

Amendment to the HSNO Act to facilitate the transfer of hazardous substances - Regulatory impact and compliance cost statement

Statement of the nature and magnitude of the problem and the need for government action

The purpose of the Hazardous Substances and New Organisms Act (HSNO) Act 1996 is “*to protect the environment, and the health and safety of people and communities, by preventing or managing the adverse effects of hazardous substances and new organisms.*” In respect of hazardous substances, the Act is designed to deliver its purpose by the Environmental Risk Management Authority New Zealand (the Authority) assigning controls (such as labelling, packaging and storage requirements) which prevent or manage the risks of every hazardous substance in NZ.

Existing hazardous substances were previously subject to controls under separate Acts covering animal remedies, explosives, dangerous goods, pesticides and toxic substances. Existing hazardous substances have their HSNO controls assigned on transfer, replacing their previous controls (under previous legislation). All existing hazardous substances must be transferred by July 2006. New hazardous substances get their controls assigned via an approval from the Authority.

The Act came into force for hazardous substances on 1 July 2001. Operating experience since this time has revealed that the following operational aspects of the Act result in the identified unintended costs:

1. having to amend the HSNO Control Regulations in order to vary the default controls (which automatically apply to a substance of a certain hazard classification) on transfer (necessary for approximately 10% of existing hazardous substances) creates unnecessary costs to government and makes controls difficult to understand for business (there are multiple places to check in determining the requirements that apply to a substance);
2. having to make a regulation in order to effect a transfer creates unnecessary costs for government and delays, which in turn increase costs to business applying to import or manufacture hazardous substances;
3. insufficient time (28-days) is provided for some businesses to cost-effectively implement changes necessary when HSNO controls replace the previous controls (on transfer);
4. a dual regulatory requirement is an error in the legislation and creates costs to business with no safety or environmental benefit (facilities are required to maintain a Dangerous Goods License **and** meet HSNO requirements after dangerous goods are transferred); and -
5. the ability to vary controls specified in the Act does not allow the Authority to assign controls sourced from outside the HSNO Control Regulations where such controls would be more effective, more cost effective or a more readily achievable means of controlling the risks posed by that substance. Assigning such controls at present may mean that these controls are not legally enforceable. Not assigning such controls creates costs to business and risks to health, safety and the environment.

Collectively, these problems affect all existing hazardous substances (80,000) and an estimated 90% of new hazardous substances.

These unintended costs reflect a regulatory failure. Government intervention is required to remove these unintended costs.

Statement of the public policy objective

The public policy objective is to minimise the costs to business and government and reduce barriers to innovation while serving the purpose of the Act by:

- facilitating the transfer of previously assessed existing hazardous substances from transitional controls to HSNO controls;
- providing for a smooth transition between transitional controls and HSNO controls; and,
- enabling the assignment of cost-effective controls to all new hazardous substances.

Statement of the feasible options that may constitute viable means for achieving the desired objective

The feasible options are the status quo and amending the HSNO Act (the preferred option). There are no non-regulatory options to achieve the public policy objective.

The table below sets out the key features of the Status Quo and the Preferred Option.

Problem	Status Quo	Preferred option (Amend HSNO Act)
Varying default controls on transfer	<p>Controls are varied by new transfer regulation (where variations reflect previous <i>requirements</i>) and by regulation amendments (where variations reflect previous <i>practices</i> that are not <i>requirements</i>).</p> <p>Government to effect regulation amendments.</p> <p>Determining all requirements for a given substance requires checking the transfer regulation, multiple regulations and multiple regulation amendments.</p>	<p>Act amended so that the Authority may widely vary controls on transfer allowing control variations that recognise previous practices as well as previous requirements.</p> <p>Regulation amendments not required.</p> <p>All requirements for a substance are presented in the transfer decision.</p>
Effecting transfer	<p>Transfer is effected by making an Order In Council.</p> <p>Authority subject to Regulation making consultation requirements.</p> <p>The controls assigned after the Cabinet process are as per the Authority's transfer proposal.</p>	<p>Act amended so that transfer is effected by decision of the Authority, promulgated by notice in the NZ Gazette and the Authority's website (supplemented by informative forums where appropriate).</p> <p>The consultative process is the same and the same controls are applied.</p>
Transitional period	<p>Business must comply with new requirements as soon as transfer is effective (after 28-day rule expires).</p>	<p>Act amended so businesses who demonstrate they are adequately managing risks of the substances on site may apply for a temporary exemption from HSNO requirements to provide time to implement changes.</p>
Dual regulatory requirement	<p>Businesses must comply with HSNO requirements and maintain a Dangerous Goods Licence until July 2006.</p>	<p>Act amended so that the Authority may exempt any or all businesses from dual regulatory requirement.</p> <p>Individual businesses exempted by application to the Authority. All businesses exempted by publicly notified decision of the Authority.</p>
Most cost-effective controls	<p>Only controls from within the HSNO Control Regulations can be assigned to a substance.</p> <p>Where more cost-effective controls exist outside the HSNO Control Regulations these cannot be assigned to a substance.</p>	<p>Act amended so that the most cost-effective controls can be applied, even if they are not in HSNO Control Regulations.</p> <p>This includes 'fit and proper persons' only to have access and case-by-case approvals - operation of which will depend on the substances to which these are applied.</p>

Statement of the net benefits of the proposal and other feasible options

The net benefits of the proposal (presented below) are unquantifiable but will result in large reductions in costs to business and reduced costs to government. Unquantifiable health, safety and environmental benefits will accrue due to improved compliance coming out of ease of understanding.

