

# **SUBMISSION**

## **HEALTH AND SAFETY AT WORK ACT 2015: BETTER REGULATION**

Engineering New Zealand (formerly IPENZ) is New Zealand's peak professional body for engineers. We are New Zealand's strongest and most influential voice on engineering issues, with more than 22,000 members who want to help shape the public policy agenda and engineer better lives for New Zealanders.

We are submitting to the Ministry of Business, Innovation & Employment (MBIE) on proposed changes to regulation under the Health and Safety at Work Act 2015. As outlined by the Minister of Workplace Regulations and Safety in his July 2019 Cabinet paper, the changes proposed together are a big and complex package of reforms. We commend the Government's commitment to protect workers from death, serious injury and illness. We acknowledge, as MBIE has in its discussion paper, that too many people are killed or injured in workplace injuries related to plant, structures, heights, scaffolding and excavations.

This submission will not address each of the consultation areas in depth nor answer all MBIE's questions as outlined in the discussion paper. Answers to the technical questions will be submitted separately by our technical experts. We support their submissions.

The Association for Consulting and Engineering Professionals New Zealand (ACENZ) have reviewed this submission and are in support of the position outlined.

### **WE AGREE WITH THE INTENT OF THE PROPOSED CHANGES TO HEALTH AND SAFETY REGULATION**

As already stated, we commend the Minister and MBIE for undertaking to improve regulations relating to plant, structures, working at heights and evacuations. We agree with MBIE that the current regulations are no longer fit-for-purpose and are due for reform.

Overall, we support the intent of the proposed changes to health and safety regulations. Although much of the detail of the regulations are still to be come, we consider that, in general, the changes proposed are proportionate safeguards. We consider that, if drafted clearly and implemented effectively, new

regulations will improve best practice, reduce confusion and improve the health and safety of industry workers.

On page 22 of MBIE's discussion paper, there is a diagram outlining MBIE's intent to layer control for plant and structures according to risk. This model is based on the Australian model. We agree with this approach and consider it clear and effective for understanding the level of health and safety controls required.

## **WE CONSIDER THERE IS A NEED TO LICENSE ENGINEERS VERIFYING OR INSPECTING PLANT, INCLUDING AMUSEMENT DEVICES**

While we agree with proposed changes to regulation under the Health and Safety at Work Act 2015, these changes cannot be made in isolation of the Government's intent to regulate engineers undertaking safety-critical work. As outlined further in this submission, we have serious concerns about the lack of clarity regarding the 'competent person' who can install, assemble, construct, commission, decommission or dismantle plant, particularly high-risk plant. A regulatory regime for engineers working on safety-critical work would remove this ambiguity and improve public confidence and safety.

## **WE HAVE A FEW COMMENTS ON THE DIFFERENT SECTIONS OF THE REPORT**

Outlined below are a few comments on the specific sections of MBIE's discussion document. Currently, we have no comment on section 6 (working at heights and scaffolding) and section 7 (excavation). We are, however, available to work with MBIE in the future as the regulations are drafted and further input is needed.

### **Section 2: Protections for people working with plant**

We agree in principle to the application of the Prescribed Risk Management Process by the Person Conducting a Business or Undertaking (PCBU) to determine risk. This allows for a proportionate application of health and safety requirements for PCBUs. We also agree that regulations need to clearly outline requirements on the management of the life cycle of plant, guarding controls and emergency stop controls and warning devices.

Plant is broadly defined in the Health and Safety Act 2015. As regulations are drafted, we ask MBIE to provide as further clarification of plant included under new regulations (for example, lifting plant such as garage hoists, tools, etc).

We believe further guidance is needed to define a "competent person" who can install, assemble, construct, commission, decommission or dismantle as required in specific circumstances. Consideration needs to be given to whether the competent person is:

- technically qualified
- the holder of some recognised form of current competence assessment
- bound by a code of ethics

Ideally, a "hierarchy of competence" needs to be established, to be selected from and justified by the PCBU according to circumstances. In the case of plant, Engineering New Zealand submits that the CPEng (mechanical) would be at the top of this hierarchy. For example,

1. CPEng (mechanical)
2. Certification Board for Inspection Personnel (CBIP) equipment inspector (assuming relevant inspection discipline exists/is anticipated)

### 3. Relevant trade qualification

#### **Section 3: Protection for people working with mobile plant**

As with Section 2, we agree in principle to the application of the Prescribed Risk Management Process by PCBUs for mobile plant. We consider that regulations proposed under this section must include mobile plant without an operator and allow for the future growth of this type of technology.

There is mobile plant where the operator must be able to move on and around the machinery. Provisions such as Good Practice Guidance would be helpful in understanding times when the operator must be belted to the machine (for example, when mobile plant is changing locations by being loaded into a truck or low-bed trailer).

MBIE's discussion paper outlines the possibility of requiring a *suitable combination of 'operator protective devices' on all mobile plant*. We consider that this requires further clarification and has the potential to have unintended consequences on plant that is imported with high safety standards. Case studies could be appropriate for supporting decision making as to the 'operator protective devices' required.

