

Summary and analysis of submissions

*OUTCOME OF PUBLIC CONSULTATION
ON THE HEALTH AND SAFETY AT
WORK (HAZARDOUS SUBSTANCES
- INFORMATION AND PROCESS
REQUIREMENTS FOR COMPLIANCE
CERTIFIERS) PERFORMANCE
STANDARD 2019*

March 2019



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1.0 Background

Under the Health and Safety at Work (Hazardous Substances) Regulations 2017 (**‘the Regulations’**) WorkSafe is able to authorise a person to be a compliance certifier provided the applicant meets the appropriate requirements in the Regulations.

Authorisation is granted for a period of five years, it may be subject to any conditions WorkSafe considers appropriate, and is for a defined scope of activity (eg issuing certified handler, and stationary container system compliance certificates).

Under regulation 6.43 of the Regulations, WorkSafe may issue performance standards setting out the information and process requirements that a compliance certifier must comply with when performing their functions.

Performance standards must be consistent with the Health and Safety at Work Act 2015, the Regulations and any safe work instruments referred to in the Regulations.

In particular this performance standard requires compliance certifiers to:

- establish, document, and maintain processes that are necessary to enable the compliance certifier to perform the functions of a compliance certifier
- establish and maintain records showing the decisions of a compliance certifier, and the basis for making them
- be able to demonstrate that every person employed or engaged to assist the compliance certifier in the performance of their functions by conducting relevant inquiries, inspections, assessments, or examinations is competent to carry out those inquiries, inspections, assessments, or examinations
- be able to demonstrate they have complied with performance standards, and have considered the impact of requirements in safe work instruments, and other relevant material concerning the functions of a compliance certifier
- communicate regularly with applicants for compliance certificates to keep them informed of the functions that are being carried out by the compliance certifier.

WorkSafe is required at least once every four years to audit each compliance certifier's compliance with the Act, the Regulations and any applicable safe work instruments and performance standards.

This performance standard is drafted in line with Australian and New Zealand Standards for bodies performing inspections; drawn up with the objective of promoting confidence in bodies performing inspections.

WorkSafe consulted publically, and on a targeted basis, about the proposed the Health and Safety at Work (Hazardous Substances – Information and Process Requirements for Compliance Certifiers) Performance Standard 2019.

Compliance certifiers, certain other persons and professional bodies were contacted directly to seek their feedback on the performance standard.

Consultation lasted for 20 working days.

Eight submissions were received:

- five from compliance certifiers
- two from professional bodies representing compliance certifiers – the New Zealand Institute of Hazardous Substances Management ('NZIHSM') and Hazardous Substances Professionals New Zealand (HSPNZ)¹
- one personal submission.

The main themes of the submissions were:

- the purpose and status of the performance standard, and whether it repeated requirements of the regulations
- training, training materials and competence for compliance certifiers
- competence of person employed or engaged by the compliance certifier, and the use of ex-compliance certifiers to conduct site visits
- record keeping, and evidence, including how requirements of the performance standard relate to ex-certifiers.

All submissions were considered, and where appropriate, changes to the performance standard were made.

The nature of the changes made to the performance standard after consultation do not require WorkSafe to consult further on the performance standard since they did not fundamentally change the proposal.

Any clauses or schedules mentioned in the responses below relate to clauses and schedules in the version of the performance standard used for consultation and may not necessarily reflect the numbering of clauses or schedules in the final version of the performance standard.

¹ HSPNZ requested additional time to respond. HSPNZ's request for additional time was granted.

2.0 Feedback and WorkSafe's response

SUBMISSION NUMBER	SUBMITTER	ORGANISATION
1	Confidential	Confidential
2	Neil Dobbs	Work Injury Care Ltd
3	Rob Storrie	Independent Consultancy Services Ltd
4	John Downey	Enviroservices (2002) Limited
5	Elizabeth Harwood and Janet Connochie	Chemsafety Ltd
6	Peter Roche, Ken Clarke and Ingeborg Vanloon	Hazardous Substances Professionals New Zealand
7	Ken Clarke	Noted as a personal submission
8	John Hickey	New Zealand Institute of Hazardous Substances Management

The text of responses is reproduced as it was submitted to WorkSafe.

SUBMITTER	FEEDBACK	WORKSAFE'S RESPONSE
GENERAL COMMENT		
2	Good	Noted.
8	<p>The NZIHSM agrees with the main purpose of the Hazardous Substance Regulations 'to minimise the risk from hazardous substances to the health and safety of workers'.</p> <p>The NZIHSM agrees that there should be a set of guidelines for all participants under the HSWA (Hazardous Substance Regs. 2017) including compliance certifiers.</p> <p>While feedback from the NZIHSM team considering this Performance standard</p> <p>agrees that much of the proposed standard is reasonable and useful there are some areas that we believe need to be clarified or altered to ensure the ongoing workability for all parties namely suppliers, legislators, users, enforcers and compliance certifiers to ensure that the RISKS from hazardous substances are maintained to an acceptable level to all concerned.</p> <p>The respondent's items for clarification appear under the relevant clause.</p>	Noted.

