

# Summary and analysis of submissions

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***OUTCOME OF PUBLIC CONSULTATION ON THE PROPOSED CHANGE  
TO CLAUSE 11 OF THE HEALTH AND SAFETY AT WORK (HAZARDOUS  
SUBSTANCES – INFORMATION AND PROCESS REQUIREMENTS FOR  
COMPLIANCE CERTIFIERS) PERFORMANCE STANDARD 2019***

February 2023



**Te Kāwanatanga o Aotearoa**  
New Zealand Government

**WORKSAFE**  
Mahi Haumarū Aotearoa



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## Background

1. Under regulation 6.8 of 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.
2. Authorisation is granted for a maximum period of five years, and it may be subject to any conditions WorkSafe New Zealand considers appropriate and is for a defined scope of activity (for example, issuing certified handler, and stationary container system compliance certificates).
3. 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.
4. 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.
5. Clause 6 of the Health and Safety at Work (Hazardous Substances-Information and Process Requirements for Compliance Certifiers) Performance Standard 2019 (the Performance Standard), requires compliance certifiers to:
  - a. establish, document, and maintain processes that are necessary to enable the compliance certifier to perform the functions of a compliance certifier
  - b. establish and maintain records showing the decisions of a compliance certifier, and the basis for making them
  - c. 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
  - d. 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
  - e. communicate regularly with applicants for compliance certificates to keep them informed of the functions that are being carried out by the compliance certifier.
6. The Performance Standard is drafted in line with Australian and New Zealand Standards for bodies performing inspections with the objective of promoting confidence in compliance certifiers performing inspections.

## Independent review

7. At present Clause 11 of the Performance Standard requires compliance certifiers to have a process for refusing to issue compliance certificates. Clause 11 is intended to work in concert with regulation 6.23 of the Regulations.
8. On 8 June 2021, WorkSafe commissioned an independent review into the notification of refusal to issue a compliance certificate process.
9. The review was undertaken following concerns raised regarding the Regulations and allegations about the performance of compliance certifiers and WorkSafe; the review was carried out by barrister Tim Smith.
10. On 7 October 2021 the report *Independent Review – Notification of Refusal to Issue a Compliance Certificate* (the Review) was submitted to WorkSafe. WorkSafe made the Review available publicly on 31 March 2022.
11. The Review identified that historically some certifiers may not have been reporting non-compliance as required and identified opportunities for WorkSafe to ensure appropriate action and oversight.

12. A total of 19 recommendations were made in the Review.
13. The recommendations included that WorkSafe should provide more guidance to certifiers on when notifications should be made and how refusals should be recorded, prioritised and actioned for follow-up by WorkSafe.
14. The recommendations from the Review relevant to this consultation are:
  - a. Recommendation (d): While use of the standard WorkSafe form for refusal notifications (Standard Form) is not prescribed by the Regulations, WorkSafe should emphasise that, as a matter of best and standard practice, such a form should be used
  - b. Recommendation (e): The Standard Form should have a means by which the certifier can put the COS Team on notice in the event that there is any particular issue that has to be dealt with as a matter of urgency - which the Standard Form does not currently do
  - c. Recommendation (o): While neither the Regulations nor the Practice Statement prescribe timings, WorkSafe should continue suggesting to certifiers that it would not generally be appropriate to allow a PCBU more than 30 days to comply with a request for compliance before issuing a refusal notification (unless a conditional certificate can be issued), which would seem to be consistent with current best practice (while emphasising that the Health and Safety at Work (Hazardous Substances - Information and Process Requirements for Compliance Certifiers) Performance Standard 2019 requires a certifier to make the decision as to whether or not to issue a certificate 'as soon as reasonably practicable' after completing the relevant assessment).
15. WorkSafe accepted the findings and recommendations of the Review and acknowledges there are opportunities for improvement in the notification of refusal process.
16. The proposed amendment to Clause 11 of the Performance Standard will address the recommendations of the Review set out in Paragraph 14 above.
17. WorkSafe has consulted publicly on the proposed amendment to Clause 11 of the Performance Standard.
18. Compliance certifiers and their professional bodies were contacted directly to seek their feedback on the revised Clause 11 of the Performance Standard.
19. Consultation lasted for 20 working days.
20. Seven submissions were received.
  - a. four from compliance certifiers
  - b. one submission from a group of compliance certifiers
  - c. two from professional bodies representing compliance certifiers - the New Zealand Institute of Hazardous Substances Management (NZIHSM) and Hazardous Substances Professionals New Zealand (HSPNZ).
21. The main themes of the submissions were.
  - a. the 15 working day time limit for submitting notifications
  - b. compliance certifiers working with applicants to correct non-compliance
  - c. feedback, or the lack thereof, from WorkSafe following a refusal notification
  - d. the format, content and use of the refusal notification form
  - e. managing conflicts of interest (outside the scope of this consultation. See Clause 23 of the Performance Standard for managing conflicts of interest)
  - f. setting time limits for certain functions of a compliance certifier, that is, issuing compliance certificates (outside the scope of this consultation. See clause 8 of the Performance Standard for controls on issuing compliance certificates).

