



EPA Submission to the Independent Taskforce on Workplace Health and Safety

Introduction

1. The Environmental Protection Authority (EPA) appreciates the invitation from the Taskforce to provide a submission on its workplace health and safety public consultation document and welcomes this opportunity to present our experience and express our views on systemic improvement.
2. We support changes to the current health and safety system to reduce workplace harm, especially harm arising from hazardous substances. Such changes will complement our own initiatives to increase compliance with HSNO Act obligations in workplaces. As our interest lies primarily with substance harm, we have focussed our comments on improvements to that part of the health and safety system.

Our role in health and safety

3. The EPA is a national environmental regulator in New Zealand. In terms of health and safety, we have responsibility under the Hazardous Substances and New Organisms (HSNO) Act 1996 to protect people and the environment from harm caused by hazardous substances (among other things). Specifically, we approve all hazardous substances in New Zealand and apply controls to prevent or manage the adverse effects of those substances on people and the environment throughout the lifecycle of the substance. We also approve third party certifiers who check that obligations are being met by substance handlers, users and site controllers for the more high-risk substances, and we undertake compliance activities to promote awareness of the adverse effects of hazardous substances and monitor the effectiveness of the HSNO regime.
4. The EPA does not have a direct enforcement role. This role lies with 85 enforcement agencies¹ including the Ministry of Business, Innovation and Employment (MBIE), which is responsible for hazardous substance enforcement in workplaces. However, the EPA is responsible for ensuring that the provisions of the HSNO Act are enforced in all premises likely to contain a hazardous

¹ Ministry of Business, Innovation and Employment (incorporating Labour Group and Energy Safety), Ministry of Health, New Zealand Transport Agency, New Zealand Police (Commercial Vehicles Investigation Unit), Civil Aviation Authority, Maritime New Zealand, New Zealand Customs Service, territorial authorities (67), regional councils (11).

substance and advising the Minister for the Environment and relevant enforcement agencies if we consider there is insufficient or unnecessary inspection and enforcement.

Data quality

5. Data produced for the National Occupational Health and Safety Advisory Committee² estimated that 700 - 1,000 deaths from occupational disease and 17,000 - 20,000 new cases of work-related disease occur in New Zealand every year. Further analysis of this data³ estimated that between 438 - 675 deaths occur each year due to occupational disease caused by hazardous substances and that a further 325 - 773 new cancer cases occur annually from hazardous substance exposure at work. Additionally there are an estimated 15 - 60⁴ deaths and 1200 - 2500 hospitalisations³ annually from unintentional acute injuries caused by hazardous substances (although not all occur in the workplace).
6. These figures are estimates based on the limited data available on the incidence of harm from various occupational exposures. Quantifying harm is challenging because of the time lag from substance exposure to disease onset. Consequently there is uncertainty on the extent to which harm occurs. However, even if the lower bound of the data ranges above is accepted as a reasonable estimate of annual death or disease occurrence from substance exposure, that level of harm to people is concerning. Even at that lower bound, death rates are greater than the annual road toll.
7. Better data is available on compliance rates with hazardous substance controls. These controls are substance specific and designed to prevent harm to people and the environment over the lifecycle of a substance. If the controls are not complied with, the prevention of harm cannot be assured. A compliance survey the EPA undertook of 400 businesses nationwide in early 2012 showed low compliance rates with HSNO Act obligations⁵. Only 25 percent of businesses were

² The Burden of Occupational Disease and Injury in New Zealand: Technical Report; National Occupational Health and Safety Advisory Committee, 2004.

³ Hazardous Substances Compliance & Enforcement Project: Risk Landscape and Compliance Assessment; Environmental Risk Management Authority, Ministry for the Environment and Department of Labour, 30 November 2005.

⁴ Further detailed review in 2007 of available data on illness and injury associated with exposure to hazardous substances (though not only in the workplace) found that 9 deaths per year were definitely associated with hazardous substances, 2 deaths probably associated with hazardous substances and up to 5 deaths possibly associated with hazardous substances. Surveillance of Harms Resulting from Exposure to Hazardous Substances; Graham Environmental Consulting Ltd, January 2007.

