NEW ZEALAND COUNCIL OF TRADE UNIONS
Te Kauae Kaimahi

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

to the

Ministry of Business, Innovation and Employment

on the

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

P O Box 6645
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 protection of workers' health and safety is core to our role as trade unionists and as the collective voice of workers, unions have a critical role in ensuring health and safety. This is recognised by International Labour Organisation Convention 155 on Occupational Health and Safety which mandates consultation between unions (through the CTU), employers (through Business New Zealand) and the Government in the design and implementation of health and safety law

1.4. As a party to ILO Convention 155, the Government is required to consult with the CTU (and Business New Zealand) to "formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment" (Article 4).

1.5. The CTU provides full workplace health and safety representative training courses. More than 27,500 health and safety representatives have been trained by the CTU since 2002.

1.6. The CTU was represented on the Independent Taskforce on Workplace Health and Safety ('the Taskforce') which released its recommendations in April last year. We were represented in the proceedings of the Royal Commission on the Pike River Coal Mine Tragedy ('the Royal Commission') and presented substantial submissions to it.

1.7. The CTU has also made comprehensive submissions on the Health and Safety Reform Bill (as it then was) and other supporting regulations. We are represented on each of the Guidance Groups set up to provide expert advice to MBIE and WorkSafe.

1.8. The genesis of New Zealand's health and safety system lies in a revolutionary document. Following a series of industrial disasters in the United Kingdom, the newly-elected Conservative Government asked Lord Alfred Robens, the Chairman of the National Coal Board, to carry out a fundamental review of the United Kingdom's health and safety law. A Committee on Safety and Health at Work was formed in 1970 and took evidence over the next two years, reporting in July 1972. Eves summarises the basic framework of the Robens Report:

> Believing that the primary responsibilities lay with those who created risks and those who worked with them, Lord Robens' Committee concluded that a more self-regulating system of provision for safety and health at work was needed and that the traditional approach based on ever-increasing, detailed and prescriptive statutory regulation was outdated, over-complex and inadequate. Reform should be aimed at creating the conditions for more effective self-regulation by employers and workpeople jointly. The efforts of industry and commerce to tackle their own safety and health problems should be encouraged, supported and supplemented by up to date provisions unified within a single, comprehensive framework of legislation. Much greater use should be made of agreed voluntary standards and codes of practice to promote progressively better conditions.

1.9. The Robens model posits a 'three-legged stool' based on a strong regulator, capable employers and informed, empowered workers. Each of these 'legs' acts as a check and balance upon the effective operation of the others.

1.10. The Robens Report founded the basis for new health and safety laws in the United Kingdom, Australia, Canada and, eventually, New Zealand by way of the Health and Safety in Employment Act 1992.

1.11. There were problems from the start with our implementation of the Robens principles. As the Taskforce noted in its report:

> 66. Ultimately, New Zealand implemented a much lighter version of the Robens based model and much later when compared with other countries such as the UK, Australia and Canada. The lighter version reflected a range of local and historical factors.
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> a. Resource constraints. The late 1980s and 1990s were a period of fiscal discipline, frozen budgets and staff cuts across the public sector. No additional funding was made available to support a comprehensive implementation of the new Act, including the development of adequate levels of supporting regulations, approved codes of practice (ACoPs) and guidance, as well as inspectorate capabilities.
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> b. Changing attitudes towards the roles of government and business. The HSE Act was developed in an era of deregulation and a growing ethos of business self-regulation. This informed low levels of resourcing for and a light-handed approach to regulation, and high levels of reliance on businesses' capabilities and commitment.
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> c. Liberalisation of the labour market and the weakening of union representation. Labour market liberalisation in the 1980s and 1990s resulted in a sustained fall in union membership and growth in casual, part-time and short-term employment relationships. …It is likely that this factor influenced omissions from the HSE Act, including the failure to establish a tripartite body and to set obligations requiring employers to have formal worker-participation systems.

> 67. As a result of these factors, and wider organisational changes taking place around this time, the model of occupational health and safety regulation implemented through the HSE Act in the early 1990s may be seen as an object lesson in how not to implement legislation.

1.12. The Taskforce noted at [61] of its report that:

> It is the Taskforce's view that weaknesses across the system are the direct result of a fundamental failure to implement properly the Robens health and safety model in New Zealand (discussed below). The plethora of issues arising from this factor alone are, across the system, multiple, persistent and compounding.

1.13. The foreword of the Taskforce's Report comes to mind:

> A key challenge in addressing workplace health and safety is that it requires balancing the interests and needs of a number of participants, particularly employers and workers. We are starting with a 20-year-old system that did not find that balance, yet the task has become more rather than less complex over time. The Taskforce has discussed this at length, and looked at how countries with much better workplace health and safety records do it. In our view, we have found a good balance requiring compromise by all parties that will both improve outcomes substantially and respect all parties' needs. Make substantial changes to that balance and we will lose the vital support of some participants and significantly weaken the potential benefits.

1.14. Regrettably, the Government seems set on further unbalancing the law. We say that this is ideological and against the weight of evidence as to what constitutes good health and safety practice. Our fundamental concern is that the system is shifting from one that is agreed between workers and businesses to one that is dictated by businesses. This change weakens the impact of many of the good changes in the new Act.

All of the evidence suggests that systems where workers have a real voice in health and safety are considerably safer than top-down systems. Workers have a right to the best protections that are feasible because they are putting their bodies on the line. The weakening of the worker participation will have a toll measured in worker's lives, disability and human misery.

1.15. It has been suggested that the system as set out will work better than the status quo because businesses will be held legally liable for failure to have adequate worker engagement systems. However, there are major problems with this. First the new Act nearly replicates a section of the Health and Safety in Employment Act 1992 that was never enforced.

1.16. Second, the proposed regulations provide no specificity as to what this duty might look like except in relation to health and safety representatives and committees (which are not now required in many workplaces). The hole in the Act continues down to the regulations. MBIE have indicated in recent discussion with us that they do not see most of the worker participation issues as ones that are susceptible to

regulation and prescription. This will severely restrict WorkSafe's ability to effectively enforce the worker engagement provisions of the Act. Indeed, the situation is worse than that the Health and Safety in Employment Act 1992 which had some backstop guarantees as to what systems would be put in place.

