

Authorising Compliance Certifiers

**HEALTH AND SAFETY AT WORK
(HAZARDOUS SUBSTANCES)
REGULATIONS 2017**

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Introduction

Under Part 6 of the Health and Safety at Work (Hazardous Substances) Regulations 2017 (the Regulations), any person may apply to WorkSafe to be authorised as a compliance certifier. Compliance certifiers check compliance with specific requirements to ensure hazardous substances are safely used, handled, stored or manufactured. A compliance certifier has the authority to issue a compliance certificate where the Regulations specify that one must be obtained to verify these requirements have been met.¹ A compliance certifier may be an individual or an organisation.

To be authorised, compliance certifiers must make an application in the form specified by WorkSafe and meet the criteria prescribed in the Regulations, such as being qualified with suitable knowledge and experience to undertake the functions of a compliance certifier for the matters they intend to certify. The authorisation expires every five years or on an earlier date specified by WorkSafe in the authorisation, and can be renewed on application by the compliance certifier.

Purpose

This policy provides direction on how WorkSafe will effectively carry out its regulatory functions in relation to compliance certifiers.

The policy is designed to provide:

- a framework for WorkSafe's decision-making
- transparency in WorkSafe's approach to compliance certifier applications and disciplinary provisions (certifier complaints and investigations).

Scope

This policy applies to all compliance certifier authorisations. Sections that apply only to compliance certifiers who are not individuals (organisations) will be prefaced with "where the certifier is not an individual" or "where the applicant is not an individual". WorkSafe and International Accreditation New Zealand (IANZ) have an operational level agreement in place to avoid duplication of common assessment requirements for organisations, to enable WorkSafe to accept accreditation as evidence the applicant meets those matters.

The following topics are out of scope in this policy paper:

- Compliance Certifier Audit
- Compliance Certifier Performance Standards
- Compliance certificates
- Investigations and complaints processes (refer to the operational policy "Investigation of Hazardous Substances Authorisations").

Authorising principles

This paper follows the authorisation principles in the 'Regulatory Function Policy-Authorisations' which provides WorkSafe with a framework of principles within which individual decisions under this authorisation regime can be made.

¹ The Regulations specify about 30 different types of matters that require a compliance certificate; such as hazardous substance locations, certified handlers and stationary container systems.

Application for authorisation

Regulatory requirements

Any person wishing to apply to WorkSafe for authorisation as a compliance certifier must comply with the requirements in regulation 6.4 (if the applicant is not an individual) and 6.5, pay the fee prescribed in Schedule 2 of the Regulations and provide sufficient information to enable WorkSafe to assess:

- a. the suitability of their qualifications to perform the functions of a compliance certifier within the scope of authorisation sought
- b. whether they are a fit and proper person, and
- c. their ability to perform the functions of a compliance certifier in an objective manner that promotes safety.

Where the applicant is not an individual the applicant must:

- a. be accredited to a recognised industry standard by International Accreditation New Zealand (IANZ)
- b. identify the scope of authorisation sought, and the scope sought for each individual to be employed or engaged to undertake the functions of a compliance certifier²
- c. demonstrate to WorkSafe's satisfaction that every individual to be employed or engaged to undertake the functions of a compliance certifier is suitably qualified to perform those functions within the scope of authorisation sought for that individual
- d. demonstrate to WorkSafe's satisfaction that IANZ has assessed each individual to be employed or engaged by the applicant as able to perform the functions of a compliance certifier as required by regulations 6.4 to 6.6
- e. provide WorkSafe with:
 - information about the applicant, company officers and each individual to be employed or engaged to perform the functions of a compliance certifier, and,
 - an approval from each person for WorkSafe to obtain information from any person, including the New Zealand Police, as required to undertake the fit and proper person determination under regulation 6.7
- f. demonstrate that:
 - the applicant is likely to perform the functions of a compliance certifier in an objective manner that promotes safety; and
 - there is either no reasonably foreseeable conflict of interest or there are procedures in place to manage any conflicts of interest.

