



**Developing regulations  
to support the new  
Health and Safety at  
Work Act**

**Submission to the Ministry of Business,  
Innovation and Employment**

***31 August 2014***



**For a better working life**

New Zealand Public Service Association  
Te Pūkenga Here Tikanga Mahi



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## Submission to the Ministry of Business, Innovation and Employment

### Introduction

#### *Who we are*

The New Zealand Public Service Association *Te Pūkenga Here Tikanga Mahi* (the PSA) is the largest trade union in New Zealand with over 58,000 members. We are a democratic organisation representing members in the public service, and the wider state sector (the district health boards, crown research institutes and other crown entities, state owned enterprises and tertiary education institutions). We also have several thousand members in non-governmental organisations working in the health, social services and community sectors, and in local government.

#### *Hazards our members face*

Our interest in these regulations arises mainly from our role as a union on behalf of all members who face health and safety risks in their workplaces. The main hazards our members have to deal with tend to be those arising from dealing with the public, often in enforcement roles. Workplace violence is a big problem, along with workplace bullying. In addition we have pockets of members who face particular hazards such as those working with hazardous substances in crown research institutes, those (such as customs officers and biosecurity officers) who work with fumigants on the wharves and meat inspectors in our freezing works who are exposed to many of the same hazards as meat workers.

We also represent some of the public servants who will be most heavily involved in the implementation of health and safety regulation. We are the union for staff in WorkSafe New Zealand, including the Health and Safety Inspectorate, and we have members in other affected agencies such as the Civil Aviation Authority, the New Zealand Transport Agency, Maritime New Zealand and ACC. As the largest state sector union we also have an interest in the machinery of government and in the regulatory framework being established under this bill.

#### *In developing this submission we sought the views of*

In developing this submission we sought the views of our members in those agencies, and also from our network of nearly one thousand health and safety representatives.

The PSA is an affiliate of the New Zealand Council of Trade Unions *Te Kauae Kaimahi* (the CTU) and endorses their submission.

## Overview

### *Phasing the development of regulations*

#### **Q. 1 Do you have any comment to offer on the proposed approach to phasing the development of regulations?**

The phasing of regulations envisaged by the Ministry will create some regulatory problems:

- There will effectively be three different risk management frameworks based on whether the particular hazard or risk is covered by regulations made under the current act and regulations, the detailed risk management process under the new regulations or the general risk management process under the new act alone. This will likely cause confusion and lead to disenchantment with the new regulatory regime among both PCBUs and workers
- There will be gaps in the regulatory regime as outlined. The Australians have a more comprehensive set of regulations and the Independent Taskforce on Workplace Health and Safety also recommended policy work and regulation relating to a number of other matters including:
  - obtaining competent advice and selecting a health and safety practitioner
  - addressing occupational health issues
  - investigations and the roles of managers and supervisors in health and safety management
  - young and old workers, workers who are new to roles, and temporary, casual and seasonal workers
  - fatigue generally, and long hours of work leading to fatigue specifically
  - the use of performance pay systems (which are particularly widespread in the public sector)

### *Format of regulations*

#### **Q. 3 What do you think are the relative benefits and drawbacks of either: having a single set of Health and Safety at Work regulations containing all regulatory requirements in one place; or having multiple sets of regulations each focusing on a single topic (some of which will apply to everyone, and others which will only apply to a select group of duty holders)?**

We agree with the arguments set out in the discussion document in favour of a consolidated set of legislation.

### *Regulatory offences*

#### **Q. 4 Do you have any comment to offer on the proposed approach to identifying regulatory offences?**

The PSA, and its members in the health and safety inspectorate, were concerned by the provisions of cl. 221(q) of the Health and Safety Reform Bill, which appeared to limit fines for offences under any regulations to \$30,000. This would constitute a massive cut to the current maximum under s.50(1)(c) of the Health and Safety in Employment Act. While clause 2 of schedule 1 of the Reform Bill allows for regulations rollover and retains the maximum penalty of \$250,000, if and when these regulations are replaced by new ones made under the new Health and Safety at Work Act the penalties will be reduced to a maximum of \$30,000, representing a reduction of nearly 90%. Much depends on the relationship between the offences in regulations and the primary duties in the Act.

Strictly speaking every regulation is linked to the primary duties – if the regulation has been breached the higher duty will have been breached as well. However there is a real risk that the courts will look at the maximum in this provision and take them as a guide for sentencing purposes when the regulations have been breached. There is also the matter of perceptions – an apparent cut of this kind could send the wrong message to PCBUs.

We were not clear as to the rationale for the reduction and proposed that cl. 221(q) be amended to reinstate the current maximum for offences under any regulation to \$250,000 as under s.50(1)(c) of the Health and Safety in Employment Act, rather than the figure of \$30,000 stated in the clause at present.

Given the uncertainty of what will be in the final Act and about what the appropriate offences will be, it is difficult to comment beyond this. We note that the CTU has asked to meet to discuss this highly technical question and we hope that some clarity can arise from that process.

#### *Infringement notices*

**Q. 5 Do you have any comment to offer on the principles for identifying which requirements of the new regulations should be infringement offences?**

The PSA, and our members in the health and safety inspectorate, welcomed the introduction of infringement offences in our submission on the Bill. Infringement Notices are an existing tool, but the higher fines and the discontinuation of the need for prior warning will mean they can finally be an effective alternative to prosecution.

However, there is a significant issue with prosecutions for minor infringement offences precluding the laying of further more serious charges by either the regulator or by a private individual. Assuming that these issues can be remedied, we agree with the general principles outlined in the discussion document.