SUBMITTER	FEEDBACK	WORKSAFE'S RESPONSE
SPECIFIC COMMENTS Clauses 1-5 of the Performance Standard		
2	Good	Noted.
4	No issues with Clauses 1 to 5.	Noted.
5	<p>2. Commencement date: will a lead in time be applied to give certifiers sufficient opportunity to upgrade their systems?</p> <p>3. Purpose should include a statement to clarify that the performance standard for information and procedures sets out requirements that are consistent with the regulations and their intent (not introducing onerous additional requirements).</p>	<p>A commencement date is included in the performance standard. Certifiers will be afforded sufficient opportunity to upgrade their systems.</p> <p>WorkSafe has ensured this performance standard is consistent with the Regulations.</p> <p>A purpose statement explains what the performance standard does, and not the criteria it needs to meet.</p>
6	<p>Firstly, HSPNZ are concerned that this performance standard even achieved a regulation status... why?</p> <p>We wish to advise that we do not approve of the method or the intention Performance standards have been written.</p> <p>It clearly written as an auditing tool for the CARS team and not the guidance tool it was originally created for certifiers or Industry.</p> <p>HSPNZ feels the Performance standards should be guidelines not compulsory standards for only an audit process.</p> <p>It exceeds requirements of the current Regulations which also provides confusion for Industry.</p> <p>Certifiers have not been provided with enough time to be consult and review to respond and from our certifiers, they would like HSPNZ to act on their behalf and agree with future method of Worksafe's prescriptive writing of the Performance Standards. We require consultation with our expertise panel to create future Performance Standards.</p> <p>Overview of this performance standard is that it has been already stated in the Regulations and the document exceeds such requirements (PART 6; 10.34).</p> <p>There seems a duplication of Reg 4.5 in this process.</p>	<p>The submitter's concerns about the status of the performance standard can only be addressed by amending the regulations.</p> <p>Performance standards have a different status to 'guidelines'. The Regulations provide for WorkSafe to issue performance standards, and that the performance of compliance certifiers must comply with, and be audited against, the requirements of such performance standards.</p> <p>The performance standard was informally circulated to compliance certifiers, some of whom provided feedback.</p> <p>Each individual compliance certifier was later asked to provide formal feedback on the performance standard.</p> <p>Public consultation on the performance standard was also undertaken by WorkSafe.</p> <p>Prior to consultation WorkSafe decided that it would agree to requests for an extension of time to respond to consultation.</p>
SPECIFIC COMMENTS Clause 6 - General requirements for compliance certifiers		
2	<p>Good.</p> <p>A further clause could be added to requiring a Compliance Certifier (CC) to apply consistent standards of requirements of evidence from PCBU established by WorkSafe and performance standards (eg the need to have a CC to have PCBU's provide a specific level of standard of site drawing and not allow these to vary depending on size, profitability, location, isolation or scope of the PCBU).</p>	Noted.
4	<p>My main question regarding clause 6 concerns the level of proof required to be demonstrated in subclauses (b), (c), and (d).</p> <p>Is the standard of proof required to meet the 'beyond reasonable doubt' standard required to support a criminal prosecution in court, or is it the 'balance of probabilities' standard which is the standard of proof required in civil cases?</p>	<p>When considering 'level of proof' the question should be whether the compliance certifier can be satisfied that a particular requirement has been met.</p> <p>Non-compliance with a performance standard is not a criminal matter; 'beyond a reasonable doubt' is not the required standard of proof.</p>

SUBMITTER	FEEDBACK	WORKSAFE'S RESPONSE
	<p>Most compliance certifiers have little or no legal training, and would require specific training in this area should the first standard be required. In most cases (where no deliberate attempt to deceive or flout the requirements was intended) I consider compliance certifiers should be able to satisfy the second standard.</p>	
6	<p>Concerns that there is a increasing level of interference with field practices and supervision techniques.</p> <p>The current proposal shows a old school Headmaster to student relationship which doesn't work in the current regime and is deemed a covert bullying technique: not tolerated in todays work practices.</p> <p>Level of ranking of auditors needs to be established for certifiers as the need to wider experience is required than a office based auditors with no field experience.</p> <p>As no formal training has been established it is an unfair expectation on certifiers to pay for their own audits at present. There needs to be common ground and training established first before auditing practices introduced for authorizations.</p> <p>Duplication of regulation.</p>	<p>WorkSafe has engaged persons whom it considers to be suitably qualified to conduct audits under the Regulations.</p> <p>WorkSafe has published on its website its policy on compliance certifier audits, and frequently asked questions about its audit process.</p> <p>WorkSafe is required to audit compliance certifiers and has no discretion to waive audit fees.</p> <p>The fee specified in schedule 2 of the Regulations must be paid by the compliance certifier on completion of their audit.</p>
<p>SPECIFIC COMMENTS</p> <p>Clause 7 – Inquiries, inspections, examinations and assessments</p>		
1	<p>How can a compliance certifier issue a certificate for an engaged person who is not a compliance certifier that has been struck off by WorkSafe NZ as being deemed incompetent.</p> <p>Also how can a compliance certifier issue a certificate for an engaged person not in their office or under their direct supervision.</p>	<p>A compliance certifier has to assure themselves the matter they are certifying complies with the requirements of the Regulations.</p> <p>The compliance certifier must decide whether to employ or engage a person to assist them; if that person is not competent it would impact on the compliance certifier's ability to carry out their functions in accordance with the Regulations and applicable performance standards.</p>
3	<p>I have an issue with 16 (4) (a) and (b) in that, for magazine inspections, given that the persons are trained/certified and have supplied sufficient evidence of that and they are provided with an inspection checklist for reporting, it would seem unnecessary to observe them doing a magazine inspection.</p> <p>Explosive magazines because of their unchanging nature and remote locations are a special case.</p>	<p>A compliance certifier has to assure themselves that a person employed or engaged by them is competent to inquire into, inspect, examine and assess matters on behalf of the compliance certifier.</p>
4	<p>Clause 7(3) will require a minor amendment to our current checklists by adding the auditor's name, as well as the certifier's name to comply with clause 22(3)(g).</p> <p>Clause 7(4) – I consider it is for the compliance certifier to examine the audit checksheet submitted by an auditor on the certifier's behalf and to insist on further proof if they are not comfortable with the level of detail and supporting documentation supplied at the time. If that detail is not forthcoming, it is the certifier who will be answerable to Worksafe, not the auditor.</p> <p>Clause 7(5) – I consider that this has always been the case, noting that this ties in with my response to clause 7(4) above.</p>	<p>Noted.</p>

