

SUBMISSION TO WORKSAFE NEW ZEALAND ON WEPR GUIDELINES

3 December 2015

Thank you for the opportunity to comment on the draft of 'Working Together – A good practice guideline for worker engagement, participation and representation at work' ("the draft guidelines"). The Health and Safety Association of New Zealand (HASANZ) is pleased to present this submission on the draft guidelines.

HASANZ is the umbrella organisation for workplace health and safety professions in New Zealand. It is an incorporated society that was launched on 10 September 2014. HASANZ represents ten diverse organisations with a shared purpose – to raise professional standards to provide healthier and safer workplaces for New Zealanders. We promote excellence in workplace health and safety practice.

Our founding member organisations include:

- Australian/New Zealand Society of Occupational Medicine (ANZSOM)
- Human Factors and Ergonomics Society of New Zealand (HFESNZ)
- Maintenance Engineers Society of New Zealand (MESNZ)
- Institute of Hazardous Substances Management (NZIHSM)
- New Zealand Institute of Safety Management (NZISM)
- NZ Occupational Health Nurses Association (NZOHNA)
- NZ Occupational Hygiene Society (NZOHS)
- New Zealand Safety Council (NZSC)
- Physiotherapy New Zealand (Occupational Health Group) (NZSP)
- Occupational Therapy New Zealand (OTNZ).

THIS SUBMISSION

This letter contains our main comments on the draft guidelines; detailed comments can be found in the appendix to this letter.

General comments

HASANZ agrees with the findings of the Independent Taskforce on Workplace Health and Safety (Taskforce) that worker participation is critical to improving health and safety outcomes. There must be genuine engagement with workers by PCBUs and they must set aside adequate time and resources to do this properly. Many PCBUs need guidance on how to engage with their workers about health and safety matters. In particular, there are issues with the capability of frontline managers to have these conversations.

The regulator, with the support of the unions, has a key role in delivering high quality information and education to PCBUs about the benefits of engagement with their workers and how to go about it. The draft guidelines are a good starting point for WorkSafe New Zealand in delivering this information, but this should not be the only mechanism to provide guidance. HASANZ believes there are opportunities to improve the draft guidelines and we have covered these in the appendix.

Complexity arising from the exemption for small businesses not in a ‘high-risk’ sector

HASANZ has already expressed its disappointment¹ that the Government confused the requirements for worker participation by introducing the concept of ‘high risk sectors or industries’ and excepting small businesses that are not in ‘high-risk industries or sectors’.

There must be consistent messages from WorkSafe about expectations of PCBUs in relation to worker participation. What is important for the draft guidelines, along with any other guidance material released by WorkSafe, is that they overcome the false impression which exists that only PCBUs in high-risk sectors need to comply with the changes that will come into effect from April 2016.

WorkSafe should be explicit about its enforcement policy, particularly in complex situations

The draft regulations prescribed a default minimum ratio of 1:19 for health and safety representatives. However, HASANZ does have some concerns about how this can really apply in practice if a PCBU uses a highly seasonal workforce where employee numbers can increase tenfold for a short period or on construction sites with a highly fluid workforce across multiple PCBUs.

HASANZ encourages WorkSafe to be explicit about its enforcement policy on these provisions. If this is not possible, then it would be useful for the draft guidelines to set out some examples of how this could be applied in particularly complex situations of multiple PCBUs or with a highly seasonal workforce. Overall, HASANZ recommends that WorkSafe carefully consider the full suite of its compliance options for regulating worker participation requirements.

