Chapter 5: Regulating work involving hazardous substances
Introduction

This chapter seeks feedback on policy proposals for regulating work involving hazardous substances under the proposed new Act.

In this chapter:

- **Current regulation** refers to regulations made under the HSNO Act that cover the use of substances hazardous to human health in a work context. Namely, the relevant provisions of the:
  - Hazardous Substances (Classes 1 to 5 Controls) Regulations 2001
  - Hazardous Substances (Classes 6, 8, and 9 Controls) Regulations 2001
  - Hazardous Substances (Identification) Regulations 2001
  - Hazardous Substances (Emergency Management) Regulations 2001
  - Hazardous Substances (Compressed Gases) Regulations 2001
  - Hazardous Substances (Tank Wagons and Transportable Containers) Regulations 2004
  - Hazardous Substances and New Organisms (Personnel Qualifications) Regulations 2001
  - Schedules 8, 9 and 10 of the Hazardous Substances (Dangerous Goods and Scheduled Toxic Substances) Transfer Notice 2004;
  - Hazardous Substances (Exempt Laboratories) Regulations 2001;
  - Hazardous Substances (Tracking) Regulations 2001; and
  - Hazardous Substances (Fireworks, Safety Ammunition and Other Explosives Transfer) Regulations 2003.

- **New regulation** refers to regulations to be made under the proposed new Act that cover work involving hazardous substances.

**What are hazardous substances?**

In relation to the proposals set out in this chapter, ‘hazardous substance’ has the same meaning as in section 2 of the HSNO Act.

Regulations covering general risk and workplace management (see chapter 2 of this discussion document) will provide for the management of other substances hazardous to health. See also chapter 4 of this discussion document about regulations involving work with asbestos.

**Hazards associated with hazardous substances**

There are two broad types of hazards associated with hazardous substances that may present an immediate or long-term injury or illness to people. These are:

- **Health hazards** – These are properties of a substance that have the potential to cause adverse health effects. Exposure usually occurs through inhalation, skin contact or ingestion. Adverse health effects can be acute (short term) or chronic (long term). Typical acute health effects include headaches, nausea or vomiting and skin corrosion, while chronic health effects include asthma, dermatitis, nerve damage or cancer.
Physicochemical hazards – These are physical or chemical properties of the substance that pose risks to workers other than health risks, as they do not occur as a consequence of the biological interaction of the substance with people. The hazards arise through inappropriate handling or use and can often result in injury to people and/or damage to property as a result of the intrinsic physical hazard. Examples of physicochemical hazards include flammable, explosive, and oxidising substances.

Many hazardous substances have both health and physicochemical hazards.

The existing regulatory regime
Hazardous substances are currently regulated under the HSNO Act based on the risks they pose to people and the environment. The hazardous properties of a substance are classified to determine how the risks can be managed. Most hazardous substances have more than one hazardous property and therefore have more than one hazard classification.

Each new hazardous substance imported or manufactured in New Zealand must be approved under the HSNO Act and have its classifications determined.

Depending on its hazard classification, rules are placed on a substance to manage the risks posed by the properties of that substance. These rules are known as controls. The controls vary depending on the risk associated with the hazardous substance. The risks come from the hazardous properties of the substance, the amount present and the way it’s used.

The hazards associated with hazardous substances need to be managed safely in the workplace under the HSE Act. While the HSE Act sets out the broad duties in relation to hazard management, the HSNO regime sets out the detailed controls that must be implemented to ensure hazardous substances are managed safely in the workplace.

Drivers for change

Estimated levels of harm from exposure to hazardous substances
Around 150,000 workplaces throughout New Zealand use hazardous substances. Unfortunately though, because of this frequent use it’s easy to take them for granted. Exposure to common hazardous substances like commercial cleaning products, paints, adhesives, acids, bases and solvents can cause serious harm when they aren’t used safely. A lack of understanding about the harm that can occur from exposure is a serious problem with serious consequences. It is estimated that there were 600 – 900 fatalities from work-related disease in 2010. Many of the diseases that featured in the mortality estimates were caused by exposure to hazardous substances, either through direct contact or as airborne contaminants in the workplace⁹.

Given the challenges in linking harm to hazardous substance exposure, compliance rates with key risk management controls help provide an understanding of whether hazardous substances users are undertaking the appropriate actions to manage the health and physiochemical hazards associated with substances. In light of this, a 2012 Environmental Protection Authority (EPA) survey of 400 businesses found that 75% of businesses were not fully compliant with a sample of 8 key risk management controls.

This indicates significant non-compliance with the HSNO Act. This level of non-compliance most likely increases the potential for acute and chronic harm.

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Taskforce findings and recommendations

Public submissions to the Taskforce commented that legislation and advice surrounding the HSNO Act and the management of hazardous substances is confusing and difficult to apply, and small and medium enterprises find it hard to interpret and keep up with what is required.

Businesses that work with hazardous substances are required to comply with two very different and overlapping pieces of legislation – the HSNO Act and the HSE Act – with quite different approaches and focus. Businesses will often have similar, although not necessarily well-aligned, obligations under both Acts, which creates uncertainty and confusion. Businesses using hazardous substances are currently required to interact with two regulatory regimes and interact with two government departments, to understand how to keep people safe in workplaces. This divide was reflected through some of the submissions to the Taskforce, where submitters noted that they often receive conflicting or duplicate messages from regulators about how to manage risks and their relative priorities.

The work health and safety regulator faces challenges in managing HSNO and HSE compliance and enforcement. This is in part because of different enforcement and compliance strategies, as well as the different enforcement tools under each Act. There are also separate funding sources for HSE and HSNO enforcement.

Finally, there is a misalignment of institutional settings and regulatory responsibilities under the two regimes, along with a lack of clarity for HSNO Act enforcement agencies. Environmental agencies (Ministry for the Environment and EPA) are responsible for regulating workplace controls for substances hazardous to human health, while the work health and safety regulator is responsible for enforcing these controls.

Public submissions to the Taskforce were consistent in their view that regulators do not seem to collaborate effectively, and they found the current division of regulatory activities confusing. Submitters recommended the regulatory framework be simplified, with greater alignment across regulatory agencies, and with the requirements in one set of rules.

Consequently, the Taskforce recommended that Government ensure a much stronger alignment and coordination of work health and safety activities through regulation of the use of hazardous substances in the workplace that are currently under the HSNO Act moving to the new work health and safety legislation.

Government’s response to the Taskforce recommendations

In response to the Taskforce recommendations, the Government agreed that:

- the HSNO regulatory regime should have responsibility for:
  - assessment and approval of all hazardous substances;
  - classifying all hazardous substances;
  - setting controls (EPA controls) that apply to all hazardous substances, including controls for labelling, safety data sheets (SDS), and disposal;
  - setting content controls (i.e. allowable levels of hazardous substances) for substances that affect human health and safety and the environment (e.g. cosmetics, domestic cleaning products, and pesticides);
  - setting controls for hazardous substances that adversely affect the environment;
  - setting controls for hazardous substances that affect human health and safety used outside the workplace; and

- the work health and safety regulatory regime have responsibility for regulating substances that affect human health and safety within the workplace, including:
incorporating or referring to EPA controls, where appropriate;
- setting controls on the use, handling, generation, and storage of hazardous substances at the workplace;
- quality assurance mechanisms, e.g. test certification, from 2014/15 onwards; and
- generally regulating such substances within the legislative framework for work health and safety.