22. After considering all seven submissions, WorkSafe decided that no changes were required to the proposed Clause 11 of the Performance Standard.
23. However, two minor changes were made post consultation. The first being the change of the word 'volume' to 'quantity' in proposed clause 11(4)(f) to reflect that sometimes it is appropriate to report quantities of hazardous substances as either a volume or a mass. The second being to require Equipment ID in proposed clause 11(4)(g) as a requirement to aid in identification of the equipment/plant that is the subject of the refusal.
24. The submissions included suggestions for amending the Regulations. Such suggestions are outside the scope of this consultation.
25. The Ministry of Business, Innovation and Employment (MBIE) is responsible for reviewing the Regulations. If MBIE reviews the Regulations the suggestions received during this consultation will be forwarded for consideration.
26. Clause numbers mentioned in the responses below relate to the proposed Clause of the Performance Standard used for consultation and may not necessarily reflect the numbering of Clause 11 in the final version of the Performance Standard.
27. Clause 2 of the Performance Standard, 'Commencement', will be amended to specify the date on which a revised Clause 11 comes into force.
28. The date on which a revised Clause 11 comes into force will reflect the requirement for WorkSafe to provide guidance to compliance certifiers about making refusal notifications, including guidance on how to complete the refusal form.

## Feedback and WorkSafe's response

29. Seven responses were received, one responder provided their submission through WorkSafe's website, the remaining six submissions were provided via email.

NUMBER	RESPONDER	ORGANISATION
1	Andrew Saunders	Vertical Horizons
2	Anonymous	
3	Anonymous	
4	James Dunphy	DGC Ltd
5	John Hickey	New Zealand Institute of Hazardous Substances Management (NZISM)
6	Anonymous	
7	Rex Alexander	Hazardous Substances Professionals NZ <sup>1</sup> (HSPNZ)

<sup>1</sup> HASANZ supports HSPNZ's submission in the context of its specialised knowledge of the hazardous substances industry and comprehensive understanding of the practical implications on compliance certifiers.