1.17. Third, we understand that WorkSafe plans to avoid issuing a Worker Participation ACOP or to prescribe in guidance what or when minimum standards may be necessary. The safety net at WorkSafe's level is cut away too. This is particularly problematic given that s 61(2)(b) of Health and Safety at Work Act 2015 clearly envisions an ACOP to promote these obligations. MBIE said in their briefing to the Minister on these duties on 8 December 2014 that:

> 12. [The worker engagement framework] needs to be underpinned by a clear view from the regulator about what effective worker engagement and participation looks like- this is to provide the "meat on the bones' of the two overarching duties. Effective practices can be made clear in both guidance and through other action by the regulator. This clarity should help PCBUs determine the most effective practices for their business, and minimise the need for the regulator to help resolve issues about effectiveness (although it will need to have this role.

1.18. Our submission is split into two parts. The first deals with the flawed proposal as to which industries are considered 'high risk' for the purposes of the regulations. The second deals with the content of the draft regulations themselves (including what we think is missing).

2. Contents

PART I: EXEMPTIONS FROM HSR REQUIREMENTS FOR 'LOW RISK' SMALL BUSINESSES

3. Introduction to Part I

3.1. The concept of exempting workers from the right to representation in any workplace, regardless of the size of the enterprise or the level of risk the workers face is an absolute affront on every level; moral, political, and legal. The Taskforce identified lack of worker participation as a crucial weak link New Zealand's health and safety system. The Taskforce found that the failure to get the balance between workers and employers right and a lack of tripartism was the root cause of the systemic problems. In particular, the Taskforce found a key problem with the 1992 legislative framework was that "there is limited support in the legislation for worker engagement, e.g. smaller firms are not required to have formal participation mechanisms such as health and safety representatives."[1]

3.2. The Taskforce set out the principles that should guide the reform of the legislative provisions governing worker participation at [264], including:

> **All workers** have a right to participate through an independent range of representation mechanisms **of their own choosing**, including workplace health and safety representatives, committees and unions where they are present in a workplace.

3.3. Moreover, the model upon which the Health and Safety at Work Act 2015 ('the Act') was based, the Australian "Model Work Health and Safety Act" ('Australia's Model Act') and its subsequent regulations do not contain the low risk exemption. Australia's Model Act arose out of two reports, both entitled "National Review into Model Occupational Health and Safety Laws". The first report quotes and endorses an earlier review of Australia's health and safety legislative framework, the "Laing report":

> **[T]he election of safety and health representatives and the constitution of safety committees are fundamental if genuine consultation is to develop in workplaces.** Without the authority provided under the Act, **almost any other consultative approach will result in unequal relationships and consultation may be one sided or tainted by the incapacity to openly and fearlessly put the necessary issues for discussion**. As a consequence, while there may be considerable talk there may be little consultation.

[1] At page 24.

3.4. Australian health and safety law experts Johnstone and Tooma (2012)[2] summarised the importance of health and safety representatives in safety systems at 137-138:

> The available empirical research suggests that direct participation by means of individual non-unionised employees engaging with managers appears to have little effect on work health and safety. There are very few studies on the use by individual workers of an individual right to refuse to perform dangerous work, and what research there is suggests that this right is little used in small firms, where workers inhabit 'structures of vulnerability'.
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> There is much stronger evidence on the positive effects of collective worker participation on work health and safety. This evidence comes from a number of countries, including from countries where there is no statutory basis for worker participation. The research shows that participatory mechanisms that enable higher levels of worker involvement are better than those that provide for more limited involvement. Many of the studies prove that there is a relationship between objective indicators of work health and safety performance (such as injury rates or exposure to hazards) in workplaces that have implemented structures for worker participation, such as the presence of trade unions, joint health and safety committees, or union or worker health and safety representatives. International research supports the argument that joint arrangements involving employer representatives and workers, and trade union representation at the workplace, are associated with better work health and safety outcomes than where representative worker participation is absent. Other studies provide more indirect evidence of the impact of worker representation on work health and safety management practices, and suggest that participatory workplace arrangements lead to improved work health and safety management practices and compliance with work health and safety regulatory standards.
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> Despite their diversity in terms of methods and other details, taken collectively these studies support the notion that joint arrangements and trade union representation at the workplace are associated with better health and safety outcomes than when employers manage work health and safety without representative worker participation.

3.5. However, despite the readily apparent failures of our current system and the recommendations of expert panels in both Australia and New Zealand, the Act was amended to now include the following provision:[3]

> (4) A PCBU is not required to initiate the election of 1 or more health and safety representatives, if the work of the business or undertaking—
>
> (a) is carried out by fewer than 20 workers; and
>
> (b) is not within the scope of any high-risk sector or industry prescribed by regulations for the purposes of this section.

3.6. This section requires the Executive to determine, in regulation, the definition of high-risk sector or industry. The courts are empowered to quash Executive acts or omissions, including subordinate legislation, which are illegal, procedurally unfair, or unreasonable. This power extends to consideration of decisions that are about to be made.[4] Regulations can be challenged by way of judicial review on a number of grounds, including whether the power to make the delegated legislation has been

[2] Johnstone, R and Tooma, M (2012) *Work Health and Safety Regulation in Australia: The Model Act.* Sydney, Federation Press.
[3] Health and Safety at Work Act 2015, s62(4).
[4] Judicature Amendment Act 1972, s4(1).

exercised for an improper purpose, whether the regulations remain within the delegation granted by Parliament, or whether the regulations will be or are uncertain in their application.

3.7. Moreover, the Regulations Review Committee is empowered to consider complaints about regulations.

3.8. The CTU wishes to raise its concerns about the draft regulations and calls on the Minister to remedy the deeply problematic definition of high-risk industry or sector implemented in the draft regulations. While the Minister has already determined, on policy and legal grounds, that some workplaces will not be required to have health and safety representatives, the regulations must correctly implement a definition of high-risk sector or industry. If they do not, the regulations will be open to scrutiny by means of judicial review and regulations review.

4. Is the regulation in accordance with the general objects and intentions of the statute under which it is made?

4.1. Regulations must be consistent with the empowering statute as a whole, and must be considered in light of the policy of the Act under which the regulation is made. Should the regulations be considered inconsistent with the purpose of the empowering statute, they are justiciable.

4.2. The purpose of the Health and Safety at Work Act 2015 ('the Act') is to provide for a balanced framework to secure the health and safety of workers and workplaces by providing for fair and effective workplace representation, consultation, co-operation, and resolution of issues in relation to work health and safety.[5] The Act requires particular regard to the principle 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.