Overview of proposals
The approach chosen by Government for regulating hazardous substances aims to reduce complexity and uncertainty for the majority of businesses that use hazardous substances.

Currently anyone, including any business, using a hazardous substance must comply with the requirements of the HSNO Act set by the EPA. Those requirements address the risks hazardous substances pose both to the health of people and to the environment. WorkSafe NZ currently enforces those HSNO requirements in workplaces.

In future, the assessment and approval of hazardous substances for introduction to New Zealand will continue under the HSNO Act. But the requirements to address risks from hazardous substances to people’s health and safety in the workplace will be set under the proposed new Act and the new regulations. The corresponding requirements will be removed from the HSNO Act.

Future requirements under the HSNO Act
The HSNO Act will continue to be the primary legislation for the regulation of hazardous substances. In future under the HSNO Act the EPA will:

- assess and approve applications for new substances;\(^{10}\)
- set requirements to address risks to the environment posed by hazardous substances regardless of where those risks occur i.e. the EPA will continue to set environmental controls that apply in workplaces;
- set requirements to address risks to people’s health in non-workplace situations (for example, in domestic homes and public places);
- issue EPA notices – a new tertiary-level instrument that will replace and update many existing requirements currently set under HSNO regulations, group standards, approvals and deemed approvals in transfer notices;
- continue to establish and maintain the hazard classification system; and
- undertake a new function to enforce requirements on importers and manufacturers to ensure they provide the correct labelling, packaging, and information in SDS.

Aligning the requirements under the HSNO Act with new workplace requirements under the proposed new Act and new regulations will be undertaken over several years. The EPA will take this opportunity to bring HSNO requirements up to date, remove duplication and simplify requirements to the extent possible to manage risks. Consultation on those changes will occur as new proposals are developed and will be undertaken by the EPA separately from the consultation WorkSafe NZ is undertaking on the workplace changes proposed in this discussion paper.

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\(^{10}\) As part of this process WorkSafe NZ will provide advice to the EPA on work health and safety risks and the controls it has or will set to address those risks, to enable the EPA to undertake a risk assessment on the new substance.
Integrating requirements
WorkSafe NZ and the EPA will work together to ensure that the majority of downstream businesses\(^{11}\) using hazardous substances will have to deal with:

- one regulator who will enforce the proposed new Act and the new regulations, as well as the HSNO environmental controls that apply within workplaces;
- one set of rules for work health and safety (under the proposed new Act and the new regulations); and
- one suite of guidance for hazardous substances (the guidance and codes prepared by WorkSafe NZ or prepared jointly with the EPA where environmental controls apply).

This approach is expected to set the foundation for reducing rates of acute injuries and chronic disease caused by hazardous substances.

New regulations
The remainder of this chapter sets out the requirements that we propose should apply to workplaces under new regulations. In summary, this involves:

- adopting key features of the Australian model regulations\(^ {12}\), which address the management of hazardous substances in the workplace but are not currently required by the current regulations;
- transferring the relevant (workplace) requirements of the following HSNO regulations into the new regulations:
  - Hazardous Substances (Classes 1 to 5 Controls) Regulations 2001
  - Hazardous Substances (Classes 6, 8, and 9 Controls) Regulations 2001
  - Hazardous Substances (Identification) Regulations 2001
  - Hazardous Substances (Emergency Management) Regulations 2001
  - Hazardous Substances (Compressed Gases) Regulations 2001
  - Hazardous Substances (Tank Wagons and Transportable Containers) Regulations 2004
  - Hazardous Substances and New Organisms (Personnel Qualifications) Regulations 2001
  - Schedules 8, 9 and 10 of the Hazardous Substances (Dangerous Goods and Scheduled Toxic Substances) Transfer Notice 2004
  - Hazardous Substances (Exempt Laboratories) Regulations 2001
  - Hazardous Substances (Tracking) Regulations 2001; and the
  - Hazardous Substances (Fireworks, Safety Ammunition and Other Explosives Transfer) Regulation 2003.

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\(^{11}\) Upstream businesses — importers, manufacturers, and suppliers of hazardous substances — will be subject to additional HSNO Act requirements.

\(^{12}\) Note that the Australian model regulations covering hazardous substances also contain requirements relating to work involving lead and lead processing. These requirements are not considered in this chapter. Instead, we propose to include the lead-related regulations in the Hazardous Work regulations to be developed as part of phase 2 (see timing and phasing of regulations in chapter 1 for more details).
transferring controls set out in HSNO approvals (including those approvals deemed in transfer notices) or group standards, which seek to prevent or mitigate illness or injury to workers, into the new regulations

- making changes to the HSNO requirements being transferred into the new regulations in order to simplify requirements to the extent possible in the short-term; and

- reviewing all other HSNO requirements being transferred into the new regulations within two years of the new regulations coming into force, to ensure requirements are fit-for-purpose and to simplify requirements to the extent possible.

Details of the proposals

Hazardous substance approvals

Existing arrangements

All hazardous substances must be approved under the HSNO Act before they can be imported into, or manufactured in, New Zealand. An approval sets out the controls which enable a hazardous substance to be managed safely.

There are a number of different types of HSNO approval:

- individual substance approvals
  - via part 5 of the HSNO Act
  - deemed approval via a transfer notice in the NZ Gazette

- group standard approvals, which apply to groups of similar substances.

Group standards are approvals for a group of hazardous substances of a similar nature, type or use. A group standard sets out the controls which enable a group of hazardous substances to be managed safely. Many hazardous substances used in the workplace are approved under group standards. Other substances (e.g. explosives, pesticides, timber treatment chemicals, vertebrate toxic agents) were given only individual approvals.

A transfer notice is a notice in the NZ Gazette that carries over requirements from previous (pre-HSNO) regimes and is a deemed approval for specific hazardous substances.

Change

We will build the workplace controls within existing HSNO approvals, which prevent or mitigate illness or injury to workers, into the new regulations. This will ensure that workplace controls on hazardous substances are all set out in a single set of regulations, as opposed to the current framework comprising the HSNO approvals, 15 sets of HSNO regulations, nine transfer notices, and approximately 200 group standards.

Inventory of hazardous substances

Existing arrangements

The first step in managing risks associated with hazardous substances involves identifying all the substances that are used, handled, stored or generated at a workplace in consultation with workers.

In Australia, a PCBU must ensure that an inventory of hazardous substances at the workplace is prepared and kept up-to-date. The inventory must be readily accessible to workers involved in using, handling or storing hazardous substances and to anyone else who is likely to be affected by a hazardous substance at the workplace.

The inventory is a list of the product names of all hazardous substances used, handled or stored at the workplace. It must be updated as new hazardous substances are introduced to the workplace or when the use of a particular hazardous substance is discontinued.
The current HSNO regulations do not require a person in charge of a place of work to prepare and maintain an inventory. However, joint MBIE and EPA guidance does state that a person in charge of a place of work should make a list of all of the substances used and stored at the workplace, as the first step in assessing the risk of exposure to hazardous substances.

**Proposed change**
In order to codify existing good practice, we propose that a PCBU at a workplace would be required to ensure that an inventory of all hazardous substances used, handled or stored at the workplace is prepared and kept at the workplace and the inventory is maintained to ensure the information in the inventory is up to date.

