



Submission by

The Employers and Manufacturers Association

to the

Environmental Protection Agency (EPA)

on the

**Implementation of a hazardous substances infringement
scheme**

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About the EMA (Employers and Manufacturers Association)

The EMA has a membership of more than 7500 businesses, from Taupō north, employing around 300,000 New Zealanders.

The membership covers all industry sectors and all business sizes. The EMA has a duty to our members to keep them informed on what changes are being planned that will both positively and negatively alter the way they manage their business. We are actively encouraging our members to be more proactive in this space to enable them to mitigate the slow and unrelenting changes that are unfolding.

The EMA also advocates on behalf of its members to bring change in areas which can be effective to the day-to-day operation of their business, such as Health and Safety. ACC, infrastructure development, employment law, skills and education and export growth. We also provide a large range of training programmes for members and their employees.

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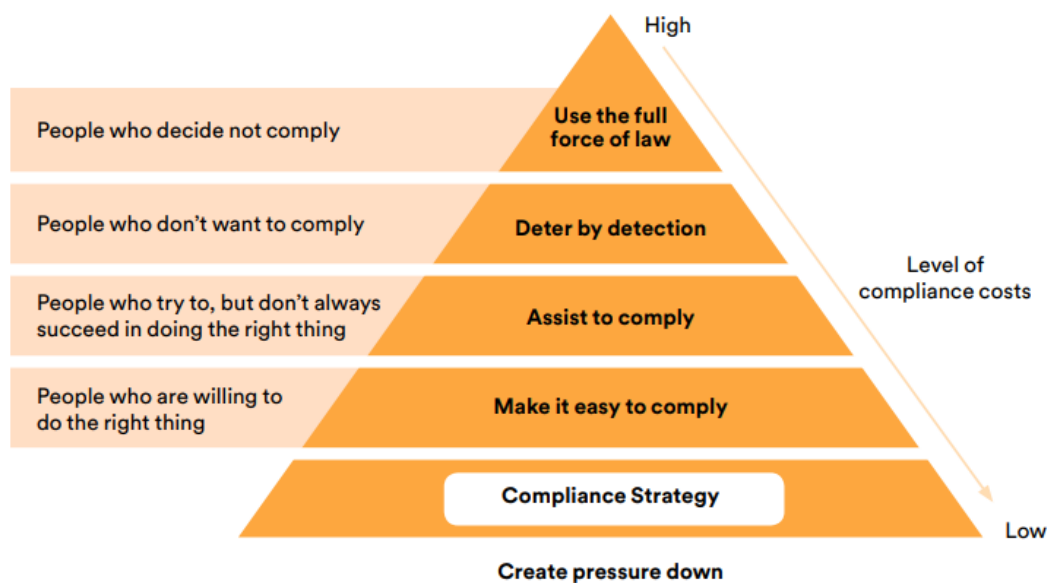
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Introduction

Thank you for the opportunity to make a submission on the Implementation of a Hazardous Substance Infringement Scheme.

Discussion.

1. The introduction of an Infringement scheme as outlined is a reactive tool to a system that is complex and difficult to manage.
2. The report offers no evaluation as to the effectiveness of infringement notices in the management compliance of hazardous substances.
3. The scheme appears to be a response to the Hazardous Substances Compliance System Findings Report 2019. The report stated “We recommend in addition to introducing ‘step in’ powers to the Hazardous Substances and New Organisms Act 1996 (HSNO), the Act be amended to provide for the issue of Enforcement Orders and associated infringement fines for non-compliance” and “an Enforcement Officer can issue an Infringement Notice” and that “we recommend the suites of tools in the allied laws (the RMA, HSWA and HSNO) be harmonised”.
4. The report also states in the executive summary “Once addressed, leadership needs to be backed up by strengthened delivery capacity through smart partnering and outreach by the EPA and WorkSafe especially.”
5. Noted in the 2019 report is the Braithwaite Model of compliance and enforcement. This model outlines interventions against cost.



6. As can be observed “Deter by detection” is second highest in compliance cost compared with make it easy to comply or assist to comply.
7. The Environmental Protection Agency (EPA) website does contain a Compliance, Monitoring and Enforcement work programme 2022- 2023. Website. There is little in that document addressing low level noncompliance.
8. What is also common knowledge within business is the low level of knowledge and competency among Worksafe Inspectors regarding the management of hazardous

substances as required by HSNO and subsequent Regulations. That being so the introduction of a penalty regime does pose issues of wrongful or incorrect notices being issued. The discussion document does not indicate any review or appeal system for employers to challenge such notices.

9. What is missing is an education platform to get NZ business onside and willing to comply or at best attempt to comply. See Braithwaite model above. The general knowledge within NZ business regarding HSNO and its Regulations is at best low to knowing something about a little bit of the requirements. It is an overly complex and demanding Act.
10. Only large companies with a dedicated inhouse resource or working in a specific or hazardous fields would be up to speed with the requirements. The average small to medium size business simply live from day to day and try to survive. This is not to condone noncompliance but rather demonstrate it is not on their daily radar.
11. Data from Worksafe NZ indicates the following.
 - a. 40 infringement notices issued 2016- 2022
 - b. 248 HSNO actions 2016 - 2022

Main sectors

1. Manufacturing
2. Construction
3. Agriculture
4. Forestry

This would indicate that HSNO enforcement actions (248) are already taking place. It also indicates the extremely low use of Infringement Notices since 2016 (40 Infringement notices or 5 per year average)

12. We note that the EPA has not taken any prosecutions since 2011 and only two abatement notices have been issued. This is surprising given its publicly stated role as “protecting the environment and the people who live and work in it, for a better way of life” On the web site it states, “We carry out a wide range of compliance activities to protect people and the environment – from raising public awareness through to prosecuting serious breaches of the law”.
13. Given the above figures it would appear that industry in general is coping quite safely despite the alleged low-level infringements. If this was not the case more serious prosecutions would have been occurred.
14. Relying on a penalty regime is hardly going to win minds and hearts especially to a complex and onerous set of regulations. See point 9.
15. WorkSafe Inspectors have insufficient hazardous substances knowledge to detect an infringement if one occurs. See point 4.
16. The Hazardous Substances Regulations already include penalties that cover most of the areas covered by the discussion document, although it is unclear if the offences under the regulations need to go to court in which case inspectors would use Improvement Notices in the first instance to get compliance.
17. Having the ability to issue instant fines would be another tool in the tool kit but again we feel the Inspectors would prefer to use Improvement Notices in the first instance.
18. We question the timing of this scheme when we understand the HSNO Act is coming under redevelopment/ review and the review of the Health and Safety at Work (Hazardous Substances) Regulations 2017 to be conducted by MBIE and WorkSafe.

Conclusion.

19. Given the above information we question the need for this Infringement Notice scheme and if it does proceed the timing of its introduction and therefore, we **recommend** that Infringement scheme does not proceed.
20. We **recommend** that if the Infringement Notice scheme is introduced then,
- a. All regulatory inspectors and fully trained to a competent level to exercise these additional powers.
 - b. A budget is created to roll out an extensive educational programme to address these low-level noncompliance issues.
 - c. A formal appeal or review provision is included in the scheme.

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