Receipt of an application

WorkSafe will process an application for an authorisation if the application complies with all the provisions in regulation 6.5(1). These provisions mean that WorkSafe has received the prescribed fee, a completed application form and all information (including supporting evidence) relating to the matters specified in regulations 6.5 to 6.8.

Qualifications to be authorised

Under regulation 6.8, WorkSafe must be satisfied that individual applicants, and those individuals employed or engaged by applicants who are not individuals, hold the appropriate qualifications, including relevant knowledge and experience, to be authorised.

² These individuals will be the signatories on the letter of accreditation provided by the applicant.

WorkSafe will assess all individual applicants against the provisions included in Regulation 6.6(1). In summary, this requires WorkSafe to be satisfied that the applicant:

- can demonstrate knowledge of relevant hazardous substances, hazards and risks associated with gases under pressure, hazardous substance classifications and potential adverse effects, the purpose of the Health and Safety at Work Act (HSWA) (and their duties and liabilities under it), and the requirements of the Regulations, related Safe work instruments (SWIs), prescribed exposure standards and Performance Standards for compliance certifiers.
- has experience in the use of equipment, procedures, and the operation of systems, including relevant testing equipment and methods.
- has appropriate practical experience undertaking specified tasks involving substances, plant, equipment, systems and situations that the person has applied to be authorised to examine and issue compliance certificates. This may include appropriate experience under supervision.

Where the applicant is not an individual the applicant must provide details about the qualifications held by each individual to be employed or engaged to undertake compliance certifier functions. WorkSafe must be satisfied about each person's suitability to undertake compliance certifier functions for the matters for which authorisation is sought. The provisions set out above will be applied to each individual identified in the application. An operational agreement between WorkSafe and IANZ will ensure that WorkSafe is likely to be satisfied with IANZ assessments of qualifications and other matters that WorkSafe must also consider, to avoid duplication.

If WorkSafe is not satisfied that it has sufficient information to grant the application, WorkSafe may invite the applicant or, where the applicant is not an individual, an individual the applicant identifies they intend to employ or engage to undertake the functions of a compliance certifier, to complete a written assessment or questionnaire and/or to attend an interview to clarify their knowledge and experience. In addition, under the Regulations, WorkSafe may require an applicant to attend a hearing in relation to the application.³

Written records

Regulation 6.6 provides that WorkSafe may regard a written record signed by a person who has trained or assessed an applicant as sufficient evidence to attest to the applicant's knowledge. Similarly, WorkSafe may regard a statutory declaration signed by the applicant's supervisor as sufficient evidence of the applicant's experience.⁴

In considering a written record or a statutory declaration, WorkSafe will consider the following:

- a. the qualifications including the level of expertise, skills and knowledge of the assessor/supervisor attesting on behalf of the applicant
- b. the approach or method used by the trainer or assessor to assess the applicant's knowledge and experience
- c. the amount and detail of information provided by the assessor/supervisor to demonstrate that the applicant has the appropriate qualifications
- d. the relevance of the information provided by the assessor/supervisor to the scope of the authorisation applied for by the applicant.

³ An assessment may include, but is not limited to, requesting the applicant demonstrate their theoretical and practical knowledge and/or their ability to meet the regulatory requirements for specific types of sites and equipment, as is relevant to the scope of their authorisation and knowledge of specific hazardous substances.

⁴ A statutory declaration must be signed in front of a person qualified to take a statutory declaration under the Oaths and Declarations Act 1957.

Where the applicant is not an individual, WorkSafe may regard as sufficient evidence of knowledge for an individual to be employed or engaged to undertake the functions of a compliance certifier (and identified in the application):

- a. either a written record signed by a person who has trained or assessed that individual
- b. or a statutory declaration signed by that individual's supervisor, providing the information specified above.

Fit and Proper person assessments

WorkSafe's Fit and Proper Person Assessment Policy will apply. The requirements to be a fit and proper person apply to both applicants who are individuals and to applicants who are not individuals.

