

# Public consultation

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*HAZARDOUS SUBSTANCES  
SAFE WORK INSTRUMENTS*

May 2018



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# This document seeks public comment on two proposed hazardous substances safe work instruments (SWIs).

## Purpose

Your submissions will help WorkSafe New Zealand determine whether the proposed SWIs should specify:

- validity periods for the compliance certificates of certain stationary container systems
- cylinder design standards.

The deadline for receipt of all submissions is **5 pm on Monday 28 May 2018**.

## How to have your say

Have your say by reviewing the proposed SWI and completing the submission form for the particular SWI.

WorkSafe would appreciate your feedback on the specific questions it has asked on each SWI. Note that the questions are prompts to get you thinking about the issues, and your comments are not restricted to answering these questions.

If you have any questions during public consultation please contact WorkSafe by emailing: [regulatory.frameworks@worksafe.govt.nz](mailto:regulatory.frameworks@worksafe.govt.nz)

## Your submission may be made public

Once you make your submission, anyone can ask for it under the Official Information Act 1982 (the OIA). If you have any queries about how the information in your submission is dealt with, please contact WorkSafe: [regulatory.frameworks@worksafe.govt.nz](mailto:regulatory.frameworks@worksafe.govt.nz)

Further information is available at: [www.legislation.govt.nz](http://www.legislation.govt.nz)

## What happens next

Once the consultation period has closed, we will analyse submissions and finalise the proposed SWIs in light of the feedback received. WorkSafe will provide a summary of submissions received and any changes to the draft SWIs. The SWIs will then be presented to the Minister for approval.

## Executive summary

### Health and safety reforms

In 2013 the Independent Taskforce on Workplace Health and Safety (the Taskforce) reported that New Zealand's work health and safety system was failing.

As a result, New Zealand's work health and safety system underwent its most significant reforms for 20 years resulting in the establishment of WorkSafe and the enactment of the Health and Safety at Work Act 2015 (HSWA), which came into effect on 4 April 2016.

### Management of hazardous substances

The Taskforce found that occupational health and hazardous substances management was performing poorly. In particular, it found the overly complex framework for workplace management of hazardous substances was contributing to this performance.

The Government proposed a number of changes in response to the Taskforce findings to help create a clearer hazardous substances regime and to provide greater certainty for businesses and workers managing hazardous substances. This included the transfer of requirements for the management of hazardous substances that affect human health and safety in the workplace from the Hazardous Substances and New Organisms Act 1996 (HSNO) to the HSWA regime.

The recently made Health and Safety at Work (Hazardous Substances) Regulations 2017 (the Regulations) give effect to this proposal.

However, the Regulations do not contain some of the more detailed technical requirements or modified compliance requirements imposed under the HSNO regime for specific types of industry, equipment, activities, or individually-approved substances.

SWIs are the tool best suited to carry on these kinds of requirements under the HSWA regime, to describe modified technical requirements, and to ensure the rules for hazardous substances remain fit for purpose.

### What is a safe work instrument?

SWIs are a new tool provided for in section 227 of HSWA. They are a type of subordinate instrument (sometimes called tertiary legislation) used to support or complement regulations.

A SWI has legal effect only to the extent it is referred to in regulations made under relevant health and safety legislation, such as HSWA. A SWI can be made for the purposes of defining terms, prescribing matters, or making other provision in relation to any activity or thing, including (without limitation) listing standards, control of substances, and competency requirements.

In the context of the Regulations, they can also:

- set additional or modified requirements for the work-related use of hazardous substances approved or reassessed by the Environmental Protection Authority (EPA)
- provide an alternative means of complying with requirements in certain provisions of the Regulations.

Further information about [safe work instruments](#) can be found on WorkSafe's website.

## Consultation for safe work instruments

SWIs are developed by WorkSafe and approved by the Minister for Workplace Relations and Safety. The Minister must not approve a SWI unless satisfied that appropriate persons and organisations have been consulted on it, having regard to its subject matter.