For each hazardous substance at the workplace, the inventory would need to include:

- the product name;
- the maximum amount that is likely to be at the workplace;
- whether it is a gas, liquid, or solid;
- the size of the container;
- the location;
- any specific storage requirements;
- the HSNO classifications, or, if the HSNO classifications are not available, the UN class and packing group; and
- the current SDS for each hazardous substance listed.

The inventory would need to be readily accessible to:

- a worker involved in using, handling, or storing a hazardous substance;
- an emergency service worker; and
- anyone else who is likely to be affected by a hazardous substance at the workplace.

We propose that these requirements would not apply to a hazardous substance that:

- is transiting a workplace while other goods are being loaded onto or unloaded from a vehicle; or
- is a consumer product and it is reasonably foreseeable that it will be used at the workplace only in:
  - quantities that are consistent with household use; and
  - in a way that is consistent with household use.

Consistent with the definition in regulation 5 of the Australian model regulations, ‘consumer product’ would mean a thing that:

- is packed or repacked primarily for use by a household consumer or for use in an office; and
- if the thing is packed or repacked primarily for use by a household consumer — is packed in the way and quantity in which it is intended to be used by a household consumer; and
- if the thing is packed or repacked primarily for use in an office — is packed in the way and quantity in which it is intended to be used for office work.

**Question 104:** Do you have any comments in relation to the regulatory proposal requiring a PCBU to prepare and maintain an inventory of hazardous substances?
Question 105:  Given that this proposal seeks to codify existing good practice, do you think the proposed regulation, requiring a PCBU to prepare and maintain an inventory of hazardous substances, will impose any additional costs on PCBUs? Conversely, what do you think are the main benefits of this proposal? (Please quantify any impacts identified and express in dollar terms to the extent practical).

Management of risk to health and safety

Existing arrangements
Currently, in accordance with section 7 of the HSE Act employers are required to have effective methods for the identification, assessment and ongoing review of hazards.

Where a significant hazard is identified, an employer must then take steps (in accordance with sections 8 – 10 of the HSE Act) to eliminate, isolate, or minimise the hazard.

These requirements will not be carried over into the proposed new Act when the HSE Act is repealed. Rather, they will be replaced by obligations relating to the management of health and safety risks, similar to those set out in regulations 34 – 38 of the Australian model regulations.

Proposed change
Consistent with regulation 351 of the Australian model regulations, we propose that the new regulations would require a PCBU to manage the risks to health and safety associated with using, handling, generating or storing a hazardous substance at a workplace in accordance with the requirements that will be prescribed in regulations covering general risk and workplace management (see the section ‘managing risks to health and safety arising from work’ on page 34 of this document for further details about these requirements).

In managing risks to health and safety the PCBU would be required to take into consideration:

- the quantity of the hazardous substance used
- the health hazards and physicochemical hazards associated with the hazardous substance
- any potentially hazardous chemical or physical reaction between the hazardous substance and another substance or mixture, including a substance that may be generated by the reaction
- any sources of fuel in the workplace, e.g. flammable gases, flammable and combustible liquids, flammable and combustible solids, reactive substances that liberate flammable gases on contact with water, and any dusts that are generated through other processes
- any sources of oxygen in the workplace. e.g. oxygen gas and compressed air in cylinders, chemical oxidisers, and peroxides
- any energy sources that have the potential to ignite a flammable or combustible material, e.g. flames, sparks, heat (including exothermic chemical reactions)
- how workers could interact with the hazardous substance at the workplace
- any structure, plant or system of work that is used in the use, handling, generation or storage of the hazardous substance
- the potential for workers to be exposed to the hazardous substance (and potential routes of absorption – inhalation, skin absorption, etc.)
- the potential degree of exposure
any relevant workplace exposure standard or biological exposure index\textsuperscript{13} for the hazardous substance

whether monitoring will be required to measure the exposure of workers to the hazardous substance

whether health monitoring will be required; and

the existence and performance of control measures.

Consistent with regulation 352 of the Australian model regulations we propose that, in addition to the circumstances prescribed in the regulations covering general risk and workplace management about the review of control measures (see page 36 of this document), a PCBU at a workplace would be required to ensure that any measures implemented to control risks in relation to a hazardous substance at the workplace are reviewed and as necessary revised annually and in any of the following circumstances:

- following any change to the SDS for the hazardous substance or the inventory of hazardous substances
- following any notifiable event\textsuperscript{14} involving a hazardous substance
- following any incident involving a hazardous substance that did not cause, but might reasonably have caused, the death of a person or a notifiable injury or illness\textsuperscript{15}
- if the person obtains a health monitoring report for a worker that contains:
  - test results that indicate that the worker has been exposed to the hazardous substance and at a concentration that may cause harm and has an elevated level of that substance and/or its metabolites in his or her body; or
  - any advice that test results indicate that the worker may have contracted a disease, injury or illness as a result of carrying out the work using, handling, generating or storing the hazardous substance that triggered the requirement for health monitoring; or
  - any recommendation that the PCBU take remedial measures, including whether the worker can continue to carry out the work using, handling, generating or storing the hazardous substance that triggered the requirement for health monitoring;
- if monitoring carried out determines that the airborne concentration of the hazardous substance at the workplace exceeds the relevant workplace exposure standard.

Question 106: Do you have any comments in relation to the proposed regulations setting out processes and considerations for managing the risks to health and safety associated with using, handling, generating or storing a hazardous substance at a workplace?

\textsuperscript{13} Workplace Exposure Standards and Biological Exposure Indicies have been developed by MBIE in conjunction with the EPA.

\textsuperscript{14} ‘Notifiable event’ has the same meaning as in section 20 of the Health and Safety Reform Bill.

\textsuperscript{15} ‘Notifiable injury or illness’ has the same meaning as in section 18 of the Health and Safety reform Bill
Question 107: Given that employers are currently required to manage significant hazards in accordance with sections 8 – 10 of the HSE Act, do you think that the proposed processes and considerations for managing the risks to health and safety associated with hazardous substances will impose any additional costs on PCUs? Conversely, what do you think are the main benefits of this proposal? (Please quantify any impacts identified and express in dollar terms to the extent practical).

Management of risk associated with physicochemical hazards (controls on class 1 to 5 substances)

Existing arrangements
The Hazardous Substances (Classes 1 to 5 Controls) Regulations 2001 prescribes controls:

- for substances with explosive (class 1) properties to reduce the likelihood of an unintended explosion and control any adverse effects;
- for substances with flammable (class 2, 3, and 4) properties to reduce the likelihood of an unintended fire or explosion and control any adverse effects; and
- for substances with oxidising (class 5) properties to reduce the likelihood of an unintended release of chemical energy as an explosion or fire and control any adverse effects.

The HSNO Classes 1 to 5 Controls regulations include some provisions that may not contribute to risk reduction and are overly complex or impractical. The regulations may also lack adequate controls for the safe management of some substances, for example the storage of liquid oxidising substances. Compliance is further complicated by the fact that some of the controls that duty holders need to comply with (for class 1 to 5 substances) are currently set outside of these regulations in schedules 8 and 10 of the Hazardous Substances (Dangerous Goods and Scheduled Toxic Substances) Transfer Notice 2004.

Proposed change
We propose that the requirements of the HSNO Classes 1 to 5 Controls regulations and relevant parts of the Dangerous Goods and Scheduled Toxic Substances transfer notice, including Schedule 8 on bulk storage, would be transferred into the new regulations.