Applications will not be processed without the fit and proper person information and approval from the applicant for WorkSafe to obtain information from any person, including the Courts and New Zealand Police, as appropriate to enable WorkSafe to complete the fit and proper assessment.

Where the applicant is not an individual, the applicant, each officer of the business (including the PCBU) and every individual employed or engaged to perform the functions of a compliance certifier will be required to pass the fit and proper assessment for the authorisation to be granted. The applicant must include information and approval for each of these people to enable their fit and proper status to be assessed, before the application can be considered.

New Authorisations

There are many types of compliance certificates (for example, as a certified handler, for stationary containers and for pyrotechnic displays), each requiring a different level of knowledge, understanding of the relevant requirements and practical experience. Therefore, WorkSafe's approach to assessing an application for a new authorisation will reflect this. The assessment may include, but is not limited to, the additional matters to assess qualifications as specified under 'Application for authorisation' on page 2.

Variation of an authorisation

Variations are used to change the conditions that apply to, or the scope of; an authorisation. For example, a variation could be used to change the types of matters that the applicant can certify or to change the maximum quantity of substances that can be examined and certified.

WorkSafe will assess an application to vary an authorisation against the provisions of regulations 6.5 to 6.8 and regulation 6.13. Regulation 6.13 provides that WorkSafe may vary the scope or conditions on an authorisation when the compliance certifier applies and pays the prescribed fee.

An application must provide reasons and information to support the variation sought. This will usually include, if the application is to extend the scope of the authorisation, additional information about qualifications to support the change requested and evidence of practical experience by the applicant in areas relevant to the change applied for. Qualifications that have already been assessed by WorkSafe and used to grant an authorisation will not typically be re-assessed unless WorkSafe is no longer satisfied the applicant meets the qualification requirements of their current authorisation.

When determining an application to vary the authorisation, WorkSafe may also consider the compliance certifier's history of performing the functions of a compliance certifier, including compliance with relevant performance standards, during the term of his/her authorisation, if this is relevant to the requirements that need to be met under the Regulations.

WorkSafe must be satisfied that the compliance certifier and, where the compliance certifier is not an individual, all individuals who undertake the functions of a compliance certifier, meets the requirements for authorisation as they apply to the change in scope or change in condition applied for. WorkSafe may approve the variation to the authorisation with any conditions it considers appropriate. If WorkSafe approves a variation to an authorisation, it will amend the applicant's grant of authorisation.

When the applicant is not an individual, if the applicant wants to vary the role of an individual identified in the current authorisation or to add a new individual to the authorisation a variation application is required. WorkSafe will assess each new person in line with the Regulations and the above requirements for a variation of an authorisation. Assessing a new person will always include an assessment of their fit and proper status and their qualifications in relation to the proposed scope of their work and the certifier's overall authorisation.

Renewal of an authorisation

WorkSafe will assess an application to renew an authorisation in accordance with Regulation 6.14. WorkSafe will also assess an application for a variation made in accordance with regulation 6.13 that may be included with an application to renew an authorisation.

In considering the application for renewal, WorkSafe will consider whether the requirements in regulations 6.5 to 6.9 are met. WorkSafe will also have regard to the compliance certifier's history of performing the functions of a compliance certifier to the extent this is relevant, and for the purpose of determining the degree to which they have complied with relevant performance standards.

Typically, this will include WorkSafe:

- a. verifying the applicant has retained their knowledge of the relevant requirements and their practical experience to meet the qualifications criteria
- b. reviewing the applicant's past performance as a compliance certifier, including considering audit results and complaints or investigations of the applicant.⁵

In addition, where the applicant for renewal is not an individual, WorkSafe will:

- a. need to be satisfied of all the matters in regulation 6.8(3)
- b. consider the matters specified above for any individual engaged or employed by the applicant to undertake the functions of a compliance certifier, as WorkSafe considers appropriate
- c. require evidence of continued accreditation to a recognised industry standard by IANZ.

