



Environmental  
Protection Authority  
Te Mana Rauhi Taiao

**HSNO  
Enforcement  
Report  
2018**

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An aerial photograph of a coastal park. The top half shows a large green lawn with a winding path and several trees. The bottom half shows a rocky shoreline with dark water. The text is overlaid on the left side of the image.

# HSNO Enforcement Report 2018

Enforcement of the  
Hazardous Substances  
and New Organisms  
Act 1996

June 2019

# Purpose

This report presents the Environmental Protection Authority's (EPA's) assessment of the enforcement of the Hazardous Substances and New Organisms Act 1996 (the HSNO Act) for the 2017/18 financial year (1 July 2017 – 30 June 2018).

Under section 99(1) of the HSNO Act, the EPA is required to ensure that its provisions are enforced in all premises likely to contain a hazardous substance or new organism. It also requires the EPA to advise the Minister for the Environment, and enforcement agencies under the HSNO Act, when it considers that there is insufficient or unnecessary inspection and enforcement.

This reporting year, the EPA will be reporting for the first time on its own activities and intentions under the HSNO Act as an enforcement agency subsequent to the legislative change of 1 December 2017.

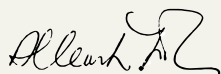
# Introduction

This is the first HSNO Enforcement Report to be completed following the transition of workplace controls for hazardous substances to the regulations of the Health and Safety at Work Act 2015 (HSWA).

Achieving the purpose of the Hazardous Substances and New Organisms (HSNO) Act, which is to “protect the environment and the health and safety of people and communities, by preventing or managing the adverse effects of hazardous substances and new organisms” requires both the HSNO Act and related legislation to work effectively together. Particularly with the wide range of agencies that play an enforcement role under the HSNO Act.

New Zealand environmental law has many overlaps and duplication. Where duplication occurs, enforcement of one set of requirements means little harm results when there is limited activity taken in that area under other legislation. The effectiveness of actions taken under other legislation, in managing areas of risk that also have requirements set under the HSNO Act, is important in our prioritising of enforcement activity under the HSNO Act. Priority is given to areas where harm is evident and the risk of further harm is seen to be highest. All parts of the jigsaw need to be in place to achieve the purpose of the HSNO Act.

The key linkages to other legislation are noted here along with any activity by the EPA to ensure that enforcement of the HSNO Act is appropriately linked across regulatory frameworks and that the HSNO Act’s purpose is achieved.



**Dr Allan L Freeth**  
Chief Executive

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# Changes in the regime

01

# The Health and Safety at Work reforms

The Health and Safety at Work reform came into effect on 1 December 2017, changing the enforcement regime for hazardous substances significantly.

The reform rewrote the law relating to safety in workplaces. It also moved all workplace-specific safety regulation relating to hazardous substances, including regulation of the storage, use, and safety of hazardous substances in workplaces, from the HSNO Act into the Health and Safety at Work (HSWA). Enforcement undertaken in workplaces under the HSWA requirements now falls outside the scope of the HSNO Act.

All hazardous substances made and used in New Zealand still need to be approved under the HSNO Act and some HSNO controls still apply to workplaces, including controls that are solely to protect the environment, and generic controls relating to classifications, labelling and safety data sheets. Enforcement under the HSNO Act relating to hazardous substances is now focused on these areas.

The reform changes not only affect the enforcement undertaken by WorkSafe but also the scope of HSNO enforcement by all other agencies. For example, councils can address the risk of hazardous substances under the Resource Management Act 1991 (RMA) through enforcement of a single set of rules relating to

discharges, rather than utilising both the rules under the HSNO Act that relate to bulk storage of hazardous chemicals and the discharge rules included in the district plan under RMA.

Much of the work on managing hazardous substances at the border is under the Customs and Excise Act 2018 rather than under the HSNO Act. There is also an overlap between fire legislation and the HSNO Act. The new Fire and Emergency New Zealand Act 2017 provides the Fire and Emergency Service with all the powers needed to manage hazardous substances emergencies, without having to use their powers under the HSNO Act.

## Impact on monitoring

The changes in legislation and the shift in responsibilities now means that many of the indicators and much of the data that have been the focus of this report in previous years are irrelevant, as the activities of certain agencies are no longer regulated under the HSNO Act, but are enforced under HSWA. Longer term indicators for monitoring compliance trends and needs under the HSNO Act will take time to develop, and establishing baseline data to guide enforcement work will flow from this.