MBIE and WorkSafe NZ will be carrying out a review of the transferred provisions within two years of the new regulations coming into force.

Question 108: Do you have any comment to make about the regulatory proposal to transfer the requirements of the Classes 1 to 5 Controls regulations and parts of the Dangerous Goods and Scheduled Toxic Substances transfer notice into the new regulations?

Management of risk associated with fireworks, safety ammunition, and other explosives

Existing arrangements
The Hazardous Substances (Fireworks, Safety Ammunition, and Other Explosives Transfer) Regulations 2003 currently provide for the safe handling of use of fireworks, safety ammunition, and other explosives by varying the controls set out in other HSNO regulations (Schedules 4, 5, and 6).
Proposed change
We propose that the relevant requirements of Schedule 4 (changes to controls relating to fireworks), Schedule 5 (changes to controls relating to safety ammunition), and Schedule 6 (changes to controls relating to other explosives) of the HSNO Fireworks, Safety Ammunition, and Other Explosives Transfer regulations would be transferred into the new regulations.

MBIE and WorkSafe NZ will be carrying out a review of the transferred provisions within two years of the new regulations coming into force.

Question 110: Do you have any comment to make about the regulatory proposal to transfer the requirements of Schedules 4, 5 and 6 of the HSNO Fireworks, Safety Ammunition, and Other Explosives Transfer regulations into the new regulations?

Question 111: Do you think there are any immediate improvements that should be made to the controls on fireworks, safety ammunition, and other explosives that are being transferred into the new regulations before the review is carried out?

Management of risk associated with health hazards (controls on class 6 and 8 substances)

Existing arrangements
The Hazardous Substances (Classes 6, 8, and 9 Controls) Regulations 2001 prescribe controls:

- for substances with toxic (class 6) properties to reduce the likelihood of any unintended exposure to any such substances and control any adverse effects;
- for substances with corrosive (class 8) properties to human tissue to reduce the likelihood of any unintended exposure and control any adverse effects; and
- for substances with ecotoxic (class 9) properties to reduce the likelihood of any unintended exposure to any such substances and control any adverse effects.

Regulations 11 – 26 relate to the scientific methodology for setting tolerable exposure limits (TELs), which are a public health protection measure set by the EPA. Consequently, these provisions would not be transferred into the new regulations.

Regulation 27 sets workplace controls in relation to compliance with TELs and regulation 28 sets controls for the safe application of vertebrate poisons. Regulations 29 and 30 addresses the setting of and compliance with workplace exposure standards (WESs), which are a workplace control set by WorkSafe NZ with input from the EPA.

Regulations 32 – 44 relate to the scientific methodology for setting environmental exposure limits, which are an environmental protection measure set by the EPA. Consequently, these provisions would not be transferred into the new regulations.

Regulations 45 – 51 sets workplace controls in relation to the application of class 9 (ecotoxic) substances. It is intended that the HSNO regulatory framework will continue to be responsible for setting environmental controls that apply to workplaces and non-workplaces. Consequently, these provisions would not be transferred into the new regulations.

The HSNO Classes 6, 8 and 9 Controls regulations may also lack adequate controls for the safe management of some class 6 (toxic) and class 8 (corrosive) substances, for example sites storing substances that are acutely toxic or known or presumed human carcinogens do not currently trigger a requirement to establish a hazardous substance location, which would be subject to assessment by an independent and competent third-party examiner.
**Proposed change**
We propose that the following provisions of the HSNO Classes 6, 8 and 9 Controls regulations would be transferred into the new regulations:

- Part 1 (general requirements) – regulations 7 – 10; and
- Part 2 (requirements for class 6 substances) – regulations 29 and 30.

Further, we propose that more specific controls relating to segregation requirements (including isolation distances) between class 6 and 8 substances and other hazardous substances; more specific controls relating to the storage of class 6 and 8 substances; and more specific controls to manage the risks specifically associated with class 6 and 8 substances would also be built into the new regulations.

**Question 112:** Do you have any comment to make about the regulatory proposal to transfer regulations 7 – 10 and 29 and 30 of the HSNO Classes 6, 8 and 9 Controls regulations into the new regulations?

**Question 113:** Do you think there are any immediate improvements that should be made to the controls on class 6 and 8 substances that are being transferred into the new regulations before the review is carried out?

**Question 114:** Do you think that workplaces storing classes 6.1A, 6.1B, and 6.1C (substances that are acutely toxic) and class 6.7A (substances that are known or presumed human carcinogens) should be required to establish a hazardous substance location and obtain a test certificate for that location?

**Management of risk associated with fumigants**

**Existing arrangements**
Fumigants are highly toxic substances that can cause serious harm and death to humans, animals, insects and other living organisms. Because of their toxicity, the use of these hazardous substances for fumigation is a very effective means of treating produce, buildings and vessels to eradicate unwanted pests. However, the dangerous nature of the substances, and the nature of the fumigation operation itself places a responsibility on those concerned to adopt safe work practices to protect themselves and others who may lawfully be in the vicinity.

The *Hazardous Substances (Fumigants) Transfer Notice 2004* currently provides for the control and safe use of fumigants by either varying controls set out in HSNO regulations (Schedule 2) or imposing additional controls (Schedule 3).

**Proposed change**
We propose that the requirements of Schedules 2 (changes to controls relating to fumigants) and 3 (new controls for fumigants) of the Fumigants transfer notice be transferred into the new regulations.

MBIE and WorkSafe NZ will be carrying out a review of the transferred provisions within two years of the new regulations coming into force.

**Question 115:** Do you have any comment to make about the regulatory proposal to transfer the requirements of Schedules 2 and 3 of the HSNO Fumigants transfer notice into the new regulations?
Question 116: Do you think there are any immediate improvements that should be made to the controls on fumigants that are being transferred into the new regulations before the review is carried out?

Requirements for labelling

Existing arrangements
Labels provide information on the hazards of substances so they can be managed safely.


These regulations set labelling requirements for importers, manufacturers, suppliers and persons in charge of a workplace. Importers, manufacturers and suppliers must sell products that are correctly labelled, but a person in charge of a place of work must make sure that the label stays on the container and continues to be readable. If a hazardous substance is decanted from one container into another, the receiving container must also be appropriately labelled.

Proposed change
We propose that in relation to labelling, the new regulations would require the PCBU to ensure that a hazardous substance used, handled or stored at the workplace is correctly labelled in accordance with:

- the requirements currently set out in regulations 8 to 30, and regulations 32 and 33 of the HSNO Identification regulations; and
- the requirements currently set out in regulations 8 to 10 of the HSNO Emergency Management regulations, where a hazardous substance is present in a quantity equal to or greater than the quantity specified for hazardous substances of that classification in Schedule 1 of those regulations.

This requirement would also apply to a PCBU if the hazardous substance is manufactured at the workplace or transferred or decanted from its original container at the workplace.

Further, we propose that the new regulations would require the PCBU to ensure that the label information is available in a manner that enables a worker handling the substance to gain rapid access to the label information.

Question 117: Do you have any comment to make about the regulatory proposal to require a PCBU to ensure that a hazardous substance used, handled or stored at the workplace is correctly labelled in accordance with the HSNO Identification regulations (8 to 30, 32 and 33) and the HSNO Emergency Management regulations (8 to 10)?

