

Module 2

Overview of the HSNO Act and key links to the RMA

What

- overview of the HSNO Act
- who is involved in and affected by the Act
- definition of a “hazardous substance”
- key links between the HSNO Act and the RMA

Why

- to understand the purpose, objectives and key provisions of the HSNO Act
- to obtain an overview of the organisations and agencies involved with the Act
- to understand who is affected by the Act
- to understand what the links are with the RMA

How

- presentation
- exercises
- group discussion



The easy part is learning how to do new things. The hard part is giving up what we normally do.

Anon

Module 2

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2.1 OVERVIEW OF THE HSNO ACT

What is the HSNO Act?

The Hazardous Substances and New Organisms (HSNO) Act 1996 is a new piece of legislation to manage the environmental, and human health and safety risks of hazardous substances and new organisms. The Act repeals a number of historical pieces of legislation, including the Explosives, Dangerous Goods, Toxic Substances and Pesticides Acts.

The HSNO Act requires all hazardous substances and new organisms (including genetically modified organisms) to be approved before import, development, field testing, release, import or manufacture.

To this end, the Act establishes a consistent process for assessing the risks posed by hazardous substances and new organisms before they are approved, and for setting controls to manage their risks to the environment, and human health and safety.

The HSNO Act does not regulate substances with radioactive, infectious or ozone depleting properties (unless these have other properties that are deemed to be hazardous under the Act) or hazardous wastes.

History of HSNO Act

In November 1988, the Interagency Co-ordinating Committee (ICC) on Pollution and Hazardous Substances recommended the streamlining of existing legislation controlling environmental pollution and hazardous substances.

At the time, a range of agencies and legislation controlled hazardous substances. Each focused on different hazardous substances, parts of their life cycle and methods of control.

New Zealand was also lagging behind international best practice and efforts to harmonise legislation for managing hazardous substances.

Development of new legislative provisions for hazardous substances

Initially, the concept for revising historical controls for hazardous substances was embedded in Part XIII of the RMA. However, due to the complexity and extent of matters to be considered, it was decided to create a new piece of legislation - the HSNO Act. As a result, the HSNO Act has repealed Part XIII and associated Schedule 5 of the RMA.

Timing of the HSNO Act and associated regulations

A special Select Committee introduced the HSNO Bill to Parliament in November 1994. The Bill was reported back to Parliament and enacted in March 1996. Those parts of the Act dealing with new organisms came into force on 29 July 1998 and those addressing hazardous substances on 2 July 2001.

With the enactment of the HSNO Act, New Zealand is one of the first countries to implement the results of a Globally Harmonised Chemical Classification and Hazard Communication Systems (GHS). This was based on international agreements outlined in Agenda 21 following the 1992 United Nations Conference on Environment and Development in Rio de Janeiro.

Legislation repealed by the Act

The key pieces of historical law repealed by the HSNO Act include:

- Explosives Act 1957
- Dangerous Goods Act 1974
- Toxic Substances Act 1979
- Pesticides Act 1979
- parts of the Animal Remedies Act 1967 and Fertiliser Act 1982
- those parts of the Animals Act 1967 and Plants Act 1970 not already superseded by the Biosecurity Act 1993.



Notes

2.2 PURPOSE OF HSNO ACT

Purpose of Act

The purpose of the HSNO Act is “to protect the environment, and the health and safety of people and communities, by preventing or managing adverse effects of hazardous substance and new organisms”.

Key principles and matters of importance

Part II of the Act spells out the key principles and matters of importance. These are summarised below.

Key principles

Principles that are relevant to the Act include:

- safeguarding the life-supporting capacity of air, water, soil and ecosystems
- maintaining and enhancing the capacity of people and communities to provide for their own economic, social and cultural wellbeing and for the reasonably foreseeable needs of future generations.

Matters of importance

The HSNO Act states that the following matters of importance must be taken into account:

- the sustainability and intrinsic values of ecosystems
- public health
- Maori culture and traditions
- the economic and related benefits of hazardous substances and new organisms
- New Zealand’s international obligations.

The Act also acknowledges a range of important concepts, as follows:

- the adoption of the precautionary approach where there is uncertainty about the effects and risks of a particular hazardous substance or new organisms
- the Treaty of Waitangi
- the establishment of a clear and transparent methodology for making decisions under the Act. The public is actively involved in this decision making process, particularly where the environmental risks are deemed to be significant.

2.3 GUIDING PRINCIPLES FOR MANAGING THE EFFECTS AND RISKS OF HAZARDOUS SUBSTANCES UNDER THE HSNO ACT

Overview

In managing the effects and risks of hazardous substances, the Act allows controls to be attached to hazardous substances when approved, that:

- are based on a rigorous assessment of the risks and benefits presented by the hazardous substance (or a group of hazardous substances)
- are “effect” based
- take into account the fact that any substance may have more than one type of hazard – for example, petrol is flammable, toxic and ecotoxic (in the past, ecotoxic hazards in particular have been neglected)
- reflect the degree (magnitude) of these hazards
- are varied according to the levels of risk at each point in a substance’s life cycle, from importation or manufacture, to end use, disposal or export
- are consistent across sectors and activities, thus avoiding conflicting requirements
- are performance-based, by stipulating a standard that has to be met, but not how it has to be met in order to allow for differing technologies.



Notes



Explanation

- “acute” means an adverse effect that occurs within a short time of exposure.
- “chronic” means an adverse effect that occurs either after a prolonged exposure, or a long time after a single exposure
- “toxic” means capable of causing ill-health in, or injury to, human beings
- “ecotoxicity” means capable of causing ill health, injury or death to any living organism apart from humans
- “bioaccumulation” means the accumulation of hazardous substances in the tissues of organisms.
- “oxidise” means to enable combustion to take place, usually by supplying oxygen. However, some oxidisers will enable combustion to take place without oxygen or even under water. Examples are chlorine and fluorine.

