

# SUBMISSION ON DISCUSSION PAPER FOR DEVELOPING REGULATIONS TO SUPPORT THE NEW HEALTH & SAFETY AT WORK ACT

**1 AUGUST 2014**

---

## **ABOUT IPENZ**

The Institution of Professional Engineers New Zealand (IPENZ) is the lead national professional body representing the engineering profession in New Zealand. It has approximately 15,500 Members, including a cross-section from engineering students, to practising engineers, to senior Members in positions of responsibility in business. IPENZ is non-aligned and seeks to contribute to the community in matters of national interest giving a learned view on important issues, independent of any commercial interest.

## **ABOUT NZIA**

The New Zealand Institute of Architects (NZIA), which was founded in 1905, is the professional body that represents more than 90 per cent of New Zealand's registered Architects, as well as hundreds of architecture graduates and students. The Institute promotes high standards of building design and professional performance. It produces material essential to architects' practice, operates design and technical programmes to educate its members, and runs a rigorous, peer-reviewed awards programme that sets the benchmark for New Zealand architecture. The Institute seeks to collaborate with central and local government, other professional organisations and the wider construction industry.

## **SUBMISSION**

This submission comprises specific comments on a number of the questions presented in Parts 1 and 2, and more general comments in relation to Parts 3 to 6.

**1. OVERVIEW**

Qn#	Question	Pg#	Comments
<b>Introduction</b>			
1	Do you have any comment to offer on the proposed approach to phasing the development of regulations?	15	<p>Given the volume of review and development work that must be accomplished the proposed phasing appears sensible. Within each phase the development of regulations and codes of practice should be prioritised according to the level of risk these currently present.</p> <p>The input from IPENZ and NZIA Members will be critical for specific pieces of work and we are willing and ready to assist.</p>
2	As a duty holder, do you rely on commercially-printed hard copies of regulations purchased either from Legislation Direct or selected retail outlets? Or, do you view or print off your own copies of regulations from the NZ Legislation website as needed?	16	<p>For such a significant area, a commercially printed copy of the regulations should be available. However; we encourage our Members to ensure that any regulation or standard that they refer to is current, and not to rely on printed copies. To ensure this, Members are directed to the authorised website to ensure they are using the current version.</p> <p>Being member based organisations, there will be requests for the development of Practice Notes to consolidate the information for the practitioner. This will present further opportunities for engineers and architects to collaborate.</p>
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)?	16	A single set of regulations might avoid the risk of inconsistency across sectors, minimising any variation in practices. However a single set of regulations encompassing all sectors may be unwieldy, and users would perhaps prefer holding only those regulations applicable to their business or activity.
4	Do you have any comment to offer on the proposed approach to	16	No comment

	identifying regulatory offences?		
5	Do you have any comment to offer on the principles for identifying which requirements of the new regulations should be infringement offences?	17	No comment on particular principles. However the infringement regime needs to enable increases in penalties for those who persistently violate the regulations.
6	Are there any proposed requirements in the regulations that you think should be infringement offences? Which ones, and why?	17	None identified
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?	18	<p>Yes, given the extent of changes proposed, involving new terminologies and concepts, and the large amount of new regulation and new codes of practice to be rolled out there will need to be time for duty holders to become familiar and comfortable with the new health and safety framework. Simply dropping a new system onto them and expecting them to fully comply would be inappropriate.</p> <p>The move from a hazards based system to a risk based system will be foreign to many. Similarly the concept of due diligence is new and might be difficult for some to grasp. Therefore time will be needed to ensure these and other concepts are firmly embedded.</p>
8	Are there any other transitional issues that you think should be considered? Please explain.	18	<p>An issue that needs to be resolved is how design responsibilities will be applied where there are no prescribed minimum standards or requirements in the Building Act or Code. For example, non-structural items in buildings. Clearly experience shows that non-structural items could have been responsible for workplace harm, injury and/or fatality. It is unclear whether the Bill is asking for compliance greater than the Building Act/Code.</p> <p>The liability status of volunteer engineers and architects needs to be clarified with Local Government around post disaster recovery provisions and in situations where it is not a declared event but the territorial authority can because of public safety issues close buildings under the Building Act.</p>