**Q. 6 Are there any proposed requirements in the regulations that you think should be infringement offences? Which ones, and why?**

The answer to this question depends on whether infringement offences end up precluding further action being taken where the same matter discloses more

serious breaches or consequences. If they do, then very few offences should be treated as infringement offences. If not, then the list could be quite extensive and could include such matters as:

- Remote and isolated work
- Monitoring airborne contaminant levels
- Record keeping
- Managing risks to health and safety
- Communication and safety monitoring
- Specific controls for flammable gases and vapours

### *Transitional arrangements*

**Q. 7 Do you think any of the new regulations will need an extended period of time to allow duty holders to comply (i.e. beyond when the proposed new Act and regulations first come into effect)? Which ones, and why?**

We do not think that an extended lead in time is needed for any of these regulations, given New Zealand's poor health and safety record. This question also relates to the possible confusion arising out of the phasing in of new regulations. The more that existing and new regulatory regimes are allowed to exist alongside each other, the greater the risk of confusion and the likelihood that the new regulatory regime is discredited.

**Q. 8 Are there any other transitional issues that you think should be considered? Please explain.**

The need to better co-ordinate the roll out of vital ACoPs (such as the ways in which health and safety duty holders can discharge their obligation to consult, collaboration and co-operate under the Health and Safety at Work Act) alongside the regulations.

### **Regulating general risk and workplace management**

#### *Managing specified risks to health and safety arising from work*

**Q. 9 Do you have any comment to offer on the regulatory proposal about the process for managing specified risks to health and safety in the workplace? Specifically, do you have any comment on the Australian requirements for reviewing control measures, and which of them may be appropriate here?**

There are issues with the Australian Model Regulations and it appears that we may end up replicating these in New Zealand. We understand that in the Australian regulations there is no express risk management obligation. There is an overall statutory duty to eliminate or minimise risk and under the regulations there is a due process to be followed in relation to specified risks. There are 18 of these listed in the Australian Model Regulations and in New Zealand it is intended to start with 6 specified risks.

We support the submission of the CTU that this represents a significant hole in the regulations, creating a situation where there is no statutory requirement to take a

generic approach to identify, assess and control hazards that fall outside those listed in the regulations.

The limitation to 6 in New Zealand exacerbates this situation, but even limiting it to 18 is problematic. There is the question of new and emerging hazards and risks and the potential that limiting the list in this way trivialises other important hazards such as workplace stress, which does not feature in the Health and Safety Reform Bill.

A better approach would be to include a general systematic risk management requirement for all risks with breach set as a regulatory offence (failure to properly manage the risk will almost certainly be a breach of the Bill in any case). In relation to specified risks, such as asbestos, set processes in the regulation would apply and be failure to manage the risk could have considerably higher maximum penalty.

We also support the call of the CTU for a hierarchy of controls to follow international best practice by placing substitution, isolation and engineering controls sequentially in the hierarchy – not equivalently.

*Information,  
training,  
supervision and  
training*

**Q. 10 What do you think are the main benefits and costs of this proposal? (Please quantify any impacts identified and express in dollar terms to the extent practical)**

The proposal is overly complex, fragmentary and confusing. It is difficult to quantify the impacts but it could bring the new law into disrepute, which could lead to a reaction against the many positive aspects of the new law and regulatory regime.

**Q. 11 Do you have any comment to offer on the regulatory proposal about the provision of information, training, supervision and instruction?**

We support this proposal.

*General facilities*

**Q. 12 Do you have any comments about the proposed regulations for general workplace facilities?**

The PSA supports the general framework relating to workplace facilities, but has concerns about weakening of protections for workers in relation to humidity and air velocity.

**Q. 13 Do you envisage any impacts (positive or negative) as a result of not specifically mentioning things such as controlling humidity and air velocity, overcrowding, and accommodation for agricultural workers in the proposed regulations?**

We view with concern the proposed removal of the requirement that each workplace should have access for all workers to means for controlling humidity arising from any work process or activity or for control atmospheric conditions including air velocity, radiant heat or temperature, to be replaced by the general requirement that workers be able to carry out their work without risks to health and safety.

An uncomfortably cold or hot or humid workplace may not pose a direct risk to health and safety but it directly impacts on worker comfort and may contribute, indirectly, to a worker taking an action that may place their, or other workers', health and safety at risk. These requirements should be maintained.

#### *First aid*

**Q. 14 Do you have any comment about the regulatory proposal for the provision of first aid facilities? Does the proposal differ greatly from how you are interpreting the current requirements? Please explain.**

The PSA supports this proposal, which we think makes the provision clearer.

#### *Emergency plans*

**Q. 15 Should some businesses not be subject to the requirement to develop, maintain and implement an emergency plan? If so, on what basis (e.g. business size/number or location of workers/risk type) and why?**

It does not therefore make sense to exempt any business or organisation from the requirement to develop an emergency plan. While high hazard industries will need much greater levels of planning relating to the hazards they manage, all organisations may well end up facing an emergency situation and should be planning for it.

**Q. 16 Do you have any other comments to make about the regulatory proposal for emergency plans?**

No.

#### *Personal protective equipment (PPE)*

**Q. 17 Do you see any issues with including protective clothing within the definition of PPE as in the Australian model regulations?**

No.

**Q. 18 Do you think the proposed requirements on PCBUs for the provision and use of PPE, based on the Australian model regulations, are clear and detailed enough? Please give reasons.**

Yes.

**Q. 19 Do you agree with the proposed amendment to the Australian model regulations about PPE needing to be compatible with other required PPE? What is the impact of incompatible PPE in your area of work? Please give examples.**

Yes.

