. prescribe requirements for the separation of buildings holding acutely toxic or corrosive substances above specified quantities from areas of high intensity land use and public places
 - 18.3. prescribe requirements for the safe storage of toxic or corrosive substances where they are present at transit depots
 - 18.4. prescribe requirements for the safe application of toxic substances (particularly agrichemicals) and the management of both on-site and off-site effects
 - 18.5. prescribe alternative requirements for the safe storage of acutely toxic or corrosive substances where they are present in limited quantities
 - 18.6. require PCBUs to establish a hazardous substance location for any location within the workplace where the following classes of substances are present above specified quantities: acutely toxic (classes 6.1A – 6.1C); and corrosive to dermal tissue (class 8.2A)
 - 18.7. require PCBUs to obtain a compliance certificate for the hazardous substance location within the workplace
 - 18.8. revoke the current requirement to have one or more workers trained and certified as an approved handler if a workplace uses, handles, or stores certain hazardous substances above specified quantities except for those substances requiring a controlled substance licence
19. **note** that the Minister for Workplace Relations and Safety will seek policy decisions on the matters outlined in the recommendation above following the exposure draft process

Major Hazard Facilities

20. **agree** that regulations concerning major hazard facilities should:
 - 20.1. specify hazardous substances and associated upper and lower tier thresholds that align with those set under the Seveso III Directive
 - 20.2. require operators of facilities meeting or exceeding the lower threshold to provide information to WorkSafe NZ about that facility
 - 20.3. require all facilities subject to the regulations to:
 - 20.3.1. prepare and implement a comprehensive and integrated safety management system for managing safety and preventing the occurrence of any major accident at the facility including:
 - 20.3.2. the identification and assessment of all hazards at the facility having the potential to cause a major accident
 - 20.3.3. the control measures to eliminate the risk of a major accident occurring, or if it is not reasonably practicable to eliminate the risk, minimise the risk so far as it is reasonably practicable

- 20.3.4. the process for on-going maintenance and safety verification of the safety critical elements of the facility for the life-cycle of the facility
- 20.3.5. provide information to the community, local community and council about the facility, its operators, how the community would be notified if a major accident occurs and what the community should do if a major incident occurred
- 20.3.6. notify WorkSafe NZ of any dangerous incidents
- 20.4. require operators of upper tier major hazard facilities to also:
 - 20.4.1. prepare, have WorkSafe NZ approve, and then implement a safety case
 - 20.4.2. prepare a design notice for a proposed facility and submit it to WorkSafe NZ after initial design has been completed and before making a final investment decision
- 20.5. specify a process for the assessment (and formal acceptance/rejection) of safety cases that is consistent with the process which already applies to petroleum exploration and extraction activities in New Zealand
- 20.6. specify circumstances under which operators of major hazard facilities would be required to review (and as necessary revise) the safety assessment, emergency plan, safety management system, and safety case for the facility
- 20.7. require operators of major hazard facilities to implement a safety role for workers at the facility that enables them to contribute to processes for the identification and assessment of major accident hazards (and control measures)
- 20.8. identify transition periods to ensure that all current facilities are operating under a safety management system or an approved safety case within 2 years of the regulations coming into force
- 20.9. require WorkSafe NZ to make core (non-sensitive and non-personally identifying) information about major hazard facilities publicly available

Next steps

- 21. **invite** the Minister for Workplace Relations and Safety to instruct Parliamentary Counsel to draft regulations reflecting the decisions of this paper
- 22. **authorise** the Minister for Workplace Relations and Safety to make decisions on detail and to make changes, consistent with the policy intent, on any issues that arise during the drafting processes for phase one regulation
- 23. **note** that this Cabinet paper and subsequent Cabinet minute will be published as soon as practicable on the Ministry of Business, Innovation and Employment's website so that stakeholders can see that the regulation development process is on-track, and provide further clarity for duty holders about the likely final shape of the regulations
- 24. **note** that remaining policy decisions on phase one regulation will be sought from Cabinet in the first half of 2015 following the exposure draft and Bill processes

25. **note** that final decisions about the making of phase one regulation will be made by Cabinet Legislation Committee once the Bill has passed and the regulation-making power is in force.

Hon Michael Woodhouse
Minister for Workplace Relations and Safety

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APPENDIX ONE: Other technical proposals for the regulation of work involving hazardous substances

The following proposals were either identified through the consultation process or are necessary to improve the clarity of existing HSNO provisions that are being carried through to the regulations.

A: Application of new regulations for work involving hazardous substances: I propose that the regulations should not apply to a substance that is used as the motive power, or to control a vehicle, aircraft, or ship and is contained in the fuel system, electrical system, control system, or emergency system of the vehicle, aircraft, or ship.

I propose that the regulations should not apply to hazardous substances being transported by land, sea, or air under the jurisdiction of the Land Transport Rules, the Maritime Rules, or the Civil Aviation Rules.

I also propose that the regulations should not apply to any fuel gas supplied or used in a gas distribution system, gas appliance, or gas installation when subject to the Gas Act 1992.

B: Signage for workplaces where hazardous substances are present: I propose that the regulations will exempt PCBUs from complying with requirements for the positioning of signage at the entrance to any workplace where explosive (class 1) substances are present and prescribe alternative requirements because it is considered undesirable, from a security perspective, to advertise the presence of explosives at the road-side entrance to a workplace.

I also propose that the requirements outlining the positioning of signage, currently prescribed by regulation 52(1) of the Hazardous Substances (Identification) Regulations 2001, should not apply to a retail outlet if the hazardous substances on site are used to refuel vehicles.

C: Packing of decanted or transferred hazardous substances in the workplace: To provide for the safe storage of hazardous substances decanted into containers at the workplace for use within the workplace, I propose that the regulations will:

- a. prescribe requirements for the packing of hazardous substances if they are transferred or decanted into a portable container and will not be supplied to a person outside the workplace; and
- b. refer to standards that must be complied with for the packing of petrol, aviation gasoline, or racing gasoline if they are transferred or decanted into a portable container, which has a capacity of 25L or less, and will not be supplied to a person outside the workplace.

D: Design, manufacture, verification, and testing of compressed gas containers: I propose that the regulations will reintroduce the requirement for low pressure fire extinguishers being imported into New Zealand to be inspected and certified by a compliance certifier before being supplied to another workplace. In 2012, amendments to the Hazardous Substances (Compressed Gases) Regulations 2001 unintentionally removed this requirement.

E: Design and operation of tank wagons and transportable containers: I propose that the regulations will be amended to clearly enable drivers of tank wagons to leave their vehicle unattended when making a comfort stop.