Regulatory Impact Statement

Additional decisions to improve New Zealand's Workplace Health and Safety Regulatory Framework

Agency Disclosure Statement

1. This Regulatory Impact Statement (RIS) has been prepared by the Ministry of Business, Innovation and Employment (MBIE).

2. It provides an analysis of options to identify the most appropriate means of supporting the new Health and Safety at Work Act (the new Act) in relation to five work-related matters:
    - General risk and workplace management
    - Worker participation, engagement and representation
    - Work involving asbestos
    - Work involving hazardous substances; and
    - Major hazard facilities

3. These five sets of regulations are often referred to as the phase one regulations. The majority of these regulations are due to come into force alongside the new Act on 4 April 2016.

4. The RIS also considers the approach to offences and penalties, and infringement notices and infringement fees under the regulations which are a key component to encouraging compliance with and enforcing the new regulatory regime.

5. Finally, it notes that regulations regarding petroleum, mining and adventure activities that were recently made under the Health and Safety in Employment Act 1992 will be adapted and transferred into the new regulatory regime. The transfer of these regulations is also being done as part of the first phase of regulations under the new Act.

Parameters for development of options

6. The options in this RIS address more detailed design decisions that are required to implement some of the commitments in *Working Safer*, the system-wide reform of the workplace health and safety system. *Working Safer* was released in August 2013 and is the Government's response to the recommendations of the Independent Taskforce on Workplace Health and Safety (the Taskforce). The Taskforce was established in 2012 to advise on possible ways to achieve the Government's target of a 25 percent reduction in serious injuries and fatalities in the workplace by 2020. This target is both the driver and broader policy objective behind the analysis in this paper. A copy of *Working Safer* is available at: http://www.mbie.govt.nz/info-services/employment-skills/workplace-health-and-safety-reform/document-and-image-library/safety-first-blueprint.pdf.

7. High-level policy decisions that support and direct the analysis in this RIS are considered in the RIS *Improving New Zealand's Workplace Health and Safety System*, a copy of which is available at: http://www.treasury.govt.nz/publications/informationreleases/ris/pdfs/ris-mbie-whs-jan14.pdf. In this way, the direction and scope of both the issues and feasible policy responses in this RIS has been limited.

8. Relevant policy decisions previously agreed to by the Government will not be revisited (although appropriate context of those decisions is acknowledged and built into the status quo). One of those decisions is the adoption of a new regulatory framework for work health and safety, based on the Australian Model Law. This is reflected in the new Health and Safety at Work Act, which was recently passed by parliament.

9. To complete the new regulatory framework for work health and safety, the new Act will be supported by regulations, Approved Codes of Practice, and guidance. A two-phased approach is being taken to the development of this material. The five work-related matters, which are the subject of this RIS (as per paragraph 2), are those matters considered in phase one. The second phase will be developed and

consulted on in a staged fashion over a period of two years. Phase two will consider other work-related matters and is soon to be developed and consulted on.

10. Initial policy decisions on the first phase of regulations were sought in March 2015. These decisions were sought across two papers:

    - Policy decisions for regulations to support the new Health and Safety at Work Act – Paper A: Phase one regulation matters of process and content [EGI Min (15)4/12 refers]
    - Policy decisions for regulations to support the new Health and Safety at Work Act – Paper B: Specific regulatory matters [EGI Min (15) 4/13) refers]

11. The first version of this RIS was considered by Cabinet alongside these Cabinet papers. Cabinet agreed to the release of exposure drafts of the phase one regulations. The majority of which have now been released in order to seek further feedback on the detail and workability of the regulations. Following that process, the RIS has been updated to reflect remaining minor policy decisions being sought from Cabinet on the first phase of regulations. The key updates relate to:
    - the approach to offences and penalties, and infringement offences and infringement fees which are key components for enforcing the new regulatory regime – this is included in **sections A6 and B6**.
    - the transfer of recently made regulations on petroleum, mining and adventure activities that need to be adapted to the new Health and Safety at Work Act – the regulatory impact of these regulations was considered at the time those regulations were introduced, as such the regulatory impact of the regulations has not been considered in this RIS. However, for completeness the transfer of the regulations has been noted in the **Implementation section**.

12. Other minor amendments were made but these were not substantive enough to impact on the original regulatory impact analysis, as such these have not been specifically identified.

Limitations on analysis undertaken

13. Quantifiable evidence relating to the costs and benefits of specific proposals has been provided where possible. The analysis does however note gaps in data, such as a lack of reliable data on occupational illness and disease.

14. Quantifiable evidence has not been provided for some proposals that form a small part of a much larger initiative outside the scope of this RIS. The discrete impact of these proposals is often small, extremely difficult to predict, and in some instances, would not make sense. For example, it would be misleading to attribute an anticipated reduction in serious injury and fatality to a single regulatory requirement that works in tandem with others and seeks to support the new Act. The components of the health and safety system are interconnected. Many of the expected benefits of individual proposals will be realised through synergies with other components of *Working Safer*. This is particularly true for the overall success of the regulatory framework.

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A. Status Quo and Problem Definition

Background to decisions being sought

Drivers for change to New Zealand's workplace health and safety system

15. The tragedy at the Pike River mine in November 2010 highlighted significant issues with New Zealand's workplace health and safety system.

16. In December 2010, the Government established a Royal Commission to report on what had happened at Pike River and to make recommendations on what was needed to prevent similar disasters in the future.

17. In June 2012, the Government established an Independent Taskforce to undertake a strategic review of whether New Zealand's workplace health and safety system remains fit for purpose and to recommend practical strategies for reducing the rate of workplace fatalities and serious injuries. The Taskforce was asked to propose a package of measures to achieve the Government's goal of a 25 percent reduction in workplace fatality and serious injury rates by 2020.

18. The Royal Commission and the Independent Taskforce submitted their reports to Government in October 2012 and April 2013 respectively. Both reports express serious concerns with the legislative and regulatory framework governing workplace health and safety in New Zealand.

19. The Taskforce called for "an urgent, sustainable step-change in harm prevention activity and a dramatic improvement in outcomes".[1] Its recommendations encompass acute, chronic (including occupational disease) and catastrophic harm, and the management of hazardous substances and major hazard facilities.

The Government's response – Working Safer: a blueprint for health & safety at work

20. The Government accepted the findings and 16 primary recommendations of the Royal Commission. These have largely been implemented.

21. The Government broadly accepted the Taskforce's recommendations and in August 2013, released its response – *Working Safer*, a comprehensive package of system-wide changes that target a reduction in New Zealand's workplace serious injury and death toll by 25 percent by 2020.

22. Key components of *Working Safer* include:
    a) *Regulatory framework*: Adopt Australian Model Law with adaptions as necessary to fit with the New Zealand context. Along with revisions, use Australian Model regulations and Approved Codes of Practice (ACoPs) to support implementation where practical
    b) *Strategy, leadership and coordination - general*: Legislative backing for Minister for Workplace Relations and Safety to produce and regularly update and report on a workplace health and safety strategy, and legislative requirement for ACC's workplace injury prevention priorities and Workplace Health and Safety (WHS) strategy to take account of each other
    c) *Strategy, leadership and coordination - injury prevention*: WorkSafe New Zealand (WorkSafe NZ) and ACC required to develop a joint work programme of activities, largely drawing on ACC Work Account funds but with a contribution from the Health and Safety in Employment levy funding
    d) *Major hazard facility regulation*: Regulation of facilities where very large quantities of hazardous substances are stored, used, or handled. These regulations will mainly apply to facilities in the chemical and downstream petroleum sectors
    e) *Hazardous substances*: 'Transfer' regulation of hazardous substances in workplaces to WHS legislative regime and make operational and legislative improvements to the Hazardous Substances and New Organisms (HSNO) regime. HSNO regime continues to regulate hazardous substances that may affect public health and the environment. WHS legislation regulates the safe use, handling, storage, and

[1] Executive Report of the Independent Taskforce on Workplace Health and Safety. (2013) page 3

manufacture of hazardous substances that may affect the health and safety of workers and other persons (from the work carried out)

f) *Worker participation*: Adopt Australian Model Law approach but with changes - e.g. omitting workplace entry permits and mandatory issue resolution process

g) *Financial incentive programmes*: Increase flexibility in Accident Compensation Act with respect to incentive programmes by replacing prescription in the Act with principles; develop Safety Star Rating scheme; and review role of existing incentive programmes.

Analysis of these decisions is summarised in the regulatory impact statement *Improving New Zealand's Workplace Health and Safety System* (hereafter referred to as the initial RIS).

A new regulatory framework for work health and safety: progress to date

23. The development of a new regulatory framework for work health and safety, based on the Australian Model Law, is underway:
    - The Health and Safety Reform Bill (the Bill), introduced to Parliament in March 2014, has now been passed. The Bill established the new Health and Safety at Work Act (the new Act), which will replace the Health and Safety in Employment Act 1992 (HSE Act) and the Machinery Act 1950.
    - The Government has agreed to the development of a suite of regulations, ACoPs, and guidance material – based on the Australian Model Law – to support the new Act [CAB Min (13) 24/10-13 refers]
    - A two-phased approach is being taken to the development of regulation and supporting guidance material: the first phase of regulation (and guidance) is intended to be in place when the new Act comes into force to enable the majority of the new regulatory framework to be in place on day one; phase two is required to come into effect within two years of the new Act coming into force.

24. This RIS addresses issues considered in phase one regulations and in doing so, determines some of the more detailed design decisions required to implement *Working Safer* initiatives a, d, e, and f in paragraph 17:

Options will consider how to:	This is required to successfully implement:
effectively design regulation covering **general risk and workplace management** to support duty holders in complying with their general duties under the new Health and Safety at Work Act	initiative *a) Regulatory framework*
support **worker participation, engagement, and representation** provisions in the new Health and Safety at Work Act to achieve more effective worker participation	initiative *a) Regulatory framework and f) Worker participation*
improve the management of **work involving asbestos** to reduce the long-term burden of asbestos-related disease	initiative *a) Regulatory framework*
improve the management of **work involving hazardous substances** to reduce the rates of injury and disease from work involving hazardous substances	initiative *a) Regulatory framework* and *e) Hazardous substances*
effectively design a regulatory regime for **major hazard facilities** to prevent, and mitigate the effects of, major accidents	initiative *a) Regulatory framework* and *d) Major hazard facility regulation*
effective enforcement of the new regulatory regime through proportionate enforcement mechanisms including ***offences and penalties, infringement offences and fees.***	initiative *a) Regulatory framework, e) Hazardous substances, d) Major hazard facility regulation and f) Worker participation*

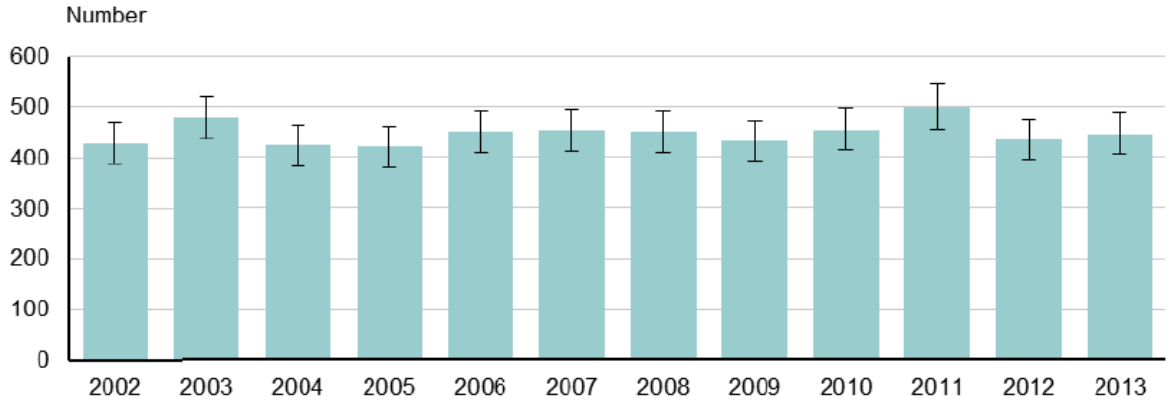
25. The following sections describe problems relating to the current work health and safety system and regulatory framework, generally, and then specifically in relation to the five work-related matters to be addressed: general risk and workplace management; work involving asbestos; worker participation, engagement and representation; work involving hazardous substances; and major hazard facilities. Where

the direction and scope of feasible policy responses has been limited, this is acknowledged and built into the status quo.

Strengthening New Zealand's workplace health and safety system

26. New Zealand's rates of workplace harm have not been declining rapidly enough to meet the Government's target of at least a 25 per cent reduction by 2020. *Figure 1* shows that the number of serious work related injury has varied around a reasonably static mean over the past decade.

Figure 1: Serious (fatal and non-fatal) work-related injury
Number of injuries
2002-13



Source: Statistics New Zealand (2014) *Serious Injury Outcome Indicators: 2000-13.* Statistics New Zealand, Wellington.[2]

27. Further data illustrating the high social, financial, and personal cost of poor workplace health and safety outcomes can be found in the initial RIS and *Working Safer.*

28. *Working Safer* affirms that New Zealand's serious injury, fatality and occupational disease rates have been unacceptably high, and unlike our trading partners, not showing improvements; there is seen to be an inefficient weighting placed on risk reduction given the costs imposed.[3] Implementation of the *Working Safer* reforms has begun, but is still in its early stages.

A new regulatory framework for work health and safety

Problems with our current regulatory framework – an incomplete implementation of the Robens approach

29. The Taskforce and the Royal Commission identified that our current regulatory framework is too complicated, not comprehensive, and is insufficiently underpinned by regulations and guidance to make the HSE Act as effective as intended. Government agreed with this assessment in bringing in the *Working Safer* reforms and in particular, committing to the development of a new regulatory framework, based on the Australian Model Law [CAB Mins (13) 24/10 and 24/11 refer].

30. The current suite of regulations that underpin HSE Act are a piecemeal collection of legacy requirements carried over from the various prescriptive regimes that the HSE Act replaced in 1992 (some of which had been in place since the early 1900's), along with ad hoc additions made to address specific concerns as they arose. As a result, current regulations lack a coherent, logical structure, are weak and outdated in places, and contain gaps (specific examples of these shortcomings are provided in sections A1 to A5).

[2] The error bars take into account the random nature of injury and provide an indication of reliability. Data for 2013 are provisional. Data is provided from 2002 onwards because the data from 2000 and 2001 are affected by the privatisation of ACC.
[3] "New Zealand's rates of serious injury and fatality and occupational disease are too high, costing us an estimated $3.5 billion or more annually, as well as taking a huge social toll", *Working Safer,* page 6.

31. The lack of appropriate clarity and certainty in regulation and guidance is particularly problematic because the HSE Act follows a format commonly known as the Robens approach. The Robens approach provides for a general duties framework within the primary legislation, ensuring a broad coverage of work and workplaces. The all-encompassing nature of the general duties means that they do not quickly date and provide flexibility over time. Regulation and non-statutory guidance – which can be more easily updated and amended – is necessary to clarify how these performance-based general duties are to be met in specific circumstances. This is particularly relevant for high-risk industries and hazards.

32. As affirmed by both the Taskforce and the Royal Commission, our implementation of the Robens approach has been weak; the detail of how broad general duties, at Act level, are to be met, and more specific obligations, is missing in some places and in others, incorporated in an ad hoc manner. This has had an adverse impact on compliance with legislative requirements as well as on the health and safety of the workforce.

33. The Robens approach remains the preferred method for regulation of work health and safety across many Commonwealth jurisdictions, with both Australia and the United Kingdom confirming this approach after recent reviews of their work health and safety laws. The decision, in the initial RIS, to closely model our regulatory framework for work health and safety on the Australian Model Law (the most recent iteration of the Robens model) confirms that a properly implemented Robens model is the best way forward for New Zealand.

A1. General risk and workplace management regulations

The existing regulatory regime for general risk and workplace management

34. The management of risk and the general management of workplaces is currently regulated by a mixture of requirements sitting at Act and regulation level. The HSE Act provides detail about the hierarchy of controls (eliminate, isolate, minimise) for managing hazards (and in turn, managing risks[4]). Current regulations cover: facilities required for the health and safety of employees; precautions to be taken with particular hazards; the work of young people particularly in hazardous workplaces and circumstances such as night work; and agricultural workers' accommodation. Some of the current regulations have general application to all workplaces (e.g. facilities and employment of young persons), and others refer to specific matters (e.g. containers of liquids). The broad purpose of these regulations is to help remove the guess work for duty holders in knowing what they need to do to comply with their primary duty of care in the HSE Act, which is necessarily stated in broad terms.