**Q. 20 Do you think it is necessary to continue the current provisions enabling a worker to genuinely and voluntarily choose to provide their own personal protective clothing so long as this does not compromise their safety? Do you agree to broaden this out to include all PPE? Please give reasons.**

The provision of comfortable and effective PPE is important. The challenge is to ensure that a worker "genuinely and voluntarily chooses" to do so. We support the call of the CTU for a regulatory offence of undue influence on workers to provide their own protective clothing.

**Q. 21 Do you agree to continue the absolute nature of the requirement on PCBUs to provide PPE to workers and other people in the workplace, and ensure it is used/worn? What are the positive/negative impacts of this? Please give your reasons.**

We support some form of absolute liability for PCBUs in relation to both the provision of PPE and ensuring that it is used by workers and others in the workplace. We also support the proposal by the CTU that this should be at the infringement offence level with more serious penalties at the regulatory offence level.

**Q. 22 Do you agree to maintain the absolute nature of the provisions on workers and other people in the workplace to use/wear PPE? What are the positive/negative impacts of this? Please give your reasons.**

The PSA agrees that it is critical for workers and others to wear appropriate PPE at all times and that there should be some enforcement action against them when they fail to do without adequate reason. This should take the form of an absolute requirement, backed with the ability of inspectors to issue infringement notices and take other compliance action where required.

However, in light of the duties on workers in cl 40 of the Health and Safety Reform Bill (to “take reasonable care for his or her own health and safety” and to “comply, as far as the worker is reasonably able, with any reasonable instruction that is given by the PCBU”), it would be unfair to workers to penalise them significantly for situations that are genuinely beyond their control. Strict liability means that a worker could be penalised for inadequate PPE provided by the PCBU.

Any strict liability imposed upon workers for failure to comply should be at a low fine level given their relatively lack of influence over what PPE is supplied.

**Q. 23 Are there any other amendments that you think should be made to the new regulations relating to PPE? Please give your reasons.**

Consistent with cl.63 of the Health and Safety Reform Bill, which requires engagement with workers “...when making decisions about ways to eliminate or minimise” risks, the regulations regarding PPE should expressly include a requirement for PCBUs to engage with workers in relation to the selection of PPE.

*Remote or isolated work*

**Q. 24 Do you support the proposal to introduce a specific requirement on PCBUs to manage risk to the health and safety of workers doing remote or isolated work? Do you think this requirement is necessary in the New Zealand context based on the meaning of remote and isolated work? Do you have examples of this kind of work in New Zealand? Please give reasons.**

The PSA supports the characterisation of this work as “remote or isolated” work, rather than “remote and isolated” as in Australia. We have a number of groups of members who work alone, such as those working in home support, traffic wardens

and DoC rangers. We also have others who may work in groups but who are isolated, such as scientists and other DoC staff who work on islands such as Raoul Island for extended periods. They are a group but are a long way from emergency services and support.

We therefore support the proposal of the CTU that the ambit of this provision be broadened to include isolation from emergency services, not just other people.

**Q. 25 Are there any other amendments that you think should be made to the new regulations relating to remote or isolated work? Please give your reasons.**

No.

*Managing risk from airborne contaminants*

**Q. 26 Do you have any comments to make in relation to the regulatory proposal for managing risks from airborne contaminants? Particularly, what do you think is a reasonable timeframe for keeping records of air monitoring?**

The PSA disagrees with the suggestion in the discussion document regarding air monitoring that “given the average life-cycle of businesses in New Zealand, 30 years may not be a reasonable requirement...” This is not good enough for private businesses and certainly not true for government. If New Zealand is serious about tackling occupational disease then we must improve our record keeping and data gathering capabilities.

We support the proposal of the CTU for these records to be kept for 40 years, with a requirement for businesses to send these records to WorkSafe on liquidation.

**Q. 27 Do you think the proposed regulation for managing risks from airborne contaminants will impose any additional costs on PCBU's? Conversely, what are the benefits of this proposal? (Please quantify any impacts identified and express in dollar terms to the extent practical)**

There will be some costs on PCBU's but one of the major obstacles to improving New Zealand's record on occupational health has been inadequate data. Any extra costs will be worth it.

*Hazardous atmospheres*

**Q. 28 Do you have any comments in relation to the regulatory proposals for managing risks associated with hazardous atmospheres?**

The PSA supports the inclusion of hazardous atmospheres as a specified risk requiring the use of specific risk management process.

**Q. 29 Do you think the proposed regulation for managing risks associated with hazardous atmospheres will impose any additional costs on PCBU's? Conversely, what are the benefits of this proposal? (Please quantify any impacts identified and express in dollar terms to the extent practical)**

We do not think that there will be significant additional costs from the proposal.

**Q. 30 Do you think New Zealand should define an atmosphere as hazardous: if the concentration of flammable gas, vapour, mist or fumes exceeds 5% of the substance's lower explosive limit (the Australian model approach), or based on the concentration of flammable gas, vapour, mist or fumes as classified by AS/NZS 60079.1.10: 2009, or other such standards? Please give reasons, noting positive or negative effects.**

No comment.

*Storage of flammable substances*

**Q. 31 Do you have any comment to make in relation to the regulatory proposal about the storage of flammable substances at the workplace?**

The PSA supports the imposition of a "lowest practicable quantity" requirement for the storage of flammable substances.

**Q. 32 Do you think the proposed regulation for the storage of flammable substances at the workplace will impose any additional costs on PCBUs? Conversely, what are the benefits of this proposal? (Please quantify any impacts identified and express in dollar terms to the extent practical)**

The emphasis here should be on worker safety, rather than costs.

