

Implementing the Health and Safety at Work Act 2015: Better regulation – plant, structures and working at heights.

WHO WE ARE

This submission is from the **Children's Convention Monitoring Group (CMG)** which is convened by the Office of the Children's Commissioner.

The Children's Convention Monitoring Group (CMG), was formed in February 2011 to monitor the New Zealand Government's implementation of the United Nations Convention on the Rights of the Child (Children's Convention) and its Optional Protocols, and the Government's response to the Concluding Observations of the UN Committee on the Rights of the Child.

The Children's Commissioner has a statutory responsibility to raise awareness and understanding of the Children's Convention; and to advance and monitor the application of it by departments of State and other instruments of the Crown.¹

Permanent members of the CMG include: the Office of the Children's Commissioner, the Human Rights Commission, Children's Rights Alliance Aotearoa, Save the Children New Zealand, and UNICEF New Zealand.



The Office of the Children's Commissioner represents **1.1 million** people in Aotearoa New Zealand under the age of 18, who make up 23 per cent of the total population.

We advocate for their interests, ensure their rights are upheld, and help them have a say on issues that affect them.

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OVERALL

- 1 The CMG supports the work to implement the Health and Safety at Work Act 2015 through better regulation of plant, structures and working at heights because improved regulation will contribute to the fulfillment of children's rights, particularly to safety and protection in the workplace. The work also contributes to New Zealand's obligations to uphold children's rights through the progressive implementation of the Children's Convention in domestic laws, policies and practices.
- 2 We acknowledge and support the decision to treat the 'young people in hazardous work' consultation as a separate piece of work in 2020, and we look forward to engaging in that consultation. That said, the rights of children and young people cut across all areas of health and safety at work. It is not clear from the discussion document how the regulations being considered here and the other pieces of work

¹ Section 12(1)(d) and (f), [Children's Commissioner Act \(2003\)](#)

(including the consultation on young people in hazardous work) will relate to each other.

- 3 Updating these regulations is an opportunity to improve protections for children and young people who work. It is also a way to improve safety for children and young people who live, play and spend time in places where they may be harmed by plant and structures managed and used by adults who work. Furthermore, it should be made clear that the Health and Safety at Work Act 2015 equally applies to all children in the work place whether they are there in a paid or voluntary capacity.
- 4 While the upcoming 'young people in hazardous work' consultation has a more direct link to the mandate of the CMG, the following submission provides some high-level comments for your consideration.

ADVANCING HUMAN RIGHTS OBLIGATIONS AND COMPLIANCE

- 5 Children and young people have the right to safety and protection, and to have their best interests be a primary consideration in all actions concerning them. Their rights to safety in the workplace are explicitly recognised in Articles 32(1) and 24(2)(e) of the UN Convention on the Rights of the Child.
 - *Article 32(1) "States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development."*²
 - *Article 24(2) "States Parties shall take appropriate measures: (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of... the prevention of accidents."*³
- 6 The UN Committee on the Rights of the Child made recommendations to the New Zealand Government in 2016 that are relevant to these regulations as follows:
 - *Amend the Health and Safety at Work Act to recognize and address working children's vulnerability to workplace injury and ensure respect for their rights under any type of contract, including casual contracts (Para 44b)*
 - *Review the draft regulation number 54 to ensure all working children under 18 are protected from hazardous work (Para 44c)*

² Article 32(1) <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

³ Article 24(2)(e) <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

- *Conduct awareness-raising programmes, including campaigns, targeting children and their parents on the rights of working children (Para 44e)⁴*
- 7 Updating the regulations on plant, structures and working at heights is an opportunity to better fulfil children's rights to workplace safety, to ensure New Zealand is meeting its international obligations and to address these specific recommendations in time for New Zealand's next review by the UN Committee on the Rights of the Child in 2021.
- 8 Observations on 'just and favourable work' from the 2018 International Committee on Economic, Social and Cultural Rights review are also relevant to the regulations as follows:⁵
- *[The Committee is] concerned about the prevalence of workplace deaths and injuries, especially in the agriculture, forestry and construction sectors, which engage a high proportion of Māori workers (art. 7). (Para 27)*
 - *The Committee urges the State party to... Effectively implement workplace health and safety legislation (Para 28d)*
 - *The Committee draws the State party's attention to its [general comment No. 23](#) [on the right to just and favourable conditions of work (Article 7 of the International Covenant on Economic, Social and Cultural Rights)]⁶.*

TAKING A CHILD RIGHTS APPROACH

- 9 The CMG promotes a child rights approach to the development of regulations, guidelines, policies and legislation. A child rights approach would consider questions like: How will the proposed changes impact on children and young people? How will decisions affect different groups of children? How have children and young people's views been taken into account?
- 10 We recommend using the government's Child Impact Assessment tool to determine intended and unintended consequences of regulations, guidelines, policy and legislation, for children and young people in the work place.⁷

⁴ 2016 Concluding Observations <http://www.occ.org.nz/assets/Uploads/Final-concluding-observations.pdf>

⁵ <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmlBEDzFEovLCuW%2fLN41VeUtud3gjfWhwNd9fXQeEr7RlggzV%2f4HPdt9o5jg3AAQR1j5TluTSyUbBmyecr1jbv7vboM%2fe1bStaBBovVUjiv%2f%2bW7IZcRFdsdfRM>

⁶ <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

⁷ <https://www.msd.govt.nz/about-msd-and-our-work/publications-resources/resources/child-impact-assessment.html>

HOW WILL THESE REGULATIONS IMPACT ON CHILDREN?