## 2. GENERAL RISK AND WORKPLACE MANAGEMENT

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?	37	<p>The proposed risk management framework requires that a PCBU eliminates risk so far as is reasonably practicable, if not possible to eliminate then minimise those risks. In controlling risks the regulations refer to the hazard creating the risk and how that should be managed. The use of the terms hazard and risk may confuse duty holders who currently are familiar only with the principles of hazard management (eliminate, isolate, minimise).</p> <p>It appears that the new requirement to assess and manage risks will apply only to “prescribed circumstances”, as will the requirement to review control measures. Clear direction will be required on what circumstances will require risk management to be applied, and what records must be maintained documenting the assessment and management processes.</p>
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)	37	<p>The risk management approach will be fundamental to the effective management of workplace health and safety. Therefore any system of risk management needs to be simple to understand and implement.</p> <p>We expect the process will add substantial costs to Practices in gaining the necessary skills and experience to ensure compliance with the Regulations. It will mean all Practices (sole practitioner to large firm) will need to have specialist knowledge on the regulatory framework and methods of compliance.</p> <p>Legal precedent will be significant in the early operations of the regulation.</p>
11	Do you have any comment to offer on the regulatory proposal about the provision of information, training, supervision and instruction?	38	The proposal to provide clarity about what adequate supervision looks like is endorsed.

			The regulations require that risk management will only be mandatory in specified situations (yet to be defined), and that the level of information, instruction training and supervision is dependent on the nature of the risks and the control measures implemented. Therefore in those situations where risk management is not mandated we question how an appropriate level of information, instruction training and supervision will be determined, and more importantly demonstrated. Training and instruction is essential and the roles and responsibilities need to be explained. There needs to be certainty around what actions provide for an appropriate 'discharge of duty'.
12	Do you have any comments about the proposed regulations for general workplace facilities?	41	No comment
13	Do you envisage any impacts (positive or negative) as a result of not specifically mentioning things such as controlling humidity and air velocity, over-crowding, and accommodation for agricultural workers in the proposed regulations?	41	No, the duty holder will always have an overarching obligation to manage health and safety risks whether or not specific instances or situations are cited.
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.	42	The proposal makes a great deal of sense in that it makes it explicit that first aid kits are of little use unless someone is available who knows how to use them.
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?	43	No, even small businesses are exposed to emergencies and a simple form emergency plan goes a long way to mitigating risks to its workers and those visiting PCBU premises.
16	Do you have any other comments to make about the regulatory proposal for emergency plans?	43	It will be important to tailor emergency planning to the size and complexity of business operations
17	Do you see any issues with including protective clothing within the definition of PPE as in the Australian model regulations?	44	No issues identified.
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	45	The Australian Model Regulations refer to PPE for minimising the 'remaining' risk after the provisions of regulations 36(3) and 36(4) are

	reasons.		implemented.  The regulatory provisions need to be careful with their reference to the PCBU duty to ensure PPE is 'hygienic' because it must be an employee's duty to maintain certain items of PPE in a hygienic state.
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.	45	For an item of PPE to be effective it must be compatible with other PPE worn by a worker, hence this amendment is supported.
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.	45	The provision of protective clothing/PPE by workers should not be seen as a condition of employment whereby duty holders avoid their responsibilities. If worker chooses to provide protective clothing/PPE there should be a responsibility on duty holders to ensure that it is appropriate and compatible with other PPE provided by the PCBU.
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.	46	We agree with continuing the absolute requirement that PPE is provided and that employees wear/use it. If at the time work is to commence the correct PPE is not available, is not suitable or does not fit then the work should not proceed.
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.	46	Yes, as for Q21
23	Are there any other amendments that you think should be made to the new regulations relating to PPE? Please give your reasons.	47	No further amendments.
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.	48	We support the proposal. Examples of remote and isolated work do exist in New Zealand e.g. railway track inspectors working alone, Department of Conservation workers.
25	Are there any other amendments that you think should be made	48	No

	to the new regulations relating to remote or isolated work? Please give your reasons.		
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?	49	Retaining air monitoring records for 30 years is impractical unless the workplace handles contaminants that have long term effects. The retention time should be risk-based depending on the workplace.
27	Do you think the proposed regulation for managing risks from airborne contaminants 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)	49	We wouldn't expect the regulations to impose additional costs on PCBUs that are already taking steps, so far as is reasonably practicable, to manage the risks associated with its workplaces.
28	Do you have any comments in relation to the regulatory proposals for managing risks associated with hazardous atmospheres?	51	No comment.
29	Do you think the proposed regulation for managing risks associated with hazardous atmospheres 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)	51	No comment.
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.	51	No comment.
31	Do you have any comment to make in relation to the regulatory proposal about the storage of flammable substances at the workplace?	52	The concept of 'the lowest practicable quantity', although supported, is a subjective requirement and could not be specified by anyone other than the PCBU responsible for the assets or operation. Therefore it would be up to the PCBU to be able to demonstrate that the quantity being stored at a workplace met this test.