*Falling objects*

**Q. 33 Do you have any comment on the regulatory proposal about managing the risk of falling objects?**

We support this proposal.

*Other general hazards at any workplace*

**Q. 34 Do you have any comment on the regulatory proposal about managing risks associated with hazardous containers and loose but enclosed materials?**

The PSA supports the retention of the more detailed New Zealand standards in relation to hazardous containers and loose but enclosed materials.

*Managing health and safety risks to young people*

**Q. 35 Do you have any comment on the regulatory proposal about carrying over the current provisions for young persons?**

The PSA has many younger members, but very few under the age of 19. While this provision has only minimal impact on our membership we understand the risks that younger workers face. Accordingly, we support the submission of the CTU that the age restriction on hazardous work, injurious work, machinery and self-propelled plant be lifted to 18.

**Q. 36 How do you think regulation 61 of the current regulations relating to the use of tractors for agricultural work by 12 year olds should be transferred to the new regulations? Do you think that this exception should be removed? Please give your reasons.**

No comment.

**Q. 37 Do you think there should be a provision in the new regulations prohibiting people younger than 15 years of age from working in an area where hazardous substances are manufactured, handled or sold? Please give your reasons.**

We endorse the position of the CTU in support of the introduction of this provision.

*Duties on limited  
child care providers*

**Q. 38 Do you have any comment to offer on the regulatory proposal about limited child care providers?**

The PSA has no members working in child care but we have a strong interest in the Vulnerable Children Act, given the number of our members who work with vulnerable children. We agree with the CTU that the safety checking and vetting of those who work with children should be managed by a single statute, which in this case should be the Vulnerable Children Act.

**Worker Participation**

*General comments  
on worker  
participation*

**General statement on worker participation**

The empirical evidence is strong on the value of organised worker participation in health and safety. For example, in our submission on the Health and Safety Reform Bill we quoted Walters, from a paper prepared for the Engineering Printing and Manufacturing Union in support of their submission to the Royal Commission on Pike River. He had reviewed a number of studies which looked at the effectiveness of worker participation based on proxy indicators and found that “generally they indicate that participatory workplace arrangements are associated with improved OHS management practices, which, in turn, might be expected to lead to improved OHS performance outcomes.”<sup>1</sup>

Walters concluded that:

*... the weight of the evidence found in the international literature considering the effectiveness of worker representation on health and safety would seem to be in line with the idea that better health and safety outcomes are likely when employers manage OHS with representative worker participation and that, in various ways, joint arrangements, trade unions and worker representation on health and safety at the workplace are likely to be positively associated with such outcomes<sup>2</sup>.*

These regulations, and the Bill, must make dramatic improvements to worker participation. The Independent Taskforce on Workplace Health and Safety found that worker involvement in workplace health and safety was critical, but that in New Zealand it was “too often ineffective and often virtually absent”. They also concluded (at 98) that there were a number of factors at play in New Zealand’s poor performance in worker participation:

- a. there is limited support in the legislation for worker engagement, e.g. smaller firms are not required to have formal participation mechanisms

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<sup>1</sup> Walters, David *The Role of Worker Representation in Managing Health and Safety: A report in support of the EPMU submission to the Royal Commission on the Pike River Coal Mine Tragedy*, p.11

<sup>2</sup> Ibid. p. 15

such as health and safety representatives. Further, the law does not ensure that there is sufficient time for health and safety representatives to perform their functions

- b. there is a lack of regulator enforcement of and guidance around the provisions, e.g. there are no ACoPs or support tools for small firms
- c. employees often lack awareness of their rights and, if they are aware, fear reprisals if they exercise them
- d. union density has fallen substantially, and there are increasing levels of unorganised, casual, contract and short-term labour in the workplace
- e. many managers lack the awareness, motivation to engage and capabilities needed to respond effectively to workers raising health and safety issues
- f. many businesses prioritise production targets over health and safety concerns<sup>3</sup>.

Both the new Act and these supporting regulations must address these barriers to effective representation.

*Relationship between primary and delegated legislation*

**The relationship between primary and delegated legislation in relation to worker participation and representation**

In our submission on the Bill we also challenged the decision to delegate much of the important provisions relating to worker participation from the primary legislation to regulation. While that decision ultimately rests with the select committee and parliament, we wish to re-iterate the point here. Certain critical elements in Part 3 of the Bill have the potential to be controversial, including the purpose of and process for setting up work groups, requirements for training of health and safety representatives (HSRs) and the makeup and processes of health and safety committees. In several instances, the devolution to regulation represents a backwards step from the current law. The extent of the devolution also means that it is difficult to know exactly how the worker participation system envisaged in these reforms will work as a whole. The development of the regulations alongside the primary legislation also makes it difficult to get a view of the whole system.

*Health and safety representatives*

**Details of the proposals**

We are concerned that the Bill and the discussion document refers to HSRs as “one way that workplaces can facilitate worker participation”. The powers accorded HSRs means that they should be central to worker participation and be a default approach, with other options only coming into play as an exception. Consideration needs to be given to HSRs being part of a default system applying to all PCBUs that engage more than a certain number of workers (currently 30, could be 10) or that are involved in hazardous industries.

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<sup>3</sup> The Report of the Taskforce, April 2013, para 98

**Q. 39 Do you have any comments on the proposed procedure for determining or varying work groups where there is one PCBU?**

In our submission on the Bill we opposed work groups as being overly bureaucratic, and saw them as a mechanism for limiting the role and scope of health and safety representatives. We agreed with the Taskforce's view [at 250]:

250. We do not, however, consider that the following provisions of the Model Law are necessary or appropriate for a New Zealand context: the detailed provisions around different types of health and safety representative (e.g. provisions defining work groups and related to deputy health and safety representatives)....