Question 118: Do you think there are any other immediate improvements that should be made to workplace labelling requirements?

Requirements for safety data sheets

Existing arrangements
A safety data sheet (SDS) is a document that provides comprehensive information on the properties of hazardous substances, how they affect health and safety in the workplace and on how to manage the hazardous substances in the workplace. For example it includes information on the identity,
health hazards,\textsuperscript{16} physicochemical hazards,\textsuperscript{17} safe handling and storage, emergency procedures and disposal considerations.

An SDS is an important tool for minimising the risks associated with the use of hazardous substances in workplaces. Consequently, having a current SDS for each hazardous substance and understanding it is essential.

SDS requirements are currently included in group standard approvals and spread over three sets of HSNO regulations: the Hazardous Substances (Identification) Regulations 2001, the Hazardous Substances (Disposal) Regulations 2001 and the Hazardous Substances (Emergency Management) Regulations 2001.

**Proposed change**
Consistent with regulation 344 of the Australian model regulations, we propose new regulations that would require a PCBU to obtain the current SDS for a hazardous substance from the manufacturer, importer or supplier of the hazardous substance either:

- not later than when the hazardous substance is ‘first supplied’ for use at the workplace; or
- if the PCBU is not able to obtain the SDS at that time, as soon as practicable after the hazardous substance is first supplied to the workplace, but before the hazardous substance is used at the workplace.

The hazardous substance would be taken to be ‘first supplied’ to a workplace if the supply is the first supply of the hazardous substance to the workplace for 5 years.

Further, we propose that the new regulations would require the PCBU to ensure that the current safety data sheet for the hazardous substance is readily accessible to:

- a worker who is involved in using, handling or storing the hazardous substance at the workplace; and
- an emergency service worker or anyone else who is likely to be exposed to the hazardous substance at the workplace.

We propose that these requirements would not apply to a hazardous substance that:

- is transiting a workplace while other goods are being loaded onto or unloaded from a vehicle; or
- is a consumer product and it is reasonably foreseeable that it will be used at the workplace only in:
  - quantities that are consistent with household use; and
  - in a way that is consistent with household use.

Consistent with the definition in regulation 5 of the Australian model regulations, ‘consumer product’ would mean a thing that:

- is packed or repacked primarily for use by a household consumer or for use in an office; and

\textsuperscript{16} These are properties of a substance that have the potential to cause adverse health effects.

\textsuperscript{17} These are physical properties of a substance that pose risks to workers other than health risks, as they do not occur as a consequence of the biological interaction of the substance with people. They arise through inappropriate handling or use and can often result in injury to people and/or damage to property as a result of the intrinsic physical hazard.
• if the thing is packed or repacked primarily for use by a household consumer — is packed in the way and quantity in which it is intended to be used by a household consumer; and
• if the thing is packed or repacked primarily for use in an office — is packed in the way and quantity in which it is intended to be used for office work.

These proposed regulations simplify the existing SDS related obligations on a person in charge, which are set out in HSNO group standard approvals, HSNO Identification regulations, HSNO Disposal regulations, and HSNO Emergency Management regulations.

**Question 119:** Do you have any comments in relation to the proposed regulations requiring a PCBU to obtain and make available the current safety data sheet for a hazardous substance?

**Question 120:** Do you think the proposed regulations, requiring a PCBU to obtain and make available the current safety data sheet for a hazardous substance, will impose any additional costs on PCBUs? Conversely, what do you think are the main benefits of this proposal? (Please quantify any impacts identified and express in dollar terms to the extent practical).

**Requirements for signage**

**Existing arrangements**

Signs are required when a workplace has amounts of hazardous substances over certain limits. Even if a workplace isn’t required to have signs, it’s best practice to always have them as they warn visitors and emergency services that hazardous substances are present. Emergency services rely on signs when they respond to an emergency to decide on the course of action they will take and the protective equipment they will wear.

Regulation 51 of the Hazardous Substances (Identification) Regulations 2001 sets out duties of persons in charge in respect of signage. Signs are required when a person in charge of a workplace has amounts of hazardous substances over threshold quantities set out in Schedule 3 of those regulations. Regulation 52 sets out the signage requirements, i.e. where signs must be located and what they must describe.

Regulation 42 of the Hazardous Substances (Emergency Management) Regulations 2001 sets out additional signage requirements, i.e. signs must describe the action to take in an emergency, where a workplace has amounts of hazardous substances over threshold quantities set out in Schedule 5 of those regulations.

**Proposed change**

We propose that in relation to signage, the following provisions would be transferred into the new regulations and merged into a single signage obligation (and one set of threshold quantities):

• regulations 51 and 52 of the HSNO Identification regulations; and
• regulation 42 of the HSNO Emergency Management regulations.

MBIE and WorkSafe NZ will be carrying out a review of the transferred provisions within two years of the new regulations coming into force.

**Question 121:** Do you have any comment to make about the regulatory proposal to transfer the existing signage requirements set out in the HSNO Identification regulations (51 and 52), and Emergency Management regulations (42) into the new regulations and merge into a single obligation?
Question 122: Do you think there are any immediate improvements that should be made to the signage requirements that are being transferred into the new regulations before the review is carried out?

Requirements applying to compressed gases

Existing arrangements
Substances that are gaseous are often contained under high pressure. Because pressurised gases can pose a risk to people and the environment, the HSNO Act deems any gas contained under pressure to be hazardous. Currently, requirements for the design, manufacture, verification, testing, and filling of compressed gas containers are provided for in the Hazardous Substances (Compressed Gases) Regulations 2001.

Proposed change
We propose that all requirements of the HSNO Compressed Gases regulations would be transferred into the new regulations.

MBIE and WorkSafe NZ will be carrying out a review of the transferred provisions within two years of the new regulations coming into force.

Question 123: Do you have any comment to make about the regulatory proposal to transfer the requirements of the HSNO Compressed Gases regulations into the new regulations?

Requirements applying to tank wagons and transportable containers

Existing arrangements
A tank wagon is a vehicle used to transport liquid or gaseous hazardous substances by road or rail. Tank wagons are characterised as: having a tank that is permanently fixed to the vehicle, or a trailer that contains a tank.

A transportable container is a container that is used in the transport of liquid or gaseous hazardous substances by road or rail. Transportable containers are characterised as being a container that is not permanently fixed to a vehicle, or a trailer, and can be unloaded at a destination or transferred to another transport mode.

Currently, tank wagons and transportable containers must be designed and operated in accordance with the Hazardous Substances (Tank Wagons and Transportable Containers) Regulations 2004.

Proposed change
We propose that the requirements of the HSNO Tank Wagons and Transportable Containers regulations would be transferred into the new regulations.

MBIE and WorkSafe NZ will be carrying out a review of the transferred provisions within two years of the new regulations coming into force.

Question 124: Do you think there are any immediate improvements that should be made to the requirements for the design, manufacture, verification, testing, and filling of compressed gas containers that are being transferred into the new regulations before the review is carried out?

Question 125: Do you have any comment to make about the regulatory proposal to transfer the requirements of the HSNO Tank Wagons and Transportable Containers regulations into the new regulations?
Question 126: Do you think there are any immediate improvements that should be made to the requirements applying to tank wagons and transportable containers regulations that are being transferred into the new regulations before the review is carried out?