Status quo: Relevant provisions under the new Act

35. Given the decision in the initial RIS to use Australian Model regulations, where practical, to support the new Act, the task is to determine how to design general risk and workplace management (GRWM) regulation (drawing on both current requirements and Australian Model regulations), while also acknowledging that other instruments – such as ACoPs and non-statutory guidance – can provide support too. Some of the 'problems' to address are a natural consequence of replacing the HSE Act – the terminology and architectural structure of the new Act does not necessarily align with existing regulatory requirements. There are also problems with existing requirements, relating to gaps in coverage and a lack of clarity. Table 1 outlines these issues, which are addressed in section B1 of the options analysis.

[4] The HSE Act focuses on the tangible management of hazards and does not directly refer to 'risk'. Though not explicitly referred to, risk management is inherent in the process required by the HSE Act because duty holders are required to take 'all practicable steps' to manage hazards, which involves taking into account the *likelihood* of harm occurring.

Table 1:

GRWM regulations: issues to be addressed	
1i.	***Providing clarity on managing 'general' risks to health and safety, to support the primary duty of care in the new Act*** Under the new Act, the primary duty of care – to ensure work health and safety[5] - is achieved by managing risks in the workplace by: *eliminating* the risks so far as is reasonably practicable, or if elimination is not reasonably practicable, *minimising* the risks so far as is reasonably practicable. Currently, the primary duty in the HSE Act is underpinned with steps that an employer must take to manage 'significant hazards' in the place of work. The structuring and application of this approach is not considered the best means of supporting the new Act or the new regulatory framework. In particular, the "hazard" terminology used is inconsistent with that of the new Act, which focuses on the management of "risks".
1ii.	***Gaps in coverage – health and safety risks not covered by the regulatory framework in a measured and articulate way*** • Some activities and/or situations of particular risk are not explicitly referred to in the regulatory framework, or are covered indirectly in a way that lacks clarity and proportionality, and dealt with by duty holders in inconsistent ways. Furthermore, clearer obligations apply to activities and/or situations of similar risk (i.e. degree of regulation not applied consistently in some circumstances). Remote or isolated work is not referenced in regulation but is identified by some as a "significant hazard" and managed accordingly; a lack of clarity surrounds expectations in relation to emergencies or disasters – natural or otherwise; and current regulation includes requirements in relation to 'raised objects' but not falling objects. For some businesses, managing these risks is already business as usual, while others are uncertain about what and how much they should do in particular circumstances. • Under the new Act, the health of workers and the conditions at the workplace are required to be monitored to ensure health and safety.
1iii.	***Duplication and ineffective structuring of current requirements for the provision of facilities, when placed in context of the new Act*** Some requirements in current HSE regulations, regarding the provision of facilities, are packaged in a way that does not complement the new Act in the most effective way. There are areas of overlap with the new Act. For example, under the new Act are requirements in relation to the provision of accommodation for workers, while current HSE regulations stipulate specific requirements regarding the accommodation of agricultural employees. There are also elements of detail that could be sensibly repackaged or dealt with at a higher level, to provide for health and safety standards in a more comprehensive and holistic way. For example, separate regulations currently exist for quite specific matters, including humidity, air velocity, radiant heat and drinking water.
1iv.	***Gaps in coverage – the scope of current prohibitions on young people performing certain types of high-risk work is inconsistently applied*** Currently, HSE regulation prohibits young people (persons under the age of 15) from performing certain types of high-risk work (such as forestry and construction), but there is no parallel prohibition for the use of hazardous substances, which is, in some circumstances, considered of equally high-risk. This provides mixed messages to business about appropriate working arrangements for young people.

[5] The new Act includes a primary duty of care that requires all persons conducting a business or undertaking (PCBUs) to ensure, so far as reasonably practicable, the health and safety of those carrying out work and other persons who could be put at risk from the work carried out. This duty applies to all types of work and all workplaces.

A2. Worker participation, engagement, and representation

Status quo: Worker participation under the New Act

36. Involving workers in health and safety matters is a key part of making workplaces safe to work in. The commitment to adopt the Australian Model Law approach to worker participation, and underpin the legislation with regulation, ACoPs and guidance, recognises that our current regulatory framework for worker participation is inadequate.[6]

37. Part 3 of the new Act broadly follows the Australian Model Law approach to worker participation – all businesses have a duty to engage with workers on health and safety matters. In addition, they are required to have effective practices that give workers the opportunity to participate in improving health and safety in the business. The new Act does not, categorically, specify what these practices must look like but does provide a trigger for systems of Health and Safety Representatives (HSRs) and Health and Safety Committees (HSCs). HSRs have a right to attend certain training, and the relevant Person Conducting a Business or Undertaking (PCBU) must comply with any prescribed requirements relating to access to training for HSRs.

A need to back up worker participation under the new Act with regulation, ACoPs and guidance

38. Worker participation provisions in the new Act require the support of regulation and guidance, without which, the worker participation system will lack clarity, checks and balances, and enforceability. Moreover, some of the provisions that sit at the Act level in the Australian Model Law were not included in our new Act, on the basis that because they concern procedural matters, they may sit better in regulation.

39. The task is to address the regulatory design of some areas, which the new Act leaves to be prescribed under regulation. These are outlined below in table 2 and considered in section B2 of the options analysis.

Table 2

Worker participation, engagement, and representation: issues to be addressed	
2i.	***Any process-based requirements to support systems of HSRs*** Should a business use HSRs as a way of meeting their worker participation duties under the new Act, there are related procedural matters, intentionally left out of the Act, requiring consideration. To help ensure the enforceability and credibility of the worker participation system, it is important that the parties involved are clear about their obligations and rights, and that consequence of non-compliance is set out. This is particularly important given the strengthened statutory role of HSRs, provided for in the new Act. For example, relying on the new Act alone, it is possible for the PCBU to nominate or appoint someone into the HSR role. This could lead to the HSR performing their function with the PCBU's best interests in mind, instead of the workers who they are meant to represent. As a result, workers may not have confidence in their representative, and may be less likely to report any health and safety issues.
2ii.	***Any process-based requirements to support systems of HSCs*** Should a business use HSCs as a way of meeting their worker participation duties under the new Act, there are related procedural matters, intentionally left out of the Act, requiring consideration. To help ensure the enforceability and credibility of the worker participation system, it is important that the parties involved are clear about their obligations and rights, and that consequence of non-compliance is set out. For example, without additional parameters, it is feasible that a HSC could be made up of people who are not workers and rarely meet together, undermining the purpose of HSCs as intended by the new Act.
2iii.	***The design of HSR training*** Regulations need to specify the requirements for appropriate HSR training. Although not compulsory, the new Act (sections 93 and 107) requires that to issue provisional improvement notices or direct work to cease, HSRs must complete training prescribed by or under regulations.

A3. Work involving asbestos

[6] Refer to page 11 of the initial RIS, and pages 34-35 of *Working Safer*

Market failure: a rationale for a robust regulatory framework

40. Asbestos has been widely used throughout the world, particularly in building and insulation materials. Inhaled asbestos fibres can remain in the lungs for long periods and can cause serious lung disease including asbestosis, lung cancer, pleural thickening and mesothelioma. These diseases are associated with all forms of asbestos and have long latency periods, in the order of 10-50 years.

41. Asbestos in workplaces is not easy to reliably identify or rule out. This information gap is exacerbated by the significant time lag between a worker's exposure to asbestos and the onset of an occupational disease, which may be attributable to multiple factors, both work and non-work related. These inherent characteristics mean that risks arising from exposure to asbestos in the workplace are unlikely to be effectively managed through performance based duties in legislation; asbestos poses health risks that require a robust regulatory framework.

Harm caused by asbestos exposure – the current scale of the problem

42. The average latency before diagnosis for most cases of asbestos-related deaths in New Zealand is over 40 years from first exposure. Mesothelioma deaths have risen from generally less than 10 per annum, prior to 1980, to an average of 90 per annum over the last decade.[7] This means that most current cases occurred before the mid-1970s.

43. Based on confirmed diagnosis and post mortem results, it can be inferred that 170 of the estimated 600 to 900 deaths from workplace disease in New Zealand in 2010 were due to asbestos exposure, making it the single biggest cause of work-related disease mortality.[8] This estimate is considered conservative, and corresponds to the lower limit of epidemiologists' estimates, which range from 170 to 300 deaths per annum.[9]

44. Comparing the rise in the use of asbestos to the peak in the mid-1970s with the incidence of disease suggests the current levels of asbestos-related deaths are the peak of what epidemiologists refer to as a "second epidemic" (post WWII) in the western world, and confirms that the New Zealand pattern and incidence is consistent with that of Australia and the United Kingdom.

Status quo: the current regulatory regime for work involving asbestos

45. The development of regulation to address health risks associated with asbestos in New Zealand can be summarised as follows:
    - The first regulations for the handling of friable asbestos[10] were passed in 1978, after awareness of asbestos as a workplace health hazard became much more prevalent in New Zealand.
    - Detailed controls on the removal of asbestos were introduced in 1983, and certificates of competence have been required for asbestos removalists since 1986.
    - The importation into New Zealand of three forms of raw friable asbestos fibre – amosite, crocidolite and chrysotile – was prohibited in 1984 (amosite and crocidolite), and in 1999 (chrysotile). There is currently no ban on the importation of asbestos-containing products (ACPs).
    - Today, regulations for work involving asbestos place duties on employers, principals to contracts, and persons in control of places of work where there is work involving asbestos. The WorkSafe NZ publication *Guidelines for the Management and Removal of Asbestos* expands on the requirements set out in regulation and provides guidance for employers and others on the procedures to follow when working with asbestos and ACPs.

Assessing the current and future areas of health risks associated with asbestos

[7] WorkSafe New Zealand, 2014: *Asbestos and other occupational lung diseases in New Zealand*.
[8] MBIE, 2013: *Work Related Disease in New Zealand: the State of Play in 2010.*
[9] This range reflects the uncertainty in determining the prevalence of other asbestos-related diseases (particularly lung cancer and asbestosis), for which the level of diagnosis and/or ensuing causal links to asbestos are much lower. The upper limit of 300 is inferred from a broad correlation between the incidences of different types of asbestos disease, established by epidemiological studies in New Zealand and Australia.
[10] Asbestos is more harmful when it is 'friable'. The term 'friable' refers to asbestos that under ordinary conditions can be easily crumbled (i.e. the potential to release asbestos fibres) (Asbestos Regulations 1998, Clause 2).

46. The ongoing development of asbestos regulation over the years has changed the nature of the health risks associated with asbestos; while some health risks are decreasing, others are increasing. Over time, risks associated with the handling of raw or friable asbestos has essentially been eliminated. Today, contact with asbestos during its removal, or where it already exists in the workplace remain the predominant risks. In particular:
    - Large quantities of ACPs, and quantities of more hazardous friable and spray coating types of asbestos remain in the built environment. These will present hazards by degrading on exposure to the weather, through maintenance work, and through its demolition or removal. This is for a variety of reasons, including that there are no border controls for asbestos, no requirement to declare asbestos content, and anecdotally, products certified at origin as asbestos-free but containing asbestos are entering New Zealand.
    - 'Non-friable' composite/bonded materials such as asbestos cement sheeting and roofing materials, and plaster materials are now degrading and will progressively create a greater risk over time. For example, water damage, physical impact, or mere aging, can cause ACPs to break down, making the release of fibre more likely.

47. A significant group of workers are at risk from exposure to these hazards, including workers engaged in removing asbestos and trades workers who are undertaking asbestos-related work. Carpenters, plumbers and electricians are together responsible for 67% of the notified asbestos disease cases during the period 1992-2013.[11] Tradespeople are a group at heightened risk, particularly because, unlike asbestos removal workers, they are not generally trained in identifying asbestos and their contact with it may not be seen as an obvious risk.
    - Approximately 300 people currently hold certificates of competence for asbestos removal work. The majority of these people are likely to carry out this work on a regular basis.
    - The number of electrical, plumbing, and other tradespersons can be estimated as several thousand, with varying potential for regular exposure, but generally at considerably reduced levels to those experienced by current sufferers (i.e. to those exposed prior to the promulgation of asbestos awareness and subsequent controls).
    - DIY workers are more difficult to quantify and the degree of risk will vary considerably.

48. There are no statistics kept on the incidence of asbestos in New Zealand buildings but an estimate of the minimum distribution of asbestos in the built environment on a national scale can be made by inference to the level of asbestos found in the demolition and rebuilding in Christchurch, following the 2010 earthquakes. The Christchurch rebuild has seen a more than ten-fold increase in the annual numbers of all categories of notifications and applications to WorkSafe New Zealand (previously MBIE) to date.[12] With up to 40,000 homes containing some form of asbestos, work involving asbestos has become an increasingly important aspect of the rebuild. As of 2009, the population of Christchurch was approximately 11.6% of the total New Zealand population. Assuming the distribution of asbestos in the built environment parallels to the distribution of the population, the volume of remaining asbestos is, at a minimum, 8.6 times that experienced in Christchurch, albeit over a much longer time period.[13]

Problems: Areas of the current regulatory regime that do not adequately address the current and future areas of health risks associated with asbestos

49. Rates of disease caused by past exposure to asbestos (including that yet to be diagnosed) cannot be influenced by making changes to current requirements. Given the progression of our regulatory response

[11] WorkSafe New Zealand, 2014: Asbestos and other occupational lung diseases in New Zealand.

[12] The number of notifications for "restricted work" increased to approximately 600. Increases in the number of exposure notifications, enquires concerning identification and removal, disposal, and applications for certificates of competence for removal work followed a similar pattern.

[13] This method of extrapolation is of course a simplification. The actual level of remaining asbestos is likely to be much greater because notifications understate the number of buildings containing asbestos. This was highlighted in the Canterbury Home Repair Programme. Moreover, any asbestos in buildings that were not damaged or are still awaiting demolition will not be reflected in the rebuilding experiences to date. Conversely, the fact that the "housing stock" in Christchurch is generally older than other parts of New Zealand is ignored.

to date, and recognising the long-lag between exposure and onset of disease, it can be inferred that the incidence and cost of asbestos-related disease will diminish over time without any further regulatory intervention (many of the buildings constructed with asbestos will be refurbished or demolished over the next 40-60 years, assuming commercial buildings have an average economic life of 80 years). Nonetheless, the necessary assessment, management, and possible removal of asbestos in the built environment over the coming decades will present significant harm to workers and others if not dealt with appropriately.

50. The current worldwide trend is towards a complete ban on the importation of asbestos-containing products and tighter controls applying to work with asbestos. These international developments have left New Zealand out of step with many of our most relevant comparators, including Australia, the European Union (EU), and the United Kingdom (UK). Australia has experienced an epidemic of asbestos-related disease over recent decades similar to that in New Zealand and has responded with comprehensive regulations and supporting infrastructure.

51. Our current regulations for work involving asbestos – the status quo – do not adequately target the prevalent hazards identified in paragraph 41. The problems with the operation of the current regulations are summarised below in table 3. These will be addressed in section B3 of the options analysis.

Table 3

Work involving asbestos: issues to be addressed	
3i.	***Poor awareness and identification (from both businesses and the regulator) regarding the presence (or likely presence) of asbestos or asbestos-containing material in the workplace*** While businesses are required to systematically assess and then address hazards presented by, asbestos, *the incidence and location of asbestos in the built environment is not clear*. This creates difficulties in holding businesses' management of hazards associated with asbestos to account, which, coupled with a lack of information, restricts peoples' ability to incorporate asbestos-related health risks in their decision making. • Some workplaces, as a matter of good practice, maintain an asbestos register; however there is no legislative requirement to do so. In particular, maintenance workers are generally not trained in asbestos, meaning they often do not recognise it on a worksite and may unknowingly expose themselves and others. People are also occupying buildings where there is asbestos that is deteriorating. In these situations, asbestos may be inappropriately managed. • Requirements for identifying asbestos (e.g. building assessments and surveys, or treating buildings being demolished or altered as potentially containing asbestos) apply in Australia and the United Kingdom, to plant and structures built prior to the ban on the importation and export of ACPs coming into effect (2003 and 2000 respectively). As no corresponding ban exists in New Zealand, establishing the reach of any 'asbestos identifying measures' will be more difficult. Nonetheless, it is considered important to provide a clear demarcation for business and have a reasonable degree of certainty that the risk of asbestos not being identified and managed is minimal.
3ii.	***Inadequate coverage of controls*** *- the types of work activity that are within scope of controls on asbestos-related work is too limited, and the degree of prescription for those controls is, in some instances, weak.* Specific controls apply to work involving asbestos if that work is considered 'restricted work' (e.g. licensing, competency requirements, exposure standards, and standards for asbestos removal work). Numerous types of maintenance, and removal and repair work that involve contact with asbestos for trades and other workers are not within scope of these controls. In particular, 'non-friable' asbestos is generally excluded from the definition of 'restricted work'.[14] Given much of the 'non-friable' asbestos in place is degraded and crumbles easily, posing an increased health risk over time, the distinction made between 'friable' and 'non-friable' asbestos is blurred and unhelpful. The guidance

[14] Except for when certain actions (e.g. use of a power tool) cause 'non-friable' asbestos to become friable.