The PSA believes that health and safety representatives should be able to exercise their powers outside their workgroups, wherever they identify a problem. There is also a case for saying that they may not need to be a member of the workgroup, so that a single HSR could cover more than one workgroup. Limiting a health and safety representative's powers to the work group disregards the changing and the complex structure of modern workplaces which the concepts of 'PCBU' and 'worker' are defined to address. For example, on a construction site, where the personnel can change daily.

We favour the less bureaucratic approach of the HSE Act schedule 1A, which also allows for the health and safety representative to exercise their powers outside the workgroup.

If it is decided that workgroups will go ahead as envisaged we would make the following recommendations:

- We note that the discussion document identifies than a series of small deadlines like 14 days for commencing negotiations to set up a workgroup. This could be hard to administer and it might be easier to have a single deadline within which a PCBU must have a workgroup in place e.g. 3 months after being approached by a worker
- If there is a union in the workplace they should be involved in the negotiations. Unions are largely absent from the discussion document and we should make the point that the occasional reference to workers' representatives is not enough. Once again we recommend the HSE provisions as the basis of union involvement

**Q. 40 Do you have any comments on the proposed process for determining work groups where there are multiple PCBUs?**

The PSA has a concern that allowing a PCBU to withdraw from negotiating with multiple PCBUs to determine a workgroup effectively gives them a veto over the formation of a workgroup and therefore over whether there are HSRs who can exercise their powers.

There is also an apparent gap in the discussion document about the relationship between an existing workgroup and a workgroup from another PCBU, when that PCBU comes onto a worksite for only a short period of time. While the obvious example is a construction site, there are many organisations (including public organisations) that will engage other PCBUs to come on site and perform work for a defined period. It is our view that they should be covered by an existing workgroup and subject to an HSR who is already in place, rather than having to renegotiate a workgroup for what is a temporary purpose.

We understand that, notwithstanding what is in the Australian legislation, this is how multiple PCBU worksites tend to be managed in Australia. It would be preferable if the statute and the regulations could make it explicit.

In situations, such as a home support worker working in someone's home the concept of a roving HSR supported by a regional health and safety centre as we proposed in our submission on the Bill may well be appropriate.

*Who can be an HSR?*

**Q. 41 Do you have any comments on the proposed eligibility criteria for a HSR?**

Consistent with our earlier comments about workgroups we oppose the requirement for the HSR to be a member of the workgroup (see above).

We agree that an individual must be willing to be an HSR, but we have a question about the third bullet point, which states that the individual must work sufficiently regularly and for sufficient time to carry out their role effectively. This is taken from the HSE Act and on the face of it is reasonable, but it should not be used to exclude casual worker from standing, just because they are designated as casual. Casual workers should still be able to be HSRs, provided that they have enough hours to carry out their role effectively

*How HSRs are elected*

**Q. 42 Do you have any comments on the regulatory proposals for the election process for HSRs?**

The wording on how HSRs are elected on page 69 is too tentative. Members of the workgroup **MUST** choose who they want to represent them, rather than 'should' (p.69).

The PSA supports proposal for PCBUs to facilitate the election and provide resources. This is not necessarily the same as 'conducting' the election. The role of unions in the election of HSRs must be written into the regulations. Schedule 1A of the current Act recognises the important role and valuable experience of unions in holding workplace elections (such as those for union delegates) and running ballots (ratification of collective agreements for example). We submitted that cl. 68 of the Bill should specify that elections are conducted by workers and their unions unless the workers ask that the PCBU or PCBUs conduct the election, and if this proposed amendment fails then this matter needs to be addressed in these regulations.

The discussion document proposes that the regulations will allow workers to have a worker's representative help them organise the election "if the majority of the work group wish them to". We suggest that this proposal has the wrong emphasis and runs the real risk that unions will be excluded from conducting ballots which their members want them to manage, and it could result in badly run ballots. We would propose that union involvement is the default process unless 3 or more workers object.

We support the regulations specifying that all members of a work group have the right to nominate someone, including themselves, to stand as an HSR and that where the number of nominations equals the number of vacancies, the nominees will become the HSRs and an election need not be held.

The CTU believes that a secret ballot should be obligatory and it need not be onerous to run. There is a risk that some people might not want to stand or participate in an election where the ballot is conducted by a show of hands.

#### *HSR term of office*

#### **Q. 43 Do you have any comments on the regulatory proposal about the term of office of three years?**

A term of office of three years is probably reasonable, although the regulations or the ACoP need to address how it might apply in temporary workplaces like house construction, or in industries where there is a high turnover of staff. We don't want the prospect of a three year term putting off people who may not know where they will be in three years from standing.

#### *Training of HSRs*

#### **Q. 44, 45, 46 HSR training**

The review of training content being undertaken by MBIE in consultation with Business NZ and the CTU should be where the issues of training are mainly dealt with. Specifying matters such as competencies in the regulations may not be appropriate, but nonetheless we do take the opportunity to address the questions raised in the discussion document.

The main point we wish to make about competencies and the content is that the emphasis needs to be as much, if not more, on the competencies required to organise the workers and engage with the PCBU, as on an understanding of the law. The technical side, such as knowing when to issue a PIN, is important but if an HSR does not have the ability or confidence to challenge the PCBU when required, it will not be much use.

The HSR entitlement to training should be two days each year of face to face training over three consecutive years. There should be an entitlement to two days in the fourth year for those representatives who have been re-endorsed and who wish to be involved in standard setting at a sector or industry level. Refresher training is also important because, as stated above, the content and competencies

are not just about the technical requirements of issuing a PIN or ordering work to cease. People can become de-skilled without top-ups.