⁵ Survey of Industry Compliance with Hazardous Substance Controls; Environmental Protection Authority, June 2012. The survey results are due to be released publicly at the end of November 2012. We ask that the figures quoted are withheld until the survey has been released.

compliant with eight key controls to manage the risks of hazardous substance use in workplaces. Larger businesses (those with more than 20 staff) were generally more compliant, but small and medium enterprises (SMEs) found it difficult to know what obligations applied in their situation and how they should apply those obligations.

Reasons for low compliance

8. Reasons for low compliance with HSNO Act controls are outlined below. They are not listed in any order of priority, but are presented as reasons from the perspective of the end-user, regulator then enforcer.
 - a. Lack of awareness by end-users, particularly SMEs, of the obligations that apply to them;
 - b. A one-size-fits-all approach where obligations contained in regulation may be applied without recognising the limited capability within many low-hazard small businesses (i.e. an SME considered to be low hazard due to the quantities and types of hazardous substances it uses) to both interpret and implement those controls;
 - c. Lack of clear and understandable obligations as a result of a complex legislative framework that has resulted in many alternative routes for compliance, all of which are valid. The large number of substances regulated (over 100,000), the wide variety of uses they are put to, and the range of hazards they represent, mean that the HSNO Act regime can be complex and difficult for end-users, third-party certifiers and enforcement agencies to navigate to determine what obligations apply in a given situation and to know what to do to meet those obligations;
 - d. Lack of regulatory agility. For example, many technical requirements are specified in regulations made under the HSNO Act. Changing these regulations requires considerable resources from multiple agencies, including Parliamentary Counsel Office (PCO). The process creates an unnecessary administrative burden when specialised or technical requirements need amending.
 - e. A private third party certification scheme for high-risk substances and facilities that may not be providing the required level of assurance. Test certifiers are approved by the EPA to perform location, equipment and personnel assessments designed to ensure the safe management of hazardous substances. Issues centre on their variable performance and the shortage of certifiers in some specialist areas. A recent voluntary audit of test certifier approvals and certifications showed an unacceptable level of non-conformance by those certifiers with HSNO Act requirements;
 - f. Low rates of inspection. This situation assumes that businesses are complying with their obligations. It can foster an attitude among end-users that non-compliance is unlikely to be discovered, and also may mean businesses do not receive appropriate advice on how to comply with their obligations as they are unlikely to encounter an inspector able to provide the necessary guidance.

- g. Insufficient and inadequate enforcement tools with a propensity towards penalising offenders rather than supporting compliance (e.g. infringement notices have never been activated – see sub-paragraph 23g for more on this aspect);
- h. Unclear roles and responsibilities between the agencies involved, particularly agencies with compliance and enforcement roles, including competing priorities and duplication across statutes e.g. across the Health and Safety in Employment (HSE) Act, HSNO Act and Resource Management Act (RMA);
- i. A large number of enforcement agencies (85), many of which do not have the capacity, expertise or skills to carry out their roles; and
- j. Financial constraints on businesses and regulatory agencies.

Addressing low compliance

9. To address low compliance with HSNO Act obligations and reduce workplace harm from hazardous substance exposure, we consider that effort needs to focus on three key areas:
 - a. Changes to the legislative framework to reduce complexity, provide agility, address test certifier problems and improve the enforcement regime. We outline the HSNO Act legislative changes we believe are necessary in paragraph 23.
 - b. Increased education and provision of targeted guidance, especially to SMEs. We already provide guidance material and other information to assist businesses to comply with their obligations and are increasing our activity in this area. A new initiative is the provision of a 'tool box' of information and awareness-raising material targeted at SMEs to help improve employer and worker awareness of the risks involved and the need to take some basic actions when using hazardous substances. We consider further effort is required so that businesses with limited capacity to navigate legislation or guidance material are readily able to adopt the key requirements that really matter in their situation. However, there are financial limitations to our ability to do this.
 - c. Increased inspection by enforcement agencies, alongside a more interactive approach between enforcement officers and businesses so that inspectors provide more advice, guidance and follow-up, and if necessary, enforcement. We expand on this approach in paragraph 28c.

Who Gets Hurt, Killed or Suffers From Ill-Health or Disease as a Result of Work?

Q1. What do you think is driving the differences in health and safety outcomes for different demographic groups?

10. We do not have information on health and safety outcomes for different demographic groups. However, the EPA compliance survey referred to in paragraph 7 above did provide evidence that

SMEs were generally less compliant with HSNO obligations than larger enterprises. SMEs found it difficult to know what safety obligations applied in their situation and how they should apply those obligations.