SUBMITTER	FEEDBACK	WORKSAFE'S RESPONSE
6	<p>What is the purpose of the mandate for this?</p> <p>Totally disagree: 1000's of photos, signatures to each is unrealistic and unreasonable unnecessary.</p> <p>Record keeping is a given in our profession and evidence should be sufficiently detailed.</p> <p>Again Duplication of regulation.</p> <p>Comes from an enforcement perspective.</p> <p>What about the certifier perspective ... has one any been provided opportunity to have dialogue before this was written?</p> <p>Need for training refresher courses on collecting and storing evidence such as i-audit systems etc. Worksafe has avoided discussions so far of actual tools required.</p>	<p>There is no requirement in the performance standard for photographs to be individually signed as implied by this submission.</p> <p>WorkSafe recognises an array of tools is available to compliance certifiers for collecting and storing evidence, and for reporting.</p> <p>The method of collecting evidence employed by a compliance certifier is a matter for the individual compliance certifier.</p> <p>Evidence collected by the compliance certifier should demonstrate the compliance certifier's rationale for making compliance certification decisions.</p>
8	<p>7 (5) A compliance certifier must make the decision as to whether or not to issue a compliance certificate, independently of any recommendation made by a person employed or engaged by the compliance certifier.</p> <p>It is standard practice for most Professional organisations to ensure that there is checking procedure in place with a second qualified party, in order to ensure that 'Negligent' decisions are not made. With this in mind it is important to ensure that all suitable available advice is considered carefully and not ignored before a risk based decision is made (ie change word 'independently' to 'with consideration only').</p>	<p>WorkSafe has reviewed the wording of this clause.</p> <p>The compliance certifier may, in reaching their decision, take into account the recommendations of a suitably qualified person employed or engaged to assist the compliance certifier, but the decision about compliance certification remains one requiring the exercise of independent judgement by the compliance certifier.</p>
<p>SPECIFIC COMMENTS</p> <p>Clause 8 – Issuing compliance certificates</p>		
2	<p>(c) why is the CC required to have a unique cert number with the certifiers number when WorkSafe database also does this – double-up.</p> <p>The WorkSafe database applies most if not all this sections requirements – suggest that certs be loaded before issue to the PCBU and only certs generated by the database be provided (with WorkSafe improving the quality of the current printing standards of the PDF). The cert is similar to a car warrant of fitness in law and should be standardised as such (ie certifiers should not be 'make up' their own and issuing as a separate document) this lends itself to inconsistencies between the database and certs issued.</p> <p>CC should be required to have in place a numbering system (ie one which is at least chronological and applied to all certs they issue the standard does not require that) just a unique number?</p>	<p>Noted.</p> <p>WorkSafe recognises that not every compliance certifier uses the Register of Compliance Certificates to generate compliance certificates.</p> <p>The performance standard sets out the information that must be included on a compliance certificate to ensure consistent information is provided by compliance certifiers, regardless of how a compliance certificate is generated.</p> <p>Noted.</p>
4	<p>I have no issue with these requirements.</p> <p>We will need to maintain a register of dates each certificate is entered on the register under subclause (4). It seems that it is insufficient to rely on having that information on the Worksafe register.</p>	<p>Noted.</p>
5	<p>Subclause (5) - How fixed is this intended to be? We can see that you don't want to have dates significantly varying, but we can foresee situations where the certifier has reviewed a report (the evidence) and is satisfied but the report and certificate are finalised the next day or (eg after a weekend).</p>	<p>The purpose this sub-clause is to set a reference point for deciding when a compliance certificate comes into force.</p>

SUBMITTER	FEEDBACK	WORKSAFE'S RESPONSE
6	<p>Full Name certifier: 'Over the top' requirement. Already a Statutory requirement.</p> <p>Retain copy of signed compliance certificate: can you have duplicate certificate signed on file, what about scan version?</p> <p>Database: Limited fields of information gathering: fields are limited.</p>	<p>This clause is not a duplication of a regulation.</p> <p>The Regulations set out the information that should be recorded in WorkSafe's Register of Compliance Certificates, the Regulations do not specify what should be recorded on a compliance certificate.</p>
8	<p>8 Issuing compliance certificates.</p> <p>NZIHSM agrees that: (5) The date on which the compliance certificate is issued must be the date on which the compliance certifier was satisfied that the matters for which the compliance certificate is required complied with the Regulations.</p> <p>It should be noted that the amount of work involved persons acting on behalf of a certifier often carry out this role.</p>	Noted.
<p>SPECIFIC COMMENTS Clause 9 – Exemptions</p>		
4	<p>Clause 9(1) presents practical difficulties for both certifiers and applicants for compliance certificates. Some companies retain excellent records of such documents, and can readily supply the relevant documents. But for others, the answer to the question by the certifier or their agent 'Do you have an exemption in place, either under HSWA or under HSNO Act covering this matter?' will be met by an answer such as 'I have no idea. Our records are only kept for 7 years' or a similar response.</p> <p>It would be a difficult exercise to set up and maintain, but I consider it would be extremely useful for compliance certifiers to be able to search a register of exemptions, issued both under s. 220, and under Schedule 1 clause 6 of the Act.</p> <p>The register would need to be searchable both by the name of the person, by the address of the site, and by date of decision, and compliance certifiers would need to be able to obtain details of any decision, including the conditions attached to it, if any, and the expiry date of the exemption if any.</p> <p>The compliance certifier could then pass on a copy of this information to the applicant with an instruction that it be retained either indefinitely or until expiry. This is better than lodging OIA requests for such information.</p>	<p>The submitter's suggestion is noted.</p> <p>All exemptions issued under HSWA are published on WorkSafe's website: (Exemptions under HSWA).</p> <p>A list of waivers and compliance plans issued under HSNO has been released by WorkSafe under the Official Information Act 1982.</p>
6	<p>Clause 9 needs to be scrapped.</p> <p>Where are the exemptions register.</p> <p>Worksafe does not shared information which is required to create a compliance plan due to privacy issues.</p>	<p>Noted.</p> <p>Compliance with privacy obligations is a legal obligation WorkSafe must meet.</p>
<p>SPECIFIC COMMENTS Clause 10 – Variation of compliance certificates</p>		
2	<p>Suggest a minor changes to the Location by the PCBU as a result of the certification process. That is, the immediate reduction of volume of LPG from 320 kg to 270 Kg – permitting three year certification – not one year (on receiving the certificate).</p> <p>Not a major issue – should be permitted to low costs for smaller flexible sites wishing to modify workplaces as a result of the law.</p>	Noted.