Expiry of an authorisation while renewal application being processed

Provided WorkSafe receives a renewal application that complies with all the provisions of regulation 6.5(1) (with or without an application for a variation) at least 20 working days before the expiry date of the existing authorisation, the authorisation will continue in effect until WorkSafe makes a decision about the renewal.

If the renewal application is not received at least 20 working days before its original expiry date, the renewal application will not be accepted and the certifier's authorisation will lapse on its expiry date. In this case the applicant will need to apply for a new authorisation and pay the associated application fee.

⁵ This may include compliance as an approved test certifier under the preceding HSNO Act 1996

If a renewal application is considered and declined, the authorisation expires on the later of the date the decision is made to decline the application or its original expiry date.

Application Fees

WorkSafe will charge application fees according to the fees given in Schedule 2 of the Regulations.

An application is not considered complete until the appropriate fee is paid to WorkSafe.

A variation application fee applies to:

- a. changes to the scope and/or conditions of an authorisation
- b. an application by a certifier that is not an individual, to add a new person to be employed or engaged to undertake the functions of a certifier on to their authorisation.

An application for renewal that includes an application for a variation will attract the fees prescribed for both.

Timeframes

WorkSafe will generally process applications for authorisations within 20 working days, beginning from the day WorkSafe receives an application that complies with all the provisions of regulation 6.5(1). Applications that are incomplete may be declined or not progressed while further information is sought from the applicant.

If WorkSafe determines that more than 20 working days are required to assess an application, it will contact the applicant to advise a new time.

Grant of authorisation

WorkSafe will be fair and reasonable when making authorisation decisions and grant an authorisation if satisfied that the applicant meets the requirements of the Regulations. If WorkSafe declines an application for authorisation, it will notify the applicant of the reasons and of his/her right of appeal to a District Court against the decision.

WorkSafe will grant an authorisation to an applicant for a specific scope that will enable the applicant to issue compliance certificates in accordance with specific Regulations that require such certificates to be issued.

The authorisation may include conditions, or be limited in scope, to reflect:

- a. the complexities associated with various sites, equipment, hazardous substances, industry types, and
- b. the ability, knowledge and experience of the applicant to meet the relevant requirements in the Regulations.

In addition, for an applicant that is not an individual, WorkSafe may require further conditions. Typically these would include but are not limited to:

- a. the certifier maintaining accreditation to a recognised industry standard by IANZ and notifying WorkSafe if their accreditation or that of a signatory is suspended or revoked.
- b. specifying that each individual employed or engaged to undertake compliance certifier functions may only examine and issue certificates for the matters specific to him or her as specified in the authorisation.
- c. specifying that no new persons are employed or engaged to undertake compliance certifier functions until an application has been made and approved by WorkSafe (refer to variations).

WorkSafe must be satisfied that the compliance certifier and, where the compliance certifier is not an individual, all individuals who undertake the functions of a compliance certifier, meets the requirements applicable to the scope of the authorisation.

Term of authorisation

WorkSafe will usually grant an authorisation for 5 years, but may specify an earlier expiry date if it is satisfied a shorter term of authorisation is required.

WorkSafe may apply a shorter authorisation if WorkSafe identifies a need to reassess the applicant's knowledge and practical skills within five years. WorkSafe will assess if a shorter term is required on a case-by-case basis and always consult with the applicant before a final decision is made about a shorter length authorisation.

Register of compliance certifier authorisations

WorkSafe will keep and maintain an up to date a public register of compliance certifier authorisations as required by the regulations.

In entering information in the register, WorkSafe will apply the principles of the Privacy Act 1993.

WorkSafe is also required to enter on the register details of any suspension or cancellation of an authorisation. WorkSafe will ensure it enters only such information as is needed to comply with the Regulations.

This information will be displayed during the term of the compliance certifier's authorisation, and after its renewal.

Investigations

WorkSafe may decide to investigate a complaint or reasonable concern about the conduct or ability of a compliance certifier according to its operational policy *investigation of hazardous substances authorisations*.

