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HSWregs@mbie.govt.nz

PEPANZ submission on the exposure draft of the Health and Safety at Work (Worker Engagement, Participation, and Representation) Regulations 2016

Introduction

This document constitutes the Petroleum Exploration and Production Association of New Zealand's (PEPANZ) submission in respect of the exposure draft of the Health and Safety at Work (Worker Engagement, Participation, and Representation) Regulations 2016 (the Regulations), which were released by the Ministry of Business, Innovation and Employment (MBIE) on 5 October 2015.

PEPANZ represents private sector companies holding petroleum exploration and mining permits, service companies and individuals working in the industry.

This submission is in two parts:

- Part 1 – Overarching comments
- Part 2 – Specific comments on the Regulations

Part 1 – Overarching comments

Whilst we are supportive of increasing worker engagement, participation and representation we have some concern with the prescriptive nature of the Regulations and consequently their workability in some situations.

For instance the Regulations may require established procedures already being effectively used for worker representatives and committees to be reconfigured simply to align with the Regulations. There are no apparent grandfathering provisions. As well as potentially adding costs this risks disrupting effective processes that already meet the objectives of the new Act and the Regulations. Consideration should be given to whether the Regulations could include allowances for existing procedures to continue to be used where these meet the intent of the Regulations.

We are also aware that the requirements provided in the Regulations could be complex for PCBU with dynamic or otherwise unconventional situations. There are instances relevant to the upstream petroleum sector where the specific requirements may be complex to comply with. For example maintenance turnarounds at large plants where workforces increase substantially for short periods and also the situation of an offshore drilling rig being mobilised from overseas for a few month long drilling campaign with a mix of overseas based and New Zealand based workers. We assume that multiple PCBU work group arrangements will be employed in these situations but how this expected to work in practice in a manner consistent with the Regulations is not always obvious at this stage.

We are also mindful the nature of some of the obligations could be costly and operationally complex in practice to implement. For example, for workers based offshore to attend two days of training is likely to involve four paid days away from work due to the practicalities of travelling to and from

offshore facilities. Removing staff from their regular responsibilities can also create operational complexity and the need to mobilise additional people. As such allowing these activities to be conducted most efficiently is important.

Part 2 – Specific comments on the Regulations

Regulation	PEPANZ Comments
2 Definition of “additional training”	Whilst limiting “additional training” to training that is within the occupational health and safety subfield of the NZ Qualifications Framework might be generally appropriate it also be overly limiting as there could be training relevant to Health and Safety Representatives (HSRs) that is overseas or otherwise not undertaken pursuant to the New Zealand Qualifications Framework. Given the alignment of the NZ health and safety regime with that in Australia it would appear logical to allow for training occurring there. Other appropriately recognised training should also be possible within the scope of additional training.
6 Minimum ratio of health and safety representatives to workers in work groups	This regulation needs to be redrafted to make clearer the fact that the requirement of 1 HSR for each 19 workers only applies to those work groups under section 64(2) of the Act and does not apply to work groups established under section 64(3) of the Act.
7 Determination of work groups	<p>This regulation appears unnecessarily complex and prescriptive. In many situations the logical configuration of work groups will be fairly obvious and so it could be straightforward to satisfy section 64(4) of the Act. However, it could be cumbersome to nonetheless be required to demonstrate how regard has been had to each and every one of the clauses under 7(2). For example if a work group is large and dynamic what is reasonably expected of a PCBU under (i) in terms of having regard to “the nature of the working arrangement of <u>each</u> worker, for example, as an employee or as a contractor.”</p> <p>Sub-clauses 7(2)(g),(i) and (j) are ultimately all manifestations of differences between workers rather than the work being undertaken. Without some understanding of the ways in which personal differences between workers or their employment arrangements affect their risk profile, these provisions are likely to cause confusion, especially the requirement to take account of the “diversity of workers <u>and</u> their work”. Amalgamating these into a single clause that requires account to be taken, notwithstanding similarities in the work undertaken, of differences between workers or their working arrangements that might pose risks in themselves would seem a more straightforward approach.</p>
23 Choice of training course	The Regulations propose the HSR have sole responsibility for selecting training courses. They are only required to consult the PCBU on logistics of attendance. This assumes that they are best placed to determine what training would best benefit the PCBU than anyone else in the