4.3. The Minister's advice from his officials is that health and safety representatives are a "proven and internationally standard mechanism to achieve worker participation".[6] No other jurisdiction in the world contains a similar exemption for small businesses from having health and safety representatives as the draft regulations do.

[5] Health and Safety at Work Act 2015, s 3(1)(c).
[6] Draft Cabinet papers in support of the Health and Safety Reform Bill, 1648 14-15, 30 January 2015, at 5.

4.4. These regulations see more than half a million workers without fair and effective workplace representation, as envisaged by the Act. These workers have no right to choose if or how they are represented. It is clear that the regulations as currently drafted are inconsistent with the purpose of the Act when considered against the evidence and recommendations of the New Zealand and Australian expert panels. Such evidence and recommendations, and the purpose of the Act, requires the Minister to implement much more robust provisions relating to health and safety representatives than those proposed. Moreover, given the overwhelming evidence in favour of the positive effect health and safety representatives have on workplace health and safety, and given the principle that workers are entitled to the maximum protection of their health and safety, any exemption should be used very cautiously and sparingly. The recommendations highlight the importance of ensuring the definition is right: of ensuring that all high-risk industries and sectors are 'within scope'. To do otherwise would be entirely inconsistent with the general object and intention of the Act.

5. Are the proposed regulations within the delegation granted by Parliament? Do the regulations appear to make some unusual or unexpected use of the powers conferred by the statute under which it is made?

5.1. This affront is further perpetuated by a deeply flawed categorisation of what constitutes a 'risk'. It is self-evident that the Minister's proposal, as set out in the draft regulations, is a consideration of political risk, rather than risk to workers health and safety. A consideration of political risk is certainly not within the delegation granted by Parliament.

5.2. The regulations as proposed see approximately 560,000 workers without the right to have a health and safety representative system if requested.[7] The Minister received advice that this would see 5 out of 6 workers in small businesses losing this right they currently enjoy under the Health and Safety in Employment Act 1992.[8] Workers in small businesses who have lost this right include (but are not limited to):

1. Transport workers, including water, road and rail freight transport
2. Port operation workers

[7] Document titled "Small Business exclusion from HSRs if requested by worker", undated and anonymous. This estimate was determined when agriculture was considered a high-risk industry.
[8] Kelly Hanson-White, email correspondence dated 16 August 2015 at 1:39pm.

3. Most manufacturing workers
4. Hospital, health care, and disability workers
5. Agriculture workers
6. Public order, safety and regulatory services workers
7. Police services

5.3. This is despite the advice that in other comparable jurisdictions, strong commonalities emerge amongst what is considered a high-risk industry. Construction, manufacturing, and agriculture are **consistently** represented in any country's assessment of its high-risk industries. Mining, forestry and fishing **usually** appear whenever those industries are present in that jurisdiction.[9]

5.4. To reach the position it has, the Minister has relied on flawed, unusual, unexpected, and arbitrary indicators of risk:

- A fatality rate of greater than 25 employees per 100,000 employees per annum;
- A severe injury rate of greater than 25 employees per 1,000 employees per annum;
- Risk of exposure to asbestos or silica dust; or
- The risk of a catastrophic event that could lead to multiple fatalities.

5.5. Flaws with these indicators include:

- *The ratios used are arbitrary.* The CTU has been unable to find a standard used in any other jurisdiction in the world based on same or similar ratios. The ratios appear to be invented without any evidence to support the threshold. There is no logical reason provided for the ratios being set at 25:100,000 and 25:1,000. On the evidence provided, the ratios could be reduced to, for example, 10:100,000 and 10:1,000. An industry that has a ratio of 10 out of 1,000 workers being severely injured is a high-risk industry. That is 10 workers who have been required to take time off work for longer than week because they have been injured at work. That is 10 workers who might not have been injured had they been represented by an elected and empowered health and safety representative.
- *No consideration of injury rate generally.* The purpose the Act is to protect workers from harm, irrespective of whether that harm results in a week off work or more for the injured worker.

[9] "Guidance to the House" document – undated.

- *Aside from asbestos and silicosis, there is no consideration of occupational disease in the categorisation of 'high risk.'* There are many more recognised illnesses in New Zealand that are generally accepted as having an occupational cause, including those set out in Schedule 2 of the Accident Compensation Act 2001. They can be as fatal or debilitating as serious harm injuries. Occupational disease was assessed in a much more robust way in earlier iterations of the model but then removed. Gradual process injuries are also excluded but can be as debilitating for workers as serious harm injuries. Occupational disease and gradual process injuries must be taken into account. NOHSAC recommended that the risk and prevalence of occupational disease requires appropriate attention, and excluding occupational disease from the high risk definition sees that recommendation completely undermined:[10]

  > it is clear that work-related disease and injury is responsible for considerable morbidity and mortality in New Zealand. For mortality, disease represents a considerably greater (ten-fold) burden than does injury; about one third of the work-related deaths are due to cancer, and substantial proportions are due to respiratory disease and ischaemic heart disease. On the other hand, work-related accidents and injuries represent a greater burden of morbidity. Therefore a balanced approach is required in which both the prevention of work-related disease and the prevention of work-related injury receive appropriate attention and resources.

- *The model excludes deaths and injuries to bystanders and children under 15.* Given that New Zealand has no minimum age of employment and children are often killed particularly in agriculture this is an extraordinary exception.

- *More generally, some people in an industry may be at higher risk than others.* For example workers new to a job are known to have greater risk of injury than other workers and this will be particularly prevalent in an industry with high use of casual, temporary or seasonal labour, or high turnover, such as agriculture. The model must take into account these factors.