The scope and nature of the various regulations and legislation is shown in tables 1 and 2.

**Table 1: HSNO – Scope of regulation**

| <b>Scope of HSNO regulation</b> |   |
|---------------------------------|---|
| Hazardous substances            | <p>Approval of all hazardous substances, including products and substances approved under group standards, before they can be introduced to New Zealand.</p> <p>Setting generic rules covering labelling, safety data sheets, packaging, environmental, and other non-workplace controls.</p> |
| New organisms                   | Control and approval regime for new organisms, including any development of genetically modified organisms, for release and for use in containment.   |

**Table 2: Scope of other related legislation**

| <b>Related legislation</b>                |  |
|---|--|
| Health and Safety at Work Act 2015 (HSWA) | <p>The HSWA purpose is to protect workers and other persons against harm to their health, safety and welfare by eliminating or minimising risks arising from work.</p> <p>All work and workplaces are covered by HSWA unless specifically excluded. The enforcement of the HSNO Act is administered by WorkSafe.</p>   |
| Health legislation                        | The Health Act 1956 gives the Ministry of Health and health agencies the function of improving, promoting, and protecting public health.   |
| Transport legislation                     | The various Acts provide for rules relating to transport on land, in the sea, and in the air. There are rules relating to the transport of dangerous goods under each of the main Acts.  |
| Local Government Act 2002                 | The Local Government Act includes rules relating to solid waste collection, bylaws regulating solid wastes, trade wastes, waste management nuisance, public health and safety. Implemented by local authorities.   |
| Resource Management Act 1991 (RMA)        | <p>The RMA purpose is to promote the sustainable management of natural and physical resources. Involves considering effects of activities on the environment now and in the future when making resource management decisions.</p> <p>Territorial councils – manage the effects of land use.</p> <p>Regional councils – manage discharges of contaminants to land, air and water, identifying and monitoring contaminated land.</p> <p>RMA rules and consents relating to hazardous substances and new organisms are additional to HSNO and are only valid when they provide additional requirements (i.e. they cannot remove HSNO requirements).</p> |
| Waste Minimisation Act 2008               | The Waste Minimisation Act relates to the management of solid wastes. Provides for local authority waste minimisation and, in Part 2, for regulations relating to product stewardship for products that have the potential to create problems at the end of their useful life. Part 2 regulations could include rules about product composition, disposal and take-back.   |

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**Related legislation**

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|---|--|
| Biosecurity Act 1993                    | <p>The Biosecurity Act regulates the risks from harmful organisms, like pests and diseases. It provides a regulatory system that helps protect New Zealand's economy, environment, human health, and a range of social and cultural values by:</p> <ul style="list-style-type: none"><li>• stopping pests and diseases before they arrive</li><li>• dealing with any if they do enter the country.</li></ul> <p>The Ministry for Primary Industries implements the HSNO Act for central government, and regional councils also have local responsibilities for pests within New Zealand.</p> |
| Customs and Excise Act 2018             | <p>The Customs and Excise Act provides for customs controls and facilitates border control through risk management. This includes ensuring that any imports meet regulatory requirements, including the HSNO Act requirements, at the border.</p> <p>Customs implement the border control and, among the regulatory requirements checked at the border, promote compliance with the hazardous substances approval requirements, with respect to substances being imported or exported from New Zealand.</p>  |
| Fire and Emergency New Zealand Act 2017 | <p>Functions of fire and emergency services under the HSNO Act include stabilising or rendering safe emergencies that involve hazardous substances, and providing for the safety of persons and property endangered by emergencies involving hazardous substances. The service also promotes safe signage, and storage for hazardous substances, and infectious and radioactive substances.</p> <p>The HSNO Act provides fire and emergency services with enforcement powers and provides for prosecution of offences.</p>   |

# EPA summary of HSNO enforcement by agencies

# 02

# Our work with territorial authorities

The EPA has responsibility under section 99 of the HSNO Act, for the oversight of enforcement and ensuring the provisions of the HSNO Act are enforced in all premises likely to contain a hazardous substance. If there is insufficient or unnecessary inspection and enforcement by one of the enforcement agencies listed in section 97 or 97A, then the EPA is to advise both those with operational responsibility in the problem area, and the Minister for the Environment of the identified short-comings or unnecessary inspection and enforcement.