Issue resolution

In its submission to MBIE on the draft regulations, HASANZ said that it:

“has serious concerns about [subpart 5] of the regulations. HASANZ agrees that some aspects relating to the worker participation regime may result in disputes, and it agrees that there should be some process for dispute resolution. However, HASANZ does not consider that it is appropriate that this dispute resolution is provided by WorkSafe inspectors. Firstly, inspectors are not trained mediators. The employment relations mediation service already exists and some aspects of health and safety blur into employment relations issues – clearly a dispute between a PCBU and an HSR about disbursements (R30(1)(b)) is not a health and safety issue, it is an employment relations issue. Secondly, an inspector has a conflict of interest when it comes to making determinations in this way. An inspector is in a position of regulatory authority and may have to take enforcement action; it is not appropriate for this same individual to be facilitating discussion between a PCBU and HSRs. HASANZ recommends that the regulations refer disputes to mediation services in this instance, rather than WorkSafe inspectors.”

Clearly the section on issue resolution may not be needed if WorkSafe is not becoming involved in this area. However, if the provisions in the regulations are retained, then we suggest that this section either needs to be greatly expanded or a separate document created with lots of examples as this could be a complex area. In particular, we believe WorkSafe would also need to document a conflict of interest policy for how it will approach both issue resolution under the subpart 5 of the regulations and its enforcement role as the regulator.

Opportunity for learning

The draft guidelines do not contain information about the value of different Health and Safety Representatives (HSRs) or Health and Safety Committees (HSCs) sharing experiences and learning. In larger organisations, or within industry sub-groups, there can be value in workers discussing health and safety issues between themselves and learning from each other.

¹ See HASANZ submission to the Ministry of Business, Innovation and Employment (MBIE) on the draft Health and Safety at Work (Worker Engagement, Participation and Representation) Regulations 2016 (draft regulations).

CONCLUDING REMARKS

Worker participation is critical to improving health and safety outcomes. HASANZ is concerned that the distracting discussion about “high risk” industries detracts from the main point of the changes recommended by the Taskforce – that all PCBUs engage with their workers and communities on health and safety issues.

We encourage WorkSafe to continue to focus on working with businesses, unions, and health and safety professionals to improve this engagement.

For any questions in relation to this submission, please contact info@hasanz.org.nz.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Craig Smith', written in a cursive style.

Craig Smith
Independent Chair

Responses close:
5pm on Friday, 4 December 2015

Email to: guidanceandstandards@worksafe.govt.nz

OR send by post to:

FEEDBACK ON WEPR GOOD PRACTICE GUIDELINES

WorkSafe New Zealand
PO Box 165
WELLINGTON 6140
Attention: Guidance and Standards

FEEDBACK: WORKER ENGAGEMENT, PARTICIPATION AND REPRESENTATION – GOOD PRACTICE GUIDELINES

Please use this feedback form to comment on our draft guidelines. The form has space for you to:

- respond to general questions about the guidelines
- comment on particular sections
- provide overall comments.

Thank you for taking the time to provide feedback.

YOUR CONTACT

DETAILS HERE PLEASE:

Your name: If this is a joint response, please add other people's names too.	Karen Chaney
Organisation name (and position, if responding on behalf of an organisation):	Health and Safety Association of New Zealand (HASANZ)
Postal address:	
Telephone number, with area code:	04 901 8777

Email:

Info@hasanz.org.nz

I wish to keep my contact details confidential

WorkSafe New Zealand will manage any personal information you supply in accordance with the Privacy Act 1993. If your response is made publicly available, your contact details will only be removed *if you have ticked the confidentiality box above*.

WorkSafe New Zealand may post your response on its website at www.worksafe.govt.nz. We may make your response available if answering a request under the Official Information Act 1982.

GENERAL QUESTIONS

- 1) Are the guidelines easy to read? (Please consider the language used, as well as the overall structure and layout.)

The guidelines are long and quite repetitive. The Australian version of the same document is only around 30 pages as opposed to nearly 100.

The key points at the beginning of each section is a useful summary.

The references to the relevant sections of the Act and of the regulations throughout the draft Guidelines are also useful.

- 2) Is it helpful to have the “key concepts and terms” at the beginning of the document, or would you prefer to have them at the end (close to the appendices)?

It would be preferable to have them at the end.

- 3) Are the diagrams and flowcharts easy to follow?

The diagram on page 10 is particularly helpful. This could easily be converted into a one or two page Factsheet.