Members of health and safety committees also need training. The PSA supports the current provisions under the HSE Act, whereby HSRs comprise the majority of the committee and question the proposal in the Bill which would enable PCBUs to meet the requirement of having worker participation practices just by having a committee. If the proposal in the Bill becomes law then the regulations should ensure that the health and safety committee are also trained.

The PSA is also opposed to the suggestion that HSR training be delivered on-line. Given that the emphasis should be on managing relationships and working with workers and employers, not just technical and legal matters, an on-line approach would be completely inadequate. Face-to-face training involving techniques such as role-plays, is the only way to deal with these issues.

On the other hand training participants should have the option of undertaking a unit standard following completion of the two day face to face course and this could be undertaken online. There could be a place for online learning provided that it is only a supplement to face to face learning and not be a substitute for it.

Many workers still do not have access to computers or the internet if training was linked to online learning only this would be a barrier to many workers taking on the H&S Rep position. Online training would not teach the interactive skills such as communication, and confidence that makes up the qualities of a good H&S rep. Online training also forces people to undertake H&S rep training unpaid as they would do it out of work hours.

Evidence shows that follow up to training enhances learning therefore WorkSafe should be responsible for funding follow up support, such as annual regional workshops.

**Q. 47 What level of experience and qualifications must the training organisation have in order to provide training for HSRs?**

The PSA wishes to emphasise the importance of unions as training providers. In 2002 the CTU developed a two-day training course for worker representatives and entered into a joint venture with the Accident Compensation Corporation. In doing this, the CTU accepted responsibility to act on behalf of all workers and not just union members.

The CTU training is of a high quality and the PSA believes that union trainers should be regarded as default providers, unless other providers can provide the same level of expertise and the same perspective.

If this proposal is unacceptable then the PSA supports the CTU proposal for a tripartite body to approve the training organisation and the course. The training organisation should be responsible for having approved trainers who meet certain criteria, including:

- Having a system of effective quality control
- A strong understanding of the workers voice and helping them to gain the confidence to be an effective H&S Rep
- Independence from safety retail organisations and the PCBU that employs the workers.

**Q. 48 What assessment should HSRs have to undergo, if any, as part of their training to be able to exercise their powers and functions under the new Act?**

We do not support a tick box written answers exam type assessment for HSRs because there is no evidence to support that type of assessment. On the contrary evidence shows that training which is more interactive and discussion based, where the representatives share their experiences and knowledge is more effective. Currently CTU HSR training provides participants with generic tools for them to apply (in groups) to their own work environment. This type of practical exercise provides direct application of learning from the course to the workplace. The best assessment is undertaken by a well-trained trainer who is observing participants of small groups of between 12-16 people who complete a workplan that is followed up in the workplace.

**Q. 49 Do you have any comments on the proposed process for HSRs to access training and the PCBU's obligations for training?**

The main point here is the right of the worker to choose their provider. The PCBU should not have a right of veto. These provisions are better than what was originally proposed, in that they limit the consultation with the PCBU to the date and location of the training. The PCBU does have an interest in the cost of training but we are concerned about the last point that the PCBU may suggest cheaper courses. All of this is still open to manipulation by an unscrupulous employer.

*Lists of HSRs*

**Lists of HSRs (p.73)**

We agree with PCBUs being required to have lists but they should be obliged to provide it to the regulator and the regulator should have a register of HSRs.

*Removal by the regulator*

**Q. 50 Do you have any comments on the proposed reasons for someone to cease being an HSR or the process for workers to remove an HSR?**

The PSA is opposed to the power of the regulator to remove health and safety representatives. This power in the Bill is drafted too widely and with insufficient structural or procedural safeguards. The power should lie with either the District Court or a tribunal.

We do not support the provision for an HSR to be removed because they are not part of the work group they represent. We have earlier raised issues about the

restrictive nature of work groups and how they limit the ability of an HSR to exercise their powers where they might be needed. It would be more appropriate for an HSR to be removed if they are no longer part of the group that elected them *and* they are not in a position to exercise their powers in relation to that group.

We agree with the processes proposed for when a group of workers want to remove an HSR.

#### *Health and safety committees (HSCs)*

##### **Health and Safety Committees (HSCs) (p.75)**

We have addressed this issue in our submission on the Bill and alluded to the issues of training when discussing HSR above. This is one of the big issues for the PSA, given that PCBUs can fulfil their duty to have worker participation practices by having HSCs instead of HSRs. The committees do not have a mandate (there is no requirement for elections), they are not trained and cannot exercise the powers of HSRs. We believe that the regulations should set out that:

- HSC members should have training
- The worker members are elected (not 'chosen') by workers
- Any HSRs in the workplace must be members of the committee unless they decline
- Members of health and safety committees must have the same protection against undue influence and adverse conduct as HSRs

#### *Membership*

##### **Q. 52 Do you think PCBUs must be required to appoint at least one person to the Health and Safety Committee (HSC) who has delegated authority to make decisions on H&S matters?**

We strongly support the representation of appropriately authorised managers on the health and safety committee.

#### *Issue resolution*

##### **Q. 54 Do you have any comments on the proposed situations where an inspector may make a final decision about a matter?**

The CTU supports inspectors having the power to make final decisions on the matters listed on page 76 of the discussion document, provided that there is the right of review of inspectors' decisions, via the proposed internal review system proposed in the Bill.

### **Regulating Work Involving Asbestos**

Asbestos is a major hazard in New Zealand workplaces and the biggest workplace killer. Our members, like many other New Zealand workers, work in workplaces where asbestos is present.