11. Larger enterprises generally had higher rates of compliance, which is likely to be due largely to their ability to resource health and safety activities better than SMEs. For example, larger businesses are more likely to have personnel with a specific role to maintain health and safety standards in the workplace. These larger enterprises also have more capacity to train staff and provide the appropriate equipment to reduce the risk of harm.
12. Reasons for low compliance with HSNO Act controls are outlined in paragraph 8 above.

Q2. What changes are needed to the workplace health and safety framework to improve outcomes for demographic groups with higher than average rates of injury and illness?

13. As mentioned in paragraph 10 above, the EPA does not have information on demographic groups, but does have recent evidence that compliance rates with HSNO Act obligations are low, particularly in SMEs. We consider that changes are needed to the current regulatory framework to reduce workplace harm from hazardous substance exposure. In paragraph 9 above we outlined the three key areas of the current workplace health and safety framework that need to be addressed to improve injury and illness rates from hazardous substance exposure. Specific details about the legislative changes we consider are necessary are outlined in paragraph 23 below, and further comment on low inspection activity is provided in paragraph 21.

Regulatory Framework

Q3. What do you think the challenges are with the current workplace health and safety regulatory framework?

14. The overarching workplace health and safety regulatory framework in New Zealand is the HSE Act. However, in terms of hazardous substance regulation, the HSNO Act provides the principal legislative framework. The relationship between the two Acts is not entirely clear and can result in uncertainty, duplication and gaps in effort.
15. Chemicals are a recognised hazard under the HSE Act and therefore can be managed in workplaces under that Act. The specific rules for hazardous substance management to protect the health of people and the environment are made under the HSNO Act. Under the HSNO Act enforcement in workplaces is undertaken by MBIE Labour Group officers, who are generally more familiar with HSE Act requirements than those of the HSNO Act. There is wide agreement among regulators, end-users and industry groups that the HSNO Act is complex. This complexity has led MBIE enforcement officers to favour enforcement under the HSE Act, which they are more familiar and comfortable working with. MBIE recently consulted on their revised

enforcement approach to the safe management of hazardous substances in workplaces⁶. This approach is to use the enforcement mechanism that is closest to the breach or most appropriate to the seriousness of the actual or potential harm. Where there is a clear and distinct breach of the HSNO Act controls, MBIE will likely use the HSNO Act enforcement tools. The EPA supports this approach.

16. The overarching regulatory framework for hazardous substances in the workplace could be improved by examining the relationship between the HSE and HSNO Acts to determine whether separate enforcement regimes under each Act remain appropriate and if so, whether further streamlining and integration in the delivery of enforcement activities is warranted.
17. In terms of the HSNO Act specifically, suggestions for improvement are outlined in paragraph 23 below. The HSNO Act requires all substances to have an approval. Most hazardous substances are now covered by group standards, which outline the conditions that apply to substances that are similar in their nature, type or use. They provide the ability for end-users to self-apply an approval if their substance is covered by a group standard without needing to apply to the EPA for an individual approval. Group standards were added to the HSNO Act to bring thousands of substances previously approved under old regimes under the Act quickly without the need for each substance to have an individual approval. While this was a pragmatic approach at the time, it means there are now multiple approval pathways, potentially with different control requirements that apply, as some substances covered by a group standard also have individual approvals.
18. The group standard approach means that we do not know all the substances (i.e. formulated intermediates and finished trade-name products) approved for use in New Zealand as there is no requirement to notify the EPA when an importer or manufacturer self-classifies a new substance to the group standard requirements and thus obtains approval for their substance without recourse to the EPA. While there is a practical element to this approach, it relies on the self-classification being accurate and therefore that the appropriate health and safety controls are being applied. It also means that if we become aware of a problem with a particular substance covered by a group standard, we do not know if it is already in New Zealand or who the supplier is. This lack of information on approved substances and the controls that apply to them also makes it difficult for enforcement agencies to ensure compliance.
19. While the HSNO system provides flexibility, particularly for large businesses that have the resources to develop their own means of meeting performance-based standards, it does not suit most SMEs, which generally prefer a simpler and certain approach. A system that provides a more tailored approach for low-hazard small businesses that focuses on a few key controls

⁶ Hazardous Substances in the Workplace: The Department of Labour's Policy on Enforcing the Safe Management of Hazardous Substances in Workplaces (May 2012).

