

Submission by Responsible Care NZ, the National Chemical Industry Association

Introduction

Thank you for the opportunity to comment on the HSW Amendment Bill on behalf of the Chemical industry sector.

Responsible Care NZ (formerly the NZ Chemical Industry Council) represents manufacturers and importers (Suppliers), together with users of hazardous substances and businesses wishing to safely manage their chemical inventory. Members and partner organisations represent the entire life cycle of the chemical, from creation to disposal.

A key contributor to the development and successful implementation of the Hazardous Substances and New Organisms (HSNO) regime, Responsible Care NZ is one of 66 chemical associations worldwide committed to safely managing chemicals and protecting the environment, through regular interaction with lead Government Agencies as Hazardous Substances and Dangerous Goods experts.

Our products and services designed to facilitate compliance include:

- Provision of technical advice and guidance.
- Raising awareness regarding the hazards associated with chemicals, wherever they are present.
- Specialist chemical training.
- Site performance assessments focusing on chemical management.
- Reviewing and upgrading safety data sheets and product labels to NZ regulations.
- Maintaining a 24/7 chemical emergency response advisory service.
- A suite of HSNO Approved Codes of Practice.

Association Position

The chemical industry supports the intention of the Bill to increase certainty for businesses and organisations seeking to maintain safe and healthy workplaces and minimise compliance costs. We are however, concerned about the absence of measures to address important, long-standing deficiencies in the hazardous substances regulations and performance. In particular, the need to facilitate compliance and minimise the effort and expense to PCBUs in improving the management of workplace chemicals. Additional resourcing will be required.

Highlights

The Hazardous Substances regulations are long overdue for review, to remove anomalies and clarify often complex and increasingly subjective compliance requirements variously interpreted by WorkSafe NZ and consultants. Safely managing the hazardous substances present in every workplace requires heightened awareness, access to expert advice and cost-effective compliance and best practice tools.

Recommendation: Prioritise raising awareness of the hazards arising from workplace chemicals, together with the support available from the chemical industry association.

Critical Risk Focus

The Bill introduces a new term: 'Critical Risk' associated with the business. The proven risk management process is to identify the hazard and then either eliminate or mitigate the risk posed to the operation. Effective risk management protects workers, assets and the environment by proactively managing operational hazards. Many Small to Medium Enterprises (SMEs) will require assistance in identifying and managing hazards. This support could be provided by suppliers and industry associations.

Definition

The current definition of "likely to cause serious harm" is unclear, open to multiple interpretations by vested interests, and may not capture significant hazards.

Recommendation: Develop an ACoP to define the appropriate risk management process.

Two-Tier Safety

Reducing the compliance burden for SMEs is a worthy goal, but having different rules for various workplaces unnecessarily complicates both management and enforcement and should not proceed. A chemical incident in even a small workplace can result in a catastrophic outcome. A two-tier system applied to the Major Hazard Facility category will erode an already high level of safety performance, while creating additional expensive consulting opportunities.

Recommendation: Do not adopt a 'two-tier' definition of SMEs which complicates enforcement and increases the cost of doing business, for no benefit.

Approved Codes of Practice (ACoP)

The proven success of robust, industry developed HSNO Approved Codes (revoked in 2017) justifies reinstatement to provide SMEs with the practical guidance necessary to support a proactive business with targeted training, a self-assessment capability and common performance standards for compliance and enforcement.

Pan-industry codes ensure consistency between the PCBU consultants and regulators alike, reflecting best practice solutions while providing a 'safe harbour' to demonstrate compliance. Robust, user-friendly ACoPs can be readily updated, reducing the need for expensive consultants and avoiding controversial enforcement decisions.

Recommendation: Reinstate industry developed ACoPs.

Role of Enforcement Agencies

Given the government's direction WorkSafe NZ is to prioritise providing advice, education, guidance and ACoPs, while retaining responsibility for compliance certifiers and enforcement, discuss with the chemical association how this can best be accomplished. A conflict of interest exists with the Certification regime, Approval process and auditing of Compliance Certifiers all vested with the same Agency.

WorkSafe NZ falls short of expectations of a key partnership with those seeking to maintain a safe and healthy workplace by safely managing their chemical inventory. The lack of suitably experienced staff emphasises the value in collaborating with industry experts to provide the required guidance and support to stakeholders.

Industry Resources to Support Enforcement Agencies

- WorkSafe NZ to lead discussions with key industry stakeholders about their desired capability to safely manage their chemical inventories.
- Determine the need for and availability of, user-friendly educational resources, together with the support available from industry and establish priorities for addressing specific projects.

Recommendations:

- WorkSafe NZ and relevant government agencies engage with the chemical industry association to access expertise and resources.
- Prioritise the industry-led development of ACoPs relating to the management of hazardous substances in workplaces.

Safe Work Instruments (SWI)

Intended to circumvent protracted legislative amendments, SWIs are being mis-used as replacements for ACoPs. Developed in isolation without meaningful industry consultation and resorting to legal language more confusing than the regulations, SWIs add to the reader's difficulty. The chemical sector considers relevant SWIs as poorly written, redirecting readers to multiple references (some pre-2017), contributing to the complexity and difficulty of identifying compliance obligations.

Recommendations:

- Reinstate key industry ACoPs while reviewing the use of SWIs.
- Establish a catalogue of SWIs indexed by the key subject on the WorkSafe NZ website.

Summary of Chemical Association Position on the Bill

The Health and Safety at Work Act (HSWA) does not require major modification, however points of pain for industry sectors require urgent attention.

Major, well documented obstacles frustrating the achievement of the required workplace chemical management performance standards include:

- Confusing responsibilities and division of labour between government agencies.
- Prescriptive and inflexible regulations.
- Largely ineffective WorkSafe NZ enforcement capability, compounded by the failure to engage with and benefit from, chemical industry expertise and resources.
- A failing compliance certification capability which requires urgent action.
- Discarding demonstrably successful HSNO initiatives, especially the Approved Handler qualification, together with Approved Codes of Practice.
- Mis-use of the Safe Work Instruments process to vary site performance and compliance requirements.

- Inconsistent interpretation of site compliance obligations due to a lack of common upskilling of workplace inspectors and compliance certifiers.
- The absence of a definition of 'critical risk' compounded by the intention to create a two-tier category which sacrifices consistency and will further complicate compliance obligations.

NB: Chemicals are present in every one of New Zealand's 600,000 businesses, virtually all small to medium sized enterprises, lacking the in-house technical capability to safely manage their chemical inventory.

Support from suppliers with product stewardship initiatives, complimented by chemical association products and services, will help WorkSafe NZ to carry out their new role.

Thank you.