Work involving asbestos: issues to be addressed	
	and prescription of work processes, given the risks at stake, is also considered inadequate. For example, workplace exposure standards are out of step with the Australian standard. Information and/or requirements regarding appropriate management of asbestos is limited, as are checks and balances on the adequacy of said management.
3iii.	***Inadequate standards of licensing and competency requirements*** • Standards of competency and processes are inconsistent from centre to centre, from one operator to another, and with those in Australia. On balance they are often lower than in Australia. They only apply to individual practitioners and this undermines the accountability, and consistency of standards by removalists. • There are deficiencies in the capability and training available to support the effective operation of the current licensing regime; barriers to entry and required levels of competence are low. • Currently there are no regulatory mechanisms to ensure that adequate training standards are achieved consistently. There is a need to consider how training standards are to be set and monitored.

52. It is extremely difficult to estimate the costs associated with work involving asbestos. Current information regarding the costs associated with asbestos exposure (mortality and morbidity) is not cogently linked to the future scale of the problem. The reason for this is two-fold. Firstly, because asbestos related diseases operate with a long lag, historical rates of disease relate not to our current regulatory regime, but rather, to an era where asbestos was still widely used and where controls on its use were non-existent or limited. Secondly, historical rates of disease largely reflect risks that have dissipated over time (e.g. handling of raw asbestos), and are a poor reflection of those emerging risks that are likely to progressively increase over the coming decades (e.g. degrading materials). It is, however, relatively clear that the current regulatory regime does not appropriately target and respond proportionately to these emerging risks. If not addressed, these risks will result in a significant exposure to workers, and, in the case of degrading materials, to others in commercial and residential premises.

A4. Work involving hazardous substances

Status quo

53. The decision to transfer regulation of hazardous substances in workplaces to the work health and safety legislation regime and make operational and legislative improvements to HSNO (initial RIS refers) recognises that the current regime for managing hazardous substances is complex and performing poorly. Currently, businesses that use hazardous substances need to look to requirements under the HSE Act and the HSNO Act and regulations in order to manage work health and safety risks effectively. These two legislative regimes have different objectives[15], which has led to areas of duplication, gaps of coverage, and businesses finding it difficult to understand the interface between the two regimes.[16]

[15] The Hazardous Substances and New Organisms Act 1996 (HSNO) is concerned with human and environmental protection. It takes a substance centric and complete life-cycle approach to management of hazardous substances, regardless of where they are used. HSNO is administered by the Ministry for the Environment and the Environmental Protection Authority. Conversely, the HSE Act is concerned with the health and safety of persons at work and other persons in the vicinity of the workplace. This is administered by MBIE.

[16] The relevant requirements for businesses that use hazardous substances are fragmented across many different instruments. Currently, there are fifteen sets of HSNO regulations, nine HSNO transfer notices, approximately 200 HSNO group standards, and about 9,000 approvals for individual substances that a business using a hazardous substance may have to comply with.

The problems with non-compliance of existing HSNO requirements

54. The complexity and lack of clarity of the current regime is considered an important factor behind significant non-compliance: of a sample of New Zealand businesses, 75 per cent were not fully complying with HSNO's key risk management controls.[17] This is a problem because there are significant costs associated with harm to human health arising from hazardous substances. It has been estimated that acute exposures to chemicals result in 15 to 60 unintentional deaths and 1,200-2,500 unintentional hospitalisations every year (although note that a number of these are non-work related). The costs associated with these are estimated to be between $45 and $170 million[18]. In addition, it has been estimated that chronic occupational exposures to hazardous substances result in 438-675 deaths every year. The majority of these were attributed to cancer, with associated costs of between $876 million and $1.3 billion per annum.[19]

The problems with existing HSNO requirements and current practices

55. Consolidating and simplifying (where possible) existing HSNO controls into the new regime alongside other sources of work health and safety risk will simplify the process for business and should lead to higher levels of compliance, but it does not fully address some of the deficiencies in existing HSNO requirements, and problems with current practices. This RIS addresses those problems. Table 4 outlines the problems that are addressed in section B4 of the options analysis.

Table 4

Work involving hazardous substances: issues to be addressed	
4i.	***Information gaps regarding businesses' understanding of what substances are present, or are likely to be present, at the workplace*** To safely manage hazardous substances a business needs to know what substances are present, or are likely to be present, at the workplace. Currently, businesses are strongly encouraged through EPA and WorkSafe guidance documents to make a list (inventory) of all of the hazardous substances used, manufactured, handled, or stored at the workplace. While many businesses do this, some do not. When hazardous substances are not properly identified, it is difficult to comply with current requirements under the HSNO Act and effectively assess and manage associated risks of exposure.
4ii.	***Information gaps regarding workers' understanding of both the harm that can be caused by the hazardous substances they use and how they can protect themselves*** It is critical that workers understand both the harm that can be caused by the hazardous substances they use and how they can protect themselves. Currently, this information is provided via safety data sheets (SDS). However, the technical information in SDS is often difficult for workers to understand, constraining workers ability to effectively manage risks associated with the use of hazardous substances.
4iii.	***Excessive requirements for the labelling of hazardous substances in the workplace where they are not supplied to another party*** Labels provide information on the hazards of substances so they can be managed safely. Current labelling requirements require importers, manufacturers, suppliers to sell products that are correctly labelled, and persons in charge of a workplace to ensure the label stays on the container and remains readable. While the detail of these requirements appropriately reflects the risks associated with the sale and/or supply of hazardous substances, it is considered disproportionate, and ineffectively targeted at, the lower risks associated with the use of hazardous substances that will not be supplied beyond the workplace. This places a relatively large onus on manufacturers or end-users decanting substances into smaller containers for use within the workplace and faces low compliance.
4iv.	***Restrictive certification requirements for the testing of gas cylinders*** Currently, gas cylinder testing can only be undertaken by an individual with periodic tester certification. This system of certification is considered to impose undue costs on gas cylinder testing station (there are approximately 80) and lack flexibility.

[17] Other factors behind non-compliance include: a lack of adequate education and guidance for end-users; a general lack of capability at all levels (the regulator, firms, workers' representatives, workers); low frequency of inspections and monitoring; a lack of adequate and graduated enforcement tools; and a lack of targeted prevention activities and incentives.
[18] Collins, (2005) Hazardous substances compliance and enforcement project: Risk landscape and compliance assessment.
[19] Ibid.

A5. The regulation of major hazard facilities

Inadequate regulatory oversight of major hazard facilities

56. Facilities where very large quantities of hazardous substances are stored, used, or handled have the potential to generate catastrophic events: major accidents that could cause significant harm to people, business, and the local and national economy. Internationally, best practice is to regulate these high hazard facilities to reduce the likelihood of a major accident and to minimise damage if one does occur. This recognises that the incentives provided by the private market, to these facilities, to prevent these 'high consequence, low frequency' events are often inadequate. In the event of a large-scale disaster, the cost imposed upon the facility responsible is likely to differ substantially from that imposed on the wider public, and as a consequence, risk mitigation against these catastrophic events is under-supplied by the market. Currently there are no specific regulations that seek to manage these risks in New Zealand[20].

Status quo: commitment to regulate major hazard facilities

57. The initial RIS and *Working Safer* describe the proposed regulatory regime for Major Hazard Facilities (MHF) at a high-level[21]. The MHF regulations will cover industrial facilities that pose potential major hazards to the workforce, to neighbouring facilities and to the wider public due to the quantities and nature of the substances they handle. Typically these are highly toxic, explosive, flammable, self-reactive or oxidising substances. The regime is intended to cover on-site safety for the workforce and provide protection and assurance of off-site safety to the neighbouring communities (including emergency plans and information).

58. This RIS is concerned with the regulatory design of the proposed MHF regime. Table 5 below outlines the issues addressed in section B5 of the options analysis.

Table 5

The regulation of major hazard facilities: issues to be addressed	
5i.	***Establishing which facilities fall within scope of the regime*** The Government has agreed that a facility or proposed facility that stores or processes, or will store and process, a quantity of specified hazardous substances meeting or exceeding the lower threshold must notify the regulator which will determine if a facility is an upper or lower tier MHF, or neither [EGI Min (15) 4/13)]. *The types of hazardous substances captured by the regime and the corresponding threshold quantities applied need establishing to define the scope of the regime's application.* This decision is purposefully limited to thresholds set by well-established models used overseas: in Europe (the *'Seveso'* Directive), the United Kingdom, and Australia [CAB Min (13) 24/11]. It is considered important to align with international best practice in a manner that fits with our business and legislative environment, and reasonable to assume that appropriate risk management of these facilities is sufficiently similar across jurisdictions; the development of our own regulatory framework is discounted as an option unlikely to deliver net benefits.
5ii.	***Information sharing – designing appropriate information sharing provisions*** • In the event of a major accident with off-site impact, it is important that those affected and in a position to manage, and thereby reduce, the adverse consequences are provided with information that allows them to do so. For example, if a major accident does occur, the relevant local council and members of the local community should have an understanding of the (in)actions they should take to eliminate or minimise risks to health and safety. • To give the regime credibility and work effectively as intended, it is important for the public to have confidence that the risks associated with these 'major hazard facilities' are being adequately controlled by operators, and monitored and regulated by the regulator. The extent and nature of information sharing, including whether it is provided proactively or reactively, should bear this in mind.
5iii.	***Recovering the costs of the regime***

[20] New Zealand does have a generic ACoP *Managing Hazards to Prevent Major Industrial Accidents,* published in 1994. More detailed regulation for facilities with major accident potential only extends to mining, upstream petroleum and geothermal sectors.
[21] Refer to page 20 of initial RIS and page 26-27 of *Working Safer.*

The regulation of major hazard facilities: issues to be addressed	
	The initial RIS acknowledged that the MHF regulations will impose additional costs on the operators subject to the regime, and on the regulator, WorkSafe NZ, required to oversee and enforce the regime. In line with established fee setting guidelines, Cabinet agreed that the costs associated with regulating major hazard facilities should be fully recovered from facility operators [EGI Min (13) 24/11]. This is appropriate as sole reliance on the Working Safer levy does not take into account the costs of providing regulatory oversight of major hazard facilities, which is a resource-intensive and specialised activity. *The method for recovering the costs of the regime needs to be established.*

A6. Offences and penalties, infringement offences and infringement fees

59. The Taskforce identified the following issues with the overall enforcement framework under the HSE Act:
    - The compliance and enforcement tools for the regulator are in some places not sufficiently flexible to enable the regulator to promote compliance.
    - The penalties in the HSE Act, and as applied in practice by the Courts, are not providing an incentive for businesses to comply with the Act.

60. Penalties under the New Zealand system are significantly lower than in Australia and fines imposed in HSE Act prosecutions continue to be low. Low fine levels undermine the general deterrent effect and send signals that offending or non-compliance in this area is less serious, or that workplace health and safety is not important. In comparison, the Australian Model Law provides for a new tiered approach to penalties, with higher maximum penalties than the HSE Act.

Status quo: the current offences and penalties, infringement offences and fees

61. The new Act seeks to address the issues raised by the Taskforce by implementing a range of new and existing enforcement tools and compliance mechanisms to enable the regulator, inspectors and the Courts to enforce the regime. It also follows the new tiered approach to penalties.

62. The overall approach to the enforcement of the regime is intended to be proportionate and encourage compliance by allowing for different and graduated regulatory responses depending on the level of the breach and who breached (for example, different level of penalties would be applied to an individual person compared to a corporate entity).

63. In order to enable effective enforcement of the regulations the Act also provides for offences and penalties and infringement offences and fees for breaches of regulatory requirements to be specified in regulations. This approach allows regulations to set a tiered approach which should provide better mechanisms for compliance, as well as proportionate and appropriate levels of response depending on the level of breach. The Act provides:

    - *Offences and Penalties* - that offences established under regulation are category 1 offences and will be subject to Judge-alone trial at the District Court. The Act also provides that regulations can be made to allow fines for offences to be set by regulation up to a maximum of $50,000 (to align with comparable regimes in New Zealand).
    - *Infringement notices and fees* – that regulations identify particular requirements of the Act or regulations as infringement offences, and set associated fees up to a maximum of $12,000 (to align with comparable regimes in New Zealand). Infringements are effectively 'on-the-spot fines' issued via notice by a health and safety inspector to deal with minor breaches of the law. Set fees apply in respect of each regulation identified as an infringement offence – meaning that inspectors do not have any discretion about the dollar amount charged.

64. The current status quo is that no offences and penalties, infringement offences and fees are specified for breaches of regulations. The Act only provides the framework; regulations need to be made to specify the actual offences and associated penalties or fees. In practice, without regulation, the regulator has no ability to issue infringement notices and infringement fees for breaches of regulatory requirements. Additionally, with no specified offences and penalties for breaches of requirements imposed by the regulations, in order to prosecute any breach that may occur the regulator would have to link a breach of the regulatory requirement back to a duty in Part 2 of the Act. Administratively this may prove very difficult and is likely to undermine the intention to have a tiered and proportionate regulatory regime.

B. Analysis of Options against Objectives

65. The elements of the workplace health and safety system are interconnected. Consequently, the policy response in each aspect of the regulatory framework has implications for the other aspects of the regulatory framework and the broader work health and safety system. The policy proposals therefore need to make targeted changes to address specific problems, but must also work together as a package to achieve a step-change in work health and safety outcomes.

66. This section analyses options for each issue identified under the five work-related areas discussed in sections A1 – A6. Options are assessed against the objectives identified below.

Objectives

67. The Government has set a target of reducing the incidence of harm in New Zealand workplaces so that by 2020 the annual rate of fatalities and serious injuries is 25 percent lower than it is today. *Working Safer* also commits to targeting occupational illness and disease and facilities with the potential to cause a major accident (major hazard facilities)[22]. Table 6 outlines other objectives, to support the reduction of workplace harm, in relation to each of the issues addressed in this RIS.

Table 6

Specific objectives relating to each of the five work-related matters	
General risk and workplace management	Provide effective support to ensure people understand, and can comply with, their primary duty of care under the new Health and Safety at Work Act
Worker participation, engagement, and representation	Support a worker participation model which provides for better levels of participation and helps workers to have the knowledge and accountability to keep themselves and their colleagues safe
Work involving asbestos	Reduce the long-term burden of asbestos-related disease
Work involving hazardous substances	Reduce the rates of injury and disease from work involving hazardous substances
Major hazard facilities	Prevent and mitigate the effects of major incidents occurring at major hazard facilities which store or process very large quantities of hazardous substances.
Offences and penalties, infringement offences and fees	Effective enforcement of the new regulatory regime through proportionate enforcement mechanisms including offences and penalties, infringement offences and fees.

68. In order to achieve these objectives, policy options addressing the problems under each of the five areas will be assessed against the following criteria to recognise the trade-offs at stake:
    - **Transparency and certainty**: the duties, obligations and rights of employers and workers are clearly set out and complied with, and the responsibilities and accountabilities of regulatory agencies are clear and understood by both agencies and duty holders.
    - **Cost effectiveness:** compliance and transitional costs are minimised.
    - **Flexibility and durability:** the regulatory regime is flexible and adaptive so that it can readily accommodate change and operate effectively in a dynamic context; and incentives are in place to encourage compliance with regulatory requirements.
    - **Proportionality:** the degree of regulation and regulator's actions are commensurate with risk.
    - **Effectiveness:** contribution to achievement of the Government's target and relevant objective, as per table 6.

[22] These objectives have been specifically highlighted because, while they contribute to our work health and safety performance, they do not necessarily contribute to the Government's 2020 target due to the long-latent nature of many occupational diseases and the rare occurrence of major accidents at facilities where very large quantities of hazardous substances are stored.

69. In general, the expected aggregate benefits, in terms of improved work health and safety outcomes and any other ancillary benefits, such as improved efficiency and productivity, should be greater than the costs of complying with, and implementing the proposals.