Requirements applying to stationary container systems

Existing arrangements
A stationary container system is a stationary tank or process container and its associated equipment, pipe work and fittings, up to and including all transfer points.

Currently, Schedule 8 of the Hazardous Substances (Dangerous Goods and Scheduled Toxic Substances) Transfer Notice 2004 provides for the design and fabrication of stationary container systems and for the certification of these systems.

Proposed change
We propose that the requirements of Schedule 8 of the HSNO Dangerous Goods and Scheduled Toxic Substances transfer notice would be transferred into the new regulations. MBIE and WorkSafe NZ will be carrying out a review of the transferred provisions within two years of the new regulations coming into force.

Question 127: Do you have any comment to make about the regulatory proposal to transfer Schedule 8 of the HSNO Dangerous Goods and Scheduled Toxic Substances transfer notice into the new regulations?

Question 128: Do you think there are any immediate improvements that should be made to the requirements applying to stationary container systems that are being transferred into the new regulations (before the review is carried out)?

Requirements applying to laboratories

Existing arrangements
Currently the requirements applying to laboratories in which small-scale use of hazardous substances in research and development or teaching occurs is provided for in the Hazardous Substances (Exempt Laboratories) Regulations 2001.

Proposed change
We propose that the requirements of the HSNO Exempt Laboratories regulations would be transferred into the new regulations. Exempt laboratories would still be able to have the current limited access to substances that are not approved under HSNO.

MBIE and WorkSafe NZ will be carrying out a review of the transferred provisions within two years of the new regulations coming into force.

Question 129: Do you have any comment to make about the regulatory proposal to transfer the HSNO Exempt Laboratories regulations into the new regulations?

Question 130: Do you think there are any immediate improvements that should be made to the requirements applying to laboratories that are being transferred into the new regulations before the review is carried out?
Tracking highly hazardous substances

Existing arrangements
Highly hazardous substances must be tracked. Tracking refers to keeping a record of what happens to a hazardous substance from when it was imported or manufactured, through to distribution and transport, to use or disposal. Tracking requirements are currently provided for in the *Hazardous Substances (Tracking) Regulations 2001*.

Proposed change
We propose that the requirements of the HSNO Tracking regulations, excluding the provisions that relate to the importation of explosives (regulation 4(2)), would be transferred into the new regulations. The import clearance function in regulation 4(2) will remain under the HSNO Act and the EPA.

MBIE and WorkSafe NZ will be carrying out a review of the transferred provisions within two years of the new regulations coming into force.

**Question 131:** Do you have any comment to make about the regulatory proposal to transfer the HSNO Tracking regulations (excluding regulation 4(2)) into the new regulations?

**Question 132:** Do you think there are any immediate improvements that should be made to the tracking requirements that are being transferred into the new regulations before the review is carried out?

Emergency Management

Existing arrangements
Currently, emergency management requirements are provided for in the *Hazardous Substances (Emergency Management) Regulations 2001*.

- regulations 6 – 11 set out requirements in relation to labelling
- regulations 12 – 20 of the regulations set out requirements in relation to SDS
- regulations 21 – 24 set out requirements in relation to fire extinguishers
- regulations 25 – 34 set out requirements in relation to emergency response plans
- regulations 35 – 41 set out requirements in relation to secondary containment; and
- regulation 42 sets out signage requirements.

Proposed change
We propose that the following provisions of the HSNO Emergency Management regulations, which relate to duties of a person in charge of a workplace, would be transferred into the new regulations:

- regulations 21 – 24 (fire extinguishers);
- regulations 25 – 34 (emergency response plans); and
- regulations 35 – 41 (secondary containment).\(^\text{18}\)

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\(^{18}\) Secondary containment provisions also provide for the prevention of harm to the environment from eco-toxic (class 9) substances.
Regulations covering general risk and workplace management will require a PCBU to prepare and maintain an emergency plan, consistent with regulation 43 of the Australian model regulations. (See the section headed ‘Emergency plans’ on page 42 of this document for further details).

Consequently, we propose that regulation 34 of the HSNO Emergency Management regulations would be amended to clarify that an emergency response plan, or any part of an emergency response plan, could be part of any other management documentation for an emergency whether:

- required by regulations covering general risk and workplace management made under the proposed new Act; or
- required by some other Act; or
- undertaken by a PCBU for some other reason.

Regulations covering major hazard facilities propose to require the operator of a major hazard facility to prepare and maintain an emergency plan specific to the facility and the hazards having the potential to cause a major accident at the facility, consistent with regulation 557 of the Australian model regulations (see page 151 of this document for further details). We propose that an operator who is required to prepare an emergency plan for a major hazard facility would not be required to prepare an emergency plan for the purposes of the new regulations.

Further, we propose that regulation 32(1) of the HSNO Emergency Management regulations would be amended so that if the New Zealand Fire Service gives the PCBU a written recommendation about the content or effectiveness of the emergency response plan, then the person would be required to revise the plan in accordance with the recommendation or identify an alternative means for achieving the outcome sought by the recommendation. Currently this regulation provides for an emergency response plan to be made available to every person identified in the plan as being responsible for executing it (or a specific part of it) and to every emergency service provider identified in it. This proposal is consistent with regulation 361 of the Australian model regulations.

MBIE and WorkSafe NZ will be carrying out a review of the transferred provisions within two years of the new regulations coming into force.

**Question 133:** Do you have any comment to make about the regulatory proposal to transfer the existing emergency preparedness requirements set out in the HSNO Emergency Management regulations (21 – 41) into the new regulations?

**Question 134:** Do you have any comment to make about the regulatory proposal that an emergency response plan, or any part of an emergency response plan, could be part of any other management documentation for an emergency whether — required by the general risk and workplace management regulations made under the proposed new Act; or required by some other Act; or undertaken by a PCBU for some other reason?

**Question 135:** Do you have any comment to make about the regulatory proposal that an operator who is required to prepare an emergency plan for a major hazard facility in accordance with new regulations covering major hazard facilities would not be also required to prepare an emergency plan by the new regulations covering work involving hazardous substances?
Question 136: Do you have any comment to make about the regulatory proposal to require a PCBU to revise their emergency response plan, if the Fire Service makes a written recommendation about the content or effectiveness of the plan?

Question 137: Do you think that we should retain the current prescriptive list of matters to be addressed in an emergency plan (as set out in regulations 29 and 30 of the HSNO Emergency Management regulations) or should we adopt the more flexible list of matters used in Australia (regulation 43 of the Australian model regulations)? Why/why not?

Question 138: Do you think that we should retain the current prescriptive set of requirements in relation to fire extinguishers (as set out in regulations 21 – 24 of the HSNO Emergency Management regulations) or should we adopt the more performance-based requirements used in Australia (regulations 359 and 360 of the Australian model regulations)? Why/why not?

Question 139: Do you think there are any immediate improvements that should be made to the emergency preparedness requirements that are being transferred into the new regulations before the review is carried out?

Test certification

Existing arrangements
Test certificates are a mechanism to ensure compliance with hazardous substance controls under the HSNO regime. Test certificates are required for people, locations, and containers that are associated with high-risk hazardous substances. Test certifiers are an important part of the HSNO compliance regime. Test certifiers are used to assess compliance with specific, but not all, hazardous substance controls.