<http://www.dol.govt.nz/consultation/hazardous-substances/consutation-hsno-policy-statement.pdf>

would help SMEs direct their effort towards obligations that have the most impact in reducing harm to employees from hazardous substance exposure.

20. Providing increased guidance material and information to SMEs is often proffered as the solution to raising awareness and compliance rates. However, in our experience, providing information only goes part way to improving compliance and therefore reducing harm to people, and is not a solution on its own. Small businesses may become overwhelmed with information. New Zealand has a relatively rapid turnover of small businesses compared with other jurisdictions⁷ and therefore information needs to be provided and refreshed frequently to maintain interest and awareness and also reach new businesses. While such information is important and necessary, it is effective only if it sits alongside strong inspection activity to create real anticipation that there may be consequences if safety controls are overlooked. We can point to similar examples such as smoking or drink driving where providing information does not by itself necessarily change people's behaviour, even where there is good evidence of the potential to cause harm.
21. Low HSNO Act compliance activity has been a concern to the EPA (and the Environmental Risk Management Authority previously) since at least 2003. We have raised these concerns in annual compliance reports since that time and have formally advised the Minister for the Environment and the Department of Labour each year since 2009 that there are insufficient levels of inspection and enforcement of HSNO Act obligations in workplaces, in accordance with our function under s99(1) of the HSNO Act. Since the HSNO Act came into force for hazardous substances in 2001, the number of hazardous substance compliance inspections in workplaces has dropped from approximately 20,000 inspections per year in 2001/02 to almost 4,000 in 2011/12. An estimated 150,000 workplaces use hazardous substances, which means that a business may receive, on average, one compliance visit every 30 years. In our view this low inspection activity is helping to maintain a level of ambivalence to, and lack of knowledge about, safety precautions, which in turn is likely to result in an unacceptable level of harm to people at work. The EPA has suggested that inspection of 15% of workplaces per year would be a more appropriate level.
22. We acknowledge that MBIE Labour Group (and formerly the Department of Labour) has worked hard to improve delivery of HSNO Act enforcement activities. The low inspection rates are more a reflection of the funding constraints it faces for activity that can be specifically directed towards HSNO Act enforcement.

⁷ See <http://www.med.govt.nz/business/business-growth-internationalisation/small-and-medium-sized-enterprises/small-and-medium-sized-enterprises> and <http://www.med.govt.nz/business/business-growth-internationalisation/pdf-docs-library/structure-and-dynamics-2011.pdf>

Q4. How do you think the workplace health and safety regulatory framework could be improved?

23. The EPA is of the view that changes are needed to the current regulatory framework to reduce workplace harm from hazardous substance exposure. In no order of priority, we consider that improvement would occur if the HSNO Act's framework was changed to:
- a. Allow low-hazard small businesses to comply with some key controls that manage risk and are easy to understand and apply. Making it easier to comply without any notable increase in risk is likely to improve compliance and therefore support harm prevention. Alongside this measure would need to sit the ability to provide simple guidance targeted at different business sectors. While we already disseminate targeted information, providing simple guidance that is legally robust is not always easy when there are multiple routes to compliance. Because of the numerous alternate routes by which businesses can comply, there are multiple means of meeting obligations. A different approach is needed to focus small businesses, in particular, on the key controls that really matter.
 - b. Simplify the framework of HSNO approvals and the application of controls so that multiple compliance routes are minimised. This would be easier to accomplish, and compliance costs could be reduced, if the New Zealand legislative regime was more closely aligned with current international norms. For example, our chemical classification system is set in regulation and based on a very early model of the United Nations Globally Harmonised System of Classification and Labelling of Chemicals. This system has moved on and our major trading partners (from where most chemical products are sourced) have adopted a more recent version. Being out of international alignment has added complexity to the HSNO system, for example in providing alternative means of compliance with labelling requirements.
 - c. Make it simpler to amend the classification criteria and control requirements currently within regulations under the HSNO Act by moving them to a different form of legal instrument that can be updated by the EPA without requiring PCO legislative involvement.
 - d. Review the current certification model to ensure it remains adequate to provide the necessary level of assurance and provide the EPA with greater ability to manage the quality and performance of third party test certifiers. The EPA is restricted in its ability to manage the test certifier regime to ensure that testing and certification of high-risk facilities is robust. Although we approve test certifiers, and can revoke their approval under certain circumstances, we have limited statutory ability to provide direction to them to ensure consistent decision-making, require them to participate in audits or take corrective action where there has been non-compliance. There is also a serious shortage of test certifier expertise in some critical areas.
 - e. Reduce the number of enforcement agencies under the HSNO Act (currently 85 for hazardous substances). In particular, many territorial authorities do not have the capacity or expertise to enforce HSNO controls and their HSNO role is comparatively small.