SUBMITTER	FEEDBACK	WORKSAFE'S RESPONSE
4	I have no issue with any of these requirements.	Noted.
6	Already a Statutory requirement. Define 'minor error'.	This term is used in the Regulations, but is not defined in the Regulations. A minor error is one that would have minimal, if any, impact on the assessment that has been made to issue a compliance certificate. For example a typographical error on a certificate or misspelling of a PCBU's name. The term minor error has been discussed with compliance certifiers at workshops. WorkSafe is happy to work with compliance certifiers to develop further examples of what constitutes a minor error.
<p>SPECIFIC COMMENTS</p> <p>Clause 11 – Refusal to issue compliance certificates</p>		
2	This needs to be expanded to provide guidance and consistency as to when and for what issues should be reported to WorkSafe. Clarity is also required as to actions CC are relating to take regarding issues of immediate serious harm and public safety in areas like schools, retail areas etc.	Noted. Whilst performance standards may include practice guides, this performance standard does not. WorkSafe provides guidance to compliance certifiers via technical bulletins and workshops.
4	I have no issue with this requirement where there is a serious breach. Minor technical non-compliances for location compliance certificates can be covered by conditional compliance certificates to allow the applicant to continue operating. However there is no corresponding relief available for applicants for stationary container system compliances. In such cases, such as where there has been a typographical error on a nameplate, we tend to point it out to the applicant and advise that we cannot issue the certificate until the error has been corrected.	The Regulations only provide for a conditional certificate to be issued for locations. A change in the Regulations is required to issue a conditional compliance certificate for stationary containers.
5	Will there be clearer guidance on what constitutes a 'timely manner'. Within 21 working days is suggested.	No timeframe is specified in the Regulations, hence the performance standard does not impose a specific timeframe. WorkSafe will provide compliance certifiers with guidance about its expectations for timeliness via technical bulletins.
6	Already Regulatory requirement: superfluous. Timely manner: minimum of 21 days.	
8	11 Refusal to issue compliance certificates. When refusing to issue a compliance certificate in accordance with regulation 6.23(2), a compliance certifier must have a procedure in place to ensure WorkSafe and the applicant are notified in a timely manner of the compliance certifier's decision to refuse a compliance certificate. Agree that the applicant should be notified of non-compliant items but must also be given a chance to fix 'minor and technical' compliance issues prior to taking significant enforcement action to maintain the trust to include all parties. Not renewing an existing certificate previously entered on the Worksafe database should be suitable notice that current compliance has not been agreed by that certifier.	Noted. A compliance certifier could give the PCBU an opportunity to remedy minor and technical issues before making a decision to issue, or refuse to issue, a compliance certificate. The Regulations require a compliance certifier to notify both the PCBU and WorkSafe when a compliance certifier refuses to issue a compliance certificate. This is a requirement the compliance certifier must adhere to. WorkSafe acknowledges there may be some discussion between the compliance certifier and PCBU whilst minor errors are remedied. This should be done judiciously, it is not a reason to delay notifying the PCBU or WorkSafe that the compliance certifier has refused to issue a compliance certificate.

SUBMITTER	FEEDBACK	WORKSAFE'S RESPONSE
SPECIFIC COMMENTS		
Clause 12 – Renewal of compliance certificates		
2	<p>This needs to clarify the need for re-visits by the CC and the degree to which historical records can provide verification of current standards.</p> <p>It is believed at all areas need 'testing' each audit. That is, information like site plans and emergency procedures need to be tested each re-newel or at least evidence created they are still current by the PCBU – not just accepted as ok by the certifier as they have something on file.</p>	<p>Noted.</p> <p>WorkSafe will provide compliance certifiers with guidance about its expectations via technical bulletins.</p>
4	I have no issue with this requirement.	Noted.
6	As above: regulations.	The submitter's comment is incorrect. The regulations do not specify the actions expected of compliance certifiers when renewing compliance certificates.
SPECIFIC COMMENTS		
Clause 13 – Related compliance certificates for hazardous substances and stationary container systems		
2	<p>Unless evidence is provided notification should be provided to Worksafe – it is easy and ensures WorkSafe has complete records as the LCC.</p> <p>The certs issued under the HSNO is not reliable and should not be considered as meeting this test – especially when some will not expire for some years – keep it only to certs issued under the HS regs could be an option.</p>	Noted.
4	This is a very good practical concession and saves everybody time and paperwork.	Noted.
5	If there has been a change in the substances or quantity of substances, or if a copy of a previous certificate is not available can WorkSafe provide clarification on what form notification should take – perhaps the commissioning a new HSL form should have a box and comment section for updating information about existing HSL.	<p>Noted.</p> <p>This is a matter for guidance, not for inclusion in a performance standard.</p>
6	<p>Intent of notification is currently being abused by enforcement officers.</p> <p>Paperwork does not reflect PCBU signatory or if paperwork is lost a area for PCBU to forward without enforcement visit (wasting enforcement time).</p> <p>Clarification is required.</p> <p>Existing certification/s noted a previous notification on WS register.</p> <p>Notification is only required for new site.</p> <p>Review on process: However, isn't certification overall a notification of a site holding hazardous substances, seems a double handling process confusing Industry and putting the microscope on certifiers within audit process.</p>	Noted.

SUBMITTER	FEEDBACK	WORKSAFE'S RESPONSE
8	<p>13 Related compliance certificates for hazardous substances and locations If no change has been made to substances, or to the quantity of substances, at a location, a compliance certifier may treat a previous compliance certificate for that location as sufficient evidence that WorkSafe was notified of the commissioning of the hazardous substance location.</p> <p>Changes in quantities of less than 30% of previous advice should not require additional notification.</p>	Noted.

