



NEW ZEALAND COUNCIL OF TRADE UNIONS
Te Kauae Kaimahi

**Submission of the
New Zealand Council of Trade Unions
Te Kauae Kaimahi**

to the

WorkSafe New Zealand

on the

Major Hazard Facilities Good Practices Guidelines

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Wellington
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1. Introduction

- 1.1. This submission is made on behalf of the 31 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU). With 320,000 members, the CTU is one of the largest democratic organisations in New Zealand.
- 1.2. The CTU acknowledges Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and formally acknowledges this through Te Rūnanga o Ngā Kaimahi Māori o Aotearoa (Te Rūnanga) the Māori arm of Te Kauae Kaimahi (CTU) which represents approximately 60,000 Māori workers.
- 1.3. The CTU has a strong interest in ensuring the guidance material issued by WorkSafe furthers the aim of reduction of workplace injuries, illnesses, and deaths. Guidance that does not further that aim is not fit for purpose. Regardless of the intended audience for the guidance material, it must be accurate, accessible and relevant to workers and their representatives. The major hazard facilities regime is new to New Zealand and the provision of good, strong guidance material is of utmost importance in ensuring the success of the regime.

2. Engagement sections

- 2.1. WorkSafe has decided not to include worker engagement, participation, and representation throughout the entire documents, opting instead to have one or two paragraphs, somewhere in the documents, dedicated to the issue.
- 2.2. The NZCTU has previously submitted that, as with all good health and safety systems, worker engagement, participation and representation should be worked

through the entire system rather than seen as an 'add on'. The NZCTU is very disappointed that the 'add on' approach has been taken in this guidance material. This does not model good practice and makes it easier for PCBUs to ignore or gloss over their duty to engage with workers on all matters that may affect their health and safety. This leads to worse decision-making and means that PCBUs are likely to breach their engagement obligations.

2.3. At a minimum, the guidance must specify what matters the PCBU must engage on in each document. For example:

2.3.1. The Safety Assessment Guideline must make it clear that engagement is required at every step of the safety assessment process, as set out in Table 2. As currently written, the engaging with worker section sits uncomfortably after setting out the basic safety assessment process, but not as part of it. It is immediately followed by a section on review of the safety assessment, making it appear that engaging with workers happens before the review of the safety assessment, rather than during it.

3. Definitions

3.1. The Glossary/Term/Concept section in the appendices of each guideline should also include the following:

3.1.1. Unions

3.1.2. Worker representative

3.1.3. Worker Engagement, Representation and Participation Good Practice Guidelines

3.2. These have been included in all other guidance documents that the NZCTU has been consulted on and are equally as relevant and important for inclusion in the major facilities guidance documents. The definitions should be uplifted from the Worker Engagement, Representation and Participation Good Practice Guidelines for consistency between WorkSafe's guidance materials.

4. Safety Assessment

4.1. Section 3 discusses hazard identification. It lists a number of hazard identification methods. The guidance should state that workers must be involved in the selection

of the tools. Moreover, workers should know how to use or be trained in the tools if meaningful engagement and participation will take place. Similarly, section 4.3 also needs to recommend training for workers on the risk assessment tools. Workers cannot be expected to engage with complex risk analysis tools such as a risk matrices and concepts such as cumulative risk without being taught how to use them.

- 4.2. The examples on page 16 should include worker engagement. Meaningful worker engagement in examples is a good way of encouraging PCBUs to think about how they can include workers in the safety assessment process. This is especially important as worker engagement is not built throughout the entire document. Similarly, the examples on page 26 to 31 should build in how workers were involved in the scenario.
- 4.3. Figure 6 on page 43 is misleading. As a risk assessment tool, it does not marry well with the test of “so far as is reasonably practicable” and what is “grossly disproportionate”. The figure states that a “tolerable risk” can be allowed to continue in place “if reduction cost exceeds improvement achieved”. That is not what the law requires. A risk must be eliminated (or minimised, if elimination is not possible) so far as is reasonably practicable unless the cost is grossly disproportionate. That is a much higher threshold than “cost exceeding the improvement achieved”. An analysis is required of how much (or otherwise) more the cost is, when compared to the improvement that could be achieved.

5. Major Accident Prevention Policy and Safety Management Systems

- 5.1. This document is structured as a process. That means PCBUs are likely to start at the beginning and go through it as they work through the process. It should be included in the “overview of the safety management system” system to ensure it is clear that engagement is required throughout the entire process. It should not sit after the “Policy, planning and objectives” section.
- 5.2. Paragraph 3.2.2.4 is unclear. The guidance encourages the PCBU to “consider the possible involvement of people in the neighbouring premises”. Presumably this refers to the impact an emergency might have on them, rather than the role they might play in either creating an emergency, or responding to the emergency. Clarification would be helpful.

