

# Submission to Ministry of Business, Innovation & Employment (MBIE) on the 'Implementation review of the Health and Safety at Work Act 2015 Better Regulations – Plant, Structures and Working at Heights.

4<sup>th</sup> October 2019

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## MinEx

MinEx is the national health and safety council for New Zealand's extractive sector - the mining, tunneling and quarrying industry. Our principal purpose is to help the industry achieve its goal of being free from fatalities, injuries and diseases. MinEx is funded by the mining and quarry sectors – through the respective associations and a number of individual companies – with a mandate to;

1. be the main point of contact with the Ministry of Business, Innovation and Employment (MBIE), WorkSafe New Zealand ("WorkSafe") and other agencies on all extractive sector matters related to health and safety, and
2. through leadership and consultation develop an industry view on relevant legislation, regulations, guidelines and training matters, and work with MBIE, WorkSafe and other agencies to adopt and implement those views, as appropriate.

To inform this submission, MinEx consulted with Straterra, the Aggregate and Quarry Association, the Institute of Quarrying, E tū, AusIMM, CCNZ and many other mining, tunnelling and quarrying operators.

We make the following submissions in relation to the consultation document Better Regulations – Plant, Structures and Working at Heights.

## General comments

We support MBIE's view that the health and safety at work regulatory framework needs to provide a balanced approach to secure the health and safety of workers by placing general duties on businesses that allow flexibility to do what is best in the circumstances, rather than relying on prescriptive requirements that focus on a narrow range of risks.

We also generally support the adoption of the Australian Model Regulations, subject to comments in our submission, as these regulations are well developed and tested in similar work environments to those experienced in New Zealand. Adopting these regulations also means we can learn from Australia's experiences, draw on their case law and compare developments over time.

The Health and Safety at Work (Mining Operations and Quarrying Operations) Regulations 2016 (MOQOR) currently cover our sector in several of the areas addressed in this discussion document. Where discussion in this document conflicts with the provisions of the MOQOR we have assumed that the MOQOR take precedence as they pertain to mining, quarrying and tunneling operations.

## Protections for people working with plant

### Part 2.2.1 Managing risks from plant itself

We support the application of a hierarchy of controls for guarding (Q2.1) and mandatory requirement for plant to be guarded (Q2.2).

We support the use of emergency stop controls, operational controls, and warning devices on plant, and a requirement to ensure proper use of plant. In relation to emergency stops, several conveyors use lanyards as emergency stops where there is a chance of someone falling onto the conveyor belt. Regulations should make it clear that where lanyards are not required (no chance of someone falling onto the conveyor belt) an emergency stop is still required on the conveyor.

### Ensure guarding and safety features manage increased risks during cleaning and maintenance

We support requirements for guarding and operational controls to ensure the safety of people cleaning and maintaining plant (Q2.5). The hierarchy of controls must be used when risk assessing working on live plant (e.g. tracking conveyor belt) and there should be physical controls, such as guards, protecting workers in such situations.

### Expand on the general obligation on PCBUs in the HSW Act to maintain plant

We support the PCBU managing or controlling the plant to ensure that maintenance, inspection and testing of the plant is carried out by a competent person. It is important however to clearly define a competent person and we would support the definition used in the Australian Model Regulations as follows:

*competent person* means:

- (a) for electrical work on energised electrical equipment or energised electrical installations (other than testing referred to in regulations 150 and 165)—[.....];

**Note**

See the jurisdictional note in the Appendix.

- (b) for general diving work—see regulations 174 and 177;
- (c) for a major inspection of a mobile crane or a tower crane under regulation 235—see regulation 235;
- (d) for inspection of amusement devices and passenger ropeways under regulation 241—see regulation 241;
- (e) for design verification under regulation 252—a person who has the skills, qualifications, competence and experience to design the plant or verify the design;

- (f) for a clearance inspection under regulation 473—a person who has acquired through training or experience the knowledge and skills of relevant asbestos removal industry practice and holds:
- (i) a certification in relation to the specified VET course for asbestos assessor work; or
  - (ii) a tertiary qualification in occupational health and safety, occupational hygiene, science, building, construction or environmental health;
- (g) for any other case—a person who has acquired through training, qualification or experience the knowledge and skills to carry out the task.

### **Powder-actuated tools**

We believe that the New Zealand regulations adequately manage risks from powder-actuated tools by requiring people to have a certificate of competence to operate them, which is supported by an Approved Code of Practice. We therefore support Option 2 to retain the current certificate of competence requirements to use a powder-actuated tool (which would be subject to review in the next phase of regulatory work on hazardous work).