B1. General risk and workplace management regulations

1i) Providing clarity on managing 'general' risks to health and safety, to support the primary duty of care in the new Act

Option	Description	Transparency & certainty	Cost effectiveness	Flexibility & durability	Proportionality	Effectiveness	Summary
Status quo – include steps for managing "significant hazards" (sections 7-10 of HSE Act) in regulation	Sections 7 – 10 of the HSE Act details the steps that an employer must take to manage significant hazards in the place of work. The steps are: *identifying, hazards, assessing the hazard, controlling the hazard and monitoring exposure.*	• "Hazard" terminology inconsistent with that of the new Act, which focuses on the management of "risks"[23]. • Lack of clarity as to the situations and/or activities within scope of "significant hazard"	• Lack of clarity may impose unnecessary compliance costs • low-cost (as is current practice) but this may be undermined by its incongruence with new Act	Flexible – describes rather than defines the activities the steps apply to, but misalignment with new Act threatens durability	Theoretically 'significant hazard' provides for actions to be commensurate to harm, but in practice, can be easily misinterpreted or incorrectly applied, with duty holders either not doing enough or being overly cautious.	Compromises effectiveness of regulatory framework's strategic focus on risks and combination of risks, rather than on individual hazards.	Does not effectively support primary duty of care under new Act and compromises the effectiveness of the new regulatory regime.
Option two - Adopt Australian Model Law approach – Adopt risk management process to specified high-risk situations and activities (Australian model regulations 32 - 38)[24]	A structured method PCBUs must follow in identifying how best to control specified risks or situations where either: • There are high stakes involved, or • there are a range of ways to control the risk, the most effective will differ on a case-by-case basis	• Similar obligations to status quo with a change in terminology to focus more on 'risks', in accordance with the new Act • scope of application is clear (i.e. the situations to which it applies are prescribed) • its limited application and relationship to broad provision in new Act has potential to cause confusion	Makes it easier for business to comply with new Act: • Small transitional costs in understanding new approach • Minimal compliance costs for business currently complying • Small administrative cost - Development and maintenance of regulation and associated guidance material	• Prescribing activities within scope may reduce flexibility but its limited application offsets this • Design of process is flexible; form of action to be taken is specified (e.g. *substituting* (wholly or partly) the hazard creating the risk with something that creates a lesser risk, without specifying what that action must look like.	Applies specifically to high-risk situations where the additional compliance cost is outweighed by the benefits. This allows duty holders to 'cut to the chase' rather than focusing on process when there is little additional benefit to be gained by doing so. Less regulatory detail about how to identify hazards.	Complements risk-targeted approach to addressing workplace harm. Improves effectiveness of legislation by providing greater clarity, particularly around assessing and controlling risks, and review measures.	**Recommended option** Effectively provides clarity to support primary duty of care in new Act may be challenges ensuring people understand new approach, but in weighing this against compliance costs, this is better managed through clear information and guidance about risk management rather than 'blanket coverage' approach of option three

[23] A hazard is a situation that has the potential to harm a person. A risk is the possibility that harm (i.e. death, an injury or an illness) might occur when a person is exposed to a hazard.

[24] In the Australian model regulations, this prescribed risk management process applies to a total of eighteen regulated high-risk situations or activities. We intend to introduce this process to cover the first six of these situations: hazardous atmospheres, ignition sources, asbestos, hazardous substances, substances hazardous to health, remote and/or isolated work, and falling objects, with the remainder to be considered in the second phase of regulation development.

Option	Description	Transparency & certainty	Cost effectiveness	Flexibility & durability	Proportionality	Effectiveness	Summary
Option three - Apply prescribed risk management process (as described in option two) **to all situations and activities** (i.e. to all risks)	This is an option put forward by some submitters, in particular, union organisations	Makes clear that all risks must be managed by this process but may prove to be unduly complex when applying to low-risk, well understood, and straightforward hazards.	Likely to impose onerous compliance costs when applied in particular circumstances	Extended scope of process limits flexibility. Restricts ability to readily accommodate change.	Limited – additional compliance costs likely to be disproportionate to risk	Health and safety outcomes may be compromised if "process/hazard spotting" mentality ensues. Compromises performance-based nature of legislation	Overly onerous and does not support targeted risk approach.

1ii) Gaps in coverage – health and safety risks not covered by the regulatory framework in a measured and articulate way

Option	Description	Transparency & certainty	Cost effectiveness	Flexibility & durability	Proportionality	Effectiveness	Summary
Status quo – make no reference in regulation to: remote or isolated work, falling objects, emergency plans, health monitoring of workers i.e. rely on general duties in the new Act at the workplace to ensure these issues are managed effectively	• remote or isolated work is not referred to in HSE regulations, but is, as a matter of good practice, identified by some as a "significant hazard" and managed accordingly • HSE regulations make no reference to falling objects but do place a duty on employers to ensure that support is used under raised objects any employee is under • Emergency plans are not explicitly referenced in current requirements or new Act, but the general duty of the HSE Act does require employers to develop procedures for dealing with emergencies • HSE Act requires the health monitoring of workers when a hazard can only be minimised and not eliminated. This is replaced by the primary duty under the new Act, which requires that both the health of workers and the conditions at the workplace are monitored to ensure health and safety.	For some, managing these risks are already business as usual, but others are uncertain about what and how much they need to do in particular circumstances.	Low cost in terms of implementation but may compromise value from current spend on other initiatives	Flexible as no prescribed way to manage these risks. Given long-lag between exposure and occupational disease, broad health monitoring requirements are not effective in the long run if not complemented by process-based requirements (e.g. storing of information and reporting)	Compromised – required action not commensurate with risk.	Low- maintains gaps in coverage and does not address low performance, in terms of health and safety outcomes, of some system participants	Does not effectively contribute to improved work health and safety outcomes; leaves gaps in coverage

Option	Description	Transparency & certainty	Cost effectiveness	Flexibility & durability	Proportionality	Effectiveness	Summary
Option two – Apply requirements (based on the Australian model regulations) that ensure the effective management of: remote or isolated work, falling objects, emergency plans, the health monitoring of workers	• PCBUs to provide a system of work that includes effective communication with workers carrying out remote or isolated work • Broaden current requirements for "raised objects" to include falling objects, based on Australian model regulations 54 and 55 • require PCBUs to prepare, maintain and implement an emergency plan for their workplace, based on Australian model regulation 43 • prescribe explicit requirements for the health monitoring of workers who may be exposed to a *substance hazardous to health*, including who monitoring is to be carried out by, or under the supervision of, and the reporting and storage of monitoring results, largely based on the Australian model regulations.	Increased clarity ensures that PCBUs know exactly what they should do. Codifies best practice. Increased clarity to help duty holders understand what is required for all substances hazardous to health.	Makes it easier for business to comply with new Act. Compliance costs likely to be small; many submitters considered these as standard business practice and part of the general requirement in the HSE Act to manage hazards to workers. Some added cost will be incurred to businesses that not complying with current requirements.	may reduce flexibility relative to status quo but appropriate flexibility within the framing of the requirements (e.g emergency plans do not have to be lengthy or complex and in the case of small low-risk businesses, can be easily developed using a simple template.) reporting and storage of health monitoring results, by recognising long-latent aspects of associated harms, promotes durability of health monitoring regime Requirements that monitoring can be carried out by, or under the supervision of a competent person (in the case of exposure monitoring) and by a registered health professional (in the case of health monitoring) provides flexibility to address capability issues in the occupational health sector, and in turn supports durability.	Additional requirements are broad enough to be commensurate to risk Regulation applied consistently to risks of similar nature. For example, the scope of health monitoring requirements purposefully extends to substances that are not 'hazardous substances' as defined under the HSNO Act but are hazardous to workers' health (e.g. fine dusts and some heavy metals)	Likely to be most effective. Health monitoring requirements ensure effective identification of workers at risk of, or being exposed to harm and provides for greater data collection of occupational illness. This allows for more effective and targeted decision making.	**Recommended option** Effectively complements new Act. Comprehensive and measured references to risky situations

Option	Description	Transparency & certainty	Cost effectiveness	Flexibility & durability	Proportionality	Effectiveness	Summary
Option three – complement the status quo with guidance material and provide regulation covering the health monitoring of workers only in relation to hazardous substances	Include non-statutory guidance material that describes best practice for managing remote or isolated work, falling objects, emergency plans, and health monitoring to support primary duty under new Act. Prescribe explicit requirements for the health monitoring of workers who may be exposed to *hazardous substances* (within the defined meaning of the term under the HSNO Act) and the reporting and storage of monitoring results, largely based on the Australian model regulations	**Moderate –** provides clarity but guidance is not binding	Minimal cost to business – marginal changes to 'required behaviour' relative to status quo	Provides greater flexibility alongside added clarity and durability than status quo – still allows for confusion over what is safest option. Ineffective incentives to comply with legislative health monitoring requirements (because they differ based on whether substance falls within definition of HSNO Act rather than its capacity to cause harm to health.)	Moderate – Requirements in relation to health monitoring inconsistently applied to work of similar risk.	Moderate – could achieve improved health and safety outcomes but gaps in coverage may limit improvements in occupational health	Guidance, in these circumstances, could provide adequate support but carries risks mitigated by option 2

1iii) Duplication and ineffective structuring of current requirements relating to the provision of facilities, when placed in context of new Act

Option	Description	Transparency & certainty	Cost effectiveness	Flexibility & durability	Proportionality	Effectiveness	Summary
Status quo – support the general duty under the new Act with current HSE regulations relating to accommodation and general facilities for agricultural workers; overcrowding in workplaces; and means to control humidity, air velocity, radiant heat and temperature.	• The general duty under the new Act requires a PCBU to ensure that any accommodation provided to a worker, as part of their job, is maintained so as to not expose the worker to a risk to their health and safety • Current HSE regulations stipulate minimum standards for the provision of facilities such as toilets, drinking water, and areas to eat and rest for workers • Current HSE regulations require employers to ensure that accommodation provided to agricultural employees is made of permanent materials, maintained in good order and condition, and	continuation of what people are used to but some HSE requirements are inconsistent with general duties of new Act and create duplication (e.g. Standards for agricultural accommodation)	Compliance cost may increase because of multiple, and in some places, detailed requirements regarding working environments	Relatively detailed requirements compromise flexibility and durability. There is scope to repackage requirements to promote durability of new Act. separate regulations for quite specific matters that could be dealt with adequately at a higher level (e.g.	Over-regulation – given the structure and framing of rights and duties in the new Act. Not clear why support for workers' rights to suitable accommodation is restricted to agricultural workers. This support is more appropriately addressed at the level of tenancy standards, through	Reasonable. However, detail and duplication could undermine effectiveness of overall regulatory framework.	Could work okay but is not best fit with new Act, i.e. in isolation not necessarily ineffective but could prove to be problematic when placed in the context of the new Act.

Option	Description	Transparency & certainty	Cost effectiveness	Flexibility & durability	Proportionality	Effectiveness	Summary
	contains or has access to facilities (e.g. for washing, drinking, toileting).			specific mention of humidity, air velocity, radiant heat and drinking water could be sensibly dealt under requirements for basic facilities)	the Residential Tenancies Act 1986.		
Option two – Remove specific requirements relating to accommodation and general facilities for agricultural workers; overcrowding in workplaces; and means to control humidity, air velocity, radiant heat and temperature and deal with these matters through general duties at Act level, broader requirements (and in some instances increased clarity) at regulation level, and new guidance material.	• The general duty under the new Act (as per option one) • Australian model regulations that cover the provision of general facilities such as toilets and means of washing and eating; and • Guidance material on providing worker accommodation and other detail in relation to standards of general facilities	Structure and packaging is consistent with new Act Matters are covered by requirements in a more coherent and logical manner, i.e. "streamlined" without reducing standard of care Greater clarity and concise detail where appropriate	Makes it easier for business to comply with new Act: Small costs in understanding the framing and 're-packaging' of requirements Compliance costs should be minimal.	Greater flexibility and durability than status quo due to broadening/'streamlining' of requirements (e.g. general requirements focusing on the suitability of the layout of a workplace should be flexible enough to apply to any situation; specific requirements relating to overcrowding (in which some work places are exempt from) can feasibly be replaced.) Detail is placed in guidance where appropriate	Re-packaging and broadening scope of requirements provides for greater proportionality – standards for agricultural workers are not weakened from status quo while workers in other sectors (such as construction) are also covered. New guidance provides detail to reinforce that actions are commensurate with risk	High – increased clarity and reduction in duplicated regulatory requirements makes regulatory framework more effective at targeting and addressing activity and risk that leads to workplace harm. Extra guidance is key.	Recommended option –best fit with new Act and other general duties. These provisions, along with the new Act, adequately cover these matters, and some detail is better placed in guidance

Option	Description	Transparency & certainty	Cost effectiveness	Flexibility & durability	Proportionality	Effectiveness	Summary
Option three – Hybrid model – • **Complement higher level requirements in Australian Model regulations with specific mention of things such as controlling humidity and air velocity, and over-crowding.** • **Expand regulation of accommodation and general facilities for agricultural workers to include other high-risk industries.**	• The general duty under the new Act (as per option one) • Underpin Australian model regulations that cover the provision of general facilities such as toilets and means of washing and eating with more detailed requirements; and • Expand current HSE requirements which set minimum standards for the accommodation and general facilities for agricultural workers to include other high-risk industries • Guidance material where appropriate	Packaging of requirements poorly structured in places Standards for agricultural accommodation are duplicated in new Act and regulations	Increased costs for certain industries	Relatively detailed requirements compromise flexibility and durability. There is scope to repackage requirements to promote durability of new Act.	Over regulation – duplication of general duties regarding worker accommodation	Moderate – some may see that more specific industry targeted regulation is better. Detail and duplication could undermine effectiveness of overall regulatory framework	Poor fit for new Act. Creates risks that are dealt with through option two.

1iv) Gaps in coverage –the scope of current prohibitions on young people performing certain types of high-risk work is inconsistently applied

Option	Description	Transparency & certainty	Cost effectiveness	Flexibility & durability	Proportionality	Effectiveness	Summary
Status quo – continue current HSE requirements that prohibits young people from certain types of high-risk work	HSE regulation 54 prohibit young people (persons under the age of 15) from performing certain types of high-risk work (such as forestry and construction), but there is no parallel prohibition for the handling of hazardous substances	Does not address a clear gap in coverage providing mixed messages to business in relation to appropriate working arrangements for young people	Unchanged	Durability is limited. Potentially creates incentives to apply the general duties, and take action to mitigate equivalent risks, inconsistently, across forms of work	**Low –** Duties, obligations and rights to ensure safety of young people are inconsistent across work of similar risk level	**Low –** • leaves gap in coverage • Does not support increasing emphasis on occupational disease caused by exposure to hazardous substances	Does not adequately deal with risk posed to young people by working with hazardous substances
Option two – Extend current HSE requirements that prohibit young people from certain types of high-risk	Broaden scope of current prohibition (as per option one) to include work that involves the direct use of hazardous substances or the manufacturing of hazardous	Makes the risk and prohibition clear but allows lower-risk work to continue.	Additional compliance costs should be minimal, particularly given scope of requirement specifically limited to	• expanding prohibition may provide for less flexibility than current requirements	**High** Intentionally limiting scope recognises nature of risks, allowing low-risk work	**High** expansion of prohibition targets risk in a proportionate manner whilst maintaining flexibility	**Recommended option** Addresses gap in current regulations and consistent with objectives of system

Option	Description	Transparency & certainty	Cost effectiveness	Flexibility & durability	Proportionality	Effectiveness	Summary
work to include *certain work* involving hazardous substances.	substances. Lower-risk work involving the handling of consumer products, such as in a retail environment, is specifically excluded from this prohibition.		work that involves direct use of hazardous substances.	• durability enhanced - incentives to comply are consistent across forms of work • clear distinction made between different forms of work involving hazardous substances provides a reasonable degree of flexibility.	to continue without undue prescription		
Option three – Extend current HSE requirements that prohibit young people from certain types of high-risk work to include *any work* involving hazardous substances.	Broaden scope of current prohibition (as per option one) to include all work where hazardous substances are manufactured, handled, or sold.	**Low –** unclear as to where the scope of the prohibition ends. For example, retail store owners may reasonably conceive that young workers cannot work in store that sells substances on a very small scale (e.g. enclosed turpentine in a retail store)	Compliance costs could be high: Many working environments brought within scope. Particularly costly if duty-holders err on the side of caution take a conservative approach in dealing with the uncertain scope	**Low –** • doesn't accommodate the large number of young workers in low-risk work or recognise the unintended practical consequences of a broadly defined prohibition • unlikely to operate effectively over time • Potentially wide and impractical scope does not incentivise compliance	**Low –** Inefficient balance between degree of regulation and risk; low-risk activities unreasonably brought into scope	Moderate – a blanket ban will ensure no young worker is exposed, even in a low-risk environment but contrary to other *Working Safer* objectives (targeted risk approach; improving and simplifying hazardous substance management)	Provides for unwieldy scope, overly burdensome, and not achieving objectives of the regulatory framework or broader system

B2. Worker participation, engagement, and representation

2i. Any process-based requirements to support systems of HSRs

Option	Transparency and certainty	Cost effectiveness	Flexibility and durability	Proportionality	Effectiveness	Summary
Status Quo – the Bill is enacted without regulations.	• Duty holders would be unclear about what their obligations are and what is required for compliance. • Workers will be unclear about what rights are.	Is lowest cost for implementation option, however, the lack of certainty about rights and obligations for procedural requirements would create system deficiencies.	• Lack of clarity and transparency in process for use of HSRs is not durable, guidance could assist parties with understanding what best practice is, however this wouldn't be binding. • Any flexibility achieved by lack of regulation will be to the detriment of achieving effective worker participation in the workplace, without the appropriate checks and balances in place.	There is a significant risk that without regulation providing the procedure to support the use of HSRs, effective worker participation in the workplace cannot be achieved (e.g. a PCBU may appoint the HSR instead of being elected by fellow workers, negating the effect of having a worker representative).	Lack of clarity of procedural requirements and rights means that the effectiveness of HSRs could be reduced (PCBUs could appoint someone into the role, instead of being elected by workers). This could undermine effective worker participation.	Does not effectively meet objectives for the system.
Option Two – procedural requirements enacted in regulations– To provide clarity and certainty, put procedural requirements concerning HSRs into regulations and supported by guidance.	• The law is clear about what process is required in the use of HSRs, including obligations and rights when electing HSRs. • Consequences of non-compliance are set out. • Duty holders are clear about their responsibilities and workers are clear about their rights.	• Compliance costs should be minimal, and will only affect those PCBUs where workers want a system of HSRs or the PCBU elects to have such a system. • The costs will be limited to administrative costs associated with the election process, time off for workers to conduct an election and the provision of facilities and resources sufficient for workers to conduct the election (such as email or paper).	The regulations allow for flexibility where appropriate by building into the proposals options for the parties to agree an approach that suits their needs (e.g. an HSR and PCBU can agree to an alternative to the three year term of office). This ensures that the regulations are dynamic and can adapt to changing business and worker requirements, whilst ensuring minimum requirements, that can't be diminished are in place (e.g. that PCBUs must provide resources to facilitate an election of an HSR).	• Regulating procedures concerning the use of HSRs is an important check on PCBUs involvement in the process and the suitability of persons elected to be a HSR. • The proposed regulations ensure that workers have the resources to elect someone to represent their needs in health and safety matters and that person is willing and works sufficiently regularly to undertake the role. This is an adequate safeguard against the risk of PCBU influence for the use of HSRs.	Putting the procedures for the use of HSRs in regulation will ensure that parties know their rights and obligations, providing clarity without limiting flexibility to choose procedures outside the minimum requirements. It is considered this will be effective in contributing to the Government meeting the targets set.	Meets objectives of the system. Recommended option.