We suggest you check the numbering of the figures – the diagram on page 10 is not numbered and the figures numbering starts at section 2.

Figure 2 does not display clearly.

- 4) What other diagrams and flowcharts are needed?

We have no specific comment to make here.

5) What is unclear or confusing?

We have no specific comment to make here.

6) The draft is long. What content is not needed?

We suggest you remove the section that refers to mining operations and put this into a separate document.

We suggest you remove some of the repetition.

7) Do you have flowcharts or other graphics that we could adapt or include?

No.

8) Do you have examples of innovative worker participation practices that you are willing to share? We will change business names and any other identifying details for all examples that are included in the final Good Practice Guide.

We understand that the following companies or projects had good processes for worker engagement and participation: Fulton Hogan, Arrow International, Air New Zealand, the North Western Alliance project.

The examples used in the guidelines should cover how the people involved should be working together and how the leadership of the organisation becomes involved and how it responds.

COMMENTS ON SPECIFIC SECTIONS

If you would like to make additional comments on specific sections, please add your comments below. If you have only general comments, please skip to the last page.

Specific comments

Please identify sub-section number (eg: 2.1.2): Sections 4.4 and 4.5

Please identify sub-section name (eg: *What can a PCBU expect from workers?*):
Māori worker and Pacific workers

Comment on the content, clarity and accuracy (or offer other suggestions):

These two sections are very specific. New Zealand is a multi-cultural society and we need to ensure we take account of our cultural diversity when PCBUs engage with workers. There are high populations of Asian and Philippino workers in certain industries, which are also in sectors that WorkSafe is targeting (construction and agriculture); PCBUs will need to consider the demographics of their workforce when considering how to engage with them – this applies in general, not just to Maori and Pacific workers.

Specific comments

Sub-section number: Section 8

Sub-section name: Issue resolution

Comment on the content, clarity and accuracy (or offer other suggestions):

In its submission to MBIE on the worker participation regulations, HASANZ said that it “has serious concerns about [subpart 5] of the regulations. HASANZ agrees that some aspects relating to the worker participation regime may result in disputes, and it agrees that there should be some process for dispute resolution. However, HASANZ does not consider that it is appropriate that this dispute resolution is provided by WorkSafe inspectors. Firstly, inspectors are not trained mediators. The employment relations mediation service already exists and some aspects of health and safety blur into employment relations issues – clearly a dispute between a PCBU and an HSR about disbursements (R30(1)(b)) is not a health and safety issue, it is an employment relations issue. Secondly, an inspector has a conflict of interest when it comes to making determinations in this way. An inspector is in a position of regulatory authority and may have to take enforcement action; it is not appropriate for this same individual to be facilitating discussion between a PCBU and HSRs. HASANZ recommends that the regulations refer disputes to mediation services in this instance, rather than WorkSafe inspectors.”

Clearly this section may not be needed if WorkSafe is not becoming involved in issue resolution. However, if the provisions in the regulations are retained, then we suggest that this section either needs to be greatly expanded or a separate document created with lots of examples as this could be a complex area. In particular, we believe WorkSafe would also need to document a conflict of interest policy for how it will approach both issue resolution under the subpart 5 of the regulations and its enforcement role as the regulator.

GENERAL COMMENTS*

(for example, about the scope of the guidelines, or anything you haven't already commented on above).

The appendices contain some good information but it's not very accessible in this form. We would suggest that this information is extracted and used to create separate examples or factsheets that are sector or size-specific.

The draft guidelines do not contain information about the value of different Health and Safety Representatives (HSRs) or Health and Safety Committees (HSCs) sharing experiences and learning. In larger organisations, or within industry sub-groups, there can be value in workers discussing health and safety issues between themselves and learning from each other.

* You can include further information with your submission. If you are sending your submission electronically and attaching a file, the file must be no more than 8Mb. We accept the following formats – Microsoft Word, Text, PDF, ZIP, JPEG and JPG.