- f. Clarify the roles and responsibilities between all agencies involved in HSNO Act compliance and enforcement activities, including the roles of all government agencies. This includes clarifying where strategic leadership for compliance and enforcement lies.
 - g. Provide a greater range of enforcement tools. The HSNO Act already allows for an infringement notice system to be established by regulation but that system has never been activated and should be. There may also be other mechanisms or regulatory models that enable a gentler approach to advising and correcting non-compliance other than resorting to penalties, particularly for first offenders.
 - h. Review the relationship between the RMA and the HSNO Act to remove duplicated responsibilities. The RMA allows councils to control the use of land to prevent or mitigate the effects from storage, use, disposal or transport of hazardous substances. This provision has led to duplicated and conflicting controls for certain businesses such as farms.
24. In paragraph 16 above we also suggested that the relationship between the HSE and HSNO Acts should be reviewed to determine whether separate enforcement regimes under each Act remain appropriate and if so, whether further streamlining and integration in the delivery of enforcement activities is warranted.
25. In paragraph 21 above we provided our view that the level of inspection in workplaces needs to be enhanced.
26. In addition, we also consider that the regulatory model underpinning health and safety, especially for hazardous substances, may need a change in focus. We describe that change below in paragraph 28c.

Regulators' Roles and Responsibilities

Q5. How effective are the regulators in influencing workplace health and safety outcomes?

27. No agency has a clear mandate for strategic leadership for HSNO Act compliance and enforcement activities. The Act fragments enforcement responsibility across multiple agencies, which can result in gaps and duplication of effort. MBIE has the largest enforcement role of all the enforcement agencies in that it enforces HSNO requirements in workplaces. The EPA has a role to "ensure that the provisions of [the] Act are enforced in all premises likely to contain a hazardous substance", but it has no enforcement capability itself. It can resort to advising the Minister when it considers that there is insufficient or unnecessary inspection and enforcement (s99(1)). There has been insufficient inspection and enforcement for a number of years (see paragraph 21), but multiple letters to those enforcement agencies have seen little change in enforcement activity. In our view, the HSNO Act needs to be more explicit about where leadership for strategic enforcement activity lies to enable a unified national approach to reducing harm from hazardous substances. Increasing responsibility for strategic compliance and enforcement may need to be backed up with an appropriate level of resource.

Q6. How could the regulators' roles and responsibilities be changed to improve their effectiveness in influencing workplace health and safety outcomes?

28. In our view, the regulators' roles and responsibilities for influencing workplace health and safety related to hazardous substance exposure could be enhanced if:
- a. One agency has overall responsibility to provide strategic leadership and oversight of compliance and enforcement activities.
 - b. The roles and responsibilities of the 85 hazardous substance enforcement agencies are reviewed. Having fewer agencies (even one agency) with responsibilities for HSNO Act enforcement would help build and concentrate expertise. The current situation creates duplication, gaps, fragmentation and inconsistent effort.
 - c. A different approach is taken where there is more interaction between the regulator and regulated party. The current model assumes that businesses know what to do and are doing it right. Consequently inspection levels are light. The EPA's recent compliance survey suggests that this is not the case – businesses state that they are unsure of what they need to do. A change in approach is necessary so that inspectors provide more advice, guidance and follow-up, and if necessary, enforcement. Associated with this is the need for a greater range of enforcement tools, such as infringement notices, where first offenders in particular have the opportunity to rectify non-compliances without fear of heavy penalties. Alongside this greater engagement with regulated parties there needs to be a more active and visible inspection and enforcement presence. We realise this approach may have fiscal consequences, and that funding would need to be considered against other government priorities.

New Zealand's Changing Workforce and Work Arrangements

Q7. What impacts are New Zealand's changing workforce and work arrangements having on workplace health and safety outcomes?