SPECIFIC COMMENTS

Clause 14 – Related compliance certificates for stationary container systems

1	The submitter's comments have been redacted for reasons of privacy.	The submitter's comments are noted. WorkSafe will discuss those comments with the submitter.
4	I always understood that this was implicit in r.17.91(3) and (4), but it is good to have it explicitly stated.	Noted.
5	It seems that subclauses (1) & (2) here are very similar to 17.91(2) & 17.91(4) – are they needed here.	Noted. This clause provides the compliance certifier with the option of accepting a current compliance certificate for the design or fabrication of a stationary tank rather than being compelled to verify all aspects of the stationary tank's compliance themselves.
6	Clarification of design/construction. review certificates are required for one off tanks. Statutory regulation: Superfluous.	Noted.
8	<p>14 Related compliance certificates for stationary container systems.</p> <p>(1) A compliance certifier may accept a compliance certificate (or a report from a suitably qualified person or engineer) for the design of a stationary tank issued under regulation 17.93(1)(a) as evidence that the design of a stationary tank meets the requirements for a tank design under regulation 17.91(2)(b)(i).</p> <p>Consideration by suitably trained and qualified professionals (eg Professional engineers or Advanced trades) should also be acceptable.</p>	Noted. The submitter's comments raise an issue that only the Regulations can deal with.

SPECIFIC COMMENTS

Clause 15 – Location visits

2	<p>It is strongly recommended that any person used to discharge any responsibilities given to them as a CC by WorkSafe provide a list of those person to WorkSafe – that include all the areas listed – before they commence such work.</p> <p>Worksafe needs to be aware that many old Test Certifier that have large client bases are currently looking to continue to work unregulated by working for a CC and not need to undergo Certifier Application requirements.</p> <p>Many of these have poor levels of site compliance. An already captured client base that has little knowledge of both changes in the act or the difference between Test and Compliance Certifiers.</p> <p>Some are also provide very limited information as to their status and often are thought to be Certifiers when they are not.</p>	Noted. The performance standard has been amended, compliance certifiers must notify WorkSafe when they engage or employ a person to undertake inquiries, inspections, assessments and examinations on their behalf.
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SUBMITTER	FEEDBACK	WORKSAFE'S RESPONSE
	<p>It should be mandatory the if a Compliance Certifier uses a 'third party' that certifier MUST hold evidence that they have informed the PCBU that the person doing the inspection at the Location is not a Certifier and a reason as to why they are not doing it.</p>	
4	<p>I have never been prepared to issue compliance certificates without a site visit, and am amazed to learn that any compliance certifier would do so, though I know of a few compliance certifiers who were (in)famous for doing so. I still occasionally come across new clients who say they never met their former certifier, and simply received a compliance (or test) certificate in the mail along with an invoice each year.</p> <p>However where I come across faded signage for example, photograph it, and a week or so later receive an email from the applicant with a photo of the new signage that is date-stamped, I fail to see why this could not be acceptable as proof that that issue has now been resolved, and there is no need for a return visit to the site, particularly if that involves a day or so's travel to the site. The two photos can be printed side by side and the date the certificate comes into force is no earlier than the date of the email from the applicant, not the date of inspection. If they take more than 20 working days to provide the photo, then, yes, a second visit will be mandatory.</p>	<p>Noted.</p> <p>Agree. This is an appropriate approach for the matters described.</p>
6	Same comments as clause 14.	
SPECIFIC COMMENTS		
Clause 16 – Training procedures and competency requirements for persons engaged or employed by compliance certifier		
4	<p>I believe that it is for the compliance certifier to be satisfied that any third party engaged or employed by them needs to be satisfied that the person is competent in all of the listed attributes and skills. If the auditor acting for the compliance certifier cannot demonstrate consistent competence in each area, their work should not be accepted.</p> <p>Each compliance certifier will need to develop the procedures listed in subclause (1) for each area the person will be acting for them. This may take a little time, but hopefully will not need to be amended very frequently.</p> <p>So much of hazardous substances auditing comes down to experience, and there is no quick way to acquire this. Mine has been acquired over some 30+ years, but new entrants to the certification process will need to be restricted in the areas in which they work, and be gradually introduced to new areas by the certifier, as time, enthusiasm and resources dictate.</p>	Noted.
6	<p>Statutory regulation: Superfluous.</p> <p>PCBU needs to establish training – correct.</p> <p>However, Since no training has been established for Certifiers by Worksafe, certifiers reject the double standards to audit the certifier on their training system for a inspector/consultant. Chicken before the egg!</p> <p>Worksafe can provide tools: templates and guidance on how to meet requirements of clause 16.</p> <p>Certifier reject this clause.</p>	<p>The submitter's comment suggests a misunderstanding of the role of a compliance certifier.</p> <p>Compliance certifiers are tasked by law with carrying out important regulatory duties. It is entirely appropriate to expect that they have training processes in place for those persons they employ or engage to assist in the performance of the compliance certifier's functions.</p>

SUBMITTER	FEEDBACK	WORKSAFE'S RESPONSE
7	<p>Section 16 to 20 unachievable without an agreed training programme with current material.</p> <p>This approach risks bad habits being passed on and no industry experience being brought in as a succession approach, nor having expertise to capitalise on to ensure ongoing experience and expertise.</p>	<p>Noted.</p> <p>Compliance certifiers are tasked by law with carrying out important regulatory duties. It is entirely appropriate to expect that they have training processes in place for those persons they employ or engage to assist in the performance of the compliance certifier's functions.</p>
<p>SPECIFIC COMMENTS Clause 17 – Testing to determine competency of persons engaged or employed by compliance certifier</p>		
4	<p>To date I have not done this, but will need to set up systems to do so before this performance standard comes into effect.</p>	<p>It is not mandatory to administer a test, this requirement applies only if the compliance certifier choses to administer a test.</p>
6	<p>As above.</p> <p>At no time has any consultation on training ever been discussed with certifiers.</p> <p>Certifier reject this clause.</p>	Noted.
7	<p>Section 16 to 20 unachievable without an agreed training programme with current material.</p> <p>This approach risks bad habits being passed on and no industry experience being brought in as a succession approach, nor having expertise to capitalise on to ensure ongoing experience and expertise.</p>	Noted.
<p>SPECIFIC COMMENTS Clause 18 – Records to demonstrate competence and training of persons engaged or employed by compliance certifier</p>		
4	<p>There may in future be training courses for prospective compliance certifiers, but until there is, we will all need to check our own records to ensure compliance with schedules 2 and 3.</p>	Noted.
5	<p>The wording here is a little confusing, the body of the clause should refer to the fact that the records relate to the competency and training of persons engaged (as stated in the heading), not the competency of the certifier.</p>	<p>Agreed: records of competency and training relate to a person employed or engaged by a compliance certifier and not the compliance certifier themselves.</p>
6	<p>Certifier reject this clause.</p> <p>Training records are satisfactory as per any other PCBU but to the certifier level not enforceable by WS or for auditing purposes.</p>	<p>Regulation 4.5 requires a PCBU to provide training and to keep records of that training.</p> <p>This duty applies in respect of workers who 'use, handle, manufacture or store hazardous substances', it may not be relevant to every person employed or engaged by a compliance certifier.</p> <p>The duty to keep records under regulation 4.5 does not preclude performance standards from setting out requirements relating to training and record keeping.</p>
7	<p>Section 16 to 20 unachievable without an agreed training programme with current material.</p> <p>This approach risks bad habits being passed on and no industry experience being brought in as a succession approach, nor having expertise to capitalise on to ensure ongoing experience and expertise.</p>	Noted.

