

INFORMATION BULLETIN



HAZARDOUS SUBSTANCES AND NEW ORGANISMS



August 1999

OSH HSNO Update

What is OSH doing pre HSNO?

Currently, OSH is concentrating its efforts on the implementation of the enforcement of the Hazardous Substances and New Organisms (HSNO) Act across all its eighteen branches. This includes operational policy development, recruitment, warranting and training our staff. This is our immediate priority.

OSH will commence work on its post-transition activities when this has been completed.

In the near future, OSH will also be working with the territorial authorities (TAs) to establish a workable process for negotiating memorandums of agreement between itself and individual TAs. We will keep you informed of progress.

What will OSH be doing during the transitional period?

The commencement date of the hazardous substances part of the HSNO Act is to be announced by the Minister for the Environment (MfE) in due course. A number of critical regulations are due to be introduced at the same time and they are under development at present. Many of these regulations bear directly on the activities of OSH in its enforcement of HSNO.

In view of the uncertainty leading up to the announcement and the content of the regulations, OSH has been unable to confirm its position other than to state it will be “business as usual” during the transitional period.

How long will the transitional period be?

ERMA New Zealand advises:

“it expects the transitional period in the HSNO Act to be extended to at least three years from the commencement of the Hazardous Substances part of the Act. Within this time, ERMA New Zealand and the Ministry for the Environment will develop regulations, which will translate the existing approved substances into the HSNO framework, and will attach HSNO controls to each. ERMA New Zealand intends to develop regulations for explosives first, followed by dangerous goods, scheduled toxic substances, pesticides, and finally the notified toxic substances. It expects that a significant lead-time will be required to both develop the regulations, and to allow a test certifier regime to become established. ERMA New Zealand does not expect this to occur prior to the March 2000 dangerous goods licensing round”.

What role does OSH see TAs undertaking during the transitional period?

It is important that “business as usual” is continued during the transitional period for both OSH and TAs. OSH and ERMA New Zealand have stated this to TAs on numerous occasions, and the position still stands.

During the transitional period OSH expects that TAs will conduct their activities as they do now, enforcing, under s.97(h)(iv), the transitional dangerous goods provisions (Part XIV) of the HSNO Act, and liaising with OSH as required.

TAs' role will remain in place for the period of the transition or until regulations are promulgated which transfer substances nominated in the transitional provisions to the main body of the HSNO Act.

During the transitional period, OSH will explore various options for the longer term with agencies such as ERMA NZ and MfE. One of the preferred options is to encourage a greater use of a test certification regime.

What role does OSH expect TAs to undertake post transition?

After the transitional period, OSH understands that TAs will enforce the HSNO Act (not restricted to dangerous goods) in or on premises situated in their respective districts other than those premises specified in s.97(a) to (g) of the HSNO Act. This sub-section of the HSNO Act is meant to be a 'catch-all' provision.

This will mean that TAs enforcement of the provisions of the HSNO Act in or on places of work (s97(a)) will be complementary to the enforcement of the Building Act for the purpose of any stationary container, and on their enforcement of the Resource Management Act.

A number of TAs have written to OSH suggesting that they carry out the inspection functions currently carried out by OSH once HSNO is fully implemented. This will be considered as part of OSH's long term position. However, it should be remembered that a compliance 'toolbox' will be introduced which will include regulations, codes of practice, standards, test certification and inspection. ERMA NZ and the MfE will put these in place. As such, inspection is only one of several tools that could be used by HSNO enforcement officers.

Will OSH be transferring any functions to TAs?

From the commencement date, TAs may also enforce, under s.97(h) of the Act, the provisions of

the HSNO Act in or on premises specified in s.97(a) to (g) of the Act for the purpose of enforcing the provisions of the Resource Management Act or any transfer of power, under s.98 of the HSNO Act, from any HSNO enforcement agency to any TA.

It has been suggested that OSH wants to take on this additional workload. That is incorrect. The position is that the HSNO Act (s.98(4)) provides that the Secretary of Labour shall continue to be responsible for the enforcement of the HSNO Act by TAs at places of work, and his responsibility is not transferable. However, the MfE is proposing a future amendment to transfer the responsibility along with the transfer of any function, power or duty.

The transfer of functions is an option that will be considered subject to the proposed legislation amendment.

OSH's first task will be to develop the policy, followed by the systems and processes, to ensure that, where functions are transferred to TAs, they are able to provide the assurances to the Secretary of Labour of their ability to carry out these functions to his satisfaction.

The HSNO Act is silent on how TAs are to be funded for the functions and duties transferred. We anticipate TAs will set their fees under s.23 of the HSNO Act.

Communication with OSH

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