Net benefits to Industry

The proposals will reduce costs to business and barriers to innovation by:

- making controls easier to understand for all hazardous substances (thereby improving compliance with controls);
- avoiding delays in the availability of the rapid assessment for new hazardous substances by completing transfers sooner (rapid assessment is a fast, low-cost assessment for new hazardous substances and is available where the new substance is 'similar' to an existing approved or transferred substance – if transfers are completed sooner the pathway is available earlier);
- providing reasonable time to implement changes where necessary (this is not quantifiable, but the scale of benefit is appreciable by considering the impact of an exemption which removes the requirement to re-label and/or re-package existing retail stocks of mineral turpentine – which is sold in petrol stations, supermarkets, hardware store, assorted dairies, marine chandleries and car accessory stores nationwide – mineral turpentine being but one of the 80,000 existing hazardous substances in NZ);
- avoiding a dual regulatory requirement (saves business \$2.5M p.a. for two years); and-
- enabling the application of the most cost-effective controls where these are not contained in the HSNO Control Regulations (not able to be quantified, but will by definition reduce costs to business).

Net benefits to Society

Improved compliance due to improved understanding will result in health, safety and environmental gains (these positive effects are unquantifiable). Environmental benefits are expected to accrue from the ability to better manage environmental risks (by varying controls) and the greater availability of the rapid-assessment pathway making the introduction of 'better' hazardous substances easier (e.g. pesticides with lower ecotoxicity to non-target organisms) . No environmental, social or cultural costs have been identified.

Net benefits to Government

The primary benefit to government is improved efficiency in assigning HSNO controls to all hazardous substances and ensuring compliance with these requirements. Efficiency gains will also accrue to government through not having to make multiple transfer regulations and regulation amendments.

Statement of the *consultation undertaken*

The following parties and departments were consulted in the development of the policy of the preferred option: BASF Chemicals, EKA Chemicals, Local Government New Zealand, Business New Zealand, Resource Management Law Association, New Zealand Association for Animal Health and Crop Protection, NZ Chemical Industry Council, Department of Labour (Occupational Safety and Health Service), Department of Conservation, Ministry of Agriculture and Forestry (New Zealand Food Safety Authority), The Treasury, Ministry of Economic Development, New Zealand Customs Service, Ministry of Health, Department of Prime Minister and Cabinet, Department of Justice, and the Authority.

All parties supported the actions identified within the hazardous substances strategy and agreed that the priority action is to remove the unintended costs discussed in this proposal.

Business compliance cost statement

The source of any compliance cost

The following sources of business compliance costs will reduce as a result of the proposal: the time costs of understanding controls; the ERMA fees and time and information costs of making applications to import or

manufacture new hazardous substances; the costs associated with the change from previous requirements to HSNO requirements; the costs of dual regulatory requirement; and the cost of meeting controls.

The following sources of business compliance costs will increase as a result of the proposal: costs associated with applying for exemptions; and costs associated with additional requirements (e.g. demonstrating staff are 'fit and proper' when using substances to which such controls are assigned).

The parties likely to be affected

Businesses that import, manufacture, store, use large quantities of, sell or dispose of hazardous substances will be affected.

Estimates of compliance costs

Compliance costs associated with meeting the controls imposed by approvals will decrease as a result of the proposal as less time will be required to determine what these requirements are, and in some cases, the controls themselves will be more cost-effective.

Compliance costs associated with applications for approval to import and manufacture new hazardous substances will decrease as a result of the proposal due to earlier availability of the rapid-assessment pathway (estimated to save businesses \$0.5M per annum in reduced fees for applications, which equates to \$2.0M per annum in compliance costs savings - as Authority fee component of application costs are approximately 25% of total applicant compliance costs for an application).

Compliance costs associated with the change from previous requirements to HSNO requirements will reduce as the proposals providing for a smooth transitional period will allow changes to be put in place in cost-effective ways (e.g. allowing time for existing stocks to be sold out rather than relabelling and/or re-packaging) and at cost-effective pace (rather than mandating that businesses meet HSNO requirements 28-days after controls are finalised). These savings are unquantified but are of significant magnitude.

Form filling and correspondence compliance costs reductions will accrue to businesses (in addition to the direct cost savings identified in the RIS) due to the removal of a dual regulatory requirement.

The compliance costs of meeting controls will reduce, by definition, where controls from outside the HSNO Control Regulations are assigned for reasons of cost-efficacy.

Applying for exemptions will impose a compliance cost. Businesses are only expected to apply for exemptions for time to meet HSNO requirements (e.g. selling existing stocks) where the benefits of obtaining the exemption outweigh the costs obtaining the exemption. Many businesses will be exempted by action of the Authority rather than in response to an application for an exemption.

Having staff determined as 'fit and proper' will impose a form filling and correspondence compliance cost on businesses using the few substances that the Authority may assign such a control to (most such substances are presently subject to such under previous legislation).

The longer term implications of the compliance costs for business

The majority of compliance cost reductions will be obtained after 1 April 2004, when previously assessed hazardous substances are transferred. Benefits of improved understandability will be ongoing.

An assessment of the risks associated with estimates and the level of confidence that can be placed on the compliance cost assessment

There is a high level of confidence in the estimates of business compliance cost reduction as these are based on actual data from the Authority and NZIER survey responses and operating experience with the Act.

The key issues relating to compliance costs identified in consultation

Reducing compliance costs has been identified as an issue in consultation. No increased compliance cost issues were identified in consultation.

Overlapping compliance requirements with other agencies

There are no overlapping compliance requirements introduced by the preferred option. One is removed.

The steps that were taken to ensure that compliance costs were minimised

The actions undertaken as part of the preferred option are to remove unintended costs to business (and government) resulting from failures in previous government interventions.