- *Basing the model on accepted claims to ACC relies on people making claims to ACC and these claims being accepted.* There is evidence many industries or populations (such as Maori and Pacific Island males) significantly under-report accidents. For another pertinent example, research in the agriculture industry found:

  > With respect to injury, thirteen percent (13%) of farmers from the AgriBase sample had had an injury, in the three months prior to interview, which had restricted their activity for a half a day or more and/or which required medical treatment from a health professional. Generally these injuries were reasonably serious and respondents reported work capacity was poor following injury. For two-thirds of those injured it was over a week before they could resume normal farming duties; **yet only a third of these respondents made a claim to the Accident Compensation Corporation.**[11]

- *Relying almost exclusively on an annualised average rate of severe injury and fatality is extremely problematic.* The advice received by the Minister acknowledges the shortfall in relying on standardised rates: they do not account

[10] http://www.dol.govt.nz/publications/nohsac/pdfs/bodi-tech-rep.pdf, at [175].
[11] Lovelock and Cryer (2009), University of Otago – Effective Occupational Health Interventions in Agriculture Summary Report, No.5, at 14.

for variances in hours of work and therefore actual exposure to risk. Many seasonal industries have periods of much greater risk (such as calving season in dairy and beef farming).[12] Some may have short, perhaps random, periods of very high risk (e.g. security guards, Work and Income staff, ACC case managers, or retail workers in shops subject to armed robbery). This would suggest numerous other indicators must be aggregated before the risk can be more accurately identified.

- *There is no consideration of the death and injury rate in Small-to-Medium Enterprises (SMEs) for each industry.* Evidence suggests strongly that SMEs have higher rates than larger businesses so a multiplier effect may be appropriate. NOHSAC has issued a report which deals with this in depth.[13] Another example is a major 2006 study by the RAND Corporation in the USA found that:[14]

  > except in retail trade, establishments with 1–19 workers had fatality rates that were 4 to 10 times higher than those in the category with the lowest rate and 1.5 to 3 times higher than those in establishments with 20–49 employees. Further analysis indicated that, within the 1–19 category, the rates dropped sharply as well, with rates for establishments with 1–4 workers much higher than those in establishments with 5–9 workers, and higher still compared to those with 10–19. Our results, therefore, confirm findings from earlier research on fatalities and establishment size.

- *There is no consideration of the effect of previous interventions in the industry.* For example, electricians work in an inherently hazardous environment which is controlled by regulation and training. A high risk industry may have a falling rate of harm as the result of such interventions. Should it then be regarded as being below high risk, implying some of the interventions could be removed?

- *The high-level ANZSIC code averaging over subindustries which can have dramatically different risk profiles.* The regulators face a dilemma. Either they wilfully disregard some high-risk industries by averaging over substantial heterogeneity in relatively large sectors and in doing so classify as below high risk some significant industries within those sectors that in fact are high risk. Or they disaggregate but are forced to use data that becomes less and less reliable as the size of subindustries reduces. Both cases are unsatisfactory and could lead to serious error. MBIE acknowledges this issue in its advice to the Minister:[15]

  > Confidence in the accuracy of data analysis and conclusions based on that analysis weakens significantly when information is broken down to lower levels of detail (as with ANSZIC level 3), because the sample sizes are smaller. You will see that isolated 'pockets' of higher and lower risk sectors emerge in the level 3 analysis compared to level 2. For example, two sectors (orchards and nurseries) within Agriculture and three (knitted products, clothing/footwear,

[12] See discussion in boxed text below
[13] NOHSAC Tehnical Report 12 Occupatonal Health and Safety in Small Businesses available at: http://employment.govt.nz/publications/nohsac/pdfs/technical-report-12.pdf
[14] Mendeloff, Nelson, Ko, & Haviland (2006) Small Businesses and Workplace Fatality Risk: An Exploratory Analysis. Available at: http://www.rand.org/content/dam/rand/pubs/technical_reports/2006/RAND_TR371.pdf. Fatality rates were used because small businesses are notorious for underreporting of injury data.
[15] Kelly Hanson-White, email to Minister Woodhouse, 7 August 2015, 12:27pm.

> recorded media) within manufacturing are not showing up on any of the four risk factors, unlike all the other sectors in those industries. … Can meaning be extracted from these particular results? Only with extreme caution, because there is no way to know whether or not these are actual effects, or outliers created by trying to break down the data into very small pieces

- *The indicators do not appear to include fatalities and serious injuries recorded by other regulators,* including Maritime New Zealand, New Zealand Transport Authority or the Civil Aviation Authority.

5.6. The CTU submits that a complete rework of the indicators used in defining high risk is required. A tripartite body or group should be established to review the evidence of risk in industries and sectors and make recommendations to the Government. The indicators must address all of the above bullet points.

5.7. Furthermore, we recommend that at a minimum, the industries considered high risk in under the Queensland Workers Compensation and Rehabilitation Act 2003 should be considered high risk in the Health and Safety Regulations in New Zealand. These are appended to our submission. ANZSIC D28 water supply, sewerage, and drainage services should also be included.

5.8. As the proposed regulations currently stand, they appear to make an unexpected use of the powers conferred by the statute under which they will be made; numerous high-risk industries have been excluded that, had a proper and meaningful consideration of the indicators of risk been undertaken, would not have been.

Agriculture as a low risk industry?

The Minister's proposed regulations will see fewer than 2,500 of the 58,040 workers in the agriculture industry able to request a health and safety representative.[16] That is just 4% of the agriculture workforce.[17] This is despite the fact that more people are killed in agriculture than any other sector in New Zealand.

Agriculture is considered by WorkSafe New Zealand as one of the top five industries where most workplace harm occurs[18] and has a national programme dedicated to reducing the inexcusable injury and fatality toll in the industry. 120 people have died as a result of workplace accidents on farms since 2008 and 220,000 work days are lost annually as a result of workplace injuries. In 2013, over 2,100 workplace injuries caused more than 5 days off work. 20 people were killed in workplace accidents on farms in 2013 – more than the number that died in forestry, construction and manufacturing combined.[19]

[16] Email to Minister Woodhouse, Kelly Hanson-White, 17 August 2015 11:05pm. However, the 2013 Census showed 105,576 in March 2013 while LEED from Statistics New Zealand showed 62,370 in June 2014 (66490 in March 2013).
17 This figure is 2% if the data from the 2013 Census is used.
[18] See, for example, WorkSafe NZ's Statement of Intent 2014 – 2018, available here: http://www.business.govt.nz/worksafe/about/publications/documents/statement-of-intent-2014-pdf
[19] http://saferfarms.org.nz/

Much agriculture work is also highly seasonal. This means that those statistics occur in relatively short, sharp bursts of work activity. Should those statistics be averaged over a full year, they would not fully reflect the reality of the injury and death toll.