The test certificate regime is managed as a private third party quality assurance regime. It is designed to relieve enforcement officers from checking key areas for compliance and provide the person in charge with a level of assurance that they comply with key controls.

Historically, some location test certificates have been issued that are not compliant with HSNO controls. This means that some persons in control of a workplace believe that they are complying with controls when they are not. The EPA lacks adequate functions and powers under HSNO to adequately manage this issue (e.g. a differentiated audit strategy and mandatory performance standards). Submitters to the Taskforce recommended the current test certification model be reviewed to develop more robust assurance processes.

There are also viability issues due to the small size and poor coverage of some of the test certification markets (e.g. pyrotechnics). The HSNO Act is unclear if the EPA can employ or contract in test certifier services to mitigate supply issues.

Consequently, in July 2013 it was proposed that the EPA be given new powers to ensure that businesses have access to expert advice and compliance mechanisms, and ensure that this advice is accurate. These changes would be made through improvements to the test certification regime by:

- clarifying the EPA’s ability to employ additional test certifiers;
- improving capability of test certifiers; and
performing mandatory targeted auditing and applying sanctions to manage test certifier performance.

**Test certification decisions**

In July 2013, the Government agreed that the changes be made to the HSNO test certification regime providing the EPA with powers:

- enabling them to employ or contract test certifiers;
- to specify timeframes for approving, continuing or renewing an application as a test certifier;
- enabling them to impose conditions when approving, continuing or renewing an application as a test certifier;
- enabling them to consider whether an applicant is a fit and proper person when approving, continuing or renewing an application as a test certifier;
- enabling them to take account of a test certifier’s history of compliance with performance requirements when an application for continuation or renewal is made;
- enabling them to obtain information from a test certifier when an application for a continuation or renewal is made;
- allowing accredited institutions (such as testing laboratories and training organisations) to issue test certificates
- enabling approved handlers to be approved by a recognised trainer or a test certifier;
- establishing requirements for recognised training and education programmes for test certifiers and approved handlers that are tied to conditions of approval, continuation or renewal
- enabling them to set mandatory performance standards for test certifiers;
- enabling them to set minimum training requirements for approved handlers;
- enabling them to specify mandatory data requirements for the test certificate register and requiring test certifiers to use the register;
- enabling cost recovery of all audits;
- requiring mandatory auditing and performance-targeted auditing on a cost recoverable basis; and
- enabling them to suspend, impose temporary conditions upon or revoke all types of test certificate.

Subsequently, the Minister for the Environment agreed that the changes should not be made to the HSNO Act, but rather that they should be built into the test certification regime that will be set out in the new regulations (since this function will no longer be undertaken under the HSNO Act).

Responsibility for oversight of the test certification regime will be delegated from the EPA to WorkSafe NZ from 1 July 2014, in line with the July 2013 decision by Government.

MBIE and WorkSafe NZ will investigate the need for further refinements to the test certification regime within two years of the new regulations coming into force.

The changes to the test certification regime are expected to result in:

- increased supply of expert advice and mechanisms to ensure businesses can comply with hazardous substance controls; and
a proportionate response to performance issues when viewed together with current responses, which are to amend or revoke a test certifier’s approval to issue test certificates.

Approved handler certification

Existing arrangements
Currently, if a workplace uses, handles, or stores explosive, or certain toxic, flammable, corrosive, or oxidising substances over certain limits, one or more of the workers will need to be trained and certified as an approved handler. This is someone who has specific knowledge and experience about how to handle particular hazardous substances and has received an approved handler test certificate from a test certifier.

To be certified as an approved handler, the worker needs to have sufficient knowledge and experience to be able to demonstrate to a test certifier that they are competent to handle the substances. The test certifier will check that the worker has had sufficient training to safely manage the hazardous substances they will be using. Training may be provided by an industry training organisation or could be on-the-job training. To get certified, that worker will need a written record of the training, which describes the method used to assess their knowledge and practical skills, and is signed by the course provider or work supervisor. An approved handler certificate must be renewed every five years.

There have been concerns for a number of years over the adequacy of the approved handler regime to prevent people being exposed to hazardous substances that could cause harm and the quality and consistency of training that is available to people wanting to become approved handlers (i.e. there is no standardised training qualifications).

The approved handler regime does not always require the person who is actually handling the hazardous substance(s) in the workplace to be an approved handler. The approved handler may be the person in control of the workplace or a manager and in certain circumstances the approved handler just needs to be available. Consequently, even with an approved handler on-site or available the actual person handling the hazardous substance can still be exposed to harm.

Proposed change
The proposed new Act and the regulations covering general risk and workplace management will provide greater clarity about what a PCBU must do in relation to the provision of information, training, supervision, and instruction in the workplace. (See the section entitled ‘Information, training, supervision and instruction’ on page 37 of this document for further details.)

In addition to these general requirements, the new regulations would require a PCBU to provide any information, training, instruction, and supervision to a worker that is necessary to protect the worker from risks to the worker’s health and safety arising from the work, if the worker:

- uses, handles, generates or stores a hazardous substance; or
- operates, tests, maintains, repairs or decommissions a storage or handling system for a hazardous substance; or
- has the potential to be harmed by a hazardous substance.

The information, instruction and training would need to include:

- details of the hazardous substances that the worker will be handling, including:
  - the names and hazard classifications of those substances;
  - the adverse effects that could be caused by each of those substances;
  - the controls imposed on those substances;
  - any relevant workplace exposure standard or biological exposure index;
access to any relevant safety data sheet,
other legislative provisions which concern the hazardous properties of those substances;
- the significant findings of the risk assessment;
- the operating equipment (including protective clothing and equipment) and procedures necessary to manage those substances;
- the appropriate precautions and actions to be taken by the worker in order to prevent injury or illness to himself/herself and other workers at the workplace;
- the procedures to adopt in an emergency involving those substances;
- the results of any workplace exposure monitoring and, in particular, if the results of such monitoring show that a workplace exposure standard has been exceeded; and
- the collective results of any health monitoring undertaken in a form calculated to prevent those results from being identified as relating to a particular person.

The information, instruction and training required would need to be:
- adapted to take account of significant changes in the type of work carried out or methods of work used by the PCBU; and
- provided in a manner appropriate to the potential degree of exposure identified by the risk assessment.

Further, the PCBU would be required to keep written records for each worker, which are signed by course providers (or work supervisors) and describe the methods used to assess the workers knowledge and practical skills and the results of that assessment.

To ensure compliance with these requirements, inspectors (warranted under the proposed new Act) would routinely check the record of learning for all workers handling hazardous substances as part of a workplace assessment; not just those workers who would previously have gained approved handler certification. This will include an assessment of the content of training courses (whether formal qualifications or internal supervised workplace based training etc.) and knowledge of site procedures to determine whether workers have an adequate understanding of the hazards and risks associated with the hazardous substances they are working with. If the inspector is not satisfied that all workers handling hazardous substances are competent to do so, then enforcement action will be taken against the PCBU.

The significantly increased numbers of inspectors that are expected to come into service over the next two years will ensure that a greater number of workplace assessments are carried out in future. In this new regulatory environment, we consider that the ongoing need for a third-party test certifier to check that a worker has received sufficient training to safely manage the hazardous substances they will be using becomes largely redundant, and imposes unnecessary costs on business.