#### **Section 4: Designing, manufacturing, importing, supplying and installing plant or structures**

As MBIE is aware, there is a great amount of interest in Section 4 of the discussion paper. We agree with MBIE that current regulatory duties are limited and confusing, that there are challenges to enforcement and that imported/second-hand plant often does not meet health and safety standards. We also agree that the modification of plant for other purposes is common in New Zealand and poses a great risk to health and safety.

We believe changes proposed by MBIE are a start to addressing concerns regarding the design, manufacturing, importing, supply and installation of plant or structures. However, we also recognise that changes to regulation alone will not improve the safety of plant and structures. Enforcement is critical to regulatory success, as is education of the sector. This takes time and resource. We request that the Government consider opportunities to further invest in supporting industry to improve health and safety in this area.

We also consider new regulations provide the opportunity for MBIE to further strengthen the role of the design verifier, as outlined in section 31(1) of the Health and Safety in Employment (Pressure, Equipment, Cranes and Passenger Ropeways) Regulations 1999. Section 31(1)(l) requires the design verifier to act as a gateway for any design modifications, in that certificates of design verification are to include "any modification or other details, not included in the submitted design, that the design verifier requires to be incorporated into the equipment". New regulations need to reinforce the role of the verifier to protect the public where New Zealand experience has shown that additional safety features are required either from new or following modification (even if those additional modifications are in addition to requirements under certain Standards).

#### **Section 5: High-risk plant**

MBIE's discussion paper outlines proposed additional requirements for the management of high-risk plant whose failure could have catastrophic consequences if risks are not appropriately managed. High-risk plant includes cranes, passenger ropeways, pressure equipment and theme-park rides/amusement devices. We agree with MBIE that there is a lot of uncertainty in current regulation of the management and certification of high-risk plant.

To address these concerns, MBIE proposes a central register of high-risk plant. The register would provide a central collection of plant designs, alterations and current accreditation and inspection requirements. Australia runs similar registers for high-risk plant. In principle, we agree with MBIE's proposal, although consider there are several challenges to be addressed to ensure successful implementation of the proposal. Further clarification is needed on who will be able to access the register, who will own/be able to access the intellectual property of the plant and how administration, maintenance and compliance of the register will operate. MBIE proposes Worksafe manage the register and that this be funded by owners and operators. MBIE considers this cost to owners and operators would offset costs incurred by engineering firms for record keeping and administration. While this may be the case in the long run, we think owners and operators should not carry the cost of the design and development of a central register.

Engineering New Zealand accredits engineers to undertake design verification of high-risk plant. We consider this appropriate professional oversight of those undertaking engineering design verification and see the provisions covered by the Pressure, Equipment, Cranes and Passenger Ropeways Regulations as appropriate. For high-risk plant imported from Australia, there is no requirement for the design to be verified by an accredited engineer in New Zealand. We believe this exposes New Zealanders to additional risk, particularly regarding the ability of the high-risk plant to retain stability during seismic events. We understand individual Australian states have different processes for design verification and therefore do not recommend that all Australian designs be accepted in New Zealand without review. These changes to regulation are an opportunity for MBIE to tighten regulation to ensure imported plant meets New Zealand design-verification requirements.

If a central register is developed, we welcome the opportunity to work with MBIE and Worksafe to develop how this register will work in operation, including where engineering expertise is required to ensure the appropriate plant is registered and certified at applicable time intervals.

## **WE RECOMMEND REGULATIONS HAVE REVIEW CYCLE REQUIREMENTS**

Technology and best practice are changing rapidly. Regulations must be reviewed regularly to ensure they appropriately safe-guard automation processes, encourage innovation and allow for technology developments. To ensure regulations are fit-for-purpose, we recommend review clauses to be added to regulations, requiring review every three years at a minimum. This will increase buy-in from impacted industries and allow for better compliance.

## **SECTOR ENGAGEMENT WILL BE KEY TO CHANGING OUTCOMES**

As highlighted above (section 4), sector engagement in the drafting and implementation of the new regulations will be critical to the success of the regulatory reform. We ask the Government to continue to resource sector engagement as the reform process continues. Once regulations are in force, we also request that the Government prioritise education of the sector. We consider education critical to improving outcomes.

Engineering New Zealand welcomes continued engagement with MBIE and is available to support the facilitation of expert engineering advice where possible, as well as facilitation of communication to engineering professionals.

## **CONCLUSION**

As outlined in this submission, we commend MBIE's work to support better regulations for plant, structures and working at heights. This is a considerable undertaking and we believe it will make a difference to the

health and safety of the industries we work in. There is still a lot of work to be done as regulations are drafted and come into effect. We recommend continued engagement with engineers through this process and are available to support this. Please do not hesitate to contact Jodi Caughley ([jodi.caughley@engineeringnz.org](mailto:jodi.caughley@engineeringnz.org) or 027 225 6199) in the first instance.