	<p>organisation. That is unlikely to be the case in organisations with a health and safety committee and professional health and safety practitioners.</p> <p>Allowing each representative to decide their own training also precludes PCBUs and health and safety committees from developing systematic approaches to training HSRs that focus on risks and issues most relevant to their PCBU's circumstances. It could also preclude the ability to centrally manage budgets and leave allocations to achieve a coordinated programme and maximise the effective and efficient running of the business.</p> <p>We consider the Regulations should instead provide that training should be decided in consultation between the PCBU, its health and safety committee where relevant, and its HSRs. The training should reflect the needs of individual HSRs well as the PCBU's circumstances. The Regulations should also logically require that additional training should be in line with the nature of the PCBU's activities and risk exposure.</p>
<p>24 PCBU to allow access to and provide funding for training</p>	<p>The requirement to pre-pay all training expenses could prove problematic at a practical level given modern accounting and remuneration practices, and the fact that some incidental expenses might not be known until after the event. Potentially requiring one off systems to be instituted to address this single context seems disproportionate. The obligation on 24(3) could lead to technical breaches of the Regulations that are subject to potentially sizeable penalties.</p> <p>It would seem simpler to simply make clear that the PCBU is responsible for meeting the costs of training fees and reasonable expenses associated with attending it and leave the practicalities to the parties. The Regulation's also appear to lack a reciprocal provision requiring an HSR to repay any advanced monies not required.</p>
<p>26 Maximum total number of days' paid leave PCBU must allow for training</p>	<p>Regulation 26 is complex and difficult to understand in its current form, which will make applying in practice difficult. The interplay between the maximums in regulation 26 and the minimum requirements in clause 12 of Schedule 2 of the Act are not simple to apply. Neither is it clear how the maximum overall number of days in regulation 26 is to be logically apportioned amongst multiple HSRs. More fundamentally, although it is an existing concept applying the concept of "paid leave" in practice may be problematic when presumably many HSRs will undertake training during their regular working hours.</p> <p>We also consider the application of the "specified date" in regulation 26(3) could for some PCBU's have completely disproportionate effect on the PCBU's HSR's annual training entitlement as the amount of paid</p>

	<p>leave for HSR's is linked to the number of workers on a specified date, which is prescribed in 26(3) as 1 April. For PCBU's with relatively consistent workforces the specific and arbitrary nature of this won't matter much, however, for PCBU's with numbers of workers that can vary substantially this approach could be disproportionate and also highly inconsistent year to year. For instance:</p> <ul style="list-style-type: none"> • Some PCBU's operating might increase the number of workers at a plant during a two week turnaround maintenance program by a factor of five and so if this is transpiring on 1 April then the effect of regulation 26 will be completely changed. • An offshore drilling rig might be mobilised to and operated in NZ for a period of only a few months, which may not include 1 April, in this case how does regulation 26 apply. <p>We recognise the efficiency advantages of a specific date but given the scale of anomalies this could create an alternative approach is required.</p> <p>We suggest that rather than a single specified date it should be <u>either</u> the number of workers on a specified date <u>or</u> the average number of workers over the year, calculated on perhaps a monthly basis.</p> <p>It would also be useful to outline how this provision is applied to PCBU's involved in "multiple PCBU work group arrangements".</p>
<p>28 Membership of health and safety committees</p>	<p>With regard to regulation 28(2)(b)(ii), it is not clear how this is going to be achieved in the following situation:</p> <ul style="list-style-type: none"> - the committee is voluntarily setup by the PCBU; and - there are not sufficient workers who volunteer or are nominated by the workforce. <p>How is a PCBU reasonably expected to comply in this situation? This should be addressed in the Regulations.</p>