## General comments

SUBMITTER	FEEDBACK	WORKSAFE'S RESPONSE
1	<p>In the case of a non compliant Certified Handler Compliance Certificate application my practice is to have the applicant withdraw their application and to refer the applicant to further training. They simply do not get a Certified Handler Compliance Certificate from me. They are referred to another Certifier after the case owing to the risk of actual or perceived Conflict of Interest. If I ever came across a serious non compliance I believed I was unable to rectify through training, malfeasance, for example, I would be informing local Worksafe anyway, under the General Risk Management Regulations.</p> <p>The risk of notifying you of each poorly prepared applicant is that you would be swamped by the notifications.</p> <p>I suppose it comes down to the purpose of the regulation which is to improve performance and safety. My Certified Handler application process provides for that. Rectification of knowledge and understanding is more easily assured than, lets say, for a stationary container that is needed for a production process. It most often just takes time on behalf of the applicant.</p> <p>I attach the Policy and Procedures under which I work.</p> <p>For your consideration.</p>	Noted.
3	<p>I believe that the Hazardous Substance (HS) Compliance system should be mutually beneficial to people, communities and the environment.</p> <p>To effect this, it must be developed as a mutual Trust model between all parties.</p>	Noted.
3	<p>If a refusal form is issued will there be a process for the applicant to get up to compliance so then a compliance certificate could be issued in the future? Will issuing a refusal mean the client will never be able to get compliance on their particular equipment that is being questioned? Would instead a compliance plan be used for this if there is non-compliances that could be compliance if certain things are completed?</p>	In general, an applicant should be able to complete remedial works to achieve compliance. Responsibility for compliance with the Regulations rests with the applicant, they must ensure they comply with the relevant requirements of the Regulations for a compliance certifier to issue a compliance certificate.
4	<p>The way to curb these abuses is to have specific events and times which start to run from the date of the site inspection (Day SI) (this being an absolute requirement for a certifier to complete). We suggest:</p> <ul style="list-style-type: none"> <li>- Day SI + 10 business days - a certifier must have made a decision to issue a certificate or refuse to do so (these being the only two options available to the certifier). This becomes the Day of decision (Day Dec).</li> <li>- Day Dec + 20 business days - a certifier must have either issued a certificate (whether conditional or full) or have filed a notification of refusal (with 2 business days grace to allow for completion of the form and filing with WorkSafe). 20 business days is close to a month.</li> </ul>	<p>Noted.</p> <p>The 'precise requirements for all steps on the certification path' may be considered in a subsequent review of this performance standard.</p>

SUBMITTER	FEEDBACK	WORKSAFE'S RESPONSE
4	<p>The other abuse which can be used to circumvent the current rules is to make an inspection a 'consultation' rather than an inspection performed for the purposes of considering whether a certificate can be issued. This delays 'Day SI'. This can be curtailed by prohibiting a certifier from issuing a certificate within six months of:</p> <ul style="list-style-type: none"> <li>- completing any form of consulting or advisory role (whether paid or unpaid) at the location.</li> </ul> <p>These restrictions will ensure that there is an exact and prescriptive timetable that applies from the processes associated with the inspection to the decision to certify or not. The restrictions would not impede (and nor is there a policy reason to do so) the work that some certifiers do with PCBUs:</p> <ul style="list-style-type: none"> <li>- in advance of site inspections to gather compliance documents which may also include identifying gaps; and</li> <li>- following up on non-compliance items after site inspections and the provision of a report on findings.</li> </ul>	<p>Noted.</p> <p>Managing conflicts of interest is outside of the scope of this consultation. It may be considered in a subsequent review of this performance standard.</p> <p>Noted.</p>
6	<p>Be good if any reference to what Worksafe response should be is kept non-descript and look towards risk and harm – this could be a number of tick boxes on a graded scale from 'Unlikely Harm' – (procedural) to 'Immediate Serious Harm' (multi injuries are likely) and let Worksafe make the intervention decisions required. Otherwise you are likely to get quite a lot of variation from individual certifiers based on there emotional involvement.</p> <p>Question relating to regulation not being met – should be being dealt with in the letter sent to the applicant by the certifier – before you need to be notified.</p>	<p>Noted.</p> <p>WorkSafe will provide guidance to compliance certifiers about making refusal notifications, as well as information on how to complete the refusal form as part of implementing the recommendations of the Review as set out in paragraph 14 above.</p> <p>Noted.</p>
7	<p>We would point out the inconsistency that a similar facility is not available for Stationary Container Systems Certificates where there may exist a similar minor level of risk and where the noncompliance can be remedied within or before a similar three month timeframe by the PCBU.</p> <p>We would respectfully suggest that the 'refusal to issue notification' proposal may in some circumstances be seen by our members as an overly blunt instrument allowing insufficient scope to address matters where a certifier cannot issue a location or SCS certificate due to the noncompliance, <b>but</b> where the risk presented and assessed by the certifier may not be a risk or threat to the health and safety of persons or to the environment <b>and yet</b> where it is not sufficiently minor that a conditional certificate can be issued, (or in the case of a stationary container system where a conditional certificate cannot be issued anyway). Further comment is made below on certifier concerns at risk assessment expectations by WorkSafe.</p>	<p>Noted.</p> <p>Changes to the Regulations<sup>2</sup> are outside the scope of this consultation. See Paragraphs 23 and 24 above.</p> <p>Noted.</p> <p>In appropriate circumstances and at the discretion of the compliance certifier, the further provisions of regulations 6.23 and 6.24 may be used.</p>