We are seeking your views on two SWIs that apply to work-related use of hazardous substances:

- a SWI to specify validity periods of compliance certificates for stationary container systems
- a SWI to specify design standards for cylinders.

### Safe work instrument to specify validity periods of compliance certificates for stationary container systems

The proposed Health and Safety at Work (Hazardous Substances – Validity Periods of Compliance Certificates for Stationary Container Systems) Safe Work Instrument 2018 establishes validity periods of compliance certificates for stationary container systems. This will allow compliance certifiers to issue compliance certificates for stationary container systems to the specified periods.

The proposed SWI provides alternative validity periods to those already prescribed in the Regulations. Without this SWI, a default period of 1 year applies to these certificates.

The proposed SWI provides that the compliance certifier may apply the default one year validity period or refuse to issue the certificate if there are specific concerns about the stationary container systems. The new validity periods do not affect those of certificates previously issued, so this SWI will only apply to new compliance certificates for stationary container systems.

The relevant referring provision in the Regulations that enables the development of this SWI is 17.92(1)(ca).

### Safe work instrument to specify design standards for cylinders

The proposed Health and Safety at Work (Hazardous Substances – Specification of Design Standards for Refillable Cylinders) Safe Work Instrument 2018 specifies design standards for cylinders. Under regulation 15.8 of the Regulations, a PCBU who designs, manufactures, imports, or supplies a cylinder (other than a fire extinguisher) must ensure the design for the cylinder complies with an applicable standard listed in Schedule 21 of the Regulations which lists design standards for gas containers, or a relevant safe work instrument that specifies design standards for cylinders.

Although Schedule 21 of the Regulations lists design standards for cylinders, over time industry may need to design, manufacture, import or supply a cylinder to a new standard not listed in the Schedule, or a standard listed in the Schedule may be replaced by a more up-to-date version. In these cases, SWIs can be used to specify standards.

This consultation does not query whether additional standards should be added to those that are being consulted on, but rather whether WorkSafe should specify the five Standards in the proposed SWI.

The relevant referring provision of the Regulations that enables the development of this SWI is 15.8(1)(b).

## Costs and benefits of the proposed safe work instruments

The two proposed SWIs for hazardous substances carry over and update previous requirements, or supplement current requirements to ensure duty holders are able to comply with the Regulations.

In the case of the SWI to establish validity periods of compliance certificates for specified stationary container systems, the SWI means that the relevant duty holders will not need to renew their certificates on a yearly basis, while ensuring appropriate oversight of these systems. In the case of the SWI to specify cylinder design standards, the SWI ensures duty-holders are able to carry out their business in compliance with the Regulations.

As required under section 227 of HSWA, the proposed SWIs will be available free of charge on WorkSafe's website. They may also be purchased in hard copy at a reasonable charge (if any).

## Standards referenced in safe work instruments

A number of standards are incorporated by reference in the proposed SWIs. These standards are available for inspection, at no charge, between the hours of 9:00 am and 5:00 pm from Monday to Friday (excluding statutory holidays):

- WorkSafe is located at Level 6, 86 Customhouse Quay, Wellington 6011.
- You may also contact WorkSafe using the following email to arrange to view the material incorporated by reference [regulatory.frameworks@worksafe.govt.nz](mailto:regulatory.frameworks@worksafe.govt.nz)
- You are invited to provide your feedback on the proposal to incorporate standards by reference when completing the public consultation submission form.

## Implementation

Following consultation, the proposed SWIs will be finalised and then submitted to the Minister for Workplace Relations and Safety for the Minister's consideration.

Both SWIs will take effect once approved. This is planned for July 2018.

The SWIs will be published on WorkSafe's website once they are approved. WorkSafe will inform you when they are published.

## **Disclaimer**

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PO Box 165, Wellington 6140, New Zealand

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