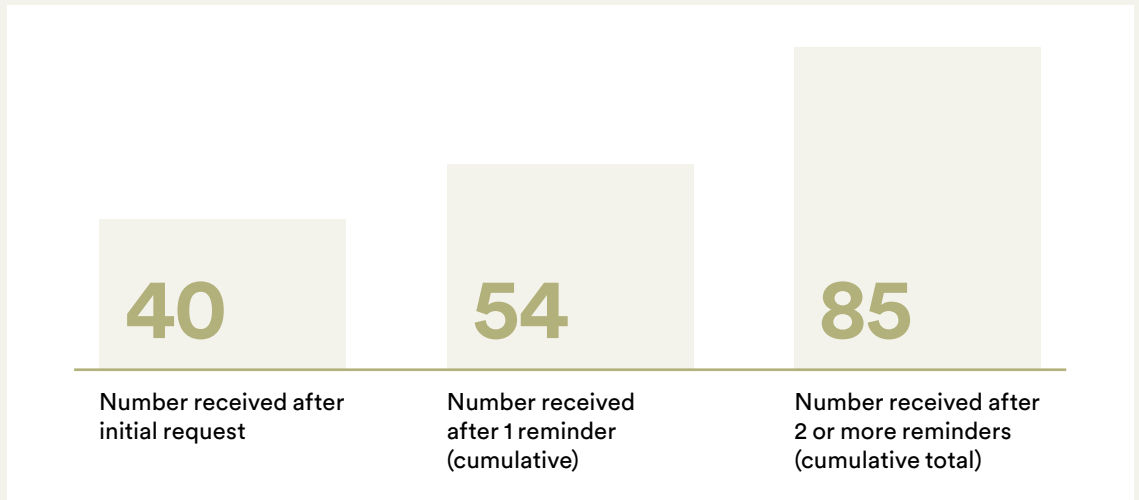
The oversight includes a requirement for enforcement agencies to notify the EPA of where they will have enforcement officers (EOs) and the level of inspection and enforcement provided by those officers. The notification should be made to the EPA before the beginning of the EPA financial year (i.e. before 1 July). Any transfer of functions and duties of the enforcement agency must also be notified to the EPA. Approval is given by the EPA for transfers between territorial councils or by the Minister for transfers between others.

To inform this report, a survey was sent to all section 97 enforcement agencies requesting information on their compliance and enforcement activities under the HSNO Act. A minimum of three weeks was given for responses. All section 97 enforcement agencies responded, after reminders were sent to many, however, not all information sought was provided.

Over half of all section 97 agencies did not respond until after the deadline had elapsed and required prompting before the response was received.

The Napier City Council was the last territorial council to provide a response – 40 days after the deadline. Amongst regional councils, the West Coast Regional Council's response failed to meet the timeframe by the widest margin, and was received over three weeks after the original deadline. Within the central government agencies, the Police failed to meet the deadline by the widest margin, providing information two weeks after the deadline. Figure 1 is a summary of agency responses to the HSNO Act enforcement questionnaire.

**Figure 1: Submissions received in the 2017/18 financial year**



Responses to the survey indicated some confusion among enforcement agencies as to the expectation of their role. Many enforcement agencies seemed to be recycling material that related to the HSNO Act enforcement, as it existed prior to the implementation of the 2015 amendments.

Submissions received in the 2017/18 financial year, for a summary of agency responses to the HS enforcement questionnaire.

# Operational responsibilities

**Table 3: Enforcement responsibilities from December 2017 under section 97 of the HSNO Act**

| Agency   | Responsibility  | Trend <sup>1</sup> |
|--|---|--------------------|
| Environmental Protection Authority (mandatory) | <p>Enforcing the requirement for a hazardous substance to have an approval before being imported or manufactured, and compliance with classification controls and content controls.</p> <p>Enforcing prohibitions relating to persistent organic pollutants and hazardous substances prohibited by regulations.</p> <p>Enforcing requirements imposed under any EPA notice.</p> | ↑                  |
| WorkSafe NZ (mandatory)                        | <p>Responsible for enforcement in workplaces. From 1 December 2017, this relates only to those HSNO Act rules relating to disposal and ecotoxic controls in any workplace.</p> <p>All provisions in, on, or about any distribution system, gas installation, or gas appliance.</p>  | ↑                  |
| New Zealand Transport Agency (discretionary)   | <p>All provisions in or on any motor vehicle, road, rail vehicle, or railway line.</p> <p>Note that commercial vehicles and railways are workplaces, and therefore from 1 December 2017 the rules relating to these are set and enforced under HSWA plus transport legislation.</p>   | =                  |
| Police (mandatory)                             | <p>All provisions in or on any motor vehicle, road, rail vehicle, or railway line (in consultation with NZTA). Note that commercial vehicles and railways are workplaces and, therefore, from 1 December 2017 the rules relating to these are now set and enforced under HSWA plus transport legislation.</p> <p>Provisions related to retail sale of fireworks.</p>            | =                  |