- 11 While the CMG does not have the expertise to comment on technical regulations about specific, specialised machinery, equipment, tools and structures; we support in general changes to quad bike and amusement device regulations, because of their particular relevance and risk to children and young people.
 - a) We support strengthening regulations for the safer use of quad bikes in order to prevent injuries or fatalities of children and young people. We strongly recommend the changes to regulations respond to the reality that children and young people use quad bikes on farms both independently and as passengers. Quad bikes require specific regulation to address the unique risks associated with their use by children and young people.
 - b) We support strengthening regulations to improve the safety of amusement devices, which are often designed for and used by children and young people. We support changes that respond to advances in technology and innovation, and we support reviewing the role of local authorities.
- 12 Although not specifically covered in this consultation, we raise as a concern the unique issues and risks for children living on farms. Children who live on farms have access to a range of machinery. These risks can be particularly pertinent for children of sharemilkers or live-in seasonal employees who are more likely to move from farm to farm over time and therefore experience different safeguards and practices depending on the practices of the farm owners and managers. We understand that safeguarding of waterways and ponds on farms is not part of this consultation but note this as another area of concern for children that should be considered as part of the Health and Safety at Work wider reforms. We urge you to consider safety of children and young people in all decisions affecting regulation of farm environments and equipment commonly used on farms.

WHAT ARE THE DIFFERENTIAL IMPACTS OF THE REGULATIONS?

- 13 When considering changes to regulations it is important to consider intended and unintended differential impacts on different cohorts of children and young people. Cohort identifiers such as ethnicity, disability, level of education or socio-economic group may be included. Actions can then be taken to ensure decisions are equitable, non-discriminatory, and consider the best interests of the child.

- 14 For example, considering the demographics of a workforce (age, gender, ethnicity, ability, socio-economic group) could mean different sets of requirements for safety settings or the need for guidance on safety regulations to be translated into multiple languages.

ENSURE SUPPORTS FOR CHILDREN AND YOUNG PEOPLE AND THEIR FAMILIES

- 15 We know that young people tend to trust their bosses; have insufficient awareness of their rights at work and are not confident to challenge their employers.⁸ Trusting employers to provide special care for children and young people in work and/or providing guidance online is helpful but not enough. Children and young people who work should be provided with information and training about their rights and how to keep themselves safe at work.
- 16 Regulations for equipment on farms and in other settings where children and young people work or spend time should be accompanied by education campaigns that can be understood by different audiences including children and young people. Information should be provided to children and young people, and to parents and guardians in farming communities, on hazards from plant, structures and working at heights such as the dangers of children on quad bikes and other hazardous equipment.
- 17 Employers should be required to undertake training and or develop on-site safety policies to make clear their safety obligations to children and young people who work for them whether paid or voluntary.

ENFORCEMENT OF REGULATIONS AND REPORTING

- 18 We encourage the development of specific regulatory requirements addressing protections for children. For example, by making any injury to a child or young person being classed as a notifiable event. This would proactively ensure compliance with protections for children.
- 19 Requirements around reporting and enforcement could contribute to evidence in this area as well as efforts to seek the views and opinions of children and young people.

MORE DATA ON CHILDREN AND YOUNG PEOPLE WHO WORK IS NEEDED

- 20 There is little data on children and young people who work in New Zealand. A report from 2010 on children who work suggests, amongst other things, that young workers

⁸ <https://www.mbie.govt.nz/dmsdocument/1008-schoolchildren-in-paid-employment-pdf>, at page 35.

undertake activities they consider unsafe if asked to do so by their boss.⁹ The same report showed that some children – especially Pacific children - were working to support the household income.¹⁰ It seems likely this would still be the case in 2010. There is a need for more and better data on children and young people who work to inform policy and regulatory changes.

- 21 The consultation document says MBIE are working with WorkSafe to get a complete picture of the harm that is occurring as a result of plant, structures, working at heights and excavations. Our understanding is that the WorkSafe System for Work related Injury Forecasting and Targeting excludes fatalities involving bystanders or people under the age of 15.
- 22 The CMG recommends that Health and Safety at Work reform be informed by adequate data and evidence about children and young people in work. The Youth Health and Wellbeing Survey could contribute to better data as well as work to analyse data sets from WorkSafe, ACC and the Ministry of Health.

WHAT DO CHILDREN AND YOUNG PEOPLE THINK?

- 23 Children and young people have the right to express their views on issues that affect them and for those views to be considered by decision makers. We recommend consulting with children and young people who work as well as children and young people who live, play or spend time in places of work, such as farms.
- 24 The CMG, and in particular the Office of the Children's Commissioner is willing to provide advice and guidance on how to ensure children and young people's views can be considered in Health and Safety at Work reforms.

⁹ <https://www.mbie.govt.nz/dmsdocument/1008-schoolchildren-in-paid-employment-pdf>, at page 6.

¹⁰ <https://www.mbie.govt.nz/dmsdocument/1008-schoolchildren-in-paid-employment-pdf>, at page 34.