<sup>2</sup> The Health and Safety at Work (Hazardous Substances) Regulations 2017.

SUBMITTER	FEEDBACK	WORKSAFE'S RESPONSE
7	<p>It is noted in the Smith report that a 30-day requirement to notify would not generally be appropriate. Through this submission we would argue that in some cases with the level of risk of the location or the system, being at the lower end of the scale, 30 days leeway before notification would be appropriate to allow the PCBU to rectify the matter.</p> <p>We would additionally suggest an accommodation that should the PCBU require a longer timeframe than 30 days to achieve compliance that a 'minor works application' explaining the reasons could be made within those 30 days requesting from WorkSafe a negotiated time extension to a maximum of 3 months on the basis of a certifier's report. This, if the concept finds favour, would require a new simplified form be developed for use in those specific circumstances.</p>	<p>Noted.</p> <p>The Review states 'WorkSafe should continue suggesting to certifiers that it would not generally be appropriate to allow a PCBU more than 30 days to comply with a request for compliance before issuing a refusal notification'.</p> <p>Noted.</p> <p>The Performance Standard must be consistent with the requirements of the Regulations.</p> <p>Changes to the Regulations are outside the scope of this consultation. See Paragraphs 23 and 24 above.</p>

### The introduction of 15 working days to notify WorkSafe and the applicant of the refusal to issue a compliance certificate

SUBMITTER	FEEDBACK	WORKSAFE'S RESPONSE
3	<p>I have three main issues that may occur with a compulsory 15 day notification period:</p> <ol style="list-style-type: none"> <li data-bbox="304 756 1391 831">i. <b>Timing:</b> Most certifiers are very busy but do not wish to issue compliance certificates when one of the HS check items is not readily available at the initial site visit. 15 days is too short a period for most certifiers to reschedule a return site visit if this is necessary to re-check missing items.</li> <li data-bbox="304 852 1391 927">ii. <b>Mutual trust:</b> Certifiers do not wish to issue compliance certificates until all items are in place at the site but believe that instead issuing non-compliance notices within 15 days may break the trust of HS sites in certifiers and the Authority. This may lead to sites hiding issues and less co-operation.</li> <li data-bbox="304 948 1391 995">iii. <b>Mutual feedback:</b> Many certifiers who have notified previously have found that the notified site sometimes becomes un-communicative.</li> </ol> <p>Conversely there has not often been feedback advice from the authority on the results of the notification for the former site.</p> <p>This may mean that instead of HS safety items being addressed that they get avoided or missed by HS sites until an incident may occur.</p> <p>In all cases it is very important that a reliable feedback system is in place.</p> <p>Also the proposed wording for 2. 'If a compliance certifier considers that a relevant requirement has not been met and refuses to issue a compliance certificate, the compliance certifier should, within 15 working days, notify both the Applicant and WorkSafe of the refusal and the reasons for the refusal in accordance with regulation 6.23(2) (b) and (c).' If this is to go ahead can the word 'should' be changed to shall.</p> <p>I think the 15 working days is far too short, as you will find there will be an overload on refusal notifications of compliance certification.</p>	<p>Compliance certifiers should notify WorkSafe within 15 working days of their decision to refuse to issue a compliance certificate.</p> <p>The 15 working day period is consistent with the time period set by the Regulations for entering information about a compliance certificate in the Register.</p> <p>WorkSafe will implement the recommendations of the Review, which include improving WorkSafe's processes for refusal notifications, and for providing feedback to compliance certifiers and applicants. The recommendations are in paragraph 11 of the Review.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted, but see above.</p>