<sup>1</sup> Trend indicates performance trend based on enforcement agencies' change in number of enforcement officers.

| Agency                                      | Responsibility   | Trend <sup>1</sup> |
|---|--|--------------------|
| Civil Aviation Authority (mandatory)        | <p>Provisions in or on any aircraft. Note that commercial aircraft and airports are workplaces and, therefore, from 1 December 2017 the rules relating to these are set and enforced under HSWA plus transport legislation.</p> <p>Disposal provisions related to disposal from any aircraft. This includes aerial spraying or pesticide bait distribution from aircraft.</p>  | ↑                  |
| Maritime New Zealand (mandatory)            | All provisions in or on any ship. Note that ships and boats operated commercially are workplaces and therefore from 1 December 2017 the rules relating to these are set and enforced under HSWA plus transport legislation.  | =                  |
| Ministry of Health (mandatory)              | All provisions where necessary to protect public health.   | ↑                  |
| Territorial Councils (mandatory)            | <p>Territorial Councils, (67 councils; including 61 territorial authorities and six unitary authorities) are responsible for all provisions on premises in their territory that are not covered by other authorities (listed above).</p> <p>All provisions on premises where another enforcement agency has transferred authority to the territorial council.</p> <p>All HSNO Act provisions on premises where the Territorial Council is enforcing RMA provisions (discretionary).</p> <p>Note that the scope of all three of these enforcement functions was reduced when workplace rules relating to hazardous substances moved from the HSNO Act to HSWA on 1 December 2017.</p> | ↓                  |
| Regional Councils (discretionary)           | <p>Regional Councils (11) may enforce all provisions on premises in a region where the regional council is enforcing RMA provisions.</p> <p>All provisions on premises in a region where another agency has transferred authority to the regional council.</p> <p>Note that the scope of these enforcement functions was reduced when workplace rules relating to hazardous substances moved from the HSNO Act to HSWA on 1 December 2017.</p>   | =                  |
| Ministry for Primary Industries (mandatory) | Enforcement of the HSNO Act in respect of new organisms.   | =                  |

## Agency activity

### Environmental Protection Authority

**EPA enforcement capability:** The EPA has experienced a reduction in warranted HSNO enforcement officers, due to staff turnover, from nine to six, and is recruiting up to a total of 13 staff. The EPA has a comprehensive HSNO Act specialised training programme that is overseen by the EPA Legal team, which all its enforcement officers must complete to become warranted.

**Targeting EPA enforcement:** In September 2018, the EPA's Hazardous Substances Compliance team started a concentrated inspections campaign to monitor compliance within the three priority sectors of industry of pest management companies, waste recycling/disposal, and agrichemicals (non-retail). These sectors were selected by using a list of sectors compiled from the Ministry for the Environment's Hazardous Activities and Industries List (HAIL) and information from WorkSafe New Zealand and Statistics New Zealand. Ratings for exposure, history, public risk, and sector activity were applied and the priority sectors identified. Companies within the priority sectors were then selected according to location, size of the business, use of high risk hazardous substances and whether they were an importer or manufacturer. The first inspections took place in October 2018, with the campaign scheduled to be completed by 31 December 2018, when 13 targeted inspections had occurred.

The concentrated inspections campaign is the beginning of a broader inspection programme targeting importers and manufacturers and Public Health Units for the remainder of 2018/19. The exact number of inspections has not been identified as the campaign is still under development.

The EPA has been working with other agencies on the legacy of past non-compliance and cross boundary issues, including an independent investigation into the use of firefighting foams containing perfluorooctane sulfonate (PFOS) contrary to the HSNO Act.

In December 2017, investigation commenced with work to identify airports and other facilities storing or using firefighting foams containing PFOS, contrary to the HSNO Act. Four additional staff were seconded from other EPA teams or recruited from outside the EPA for the investigations. This work is now nearing completion.

### WorkSafe

During the year, WorkSafe performed a higher level of inspection activity in worksites containing hazardous substances than was carried under the old HSNO Act regime. More recently, WorkSafe's inspection of these included compliance with HSNO Act environmental controls.