Hazardous properties not covered by the HSNO Act

The HSNO Act does not control radioactive or ozone-depleting substances (unless they have another hazardous property) as these are already covered in separate legislation (the Radiation Protection Act 1965 and Regulations 1982, and the Ozone Layer Protection Act 1996).

The HSNO Act also does not cover infectious hazardous properties, as infectious agents/materials are mostly associated with living organisms and related waste products.

Infectious properties are managed through other means (Land Transport Rule: Dangerous Goods 1999 and NZ Standard 5433:1999: Transport of Dangerous Goods on Land, and New Zealand Standard NZ4304: Management of Healthcare Waste).

(However, it is noted that the HSNO Act manages the importation and development of infectious agents through the part of the Act that deals with new organisms. This is not covered by this workshop).

Similarly, the HSNO Act does not cover hazardous waste unless it is a waste hazardous substance that can be clearly associated with an approval under the HSNO Act. In most cases, hazardous waste is highly mixed in New Zealand, and is managed under programmes established under the RMA. This is discussed further in Module 4.

What the Authority does

The Authority's powers represent those of a Commission of Inquiry in considering and making decisions on applications for hazardous substances or new organisms, meaning that these powers are the same as that of a District Court.

The HSNO Act specifies that the Authority's membership includes a balanced mix of knowledge and experience in matters likely to come before the Authority. Information on the members of the Authority can be found on the ERMA New Zealand website.

The Authority's functions include:

- develop a methodology for assessing applications for, and deciding on approvals to introduce hazardous substances or new organisms into New Zealand
- place controls on hazardous substance and new organisms as part of the approval process
- investigate, or require an investigation into, incidents and accidents
- operate a public process to assess and decide on applications for hazardous substances or new organisms
- maintain a publicly available register of approvals for hazardous substances and new organisms
- approve test certifiers and codes of practice
- monitor and report on the effectiveness of the Act
- promote awareness of the safe management of hazardous substances and new organisms.
- advise on the content of regulations under the Act
- advise the Minister for the Environment on best international practice.



Notes

2.5 KEY LINKS BETWEEN THE HSNO ACT AND THE RMA

Relationship of the HSNO Act with the RMA

Section 142 (HSNO): Relationship to other Acts states:

- “(2) *Every person exercising a power or function under the Resource Management Act 1991 relating to the storage, use, disposal, or transportation of any hazardous substance shall comply with the provisions of this Act and any regulations made under this Act.*
- (3) *Nothing in subsection (2) of this section shall prevent any person lawfully imposing more stringent requirements on the storage, use, disposal, or transportation of any hazardous substance than may be required by this Act or regulations made under this Act where such requirements are considered necessary by that person for the purposes of the Resource Management Act 1991.*
- (4) *Nothing in this Act shall apply to any resource consent, being-*
- (a) *A land use consent relating to the storage, use, disposal, or transportation of any hazardous substance; or*
 - (b) *A coastal permit to do something that would otherwise contravene section 15 of the Resource Management Act 1991; or*
 - (c) *A discharge permit,---*
- where that resource consent was granted before the coming into force of any regulations made under this Act (other than regulations made under Parts XI to XVI of this Act) until such time as the conditions on the resource consent are reviewed in accordance with section 128 of the Resource Management Act 1991.*
- (5) *For the purposes of this section, “resource consent” has the same meaning as in the Resource Management Act 1991.*
- (6) *Any controls prescribed under any other Act for any hazardous substance shall not contravene the provisions of regulations made under sections 75 and 76 of this Act unless---*
- (a) *There is a provision in that other Act that expressly provides that controls made under that other Act for specified purposes may contravene the provisions of regulations made under this Act; and*
 - (b) *The controls are made for the purposes provided for in that Act.”*

**Amendment of the
RMA by the HSNO
Act (note these are
not in force yet)
Section 2 of the RMA**

The Fourth Schedule of the HSNO Act amends the RMA in some key areas.

Section 2 (Interpretation) of the RMA is amended by inserting, after the definition of the term "Government road" in section 2 (1), the following definition:

"Hazardous substance" includes, but is not limited to, any substance defined in section 2 of the Hazardous Substances and New Organisms Act 1996 as a hazardous substance.'

**Section 62 (1) of the
RMA**

The HSNO Act originally amended Section 62(1)(ha) of the RMA by omitting (as inserted by section 34(1) of the Resource Management Act 1993) the words:

"the regional council shall retain primary responsibility for the hazard or hazardous substance; and",

and substituting the following subparagraphs:

"(iii) The regional council shall retain primary responsibility for the natural hazard; and

(iv) The relevant territorial authority shall retain primary responsibility for the hazardous substance."

However, the recent Resource Management Amendment Act 2003 repeals that part of the Fourth Schedule of the HSNO Act relating to Section 62(1)(ha) of the RMA. Instead, the Amendment Act creates a new section 62 RMA on the "Content of Regional Policy Statements", specifying what a regional policy statement must state, including the following:

62(1)(i) "the local authority responsible in the whole or any part of the region for specifying the objectives, policies, and methods for the control of the use of land –

(i) to avoid or mitigate natural hazards or any group of hazards; and

(ii) to avoid or mitigate the adverse effects of the storage, use, disposal or transportation of hazardous substances....

62(2) "If no responsibilities are specified in the regional policy statement for functions described in subsection (1)(i)(i) or (ii), the regional council retains primary responsibility for the function in subsection (1)(i)(i) and the territorial authorities of the region retain primary responsibility for the function in subsection (1)(i)(ii)