SUBMITTER	FEEDBACK	WORKSAFE'S RESPONSE
4	<p>We agree that it is highly desirable for specific time frames for actions required to be taken by the certifier to be clearly defined to replace the non-specific words in the Performance Standard – ‘promptly’ and ‘in a timely manner’ – however, as part of this exercise the ways in which certifiers have lawfully or unlawfully circumvented the rules should be eliminated.</p> <p>We advocate a small increase in your 15 working days to 20 working days, however we strongly advocate a tightening in the precise requirements for all steps on the certification path to avoid the abuses which have been occurring. We believe WorkSafe must use this opportunity to clean up certifiers’ abuses, not pander to them.</p>	<p>Noted.</p> <p>The proposed 15 working day period for notification is consistent with the time period set by the Regulations for entering information about a compliance certificate in the Register.</p> <p>The ‘precise requirements for all steps on the certification path’ may be considered in a subsequent review of this performance standard.</p>
5	<p>NZIHSM have three main issues that may occur with a compulsory 15 day notification period.</p> <ul style="list-style-type: none"> <li>i. <b>Timing:</b> Most certifiers are very busy but do not wish to issue compliance certificates when one of the ‘HS check’ items is not readily available at the initial site visit. 15 days is too short a period for most certifiers to reschedule a return site visit if this is necessary to re-check missing items.</li> <li>ii. <b>Mutual trust:</b> Certifiers do not wish to issue compliance certificates until all items are in place at the site but believe that instead issuing non-compliance notices within 15 days may break the trust of HS sites in certifiers and the Authority. This may lead to sites ‘hiding’ issues and less cooperation.</li> <li>iii. <b>Mutual feedback:</b> Many certifiers who have notified previously have found that the ‘notified’ site sometimes becomes un-communicative.</li> </ul> <p>Conversely there has not often been ‘feedback’ advice from ‘the authority’ on the results of the notification for the former site.</p> <p>This may mean that instead of ‘HS safety’ items being addressed that they get avoided or missed by HS sites until an incident may occur.</p> <p>In all cases we agree that it is very important that a reliable ‘feedback’ system is in place for all parties for a safe and reliable system.</p>	<p>The 15 working day period is consistent with the time period set by the Regulations for entering information about a compliance certificate in the Register.</p> <p>In appropriate circumstances and at the discretion of the compliance certifier, the further provisions of regulations 6.23 and 6.24 may be used.</p> <p>WorkSafe will implement the recommendations in paragraph 11 of the Review, which include improving WorkSafe’s processes for refusal notifications, and for providing feedback to compliance certifiers and applicants. See Paragraphs 23 and 24 above.</p>
7	<p>We agree that the current wording of Clause 11 of the performance standard of a ‘timely’ notification provides no clarity and presents a risk to the professional integrity of the certifiers’ work practice and approval.</p> <p>In the event of an incident, accident, spillage, fire, injury, or worse occurring as a result of an observed noncompliance ‘timely’ provides no protection for our members. The certifier’s and the regulator’s, and in the case of court action, lawyers, and judges definition of ‘timely’ and indeed ‘risk’ would undoubtedly differ. That is why we are in agreement with the need to specify a time period.</p> <p>Of course where the risk to persons or the environment from an observed and assessed noncompliance was of such magnitude that the likelihood of an incident resulting from the risk from the hazard occurring, we would in order to further protect our members suggest that a direction to notify immediately would be appropriate.</p>	<p>Noted.</p>