For example, in August, WorkSafe reminded farmers "of the risks posed by livestock and vehicles during calving as historically the number of injuries on dairy farms rocket up in August. Although there are relatively few incidents causing injuries on farms in June, this number doubles in July and then more than doubles again in August. Dairy farmers in particular are more likely to be injured by cows in August than in any time of the year." Radio New Zealand reported that "Since 2008, ACC has received more than 900 severe injury claims from people working on dairy farms in August - and about 7520 in total. That compares to 496 severe claims in July and 834 in September, in the same time period."[20]

Despite the overwhelming evidence of the dangerous nature of the industry, the regulations as proposed would see agriculture classified as low-risk. Workers will not be entitled to elect a health and safety representative even if they request one, the consequence being that there would be no elected worker with an annual entitlement to attend health and safety training, or with the ability to issue provisional improvement notices or direct workers to cease dangerous work. As currently proposed, the regulations deny workers the ability to participate in health and safety in a collectivised way.

Case study- the death of Tom Sewell

When UK mother Linda Sewell wrote to her British MP about the death of her son Tom on his first day at work on a New Zealand farm, he queried the death with Minister Bridges. The Minister said in his response that *"The regulator was faced with a difficult judgment call. … The decision not to take enforcement action was based on the mitigating circumstances that Tom had acted without permission or sufficient training and that the owner had demonstrated a proactive and swift response to the tragedy. Tom's case touches on a delicate but integral part of the New Zealand health and safety cultural dynamic. That is the principle of individual responsibility. People in the workplace are making choices about their safety every day and these choices can have a devastating effect."*

Tom Sewell was 19 years old when he died. He arrived on the farm without induction and began his first day without the farmer being present. He went with a friend on a quad bike for a ride around the farm to learn about it and was killed when the bike crashed. The bike was regularly used by the casual tourist workforce that worked on the farm and had the keys left in it as a matter of course. The bike was a known hazard and it is unclear whether any of the workers had health and safety induction training and certainly Tom was expected to complete his first day at work without an induction. There was no worker participation system on the farm and our own Minister describes the case as one of "individual responsibility". The UK Coroner was extremely critical of the circumstances.

The Department of Labour investigated and found 6 practicable steps that the employer could have taken. They noted that: *"The Practicable steps that IWV Kiwi should have taken*

[20] "August a peak period for farm injuries", 3 August 2015, http://www.business.govt.nz/worksafe/news/releases/2015/august-a-peak-period-for-farm-injuries; and "Dairy farm accidents spike during calving", 4 August 2015, http://www.radionz.co.nz/news/rural/280472/dairy-farm-accidents-spike-during-calving.

are: Informed the employees that no one but Mr Kenna was to operate the Polaris. The Polaris Ranger should have been locked away when the owners were not on the property. There should have been rules around the use of the Polaris. When the Polaris is driven, helmets should be worn. If employees are working on the property there should be supervision [and] a nominated person responsible for the health and safety of those working. It should be made very clear to any visitors (potential employees) to the property that they are not permitted to start work without a health and safety induction and proper introduction to the site."

Despite this report, Minister Bridges believed this accident was down to Tom making bad choices on his first day at work.

The case study below illustrates a number of points, including the significant risks workers face in the agriculture industry, and that workers are at higher risk when new to a job, or when heavy use of casual or short term worker is made.

6. Are the regulations uncertain in their application?

6.1. The regulations as proposed contain numerous provisions that will result in significant uncertainty in their application. A practical problem with the proposal is the definition of high risk industries in draft regulation 5(1)(b) as ones where a business "operates predominantly." "Operates predominantly" is open to very wide interpretation and, if left, will be subject to much judicial scrutiny.

6.2. A business with 18 workers that operates a forestry crew with 49% of its time and resources and a wood chipping business 51% of the time is equally as risky while undertaking forestry as a business with 9 workers that undertakes forestry 100% of the time.

6.3. It is unclear whether this regulation would include, for example, a business that has five workers operating in a 'low risk' job (truck driving) and five workers operating in a 'high risk' job (tree felling). It is unclear whether such an operation would be "operating predominantly" in the transport industry or the forestry industry. Either set of workers should be able to request a health and safety representative.

6.4. A given worker may also work on a variety of tasks – for example in both farm forestry and handling stock. Should they have less protection than say a worker who works for some of the year in a forestry gang and some of the year on a farm? It would also be inconsistent: if a farm contracted a forestry contractor to carry out the forestry work, the workers on the farm forestry would have the right to elect health and safety representatives. A worker employed by the farmer doing the identical work would not.

6.5. Further, it appears that the Minister intends that PCBU would self-determine which industry category they fit. This is an obvious incentive for PCBUs who do not want to have health and safety representative to argue that a high-risk part of their business is not the predominant one.

6.6. The CTU submits that the words "operates predominantly" should be changed to "operates" in draft regulation 5(1)(b). Failing to do so will see the regulations being uncertain in their application, and will fail to give workers the highest level of protection against harm to their health, safety and welfare from hazards and risks arising from work.

7. Enforcement

7.1. The CTU submits that an offence should be created for misrepresenting the nature or size of the business or undertaking to avoid an obligation to elect health and safety representatives or consider appointing a health and safety committee.

7.2. Moreover, an inspector should be given the power under draft regulation 30 to determine whether a business or undertaking is operating in a high risk or otherwise specified industry and the number of workers undertaking work for the PCBU.

8. Review

8.1. We note the proposal that the high risk definitions should be reviewed at least every five years. We think that given the untried and dodgy nature of the current proposal, the first review of this system should be in 2 years.

9. Conclusion

9.1. The definition of high risk is fundamentally flawed and requires serious reconsideration by the Minister. As currently proposed, the definition would not stand up to scrutiny. The Minister should direct officials to dedicate urgent attention and resources to ensuring the regulations are in accordance with the general objects and intentions of the Act, are made based on robust and sound evidence of risk (and exclude irrelevant considerations), and are certain in their application. The Minister should direct officials to convene a meeting of its social partners, CTU and Business New Zealand, to test the reconsidered definition of high-risk.

PART II: OTHER ASPECTS OF THE REGULATIONS

10. Worker engagement and participation practices

10.1. We note that s 61(2) of the Act provides that the PCBU must comply with prescribed requirements for worker participation practices. However, the draft regulations contain no such requirements.

10.2. We think that it is appropriate that these are specified in regulations. Three particular elements are important:

Documented practices

10.3. Every PCBU should have documented practices for worker engagement and participation.

10.4. These may be an agreed procedure for engagement under s 58(2) but may also be a simple as a health and safety policy that meets the duties of engagement and worker participation practices.