- 5.3. Paragraph 4.1 is incomplete in its list of when workers must be engaged with. For example, PCBUs should also engage with workers over investigating incidents (HSRs have a role here), performance monitoring, audit and review, and on-going review and revision of the SMS. If WorkSafe chooses to only include one section on engagement with workers, it must be complete.
- 5.4. Paragraph 4.2 should encourage the involvement of unions if they are present or identifiable. Unions often have dedicated health and safety organisers that can assist with both health and safety knowledge and technical knowledge. This might not be required by law (unless workers request for their views to be expressed via their union), but it would be considered good practice. The purposes of the Health and Safety at Work Act 2015 and its regulations is to encourage both unions and employer organisations to take a constructive role in promoting improvements in work health and safety practices. WorkSafe's guidance must further this purpose.
- 5.5. Paragraph 5.2 covers "responsibility and accountability of workers". It almost wholly focuses on the responsibility and accountability of workers. This paragraph should better mirror the way the duties in the Act and regulations work. That is, the primary duty is on the PCBU to eliminate risk in the workplace so far as is reasonably practicable. The PCBU cannot contract out of that duty or spread that duty to its workers by making them responsible for managing the risk. There are also significant duties on officers. These two duties need to be highlighted before the discussion of duties and responsibilities on workers. Of course those responsibilities are important but they are only one part of the jigsaw.
- 5.6. Paragraph 5.5 on Training needs to be updated when the Health and Safety at Work (Hazardous Substances) Regulations 2016 are complete.
- 5.7. Paragraph 5.6.1 states "Develop competency standards in consultation with workers". Consultation was deliberately removed as a concept from the Health and Safety at Work Act 2015 and replaced with "engagement". The guidance should reflect this. The development of competency standards should also include worker representatives.
- 5.8. Paragraph 5.7 states that contractors may be at particular risk. They may also put workers that are employees at particular risk. The level of control needed will be proportionate not only to the complexity of the task (as the guidance states) but also to the level of risk. The so far as is reasonably practicable test applies equally to

managing risks that contractors are exposed to (or introduce into the workplace) as it does to workers who are employees.

- 5.9. Paragraph 6.1 sets out “Design principles and standards”. This should open with the principles set out in the purpose of the Health and Safety at Work Act 2015, including that “workers and other persons should be given the highest level of protection against harm to their health, safety, and welfare from hazards and risks arising from work or from specified types of plant as is reasonably practicable.” The principles of the Act should guide the subsequent design principles and standards.
- 5.10. Paragraph 6.5.2 should provide guidance on the readability and accessibility of operating instructions given to workers. This is particularly important given the often complicated and technical nature of operations within a major hazard facility. The PCBU must provide information to workers in an easily comprehensible form that can also be revisited.
- 5.11. Paragraph 7.2 on “safety culture and organisational commitment” is weak. The purpose of creating a health and safety culture also includes to ensure that workers and their representatives feel secure, able, and confident to raise issues, cease work if necessary without penalty, and know that issues raised will be taken seriously. The guidance on workplace culture in the Worker Engagement, Participation and Representation Good Practice Guideline is much better and should be copied.
- 5.12. At paragraph 8.3 the guidance document states “It is important to make sure workers understand the reasoning behind the MHF’s design and processes, so they can recognise a relevant change”.

6. Notification and Designations

- 6.1. We have no additional comments, save for the general comments that apply across all guidance documents set out above.

7. Safety Cases

- 7.1. Paragraph 2.2.1.2 should become a major heading – perhaps directly following 2.1. As it is currently a subheading, it seems as though engaging with workers is not required throughout other parts of the process, such as 2.4 – preparing the safety case.

- 7.2. Engaging the workforce as early as possible is a critical topic and is equally as important as communicating with WorkSafe. This paragraph should also encourage engaging with unions where the workforce has not yet been hired or contracted. To say it is “not feasible [to engage] until workers are hired” is misleading. Engaging with unions is an obvious way to engage with workers when it is not “feasible” to engage with the particular workers who will inevitably be working in the major hazard facility.
- 7.3. Paragraph 3.2 (and throughout the document) should include worker representatives, if workers choose to have them. Paragraph 3.2 should also refer back to the Worker Engagement, Participation and Representation Good Practice Guideline.
- 7.4. Paragraph 7.1.1 should include “How workers were involved in creating the emergency plan” in the list of supporting information to the emergency plan summary.

8. Emergency Planning

- 8.1. Paragraph 2.1 ought to recommend engaging with unions where workers may not be identifiable at the time of preparation or revision of the emergency plan (e.g. the workforce has not been employed or engaged yet). This section should also say “Workers and their representatives should be involved in”.
- 8.2. Paragraph 2.2 states “Generally consultation should:”. The word “generally” should be deleted. Under no circumstances should consultation occur once a proposal has fully been decided on, it should always be genuine and include listening to what others have to say and considering the responses. If it is not those things, it is not consultation.
- 8.3. Paragraph 3.2.2 should include guidance on the accessibility and usability of emergency equipment. Moreover, it should give guidance on the regular checking/maintenance of the equipment, especially if it is not regularly used. The NZCTU is aware of multiple emergencies where the emergency equipment may have been at the workplace but not accessible to the workers who were required to use it. For example, protective clothing could be kept in a locked cupboard that workers do not have easy access to.

8.4. Paragraph 4.3 refers to periods where there may be increased risk due to extra personnel on-site. This should also refer to times when there is an increased risk due to personnel who would usually be on-site not being there, as the Seveso disaster demonstrated.