

Submission

to the

The Ministry of Business,
Innovation and Employment

on the

Health and Safety at Work
(Worker Engagement,
Participation, and
Representation)
Regulations 2016
(Consultation Draft)

30 October 2015

Submission by the New Zealand Bankers' Association to the Ministry of Business, Innovation and Employment on the Health and Safety at Work (Worker Engagement, Participation, and Representation) Regulations 2016 (Consultation Draft)

About NZBA

1. NZBA works on behalf of the New Zealand banking industry in conjunction with its member banks. NZBA develops and promotes policy outcomes which contribute to a strong and stable banking system that benefits New Zealanders and the New Zealand economy.
2. The following fifteen registered banks in New Zealand are members of NZBA:
 - ANZ Bank New Zealand Limited
 - ASB Bank Limited
 - Bank of China (NZ) Limited
 - Bank of New Zealand
 - Bank of Tokyo-Mitsubishi, UFJ
 - Citibank, N.A.
 - The Co-operative Bank Limited
 - Heartland Bank Limited
 - The Hongkong and Shanghai Banking Corporation Limited
 - JPMorgan Chase Bank, N.A.
 - Kiwibank Limited
 - Rabobank New Zealand Limited
 - SBS Bank
 - TSB Bank Limited
 - Westpac New Zealand Limited.

Background

3. NZBA is grateful for the opportunity to submit on the Health and Safety at Work (Worker Engagement, Participation, and Representation) Regulations 2016 (Consultation Draft) (**Regulations**).
4. NZBA commends the Ministry of Business, Innovation and Employment's (**MBIE**) commitment to meaningful consultation and engagement and appreciates the invitation to participate in this consultation.
5. The following submission makes some brief comments on the Regulations.
6. If you would like to discuss any aspect of the submission further, please contact:

Antony Buick-Constable
Policy Director & Legal Counsel

Executive summary

7. NZBA members currently employ over 25,000 staff, and New Zealand has over 1100 bank branches. NZBA members take their health and safety obligations very seriously and have allocated significant resources to ensure compliance with the legislative regime, and will continue to do so following the commencement of the Health and Safety at Work Act 2015 (**the Act**) on 4 April 2016.
8. NZBA considers that some of the Regulations are too prescriptive and will be unduly onerous on its members. NZBA also seeks further clarification on transitional training.

Part 2, Subpart 2: Work groups

Draft regulation number	Comment
6	<p>NZBA submits that the proposed minimum ratio of health and safety representatives to workers in a work group where a PCBU has not determined work groups, namely 1 representative for every 19 workers, is excessive, and would be extremely onerous and potentially unworkable in practice.</p> <p>For example, due to the size of most of the major banks in New Zealand, the proposed minimum ratio may mean that each major bank is required to have approximately 250+ health and safety representatives. This would create a significant administrative burden on members, which NZBA submits would be out of proportion to any perceived benefit, noting that banking is a low-risk industry.</p> <p>In addition, section 61(1) of Act requires a PCBU to have practices that provide “reasonable opportunities” for workers to participate effectively in improving work health and safety on an ongoing basis. Section 6(3)(f) of the Act goes on to define “reasonable opportunities” in this context as including opportunities that are reasonable in the circumstances, having regard to the willingness of workers and their representatives to develop worker participation practices. This does not necessarily align with the proposed minimum ratio in Regulation 6. The proposed minimum ratio could pose a real issue if members are not reasonably able to attain the minimum due to a lack of employee interest. NZBA further submits that the liability for not doing so (a fine of potentially \$100,000) is disproportionate to the offence.</p> <p>NZBA submits that a higher ratio of 1:40-1:50 would be more appropriate for large, low-risk industries such as banking, or that PCBUs in such industries should be given reasonable discretion to determine what the appropriate minimum ratio should be based on the relevant structure, needs and risks of the business.</p>

Part 2, Subpart 3: Health and safety representatives

Draft regulation number	Comment
21	<p>NZBA submits that health and safety representatives should not be afforded sole discretion to decide their own training course(s). Training course selection should require the agreement of the PCBU. The dollar value of training course(s) should also be as agreed as appropriate/approved by the PCBU.</p>
26	<p>NZBA submits that the calculation of the maximum total number of days' paid leave a PCBU must allow for training, based on the size of the PCBU, is unnecessarily prescriptive and not necessarily linked to the actual training needs of health and safety representatives.</p> <p>By way of example, based on the Regulations' proposed minimum ratio of health and safety representatives to workers in a work group where a PCBU has not determined work groups (of 1 representative for every 19 workers, discussed above), one major bank noted that if it allowed the maximum total number of days' paid leave it would have one employee off on training for 50 weeks of the year. NZBA submits that this is excessive in large, low-risk industries such as banking.</p> <p>NZBA would prefer health and safety representative training be endorsed by WorkSafe, and that the duration of training days be prescribed according to the needs of the course, rather than a number of days calculated annually.</p>

Schedules

Draft schedule number	Comment
Schedule 1, (2)	<p>NZBA submits that the following needs to be clarified:</p> <ul style="list-style-type: none"> • What transitional training will be required for those workers who are already trained health and safety representatives? • The time frame organisations will have to retrain current health and safety representatives. <p>It would also be helpful to understand which organisations can deliver these training courses.</p>