10.5. This is particularly important because it will be difficult for a Health and Safety Inspector to determine what good practice looks like if it is not written down (indeed this invites a dispute between workers and PCBUs).

10.6. Documented practices also create greater certainty and clarity for new workers and officers of the PCBU.

10.7. We think the importance of documentation in allowing workers and inspectors to determine whether PCBUs are meeting their obligations considerably outweighs the compliance cost.

Issue resolution

10.8. We note that the Model WHS Regulations (regulations 22 and 23) contain a default issue resolution process that contains useful guidance for workers and PCBUs on their mutual responsibilities as follows:

> **22 Agreed procedure—minimum requirements**
> (1) This regulation sets out minimum requirements for an agreed procedure for issue resolution at a workplace.
> (2) The agreed procedure for issue resolution at a workplace must include the steps set out in regulation 23.
> (3) A person conducting a business or undertaking at a workplace must ensure that the agreed procedure for issue resolution at the workplace:

(a) complies with subregulation (2); and
(b) is set out in writing; and
(c) is communicated to all workers to whom the agreed procedure applies.

Maximum penalty:
In the case of an individual—$3 600.
In the case of a body corporate—$18 000.

23 Default procedure

(1) This regulation sets out the default procedure for issue resolution for the purposes of section 81(2) of the Act.
(2) Any party to the issue may commence the procedure by informing each other party:
(a) that there is an issue to be resolved; and
(b) the nature and scope of the issue.
(3) As soon as parties are informed of the issue, all parties must meet or communicate with each other to attempt to resolve the issue.
(4) The parties must have regard to all relevant matters, including the following:
(a) the degree and immediacy of risk to workers or other persons affected by the issue;
(b) the number and location of workers and other persons affected by the issue;
(c) the measures (both temporary and permanent) that must be implemented to resolve the issue;
(d) who will be responsible for implementing the resolution measures.
(5) A party may, in resolving the issue, be assisted or represented by a person nominated by the party.
(6) If the issue is resolved, details of the issue and its resolution must be set out in a written agreement if any party to the issue requests this.
Note
Under the Act, parties to an issue include not only a person conducting a business or undertaking, a worker and a health and safety representative, but also representatives of these persons (see section 80 of the Act).
(7) If a written agreement is prepared all parties to the issue must be satisfied that the agreement reflects the resolution of the issue.
(8) A copy of the written agreement must be given to:
(a) all parties to the issue; and
(b) if requested, to the health and safety committee for the workplace.
(9) To avoid doubt, nothing in this procedure prevents a worker from bringing a work health and safety issue to the attention of the worker's health and safety representative.

10.9. As under the Australia model, the default should be modifiable by agreement between the workers and the PCBU. This ties in with the requirement for engagement when developing issue resolution systems under the new Act (s 60(f)).

10.10. A default issue resolution process is useful to workers and PCBUs. It will help to resolve disputes more quickly and without reference to WorkSafe. A set process with minimum procedural safeguards and clear steps is particularly important in workplaces which do not have trained health and safety representatives or unions.

10.11. We propose that New Zealand enact a system of issue resolution based on the Australian model including a default issue resolution process.

Worker engagement

10.12. Section 59 of the new Act sets out the nature of engagement with workers. This section (based on the Model WHS Act) is useful but needs further specification.

10.13. We recommend a regulation setting out the following matters relating to worker engagement:

- In relation to the sharing of relevant information with workers (s 59(1)(a)), that the information be provided to workers in a manner that is easily understandable (including where workers have spoken or written language comprehension issues);

- In relation to the sharing of information in a timely manner (s 59(1)(a)), that the regulations specifically state that workers have a right to seek further relevant information if needed;

- That the reasonable opportunity for workers to express their views and contribute to the decision-making process (s 59(1)(b)) includes a right to seek advice and to express and contribute through their representatives.

11. Work groups

Determining work groups

11.1. We support the default model of 1 health and safety representative per 19 workers.

11.2. Tying the ratio to the upper size limit of a small-to-medium enterprise makes sense. However, we note that this ratio is only tied to the default and is therefore is variable by the PCBU if they consider that it is inappropriate for the workplace. This places strong importance on the criteria used to decide workgroups (under draft regulation 7).

11.3. We are aware that some submitters are already attempting to read down the default ratio by suggesting that it should be per 19 full time equivalents rather than workers. We do not support such a revision.

11.4. We support the list of criteria for determining workgroups in draft regulation 7 (which are almost identical to those in regulation 17 of the Model WHS Regulations).

11.5. A missing criterion in draft regulation 7 is the "prescribed minimum ratio for a work group referred to in regulation 6." This would not be a rigid ratio for workgroups but it is a relevant consideration when dividing up a workplace. Without this anchor, a PCBU may well decide that an appropriate ratio is 1 representative to 100 or more workers.

11.6. Unions also have an important statutory function to safeguard their members' health and safety that is recognised under the Employment Relations Act 2000 and the Health and Safety at Work Act 2015. The regulations should also recognise this. Draft regulation 7(b) should be amended to state "the views of workers and their representatives in relation to-".

11.7. We are concerned that the workgroup system may be used by some PCBUs to limit the effectiveness of health and safety representatives and avoid scrutiny of poor health and safety practices. An additional factor under draft regulation 7 should be that "Workgroups should not be used to evade enforcement or excluding workers and their representatives from participating in health and safety."

11.8. A reinforcement of the provisions of s 64(4) of the Act is important in the regulations. We recommend a new clause 7(3) stating "Any determination of work groups should ensure that the work groups effectively enable the health and safety interests of all workers in the PCBU or PCBUs to be represented. "

11.9. Health and safety inspectors should be empowered to help resolve disputes around the determination of work groups (such as where workers object to inappropriate groupings) and ultimately to determine workgroups.

Multiple PCBU work groups

11.10. Withdrawal from multiple-PCBU work groups (draft regulation 8) is problematic. This provision may be used by PCBUs to evade their health and safety obligations by withdrawing from the work group and thereby denying a health and safety representative access and the ability to exercise their powers.

