

Terms of Reference

Review of the Hazardous Substances Compliance System

Establishment of an independent Technical Working Group

The Ministry for the Environment (MfE) and the Chief Executive of the Environmental Protection Authority (EPA) have decided to review the hazardous substances compliance system.

They have decided that the review will be conducted by an independent Technical Working Group, comprising a chairperson and two other members.

These terms of reference explain:

- The broad scope and guiding principles of the review
- How people can participate in the review
- An overview of the review process.

Context

1. The hazardous substances compliance system aims to keep people safe from the dangers of hazardous substances. It comprises a complex framework of legislation¹, operations and processes that are managed by a variety of agencies².
2. Recent reports and incidents of non-compliance with the regulations for hazardous substances have highlighted the dangers that these substances can pose, and indicate a range of weaknesses within the hazardous substances compliance system.
3. These incidents have resulted in significant risks to people and the environment, they have also resulted in substantial costs to the Crown and local government to remediate sites or to appropriately dispose of hazardous material.

¹Hazardous Substances and New Organisms Act 1996 (HSNO), Health and Safety at Work Act 2015 (HSWA), Resource Management Act 1991 (RMA), Waste Minimisation Act 2008 (WMA), Ozone Layer Protection Act (OLPA) 1996, Agricultural Compounds and Veterinary Medicines (ACVM) Act 1997.

²WorkSafe, Environmental Protection Authority, Maritime New Zealand, Civil Aviation Authority, Ministry for Primary Industries, Public Health Units, Police, territorial authorities, regional councils.

4. To mitigate the occurrence and impacts of such incidents, we need to review the hazardous substances compliance system to ensure it is capable of protecting the health of people and the environment.

Purpose of the review and role of the Technical Working Group

5. The purpose of the review is to recommend improvements at a system level to the hazardous substances compliance system to protect the environment, and the health and safety of people and communities.
6. The role of the Technical Working Group is also to analyse the hazardous substances compliance system; decide whether it is fit for purpose; and recommend improvements.

Scope of the review

7. The Technical Working Group will decide on where the review will focus its work, and will agree this focus with MfE and the Chief Executive of the EPA, at the start of the review process.
8. It is expected that the following will be covered by the review:
 - Report on the effectiveness of the regulatory and legislative framework of the hazardous substances compliance system, including regulatory tools or enforcement actions and measures intended to enforce compliance.
 - Determine the effectiveness of the operational systems for hazardous substances compliance, by considering the roles played by the other enforcement agencies, how they work together, their focus and priorities.
 - Clarify the broader social, financial, and other issues that influence non-compliance, including at local government level;
 - Identify which approaches, taken by enforcement agencies in other countries, may be appropriate to New Zealand;
 - Review data collection and reporting on the performance of the hazardous substances compliance system;
 - Describe what is required to address situations where landowners are unable or unwilling to clean up sites.
9. The review may consider the resourcing and capability of other agencies enforcing hazardous substances regulations; how agencies interact in relation to hazardous substances compliance; and how legislative changes affect compliance.
10. Findings from this review, where applicable, may be taken into account by relevant agencies in any future review work they may have.

Exclusions

11. The review is not intended to make specific recommendations about recent legislative changes under the Hazardous Substances and New Organisms Act (HSNO) 1996, the Health and Safety at Work Act (HSWA) 2015, or the Resource Management Act 1991.
12. The review is not intended to propose changes to specific regulations, notices, or work that is related to non-hazardous substances. It is also not intended to propose changes to topics that

are expected to be considered during reviews that have already been planned³ or to examine how agencies make decisions about their operational priorities or undertake regulatory functions.

Support for the Technical Working Group

13. A secretariat for the Technical Working Group will be provided by the EPA. All communications with the Technical Working Group will be via the secretariat.
14. Local government and other agencies involved in the hazardous substances compliance system at both legislative and operational levels will have the opportunity to provide input to the review, and to comment on the draft report, ahead of any formal release.

Deliverables

15. A draft and a final report of the Technical Working Group will be delivered to MfE, and the Chief Executive of the EPA, prior to any public circulation.
16. The draft report will be provided to those agencies listed at 14 above, with sufficient time to allow the agencies to review, and provide any feedback to the Technical Working Group in time for them to meet the final report deadline.
17. The Technical Working Group may choose to amend their final report in light of the feedback received.
18. The final report will:
 - Describe the current hazardous substances compliance system
 - Identify the strengths and weaknesses of the hazardous substances compliance system and funding
 - Advise on whether the hazardous substances compliance system is fit for purpose. This will be supported by analysis of the system's structural, operational, legal, leadership, and resourcing aspects
 - Make recommendations for improving the hazardous substances compliance system
 - Describe how the improvements may be implemented efficiently and cost-effectively.

Procedures and Methods for the Technical Working Group

19. Subject to these Terms of Reference, the Technical Working Group will determine its own way of working.
20. In reviewing the hazardous substances compliance system, it is anticipated that the Technical Working Group may (for example):

³ Including the review of Health and Safety at Work (Hazardous Substances) Regulations, to be conducted by MBIE and WorkSafe

- Undertake a stakeholder analysis to identify the issues and needs of stakeholders;
- Review relevant documents (a suggested reading list will be provided by the EPA/MfE technical support team, as an introduction to the issues);
- Interview key personnel, including other local and government agencies who are involved in the hazardous substance compliance regime, to find their views, to collect information that is not documented, with a view to understanding the interfaces and any issues;
- Analyse and draw conclusions about the design, capability and capacity of the hazardous substances compliance system
- Make recommendations in a draft and final report.

Term of the review

21. The Review will run from the date of appointment set out in the letters of appointment until all functions required of the Technical Working Group in relation to the final report it makes, have been completed.
22. The Technical Working Group is required to produce a written report no later than 6 months from the date of starting the review, although this may change, depending on the shape of the review, by prior agreement with the Chief Executive of the EPA, and MfE.
23. The Technical Working Group will endeavour to keep within the review budget provided by the EPA, and will run the review in a manner that demonstrates fiscal responsibility and complies with any relevant EPA policies on matters such as sensitive expenditure.