29. Not within our area of expertise.

Q8. What changes to the workplace health and safety framework, if any, are needed as a result of the changing workforce and work arrangements?

30. Not within our area of expertise.

Worker Participation and Engagement

Q9. How effective do you think worker participation is in improving workplace health and safety in New Zealand?

31. We consider worker involvement is important to ensuring effective workplace health and safety outcomes. A first step is raising awareness among workers of the hazards involved so that they can take responsibility for reducing harm to themselves and others from hazardous substance exposure. We consider that currently the level of necessary awareness is low. As mentioned in paragraph 9b, we are preparing a 'tool box' of information and awareness-raising material for SMEs to help improve employer and worker awareness of the risks involved and the need to take some basic actions when using hazardous substances.

Q10. What improvements can be made to worker participation in workplace health and safety so as to get better workplace health and safety outcomes?

32. Industry-led initiatives are important in improving workplace health and safety outcomes. Studies within New Zealand show that the values of the owner-manager of a small business are key to determining the business's approach to health and safety management⁸. SMEs are also likely to be more receptive to advice from respected industry leaders who are stalwarts of the industry with years of experience as well as knowledge and commitment to health and safety⁹.

Leadership and Governance

Q11. To what extent do directors and other senior leaders provide effective leadership and governance of workplace health and safety?

33. Not within our area of expertise.

Q12. What improvements can be made to directors' and other leaders' participation in workplace health and safety, so as to get better workplace health and safety outcomes?

34. Not within our area of expertise.

Capacity and Capability of the Workplace Health and Safety System

Q13. To what extent do firms have the capacity and capability to effectively manage workplace health and safety issues (including through accessing external resources)?

35. As discussed in paragraph 10 above, SMEs have limited capacity to effectively manage harm from hazardous substance exposure. Better tailoring and targeting of guidance, advice and

⁸ The Development of Preventative Interventions to Reduce Hazardous Chemical Exposures in Small Business in New Zealand; Ian Laird et al, Massey University.

⁹ Occupational Health and Safety in Small Businesses: Which Way Forward? Felicity Lamm et al, Auckland University of Technology.

inspection to business sectors is likely to lead to more effective outcomes given the current low levels of awareness among SMEs particularly.

Q14. What options are there for improving firm level capacity and capability to deliver better workplace health and safety outcomes?

36. Some options have already been mentioned in paragraph 23 above, such as focusing on the key controls that matter to reduce harm from hazardous substance exposure, and providing simple, straight-forward guidance and messaging around the risks involved from hazardous substance exposure and how to stay safe.
37. An appropriate level of training when handling hazardous substances is critical. The HSNO Act requires people using and storing the most highly hazardous substances to be an Approved Handler. Currently multiple providers offer Approved Handler training courses, many of which have little or no moderation, and there are no minimum standards on the acceptable level of training. This situation can lead to businesses choosing least-cost training options that may not provide an adequate level of training or sufficient knowledge of the substances being used.

Incentives

Q15. How effective are existing financial and non-financial incentives in improving workplace health and safety outcomes?

38. An effective incentive for compliance with HSNO Act requirements has been the ability of businesses using hazardous substances to obtain insurance. Insurance companies are increasingly requiring proof of compliance with HSNO Act requirements from those businesses before they will provide insurance cover. The EPA has provided training to the insurance industry on the key steps to comply with the hazardous substances legislation. This training has been integrated into the insurance brokers continuing professional development programme. Although the data is anecdotal, we have observed increased calls to our hazardous substances information line advising that the caller was directed to us by their insurance company.

Q16. How could incentives be better used to improve workplace health and safety outcomes?

39. Extended producer responsibility/product stewardship-type measures could be used. An example is rules that require suppliers to ensure sites they supply chemicals to are compliant with HSNO Act requirements. If small businesses do not comply and are unsafe they will have difficulty obtaining reliable supplies of key materials.

Influencing Health and Safety Outcomes Beyond One's Own Workplace

Q17. How successful are government, industry, corporate or other potentially influential bodies in influencing workplace health and safety outcomes beyond their own workplaces (for example through influencing their suppliers, counterparts, and competitors)?

- 40. There has been some success with hazardous substance suppliers influencing their customers through product stewardship regimes. For example, one major New Zealand chemical supplier will not supply to a site unless the site complies with HSNO Act requirements. This practice, however, is not widespread especially among smaller suppliers as the supplier, although doing the right thing by ensuring safety obligations are being met, may lose customers.
- 41. Another successful example is the training that the EPA provided to the insurance industry (see paragraph 38).

