



9 September 2019

Ministry of Business Innovation Employment
Health & Safety Review
PO Box 1473
WELLINGTON 6140

Via email to HSWregs@mbie.govt.nz

Dear Sir/Madam

Re: Health & Safety Review - Plant and Structures

Please find attached a submission on the proposed Ministry of Business Innovation Employment (MBIE) changes to plant and structures within the Health & Safety at Work Act 2015

Please do not hesitate to contact me if you require any further information on this submission.

Yours sincerely

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Kate Trufitt
Co-Chair

Brent McGrath
Co-Chair



TO: Ministry of Business Innovation Employment

SUBMISSION ON: Proposed changes to plant and structures within the Health & Safety at Work Act 2015

NAME: Kiwifruit Industry Health & Safety Forum

ADDRESS: PO Box 4246, Mount Maunganui South 3149

1. Background to the Kiwifruit Industry Health & Safety Forum

The Forum was formed in July 2016 to provide consistency across the industry on health & safety (H&S) related issues, to provide an information sharing platform and to consider H&S initiatives that benefit the industry. Membership of the Forum is made up of developers, post-harvest and grower representatives.

2. The kiwifruit industry in New Zealand

The kiwifruit industry is a major contributor to regional New Zealand returning \$1.8b directly to rural communities in 2018/19. There are 2800 growers with 14,000ha of orchards with 7700ha green and 6300ha gold. The industry has 10,000 permanent employees and up to 25,000 jobs during the peak season. Approximately 80% of New Zealand's kiwifruit crop is grown in the Bay of Plenty.

3. General comments

The Forum has reviewed the proposed changes and are generally supportive. Providing a safe working environment for workers is paramount and is what the kiwifruit industry strives to achieve. While not all proposed changes are relevant to kiwifruit, the Forum notes the following comments.

4. Protections for people working with plant

2.2 - 2.4 The Forum submits that the following are mandated via a code of practice as technology is changing rapidly and therefore changing requirements are easier in a code of practice than an Act:

- Mandatory requirement to ensure appropriate guarding
- Record keeping for presence-sensing safeguarding systems
- Requirements for emergency stop and operational controls, warning devices on plant and proper use of plant

The Forum notes there needs to be a clear definition of what is 'appropriate' which needs to equal the standard.

2.5 The Forum agrees that the approach in the Australian Model Regulations should be applied in ensure the safety of people cleaning and maintaining plant.

2.6 - 2.10 The Forum submits that there should be requirements noted in the Act for PCBUs managing or controlling to address certain risks but note that there are overlapping duties between the PCBU and the manufacture.

Industry practice is to test and inspect plant decommissioned immediately prior to commission and doesn't support a requirement for regular testing of decommissioned plant. The consultation document notes that a 'competent person' could carry out the inspection.



The Forum seeks further clarification from MBIE on the definition of ‘competent person’ and suggests that the wording should say ‘trained and competent person’

The Forum submits that there should be requirements in the Act to ensure H&S risks from plant is not created or increased by using plant for new/or altering purposes.

2.12 The Forum submits that the Maritime and Aviation regulations are sufficient.

2.14 - 2.19 The Forum submits that there should be specific requirements in the form of the Australian Model Regulations however we do not think that the definition of ‘plant that lifts or suspends loads’ should be defined in the Act.

2.20 - 2.25 The Forum submits that there should be additional controls for industrial robots and agree that the Australian Model Regulations are appropriate. WorkSafe’s *Safe Use of Machinery* is guidance material which defines best practice. This does not sufficiently address the risks or provide strong regulation requirements. The Forum submits that while there is benefit in providing a code of practice, these practices should be noted in the Act.

2.26 - 2.28 The Forum agrees that PCBUs should follow the prescribed risk management process and that there should be an increased level of education and guidance for PCBUs to assess and manage risks from plant.

2.29 Overall, the industry is following the practices set out in the consolation document and while there may not be a significant cost to the industry there could be a cost for smaller business with investment in things like training.

5. Protections for people working with mobile plant

3.1 The Forum submits that the prescribed risk management process should be applied to mobile plant and that the key risks should be identified.

3.3 - 3.6 The Forum agrees that the approach of the Australian Model Regulations should be followed however we don’t agree that PCBUs be responsible for determining suitable operator protective devices. This should be noted as requirements under the Act. Where the PCBU deviates from the requirements, a risk-based assessment should be used. An example of this is quad bikes and crush protection devices. When crush protection devices are added to quad bikes, the quad bikes are unable to safely manoeuvre under kiwifruit vines.

3.7 - 3.12 The Forum supports option three and notes that there should be a requirement for manufactures to ensure an adequate field of vision. The Forum submits that additional requirements are preferable to ensure safety of operators of mobile plant. These could include traffic management plans and the requirement that mobile plant is turned off when an operator exits. Passengers should have the same protection, if not more, as operators. Passengers are relying on operators to maintain safety standards. Operators should only accept passengers if the mobile plant is designed to carry them.

3.13 - 3.17 The Forum agrees with the definition of mobile plant and don’t agree that exemptions be applied. The Forum preferred option is option one.

3.18 - 3.23 The Forum submits that developing an approved code of practice to address risks associated with forklifts is essential and way past due. In this regard, the Forum supports



option two. The requirements for operator protective devices for all mobile plant do address risks for forklifts however these risks should be addressed in regulations. Forklift operators should absolutely require a specific licence to operate and there needs to be a tighter pathway to obtaining this licence. Current training programmes do not sufficiently address the risks from forklift use.

While there will be associated costs with the proposed changes, the Forum submits that the benefits will be enormous and will hopefully go some way to reduce incidents

6. Designing, manufacturing, importing, supplying and installing plant or structures

4.1 - 4.8 The Forum agrees with risks and issues identified and submit that education and intervention tools would be most effective for compliance of the Act. The Forum supports option one and agree that designers should provide information relating to design life and safety critical components to manufactures. It is also essential that the party using the plant needs to provide to the designer the correct specifications including potential risks and hazards. The Forum agrees that suppliers, installers, commissioners and constructors of plant have similar requirements as designers, manufacturers and importers of plant

4.9 - 4.10 The Forum supports importers taking all reasonable steps to obtain information from overseas manufacturers and designers equivalent if they were based in New Zealand and that there should be a recognised jurisdiction that importers could rely on to ensure plant meets New Zealand H&S requirements

4.11 - 4.14 The Forum supports suppliers of second-hand plant should be required to identify faults in the plant and provide this information to the person being supplied with the plant. The Forum supports requirements for the safe design and manufacture of guarding where it is used as a control measure, operational controls, emergency stops and warning devices. The Forum supports the approach of the Australian Model Regulations.

4.15 - 4.19 The Forum supports option three which is in addition to option one and two. This provides additional layer of risk control. The Forum supports the following information being included in the Act for designers providing information to downstream duty holders

- Maintenance
- Manuals
- Cleaning
- Electrical requirements
- Safe operation

4.20 There will be indirect costs to the industry however we don't see these as being significant

7. Excavation work

7.1 The Forum supports retaining mandatory controls but no not support amendments in line with the Australian Model Regulations. There would be a cost to business which we don't think is necessary when orchard developers are already following strict controls.

7.10 The Forum supports regulation to ensure a duty to obtain current underground services information and that this should be the responsibility of the PCBU



8. Transitional Arrangements

8.2 The Forum is not aware of any proposals that would require an extended transitional period

9. HortNZ submission

The Forum has reviewed and supports the HortNZ submission

Further discussion

The Forum welcomes further discussion with MBIE on the proposed changes to the Plant Variety Act.