SUBMITTER	FEEDBACK	WORKSAFE'S RESPONSE
<p>SPECIFIC COMMENTS Clause 19 – Responsibilities of persons engaged or employed by compliance certifier</p>		
2	<p>There appears to be no formal requirement for a CC to define what information they collect vrs that of others on their behalf? In the future how can WorkSafe identify what a CC did or the person on employed.</p> <p>The question is also under what the regulations does what person operate under? Does WorkSafe have any legal power to control these persons or are they only able to work on the fact they are employed by a Compliance Certifier? If Worksafe could/does stop a person working for one or more CC what rights are provided to that person to a defence themselves have they right to claim damages if found not to have acted incorrectly – mess.</p> <p>The overall concern is WorkSafe loses control of the quality assessment process within the framework set up to ensure people with the required skill undertake that work. Not everyone can issue a warrant of fitness for a car but it appears almost anyone can assess HS that are a far greater risk!</p>	<p>The compliance certifier is accountable for compliance certification decisions.</p> <p>The onus is on a compliance certifier to ensure that persons employed or engaged to assist in the performance of compliance certifier functions are up to the job.</p>
4	<p>Compliance certifiers have probably not complied with this clause in the past, but it is an excellent idea that we will be adopting.</p>	<p>Noted.</p>
6	<p>Reject this clause.</p>	<p>Noted.</p>
7	<p>Section 16 to 20 unachievable without an agreed training programme with current material.</p> <p>This approach risks bad habits being passed on and no industry experience being brought in as a succession approach, nor having expertise to capitalise on to ensure ongoing experience and expertise.</p>	<p>Noted.</p>
<p>SPECIFIC COMMENTS Clause 20 – Continuing competence of persons engaged or employed by compliance certifier</p>		
4	<p>I have no issue with this requirement, though have not formally done so in the past.</p> <p>We will be setting up suitable procedures to enable compliance in the near future.</p>	<p>Noted.</p>
6	<p>Reject this clause.</p>	<p>Noted.</p>
7	<p>Section 16 to 20 unachievable without an agreed training programme with current material.</p> <p>This approach risks bad habits being passed on and no industry experience being brought in as a succession approach, nor having expertise to capitalise on to ensure ongoing experience and expertise.</p>	<p>Noted.</p>
8	<p>20 Continuing competence of persons engaged or employed by compliance certifier</p> <p>(1) A compliance certifier must ensure the continuing competence of any person engaged or employed to inquire into, inspect, assess, or examine a matter on behalf of a compliance certifier.</p> <p>How can a compliance certifier 'ensure' the continuing competence of all parties outside of the usual qualification checking and considered review of the reports from these parties from known facts.</p>	<p>Noted.</p> <p>A considered review of the reports is an acceptable way of reviewing on-going competence.</p> <p>WorkSafe provides guidance and assistance via individual support, technical bulletins, updates and regular workshops and training sessions.</p> <p>These are open to persons employed or engaged by compliance certifiers as a means of ensuring continuing competence.</p>

SUBMITTER	FEEDBACK	WORKSAFE'S RESPONSE
<p>SPECIFIC COMMENTS Clause 21 – Complaints</p>		
4	This requirement is supported.	Noted.
6	<p>reject this clause based on there is no bench mark, no moderation.</p> <p>Worksafe not looking at their own model on the complaint process.</p>	Noted.
<p>SPECIFIC COMMENTS Clause 22 – Records management</p>		
2	<p>While the level of information being requested is not challenged the means by which it is recorded is. To require the information collected within clause 22 (3) (a-g) to be signed is simply not practicable. To sign each entry would require it to first be printed and later filed. My organisation runs a paperless system. Most evidence is provided electronically and such a policy shows no regard to protection of the environment or modern business practices.</p> <p>I suggest an amendment be made to require information (if not signed) to be able to have its source verified or tracked within electronic systems at a later time for verification and auditing purposes. (Similarly for photos, certs, training records and other information provided by PCBU's.)</p>	Noted.
4	<p>Is subclause (1) enforceable in the case of a compliance certifier who is deceased?</p> <p>Even for certifiers who retire, their circumstances may be such that they are unable physically or mentally to comply with this requirement.</p> <p>We will need to amend our audit forms to include the name of the auditor and the name of the compliance certifier to comply with subclause (3) (g). A space for their signatures and dates will also be needed under subclause (4).</p> <p>Subclause 6 presents difficulties in that the certifier may be photographing a specific problem on an item or area, but not be able to get back far enough to clearly identify the specific item.</p> <p>Subclause 7 appears excessive, and my question in response to clause 6 reinforces this view.</p> <p>I am advised that the Police, when presenting photos as evidence merely hand them up to the Registrar, declare that they took the photo, or if they did not, have the photographer also appear as a witness, and state under oath where the photo was taken and describe what it is intended to show. Date stamping of photographs is straightforward with modern cameras, but may conceal vital evidence, which is why Police photographers do not use it. Any other requirements are unnecessary and serve no legal requirements.</p>	<p>Noted.</p> <p>WorkSafe acknowledges the concern about records created by compliance certifiers that for whatever reason no longer hold an authorisation from WorkSafe.</p> <p>This is not an issue that a performance standard can address.</p> <p>This is consistent with WorkSafe's policy for recording details of when and where photographs were taken.</p> <p>It is clearly important to record who took a particular photograph for the photograph to have any evidential value.</p>