The majority of its inspection efforts targets priority areas, including manufacturing, agriculture, construction, forestry, and adventure activities. In the 2017/18 financial year, inspections were carried out in 3,730 workplaces where hazardous substances were a focus. During the year WorkSafe issued 123 compliance orders under the HSNO Act. Inspections increased by 47 percent from the 2,533 inspections in the 2016/17 financial year.

WorkSafe also carried out audits and incident investigation relating to gas installation and systems.

### NZTA

The NZTA reported that it monitors activities through its rail safety unit and through the Police. NZTA plans to review its capability to regulate hazardous substances.

### Police

Enforcement of the rules on sale of retail fireworks were effectively implemented.

The Police also undertook enforcement work on the transport of hazardous substances, which until 1 December 2017, was subject to the HSNO Act. The group responsible has been increasing its capability in enforcement.

### Civil Aviation Authority

The Authority enforced rules concerning chemical dispersal, including spraying and dropping pesticide baits, from aircraft. The Authority responded to the seven reported incidents.

The Civil Aviation Authority also undertook enforcement work on the transport of hazardous substances, which until 1 December 2017, was subject to the HSNO Act.

Civil Aviation plans to audit or inspect 35 to 55 agricultural operators, including aspects regulated under the HSNO Act. The Authority expects to have six HSNO warranted enforcement officers in 2018/19.

## Maritime NZ

Maritime NZ undertook enforcement work relating to the transport of hazardous substances on ships and maintained its enforcement capacity during the year. Maritime NZ met their target of inspecting 350 vessels for compliance with the HSNO Act, and international maritime dangerous goods rules and Maritime Transport Act compliance. With the implementation of the legislative changes on 1 December 2017, the bulk of this activity is no longer in scope for the HSNO Act.

## Ministry of Health

In the 2017/18 financial year, there were 59 hazardous substance incidents reported to the Ministry of Health, this was less than the 69 incidents reported in the 2016/17 financial year. There were 43 investigations resulting from these reports. Many of the incidents occurred in the workplace. In addition, the Ministry of Health issued 334 permissions relating to vertebrate toxic agent use. Of these, 289 permissions were audited for compliance. The Ministry of Health identified a total of nine non-compliances.

The Ministry of Health continues to deliver a comprehensive programme of proactive and reactive initiatives through its Hazardous Substances Action Plan to manage public health risks from a wide range of hazardous substance exposures.

## Territorial councils

There is a wide variation in the level of enforcement activity under the HSNO Act. Some councils are active, but an increasing number do not have enforcement capability and a growing number of these have indicated they have no plans to acquire any.

The EPA received returns from all of the 67 territorial councils relating to their intentions for HSNO Act compliance activity. Overall HSNO Act enforcement is being increasingly viewed as a lesser priority by councils when planning their activities.

A total of 34 councils report that they had HSNO-warranted enforcement officers on their staff during the 2017/18 financial year. In addition, 11 councils advised that they have contracted out HSNO enforcement functions to a third party.

In the 2017/18 financial year, 33 percent of councils did not have HSNO enforcement capability, either on staff or contracted in. This is an increase from the 22 percent of councils

that reported having no capability in the 2016/17 financial year.

Six of the 22 councils with no HSNO enforcement capability (Carterton District Council, Horowhenua District Council, Hurunui District Council, Kaipara District Council, Napier City Council, and Taupo District Council) indicated that they plan to rectify this in 2018/19. Note that Carterton District Council and Kaipara District Council reported the same intention last year.

Sixteen of the 22 councils did not indicate that they intend to obtain HSNO enforcement capability. These councils are: Central Otago District Council, Chatham Islands Council, Christchurch City Council, Far North District Council, Gore District Council, Kaikoura District Council, Kapiti Coast District Council, Rangitikei District Council, Rotorua Lakes Council, South Taranaki District Council, Tauranga City Council, Tararua District Council, Waimate District Council, Waitaki District Council, Westland District Council and Whanganui District Council. In the 2016/17 financial year, six councils had no capability and no plans to develop any, and in the 2015/16 financial year there were only two councils in this position.

## Regional councils

Returns from regional councils indicated that most manage hazardous substances problems under the RMA. Discharges to the environment are regulated under the RMA. Other areas where RMA enforcement is undertaken with respect to hazardous substances include emergency incident response, spray drift, compliance monitoring of sites containing large quantities of hazardous substances, and pollution prevention audits. In addition, regional councils also give advice on RMA rules relating to the use and storage of hazardous substances and undertake emergency response planning.