Option	Transparency and certainty	Cost effectiveness	Flexibility and durability	Proportionality	Effectiveness	Summary
Option Three – procedural requirements put into guidance – To provide for flexibility and innovation of process, put the procedural requirements concerning HSRs into guidance only.	• Guidance is indicative of best practice, it can influence decisions of duty holders, however, it is not binding. Therefore, processes will be less certain as PCBUs choose whether or not to enact best practice, or something different in order to meet the requirements under the Act. • Guidance is able to be changed more readily than regulations, without the protection of being considered through the legislative process. Clarity and certainty could therefore be compromised where changes are made frequently.	Compliance costs should be minimal, only where PCBUs want to align with best practice will they bear the same costs associated with the option above (as they would not be binding in guidance).	Guidance allows for flexibility and innovation of approach, as it is not binding. However, this can be at the cost of not protecting important minimum requirements. For example it would be possible for a PCBU to influence and/or control the process for electing HSRs, instead of allowing workers to elect someone to represent their interests.	There is a significant risk that worker participation will not be effective without binding procedures in place to support the use of HSRs.	With the procedural requirements of the system placed in guidance, the effectiveness of having HSRs is likely to be considerably reduced. PCBUs will still have to abide by their duties under the new Act, however, they would be able to choose a process that meets their needs (influencing who can be an HSR, and effectively minimising the impact of having an HSR that represents the worker voice). This would likely impact negatively on the targets set.	Does not effectively meet objectives for the system.

2ii) Any process-based requirements to support systems of HSCs

Option	Transparency and certainty	Cost effectiveness	Flexibility and durability	Proportionality	Effectiveness	Summary
Status Quo – the Bill is enacted without regulations.	• Duty holders would be unclear about what their obligations are and what is required for compliance. • Workers will be unclear about what rights are.	Is lowest cost for implementation option, however, the lack of certainty about rights and obligations for procedural requirements would create system deficiencies.	• Lack of clarity and transparency in process for use of HSCs is not durable; parties need direction and clarity about how to use HSCs. • Any flexibility achieved by lack of regulation will be to the detriment of achieving effective worker participation in the workplace, without the appropriate checks and balances in place.	There is a significant risk that without regulation providing the procedure to support the use of HSCs, effective worker participation in the workplace cannot be achieved (e.g. a PCBU may appoint the members of the HSC instead of it being chosen by workers, impacting on the effectiveness of the HSC, which might not have genuine worker input).	Lack of clarity of procedural requirements and rights means that the effectiveness of HSCs could be reduced (PCBUs could appoint each member to the HSC, instead of having half of the members appointed by workers or the HSC might only meet once every year). This could undermine effective worker participation.	Does not effectively meet objectives for the system.

Option	Transparency and certainty	Cost effectiveness	Flexibility and durability	Proportionality	Effectiveness	Summary
Option Two – procedural requirements enacted in regulations– To provide clarity and certainty, put procedural requirements concerning HSCs into regulations and supported by guidance.	• The law is clear about what process is required in the use of HSCs, including obligations and rights when choosing committee members, and minimum requirements for how often the HSC must meet. • Consequences of non-compliance are set out. • Duty holders are clear about their responsibilities and workers are clear about their rights.	• Compliance costs should be minimal, and will only affect those PCBUs where workers want a HSC or the PCBU elects to have such a system. • The costs will be limited to administrative costs associated with establishing the committee, and the committee meeting regularly, at least every three months.	The regulations prescribe how often a committee must meet, and that half of the committee must be made up of workers not appointed by the PCBU. How the parties go about nominating and appointing members and how the committee operates is flexible outside of these minimum requirements.	Regulating procedures concerning the use of HSCs is an important check on PCBUs involvement in the process, especially in relation to the ability to appoint each member of the HSC. Regulating these minimum requirements is a proportionate response to the risk.	Putting the procedures for the use of HSCs in regulation will ensure that parties know their rights and obligations, providing clarity without limiting flexibility to choose procedures outside the minimum requirements. It is considered this will be effective in contributing to the Government meeting the targets set.	Meets objectives of the system. Recommended option.
Option Three – procedural requirements put into guidance – To provide for flexibility and innovation of process put the procedural requirements concerning HSCs into guidance only.	• Guidance is indicative of best practice, it can influence decisions of duty holders, however, it is not binding. Therefore, processes will be less certain as PCBUs choose whether or not to enact best practice, or something different in order to meet the requirements under the Act. • Guidance is able to be changed more readily than regulations, without the protection of being considered through the legislative process. Clarity and certainty could therefore be compromised where	Compliance costs should be minimal, only where PCBUs want to align with best practice will they bear the same costs associated with the option above (as they would not be binding in guidance).	Guidance allows for flexibility and innovation of approach, as it is not binding. However, this can be at the cost of not protecting important minimum requirements. For example it would be possible for a PCBU to influence and/or control the process for appointing committee members, instead of allowing workers to nominate members that they want to represent their interests.	There is some risk that worker participation will not be effective without binding procedures in place to support the use of HSCs. This arises from the PCBU being able to appoint a committee that does not truly represent worker voice, or alternatively a committee that is ineffective because it meets infrequently.	With the procedural requirements of the system placed in guidance, the effectiveness of having HSCs is likely to be reduced. PCBUs will still have to abide by their duties under the new Act, however, they would be able to choose a process that meets their needs (influencing who can be an HSC member, and effectively minimising the impact of having an HSC that represents the worker voice). This would likely impact negatively on the targets set.	Does not effectively meet objectives for the system.

Option	Transparency and certainty	Cost effectiveness	Flexibility and durability	Proportionality	Effectiveness	Summary
	changes are made frequently.					

2iii) The design of HSR training

Option	Transparency and certainty	Cost effectiveness	Flexibility and durability	Proportionality	Effectiveness	Summary
Status quo – Regulations specify core competencies. The new Act (sections 93 and 107) requires that to issue provisional improvement notices or direct work to cease, health and safety representatives (HSRs) must complete training prescribed by or under regulations. Under this, regulations would prescribe the core competencies that HSRs are required to have (listed by notice in the *New Zealand Gazette*). The regulations would require training courses to be developed and provided based on delivery of these core competencies. No other requirement for quality assurance of training is regulated.	Provides certainty about the outcomes desired from training, but leaves delivery to the market. Clarity about what HSRs are required to know and be able to do would be provided by the regulated core competencies. However there would be no mechanism for assurance that training course providers are meeting any particular quality standards. This would make it more difficult for PCBUs and HSRs to choose quality courses.	Would impose minimal costs on training providers (who would be unregulated other than a requirement to base courses on the listed core competencies). Costs of course development would be lower due to a lack of compliance costs. This may or may not lead to lower course fees for HSRs depending on behaviour of training providers in terms of profit taking.	Provides flexibility for the provision of HSR training through a focus on outcomes, and no requirements restricting delivery. In addition as the outcomes are listed by gazetted notice this enables flexibility to change them as the context changes. These factors allow for innovation in training delivery to occur. However there are no incentives for the provision of training to appropriately deliver on the required core competencies – this would be left to the training market.	Leaves the quality of training provision to the providers, and does not institute a role for a regulator to provide checks against this. This may be less proportional than the other two options because it does not seek to mitigate any risk to the ability of HSRs to effectively contribute to the health and safety system (through poor quality training).	There will be no provision to measure/quality assure the effectiveness of course provision. The outcome of a lack of quality assurance is that there will be no system in place to verify that HSRs have achieved the appropriate core competencies, and no ability to manage concerns about the quality of training or concerns that could be raised in relation to potential misuse of powers.	No quality assurance requirements are undesirable because it would lead to a wide variability of training and lower confidence for PCBUs investing in training for their HSRs.
Option Two – Provision of quality assurance by NZQA. This option builds on option one, through the regulations specifying core competencies, and requiring either that HSRs (to be considered trained for the purposes of sections 93 and 107 of the new Act) either achieve the relevant unit standards, or complete a	By requiring HSRs to achieve unit standards, the regulations effectively mandate NZQA to provide certainty regarding the standard that training providers need to meet. This is done through specifying the unit standards (developed in association with the relevant industry training organisation or ITO and based on the gazetted core competencies), and	There are no fiscal costs involved in establishing the quality assurance system as it already exists. NZQA's role (among other things) is to provide a national framework for quality assurance of education and training, and to provide independent quality assurance of non-university education providers. Costs faced by NZQA in assessing applications are recouped through cost recovery. Fees that training providers will	Provides flexibility for training to be provided by tertiary education providers approved by the NZQA, and by workplaces assessing against the unit standards and being moderated in conjunction with the ITO. This option is governed by the legislation and rules of the education system and therefore,	Assures that training providers and courses meet a standard of quality provided by the NZQA, which is an established system of quality assurance for education and training provided by an independent body. This option ensures HSRs are appropriately trained as required and provides a system to regularly check the quality of providers and courses, and also	Arrangements for quality assurance and assessment would ensure that: standards for training are set and maintained; quality is maintained evenly across a range of training providers; learners can verify they have obtained relevant outcomes from training; the regulator can access information about training outputs, and competencies developed	This is our preferred option because it has the greatest likelihood of raising quality standards of training, and does not require the duplication of government effort put towards quality assurance of training. This option will raise the price of HSR training for PCBUs (through training providers passing on compliance costs). This

Option	Transparency and certainty	Cost effectiveness	Flexibility and durability	Proportionality	Effectiveness	Summary
training scheme approved by the NZQA.	approving organisations to assess against these unit standards. HSRs and businesses looking to purchase training would have certainty that they are accessing the appropriate courses by looking for evidence of NZQA approval.	need to pay to NZQA for the assessment of applications required to assess unit standards range from $7,000 to $10,000 in initial costs (established providers already registered with NZQA would not face these costs), and approximately $3,000 to $4,000 annually for maintenance costs. Costs training providers face in meeting these requirements both initially and on an ongoing basis are likely to be passed on in student fees. This would be borne by PCBUs and is not offset.	changes to it may be more difficult.	provides a mechanism to deal with complaints.	through training can be seen as easily portable or transferable between different industries or workplaces.	risk is partly mitigated through the provision of government funding to procure a transition course for HSRs who have previously completed training.
Option Three – an alternative regulator plus Ministerial approval. This option also builds on option one through the regulations listing core competencies, as well as specifying that to be considered trained under sections 93 and 107 of the new Act, HSRs must complete an initial HSR training course approved by the Minister for Workplace Relations and Safety. A regulator such as WorkSafe NZ would establish the criteria and process for obtaining approval, managing the assessment process, and provide recommendations to the Minister.	Under this option the regulator must specify to training providers what the criteria and process is for obtaining approval to deliver. This provides some certainty although the Minister not the regulator has final approval. These criteria and processes need to be established as they are not pre-existing as in the NZQA option.	This option carries fiscal costs for a regulator to establish the capability and capacity to deliver this function, which would accrue to the Crown. Ongoing costs could be cost recovered from training providers through a levy or application fees. This would likely be subsequently passed on from training providers to PCBUs in course fees, and is not offset.	This option carries significant flexibility in that the quality assurance system is not established and must be built. This enables the system to be developed in a way that is fit for the purpose of HSR training only. To be durable we would need to design and build a review mechanism.	The fiscal costs involved with establishing this new function specifically for health and safety representatives is likely to be higher than the other options, but may be justified. This system would take time to build, and would need to be close in nature to the NZQA system in order to be effective and keep track of best practice. Ministerial involvement in operational decisions at this level is probably a heavy handed approach.	Effectiveness is difficult to predict given it is not established. The most likely regulator WorkSafe NZ does not have existing expertise in regulating training matters.	This option is not preferred as it is unlikely to be cost effective.

B3. Work involving asbestos

3i. Poor awareness and identification (from both businesses and the regulator) regarding the presence (or likely presence) of asbestos or asbestos-containing material in the workplace

Option	Transparency & certainty	Cost effectiveness	Flexibility & durability	Proportionality	Effectiveness	Summary
Status quo – no legislative requirement to identify asbestos in a workplace in advance of work being conducted. However, businesses are required to systematically assess, and then address hazards presented by, asbestos	Low	Low immediate cost but costs to society are higher over the longer term	Flexible, but does not support future work or solutions	Very light handed response to a significant hazard	Variable, but generally low	Limited coverage and high incidence of asbestos related disease
Option two – Require all workplaces (other than residential premises) built prior to 2000 to complete a survey and maintain an asbestos register and asbestos management plan where it is present	High – Much greater clarity around obligations and ability to hold duty-holders accountability. Related guidance material will help ensure obligations are readily understood.	Higher short term (3yr) costs. Estimated as 30-40,000 businesses with an estimated average cost of compliance (survey and register) of $1,000 per building ($30-40 million in total). The preparation of an asbestos management plan (where it is present) will impose additional costs to some businesses. These costs are offset against reduced medium to long term costs. Limited cost to regulator	Flexible, as mandatory requirement to survey and plan, but allows workplaces to tailor responses to their own circumstances. Clear long-term benefits	Moderate response that sets process requirements for businesses where there is asbestos, but allows risk-based response. Varying age of building at which requirement applies means compliance burden is reduced in proportion to the risk.	Moderate costs but will support other regulations and ease compliance for businesses while reducing the incidence of asbestos-related disease in the long term	Recommended option
Option three – Require an asbestos register for all buildings, including rental residential premises, built prior to 2000.	Highest, notionally. But, difficulty or unwillingness of property owners to comply Reduced clarity and consistency for residential properties could undermine regime	As for above option, but with up to 450,000 residential rental properties included @ $200 average cost per residential property ($90 million) = $120-130 million	As above, but with increased costs for including owners of residential rental properties Questionable durability for rental properties	Significant response, but not closely directed at workplaces where hazard exists. Likely to be seen as disproportionate to the risk for most residential properties	Expensive and highest compliance burden with limited additional benefits over preferred option	Not recommended

3ii. Inadequate controls – *The types of work activity that are within scope of controls on asbestos-related work is too limited, and the degree of prescription for those controls are, in some instances, weak.*

Option	Transparency & certainty	Cost effectiveness	Flexibility & durability	Proportionality	Effectiveness	Summary
Status quo – **Limited mandatory controls other than for removal** **No prohibition on other work with asbestos**	Limited consistency, with opportunities for short-cuts and non-compliance with primary duties	Low short-term cost, but considerable risk asbestos disease later, with resulting suffering and costs	Flexibility but little resilience Notionally risked-based, but many participants are not aware of the risks or mitigations	Inadequate guidance and prescription of work processes in proportion to the risks	Considerable wastage through lack of guidance. Workers exposed to significant risks. Often not effective	Low level of regulation, with resulting risk
Option two – **Regulations define asbestos-related work, without prescribing controls but prohibiting any other work with asbestos**	Not transparent or certain for those doing asbestos-related work. Difficult for regulator	Cost effective for larger firms or repetitive operations, but difficult for smaller operators to develop their own practices	Flexible for firms, but likely to result in failures as for status quo	As above. Light-handed approach that is likely to encourage avoidance by smaller firms or those completing asbestos-related work occasionally	Not likely to be effective in reducing worker exposure	Not recommended
Option three – **Schedule of asbestos-related work with mandatory controls or work methods. Prohibition on all other work with asbestos**	Transparent requirements with clear boundaries of nonconformity	Provides approved methods of work for all market participants Regulator costs and shared industry costs in developing approved methods, but proportionate	Less flexible, but in recognition of hazards for workers requiring a high level of prescription for asbestos-related work	Proportionate to the risk associated with the different types of asbestos-related work. Limits regulator involvement to guidance and enforcement for breaches	Ensures effective controls are in place for workers and others affected	Recommended