We understand that MBIE has acknowledged epidemiological studies that suggest that more than 300 people will die per annum as exposures from the 1960s and 1970s take effect. In 1986 the World Health Organisation declared that asbestos

causes cancer and no level of exposure is safe. Further, the risks have been known to employers and government for thirty years.

Unlike most other developed countries New Zealand does not have a plan in place to eliminate asbestos, and we fail to ban imports of asbestos containing products. In Australia and the U.K., asbestos products are strictly banned at the border. The Government has a goal of reducing workplace accidents by 25 percent by 2020. It must also have a goal to prevent the high rate of occupational lung diseases caused by asbestos exposure and these regulations will be integral to achieving that goal.

The goal should be to completely eradicate asbestos from all workplaces. The European Parliament has agreed to 'eradicate' asbestos by 2028, and there is a plan to eradicate asbestos in Australia by 2030. New Zealand should follow suit and have a national plan to eliminate asbestos from our built environment.

*We support the recommendations of the CTU on asbestos*

The PSA therefore supports the recommendations of the CTU in their submission on these regulations, both in the section on the current problem, and in their responses to the questions.

## **Regulating work involving hazardous substances**

*General comments on hazardous substances*

### **General comments**

The PSA has members working in a number of workplaces involved in the storing and handling of hazardous substances, such as laboratories and on the wharves when cargoes are fumigated. New Zealand's hazardous substances legislation and regulation has been criticised as being too complex and difficult to apply by those involved with and using hazardous substances. The PSA supports any measures that will help address this issue.

*Worker participation*

### **Worker participation**

The PSA believes that the specific worker participation requirements for workplaces with hazardous substances need to be spelt out in the regulations. The worker participation provisions are not sufficiently detailed to cover the concept of workers having representation when the PCBU is:

- undertaking health monitoring
- monitoring the exposure of workers to the hazardous substances
- reviewing controls
- selecting medical practitioners
- disclosing and holding health information.

In all these situations the regulations must expressly enable worker participation and representation.

**Q. 104 Do you have any comments in relation to the regulatory proposal requiring a PCBU to prepare and maintain an inventory of hazardous substances?**

Having an inventory is a good idea and many workplaces already do this. But there are some concerns with what needs to be recorded:

- Size of container - it may be simpler to record how many containers rather than size of container as there could be multiple containers of various size
- Location - likely to have multiple locations
- Current SDS - since SDS are all multiple pages and in some cases can be very long not sure how practical it is to have all SDS in inventory.

We have some concerns about the proposal not to require an inventory in the following situations:

- Transiting a workplace while other goods are being loaded or unloaded from a vehicle. The regulations need to be specific about what this would entail. It may be fine for something like a courier delivering a few goods to the worksite but what about a freight wagon parked up for period time awaiting further loads.
- Quantities consistent with household use and being used in a way consistent with household use. The regulations would need to be more specific to ensure situations like commercial cleaners ordering in bulk and then storing the product at site they clean would not be excluded from need to have inventory. If it is quantities consistent with household use then they may need some controls around supplying and storing in bulk amounts. Situations like this (contractors storing bulk amounts on someone else's worksite) should be covered by the inventory even though it means a PCBU will be responsible for hazardous substance owned and stored by others on the PCBUs worksite.

**Q. 105 Given that this proposal seeks to codify existing good practice, do you think the proposed regulation, requiring a PCBU to prepare and maintain an inventory of hazardous substances, will impose any additional costs on PCBUs? Conversely, what do you think are the main benefits of this proposal? (Please quantify any impacts identified and express in dollar terms to the extent practical).**

This will impose additional costs, relating to staff time preparing and maintaining the inventory, and it will be variable depending on range and quantities of hazardous substance on the worksite. These costs will be outweighed by the greater assurance of what hazardous substances are on site, where they are and in what quantities. This will result in better control and management of hazardous substances by PCBUs and better information being supplied to workers using the substances.

*Management of risk to health and safety*

**Q. 106 Do you have any comments in relation to the proposed regulations setting out processes and considerations for managing the risks to health and safety associated with using, handling, generating or storing a hazardous substance at a workplace?**

A PCBU at a workplace should also be required to ensure that any measures implemented to control risks in relation to a hazardous substance at the workplace are reviewed following any change in the physical environment in which a hazardous substance is used, handled, generated or stored. It should also cover situations where the physical building is altered and/or energy sources, fuels etc. are added or removed.

*Management of risk associated with health hazards (class 6 & 8 substances)*

**Q. 114 Do you think that workplaces storing classes 6.1A, 6.1B, and 6.1C (substances that are acutely toxic) and class 6.7A (substances that are known or presumed human carcinogens) should be required to establish a hazardous substance location and obtain a test certificate for that location?**

Yes, but there could be a quantity threshold below which there is no requirement to establish a hazardous substances location and obtain a test certificate to try and reduce the costs. However, if the substances are acutely toxic then there should not be any exceptions.

*Requirements for labelling*

**Q. 117 Do you have any comment to make about the regulatory proposal to require a PCBU to ensure that a hazardous substance used, handled or stored at the workplace is correctly labelled in accordance with the HSNO Identification regulations (8 to 30, 32 and 33) and the HSNO Emergency Management regulations (8 to 10)?**

We support this proposal.

*Requirements for safety data sheets*

**Q. 119 Do you have any comments in relation to the proposed regulations requiring a PCBU to obtain and make available the current safety data sheet for a hazardous substance?**

This is a good idea but the safety data sheet also needs to be user friendly so workers can see the information they need quickly and easily.