This RMA work is on-going. The changes in transferring regulation of storage in commercial premises from the HSNO Act to HSWA means that councils will need to work more closely with WorkSafe in coordinating activity in this area in the future.

Only Taranaki and Hawkes Bay Regional Councils have HSNO-warranted officers. Taranaki Regional Council uses its officers to complete delegated work on behalf of two of the district councils in the Taranaki Region.

### Ministry for Primary Industries

The levels of inspection of containment facilities are considered by the EPA to be satisfactory, with 95 percent of them being inspected and the low rate of non-compliance amongst containment facilities is reflective of the comprehensive compliance work that is undertaken.

The Ministry for Primary Industries undertakes surveillance and border control activity to ensure that new organisms are not introduced into New Zealand under the Biosecurity Act. It also responds to incursions of new organisms under the Biosecurity Act.

**Table 4: Other enforcement of the HSNO Act**

| Agency  | Responsibility   | Trend |
|---|--|-------|
| New Zealand Customs Service   | New Zealand Customs Service undertakes hazardous substances enforcement activity at the border. Although it is not an enforcement agency under s97 of the HSNO Act, s121 of the HSNO Act states that any hazardous substance imported in breach of the HSNO Act is a prohibited import under s54 of the Customs and Excise Act 1996. | =     |
| Fire and Emergency New Zealand (discretionary – not listed in section 97 but has powers under the emergency provisions in Part 9 of the HSNO Act) | Fire and Emergency is the lead agency at a hazardous substance emergency when it is the first responder, or control is handed over to the EPA at a multi-agency emergency. It has discretionary powers under the HSNO Act in an emergency. It also has emergency powers under the Fire and Emergency New Zealand Act.                | ↑     |

## Other activity

### Customs Service

Customs undertakes inspection of imports based on declarations and assessments of the risk associated with the import. Customs estimated that 98.8 percent of all import transactions were compliant with New Zealand law (including the HSNO Act) based on risk assessment.<sup>2</sup>

In 2019, the target for this is 95 percent (the same level as the target in 2018). Following the implementation of the legislative changes on 1 December 2017, the bulk of this activity is no longer in scope for the HSNO Act.

“We will exercise our powers under HSNO, and we will not invoke the powers of an enforcement officer under the HSNO Act, i.e. we will not declare an emergency under section 136 of the HSNO Act.”

This is appropriate because the powers under the Fire and Emergency New Zealand Act 2017 allow greater scope of response to HSNO issues than the HSNO Act and it ensures that there is no gap in responding to emergencies. This does not limit another agency taking responsibility for a site under section 136 of the HSNO Act.

### Fire and Emergency New Zealand

It is Fire and Emergency New Zealand’s stated intention to undertake its emergency activity and use of emergency powers under the Fire and Emergency New Zealand Act 2017 rather than the HSNO Act.

# Managing environmental harm

The need for the enforcement of the HSNO Act to be undertaken in conjunction with other enforcement and regulatory activity has been highlighted by feedback received from enforcement agencies. This is a consistent theme from past annual surveys and can create uncertainty and confusion about who has the authority to act.

Only 11 councils have HSNO enforcement officers and have taken some kind of hazardous substances enforcement action.

Twenty-one councils have indicated that they do not have capability to enforce the HSNO Act. Of those, 18 have indicated that they did not carry out any hazardous substances monitoring or enforcement under other legislation (e.g. RMA).

Councils are required to maintain enforcement officer capability in order to comply with their obligations under the HSNO Act. If the HSNO Act is not enforced, including through overlapping legislation, the absence of enforcement officer capability within these councils make them non-compliant with the HSNO Act.

A small sample of councils report that harm is being managed through legislation other than the HSNO Act. Where this is the case, it is possible that the reduction in harm caused by hazardous substances, through the efforts of councils, may not have been fully reported.

The EPA is clarifying what the HSNO Act requires of councils through a structured engagement programme and provision of formal guidance. HSNO requirements could interface with, or complement territorial authority powers under other legislation to enable further hazardous substances harm reduction. Effective enforcement involves ensuring regulatory boundary issues, including the need for overlapping jurisdictions to be compatible, to ensure that any gaps identified do not exacerbate problems.

Enforcement agencies must take a wider view and consider the desired outcome. They need to be able to confidently select the most effective tool from a number of regulatory frameworks, to effectively manage wider hazardous substances issues. Issues such as management and disposal of wastes, contaminated sites, discharges to the environment and emergency management and safety cannot be addressed under a single Act within the New Zealand legal framework as it now stands.