### **Plant that lifts or suspends loads**

We believe that a definition is required for Plant that lifts or suspends loads. We would support use of the definition in the NSW guidance which states:

*If you use plant that lifts people or objects, it must:*

- *be designed to do so*
- *have suitable lifting attachments*
- *be used within its safe working limits*
- *not be used to suspend or carry loads over people, unless designed to do so.*

*You must also ensure:*

- *the loads remain under control*
- *no load is lifted simultaneously by more than one item of plant (unless the load placed on each item of plant is within its rated capacity).*

While no-one should be in the fall zone of any lifted object, there are circumstances where this may still occur after taking all reasonably practicable steps to avoid it. Examples are when shaft sinking, or the use of tower cranes in cities (if you luff the load in to keep it away from the public, the load is then slewed over the working site). The “reasonably practicable” test in the HSAW Act should adequately cover such situations.

In relation to loads lifted simultaneously by more than one item of plant, the Approved Code of Practice should be referenced rather than any additional prescriptive regulations.

## Options and questions for discussion

### **Require PCBUs to apply the Prescribed Risk Management Process to specific risks from mobile plant**

We support the proposal to apply the Prescribed Risk Management Process to plant as outlined in Section 2 of the discussion paper. When applying this risk management process, we do not believe it is necessary to specify the key risks of mobile plant as there is a danger that not all risks will be considered and that only those prescribed will be considered in the risk management process.

### **Ensure risks of collision are managed effectively**

Collisions remain the number one killer of workers in many industries, and in our sector 30% of all reported incidents involve vehicles. We support the graduated approach used in the Australian Model Regulations and therefore support the adoption of Option 1 in Section 3.2.3.

We also believe that information on Traffic Management should be included in guidance and/or approved codes of practice.

### **Ensuring passengers are protected**

We believe that passengers should be afforded the same level of protection as operators of mobile plant. Passengers should not be in mobile plant unless the plant is designed to carry passengers therefore, we support Option 2 in Section 3.2.4.

### **Coverage of requirements for mobile plant**

We support using the term 'powered mobile plant' in any regulations and defining it as in the Australian Model Regulations as "plant that is provided with some form of self-propulsion that is ordinarily under the direct control of an operator".

We support the flexible approach used in the Australian Model Regulations, per Option 1, and therefore do not believe exemptions are necessary here.

## Designing, manufacturing, importing, supplying, and installing plant or structures

### **Ensuring hazards are identified and adequate information is provided, obtained and acted on in relation to plant**

Designers, manufacturers, importers and suppliers are often in possession of the best information on hazards and safety features on their equipment. It is therefore appropriate to require them, in regulation, to give that information to the purchasers of that equipment.

We support adoption of the Australian Model Regulations listed in Option 1 of Section 4.2.2., however believe such regulations should be strengthened to include suppliers, and installers/commissioners/constructors of plant.

There may be some unintended consequences however in relation to supplier obligations in relation to second-hand plant. Suppliers of equipment may be loathed to “trade-in” equipment as they will inherit the obligation to ensure it meets all safety requirements. The duties on suppliers in section 43 of the HSW Act to ensure the health and safety of persons, test, and provide adequate information do not apply to the sale of second-hand plant sold “as is”. This exemption should be retained to ensure that there remains a market for “as is” equipment without diminishing the obligations on the user of that plant to ensure it is in safe operating condition.

We also think importers should have to take all reasonable steps to get information from overseas manufacturers and designers equivalent to that which would be required if the designer or manufacturer were based in New Zealand (Q4.9).

### **Make it clearer how upstream PCBUs can fulfil their duties in relation to structures**

We believe that regulations pertaining to plant should also apply to structures and therefore we support the Australian Model Regulations listed in Option 1. Requirements on designers of structures should also be similar to those of designers of plant.

## **Working at heights**

### **Apply the Prescribed Risk Management Process to work at heights in all workplaces**

We agree that the Prescribed Risk Management approach provides a generic process of risk management, with additional criteria or thresholds included in relation to particular hazards, while allowing the flexibility needed for a wide range of work and workplaces.

In relation to working at heights and other high-risk activities, the application of the Prescribed Risk Management Process will further improve clarity and consistency for workplaces, without requiring mandatory controls. We generally do not support the establishment of mandatory controls, rather workplaces should be required to use a prescribed process which should enable them to establish appropriate controls based on their site risk assessment.

Wayne Scott

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