3iii) The coverage of, and degree of prescription for, licensing and competency requirements for asbestos removal

Option	Transparency & certainty	Cost effectiveness	Flexibility & durability	Proportionality	Effectiveness	Summary
Status quo "restricted work" carried out by a person holding a certificate of competence, or by someone under direct supervision of a person holding a certificate	Moderate, but high regulator input and compliance burden not always in proportion to the risk. Considerable variability of methods and standards	Most cost effective removal methods or standards always being applied and with some wastage and increased risk in some other areas	Flexible in respect of asbestos-related work not captured. 'One-size fits all' approach to asbestos-related work of varying risks that is captured limits flexibility. Ineffective training and licensing infrastructure limits durability.	Often results in higher standards being required than lower-risk work justifies. Standards are inadequate and often not met for higher-risk (friable) asbestos removal work	Broadly effective, but not in all cases	Resulting in overall low standards with resulting exposure risk for asbestos removal workers and others
Option two – Remove licensing requirements completely	Low	Low	Flexible, but quality of service is likely to be highly variable	Limited response relative to risks involved. Likely to create significant risks for workers and others	Not effective	Not recommended
Option three – Create two-tier licensing regime: Class A (friable or high-risk) and Class B (Lower risk, for example, bonded asbestos-containing materials)	High Coverage of all removal work, with exemption for small jobs. Controls better reflect hazards for workers and others	Better than current regime -- Class B work will be at reduced compliance costs, and higher costs of Class A work will be met by those bearing the risk.	Greater scope/coverage may limit flexibility, but two-tier system ensures appropriate controls are in place for all removals. WorkSafe NZ will work with training providers to build competencies and infrastructure, to ensure the durability of the regime.	Better targeting of risks, with controls commensurate to risks in given situation	Most effective	Recommended. Best allocation of private and public resources in proportion to risks, while recognising the significance of the asbestos hazard
Option four – Raise standards to "class A" level for all removal work (i.e. work not currently captured to be subject to standards of high-risk work that is currently captured.)	Good, but excessive controls will cloud issues for market participants.	Expensive. Wastage of resources through over specification of response	Inflexible Unlikely to be durable	Excessive response for lower level risks	Unlikely to be effective without considerable regulator involvement (not justified for lower-risk removal work)	Wasteful option that would engender a range of responses and would waste industry and regulator resources

The preferred options for work involving asbestos as a package

70. Together, the preferred option for regulating work involving asbestos broadly align with the Australian model regulations and provide a consistent framework for the management of asbestos materials in workplaces, the removal of asbestos, and the licensing and competencies for asbestos removalists and assessors.

71. The proposals are premised on two key requirements: work with asbestos is illegal unless it is of a type described by the regulations, and meets the requirements set out in the regulations; and people's exposure to airborne asbestos in a workplace must be eliminated to the extent that it is reasonably practicable. The first requirement is an extension of the new Act's primary duty of care on the basis that the carcinogenic properties of asbestos justify strict controls on its use in the workplace and where work involving asbestos presents a significant hazard to others. The second key requirement is simply a restatement of a core duty of the Act but with explicit reference to the hazard of asbestos.

72. Public submissions offered strong support for the proposed new regulations as a package. Compliance costs were noted by several large employers and asset owners, but were generally considered reasonable due to the health hazards presented by asbestos. In the long-run, this framework will deliver substantial benefits in terms of reduced risk and exposure to asbestos in the workplace and consequent improved health outcomes.

B4. Work involving hazardous substances

4i. Information gaps regarding businesses' understanding of what substances are present, or are likely to be present, at the workplace

Option	Description	Transparency & certainty	Cost effectiveness	Flexibility & durability	Proportionality	Effectiveness	Summary
Status quo – use guidance material to indicate best practice on addressing potential information gaps	Continue using guidance to encourage PCBUs to prepare and maintain a list (inventory) of all hazardous substances present at the workplace	Guidance is indicative of best practice, it can influence decisions of duty holders, however, it is not binding.	No cost impact because this option does not make preparation and maintenance of an inventory compulsory.	Guidance allows for flexibility, as it is not binding. However, it does not require PCBUs to prepare and maintain an inventory, which is an essential first step for the effective management of risk associated with hazardous substances.	Very light handed response to a significant hazard.	Variable, but generally low. unlikely to compel the remaining group of businesses, which don't currently have an inventory, to prepare one, and may find it difficult to comply with other requirements for the safe management of hazardous substances without one.	Not recommended
Option two – Codify existing good practice in regulation	Regulations require PCBUs to prepare and maintain an inventory of all hazardous present at the workplace, and ensure its availability to emergency service workers	The requirements would clarify for PCBUs the matters to be included in the inventory, who needs to be able to access the inventory, and the circumstances when hazardous substances do not need to be included in the inventory.	Transitional and compliance costs will differ for business, depending on whether consistent or fluctuating types and quantities of hazardous substances are present. The anticipated costs are summarized in table 7 below.	The regulations would prescribe the matters to be included in the inventory, who needs to be able to access the inventory, and the circumstances when hazardous substances do not need to be included in the inventory.	There is a risk that a PCBU will not be able to manage the risks associated with their hazardous substances effectively if they do not prepare and maintain an inventory.	Will support PCBU to comply with other prescribed requirements for the management of hazardous substances. An essential first step for the effective management of risk associated with hazardous substances. Is likely to contribute over time to a reduction in the number of injuries and deaths per annum from exposure to hazardous substances in the workplace. It is extremely difficult however to quantify the benefits that are directly attributable to this proposal.	Recommended option

Table 7

Anticipated impact of inventory proposal on the estimated 150,000 businesses that use, handle, manufacture, or store hazardous substances[25]			
	Set up system – one-off labour costs	**Ongoing labour costs (p.a)**	**Capital costs**
Businesses that already have inventory in place (105,000; 70%)	Nil	Nil	Minimal • It is entirely feasible and appropriate for smaller businesses to meet this requirement via simple computer or paper based system (which many already have). • To minimise the need for business to invest in, or make (costly) changes to software, inventory need only to readily identify: the hazardous substances on site (product or chemical name and UN number); the quantity stored; their location; and any storage and separation requirements.
Per business that does not have an inventory in place and hold consistent types and quantities of hazardous substances (40,500 in total)	$120-$240 ($40 per hour x 3-6 hours)	$80 ($40 per hour X 2 hours x 1 review)	
Per business that does not have an inventory in place and hold fluctuating types and quantities of hazardous substances (4,500 in total)	$640-$1,280 ($40 per hour x 16-32 hours)	$480 ($40 per hour x 1 hour to complete review x 12 reviews[26])	
All businesses that do not have an inventory in place	**$7.74m - $15.48m** ($4.86-$9.72m + $2.88m-$5.76m)	**$5.4** ($3.24m + $2.16m)	

73. It is important to note that certain requirements under the HSNO Act (for example, storage and separation requirements) rely on a detailed understanding of the hazardous substances present at the workplace and, without preparing an inventory, are difficult to comply with. This implies that the expected compliance costs of this proposal – (as per table 7) – likely include costs that some businesses should already be incurring, but are avoiding by way of non-compliance with status quo requirements. Put another way, this proposal is likely to carry spill-over benefits, reducing harm associated with hazardous substances in the workplace by way of enhancing compliance with other requirements.

[25] Expected benefits have not been quantified. Any reduction in the rates of injury and disease from work involving hazardous substances will be influenced by a myriad of factors, and often with a lag. It is therefore extremely difficult to establish a direct causal connection between this proposal, which is essentially a "first step" process-based requirement, and the outcome sought.

[26] Given the complexity and fluctuation of hazardous substances it is assumed these businesses use stock control systems, economising on review time, and that these review are carried out monthly.

4ii. Information gaps regarding workers' understanding of both the harm that can be caused by the hazardous substances they use and how they can protect themselves

Option	Transparency & certainty	Cost effectiveness	Flexibility & durability	Proportionality	Effectiveness	Summary
Status quo – use guidance as a means of encouraging PCBUs to convey information in safety data sheets to workers in a way that can be readily understood	Guidance is indicative of best practice, it can influence decisions of duty holders, however, it is not binding.	Would not impose any additional compliance costs on business as it is a voluntary option.	Guidance allows for flexibility, as it is not binding. However, it does not require PCBUs to ensure that information in safety data sheets is conveyed to workers in a way that can be readily understood.	Very light handed response.	Variable, but generally low. The reliance on guidance alone is unlikely to compel all PCBUs to ensure that information in safety data sheets is conveyed to workers in a way that can be readily understood.	Not recommended.
Option two – regulations require PCBUs to ensure that information in safety data sheets is conveyed in a way to workers that can be readily understood	PCBUs would be clear about what their obligations are in relation to the provision of key safety information to workers.	This option would impose costs on business, but these costs would be highly variable depending on the number of different hazardous substances that are used at a workplace, whether the inventory of substances at the workplace is constant or fluctuates, and whether suppliers already provide a product safety card at point of sale (this is common practice for many agrichemicals). Consequently, it is very difficult to quantify this option.	The regulations would require PCBUs to ensure that information in safety data sheets is conveyed in a way to workers that can be readily understood. However, it would be left to PCBUs to determine the best way to do this. For example, the PCBU may choose to use product safety cards (particularly where these have been provided by the supplier), or the PCBU may choose to colour code key information in the safety data sheet to make it easier to understand.	Excessive response if the PCBU (in particular a person in charge of a small business) has to prepare the product safety cards (i.e. where they are not already supplied with the product).	Ensuring that information in safety data sheets is conveyed to workers in a way that can be readily understood is important for ensuring that workers understand both the harm that can be caused by the hazardous substances they use and how they can protect themselves. This option is likely to contribute over time to a reduction in the number of injuries and deaths per annum from exposure to hazardous substances in the workplace. It is extremely difficult however to quantify the benefits that are directly attributable to this proposal.	Partially meets objectives for the system.

Option	Transparency & certainty	Cost effectiveness	Flexibility & durability	Proportionality	Effectiveness	Summary
Option three – regulations require PCBUs to ensure that workers are informed of the sections in the safety data sheet that set out the key information about hazards and control measures **AND** **use guidance as a means of encouraging PCBUs to convey information in safety data sheets to workers in a way that can be readily understood**	PCBUs would be clear about what their obligations are in relation to the provision of key safety information to workers.	This option would impose minimal costs on the majority of business that already have safety data sheets for the hazardous substances they use, in accordance with current HSNO requirements. Costs are associated with the provision of information to the worker at the time of their initial assignment, and whenever a new substance is introduced to the work area. Given that safety data sheets are prepared to a standard format, the worker should always be able to refer to the same sections for the key safety information, regardless of the substance being used.	The regulations would require PCBUs to ensure that information provided to a worker at the time of their initial assignment, and whenever a new substance is introduced to the work area, indicates the sections of the safety data sheets that provide information about the hazards, first aid measures, firefighting measures, accidental release measures, storage, and handling.	Moderate response.	ensures that workers can more easily navigate safety data sheets to find the most important safety information and not get bogged down in the overly complex/technical content. This will ensure workers can more readily access key information to help them understand both the harm that can be caused by the hazardous substances they use and how they can protect themselves. The use of guidance to complement this regulatory requirement will provide supporting information for PCBUs that choose to distil all relevant information from safety data sheets onto more readable and understandable in-house information and training documents. This option is likely to contribute over time to a reduction in the number of injuries and deaths per annum from exposure to hazardous substances in the workplace. It is extremely difficult however to quantify the benefits that are directly attributable to this proposal.	Meets objectives for the system. Recommended option

4iii) Excessive requirements for the labelling of hazardous substances in the workplace where they are not supplied to another party

Option	Transparency & certainty	Cost effectiveness	Flexibility & durability	Proportionality	Effectiveness	Summary
Status quo – Carry through existing HSNO requirements for the labelling of hazardous substances	Current requirements are appropriate for importers, suppliers, and manufacturers who will supply hazardous substances to end-users but are too detailed for end-users that want to decant substances into a smaller container in the workplace for use within the workplace	Imposes unnecessary costs on end-user businesses that decant hazardous substances into smaller containers in the workplace for use within the workplace	The current HSNO requirements prescribe an extensive list of matters to be included on the label	Excessive response.	Current requirements too burdensome and so many businesses are unlikely to comply with these detailed requirements	Not recommended.
Option two – regulations prescribe simplified requirements for the labelling of hazardous substances, which will not be supplied outside the workplace	Clear and simple for PCBUs to implement and comply with, focussing only on the provision of safety information that is absolutely necessary	Imposes minimal costs on end-user businesses that decant hazardous substances into smaller containers in the workplace for use within the workplace	The proposed requirements under this option would prescribe a minimal list of matters to be included on the label (only those considered absolutely necessary – consistent with the Australian Model Regulations).	Moderate response to manage the risks.	The proposed requirements under this option are far simpler and more likely to be complied with. This will ensure that more workers handling decanted substances are aware of the key hazards associated with those substances.	Meets objectives for the system. Recommended option.

4iv. Restrictive certification requirements for the testing of gas cylinders

Option	Transparency & certainty	Cost effectiveness	Flexibility & durability	Proportionality	Effectiveness	Summary
Status quo – Gas cylinder testing can only be carried out by an individual with periodic tester certification	Provides certainty and clarity for users.	Imposes unnecessary costs on the approximate 80 gas cylinder testing stations by requiring these businesses to ensure that each individual carrying out testing duties is certified as a periodic tester.	A less flexible option. The PCBU must ensure that workers carrying out testing duties must be certified as periodic testers.	Excessive response	This option ensures that only competent persons will carry out gas cylinder testing	Not recommended.
Option two – A gas cylinder testing station can be certified as a periodic tester	Provides certainty and clarity for users.	Reduces unnecessary costs on the 80 gas cylinder testing stations by enabling the PCBU, rather than individual workers, to be certified as a periodic tester.	More flexibility for the PCBU as they can be certified, rather than individual workers.	Moderate response	This option requires the capacity, capability, and systems of the PCBU, rather than individual workers, to be assessed. The PCBU once certified is then responsible for ensuring that its workers are competent to carry out the testing.	Meets objectives for the system. Recommended option.

B5. The regulation of major hazard facilities

5i. Establishing which facilities fall within scope of the regime

Option	Description	Transparency and certainty	Cost effectiveness	Flexibility and durability	Proportionality	Effectiveness	Summary
Status Quo – Follow the Australian model regulations, based on Seveso II parameters	The specified substances, their classifications and associated thresholds, under the 1996 Seveso II Directive are the parameters used to characterise a workplace as a MHF in Australia and the UK[27]. *However, Seveso II has been updated…* • Member States of Seveso are required to implement the Seveso III Directive by 1st June 2015. • COMAH regulations have since been amended to reflect Seveso III, including changes made to the European Commission (EC) and United Nations' Globally Harmonised System (UN GHS) of Classification and Labelling of Chemicals. • Australian regulators have indicated progressive amendments to align with these changes too.	Certainty not provided as regulator and operators will be aware that this model is likely to change	Lack of clarity about the future of the regulations could lead to confusion Lack of alignment with international classification systems could increase costs for NZ operators	Following a model that is out of date and not the accepted international best practice limits its durability; it will require the NZ regime to be reconsidered in the next 3-4 years	Only substances with real major incident potential are included, reflecting the nature of risks arising, and ensuring actions are commensurate with risk.	Likely to be generally effective in addressing risk in workplaces/facilities with the potential to cause major harm but potential lack of certainty and durability of regime may undermine effectiveness	Partially meets objectives but does not reflect current international best practice
Option Two – Follow Seveso II in the interim, and update in due course to reflect Seveso III	Follow the Australian model regulations, based on Seveso II, and the trajectory of any changes made to their regime to align with international best practice. Policy work on implementing the EC and UN GHS is currently underway in Australia, and there is indication that further work will be done to align with Seveso III.	Certainty not provided as the regulator and operators will be aware that this model will change	Lack of clarity about the future of the regulations could lead to confusion Lack of alignment with international classification systems could increase costs for NZ operators	Following a model that is out of date and not the accepted international best practice will require the NZ regime to be reconsidered in the next 3-4 years	Only substances with real major incident potential are included, reflecting the nature of risks arising, and ensuring actions are commensurate with risk.	Likely to be generally effective in addressing risk in workplaces/facilities with the potential to cause major harm but potential lack of certainty and durability of regime may undermine effectiveness	Partially meets objectives but does not reflect current international best practice

[27] The Seveso Directive, established by the European Union, cascades to each member state and applies to around 10,000 industrial establishments where hazardous substances are used or stored in large quantities, mainly in the chemicals, petrochemicals, storage, and metal refining sectors . The United Kingdom's *Control of Major Accident Hazards Regulations 1999 (*COMAH), and the approach developed in the Australian model regulations, were both developed under the Seveso framework.