SUBMITTER	FEEDBACK	WORKSAFE'S RESPONSE
	<p>We note that the Smith Report in Recommendation (o) refers to the requirement for the certifier to make a decision whether or not to issue 'as soon as is reasonably practicable' after completing the relevant assessment. With the exception of the situation described above where the risk is immediately apparent it has been made clear by our members that the full assessment of the site resulting from the site visit may take some time albeit still encompassed by the concept of 'as soon as is reasonably practicable' where priority would be according to risk. We additionally note the wording on the form to be lodged within 15 days of the 'decision being made' and therefore by inference not from the date of the inspection – a position we agree with.</p>	
6	<p>If you are looking to change the regs on this – Worksafe could consider certifiers be required to notify them before refusal of a Certificate and have a process of review that takes place before the notice is provided...? A thought, then there might be a chance of Worksafe fixing the problem using Notices to the PCBU – and having a Certifier confirm compliance going forward – a thought.</p>	<p>Noted.</p> <p>Changes to the Regulations are outside the scope of this consultation. See Paragraphs 23 and 24 above.</p>
7	<p>In conclusion we would ask that the requirement to notify be reconsidered as a more nuanced continuum from:</p> <ul style="list-style-type: none"> <li>- conditional certification for both Locations and with Stationary Container Systems as an additional category</li> <li>- refusal to issue Location or (from above) Stationary Container Systems Conditional certificates presenting low risk with a 30-day notification period (or WorkSafe negotiated time extension as suggested); to</li> <li>- a 15-day notification period 'from the decision being made' through to</li> <li>- 15 days from date of inspection where WorkSafe to be required to urgently consider the notification: to</li> <li>- an immediate notification on realisation that there is an imminent risk to life, the environment and property.</li> </ul> <p>This we suggest represents a more realistic scenario of the reality faced by certifiers in both dealing with their clients from a business perspective and in ensuring that the risk of potential non-compliance meets WorkSafe New Zealand's, our communities', and workers' expectations of safe and healthy work environments.</p>	<p>Noted.</p> <p>Changes to the Regulations are outside the scope of this consultation. See Paragraphs 23 and 24 above.</p> <p>Noted.</p> <p>The expectation that compliance certifiers will make compliance decisions as soon as reasonably practicable remains in force.</p> <p>The Performance Standard sets the minimum level of compliance for compliance certifiers. However, WorkSafe expects compliance certifiers to exercise their discretion when issuing or refusing to issue compliance certificates. Nothing in the Performance Standard prevents a compliance certifier from notifying a refusal within 15 working days.</p>

### Specifying that the Notification of Refusal form must be used

SUBMITTER	FEEDBACK	WORKSAFE'S RESPONSE
2	I am happy with the notification feedback form and the proposed changes. Under section 1 of the notification feedback form may you kindly make the 'address' a mandatory field in the case where you are dealing with handlers or cylinder importers it is still more important to have the PCBU's address.	Noted.
3	I think the use of a refusal form will be good. But I think this form should be online in the WorkSafe register that the compliance certifiers use so then this can be filled out online and attach any information that is required. This will take out the step of using a PDF form and filling that out and then sending all that information over email. In many cases emails only have a maximum size so sending information has been a problem in the pass with WorkSafe not receiving emails with the information. If the form is online and we provide all the information online how will it will be ensured that the information is keep confidential within WorkSafe.	Noted.  The PDF form is an interim solution. WorkSafe is developing an online solution for submitting refusal notifications that will be implemented when available.
7	We are in general agreement, subject to any alteration or improvement that our submission might engender, that the Notification of Refusal Form must be used	Noted.