WorkSafe's operational policy *Investigation of Hazardous Substances Authorisations* will apply, with appropriate modifications where required to account for matters provided for in the Regulations specific to a compliance certifier authorisation. For example if there is a concern about the conduct or ability of a compliance certifier, WorkSafe may decide an audit is more appropriate than an investigation.

Compliance Certifier organisations

The Regulations require a compliance certifier that is not an individual:

- a. must be accredited to a recognised industry standard by IANZ, on behalf of the Accreditation Council, when they apply for authorisation; and
- b. WorkSafe must be satisfied with the IANZ accreditation assessment of individuals employed or engaged by the applicant to undertake the functions of a compliance certifier.

The recognised industry standard for a compliance certifier is AS/NZS ISO/IEC 17020: 2013 "Conformity assessment requirements for the operation of various types of bodies performing inspection" (ISO 17020).⁶

⁶ The accreditation standard may require one or more specific or supplementary criteria documents setting out the technical requirements for inspecting and issuing of compliance certificates under the Regulations and associated performance standards.

WorkSafe and IANZ will have an operational level agreement in place to enable them to work efficiently and effectively together and to ensure that the technical criteria necessary to obtain and maintain accreditation are no less than the criteria WorkSafe requires to authorise individual certifiers. With an agreement in place WorkSafe can accept IANZ accreditation assessments of those matters that WorkSafe would also consider for a compliance certifier that is not an individual. WorkSafe does not expect to duplicate the assessment of any matters already assessed by IANZ.⁷

Accordingly, WorkSafe is likely to be satisfied that IANZ accreditation to ISO 17020 meets the equivalent requirements for authorising a compliance certifier that is not an individual, when the agreement with IANZ provides for WorkSafe to:

- a. provide input into the technical criteria and content of the assessment, surveillance and reassessment examinations or inspections undertaken by IANZ
- b. be informed of and specify proposed technical persons on the IANZ assessment and reassessment team
- c. participate in IANZ assessments, surveillance and reassessments if WorkSafe wishes
- d. view information and reports IANZ prepares about the accreditation of the applicant/certifier
- e. be informed if the scope of the accreditation or that of any signatories is amended, suspended or revoked
- f. refer complaints about accredited compliance certifiers to IANZ, as appropriate, as part of a WorkSafe investigation of a compliance certifier.

WorkSafe will undertake the fit and proper person assessments for the applicant, officers of the applicant and individuals identified to undertake compliance certifier functions.

For a renewal application or any assessment of compliance history, WorkSafe may take into account the accreditation and audit reports provided by IANZ as part of IANZ assessment for the certifier to obtain or maintain accreditation.

WorkSafe may request IANZ reassess a compliance certifier's accreditation at any time WorkSafe has a reasonable concern about whether the certifier is operating in an objective manner that promotes health and safety.

Investigation of certifier organisations

WorkSafe may investigate a compliance certifier that is not an individual when it considers it is appropriate, if it receives a complaint or has a reasonable concern about the conduct or ability of the certifier. WorkSafe's operational policy *Investigation of Hazardous Substances Authorisations* will apply. Accordingly, WorkSafe's response may include referring the matter to IANZ to consider, as appropriate.

Similarly, if an investigation refers to a specific individual or individuals covered by the certifier's authorisation, the "investigation of hazardous substances authorisations" policy provides that WorkSafe may decide that it is necessary in the interests of health and safety, to suspend the authorisation of the individual or individuals during the course of an investigation. If this is the case, the compliance certifier will be required to ensure that individual or individuals are not permitted to perform the functions of a compliance certifier, pending the outcome of the investigation.

⁷ Such as the technical qualifications of accredited signatories (individuals who will undertake the functions of a compliance certifier) and that there are effective management procedures in place to manage any potential conflicts of interest and quality assurance of inspections and certificates issued. Details of these arrangements are expected to be covered by an operating level agreement between IANZ and WorkSafe.

Review of this Policy

This policy will be reviewed as needed to ensure the policy is still achieving its objectives, address any operational inefficiency within the policy and recognise any relevant legislative amendments.

Policy owner: General Manager, Better Regulation

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