Option	Description	Transparency and certainty	Cost effectiveness	Flexibility and durability	Proportionality	Effectiveness	Summary
Option Three – (preferred): Follow Seveso III	Follow the structure of the Australian and UK regulations and the regulations for petroleum exploration and extraction activities in New Zealand. Adopt the most recent table of specified substances and thresholds based on Seveso III parameters. This reflects the UN GHS version 5 classifications that are proposed to be adopted by the EPA to replace the HSNO classifications in New Zealand.	Establishes a modern and up to date regime from the start that is likely to be supported for the next 15+ years. The resulting clarity of approach and relatively long 'shelf life' provides certainty for operators and the regulator about requirements.	Regime's long-term durability and domestic and international alignment enhances cost effectiveness – e.g. regulator and operators can use existing guidance and knowledge. Few facilities not already captured under Seveso II are expected to be brought into scope.	Setting the requirements for the next 15+ years based on international best practice will provide durability. For example, it provides coverage for facilities that do not reside in New Zealand, but may do one day.	Only substances with real major incident potential are included, reflecting the nature of risks arising, and ensuring actions are commensurate with risk.	Likely to be effective in addressing risk in workplaces/facilities with the potential to cause major harm. Most likely to provide long-term effectiveness.	Most likely to meet objectives for the system - replicates current international best practice and the most durable.

5ii) Public Information: providing assurance to the local community that the risks associated with these facilities are being adequately managed

Option	Description	Transparency and certainty	Cost effectiveness	Flexibility and durability	Proportionality	Effectiveness	Summary
Option one – Operators provide local community with general information only	The operator of an upper tier major hazard facility is required to provide the local community with general information about the facility's operations – including how the community would be notified if a major incident occurs and what the community should do in the event of a major incident.	Makes clear the responsibilities and accountabilities of the operator, and any actions to be taken by other members of the community, and provides opportunity to correct information (or dispel misinformation) about the facility and its operations. But this clarity is limited to neighbouring community, and excludes lower tier facilities.	This information is required to comply with the regime, but there will be a cost associated with its dissemination and supplementary engagement.	Assurance provided and improved relationships between operators and communities will enhance durability.	Duty is considered proportionate to risk.	Community is in a better position to protect itself in the event of a major accident with off-site impact, thereby reducing the actual consequences of the major accident. However, there will be an information gap relating to lower tier facilities.	Could meet objectives but greater information sharing with a broader public could provide additional benefits.

Option	Description	Transparency and certainty	Cost effectiveness	Flexibility and durability	Proportionality	Effectiveness	Summary
Option Two – Operators required to provide local community with general information *and* make core (non-sensitive) information publically available on their website	In addition to option one, all operators must make publically available on their website core (non-sensitive) information – for example, a summary of the safety management systems in place and, for upper tier sites, a summary of their safety case.	Provides additional assurance to the public that operators are complying with their responsibilities and that WorkSafe NZ is actively monitoring their activities.	Proactive release of information has administrative efficiencies over reactively responding to individual information requests. Operators will incur some additional costs in establishing the information system and maintaining the information. Decentralized and therefore more difficult for the public to access, and for the regulator to monitor than option three.	Enhances credibility of regime, making it more durable. More difficult to enforce than option three, compromising incentives to comply.	Duty is considered proportionate to risk. Commercial and security sensitive information will be withheld when balanced against public interest.	Additional assurance provided over option one enhances contribution to objective.	Enhances credibility of regime and helps achieve regime's objectives but carries implementation costs and risks that are mitigated under option three.
Option Three – Operators required to provide local community with general information *and* provide core (non-sensitive) information to WorkSafe NZ, who will make it publically available	In addition to option one, all facility operators must provide WorkSafe NZ with, for example, a summary of the safety management systems in place and, for upper tier sites, a summary of their safety case. This information will be made publically available on the WorkSafe NZ website and will be governed by the provisions of the Official Information Act 1982 (OIA), which provides protections for withholding commercial and security sensitive information when balanced against public interest.	Provides additional assurance to the public that operators are complying with their responsibilities, that WorkSafe NZ is actively monitoring their activities and that a core level of information about all facilities is easily accessible. Reflects the principles of open Government (including those of the Open Government Partnership)	As with option two, with additional cost efficiencies expected through the centralising of information. Operators are expected to incur minimal additional cost in providing this information to WorkSafe NZ, who intends to provide an exemplar tool as a way of guidance.	Proactive release of industry best practice. Centralised manner allows for adaptive learning and changes to be more readily accommodated. This promotes flexibility and durability.	Duty is considered proportionate to risk. Only upper tier facilities must directly provide general information to the local community, but WorkSafe will make available information on all facilities. Commercial and security sensitive information will be withheld when balanced against public interest.	Additional assurance provided over option one enhances contribution to objective.	**Recommended option –** enhances credibility of regime and helps achieves regime's objectives in an efficient way.

5iii. Recovering the costs of the regime

74. Cabinet has previously agreed that the costs associated with regulating major hazard facilities should be fully recovered from facility operators [CAB Min (13) 24/11) refers]. The cost recovery mechanism is under consideration and will be developed and consulted on separately.

Anticipated impact of MHF regime as a package

Number of facilities within scope of regime

75. In accordance with *Seveso III*, sites fall within scope of the regime based on the nature and quantities of material that they handle, use or store. Regulations will outline upper and lower site thresholds for quantities of particular substances, and set different regulatory requirements for businesses based on which thresholds are met.

76. WorkSafe NZ estimates that there are 64 businesses meeting the upper thresholds, and 105 businesses meeting the lower thresholds. International benchmarking indicates that 4-7 of these lower tier sites may also present a high risk[28], and therefore be designated by WorkSafe NZ as being subject to the upper threshold requirements. The data is not definitive but is the best estimate based on current state of knowledge. Sites within scope of the regime will be subject to the following requirements [CAB Min (13) 24/11 and EGI Min (15) 4/13 refer]:
    - In order to operate, upper threshold sites will be required to prepare, and have approved by WorkSafe NZ, a safety case.
    - All sites are required to undertake safety assessment and/or hazard and potential major incident identification, have safety management systems and provide information to the community, emergency service providers and to WorkSafe NZ.

77. Generally, submitters broadly supported the regulation of MHFs; many operators of facilities within the proposed scope of the regime already have systems in place to prevent a major incident and consider the proposed regulations a necessary part of their risk management procedures.

[28] This may be determined on the basis of the quantity or combination of hazardous substances, the type of activities at the facility and the surrounding land use

B6. Offences and penalties, infringement offences and fees

6) Offences and penalties

Option	Transparency & certainty	Cost effectiveness	Flexibility & durability	Proportionality	Effectiveness	Summary
Status quo – Do not set offences and penalties, infringement offences and fees for breaches of regulations.	This approach would not be transparent and would increase uncertainty for duty holders, as the potential penalty that would be applied for a breach would be less clear.	A lack of clarity about the offences and penalties that may be applied may lead to over compliance due to concerns about the level of penalty or fine that may be applied, imposing unnecessary costs on duty holders.	This approach would reduce the flexibility in the regime as the response to the breach of a regulatory requirement would have to rely on what is set in the Act, this reduces the regulator's flexibility in choosing an appropriate response.	This approach may mean that the same level of penalties and fines to breaches of the Act and regulatory requirements. This is unlikely to be the most proportionate approach and may lead duty holders to focus on their attention in the wrong areas.	Not specifying the offences and penalties, infringement offences and fees in the regulators is likely to mean that the regulations are ineffective and unenforceable in many cases.	If offences and penalties are not set in regulations, then in many cases the regulation are likely to be ineffective in encouraging compliance as there is no clear associated penalty for breaching a requirement. This is likely to result in the issues that were seen under the HSE Act with inconsistent fines and problems with over or under compliance continuing. It is also likely to mean that in many cases the regulator may not be able to take action for a breach of a regulatory requirement.
Option two - Set offences and penalties, infringement offences and fees in regulations for breaches of regulatory requirements.	Establishing a tiered approach to offences and penalties, infringement offences and fines in regulations will be more transparent and provide greater certainty for duty holders about the potential penalty for a breach.	Setting the regulations should support better compliance practices by duty holders, with the focus of compliance being on the more serious breaches.	This approach is more flexible as it provides for a range of penalties to be applied depending on the seriousness of the breach.	Setting appropriate penalties and fine maxima in regulation for different offences and for different classes of offender will provide clarity about the proportionality of duties in the regulations compared to those at Act level.	This approach should support better compliance practices by businesses, with the focus of compliance being on the more serious breaches.	**Recommended option:** In essence having different penalties and fine maxima set for different offences, and for different classes of offender set in regulations recognises that the consequences of contravention of regulatory requirements can vary widely in seriousness and impact. Setting appropriate maxima in regulation will provide clarity about the proportionality of duties in the regulations compared to those at Act level. This is an important part of the new offence regime under the Act.

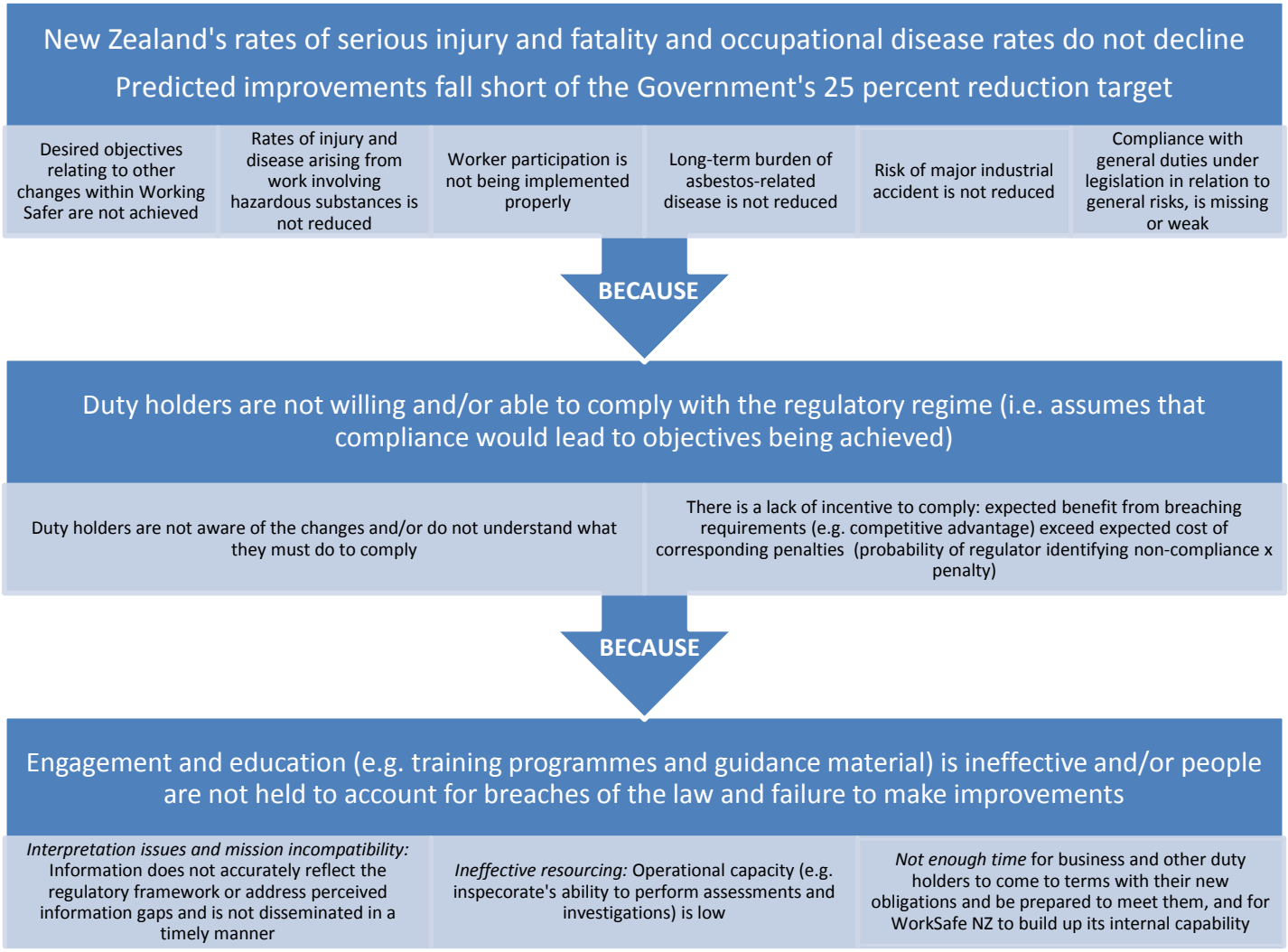
C. Implementation

78. In isolation, the proposals address problems that are quite disparate. Together, the proposals strengthen the regulatory framework for work health and safety, and support and complement other components of *Working Safer*. Workplace culture and informal systems (trust, commitment, buy-in, positive workplace culture) are a key determinant of the success or failure of the regulatory framework. There is a risk of insufficient buy-in from business and the community, particularly where there are low levels of compliance currently, such as in the management of hazardous substances, and where the proposals require additional compliance (for example, in the case of major hazard facilities).

Key risks to implementation and mitigation strategy

79. Figure 2 highlights some of the key resourcing and implementation risks below the surface, which may see the Government's 25 percent reduction target, and associated objectives, not being met. It isolates these risks by assuming the design of the regulatory requirements (and penalties associated with non-compliance) - are fit for purpose and capable of delivering the desired objectives[29].

Figure 2: Key resourcing and implementation risks



Ensuring alignment between policy objectives and operational realities

[29] Section E – monitoring, evaluation and review – outlines how the design of the regulatory requirements will be monitored, evaluated, and reviewed to ensure the new regulations are working as expected and remain fit for purpose over time.

80. MBIE is the primary policy agency for workplace health and safety and will lead the regulatory change process to enable implementation of the regulatory framework, including the proposals outlined in this paper. WorkSafe NZ is the workplace health and safety regulator, and has a key role in implementing the new regime.

81. MBIE and WorkSafe NZ are working closely together to ensure alignment between policy objectives and operational realities; a partnership approach that harnesses the comparative strengths of both organisations. This allows for guidance material, processes, communications, and transitional periods to accurately reflect the regulatory framework and address perceived information gaps business and workers may have.

82. WorkSafe NZ is building its internal capacity and capability to operationalise aspects of the regulatory framework (for example, the administering of the MHF regime).

83. Careful consideration has been given to the time needed for businesses to understand the new requirements and take steps to ensure they can effectively comply, and for WorkSafe NZ to build up its internal capability. These timing considerations are elaborated on in the remainder of this section.

Implementation programmes which provide information, and promote adequate incentives and compliance

84. The following implementation programmes will support the effectiveness of specific proposals:
General risk and workplace management regulations
- *Guidance material to support the regulations* - WorkSafe NZ will be publishing risk management factsheets to support duty holders in understanding the general risk and workplace management regulations.
- *Health monitoring for workers* – WorkSafe NZ will publish educational and guidance material as early as possible before the regulations come into effect to ensure PCBUs carrying out health monitoring are supported to put in place appropriate processes to ensure: workers subject to health monitoring have an opportunity to have any concerns addressed; employment agreements can be appropriately revised; and systems for storing health monitoring records can be established. WorkSafe will also work with occupational health organisations to provide awareness and guidance on the new health monitoring requirements.

Worker participation, engagement, and representation
- *Guidance material to support the regulations* – To help parties understand their obligations and rights under Part 3 of the new Act and the associated regulations, WorkSafe NZ will be publishing an ACoP. This will provide a plain English explanation of the requirements in the new Act and regulations, as well as examples of what worker participation and engagement might look like in practice for different sized businesses and industries.
- *HSR training – transitional training and monitoring* – It is likely that there will be a short amount of time between the regulatory parameters for HSR training being known, and the enforcement date of the new Act (when HSRs will need to be trained). Training providers need time to review courses and redevelop them as necessary. There is a risk that as the timeframe for redeveloping courses is likely to be short, that the availability of HSR training is low in the first few months of the new legislation coming into force. To manage this risk, MBIE is procuring a standalone transition course that will enable a proportion of existing trained HSRs to complete recognised training quickly.

