

Submission on the consultation document on New Zealand's Work Health and Safety System

31 October 2024

MinEx

MinEx is the national health and safety council for New Zealand's extractive sector – the mining, tunnelling and quarrying industry. Our principal purpose is to help the industry achieve its goal of being free from fatalities and serious harm. 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 New Zealand, Etū, AusIMM, Civil Contractors NZ and many other mining, tunnelling and quarrying operators. We have also received full endorsement from the Mines Rescue Trust who support this submission.

We make the following submissions in relation to the consultation document on New Zealand's Work Health and Safety System.

Key points

- An effective Work Health and Safety Regulatory System (WHSRS) needs an effective regulator with appropriate Government oversight to ensure the regulator is delivering to expectations.
- As a high-risk industry, we have benefitted from specific regulations and guidance material that provide greater clarity on what is expected of businesses in our sector.
- Regular engagement between the regulator, business owners, managers and workers is critical to ensure the health and safety of workers and others affected by the work of the business or organisation.
- We believe there are duties currently carried out by WorkSafe that our sector could carry out and fund therefore releasing resources within WorkSafe for core activities such as conducting inspections, providing support, and investigating incidents.
- There needs to be clearer guidance particularly around key concepts such as “reasonably practicable” and “acceptable level of risk”.
- There needs to be more focus on Worker Health and Wellbeing.

General comments

Our sector covers mining, quarrying and tunnelling and as such many of our sites are small and in remote parts of the country. It is therefore critical that the WHSRS is flexible, scalable, and simple to understand to cater for varying levels of education and literacy.

An effective WHSRS requires consequences for poor behaviour. Regulators need to be consistent and ensure a level playing field for all businesses. Since the introduction of the Health and Safety at Work Act in 2015, regulatory action has been inconsistent and, in some cases, ineffective. Prosecutions, when successful, have not always resulted in punishment that deters poor behaviour.

When serious incidents occur, learnings from these are seldom shared with industry in a timely manner, particularly if they are subject to a formal investigation. This can mean that learnings are not shared for sometimes years after an incident. This does not support the objective of our WHSRS to protect people from harm, in a way that is clear, effective, flexible and durable, proportionate to the risks, and balances risks with costs. NZ businesses would also benefit from timely information on learnings from international incidents, particularly those from Australia.

Focus area one: Businesses are best placed to understand and manage their risks

We agree that businesses are best placed to understand and manage their risks.

In the extractives sector this is achieved by each site:

- Carrying out an over-arching risk assessment to identify hazards in the workplace;
- Having meaningful discussions with workers about what could hurt them or impact on their health, implementing effective controls and providing risk awareness training;
- Continually reviewing/checking to insure they comply with the Health and Safety at Work (Mining Operations and Quarrying Operations) Regulations 2016 (MOQO) and associated Approved Codes of Practice.

We have an effective industry association MinEx, which is industry funded, and supports businesses with training, guidance, incident data, templates and other information. We also have excellent engagement with the High Hazard Unit (HHU) within WorkSafe and as a result there is a lot of clarity and consistency of approach across our sector.

We have a number of workplaces where businesses work together and have overlapping duties. These are not well understood, particularly within small and medium sized businesses (SMEs). SMEs do not understand where their responsibilities start and end, and where other party's responsibilities start and end. There needs to be better clarity around overlapping responsibilities through clearer guidance or a code of practice.

There is also a lack of clarity and confusion around concepts and terms used within the legislation, particularly "reasonably practicable" and "acceptable level of risk". Better guidance and direction around how to interpret these terms is needed. This could be in the form of guidance or codes of practice.

Focus area three: worker engagement and participation

A variety of communication tools are used across our sector due to the diverse nature of businesses from large tunnelling projects and mines to one-person alluvial gold miners and small quarries employing 2-3 people. Tools include:

- elected health and safety representatives,
- informal health and safety representatives or champions,
- health and safety committees
- regular health and safety communications
- regular health and safety briefings, eg 'toolbox' meetings

Most of these tools are effective but can get overused due to organisations believing they need to have health and safety meetings, or toolbox talks every day because others do so. Focused toolbox/prestart talks can be an effective way of communicating the tasks and associated hazards and risks for the day ahead.

Regular informal discussions in the workplace are the most effective way to listen to and talk with workers. There is currently sufficient guidance material on effective communication however all situations and workplaces are different, employing different people in different environments.

Focus area four: an effective work health and safety system needs effective regulators

As mentioned above, we have an excellent relationship and engagement with the HHU within WorkSafe. They are however poorly resourced to regulate over 1,000 sites spread across the entire country, coupled with other tasks of investigating incidents, managing a certificate of competence system and providing guidance to industry. Currently there is 1 quarry inspector, 2 trainee inspectors (who don't hold a COA) and 4 mines inspectors for almost 1,000 active mines and quarries. Due to resource constraints, there is greater focus on larger organisations who tend to have greater resources and funds available to manage health and safety.

An effective WHSRS needs an effective regulator with appropriate Government oversight to ensure the regulator is delivering to expectations. We believe WorkSafe needs clear direction on what the Government expects of them and oversight from within Government to ensure these expectations are met.

There appears to be little collaboration between the government agencies responsible for health and safety being WorkSafe, ACC and MBIE. Their strategies are not aligned, and it is not clear what each organisation's goals and strategies are.

The level of funding and how that is sourced will determine what resources WorkSafe will have and their priorities. We believe that industry could take on some of the functions currently undertaken by WorkSafe, albeit that there may need to be some WorkSafe over-sight.

MinEx, as the sector's health and safety council, currently collects safety data including incident statistics. We also issue weekly safety alerts and develop industry resources and guidance. We have also developed codes of practice for the sector. These are some examples of things that WorkSafe currently has responsibility for but are unable to deliver in a timely manner due to lack of resources.

Under MOQQ, a Board of Examiners establishes Certificate of Competence (CoC) requirements for our sector and each extractives site manager is required to maintain a CoC. The administration of this system currently sits with WorkSafe however once again resourcing means it does not always operate efficiently. This system could be provided by industry, with HHU oversight and audit, removing the financial burden from WorkSafe and allowing industry to appropriately fund the efficient operation of the system. Setting requirements for the system should remain with WorkSafe and the Board of Examiners.

Worker health and wellbeing

The current system of Worker Exposure Standards (WES) and Biological Exposure Indices (BEI) are both unworkable and not helpful. WES and BEI are not mandatory nor enforceable. In determining these limits, WorkSafe occupational hygienists do not have to consider the ability of anyone to measure the limits or achieve them and therefore they are meaningless limits that consume resources to maintain them.

While WorkSafe have developed some useful guidance on worker exposures, they have not done enough in the area of respirable crystalline silica (RCS). New Zealand needs a silicosis registry, similar to the asbestos registry, so that we can determine the extent of exposure to silicosis and develop strategies to reduce such exposures. We frankly do not know the extent of the problem and given that Australia has 10,000 active cases of silicosis across all industries, we would be naive to assume we do not have a problem.

There needs to be more focus on mental health, wellbeing and psychosocial risks in the workplace. While some guidance has been developed there is no clear mental health strategy or plans to implement one.

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