### Specifying the required information that WorkSafe must receive in the Notification of Refusal form

SUBMITTER	FEEDBACK	WORKSAFE'S RESPONSE
2	I am happy with the notification feedback form and the proposed changes. Under section 1 of the notification feedback form may you kindly make the 'address' a mandatory field in the case where you are dealing with handlers or cylinder importers it is still more important to have the PCBU's address.	Noted.
3	I am happy with all the points that are noted in 4. of the proposed new wording:  '4. The notification to WorkSafe must include the following information: a. the legal name of the Applicant; and b. the New Zealand Business Number (NZBN) of the Applicant (if applicable); and c. the email address and telephone number of the Applicant. d. the address where the hazardous substance is held (if applicable); and e. the type of compliance certificate; and f. the volume and class of hazardous substances (if applicable); and g. the date upon which the compliance certifier considered a relevant requirement for the issue of a compliance certificate had not been met; and h. the relevant requirement as specified in the Regulation not met by the Applicant; and i. the reason(s) for the Refusal; and j. whether the compliance certifier considers the reason for the refusal means WorkSafe should urgently consider the notification, and if so, why; k. whether supporting information is available; and l. the name of the compliance certifier refusing to issue the compliance certificate.'	Noted.

SUBMITTER	FEEDBACK	WORKSAFE'S RESPONSE
	<p>I believe there is an 'and' missing between c. and d.</p> <p>Will this form be online to fill out?</p>	<p>Noted. This omission will be corrected.</p> <p>The refusal form will be available online.</p>
6	<p>Just had a quick look at the form - might be a good idea to have a space for the PCBU - and Person the Certifier is dealing with - your only have space for one.</p> <p>Also looks like CHC have again been completely missed out again? If a worker they cant be the PCBU and often are not even in control of the place of work... If we can't get sufficient info from the person regarding their personal details - it would make the first box a bit hard to fill in...</p> <p>Also have you considered self-employed applicants for both CHC and LCC etc - they don't have a business number and may also not have a legal business name.</p> <p>Can I also say - the performance standards require us to give reasons why we are refusing a cert so - why are you getting us to repeat the need to write that down again this on a form - when a simple request to provide that document might be of a lot more more assistance to Worksafe - ensure certifiers follow the right process of refusal with the applicant and eliminate doubling up work for the Certifier (mostly unpaid at this stage)?</p>	<p>Noted.</p> <p>The refusal form recognises 'applicants' in addition to PCBUs, this includes prospective certified handlers.</p> <p>The status of an applicant may mean that certain information is simply not available; it is not mandatory to complete every field on the refusal form.</p> <p>Noted.</p> <p>For privacy reasons not every compliance certifier is prepared to provide Worksafe with a copy of their assessment report. Hence, the refusal form is designed to provide a comprehensive record of why a compliance certificate has been refused.</p>