Weaknesses noted need to be considered in this wider context. Enforcement under one, for example by councils using RMA, can manage some incidents that could also be managed under the HSNO Act. The important thing is that incidents requiring an enforcement response are noticed and responded to in one way or another.

## Understanding and implementing the new regime

A shortcoming in HSNO enforcement work relates to apparent confusion about new roles and the focus on issues that are now WorkSafe's responsibility. These areas of enforcement will still be a focus for the enforcement agencies, such as Maritime NZ and other transport agencies. Much of their work, however, is no longer in areas where the EPA has regulatory oversight. But there are indications that, in some areas, the understanding of the new role, under each Act for each oversight agency, is still being bedded-in.

With the fragmented nature of New Zealand legislation, combined with a poor understanding of the roles, and the regulatory tools available to manage hazardous substances, there is a risk that an effective response to incidents or problems may be limited because of the concern as to whether it fits within the enforcement agencies' direct jurisdiction.

There is also a general shortage of skills and knowledge across many enforcement agencies relating to hazardous substances, their hazard properties, proper treatment, and disposal. This affects not only HSNO enforcement, but enforcement of their legislative regimes and effective prioritisation of any operational activity.

The changes in legislation and the resulting transition period have meant that past non-compliance issues are now framed in a new context, which adds further complexity. This includes issues that crossed or now cross the boundaries of a number of legislative frameworks. Examples of this include confusion relating to the places where activities involving hazardous substances are being carried out. It is possible to have controls set by both the EPA under the HSNO Act, and requirements set by the Regional Authority within the Regional Plan under RMA. This current state, and other non-compliance issues relating to changes in the hazardous substance regulatory framework, means that there are still ongoing issues to manage.

These issues include problems such as the continued contamination by PFOS firefighting foams. Such issues require much resource and, in the short term, divert resources from enforcement that could prevent future problems.

Related to this issue are legacy sites, containing waste hazardous substances, that have been abandoned or are owned by parties that are effectively insolvent.

## Hazardous waste infrastructure

Enforcement (under both the RMA and the HSNO Act) of dumping and poor disposal of hazardous wastes is an ongoing problem in many districts. This is often related to there being a lack of effective disposal options, for those dealing with small volumes of hazardous substances needing proper disposal. This problem has recently been highlighted by a Consumer NZ report<sup>3</sup> and particularly affects households and smaller enterprises in many parts of the country.

A number of councils do not accept hazardous wastes, and waste management companies are not currently able to provide collection and consolidation of small volumes for treatment at reasonable cost. Where collection does occur the frequency and cost of collection varies greatly.

## Territorial councils

The EPA received returns from all of the 67 territorial councils relating to their intentions for HSNO compliance activity. Their responses showed that more councils are not viewing HSNO enforcement as a priority when planning their activities.

In the 2017/18 financial year, a total of 45 territorial councils report that they have HSNO-warranted enforcement officer capability on staff and/or contracted in. The remainder, some 33 percent of councils, report not having HSNO enforcement capability either on staff or contracted in. This is an increase from 22 percent of council respondents in the 2016/17 financial year who reported having had no capability.

3 Hazardous waste: A guide to disposal found at <https://www.consumer.org.nz/articles/hazardous-waste-a-guide-to-disposal>

The reasons given by councils for not increasing HSNO enforcement included:

- a lack of HSNO work in the particular district
- restructure or retirement of staff resulting in lost capability and currency of knowledge
- there being no practical route or guidance from EPA in regard to HSNO training.

The primary HSNO enforcement function for territorial councils relates to hazardous substances found in public places (other than worksites) and in private residential addresses. HSNO enforcement now focuses on hazardous substances in households, whether a substance is approved and generic rules (such as labelling, classification and environmental controls, including controls on eco-toxicity and disposal). The largest quantity of hazardous substances in any territorial council area are in workplaces and are now managed under HSWA, not the HSNO Act.

Feedback from the 2017 discussions with councils indicated that a major concern was with large volumes of hazardous material, and these were almost exclusively held in workplaces. Councils will need to refocus concerns with these premises away from the HSNO Act activity and engage more in compliance activity under other legislation, such as RMA and HSWA. (Local authorities are regulatory agencies under the HSNO Act but inspectors with enforcement powers under HSWA are all appointed by WorkSafe as the regulator.)