Q18. What could be done to get government, industry, corporate or other potentially influential bodies to exert greater influence on improving workplace health and safety outcomes beyond their own workplaces?

- 42. No comments.

Major Hazards

Q19. How strong is New Zealand's current approach to regulating major hazards?

- 43. New Zealand has no specific major hazard facility regulations, although in theory the HSNO Act control framework should be flexible enough to deal with these larger, higher risk sites. The HSNO Act controls are performance-based and therefore 'scalable' so that they can apply to large major hazard sites. For example, the emergency response plan required under the HSNO Act for a major oil refinery would be more detailed and expansive, with many more responsibilities specified, than the plan for the average service station. Similarly, the level of test certification undertaken for the refinery should be a lot more detailed and comprehensive than for smaller sites.
- 44. Our regulatory regime is often compared with Australia where they have major hazard facility regulations at state level. The threshold levels for triggering this type of regulation in Australia are very high, for example, 200 tonne of LPG and 50,000 tonne for petroleum fuels. Their thresholds for other hazard classifications are also quite high by New Zealand standards. There are very few facilities of this scale in New Zealand.
- 45. A specific concern with the current New Zealand system for managing major hazard facilities is the low level of enforcement of HSNO Act requirements (mentioned in paragraphs 8f and 21 above) and the inadequacies of the test certification model (mentioned in paragraphs 8e and 47) particularly in certain sectors, that could present significant risks with respect to these major hazard facilities.

46. New Zealand also has no national health and safety register for major hazard facilities. While the EPA's test certificate database¹⁰ could assist to serve this purpose, it is only adequate for major facilities involving substances with flammable, oxidising or explosive properties.

Q20. What improvements to the regulation of major hazards would lead to better workplace health and safety outcomes?

47. Improvements to the regulation of major hazards may be achieved by modifications to and improvements with the regulatory framework and operation of the HSNO Act regime. For example, the existing HSNO Act test certificate model provides for the licensing of high hazard facilities. However, we know that some aspects of this model are not adequate to deal with all risks in the New Zealand context. The test certifier regime is a third party certification model, but because of the small market size in New Zealand in some specialist areas, this model may not always be adequate. MfE is reviewing the test certifier model and comparing it with other certification models to determine whether changes are necessary. An opportunity exists to ensure that whatever changes are made to the test certifier scheme are also appropriate to deal with major hazard facilities.

Health and Hazardous Substances

Q21. What are the most significant challenges to managing occupational health risks and exposure to hazardous substances?

48. A key challenge in managing occupational health risks from hazardous substance exposure is the lack of data on harm. Without accurate data we do not know the extent of harm that is occurring in the workplace, where and how it is occurring and consequently, how to better prevent it.
49. The current hazardous substance approach relies on historic death and injury rates to identify where effort should be directed. That approach does not adequately deal with long lag times for chronic illnesses or the potential catastrophic nature of accidents in high-hazard sectors. The Pike River report¹¹ identified a similar concern in relation to high-hazard industries where by their nature the probability of an adverse event is low, but the consequences are high. Identifying workplace substance hazards, providing the necessary guidance for businesses and ensuring an appropriate level of enforcement needs to be informed not only by historic death and injury rates, but incorporate the potential for catastrophic events.

¹⁰ Test certificates are issued for sites at which the most highly hazardous substances are stored and/or used. The EPA is mandated under the HSNO Act to maintain a national register of test certificates.

¹¹ Pike River report 2012 page 295

50. Another challenge is the lack of awareness among workers of the risk from exposure to hazardous substances, such as occurred previously with asbestos. Particularly with chronic exposure, the risk is 'hidden' and may be overlooked by workers. This is a key area where awareness needs to be increased.
51. As a result of its complexity, the HSNO Act can be more difficult to navigate and enforce than the HSE Act, and consequently this may lead to a reduced enforcement focus by inspectors. We commented on this aspect in paragraph 15 above.
52. See also our comments on reasons for low compliance with HSNO Act obligations in paragraph 8 above.

Q22. What changes could be made to the existing workplace health and safety framework to reduce the harm caused by occupational disease and ill-health?