**Q. 120 Do you think the proposed regulations, requiring a PCBU to obtain and make available the current safety data sheet for a hazardous substance, will impose any additional costs on PCBUs? Conversely, what do you think are the main benefits of this proposal? (Please quantify any impacts identified and express in dollar terms to the extent practical).**

The cost impact would depend on how many hazardous substances a PCBU had. If they had a large number then they would probably need to subscribe to an electronic database. This is an on-going cost but if they have lots of hazardous substances then they probably already do this. Crown Research Institutes, for example, probably do this already.

*Requirements  
applying to  
laboratories*

**Q. 130 Do you think there are any immediate improvements that should be made to the requirements applying to laboratories that are being transferred into the new regulations before the review is carried out?**

We have no immediate improvements to suggest but we support the idea of a review.

*Tracking highly  
hazardous  
substances*

**Q. 132 Do you think there are any immediate improvements that should be made to the tracking requirements that are being transferred into the new regulations before the review is carried out?**

We have no suggestions for immediate improvements but it would make life lot easier for those involved in handling hazardous substances to work out what they do and don't need to track if the HSNO hazard classes were updated to be in line with the United Nations Globally Harmonized System of Classification and Labeling of Chemicals (GHS).

*Emergency  
management*

**Q.134 Do you have any comment to make about the regulatory proposal that an emergency response plan, or any part of an emergency response plan, could be part of any other management documentation for an emergency whether — required by the general risk and workplace management regulations made under the proposed new Act; or required by some other Act; or undertaken by a PCBU for some other reason?**

There needs to a complete version of the response plan in an accessible place, so if part of the plan was documented elsewhere then this part should still be covered in full.

**Q. 136 Do you have any comment to make about the regulatory proposal to require a PCBU to revise their emergency response plan, if the Fire Service makes a written recommendation about the content or effectiveness of the plan?**

This seems like a sensible proposal.

**Q. 138 Do you think that we should retain the current prescriptive set of requirements in relation to fire extinguishers (as set out in regulations 21 – 24 of the HSNO Emergency Management regulations) or should we adopt the more performance-based requirements used in Australia (regulations 359 and 360 of the Australian model regulations)? Why/why not?**

We would suggest that the current HSNO regulations are preferable, because they clearly state how many extinguishers you need. The Australian regulations say that the PCBU must ensure enough giving regard to types of hazardous chemicals, quantities used, handled, generated or stored etc. This is likely to result in people being unsure and either making it up or having to pay for advice.

*Approved handler  
certification*

**Q. 140 Do you have any comment to make about the regulatory proposal to revoke the existing approved handler requirements and replace with duties in relation to the provision of information, training, instruction, and supervision?**

This proposal is a significant change from the current regulations. The PSA is aware of the concerns about the adequacy of the current approved handler scheme; that the approved handler (i.e. the worker who has training and knowledge of the hazardous substance and how to handle it) may not be the person who is actually handling the hazardous substance. In that instance, the current approved handler scheme does nothing to protect the worker handling the substance.

In principal what is being proposed sounds good as it should ensure:

- more workers using hazardous substances will have more knowledge than they do currently
- greater emphasis on enforcement to ensure training is actually occurring

The PSA also agrees with the requirement that a PCBU must keep written records for each worker of the information, training, and supervision they receive, along with records of how that knowledge and practical skills are tested.

This change would take some time to implement so there would need to be a period of transition where both the existing requirement for approved handlers and new requirement to train all users apply - or some measure that ensures there is no time where a workplace has neither an approved handler or trained users.

**Q. 141 Do you think the proposal to revoke the existing approved handler requirements and replace with duties in relation to the provision of information, training, instruction, and supervision will impose any additional costs on PCBUs? Conversely, what do you think are the main benefits of this proposal? (Please quantify any impacts identified and express in dollar terms to the extent practical)**

There will be additional costs arising out of the requirement to train all staff using hazardous substances rather than just one or a few approved handlers. However, this could be mitigated for large employers by the proposed change allowing training to be provided in-house.

The benefits of a better informed and therefore safer staff are worth it.

#### *Monitoring*

**Q. 142 Do you have any comments in relation to the proposed regulation requiring a PCBU to carry out workplace exposure monitoring where it is necessary to determine the efficiency and effectiveness of measures introduced to control exposure to substances hazardous to health?**

What is proposed appears to be very similar to current arrangements but if anything it is a little bit broader.

The proposal appears to increase amount monitoring that will be required and that probably creates an issue - are there sufficient providers of exposure monitoring services? The same goes for health monitoring.

There should be a requirement on PCBU to ensure that any monitoring (exposure or health) carried out has to be done by an appropriately accredited provider e.g. for laboratory based testing it should be IANZ (international Accreditation New Zealand) accredited. Everybody needs to be able to have confidence in the results.

**Q. 143 Do you have any comments in relation to the proposed regulations for establishing health monitoring for any worker who may be exposed to a substance hazardous to health?**

The PSA supports health monitoring for workers who may be exposed to a substance hazardous to health and agrees with the requirement for records. Engagement with workers in regards to selection of a medical practitioner needs to be genuine engagement and should include unions or worker representative if there is one.

We also submit the regulations should impose an obligation on a PCBU to tell WorkSafe NZ if the PCBU receives advice that a worker has contracted an occupational disease, or has received recommendations for a remedial measure. There should be an infringement offence if the PCBU fails to do so.

**Regulating major hazard facilities**

*We support the submission of the CTU*

The PSA is not aware of any facilities within our coverage that would qualify as major hazard facilities. We therefore have no submissions to make on regulating major hazard facilities, other than to endorse the submission of the CTU.

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