



# Test certifier regime review outcomes

## BACKGROUND

In July 2008, the Ministry for the Environment initiated a review of the effectiveness of the test certifier regime that was established under the Hazardous Substances and New Organisms Act (HSNO Act). The regime is a system where approved independent inspectors (test certifiers) issue test certificates to confirm compliance with HSNO regulatory requirements. The regime was established to help manage the risks that hazardous substances can present to property, people and the environment.

## PURPOSE

The purpose of this document is to inform you of the outcome of the review and anticipated next steps to address some of the issues identified.

## WHY THE REVIEW?

The Ministry undertook this review in response to concerns raised by government, industry and test certifiers with the way the regime was operating. Specific concerns were:

- the long-term viability of the regime
- the age, number, distribution and expertise of test certifiers
- the consistency of decision-making
- barriers to becoming a test certifier (eg, training requirements, insurance)
- implementation of the regime (industry compliance, pro-activeness of test certifiers)
- the role of local and central government agencies, professional associations, independent audit agencies, consultancies and insurance companies in supporting the regime.

## OBJECTIVES

The objectives of the review were to:

- establish whether the regime effectively assisted with the management of the risks associated with hazardous substances
- identify improvements to address any inefficiencies or ineffectiveness in the regime.

## APPROACH

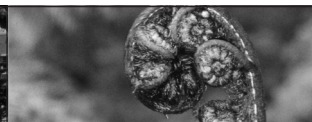
The Ministry established an advisory group in 2008 to provide advice and guidance to the Ministry project team. The group consisted of representatives from government departments, the Environmental Risk Management Authority (ERMA), industry and test certifiers. The advisory group met four times over the course of the review.

The Ministry worked with the advisory group and other stakeholders to identify an evidence base for the concerns mentioned above and commissioned the following research projects:

- the extent of industry dealing with hazardous substances in New Zealand
- the views of former test certifiers
- the views of businesses dealing with hazardous substances.

In addition, the Ministry met with and interviewed:

- test certifiers, industry organisations and local government
- former test certifiers to investigate their reasons for leaving the role
- a range of businesses to determine their views on compliance and the operation of the regime
- insurance industry representatives to determine their possible role in compliance



- HSNO enforcement agencies to get an understanding of their work
- ERMA and the Department of Labour to identify opportunities to improve compliance and enforcement
- various industry training organisations, the Tertiary Education Commission, Ministry of Health and tertiary education providers to discuss industry training opportunities and comparable certification schemes.

## OUTCOMES

The review revealed five key issues and several potential solutions. These are listed below:

**Table 1: Issues and Solutions**

Key issues	Potential solutions
1. <b>Low levels of business compliance</b> – compliance level is between 22–38 per cent in New Zealand.	<ul style="list-style-type: none"> <li>• Improve awareness of the legal requirements</li> <li>• Provide clear guidance on accepted practice</li> <li>• Increase enforcement activity</li> <li>• Raise support from associated industries</li> <li>• Better coordination of central government support</li> <li>• Improve local government involvement</li> </ul>
2. <b>Long-term viability of the regime</b> – there are only 117 test certifiers in New Zealand and more than 50 per cent are over 55 years of age. Entry requirements are restrictive, which may lead to a future shortage of test certifiers.	<ul style="list-style-type: none"> <li>• Broaden the entry criteria for test certifiers</li> <li>• Develop coordinated initial training and professional development for test certifiers</li> <li>• Improve professional association support</li> <li>• Increase well-targeted enforcement activity</li> </ul>
3. <b>Inconsistencies related to test certification</b> – different interpretations of the HSNO requirements have resulted in inconsistencies.	<ul style="list-style-type: none"> <li>• Provide detailed, definitive codes of practice and guidance/ advice to test certifiers</li> <li>• Provide initial training to test certifiers</li> <li>• Create ongoing professional development programme</li> <li>• Accredited test certifiers</li> <li>• Audit test certifier decisions</li> <li>• Simplify the regulations and controls</li> <li>• Increase professional association involvement</li> </ul>
4. <b>Lack of coordination between government agencies</b> – central and local government and other agencies do not have clearly defined regulatory responsibilities and relationships.	<ul style="list-style-type: none"> <li>• Clearer agreement on specific roles and responsibilities</li> <li>• A centralised database of test certification-related activities</li> <li>• Improve the interface with other relevant legislation (eg, Resource Management Act and Building Act)</li> </ul>
5. <b>Conflicts of interest</b> – some test certifiers provide consultancy services and then issue a certificate for the same business. Added to this, test certifiers issue certificates and then act as enforcement officers for the same business.	<ul style="list-style-type: none"> <li>• Clear separation between the advice test certifiers provide as consultants and final certification</li> <li>• Improve auditing of test certifier decision-making</li> </ul>



## NEXT STEPS

This review identified five key issues and solutions. Some are outside the operation of the regime, but have an impact on its effectiveness. The findings of this review will be reported to the Minister for the Environment, along with a programme for improvement, by the end of June this year (2010).

The programme for improvement includes short-term actions, which could be implemented in the immediate future. These will include:

- establishment of infringement notices to increase the range of available enforcement tools and improve compliance. While not placing an undue burden on business, providing an alternative means to respond to HSNO breaches (that do not warrant the time and expense of prosecution) will help compliance
- improving the regulations for personnel qualifications to remove barriers to suitably qualified entrants who are capable of undertaking test certifier roles.

Other longer-term actions of a regulatory or non-regulatory nature will be reported to the Minister for the Environment in July this year.