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)	52	Additional costs may be incurred by PCBUs requiring to have delivered sufficient quantities of substances to support their operations.
33	Do you have any comment on the regulatory proposal about managing the risk of falling objects?	53	No comment.
34	Do you have any comment on the regulatory proposal about managing risks associated with hazardous containers and loose but enclosed materials?	54	No comment
35	Do you have any comment on the regulatory proposal about carrying over the current provisions for young persons?	56	No comment.
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.	57	No comment
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.	57	No comment
38	Do you have any comment to offer on the regulatory proposal about limited child care providers?	57	No comment.



### **3. WORKER PARTICIPATION**

We have no specific comments in relation to worker participation other than to support the view that engagement by workers, through the establishment of work groups and appointment of appropriately trained Health and Safety representatives, is critical to improving work place health and safety. Where workers feel that they are part of the decision making process buy-in will be achieved.

The regulations relating to workplaces where multiple PCBUs operate will need careful consideration to ensure that responsibilities and accountabilities are clearly understood by the duty holders.

### **4. ASBESTOS**

We acknowledge the role of architects and engineers in specifying materials, and the need for them to ensure that their designs are free from asbestos. However New Zealand does not have any restrictions on the importation of asbestos-containing materials, and there are few controls to capture such materials when imported from overseas. Therefore, the designer may have little control in ensuring their as-built designs are asbestos free.

We support any provisions to tighten the controls on work that may involve asbestos and, although outside the scope of the health and safety regulations, would strongly support any moves towards a complete ban on products containing asbestos. In the meantime we will continue to inform our Membership of the hazards relating to asbestos and the responsibilities of the designer to take, so far as is reasonably practicable, steps to avoid the use of products containing asbestos.

### **5. REGULATING WORK INVOLVING HAZARDOUS SUBSTANCES**

We believe that the proposed regulations draw a good balance between activities which are unregulated (i.e. very low quantities), those that are certificated by third parties (test certifiers) in Chapter 5 and those which are closely monitored (High hazards) in Chapter 6. We support the concept that as the risk increases the level of scrutiny increases.

We support the consolidation of all regulations relating to NSNO, dangerous goods and toxic substances into one single source of regulation available to PCBUs. Such consolidation will ensure that businesses and organisation now have to deal with only one government agency in relation to HSNO and health and safety.

Given the regulations codify existing good practice there should only be cost implications on those who currently fail to meet these standards. These are the ones who are the main contributors to our poor health and safety performance and need to lift their game.

We generally agree with the various provisions laid out in this section of the discussion document. The removal of Approved Handlers may be viewed as taking away the status and buy-in of specific personnel with in-depth knowledge of handling hazardous substances and the responsibility for ensuring compliance. Although it is acknowledged that in some instances the Approved Handler was not those same people exposed to the risks of working with hazardous substances, the new regime which obligates the PCBU to provide any information, training, instructions, and supervision to all workers dealing with or exposed to risks to health and safety arising from their work, may be viewed as diluting this expertise and imposing further costs on a PCBU.

## 6. REGULATION MAJOR HAZARDS FACILITIES

We support the concept of safety cases, as already used in a number of high risk industries both nationally and internationally. However, for a safety case framework to be effective there needs to be rigorous evaluation of its content prior to approval, regular audit of its implementation and strong enforcement of compliance. A safety case is of little value if it is not reflected in the culture and performance of the organisation, and does not receive close regulatory oversight.

There is much already published about the content and effective management of safety cases. We would expect a safety case to include such details as:

- The PCBU's organisation and safety management arrangements
- Responsibilities and accountabilities of key safety positions
- Safety Analyses (identification of hazards, assessment of the risks, and descriptions of the controls in place to manage those risks)
- Evidence of compliance with standards and best practice
- Procedures for audits and inspections
- Record keeping and reporting requirements
- Emergency response procedures

In relation to WorkSafe having the power to withdraw acceptance of safety cases, it is our view that as the Regulator such powers will be essential to being able to enforce workplace health and safety standards for major hazard facilities. However, in having such powers the Regulator must be prepared to use them where circumstances show that it is necessary and prudent.

## 7. CONCLUSION

IPENZ and NZIA fully endorse the Government's 'Working Safer: a blueprint for health and safety at work' initiative and the principles of the Health and Safety at Work Bill. We appreciate the opportunity to make this submission on the associated regulation and look forward to continued engagement as further regulation and the underpinning codes of practice are developed.

We would be happy to provide further clarification on this submission. For more information please contact:

Teena Hale Pennington

Chief Executive, NZIA

Email: [thalepennington@nzia.co.nz](mailto:thalepennington@nzia.co.nz)

Telephone: 027 527 5273

Graham Dilks

Engineering Practice Manager, IPENZ

Email: [engpracticemanager@ipenz.org.nz](mailto:engpracticemanager@ipenz.org.nz)

Telephone: 04 495 1645