While the decrease in many councils' capabilities to undertake HSNO enforcement is a concern, in some cases it merely reflects the fact that the highest priorities relating to hazardous substances, such as storage conditions and sites with significant quantities of hazardous substances, are no longer regulated under the HSNO Act. Those councils undertaking enforcement are still adjusting to the changes of responsibilities between the different Acts, especially as the focus of previous enforcement work was workplaces that contain hazardous substances.

## EPA enforcement capacity

While the EPA carried out more enforcement inspections than previously, the EPA enforcement capability was not high for much of the 2017/18 financial year. Weaknesses were caused by a need to rebuild and grow the team due to staff turnover and acquisition of new responsibilities. The team now has eleven staff plus two contractors. However, there were discontinuities in work for the following reasons:

- the induction of new staff and the training necessary to become warranted officers
- significant unplanned high-priority work relating to PFOS and a legacy site, which disrupted work plans and led to postponement of some activities.

The disruption to capability, and the commitments to the PFOS investigation, interrupted HSNO work with councils and reduced overall capacity to undertake inspections of importers and manufacturers.

# Future actions

03

# Building capability and capacity

The EPA is responding to the weaknesses identified as outlined in this section.

## Improving EPA capacity

The EPA is building its capability and capacity in the compliance area. This includes recruitment to increase HS compliance staff numbers. This does present some resourcing challenges to the EPA and take some time to implement. For example, the HS enforcement officer warranting process takes six months to complete to a legally-acceptable standard.

## Hazardous Substances Compliance System Technical Working Group

As a result of incidents involving the legacy of poor compliance in the past, including the Concours Electroplating incident in Timaru, the EPA is now examining the enforcement of hazardous substances regulation in a wider context. The problems have involved failings under more than one Act. An independent Technical Working Group has been set up by the EPA and the Ministry for the Environment to make recommendations for improving the national hazardous substances compliance system in general. This should help improve understanding, and ultimately performance, on those compliance issues that involve a number of different Acts and enforcement agencies. The final recommendations from the Technical Working Group are expected in June 2019.

The recommendations of the Technical Working Group will help the EPA not only with its planning of HSNO enforcement but also with the connections between this work and other regulatory frameworks. We expect to be working with other agencies, such as WorkSafe

and councils, in this wider context and in a more interconnected way to address potential harm.

## Focus of the EPA's work in enforcement

At this stage, the EPA is focusing on the following:

- A broad inspection programme covering importers and manufacturers, and delegation holders. This will include more inspections than the EPA has carried out in the past. The activity will avoid problems downstream by ensuring that high hazard products are not available to households and for those that are, essential information, packaging, and instructions are available to enable households to use the products safely.
- Developing clear guidance on roles and expectations for enforcement under the HSNO Act, and how this fits with the wider regulatory framework to prevent harm. This is an essential first preparatory step to working with other enforcement agencies and to developing appropriate training resources to assist them. It also identifies key aspects for monitoring the need for, and effectiveness of, HSNO compliance within the wider context.
- The EPA will plan to ensure we have the ability to play a key role in managing legacy issues where there are gaps and particular problems resulting in a lack of effective enforcement action.

In the medium term, the EPA will seek to address improved capability in selected councils in the context of partnering in enforcement work. This will be to ensure importers and manufacturers of hazardous substances are approved, and importers and manufacturers comply with generic rules such as labelling, packaging and safety data sheets.

# General conclusions

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# Summary

The EPA surveys all HSNO Act Section 97 agencies annually to determine the levels of enforcement carried out in the previous year and planned for the coming year.

Findings from the surveys indicate that some agencies do not give significant priority to hazardous substances matters. Overall, hazardous substances compliance capability has reduced from the 2016/17 financial year to the 2017/18 financial year.

In the 2016/17 financial year, no responses were received from 14 percent of the agencies surveyed. In the 2017/18 financial year, all agencies responded to the survey, although some of these responses remained incomplete and required additional time to gather this information.

Certain agencies are increasing the amount of hazardous substances monitoring and enforcement activity. WorkSafe NZ and the EPA being noteworthy. Others are in a steady state or in decline, as a result of perceived higher priorities or pressures.

Significant and complex hazardous substances issues have been identified through the compliance work of the agencies listed above. Some of these issues have included legacy sites that have required a high level of resources to resolve the risks to public safety. If prompt, connected, and assertive action had been taken at the appropriate time, the level of resourcing required to manage the situation may have been reduced, and the risk mitigated.

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