Work involving asbestos
- *Guidance material to support the regulations* - WorkSafe NZ will be publishing extensive guidance for owners and occupiers on how to survey and monitor asbestos in workplaces, and there will be sufficiently trained and experienced experts available to assist when required. An ACoP is being developed in support of the regulations and new guidance is being developed to describe approved work methods for asbestos-related work.
- *Building competencies and infrastructure* - WorkSafe NZ will be working with an industry training organisation, training providers and sector groups to develop unit standards and assessment

processes for asbestos removal workers, assessors and other trades workers coming into contact with asbestos. The regulations will come into force progressively to allow the development and uptake of new qualifications and to allow existing removalists to transition to the new licensing requirements (two years will be provided for the implementation of certification regimes).

- *Raising awareness of asbestos risks in workplaces* – WorkSafe NZ and other agencies will be working together to promote awareness and improve access to advice and expertise that businesses will need to meet their duties under the regulations.

Work involving hazardous substances

- *Information* – WorkSafe NZ intend to update and re-use a range of existing EPA guidance documents to support regulated parties to comply with the new HSW regulations for work involving hazardous substances. This will be supported by a new guidance document that provides an overview of the key changes to the requirements carried through from the HNSO regime and explains the new requirements, initially reinforced by three factsheets that detail the requirement to prepare and maintain an inventory, the training requirements for those using, handling and storing hazardous substances and changes to the compliance certifier regime.
- *Enforcement strategy* – a hazardous substances enforcement strategy outlining WorkSafe NZ's intentions and planned activities will be developed by WorkSafe NZ. This strategy is designed to improve clarity and understanding by duty-holders of their obligations, increase levels of compliance and ultimately, improve health and safety outcomes for those industries working with hazardous substances. The scope of this strategy will include:
    - How WorkSafe NZ will build its technical capability and capacity to deliver outcomes recorded in its hazardous substances enforcement strategy (WorkSafe NZ's inspectorate capacity is currently forecast to reach 120 by 30 June 2015);
    - How the strategy will be embedded within WorkSafe NZ's wider regulatory enforcement responsibilities;
    - How the strategy will align and contribute to WorkSafe NZ's recently finalised Occupational Health strategy to ensure joined-up interventions with no duplication;
    - Industries WorkSafe NZ will target as part of its proactive enforcement of hazardous substances workplace controls (currently collision repair, boat building, high risk sites, fireworks and location test certificates);
    - Planned number of health and safety assessments to be completed per annum (2987 HSNO assessments are planned for the 2014/15 year);
    - Measures that will be monitored to assess on an annual basis health and safety performance of industries working with hazardous substances and how the hazardous substances strategy is contributing to the Government's goal of a 25% reduction is serious harm and fatalities by 2020;
    - How data integrity will be improved to better inform industries targeted each year and accurate baselines.

Major hazard facilities

- *Implementing the MHF regime* – the MHF team within WorkSafe NZ has been set up to administer the incoming regulations and all MHFs throughout New Zealand. The MHF team will be responsible for overseeing operators' requirements and compliance by undertaking site visits, inspections, incident investigations and for assessing and approving safety cases.
- *Socialising the MHF regime with operators of facilities* – the MHF team has visited all the sites they consider likely to be upper tier major hazard facilities. These visits allow for common issues with process safety and safety management systems to be identified, and ensure that operators are prepared for the proposed regulations. There is overall acceptance by industry of the proposed regulations; the MHF team has already received draft safety cases from some operators.

- *Guidance material to support the regulatory regime* - WorkSafe NZ will be publishing Good Practice Guides about major hazard facility safety cases and safety management systems.

Recently-made regulations for mining, petroleum and adventure activities

85. As part of the first phase of regulations, recently made regulations in relation to mining, petroleum and adventure activities are also being transferred to sit under the new Act. *S*ome minor changes will be made to smooth the implementation of these regulations as they are adapted for the new framework. All are matters of detail, and do not affect the regulatory impact analysis completed for each set of regulations in 2010-11 and 2013 respectively. These minor changes are outlined below:
    - *Refinements to mining competencies and hot work in underground coal operations* – Site Senior Executives and mine managers will now have a further year to acquire their new competencies, and it will be made clear that there are distinct levels of risk-management competency for Site Senior Executives in surface and underground operations. It will also be made clear that hot work in underground coal operations requires regulator approval.
    - *Clarifying duties in the petroleum regime* – the description of duty-holders will be clarified to align with the new framework, with two minor changes to the scope of duties. For onshore non-production operations, it is more appropriate for the permit operator than the drilling contractor to prepare the emergency plan, and well operation notices need to describe hazard controls.
    - *Effective enforcement of the adventure activities regime* – a new offence of offering to provide adventure activities while unregistered will ensure that the regulations meet their policy intention of ensuring that operators cannot commence operations or continue to operate with suboptimal systems. This will mean that the regulator does not always have to actually catch operators in the act of undertaking the adventure activity while unregistered, as this often involves remote locations.

Providing adequate time to ensure the regulatory framework is fit for purpose and well understood

86. The following strategies seek to mitigate risks of uncertainty and unintended consequences, which may be prompted by the speed of the change:
    - The creation of regulations, ACoPs, standards and guidance is a phased process, based on priority: phase one regulations (the proposals in this RIS) are intended to come into effect in parallel with the new Act; phase two regulations are intended to be in place within two years of the new Act coming into force. The development of guidance material purposefully aligns with this process. This approach avoids overloading industry stakeholders, ensuring they are able to provide meaningful input into the development process so that the regulations are fit for purpose, and alleviates potential resource and capacity pressures on the regulator, WorkSafe NZ, recognising the volume of work to be done.
    - There will be a period of 7 months between when the new Act is passed and when the regime comes into effect. This implementation window provides WorkSafe NZ with sufficient time to build up its internal capability and ensure the final details of the systems, processes, communications and related guidance material are aligned with the new Act.
    - Some aspects of proposals require additional stakeholder consultation. Regulations for asbestos, hazardous substances and Major Hazard Facilities are highly technical, and require expert input from industry to ensure they are correct before being finalised. Exposure drafts, reflecting consideration of the finer detail of proposals in this RIS and other related matters, will be released to targeted stakeholders in March-April 2015. This seeks to ensure details are workable and will help to maintain the positive stakeholder buy-in and goodwill towards the regulation development process to date.
    - It is recognised that there is a case for providing additional time for specific regulations requiring increased investment from business in time, effort or money when compared with the status quo. MBIE and WorkSafe NZ are working together to identify proposals requiring transitional arrangements, determine the appropriate transitional periods, and consult with stakeholders, via an exposure draft process, to determine the detail of these.

D. Consultation

87. The discussion document – *Developing Regulations to Support the new Health and Safety at Work Act*, sought views on the policy proposals discussed in this RIS. The submission period opened in May 2014 and lasted 10 weeks. A total of 180 submissions were received representing the views of a wide range of businesses, representative organisations (business and workers) and individuals. All industries were represented (based on the Australian and New Zealand Standard Industrial Classification (ANZSIC) 2006), as were a wide range of business sizes and locations.

88. MBIE considered the submissions and met with stakeholder groups established by WorkSafe NZ to further refine the proposals where necessary in light of feedback received. These groups represented the interests of all relevant parties, including people with expertise on technical and operational matters (for example, test certifiers and asbestos removalists).

89. In March 2015, Cabinet agreed to release, for consultation, exposure drafts of the first phase of regulations [CAB Min EGI (15) 4/12 refers]. The majority of the first phase of regulations were consulted on in March-June 2015, specifically:
    - work involving asbestos
    - major hazard facilities
    - general risk and workplace management
    - mining, petroleum, and adventure activities
    - offences and penalties, and infringement offences and fees for the above regulations

90. In addition feedback was sought about the approach to offences and penalties, and infringement offences and infringement fees, which would be applied across all the regulations.

91. The focus of the exposure draft consultation process was to seek expert stakeholder feedback on whether the regulations as drafted were fit for purpose, technically correct and accurately reflected earlier policy decisions.

92. Due to the highly technical nature of the regulations, officials primarily relied on specialist guidance groups established by WorkSafe New Zealand (WorkSafe NZ) to test the content of the exposure drafts in detail. These groups include technical experts as well as worker and industry representatives in order to ensure a wide range of views were being considered. A full list of the groups and their members is provided in annex two of the Cabinet paper titled Minor Policy Decisions for Regulations to Support the new Health and Safety at Work Act.

93. In addition to the feedback received from the guidance groups, Officials also received feedback directly from 94 stakeholders on the exposure drafts of the regulations. Comments were received from a range of industry groups and also direct from businesses (large and small) from across New Zealand and across sectors (from mining through to early childhood carers). Worker representatives were also highly engaged in the process and submissions were received from a range of unions. Input was also received from the Human Rights Commission, the New Zealand Law Society, the New Zealand Defence Force, Ministry of Education, the Earthquake Commission, Maritime New Zealand, the Accident Compensation Commission and Tourism New Zealand.

94. A wide range of expert stakeholder feedback was received on the exposure drafts of the regulations. This feedback was largely positive and constructive and means that the policy intent of the regulations remains largely unchanged. Stakeholder feedback fell into three main categories:
    - requests for clear and practical guidance material to provide further detail on the requirements under the regulations;
    - suggestions for drafting improvements to provide greater clarity, improve technical accuracy, and better align the new regulations and the HSE regulations being carried over;
    - clarification about the policy intent of certain provisions – minor amendments to provide greater clarity on policy.

95. MBIE has been working closely with WorkSafe NZ to respond to requests for guidance and take onboard suggested drafting improvements. This will ensure the regulations are both workable and enforceable.

96. The following agencies have been consulted on the proposals and their views have been taken into account: Accident Compensation Corporation; Civil Aviation Authority; Department of Corrections; Department of Internal Affairs; Environmental Protection Authority; Maritime New Zealand; Ministry of Defence; Ministry of Education; Ministry for the Environment; Ministry of Health; Ministry of Justice; Ministry of Civil Defence & Emergency Management; Ministry of Pacific Island Affairs; Ministry of Primary Industries; Ministry of Transport; New Zealand Customs Service; New Zealand Defence Force; New Zealand Fire Service; New Zealand Police; New Zealand Transport Agency; Office of the Privacy Commissioner; Parliamentary Counsel Office; State Services Commission; Te Puni Kōkiri; Health and Disability Commissioner; Human Rights Commission; Canterbury Earthquake Recovery Authority; Earthquake Commission; Treasury; and WorkSafe New Zealand. The Department of Prime Minister and Cabinet has been informed.

97. Officials have sought advice from the Office of the Privacy Commissioner and the Human Rights Commission on the consent process for the health monitoring requirements under the general risk and workplace management regulations. Some concerns were raised by stakeholders about requirements' consistency with the Privacy Act 1993, the HDC Code, and the New Zealand Bill of Rights Act 1990. The Office of the Privacy Commission and the Human Rights Commissioner have recognised the significant benefits of these monitoring regulations for workers dealing with substances hazardous to health which outweigh any limitations regarding the consent processes. The Health and Disability Commission has confirmed that, in many cases, the rights and duties contained in the HDC Code, including in relation to consent, would apply in respect of such monitoring.

E. Monitoring, Evaluation, and Review

The new regulatory framework for work health and safety

98. A formal monitoring and evaluation of the work health and safety regulatory reforms, including the proposed changes in this RIS, will be undertaken jointly by the research and evaluation functions within MBIE and WorkSafe NZ. MBIE and WorkSafe NZ will formally identify the demarcation between the two agencies in this respect.

99. MBIE has developed a close working relationship with Australian regulators and policymakers. These exchanges will continue to ensure our regulatory framework keeps abreast with developments in Australia. The Australian Model Law (including regulations, ACoPs, and guidance) and the outcomes of its implementation are subject to review and evaluation; this is scheduled for 2016. We will be looking closely at recommendations and findings coming out of this, and where relevant, consider how this information may be used to improve the implementation of our own regulatory framework.

100. Below are performance measures that will be used to assess the effectiveness of the new regulatory framework in relation to specific proposals. This will be monitored by MBIE and WorkSafe NZ.

Worker participation, engagement, and representation

- *Monitoring of HSR training* – it will be necessary to monitor HSR training (in terms of the numbers of HSRs successfully achieving unit standards, and the availability and price of HSR courses) in order to evaluate the appropriateness of the choice of regulatory intervention. WorkSafe NZ will have leadership of this monitoring and evaluation, in collaboration with NZQA and Skills ITO.

Work involving asbestos

- The regulations will require increased notifications to WorkSafe NZ for asbestos removal work and improved documentation of work methods, health surveillance and other processes that will provide better information on the quantity and quality or work involving asbestos generally.
- Worksafe NZ will continue to maintain the asbestos disease register and the asbestos exposure register and to monitor other sources of data, such as the NZ Cancer Register for information on the occurrence of asbestos-related disease.
- Administration of the licencing regime and enforcement activity will provide information on the maintenance of competencies and capacity in the sector and will inform Worksafe NZ's oversight of the competency framework.

Work involving hazardous substances

- *Review of existing requirements* – minor and/or technical changes will be made to the existing (HSNO) requirements being carried through to the new regulations in order to simplify them to the extent possible in the short-term. More substantive review of these requirements will need to be carried out within two years of the new regulations coming into force, to ensure requirements are fit-for-purpose and to simplify them for users to the full extent possible.
- *Monitoring of regime* – the following measures will be monitored by MBIE and WorkSafe to assess whether implementation of the new regulations for work involving hazardous substances has increased the ability and willingness of the regulated to comply with the prescribed controls, which should ultimately lead to a reduction in the number of injuries and deaths from exposure to hazardous substances:
    - reduction in number of spills and fires involving hazardous substances at workplaces that fire service attends each year
    - reduction in the number of notifiable events (workplace deaths, injuries, and dangerous occurrences) involving hazardous substances

- increase in the number of proactive workplace assessments carried out by WorkSafe to check compliance with workplace use controls on hazardous substances
- reduction in the number of reactive enforcement interventions, involving hazardous substances, carried out by WorkSafe
- reduction in the number of incidents involving hazardous substances that WorkSafe responds to
- increase in the percentage of compliance certifiers that meet the performance standards set by WorkSafe
- reduction in the number of workplaces that are non-compliant with controls for the safe management of hazardous substances
- reduction in the number of complaints and adverse health reports received by WorkSafe about workplaces that are non-compliant with controls for the safe management of hazardous substances or substances hazardous to health.

This reporting will occur on a monthly basis to WorkSafe NZ's Senior Leadership Team and quarterly to WorkSafe NZ's Board. This reporting frequency will maintain regular oversight of trends and early awareness of any unintended consequences from the reforms. The measurement source will be WorkSafe NZ's operational intelligence collected by WorkSafe NZ's inspectorate as part of workplace assessments carried out. WorkSafe NZ's General Manager Assessments will be responsible for preparing this report for the Board and sharing the information collated with MBIE and MfE/EPA.

Regulating Major Hazard Facilities

- *Review of MHF regime funding* – a review of the MHF function within WorkSafe NZ will be undertaken by MBIE in 2016/17 as part of a comprehensive review of WorkSafe NZ funding, to assess the capacity of the regime to be self-funded.
- *Review of regime* – a comprehensive evaluation of the new regulatory regime for MHFs will be carried out after five years and earlier if there are significant concerns about aspects of the regime to consider whether or not the regulatory design of the regime is the most suitable over the long term. In particular, this includes the funding model and the associated fees.
- *Monitoring of the regime over the interim will be ongoing* –the MHF team's key findings and themes (for example, from sites inspected, investigation of incidents, and observations of 'good' risk management practices) will be published in WorkSafe NZ's annual reports. This will provide both transparency and accountability of the regime and strategic direction to industry stakeholders.

The bigger picture – Working Safer: the targets of the workplace health and safety system reform

101. As the new regulatory framework for work health and safety is a key part of *Working Safer,* monitoring of its impacts and effectiveness will be placed in the broader context of the *Working Safer* target – a 25 percent reduction in serious injuries and fatalities in the workplace by 2020, and its interim target – a reduction of at least 10 percent by 2016. These targets will be measured using three indicators: the age-standardised rate of fatal work-related injury; the age-standardised rate of serious non-fatal work-related injury; and the rate of work-related injury with more than a week away from work.

102. WorkSafe NZ is leading the achievement of the Government targets and, as a Crown entity, is subject to oversight of a department, the responsible Minister and Parliament. WorkSafe NZ is subject to the usual oversight mechanisms, including the requirement to have accountability documents against which its performance will be assessed.

103. In its *Statement of Intent,*[30] WorkSafe NZ outline the medium-term indicators – to 2020 – to measure its regulatory performance within the context of the workplace health and safety system. The S*tatement of Performance Expectations* outlines the performance indicators to monitor shorter-term changes in the health and safety system. The WorkSafe NZ Board is required to report annually to the Minister, other stakeholders, and the New Zealand public on full-year progress against the Statement of Intent and Statement of Performance Expectations, including reference to progress against key actions and priorities.

[30] Worksafe NZ, 2014: *Statement of Intent – 2014.*