SUBMITTER	FEEDBACK	WORKSAFE'S RESPONSE
5	<p>(7) what level of detail is needed about the person taking the photos – will it be sufficient to have this information from the site contact (eg HSE Manager), who may have delegated the task of taking the photos to one or more other employees on site? Is the information needed about the person providing the photo or the physical photographer. Sometimes date and location information is embedded in the photo file, but this does depend on how it has been handled.</p>	<p>The submitter's comments are noted. The compliance certifier should note the responsibility or position of the person providing photographs.</p> <p>This is acceptable.</p>
7	22.4 is excessive and very long duration for no gain whatsoever. If 23 is adhered to this embraces 22.4 fully.	Noted.
8	<p>22 Records management.</p> <p>(1) A compliance certifier must retain all records related to the functions of a compliance certifier for at least five years after the expiry of the compliance certificate to which the functions relate.</p> <p>While records are important it is also important to ensure that there is not so much detail and time taken on records that the Risk and Safety of Workers becomes secondary.</p>	Noted.
<p>SPECIFIC COMMENTS Clause 23 – Storage and security of information and records</p>		
4	<p>I have no issue with these requirements.</p> <p>However accidents do happen, and I have had two occasions over the years where my field notes, covering several months' worth of site visits, have been lost and the data has had to be reacquired through a further site visit.</p>	Noted.
7	22.4 is excessive and very long duration for no gain whatsoever. If 23 is adhered to this embraces 22.4 fully.	
<p>SPECIFIC COMMENTS Clause 24 – Impartiality and conflict of interest</p>		
2	This section should also clearly state the issues of certification of own work and the requirement not to engage in any activity that the CC is auditing and ref to the Regulations relating to this.	Noted.
4	<p>I have no issue with this clause.</p> <p>However we will need to set up a conflicts of interest register.</p>	Noted.
6	<p>Register is unnecessary.</p> <p>File not adequate.</p> <p>Reject clause to be under audit.</p>	<p>Noted.</p> <p>This clause has been amended.</p>
<p>SPECIFIC COMMENTS Clause 25 – Review</p>		
4	<p>An annual review of procedures and documentation is a good idea and is supported.</p> <p>We do our best to ensure that only current forms are used by marking earlier versions 'Superseded'.</p>	Noted.

SUBMITTER	FEEDBACK	WORKSAFE'S RESPONSE
5	2. Requires detailing every change that has been made to a procedure or document. how detailed will this need to be – should it be substantive changes and not minor typographical and formatting matters. Will identifying that particular sections of the document have been changed suffice.	Noted. The performance standard has been amended to remove the need to record minor changes in process.
6	Worksafe should be providing training to certifiers to support the expansion of the regime not micromanage current set up on certifiers.	Noted.
SPECIFIC COMMENTS Clause 26 – Equipment		
1	(2) Calibration to be carried out by IANZ accredited laboratories as applicable (eg calibration of pressure gauges). (3) Compliance certifiers to be CBIP/IANZ accredited for the particular inspection technique (eg Compliance certifiers can not carry out simple dye penetrant, magnetic particle or ultrasonic thickness inspections without holding current CBIP certificates of competency and proficiency and having passed an IANZ audit in the discipline used in inspection and testing). All reports to be IANZ endorsed.	Noted.
4	This is basic health and safety. Anyone using an item like a gas detector or harness that is out of test or uncalibrated is risking their own personal safety and may put others at risk if the person requires rescuing.	Noted.
6	Definition of equipment is required: Toolboxes for certifiers needs to be established. HSPNZ happy to arrange but with assistance form Worksafe to develop.	The common definition of 'equipment' applies. It is not for WorkSafe to establish toolboxes. The compliance certifier should provide equipment appropriate to performing the functions of a compliance certifier.
SPECIFIC COMMENTS Renewal Assessment Period (Schedule 1)		
2	The renewal assessment for approved handlers of 0 working days is completely inappropriate. Unless WS is expecting this to be a rubber stamping activity! The certification process is for our process in three parts. 1. Ensuring all the information is provided full. 2. Ensuring evidence of skill, experience and training meet a accepted standard and relate to the HS regulations. Often requiring information form the PCBU as required by the regulations. 3. Confirmation that the CH is ensuring standards within the WorkSafe are meeting reasonable standards for that specific industry HS. Often a number of requests and even site visits are required (specially for fumigants, VTA and HS relating tovery highly toxic substances) to confirm the person is suitable to receive CHC – it takes time to assess all 3 areas listed above gain the evidence required by other areas of this performance standard. To have a renewal assessment period of 0 Days is incorrect (14 days for assessments is a better time frame – notification to WorkSafe after this as to why).	Noted. The Schedule 1 has been amended to simplify its requirements.