11.11. A health and safety representative can generally only exercise their powers on behalf of their workgroup. Does this mean that a PCBU could evade a PIN by giving notice of their withdrawal from the workgroup structure as soon as they received the PIN or consultation that looked like it may result in a PIN? PCBUs with less than 20 workers may choose not to have representatives even if asked and other may choose not to have a workgroup which covers a group of workers. It seems to us that the holes in the worker participation system make an unqualified right of withdrawal a very dangerous one.

11.12. We recommend either that draft regulation 8 is deleted or that a much longer minimum notice period is specified (such as three months) to prevent PCBUs from opting out to avoid investigations or action by health and safety representatives or health and safety inspectors.

12. Health and safety representatives

Election process

12.1. The provisions relating to health and safety representative elections are not well drafted. There are a number of issues.

12.2. First, there is an unclear boundary between the initiation of an election (which is the PCBU's responsibility under s 65 of the Act and must occur within a given timeframe) and the conduct of an election (the requirements of which are set out in regulation).

12.3. The draft regulations envisage an election process which is far too dominated by the PCBU both by allowing the PCBU to conduct the election process in some circumstances (and providing no guidance as to when) in draft regulation 13 as well as providing that in all cases, the PCBU will undertake much of the election process (such as calling for nominations) in draft regulation 16.

12.4. This differs from both the default approach under the Health and Safety in Employment Act 1992 (where workers and their representatives conduct the elections) and the approach under cl 64 of the Model WHS Act where the workers decide the process for the conduct of the election.

12.5. The most complete recent survey of what works in the health and safety representation sphere is a 2014 study undertaken by four of the foremost experts in health and safety representation, David Walters, Richard Johnstone, Michael Quinlan and Emma Wadsworth entitled 'A study of the role of workers' representatives in health and safety arrangements in coal mines in Queensland.'[21] The study notes that one of the most important prerequisites for effective worker participation is the autonomy of the worker representatives from management. Summarising research evidence, the authors note in part 3.1.2 that:

> Further process-based pre-conditions supportive of worker representation and consultation on OHS include the presence of effective means of autonomous worker representation at the workplace and the support for it from trades unions outside the workplace, as well as the practice of consultation and communication between worker representatives and their constituencies (Walters and Nichols, 2007). In this respect, Walters and Nichols (2007) note that, while there is seldom any dissent from the notion that worker participation improves health and safety outcomes, what distinguishes worker representation and consultation from employer

[21] Full report available at: http://cfmeu.com.au/sites/cfmeu.com.au/files/downloads/[field_download_state-raw]/[field_download_type-raw]/qldminesafetyreport0314.pdf

and management led initiatives to achieve greater 'worker engagement' with health and safety issues is the independence of the former from an employer dominated approach and they point out that there are sound reasons and much evidence, both historical and current, to argue that such independence is valuable.

12.6. This lack of autonomy for health and safety representatives is a key problem in New Zealand workplaces. Giving PCBUs such influence over elections puts autonomy further at risk and with it freedom of workers to elect representatives of their choice and for those representatives to feel free to act in their fellow-workers' interests. The major survey of CTU-trained health and safety representatives appended to our submission on the Health and Safety Reform Bill found that almost 40% of representatives had been shoulder-tapped or appointed by a manager without a proper election process. It seems likely that other training providers would have greater proportions.

12.7. The proposed regulations are another backwards step and will weaken health and safety further.

12.8. We recommend the following changes to remedy this problem:

- Draft regulation 13 should include a clause based on cl 61 of the Model WHS Act that states "The workers in a work group may determine how an election of a health and safety representative for the work group is to be conducted."

- Draft regulations 16(d) and (e) should not be enacted. While we understand the intention behind these clauses (that a PCBU may determine whether an election is needed), the calling for nominations is clearly part of the election process. It is also a part of the process where the PCBU can exercise considerable influence on who stands.

- There should be an offense created under the regulations for a PCBU or officer of a PCBU who unduly influences the workers not to hold an election or to select a particular candidate.

- A health and safety inspector should be empowered to assist workers, representatives and the PCBU to resolve disputes regarding elections and to make a decision if agreement cannot be reached on issues in dispute.

12.9. Alongside this fundamental issue of electoral independence from the PCBU, we recommend a number of more technical changes.

12.10. Draft regulation 12 could be expressed more clearly if it said "Upon notification by a worker under s 62(1) the PCBU is required to initiate an election."

12.11. The proposed timeframe of three months for the initiation of an election under draft regulation 12(1) is much too slow. Often workers will request health and safety representatives because they have pressing concerns about health and safety. We note also that one of the motivations behind the misbegotten PCBU-determined workgroups was to reduce delays in the system.

12.12. Our proposal above at [12.8] that the PCBU does not call for nominations or determine whether an election is needed also reduces the amount of time required.

12.13. We recommend that the specified time for initiating an election ought to be six weeks where there is no existing health and safety representative system and four weeks otherwise.

12.14. In draft regulation 13(1) it is misleading to suggest that an election can be in any form. The election must be a vote of some description. We suggest deletion or specification.

12.15. In draft regulation 15 it would be clearer and more helpful to state in both subclauses "the vote need not be conducted" rather than "the election need not be conducted."

12.16. The PCBU ought to only provide resources and assistance that are requested by the person conducting the election (draft regulation 16(1)(a)).

List of health and safety representatives

12.17. We support the requirement to display a list of health and safety representatives and to update that list.

12.18. However, we recommend that (as occurs in Australia) PCBUs should be required to share that list with WorkSafe. This is a small compliance cost but solves a big problem for WorkSafe, that they do not know how many current health and safety representatives there are New Zealand (or any particular industry), and it provides them with the means to communicate with reps and offer professional development such as workshops, regional meetings and ongoing sharing of information and solutions to problems.

12.19. We do not agree with the proposition that the list of HSRs should merely be accessible, the CTU wishes the list to be displayed. In exceptional circumstances, e.g. where the workplace is a person's home, then a display of the list may not be appropriate. There should not be blanket exemptions.

Training for health and safety representatives

12.20. We do not support the definition of additional training that links any additional training solely to the New Zealand Qualifications Framework occupational health and safety subfield. There are currently only four qualifications approved in this field and this will substantially limit the value of further training to health and safety representatives. Many of the subjects covered in the subfield are unhelpful to health and safety representatives and many important topics are not covered.

12.21. We recommend that a choice be available for additional training allowing it to be either under the subfield or subject to a tripartite approval process facilitated by WorkSafe to ensure that it is useful and fit for purpose.