53. See our response in paragraphs 23 and 28.

Small to Medium-Sized Enterprises

Q23. What workplace health and safety challenges are specific to the self-employed and small-to-medium enterprises?

54. See our response in sub-paragraphs 8a, b and c.

Q24. What improvements could be made to the workplace health and safety framework, and its implementation, to ensure that it's effective for self-employed and small-to-medium sized enterprises?

55. See our responses in paragraph 9 and 23 above, particularly the comments about allowing low-hazard small businesses to comply with key controls to manage harm from hazardous substances. Changes are also needed to enable guidance to be provided to SMEs that targets awareness of these key measures, without the legal risk that only a partial set of obligations are being covered.

Measurement and Data

Q25. To what extent are New Zealand's workplace injury and occupational disease data collection mechanisms conducive to robust monitoring, investigation and comparative analysis?

56. Data sources for monitoring harm from hazardous substance exposure, particularly chronic harm, are not adequate. Data is often not easily interrogated, or does not provide enough detail to enable proper analysis. We are working with the Ministry for the Environment to improve the monitoring framework for measuring the effectiveness of the HSNO Act, particularly to improve

data related to harm from hazardous substance exposure. This work will involve some increased resourcing. One area of proposed improvement is to record causes of harm more clearly so that it is easier to identify if a hazardous substance has been involved in causing harm.

Q26. What opportunities are there for improving data collection, integration and reporting?

57. Significant effort is going into improving data sources to monitor harm to people from hazardous substance exposure. A specific area of difficulty is to capture data related to long-term chronic disease from substance exposure, although we know that many other jurisdictions are also struggling to find ways to capture that data.
58. Better use could be made of existing data sources, such as cases of reported harm to MBIE, and ACC data on compensation claims. Currently it is not possible to use these data sources to investigate harm caused by hazardous substance exposure, as often cases are not easily linked to a specific substance or the format of the data does not allow for this kind of analysis. Even our own data registers cannot be made available to researchers. Linkages across agencies could be strengthened to improve the collection, sharing and usefulness of relevant data.
59. There are other areas where better data will support harm reduction. This includes continuing to collect data on compliance rates and improving understanding of the high-risk industries to enable interventions to be targeted more effectively.

Our National Culture and Societal Expectations

Q27. Do you think New Zealand culture influences our workplace health and safety outcomes?

60. The large proportion of SME businesses in New Zealand compared with other jurisdictions influences our workplace health and safety outcomes. Small businesses find it difficult to know what their obligations are and then what to do to comply with them. Financial constraints and the economic climate also influence employers' ability to address their obligations. A number of reports on challenges to SMEs related to regulatory compliance are available and some will be applicable to hazardous substance regulation¹².

Q28. What might we do to improve our culture relating to workplace health and safety?

61. Campaigns pitching the right key messages about harm would go some way towards raising awareness of the key things that matter to reduce harm. Information targeted at the various sectors, particularly higher risk industries, has been shown to have an impact on improving behaviour. However, information and awareness-raising alone will not be sufficient to significantly improve death and injury rates from hazardous substances. A strong and visible

¹² See http://www.massey.ac.nz/massey/fms/sme/Report_Regulation_NZ_2011.pdf

inspection and enforcement regime needs to sit alongside any awareness-raising activity to make any significant inroads into reducing workplace harm. See paragraph 28c for more on this aspect.

Other Factors

Q29. Are there any other factors (not already covered) that influence workplace health and safety outcomes in New Zealand?

62. No comments.

Q30. Do you have any other suggestions for how to improve workplace health and safety outcomes in New Zealand?

63. No comments.

Other comments

Q31. Are there any other comments that you would like to make?

64. The EPA welcomes this opportunity to provide comment to improve New Zealand's workplace health and safety system, particularly as it relates to hazardous substances. The problems are complex and multifaceted. Solutions will involve multiple strategies and actions across a number of agencies and by businesses themselves. We consider that three key areas need to be addressed together if New Zealand is to make an appreciable difference to reducing workplace death and injury rates from hazardous substances at work:

- changes to the legislative framework;
- increased inspection activity with a more interactive enforcement approach; and
- increased education to raise awareness of the risks involved and what to do to mitigate them.

People's attitude towards keeping themselves and others safe from substance exposure also needs to change if a significant difference to workplace harm is to occur.

Rob Forlong
Chief Executive

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