Consequently, we propose to revoke the approved handler requirements, except in relation to certain explosives, vertebrate toxic agents, and fumigants that require a Controlled Substance Licence. 19

MBIE and WorkSafe NZ will be carrying out a review of the Controlled Substance Licence (and associated approved handler) requirements within two years of the new regulations coming into force.

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19 An applicant for a Controlled Substance Licence needs to be able to demonstrate, via their approved handler certificate, that they are adequately trained to handle the substance.
**Question 140:** Do you have any comment to make about the regulatory proposal to revoke the existing approved handler requirements and replace with duties in relation to the provision of information, training, instruction, and supervision?

**Question 141:** Do you think the proposal to revoke the existing approved handler requirements and replace with duties in relation to the provision of information, training, instruction, and supervision will impose any additional costs on PCBUs? Conversely, what do you think are the main benefits of this proposal? (Please quantify any impacts identified and express in dollar terms to the extent practical)

**Monitoring**

**Existing arrangements**
Currently, if an employer is unable to eliminate or isolate the significant hazards associated with a substance hazardous to the health of an employee, then the HSE Act requires that employer to monitor an employee’s exposure to the substance and, with their informed consent, monitor the employee’s health in relation to exposure to the substance (sections 10(2)(c), (d) and (e) of the HSE Act refers). A ‘substance hazardous to health’ is any substance, or product containing a substance that is known or suspected to cause harm to health. This includes: hazardous substances, approved under the HSNO Act, which have a class 6 (toxic) or class 8 (corrosive) hazard classification; and substances listed in the Workplace Exposure Standards publication currently applicable in New Zealand.

Monitoring includes the use of valid and suitable techniques to give a quantitative estimate of the exposure of employees to substances hazardous to health. For airborne substances, workplace exposure monitoring involves the periodic and/or continuous sampling of workplace atmospheres, to derive a quantitative measure of exposure to substances hazardous to health. Biological monitoring, which measure the levels of the substance or its metabolite(s) in body fluids or in exhaled breath, may also provide information on exposure to substances hazardous to health.

Health monitoring of a person means monitoring the person to identify changes in the person’s health status resulting from exposure to substances hazardous to health. It involves the collection of data in order to evaluate the effects of exposure and to confirm that the absorbed dose is within safe levels. This allows decisions to be made about implementing ways to eliminate or minimise the worker’s exposure, for example, reassigning to other duties that involve less exposure or improving control measures.

Currently, the results of workplace exposure monitoring should be provided to those employees with the potential for exposure to the substances monitored. Records of such monitoring, with personal identifiers removed, should be readily accessible to all employees (section 11 of the HSE Act refers).

**Proposed change**
Consistent with regulations 49 and 50 of the Australian model regulations, regulations covering general risk and workplace management will make clear that a PCBU must:

- ensure no one at the workplace is exposed to a substance or mixture in an airborne concentration that exceeds the workplace exposure standard for a substance or mixture; and

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20 Workplace Exposure Standards and Biological Exposure Indicies have been developed by MBIE in conjunction with the EPA
• ensure that air monitoring is carried out to determine the airborne concentration of a substance or mixture to which a workplace exposure standard applies:
  o if the person is not certain on reasonable grounds whether or not the airborne concentration of the substance or mixture exceeds the relevant exposure standard; or
  o if monitoring is necessary to determine whether there is a risk to health (See the section entitled ‘Managing risk from airborne contaminants’ on page 48 of this document for further details).

In addition to this obligation, we propose that new requirements would be built into the new regulations to require a PCBU to carry out workplace exposure monitoring where it is necessary to determine the efficiency and effectiveness of measures introduced to control exposure to substances hazardous to health.

Further, we propose that the new regulations would require a PCBU to ensure health monitoring (which includes biological exposure monitoring) is provided for any worker who may be exposed to a substance hazardous to health for which:
• an identifiable disease or health effect may be related to the exposure;
• there is reasonable likelihood that the disease or health effect may occur under the particular conditions of work; and
• there are valid techniques for detecting indications of the disease or the effect.

Health monitoring would also be required where a health and safety medical practitioner (appointed by WorkSafe NZ) requires medical examination of workers.

If workplace exposure monitoring or biological exposure monitoring carried out determines that the concentration of a substance hazardous to health to which the worker is exposed exceeds a relevant workplace exposure standard or biological exposure index, or if a health monitoring report for a worker contains:
• test results that indicate that the worker has been exposed to the substance and at a concentration that may cause harm and has an elevated level of that substance and/or its metabolites in his or her body; or
• any advice that test results indicate that the worker may have contracted a disease, injury or illness as a result of carrying out the work using, handling, generating or storing the substance that triggered the requirement for health monitoring; or
• any recommendation that the PCBU take remedial measures, including whether the worker can continue to carry out the work using, handling, generating or storing the substance that triggered the requirement for health monitoring; then —

the PCBU would be required to ensure that any measures implemented to control risks in relation to the substance hazardous to health are reviewed and as necessary revised. This is consistent with regulation 352 of the Australian model regulations.

Consistent with regulations 369 – 378 of the Australian model regulations, we propose that a PCBU would also be required to:
• inform workers and prospective workers about health monitoring requirements;

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21 Workplace exposure monitoring should only be carried out by a competent person who has sufficient knowledge, skills, and experience in workplace exposure monitoring techniques, including interpretation of the results.
• ensure health monitoring is carried out by or under the supervision of a registered medical practitioner, occupational health nurse, or occupational hygienist with experience in health monitoring;
• consult workers in relation to the selection of the registered medical practitioner, occupational health nurse, or occupational hygienist;
• pay all expenses relating to health monitoring;
• provide certain information about a worker to the registered medical practitioner, occupational health nurse, or occupational hygienist carrying out the monitoring, including:
  o the name and address of the person conducting the business or undertaking;
  o the name and date of birth of the worker;
  o the work that the worker is, or will be, carrying out that has triggered the requirement for health monitoring;
  o if the worker has started that work — how long the worker has been carrying out that work;
• take all reasonable steps to obtain a report from the registered medical practitioner, occupational health nurse, or occupational hygienist as soon as practicable after the monitoring has been carried out;
• provide a copy of the report to the worker as soon as practicable after the person obtains the report;
• provide a copy of the report to WorkSafe NZ if the report contains:
  o any advice that test results indicate that the worker may have contracted a disease, injury or illness as a result of carrying out the work using, handling, generating or storing substances hazardous to health; or
  o any recommendation that the person conducting the business or undertaking take remedial measures;
• provide the report to all other PCBUs who have a duty to provide health monitoring for the worker;
• keep reports as confidential records for at least 30 years after the record is made; and
• not disclose the report to anyone without the worker’s written consent.

Question 142: Do you have any comments in relation to the proposed regulation requiring a PCBU to carry out workplace exposure monitoring where it is necessary to determine the efficiency and effectiveness of measures introduced to control exposure to substances hazardous to health?

Question 143: Do you have any comments in relation to the proposed regulations for establishing health monitoring for any worker who may be exposed to a substance hazardous to health?
Question 144: Given that employers, in accordance with sections 10(2) of the HSE Act, are currently required to monitor an employee’s exposure to significant hazards (i.e. substances hazardous to health) and, with informed consent, monitor the employee’s health, do you think that the proposed regulations for carrying out workplace exposure monitoring and establishing health monitoring will impose any additional costs on PCUs? (Please quantify any impacts identified and express in dollar terms to the extent practical)