12.22. Transitional training is not linked into the set of requirements and protections under the draft regulations for initial or additional training. This means that a PCBU is not required to provide access to or funding for this training. That's a significant problem given that transitional training is very important to the proper functioning of the new Act and there is a significant incentive on unscrupulous PCBUs to avoid allowing their health and safety representatives to undertake transition training. Transition training should be subject to the same protections as initial and further training.

12.23. The cap on training days in draft regulation 26 does not make sense with regard to the initial training. This is needed for health and safety representatives to understand their role properly and exercise their powers. Unlike Employment Relations Education Leave, there is a clear cap on the amount of initial training provided by the number of health and safety representatives elected. Further, it is important that health and safety representatives get initially trained as soon as possible to ensure they understand their role, powers and obligations.

12.24. We recommend that the training cap in draft regulation 26 should only apply to additional training and not initial training.

13. Health and safety committees

13.1. We are concerned at the seeming lack of any requirements to provide any training to health and safety committees. Health and safety committees have a separate and distinct set of functions and powers from health and safety representatives. All representatives on the health and safety committee (including both worker and PCBU representatives) should be properly trained to undertake their role.

13.2. We recommend that the regulations state that "Each member of the committee is entitled to adequate training and information to undertake their role."

13.3. We are concerned at an apparent watering down of health and safety representatives' representation on the health and safety committee. Section 76 of the Model WHS Act states that:

> (2) If there is a health and safety representative at a workplace, that representative, if he or she consents, is a member of the committee.
> (3) If there are 2 or more health and safety representatives at a workplace, those representatives may choose 1 or more of their number (who consent) to be members of the committee.

13.4. Draft regulation 28(2)(c) states only that each health and safety representative who consents to be a member of the committee is eligible to be a member of the committee.

13.5. The draft regulation is ambiguous. It may be read as meaning almost the same thing as the Model WHS Act provision- that the health and safety representatives at a workplace may choose how many of their number sit on the committee. This is acceptable though not as good as the Australian provision which encourages health and safety representatives to decide the optimal representation collectively (rather than simply providing a right for all to go on the committee).

13.6. However, the same clause may also be read as stating that any health and safety representatives are eligible to sit on the committee. This would mean that health and safety representatives have no rights above other workers in the workplace (all of whom are also eligible to sit on the committee).

13.7. We recommend that the clearer and better Australian approach be followed and draft regulation 28(2)(c) be replaced by the wording of s 76(2) and (3) of the Model WHS Act.

14. Issues inspectors may decide on

14.1. Inspectors ought to be able to decide whether a business is operating in a high risk industry (or a specified industry for the purpose of draft regulation 5.

14.2. Inspectors ought to be able to decide work groups for the PCBU where those chosen are inadequate to represent worker's health and safety interests. This power is similar to that of inspectors under Australian law and provides a very important safeguard against PCBU abuse of the work group system.

14.3. Inspectors should also be able to determine election processes for health and safety representatives where these are in dispute or where a PCBU has exercised undue influence over the process or result.

15. Offences, penalties and infringement offences

15.1. The list of offences and penalties is reasonable.

15.2. We note our proposals above for additional offences regarding misclassified high risk industries or workplace size.

16. Exemptions process

16.1. We note that while not specifically covered in the draft regulations, the discussion document asks for comment as to whether any aspect of the regulations should be subject to exemptions for certain industries.

16.2. The exemptions process in Australia is governed by a set of seven nationally agreed principles to guide decision-making around the exemptions.[22] These include consistency, transparency, accountability, constructiveness, accountability, proportionality, responsiveness, and that the exemptions be targeted.

16.3. These principles are sound and would avoid the perception that the exemption process might be used to advantage specific groups.

16.4. The CTU recommends the adoption of a similar set of principles.

[22] http://www.safeworkaustralia.gov.au/sites/SWA/model-whs-laws/model-whs-regulations/Documents/National%20exemption%20framework/ExemptionWHSRegulationsNationalPrinciples.pdf

16.5. In terms of possible exemptions, we recommend that applications go through a set process rather than ad hoc as part of consultations on unrelated regulations.

16.6. Using this proper process, it would be worth considering exempting PCBUs in certain high risk industries from the ability to opt out of multi-PCBU workgroups. Obvious candidates would be mining (given the findings of the Royal Commission regarding the Tragedy at Pike River Mine on this point) and construction.

APPENDIX 1: WORKCOVER QUEENSLAND CATEGORISATION OF HIGH RISK INDUSTRIES

The following industries and sectors are considered 'high-risk' for the purposes of Queensland's Workers' Compensation and Rehabilitation Regulations 2014. The pdf version of this table is available here: https://publications.qld.gov.au/storage/f/2014-08-31T22%3A25%3A32.675Z/01-09-14-01-extra-gazette.pdf

ANZSIC Class	Industry
	Agriculture, forestry and fishing
01	Agriculture
02	Aquaculture
03	Forestry and logging
04	Fishing, hunting and trapping
05	Agriculture, forestry and fishing support services
	Mining
06	Coal mining
07	Oil and gas extraction
08	Metal ore mining
09	Non-metallic mineral mining and quarrying
10	Exploration and other mining support services
	Manufacturing
11	Food product manufacturing
12	Beverage and tobacco manufacturing
13	textile, leather, clothing and footwear manufacturing
14	Wood product manufacturing
15	Pulp, paper and converted paper product manufacturing
16	Printing (including the reproduction of recorded media)
17	Petroleum and coal product manufacturing
18	Basic chemical and chemical product manufacturing
19	Polymer product and rubber product manufacturing
20	Non-metallic mineral product manufacturing
21	Primary metal and metal product manufacturing
22	Fabricated metal product manufacturing
23	Transport equipment manufacturing
24	Machinery and equipment manufacturing
25	Furniture and other manufacturing
	Construction
30	Building construction
31	Heavy and civil engineering construction
32	Construction services
	Transport and storage
46	Road transport
47	Rail transport
48	Water transport
49	Air and space transport
50	Other transport
52	Transport support services
53	Warehousing and storage

	Health and community services
84	Hospitals
85	Medical and other health care services
86	Residential care services
	Miscellaneous
29	Waste collection, treatment and disposal services
77	Public order, safety and regulatory services
0510	Forestry support services
7711	Police services
1611	Printing
3020	Non-residential building construction
7714	Correctional and detention services