SUBMITTER	FEEDBACK	WORKSAFE'S RESPONSE
4	<p>The proposal to extend the renewal assessment period to 30 days for location compliance certificates, and 40 days for stationary container systems is welcomed. These may still be difficult to achieve, but the vast majority will be able to be done in this time.</p> <p>There are times when a stationary container system is compliant at the time of renewal, but will be non-compliant inside 12 months. I had one like this recently where a rotomoulded tank will reach its 10 year service life in late November 2018, so the certificate was issued for the shorter period. This is supported by r. 17.4.</p>	<p>Noted.</p> <p>The schedule will be reviewed and may be changed based on experience and feedback from compliance certifier's use of the Schedule.</p>
6	<p>We believe professionals externally such as IANZ is a more fair process to be reviewed and renewed.</p> <p>Has Worksafe taken any consideration in engaging a third party such as IANZ to elevate workload and provide a fairer more professional audit for certifiers.</p>	<p>WorkSafe may use compliance certifiers as technical experts during audits.</p> <p>WorkSafe will nominate compliance certifiers as technical experts based on their authorisation, experience, and impartiality.</p>
8	<p>Schedule 1 Renewal assessment period.</p> <p>Renewal assessment periods shall be guides only in that where a site is actively remedying non-compliances in conjunction with an independent certifier some leeway should be acceptable before engaging full enforcement. For example, any item that may require a council consent may well take in excess of 30-40 days.</p>	<p>As noted previously, performance standards are not guides.</p> <p>Performance standards specify requirements that must be complied with by compliance certifiers when undertaking their functions as a compliance certifier.</p>
<p>SPECIFIC COMMENTS Competency Register (Schedule 2)</p>		
2	<p>Poorly designed and gives little direction as to the scope and assessment that should be being made as to ensuring the person has sufficient skills. Suggest it lists the requirements.</p>	<p>Noted.</p> <p>This schedule has been removed from the performance standard.</p> <p>A list of the information required to be stored will be added to the performance standard.</p>
4	<p>The competency register in Schedule 2 is confusing and needs further illustration.</p> <p>Most compliance certifiers have never had a formal assessment of their competency, and their clients are likely to be the best judges of such competency. Competent compliance certifiers get asked to come back; incompetent ones do not.</p>	<p>Noted.</p> <p>This schedule has been removed from the performance standard.</p> <p>A list of the information required to be stored will be added to the performance standard.</p>
6	<p>Reject</p>	<p>Noted.</p> <p>This schedule has been removed from the performance standard.</p> <p>A list of the information required to be stored will be added to the performance standard.</p>
<p>SPECIFIC COMMENTS Training and experience record (Schedule 3)</p>		
2	<p>Again poor formatting - likely to result in a similar level of training.</p> <p>Worksafe needs to consider that if it allows certifiers to employ others to undertake certification work it is essentially allowing us to become them. So the standards applied to us need to also be applied to those we employ!</p>	<p>Noted.</p> <p>This schedule has been removed from the performance standard.</p> <p>A list of the information required to be stored will be added to the performance standard.</p>

SUBMITTER	FEEDBACK	WORKSAFE'S RESPONSE
4	<p>This is likely to be superfluous, as most compliance certifiers will have their own training records and can get these for any auditors they may engage or employ.</p> <p>Mine are kept on our company's Personal files under my name.</p>	<p>Noted.</p> <p>This schedule has been removed from the performance standard.</p> <p>A list of the information required to be stored will be added to the performance standard.</p>
6	Reject.	<p>Noted.</p> <p>This schedule has been removed from the performance standard.</p> <p>A list of the information required to be stored will be added to the performance standard.</p>

SPECIFIC COMMENTS

Additional comments

4	<p>I have identified a number of issues here that I consider to add nothing to the evidence of competence of the compliance certifier, and which are of dubious legal status. The requirements with respect to identifying photographs I believe falls into this category.</p> <p>There is also the basic protection in law protecting a defendant against self-incrimination. A compliance certifier could, I believe, justify refusing to supply certain information if they considered Worksafe would be likely to use that information to adversely impact their ability to operate in their chosen profession. Of course, many will, and already have, resigned as compliance certifiers and become successful consultants. This does nothing to assist Worksafe in ensuring that everybody returns home from work in more or less as good a state of health as they left that morning.</p> <p>Yet another problem concerns the Worksafe assessors, and their competence to assess compliance certifiers. Past experience has given me a somewhat jaundiced view in this respect, and I know that I am not alone. Compliance certifiers generally work across a wide range of industries, each with different challenges to compliance. In many cases we are trying to help clients achieve compliance with regulations that are either irrelevant to their industry, or do not allow for practical requirements.</p>	<p>Compliance certifiers are authorised by, and accountable to, WorkSafe for the performance of their functions as compliance certifiers.</p> <p>The Regulations make this relationship clear, and specifically empower auditors to require the production of information.</p>
6	<p>Not enough time to put professional review and consideration into document.</p> <p>HSPNZ recommends Worksafe rewrite documentation with consideration of the certifier not enforcement.</p> <p>Change performance standards to work for certifiers and Industry and not a audit standard as Punitive Punishment Interview prompt.</p>	<p>The submitter requested a specific extension of time to respond to consultation. This request was granted by WorkSafe.</p> <p>Had the submitter requested a further extension of time, WorkSafe would have been open to considering it.</p>
7	<p>A personal submission regarding the draft Performance Standard.</p> <p>Section 16 to 20 unachievable without an agreed training programme with current material.</p> <p>This approach risks bad habits being passed on and no industry experience being brought in as a succession approach, nor having expertise to capitalise on to ensure ongoing experience and expertise.</p>	<p>The views of the submitter's personal comments are noted. WorkSafe's relationship with compliance certifiers is not contractual one.</p> <p>A performance standard is intended to clearly set out WorkSafe's expectations of those it authorises to carry out certification work.</p> <p>It is used as an audit tool against which performance is measured. It is not an enforcement tool.</p>

SUBMITTER	FEEDBACK	WORKSAFE'S RESPONSE
	<p>22.4 is excessive and very long duration for no gain whatsoever. If 23 is adhered to this embraces 22.4 fully.</p> <p>Summary statement. If this level of micro-managing detail is required it is suggested this is symptomatic of serious underlying issues such as training, leadership, moderation, and mentoring issues.</p> <p>To have to lock an operator into this level of minute management detail depicts a broken model, as this will never serve as an agreement, rather a dictation.</p> <p>This model of operation lacks a written agreement/contract of any nature between Worksafe and the Compliance Certifier.</p> <p>To have a Performance Standard which is an 'enforcement tool' as a form of mutual agreement for service provision, suggests a breakdown of relationship and cannot function with an agreed outcome.</p> <p>In a technical sense this is a highly skilled group of professionals, of whom effectively serve Worksafe to deliver a service of compliance assessment and submission of appropriate returns. This reads as a whipping stick as opposed to a agreement to work together for a common goal.</p> <p>In a reasonable society (which is what NZ is proud of) every agreement of service provision there is provision for recognition of performance and also that of discipline procedures. This cannot serve as such an agreement, rather something to take them to court over as a first resort when any proceedings should be a last resort..</p> <p>Having no axe to grind with either party, this is an outside viewpoint as to what is being portrayed with the knowledge of how the model operates.</p>	

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