### Advising WorkSafe of the level of urgency of the refusal and why

SUBMITTER	FEEDBACK	WORKSAFE'S RESPONSE
3	<p>I understand this point, but I feel like there should be some guidance given to compliance certifier's from WorkSafe on what should be considered as urgently consider the notification. Or is this just up to the compliance certifier to determine the urgency? Maybe a rating system of 1 to 5 for urgency could be used as there could be cases were there is non-compliances with the regulations but they a minor and then ones that are major.</p>	<p>Noted.</p> <p>WorkSafe will implement the recommendations of the Review; WorkSafe will provide guidance to compliance certifiers about making refusal notifications, as well as information on how to complete the refusal form.</p> <p>In appropriate circumstances and at the discretion of the compliance certifier, the further provisions of regulations 6.23 and 6.24 may be used.</p>
7	<p>Concern has been expressed by our membership that it is WorkSafe's expectation that certifiers conduct risk assessment to determine if a noncompliance is minor in order to issue a conditional certificate or as required by the DRAFT notification form proposed, to decide on the basis of a risk analysis that a matter should be deemed urgent enough to require action by WorkSafe. There is anecdotal evidence that there is a lack of consistency in deciding what is minor in order to issue a conditional certificate. Some guidance may be and is being taken by some certifiers using the EPA Performance Standard for Conditional Location Test Certificates (July 2012).</p> <p>We would ask that WorkSafe New Zealand provide information and guidance on risk assessment along with the regulator's expectations in this area. A new Performance Standard is requested together with a Workshop presentation and panel of suitably experienced and qualified experts to answer members' questions to provide surety and confidence.</p> <p>Without that advice certifiers may in future refuse to evaluate minor risk and so refuse to issue conditional certificates and that would be detrimental to all concerned - industry, certifiers, and regulator.</p> <p>Because of certifiers significant experience in having their decisions questioned at audit and by inconsistent, often personal, opinions based on no empirical or theoretical logical evidence, expressed by enforcement officers following site visits we ask that this process must entail a consistent coordinated approach to risk. As part of our submission, we request access to the audit checksheets used to audit certifier performance and the guidance, if any, provided to enforcement officers</p>	<p>Noted.</p> <p>WorkSafe will provide guidance to compliance certifiers about making refusal notifications, as well as information on how to complete the refusal form.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>The request to access the audit check sheets used to audit certifier performance and the guidance, if any, provided to enforcement officers is outside the scope of this consultation. The request for access to audit check sheets has been responded to separately.</p>

## Annex 1: Proposed new wording

### Current wording of Clause 11 of the Information Performance Standard

'A compliance certifier must have a process in place to ensure that WorkSafe and the applicant are notified in a timely manner of a decision to refuse a compliance certificate in accordance with regulation 6.23(2).'

#### Proposed new wording

##### 11. Refusal to issue compliance certificates

1. A compliance certifier must establish and maintain a documented process to ensure that WorkSafe and the applicant are notified when a compliance certifier refuses to issue a compliance certificate in accordance with regulation 6.23(2).
2. If a compliance certifier considers that a relevant requirement has not been met and refuses to issue a compliance certificate, the compliance certifier should, within 15 working days, notify both the applicant and WorkSafe of the refusal and the reasons for the refusal in accordance with regulation 6.23(2)(b) and (c).
3. A notification to WorkSafe under regulation 6.23(2)(c) (the **notification**):
  - a. must be given in the manner and form required by WorkSafe; and
  - b. include the information referred to in subclause (4).
4. The notification must include all of the following information:
  - a. the legal name of the applicant;
  - b. the New Zealand Business Number (NZBN) of the applicant (if applicable);
  - c. the email address and telephone number of the applicant;
  - d. the physical address where the hazardous substance is held (if applicable);
  - e. the type of compliance certificate;
  - f. the quantity\* and class of hazardous substances (if applicable);
  - g. the equipment ID (if applicable);†
  - h. the date upon which the compliance certifier considered a relevant requirement for the issue of a compliance certificate had not been met;
  - i. the relevant requirement, as specified in the regulations, that has not been met by the applicant;
  - j. the reason(s) for the refusal;
  - k. whether the compliance certifier considers that, due to the reason for the refusal, WorkSafe should urgently consider the notification and, if so, why;
  - l. whether supporting information is available;
  - m. the name of the compliance certifier refusing to issue the compliance certificate.
5. A compliance certifier may provide further relevant information (if any).
6. A compliance certifier must sign every notification of the refusal to issue a compliance certificate.
7. A compliance certifier's signature on a notification of the refusal to issue a compliance certificate may be electronic.
8. A compliance certifier must retain all records related to the refusal to issue a compliance certificate until a date that is at least five years after the date of the refusal.

\* Amended from 'volume' post consultation as quantity is more appropriate.

† Added post consultation.

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